

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

2
3 ESTATE OF REBECCA POWELL, through
4 BRIAN POWELL, as Special Administrator;
5 DARCI CREECY, individually and as Heir;
6 TARYN CREECY, individually and as an
7 Heir; ISAIAH KHOSROF, individually and as
8 an Heir; LLOYD CREECY, individually;,
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14 Plaintiffs,

15 vs.

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

Supreme Court No.:

District Court No. 7-19-28878-C

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Elizabeth A. Brown
Clerk of Supreme Court

16 **RESPONDENTS’ APPENDIX VOLUME II**

18 S. BRENT VOGEL

Nevada Bar No. 6858

19 ADAM GARTH

20 Nevada Bar No. 15045

Lewis Brisbois Bisgaard & Smith LLP

21 6385 South Rainbow Boulevard, Suite 600

22 Las Vegas, Nevada 89118

Telephone: 702-893-3383

23 Facsimile: 702-893-3789

24 *Attorneys for Respondent Valley Health System, LLC*
25 *dba Centennial Hills Hospital Medical Center*
26
27
28

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D	Notice of Entry of Order and Order Regarding Plaintiffs' Motion to Extend Time to Respond to Defendants' Valley Health Systems, Dr. Dionice S. Juliano, Dr. Conrado Concio, and Dr. Vishal S. Shah's Memorandum of Costs	1/25/2022	160-170
E	Defendant Valley Health System, LLC dba Centennial Hills Hospital Medical 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	2/23/2022	171-296

this 24th day of February, 2023

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 Respondent Valley Health System,
LLC dba Centennial Hills Hospital Medical
Center

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 24th day of February, 2023, a true and correct copy
3 of **RESPONDENTS' APPENDIX VOLUME II** was served by electronically filing with the Clerk
4 of the Court using the Odyssey E-File & Serve system and serving all parties with an email-address
5 on 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 By /s/ Heidi Brown
15 An Employee of
16 LEWIS BRISBOIS BISGAARD & SMITH LLP
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Heather S. Shuman

CLERK OF THE COURT

**DISTRICT COURT
CLARK COUNTY, NEVADA
-oOo-**

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

Plaintiffs,)

vs.)

VALLEY HEALTH SYSTEM, LLC)
(doing business as "Centennial Hills)
Hospital Medical Center"), a Foreign)
Limited Liability Company;)
UNIVERSAL HEALTH SERVICES,)
INC., a Foreign Corporation; DR.)
DIONICE S. JULIANO, M.D., an)
Individual; DR. CONRADO C.D.)
CONCIO, M.D., an individual; DR.)
VISHAL S. SHAW, M.D., an individual;)
DOES 1-10; and ROES A-Z;)

Defendants.)

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

**ORDER RE: PLAINTIFFS'
MOTION TO EXTEND TIME
TO RESPOND TO DEFENDANTS'
VALLEY HEALTH SYSTEMS,
DR. DIONICE S. JULIANO,
DR. CONRADO CONCIO, AND
DR. FISHAL S. SHAH'S
MEMORANDA OF COSTS**

INTRODUCTION

The above-referenced matter is scheduled for a hearing on January 26, 2022, with regard to the Plaintiffs' Motion to Extend Time to Respond to Defendants' Valley Health Systems, Dr. Dionice S. Juliano, Dr. Conrado Concio, and Dr. Fishal S. Shah's Memoranda of Costs. Pursuant to the Administrative Orders, this matter may be decided with or without oral argument. This Court has determined that it would be appropriate to decide this matter on the pleadings, and consequently, this Order issues.

FACTUAL AND PROCEDURAL HISTORY

On 11/19/21, the Court entered an Order Vacating Prior Order Denying Defendant Valley Health System, LLC DBA Centennial Hills Hospital Medical Center's Motion for Summary Judgment and Granting Said Defendant's Motion for Summary

Judgment Per Writ of Mandamus of Nevada Supreme Court. A Notice of Entry of Order was entered that same day. On 11/22/21, Defendant Valley Health Systems filed a Motion for Attorneys Fee and a Verified Memorandum of Costs. Defendants Conrado Concio, MD and Vishal Shah, MD filed a Verified Memorandum of Costs and Disbursements on 11/23/21, and a Motion for Attorney's Fees and Costs on 12/10/21.

On 12/3/21, Plaintiffs filed the present Motion to Extend Time to Respond to Defendants' Valley Health Systems, Dr. Dionice S. Juliano, Dr. Conrado Concio, and Dr. Vishal Shah's Memorandums of Costs. Plaintiffs received an Order Shortening Time on 12/10/21. The Court notes that as of the date that the Court is preparing this Order, Plaintiffs have still not filed a Motion to Retax.

SUMMARY OF LEGAL AND FACTUAL ARGUMENTS

Pursuant to NRCP 6(b)(1)(B)(ii) and EDCR 2.35(a), Plaintiffs request additional time to respond to the Defendants' Memorandums of Costs. Plaintiffs' counsel states that it received Defendants' Memorandums on 11/22/21 and 11/23/21, but the office was closed and consequently Plaintiffs were unable to timely respond. Further, Plaintiffs' counsel states they contacted Defendants' counsel to request an extension, but Defendants' counsel declined. Given the Thanksgiving holiday, Plaintiffs argue that good cause exists to extend the deadline for their responsive briefing. Finally, Plaintiffs contend that they meet the four requirements for a determination of excusable neglect, as set forth in the case of *Moseley v. Eighth Judicial District Court*, 124 Nev. 654, 668 n.66 (2008), and that Defendants will not suffer significant prejudice as an extended deadline will be slight and no additional costs will accrue.

Defendant Valley Health System, LLC, filed an Opposition and Countermotion on 12/20/21. Defendant Valley Health System, LLC DBA Centennial Hills Hospital Medical Center (CHH) argues that Plaintiffs' requested relief falsely relies on NRCP 6(b)(1)(B)(ii), to request additional time to respond to the Memorandums of Costs. Summary judgment in favor of Defendants entitles Defendants to an award of attorneys' fees pursuant to NRCP 68. However, Plaintiff's Motion to Extend Time to Retax is predicated on a memorandums of costs, which are subject to NRS 17.117, NRS 18.005, NRS 18.020, and NRS 18.110, not the NRCP.

Further, CHH timely served its Memorandum of Costs on 11/22/21, within five days of the Notice of Entry of Order on 11/19/21, as required by NRS 18.110(1).

1 Cotemporaneous with the filing of CHH's memorandum of costs, CHH separately
2 moved for attorneys' fees pursuant to N.R.C.P. 68, N.R.S. §§ 17.117, 7.085, 18.010(2),
3 and EDCR 7.60, on 11/22/21. Pursuant to EDCR 2.20(e), Plaintiffs had until 12/6/21 to
4 oppose CHH's Motion for Fees. Plaintiffs did nothing to retax costs within the 3 days
5 provided by NRS 18.110(4). Rather, Plaintiffs failed to act until 12/3/21 at which time,
6 they requested an extension of time to oppose CHH's separate motion for attorneys'
7 fees pursuant to N.R.C.P. 68, N.R.S. §§ 17.117, 7.085, 18.010(2), and EDCR 7.60. CHH
8 provided the Court with an email chain as an exhibit, which evidences CHH's
9 agreement to extend a professional courtesy to oppose the one opposable document-
10 the Motion for Attorney's Fees. CHH excluded any implication that Plaintiffs could
11 attempt to retax costs, a wholly separate statutory device. CHH states this is another
example of Plaintiffs counsel's failure to follow the law and statutory deadlines.

12 NRS 18.110(1) requires that a party in whose favor judgment is rendered, and
13 who claims costs, must file with the clerk, and serve a copy upon the adverse party,
14 within 5 days after the entry of judgment, a verified memorandum of costs. See NRS
15 18.110(1). Once notice of entry was served, Plaintiffs were on notice that the
16 memorandum of costs was coming, since they knowingly rejected CHH's Rule 68 Offer
17 of Judgment for a waiver of costs. While Plaintiffs normally would have had only until
18 11/25/21 to retax costs, the Thanksgiving holiday extended their deadline. Even
19 assuming the deadline was extended until 11/29/21 (Monday); Plaintiffs offer no excuse
for why they failed to act until 12/3/21 (Friday).

20 Moreover, CHH argues that NRS 18.110's lack of provision for judicial extension
21 under subsection (4) clearly indicates that there is no judicial discretion when a party
22 fails to timely retax costs. As expressed in *Moseley v. Eighth Judicial Dist. Court of*
23 *Nev.*, 124 Nev. 654, 662, 188 P.3d 1136, 1142 (2008), cited by Plaintiffs in support of
24 their motion, "NRCP 6(b)(2) applies to most acts required by the rules of civil
25 procedure unless they are specifically excluded." The retaxing of costs is an act required
26 by NRS 18.110(4), not the NRCP. As such, NRCP 6 does not apply and it is unavailing to
27 Plaintiffs. NRS 18.110 must be strictly construed, and in so doing, the absence of any
28 discretion as it pertains to NRS 18.110(4) versus the specific discretion granted
pursuant to NRS 18.110(1) requires that Plaintiffs' motion be summarily denied. There
is no statutory allowance for any judicial discretion with respect to retaxing costs.

1 Pursuant to *Moseley*, Plaintiffs were required to demonstrate (1) good faith, (2)
2 they exercised due diligence, (3) had a reasonable basis for not complying within the
3 time allotted, and (4) the absence of prejudice to CHH. They failed in all four respects,
4 especially the key factor that *Moseley* stated the courts must look to before finding
5 excusable neglect, namely the reasonable basis for noncompliance. Similarly, EDCR
6 2.35 is unavailing, as it relates to discovery issues.

7 Finally, CHH argues that it is entitled to attorneys' fees and costs under EDCR
8 7.60(b)(1) and NRS 18.010(b) because Plaintiffs' Motion is frivolous and brought
9 without any statutory or case law authority.

10 Defendants Concio and Shah filed an Opposition on 12/21/21. They oppose
11 Plaintiffs' Motion on essentially the same grounds as CHH. These Defendants note that
12 at the time of filing their Opposition, Plaintiffs still did not file a Motion to Retax.

13 Plaintiffs filed a Reply to the Valley Health Opposition, on 12/27/21. Plaintiffs
14 argue that the Court does have discretion to allow Plaintiffs additional time to respond
15 to Defendants' Memoranda of Costs. Plaintiffs argue that Defendants seek to take
16 advantage of a deadline to prevent Plaintiffs from responding, despite AO-21-04
17 (issued 6/4/21), which admonishes attorneys not to "press for unwarranted tactical
18 deadlines..."

19 Plaintiffs argue that because the time limits in NRS 18.110(1) permit the Court to
20 accept untimely memorandum of costs by a prevailing party, it would only be just that
21 the same discretion apply to NRS 18.119(4). *Eberle v. State ex. Rel. Nell J. Redfield*
22 *Trust*, 108 Nev. 587, 590, 836 P.2d 67, 69 (1992); *Valladares v. DMJ, Inc.*, 110 Nev.
23 1291, 885 P.2d 589 (1994) (considering a party's "due diligence" or lack thereof in
24 deciding whether to accept an untimely memorandum of costs). Further, Plaintiffs
25 argue that the language in NRS 18.110(4) is permissive not mandatory. Subsection (4)
26 provides:

27 Within 3 days after service of a copy of the memorandum, the adverse party
28 **may** move the court, upon 2 days' notice, to retax and settle the costs, notice of
which motion shall be filed and served on the prevailing party claiming costs.
Upon hearing of the motion the court shall settle the costs

See NRS 18.110(4) (emphasis added).

Plaintiffs contend that the presence of the word "may" in subsection (4) of NRS
18.110 substantially refutes Defendants' contention that there is no "judicial discretion"

1 in subsection (4). As a permissive mandate, the exercise of judicial discretion is
2 appropriate and Plaintiffs should be allowed an extension to file their motion to retax
3 and settle beyond the permissive period established in NRS § 18.110(4). There is no
4 language in subsection (4) or any case law interpreting NRS §18.110(4), which
5 indicates that subsection (4)'s "3 day after service" is as a de facto "statute of
6 limitations" deadline, such that any filing beyond the 3 days would be an absolute
7 jurisdictional bar. Such an interpretation leaves no leeway for motions for an extension
8 of time, or to file a motion to retax and settle costs filed after the three days. Instead,
9 NRS 18.110(4) uses "may."

10 The issue before the Court is not the absence or failure of Plaintiffs to file a
11 motion to retax and settle costs. Instead, the issue is whether under the factual
12 circumstances in which the memorandum of costs were served, may the Court consider
13 (1) a motion for extension of permissive time frame set forth in subsection (4); and/or
14 (2) a motion to retax and settle costs filed more than the time period suggested in NRS
15 18.110(4), with a showing of excusable neglect.

16 Plaintiffs filed a Reply to the Opposition filed by Concio and Shah, on 12/27/21
17 This Reply contains the same arguments as Plaintiffs' Reply to CHH. However, in this
18 Reply, Plaintiffs argue that they are under no obligation to file a Motion to Retax or
19 objection to the Defendants' Memorandums pending the Court's ruling on this Motion.

20 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

21 NRS 18.110 provides the following:

22 **NRS 18.110 Verified memorandum of costs: Filing and 23 service; witness' and clerk's fee; retaxing and settling costs.**

24 1. The party in whose favor judgment is rendered, and who claims
25 costs, **must file** with the clerk, **and serve** a copy upon the adverse party,
26 **within 5 days after the entry of judgment, or such further time**
27 **as the court or judge may grant,** a memorandum of the items of the
28 costs in the action or proceeding, which memorandum must be verified
by the oath of the party, or the party's attorney or agent, or by the clerk of
the party's attorney, stating that to the best of his or her knowledge and
belief the items are correct, and that the costs have been necessarily
incurred in the action or proceeding.

2. The party in whose favor judgment is rendered shall be entitled to
recover the witness fees, although at the time the party may not actually
have paid them. Issuance or service of subpoena shall not be necessary to
entitle a prevailing party to tax, as costs, witness fees and mileage,
provided that such witnesses be sworn and testify in the cause.

1 3. It shall not be necessary to embody in the memorandum the fees
2 of the clerk, but the clerk shall add the same according to the fees of the
3 clerk fixed by statute.

4 4. **Within 3 days after service of a copy of the**
5 **memorandum, the adverse party may move the court, upon 2**
6 **days' notice, to retax and settle the costs**, notice of which motion
7 shall be filed and served on the prevailing party claiming costs. Upon the
8 hearing of the motion the court or judge shall settle the costs.

9 NRS 18.110 (emphasis added).

10 The Court acknowledges that the plain language of NRS 18.110 does provide that
11 if a party claims costs, the party “must file . . . and serve” a Memorandum of Costs,
12 “within 5 days after the entry of judgment.” The statute does specifically give the Court
13 discretion to extend the time, as the statute indicates, “or such further time as the court
14 or judge may grant. . . .” With regard to a Motion to Retax Costs, NRS 18.110 indicates
15 that “within 3 days after service of a copy of the memorandum, the adverse party ‘may’”
16 move the Court to retax such costs. Although Plaintiffs argue that the permissive “may”
17 language, means that the 3-day time period is somehow discretionary with the Court,
18 this Court finds and concludes that the permissive “may” language in NRS 18.110(4),
19 simply applies to the party’s ability to file a Motion to Retax “if they find such a motion
20 necessary.” On the other hand, however, the Court acknowledges the argument that if
21 the Legislature intended to allow the Court discretion to extend the time for filing the
22 Memorandum of Costs, why would the Legislature not have intended to provide the
23 same discretion to the Court as it relates to a Motion to Retax costs.

24 In *Valladares v. DMJ, Inc.*, 110 Nev. 1291, 885 P.2d 580 (1994), the Nevada
25 Supreme Court held that the Court had discretion to extend the time for filing the
26 memorandum of costs under NRS 18.110(1). The Court upheld the District Court’s
27 decision not to allow a late amendment, due to a lack of diligence, when Valladares
28 received a bill from his expert on 4/8/93, but did not file an amended memo of costs
until 4/21/93, and did not file a motion to amend until 5/7/93. *Id.*, at 1294. Similarly,
in *Eberle v. State ex rel. Nell J. Redfield Trust*, 108 Nev. 587, 836 P.2d 67 (1992), the
Court held that the statutory period set forth in NRS 18.110(1) was not a jurisdictional
requirement, and that the Court has discretion to reach the merits of the motion. Also,
in *Gonzalez v. LVMPD*, 129 Nev. 1118 (Unpublished 2013), the Nevada Supreme Court
confirmed that NRS 18.110 is not jurisdictional, and the Court specifically indicated

1 that “The plain language of NRS 18.110(1) grants the district court discretion to
2 consider a memorandum of costs filed outside the statutory time frame.” *Id.*, at *2.

3 Although the Court has specifically indicated that the District Courts have
4 discretion as it relates to NRS 18.110(1), there are no Nevada cases specifically
5 indicating that the Court has such discretion when dealing with NRS 18.110(4). In
6 *Randono v. Turk*, 86 Nev. 123, 466 P.2d 218 (1970), the Supreme Court indicated that
7 the trial court did not err when it denied a Motion to Retax, when it was not timely
8 filed. The Court simply cited to the language of the statute, which reads, “The Motion
9 to Retax must be filed ‘within 3 days after service of a copy of the memorandum . . .’”
10 *Id.*, at 132, citing NRS 18.110(4).

11 The Nevada Court of Appeals issued an unpublished opinion in 2017, citing to
12 *Sheehan & Sheehan v. Nelson Malley & Co.*, 121 Nev. 481, 117 P.3d 219 (2005), and
13 stating that “In order to preserve an issue regarding costs, a party must file a motion to
14 retax and settle the costs within three days of service of the memorandum of costs.”
15 *Rosaschi v. Carter*, 133 Nev. 1068 (Unpublished 2017), referencing NRS 18.110(4).

16 Similarly, in *Terry v. Cruea*, 133 Nev. 1082 (Unpublished, 2017), the Nevada
17 Supreme Court indicated, “by failing to file a motion to retax costs, Cruea waived any
18 appellate review of that issue.” *Id.*, citing *Sheehan* at 493. The Court recognized that
19 Cruea had filed an opposition to the untimely motion for attorney fees, which included
20 a copy of the previously filed memorandum of costs, but it “fail[ed] to satisfy NRS
21 18.110(4)’s requirement that a motion to retax costs be filed within 3 days of service of
22 the memorandum.” *Id.*, at fn 2.

23 This Court finds and concludes that NRS 18.110 is not jurisdictional. Although
24 neither the case law nor the statute itself indicates that the Court has discretion to allow
25 a late filed Motion to Retax under NRS 18.110(4), this Court finds that if it has
26 discretion to allow a late filed Memorandum of Costs, equity would require that the
27 Court also have discretion to allow a late filed Motion to Retax Costs. Additionally,
28 NRCP 6(b) provides authority for the Court to extend time if it finds excusable neglect.
See NRCP 6(b)(1)(ii) (the exceptions contained in sub (2) do not preclude application of
that rule to the instant case).

Both sides have cited to *Moseley v. Eighth Judicial Dist. Court, ex rel. County of Clark*, 124 Nev. 654, 188 P.3d 1136 (2008), for the factors which the Court is to

1 consider in determining whether excusable neglect has been established. In that case,
2 the Supreme Court indicated the following:

3 a party seeking relief from NRCP 25(a)(1) under NRCP 6(b)(2) is required
4 to demonstrate that (1) it acted in good faith, (2) it exercised due
5 diligence, (3) there is a reasonable basis for not complying within the
specified time, and (4) the nonmoving party will not suffer prejudice.

6 *Id.*, at 668.

7 In considering the Moseley factors, this Court finds that there is no evidence that
8 the Plaintiff failed to act in good faith, and the Court finds that the non-moving party
9 would probably suffer no prejudice, but the Court finds that Plaintiff failed to exercise
10 due diligence, and there is really no reasonable basis for not complying within the
11 specified time. Because of the Thanksgiving holiday, it is understandable that a Motion
12 to Retax was not filed on the 25th or 26th (holidays), or the 27th or 28th (weekend), but
13 there seems to be no good cause for not filing the Motion to Retax on Monday,
14 November 29, or thereafter. The Memoranda of Costs were filed on November 22, and
15 23, 2021. If we did not count Court Holidays or weekend days, the Motions to Retax
16 would have been due on November 30, and December 1, 2021, respectively. Plaintiffs'
17 counsel apparently did not even seek an extension from opposing counsel until
18 December 3, 2021. This Court finds and concludes that the lack of diligence on the part
of Plaintiffs, prevents this Court from granting the Plaintiffs' Motion to Extend time.
19 The Court further notes that the Plaintiff still has not filed a Motion to Retax.

20 Defendants have sought fees, pursuant to EDCR 7.60(b)(1), based on the
21 argument that Plaintiffs have filed a frivolous, unnecessary, or unwarranted Motion.
22 The Court cannot so find, and consequently, no fees are appropriate.

23 **CONCLUSION/ORDER**

24 Based upon the foregoing, and good cause appearing,

25 **IT IS HEREBY ORDERED** that Plaintiffs' Motion to Extend Time to Respond
26 to Defendants' Valley Health Systems, Dr. Dionice S. Juliano, Dr. Conrado Concio, and
Dr. Fishal S. Shah's Memoranda of Costs, is hereby **DENIED**.

27 **IT IS FURTHER ORDERED** that Defendant, Valley Health's Countermotion
28 for Costs and Fees Pursuant to EDCR 7.60 is also **DENIED**.

The Court requests that counsel for Defendant, Valley Health/CHH, prepare and
process the Notice of Entry relating to this Order.

Because this matter has been decided on the pleadings, the hearing scheduled for 1/26/22 will be taken off calendar, and consequently, there is no need for any parties or attorneys to appear.

Dated this 24th day of January, 2022

[Handwritten signature]

778 D93 C440 21D3
Jerry A. Wiese
District Court Judge

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

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

CASE NO: A-19-788787-C

8 vs.

DEPT. NO. Department 30

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

11 **AUTOMATED CERTIFICATE OF SERVICE**

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

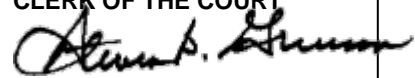
15 Service Date: 1/24/2022

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

26
27
28

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
6	Kimberly DeSario	kimberly.desario@lewisbrisbois.com
7	Heidi Brown	Heidi.Brown@lewisbrisbois.com
8	Tiffany Dube	tiffany.dube@lewisbrisbois.com
9		
10		
11		
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EXHIBIT E



1 **MRCN**
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;
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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
MOTION FOR RECONSIDERATION
REGARDING ITS MOTION FOR
ATTORNEYS' FEES PURSUANT TO
N.R.C.P. 68, N.R.S. §§ 17.117, 7.085,
18.010(2), AND EDCR 7.60**

HEARING REQUESTED

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

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

DATED this 23rd day of February, 2022

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

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

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

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

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

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

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

18 5. On August 28, 2020, Defendant served an Offer of Judgment on Plaintiff pursuant
19 to N.R.C.P. 68, N.R.S. 17.115¹, and *Busick v. Trainor*, 2019 Nev. Unpub. LEXIS 378, 437 P.3d
20 1050 (2019) for a waiver of any presently or potentially recoverable costs in full and final settlement
21 of the matter. At the time of the Offer, Defendants’ expended costs and fees totaled \$58,514.36.
22 The Offer was not accepted by Plaintiff and expired on September 11, 2020.

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

28 _____
 ¹ Currently N.R.S. 17.117.

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

8. The billing records are attached hereto along with all costs and disbursements incurred in this case which are true and accurate copies of said records and are maintained in the course of our firm's business².

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

FURTHER YOUR DECLARANT SAYETH NAUGHT.

/s/Adam Garth

Adam Garth, Esq.

No notarization required pursuant to NRS 53.045

² Exhibit “E” hereto

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. FACTUAL BACKGROUND**

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

7 CHH moved this Court on November 22, 2021 for **\$110,930.85** in attorneys’ fees per
8 N.R.C.P. 68 and N.R.S. §§ 17.117, plus **\$58,514.36** in pre-NRCP 68 offer fees and expenses pursuant
9 to N.R.S. §§ 7.085, 18.010(2) and EDCR 7.60.³ Plaintiffs opposed said motion,⁴ with a reply by
10 CHH interposed in further support of its motion.⁵

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

26 ³ Exhibit “A” hereto

27 ⁴ Exhibit “B” hereto

28 ⁵ Exhibit “C” hereto

⁶ Exhibit “D” hereto

⁷ Exhibit “E” hereto

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

4 There are two issues afoot which this Court conflated, namely the memorandum of costs and
5 disbursements previously submitted totaling **\$42,492.03**⁸, an amount which is undisputed, and for
6 which this Court has refused to sign a judgment,⁹ and the additional costs, disbursements and
7 attorneys fees addressed by CHH's instant motion and the initial motion which sought **\$110,930.85**
8 in attorneys' fees per N.R.C.P. 68 and N.R.S. §§ 17.117, plus **\$58,514.36** in pre-NRCP 68 offer fees
9 and expenses pursuant to N.R.S. §§ 7.085, 18.010(2) and EDCR 7.60. As a further reminder, this
10 Court previously denied Plaintiffs' motion to extend time to retax costs¹⁰ attendant to the
11 memorandum of costs for the aforementioned **\$42,492.03**,¹¹ an amount which itself is undisputed and for
12 which a judgment must be signed and entered.
13

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

26 ⁸ Exhibit "F" hereto

27 ⁹ Exhibit "G" hereto

28 ¹⁰ Exhibit "H" hereto

¹¹ Exhibit "F"

¹² Exhibit "D", p. 11

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

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

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

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

28 ¹³ Court's February 15, 2022 order, pp. 11-12

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

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

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

26 ¹⁴ Exhibit "F"

27 ¹⁵ Exhibit "H"

28 ¹⁶ Exhibit "F"

¹⁷ *Id.*

1 As previously noted in CHH's prior motion on this issue, Plaintiffs made multiple allegations
2 concerning the cause of death. First, Plaintiffs asserted that Ms. Powell died from a Cymbalta
3 overdose and that the administration of the Ativan to calm her during her CT procedure suppressed
4 her breathing which caused her death. In order to debunk those theories, CHH engaged Dr. Ruffalo,
5 a pharmacology and anesthesiology expert, whose report completely eviscerated Plaintiffs'
6 accusations in this regard. This forced Plaintiffs to abandon their initial theory of the case as outlined
7 in their Complaint and concoct another unsupported liability theory. Dr. Ruffalo's itemized bills
8 are attached hereto documenting his extensive review of the records, his research of applicable
9 literature supportive of his findings, and his drafting of both an initial expert report and rebuttal
10 report addressing the respective Plaintiffs' experts accusations.¹⁸ His bills alone total \$16,500.¹⁹

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

27 ¹⁸ Exhibit "E", pp. 17, 38, 128

28 ¹⁹ *Id.*

²⁰ Exhibit "E", pp. 25, 39, 105, 138, 171 and 195

1 \$25,355.²¹

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

9 Additionally, Plaintiffs interposed some half-baked economic loss theory based upon Brian
10 Powell's supplemental interrogatory response where he merely guessed at Ms. Powell's prior
11 earnings. To that end, Plaintiffs interposed an "expert report" from an economist based solely upon
12 the unsubstantiated guesswork of a party to this action. CHH needed to interpose a rebuttal to
13 Plaintiffs' economist to discredit the unsubstantiated income theory proffered by them. Erik Volk
14 was engaged to do exactly that. His invoices to review of Plaintiffs' expert report and draft a rebuttal
15 thereto have also been provided.²² Invoices from Mr. Volk total \$4,544.10.²³ Thus, expert fees
16 alone, without Dr. Shah's bills, total \$46,399.10.
17

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

22 As for the amount of attorneys fees and hours billed by all timekeepers in this case, as well
23 as other related disbursements including court filing fees and other related expenses, CHH provides
24 195 pages of billing records²⁵ substantiating the hundreds of hours devoted to defending CHH
25

26 ²¹ *Id.*

27 ²² Exhibit "E", pp. 146-150, 162-166

28 ²³ *Id.*

²⁴ Exhibit "D" to Exhibit "C" hereto

²⁵ Exhibit "E"

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

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

25 **II. LEGAL ARGUMENT**

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

27 EDCR 2.24 states in pertinent part:
28

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

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

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

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

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

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

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

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

27 ...
28

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

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

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

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

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

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

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

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

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

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

18 All factors to be considered in awarding attorneys' fees under the current circumstances
19 weigh in favor of Defendants. First, Plaintiffs did not bring his claims against CHH in good faith.

20 The Nevada Supreme Court confirmed this fact by finding as follows:
21

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

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

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

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

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

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

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

22
23
24
25 _____
26 ²⁶ Exhibit "B" to Exhibit "A" hereto, pp. 3-5 (emphasis supplied)

27 ²⁷ Exhibit "D" hereto, p. 11

28 *Id.*

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

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

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

28 ³⁰ Exhibit "E" hereto.

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

14
15
16 Finally, as set forth in detail below, the fourth factor regarding the reasonableness of CHH's
17 requested attorneys' fees also weighs in favor of CHH. Pursuant to NRCP 68, CHH may recover
18 their attorneys' fees from the date of service of the Offer of Judgment to the end of the matter. In
19 this case, the Offer of Judgment was served on August 28, 2020 and expired on September 11, 2020.
20 CHH incurred a total of \$110,930.85 in attorneys' fees alone³¹ (not inclusive of expenses) from
21 August, 28, 2020 to the present billing cycle (which does not include all fees incurred for October,
22 2021). Additionally, CHH incurred \$31,401.10 in disbursements including expert fees and other
23 expenses incurred since August, 28, 2020.³² This amount of bills is reasonable for the massive
24 amounts of time and energy needed to defend this case, engage in extensive written discovery to
25
26
27

28 ³¹ Exhibit "E" hereto

³² *Id.*

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

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

16 **C. Amount of Fees Incurred**

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

24
25
26
27 ³³ *Id.*

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

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

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

- 8 (1) the qualities of the advocate: ability, training, education, experience,
9 professional standing and skill;
- 10 (2) the character of the work to be done: its difficulty, its intricacy, its
11 importance, time and skill required, the responsibility imposed and the
12 prominence and character of the parties where they affect the importance of
13 the litigation;
- 14 (3) the work actually performed by the lawyer: the skill, time and
15 attention given to the work;
- 16 (4) the result: whether the attorney was successful and what benefits were
17 derived.

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

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

20 Partner Adam Garth	405.6 hours	\$91,260.00
21 Partner Brent Vogel	39.8 hours	\$ 8,955.00
Associate Heather Armantrout	33.1 hours	\$ 6,404.85
Paralegal Arielle Atkinson	46.9 hours	\$ 4,221.00
Paralegal Joshua Daor	0.1 hours	\$ 90.00
Total		\$110,930.85³⁵

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

28 ³⁵ Exhibit "E" hereto

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

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

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

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

19 NRS § 7.085 provides the following:

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

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

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

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

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

8 NRS § 7.085 (emphasis supplied).

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

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

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

16 Furthermore,

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

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

28 ³⁶ Exhibit "B" to Exhibit "A" hereto, note 4 (emphasis supplied)

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

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

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

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

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

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

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

20 EDCR 7.60(b) provides:

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

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

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

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

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

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

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

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

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

19
20 **III. CONCLUSION**

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

1 DATED this 23rd day of February 2022.

2 LEWIS BRISBOIS BISGAARD & SMITH LLP

3
4
5 By /s/ Adam Garth

6 S. BRENT VOGEL

7 Nevada Bar No. 006858

8 ADAM GARTH

9 Nevada Bar No. 15045

6385 S. Rainbow Boulevard, Suite 600

Las Vegas, Nevada 89118

Tel. 702.893.3383

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

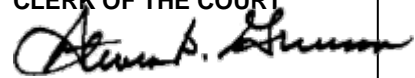
2 I hereby certify that on this 23rd day of February, 2022, a true and correct copy
3 of **DEFENDANT VALLEY HEALTH SYSTEM, LLC DBA CENTENNIAL HILLS**
4 **HOSPITAL MEDICAL CENTER'S MOTION FOR RECONSIDERATION REGARDING**
5 **ITS MOTION FOR ATTORNEYS' FEES PURSUANT TO N.R.C.P. 68, N.R.S. §§ 17.117,**
6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

9 Paul S. Padda, Esq.
10 PAUL PADDALAW, 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 By /s/ Heidi Brown
18 An Employee of
19 LEWIS BRISBOIS BISGAARD & SMITH LLP
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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; ISAAH KHOSROF, individually and as
an Heir; LLOYD CREECY, individually;,
15

Plaintiffs,

16 vs.
17

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

Defendants.
23

Case No. A-19-788787-C

Dept. No.: 30

**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
9 Nevada Bar No. 6858
10 ADAM GARTH
11 Nevada Bar No. 15045
12 6385 S. Rainbow Boulevard, Suite 600
13 Las Vegas, Nevada 89118
14 Tel. 702.893.3383
15 *Attorneys for Attorneys for Defendant Valley*
16 *Health System, LLC dba Centennial Hills Hospital*
17 *Medical Center*
18
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1 **DECLARATION OF ADAM GARTH IN SUPPORT OF MOTION FOR ATTORNEYS'**
2 **FEES**

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

- 4 1. I am a partner at Lewis Brisbois Bisgaard & Smith LLP, and am duly licensed to practice
5 law in the State of Nevada. I am competent to testify to the matters set forth herein, and will
6 do so if called upon.
- 7 2. I am one of the attorneys of record representing Defendant Valley Health System, LLC dba
8 Centennial Hills Hospital Medical Center (“Defendant” or “CHH”) in the above-entitled
9 action, currently pending in Department 30 of the Eighth Judicial District Court for the State
10 of Nevada, Case No. A-19-788787-C.
- 11 3. I make this Declaration on behalf of DEFENDANT VALLEY HEALTH SYSTEM, LLC
12 DBA CENTENNIAL HILLS HOSPITAL MEDICAL CENTER’S MOTION FOR
13 ATTORNEYS’ FEES PURSUANT TO N.R.C.P. 68, N.R.S. §§ 17.117, 7.085, 18.010(2),
14 AND EDCR 7.60.
- 15 4. I have been counsel of record for Defendants for much of this case, including for all times
16 that fees are being sought with this Motion for post-NRCP Rule 68 fees and costs, and much
17 pre-NRCP Rule 68 fees and costs.
- 18 5. On August 28, 2020, Defendant served an Offer of Judgment on Plaintiff pursuant to
19 N.R.C.P. 68, N.R.S. 17.115¹, 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.

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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

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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 its 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.

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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 ...

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

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

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

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

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

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

1 786 (1985).

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

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

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

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

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

1 circumstances by similarly trained and experienced providers of
2 health care." NRS 41A.015 (defining professional negligence); *Winn*,
3 128 Nev. at 252-53; 277 P.3d at 462 (explaining that a "plaintiffs
4 general belief that someone's negligence may have caused his or her
5 injury" triggers inquiry notice).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, sterilize sutures properly,
20 and monitor Powell, that suggest he already believed, and
21 knew of facts to support his belief, that negligent treatment
22 caused Powell's death by the time he made these complaints
23 to NDHHS and the Nursing Board.**

24 **4 The real parties in interest do not adequately address why
25 tolling should apply under NRS 41A.097(3)** (providing that the
26 limitation period for a professional negligence claim "is tolled for
27 any period during which the provider of health care has concealed
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).

29 **Given that uncontroverted evidence demonstrates that the
30 petitioners are entitled to judgment as a matter of law** because
31 the complaint is time-barred under NRS 41A.097(2), see NRCP
32 56(a); *Wood*, 121 Nev. at 729, 121 P.3d at 1029 (recognizing that
33 courts must grant summary judgment when the pleadings and all other
34 evidence on file, viewed in a light most favorable to the nonmoving
35 party, "demonstrate that **no genuine issue as to any material fact**
36 **[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 thy 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

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

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

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

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

NRS § 7.085 provides the following:

1. If a court finds that an attorney has:

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

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

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

NRS § 7.085 (emphasis supplied).

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

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

EDCR 7.60(b) provides:

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

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

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

///

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

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

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

7 (b) Without regard to the recovery sought, when the court finds that
8 the claim, counterclaim, cross-claim or third-party complaint or
9 defense of the opposing party was brought or maintained without
10 reasonable ground or to harass the prevailing party. The court shall
11 liberally construe the provisions of this paragraph in favor of
12 awarding attorney's fees in all appropriate situations. It is the intent of
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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1 DATED this 22nd day of November 2021.

2 LEWIS BRISBOIS BISGAARD & SMITH LLP

3
4
5 By /s/ Adam Garth

6 S. BRENT VOGEL

7 Nevada Bar No. 006858

8 ADAM GARTH

9 Nevada Bar No. 15045

6385 S. Rainbow Boulevard, Suite 600

Las Vegas, Nevada 89118

Tel. 702.893.3383

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

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

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

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

EXHIBIT ‘A’

1 S. BRENT VOGEL
Nevada Bar No. 6858
2 Brent.Vogel@lewisbrisbois.com
ADAM GARTH
3 Nevada Bar No. 15045
Adam.Garth@lewisbrisbois.com
4 LEWIS BRISBOIS BISGAARD & SMITH LLP
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

17 vs.

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

23 Defendants.
24

Case No. A-19-788787-C

Dept. No.: 30

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

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

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

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

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

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

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

6
7 DATED this 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*
22
23
24
25
26
27
28

1 **CERTIFICATE OF SERVICE**

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

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

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

15
16
17 By /s/ Roya Rokni
18 Roya Rokni, an Employee of
19 LEWIS BRISBOIS BISGAARD & SMITH LLP
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EXHIBIT ‘B’

EXHIBIT ‘B’

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Petitioners,

vs.

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

and

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

No. 82250

FILED

OCT 18 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER GRANTING PETITION

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

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

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

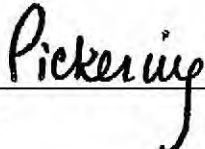
⁴The real parties in interest do not adequately address why tolling should apply under NRS 41A.097(3) (providing that the limitation period for a professional negligence claim “is tolled for any period during which the provider of health care has concealed any act, error or omission upon which the action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

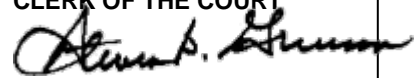

_____, J.
Herndon

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,*
LLC dba Centennial Hills Hospital Medical
8 *Center*

9
10 DISTRICT COURT

11 CLARK COUNTY, NEVADA

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

15 Plaintiffs,

16 vs.

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

22 Defendants.

Case No. A-19-788787-C

Dept. No. 30

NOTICE OF ENTRY OF ORDER

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

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27 ///

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

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; ISALAH KHOSROF, individually and as
an Heir; LLOYD CREECY, individually;,,

Plaintiffs,

vs.

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

Defendants.

Case No. A-19-788787-C

Dept. No.: 30

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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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.

4 Dated this 19th day of November, 2021

5 Dated: _____.


DISTRICT COURT JUDGE

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

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

11 *UNSIGNED*

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

21 DATED this 18th day of November, 2021

22 /s/ Brad Shipley

23 John H. Cotton, Esq.
24 Brad Shipley, Esq.
25 JOHN H. COTTON & ASSOCIATES
26 7900 W. Sahara Ave., Suite 200
27 Las Vegas, NV 89117
28 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.

/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](#)

Caution: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

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@jhcottonlaw.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>; jhcotton@jhcottonlaw.com

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

Importance: High

Counsel:

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

Adam Garth

Adam Garth

Partner

Las Vegas Rainbow

702.693.4335 or x7024335

From: [Garth, Adam](#)
To: [Paul Padda](#); [Srilata Shah](#); [Brad Shipley](#)
Cc: [Vogel, Brent](#); [Rokni, Roya](#); [Sirsy, Shady](#); [San Juan, Maria](#); jhcotton@jhcottonlaw.com
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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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>; 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,

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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@jhcottonlaw.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>; jhcotton@jhcottonlaw.com

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

Importance: High

Counsel:

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

Adam Garth

Adam Garth

Partner

Las Vegas Rainbow

702.693.4335 or x7024335

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Estate of Rebecca Powell,
Plaintiff(s)

CASE NO: A-19-788787-C

7 vs.

DEPT. NO. Department 30

8
9 Valley Health System, LLC,
Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

15 Service Date: 11/19/2021

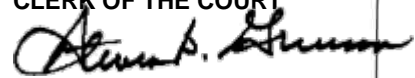
16 Paul Padda	psp@paulpaddalaw.com
17 S. Vogel	brent.vogel@lewisbrisbois.com
18 Jody Foote	jfoote@jhcottonlaw.com
19 Jessica Pincombe	jpinnacle@jhcottonlaw.com
20 John Cotton	jhcotton@jhcottonlaw.com
21 Paul Padda	civil@paulpaddalaw.com
22 Brad Shipley	bshipley@jhcottonlaw.com
23 Tony Abbatangelo	Tony@thevegaslawyers.com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

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Diana Escobedo	diana@paulpaddalaw.com
Srilata Shah	sri@paulpaddalaw.com
Shady Sirsy	Shady.Sirsy@lewisbrisbois.com
Maria San Juan	maria.sanjuan@lewisbrisbois.com
Karen Cormier	karen@paulpaddalaw.com

EXHIBIT B



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; ISIAIAH 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; ISIAIAH
KHOSROF, individually; LLOYD CREECY, individually submit this opposition to Defendant,

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

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

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

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

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

1. FACTUAL BACKGROUND

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

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

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

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

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

23 By letter dated February 5, 2018, HHS notified Mr. Powell that it conducted an
24 "investigation" of the facility and concluded that Centennial Hills committed "**violation(s) with**
25 **rules and/or regulations.**" HHS's report noted several deficiencies in the medical care provided
26 to Ms. Powell including, among other things, that Ms. Powell was exhibiting symptoms that
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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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27
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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. Julianio filed a Joinder to Centennial Hills'
5 reply.
6

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

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

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

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

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

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

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

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

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

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

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

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...

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

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

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

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

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

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

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

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

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

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

21 However, Defendant's Offer of Judgment of \$58,514.36 was not reasonable and nor was
22 it in good faith considering Plaintiffs' causes of action for medical malpractice, wrongful death,
23 and negligent infliction of emotional harm. Plaintiffs lost their mother, who was only 41 years
24 old at the time of her death. It was reasonable for Plaintiffs to reject Defendants' Offer of
25 Judgment as the terms of the Offer of Judgment did not provide for any monetary recovery to
26 Plaintiffs to compensate them for the loss of their mother. Defendants incorrectly state in their
27
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papers that given the likelihood of losing on this issue, the offered waiver of right to seek reimbursement of costs was reasonable in both timing and amount. On the contrary, shortly after the expiration of the time to accept the Offer of Judgment, this Court denied Centennial Hills Motion for Summary Judgment in October 2020 as it did not find merit in Defendant's Motion for Summary Judgment. An award of attorneys' fees is not appropriate in this case as Defendants failed to present an Offer of Judgment that would compensate Plaintiffs for their loss and the Offer itself was not proper under Nevada law. To this point, while the Offer cites Busick v. Trainor, 2019 WL 1422712, this is an unpublished decision by the Nevada Supreme Court. There is no published authority in Nevada that has held that a "walk away" Offer of Judgment is a proper Offer under NRCP 68, especially where no documentation is provided to permit a plaintiff to evaluate the reasonableness of the claimed fees and costs. Instead, the Nevada Supreme Court has held that where a trial court is evaluating an offer of judgment, the court may not factor in the "inclusion of fees and costs as part of the judgment being evaluated." McCrary v. Bianco, 122 Nev. 102, 107 (2006).

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

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

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

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

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

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

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

23 Although the decision to award such fees lies within the district court's discretion, the
24 Nevada Supreme Court has emphasized that, while Nevada's offer of judgment provisions are
25 designed to encourage settlement, they should not be used as a mechanism to unfairly force
26 plaintiffs to forego legitimate claims. Beattie v. Thomas, 99 Nev. 579, 588–89, 668 P.2d 268,
27
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274 (1983). Each factor need not favor awarding attorney fees because “no one factor under Beattie is determinative.” Yamaha Motor Co. v. Arnoult, 114 Nev. 233, 252, 955 P.2d 661, 673 (1998). “[E]xplicit findings on every Beattie factor [are not] required for the district court to adequately exercise its discretion.” Certified Fire Prot., Inc. v. Precision Constr., Inc., 128 Nev. Adv. Op. 35, 283 P.3d 250, 258 (2012).

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

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

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

NRS 7.085 provides the following:

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

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

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

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

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

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

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

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

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

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

Pursuant to EDCR Rule 7.60(b):

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

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

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

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

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

NRS 18.010 (2)(b) provides:

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

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

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

...

IV. CONCLUSION

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

Dated this 16th day of December 2021.

PAUL PADDALAW, PLLC

/s/ Srilata R. Shah

Paul S. Padda, Esq.

Nevada Bar No. 10417

Srilata R. Shah, Esq.

Nevada Bar No. 6820

4560 South Decatur Boulevard, Suite 300

Las Vegas, Nevada 89103

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

Pursuant to Rule 5(b) of the Nevada Rules of Civil Procedure, I certify that I am an employee of Paul Padda Law, PLLC and that on this 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

8
9 DISTRICT COURT

10 CLARK COUNTY, NEVADA
11

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

15 Plaintiffs,
16

17 vs.

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

22 Defendants.
23

Case No. A-19-788787-C

Dept. No.: 30

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

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

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

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

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

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

19 ///

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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*
22
23
24
25
26
27
28

1 **CERTIFICATE OF SERVICE**

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

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

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

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

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

RESP

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

psp@paulpaddalaw.com

JAMES P. KELLY, ESQ.

Nevada Bar No.: 8140

jpk@paulpaddalaw.com

PAUL PADDA LAW, PLLC

4560 South Decatur Boulevard, Suite 300

Las Vegas, Nevada 89103

Tele: (702) 366-1888

Fax: (702) 366-1940

Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

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

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

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

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

3 **INTRODUCTORY STATEMENT**

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

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

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

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

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

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

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

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

18 **INTERROGATORY NO. 1:**

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

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

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

26 ...

27 ...
28

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

Full Name: Rebecca Ann Powell

Date of Birth: May 30, 1975

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

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

INTERROGATORY NO. 2:

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

RESPONSE TO INTERROGATORY NO. 2:

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

Without waiving these objections, Plaintiff responds as follows:

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

Spouse's Name: Brian Marshall Powell

Date of Birth: 11/4/72

SSN: XXX-XX-4784

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

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

3 **INTERROGATORY NO. 3:**

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

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

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

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

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

19 **INTERROGATORY NO. 4**

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

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

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

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

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

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

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

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

18 **INTERROGATORY NO. 5**

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

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

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

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

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

9 **INTERROGATORY NO. 6**

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

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

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

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

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

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

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

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

5 **INTERROGATORY NO. 7**

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

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

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

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

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

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

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

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

INTERROGATORY NO. 8

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

RESPONSE TO INTERROGATORY NO. 8:

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

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

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

INTERROGATORY NO. 9

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

...

RESPONSE TO INTERROGATORY NO. 9:

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

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

INTERROGATORY NO. 10

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

RESPONSE TO INTERROGATORY NO. 10:

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

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

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

7 **INTERROGATORY NO. 11**

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

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

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

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

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

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

28 . . .

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

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

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.

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

3 **INTERROGATORY NO. 16**

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

9
10 **RESPONSE TO INTERROGATORY NO. 16:**

11 Objection. Plaintiff objects to this Interrogatory because it seeks expert medical opinions,
12 it is excessive as to time (i.e.: it calls for the disclosure of all information before the incident at
13 issue in this case, as opposed to the 5 year period of time typically allowed by the Discovery
14 Commissioner) making it overly burdensome, and it seeks the disclosure of information that is
15 irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.
16

17 Without waiving these objections, about 5 years into our marriage, Rebecca took a bunch
18 of pills and had to be hospitalized at Marymount Hospital in Ohio for approximately two weeks.
19 I believe she was admitted for psychiatric treatment and observation. I don't recall the names of
20 doctors.
21

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

25 **INTERROGATORY NO. 17:**

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

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

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

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

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

11 **INTERROGATORY NO. 18:**

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

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

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

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

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

3 **INTERROGATORY NO. 19**

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

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

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

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

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

21 **INTERROGATORY NO. 20**

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