

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; ISALAH
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 04:55 PM
Elizabeth A. Brown
Clerk of Supreme Court

Appeal No. 84861

APPELLANTS’ APPENDIX

VOLUME 4

VOL.	DOCUMENT	DATE	PAGES
1	Case Summary	N/A	1-48
1	Initial Appearance Fee Disclosure	February 4, 2019	49-50
1	Complaint with Affidavit from Dr. Sami Hashim, M.D.	February 4, 2019	51-79

1	Affidavit of Service – Service upon Valley Health System, LLC	June 4, 2019	80-81
1	Motion to Dismiss by Valley Health System, LLC	June 19, 2019	82-94
1	Plaintiffs’ Opposition to Motion to Dismiss	August 13, 2019	94-102
1	Journal Entry denying Motion to Dismiss	September 25, 2019	103-104
1	Answer by Valley Health System, LLC	April 15, 2020	105-115
1	Scheduling Order & Trial Date	May 6, 2020	116-120
1	Offer of Judgment by Valley Health System, LLC	August 28, 2020	121-124
2	Motion for Summary Judgment by Valley Health System, LLC (exhibits excluded)	September 2, 2020	125-142
2	Plaintiffs’ Opposition to Motion for Summary Judgment (most exhibits excluded)	September 16, 2020	143-156
2	Reply to Plaintiffs’ Opposition to Motion for Summary Judgment (exhibits excluded)	October 21, 2020	157-179
2	Notice of Order denying Motion for Summary Judgment	November 2, 2020	180-189
3	Petition for Writ of Mandamus to Nevada Supreme Court	December 22, 2020	190-228
3	Order by Nevada Supreme Court Granting Writ of Mandamus	October 18, 2021	229-234

3	Petition for Rehearing on Order Granting Writ of Mandamus	November 5, 2021	235-255
3	Notice of Erratum	November 15, 2021	256-258
3	Order by Nevada Supreme Court Denying Rehearing	November 15, 2021	259-260
3	Write of Mandamus issued by Nevada Supreme Court	November 22, 2021	261-262
3	Certificate of Service of Writ of Mandamus	November 3, 2021	263-267
3	Order by Nevada Supreme Court denying En Banc Reconsideration	January 10, 2022	268-269
4	Notice of Order of District Court Vacating Summary Judgment	November 19, 2021	270-281
4	Memorandum of Costs filed by Valley Health System, LLC (exhibits included)	November 22, 2021	282-305
4	Motion for Attorneys Fees by Valley Health System, LLC (exhibits included)	November 22, 2021	306-357
4	Plaintiffs' Opposition to Motions for fees and costs (exhibits included)	December 16, 2021	358-458
4	Reply to Plaintiffs' Opposition by Valley Health System, LLC (exhibits excluded)	February 2, 2022	459-480

4	Notice of Order denying Valley Health System, LLC fees and costs	February 16, 2022	481-496
5	Motion for Reconsideration of Order Denying Fees and Costs filed by Valley Health System, LLC	February 23, 2022	497-525
5	Notice of Hearing on Motion for Reconsideration	February 23, 2022	526
5	Plaintiffs' Opposition to Motion for Reconsideration	March 9, 2022	527-538
5	Notice of Appeal by Valley Health System, LLC regarding denial of fees and costs	March 14, 2022	539-560
5	Case Appeal Statement by Valley Health System, LLC	March 14, 2022	561-570
5	Notice of Appeal by Valley Health System, LLC filed with Nevada Supreme Court	March 14, 2022	571-592
6	Notice of Order denying Valley Health System, LLC's motion for reconsideration of denial of fees and costs based upon lack of jurisdiction	May 4, 2022	593-605
6	Notice of Withdrawal of Appeal by Valley Health System, LLC	May 12, 2022	606-608
6	Order Dismissing Appeal	May 16, 2022	609

6	Notice of Entry of Judgment	June 7, 2022	610-656
6	Plaintiffs' Notice of Appeal from Judgment	June 7, 2022	657-658
6	Plaintiffs' Case Appeal Statement	June 7, 2022	659-663
6	Notice of Order staying enforcement of judgment	December 9, 2022	664-672

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 4** 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



1 NEOJ
S. BRENT VOGEL
2 Nevada Bar No. 06858
Brent.Vogel@lewisbrisbois.com
3 ADAM GARTH
Nevada Bar No. 15045
4 Adam.Garth@lewisbrisbois.com
LEWIS BRISBOIS BISGAARD & SMITH LLP
5 6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
6 T: 702.893.3383
F: 702.893.3789
7 *Attorneys for Defendant Valley Health System,*
8 *LLC dba Centennial Hills Hospital Medical*
Center

9
10 DISTRICT COURT
11 CLARK COUNTY, NEVADA

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

Case No. A-19-788787-C

Dept. No. 30

NOTICE OF ENTRY OF ORDER

15 Plaintiffs,

16 vs.

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

22 Defendants.

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

26 ///

27 ///

28 ///

1 DATED this 19th day of November, 2021.

2

3

LEWIS BRISBOIS BISGAARD & SMITH LLP

4

5

By /s/ Adam Garth

6

S. BRENT VOGEL

7

Nevada Bar No. 06858

8

ADAM GARTH

9

Nevada Bar No. 15045

10

6385 S. Rainbow Boulevard, Suite 600

11

Las Vegas, Nevada 89118

12

702.893.3383

13

Attorneys for Attorneys for Defendant Valley

14

Health System, LLC dba Centennial Hills Hospital

15

Medical Center

16

17

18

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24

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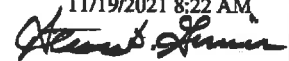
1 **CERTIFICATE OF SERVICE**

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

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

John H. Cotton, Esq.
Brad Shipley, Esq.
JOHN. H. COTTON & ASSOCIATES
7900 W. Sahara Ave., Suite 200
Las Vegas, NV 89117
Tel: 702.832.5909
Fax: 702.832.5910
jhcotton@jhcottonlaw.com
bshipleyr@jhcottonlaw.com
*Attorneys for Defendants Dionice S. Juliano,
M.D., Conrado Concio, M.D And Vishal S.
Shah, M.D.*

14
15
16 By /s/ Roya Rokni
17 An Employee of
18 LEWIS BRISBOIS BISGAARD & SMITH LLP
19
20
21
22
23
24
25
26
27
28


CLERK OF THE COURT

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

DISTRICT COURT
 CLARK COUNTY, NEVADA

ESTATE OF REBECCA POWELL, through
 BRIAN POWELL, as Special Administrator;
 DARCI CREECY, individually and as Heir;
 TARYN CREECY, individually and as an
 Heir; 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.: 30

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Dated this 19th day of November, 2021

4
5 Dated: _____



DISTRICT COURT JUDGE

6
7
8 DATED this ____ day of November, 2021.

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

9
10 *UNSIGNED*

11 Paul S. Padda, Esq.
12 Srilata Shah, Esq.,
13 PAUL PADDA LAW, PLLC
14 4560 S. Decatur Blvd., Suite 300
15 Las Vegas, NV 89103
16 Tel: 702.366.1888
17 Fax: 702.366.1940
18 psp@paulpaddalaw.com
19 *Attorneys for Plaintiffs*

DATED this 18th day of November, 2021

18 /s/ Brad Shipley

19 John H. Cotton, Esq.
20 Brad Shipley, Esq.
21 JOHN H. COTTON & ASSOCIATES
22 7900 W. Sahara Ave., Suite 200
23 Las Vegas, NV 89117
24 Tel: 702.832.5909
25 Fax: 702.832.5910
26 jhcotton@jhcottonlaw.com
27 bshipley@jhcottonlaw.com
28 *Attorneys for Defendants Dionice S. Juliano,
M.D., Conrado Concio, M.D And Vishal S.
Shah, M.D.*

/s/ Adam Garth

S. BRENT VOGEL, ESQ.
Nevada Bar No. 6858
ADAM GARTH, ESQ.
Nevada Bar No. 15045
SHADY SIRSY, ESQ.
Nevada Bar No. 15818
LEWIS BRISBOIS BISGAARD & SMITH
LLP
6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
*Attorneys for Defendant Valley Health
System, LLC dba Centennial Hills Hospital
Medical Center*

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

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Adam,

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

Brad Shipley, Esq.

John H. Cotton & Associates, Ltd.

7900 W. Sahara ave. #200

Las Vegas, NV 89117

bshipley@jhcottonlaw.com

702 832 5909

From: Garth, Adam <Adam.Garth@lewisbrisbois.com>

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

To: Srilata Shah <sri@paulpaddalaw.com>; Paul Padda <psp@paulpaddalaw.com>; Brad Shipley <bshipley@jhcottonlaw.com>

Cc: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>; Sirsy, Shady <Shady.Sirsy@lewisbrisbois.com>; San Juan, Maria <Maria.SanJuan@lewisbrisbois.com>; John Cotton <jhcotton@jhcottonlaw.com>

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

Importance: High

Counsel,

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

Adam Garth



Adam Garth

Partner

Adam.Garth@lewisbrisbois.com

T: 702.693.4335 F: 702.366.9563

6385 South Rainbow Blvd., Suite 600, Las Vegas, NV 89118 | LewisBrisbois.com

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From: Garth, Adam <Adam.Garth@lewisbrisbois.com>

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

To: Srilata Shah <sri@paulpaddalaw.com>; Paul Padda <psp@paulpaddalaw.com>; Brad Shipley <bshipley@ihcottonlaw.com>

Cc: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>; San Juan, Maria <Maria.SanJuan@lewisbrisbois.com>; Sirsy, Shady <Shady.Sirsy@lewisbrisbois.com>; ihcotton@ihcottonlaw.com

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

Importance: High

Counsel:

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

Adam Garth

Adam Garth
Partner
Las Vegas Rainbow
702.693.4335 or x7024335

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

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

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

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

Paul S. Padda, Esq.
PAUL PADDALAW, PLLC
Websites: paulpaddalaw.com

Nevada Office:
4560 South Decatur Blvd., Suite 300
Las Vegas, Nevada 89103
Tele: (702) 366-1888

California Office:
One California Plaza
300 South Grand Avenue, Suite 3840
Los Angeles, California 90071
Tele: (213) 423-7788



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

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Cc: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>; Sirsy, Shady <Shady.Sirsy@lewisbrisbois.com>; San Juan, Maria <Maria.SanJuan@lewisbrisbois.com>; ihcotton@ihcottonlaw.com

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

Importance: High

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Adam Garth



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Partner
Adam.Garth@lewisbrisbois.com
T: 702.693.4335 F: 702.366.9563

6385 South Rainbow Blvd., Suite 600, Las Vegas, NV 89118 | LewisBrisbois.com

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From: Garth, Adam <Adam.Garth@lewisbrisbois.com>

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

To: Srilata Shah <sri@paulpaddalaw.com>; Paul Padda <psp@paulpaddalaw.com>; Brad Shipley <bshipley@ihcottonlaw.com>

Cc: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>; San Juan, Maria <Maria.SanJuan@lewisbrisbois.com>; Sirsy, Shady <Shady.Sirsy@lewisbrisbois.com>; ihcotton@ihcottonlaw.com

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


Importance: High

Counsel:

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

Adam Garth

Adam Garth



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

9 DISTRICT COURT

10 CLARK COUNTY, NEVADA

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

15 Plaintiffs,

16 vs.

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

22 Defendants.
23

Case No. A-19-788787-C

Dept. No.: 30

**DEFENDANT VALLEY HEALTH
SYSTEM LLC'S VERIFIED
MEMORANDUM OF COSTS**

24
25 Defendant VALLEY HEALTH SYSTEM, LLC (doing business as "Centennial Hills
26 Hospital Medical Center", hereinafter "CHH") as the prevailing party, by and through their
27 attorneys, the law firm of Lewis Brisbois Bisgaard & Smith LLP, hereby submit the following
28 Verified Memorandum of Costs to be recovered against Plaintiffs pursuant N.R.S. 18.005, 18.020,

1 18.110, 17.117, and N.R.C.P. 68(f):

2	Clerk's fees	Allowed by NRS 18.005(1)	\$515.50
3	Expert fees	Allowed by NRS 18.005(5)	\$41,724.10
4	Process Server fees	Allowed by NRS 18.005(7)	\$27.43
5	Other	Allowed by NRS 18.005(17)	\$225.00
6			
7		TOTAL	\$42,492.03

8 Supporting documentation for the items set forth above is attached hereto as Exhibit "A" in
9 the form of a disbursement log. According to the log, a total of \$45,267.03 was incurred as
10 recoverable disbursements. However, the \$3,000 arbitration fee is being refunded except for a \$225
11 administrative fee. The amount contained in this memorandum reflects the yet to be refunded
12 arbitration fees less the administrative fee. In accordance with NRS 18.005 and NRS 18.020,
13 Defendants are entitled to a cost award of **\$42,492.03**. Further, Plaintiff rejected an Offer of
14 Judgment by Defendants dated August 28, 2020 and failed to obtain a more favorable judgment.¹
15 Therefore, the costs set forth above are recoverable by Defendants pursuant to N.R.C.P. 68(f) and
16 N.R.S. 17.117(10).

17 The expert costs incurred in this case were reasonable, necessarily incurred and are
18 recoverable pursuant to NRS 18.005. Pursuant to NRS 41A.100, professional negligence claims
19 require expert medical testimony be given on standard of care and causation. *See also, Williams v.*
20 *Dist. Ct.*, 262 P. 3d 360, 127 Nev. 518 (2011). The amount of "reasonable costs" for experts is
21 limited to the three distinct expert witnesses at \$1,500 per expert, "unless the court allows a larger
22 fee after determining that the circumstances surrounding the expert's testimony were of such
23 necessity as to require the larger fee." NRS 18.005(5). For complicated professional negligence
24 cases as this one, courts can and often do permit expert fees in excess of \$1,500.

25 The experts retained by CHH all meet the factors set out in *Frazier v. Drake*, 357 P.3d 365, 377
26

27 ¹ See Offer of Judgment, attached hereto as Exhibit "A", and Notice of Entry of Summary
28 Judgment, attached hereto as Exhibit "B".

1 (Nev.App. 2015) for granting expert fees in excess of \$1,500. CHH needed to dispel the medically
2 incorrect assertion by Plaintiffs that the administration of Ativan to Ms. Powell caused suppressed
3 breathing. Richard Ruffalo, M.D., a pharmacologist was required to analyze Ms. Powell's medical
4 records of more than 1,600 pages and formulate opinions and rebuttals of Plaintiffs' experts in this
5 case who advanced medically impossible theories. Furthermore, Hiren Shah, M.D., a hospitalist,
6 and Abraham Ishaaya, M.D., a critical care specialist, were retained to rebut the allegations that both
7 a critical care expert was needed to attend to Ms. Powell, and that the care she received while
8 hospitalized in a non-ICU setting was entirely appropriate under the circumstances. All three of
9 these experts opined on causation, and Drs. Shah and Ishaaya commented on standard of care as
10 well. Moreover, Plaintiffs' submitted a wholly unsubstantiated economist's report based upon not
11 one shred of evidence as to lost earning capacity of Ms. Powell. CHH retained an economist to
12 completely discredit Plaintiffs' report due to the absence of any proof whatsoever of any economic
13 losses.

14 The three medical experts expended many hours reviewing the voluminous medical records in
15 this case and prepared two written reports including initial and rebuttal reports. Drs. Shah, Ishaaya,
16 and Ruffalo each independently meet the *Frazier* factors for a fee in excess of \$1,500 for each of
17 their respective services.

18 Eric Volk, a forensic economist rebutted the report of Plaintiffs' economist and needed to
19 research the theory upon which Plaintiffs' expert predicated his completely unsubstantiated opinion.
20 Mr. Volk spent numerous hours reviewing Plaintiffs' expert report and researching the lack of basis
21 for Plaintiffs' expert's opinions based upon no evidence whatsoever. He prepared a rebuttal report.
22 Mr. Volk meets the *Frazier* factors for a fee in excess of \$1,500.

23 CHH respectfully requests this Court exercise its discretion and allow the recovery of all
24 expert costs incurred by CHH secondary to the complex nature of Plaintiffs' alleged medical
25 injuries, the causation of those injuries, and Plaintiff's complicated claims of economic injury.

26 ///

27 ///

28 ///

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of November, 2021, a true and correct copy of **DEFENDANT VALLEY HEALTH SYSTEM LLC'S VERIFIED MEMORANDUM OF COSTS** was served by electronically filing with the Clerk of the Court using the Odyssey E-File & Serve system and serving all parties with an email-address on record, who have agreed to receive electronic service in this action.

Paul S. Padda, Esq.
PAUL PADDA LAW, PLLC
4560 S. Decatur Blvd., Suite 300
Las Vegas, NV 89103
Tel: 702.366.1888
Fax: 702.366.1940
psp@paulpaddalaw.com
Attorneys for Plaintiffs

John H. Cotton, Esq.
Brad Shipley, Esq.
JOHN. H. COTTON & ASSOCIATES
7900 W. Sahara Ave., Suite 200
Las Vegas, NV 89117
Tel: 702.832.5909
Fax: 702.832.5910
jhcotton@jhcottonlaw.com
bshipleyr@jhcottonlaw.com
*Attorneys for Defendants 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

EXHIBIT 'A'

EXHIBIT 'A'

DBDRYP02

Disbursement Diary

From 0/00/00 Through 10/31/21 10/26/2021 10:47:02 patricia.jose Page 1
UHS of Delaware, Inc. *Publiclado-sqn01#acc/LDBData
Estate of Rebecca Powell v. Centennial Hills Selections: Client-Matter: 28094-190 to 28094-190 WIP Only *Include Write-Offs *Include AJP Invoices Sent to Client for Direct Payment*

Date	DsbCd	Description	Check No.	Units	Rate	Amount	Stat/Source	Invoice No.
8/18/21	EXPM	Medical Expert Services: Ruffalo & Associates, Inc. Expert medical services rendered on 06/14/21.	337132			10,350.00-	W A/P-P	
8/18/21	EXPM	Medical Expert Services: Ruffalo & Associates, Inc. Inv#:2538 Expert medical services rendered on 06/14/21.	337211			10,350.00	W A/P-P	
10/09/21	EXPM	Medical Expert Services: Abraham Ishaaya Inv#:5POWELL Expert medical services rendered on 09/16/21 - 10/01/21.				3,437.50	A/P	
Disbursements by Type:								
EXPM Medical Expert Services						3,437.50		
Matter Total						3,437.50		

DBDRYP02

Disbursement Diary

Page 1

10/26/2021 10:34:12 patricia.jose

*Public/adc-sqlh01#acct/DBData

From 0/00/00 Through 10/31/21

UHS of Delaware, Inc.
Estate of Rebecca Powell v. Centennial Hills*Include A/P Invoices Sent to Client
for Direct Payment*

Selections: Client-Matter: 28094-190 *Include Write-Offs*

Date	DsbCd	Description	Check No.	Units	Rate	Amount	Stat/Source	Invoice No.
6/15/20	Q	Filing Services: American Legal Investigation Services Nevada, Inc. Inv#:3706/03/20 McBride Hall 5150163	304417			27.43	P A/P-P	2701173
7/14/20	5	Court filing fee: Comerica Commercial Card Services Inv#:063020STMT-ANOUWELS Trans Date: 06/08/2020 Nvfile* 006153274-0, Filing fee for substitution of attorney for defendant Valley Health System, LLC dba Centen Hills Hospital Medical Center.						
7/22/20	CS	E123-Consulting Services: Ruffalo & Associates, Inc. Inv#:2441 Professional services rendered on 06/24/20 - 07/22/20.	305674			3.50	P A/P-P	2723465
8/26/20	EXPM	Medical Expert Services: Abraham Ishaaya Inv#:POWELL,R-080220 Expert medical services rendered on 08/02/20 - 08/10/20.	309051			4,350.00	P A/P-P	2723465
9/15/20	5	Court filing fee: Comerica Commercial Card Services Inv#:083120STMT-ANOUWELS Trans Date: 08/10/2020 Nvfile* 006448171-0, Filing fee for non opposition.				6,710.00	P A/P-P	2756453
9/15/20	CS	E123-Consulting Services: Ruffalo & Associates, Inc. Inv#:2449 Professional services rendered on 09/10/20.	310480			3.50	P A/P-P	2777320
9/17/20	EXPM	Medical Expert Services: Abraham Ishaaya Inv#:2POWELL Expert medical services rendered on 09/13/20 - 09/15/20.	310408			1,800.00	P A/P-P	2777320
10/15/20	5	Court filing fee: Comerica Commercial Card Services Inv#:093020STMT-ANOUWELS Trans Date: 09/02/2020 Nvfile* 006555123-0, Filing fee for Valley Health System, LLC and Universal Health Services, Inc.'s motion for summary judgment based upon the expiration of the statute of limitations.				1,375.00	P A/P-P	2777320
11/16/20	5	Court filing fee: Comerica Commercial Card Services Inv#:103120STMT-ANOUWELS Trans Date: 10/21/2020 Nvfile* 006809393-0, Filing fee for reply opposition.				209.50	P A/P-P	2808914
11/16/20	5	Court filing fee: Comerica Commercial Card Services Inv#:103120STMT-ANOUWELS Trans Date: 10/26/2020 Nvfile* 006836433-0, Filing fee for defendants Valley Health System, LLC and Universal Health Services, Inc.'s amended ex parte application to strike non- conforming document pursuant to EDCR 8. 03 and replace non-conforming pages.				3.50	P A/P-P	2836962
11/16/20	5	Court filing fee: Comerica Commercial Card Services Inv#:103120STMT-ANOUWELS Trans Date: 10/26/2020 Nvfile* 006834234-0, Filing fee for defendants' application to strike non-conforming document pursuant to EDCR and replace non-conforming document on defendants' motion for summary judgment based upon expiration of statute of limitations.				3.50	P A/P-P	2836962
11/16/20	5	Court filing fee: Comerica Commercial Card Services Inv#:103120STMT-ANOUWELS Trans Date: 10/28/2020 Nvfile* 006850481-0, Filing fee for notice entry of order.				3.50	P A/P-P	2836962
12/14/20	5	Court filing fee: Comerica Commercial Card Services Inv#:113020STMT-ANOUWELS Trans Date: 11/02/2020 Nvfile* 006870224-0, Filing fee for notice entry of order.				3.50	P A/P-P	2836962
12/14/20	5	Court filing fee: Comerica Commercial Card Services Inv#:113020STMT-				3.50	P A/P-P	2853363

Stat: blank-WIP Open; W-WIP Written-off; B-Billed & Unpaid; P-Paid; SN-Sent to client for direct payment; PW-partially paid/partially written-off.
Source: A/P-Accounts Payable Vendor Not Paid; A/P-P-Accounts Payable-Vendor Paid; DSB-Disb entry; APWFL-A/P Workflow

DBDRYP02

Disbursement Diary

Page 2

10/26/2021 10:34:13 patricia.jose

*PublicLad-sqln01#acc/LDBData

AM

From 0/00/00 Through 10/31/21

UHS of Delaware, Inc.
Estate of Rebecca Powell v. Centennial Hills

Include Write-Offs *Include A/P Invoices Sent to Client for Direct Payment*

Selections: Client-Matter: 28094-190 to 28094-190 *Include Write-Offs*

Date	DsbCd	Description	Check No.	Units	Rate	Amount	Stat/Source	Invoice No.
1/15/21	5	ANOUWELS Trans Date: 11/20/2020 Nvefile* 006968470-0, Filing fee for defend Valley Health System LLC's reply to plaintiff's opposition to motion for st shortening time.				3.50	P A/P-P	2853363
1/15/21	5	Court filing fee: Comerica Commercial Card Services Inv#:123120STMT-ANOUWELS Trans Date: 12/17/2020 Nvefile* 007108178-0, Filing fee for notice entry of order.				3.50	P A/P-P	2885307
2/12/21	5	Court filing fee: Comerica Commercial Card Services Inv#:123120STMT-ANOUWELS Trans Date: 12/23/2020 Nevada Supreme Court, Filing fee for petiti for writ of mandamus.				250.00	P A/P-P	2885307
5/14/21	5	Court filing fee: Comerica Commercial Card Services Inv#:013121STMT-ANOUWELS Trans Date: 01/21/2021 Nvefile* 007268304-0, Filing fee for notice entry of order.				3.50	P A/P-P	2915500
5/14/21	5	Court filing fee: Comerica Commercial Card Services Inv#:043021STMT-ANOUWELS Trans Date: 04/06/2021 Nvefile* 007678289-0, Filing fee for exhibi m to defendant Valley Health System LLC's motion to reconsider.				3.50	P A/P-P	2994277
5/14/21	5	Court filing fee: Comerica Commercial Card Services Inv#:043021STMT-ANOUWELS Trans Date: 04/06/2021 Nvefile* 007677918-0, Filing fee for defend Valley Health System LLC's motion to reconsider motion for stay pending pet for writ of mandamus.				3.50	P A/P-P	2994277
5/14/21	5	Court filing fee: Comerica Commercial Card Services Inv#:043021STMT-ANOUWELS Trans Date: 04/09/2021 Nvefile* 00769690-0, Filing fee for notice entry of order.				3.50	P A/P-P	2994277
5/19/21	EXPM	Court filing fee: Comerica Commercial Card Services Inv#:043021STMT-ANOUWELS Trans Date: 04/16/2021 Nvefile* 007734419-0, Filing fee for defend Valley Health System LLC's reply in further support of its motion to recons motion for stay pending petition for writ of mandamus and in reply to plain opposition.	331469			3.50	P A/P-P	2994277
6/15/21	EXPM	Medical Expert Services: Abraham Ishaaya Inv#:3POWELL Expert medical services rendered on 05/14/21 - 05/18/21.	337132			6,187.50	P A/P-P	2982480
7/15/21	5	Medical Expert Services: Ruffalo & Associates, Inc. Inv#:2538 Expert medica services rendered on 06/14/21.				10,350.00	P A/P-P	3026387
7/15/21	5	Court filing fee: Comerica Commercial Card Services Inv#:063021STMT-ANOUWELS Trans Date: 06/04/2021 Nvefile* 007997526-0, Filing fee for notice entry of order.						
7/15/21	5	Court filing fee: Comerica Commercial Card Services Inv#:063021STMT-ANOUWELS Trans Date: 06/18/2021 Nvefile* 008073913-0, Filing fee for initia expert disclosure.				3.50	B A/P-P	3043957
7/15/21	EXPM	Medical Expert Services: Abraham Ishaaya Inv#:POWELL,R-071521 Expert medical services rendered on 07/15/21.						
8/12/21	AM	E121-Arbitrators/Mediators Fees: JAMS, INC. Inv#:5821548 Mediation/arbitrat services rendered on 08/10/21. -Approved by Richard Kim from UHS of Delaware	335584			2,970.00	B A/P	3043957

Stat: blank-WIP Open; W-WIP Written-off; B-Billed & Unpaid; P-Paid; SN-Sent to client for direct payment; PW-partially paid/partially written-off.
Source: A/P-Accounts Payable Vendor Not Paid; A/P-P-Accounts Payable-Vendor Paid; DSB-Disb entry; APWFL-A/P Workflow

Disbursement Diary

Page 3

10/26/2021 10:34:14 patricia.jose

From 0/00/00 Through 10/31/21

UHS of Delaware, Inc.
Estate of Rebecca Powell v. Centennial Hills

*Public/ldc-sqln01#acct/LDBData
*Include A/P Invoices Sent to
Client for Direct Payment*

Selections: Client-Matter: 28094-190 to 28094-190 *Include Write-Offs*

Date	DsbCd	Description	Check No.	Units	Rate	Amount	Stat	Source	Invoice No.
8/18/21	EXPM	Medical Expert Services: Ruffalo & Associates, Inc. Expert medical services rendered on 06/14/21.	337132			3,000.00	P	A/P-P	3072540
8/18/21	EXPM	Medical Expert Services: Ruffalo & Associates, Inc. Inv#:2538 Expert medical services rendered on 06/14/21.	337211			10,350.00	- W	A/P-P	
8/26/21	CS	E123-Consulting Services: J.S. Held, LLC Inv#:1274938 Professional services rendered on 06/21/21 - 08/26/21.	341295			10,350.00	W	A/P-P	
9/13/21	CS	E123-Consulting Services: J.S. Held, LLC Inv#:1278635 Professional services rendered on 08/09/21 - 08/24/21.				688.50	P	A/P-P	3069107
10/09/21	EXPM	Medical Expert Services: Abraham Ishaaya Inv#:5POWELL Expert medical services rendered on 09/16/21 - 10/01/21.				3,855.60	B	A/P	3102586
						3,437.50		A/P	

Disbursements by Type:

5	Court filing fee	515.50
AM	E121-Arbitrators/Mediators Fees	3,000.00
CS	E123-Consulting Services	10,694.10
EXPM	Medical Expert Services	31,030.00
Q	Filing Services	27.43

Matter Total

45,267.03

EXHIBIT 'B'

EXHIBIT 'B'



1 **NEOJ**
2 **S. BRENT VOGEL**
3 **Nevada Bar No. 06858**
4 **Brent.Vogel@lewisbrisbois.com**
5 **ADAM GARTH**
6 **Nevada Bar No. 15045**
7 **Adam.Garth@lewisbrisbois.com**
8 **LEWIS BRISBOIS BISGAARD & SMITH LLP**
9 **6385 S. Rainbow Boulevard, Suite 600**
10 **Las Vegas, Nevada 89118**
11 **T: 702.893.3383**
12 **F: 702.893.3789**
13 ***Attorneys for Defendant Valley Health System,***
14 ***LLC dba Centennial Hills Hospital Medical***
15 ***Center***

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

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

18 **Plaintiffs,**

19 **vs.**

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

Defendants.

Case No. A-19-788787-C

Dept. No. 30

NOTICE OF ENTRY OF ORDER

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

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DATED this 19th day of November, 2021.

LEWIS BRISBOIS BISGAARD & SMITH LLP

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

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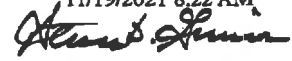
CERTIFICATE OF SERVICE

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

Paul S. Padda, Esq.
PAUL PADDA LAW, PLLC
4560 S. Decatur Blvd., Suite 300
Las Vegas, NV 89103
Tel: 702.366.1888
Fax: 702.366.1940
psp@paulpaddalaw.com
Attorneys for Plaintiffs

John H. Cotton, Esq.
Brad Shipley, Esq.
JOHN. H. COTTON & ASSOCIATES
7900 W. Sahara Ave., Suite 200
Las Vegas, NV 89117
Tel: 702.832.5909
Fax: 702.832.5910
jhcotton@jhcottonlaw.com
bshipleyr@jhcottonlaw.com
*Attorneys for Defendants 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


 CLERK OF THE COURT

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

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

Case No. A-19-788787-C

Dept. No.: 30

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 ///

27 ///

28 ///

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

Dated this 19th day of November, 2021

4
5 Dated: _____



DISTRICT COURT JUDGE

6
7
8 DATED this ____ day of November, 2021.

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

9
10 *UNSIGNED*

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

20 DATED this 18th day of November, 2021

21 /s/ Brad Shipley

22 John H. Cotton, Esq.
23 Brad Shipley, Esq.
24 JOHN H. COTTON & ASSOCIATES
25 7900 W. Sahara Ave., Suite 200
26 Las Vegas, NV 89117
27 Tel: 702.832.5909
28 Fax: 702.832.5910
jhcotton@jhcottonlaw.com
bshipley@jhcottonlaw.com
Attorneys for Defendants Dionice S. Juliano,
M.D., Conrado Concio, M.D And Vishal S.
Shah, M.D.

/s/ Adam Garth

S. BRENT VOGEL, ESQ.
Nevada Bar No. 6858
ADAM GARTH, ESQ.
Nevada Bar No. 15045
SHADY SIRSY, ESQ.
Nevada Bar No. 15818
LEWIS BRISBOIS BISGAARD & SMITH
LLP
6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
Attorneys for Defendant Valley Health
System, LLC dba Centennial Hills Hospital
Medical Center

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

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Adam,

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

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

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

Counsel,

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

Adam Garth



Adam Garth
Partner
Adam.Garth@lewisbrisbois.com
T: 702.693.4335 F: 702.366.9563

6385 South Rainbow Blvd., Suite 600, Las Vegas, NV 89118 | LewisBrisbois.com

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From: Garth, Adam <Adam.Garth@lewisbrisbois.com>

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

To: Srilata Shah <sri@paulpaddalaw.com>; Paul Padda <psp@paulpaddalaw.com>; Brad Shipley <bshiplev@ihcottonlaw.com>

Cc: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>; San Juan, Maria <Maria.SanJuan@lewisbrisbois.com>; Sirsy, Shady <Shady.Sirsv@lewisbrisbois.com>; Ihcotton@ihcottonlaw.com

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

Importance: High

Counsel:

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

Adam Garth

Adam Garth
Partner
Las Vegas Rainbow
702.693.4335 or x7024335

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

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

From: Paul Padda <psp@paulpaddalaw.com>
Sent: Friday, November 12, 2021 9:56 AM
To: Garth, Adam <Adam.Garth@lewisbrisbois.com>; Srilata Shah <sri@paulpaddalaw.com>; Brad Shipley <bshipley@jhcottonlaw.com>
Cc: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>; Sirsy, Shady <Shady.Sirsy@lewisbrisbois.com>; San Juan, Maria <Maria.SanJuan@lewisbrisbois.com>; jhcotton@jhcottonlaw.com
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As you know, there is a motion for rehearing pending in the Supreme Court. Given that fact, and the lack of prejudice to Defendants, please advise if Defendants are willing to stay enforcement of the Supreme Court's decision which is the subject of a motion for rehearing?
Thanks.

Paul S. Padda, Esq.
PAUL PADDA LAW, PLLC
Websites: paulpaddalaw.com

Nevada Office:
4560 South Decatur Blvd., Suite 300
Las Vegas, Nevada 89103
Tele: (702) 366-1888

California Office:
One California Plaza
300 South Grand Avenue, Suite 3840
Los Angeles, California 90071
Tele: (213) 423-7788



PAUL PADDA LAW
TRIAL ATTORNEYS

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From: Garth, Adam <Adam.Garth@lewisbrisbois.com>

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

To: Sriyata Shah <sri@paulpaddalaw.com>; Paul Padda <psp@paulpaddalaw.com>; Brad Shipley <bshipley@ihcottonlaw.com>

Cc: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>; Sirsy, Shady <Shady.Sirsy@lewisbrisbois.com>; San Juan, Maria <Maria.SanJuan@lewisbrisbois.com>; ihcotton@ihcottonlaw.com

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

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Adam Garth



Adam Garth
Partner
Adam.Garth@lewisbrisbois.com
T: 702.693.4335 F: 702.366.9563

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To: Sriyata Shah <sri@paulpaddalaw.com>; Paul Padda <psp@paulpaddalaw.com>; Brad Shipley <bshipley@ihcottonlaw.com>

Cc: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>; San Juan, Maria <Maria.SanJuan@lewisbrisbois.com>; Sirsy, Shady <Shady.Sirsy@lewisbrisbois.com>; ihcotton@ihcottonlaw.com

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

Importance: High

Counsel:

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Adam Garth

Adam Garth

Partner
Las Vegas Rainbow
702.693.4335 or x7024335



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

8
9 DISTRICT COURT

10 CLARK COUNTY, NEVADA
11

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

15 Plaintiffs,

16 vs.

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

23 Defendants.

Case No. A-19-788787-C

Dept. No.: 30

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

HEARING REQUESTED

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

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

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

2

3 DATED this 22nd day of November, 2021

4

5

LEWIS BRISBOIS BISGAARD & SMITH LLP

6

7

By /s/ Adam Garth

8

S. BRENT VOGEL

Nevada Bar No. 6858

9

ADAM GARTH

Nevada Bar No. 15045

10

6385 S. Rainbow Boulevard, Suite 600

11

Las Vegas, Nevada 89118

12

Tel. 702.893.3383

13

Attorneys for Attorneys for Defendant Valley

Health System, LLC dba Centennial Hills Hospital

14

Medical Center

15

16

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

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

- 4 1. I am a partner at Lewis Brisbois Bisgaard & Smith LLP, and am duly licensed to practice
5 law in the State of Nevada. I am competent to testify to the matters set forth herein, and will
6 do so if called upon.
- 7 2. I am one of the attorneys of record representing Defendant Valley Health System, LLC dba
8 Centennial Hills Hospital Medical Center ("Defendant" or "CHH") in the above-entitled
9 action, currently pending in Department 30 of the Eighth Judicial District Court for the State
10 of Nevada, Case No. A-19-788787-C.
- 11 3. I make this Declaration on behalf of DEFENDANT VALLEY HEALTH SYSTEM, LLC
12 DBA CENTENNIAL HILLS HOSPITAL MEDICAL CENTER'S MOTION FOR
13 ATTORNEYS' FEES PURSUANT TO N.R.C.P. 68, N.R.S. §§ 17.117, 7.085, 18.010(2),
14 AND EDCR 7.60.
- 15 4. I have been counsel of record for Defendants for much of this case, including for all times
16 that fees are being sought with this Motion for post-NRCP Rule 68 fees and costs, and much
17 pre-NRCP Rule 68 fees and costs.
- 18 5. On August 28, 2020, Defendant served an Offer of Judgment on Plaintiff pursuant to
19 N.R.C.P. 68, N.R.S. 17.115¹, and *Busick v. Trainor*, 2019 Nev. Unpub. LEXIS 378, 437
20 P.3d 1050 (2019) for a waiver of any presently or potentially recoverable costs in full and
21 final settlement of the matter. At the time of the Offer, Defendants' expended costs and fees
22 totaled \$58,514.36. The Offer was not accepted by Plaintiff and expired on September 11,
23 2020.
- 24 6. Since the date the Offer of Judgment: I billed 405.6 hours for a total charge to the client of
25 \$91,260; S. Brent Vogel, Esq. billed 39.8 hours for a total charge to the client of \$8,955;
26 Heather Armantrout, Esq. billed 33.1 hours for a total charge to the client of \$6,404.85. I

27
28 ¹ Currently N.R.S. 17.117.

1 have personal knowledge of Mr. Vogel and Ms. Armantrout's work on this matter and I have
2 personally reviewed their billing entries for the time period in question.

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

8 8. The billing records are available for the Court's *in camera* review, if requested.

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

10 FURTHER YOUR DECLARANT SAYETH NAUGHT.

11 /s/Adam Garth

12 Adam Garth, Esq.

13

14 No notarization required pursuant to NRS 53.045

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. FACTUAL BACKGROUND**

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

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

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

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

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

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

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

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

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

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

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

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

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

12 Pursuant to N.R.C.P. 68, CHH served Plaintiff with an Offer of Judgment on August 28,
13 2020.² In that Offer of Judgment, Defendants offered to waive any presently or potentially
14 recoverable costs in full and final settlement of the claims. At the time of the Offer, Defendants'
15 incurred costs were \$58,514.36. The Offer was not accepted by Plaintiff and expired on September
16 11, 2020.

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

20 Thereafter, the parties engaged in extensive written discovery. Discovery disputes emerged
21 during that time necessitating conferences pursuant to EDCR 2.34 and supplements to previously
22 provided requests for production and interrogatories. Moreover, due to the wide ranging allegations
23 in this matter and considering CHH's potential liability not only as a direct defendant, but also under
24 the concept of ostensible agency, CHH engaged three medical experts to address the issues raised
25 by Plaintiffs, namely a pharmacologist, a hospitalist and an intensivist. In response to Plaintiffs'
26 expert disclosure, CHH engaged in an economist to rebut the Plaintiffs' economist's report which
27

28 ² See Offer of Judgment, attached hereto as Exhibit "A".

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

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

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

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

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

1 2020.

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

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

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

24 ///

25 ///

26
27 ³ See Order Granting Petition, Exhibit "B" hereto

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

1 **II. LEGAL ARGUMENT**

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

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

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

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

9 ...
(B) the offeree must pay the offeror's post-offer costs and expenses,
10 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
11 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**
12 **be allowed, actually incurred by the offeror from the time of the offer.**

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

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

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

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

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

1 786 (1985).

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

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

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

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

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

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

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

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

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

1 matter of law" (internal quotations omitted)) . . .⁵

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

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

25 _____
26 ⁵ Exhibit "B" hereto, pp. 3-5 (emphasis supplied)

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

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

6 Third, Plaintiffs' decision to reject the Offer of Judgment was in bad faith and grossly
7 unreasonable. Instead of abandoning their untimely filed action, (and accepting CHH's Offer of
8 Judgment), Plaintiffs simply continued to push the litigation forward, blocking every opportunity
9 CHH provided to "stop the financial bleeding" by staying the litigation while this case dispositive
10 issue made its way through the courts. They opposed two stay motions and a motion to reconsider
11 a stay. They opposed a motion to dismiss and a motion for summary judgment, presenting not one
12 shred of evidence by anyone with personal knowledge of the facts, supporting their claim of a timely
13 commencement of the action. They forced CHH to incur substantial legal costs and expenses to
14 defend the action, requiring the engagement of counsel along with multiple experts, to pursue a
15 lawsuit they knew could not be maintained from the start. Furthermore, they provided unresponsive
16 answers to discovery requests seeking to avoid addressing the underlying claims in the lawsuit
17 necessitating EDCR 2..34 conferences and their supplementation of a large number of discovery
18 responses. At every turn and opportunity, Plaintiffs stonewalled providing materials and
19 information supportive of their claims while placing CHH in the position of having to incur massive
20 expenses to obtain that to which it was legally entitled and seek dismissal of what Plaintiffs clearly
21 knew was an untenable claim. The Plaintiffs' failure to accept CHH's Offer of Judgment was both
22 in bad faith and grossly unreasonable.

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

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

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

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

15 **B. Amount of Fees Incurred**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 NRS § 7.085 provides the following:

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

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

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

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

27 NRS § 7.085 (emphasis supplied).

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

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

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

28 ⁸ Exhibit "B", note 4 (emphasis supplied)

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

6 Furthermore,

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

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

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

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

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

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

13 "The statutes are clear—parties who bring and maintain an action without grounds shall have
14 attorney fees imposed against them." *Lopez v. Corral*, Nos. 51541, 51972, 2010 Nev. LEXIS 69, at
15 *24, 2010 WL 5541115 (Dec. 20, 2010).

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

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

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

28 EDCR 7.60(b) provides:

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

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

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

///

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

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

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

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

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

24 **III. CONCLUSION**

25 Based upon the legal authority and reasons stated above, Defendants respectfully request the
26 Court grant their Motion and award them **\$110,930.85** in attorneys' fees per N.R.C.P. 68 and
27 N.R.S. §§ 17.117, plus **\$58,514.36** in pre-NRCP 68 offer fees and expenses pursuant to N.R.S. §§
28 7.085, 18.010(2) and EDCR 7.60.

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DATED this 22nd day of November 2021.

LEWIS BRISBOIS BISGAARD & SMITH LLP

By /s/ Adam Garth

S. BRENT VOGEL

Nevada Bar No. 006858

ADAM GARTH

Nevada Bar No. 15045

6385 S. Rainbow Boulevard, Suite 600

Las Vegas, Nevada 89118

Tel. 702.893.3383

*Attorneys for Attorneys for Defendant Valley
Health System, LLC dba Centennial Hills Hospital
Medical Center*

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CERTIFICATE OF SERVICE

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

Paul S. Padda, Esq.
PAUL PADDA LAW, PLLC
4560 S. Decatur Blvd., Suite 300
Las Vegas, NV 89103
Tel: 702.366.1888
Fax: 702.366.1940
psp@paulpaddalaw.com
Attorneys for Plaintiffs

John H. Cotton, Esq.
Brad Shipley, Esq.
JOHN. H. COTTON & ASSOCIATES
7900 W. Sahara Ave., Suite 200
Las Vegas, NV 89117
Tel: 702.832.5909
Fax: 702.832.5910
jhcotton@jhcottonlaw.com
bshipleyr@jhcottonlaw.com
*Attorneys for Defendants 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

EXHIBIT ‘A’

EXHIBIT ‘A’

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

8
9 DISTRICT COURT
10 CLARK COUNTY, NEVADA
11

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

15 Plaintiffs,

16 vs.

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

22 Defendants.
23
24

Case No. A-19-788787-C

Dept. No.: 30

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

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

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

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

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

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

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

6
7 DATED this 28th day of August, 2020

8
9 LEWIS BRISBOIS BISGAARD & SMITH LLP

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

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

Paul S. Padda, Esq.
PAUL PADDA LAW, PLLC
4560 S. Decatur Blvd., Suite 300
Las Vegas, NV 89103
Tel: 702.366.1888
Fax: 702.366.1940
psp@paulpaddalaw.com
Attorneys for Plaintiffs

John H. Cotton, Esq.
Brad Shipley, Esq.
JOHN. H. COTTON & ASSOCIATES
7900 W. Sahara Ave., Suite 200
Las Vegas, NV 89117
Tel: 702.832.5909
Fax: 702.832.5910
jhcotton@jhcottonlaw.com
bshipleyr@jhcottonlaw.com
*Attorneys for Defendants Dionice S. Juliano,
M.D., Conrado Concio, M.D. and Vishal S.
Shah, M.D.*

By /s/ Roya Rokni
Roya Rokni, an Employee of
LEWIS BRISBOIS BISGAARD & SMITH LLP

EXHIBIT 'B'

EXHIBIT 'B'

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Petitioners,

vs.

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

and

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

No. 82250

FILED

OCT 18 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER GRANTING PETITION

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

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

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

¹Petitioner 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

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

²Petitioners 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

³The 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.

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


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

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

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

 J.
Cadish

 J.
Pickering

 J.
Herndon

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

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

EXHIBIT 'C'

EXHIBIT 'C'



1 NEOJ
S. BRENT VOGEL
2 Nevada Bar No. 06858
Brent.Vogel@lewisbrisbois.com
3 ADAM GARTH
Nevada Bar No. 15045
4 Adam.Garth@lewisbrisbois.com
LEWIS BRISBOIS BISGAARD & SMITH LLP
5 6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
6 T: 702.893.3383
F: 702.893.3789
7 *Attorneys for Defendant Valley Health System,*
8 *LLC dba Centennial Hills Hospital Medical*
Center

9
10 DISTRICT COURT
CLARK COUNTY, NEVADA

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

Case No. A-19-788787-C

Dept. No. 30

NOTICE OF ENTRY OF ORDER

15 Plaintiffs,

16 vs.

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

22 Defendants.

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

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DATED this 19th day of November, 2021.

LEWIS BRISBOIS BISGAARD & SMITH LLP

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

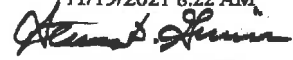
1 **CERTIFICATE OF SERVICE**

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

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

John H. Cotton, Esq.
Brad Shipley, Esq.
JOHN. H. COTTON & ASSOCIATES
7900 W. Sahara Ave., Suite 200
Las Vegas, NV 89117
Tel: 702.832.5909
Fax: 702.832.5910
jhcotton@jhcottonlaw.com
bshipleyr@jhcottonlaw.com
*Attorneys for Defendants Dionice S. Juliano,
M.D., Conrado Concio, M.D And Vishal S.
Shah, M.D.*

14
15 By /s/ Roya Rokni
16 An Employee of
17 LEWIS BRISBOIS BISGAARD & SMITH LLP
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CLERK OF THE COURT

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

DISTRICT COURT
 CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

Case No. A-19-788787-C

Dept. No.: 30

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THIS COURT FURTHER FINDS that even if Plaintiffs did adequately address the tolling issue, such an argument would be unavailing, as the medical records provided were sufficient for their expert witness to conclude that petitioners were negligent in Rebecca 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), and

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

THIS COURT FURTHER FINDS that Plaintiffs did not adequately address whether such an application of equitable tolling 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), and

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

THE COURT FURTHER FINDS that given the uncontroverted evidence demonstrating that Defendants were entitled to judgment as a matter of law because the complaint was 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));

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

///

///

///

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

4
5 Dated: _____

Dated this 19th day of November, 2021


DISTRICT COURT JUDGE

6
7
8 DATED this ____ day of November, 2021.

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

9
10 *UNSIGNED*

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

20 DATED this 18th day of November, 2021

21 /s/ Brad Shipley

22 John H. Cotton, Esq.
23 Brad Shipley, Esq.
24 JOHN H. COTTON & ASSOCIATES
25 7900 W. Sahara Ave., Suite 200
26 Las Vegas, NV 89117
27 Tel: 702.832.5909
28 Fax: 702.832.5910
jhcotton@jhcottonlaw.com
bshipley@jhcottonlaw.com
Attorneys for Defendants Dionice S. Juliano,
M.D., Conrado Concio, M.D And Vishal S.
Shah, M.D.

/s/ Adam Garth

S. BRENT VOGEL, ESQ.
Nevada Bar No. 6858
ADAM GARTH, ESQ.
Nevada Bar No. 15045
SHADY SIRSY, ESQ.
Nevada Bar No. 15818
LEWIS BRISBOIS BISGAARD & SMITH
LLP
6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
Attorneys for Defendant Valley Health
System, LLC dba Centennial Hills Hospital
Medical Center

From: [Brad Shipley](#)
To: [Garth, Adam](#); [Srilata Shah](#); [Paul Padda](#)
Cc: [Vogel, Brent](#); [Rokni, Roya](#); [Sirsy, Shady](#); [San Juan, Maria](#)
Subject: [EXT] RE: Adam Garth sent you "Powell v Valley - Proposed Order Vacating Prior MSJ and Ordering SJ on SOL"
Date: Friday, November 12, 2021 10:00:14 AM
Attachments: [Image001.png](#)

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Adam,

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

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

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

Counsel,

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

Adam Garth



Adam Garth
Partner
Adam.Garth@lewisbrisbois.com

T: 702.693.4335 F: 702.366.9563

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From: Garth, Adam <Adam.Garth@lewisbrisbois.com>

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

To: Srilata Shah <sri@paulpaddalaw.com>; Paul Padda <psp@paulpaddalaw.com>; Brad Shipley <bshipley@ihcottonlaw.com>

Cc: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>; San Juan, Maria <Maria.SanJuan@lewisbrisbois.com>; Sirsy, Shady <Shady.Sirsy@lewisbrisbois.com>; ihcotton@ihcottonlaw.com

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

Importance: High

Counsel:

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

Adam Garth

Adam Garth
Partner
Las Vegas Rainbow
702.693.4335 or x7024335

From: Garth, Adam
To: Paul Padda; Srilata Shah; Brad Shipley
Cc: Vogel, Brent; Rokni, Roya; Sirsy, Shady; San Juan, Maria; jhcotton@jhcottonlaw.com
Subject: RE: Adam Garth sent you "Powell v Valley - Proposed Order Vacating Prior MSJ and Ordering SJ on SOL"
Date: Friday, November 12, 2021 9:59:40 AM
Attachments: Image001.png
Image002.png

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

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

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

Paul S. Padda, Esq.
PAUL PADDALAW, PLLC
Websites: paulpaddalaw.com

Nevada Office:
4560 South Decatur Blvd., Suite 300
Las Vegas, Nevada 89103
Tele: (702) 366-1888

California Office:
One California Plaza
300 South Grand Avenue, Suite 3840
Los Angeles, California 90071
Tele: (213) 423-7788



PAUL PADDALAW
TRIAL ATTORNEYS

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

To: Srilata Shah <sri@paulpaddalaw.com>; Paul Padda <psp@paulpaddalaw.com>; Brad Shipley <bshipley@ihcottonlaw.com>

Cc: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>; Sirsy, Shady <Shady.Sirsy@lewisbrisbois.com>; San Juan, Maria <Maria.SanJuan@lewisbrisbois.com>; ihcotton@ihcottonlaw.com

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

Importance: High

Counsel,

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Adam Garth



Adam Garth

Partner

Adam.Garth@lewisbrisbois.com

T: 702.693.4335 F: 702.366.9563

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To: Srilata Shah <sri@paulpaddalaw.com>; Paul Padda <psp@paulpaddalaw.com>; Brad Shipley <bshipley@ihcottonlaw.com>

Cc: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>; San Juan, Maria <Maria.SanJuan@lewisbrisbois.com>; Sirsy, Shady <Shady.Sirsy@lewisbrisbois.com>; ihcotton@ihcottonlaw.com

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

Importance: High

Counsel:

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

Adam Garth

Adam Garth

Partner
Las Vegas Rainbow
702.693.4335 or x7024335

1 **CSERV**

2
3 **DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**

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

CASE NO: A-19-788787-C

8 **vs.**

DEPT. NO. Department 30

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

11 **AUTOMATED CERTIFICATE OF SERVICE**

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

15 **Service Date: 11/19/2021**

16 Paul Padda	psp@paulpaddalaw.com
17 S. Vogel	brent.vogel@lewisbrisbois.com
18 Jody Foote	jfoote@jhcottonlaw.com
19 Jessica Pincombe	jpinnacle@jhcottonlaw.com
20 John Cotton	jhcotton@jhcottonlaw.com
21 Paul Padda	civil@paulpaddalaw.com
22 Brad Shipley	bshipley@jhcottonlaw.com
23 Tony Abbatangelo	Tony@thevegaslawyers.com
24 Adam Garth	Adam.Garth@lewisbrisbois.com
25 Roya Rokni	roya.rokni@lewisbrisbois.com

1	Diana Escobedo	diana@paulpaddalaw.com
2	Srilata Shah	sri@paulpaddalaw.com
3	Shady Sirsy	Shady.Sirsy@lewisbrisbois.com
4	Maria San Juan	maria.sanjuan@lewisbrisbois.com
5	Karen Cormier	karen@paulpaddalaw.com
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OPP
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; ISIAHA KHOSROF,
individually; LLOYD CREECY, individually;

Plaintiffs,

vs.

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

Defendants.

CASE NO. A-19-788787-C

DEPT. 30

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

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

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

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

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

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

3 For the reasons set forth below, this Court should deny Centennial Hills' Motion for
4 Attorneys' Fees. In support of this opposition, Plaintiffs rely upon the memorandum of points
5 and authorities below, all papers on file in this litigation, Centennial Hills' Offer of Judgment
6 and any additional argument the Court may permit. See Defendant's Offer of Judgment to
7 Plaintiffs attached as Exhibit 1.
8

9
10 **1. FACTUAL BACKGROUND**

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

15 On May 3, 2017, Ms. Powell was found by EMS at her home. Ms. Powell was
16 unconscious, labored in her breathing, and had vomit on her face. EMS provided emergency care
17 and transported her to Centennial Hills where she was admitted. Ms. Powell continued to improve
18 during her admission. However, on May 10, 2017, Ms. Powell complained of shortness of breath,
19 weakness, and a "drowning" feeling. In response to these complaints, Defendant Dr. Shah ordered
20 Ativan to be administered via an IV push. On May 11, 2017, Dr. Concio ordered two more doses
21 of Ativan and ordered several tests, including a chest CT to be performed. However, the CT could
22 not be performed due to Ms. Powell's inability to remain still during the test. Ms. Powell was
23 returned to her room where she was supposed to be monitored by a camera. Another dose of
24 Ativan was ordered at 3:27 AM on May 11, 2017. Shortly thereafter, Ms. Powell suffered acute
25 respiratory failure, resulting in her death on May 11, 2017.
26
27
28

Estate of Rebecca Powell et al. v. Valley Health System, LLC, et al.
District Court Case No. A-19-788787-C, Dept. 30
Plaintiffs' Opposition to Defendant Valley Health System LLC's Motion For Attorneys' Fees

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

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

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

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

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

10 II. PROCEDURAL HISTORY

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

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

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

1 Concio and Dr. Juliano's Motion to Dismiss. On June 19, 2019, Defendant Centennial Hills filed
2 a separate Motion to Dismiss pursuant to NRCP 12(b)(5) alleging Plaintiffs failed to timely file
3 their Complaint within the statute of limitations time of one year pursuant to NRS 41A.097(2)
4 and requested dismissal of Plaintiffs' Complaint. On August 13, 2019, Plaintiffs filed their
5 Opposition to the Motion to Dismiss filed by Defendants.
6

7 On September 23, 2019, Defendant, Universal Health Services, Inc. Joinders to
8 Defendants Dr. Concio and Dr. Juliano's Motion to Dismiss. On September 23, 2019, Defendant
9 Universal Health Services, Inc. filed a Joinder to Motion to Dismiss. On September 25, 2019,
10 counsel for Centennial Hills presented oral arguments to the District Court on their Motion to
11 Dismiss. Judge Wiese denied Centennial Hills' Motion to Dismiss Plaintiffs' Complaint based
12 upon NRS 41A.097(2) and NRCP 12(b)(5).
13

14 After considering the papers on file and arguments of counsel, the District Court issued
15 an Order dated February 6, 2021. Under the Findings of Fact and Conclusions of Law, Judge
16 Wiese addressed the statute of limitations arguments noting that **the Supreme Court has been**
17 **clear that the standard of when a claimant "knew or reasonably should have known" is**
18 **generally an issue of fact for a jury to decide.** See, *Order Denying Defendants Conrado*
19 *Concio, M.D. and Dionice Juliano, M.D. 's Motion to Dismiss Plaintiffs' Complaint* attached as
20 **Exhibit 4, 2:24-26.** Additionally, in the Order dated February 6, 2021, this Court denied
21 Defendants Dr. Concio and Dr. Juliano's Motion to Dismiss Plaintiffs' Complaint, and
22 subsequent Joinders. In a companion Order dated February 6, 2021, the Court also denied
23 Centennial Hills' Motion to Dismiss Plaintiffs' Complaint, and subsequent Joinders to that
24 motion. See *Order Denying Defendant Centennial Hills Hospital Medical Center's Motion to*
25 *Dismiss Plaintiffs' Complaint* attached as **Exhibit 5.**
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1 Dr. Concio, Dr. Juliano and Dr. Shah filed their answer on October 2, 2019. On April 15,
2 2020, Centennial Hills filed its Answer to Plaintiffs Complaint.

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

7
8 On August 28, 2020 Centennial Hills served its Offer of Judgment to Plaintiffs which
9 offered no money but simply offered "to waive any presently or potentially recoverable attorney's
10 fees and costs in full and final settlement of the . . . case." See *Defendant Valley Health Systems,*
11 *LLC's Rule 68 Offer to Plaintiff's* attached as Exhibit 1. The Offer claimed that "[a]t this time,
12 Defendant has incurred \$53,389.90 in attorney's fees and \$5,124.46 in costs." *Id.* No billing
13 statements or invoices documenting Centennial's purported fees and costs were attached to the
14 Offer. *Id.*

15
16 On September 2, 2020, Centennial Hills and Universal Health Services filed a Motion for
17 Summary Judgment based upon the expiration of the Statute of Limitations contained in NRS
18 41A.097. On September 3, 2020, co-defendants Dr. Concio, Dr. Shah, and Dr. Juliano joined
19 Centennial Hills' Motion for Summary Judgment.

20
21 On September 16, 2020, Plaintiffs filed their Opposition to Centennial Hills' Motion for
22 Summary Judgment. The Opposition pointed out that Centennial Hills had previously raised the
23 identical arguments in their prior Motion to Dismiss and had joined co-defendants Motion also
24 seeking a dismissal based on the expiration of the statute of limitations. Because the prior Motions
25 to Dismiss were denied by the Court after hearing oral arguments from counsel, Plaintiffs also
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1 requested reasonable fees and costs for the violation of EDCR 2.24 which disallows the filing of
2 the same motion without seeking leave of Court.

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

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

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

21 On November 5, 2020, Centennial Hills filed a Motion Seeking a Stay of the lower court
22 proceedings pending a resolution of an appellate issue pursuant to NRAP 8(a)(1)(A). On
23 November 19, 2020, Plaintiffs filed an Opposition to Centennial Hills Motion Requesting a Stay.
24 On December 17, 2020, the District Court denied Centennial Hills' Motion for Stay. In denying
25 the stay the District Court again reiterated its reasoning for denying Centennial's Motion for
26 Summary Judgment by stating that "the Court cannot find that the Defendants are likely to prevail
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1 on the merits, as this Court previously found, and continues to believe, that the Death Certificate
2 identifying Ms. Powell's cause of death as a "suicide," may have tolled the statute of limitations,
3 in that such a conclusion or determination by the Medical Examiner, would clearly not suggest
4 "negligence" on the part of any medical care provider. See *Order Denying Defendant Valley*
5 *Health System, LLC's Motion to Stay on Order Shortening Time*, attached as **Exhibit 7, 5:7-10**.
6 Although Defendants suggest that Plaintiffs possessed inquiry notice much earlier, the Court
7 could not find that the families questioning of the cause of death equated with inquiry notice of
8 negligence. Consequently, this Court concluded that "when the Plaintiffs knew or should have
9 known, of the alleged negligence of the Defendants, was an issue of fact which overcame the
10 Defendants' Motion for Summary Judgment. Consequently, the Court cannot find that there is a
11 likelihood of success on the merits." Id.

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

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

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

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

5
6 As the record reflects, this Court repeatedly denied several applications for Motions to
7 Dismiss based on the expiration of the statute of limitations and Motions for Summary Judgment
8 arguing the expiration of the statute of limitations by Defendants and found the filing of Plaintiffs
9 suit to be meritorious and within the statute of limitations.

10 Centennial Hills did not “win” this matter on its merits. The case was not tried on the facts
11 or merits and a jury did not find in Defendants’ favor. The Supreme Court reversed the decision
12 of this Court on their interpretation of the facts regarding inquiry notice. The Supreme Court
13 incorrectly reversed Judge Wiese’s decision on Centennial Hills Motion for Summary judgment
14 which results in a dismissal of the case based on the Supreme Court’s interpretation of the facts
15 as to when all the Plaintiffs learned of the wrongful death/medical malpractice claims against
16 Centennial Hills and the treating physicians. Plaintiffs are challenging the Nevada Supreme
17 Court’s October 18, 2021, decision and filing a Petition for En Banc Reconsideration.
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20 This opposition is submitted to Centennial Hills Motion for Attorneys’ Fees pursuant to
21 NRCF 68, NRS 17.117, 7.085, 18.010 (2), and EDCR 7.60.

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III. MEMORANDUM OF POINTS AND AUTHORITIES

A. **THIS COURT HAS THE DISCRETION TO DENY CENTENNIAL HILLS' APPLICATION FOR ATTORNEYS' FEES BASED ON THE BEATTIE FACTORS.**

The irrefutable facts of this case are as follows: This is a case where a 41-year-old mother of three died while hospitalized at Centennial Hills. The coroner's office noted Ms. Powell's death to be suicide. It was not until Ms. Powell's ex-husband Brian Powell, requested the HHS to investigate the death of Ms. Powell did HHS by letter/report dated February 5, 2018, inform Mr. Powell that it conducted an "investigation" of the facility and concluded that Centennial Hills committed "violation(s) with rules and/or regulations."

"It is within the discretion of the trial court judge to allow attorney's fees pursuant to Rule 68" and "[u]nless the trial court's exercise of discretion is arbitrary or capricious, this court will not disturb the lower court's ruling on appeal." Schouweiler v. Yancey Co., 101 Nev. 827, 833, 712 P.2d 786, 790 (1985). (Emphasis added). This Court should exercise its discretion and deny Centennial Hills motion for attorneys' fees as Plaintiffs' claims had merit and continues to have merit. The dismissal of the case on an incorrect interpretation of 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.

Moreover, Pursuant to NRCP 68¹, 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 force**

¹ The same argument is applicable to NRS 17.117(10).

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

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

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

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

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

17 Plaintiffs satisfy the first Beattie factor in that the Plaintiffs' claims were brought in good
18 faith. The claims for medical malpractice and wrongful death are well supported by the facts of
19 this case and the impending death of Rebecca Powell at the age of 41. HHS found Centennial
20 Hills to be negligent in the care provided to Rebecca Powell at Centennial Hills. HHS's report
21 dated February 5, 2018, noted several deficiencies in the medical care provided to Ms. Powell
22 including, among other things, that Ms. Powell was exhibiting symptoms that should have
23 triggered a higher level of care ("the physician should have been notified, the RRT activated, and
24 the level of care upgraded"). See Exhibit 3. The HHS Report of Investigation stands in stark
25 contrast to the Certificate of Death which inaccurately declared Ms. Powell's death a suicide.
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Estate of Rebecca Powell, et al. v. Valley Health System, LLC, et al.
District Court Case No. A-19-788787-C, Dept. 30
Plaintiffs' Opposition to Defendant Valley Health System LLC's Motion For Attorneys' Fees

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

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

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

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

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

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

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

20 As stated above, Defendants Offer of Judgment did not include an amount to compensate
21 the Plaintiffs for the loss of their mother. Plaintiffs continued to defeat every Motion to Dismiss,
22 and Motion for Summary Judgement filed by all the Defendants challenging the expiration of the
23 statute of limitations based on inquiry notice. Centennial Hills lost every Motion to Dismiss,
24 Motion for Summary Judgment and Motion for a Stay pending the decision on the Writ as this
25 Court was not convinced by Defendant that Plaintiffs filed the Complaint beyond the statute of
26 limitations. This Court correctly held that the facts surrounding when Plaintiffs learned of the
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1 negligence to support their causes of action is an issue of fact to be determined by the jury and/or
2 trier of fact. It was not **grossly unreasonable** for Plaintiffs to reject the Offer of Judgment as no
3 amount was being offered in damages to the Plaintiffs. What Defendants were offering was a
4 waiver of their purported fees and costs in the range of \$58,500. Plaintiffs were not even in a
5 position to verify the accuracy of the alleged fees and costs since no documentation was provided
6 by Centennial Hills in support of its Offer.

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

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

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

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

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

28 Estate of Rebecca Powell et al. v. Valley Health System LLC et al.
District Court Case No. A-19-788787-C, Dept. 30
Plaintiffs' Opposition to Defendant Valley Health System LLC's Motion For Attorneys' Fees

1 274 (1983). Each factor need not favor awarding attorney fees because “no one factor under
2 Beattie is determinative.” Yamaha Motor Co. v. Arnoult, 114 Nev. 233, 252, 955 P.2d 661, 673
3 (1998). “[E]xplicit findings on every Beattie factor [are not] required for the district court to
4 adequately exercise its discretion.” Certified Fire Prot. Inc. v. Precision Constr. Inc., 128 Nev.
5 Adv. Op. 35, 283 P.3d 250, 258 (2012).
6

7 As detailed above, the Plaintiffs’ Complaint for wrongful death and medical malpractice
8 was brought in good faith which is well supported by the facts in the record and this Court’s
9 denial of several Motions by all the Defendants on the issue of the statute of limitations.
10 Moreover, it is Defendant continued filing of Motions based on the same theory that Plaintiffs
11 did not file their lawsuit within the prescribed statute of limitations that drove up Defendant’s
12 fees. The fees related to these relentless attempts on the same statute of limitations theory makes
13 Defendant’s attorney’s fees unreasonable and unjustified. Moreover, Plaintiffs are unable to
14 properly evaluate the reasonableness of Defendant’s attorney’s fees because they only present a
15 summary of the fees that have been incurred.
16

17 It is interesting to note that Defendants were willing to mediate this matter in November
18 of 2021 prior to the October 18, 2021, Supreme Court decision. Defendants’ willingness to
19 mediate further supports the merit of Plaintiffs’ claims. This Court should use its discretion and
20 deny the motion for attorneys’ fees.
21

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

25 NRS 7.085 provides the following:

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

Estate of Rebecca Powell et al. v. Valley Health System LLC et al.
District Court Case No. A-19-788787-C, Dept. 30
Plaintiffs’ Opposition to Defendant Valley Health System LLC’s Motion For Attorneys’ Fees

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

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

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

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

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

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

15 It is absurd for Defendants to suggest that the provisions of NRS 7.085 even apply to the
16 facts of this case. Plaintiffs' attorneys did not violate NRS 18.010(2), NRCP 11 or EDCR 7.60.
17 Defendants incorrectly malign Plaintiffs' counsel and make untrue statements of Plaintiffs'
18 counsel's misrepresentation of facts. It is Defendant's counsel's statements in support of the
19 instant motion that misrepresent the facts of this case and it is Defendant who should be
20 sanctioned. Plaintiffs in good faith filed a suit for wrongful death/medical malpractice against
21 Centennial Hills and the treating physician whose negligent actions and/or inactions led to the
22 death of Rebecca Powell. To belittle the death of a 41-year-old and to malign the Plaintiffs'
23 counsel is not only callous, but unprofessional. Plaintiffs' counsel did nothing in this case that
24 would warrant the application of the sanctions suggested by defense counsel.
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1 Defense counsel also insults this Court in its application for fees pursuant to NRS 7.085
2 as it is this Court that repeatedly found merit in Plaintiffs' arguments and denied several motions
3 to dismiss and motions for summary judgment involving the issue of inquiry notice and the
4 expiration of the statute of limitations. Defendant provides no facts to support their application of
5 pre-NRCP 68 costs and fees pursuant to NRS 7.085. This Court should deny the application for
6 fees and costs as the Plaintiffs did not submit frivolous or vexatious claims and did not over
7 burden the limited judicial resources nor did it hinder the timely resolution of meritorious claims.
8

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

13 Pursuant to EDCR Rule 7.60(b):

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

18 (1) Presents to the court a motion or an opposition to a motion
19 which is obviously frivolous, unnecessary or unwarranted.

20 (2) Fails to prepare for a presentation.

21 (3) So multiplies the proceedings in a case as to increase costs
22 unreasonably and vexatiously.

23 (4) Fails or refuses to comply with these rules.

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

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

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

3
4 **D. CENTENNIAL HILLS IS NOT ENTITLED TO FEES UNDER NRS**
5 **18.010(2).**

6 NRS 18.010 (2)(b) provides:

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

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

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

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IV. CONCLUSION

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

Dated this 16th day of December 2021.

PAUL PADDA LAW, PLLC

/s/ Srilata R. Shah

Paul S. Padda, Esq.

Nevada Bar No. 10417

Srilata R. Shah, Esq.

Nevada Bar No. 6820

4560 South Decatur Boulevard, Suite 300

Las Vegas, Nevada 89103

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

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

/s/ Karen Cormier

An Employee of Paul Padda Law, PLLC

EXHIBIT 1

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

9 DISTRICT COURT
10 CLARK COUNTY, NEVADA

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

15 Plaintiffs,

16 vs.

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

22 Defendants.
23
24

Case No. A-19-788787-C

Dept. No.: 30

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

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

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

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

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

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

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

DATED this 28th day of August, 2020

LEWIS BRISBOIS BISGAARD & SMITH LLP

By **/s/ Adam Garth**

S. BRENT VOGEL

Nevada Bar No. 6858

ADAM GARTH

Nevada Bar No. 15045

6385 S. Rainbow Boulevard, Suite 600

Las Vegas, Nevada 89118

Tel. 702.893.3383

Attorneys for Attorneys for Defendant Valley

Health System, LLC dba Centennial Hills Hospital

Medical Center

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CERTIFICATE OF SERVICE

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

Paul S. Padda, Esq.
PAUL PADDA LAW, PLLC
4560 S. Decatur Blvd., Suite 300
Las Vegas, NV 89103
Tel: 702.366.1888
Fax: 702.366.1940
psp@paulpaddalaw.com
Attorneys for Plaintiffs

John H. Cotton, Esq.
Brad Shipley, Esq.
JOHN. H. COTTON & ASSOCIATES
7900 W. Sahara Ave., Suite 200
Las Vegas, NV 89117
Tel: 702.832.5909
Fax: 702.832.5910
jhcotton@jhcottonlaw.com
bshipley@jhcottonlaw.com
*Attorneys for Defendants Dionice S. Juliano,
M.D., Conrado Concio, M.D. and Vishal S.
Shah, M.D.*

By /s/ Roya Rokni
Roya Rokni, an Employee of
LEWIS BRISBOIS BISGAARD & SMITH LLP

EXHIBIT 2

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

RESP

PAUL S. PADDA, ESQ.

Nevada Bar No.: 10417

psp@paulpaddalaw.com

JAMES P. KELLY, ESQ.

Nevada Bar No.: 8140

jpk@paulpaddalaw.com

PAUL PADDA LAW, PLLC

4560 South Decatur Boulevard, Suite 300

Las Vegas, Nevada 89103

Tele: (702) 366-1888

Fax: (702) 366-1940

Attorneys for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

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

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

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

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

3 **INTRODUCTORY STATEMENT**

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

10 It is anticipated that further discovery, independent investigation, legal research, and
11 analysis will supply additional facts, add meaning to known facts, and establish entirely new
12 factual conclusions and legal contentions. The following responses are given without prejudice
13 to Plaintiff's right to produce evidence of any subsequently discovered fact or facts, which this
14 responding party may later recall, or be made aware of. The following responses given represent
15 a good faith effort to supply factual information and as much specification of legal contentions as
16 is presently known, but should in no way be to the prejudice of Plaintiff in relation to further
17 discovery, research, analysis, or proof thereof. These responses are made solely for the purposes
18 of this action. The responses are subject to all objections as to competence, relevance, materiality,
19 propriety, admissibility, and to any and all other objections on the grounds that would require the
20 exclusion of any statement contained herein if any questions were asked of, or a statement
21 contained herein were made by, a witness present and testifying in court, all of which objections
22 and grounds are preserved and may be interposed at the time of trial.
23
24
25

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

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

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

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

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

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

17 **INTERROGATORY NO. 1:**
18

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

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

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

26 ...

27 ...
28

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

4 Full Name: Rebecca Ann Powell

5 Date of Birth: May 30, 1975

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

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

10 **INTERROGATORY NO. 2:**

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

13 **RESPONSE TO INTERROGATORY NO. 2:**

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

19 Without waiving these objections, Plaintiff responds as follows:

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

21 Spouse's Name: Brian Marshall Powell

22 Date of Birth: 11/4/72

23 SSN: XXX-XX-4784

24 Rebecca was previously married to Steven Trager, but I do not know his identifying
25 information or dates of marriage.
26
27
28

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

3 **INTERROGATORY NO. 3:**

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

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

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

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

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

19 **INTERROGATORY NO. 4**

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

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

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

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

3 May 15, 2010: Lourdes College
4 6832 Convent Boulevard
5 Sylvania, OH 43560
6 *Associate of Arts Degree*
7
8 December 2012: Cuyahoga Community College
9 4250 Richmond Road
10 Highland Hills, OH 44122
11 *Associate of Applied Science in Nursing*
12
13 March 19, 2013: State of Ohio Board of Nursing
14 17 S High Street, #660
15 Columbus, OH 43215
16 *Registered Nurse, License*

17 I recall that Rebecca started to obtain her bachelor's degree, but she did not yet complete
18 it. Plaintiff reserves the right to amend and/or supplement this Answer as discovery remains
19 ongoing.
20

21 **INTERROGATORY NO. 5**

22 Please list each job or occupation Plaintiffs' decedent held during the last ten (10) years
23 prior to the injuries alleged in this case, including dates of each position, dates of unemployment,
24 job title, job duties, immediate supervisor and annual compensation.
25

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

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

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

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

9 **INTERROGATORY NO. 6**

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

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

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

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

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

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

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

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

5 **INTERROGATORY NO. 7**

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

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

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

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

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

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

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

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

1 **INTERROGATORY NO. 8**

2 Please state the name, address and telephone number of each and every healthcare
3 provider, including but not limited to hospitals, clinics, surgical centers, at home healthcare
4 providers, physicians, psychiatrists, psychologists and therapists, who provided care and/or
5 treatment to Plaintiffs' decedent within the ten (10) years prior to the incident referred to in the
6 Complaint.
7

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

9 Objection. Plaintiff objects to this interrogatory because it is compound and contains multiple
10 subparts which constitute separate interrogatories, seeks information that is not appropriately limited
11 in scope, and it seeks disclosure of information that is irrelevant and not reasonably calculated to
12 lead to the discovery of admissible evidence. Objection. This Interrogatory is impermissibly
13 overbroad in that it seeks disclosure of Plaintiff's medical history without proper limitation as to
14 scope. Schlatter v. Eighth Judicial District Court 93 Nev. 189, 192, 561 P.2d 1342, 1344 (1977).
15

16 Without waiving said objections, Plaintiff responds as follows: In approximately 2007,
17 Rebecca was diagnosed with bipolar disorder. The diagnosis was made in Ohio, but I cannot
18 recall name of physician. Other than that, Rebecca was healthy with no respiratory issues.
19

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

23 **INTERROGATORY NO. 9**

24 Please state whether you, Brian Powell, ever pleaded guilty to or were convicted of any
25 crime other than minor traffic violations, and if so, please state: the nature of the offense(s); the
26 date(s); the county(s) and state(s) in which you were tried, and the sentence(s) given.
27

28 ...

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

2 Objection. Defendants seek discovery outside the scope of NRS §50.095 and NRC
3 26(b)(1) as it is not relevant to any party's claims or defenses and is disproportional to the needs
4 of the case, considering the importance of the issues at stake in the action, the amount in
5 controversy, the parties' relative access to relevant information, the parties' resources, the
6 importance of the discovery in resolving the issues, and whether the burden or expense of the
7 proposed discovery outweighs its likely benefit.

8
9 Without waiving these objections, I have not been convicted of a felony during the time
10 frame set forth in NRS §50.095.

11 **INTERROGATORY NO. 10**

12
13 If Plaintiffs' decedent was ever involved in any other legal action, either as a defendant
14 or as a plaintiff please state: the date and place each such action was filed giving the name of the
15 court, the name of the other party or parties involved, the number of such actions and the names
16 of the attorneys representing each party; a description of the nature of each such action, and; the
17 result of each such action, whether or not there was an appeal and the result of the appeal, and
18 whether or not such case was reported, and the name, volume number and page citation of such
19 report.
20

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

22 Objection. Plaintiff objects to this Interrogatory because it is excessive as to time (no
23 limitation to time whatsoever, which is overly burdensome and exceeds the five-year period of
24 time the Discovery Commissioner typically permits) and scope (calls for "any" legal action and
25 is not sufficiently limited to relate to the specific body parts at issue in this lawsuit), and it seeks
26
27
28

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

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

6
7 **INTERROGATORY NO. 11**

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

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

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

15
16 Without waiving these objections, I was not able to visit Rebecca while she was
17 hospitalized because I was turned away by the nurses. Lloyd Creecy, Taryn Creecy, Isaiah
18 Khosrof, Darci Creecy have information. I did meet with Taryn, Isaiah and one of Rebecca's
19 friends to speak with the doctor and risk manager after Rebecca's death, but they didn't provide
20 any information.

21
22 For further information that may be responsive to this Interrogatory, please refer to the
23 parties' initial and supplemental document disclosures and witness lists.

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

27 ...
28

1 **INTERROGATORY NO. 12**

2 Please itemize all bills or expenses Plaintiffs' decedent or her estate incurred, including
3 but not limited to those from all hospitals or other health care providers, as a result of the incident
4 referred to in the Complaint, including the extent to which the expenses have been paid and by
5 whom.
6

7 **RESPONSE TO INTERROGATORY NO. 12:**

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

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

13 **INTERROGATORY NO. 13**

14 List and describe in detail the injuries, complaints, and symptoms which you claim
15 Plaintiffs' decedent suffered as a result of the incident or incidents out of which this action arose,
16 including aggravated pre-existing conditions, as well as the treatment sought.
17

18 **RESPONSE TO INTERROGATORY NO. 13:**

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

22 Without waiving these objections, Plaintiff responds as follows: Rebecca's untimely
23 death. For further information related to Plaintiff Rebecca Powell's injuries, complaints and
24 symptoms, please refer to her complete set of medical records.
25

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

INTERROGATORY NO. 14

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

RESPONSE TO INTERROGATORY NO. 14:

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

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

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

INTERROGATORY NO. 15

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

RESPONSE TO INTERROGATORY NO. 15:

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

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

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

INTERROGATORY NO. 16

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

RESPONSE TO INTERROGATORY NO. 16:

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

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

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

INTERROGATORY NO. 17:

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

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

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

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

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

11 **INTERROGATORY NO. 18:**

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

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

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

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

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

3 **INTERROGATORY NO. 19**

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

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

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

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

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

21 **INTERROGATORY NO. 20**

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

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

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

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

9 Without waiving these objections, Plaintiff responds as follows:

10 Please see Answer to Interrogatory No. 19.

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

14 **INTERROGATORY NO. 21**

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

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

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

24 Without waiving said objections, Plaintiff answers as follows:

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

INTERROGATORY NO. 22

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

RESPONSE TO INTERROGATORY NO. 22:

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

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

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

INTERROGATORY NO. 23

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

RESPONSE TO INTERROGATORY NO. 23:

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

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

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

6
7 **INTERROGATORY NO. 24**

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

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

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

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

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

23
24 **INTERROGATORY NO. 25**

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

27 ...
28

RESPONSE TO INTERROGATORY NO. 25:

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

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

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

INTERROGATORY NO. 26

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

RESPONSE TO INTERROGATORY NO. 26:

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

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

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

6
7 **INTERROGATORY NO. 27**

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

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

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

15
16 Without waiving these objections, for information that may be responsive to this
17 Interrogatory, please refer to the parties' initial and supplemental document disclosures and
18 witness lists.

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

22 **INTERROGATORY NO. 28**

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

RESPONSE TO INTERROGATORY NO. 28:

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

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

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

INTERROGATORY NO. 29

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

RESPONSE TO INTERROGATORY NO. 29:

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

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

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

1 **INTERROGATORY NO. 30**

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

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

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

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

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

16 **INTERROGATORY NO. 31**

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

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

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

1 downs" is irrelevant); Tri-County Equipment & Leasing v. Klinke, P.3d 593 (2012); Proctor v.
2 Castelletti, 112 Nev. 88, 90, 911 P.2d 853, 854 (1996); Winchell v. Schiff, 124 Nev. 938, 945-
3 46, 193 P.3d 946, 951 (2008); and Bass-Davis v. Davis, 122 Nev. 442, 453-54, 134 P.3d 103, 110
4 (2006). The Nevada Supreme Court has created "a *per se* rule barring the admission of a
5 collateral source of payment for an injury into evidence for *any purpose*." Khoury, 377 P.3d at
6 94, citing Proctor. Further, defendants seek discovery outside the scope of NRCP 26(b)(1) as it is
7 not relevant to any party's claims or defenses and is disproportional to the needs of the case,
8 considering the importance of the issues at stake in the action, the amount in controversy, the
9 parties' relative access to relevant information, the parties' resources, the importance of the
10 discovery in resolving the issues, and whether the burden or expense of the proposed discovery
11 outweighs its likely benefit.
12

13
14 Without waiving said objections, I am not aware of any liens.

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

18 **INTERROGATORY NO. 32:**

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

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

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

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

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

7 **INTERROGATORY NO. 33:**

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

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

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

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

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

24 **INTERROGATORY NO. 34**

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

RESPONSE TO INTERROGATORY NO. 34:

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

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

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

INTERROGATORY NO. 35

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

RESPONSE TO INTERROGATORY NO. 35:

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

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

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

INTERROGATORY NO. 36:

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

RESPONSE TO INTERROGATORY NO. 36:

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

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

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

INTERROGATORY NO. 37:

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

RESPONSE TO INTERROGATORY NO. 37:

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

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

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

5 **INTERROGATORY NO. 38**

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

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

10 Plaintiff assumes that physicians working in CHH are employees of CHH and/or Valley
11 Health System, LLC and Universal Health Service, Inc. Defendants have not disclosed any
12 information, either in initial or supplemental disclosures, to disabuse him of this assumption.
13 Plaintiff reserves the right to amend and/or supplement this response as discovery remains
14 ongoing.
15

16 **INTERROGATORY NO. 39**

17 Did you ever have any notice that any co-defendant physician or medical practice with
18 which that physician is affiliated was an independent contractor from CHH? If yes, please state
19 when you received such notice and the specific information you received pertaining thereto.
20

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

22 Not to Plaintiff's knowledge or understanding.

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

26 ...

27 ...

INTERROGATORY NO. 40

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

RESPONSE TO INTERROGATORY NO. 40:

Please see responses to interrogatory numbers 38 and 39.

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

PAUL PADDA LAW, PLLC

/s/ Paul S. Padda

Paul S. Padda, Esq.

James P. Kelly, Esq.

4560 South Decatur Boulevard, Suite 300

Las Vegas, Nevada 89103

Attorneys for Plaintiffs

Dated this 1st day of September, 2020.

DECLARATION OF BRIAN POWELL PER NRS 53.045

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

Executed this 27TH day of AUGUST, 2020.



BRIAN POWELL

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

CERTIFICATE OF SERVICE

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

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

EXHIBIT 3

STATE OF NEVADA

BRIAN SANDOVAL
Governor

RICHARD WHITLEY, MS
Director, DHHS



JULIE KOTCHEVAR
Administrator, DPBH

VACANT
Chief Medical Officer

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

February 5, 2018

Brian Powell
Po Box 750131
Las Vegas, NV 89136

Re: Complaint Number NY00049271

Dear Mr. Powell,

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

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

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

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

Sincerely,

DPBH Complaint Coordinator

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS0086HOS	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____		(X3) DATE SURVEY COMPLETED 09/21/2017
NAME OF PROVIDER OR SUPPLIER CENTENNIAL HILLS HOSPITAL MEDICAL CEN		STREET ADDRESS, CITY, STATE, ZIP CODE 6800 N DURANGO DR LAS VEGAS, NV 89149			
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE	
S 000	<p>Initial Comments</p> <p>This Statement of Deficiencies was generated as a result of complaint investigation conducted at your facility and completed on 9/21/17 in accordance with Nevada Administrative Code, Chapter 449, Hospital.</p> <p>The census at the time of the survey was 270.</p> <p>The sample size was five.</p> <p>There were two complaints investigated.</p> <p>Complaint #NV00049271 was substantiated.</p> <p>The allegation a patient in respiratory distress was unattended and was not upgraded to a higher level of care was substantiated (See Tag S 300).</p> <p>Complaint #NV00049721 with the following allegations could not be substantiated:</p> <p>Allegation 1: sterile technique was not implemented when suturing a re-opened surgical incision.</p> <p>Allegation 2: a re-opened surgical incision was sutured without using local anesthesia.</p> <p>Allegation 3: pain medication was not administered in a timely manner.</p> <p>Allegation 4: an anesthesia vial was left at bedside in a patient's room.</p> <p>The investigation into the allegations included:</p> <p>Review of five clinical records including the patient of concern.</p> <p>Interviews were conducted with the Chief of Nursing Operations (CNO) and an Emergency</p>	S 000			

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.
LABORATORY DIRECTOR'S OR PROVIDER/SUPPLIER REPRESENTATIVE'S SIGNATURE

TITLE

(X6) DATE
10/27/17

STATE FORM

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If continuation sheet 1 of 12

PLTF 54

4 AA 417

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(01) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS60R6HQS	(02) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(03) DATE SURVEY COMPLETED 09/21/2017
NAME OF PROVIDER OR SUPPLIER CENTENNIAL HILLS HOSPITAL MEDICAL CEN		STREET ADDRESS, CITY, STATE, ZIP CODE 6900 N DURANGO DR LAS VEGAS, NV 89149		
(04) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(05) COMPLETE DATE
S 000	Continued From page 1 Department Physician. Observation of a medical surgical hospitalization unit including two patient rooms. Review of the facility policies title Pain Management; Wound Care Therapeutic Support Services Guidelines, Sterile Products: Aseptic Technique, Hand Hygiene and Drug Storage. The findings and conclusions of any investigation by the Division of Public and Behavioral Health shall not be construed as prohibiting any criminal or civil investigations, actions or other claims for relief that may be available to any party under applicable federal, state or local laws. The following deficiency was identified:	S 000		
S 300 SS-G	NAC 449.3822 Appropriate Care of Patient 1. Each patient must receive, and the hospital shall provide or arrange for, individualized care, treatment and rehabilitation based on the assessment of the patient that is appropriate to the needs of the patient and the severity of the disease, condition, impairment or disability from which the patient is suffering. This Regulation is not met as evidenced by: Based on observation, interview, record review and document review, the facility failed to ensure a patient in respiratory distress was monitored and received the necessary care for 1 of 5 sampled residents (Resident #2). Findings include:	S 300		10/27/17

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

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If continuation sheet 2 of 12

PLTF 55

4 AA 418

PRINTED: 02/05/2018
FORM APPROVED

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS6086HOS	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 09/21/2017
NAME OF PROVIDER OR SUPPLIER CENTENNIAL HILLS HOSPITAL MEDICAL CEN		STREET ADDRESS, CITY, STATE, ZIP CODE 6900 N DURANGO DR LAS VEGAS, NV 89146		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
S 300	<p>Continued From page 2</p> <p>Patient #2</p> <p>Patient #2 was admitted on 5/3/17, with diagnoses including intentional medication overdose and acute respiratory failure.</p> <p>A Physician progress note dated 5/8/17 at 2:08 PM, documented the patient did not complain of shortness of breath (SOB). The patient was status post intubation with Methicillin Resistant Staphylococcus Aureus (MRSA) pneumonia.</p> <p>The Pulmonologist consultation report dated 5/9/17 at 5:49 PM, indicated the patient did not have inflammation of the pleura, no blood in sputum, secretions were compatible with aspiration and MRSA. The treatment plan included breathing treatment, oxygen as needed and to decrease steroids.</p> <p>The Nursing progress dated 5/10/17 at 2:00 AM, documented the patient had a non-productive cough and SOB. The patient received oxygen at 2 liters per minute (lpm) and a breathing treatment as needed. The progress note did not document the patient's vital signs.</p> <p>On 5/10/17 at 3:41 AM, the clinical record documented the following vital signs: heart rate 76 beats per minutes (bpm) and respiratory rate 16 breaths per minute (br/m). The vital signs report did not document the blood pressure (B/P) or oxygen saturation (SPO2). The patient was receiving oxygen at 3 lpm via nasal cannula.</p> <p>On 5/10/17 at 8:00 AM, the clinical record documented the following vital signs: temperature 36.6 Fahrenheit, heart rate 96 bpm, respiratory rate 18 br/m, B/P 133/76, SPO2 96% with oxygen at 2 lpm via nasal cannula.</p>	S 300		

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

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If continuation sheet 3 of 12

PLTF 56

4 AA 419

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NV83086HOS	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 09/21/2017
NAME OF PROVIDER OR SUPPLIER CENTENNIAL HILLS HOSPITAL MEDICAL CEN		STREET ADDRESS, CITY, STATE, ZIP CODE 8900 N DURANGO DR LAS VEGAS, NV 89149		
(X4) ID PREFIX TAG S 300	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG S 300	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
	<p>Continued From page 3</p> <p>On 5/10/17 at 3:04 PM, the clinical record documented the following vital signs: heart rate 98 bpm, respiratory rate 20 br/m, B/P 133/76 and SPO2 95% with oxygen at 3 lpm via nasal cannula.</p> <p>The Nursing progress note dated 5/10/17 at 3:13 PM, documented the patient was resting in bed with SOB and fatigue. The patient was monitored with cameras due to being on a legal hold.</p> <p>The Nursing progress note dated 5/10/17 at 4:11 PM, revealed the patient complained of labored breathing. A physician was notified and orders were obtained for a chest x-ray and arterial blood gases. The progress note documented the patient was treated with breathing treatments and Ativan without satisfactory results. The progress note did not document vital signs.</p> <p>The Respiratory Therapist (RT) progress note dated 5/10/17 at 4:32 PM, documented the patient complained of respiratory distress when a radiology test was being conducted. The facility Rapid Response Team (RRT) was activated and checked the patient. The patient was returned to her room with the following vital signs: heart rate 115 bpm, SPO2 98% with oxygen at 6 lpm and a respiratory rate 28 br/m. Arterial blood gas (ABG) analysis was drawn with no critical results.</p> <p>The chest X-ray results dated 5/10/17 at 4:32 PM, documented persistent bilateral interstitial infiltrates with no changes since the previous chest-X-ray.</p> <p>The Pulmonologist consultation dated 5/10/17 at 5:15 PM, documented the patient complained of dyspnea (difficult or labored breathing) when a</p>			

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

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QEU211

If continuation sheet 4 of 12

PLTF 57

4 AA 420

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS0088HOS	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 08/21/2017
NAME OF PROVIDER OR SUPPLIER CENTENNIAL HILLS HOSPITAL MEDICAL CEN		STREET ADDRESS, CITY, STATE, ZIP CODE 6900 N DURANGO DR LAS VEGAS, NV 89149		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
8 300	<p>Continued From page 4</p> <p>radiology study was being conducted and the RRT was activated. The patient did not have inflammation of the pleura (membranes that cover the lungs) and the chest X-ray showed some changes, but not fluids in the pleura. The increased dyspnea was possibly caused by "too rapid taper steroids". The treatment plan was to resume the steroids every eight hours, breathing treatment and pulmonary hygiene. Steroids were resumed as per Pulmonologist recommendation.</p> <p>The RT treatment report dated 5/10/17 at 10:22 PM, revealed the patient was receiving Oxygen via nasal cannula at 3 liter per minute (LPM) with an Oxygen saturation of 92 percent (%).</p> <p>The RT evaluation prior to a respiratory treatment performed on 5/10/17 at 11:51 PM, revealed breath sounds were diminished in all pulmonary lobes.</p> <p>The Medication Administration Record (MAR) dated 5/10/17 at 11:52 PM, documented Ipratropium 0.02 %, Levalbuterol 0.63 milligrams (mg) and Acetylcysteine 20 inhalation were administered. The patient's vital signs were documented as follows: pulse 100 bpm and respiratory rate at 22 br/m.</p> <p>The post respiratory treatment evaluation performed on 5/11/17 at 12:10 AM, revealed unchanged breath sounds (diminished) in all pulmonary lobes. The patient was receiving Oxygen via nasal cannula at 3 liter per minute (LPM) with an Oxygen saturation of 95%.</p> <p>The Respiratory therapy treatment report dated 5/11/17 at 2:00 AM, lacked the patient's respiratory status information or vital sign data. The respiratory therapy treatment note was blank.</p>	8 300		

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

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If continuation sheet 5 of 12

PLTF 58

4 AA 421

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NV89086HOS	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 09/21/2017
NAME OF PROVIDER OR SUPPLIER CENTENNIAL HILLS HOSPITAL MEDICAL CEN		STREET ADDRESS, CITY, STATE, ZIP CODE 8900 N DURANGO DR LAS VEGAS, NV 89149		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
S 300	<p>Continued From page 5</p> <p>The Nursing progress note dated 5/11/17 at 3:15 AM, documented the patient was checked by two Registered Nurses (RN). The patient complained of anxiety and difficulty breathing. A physician and RT were notified and an order for Ativan was obtained. The nursing progress note indicated the patient kept pulling the Oxygen off, and RT recommended to monitor the patient closely. The Nurse Supervisor was notified about the need of a sitter to monitor the patient. The Camera Room was notified to check the patient via surveillance camera for removing the Oxygen. A technician at the Camera Room indicated the room could not be seen clearly through the camera and suggested to move the patient to another room with a camera. The note documented the patient seemed relaxed after the administration of the medication Ativan. The patient's vital signs were not documented in this note. There was no evidence the patient was changed to another room as suggested by the Camera Room technician.</p> <p>The RT evaluation prior to a respiratory treatment performed on 5/11/17 at 4:08 AM, revealed the breath sounds were diminished in all pulmonary lobes. The patient's Oxygen saturation was 90% and Oxygen was administered with a non-rebreather mask, however, the rate of Oxygen flow was not documented. The following vital signs were documented: heart rate of 130 bpm and respiratory rate of 30 br/m. There was no evidence the attending physician was notified about the increased heart rate and respiratory rate.</p> <p>The MAR dated 5/11/17 at 4:18 AM, documented Ipratropium 0.02 %, Levalbuterol 0.63 mg and Acetylcysteine 20 inhalation were administered.</p>	S 300		

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

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If continuation sheet 6 of 12

PLTF 59

4 AA 422

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS6088HOS	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 09/21/2017
NAME OF PROVIDER OR SUPPLIER CENTENNIAL HILLS HOSPITAL MEDICAL CEN		STREET ADDRESS, CITY, STATE, ZIP CODE 6900 N DURANGO DR LAS VEGAS, NV 89148		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
S 300	<p>Continued From page 6</p> <p>The patient's vital signs were documented as follows: pulse 130 bpm and respiratory rate at 30 br/m.</p> <p>The post respiratory treatment evaluation performed on 5/11/17 at 4:47 AM, revealed unchanged breath sounds (diminished) in all pulmonary lobes. The patient was receiving Oxygen via non-rebreather mask with Oxygen at 15 lpm, SPO2 of 90% and unchanged breath sounds. There was no evidence the attending physician was notified about the change in the patient's condition.</p> <p>The Nursing progress note dated 5/11/17 at 8:57 AM, documented at approximately 8:10 AM the patient was found unresponsive with the Oxygen mask in her feet and Cardio-Pulmonary Resuscitation (CPR) was initiated.</p> <p>The Respiratory therapy progress note dated 5/11/17 at 10:20 AM, indicated therapist entered the room during a Code Blue and CPR was initiated. The note documented a physician pronounced the patient at 6:50 AM and CPR ended.</p> <p>The Legal 2000 (Legal hold) Patient Frequency Observation Record date 5/11/17, revealed the patient was monitored in room 701 via camera every 15 minutes from 5/10/17 at 7:00 PM through 5/11/17 at 5:00 AM. The record documented the patient was awake/alert all the time, except on 5/10/17 at 11:00 PM and on 5/11/17 from 5:00 AM to 6:00 AM when it was documented the patient was sleeping. The record indicated a nurse called the sitter at 4:20 AM, the patient removed the intravenous (IV) lines, but they could not see the incident on monitor and suggested to change the patient to room 832. The record revealed at 6:10</p>	S 300		

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

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If continuation sheet 7 of 12

PLTF 60

4 AA 423

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NV86088HOS	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 08/21/2017
NAME OF PROVIDER OR SUPPLIER CENTENNIAL HILLS HOSPITAL MEDICAL CEN		STREET ADDRESS, CITY, STATE, ZIP CODE 6800 N DURANGO DR LAS VEGAS, NV 89149		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
S 300	<p>Continued From page 7</p> <p>AM, Code Blue was announced. The record indicated the patient "last appeared to be sitting in close to upright position with fingers possible in mouth for approx. (approximately) one hour".</p> <p>Clinical record lacked documented evidence the patient's vital signs were monitored on 5/11/17 from 4:47 AM through 6:10 AM, when the patient was found unresponsive. There was no evidence a physician or the Rapid Response Team (RRT) were notified about the abnormal vital signs obtained at 4:08 AM, 4:18 AM, 4:47 AM and the patient's change in condition. The record did not document if the patient was moved to another room with a better camera resolution to monitor if Oxygen mask was removed.</p> <p>The RN who provided care to the patient on 5/11/17, submitted a statement dated 8/4/17, which indicated the patient was complaining of shortness of breath (SOB) from the previous shift and the RT provided breathing treatments several times but the patient was uncooperative. The patient was medicated with Ativan. The RN stated the attending physician was notified about the SOB and an order for a computerized tomography (CT) was obtained. Due to the SOB and anxiety, the CT could not be performed and the physician ordered another dose of Ativan. The RN indicated after the medication was administered, vital signs stabilized and the patient fell asleep at approximately 4:15 AM. A Certified Nursing Assistant (CNA) and the RN rotated hourly to check the patient. The statement documented the vital signs were at baseline and the patient was monitored via camera. The RN continued to provide care to other patients and hourly rounds were performed by a CNA at 5:00 AM and "all was well". The RN's statement continued that at no point it was believed the</p>	S 300		

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

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If continuation sheet 6 of 12

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Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS6086HOS	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 09/21/2017
NAME OF PROVIDER OR SUPPLIER CENTENNIAL HILLS HOSPITAL MEDICAL CEN		STREET ADDRESS, CITY, STATE, ZIP CODE 6900 N DURANGO DR LAS VEGAS, NV 89149		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
S 300	<p>Continued From page 8</p> <p>patient was in critical distress because the patient's condition was related to anxiety and the concerns had been reported to the Charge Nurse.</p> <p>The discharge summary dated 5/23/17, revealed the attending physician had been notified on 5/10/17 at 5:00 PM, when the patient complained of shortness of breath. The physician ordered arterial blood gases (ABG) and a chest X-ray. The physician documented the chest-X-ray and the ABG results were reviewed and an RN was directed to contact a Pulmonologist for an evaluation. The discharge summary indicated the attending physician was notified on 5/11/17 in the morning the patient expired. There was no evidence the attending physician was notified of the patient's increased respiratory and heart rate obtained at 4:08 AM and 4:47 AM.</p> <p>On 8/2/17 at 1:50 PM, the Chief of Nursing Operations (CNO) indicated Patient #2 should have been monitored closely based on the vital signs and condition. The CNO acknowledged the Rapid Response Team (RRT) should have been activated and the patient upgraded to a higher level of care.</p> <p>On 9/21/17 at 12:26 PM, the facility Process Improvement Manager indicated the patient was not monitored by telemetry and the cardiac monitoring documentation available for 5/11/17 was the electrocardiogram performed during the Code Blue.</p> <p>On 8/2/17 at 2:22 PM, an observation was conducted on the behavioral monitoring unit where staff monitored patients in their room via camera. A CNA (sitter) and a RN were on duty. The RN explained the purpose of the monitoring was to ensure the patients with psychiatric</p>	S 300		

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If continuation sheet 8 of 12

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4 AA 425

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Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS5086H06	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____		(X3) DATE SURVEY COMPLETED 08/21/2017
NAME OF PROVIDER OR SUPPLIER CENTENNIAL HILLS HOSPITAL MEDICAL CEN		STREET ADDRESS, CITY, STATE, ZIP CODE 6900 N DURANGO DR LAS VEGAS, NV 89149			
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)		(X5) COMPLETE DATE
S 300	<p>Continued From page 9</p> <p>behaviors were safe in their rooms. If a patient was out of bed, pulled lines out or got out the room, the nurse was notified immediately. The RN indicated it was only a visual monitoring and it was not capable of monitoring vital signs or if the patient was breathing or not.</p> <p>On 8/21/17 at 10:38 AM, a CNA explained rounds were performed every hour and as needed to each room. The CNA checked for comfort, pain or other issues or concerns the patients manifested. If there was any change in the patient's condition, the CNA notified the Licensed Nurse immediately. Vital signs were obtained by CNAs. If any of the vital signs were out of the normal parameters, the vital signs would be repeated and the nurse would be notified. The CNA described normal parameter for vital signs: B/P: 130/80, HR: 60 bpm, RR: 14-16 br/m, SPO2: 91% and above.</p> <p>On 8/21/17 at 10:47 AM, another CNA indicated rounds were performed every hour and as needed. The CNA explained during the rounds they checked the patients for comfort, pain, distress or other concerns from the patient. The CNA verbalized vital signs were obtained by CNAs and the normal parameters were described as follow: B/P: 120/80, HR: 60 -88 bpm, SPO2: above 92% and RR 16-18 br/m. If any of the vital signs were out of parameter, the nurse would be notified.</p> <p>On 8/21/17 at 11:02 AM, a RN explained normal vital signs were: B/P: 100/60, HR: no more than 100 bpm, RR: 16-20 br/m and SPO2 no less than 90%. If a patient presented with a HR of 140 bpm and RR of 30 br/m, the physician must be notified immediately and the RRT activated.</p>	S 300			

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If continuation sheet 10 of 12

PLTF 63

4 AA 426

PRINTED: 02/05/2018
FORM APPROVED

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NV8808H06	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 09/21/2017
NAME OF PROVIDER OR SUPPLIER CENTENNIAL HILLS HOSPITAL MEDICAL CEN		STREET ADDRESS, CITY, STATE, ZIP CODE 6880 N DURANGO DR LAS VEGAS, NV 89149		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
8 300	<p>Continued From page 10</p> <p>On 9/21/17 at 11:20 AM, an RT Supervisor explained non-rebreather mask was used as the last resort when a patient had respiratory problems that did not improve with breathing treatment, pulmonary hygiene and the SPO2 was lower than 90%. The RT Supervisor indicated if a non-rebreather mask was placed, the patient had to be upgraded to the next level of care. The RT Supervisor stated any RT could notify the physician and the RRT if after an assessment it was determined a patient was in respiratory distress. The RT Supervisor confirmed according to the vital signs documented in the record on 5/11/17 at 4:08 AM and 4:47 AM, Patient #2 was in respiratory distress and required an upgrade of the level of care. The RT Supervisor explained SPO2 lower than 90%, changes in skin color, the use of the accessory respiratory muscles, increase in heart and respiratory rates and abnormal arterial blood gases could be identified such as signs and symptoms of respiratory distress. The RT Supervisor verbalized the normal SPO2 was 90% or above but depended of the patient's condition.</p> <p>On 9/21/17 at 12:01 PM, the RT who provided care to Patient #2 on 5/10/17 during the day, had been worked with the patient since she was extubated and transferred from Intensive Care to the med-surge unit. The RT was present when the patient complained of a respiratory distress in the radiology unit and the RRT was activated. An Emergency Department physician responded to the incident, stabilized the patient and transferred back to her room. After that time, the RT provided a breathing treatment several times throughout the day but vital signs were stable. The RT explained a non- rebreather mask was used when a patient was not oxygenating (SPO2 was lower than 90%) and required an upgrade level of</p>	8 300		

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Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS0086H08	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 08/21/2017
NAME OF PROVIDER OR SUPPLIER CENTENNIAL HILLS HOSPITAL MEDICAL CEN		STREET ADDRESS, CITY, STATE, ZIP CODE 6900 N DURANGO DR LAS VEGAS, NV 89149		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
S 300	<p>Continued From page 11</p> <p>care. After reviewing Patient #2's clinical record for 5/11/17 at 4:06 AM and 4:47 AM, the RT concluded the physician should have been notified, the RRT activated and the level of care upgraded.</p> <p>Facility policy titled RRT dated December 2016, documented the RRT was established to aid in the preservation of patient life based on an early recognition of life threatening conditions. The policy documented the RRT could be activated when changes occurred in a patient that included acute change in heart rate less than 40 or more than 130 bpm, respiratory rate less than 8 or more than 28 br/m, acute change in saturation less than 90% despite oxygen and shortness of breath.</p> <p>Severity: 3 Scope: 1</p> <p>Complaint # NV00049271</p>	S 300		

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If continuation sheet 12 of 12

PLTF 65

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EXHIBIT 4

Handwritten Signature
CLERK OF THE COURT

ORDER

PAUL S. PADDA
Nevada Bar No.: 10417
Email: psp@paulpaddalaw.com
PAUL PADDA LAW, PLLC
4560 South Decatur Boulevard, Suite 300
Las Vegas, Nevada 89103
Tele: (702) 366-1888
Fax: (702) 366-1940
Attorneys for Plaintiffs

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

CASE NO. A-19-788787-C
DEPT. XXX (30)

**ORDER DENYING DEFENDANTS
CONRADO CONCIO, M.D. AND
DIONICE JULIANO, M.D.'S MOTION
TO DISMISS PLAINTIFFS'
COMPLAINT**

The above-referenced matter was scheduled for a hearing on September 25, 2019.

Appearing on behalf of Plaintiffs were Paul S. Padda, Esq. and Suneel J. Nelson, Esq.

Appearing on behalf of Defendants the movant, was Brad J. Shipley, Esq. and Zachary J.
Thompson, Esq.

...

...

*Order Denying Defendants Conrado Concio, M.D. and Dionice Juliano, M.D.'s Motion to Dismiss
Estate of Rebecca Powell, et. al. v. Centennial Hills Hospital Medical Center et. al.
Case No. A-19-788787-C, Dept. No. XXX (30)*

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

I.

PROCEDURAL POSTURE

1. On February 4, 2019, Plaintiffs filed a Complaint alleging medical malpractice, wrongful death and negligent infliction of emotional distress ("NIED"). Plaintiffs attached to their Complaint a sworn affidavit from Dr. Sami Hashim, M.D. in support of their first cause of action alleging medical malpractice.

2. On June 12, 2020, Defendants Conrado Concio, M.D. and Dionice Juliano, M.D. filed a motion to dismiss Plaintiffs' Complaint alleging that Plaintiffs failed to timely file their Complaint within the statute of limitations time of one year pursuant to NRS 41A.097(2) and also failing to meet the threshold requirements of NRS 41A.071 for the claims of negligent infliction of emotional distress and professional negligence.

3. On June 13, 2019 Defendant Vishal Shah, M.D. filed a joinder to Defendants Conrado, M.D. and Dionice Juliano, M.D.'s motion to dismiss.

4. On June 26, 2019, Defendant Centennial Hills Hospital filed a joinder to Defendants Conrado, M.D. and Dionice Juliano, M.D.'s motion to dismiss.

5. On September 23, 2019, Defendant Universal Health Services, Inc. filed a joinder to Defendants Conrado, M.D. and Dionice Juliano, M.D.'s motion to dismiss.

6. The motion to dismiss and related matters were heard by the Court on September 25, 2019.

7. After considering the papers on file in this matter and the arguments of counsel, the Court hereby renders the following findings of fact and conclusions of law:

I.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

8. The Court, addressing the statute of limitations issue, noted that the Supreme Court has been clear that the standard of when a claimant "knew or reasonably should have known" is generally an issue of fact for a jury to decide. However, the Court also noted that in this case, it does appear that the Complaint was not filed until a substantial period after the date of Rebecca Powell's death. Therefore, Defendants may revisit the statute of limitations issue in

1 the future through a motion for summary judgment at which point the Court will reconsider the
 2 issue at that time. (Transcript 18:4-13).

3 9. The Court further stated there is at least an insinuation that there was
 4 concealment, and the Court understands the argument that you cannot hold one defendant
 5 responsible for another defendant's concealment. However, if there was concealment in this
 6 case, it also arguably prevented the Plaintiffs from having the inquiry notice they needed in
 7 order to comply with the statute of limitations. (Transcript 18:14-23).

8 10. The Court further stated that, in medical malpractice cases, an issue of fact is
 9 determined when that inquiry notice starts, and arguably, the inquiry notice may not start until
 10 Plaintiffs receive the pertinent records (Transcript 18:24-19:3).

11 11. The Court further stated regarding a Nevada Rule of Civil Procedure 12(b)(5)
 12 motion based upon a "failure to state a claim upon which relief can be granted" that Defendants
 13 must show that "under no circumstances would Plaintiffs able to prevail." At this point in the
 14 litigation, the Court determined that this an issue of fact to be determined at a later date as
 15 Defendants have not met their burden. (Transcript 19:4-7).

16 12. With regard to the NIED claim, Court stated that Plaintiffs' correctly pled the
 17 claim, and Plaintiffs' Complaint meets the requirements of NRS 41A.071. However, there is
 18 inconsistency within Plaintiffs' Affidavit which creates a genuine issue of fact. Therefore,
 19 some arguments may be brought up in a motion for summary judgment that the Court will
 20 consider at a later time after more evidence is available (Transcript 19:12-19:25).

21 13. Defendant Centennial Hills Hospital Medical Center's motion to dismiss
 22 Plaintiffs' Complaint based upon NRS 41A.097 and NRCP 12(b)(5) must be denied (Transcript
 23 19:25-20:2).

24 14. The Court concludes that Plaintiffs' Complaint should not be dismissed at this
 25 time with the evidence available to the Court.

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 27 . . .
 28 . . .

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

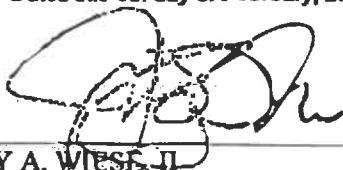
III.
ORDER

Based upon the foregoing,

IT IS HEREBY ORDERED that Defendants Conrado Concio, M.D. and Dionice Juliano, M.D.'s Motion to Dismiss Plaintiffs' Complaint, and the subsequent joinders to that motion, on the grounds that (1) Plaintiffs untimely filed their complaint to satisfy the requirements of NRS 41A.097 and (2) that Plaintiffs failed to meet the threshold pleading requirements pursuant to NRS 41A.071 regarding Plaintiffs' claims of negligent infliction of emotional distress and professional negligence is DENIED without prejudice.

Dated this _____ day of _____, 2021.

Dated this 6th day of February, 2021


JERRY A. WIESE, JR.
DISTRICT COURT JUDGE
EIGHTH JUDICIAL DISTRICT COURT
DEPARTMENT 1
JERRY A. Wiese
District Court Judge

Respectfully submitted by:

Approved as to Form and Content By:

PAUL PADDA LAW

JOHN H. COTTON & ASSOCIATES, LTD.

By: /s/ Paul S. Padda

By: /s/ Brad J. Shipley

Paul S. Padda, Esq.
Nevada Bar No. 10417
4650 S. Decatur Boulevard, Ste. 300
Las Vegas, Nevada 89103

Brad J. Shipley, Esq.
Nevada Bar No. 12639
7900 West Sahara Ave, Suite 200
Las Vegas, Nevada 89117

Attorneys for Plaintiffs

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

Dated this 4th day of February 2021.


From: Brad Shipley
To: Jennifer Greening; Garth, Adam
Cc: Vogel, Brent; Rokni, Roya; Whitbeck, Johana; Armantrout, Heather; Atkinson, Arielle; Paul Padda
Subject: RE: Powell v. Valley Health - Proposed Orders re: 9/25/2019 Hearing
Date: Thursday, February 4, 2021 12:56:32 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)

We have no objection to either order. You may use my e-signature for approval of the proposed orders.

Brad J. Shipley, Esq
John H. Cotton and Associates
7900 W. Sahara Ave. #200
Las Vegas, NV 89117
(702) 832-5909
(630) 269-1717

From: Jennifer Greening <Jennifer@paulpaddalaw.com>
Sent: Thursday, February 4, 2021 12:51 PM
To: Garth, Adam <Adam.Garth@lewisbrisbois.com>; Brad Shipley <bshipley@jhcottonlaw.com>
Cc: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>; Whitbeck, Johana <Johana.Whitbeck@lewisbrisbois.com>; Armantrout, Heather <Heather.Armantrout@lewisbrisbois.com>; Atkinson, Arielle <Arielle.Atkinson@lewisbrisbois.com>; Paul Padda <psp@paulpaddalaw.com>
Subject: RE: Powell v. Valley Health - Proposed Orders re: 9/25/2019 Hearing

Thank you, Mr. Garth.


Jennifer C. Greening
Paralegal
PAUL PADDA LAW, PLLC
Jennifer@paulpaddalaw.com
www.paulpaddalaw.com


Nevada Office:
4560 South Decatur Blvd, Suite 300
Las Vegas, Nevada 89103
Tele: (702) 366-1888
Fax: (702) 366-1940

Mailing Address:
4030 S. Jones Boulevard, Unit 30370
Las Vegas, Nevada 89173

California Office:
12655 West Jefferson Blvd., 4th Floor
Los Angeles, California 90066
Tele: (213) 423-7788

EXHIBIT 5


CLERK OF THE COURT

ORDER

PAUL S. PADDA
Nevada Bar No.: 10417
Email: psp@paulpaddalaw.com
PAUL PADDA LAW, PLLC
4560 South Decatur Boulevard, Suite 300
Las Vegas, Nevada 89103
Tele: (702) 366-1888
Fax: (702) 366-1940
Attorneys for Plaintiffs

**DISTRICT COURT
CLARK COUNTY, NEVADA**

* * * * *

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

Plaintiffs,

vs.

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

Defendants.

CASE NO. A-19-788787-C
DEPT. XXX (30)

**ORDER DENYING DEFENDANT
CENTENNIAL HILLS HOSPITAL
MEDICAL CENTER'S MOTION TO
DISMISS PLAINTIFFS' COMPLAINT**

The above-referenced matter was scheduled for a hearing on September 25, 2019.

Appearing on behalf of Plaintiffs was Paul S. Padda, Esq. and Suneel J. Nelson, Esq.

Appearing on behalf of Defendant Centennial Hills Hospital Medical Center, the movant, was
Brad J. Shipley, Esq. and Zachary J. Thompson, Esq.

...

*Order Denying Defendants Centennial Hills Hospital Medical Center and Universal Health Services, Inc.'s Motions to Dismiss
Estate of Rebecca Powell, et. al. v. Centennial Hills Hospital Medical Center et. al.
Case No. A-19-788787-C, Dept. No. XXX (30)*

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

I.

PROCEDURAL HISTORY

1. On February 4, 2019, Plaintiffs filed a Complaint alleging medical malpractice, wrongful death and negligent infliction of emotional distress ("NIED"). Plaintiffs attached to their Complaint a sworn affidavit from Dr. Sami Hashim, M.D. in support of their first cause of action alleging medical malpractice.

2. On June 19, 2019, Defendant Centennial Hills Hospital Medical Center filed a motion to dismiss pursuant to Nevada Rule of Civil Procedure ("NRCPP") 12(b)(5) alleging that Plaintiffs failed to timely file their Complaint within the statute of limitations time of one year pursuant to NRS 41A.071.

3. On September 23, 2019, Defendant Universal Health Services, Inc. filed a joinder to Defendant Centennial Hills Hospital Medical Center's motion to dismiss.

4. The motion to dismiss and related matters were heard by the Court on September 25, 2019 ("the hearing").

5. After considering the papers on file in this matter and the arguments of counsel, the Court hereby renders the following findings of fact and conclusions of law:

I.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

6. The Court, addressing the statute of limitations issue at the hearing, noted that the Supreme Court of Nevada has been clear that the standard of when a claimant "knew or reasonably should have known" is generally an issue of fact for a jury to decide. However, the Court also noted that in this case it does appear that claim was not filed until a substantial period after the date of Rebecca Powell's death. Therefore, the Court determined at the hearing that some arguments may be brought up later in a motion for summary judgment that the Court will consider following the filing of such a motion. (Transcript 18:4-13).

7. The Court further stated at the hearing that there is at least an insinuation that there was concealment, and the Court understands the argument that you cannot hold a Defendant responsible for another Defendants concealment. However, if there is concealment,

1 it arguably prevents the Plaintiffs from having the inquiry notice they need in order to comply
2 with the statute of limitations. (Transcript 18:14-23).

3 8. The Court further stated at the hearing that an issue of fact is determined when
4 that inquiry notice starts, and arguably, the inquiry notice may not start until a Plaintiff receives
5 the pertinent records (Transcript 18:24-19:3).

6 9. The Court further stated at the hearing that an NRCP 12(b)(5) motion for “failure
7 to state a claim upon which relief can be granted,” requires a defendant to show that “under no
8 circumstances would the plaintiffs be able to prevail.” The Court found that Defendants’s
9 motion did not meet this standard. Therefore, the Court determined this to be an issue of fact to
10 be determined at a later date (Transcript 19:4-7).

11 10. The Court finds and concludes that Defendant Centennial Hills Hospital Medical
12 Center’s motion to dismiss Plaintiffs’ Complaint based upon NRS 41A.097 and NRCP 12(b)(5)
13 must be denied (Transcript 19:25-20:2).

14 11. The Court also finds and concludes that Plaintiffs’ Complaint should not be
15 dismissed at this time with the evidence available to the Court.

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

III.

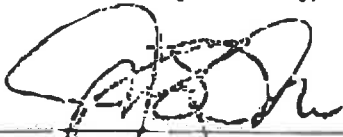
ORDER

Based upon the foregoing,

IT IS HEREBY ORDERED that Defendant Centennial Hills Hospital Medical Center's Motion to Dismiss Plaintiffs' Complaint, and the subsequent joinders to that motion, on the grounds that Plaintiffs untimely filed their Complaint to satisfy the requirements of NRS 41A.097 is DENIED without prejudice.

Dated this _____ day of _____, 2021.

Dated this 6th day of February, 2021


JERRY A. WIESE II
DISTRICT COURT JUDGE
EIGHTH JUDICIAL DISTRICT COURT
DEPARTMENT 3B85 F30D
Jerry A. Wiese
District Court Judge

Respectfully submitted by:

Approved as to Form and Content By:

PAUL PADDA LAW

LEWIS BRISBOIS BISGAARD & SMITH

By: /s/ Paul S. Padda

By: /s/ Adam Garth

Paul S. Padda, Esq.
Nevada Bar No. 10417
4650 S. Decatur Boulevard, Ste. 300
Las Vegas, Nevada 89103

S. Brent Vogel, Esq.
Nevada Bar No. 6858
Adam Garth, Esq.
Nevada Bar No. 15045
6385 S. Rainbow Boulevard, Ste. 600
Las Vegas, Nevada 89118

Attorneys for Plaintiffs

Attorneys for Defendant Valley Health
System, LLC dba Centennial Hills Hospital
Medical Center

Dated this 4th day of February 2021.

From: Garth, Adam
To: Jennifer Greening; Brad Shipley
Cc: Vogel, Brent; Rokni, Roya; Whitbeck, Johana; Armantrout, Heather; Atkinson, Arielle; Paul Padda
Subject: RE: Powell v. Valley Health - Proposed Orders re: 9/25/2019 Hearing
Date: Thursday, February 4, 2021 12:40:51 PM
Attachments: image001.png
image002.png
image003.png
image004.png
image005.png
image006.png
Logo_e6253148-26a1-47a9-b851-6ac0ff0bc3c4.png

You can sign my e-signature to the stipulation and submit for filing regarding the Centennial Hills order only. We can take no position regarding the other order as that pertains to co-defendant's motion and he will need to provide his approval.

Adam Garth



Adam Garth
Partner
Adam.Garth@lewisbrisbois.com
T: 702.693.4335 F: 702.366.9563

6385 South Rainbow Blvd., Suite 600, Las Vegas, NV 89118 | LewisBrisbois.com

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From: Jennifer Greening <Jennifer@paulpaddalaw.com>
Sent: Thursday, February 4, 2021 12:34 PM
To: Garth, Adam <Adam.Garth@lewisbrisbois.com>; Brad Shipley <bshipley@jhcottonlaw.com>
Cc: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>; Whitbeck, Johana <Johana.Whitbeck@lewisbrisbois.com>; Armantrout, Heather <Heather.Armantrout@lewisbrisbois.com>; Atkinson, Arielle <Arielle.Atkinson@lewisbrisbois.com>; Paul Padda <psp@paulpaddalaw.com>
Subject: [EXT] RE: Powell v. Valley Health - Proposed Orders re: 9/25/2019 Hearing

Attached is the hearing transcript for your review.

Thank you.

Jennifer C. Greening
Paralegal
PAUL PADDA LAW, PLLC
Jennifer@paulpaddalaw.com
www.paulpaddalaw.com
A row of four small, square social media icons: Facebook, Twitter, LinkedIn, and Instagram.

Nevada Office:
4560 South Decatur Blvd, Suite 300
Las Vegas, Nevada 89103
Tele: (702) 366-1888
Fax: (702) 366-1940

EXHIBIT 6

Handwritten Signature
CLERK OF THE COURT

**DISTRICT COURT
CLARK COUNTY, NEVADA
-oOo-**

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

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

Plaintiffs,

vs.

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

ORDER

Defendants.

The above-referenced matter was scheduled for a hearing on November 4, 2020, with regard to Defendant Valley Health System LLC's (Valley's) and Universal Health Services, Inc.'s (Universal's) Motion for Summary Judgment Based upon the Expired Statute of Limitations. Defendants Dionice Juliano, M.D., Conrado Concio, M.D., and Vishal Shah, M.D. joined the Motion for Summary Judgment. Additionally, Defendant, Juliano's Motion for Summary Judgment and Defendants Concio and Shaw's Motion for Partial Summary Judgment on Emotional Distress Claims is on calendar. Finally, Plaintiff's Counter-Motion to Amend or Withdraw Plaintiffs' Responses to Defendants' Requests for Admissions is on calendar. Pursuant to A.O. 20-01 and subsequent administrative orders, these matters are deemed "non-essential," and may be decided after a hearing, decided on the papers, or continued. This Court has determined that it

1 would be appropriate to decide these matters on the papers, and consequently, this
2 Order issues.

3 **Defendants Valley's and Universal's Motion for Summary Judgment Based**
4 **upon the Expiration of the Statute of Limitations.**

5 On May 3, 2017 Rebecca Powell ("Plaintiff") was taken to Centennial Hills
6 Hospital, a hospital owned and operated by Valley Health System, LLC ("Defendant")
7 by EMS services after she was discovered with labored breathing and vomit on her face.
8 Plaintiff remained in Defendant's care for a week, and her condition improved.
9 However, on May 10, 2017, Plaintiff complained of shortness of breath, weakness, and
10 a drowning feeling. In response to these complaints, Defendant Doctor Vishal Shah
11 ordered Ativan to be administered via IV push. Plaintiff's condition did not improve.
12 Defendant, Doctor Conrado Concio twice more ordered Ativan to be administered via
13 IV push, and Plaintiff was put in a room with a camera in order to better monitor her
14 condition. At 3:27 AM on May 11, 2017, another dose of Ativan was ordered. Plaintiff
15 then entered into acute respiratory failure, resulting in her death.

16 Plaintiff brought suit on February 4, 2019 alleging negligence/medical
17 malpractice, wrongful death pursuant to NRS 41.085, and negligent infliction of
18 emotional distress. Defendant previously filed a Motion to Dismiss these claims, which
19 was denied on September 25, 2019. The current Motion for Summary Judgment was
20 filed on September 2, 2020. Defendants Dionice Juliano, MD, Conrado Concio, MD,
21 and Vishal Shah, MD joined in this Motion on September 3, 2020. Plaintiff filed their
22 opposition September 16, 2020. Defendant filed its reply on October 21, 2020 and
23 Defendants Dionice Juliano, MD, Conrado Concio, MD, and Vishal Shah, MD joined
24 the reply on October 22, 2020.

25 Defendant claims that, pursuant to NRS 41A.097 Plaintiff's claims were brought
26 after the statute of limitations had run. In pertinent part, NRS 41A.097 states in
27 pertinent part: "an action for injury or death against a provider of health care may not
28 be commenced more than 3 years after the date of injury or 1 year after the plaintiff
discovers or through the use of reasonable diligence should have discovered the injury,
whichever occurs first." NRS 41A.097(2). There appears to be no dispute that the
Complaint was filed within 3 years after the date of injury (or death). The issue is
whether the Complaint was filed within 1 year after the Plaintiffs knew or should have

1 known of the injury. Defendants claim that they fall under the definition of a “provider
2 of health care” under NRS 41A.017 and that all of Plaintiff’s claims sound in
3 professional negligence. Therefore, all the claims are subject to NRS 41A.097.

4 Defendant claims that Plaintiff was put on inquiry notice of the possible cause of
5 action on or around the date of Plaintiff’s death in May of 2017 and therefore the suit,
6 brought on February 4, 2019, was brought after the statute of limitations had tolled.
7 Defendant makes this claim based on several theories. Defendant claims that since
8 Plaintiffs are suing for Negligent Infliction of Emotional Distress, and an element of
9 that claim is contemporaneous observation, that Plaintiff was put on notice of the
10 possible claim on the date of Ms. Powell’s death. Alternatively, Defendant argues that
11 since Plaintiff ordered and received Ms. Powell’s medical records no later than June
12 2017, they were put on notice upon the reception of those records. Finally, Defendant
13 argues that since Plaintiffs made two separate complaints alleging negligence, they
14 were aware of the possible claim for negligence and thus on inquiry notice. (On May 23,
15 2017, Defendants provide an acknowledgement by the Nevada Department of Health
16 and Human Services (“HHS”) that they received Plaintiff Brian Powell’s complaint
17 made against Defendants. And on June 11, 2017, Plaintiff Brian Powell filed a
18 complaint with the Nevada State Board of Nursing alleging negligence in that Decedent
19 was not properly monitored.)

20 Plaintiff argues that the date of accrual for the statute of limitations is a question
21 of fact for the jury and summary judgment is not appropriate at this stage where there
22 are factual disputes. Plaintiffs claim they were not put on inquiry notice of Defendant’s
23 negligence until they received the February 5, 2018, HHS report and therefore the
24 complaint, filed on February 4, 2019, was brought within the one-year statute of
25 limitations. Plaintiff makes this claim based on several pieces of evidence. First, while
26 the medical records were mailed to Plaintiffs on June 29, 2017, there is no evidence
27 that shows the records were ever received. Additionally, on June 28, 2017, Plaintiffs
28 were informed via the Certificate of Death, that Ms. Powell’s death was determined to
be a suicide. This prevented Plaintiff from ever considering negligence contributed to
her death. Plaintiffs argue the first time they could have suspected negligence was
when they received the report from HHS on February 5, 2018, that stated the facility

1 had committed violations with rules and/or regulations and deficiencies in the medical
2 care provided to Decedent.

3 Plaintiff claims that Defendant's present Motion for Summary Judgment is just
4 a regurgitation of Defendant's prior Motion to Dismiss on the same facts in violation of
5 Eighth Judicial District Court Rule (EJDCR) 2.24(a). Plaintiff claims this Motion is a
6 waste of time, money, and resources that rehashes the same arguments that the court
7 had already decided, and the Motion should be denied pursuant to EJDCR 2.24(a).

8 Summary judgment is appropriate if the pleadings, depositions, answers to
9 interrogatories, and admissions on file, together with the affidavits, if any, show that
10 there is no genuine issue as to any disputed material fact and that the moving party is
11 entitled to a judgment as a matter of law. NRCP 56(c). The tolling date ordinarily
12 presents a question of fact for the jury. *Winn v. Sunrise Hospital and Medical Center*,
13 128 Nev. 246, 252 (2012). "Only when the evidence irrefutably demonstrates that a
14 plaintiff was put on inquiry notice of a cause of action should the district court
15 determine this discovery date as a matter of law." *Id.* A plaintiff discovers an injury
16 when "he knows or, through the use of reasonable diligence, should have known of facts
17 that would put a reasonable person on inquiry notice of his cause of action." *Massey v.*
18 *Linton*, 99 Nev. 723 (1983). The time does not begin when the plaintiff discovers the
19 precise facts pertaining to his legal theory but when there is a general belief that
20 negligence may have caused the injury. *Id.* at 728.

21 There is a suggestion in the Defendants' Reply Brief that the Plaintiffs may have
22 been arguing that any delay in filing the Complaint may have been due to a fraudulent
23 concealment of the medical records, and that such a defense needs to be specifically
24 pled. This Court has not interpreted the Plaintiff's position to be one that the records
25 were "fraudulently concealed," only that there was no evidence that they had timely
26 received them. This Court will not take a position on this issue at this time, as it is not
27 necessary as part of the Court's analysis, and it does not change the opinion of the
28 Court either way.

Although the Complaints filed by Brian Powell, suggest that Plaintiff may have at
least been on inquiry notice in 2017, the fact that the family was notified shortly after
the decedent's death that the cause of death was determined to be a "suicide," causes
this Court some doubt or concern about what the family knew at that time period.

1 Since the family did not receive the report from the State Department of Health and
2 Human Services, indicating that their previously determined cause of death was in
3 error, it is possible that the Plaintiffs were not on inquiry notice until February 4, 2019.
4 This Court is not to grant a Motion to Dismiss or a Motion for Summary Judgment on
5 the issue of a violation of the Statute of Limitations, unless the facts and evidence
6 irrefutably demonstrate that Plaintiff was put on inquiry notice more than one year
7 prior to the filing of the complaint. This Court does not find that such evidence is
8 irrefutable, and there remains a genuine issue of material fact as to when the Plaintiffs
9 were actually put on inquiry notice. Such issue is an issue of fact, appropriate for
10 determination by the trier of fact. Consequently, Summary Judgment would not be
11 appropriate, and the Motion for Summary Judgment, and the Joinders thereto, must
12 be denied.

13 **Defendant, Juliano's Motion for Summary Judgment, and Defendant**
14 **Concio and Shah's Motion for Partial Summary Judgment on Emotional**
15 **Distress Claims.**

16 On or about 05/03/17, 41-year-old Rebecca Powell was transported to
17 Centennial Hospital. Rebecca ultimately died on 05/11/17. Plaintiffs allege that the
18 death was due to inadequate and absent monitoring, a lack of diagnostic testing, and
19 improper treatment. Furthermore, Plaintiffs allege that Rebecca Powell's negligent
20 death caused them Negligent Infliction of Emotional Harm.

21 Defendant, Doctor Dionice Juliano, argues that based on the discovery which
22 has taken place, the medical records, and specifically his own affidavit, there are no
23 material facts suggesting he was responsible for the care and treatment of Rebecca
24 Powell after May 9, 2017.¹ Further, Defendant argues that for a claim for Negligent
25 Infliction of Emotional to survive, the plaintiff must be physically present for the act
26 which is alleged to have inflicted that emotional distress.

27 Defendants further argue that Summary Judgment is warranted because the
28 Plaintiff failed to timely respond to Requests for Admission, and consequently,

¹ Dr. Dionice Juliano's Affidavit indicates that the patient was admitted on May 3, 2017, by the physician working the night shift. Dr. Juliano saw her for the first time on May 4, 2017, and was her attending physician, until he handed her off at the end of a "week-on, week-off" rotation on Monday, May 8, 2017. He had no responsibility for her after May 8, as he was off duty until Tuesday, May 16, 2017. The Plaintiffs' Complaint is critical of the acts or omissions which occurred on May 10 and 11, 2017.

1 pursuant to NRCP 36, they are deemed admitted. Defendants argue that Plaintiffs have
2 no good cause for not responding.

3 Plaintiffs argue that Defendants prematurely filed their motions since there is
4 over a year left to conduct discovery. Moreover, Plaintiffs argue that Defendants acted
5 in bad faith during a global pandemic by sending the admission requests and by not
6 working with Defendants' counsel to remind Plaintiffs' counsel of the missing
7 admission requests. Moreover, since Defendants have not cited any prejudice arising
8 from their mistake of submitting its admission requests late, this Court should deem
9 Plaintiffs' responses timely or allow them to be amended or withdrawn. Plaintiffs ask
10 this Court to deny the premature motions for Summary Judgment and allow for
discovery to run its natural course.

11 Pursuant to NRCP 56, and the relevant case law, summary judgment is
12 appropriate when the evidence establishes that there is no genuine issue of material
13 fact remaining and the moving party is entitled to judgment as a matter of law. All
14 inferences and evidence must be viewed in the light most favorable to the non-moving
15 party. A genuine issue of material fact exists when a reasonable jury could return a
16 verdict for the non-moving party. See NRCP 56, *Ron Cuzze v. University and*
17 *Community College System*, 123 Nev. 598, 172 P.3d 131 (2008), and *Golden Nugget v.*
18 *Ham*, 95 Nev. 45, 589 P.2d 173 (1979), and *Oehler v. Humana, Inc.*, 105 Nev. 348
19 (1987). While the pleadings are construed in the light most favorable to the non-
20 moving party, however, that party is not entitled to build its case on "gossamer threads
of whimsy, speculation, and conjecture." *Miller v. Jones*, 114 Nev. 1291 (1998).

21 With regard to the Requests for Admissions, NRCP 36(a)(3) provides that a
22 matter is deemed admitted unless, within 30 days after being served, the party sends
23 back a written answer objecting to the matters. Here, Plaintiff's counsel failed to
24 respond to Defendants' counsel request for admissions during the allotted time.
25 Defendants' counsel argues that Plaintiffs should not be able to withdraw or amend
26 their responses because their attorney was personally served six different times and
27 emailed twice as notice that they were served the admission requests. On the other
28 hand, Plaintiffs' counsel argued that their late response was due to consequences from
the unprecedented global pandemic that affected their employees and work. NRCP
36(b) allows the Court to permit the admission to be withdrawn or amended if it would

1 promote the presentation of the merits. Since Nevada courts, as a public policy, favor
2 hearing cases on its merits, and because this Court finds that the global pandemic
3 should count as “good cause,” this Court will allow Plaintiffs’ late responses to be
4 recognized as timely responses. They were filed approximately 40 days late, but the
5 Court finds that the delay was based on “good cause,” and that they will be recognized
6 as if they had been timely responses.

7 Under *State v. Eaton*, 101 Nev. 705, 710 P.2d 1370 (1985), to prevail in a claim
8 for Negligent Infliction of Emotional Distress, the following elements are required: (1)
9 the plaintiff was located near the scene; (2) the plaintiff was emotionally injured by the
10 contemporaneous sensory observance of the accident; and (3) the plaintiff was closely
11 related to the victim. The Plaintiffs argue that although there has been a historical
12 precedent requiring the plaintiff to have been present at the time of the accident. This
13 Court previously held in this case that the case of *Crippens v. Sav On Drug Stores*, 114
14 Nev., 760, 961 P.2d 761 (1998), precluded the Court from granting a Motion to Dismiss.
15 Although the burden for a Motion for Summary Judgment is different, the Court is still
16 bound by the Nevada Supreme Court’s decision in *Crippens*, which indicated, “it is not
17 the precise position of plaintiff or what the plaintiff saw that must be examined. The
18 overall circumstances must be examined to determine whether the harm to the plaintiff
19 was reasonably foreseeable. Foreseeability is the cornerstone of this court’s test for
20 negligent infliction of emotional distress.” *Id.* The Court still believes that the
21 “foreseeability” element is more important than the location of the Plaintiffs, pursuant
22 to the Court’s determination in *Crippens*, and such an analysis seems to be a factual
23 determination for the trier of fact. Consequently, Summary Judgment on the basis of
24 the Plaintiff’s failure to be present and witness the death of the decedent, seems
25 inappropriate.

26 With regard to the argument that Dr. Juliano did not participate in the care of
27 the Plaintiff during the relevant time period, the Plaintiff’s objection simply indicates
28 that the motion is premature, but fails to set forth any facts or evidence to show that
29 Dr. Juliano was in fact present or involved in the care of the decedent during the
30 relevant time period. The Court believes that this is what the Nevada Supreme Court
31 was referring to when it said that a Plaintiff is not entitled to build its case on
32 “gossamer threads of whimsy, speculation, and conjecture.” *Miller v. Jones*, 114 Nev.

1 1291 (1998). As the Plaintiffs have been unable to establish or show any facts or
2 evidence indicating that Dr. Juliano was present during the relevant time period, the
3 Court believes that no genuine issues of material fact remain in that regard and Dr.
4 Juliano is entitled to Summary Judgment. With regard to all other issues argued by the
5 parties, the Court finds that genuine issues of material fact remain, and summary
6 judgment would therefore not be appropriate.

7 Based upon the foregoing, and good cause appearing,

8 **IT IS HEREBY ORDERED** that Defendants Valley's and Universal's Motion
9 for Summary Judgment Based upon the Expiration of the Statute of Limitations, and
all Joinders thereto are hereby **DENIED**.

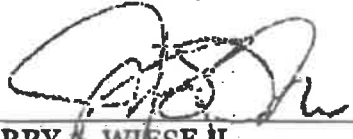
10 **IT IS FURTHER ORDERED** that Defendant Juliano's Motion for Summary
11 Judgment is hereby **GRANTED**, and Dr. Juliano is hereby Dismissed from the Action,
without prejudice.

12 **IT IS FURTHER ORDERED** that the Defendants, Concio and Shah's Motion
13 for Partial Summary Judgment on the Negligent Infliction of Emotional Distress
14 Claims is hereby **DENIED**. All joinders are likewise **DENIED**.

15 **IT IS FURTHER ORDERED** that because the Court has ruled on these
16 Motions on the papers, the hearing scheduled for November 4, 2020, with regard to the
foregoing issues is now moot, and will be taken off calendar.

17 Dated this 28th day of October, 2020.

Dated this 29th day of October, 2020

18
19
20 
21 JERRY A. WIESE II
22 DISTRICT COURT JUDGE
23 EIGHTH JUDICIAL DISTRICT COURT
24 DENVER, COLORADO
25 Jerry A. Wiese
26 District Court Judge
27
28

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4
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 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Order was served via the court's electronic eFile system to all
14 recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 10/29/2020

16 Paul Padda	psp@paulpaddalaw.com
17 S. Vogel	brent.vogel@lewisbrisbois.com
18 Jody Foote	jfoote@jhcottonlaw.com
19 Jessica Pincombe	jpincombe@jhcottonlaw.com
20 John Cotton	jhcotton@jhcottonlaw.com
21 Johana Whitbeck	johana.whitbeck@lewisbrisbois.com
22 Brad Shipley	bshipley@jhcottonlaw.com
23 Tony Abbatangelo	Tony@thevegaslawyers.com
24 Adam Garth	Adam.Garth@lewisbrisbois.com
25 Royla Rokni	roya.rokni@lewisbrisbois.com

26
27
28

1 James Kelly jpk@paulpaddalaw.com
2 Arielle Atkinson arielle.atkinson@lewisbrisbois.com
3 Paul Padda civil@paulpaddalaw.com
4 Marlenne Casillas marlennec@paulpaddalaw.com
5 Jennifer Greening jennifer@paulpaddalaw.com
6

7
8 If indicated below, a copy of the above mentioned filings were also served by mail
9 via United States Postal Service, postage prepaid, to the parties listed below at their last
known addresses on 11/2/2020

10 John Cotton John H. Cotton & Associates, LTD.
11 Attn: John H. Cotton
12 7900 W. Sahara Ave. - Suite 200
Las Vegas, NV, 89117
13 Paul Padda Paul Padda Law, PLLC
14 c/o: Paul Padda
15 4560 S. Decature Blvd, Suite 300
Las Vegas, NV, 89103
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EXHIBIT 7

ORDR

PAUL S. PADDA, ESQ.

Nevada Bar No.: 10417

Email: psp@paulpaddalaw.com

JAMES P. KELLY, ESQ.

Nevada Bar No.: 8140

Email: jpk@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; ISALAH KHOSROF,
individually; LLOYD CREECY, individually;

Plaintiffs,

vs.

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

Defendants.

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

**ORDER DENYING DEFENDANT
VALLEY HEALTH SYSTEM, LLC'S
MOTION TO STAY ON ORDER
SHORTENING TIME**

The above-referenced matter was scheduled for a hearing on November 25, 2020 with regard to Defendant Valley Health System's Motion for Stay. Pursuant to Administrative Order 20-01, and subsequent administrative orders, this matter was deemed "non-essential," and as

Estate of Rebecca Powell, et al. v. Valley Health System, LLC et al.
District Court Case No. A-19-788787-C, Dept. 30

1 such, this Court has determined that it would be appropriate to decide this matter on the papers.
2 A minute order was circulated on November 23, 2020 to the parties, the contents of which
3 follows:

4 On May 3, 2017, Plaintiff was found by EMS at her home. She was unconscious, labored
5 in her breathing, and had vomit on her face. EMS provided emergency care and transported her
6 to Defendant Hospital, and she was admitted. Plaintiff continued to improve while she was
7 admitted. However, on May 10, 2017 Plaintiff complained of shortness of breath, weakness, and
8 a "drowning feeling." One of her doctors ordered Ativan to be administered via an IV push. On
9 May 11, another doctor ordered two more doses of Ativan and ordered several tests, including a
10 chest CT to be performed. However, the CT could not be performed due to Plaintiff's inability to
11 remain still during the test. She was returned to her room where she was monitored by a camera
12 to ensure she kept her oxygen mask on. Plaintiffs, in their complaint, alleged the monitoring was
13 substandard and Defendant should have used a better camera or in person monitoring, among
14 other theories of substandard care. Another dose of Ativan was ordered at 3:27 AM and Plaintiff
15 entered into acute respiratory failure, which resulted in her death. The other named Plaintiffs
16 claimed they were in Decedent's hospital room and observed Defendant's negligence.

17 Plaintiffs ordered Decedent's medical records on May 25, 2017; however, there were
18 issues with delivery, and it is unclear exactly when Plaintiffs received them. Decedent's husband,
19 a named Plaintiff, filed a complaint with the State of Nevada Department of Health and Human
20 Services ("HHS") sometime before May 23, 2017. Approximately six weeks after the death of
21 Decedent, Plaintiffs received the death certificate which listed the cause of death as a suicide from
22 Cymbalta Intoxication. On February 5, 2018 HHS responded to Plaintiff's complaint. The letter
23 said that after an investigation, HHS concluded that the facility had committed violations by not
24

1 following rules and/or regulations as well as finding there were deficiencies in the medical care
2 provided to Decedent.

3 On February 4, 2019, Plaintiff's filed suit alleging negligence/medical malpractice,
4 wrongful death pursuant to NRS 41.085, and negligent infliction of emotional distress. Defendant
5 did not file an answer but filed a Motion to Dismiss on June 19, 2020 alleging the statute of
6 limitations had tolled. Plaintiff answered the motion. The court denied the Motion to Dismiss on
7 September 25, 2019. Defendant filed an Answer to Plaintiff's complaint on April 15, 2020.
8

9 Defendants Valley Health System, LLC and Universal Health Services, Inc. then filed a
10 'Motion for Summary Judgment Based Upon the Expiration of the Statute of Limitations.'
11 Defendants Dionice Juliano, M.D., Conrado Concio, M.D., and Vishal Shah, M.D. joined the
12 Motion for Summary Judgment. Additionally, Defendant Juliano filed a Motion for Summary
13 Judgment, and Defendants Concio and Shaw filed a Motion for Partial Summary Judgment on
14 Emotional Distress Claims. Plaintiffs filed a Counter-Motion to Amend or Withdraw Plaintiffs
15 Responses to Defendants Requests for Admissions. All of these items were on the November 04,
16 2020 calendar. An Order deciding these motions was filed on October 29, 2020. The Order denied
17 Defendants, Valley Health System and Universal's Motion for Summary Judgment and related
18 Joinders; granted Defendant Juliano's Motion for Summary Judgment, and dismissed Dr. Juliano
19 from the case without prejudice; and denied Defendants Concio and Shah's Motion for Partial
20 Summary Judgment on the Emotional Distress Claims.
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22

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

2 This matter has been pending since February, 2019. It is currently set for trial on May 23,
3 2022. Initial expert disclosures are to be made on or before June 18, 2021, rebuttal expert
4 disclosures are due on August 27, 2021, and discovery is to be completed on or before October
5 28, 2021. Valley argues that it is currently preparing a Petition for Writ of Mandamus, and is first
6 seeking a stay with the district Court pursuant to NRAP 8(a)(1)(A). The decision whether to grant
7 a motion for a stay in proceedings is left to the sound discretion of the Court. Nevada Tax
8 Commission v. Brent Mackie, 74 Nev. 273, 276 (1958). The factors to be considered by the Court
9 when considering whether to issue a stay in the proceedings when an appellate issue is pending
10 before the Nevada Supreme Court are (1) whether the object of the writ petition will be defeated
11 if the stay is denied; (2) whether the petitioner will suffer irreparable or serious injury if the stay
12 is denied; (3) whether the real party in interest will suffer irreparable or serious injury if the stay
13 is granted; and (4) whether petitioner is likely to prevail on the merits in the writ petition. NRAP
14 8(c); Fritz Hansen A/S v. Eighth Judicial District Court, 116 Nev. 650, 657 (2000).

15 Defendant, VHS argues that each of the 4 factors weigh in favor of granting a stay. The
16 Plaintiffs, on the other hand, argue that none of the factors weigh in favor of the Defendant. This
17 Court finds and concludes as follows: 1) Trial is currently not scheduled until May of 2022, and
18 consequently, even if a stay is denied, it is likely that the Supreme Court would rule on the
19 "potential" Writ of Mandamus, prior to the parties going to Trial. Consequently, the Court does
20 not find that the purpose of the writ petition would be defeated if the stay were denied. 2) The
21 only injury or damage that the Petitioner would suffer if the stay were denied, would be continued
22 litigations and the costs associated therewith. The Court has consistently held that ongoing
23 litigation and the expenses associated therewith do not cause "irreparable harm." Consequently,
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1 the Court does not find that the Petitioner would suffer irreparable harm or serious injury if the
2 stay were denied. 3) Although the Plaintiffs are correct that memories dim as time passes, such a
3 fact applies to all witnesses equally Plaintiff's witnesses as well as Defendants' witnesses.
4 Consequently, the Court does not find that the Plaintiffs would suffer irreparable or serious injury
5 if the stay were granted. 4) The Court cannot find that the Petitioners are likely to prevail on the
6 merits, as this Court previously found, and continues to believe, that the Death Certificate
7 identifying Ms. Powell's cause of death as a "suicide," may have tolled the statute of limitations,
8 in that such a conclusion or determination by the Medical Examiner, would clearly not suggest
9 "negligence" on the part of any medical care provider. Although the Defendants suggest that the
10 Plaintiffs possessed inquiry notice much earlier, the Court could not find that the families
11 questioning of the cause of death equated with inquiry notice of negligence. Consequently, this
12 Court concluded that when the Plaintiffs knew or should have known, of the alleged negligence
13 of the Defendants, was an issue of fact which overcame the Defendants' Motion for Summary
14 Judgment. Consequently, the Court cannot find that there is a likelihood of success on the merits.
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16
17 Another issue which is important in this Court's analysis, is the fact that a Writ has
18 apparently not yet been filed. If the Court were to grant the Stay as requested, it is possible that 6
19 months, or even a year from now, the Writ may still not be filed, so the Court would have stayed
20 the case for no reason.
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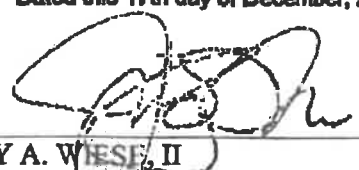
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PAUL PADDA LAW, PLLC
4560 South Decatur Boulevard, Suite 300
Las Vegas, Nevada 89103
Tele: (702) 366-1888 • Fax (702) 366-1940

1 Based upon all these reasons, considering the relevant factors set forth above, finding that
2 they weigh in favor of the non-moving party, and good cause appearing,

3 **IT IS HEREBY ORDERED** that the Defendant's Motion for Stay is hereby **DENIED**.

4 Dated this _____ day of December, 2020. Dated this 17th day of December, 2020



JERRY A. WIESE, II
DISTRICT COURT JUDGE
EIGHTH JUDICIAL DISTRICT COURT
DEPARTMENT 30
100-203-863E 6997
Jerry A. Wiese
District Court Judge

10 *Respectfully submitted by:*

11 **PAUL PADDA LAW**

12 /s/ Paul S. Padda
13 Paul S. Padda, Esq.
14 Nevada Bar No. 10417
15 James P. Kelly, Esq.
16 Nevada Bar No. 8140
17 4650 S. Decatur Boulevard, Ste. 300
18 Las Vegas, Nevada 89103

19 *Attorneys for Plaintiffs*



1 **RIS**
2 **S. BRENT VOGEL**
3 **Nevada Bar No. 6858**
4 **Brent.Vogel@lewisbrisbois.com**
5 **ADAM GARTH**
6 **Nevada Bar No. 15045**
7 **Adam.Garth@lewisbrisbois.com**
8 **LEWIS BRISBOIS BISGAARD & SMITH LLP**
9 **6385 S. Rainbow Boulevard, Suite 600**
10 **Las Vegas, Nevada 89118**
11 **Telephone: 702.893.3383**
12 **Facsimile: 702.893.3789**
13 ***Attorneys for Defendant Valley Health System,***
14 ***LLC dba Centennial Hills Hospital Medical***
15 ***Center***

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

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

17 **Plaintiffs,**

18 **vs.**

19 **VALLEY HEALTH SYSTEM, LLC (doing**
20 **business as "Centennial Hills Hospital Medical**
21 **Center"), a foreign limited liability company;**
22 **UNIVERSAL HEALTH SERVICES, INC., a**
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.: 30

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

Hearing Date: February 9, 2022

Hearing Time: 9:00 a.m.

23 **Defendant VALLEY HEALTH SYSTEM, LLC (doing business as "Centennial Hills**
24 **Hospital Medical Center") by and through its counsel of record, S. Brent Vogel and Adam Garth of**
25 **the Law Firm LEWIS BRISBOIS BISGAARD & SMITH LLP, hereby file their Reply in Further**
26 **Support of Their Motion for Attorneys' Fees Pursuant to N.R.C.P. 68 and N.R.S. §§ 17.117, 7.085,**
27 **18.010(2) and EDCR 7.60.**

28 **This Motion is based upon the Memorandum of Points and Authorities below, Defendant's**

1 Motion in Chief, the pleadings and papers on file herein, any oral argument which may be
2 entertained by the Court at the hearing of this matter.

3 DATED this 2nd day of February, 2022

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LEWIS BRISBOIS BISGAARD & SMITH LLP

6

7

By /s/ Adam Garth

8

S. BRENT VOGEL

Nevada Bar No. 6858

9

ADAM GARTH

10

Nevada Bar No. 15045

6385 S. Rainbow Boulevard, Suite 600

11

Las Vegas, Nevada 89118

12

Tel. 702.893.3383

*Attorneys for Attorneys for Defendant Valley
Health System, LLC dba Centennial Hills Hospital
Medical Center*

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs' entire opposition is predicated on a false assertion that they possessed a viable
4 case in the first instance. To put Plaintiffs' argument in the proper light, they effectively state "We
5 were winning until we lost everything, but since we thought we were winning, we had a good faith
6 basis to proceed." So, according to Plaintiffs, as long as they won a number of battles but still lost
7 the war, they are on firm ground – not so.

8 Their entire argument is that because this Court repeatedly denied dismissal attempts by the
9 respective defendants despite clear, convincing, and irrefutable evidence of inquiry notice which
10 each and every plaintiff possessed, they are somehow absolved from either their malpractice or
11 unethical practice of pursuing a case which was dead on arrival when filed. The overarching factor,
12 which Plaintiffs seem to "gloss over," is the Nevada Supreme Court held that the "district court
13 manifestly abused its discretion when it denied summary judgment."¹ In other words, it was so
14 plainly obvious at the outset of the litigation that Brian Powell's two State agency complaints,
15 standing alone, let alone Plaintiffs sought and obtained Ms. Powell's complete medical record from
16 CHH, that this case should have been dismissed a year ago at the latest when the summary judgment
17 motion was made.

18 Even more stunning in this case, as the Supreme Court also pointed out, was that Plaintiffs
19 possessed the entire medical record for the decedent from CHH within one month of her death.²
20 Either possession of the record or the State agency complaints was sufficient to trigger the
21 commencement of inquiry notice, let alone the two combined. All other arguments advanced by
22 Plaintiffs disregard their lawyer's incompetence in prosecuting a lawsuit he refused to admit was
23 legally non-revivable, and where he failed to provide any evidence which formed the basis of his
24 own concocted theories of alleged confusion as to cause of death or some fraudulent concealment
25 of records. Plaintiffs' counsel failed to interpose an affidavit or declaration from any plaintiff in
26 this case even suggesting these as a basis to support his theory, and for good reason – either it was
27

28 ¹ Exhibit "B" to CHH's motion in chief, p. 2

² Exhibit "B" to CHH's motion in chief, pp. 3-5

1 a lie and could not be presented to the Court, or it was gross incompetence to fail to support any
2 claim with admissible evidence in opposition to unopposed evidence in support of a motion for
3 summary judgment. Either way, Plaintiffs' counsel acted in bad faith here.

4 If Plaintiffs' procedural bad faith was not enough, Plaintiffs had no good faith factual basis
5 for starting the lawsuit. What will be plainly evident below is that Plaintiffs' counsel commenced
6 this action with their usual "go to" physician expert (who they regularly drop as an expert once time
7 for expert exchanges, but utilize in an effort to get over the NRS 41A.071 hurdle) on some half-
8 baked theory that Ms. Powell was overdosed on Ativan which suppressed her breathing and caused
9 her death. After CHH demonstrated through unimpeachable expert reporting and evaluations that
10 given the timing of the Ativan, it had almost completely metabolized in Ms. Powell long before her
11 death and had no effect whatsoever on the outcome of her hospital course. Even more revealing
12 was the fact that CHH's experts concluded, and upon which Plaintiffs' experts actually agreed, that
13 Ms. Powell died from an acute mucous plug event, not Ativan overdosing or anything else, an event
14 which was not predictable. Her demise was predetermined by her own suicide attempt and resulting
15 aspiration pneumonia which created a cascading decline in her health condition, that only
16 temporarily improved, but which could not be reversed by the best of care.³ Plaintiffs' counsel spends
17 considerable time in opposition attempting to garner sympathy due to the death of Ms. Powell which
18 was precipitated by her own purposeful actions and had nothing whatsoever to do with the care she
19 received at CHH. This is another perpetration of the continuing web of lies by Plaintiffs' counsel
20 which has been put to an end by the Nevada Supreme Court due to Plaintiffs' counsel's improper
21 advancement of an expired lawsuit.

22 What is even more disturbing is that Plaintiffs' counsel attempts to legitimize their actions
23 by asserting that a previously scheduled mediation somehow validates their claims. Nothing can be
24 further from the truth. CHH attempted to limit the constant hemorrhaging of money and time
25 devoted to this illegitimate lawsuit which was only being given oxygen by repeated denials of a
26

27 ³ Exhibit "D" hereto consisting of CHH's initial and rebuttal expert disclosures demonstrating the
28 complete absence of an underlying good faith factual basis for lawsuit.

1 pause in expenses while this matter worked its way through the Nevada Supreme Court for final
2 determination of its legitimacy. As previously noted in CHH's motion in chief, Plaintiffs
3 vehemently opposed any efforts to stem of tidal wave of expenses, opposing any motion for a stay
4 on multiple occasions. They forced an increase in costs and expenses and now do not want to pay
5 for their actions.

6 In short, Plaintiffs' gambled, lost, and now have to pay up. Denial of this motion would
7 represent an invitation to lawyers to commence lawsuits late, encourage them to not provide any
8 evidentiary support for positions they take, and after presented with an opportunity to walk away
9 free and clear after being shown the impropriety of their actions, to continue to pursue baseless and
10 untenable litigation. The Nevada Supreme Court would likely be interested in weighing in on this
11 issue as well.

12 **II. LEGAL ARGUMENT**

13 **A. The Beattie Factors Weigh Completely In Favor of CHH**

14 In awarding attorneys' fees pursuant to NRCP 68, the district court must analyze the
15 following factors: "(1) whether the plaintiffs claim was brought in good faith; (2) whether the
16 defendants' offer of judgment was reasonable and in good faith in both its time and amount; (3)
17 whether the plaintiff's decision to reject the offer and proceed to trial was grossly unreasonable or
18 in bad faith; and (4) whether the fees sought by the offeror are reasonable and justified in amount."
19 *Beattie v. Thomas*, 99 Nev. 579, 588-89, 688 P.2d 268, 274 (1983). However, no single *Beattie*
20 factor is determinative, and a review of the factors shows this Court should award CHH its attorneys'
21 fees. *Frazier v. Drake*, 131 Nev. 632, 642, 357 P.3d 365, 372 (Nev. App. 2015). While this Court's
22 order need not go into detail regarding each and every *Beattie* factor, its findings must be supported
23 by substantial evidence. *Logan v. Abe*, 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015). The district
24 court abuses its discretion if the *Beattie* factors are not supported by substantial evidence. *Id.*

25 Further, attorneys' fees are warranted even with a finding that two of the *Beattie* factors
26 weigh in favor of the moving party. *See Lafrieda v. Gilbert*, 435 P.3d 665 (Nev. 2019) (upholding
27 district court's award of attorneys' fees when it found the offer of judgment was reasonable in both
28 time and amount and the fees were necessary and reasonably incurred.) In the instant case, all four

1 factors weigh completely in CHH's favor.

2 **B. Plaintiffs' Lawsuit Was Brought in Bad Faith**

3 As previously demonstrated in CHH's motion in chief and in the introduction above,
4 Plaintiffs' lawsuit was not brought in good faith. The mere fact that a 41 year old woman died, due
5 to her own suicide attempt, does not require CHH to open its checkbook and pay. Plaintiff had both
6 procedural and substantive hurdles to overcome, neither of which they did.

7 The Nevada Supreme Court cited multiple times which Plaintiffs received inquiry notice in
8 this case. Specifically the Court stated:

9 Here, irrefutable evidence demonstrates that the real parties in interest were
10 on inquiry notice by June 11, 2017 at the latest, when real party in interest
11 Brian Powell, special administrator for the estate, filed a complaint with the State
12 Board of Nursing. There, Brian alleged that the decedent, Rebecca Powell, "went
13 into respiratory distress" and her health care providers did not appropriately
14 monitor her, abandoning her care and causing her death. Thus, Brian's own
15 allegations in this Board complaint demonstrate that he had enough information
16 to allege a prima facie claim for professional negligence-that in treating Rebecca,
17 her health care providers failed "to use the reasonable care, skill or knowledge
18 ordinarily used under similar circumstances by similarly trained and experienced
19 providers of health care." NRS 41A.015 (defining professional negligence);
20 *Winn*, 128 Nev. at 252-53; 277 P.3d at 462 (explaining that a "plaintiffs general
21 belief that someone's negligence may have caused his or her injury" triggers
22 inquiry notice).³ That the real parties in interest received Rebecca's death
23 certificate 17 days later, erroneously listing her cause of death as suicide,
24 does not change this conclusion.⁴ Thus, the real parties in interest had until June
25 11, 2018, at the latest, to file their professional negligence claim. Therefore, their
26 February 4, 2019 complaint was untimely.

27 **3 The evidence shows that Brian was likely on inquiry notice**
28 **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.

29 **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 unavailing, as the medical

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

13 **Given that uncontroverted evidence demonstrates that the petitioners are**
14 **entitled to judgment as a matter of law** because the complaint is time-barred
15 under NRS 41A.097(2), see NRCP 56(a); *Wood*, 121 Nev. at 729, 121 P.3d at
16 1029 (recognizing that courts must grant summary judgment when the pleadings
17 and all other evidence on file, viewed in a light most favorable to the nonmoving
18 party, "demonstrate that **no genuine issue as to any material fact [remains]** and
19 that the moving party is entitled to a judgment as a matter of law" (internal
20 quotations omitted)) . . .⁴

21 Let's review the timing of the notice. Independent from anything that Brian Powell did with
22 reporting alleged and suspected medical negligence to two State agencies, Plaintiff Taryn Creecy
23 sought and obtained a Probate Court order directing that she be permitting to obtain Ms. Powell's
24 medical records from CHH, and that court order was issued on May 24, 2017, 13 days after Ms.
25 Powell's death.⁵ Does Plaintiffs' counsel expect that everyone is so stupid as to believe that Ms.
26 Creecy sought a complete copy of the medical records from CHH for fun? Who requests medical
27 records from a hospital for a deceased individual if not to review them to determine what happened
28 due to some suspected impropriety of care? The Supreme Court noted that CHH presented
"uncontroverted evidence" that Plaintiffs' received a complete copy of Ms. Powell's entire CHH
medical chart which was demonstrated to this Court on the motion for summary judgment and again
on appeal through the affidavits of CHH's custodian of records and the medical records retrieval
service which processed Ms. Creecy's order for the records. Due to an improper address provided
by Ms. Creecy, the records were sent twice, the last time on June 29, 2017.⁶ As the Supreme Court
noted in its writ of mandamus order, Plaintiffs proffered a theory of fraudulent concealment but

⁴ Exhibit "B" to CHH's motion in chief, pp. 3-5 (emphasis supplied)

⁵ Exhibit "E" hereto

⁶ Exhibit "G"

1 failed to demonstrate any evidence of it. The Supreme Court acknowledged that Plaintiffs were in
2 full possession of the entire medical record which was available to them and at least partially
3 reviewed by their medical expert in support of his NRS 41A.071 declaration.

4 In an effort to extricate themselves from the mess of their own creation, Plaintiffs' counsel
5 erroneously seeks *en banc* reconsideration of the Supreme Court's order in this case, falsely stating
6 that the only evidence of inquiry notice here was Brian Powell's two State agency complaints, and
7 that noting that his complaints were initiated without knowledge of the remaining Plaintiffs in this
8 case (an assertion which is unsupported by any evidence whatsoever in the record but is again being
9 unethically advanced by ethically bankrupt counsel). That motion is almost assuredly doomed to
10 failure.

11 Plaintiffs further contends in their pending motion in Supreme Court that only the Estate's
12 claims could be barred by the statute of limitations since it was Brian Powell, the Estate's special
13 administrator, who allegedly "went rogue" and filed these complaints without any knowledge by
14 other Plaintiffs. Thus, Plaintiffs' counsel asserts the remaining Plaintiffs cannot be bound by Mr.
15 Powell's rogue actions. Again, to think everyone is so stupid as to believe that nonsense is insulting
16 to say the least. Plaintiffs' counsel conveniently omitted that all of the Plaintiffs prosecuted this
17 lawsuit having received records from CHH independent from any State agency complaints. In
18 *Christina Kushnir, M.D. et al. v. Eighth Judicial District Court*, 137 Nev. Adv. Op. 41 (2021), the
19 Court of Appeals stated that NRS 41A.097's one year discovery period for the purposes of inquiry
20 notice in a professional negligence case begins to run when a party receives the complete medical
21 record and "had facts before him that would have led an ordinarily prudent person to investigate
22 further." Plaintiffs' possession of the hospital records in this case coupled with their expert's ability
23 to review them and opine on the alleged malpractice for NRS 41A.071 purposes commenced the
24 running of the statute of limitations.

25 Conspicuously absent from Plaintiffs' opposition on this motion as well as to the Supreme
26 Court in their motion for *en banc* reconsideration, is any citation to this binding authority and the
27 cases preceding it. Thus, the mere possession of the complete medical record in June, 2017 by
28 Plaintiffs commenced the running of the statute of limitations here. The Nevada Supreme Court's

1 decision in this case made that perfectly clear. Thus, Plaintiffs lacked a good faith basis for their
2 claim in the first place since they possessed the medical records within 6 weeks of Ms. Powell's
3 death any did nothing to preserve their rights for 20 months thereafter before filing this illegitimate
4 and untimely lawsuit. This fact alone presents evidence of bad faith.

5 Moreover, the Nevada Supreme Court also stated in footnote 3 to its decision cited above,
6 "The evidence shows that Brian was likely on inquiry notice even earlier. For example, real parties
7 in interest had observed in real time, following a short period of recovery, the rapid deterioration of
8 Powell's health while in petitioners' care." In other words, Plaintiffs made assertions in the case
9 that they personally observed Ms. Powell's rapid deterioration. By so asserting, they admit they
10 were on the very inquiry notice required. Again, Plaintiffs' counsel conveniently forgets to highlight
11 his claim on Plaintiffs' behalf in this regard since it will not support the misrepresentation of facts
12 he now attempts to perpetrate on this Court in opposition to the instant motion.

13 In summary, Plaintiffs' bad faith has been determined in three different ways – (1)
14 possessing the entire medical record on or about June 29, 2017, (2) all Plaintiffs allegedly witnessing
15 Ms. Powell's rapid deterioration of condition, and (3) two State agency complaints specifically
16 alleging malpractice and requesting investigations. Any one of these is sufficient for inquiry notice.
17 All combined, it screams inquiry notice. All of this information was within Plaintiffs' exclusive
18 possession at the time of the lawsuit's filing. For Plaintiffs' counsel to manufacture a nonsensical
19 and completely unsubstantiated claim of "confusion", lacking any shred of evidentiary support,
20 demonstrates the very bad faith for which the penalties of the statutes and rules were established to
21 deter. Therefore, this was a bad faith lawsuit by Plaintiffs' and their counsel, plain and simple.

22 **C. CHH's Offer of Judgment Was Brought in Good Faith in Both Timing and**
23 **Amount**

24 Plaintiffs' opposition to this factor is based upon the galling and false claim that just because
25 Ms. Powell died at CHH at the age of 41, CHH's offer of judgment should have included a cash
26 award to Plaintiffs rather than a waiver of over \$58,000 in costs and fees precipitated by Plaintiffs'
27 bad faith lawsuit.

28 CHH's Offer was reasonable as to time. The Offer was served on August 28, 2020. CHH's

1 motion for summary judgment was served on September 2, 2020, 5 days after the Offer and well
2 within the time to accept it, 9 days to be exact. Moreover, the Offer was made about 1½ years from
3 the lawsuit's commencement. As previously demonstrated herein, on the original motion for
4 summary judgment, on appeal to the Nevada Supreme Court, and in the Supreme Court's decision
5 thereon, every single one of the Plaintiffs was on inquiry notice of alleged malpractice in three
6 different ways, where only one means was sufficient to commence the running of the statute of
7 limitations. These were made abundantly clear in CHH's summary judgment motion pending
8 coterminously with the Offer. Plaintiffs were the parties in exclusive possession of evidence of
9 inquiry notice. The fact that this Court previously denied CHH's predecessor counsel's motion to
10 dismiss did not delegitimize the arguments which were only amplified and irrefutably demonstrated
11 by CHH in its motion for summary judgment to which a wholly different standard applied and to
12 which Plaintiffs were obligated to provide evidence in opposition thereto. This they failed to do,
13 and the Supreme Court noted it.

14 Moreover, Plaintiffs were in possession of CHH's respective requests for production of
15 documents and interrogatories six weeks prior to the motion for summary judgment having been
16 filed, and they produced the "smoking gun" documents demonstrating irrefutable evidence of
17 inquiry notice prior to the motion for summary judgment having been made and even while said
18 motion was pending before this Court prior to the final submission of the motion. Plaintiffs were on
19 notice of the statute of limitations issues even as early as the motion to dismiss made by predecessor
20 counsel in July, 2019, just months after commencing this action, yet they still pursued their
21 untenable claim while in full possession of the documents which defeated it.

22 Plaintiffs' counsel further falsely assumes that because this Court denied CHH's summary
23 judgment motion, an error corrected by the Nevada Supreme Court, that somehow provides cover
24 to Plaintiffs for their improper commencement of the action in the first place. It does not. CHH's
25 Offer was made based upon Plaintiffs' exclusive possession of the very evidence necessary to defeat
26 their assertions of a lack of inquiry notice. Therefore, the timing of the Offer was completely proper.

27 Likewise, the amount of fees and costs sought by CHH are completely reasonable and are at
28 least supported by persuasive authority, i.e. *Busick v. Trainor*, 437 P.3d 1050 (Nev. 2019) which

1 notes that a waiver of costs is sufficient consideration. An offer of judgment containing only a
2 mutual waiver of attorneys' fees and costs in exchange for a dismissal of a lawsuit is not nominal,
3 and may constitute a reasonable offer made in good faith. *See Busick v. Trainor*, 2019 Nev. Unpub.
4 LEXIS 378 at *6-8 (No. 72966 March 28, 2019). In *Busick*, the plaintiffs alleged \$ 1-3 million
5 dollars in damages in a medical malpractice claim. In preparing for trial, the defendant served an
6 offer of judgment on the plaintiffs for a mutual waiver of attorneys' fees and costs. *Id.* At the time
7 the offer of judgment was made, the defendant had incurred approximately \$ 95,000 in costs. Since
8 an award of costs is mandated under NRS 18.020, the district court found the waiver of such is a
9 meaningful sum to be included in the offer of judgment, and awarded defendant its costs and
10 attorneys' fees pursuant to NRCP 68.

11 In this case, CHH's Offer was to waive over \$58,000 in costs and fees. Plaintiffs did nothing
12 about the Offer, which under the Rule, expired after 14 days. In a separate memorandum of costs,
13 which Plaintiffs failed to timely move to retax, CHH provided supporting authority for same. On
14 this motion, CHH offered to present to this Court for *in camera* inspection (to preserve
15 attorney/client privilege and work product privilege) to provide time sheets for all time keepers and
16 all invoices, costs, disbursements and fees. What have Plaintiffs offered – nothing. They provide
17 not one shred of evidence that the costs are unreasonable or any basis for so stating. The only
18 unreasonable factor in Plaintiffs' counsel's mind is that they lost and have now subjected their
19 clients to a judgment due to their counsel's hubris. Lest we forget here – it was CHH which
20 attempted to reduce costs here by seeking stays of discovery. Plaintiffs opposed those efforts at
21 every turn. Plaintiffs now oppose paying for the costs they forced CHH to incur. Unfortunately for
22 Plaintiffs, the law provides a recovery mechanism to counter Plaintiffs' efforts. In fact, it can be
23 assumed that Plaintiffs purposefully sought to increase CHH's costs to extract a settlement despite
24 the untenable claim they advanced as a dead lawsuit at its filing.

25 All of these demonstrate Plaintiffs' bad faith, pure and simple. Given the likelihood of
26 Plaintiffs losing on this issue, the offered waiver of the right to seek reimbursement of costs was
27 reasonable in both timing and amount, especially given the multiple opportunities for Plaintiffs to
28 be on notice of the issue.

1 **D. Plaintiffs' Decision to Reject the Offer of Judgment Was in Bad Faith and**
2 **Grossly Unreasonable**

3 Plaintiffs claim that since this Court kept allowing Plaintiffs to win instead of
4 properly dismissing this case from the outset, or at a minimum, when irrefutable evidence of inquiry
5 notice was supplied by CHH to which Plaintiffs interposed **nothing in opposition**, they were
6 justified in rejecting the Offer. Timing of the Offer does not support Plaintiffs' counsel's assertion.
7 As previously noted, CHH's summary judgment motion was made 5 days after the Offer. Plaintiffs
8 knew they possessed irrefutable evidence of inquiry notice by having received the medical records
9 of Ms. Powell more than three years earlier. They knew they provided the records to their medical
10 expert who opined thereon. Plaintiffs' expert, Dr. Sami Hashim, stated in clear terms the following:

11 **Based upon the medical records, the patient did not and with high probability**
12 **could not have died from the cause of death stated in the Death Certificate. The**
13 **patient died as a direct consequence of respiratory failure directly due to below**
14 **standard of care violations as indicated by her medical records and**
15 **reinforced by the Department of Health and Human Services – Division of**
16 **Health Quality and Compliance Investigative Report.⁷**

17 (Emphasis supplied). **Dr. Hashim noted that he primarily relied upon the very medical records**
18 **which Plaintiffs obtained in May/June, 2017, and the HHS Report was only a “reinforcement”**
19 **of what was contained in the medical records.**

20 The issue from the commencement of this action involved the timeliness of it. Plaintiffs'
21 counsel's sole argument is that “there was no bad faith as Plaintiffs wholeheartedly believed in their
22 causes of action which was supported by the report issued by HHS in February of 2018.” First of
23 all, Plaintiffs' counsel's belief in their causes of action is of no moment here. The sole issue is
24 whether Plaintiffs possessed the very information they needed, and were on notice of the law
25 regarding same, when they commenced the action, to have commenced a timely lawsuit. They
26 possessed all necessary information on multiple fronts but nevertheless pursued a case which was
27 dead on arrival. Plaintiffs alleged that they watched Ms. Powell rapidly deteriorate during her stay
28 at CHH. The Supreme Court said that was sufficient inquiry notice.

 Plaintiffs sought and obtained a Probate Court order granting them access to Ms. Powell's

⁷ Exhibit “F” hereto, ¶6(B)

1 entire CHH medical record. Before commencing the lawsuit, Plaintiffs' counsel obtained the
2 records provided by CHH to Plaintiffs and forwarded them to Dr. Hashim to obtain his opinion for
3 NRS 41A.071 purposes. There was no other mechanism in place to obtain the records other than
4 what Plaintiffs engaged since no lawsuit was pending to provide said records pursuant to NRCP
5 16.1. Plaintiffs' counsel knowingly advanced a completely unsubstantiated and unsupported theory
6 of either confusion by his clients or fraudulent concealment by CHH. As noted by the Supreme
7 Court, neither theory had any basis whatsoever. Thus, Plaintiffs' counsel purposely failed to support
8 their opposition to irrefutable evidence warranting summary judgment on the inquiry notice issue,
9 underscoring their bad faith here.

10 Finally, Plaintiffs possessed and then provided evidence of Plaintiffs' inquiry notice by
11 supplying the two State agency complaints. The Supreme Court considered that as additional
12 irrefutable evidence of Plaintiffs' inquiry notice. Now, Plaintiffs' counsel attempts to deflect from
13 their own incompetence and claim that the Supreme Court imposed a standard never contemplated,
14 namely that all of the Plaintiffs were bound by the State agency complaints initiated by Brian Powell.
15 Again, Plaintiffs' counsel presents no evidence of that, just their own assertion which is not only
16 improper, but false. Plaintiffs' bad faith is further underscored by the fact that they tacitly admit
17 that the Estate's claims in this case were made in bad faith because the State agency complaints
18 were made solely by Brian Powell on behalf of the Estate, not on behalf of the remaining Plaintiffs.
19 By so admitting, Plaintiffs' counsel acknowledges that, at a minimum, the Estate possessed
20 sufficient inquiry notice by June 11, 2017, and that the Estate's lawsuit was untimely when filed.
21 That is further evidence of bad faith by pursuing a claim known to be untimely.

22 Additionally, Plaintiffs blocked every opportunity CHH provided to "stop the financial
23 bleeding" by staying the litigation while this case dispositive issue made its way through the courts.
24 They opposed two stay motions and a motion to reconsider a stay. They opposed a motion to dismiss
25 and a motion for summary judgment, presenting not one shred of evidence by anyone with personal
26 knowledge of the facts, supporting their claim of a timely commencement of the action. They forced
27 CHH to incur substantial legal costs and expenses to defend the action, requiring the engagement of
28 counsel along with multiple experts, to pursue a lawsuit they knew could not be maintained from

1 the start. Furthermore, they provided unresponsive answers to discovery requests seeking to avoid
2 addressing the underlying claims in the lawsuit necessitating EDCR 2..34 conferences and their
3 supplementation of a large number of discovery responses. At every turn and opportunity, Plaintiffs
4 stonewalled providing materials and information supportive of their claims while placing CHH in
5 the position of having to incur massive expenses to obtain that to which it was legally entitled and
6 seek dismissal of what Plaintiffs clearly knew was an untenable claim. The Plaintiffs' failure to
7 accept CHH's Offer of Judgment was both in bad faith and grossly unreasonable.

8 **E. Costs and Fees Sought By CHH Are Both Reasonable and Justified**

9 In what has to be the most ridiculous, baseless and nonsensical argument yet, Plaintiffs'
10 counsel stated in opposition that "it is Defendant [sic] continued filing of Motions based upon the
11 same theory that Plaintiffs did not file their lawsuit within the prescribed statute of limitations that
12 drove up Defendant's fees." So, to boil it down to its simplest "logic", because CHH pursued its
13 rights, filed a motion for summary judgment based upon statute of limitations which should have
14 been granted as the Supreme Court noted, and because Plaintiffs filed an untimely lawsuit, it is
15 CHH's fault that Plaintiffs' counsel pursued an untenable case.

16 What drove up costs from the first dollar was the filing of an untimely lawsuit. The fact that
17 Plaintiffs were allowed to get away with it for so long underscores the need for costs and fees to be
18 imposed. Plaintiffs drove up the costs and fees here by initiating the lawsuit and then, when
19 un rebutted evidence of their counsel's practice failures was plainly evident and presented for all to
20 see, Plaintiffs' counsel chose to press forward with an unwinnable case. As this Court is aware,
21 Plaintiffs are not without a remedy here. If Plaintiffs engaged their counsel prior to the expiration
22 of the statute of limitations, it was a clear breach of the standard of care to have not timely filed the
23 lawsuit. The issue if the lawsuit's timeliness has already been fully adjudicated. Plaintiffs' counsel
24 already admitted in their opposition to this motion that they had a completely viable case against
25 CHH if not for that darn statute of limitations. Thus, we have judicial determination of a breach
26 in the standard of care, depending upon when Plaintiffs' counsel was engaged, and an admission
27 by said counsel as to the viability of Plaintiffs' underlying case. Plaintiffs may then pursue a legal
28 malpractice case against Mr. Padda's office, and since he so firmly believes that just because Ms.

1 Powell died, Plaintiffs are entitled to something, he can feel free to pay them.

2 An analysis of the *Beattie* factors shows that an award of attorneys' fees to CHH from the
3 time of the Offer of Judgment served on Plaintiffs to the present is warranted and appropriate.

4 **F. Amount of Fees Incurred**

5 When awarding fees in the offer of judgment context under N.R.C.P. 68 and N.R.S. 17.115
6 [currently N.R.S. 17.117], the district court must also consider the reasonableness of the fees
7 pursuant to *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969). *Id.* When
8 determining the amount of attorneys' fees to award, the District Court has wide discretion, to be
9 "tempered only by reason and fairness" *Shuette v. Beazer Homes*, 121 Nev. 837, 864 (2005).⁸ If
10 the district court's exercise of discretion is neither arbitrary nor capricious, it will not be disturbed
11 on appeal. *Schouweiler*, 101 Nev. at 833.

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

17
18 The following four *Brunzell* factors are to be considered by the court:

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

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

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

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

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

27 ⁸ Reasonable attorneys' fees also include fees for paralegal and non-attorney staff "whose labor
28 contributes to the work product for which an attorney bills her client." *See Las Vegas Metro. Police*
Dep't v. Yeghiazarian, 312 P.3d 503, 510 (Nev. 2013).

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

2 Partner Adam Garth	405.6 hours	\$91,260.00
3 Partner Brent Vogel	39.8 hours	\$ 8,955.00
4 Associate Heather Armantrout	33.1 hours	\$ 6,404.85
5 Paralegal Arielle Atkinson	46.9 hours	\$ 4,221.00
6 Paralegal Joshua Daor	0.1 hours	<u>\$ 90.00</u>
7	Total	\$110,930.85

8 Plaintiffs provide not one shred of evidence of justification in opposition to the instant
9 motion to demonstrate that the fees associated herewith are not in line with what is charged in the
10 community, and the fact that the hourly rates are even below average. A consideration of the
11 *Brunzell* factors shows that the recovery of the entire billed amount of fees from August 28, 2020,
12 to present is entirely appropriate.

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

15 Despite Plaintiffs' counsel's entreaties to the contrary, this case was not brought in good
16 faith for all of the reasons articulated hereinabove and in CHH's motion in chief. Plaintiffs had no
17 viable case from the inception. It was not even close. Moreover, all of the evidence concerning the
18 timing issues in this case fell squarely within the exclusive possession of Plaintiffs, not CHH. They
19 knew when they requested the medical records and received them. They knew what they allegedly
20 witnessed at the hospital. They knew they went to Probate Court for the express purpose of
21 obtaining Ms. Powell's medical records. They knew they pursued two State agency inquiries into
22 the allegations of malpractice they requested be undertaken. Through their lawyer only, without
23 interposing anything during the pendency of the motions, they feign ignorance of the State agency
24 investigations when it comes to commencing the statute of limitations clock, but then collectively
25 utilize the results of those investigations to prosecute the lawsuit on behalf of all Plaintiffs, not just
26 the Estate. In other words, Plaintiffs want to selectively apply what works for them, but eliminate
27 what injures their case when it comes time to pay up. They cannot have it both ways. The law was
28 clearly made out that possession of the entirety of the medical records provides inquiry notice.

1 Plaintiffs' report to the State agencies alleging the very malpractice they allege in this case is
2 another. Moreover, Plaintiffs claimed to be bystanders during Ms. Powell's rapid deterioration at
3 the time of the alleged incident. Each of these alone provided the requisite inquiry notice and all of
4 the rules associated with the respective conditions for such notice were firmly established.
5 Unfortunately for Plaintiffs, they hired a lawyer who failed to either know or follow them and have
6 now been subjected to costs and fees.

7 NRS § 7.085 defines the very behavior exhibited by Plaintiffs' counsel in this case. There
8 could not have been a more textbook example of inquiry notice than what existed in this case, but
9 still Plaintiffs' counsel persisted in not only lying about the facts, but **failed to interpose any**
10 **evidence opposing the irrefutable evidence of inquiry notice provided by CHH.** How much
11 more egregious can such conduct be? Plaintiffs' counsel even has the audacity to accuse our firm
12 of unethical conduct in calling them out for their lies, misrepresentations and professional
13 incompetence.

14 As NRS 7.085 states within its terms, courts are mandated to hold parties and their counsel
15 accountable and to liberally construe the facts in favor of the prevailing party who demonstrates
16 the impropriety of litigation pursued without legal basis for doing so. As noted by a sister
17 Department, "NRS 7.085 essentially provides, where an attorney violates NRS 18.010(2), NRC 11
18 or EDCR 7.60, the delinquent lawyer may be required to personally pay the additional costs,
19 expenses and/or attorney's fees in all appropriate situations. Notably, as shown above, NRS
20 18.010(2)(b), EDCR 7.60 and NRS 7.085 do not require Defendants to be "prevailing parties" and
21 attorneys' fees may be awarded without regard to the recovery sought." *Berberich v. S. Highland*
22 *Cnty. Ass'n*, 2019 Nev. Dist. LEXIS 130, *11 (Nev. Dist. Ct., Case No. A-16-731824-C, January
23 29, 2019).

24 Hereinabove and in CHH's motion in chief, CHH provided a long documented recitation of
25 case law and facts which specifically and directly contradict anything and everything advanced by
26 Plaintiffs' counsel in this matter. Plaintiffs' counsel did everything he could to force CHH to incur
27 expenses. He filed a case well beyond the statute of limitations, despite clear case law demonstrating
28 when inquiry notice commences. He was faced with two motions on the issue and misrepresented

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

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

19 *Washington v. AA Primo Builders, Ltd. Liab. Co.*, 440 P.3d 49 (Nev. 2019) (Emphasis supplied).
20 "The statutes are clear—parties who bring and maintain an action without grounds shall have
21 attorney fees imposed against them." *Lopez v. Corral*, Nos. 51541, 51972, 2010 Nev. LEXIS 69, at
22 *24, 2010 WL 5541115 (Dec. 20, 2010).

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

1 all the more egregious.

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

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

7 Again, in opposition to CHH's instant motion, Plaintiffs' counsel decided to take the "best
8 defense is a good offense" approach to this section's relief. The only problem is that the offense is
9 far from good. Plaintiffs' counsel states that fees increased for two reasons: (1) CHH filed multiple
10 motions pertaining to dismissal, summary judgment and for stays, forcing Plaintiffs to respond, and
11 (2) CHH propounded extensive discovery in an effort to ascertain the theory of liability and
12 causation associated with Plaintiffs' untenable claim, as well as additional supporting
13 documentation of Plaintiffs' inquiry notice which Plaintiffs' provided during the pendency of the
14 motion for summary judgment, to wit, Plaintiffs' State agency complaints.

15 So what is Plaintiffs' counsel really saying – Plaintiffs could file a lawsuit where the statute
16 of limitations expired 8 months before, and CHH was not permitted to ascertain any discovery to
17 contradict that, and was not permitted to obtain Plaintiffs' substantiation for their underlying claims.
18 Plaintiffs' assertion in this regard is not only meritless, it is the most foolish argument they made in
19 this case, and that is really saying something. The better perspective, and the one by which the
20 statutes require the matter be viewed, is that had Plaintiffs' counsel properly ascertained the state of
21 the law, they would have recognized their lawsuit was filed too late. Once they were advised of it
22 on multiple occasions, they were given the opportunity to extricate themselves for no costs but
23 instead, they doubled down and then lost their entire case. Bringing an untenable lawsuit from the
24 beginning is what caused Plaintiffs' to be in this position, not anything CHH did.

25 Plaintiffs' counsel commenced and maintained a completely unsustainable action from the
26 beginning. They knowingly possessed the full medical file. They went to court to obtain an
27 authorization to get the medical file. They never denied receiving the medicals, and in fact, utilized
28 the medicals they did receive to obtain a medical affidavit for use with the Complaint. They

1 knowingly possessed multiple complaints to State agencies alleging malpractice against CHH and
2 requesting formal investigations thereof. Then, for purposes of the motion for summary judgment,
3 Plaintiffs' counsel feigned confusion on his client's behalf as to decedent's cause of death (a fact
4 which none of the Plaintiffs confirmed in any sworn statement or testimony). After creating chaos
5 for no reason, when given the opportunity to prevent CHH from incurring further costs, Plaintiffs'
6 counsel opposed any request for a stay of proceedings, three times in this case, requiring the
7 continued discovery process, expert evaluations and expert reporting. They refused to agree to
8 postpone the trial date to allow this matter to make its way through the Supreme Court, with
9 knowledge that the Court would be ruling one way or another on this case dispositive issue. In all,
10 Plaintiffs' counsel knowingly caused enormous costs on CHH only to have the very issues raised in
11 this Court result in a total dismissal. CHH should not be required to pay for Plaintiffs' folly,
12 especially when Plaintiffs' counsel purposely looked to increase expenses while pursuing a defunct
13 case from the outset. Thus, EDCR 7.60 provides a further avenue of deterrence to attorneys, like
14 Plaintiffs' counsel, who engage in these unnecessary and flagrantly frivolous lawsuits which are
15 dead before they are even filed, justifying an award of \$110,930.85 in attorneys' fees per N.R.C.P.
16 68 and N.R.S. §§ 17.117, plus \$58,514.36 in pre-NRCP 68 offer fees and expenses pursuant to
17 N.R.S. §§ 7.085, 18.010(2) and EDCR 7.60.

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

19 Likewise, CHH is entitled to an award of his attorney's fees and costs under NRS
20 §18.010(2)(b) and Plaintiffs' opposition is unavailing in this regard. It has been determined by this
21 State's highest Court that Plaintiffs possessed inquiry notice as late as June, 2017, merely a month
22 after Ms. Powell's death, but by their own admissions as to their contemporaneous observance of
23 events, as early as the time of her death on May 11, 2017. In other words, the Supreme Court
24 already determined that Plaintiffs' case was groundless because it was filed too late. Anything else
25 is immaterial. Plaintiffs' counsel made the foolhardy move to file a lawsuit 8 months beyond the
26 latest date to do so, failed to support any motion by CHH with any evidentiary support for their
27 fallacious and concocted theories, and now claim that they either did not commence, or even more
28 egregiously continued to maintain a knowingly untenable claim in light of the overwhelming and

1 uncontroverted evidence submitted by CHH. they had a fair chance to back out gracefully but
2 thumbed their nose at it and are now crying that it is unfair to hold them accountable. That is
3 precisely what the Legislature did by enacting this statute – hold lawyers like Plaintiffs’ counsel
4 accountable for untenable lawsuits and the creation of increased costs to attempt to strongarm a
5 defendant into a settlement. Plaintiffs’ plan failed miserably and now is time to pay the piper.

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

10 **III. CONCLUSION**

11 Based upon the legal authority and reasons stated above, Defendants respectfully request the
12 Court grant their Motion and award them **\$110,930.85** in attorneys’ fees per N.R.C.P. 68 and
13 N.R.S. §§ 17.117, plus **\$58,514.36** in pre-NRCP 68 offer fees and expenses pursuant to N.R.S. §§
14 7.085, 18.010(2) and EDCR 7.60.

15 DATED this 2nd day of February, 2022.

16 LEWIS BRISBOIS BISGAARD & SMITH LLP

17
18
19 By /s/ Adam Garth
20 S. BRENT VOGEL
21 Nevada Bar No. 006858
22 ADAM GARTH
23 Nevada Bar No. 15045
24 6385 S. Rainbow Boulevard, Suite 600
25 Las Vegas, Nevada 89118
26 Tel. 702.893.3383
27 *Attorneys for Attorneys for Defendant Valley*
28 *Health System, LLC dba Centennial Hills Hospital*
Medical Center

1 **CERTIFICATE OF SERVICE**

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

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

John H. Cotton, Esq.
Brad Shipley, Esq.
JOHN. H. COTTON & ASSOCIATES
7900 W. Sahara Ave., Suite 200
Las Vegas, NV 89117
Tel: 702.832.5909
Fax: 702.832.5910
jhcotton@jhcottonlaw.com
bshipleyr@jhcottonlaw.com
Attorneys for Defendants Dionice S. Juliano,
M.D., Conrado Concio, M.D And Vishal S.
Shah, M.D.

17
18
19 By

/s/ Heidi Brown
An Employee of
LEWIS BRISBOIS BISGAARD & SMITH LLP



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2 PAUL S. PADDA, ESQ. (NV Bar #10417)

3 Email: psp@paulpaddalaw.com

4 SRILATA SHAH, ESQ. (NV Bar #6820)

5 Email: sri@paulpaddalaw.com

6 PAUL PADDA LAW, PLLC

7 4560 South Decatur Boulevard, Suite 300

8 Las Vegas, Nevada 89103

9 Tele: (702) 366-1888

10 Fax: (702) 366-1940

11 Attorneys for Plaintiffs

12
13 DISTRICT COURT
14 CLARK COUNTY, NEVADA

15 ESTATE OF REBECCA POWELL, through
16 BRIAN POWELL, as Special Administrator;
17 DARCI CREECY, individually and as an Heir;
18 TARYN CREECY, individually and as an
19 Heir; ISALAH KHOSROF, individually and as
20 an Heir; LLOYD CREECY, individually;

21 Plaintiffs,

22 vs.

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

Defendants.

Case No. A-19-788787-C

Dept. No. XXX (30)

NOTICE OF ENTRY OF ORDER AND
DECISION REGARDING VALLEY
HEALTH SYSTEM'S MOTION FOR
FEES AND COUNTERMOTION FOR
FEES AND COSTS

1

Estate of Rebecca Powell v. Valley Health System, LLC, et. al.
Eighth Judicial District Court, Case No. A-19-788787-C (Dept. 30)
Notice Of Entry Of Order And Decision Regarding Valley Health System's Motion For Fees
PPL #201297-15-06

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

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

1 Notice is hereby provided that the Court filed an Order and Decision pertaining to
2 Valley Health System's Motion for Fees and the Countermotion for Fees and Costs. A copy of
3 that Order and Decision is attached hereto as Exhibit A.
4

5 Respectfully submitted,
6

7 /s/ Paul S. Padda

8 Paul S. Padda, Esq.
9 Srilata Shah, Esq.
10 PAUL PADDA LAW, PLLC
11 4560 South Decatur Blvd., #300
12 Las Vegas, Nevada 89103
13 Tele: (702) 366-1888

14 Counsel for Plaintiffs

15 Dated: February 16, 2022
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PAUL PADDA LAW, PLLC
4560 South Decatur Boulevard, Suite 300
Las Vegas, Nevada 89103
Tele: (702) 366-1888 • Fax (702) 366-1940

CERTIFICATE OF SERVICE

Pursuant to the Nevada Rules of Civil Procedure, the undersigned hereby certifies that on this day, February 16, 2022, a copy of the foregoing **NOTICE OF ENTRY OF ORDER AND DECISION REGARDING VALLEY HEALTH SYSTEM'S MOTION FOR FEES AND COUNTERMOTION FOR FEES AND COSTS** was filed and served through the Court's electronic filing system upon all parties and counsel identified on the Court's master e-service list.

/s/ Shelbi Schram

Shelbi Schram, Litigation Assistant
PAUL PADDA LAW

EXHIBIT A

EXHIBIT A

Atkinson
CLERK OF THE COURT

**DISTRICT COURT
CLARK COUNTY, NEVADA
-oOo-**

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

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

Plaintiffs,

vs.

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

**ORDER RE: VALLEY
HEALTH SYSTEM'S
MOTION FOR FEES
AND COUNTERMOTION
FOR FEES AND COSTS**

Defendants.

INTRODUCTION

The above-referenced matter is scheduled for a hearing on 2/18/22, with regard to Defendant, Valley Health System (Centennial Hospital's) Motion for Attorneys' Fees and Countermotion for Fees and Costs. Pursuant to the Administrative Orders of the Court, as well as EDCR 2.23, these matters may be decided with or without oral argument. This Court has determined that it would be appropriate to decide these matters on the pleadings, and consequently, this Order issues.

FACTUAL AND PROCEDURAL HISTORY

On May 3, 2017, Rebecca Powell ("Plaintiff") was taken to Centennial Hills Hospital, a hospital owned and operated by Valley Health System, LLC ("Defendant") by EMS services after she was discovered with labored breathing and vomit on her face. Plaintiff remained in Defendant's care for a week, and her condition improved.

1 However, on May 10, 2017, her condition began to deteriorate and on May 11, 2017, she
2 suffered an acute respiratory failure, resulting in her death.

3 Plaintiffs brought suit on February 4, 2019 alleging negligence/medical
4 malpractice, wrongful death pursuant to NRS 41.085, and negligent infliction of
5 emotional distress. Defendants filed Motions to Dismiss and for Summary Judgment,
6 which this Court denied. After a recent remand from the Nevada Supreme Court, on
7 11/19/21, the Court entered an Order Vacating Prior Order Denying Defendant Valley
8 Health System, LLC DBA Centennial Hills Hospital Medical Center's Motion for
9 Summary Judgment and Granting Said Defendant's Motion for Summary Judgment
10 Per Mandamus of Nevada Supreme Court. A Notice of Entry of Order was entered that
11 same day. On 11/22/21, Defendant Valley Health Systems filed a Motion for Attorneys
12 Fee and Verified Memorandum of Costs. On 12/3/21, Plaintiffs filed a Motion to
13 Extend Time to Respond to Defendants' Valley Health Systems, Dr. Dionice S. Juliano,
14 Dr. Conrado Concio, and Dr. Vishal Shah's Memorandums of Costs. Plaintiffs received
15 an Order Shortening Time on 12/10/21. Following briefing, the Court entered an Order
16 denying Plaintiffs' Motion to Extend Time to Respond, because of a lack of diligence on
17 part of the Plaintiffs. On 12/20/21, Valley filed an Opposition to Plaintiff's Motion to
18 Extend Time to Retax Costs, and Counter-motion for Fees and Costs.

19 **SUMMARY OF LEGAL AND FACTUAL ARGUMENTS**

20 Defendant Valley Health System, LLC d/b/a Centennial Hills Hospital Medical
21 Center (CHH) seeks attorneys' fees pursuant to NRCP 68(f) and NRS 17.117(10). CHH
22 argues that it is entitled to an award of attorneys' fees because Plaintiffs rejected CHH's
23 Offer of Judgment and then failed to obtain a more favorable judgment. See *Albios v.*
24 *Horizon Cmty's., Inc.*, 122 Nev. 409, 417, 132 P.3d 1022 (2006); *Logan v. Abe*, 131 Nev.
25 260, 268, 350 P.3d 1139 (2015).

26 CHH states that it served an Offer of Judgment on Plaintiffs for a waiver of any
27 presently or potentially recoverable costs, in full and final settlement of the Plaintiff's
28 claims. Plaintiffs rejected this Offer of Judgment by failing to accept it within 14 days.
N.R.C.P. 68(e) and N.R.S. 17.117(6). As this Court was directed by the Supreme Court to
vacate its order denying summary judgment to CHH and instead issue an order
granting CHH's summary judgment motion, Plaintiffs failed to obtain more a favorable
judgment than the one offered to them in CHH's Offer of Judgment. Thus, pursuant to

1 N.R.C.P. 68 and N.R.S. 17.117, this Court has discretion to award CHH its attorneys'
2 fees.

3 CHH cites to *Schouweiler v. Yancey Co.*, for the proposition that a Court must
4 consider the following factors in in exercising its discretion to award fees: (1) whether
5 the offeree brought his claims in good faith; (2) whether the offeror's offer of judgment
6 was also brought in good faith in both timing and amount; (3) whether the offeree's
7 decision to reject the offer of judgment was in bad faith or grossly unreasonable; and
8 (4) whether the amount of offeror's requested fees is reasonable and justified.

9 *Schouweiler*, 101 Nev. 827, 833, 917 P.2d 786 (1985). CHH argues that all of the
10 Schouweiler factors weigh in favor of CHH.

11 As to the first factor, CHH notes that the Supreme Court determined Plaintiffs
12 were on notice of any alleged malpractice in this case, in possession of records long
13 before the statute of limitations expired, and knowingly initiated complaints to State
14 agencies manifesting definitive knowledge and belief of malpractice. Nevertheless,
15 CHH argues, Plaintiffs chose to initiate a lawsuit "which was dead on arrival,
16 continued to maintain it even after irrefutable evidence demonstrated its untenability,
17 and then used every opportunity to prevent the expenditure of additional resources in
18 order to prove the impropriety of the lawsuit." Accordingly, Plaintiffs' claims were not
19 brought in good faith.

20 With regard to the second factor, CHH argues that its Offer of Judgment was
21 brought in good faith in both timing and amount. At the time of the Offer, CHH had
22 incurred over \$58,000.00 in costs defending Plaintiffs' claims. The Offer was served
23 several days prior to CHH's Motion for Summary Judgment and about one and a half
24 years after the lawsuit's commencement. Before the Motion for Summary Judgment
25 was filed, Plaintiffs were in possession of documents that demonstrated irrefutable
26 evidence of inquiry notice. Plaintiffs were on notice of the statute of limitations issues
27 as early as July 2019 when CHH's prior counsel filed a Motion to Dismiss. Therefore,
28 given Plaintiffs' likelihood of losing on merits, the offered waiver of the right to seek
reimbursement of costs was reasonable in both timing and amount.

For similar reasons, CHH argues that Plaintiffs' decision to reject the offer of
judgment was in bad faith and grossly unreasonable. Instead of abandoning their

1 untimely filed action, Plaintiffs' decision to pursue an untenable case caused CHH to
2 incur substantial legal costs and expenses to seek dismissal.

3 CHH argues that the fourth factor regarding the reasonableness of CHH's
4 requested attorneys' fees also weighs in favor of CHH. Pursuant to NRCP 68, CHH may
5 recover their attorneys' fees from the date of service of the Offer of Judgment to the end
6 of the matter. In this case, CHH served an Offer of Judgment on 8/28/20 that expired
7 on 9/11/20. CHH states it incurred a total of \$110,930.85 in attorneys' fees alone (not
8 inclusive of expenses) from 8/28/20 to the present billing cycle (which does not
9 include all fees incurred in October 2021). Additionally, CHH incurred \$31,401.10 in
10 disbursements including expert fees and other expenses since 8/28/20.

11 CHH argues that the amount of its bills is reasonable, given the amount of time
12 and energy needed to defend this case, engage in extensive written discovery, extensive
13 motions and appeals practice, and, expert time and expenses, due to Plaintiffs' refusal
14 to stipulate to stay the litigation while the summary judgment issue made its way
15 through the court system. Additionally, medical malpractice cases are complex, involve
16 substantial amounts of expert testimony, and require a great deal of preparation. CHH
17 states that documents are available for in camera review by this Court, but were not
18 attached to the Motion in order to preserve attorney-client privilege and protect
19 information contained within the descriptions of the attorney billing.

20 With regard to the *Brunzell vs. Golden Gate* analysis, CHH indicates that
21 attorneys Mr. Garth and Mr. Vogel are experienced litigators that focus exclusively on
22 medical malpractice. Both have practiced many years and are partners at Lewis
23 Brisbois. They both billed \$225/hour on this matter. Where appropriate, work was also
24 assigned to associate attorneys (\$193.50/hour) and paralegals (\$90/hour).

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

There were multiple highly skilled expert witnesses presented by both parties.
Further, nearly 14 months have passed since CHH's Offer of Judgment expired,
including the participation in motion practice regarding a motion for summary

1 judgment, two motions to stay proceedings (one in this Court and one in Supreme
2 Court), a writ petition to the Nevada Supreme Court, as well as extensive written
3 discovery. CHH argues that its requested attorneys' fees are well below the amounts
4 Nevada courts have found reasonable. Defendants are only requesting attorneys' fees at
5 a rate of \$225 and \$193.50 per hour, and a paralegal rate of \$90 per hour. CHH argues
6 that a consideration of the *Brunzell* factors shows that the recovery of the entire billed
7 amount of fees from August 28, 2020 to present is entirely appropriate. *Brunzell*, 85
8 Nev. 345, 455 P.2d 31 (1969).

9 In addition to all NRCP Rule 68 post offer fees and costs, CHH requests that
10 sanctions be imposed against Plaintiffs' counsel for all pre-NRCP Rule 68 costs and fees
11 totaling \$58,514.36 in accordance with NRS 7.085. CHH cites to EDCR 7.60, which
12 provides a further avenue of deterrence to attorneys, like Plaintiffs' counsel who engage
13 in these unnecessary and flagrantly frivolous lawsuits, which are dead before they are
14 even filed. Accordingly, CHH argues that an award of \$110,930.85 in attorneys' fees per
15 N.R.C.P. 68 and N.R.S. §§ 17.117, plus \$58,514.36 in pre-NRCP 68 offer fees and
16 expenses pursuant to N.R.S. §§ 7.085, 18.010(2) and EDCR 7.60, is justified. CHH
17 argues that it is entitled to an award of his attorney's fees and costs under NRS
18 §18.010(2)(b), as Plaintiffs maintained the lawsuit without reasonable grounds or to
19 harass the Defendants.

20 CHH's separately filed a Verified Memorandum of Costs indicates that it seeks
21 costs, pursuant to NRS 18.005 and 18.020, as well as NRCP 68 and NRS 17.117, in the
22 amount of \$42,492.03. A majority of the costs requested (\$41,724.10) are for expert
23 fees. CHH argues that the experts all meet the factors set forth in *Frazier v. Drake*.

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

1 Plaintiffs argue that the dismissal of the case on an incorrect interpretation of
2 the facts and application of inquiry notice to all the named Plaintiffs by the Supreme
3 Court does not make the claims of Plaintiffs any less meritorious. Further, pursuant to
4 NRCP 68, and NRS 17.117(10), a party is not entitled to attorney's fees simply because it
5 served an offer of judgment on the opposing party and that party failed to achieve a
6 more favorable verdict. The purpose of NRCP 68 is to encourage settlement; it is not to
7 force Plaintiffs' unfairly to forego legitimate claims. See *Beattie v. Thomas*, 99 Nev.
8 579, 668 P.2d 268 (1983).

9 Plaintiffs argue that their claims were brought in good faith, as HHS determined
10 that there were deficiencies in Ms. Powell's care and the death certificate was
11 inaccurate. Additionally, this Court repeatedly found merit in Plaintiffs' Complaint and
12 their causes of action for wrongful death, medical malpractice, and negligent infliction
13 of emotional harm.

14 Plaintiffs argue that Defendant's Offer of Judgment, to waive costs and fees, of
15 \$58,514.36 was not reasonable and nor was it in good faith considering Plaintiffs'
16 causes of action for medical malpractice, wrongful death, and negligent infliction of
17 emotional harm. Plaintiffs lost their mother, who was only 41 years old at the time of
18 her death. It was reasonable for Plaintiffs to reject Defendants' Offer of Judgment, as
19 the terms of the Offer of Judgment did not provide for any monetary recovery to
20 Plaintiffs to compensate them for the loss of their mother. CHH indicated at the time it
21 had incurred \$53,389.90 in fees and \$5,124.46 in costs, but no supporting documents
22 were provided. Moreover, this Court denied the Motion for Summary Judgment.
23 Therefore, CHH incorrectly states that given the likelihood of losing on this issue, the
24 offered waiver of right to seek reimbursement of costs was reasonable in both timing
25 and amount. Further, Plaintiffs contend that their decision to reject the Offer of
26 Judgment was not grossly unreasonable nor in bad faith because no amount was being
27 offered in damages to the Plaintiffs.

28 With regard to the fees sought, Plaintiffs argue that CHH won on a technicality
at the Supreme Court, and not on the merits or by way of a jury verdict in favor of
Defendants. Plaintiffs argue that CHH incurred so much in fees because it continued
filing motions based on the same statute of limitations theory. Thus, CHH's fees are
unreasonable and unjustified. Plaintiffs also claim they are unable to properly evaluate

1 the reasonableness of CHH's attorney's fees because Defendant only presented a
2 summary of the fees that were incurred.

3 Plaintiffs argue that it is absurd for CHH to suggest that the provisions of NRS
4 7.085 even apply to the facts of this case, and that Plaintiffs' attorneys violated NRS
5 18.010(2), NRCP 11 or EDCR 7.60. Plaintiffs further argue that CHH has not provided
6 factual support to support the request for pre-NRCP 68 costs and fees pursuant to NRS
7 7.085. Plaintiffs ask that this Court deny the application for fees and costs as the
8 Plaintiffs did not submit frivolous or vexatious claims and did not over burden the
9 limited judicial resources nor did it hinder the timely resolution of meritorious claims.
10 Similarly, Plaintiffs contend that CHH has not provided any factual support for its
11 request for attorneys' fees pursuant to EDCR 7.60 or 18.010(2).

12 In Reply, CHH argues that Plaintiffs' entire opposition is predicated on the false
13 assertion that they possessed a viable case in the first instance. CHH argues that,
14 "Plaintiffs' entire argument is that because this Court repeatedly denied dismissal
15 attempts by the respective defendants despite clear, convincing, and irrefutable
16 evidence of inquiry notice which each and every plaintiff possessed, they are somehow
17 absolved from either their malpractice or unethical practice of pursuing a case which
18 was dead on arrival when filed."

19 CHH argues that the Nevada Supreme Court held that the "district court
20 manifestly abused its discretion when it denied summary judgment." CHH argues that
21 this matter should have been dismissed a year ago at the latest.

22 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

23 With regard to the requested costs, in *Frazier v. Drake*, 131 Nev. 632, 357 P.3d
24 365 (NV.Ct.of App., 2015), the Court noted that NRS 18.005(5) provides for the
25 recovery of "reasonable fees of not more than five expert witnesses in an amount of not
26 more than \$1,500 for each witness unless the court allows a larger fee after
27 determining that the circumstances surrounding the expert's testimony were of such
28 necessity as to require the larger fee." *Id.*, at 644. The Court went on to state the
following:

.... we conclude that any award of expert witness fees in excess of \$1,500
per expert under NRS 18.005(5) must be supported by an express,
careful, and preferably written explanation of the court's analysis of
factors pertinent to determining the reasonableness of the requested fees
and whether "the circumstances surrounding the expert's testimony were

1 of such necessity as to require the larger fee." See NRS 18.005(5); cf.
2 *Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 93, 787 P.2d 777, 780
3 (1990) (requiring an "express, careful and preferably written explanation"
4 of the district court's analysis of factors pertinent to determining whether
5 a dismissal with prejudice is an appropriate discovery sanction). *In*
6 *evaluating requests for such awards, district courts should*
7 *consider the importance of the expert's testimony to the*
8 *party's case; the degree to which the expert's opinion aided*
9 *the trier of fact in deciding the case; whether the expert's*
10 *reports or testimony were repetitive of other expert witnesses;*
11 *the extent and nature of the work performed by the expert;*
12 *whether the expert had to conduct independent investigations*
13 *or testing; the amount of time the expert spent in court,*
14 *preparing a report, and preparing for trial; the expert's area*
15 *of expertise; the expert's education and training; the fee*
16 *actually charged to the party who retained the expert; the fees*
17 *traditionally charged by the expert on related matters;*
18 *comparable experts' fees charged in similar cases; and, if an*
19 *expert is retained from outside the area where the trial is held,*
20 *the fees and costs that would have been incurred to hire a*
21 *comparable expert where the trial was held.*

22 *Id.*, at 650-651.

23 The Defendant, CHH, argues the importance of the testimony of each of the
24 witnesses, and how their respective opinions were necessary for the Defendant's case.
25 CHH argues that the medical experts expended "many hours," and "prepared two
26 written reports." There was no discussion in the briefing about repetitiveness, whether
27 they had to conduct independent investigations or testing, the amount of time spent in
28 court, preparing reports, or preparing for trial, the fees charged to the Defendant, and
the fees traditionally charged, and what they charge compared to other experts, etc.
Consequently, the Court could allow the expert fee of \$1,500.00, for up to 5 expert
witnesses, if the Court were able to find that the experts were relevant and the fees
incurred, but the Court cannot allow expert fees in excess of \$1,500.00 without a
Frazier analysis.

Additionally, the Court notes that any costs awarded need to be itemized and
documented. The Nevada Supreme Court has stated that without "itemization or
justifying documentation," the Court is "unable to ascertain whether such costs were
accurately assessed." *Bobby Berosini, Ltd. V. People for the Ethical Treatment of*
Animals, 114 Nev. 1348, 1353, 971 P.2d 383 (1998). Further, when the "memorandum

1 of costs is completely void of any specific itemization," and a "lack of supporting
2 documentation," it is an abuse of discretion on the part of the Court if it awards the
3 requested costs. *Id.* The Supreme Court has further indicated that "justifying
4 documentation' must mean something more than a memorandum of costs." *Cadle Co.*
5 *v. Woods & Erickson, LLP*, 131 Nev. 114, 121, 345 P.3d 1049 (2015). The Court has
6 further indicated that "Without evidence to determine whether a cost was reasonable
7 and necessary, a district court may not award costs." *Id.*, citing *Peta*, 114 Nev. at 1353,
8 971 P.2d at 386. In this case, Defendant produced a "Disbursement Diary," but based
9 on the above-referenced cases, this is insufficient to support the requested costs. There
10 is insufficient evidence submitted for the Court to determine whether the requested
11 costs were reasonable and necessary, there was no specific itemization, other than the
12 Disbursement Diary, and there were no supporting documents.

13 Based upon the foregoing, the Court cannot award costs.

14 NRCP 68 provides in pertinent part as follows:

15 **Rule 68. Offers of Judgment**

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

22

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

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

26 (2) Within 21 days after service of written notice that the offer is
27 accepted, the obligated party may pay the amount of the offer and obtain
28 dismissal of the claims, rather than entry of a judgment.

(3) If the claims are not dismissed, at any time after 21 days after
service of written notice that the offer is accepted, either party may file
the offer and notice of acceptance together with proof of service. The clerk
must then enter judgment accordingly. The court must allow costs in
accordance with NRS 18.110 unless the terms of the offer preclude a
separate award of costs. Any judgment entered under this section must be
expressly designated a compromise settlement.

(e) Failure to Accept Offer. If the offer is not accepted within 14
days after service, it will be considered rejected by the offeree and deemed
withdrawn by the offeror. . . . Any offeree who fails to accept the offer
may be subject to the penalties of this rule.

(f) Penalties for Rejection of Offer.

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

3 (A) the offeree cannot recover any costs, expenses, or attorney
4 fees and may not recover interest for the period after the service of the
5 offer and before the judgment; and

6 (B) the offeree must pay the offeror's post-offer costs and
7 expenses, including a reasonable sum to cover any expenses incurred by
8 the offeror for each expert witness whose services were reasonably
9 necessary to prepare for and conduct the trial of the case, applicable
10 interest on the judgment from the time of the offer to the time of entry of
11 the judgment and reasonable attorney fees, if any be allowed, actually
12 incurred by the offeror from the time of the offer. If the offeror's attorney
13 is collecting a contingent fee, the amount of any attorney fees awarded to
14 the party for whom the offer is made must be deducted from that
15 contingent fee.

16
17 **NRCP 68.**

18 NRCP 68 provides that the Defendant would be entitled to "reasonable attorney
19 fees, if any be allowed." The language of the Rule specifically provides that Court with
20 "discretion," as it relates to attorney's fees, and the Court's discretion will not be
21 disturbed absent a clear abuse of such discretion. *Armstrong v. Riggi*, 92 Nev. 280,
22 549 P.2d 753 (1976); *Schouweiler v. Yancey Co.*, 101 Nev. 827, 712 P.2d 786 (1985);
23 *Bidart v. American Title Ins. Co.*, 103 Nev. 175, 734 P.3d 732 (1987).

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

In analyzing whether to award attorneys' fees, the factors which need to be
considered pursuant to *Brunzell*, include the following: (1) the qualities of the advocate:
his ability, training, education, experience, professional standing and skill; (2) the
character of the work to be done: its difficulty, intricacy, importance, the time and skill
required, the responsibility imposed and the prominence and character of the parties
when they affect the importance of the litigation; (3) the work actually performed by
the lawyer: the skill, time and attention given to the work; and (4) the result: whether

1 the attorney was successful and what benefits were derived. *Schouweiler* at 833-834,
2 citing to *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31 (1969)
3 (quoting *Schwartz v. Schwerin*, 85 Ariz. 242, 336 P.2d 144, 146 (1959)).

4 With regard to the attorney's fees requested, this Motion is different from the
5 Motion for Fees filed by Drs. Concio and Shaw, in that CHH contends that it incurred
6 \$110,930.85 in attorney's fees since 8/28/20 (roughly twice the fees incurred by Drs.
7 Concio and Shaw). In considering the *Beattie* factors, the Court finds and concludes
8 that the plaintiff's claim was brought in good faith. The Court finds and concludes that
9 Defendant's offer of judgment, in the amount of \$0.00, (offering to waive
10 approximately \$58,500.00 in fees and costs), was brought in good faith in both its
11 timing and amount. The Court acknowledges that the parties disagree about this issue,
12 but as much as the Plaintiffs believed they had a valid case, the Defendants disputed
13 any liability. The Court further finds and concludes that Plaintiff's decision to reject the
14 offer and proceed to trial was not grossly unreasonable or in bad faith. Plaintiffs
15 believed they had a valid claim, and the Court cannot find that wanting some recovery,
16 as opposed to \$0.00, to be "grossly unreasonable" or in "bad faith. With regard to a
17 determination of whether the fees sought by the Defendants are reasonable and
18 justified in amount, a *Brunzell* analysis is required. *Beattie v. Thomas*, 99 Nev. 579,
19 588, 668 P.2d 268 (1983).

20 In determining the reasonableness of the fees requested, the Court has analyzed
21 the *Brunzell* factors, as follows: The Court finds that the qualities of defense counsel,
22 his ability, training, education, experience, professional standing and skill, favor an
23 award of fees. When considering the character of the work to be done - its difficulty,
24 intricacy, importance, the time and skill required, (when dealing with a professional
25 negligence/medical malpractice case), and finding that the character or prominence of
26 the parties was unremarkable, the complexity of the case warrants an award of fees.
27 The Court cannot evaluate the work actually performed by the lawyers, in this case, and
28 the skill, time and attention given to the work, without a detailed billing statement.
Although the Defendant has offered to submit a billing ledger to the Court in camera, it
would have been necessary for the Defendant to have submitted such ledger, and
disclosed it to the Plaintiff so that the reasonableness could have been addressed by all
parties, and by the Court. Finally, in considering the result, the Court notes that

1 although the Court found insufficient evidence to establish irrefutably that the statute
2 of limitations had expired, Defense counsel was successful in convincing the Supreme
3 Court of that, and consequently, Defendants prevailed. *Brunzell v. Golden Gate Nat'l*
4 *Bank*, 85 Nev. 345, 349, 455 P.2d 31 (1969). Based upon this NRCP 68 analysis, with
5 the exception of being able to analyze the reasonableness of the fees allegedly incurred,
6 the Court would likely have awarded at least some fees to the Defendant, at least for the
7 period of time after rejection of the Offer of Judgment. Without any evidence of the
8 fees actually accrued, and based on the amount requested, the Court cannot make a
9 finding as to the reasonableness of such fees, and consequently, the Court has no choice
under *Brunzell* and *Beattie*, to deny the request for Fees.

10 **CONCLUSION/ORDER**

11 Based upon the foregoing, and good cause appearing,

12 **IT IS HEREBY ORDERED** that the Defendants' Motion for Fees and Costs is
13 **DENIED.**

14 The Court requests that Plaintiff's counsel prepare and process a Notice of Entry
15 with regard to this Order.

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

19 Dated this 15th day of February, 2022

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24 Jerry A. Wiess
25 District Court Judge
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