

**IN THE SUPREME COURT OF THE STATE OF NEVADA**  
VALLEY HEALTH SYSTEM, LLC d/b/a DESERT  
SPRINGS HOSPITAL,

*Petitioner,*

v.

THE EIGHTH JUDICIAL DISTRICT COURT OF  
THE STATE OF NEVADA ex rel. THE COUNTY  
OF CLARK, AND THE HONORABLE JUDGE  
GLORIA STURMAN,

*Respondents,*

and

LASHAWANDA WATTS,

*Real Party in Interest,*

And

HOLAVANAHALLI KESHAVA- PRASAD, M.D.  
AND H. KESHAVA PRASAD, MD, PLLC,  
ABDUL TARIQ, D.O.; NEUROLOGY CLINICS OF  
NEVADA LLC; AMIR QURESHI, M.D.; ROE AMIR  
QURESHI, M.D. EMPLOYER; ALI HAQ, M.D.; ROE  
ALI HAQ, M.D. EMPLOYER; CHARLES KIM  
DANISH, D.O.; PLATINUM HOSPITALISTS, LLP;  
DOES 1-35; ROE CORPORATIONS 1-35, inclusive,

*Additional Parties in Interest.*

Supreme Court No.

84910

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**PETITION FOR WRIT OF MANDAMUS AND/OR PROHIBITION**

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**NRAP 26.1 DISCLOSURE**

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

1. Valley Health System, LLC d/b/a Desert Springs Hospital Medical Center (“Desert Springs”) is wholly owned by Valley Hospital Medical Center, Inc., which is an indirect subsidiary of Universal Health Services, Inc. (“UHS”), a publicly held company.
2. Names of all law firms whose attorneys have appeared for the party or amicus in this case (including proceedings in the district court or before an administrative agency) or are expected to appear in this court: Hall Prangle & Schoonveld, LLC; Lewis Brisbois Bisgaard & Smith LLP; Brenske Andreevski & Krametbauer; McBride Hall; Collinson, Daehnke, Inflow & Greco; John H. Cotton & Associates, LTD.
3. If litigant is using a pseudonym, the litigant’s true name: N/A

Dated this 29th day of July 2022.

HALL PRANGLE & SCHOONVELD, LLC

By: /s/ Kenneth M. Webster, Esq.

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**PETITION FOR WRIT OF MANDAMUS AND/OR PROHIBITION**

Petitioner, Valley Health System, LLC d/b/a Desert Springs Hospital Medical Center (“Desert Springs”), by and through their attorneys of record, Hall Prangle & Schoonveld, LLC, pursuant to Nevada Rule of Appellate Procedure 21 and based on this Court’s original jurisdiction as set forth in Article 6 § 4 of the Nevada Constitution and NRS 34.160, hereby respectfully petition this Honorable Court to issue a Writ of Mandamus and/or Prohibition directing the Honorable Gloria J. Sturman (“Respondent”) to:

- 1) vacate her January 26, 2022 Order (P.A. 145- 78); and
- 2) enter an order granting Desert Springs’ Motion for Partial Dismissal of Plaintiff’s Complaint because Count I of her complaint alleging a claim for “Hospital Negligence”, even when read together with the attached expert affidavits, fails to state a separate claim for direct negligence against Desert Springs in compliance with NRS 41A.071.

1. This matter arises out of the medical treatment provided to Plaintiff Lashawanda Watts at Desert Springs Hospital between July 20-27, 2020. (P.A. 1-53). In her complaint filed on July 22, 2021, Plaintiff brought claims alleging professional negligence against various physicians and their employers, including Holavanahalli Keshava-Prasad, M.D. and H. Keshava Prasad, M.D., PLLC; Amir Qureshi, M.D. and Roe Amir Qureshi, M.D. Employer; Ali Haq, M.D. and Roe Ali

1 Haq, M.D. Employer; and Charles Kim Danish, D.O. and Platinum Hospitalists,  
2 LLP. (*Id.*). Specifically, Plaintiff alleged that these physicians were negligent,  
3 *inter alia*, in failing “to provide appropriate treatment for vasculitis when the  
4 diagnosis was initially suspected”; failing to follow up or address a blood test  
5 result that was ordered and resulted prior to the patient’s departure from Desert  
6 Springs Hospital which would have assisted in the diagnosis of vasculitis”; and  
7 failing to order a rheumatology consultation or transferring the patient to a higher  
8 level of care at a tertiary care center.” (P.A.11-13, 15-17, 18-20, 21, 23, 24-26).  
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12 2. In addition, Plaintiff’s complaint also asserted two claims against  
13 Desert Springs, one (Count I) entitled “Hospital Negligence” and another (Count  
14 VII) entitled “Vicarious Liability”. (P.A.7-11, 27-28). In support of her “Hospital  
15 Negligence” claim, Plaintiff asserted the same allegations of negligent conduct by  
16 the co-defendant physicians but did not specifically identify by name or describe  
17 by conduct the alleged negligent actor(s) from the hospital or assert any specified  
18 acts of alleged negligence as to them. (P.A.7-11). Plaintiff’s “Vicarious Liability”  
19 claims also restated her allegations of negligence by the co-defendant physicians  
20 and sought to hold Desert Springs liable for their conduct. (P.A.27-28). While also  
21 seeking to hold the hospital liable for the conduct of its “nurse practitioners,  
22 nurses, technicians, medical assistants, and/or other medical professionals or staff,”  
23 Plaintiff’s “Vicarious Liability” claims did not assert any new or additional  
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1 allegations of negligence or further describe by name or specific conduct the  
2 allegedly negligent non-physician alleged agent(s)/employee(s). (*Id.*).

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4 3. In support of her professional negligence claims, Plaintiff attached the  
5 affidavits of merit of two physicians, rheumatology and internal medicine  
6 physician, Dr. Rebecca M. Shepherd, and surgeon, Dr. Mark A. Smith. (P.A.34-38,  
7 44-46). While both Dr. Shepherd's and Dr. Smith's affidavits identified the  
8 physician defendants by name and asserted a specific act or acts of alleged  
9 negligence as to each of them (*e.g., id.* at 35-36, 44), neither affidavit identified  
10 any nurses, technicians, or other hospital employees by name (or other  
11 description), and/or separately set forth any specific act or acts of alleged  
12 negligence by them or the hospital. (P.A.34-38, 44-46).

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16 4. In lieu of filing an answer, Desert Springs moved to dismiss Count I  
17 ("Hospital Negligence") of Plaintiff's complaint pursuant to NRCP 12(b)(5) on the  
18 grounds that it did not alleged facts sufficient to support a claim against it based on  
19 conduct independent of the co-defendant physicians' alleged negligence. (P.A.54-  
20 117). More specifically, Desert Spring's motion asserted that while titled  
21 "Hospital Negligence," Count I of Plaintiff's complaint was duplicative of her  
22 "Vicarious Liability" claim because it did not contain any allegations of  
23 institutional negligence, nursing negligence, or any other factual allegations of any  
24 kind specifically setting for a breach of the standard of care by the hospital itself,  
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1 its nurses, technicians, or any of its other employees. (P.A.59-60, 62). Instead,  
2 while broadly stating that “Desert Springs Hospital and/or its physicians, agents,  
3 employees, nursing staff breached its duty to plaintiff Lashawanda Watts,” the  
4 proceeding allegations merely restated her allegations of negligent conduct by its  
5 co-defendant physicians. (*Id.*).

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8 5. In addition, Desert Spring’s motion asserted that dismissal of Count I  
9 was also warranted under NRS 41A.071 because neither affidavit of merit satisfied  
10 NRS 41A.071’s specificity requirements to support a direct negligence claim  
11 against the hospital. Indeed, neither affidavit separately identified by name or  
12 described by conduct, the hospital itself or any nurse, technician, or other hospital  
13 employee who was negligent, and separately attributed a “specific act or acts of  
14 alleged negligence” to them such that Desert Springs could be found to be on  
15 notice of the nature and basis of the claim asserted against it. (P.A.60-62); NRS  
16 41A.071.  
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20 6. Plaintiff opposed the motion, arguing that her claims against Desert  
21 Springs were not duplicative because Count I was separately titled “Hospital  
22 Negligence,” and thus was sufficient under Nevada’s notice pleading standard to  
23 advise Desert Springs of her direct negligence claim against it. (P.A.118-35).  
24 Furthermore, Plaintiff asserted that when read together with her complaint, Dr.  
25 Shepherd’s and Dr. Smith’s affidavits satisfied NRS 41A.071’s specificity  
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1 requirements because when stating that “*the providers* at Desert Springs” fell  
2 below the standard of care, she was necessarily also referencing the hospital’s  
3 nurses and other hospital employees, and not just the named co-defendant  
4 physicians. (P.A.121-22) (emphasis added).

6 7. In its reply, Desert Springs asserted that simply labeling a claim  
7 “Hospital Negligence” is not enough to satisfy Nevada’s notice pleading  
8 requirements. (P.A.136-44). Rather, Plaintiff was required to present specific facts  
9 which, if proven, would entitle her to recover against Desert Springs independent  
10 of any negligence by its co-defendant physicians. (P.A.138). Furthermore, and  
11 contrary to Plaintiff’s assertions, a plain reading of both her complaint and her  
12 expert’s affidavits demonstrates that their references to “the providers at Desert  
13 Springs” pertained solely to the co-defendant physician and did not encompass any  
14 nurses, technicians or other hospital employees. (P.A.139-42). In any event, even  
15 if “the providers at Desert Springs” included its nurses, technicians, and/or other  
16 hospital employees, neither the proceeding allegations of her complaint nor her  
17 experts’ affidavits alleged specific facts from which Desert Springs could identify  
18 which of its employees were negligent, how they were negligent, when that  
19 negligence occurred, and/or whether such negligence was based upon hospital  
20 policies and procedures, nursing negligence, or some other conduct *independent* of  
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its alleged vicarious liability for the co-defendant physicians' alleged negligence.  
(P.A.141-43).

8. On October 12, 2021, after entertaining oral arguments<sup>1</sup>, the district court denied Desert Springs' motion<sup>2</sup>. (P.A.179-99). Notwithstanding the absence of any specific allegations of alleged negligent conduct by the hospital itself, its nurses/technicians, or any other hospital employee, the district court found that when read together, Plaintiff's complaint and the attached affidavits of merit were sufficient to put Desert Springs on notice "of what's being alleged with respect to them." (P.A.198). A written order denying Desert Spring's motion for partial dismissal of Plaintiff's complaint was entered on January 26, 2022. (P.A.145-59). Notice of entry of the district court's order was subsequently filed and served on January 27, 2022. (P.A.160-78).

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<sup>1</sup> In addition to Desert Springs' motion for partial dismissal, the district court also entertained argument on the co-defendant physicians' separately-filed motions to dismiss. Those motions, to which Desert Springs joined, sought dismissal on the grounds, *inter alia*, that the medical expert affidavits attached to her complaint did not comply with NRS 41A.071 because they were authored by physicians who did not practice in the same or substantially similar area of practice as the named defendant physicians. The district court subsequently denied the defendant physicians' motions. Dr. Keshava-Prasad and her employer, H. Keshava-Prasad, PLLC, have since filed a Petition for Writ of Mandamus seeking this Court's review of the order denying their motion.

<sup>2</sup> The Recorder's transcript for the hearing on the defendants' motions was not filed with the district court until April 22, 2022. (P.A.179).

1           9.     Desert Springs respectfully contends Respondent erred in denying its  
2 motion to dismiss because a plain reading of Count I of Plaintiff's complaint  
3 demonstrates that it does not set forth an independent basis for imposing liability  
4 on the hospital, but instead merely restates the same allegations underlying her  
5 "Vicarious Liability" claim. Indeed, contrary to Respondent's holding, Count I of  
6 Plaintiff's complaint does not put Desert Springs on notice of the nature and basis  
7 of any purported independent claim asserted against it, *i.e.*, when and by whom the  
8 alleged negligent acts were committed, and whether that claim is based upon  
9 ordinary negligence or professional negligence, including negligent hospital  
10 policies and procedures, nursing negligence, or some other conduct *independent* of  
11 its alleged vicarious liability for the co-defendant physicians' alleged professional  
12 negligence. Accordingly, for this reason alone, respondent erred in denying  
13 Petitioner's motion.  
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19           10.   Respondent further erred in finding that the attached affidavits, when  
20 read together with Plaintiff's complaint, were sufficiently specific to fill the void  
21 left by the complaint allegations and satisfy NRS 41A.071. Indeed, much like  
22 Plaintiff's complaint, neither affidavit specifically identifies by name or by conduct  
23 the hospital itself, a nurse(s), a technician(s), or any other hospital employee *and*  
24 attributes specific acts of negligence to them that are independent on the  
25 allegations asserted against the co-defendant physicians. Rather, both affidavits  
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1 exclusively focus their opinions on the conduct of the co-defendant physicians and  
2 are devoid of any independent allegations of negligence by the hospital itself, its  
3 nurses, or any other hospital employee(s). Accordingly, even when read together  
4 with Plaintiff's complaint, the expert affidavits fail to place Desert Springs on  
5 notice of the nature and basis of Plaintiff's purportedly separate direct negligence  
6 claim against it, and thus that claim should have been dismissed.  
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9       Wherefore, based on the foregoing and the accompanying Points and  
10 Authorities, Petitioner respectfully requests this Court issue a Writ of Mandamus  
11 ordering Respondent to vacate the January 26, 2022 Order, and dismiss Count I of  
12 Plaintiff's complaint.  
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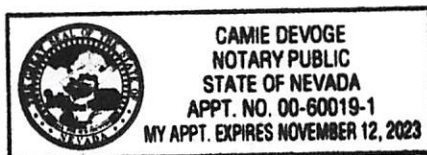
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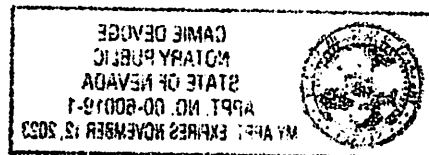
Under penalty of perjury, the undersigned declares that he is the attorney for  
Petitioner and knows the contents of the foregoing Petition; that the pleading is  
true of his own knowledge, except as to those matters stated on information and  
belief, and that as to such matters he believes to be true. This verification is made  
by the undersigned attorney pursuant to NRS 15.010, on the ground that the  
matters stated, and relied upon, in the foregoing Petition are all contained in the  
prior pleadings and other records of the District Court, true and correct copies of  
which have been attached hereto.

  
\_\_\_\_\_  
TYSON J. DOBBS, ESQ.

SUBSCRIBED AND SWORN to before me  
on this 29 day of July 2022

  
\_\_\_\_\_  
NOTARY PUBLIC in and for said  
County of Clark and State of Nevada







## **POINTS AND AUTHORITIES**

### **I. STATEMENT OF ISSUE PRESENTED FOR REVIEW.**

Did Respondent err in denying Desert Springs' Motion for Partial Dismissal of Plaintiff's complaint under NRCP 12(b)(5) when the complaint and attached affidavits, even when read together, failed to set forth facts identifying the allegedly negligent hospital employees and attribute specific acts of negligence to them as required under NRS 41A.071?

### **II. ROUTING STATEMENT**

Petitioner submits that this Petition for Writ of Mandamus falls within one of the categories of cases retained by this Court pursuant to NRAP 17(a). *See* NRAP 17(a): "Matters raising as a principal issue of question of statewide importance." The principal issue here – the interpretation and application of NRS 41A.071's specificity requirements – is a matter of statewide importance because the application of these safeguards against frivolous lawsuits affect all Nevada Hospitals and all Nevada physicians who are named as defendants in actions alleging professional negligence.

### **III. STATEMENT OF FACTS**

The following facts are taken from Plaintiff's complaint, the expert affidavits attached thereto and the papers and pleadings on file with the district court.

**Ms. Watts Presents to Desert Springs For Treatment.**

On July 20, 2020, Plaintiff Lashawanda Watts presented to Desert Springs Hospital “complaining of increasing discomfort and discoloration of both of her feet.” (P.A.5). Upon her admission, co-defendant Dr. Charles Kim Danish became Plaintiff’s attending physician. (P.A.6). Over the next week, various consulting physicians were called into participate in Plaintiff’s care, including internal medicine physician (and co-defendant) Dr. Ali Haq, neurologist (and co-defendant) Dr. Abdul Tariq, infectious disease physician (and co-defendant) Dr. Amir Qureshi, and hematologist/oncologist (and co-defendant) Dr. Holavanahalli Keshava-Prasad. (*Id.*). During her treatment, Plaintiff’s physicians noted a tentative diagnosis of “probable vasculitis” and ordered various additional testing and treatments, including steroids and other pharmaceutical therapies. (*Id.*). On July 27, 2020, Plaintiff was discharged to Encompass Health Rehabilitation Hospital of Henderson. (P.A.7). She was later transferred to University Medical Center and then to Dixie Regional Medical Center in Utah where the previous tentative vasculitis diagnosis was confirmed and treatment was continued. (*Id.*). Despite these treatments, Plaintiff ultimately lost four of her toes to amputation and other autoamputated. (*Id.*).

## Plaintiff Files Complaint Asserting Claims For Professional Negligence

On July 22, 2021, Plaintiff filed a complaint against Desert Springs, Dr. Danish, Dr. Tariq, Dr. Qureshi, Dr. Haq, and Dr. Keshava-Prasad arising out of the care and treatment she received at Desert Springs between July 20-27, 2020. (P.A.1-53). As against the named physicians and their employers, Plaintiff's complaint asserted claims entitled "Medical Malpractice" and "Vicarious Liability". (P.A.11-27, 29-31). As against Desert Springs, Plaintiff asserted two claims, one entitled "Hospital Negligence" and the other entitled "Vicarious Liability." (P.A.7-11, 27-28). Plaintiff's "Hospital Negligence" claim alleged in pertinent part:

"42. Defendant DESERT SPRINGS HOSPITAL and/or its physicians, agents, employees, nursing staff, and/or medical team breached its duty to Plaintiff Lashawanda Watts, in numerous ways, including but not limited to:

- a. The physicians Abdul Tariq Do (neurology), Holavanahalli Keshavaprasad M (oncology), Amir Quershi MD (infectious disease), Ali Haq MD (internal medicine) and Charles Kim Danish MD (hospitalist) providing care for Lashawanda Watts fell below the standard of care in the following ways:
  - i. The providers at Desert Springs Hospital neglected to provide appropriate treatment for vasculitis when the diagnosis of vasculitis was initially suspected.
  - ii. The administration of IV methylprednisolone is established as the standard of care in the initial management of small vessel vasculitis. Treatment with IV steroids arrests or slows the autoimmune process, which allows time for the diagnosis to be confirmed. Trials dating back to landmark studies in the 1960

by Fauci et al have demonstrated that effective utilization of pulse dose steroids in the early management of disease.

- iii. Each provider has the training and capability to initiate IV corticosteroids to arrest the inflammatory process while awaiting further work up and management. Specifically, Dr. Abdul Tariq ordered a “vasculitis panel” on 7/23/20. A dose of solumedrol 125mg IV was given on 7/25/20 and solumedrol 40mg IV was given on 7/27/20. Early and consistent administration of IV steroids would have been safe and effective at treating vasculitis while working through the appropriate differential diagnosis and arranging further care.
- iv. The provider Tariq Abdul MD did not follow up or address a blood test result that was ordered and resulted prior to the patient’s departure from Desert Springs Hospital which would have assisted in the diagnosis of vasculitis.
- v. The standard of care for all medical providers is to obtain and review the results of tests that were ordered by that provider, and to do so in a timely fashion. In addition, if a provider is uncertain of the meaning of a result, expert opinion either through reviewing the literature or consulting with an expert, is expected. Dr. Abdul ordered the vasculitis panel on 7/23/20 and the PR3 antibody (for a small vessel vasculitis called ANCA associated with vasculitis or Wegener’s Granulomatosis) was resulted on 7/26/20, but no provider, including Dr. Tariq, made note of or mentioned this result. However, this result was included in the discharge summary by Dr. Danish, such that it is known that the blood test result was available at that time.
- vi. The providers at Desert Springs fell below the standard of care for Miss Watts by not seeking expertise from rheumatology or transferring the patient to a higher level of care at a tertiary care center as soon as the diagnosis of vasculitis was being considered.
- vii. Vasculitis is a rare and deadly disease. The physicians at Desert Springs considered the diagnosis of vasculitis from 7/23/20 but

1 did not have the expertise to manage the vasculitis. The standard  
2 of care set out by the EUVAS Guidelines is to transfer a patient  
3 to a higher level of care. Thus as soon as the providers at Desert  
4 Springs Hospital were concerned about a diagnosis of vasculitis,  
5 especially in light of the lack of availability of rheumatology  
6 consultants, and especially with worsening symptom, the  
7 providers should have transferred Miss Watts to a tertiary care  
8 center so as to prevent progressive damage to imperiled tissues.  
9 Instead, the providers sent Miss Watts to a rehabilitation facility  
10 with a 5 day course of oral steroids on 7/27/20 despite the fact  
11 that Miss Watts was demonstrating worsening symptoms and  
continued 6/10 pain. This led to a delay in care as the patient  
was referred from Encompass Health back to a second acute  
care hospital and finally Dixie Regional Medical Center on  
7/31/20 at which point she was evaluated by a rheumatologist.

viii. This substandard treatment and delay, caused by the providers  
at Desert Springs Hospital, decreased a substantial chance of  
saving her digits from gangrene and ultimately amputation/auto-  
amputation.”

(P.A.8-10). Plaintiff’s “Hospital Negligence” claim did not identify by name or  
describe by conduct any other allegedly negligent actors or contain any other  
alleged specific acts of negligence.

Plaintiff’s second cause of action against Desert Springs, titled “Vicarious  
Liability”, “repeat[ed] and realleg[ed]” the previous allegations of negligence and  
asserted that the hospital “employed doctors, nurse practitioners, nurses,  
technicians, medical assistants, and/or other medical professionals or staff,”  
including the named physician defendants; that the physician defendants were its  
employees, servants, agents and/or associates who were acting within the course

and scope of their employment with Desert Springs; and that because of this relationship Desert Springs is vicariously liable for their negligent acts and omissions. (P.A.27-28).

### The NRS 41A.071 Affidavits

In support of her allegations, Plaintiff attached the affidavits of rheumatologist and internal medicine physician Dr. Rebecca Shepherd, and surgeon, Dr. Mark A. Smith. (P.A.34-53). Prior to stating her opinions, Dr. Shepherd's affidavit stated in pertinent part:

"3. The records are the type usually relied upon by reviewers such as myself. These records appear to be reliable. While it is true that all patient interactions are unique, there are specific medical practices that *a treating physician would be expected to provide to meet the applicable standard of care. I have specifically reviewed these records to determine whether within a reasonable degree of medical probability that standard of care was met.*

4. After review of the aforementioned data, I have come to the following conclusions:

5. *The physicians Abdul Tariq Do[sic] (neurology), Holavanahalli Keshavanprasad [sic] MD (oncology), Amir Quershi MD (infectious disease), Ali Haq MD (internal medicine) and Charles Kim Danish MD (hospitalist) providing care for Lashawanda Watts fell below the standard of care in the following ways...."* (P.A.35).

Dr. Shepherd thereafter delineates the specific details of how the physicians breached the standard of care. (P.A.35-37). Other than identifying Desert Springs Hospital as the location of where Plaintiff's treatment occurred, Dr. Shepherd's affidavit does not identify by name or describe by conduct any nurse, technician, or

1 other hospital employee, or contain any allegations against the hospital itself, either  
2 in the form of allegations of negligent policies and procedures, nursing care or any  
3 other opinions specifically directed against it or one of its employees.  
4

5 Dr. Smith's two-page affidavit stated that he agreed with Dr. Shepherd that  
6 "the providers at Desert Springs Hospital, Abdul Tariq Do (neurology),  
7 Holavanahalli Keshavaprasad MD (oncology), Amir Quershi MD (infectious  
8 disease), Ali Haq MD (internal medicine) and Charles Kim Danish MD  
9 (hospitalist), neglected to provide appropriate treatment for vasculitis when the  
10 diagnosis of vasculitis was initially suspected", and that "[t]his substandard  
11 treatment and delay, caused by the providers at Desert Springs Hospital, decreased  
12 a substantial chance of saving her digits from gangrene and ultimately  
13 amputation/auto-amputation." (P.A.44-45). However, like Dr. Shepherd's  
14 affidavit, Dr. Smith's affidavit does not identify by name or describe by conduct  
15 any nurse, technician, or other employee of the hospital, or contain any allegations  
16 against the hospital itself, either in the form of allegations of negligent policies and  
17 procedures, nursing care or any other opinions specifically directed against it or  
18 one of its employees. *Id.*  
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25 **Desert Springs Files Motion To Partially Dismiss Plaintiff's Complaint.**

26 On August 13, 2021, Desert Springs filed a motion to partial dismiss  
27 Plaintiff's complaint on the grounds that it failed to state a claim under NRCP  
28

1 12(b)(5) and NRS 41A.071. (P.A.54-117). Specifically, Deserts Springs moved  
2 the district court to dismiss Plaintiff's "Hospital Negligence" claim (Count I)  
3 because neither her complaint nor her attached expert affidavits identified by name  
4 or described by conduct the hospital or any of its employees, and "set forth  
5 factually a specific act or acts of alleged negligence separately as to each" of them.  
6 Rather, even when her complaint and the expert affidavits were read together,  
7 Plaintiff's "Hospital Negligence" claim was merely a restatement of her other  
8 claim against the hospital seeking to hold it vicariously liable for the conduct of the  
9 co-defendant physicians. (*Id.*).  
10  
11

12 In her Response, Plaintiff urged that while the allegations of her complaint  
13 "outline specific actions of the physicians chosen by Desert Springs to offer Ms.  
14 Watts' care within her Hospital Negligence claim, she also asserts the hospital  
15 and/or its physicians, agents, employees, nursing staff, and/or medical staff  
16 breached their duties to Plaintiff." (P.A.120). These allegations, Plaintiff asserted,  
17 were sufficient to satisfy Nevada's notice pleading standard and put the hospital on  
18 notice of the nature of the allegations asserted against it. (*Id.*). Additionally, and  
19 contrary to Desert Springs' assertion, Plaintiff argued that the affidavits attached to  
20 her complaint did comply with NRS 41A.071 because they criticized "the  
21 providers at Desert Springs' and not just Desert Springs' named doctor co-  
22 defendants." (P.A.121-22). While neither the affidavits nor the allegations of  
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1 Plaintiff's complain specifically identified any hospital employees by name,  
2 Plaintiff asserted that no such specificity was required because she had described  
3 those individuals by their alleged negligent conduct. (P.A.122-23). Ultimately,  
4 when read together, Plaintiff claimed that dismissal was not required because her  
5 complaint and attached affidavits satisfied NRS 41A.071. (P.A.122, 124).  
6

7  
8 In its Reply, Desert Springs argued that while Plaintiff's complaint broadly  
9 asserts that the entity Desert Springs breached a duty owed to her, it does not  
10 provide any facts supporting that general allegation, including any facts specifying  
11 the duty allegedly breached or by whom, *i.e.*, by the hospital itself or by one of its  
12 employed nurses, technicians or other employees. (P.A.141-43). Ultimately,  
13 Plaintiff's vague allegations were insufficient to place Desert Springs on notice of  
14 the nature and basis of her purported direct negligence claim as required under  
15 NRCP 12(b)(5).  
16  
17  
18

19 Furthermore, Desert Springs urged that dismissal was required because Dr.  
20 Shepherd's and Dr. Smith's affidavits, even when read together with Plaintiff's  
21 complaint, failed to support a direct negligence claim against Desert Springs.  
22 (P.A.139-43). Indeed, a plain reading of their affidavits demonstrate, contrary to  
23 Plaintiff's assertions, that when using the term "providers" to describe the  
24 allegedly negligent actors involved in Plaintiff's care, Drs. Shepherd and Smith  
25 were referring exclusively to the co-defendant physicians and not any other  
26  
27  
28

1 individuals, *i.e.*, nurses, technicians or other hospital employees, involved in her  
2 care. (P.A.141-42). Moreover, even if that was their intention, neither affidavit  
3 specifically identified by name or described by conduct any specific nurse,  
4 technician, or other hospital employee, and asserted a specific act or acts of  
5 negligence by them. Thus, both affidavits failed to comply with NRS 41A.071's  
6 specificity requirements. (P.A.141-43).  
7  
8

### 9 Respondent Denies Desert Springs' Motion

10 On October 12, 2021, Respondent held a hearing on all pending motions  
11 brought by Defendants in response to Plaintiff's complaint, including Desert  
12 Springs' Motion for Partial Dismissal. (P.A.179-99). After entertaining argument,  
13 Respondent denied Desert Springs' motion. (P.A.197-98). In reaching this  
14 decision, Respondent explained:  
15  
16

17 "So I think between – the very specific nature of this complaint that  
18 divides all the allegations into – starting with cause of action number  
19 1, Desert Springs, independent. Desert Springs independent liability.  
20 Then it goes through each of the doctors. Then cause of action number  
21 7, which is vicarious liability for the hospital, and then goes through  
22 vicarious liability for all the doctors. Its puts everybody, I think, on  
23 pretty clear notice as to all the allegations against each of them. And as  
24 I said, I already think the affidavit is sufficient." (P.A.196).

25 With respect to the affidavits, Respondent further reasoned:

26 "THE COURT: Well, so here's – if you read the case law, it says you  
27 read the complaint with the affidavit. Both of the complaints [sic] say  
28 –  
MR. DOBBS: Yes.

1 THE COURT: - the doctors at Desert Springs. They don't say the  
2 doctors and Desert Springs. They just say the doctors at. But you read  
3 the complaint with the affidavit. And as I said, where you've got a  
4 complaint that has very carefully cause of action number 1, negligence  
5 of the hospital, then falls to every doctor. Cause of action number 7,  
6 vicarious liability of the hospital, vicarious liability of all the  
7 physicians. The complaint very carefully separates it out and drafts it  
8 as to each and every individual, which read together with the  
9 complaint, puts the hospital on notice that they are pursuing, whether  
10 they've got all the evidence they need now to proceed with it as Mr.  
11 Brenske's indicated, is a question for another day.

9 But it's a question – this statute is a question of putting you on notice,  
10 and we are told to read the complaint with the affidavit. But this is a  
11 really thorough complaint, and I think it puts everybody on notice of  
12 what's being alleged with respect to them. It's not just the affidavit.  
13 The affidavit is merely there to support that there will be expert  
14 opinions necessary to support these causes of action. It doesn't  
15 establish what the cause of action is. It's there to, as was said earlier,  
16 weed out frivolous complaints. I don't think this is frivolous. The  
17 complaint is very thorough, and I believe provides adequate notice to  
18 all the participants as to all the possible exposure. They have  
19 affidavits of physicians who support these claims. So it's not entirely  
20 frivolous. I think when read together everybody is on notice.”  
21 (P.A.197-98).

#### 22 IV. REASONS WHY A WRIT OF MANDAMUS SHOULD ISSUE.

##### 23 A. Writ Standard.

24 A writ of mandamus is available (1) “to compel the performance of an act  
25 which the law requires as a duty resulting from an office, trust, or station,” NRS  
26 34.160, (2) “to control a manifest abuse of or arbitrary or capricious exercise of  
27 discretion” or (3) “to clarify an important issue of law.” *Bennett v. Eighth Jud.*  
28 *Dist. Ct.*, 121 Nev. 802, 806, 121 P.3d 605, 608 (2005). When a district court's

findings raise questions of law, such as those at issue in this Petition, they are reviewed *de novo*. *Marquis & Aurbach v. Eighth Jud. Dist. Ct.*, 122 Nev. 1147, 1156, 146 P.3d 1130, 1136 (2006). The writ shall be issued in all cases where the petitioner does not have a plain, speedy and adequate remedy in the ordinary course of law, NRS 34.170, or where “no disputed factual issues exist” and summary judgment is clearly required by statute or rule. *Libby v. Eighth Jud. Dist. Ct.*, 130 Nev. 359, 362, 325 P. 3d 1276, 1278 (2014) and *Nevada Assn’ Servs., Inc. v. Eighth Jud. Dist. Ct.*, 130 Nev. 949, 953, 338 P.3d 1250, 1253 (2014).

A writ of mandamus is particularly appropriate here where Respondent has allowed a claim for direct negligence to proceed against a hospital without specific allegations of negligence by the hospital itself (or any of its employees), and which lacks the support of an NRS 41A.071 affidavit filling that gap and identifying which of its employees were negligent and setting forth factually any specific act or acts by those individuals. It is these types of overly broad and threadbare claims which NRS 41A.071 was designed to prevent. As a result, Desert Springs has been deprived of the protections afforded it under Nevada’s Rules of Civil Procedure and NRS 41A.071, and is now left without a fair understanding of the nature or basis of the purported “Hospital Negligence” claim asserted against it. If Respondent’s order is allowed to stand, not only will Desert Springs be without any meaningful ability to defend itself against this undefined claim, but Plaintiff’s

threadbare complaint and attached affidavits will be ripe for use by others as examples of how to circumvent the specificity requirements of NRS 41A.071 and/or pursue wholly speculative claims. Accordingly, this Court’s intervention is needed to both prevent the immediate prejudice to Desert Springs and future plaintiffs use of the instant complaint and affidavits as examples to circumvent the protections afforded defendants under NRS 41A.071.

Having already exhausted all available remedies with the District Court, Petition is now without a plain, speedy and adequate remedy to correct these errors of law except to seek mandamus relief from this Court. *See International Game Tech, Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197-98, 179 P.3d 556, 558-59 (2008) (explaining that this Court “will consider petitions denying motions to dismiss when . . . the district court is obligated to dismiss an action pursuant to clear [statutory] authority”).

**B. Respondent Erred When It Failed To Dismiss Count I of Plaintiff’s Complaint.**

**1. Plaintiff’s “Hospital Negligence” Claim Fails To Allege Specific Acts of Negligence Against Desert Springs Or One Of Its Employees.**

Respondent erred in denying Desert Spring’s Motion to Dismiss Count I of Plaintiff’s Complaint because that claim – titled “Hospital Negligence” – does not set forth factual allegations sufficient to establish a separate claim for direct negligence against Desert. It is well-established that to prevail on a negligence

1 action, a plaintiff must establish four elements: (1) the existence of a duty of care,  
2 (2) breach of that duty, (3) legal causation, and (4) damages. *Sanchez ex rel*  
3 *Sanchez v. Wal-Mart Stores, Inc.*, 125 Nev. 818, 823, 221 P.3d 1276, 1280 (2009).  
4  
5 Where a plaintiff fails to allege facts sufficient to establish each of the elements of  
6 her claim, it must be dismissed. *See* NRCP 12(b)(5).  
7

8 Here, in Count I of Plaintiff's Complaint titled "Hospital Negligence,"  
9 Plaintiff alleges that Desert Springs "and/or its physicians, agents, employees,  
10 nursing staff, and/or medical team breached its duty to Plaintiff Lashawanda Watts,  
11 in numerous ways. . . ." (P.A.8, at ¶42). But the only paragraph within Count I  
12 containing any allegations of negligence is paragraph 42 and the only allegations  
13 contained therein pertain to the conduct of the co-defendant physicians. (*Id.*).  
14  
15 Indeed, despite asserting that Desert Springs' "physicians, agents, employees,  
16 nursing staff, and/or medical team" breached the standard of care, subpart "a." of  
17 paragraph 42 specifically limits its allegations to "[t]he physicians Abdul Tariq Do  
18 (neurology), Holavanahalli Keshavaprasad M (oncology), Amir Quershi MD  
19 (infectious disease), Ali Haq MD (internal medicine) and Charles Kim Danish MD  
20 (hospitalist) . . . ." (*Id.*). None of the sub-parts to subparagraph "a." identify any  
21  
22 specific nurse, technician, or other hospital employee, or contain any specific  
23  
24 allegations of negligence against them, and there is no subparagraph "b."  
25  
26 addressing the alleged negligence of any other individual or individuals.  
27  
28

Thus, while Count I seeks to hold Desert Springs directly liable for its own conduct and/or the conduct of one of its nurses, technicians and/or other hospital employee, it contains no allegations beyond those asserted against the co-defendant physicians detailing the duty owed or the standard of care allegedly breached, who from the hospital breached it, when they breached it and in what manner they breached it. Without such allegations, Plaintiff's "Hospital Negligence" claim is nothing more than a duplicate of her "Vicarious Liability" claim. To the extent that it truly is intended to assert a separate claim for direct negligence against Desert Springs, the absence of any specific allegations of negligence by the hospital or its employees leave Desert Springs with no way of determining whether that claim intends to assert an action for ordinary negligence or professional negligence, and if the latter, whether that claim is based on its own negligence, e.g., promulgation of negligent policies and procedures, or the negligence of one of its nurses, technicians, or other hospital employees, when that negligence occurred, and/or by whom the allegedly negligent act was committed.

Accordingly, even drawing every inference in her favor, and accepting all of her allegations as true, Count I should have been dismissed because it failed to allege facts sufficient to support each element of a negligence claim against Desert Springs. *See Buzz Stew, LLC v. City of North Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008) (providing that when reviewing a decision on a motion

to dismiss for failure to state a claim, appellate courts are to accept all factual allegations in the complaint as true and draw all inferences in the plaintiff's favor); *Brelant v. Preferred Equities Corp.*, 109 Nev. 842, 846, 858 P.2d 1258, 1260 (1993) (explaining that, to avoid dismissal for failure to state a claim, a plaintiff must alleged facts sufficient to provide respondents "fair notice of the nature and basis of a legally sufficient claim"); *Mayo v. Williams*, 2016 WL 3951731, \*1 (Nev. Ct. of App. July 13, 2016) (unpublished disposition) (dismissal of plaintiff's negligence claim upheld because plaintiff failed to allege facts support each element of that claim); *Healy v. Macayo Vegas, Inc.*, 132 Nev. 976, \*1-2, 2016 WL 854530, \*1-2 (Nev. Ct. App. March 2, 2016) (unpublished disposition) (same).

**2. Respondent Should Have Dismissed Plaintiff's  
"Hospital Negligence" Claim Because Even When  
Read Together With The Attached Expert Affidavits,  
It Failed To State A Claim In Compliance With NRS  
41A.071.**

Assuming Count of I Plaintiff's Complaint intended to assert a claim for professional negligence against Desert Springs, Respondent erred in denying Desert Springs' Motion because neither experts' affidavit satisfy the specificity requirements in NRS 41A.071. In *Zohar v. Zbiegien*, 130 Nev. 733, 334 P.3d 402, (2014), this Court clarified that when determining whether a plaintiff has complied with NRS 41A.071's affidavit requirement, the parties and the courts must read the



1 complaint and the alleged supporting affidavit together before concluding that the  
2 affidavit is insufficient.

3  
4 However, in 2015, the Legislature amended NRS 41A.071 to impose  
5 additional specificity requirements beyond those presented “in the version of NRS  
6 41A.071 considered in *Zohar*.” *Baxter v. Dignity Health*, 131 Nev. 759, 764, 357  
7 P.3d 927, 930 fn.4, (2015). In addition to the previous requirements, *inter alia*,  
8 that the medical expert affidavit “[s]upports the allegations contained” in the  
9 complaint and that the expert practice in a “substantially similar” area of medicine  
10 as that engaged in by the defendant healthcare providers at the time of the alleged  
11 negligence, the 2015 amended version of NRS 41A.071 now also requires that the  
12 affidavit specifically identify “by name, or describes by conduct, each provider of  
13 health care who is alleged to be negligent,” and set “forth factually a specific act or  
14 acts of alleged negligence separately as to each defendant in simple, concise and  
15 direct terms.” NRS 41A.071(1), (3) and (4). Where a complaint and affidavit, even  
16 when read together, fail to comply with these requirements, it must be dismissed.  
17  
18 *See e.g., Alemi v. Eighth Judicial Dist. Ct. of State*, 2016 WL 115651 at \*1, No.  
19 66917 (Nev. Jan. 7, 2016) (unpublished disposition).  
20  
21

22 Here, even when read together, Plaintiff’s Complaint against Desert Springs  
23 and Drs. Shepherd’s and Smith’s affidavits fail to satisfy NRS 41A.071(1), (3)  
24 and/or (4). Indeed, as demonstrated in Point I.B.1, *supra*, Plaintiff’s complaint does  
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26  
27  
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no more than generally alleged that Desert Springs “breached its duty to Plaintiff” and that as a “direct and proximate result of “DESERT SPRINGS HOSPITAL’S breaches of the standard of care,” Plaintiff was injured. (P.A.8-9, at ¶¶42-43). While Dr. Shepherd’s and Dr. Smith affidavits identify by name or describe by conduct the co-defendant physicians and set forth factually “a specific act or acts of alleged negligence separately as to each” of them, they do not do so with respect to Desert Spring. *See* NRS 41A.071. Neither affidavit identifies Desert Springs by name or conduct, *and* sets forth factually any specific act or acts of alleged negligence separately as to the hospital, its nurses, technicians, or other employees such that Desert Springs could determine who they were, when the alleged negligence occurred, and how or if such alleged negligence was a proximate cause of Plaintiff’s injuries. *See Soong, M.D. v. Eighth Judicial District Court*, 490 P.3d 119, \*1, 2021 WL 2935695, \*1 (Nev. July 12, 2021) (unpublished disposition) (Defendant’s petition for writ of mandamus granted because plaintiff’s complaint’s and expert affidavit’s general assertions that defendant acted below the standard of care were insufficient, even when read together, to support claim under NRS 41A.071(4)).

Accordingly, even when read together with Plaintiff’s complaint, the expert affidavits fail to place Desert Springs on notice of the nature and basis of

Plaintiff's purportedly separate direct negligence claim against it, and thus that claim should have been dismissed.

### **CONCLUSION**

For the foregoing reasons, Petitioner Valley Health System, LLC d/b/a Spring Valley Hospital Medical Center respectfully requests that this Court affirm the district court's order granting its motion to dismiss Plaintiffs' Complaint for failure to comply with NRS 41A.071's affidavit requirement.

DATED this 29th day of July, 2022

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**CERTIFICATE OF COMPLIANCE**

1  
2  
3 1. I hereby certify that this brief complies with the formatting  
4 requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and  
5 the type style requirements of NRAP 32(a)(6) because:  
6

7 This brief has been prepared in a proportionally spaced typeface using  
8 Microsoft Word 2010 in Times New Roman 14-point type.  
9

10 2. I further certify that this brief complies with the page- or type-volume  
11 limitations of NRAP 21(d) because, excluding the parts of the brief exempted by  
12 NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or  
13 more, and contains 6,333 words.  
14

15 3. I have read this Petition, and to the best of my knowledge,  
16 information, and belief, it is not frivolous or interposed for any improper purpose,  
17 and that it complies with all applicable Nevada Rules of Appellate Procedure.  
18

19 4. I understand that I may be subject to sanctions if the accompanying  
20 Petition is not in conformity with the requirements of the Nevada Rules of  
21 Appellate Procedure.  
22

23  
24 DATED this 29<sup>th</sup> day of July, 2022.  
25  
26  
27  
28

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of HALL PRANGLE & SCHOONVELD, LLC; that on the 1<sup>st</sup> day of August 2022, I served a true and correct copy of the foregoing **PETITIONER VALLEY HEALTH SYSTEM, LLC dba DESERT SPRINGS HOSPITAL MEDICAL CENTER'S PETITION FOR WRIT OF MANDAMUS** via the E-Service Master List for the above referenced matter in the Eighth Judicial District Court e-filing System in accordance with the electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules, to the following:

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