

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;,
9
10
11
12
13

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
26
27
28

 Defendants.

Supreme Court No.:

District Court No. 7-19-28878-C

Electronically Filed
Feb 27 2023 01:43 PM
Elizabeth A. Brown
Clerk of Supreme Court

15 **RESPONDENTS’ APPENDIX VOLUME V**

18 S. BRENT VOGEL

19 Nevada Bar No. 6858

20 ADAM GARTH

21 Nevada Bar No. 15045

22 Lewis Brisbois Bisgaard & Smith LLP

23 6385 South Rainbow Boulevard, Suite 600

24 Las Vegas, Nevada 89118

25 Telephone: 702-893-3383

26 Facsimile: 702-893-3789

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

INDEX TO APPENDIX VOLUME V

| Number | Document | Date | Pages |
|--------|--|----------|---------|
| E | 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 | 2/2/2022 | 486-519 |

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

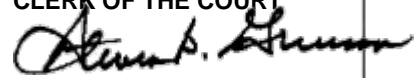
1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 24th day of February, 2023, a true and correct copy
3 of **RESPONDENTS' APPENDIX VOLUME V** 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 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 By /s/ Heidi Brown
15 An Employee of
16 LEWIS BRISBOIS BISGAARD & SMITH LLP
17
18
19
20
21
22
23
24
25
26
27
28



COMP

PAUL S. PADDA, ESQ. (NV Bar #10417)

Email: psp@paulpaddalaw.com

JOSHUA Y. ANG, ESQ. (NV Bar #14026)

Email: ja@paulpaddalaw.com

PAUL PADDA LAW, PLLC

4560 South Decatur Blvd., Suite 300

Las Vegas, Nevada 89103

Tele: (702) 366-1888

Fax: (702) 366-1940

Attorneys for Plaintiffs

CLARK COUNTY DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

A-19-788787-C

Case No. _____

Department 14

Dept No. _____

COMPLAINT

JURY TRIAL DEMANDED

***SUBJECT TO AUTOMATIC
ARBITRATION EXEMPTION –***

- 1. Pursuant To N.A.R. 3(A)-
Medical Malpractice***
- 2. Amount In Controversy Exceeds
\$50,000.00***

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

**DECLARATION OF GINA ARROYO,
PURSUANT TO NRS 53.045 IN SUPPORT
OF DEFENDANTS' VALLEY HEALTH
SYSTEM, LLC AND UNIVERSAL
HEALTH SERVICES, INC.'S MOTION
FOR SUMMARY JUDGMENT ON
STATUTE OF LIMITATIONS**

24
25 STATE OF NEVADA }

26 COUNTY OF CLARK }

27 I, GINA ARROYO, declare as follows:

28 1. I am over the age of eighteen and I make this affidavit solely in my capacity as an

1 Area Manager for MRO Corp., the company responsible for providing Disclosure Management
2 Services that include Release of Information (ROI) Services for the processing of requests for copies
3 of Protected Health Information (PHI) on behalf of Centennial Hills Hospital ("CHH") in Las
4 Vegas, Nevada.

5 2. In my capacity, I manage a proprietary platform for the secure and compliant
6 exchange of PHI between CHH and other entities, including other providers, government agencies,
7 payers, third-party requesters and patients, including law firms as well as to patients and their
8 families. In my position, I and members of my team, have complete access to all patient medical
9 records from CHH, and are responsible for processing all medical records requests for said records.
10 I therefore have personal knowledge of our system through which we have obtained all medical
11 records requests for CHH. Any such requests are directed to our organization to obtain the records,
12 process, and transmit to the requesting party. I have held this position during since April, 2017 and
13 retain it today. Therefore, I am competent to testify to the facts contained herein.

14 3. Upon receipt of a request for medical records from any individual or entity, it is the
15 responsibility of my organization to review the request, determine whether the requesting party has
16 provided sufficient documentation to obtain the records, and upon such proof, retrieving those
17 records from CHH's electronic medical records (EMR) program.

18 4. Once retrieved, we assemble the medical records in accordance with the request from
19 the person or entity. If required by a legal entity who needs a certificate of the records custodian,
20 we obtain the required certificate of the custodian of records for CHH, Melanie Thompson. Ms.
21 Thompson is currently the records custodian for CHH, and she was the custodian at the time the
22 records requested in this case were received. If a patient or family member requests medical records,
23 no certificate of the records custodian is required and is not provided.

24 5. I have reviewed our database system in which we log every request for medical
25 records for CHH to determine the timeline for the records requested in this matter, and the specific
26 records provided attendant to each request for the information containing the first request which
27 CHH received concerning Rebecca Powell.

28 6. On May 25, 2017, MRO received a request for medical records from Taryn Creecy,

1 one of the plaintiffs in this matter, along with a copy of a court order requiring that Centennial Hills
2 Hospital provide a complete copy of Rebecca Powell's medical chart (**Exhibit "A" hereto**).

3 7. Our records indicate that on June 2, 2017, the request for the medical records for
4 Mrs. Powell was processed by MRO personnel. As part of that process, a ROI specialist validated
5 the documentation provided by the requesting party to ensure that the requesting party was an
6 authorized recipient. Thereafter, the ROI specialist used the information on the authorization
7 request to populate records from the CHH EMR according to patient identifiers, date of service, and
8 the specific records requested. The ROI specialist then electronically imported the medical records
9 to our ROI Online® portal and performed a quality review on all pages to ensure accuracy and
10 compliance with the request documentation. Thereafter, the records were released to MRO's
11 national service center for a second quality control check and shipment to the requesting party.

12 8. On June 5, 2017, we determined that the records for Mrs. Powell were requested by
13 Taryn Creecy, her daughter, and that the records were requested to be sent to a post office box. We
14 confirmed that Ms. Creecy needed to obtain a court order for the records since she was not the
15 patient. We verified the request along with the attached court order (**Exhibit "A"**).

16 9. On June 7, 2017, we sent an invoice to Ms. Creecy (**Exhibit "B"**) which included all
17 fees associated with the provision of 1,165 pages of Mrs. Powell's medical records from CHH. The
18 1,165 pages invoiced represented the entirety of medical records for Mrs. Powell with no exclusions.

19 10. On June 12, 2017, we received payment for the 1,165 pages of records (**Exhibit**
20 **"C"**). On June 13, 2017, we sent out the complete 1,165 pages to Ms. Creecy to the address provided
21 on the request documentation.

22 11. On June 23, 2017, we received the package back from the United State Postal Service
23 due to undeliverability to the addressee (**Exhibit "D"**).

24 12. Upon return of the records, our notes indicate that on June 28, 2017, we contacted
25 Ms. Creecy and she advised us that the post office box to which she requested the records be sent
26 was in the name of her father, Brian Powell, and that the Post Office likely returned them since she
27 was an unknown recipient at the post office box. She thereafter requested that we resend the records
28 to him at that post office box address.

1 13. On June 29, 2017, we re-sent the records addressed to Mr. Powell at the post office
2 box previously provided and we did not receive the records back thereafter.

3 14. Again, we provided copies of all medical records for Mrs. Powell as part of this
4 medical records request, since that was what the authorization and court order called for, and no
5 records for this patient were excluded from that packet.

6 15. As to those matters stated herein of which I have personal knowledge, I affirm the
7 truth and accuracy of such facts. As to any facts that are not within my personal knowledge, I am
8 informed and believe that such matters are true and correct.

9 Dated this 1st day of September, 2020.


GINA ARROYO

10
11 No Notary Required per NRS 53.045
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT ‘A’

* Put Records on CD

AUTHORIZATION TO USE AND DISCLOSE PROTECTED HEALTH INFORMATION

☐ Initial here if requesting information from Centennial Hills Hospital Medical Center.
Note: There will be a charge of \$.14 per page if source document is electronic or a charge of \$.16 per page if source document is paper for releases of PHI for all reasons other than continued patient care.

☐ Initial here if requesting access to review original medical records.

☐ Initial here if requesting patient record to be provided in electronic format (CD) or secure e-mail.

Patients are entitled to one (1) free Compact Disc (CD) containing radiology images/films/recordings. Any requests for additional copies will be subject to a \$10 fee per CD.

Patient Name at Time of Treatment: REBECCA ANN POWELL Date of Birth: 5/30/1975 Social Security Number: 275-80-9124
Street Address: P.O. Box 750131 Home Phone Number: 216 571 9522
City: LAS VEGAS State: NV Zip Code: 89136-0131 Work Phone Number: _____
Email: _____

This document authorizes Centennial Hills Hospital Medical Center to use and disclose Protected Health Information (PHI) as described below. Uses and disclosures of PHI will be consistent with Nevada and Federal law concerning the privacy of PHI. Failure to provide all information requested will delay action on this Authorization.

- Person(s)/Organization(s) authorized to receive the PHI: Centennial Hills Hospital Medical Center
- Purpose of Requested Use or Disclosure: _____
- Description of the information included in Use or Disclosure: Treatment date(s): 5/3/2017 to 5/11/2017
☒ Billing Record ☒ History and Physical ☒ Emergency Department
☒ All PHI In Medical Record (Complete Chart Copy) ☒ Operative Report ☒ Other (please specify): ALL RECORDS, IMAGES AND TAPES
☒ Radiology Images CD ☒ X-Ray Report BOTH SOFT AND HARD COPY
☒ Discharge Summary ☒ Lab Reports/Pathology Reports
- By signing my initials next to the specific category of highly confidential information, I am authorizing Centennial Hills Hospital Medical Center to release the indicated type of information next to my initials pursuant to this Authorization from the treatment date(s) listed above.
HIV/AIDS _____ Drug and Alcohol Information _____ Genetic Information _____
Mental Health Information _____ Sexually Transmitted Disease Information _____ Tuberculosis Information _____
- Please list a date or event at which point this Authorization will expire (not to exceed 1 year): _____

NOTICE OF RIGHTS AND OTHER INFORMATION:

- I understand that I have the right to revoke this authorization at any time. Such requests must be submitted in writing to the attention of Centennial Hills Hospital Medical Center, Health Information Management Department at 6900 North Durango Boulevard, Las Vegas, Nevada, 89149. Phone: (702) 629-1300 Fax: (702) 629-1645. Cancellation of my authorization will be effective when Centennial Hills Hospital Medical Center receives my signed request, but it will not apply to the information that was used or disclosed prior to that date.
- I understand that refusal to sign this authorization will have no effect on my enrollment, eligibility for benefits, or the amount a third party payor pays for the health services I receive.
- I understand that the person or entity that receives this information may not be covered by the federal privacy regulations, in which case the information above may be redisclosed and no longer protected by these regulations. I also understand that the person I am authorizing to use and/or disclose the information may receive compensation for the use and/or disclosure.
- I have a right to receive a copy of this authorization. I may inspect or obtain a copy of the protected health information that I am being asked to use or disclose.

Signature of Patient: [Signature] Date: 5/25/17
Signature of Legal Representative: Jayn Creevy Print Name: Jayn Creevy Date: 5/25/17 Relationship to Patient: Daughter

Witness: _____ Date: _____
☐ I Will Pick Up PHI
☐ Mail PHI
☐ Please Fax PHI To Physician Indicated

Reason Patient Unable to Sign

☐ Patient received copy of authorization

Staff Initials: _____

BAR CODE



R11001

Centennial Hills Hospital
MEDICAL CENTER

AUTHORIZATION TO USE AND DISCLOSE
PROTECTED HEALTH INFORMATION

(PMM# 78329158) (R 8/15) (FOD)

PATIENT IDENTIFICATION

RECEIVED
MAY 25 2017
CLERK OF THE COURT

CASSADY LAW OFFICES, P.C.
10799 W. Twain Avenue
Las Vegas, Nevada 89135
(702) 650-4480 - Fax 650-5561

- DISPOSITIONS
- ☐ - Voluntary Dismissal
 - ☐ - Transferred (before/during trial)
 - ☐ - Involuntary Dismissal (statutory)
 - ☐ - Judgment on Arbitration Award
 - ☐ - Stipulated Dismissal
 - ☐ - Stipulated Judgment
 - ☒ - Summary Judgment
 - ☐ - Non-Jury (bench) Trial
 - ☐ - Jury Trial

1 **ORDER**
2 CASSADY LAW OFFICES, P.C.
3 Jasen E. Cassady, Esq.
4 Nevada Bar No. 8018
5 jasen@cassadylawoffices.com
6 Brandi K. Cassady, Esq.
7 Nevada Bar No. 12714
8 brandi@cassadylawoffices.com
9 Brendan M. McGraw, Esq.
10 Nevada Bar No. 11653
11 brendan@cassadylawoffices.com
12 10799 West Twain Avenue
13 Las Vegas, Nevada 89135
14 Phone: (702) 650-4480
15 Fax: (702) 650-5561
16 Attorneys for the Estate

Electronically Filed
05/25/2017

Heather S. Shuman
CLERK OF THE COURT

**DISTRICT COURT
CLARK COUNTY, NEVADA**

In the Matter of the Estate of

REBECCA ANN POWELL a/k/a
REBECCA A. POWELL a/k/a
REBECCA POWELL,

Deceased.

CASE NO.: P-17-091793-E

DEPT NO.: PC-1

Probate

ORDER TO RELEASE MEDICAL RECORDS

THE COURT, having reviewed the Ex Parte Petition to Release Medical Records, and good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the medical records for REBECCA ANN POWELL a/k/a REBECCA A. POWELL a/k/a REBECCA POWELL, held with any and all medical facilities, hospitals, clinics, physicians, rehabilitation facilities, acute care facilities, nurse practitioners, and any other person or entity having medical records for the Decedent, including, but not limited to:

CENTENNIAL HILLS HOSPITAL and its health care providers, nurses, doctors, staff, nurse practitioners, on-site pharmacy, and/or affiliates;

shall release copies of said medical records to TARYN CREECY or her attorneys.

DATED this 24 day of May, 2017.

Submitted by:

CASSADY LAW OFFICES, P.C.

By: *Brendan M. McGraw*
Brendan M. McGraw, Esq.
Nevada Bar No. 11653

[Signature]
DISTRICT COURT JUDGE

CERTIFIED COPY
DOCUMENT ATTACHED IS A
TRUE AND CORRECT COPY
OF THE ORIGINAL ON FILE

Heather S. Shuman
CLERK OF THE COURT

MAY 25 2017

RECEIVED

CASSADY LAW OFFICES, P.C.

MAY 25 2017

10799 W. Twain Avenue
Las Vegas, Nevada 89135
(702) 650-4480 - Fax 650-5561

CLERK OF THE COURT

Electronically Filed
05/25/2017

Heather L. Smith
CLERK OF THE COURT

1 **ORDER**
2 CASSADY LAW OFFICES, P.C.
3 Jasen E. Cassady, Esq.
4 Nevada Bar No. 8018
5 jasen@cassadylawoffices.com
6 Brandi K. Cassady, Esq.
7 Nevada Bar No. 12714
8 brandi@cassadylawoffices.com
9 Brendan M. McGraw, Esq.
10 Nevada Bar No. 11653
11 brendan@cassadylawoffices.com
12 10799 West Twain Avenue
13 Las Vegas, Nevada 89135
14 Phone: (702) 650-4480
15 Fax: (702) 650-5561
16 Attorneys for the Estate

**DISTRICT COURT
CLARK COUNTY, NEVADA**

In the Matter of the Estate of

REBECCA ANN POWELL a/k/a
REBECCA A. POWELL a/k/a
REBECCA POWELL,

Deceased.

CASE NO.: P-17-091793-E

DEPT NO.: PC-1

Probate

ORDER TO RELEASE MEDICAL RECORDS

15 THE COURT, having reviewed the Ex Parte Petition to Release Medical Records, and good
16 cause appearing,

17 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the medical records for
18 REBECCA ANN POWELL a/k/a REBECCA A. POWELL a/k/a REBECCA POWELL, held
19 with any and all medical facilities, hospitals, clinics, physicians, rehabilitation facilities, acute care
20 facilities, nurse practitioners, and any other person or entity having medical records for the
21 Decedent, including, but not limited to:

**CENTENNIAL HILLS HOSPITAL and its health care
providers, nurses, doctors, staff, nurse practitioners, on-site
pharmacy, and/or affiliates;**

shall release copies of said medical records to TARYN CREECY or her attorneys.

DATED this 24 day of May, 2017.

[Signature]
DISTRICT COURT JUDGE

Submitted by:

CASSADY LAW OFFICES, P.C.

By: *[Signature]*

Brendan M. McGraw, Esq.
Nevada Bar No. 11653

- DISPOSITIONS
- ☐ - Voluntary Dismissal
 - ☐ - Transferred (before/during trial)
 - ☐ - Involuntary (statutory) Dismissal
 - ☐ - Judgment on Arbitration Award
 - ☐ - Stipulated Dismissal
 - ☐ - Stipulated Judgment
 - ☒ - Summary Judgment
 - ☐ - Non-Jury (bench) Trial
 - ☐ - Jury Trial



JOHN R. KASICH
GOVERNOR
Donald J. Petri
Registrar, BMV

Ohio

USA

IDENTIFICATION CARD

1820UL1926900000



Under 21 until 06-20-2018

15 Sex: F
16 HL: 5-05
17 Wt: 180
18 Eyes: BRO
19 Hair: BRO

06-20-1995

1 CREECY
2 TARYN NICOLE
8 4572 TURNEY RD
CLEVELAND, OH 44105



4d LICENSE NO. 3 BIRTHDATE 1b ISSUE DATE
TZ901113 06-20-1995 01-07-2015

9 CLASS 1b EXPIRES
REG 06-20-2018

NONDRIVER

Taryn Crecy



* Put Records on CD

AUTHORIZATION TO USE AND DISCLOSE PROTECTED HEALTH INFORMATION

| | |
|-------------------------------------|---|
| <input checked="" type="checkbox"/> | Initial here if requesting information from Centennial Hills Hospital Medical Center. Note: There will be a charge of \$.14 per page if source document is electronic or a charge of \$.16 per page if source document is paper for releases of PHI for all reasons other than continued patient care. |
| <input type="checkbox"/> | Initial here if requesting access to review original medical records. |
| <input type="checkbox"/> | Initial here if requesting patient record to be provided in electronic format (CD) or secure e-mail. |
| <input type="checkbox"/> | Patients are entitled to one (1) free Compact Disc (CD) containing radiology images/films/recordings. Any requests for additional copies will be subject to a \$10 fee per CD. |

| | | | |
|-----------------------------------|-------|---------------|------------------------|
| REBECCA ANN POWELL | | 5/30/1975 | 275-80-9124 |
| Patient Name at Time of Treatment | | Date of Birth | Social Security Number |
| P.O. Box 750131 | | | 216 571 9522 |
| Street Address | | | Home Phone Number |
| LAS VEGAS | NV | 89136-0131 | |
| City | State | Zip Code | Work Phone Number |
| Email | | | |

This document authorizes Centennial Hills Hospital Medical Center to use and disclose Protected Health Information (PHI) as described below. Uses and disclosures of PHI will be consistent with Nevada and Federal law concerning the privacy of PHI. Failure to provide all information requested will delay action on this Authorization.

1. Person(s)/Organization(s) authorized to receive the PHI: ☐ Centennial Hills Hospital Medical Center

2. Purpose of Requested Use or Disclosure:

3. Description of the information included in Use or Disclosure: Treatment date(s): 5/3/2017 to 5/11/2017

- | | | |
|---|---|---|
| <input checked="" type="checkbox"/> Billing Record | <input checked="" type="checkbox"/> History and Physical | <input checked="" type="checkbox"/> Emergency Department |
| <input checked="" type="checkbox"/> All PHI in Medical Record (Complete Chart Copy) | <input checked="" type="checkbox"/> Operative Report | <input checked="" type="checkbox"/> Other (please specify): |
| <input checked="" type="checkbox"/> Radiology Images CD | <input checked="" type="checkbox"/> X-Ray Report | ALL RECORDS, IMAGES AND TRANSCRIPTS |
| <input checked="" type="checkbox"/> Discharge Summary | <input checked="" type="checkbox"/> Lab Reports/Pathology Reports | BOTH SOFT AND HARD COPY |

4. By signing my initials next to the specific category of highly confidential information, I am authorizing Centennial Hills Hospital Medical Center to release the indicated type of information next to my initials pursuant to this Authorization from the treatment date(s) listed above.

| | | |
|------------------------------|--|--------------------------|
| HIV/AIDS | TC Drug and Alcohol Information | Genetic Information |
| TC Mental Health Information | Sexually Transmitted Disease Information | Tuberculosis Information |

5. Please list a date or event at which point this Authorization will expire (not to exceed 1 year):

NOTICE OF RIGHTS AND OTHER INFORMATION:

- I understand that I have the right to revoke this authorization at any time. Such requests must be submitted in writing to the attention of Centennial Hills Hospital Medical Center, Health Information Management Department at 6900 North Durango Boulevard, Las Vegas, Nevada, 89149. Phone: (702) 629-1300 Fax: (702) 629-1645. Cancellation of my authorization will be effective when Centennial Hills Hospital Medical Center receives my signed request, but it will not apply to the information that was used or disclosed prior to that date.
- I understand that refusal to sign this authorization will have no effect on my enrollment, eligibility for benefits, or the amount a third party payor pays for the health services I receive.
- I understand that the person or entity that receives this information may not be covered by the federal privacy regulations, in which case the information above may be redisclosed and no longer protected by these regulations. I also understand that the person I am authorizing to use and/or disclose the information may receive compensation for the use and/or disclosure.
- I have a right to receive a copy of this authorization. I may inspect or obtain a copy of the protected health information that I am being asked to use or disclose.

Signature of Patient

Date

Signature of Legal Representative

Print Name

Date

Relationship To Patient

Witness

Date

☐ I Will Pick Up PHI

☐ Mail PHI

☐ Please Fax PHI To Physician Indicated

Reason Patient Unable to Sign

☐ Patient received copy of authorization

Staff Initials:

BAR CODE



RI1001

Centennial Hills Hospital
MEDICAL CENTER

AUTHORIZATION TO USE AND DISCLOSE
PROTECTED HEALTH INFORMATION

(PMM# 78329158) (R 8/15) (FOD)

PATIENT IDENTIFICATION

EXHIBIT ‘B’

MRO
1000 Madison Avenue, Suite 100
Norristown, PA 19403

Verification Needed
17117315
June 07, 2017



Phone: (610) 994-7500
Fax: (610) 962-8421

Taryn Creecy
P.O. Box 750131
Las Vegas, NV 89136

Reference ID:

MRO Request ID: 17117315

MRO Online Tracking Number: TVHS7ABJBYXFG

On 5/25/2017 the following healthcare provider received your request for copies of medical records:

Centennial Hills Hospital
6900 North Durango Drive
Las Vegas, NV 89149

You requested records for: REBECCA POWELL

Fees

| | |
|---------------------------|-----------------|
| Search and Retrieval Fee: | \$0.00 |
| Number of Pages: | 1165 |
| Tier 1: | \$93.20 |
| Tier 2: | \$0.00 |
| Tier 3: | \$0.00 |
| Media pages/materials: | 0 |
| Media Fee: | \$0.00 |
| Certification Fee: | \$0.00 |
| Adjustments: | \$0.00 |
| Postage: | \$1.19 |
| Sales Tax: | \$7.69 |
| TOTAL: | \$102.08 |
| Paid at Facility: | (\$0.00) |
| Paid to MRO: | (\$0.00) |
| BALANCE DUE: | \$102.08 |

VERIFICATION NEEDED

MRO processes requests for copies of medical records on behalf of your healthcare provider.

Your request for medical records has yielded 1165 pages of records. In order to process your request in compliance with HIPAA, we need to verify that you requested these records and that the address listed above is correct. (See 45 CFR § 164.514).

To verify your request information, please pay the balance due. Federal and state laws permit healthcare providers and companies like MRO to charge patients a "reasonable, cost-based fee" for copies of their medical records. (See 45 CFR § 164.524(c)(4)). You may pay the balance on the invoice by check by sending payment to MRO, P.O. Box 6410, Southeastern, PA 19398-6410 or online using a credit card at www.roilog.com. If you have any questions, please call MRO at (610) 994-7500.

If you want to modify your request, please check the modification option on the next page and submit a revised request that is more specific as to which parts (e.g., tests, progress notes, etc.) or dates of service you would like to have sent to you along with this form by fax to (610) 962-8421, via email at RequestInformation@MROCorp.com, or by U.S. mail to MRO, 1000 Madison Avenue Suite 100, Norristown, PA 19403.

If you want to cancel your request, please check off the cancellation option below and send this form to MRO by fax to (610) 962-8421 or email RequestInformation@MROCorp.com, or by U.S. mail to MRO, 1000 Madison Avenue Suite 100, Norristown, PA 19403.

By paying this invoice, you are representing that you have reviewed and approved the charges and have agreed to pay them. Any dispute relating to this invoice must be presented before paying this invoice. Any dispute not so presented is waived. All disputes must be resolved by arbitration under the Federal Arbitration Act through one or more neutral arbitrators before the American Arbitration Association. Class arbitrations are not permitted. Disputes must be brought only in the claimant's individual capacity and not as a representative of a member or class. An arbitrator may not consolidate more than one person's claims nor preside over any form of class proceeding.

Please contact MRO at (610) 994-7500 for any questions regarding this invoice.
MRO is the medical copy request processor for:
Centennial Hills Hospital

PAYMENT:

You may pay this invoice online at:

www.roilog.com

You can send a check to:

MRO

P.O. Box 6410,
Southeastern, PA 19398-6410

MRO Tax ID (EIN): 01-0661910

*Please write the Request # on the check
or return this invoice with the payment*

EXHIBIT ‘C’

CC Payment Receipt

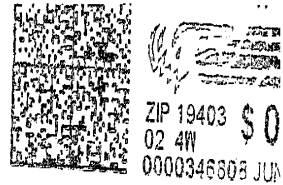
| | |
|----------------------------|-----------------------------|
| Transaction Status: | Approved |
| Transaction Date and Time: | 6/12/2017 3:44:19 PM |
| Transaction Reference No.: | 961989 |
| Approval Code: | 0000932555 |
| Order Number: | 17117315 |
| Charge Amount: | \$102.08 |
| Credit Card Number: | XXXXXXXXXXXX2733 |
| Credit Card Holder: | Brian M. Powell |

EXHIBIT ‘D’

MRO
1000 Mac
Suite 100
Norristown, PA 19403

RETURN SERVICE
REQUESTED

FIRST CLASS



Handwritten signature

Taryn Creecy
Personal
P.O. Box 750131
Las Vegas, NV 89136



NIXIE 851 7E 1 0106/23/17
RETURN TO SENDER
ATTEMPTED - NOT KNOWN
UNABLE TO FORWARD
SC: 1940324262S 2104N174110-0033E

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

8
9 DISTRICT COURT
10 CLARK COUNTY, NEVADA
11

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

15 Plaintiffs,

16 vs.

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

22 Defendants.
23

Case No. A-19-788787-C

Dept. No.: 30

**DECLARATION OF MELANIE
THOMPSON, PURSUANT TO NRS 53.045
IN SUPPORT OF DEFENDANTS'
VALLEY HEALTH SYSTEM, LLC AND
UNIVERSAL HEALTH SERVICES,
INC.'S MOTION FOR SUMMARY
JUDGMENT ON STATUTE OF
LIMITATIONS**

24
25 STATE OF NEVADA }

26 COUNTY OF CLARK }

27 I, MELANIE THOMPSON, declare as follows:

28 1. I am over the age of eighteen and I make this affidavit in my capacity as the Health

1 Information Manager for Centennial Hills Hospital ("CHH") in Las Vegas, Nevada.

2 2. In my capacity, I am the medical records custodian for CHH and am responsible for
3 maintaining copies of all medical records for patients of CHH. Medical records for patients are
4 created from the electronic medical records (EMR) system for CHH. All information pertaining to
5 the patient, including, but not limited to notes, labs, physician orders, consultations, and anything
6 having to do with the patient is maintained in our EMR by patient medical record number. It is
7 cross-referenced by the patient's date of birth to assure that we obtain information on the correct
8 patient should that record be requested.

9 3. As the medical records custodian, I provide certifications for all medical records
10 requests which are requested by some legal entity. If another medical provider, patient or patient's
11 family requests such records, CHH does not provide a certificate from me.

12 3. CHH employs MRO as service to process all requests for medical records from any
13 individual or entity. As part of that role, MRO maintains access to our EMR and assembles all
14 medical records requests to comport with the specific documents requested by the party seeking the
15 records. In that regard, MRO downloads all records compliant with the specific request from our
16 EMR, assembles them into a package, invoices the requesting party before the records are
17 disseminated, obtains payment from the requesting party and then prepares the records for
18 dissemination. In the event a legal entity is requesting a copy of the medical records, I provide a
19 certification that I maintain the records at CHH and attest to the accuracy thereof. If records are
20 requested by a someone other than who needs a legal certification for evidentiary purposes, my
21 certificate is not included among the records provided to the requesting party.

22 4. I have reviewed Ms. Creecy's medical records request for Mrs. Powell's complete
23 medical records dated May 25, 2017. Since these records were requested by an individual, my
24 certificate as the custodian would not, and did not, accompany the medical records which were
25 provided to her. However, I have access to the medical records file which was provided to Ms.
26 Creecy pertaining to Mrs. Powell in June, 2017. I have compared that file with the EMR, the source
27 from which all medical records for a patient are derived. In comparing the medical records, with
28 the EMR, I am able to determine that a full and complete copy of Mrs. Powell's patient file was

1 provided to Ms. Creecy and contained all 1165 pages of medical records. No records were excluded
2 from those provided to Ms. Creecy in June, 2017.

3 5. As to those matters stated herein of which I have personal knowledge, I affirm the
4 truth and accuracy of such facts. As to any facts that are not within my personal knowledge, I am
5 informed and believe that such matters are true and correct.

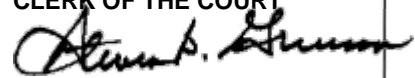
6 Dated this 26 day of August, 2020.

7 
8 MELANIE THOMPSON

9 No Notary Required per NRS 53.045
10
11
12
13
14

15 By
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT D



NOED

PAUL S. PADDALAW, ESQ. (NV Bar #10417)

Email: psp@paulpaddalaw.com

SRILATA SHAH, ESQ. (NV Bar #6820)

Email: sri@paulpaddalaw.com

PAUL PADDALAW, PLLC

4560 South Decatur Boulevard, Suite 300

Las Vegas, Nevada 89103

Tele: (702) 366-1888

Fax: (702) 366-1940

Attorneys for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

Case No. A-19-788787-C

Dept. No. XXX (30)

**NOTICE OF ENTRY OF ORDER AND
DECISION REGARDING VALLEY
HEALTH SYSTEM'S MOTION FOR
FEES AND COUNTERMOTION FOR
FEES AND COSTS**

1

Estate of Rebecca Powell v. Valley Health System, LLC, et. al.
Eighth Judicial District Court, Case No. A-19-788787-C (Dept. 30)
Notice Of Entry Of Order And Decision Regarding Valley Health System's Motion For Fees
PPL #201297-15-06

1 Notice is hereby provided that the Court filed an Order and Decision pertaining to
2 Valley Health System's Motion for Fees and the Countermotion for Fees and Costs. A copy of
3 that Order and Decision is attached hereto as Exhibit A.
4

5 Respectfully submitted,
6

7 /s/ Paul S. Padda
8

9 Paul S. Padda, Esq.
10 Srilata Shah, Esq.
11 PAUL PADDA LAW, PLLC
12 4560 South Decatur Blvd., #300
13 Las Vegas, Nevada 89103
14 Tele: (702) 366-1888

15 Counsel for Plaintiffs
16

17 Dated: February 16, 2022
18
19
20
21
22
23
24
25
26

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

CERTIFICATE OF SERVICE

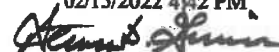
Pursuant to the Nevada Rules of Civil Procedure, the undersigned hereby certifies that on this day, February 16, 2022, a copy of the foregoing **NOTICE OF ENTRY OF ORDER AND DECISION REGARDING VALLEY HEALTH SYSTEM'S MOTION FOR FEES AND COUNTERMOTION FOR FEES AND COSTS** was filed and served through the Court's electronic filing system upon all parties and counsel identified on the Court's master e-service list.

/s/ *Shelbi Schram*

Shelbi Schram, Litigation Assistant
PAUL PADDA LAW

EXHIBIT A

EXHIBIT A


 CLERK OF THE COURT

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

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

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

Plaintiffs,

vs.

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

**ORDER RE: VALLEY
HEALTH SYSTEM'S
MOTION FOR FEES
AND COUNTERMOTION
FOR FEES AND COSTS**

Defendants.

INTRODUCTION

The above-referenced matter is scheduled for a hearing on 2/18/22, with regard to Defendant, Valley Health System (Centennial Hospital's) Motion for Attorneys' Fees and Countermotion for Fees and Costs. Pursuant to the Administrative Orders of the Court, as well as EDCR 2.23, these matters may be decided with or without oral argument. This Court has determined that it would be appropriate to decide these matters on the pleadings, and consequently, this Order issues.

FACTUAL AND PROCEDURAL HISTORY

On May 3, 2017, Rebecca Powell ("Plaintiff") was taken to Centennial Hills Hospital, a hospital owned and operated by Valley Health System, LLC ("Defendant") by EMS services after she was discovered with labored breathing and vomit on her face. Plaintiff remained in Defendant's care for a week, and her condition improved.

1 However, on May 10, 2017, her condition began to deteriorate and on May 11, 2017, she
2 suffered an acute respiratory failure, resulting in her death.

3 Plaintiffs brought suit on February 4, 2019 alleging negligence/medical
4 malpractice, wrongful death pursuant to NRS 41.085, and negligent infliction of
5 emotional distress. Defendants filed Motions to Dismiss and for Summary Judgment,
6 which this Court denied. After a recent remand from the Nevada Supreme Court, on
7 11/19/21, the Court entered an Order Vacating Prior Order Denying Defendant Valley
8 Health System, LLC DBA Centennial Hills Hospital Medical Center's Motion for
9 Summary Judgment and Granting Said Defendant's Motion for Summary Judgment
10 Per Mandamus of Nevada Supreme Court. A Notice of Entry of Order was entered that
11 same day. On 11/22/21, Defendant Valley Health Systems filed a Motion for Attorneys
12 Fee and Verified Memorandum of Costs. On 12/3/21, Plaintiffs filed a Motion to
13 Extend Time to Respond to Defendants' Valley Health Systems, Dr. Dionice S. Juliano,
14 Dr. Conrado Concio, and Dr. Vishal Shah's Memorandums of Costs. Plaintiffs received
15 an Order Shortening Time on 12/10/21. Following briefing, the Court entered an Order
16 denying Plaintiffs' Motion to Extend Time to Respond, because of a lack of diligence on
17 part of the Plaintiffs. On 12/20/21, Valley filed an Opposition to Plaintiff's Motion to
18 Extend Time to Retax Costs, and Countermotion for Fees and Costs.

19 **SUMMARY OF LEGAL AND FACTUAL ARGUMENTS**

20 Defendant Valley Health System, LLC d/b/a Centennial Hills Hospital Medical
21 Center (CHH) seeks attorneys' fees pursuant to NRCP 68(f) and NRS 17.117(10). CHH
22 argues that it is entitled to an award of attorneys' fees because Plaintiffs rejected CHH's
23 Offer of Judgment and then failed to obtain a more favorable judgment. See *Albios v.*
24 *Horizon Cmtys., Inc.*, 122 Nev. 409, 417, 132 P.3d 1022 (2006); *Logan v. Abe*, 131 Nev.
25 260, 268, 350 P.3d 1139 (2015).

26 CHH states that it served an Offer of Judgment on Plaintiffs for a waiver of any
27 presently or potentially recoverable costs, in full and final settlement of the Plaintiff's
28 claims. Plaintiffs rejected this Offer of Judgment by failing to accept it within 14 days.
N.R.C.P. 68(e) and N.R.S. 17.117(6). As this Court was directed by the Supreme Court to
vacate its order denying summary judgment to CHH and instead issue an order
granting CHH's summary judgment motion, Plaintiffs failed to obtain more a favorable
judgment than the one offered to them in CHH's Offer of Judgment. Thus, pursuant to

1 N.R.C.P. 68 and N.R.S. 17.117, this Court has discretion to award CHH its attorneys'
2 fees.

3 CHH cites to *Schouweiler v. Yancey Co.*, for the proposition that a Court must
4 consider the following factors in exercising its discretion to award fees: (1) whether
5 the offeree brought his claims in good faith; (2) whether the offeror's offer of judgment
6 was also brought in good faith in both timing and amount; (3) whether the offeree's
7 decision to reject the offer of judgment was in bad faith or grossly unreasonable; and
8 (4) whether the amount of offeror's requested fees is reasonable and justified.

9 *Schouweiler*, 101 Nev. 827, 833, 917 P.2d 786 (1985). CHH argues that all of the
10 *Schouweiler* factors weigh in favor of CHH.

11 As to the first factor, CHH notes that the Supreme Court determined Plaintiffs
12 were on notice of any alleged malpractice in this case, in possession of records long
13 before the statute of limitations expired, and knowingly initiated complaints to State
14 agencies manifesting definitive knowledge and belief of malpractice. Nevertheless,
15 CHH argues, Plaintiffs chose to initiate a lawsuit "which was dead on arrival,
16 continued to maintain it even after irrefutable evidence demonstrated its untenability,
17 and then used every opportunity to prevent the expenditure of additional resources in
18 order to prove the impropriety of the lawsuit." Accordingly, Plaintiffs' claims were not
19 brought in good faith.

20 With regard to the second factor, CHH argues that its Offer of Judgment was
21 brought in good faith in both timing and amount. At the time of the Offer, CHH had
22 incurred over \$58,000.00 in costs defending Plaintiffs' claims. The Offer was served
23 several days prior to CHH's Motion for Summary Judgment and about one and a half
24 years after the lawsuit's commencement. Before the Motion for Summary Judgment
25 was filed, Plaintiffs were in possession of documents that demonstrated irrefutable
26 evidence of inquiry notice. Plaintiffs were on notice of the statute of limitations issues
27 as early as July 2019 when CHH's prior counsel filed a Motion to Dismiss. Therefore,
28 given Plaintiffs' likelihood of losing on merits, the offered waiver of the right to seek
reimbursement of costs was reasonable in both timing and amount.

For similar reasons, CHH argues that Plaintiffs' decision to reject the offer of
judgment was in bad faith and grossly unreasonable. Instead of abandoning their

1 untimely filed action, Plaintiffs' decision to pursue an untenable case caused CHH to
2 incur substantial legal costs and expenses to seek dismissal.

3 CHH argues that the fourth factor regarding the reasonableness of CHH's
4 requested attorneys' fees also weighs in favor of CHH. Pursuant to NRCP 68, CHH may
5 recover their attorneys' fees from the date of service of the Offer of Judgment to the end
6 of the matter. In this case, CHH served an Offer of Judgment on 8/28/20 that expired
7 on 9/11/20. CHH states it incurred a total of \$110,930.85 in attorneys' fees alone (not
8 inclusive of expenses) from 8/28/20 to the present billing cycle (which does not
9 include all fees incurred in October 2021). Additionally, CHH incurred \$31,401.10 in
10 disbursements including expert fees and other expenses since 8/28/20.

11 CHH argues that the amount of its bills is reasonable, given the amount of time
12 and energy needed to defend this case, engage in extensive written discovery, extensive
13 motions and appeals practice, and, expert time and expenses, due to Plaintiffs' refusal
14 to stipulate to stay the litigation while the summary judgment issue made its way
15 through the court system. Additionally, medical malpractice cases are complex, involve
16 substantial amounts of expert testimony, and require a great deal of preparation. CHH
17 states that documents are available for in camera review by this Court, but were not
18 attached to the Motion in order to preserve attorney-client privilege and protect
19 information contained within the descriptions of the attorney billing.

20 With regard to the *Brunzell vs. Golden Gate* analysis, CHH indicates that
21 attorneys Mr. Garth and Mr. Vogel are experienced litigators that focus exclusively on
22 medical malpractice. Both have practiced many years and are partners at Lewis
23 Brisbois. They both billed \$225/hour on this matter. Where appropriate, work was also
24 assigned to associate attorneys (\$193.50/hour) and paralegals (\$90/hour).

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

There were multiple highly skilled expert witnesses presented by both parties.
Further, nearly 14 months have passed since CHH's Offer of Judgment expired,
including the participation in motion practice regarding a motion for summary

1 judgment, two motions to stay proceedings (one in this Court and one in Supreme
2 Court), a writ petition to the Nevada Supreme Court, as well as extensive written
3 discovery. CHH argues that its requested attorneys' fees are well below the amounts
4 Nevada courts have found reasonable. Defendants are only requesting attorneys' fees at
5 a rate of \$225 and \$193.50 per hour, and a paralegal rate of \$90 per hour. CHH argues
6 that a consideration of the *Brunzell* factors shows that the recovery of the entire billed
7 amount of fees from August 28, 2020 to present is entirely appropriate. *Brunzell*, 85
8 Nev. 345, 455 P.2d 31 (1969).

9 In addition to all NRCP Rule 68 post offer fees and costs, CHH requests that
10 sanctions be imposed against Plaintiffs' counsel for all pre-NRCP Rule 68 costs and fees
11 totaling \$58,514.36 in accordance with NRS 7.085. CHH cites to EDCR 7.60, which
12 provides a further avenue of deterrence to attorneys, like Plaintiffs' counsel who engage
13 in these unnecessary and flagrantly frivolous lawsuits, which are dead before they are
14 even filed. Accordingly, CHH argues that an award of \$110,930.85 in attorneys' fees per
15 N.R.C.P. 68 and N.R.S. §§ 17.117, plus \$58,514.36 in pre-NRCP 68 offer fees and
16 expenses pursuant to N.R.S. §§ 7.085, 18.010(2) and EDCR 7.60, is justified. CHH
17 argues that it is entitled to an award of his attorney's fees and costs under NRS
18 §18.010(2)(b), as Plaintiffs maintained the lawsuit without reasonable grounds or to
19 harass the Defendants.

20 CHH's separately filed a Verified Memorandum of Costs indicates that it seeks
21 costs, pursuant to NRS 18.005 and 18.020, as well as NRCP 68 and NRS 17.117, in the
22 amount of \$42,492.03. A majority of the costs requested (\$41,724.10) are for expert
23 fees. CHH argues that the experts all meet the factors set forth in *Frazier v. Drake*.

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

1 Plaintiffs argue that the dismissal of the case on an incorrect interpretation of
2 the facts and application of inquiry notice to all the named Plaintiffs by the Supreme
3 Court does not make the claims of Plaintiffs any less meritorious. Further, pursuant to
4 NRCP 68, and NRS 17.117(10), a party is not entitled to attorney's fees simply because it
5 served an offer of judgment on the opposing party and that party failed to achieve a
6 more favorable verdict. The purpose of NRCP 68 is to encourage settlement; it is not to
7 force Plaintiffs' unfairly to forego legitimate claims. See *Beattie v. Thomas*, 99 Nev.
8 579, 668 P.2d 268 (1983).

9 Plaintiffs argue that their claims were brought in good faith, as HHS determined
10 that there were deficiencies in Ms. Powell's care and the death certificate was
11 inaccurate. Additionally, this Court repeatedly found merit in Plaintiffs' Complaint and
12 their causes of action for wrongful death, medical malpractice, and negligent infliction
13 of emotional harm.

14 Plaintiffs argue that Defendant's Offer of Judgment, to waive costs and fees, of
15 \$58,514.36 was not reasonable and nor was it in good faith considering Plaintiffs'
16 causes of action for medical malpractice, wrongful death, and negligent infliction of
17 emotional harm. Plaintiffs lost their mother, who was only 41 years old at the time of
18 her death. It was reasonable for Plaintiffs to reject Defendants' Offer of Judgment, as
19 the terms of the Offer of Judgment did not provide for any monetary recovery to
20 Plaintiffs to compensate them for the loss of their mother. CHH indicated at the time it
21 had incurred \$53,389.90 in fees and \$5,124.46 in costs, but no supporting documents
22 were provided. Moreover, this Court denied the Motion for Summary Judgment.
23 Therefore, CHH incorrectly states that given the likelihood of losing on this issue, the
24 offered waiver of right to seek reimbursement of costs was reasonable in both timing
25 and amount. Further, Plaintiffs contend that their decision to reject the Offer of
26 Judgment was not grossly unreasonable nor in bad faith because no amount was being
27 offered in damages to the Plaintiffs.

28 With regard to the fees sought, Plaintiffs argue that CHH won on a technicality
at the Supreme Court, and not on the merits or by way of a jury verdict in favor of
Defendants. Plaintiffs argue that CHH incurred so much in fees because it continued
filing motions based on the same statute of limitations theory. Thus, CHH's fees are
unreasonable and unjustified. Plaintiffs also claim they are unable to properly evaluate

1 the reasonableness of CHH's attorney's fees because Defendant only presented a
2 summary of the fees that were incurred.

3 Plaintiffs argue that it is absurd for CHH to suggest that the provisions of NRS
4 7.085 even apply to the facts of this case, and that Plaintiffs' attorneys violated NRS
5 18.010(2), NRCP 11 or EDCR 7.60. Plaintiffs further argue that CHH has not provided
6 factual support to support the request for pre-NRCP 68 costs and fees pursuant to NRS
7 7.085. Plaintiffs ask that this Court deny the application for fees and costs as the
8 Plaintiffs did not submit frivolous or vexatious claims and did not over burden the
9 limited judicial resources nor did it hinder the timely resolution of meritorious claims.
10 Similarly, Plaintiffs contend that CHH has not provided any factual support for its
11 request for attorneys' fees pursuant to EDCR 7.60 or 18.010(2).

12 In Reply, CHH argues that Plaintiffs' entire opposition is predicated on the false
13 assertion that they possessed a viable case in the first instance. CHH argues that,
14 "Plaintiffs' entire argument is that because this Court repeatedly denied dismissal
15 attempts by the respective defendants despite clear, convincing, and irrefutable
16 evidence of inquiry notice which each and every plaintiff possessed, they are somehow
17 absolved from either their malpractice or unethical practice of pursuing a case which
18 was dead on arrival when filed."

19 CHH argues that the Nevada Supreme Court held that the "district court
20 manifestly abused its discretion when it denied summary judgment." CHH argues that
21 this matter should have been dismissed a year ago at the latest.

22 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

23 With regard to the requested costs, in *Frazier v. Drake*, 131 Nev. 632, 357 P.3d
24 365 (NV.Ct.of App., 2015), the Court noted that NRS 18.005(5) provides for the
25 recovery of "reasonable fees of not more than five expert witnesses in an amount of not
26 more than \$1,500 for each witness unless the court allows a larger fee after
27 determining that the circumstances surrounding the expert's testimony were of such
28 necessity as to require the larger fee." *Id.*, at 644. The Court went on to state the
following:

... we conclude that any award of expert witness fees in excess of \$1,500
per expert under NRS 18.005(5) must be supported by an express,
careful, and preferably written explanation of the court's analysis of
factors pertinent to determining the reasonableness of the requested fees
and whether "the circumstances surrounding the expert's testimony were

1 of such necessity as to require the larger fee." See NRS 18.005(5); cf.
2 *Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 93, 787 P.2d 777, 780
3 (1990) (requiring an "express, careful and preferably written explanation"
4 of the district court's analysis of factors pertinent to determining whether
5 a dismissal with prejudice is an appropriate discovery sanction). *In*
6 *evaluating requests for such awards, district courts should*
7 *consider the importance of the expert's testimony to the*
8 *party's case; the degree to which the expert's opinion aided*
9 *the trier of fact in deciding the case; whether the expert's*
10 *reports or testimony were repetitive of other expert witnesses;*
11 *the extent and nature of the work performed by the expert;*
12 *whether the expert had to conduct independent investigations*
13 *or testing; the amount of time the expert spent in court,*
14 *preparing a report, and preparing for trial; the expert's area*
15 *of expertise; the expert's education and training; the fee*
16 *actually charged to the party who retained the expert; the fees*
17 *traditionally charged by the expert on related matters;*
18 *comparable experts' fees charged in similar cases; and, if an*
19 *expert is retained from outside the area where the trial is held,*
20 *the fees and costs that would have been incurred to hire a*
21 *comparable expert where the trial was held.*

22 *Id.*, at 650-651.

23 The Defendant, CHH, argues the importance of the testimony of each of the
24 witnesses, and how their respective opinions were necessary for the Defendant's case.
25 CHH argues that the medical experts expended "many hours," and "prepared two
26 written reports." There was no discussion in the briefing about repetitiveness, whether
27 they had to conduct independent investigations or testing, the amount of time spent in
28 court, preparing reports, or preparing for trial, the fees charged to the Defendant, and
the fees traditionally charged, and what they charge compared to other experts, etc.
Consequently, the Court could allow the expert fee of \$1,500.00, for up to 5 expert
witnesses, if the Court were able to find that the experts were relevant and the fees
incurred, but the Court cannot allow expert fees in excess of \$1,500.00 without a
Frazier analysis.

Additionally, the Court notes that any costs awarded need to be itemized and
documented. The Nevada Supreme Court has stated that without "itemization or
justifying documentation," the Court is "unable to ascertain whether such costs were
accurately assessed." *Bobby Berosini, Ltd. V. People for the Ethical Treatment of*
Animals, 114 Nev. 1348, 1353, 971 P.2d 383 (1998). Further, when the "memorandum

1 of costs is completely void of any specific itemization,” and a “lack of supporting
2 documentation,” it is an abuse of discretion on the part of the Court if it awards the
3 requested costs. *Id.* The Supreme Court has further indicated that “‘justifying
4 documentation’ must mean something more than a memorandum of costs.” *Cadle Co.*
5 *v. Woods & Erickson, LLP*, 131 Nev. 114, 121, 345 P.3d 1049 (2015). The Court has
6 further indicated that “Without evidence to determine whether a cost was reasonable
7 and necessary, a district court may not award costs.” *Id.*, citing *Peta*, 114 Nev. at 1353,
8 971 P.2d at 386. In this case, Defendant produced a “Disbursement Diary,” but based
9 on the above-referenced cases, this is insufficient to support the requested costs. There
10 is insufficient evidence submitted for the Court to determine whether the requested
11 costs were reasonable and necessary, there was no specific itemization, other than the
12 Disbursement Diary, and there were no supporting documents.

13 Based upon the foregoing, the Court cannot award costs.

14 NRCP 68 provides in pertinent part as follows:

15 **Rule 68. Offers of Judgment**

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

22

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

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

26 (2) Within 21 days after service of written notice that the offer is
27 accepted, the obligated party may pay the amount of the offer and obtain
28 dismissal of the claims, rather than entry of a judgment.

(3) If the claims are not dismissed, at any time after 21 days after
service of written notice that the offer is accepted, either party may file
the offer and notice of acceptance together with proof of service. The clerk
must then enter judgment accordingly. The court must allow costs in
accordance with NRS 18.110 unless the terms of the offer preclude a
separate award of costs. Any judgment entered under this section must be
expressly designated a compromise settlement.

(e) Failure to Accept Offer. If the offer is not accepted within 14
days after service, it will be considered rejected by the offeree and deemed
withdrawn by the offeror. . . . Any offeree who fails to accept the offer
may be subject to the penalties of this rule.

(f) Penalties for Rejection of Offer.