

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

4 *Petitioner,*

5 v.

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

10 *Respondents,*

11 and

12 LASHAWANDA WATTS,

13 *Real Party in Interest,*

14 HOLAVANAHALLI KESHAVA- PRASAD, M.D.
15 AND H. KESHAVA PRASAD, MD, PLLC,
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17 NEVADA LLC; AMIR QURESHI, M.D.; ROE
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22 CORPORATIONS 1-35, inclusive,

23 *Additional Parties in Interest.*

Supreme Court No.

85096

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24 **REPLY IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS**
25 **AND/OR PROHIBITION**

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Rules

NRCP 8(d)3

**REPLY IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS
AND/OR PROHIBITION**

INTRODUCTION AND SUMMARY OF ARGUMENT

Under this Court's prior decisions, *see e.g., Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 846, 858 P.2d 1258, 1260 (1993), *Mayo v. Williams*, 2016 WL 3951731, *1 (Nev. Ct. App. July 13, 2016) (unpublished disposition) and *Healey v. Macayo Vegas, Inc.*, 132 Nev. 976, *1-2, 2016 WL 854530 (Nev. Ct. App. March 2, 2016) (unpublished disposition), Respondent erred as a matter of law in denying Petitioner's motion for partial dismissal of Plaintiff's complaint because the allegations contained in Count I (Hospital Negligence) failed to provide fair notice of the nature and basis of her purported direct negligence against the hospital. Furthermore, and assuming the allegations contained in Count I were intended to support a claim for professional negligence, Respondent also erred as a matter of law in denying Petitioner's motion because neither of Plaintiff's experts' affidavits satisfy NRS 41A.071's specificity requirements.

In her Answer, Plaintiff first claims that Petitioner is barred from seeking writ relief by the doctrine of laches because it purportedly "waited over six months to file its writ petition." (Ans. 5). But as this Court has previously noted, there is no specific time limit delineating when a petition for a writ of mandamus must be filed. *Widdis V. Second Judicial Dist. Court*,

1 114 Nev. 1224, 1227-28, 968 P.2d 1165, 1167 (1998) (writ petition filed 7
2 months after order denying motion did not amount to inexcusable delay
3 justifying application of laches). Moreover, following its review of the
4 transcript from the hearing on its motion and its review of its co-defendant's
5 writ petition, Desert Springs re-evaluated its position and decided to seek
6 review by this Court of the district court's order. In any event, this Court
7 has previously found delays of twice as long (and longer) insufficient to
8 support application of the doctrine of laches to preclude extraordinary writ
9 relief. *See e.g., Campbell v. Griffin in and for Carson City*, 101 Nev. 718,
10 720, 710 P.2d 70, 71 (1985) (16-month delay in filing petition for
11 extraordinary relief did not support application of the doctrine of laches);
12 *Bonetti v. Fifth Judicial District Court in and for County of Nye*, 514 P.3d
13 1086, *2 (Nev. August 11, 2022) (13-month delay was not inexcusable to
14 justify barring writ relief by laches).

20 On the merits, Plaintiff's Answer focuses primarily on how Nevada
21 law recognizes claims asserting a corporate theory of liability and permits
22 alternative pleading but neither of these assertions are in dispute nor do they
23 squarely address the deficiencies in her complaint (and/or Respondent's
24 ruling). Indeed, while a corporate theory of liability can serve as the basis of
25 a cause of action under Nevada law and plaintiffs are entitled to assert
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1 alternative causes of action under NRCp 8(d), Count I of Plaintiff's
2 complaint should have been dismissed because it fails to allege sufficient
3 facts to support a direct negligence claim against Desert Springs that was
4 separate and distinct from her vicarious liability claim (Count VII).
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6 Likewise, and contrary to Plaintiff's assertion, NRS 41A.071 *does*
7 require a medical malpractice plaintiff "to independently identify the actors
8 of the hospital staff that fell below" the standard of care, and to do so either
9 by name or by conduct, *and* to set "forth factually *a specific act or acts of*
10 *alleged negligence separately as to each defendant in simple, concise and*
11 *direct terms.*" NRS 41A.071(3) and (4) (emphasis added). Thus, while
12 Plaintiff's experts identify by name and describe by conduct the co-
13 defendant physicians *and* set forth factually "a specific act or acts of alleged
14 negligence separately as to each" of them, they fail to do so with respect to
15 Desert Springs and/or any of its nurses, technicians, or other employees.
16 Accordingly, for these reasons and those that follow, Petitioners respectfully
17 request that this Court issue a Writ of Mandamus or Prohibition, as
18 appropriate, directing Respondent to vacate its order entered on January 26,
19 2022, and to enter an order dismissing Count I of Plaintiff's Complaint.
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ARGUMENT

I. Plaintiff's Assertion Of Laches Is Meritless.

Plaintiff's assertion that Desert Spring's Petition is barred by the doctrine of laches is meritless. To determine whether or not laches should preclude consideration of a writ petition, "a court must determine: (1) whether there was an inexcusable delay in seeking the petition, (2) whether an implied waiver arose from the petitioner's knowing acquiescence in existing conditions, and (3) whether there were circumstances causing prejudice to the respondent." *State of Nevada v. Eighth Judicial Dist. Court ex rel. County of Clark*, 118 Nev. 140, 148, 42 P. 3d 233, 238 (2002).

Here, as briefly discussed *supra*, Desert Springs filed its Petition approximately three months after it received a copy of the recorder's transcript from the hearing on its motion for partial dismissal of plaintiff's complaint. (P.A.179-99). Shortly thereafter, Desert Springs co-defendant filed a writ petition of her own seeking review of another order denying her motion to dismiss based on certain requirements contained in NRS 41A.071. Its review of the transcript from the hearing on its motion and its co-defendant's filing of her own petition caused Desert Springs to re-evaluate its decision on whether to seek review of the district court's decision. Ultimately, because the transcript reinforced its previous conclusion that the

1 district court had erred in denying its motion to dismiss, and co-defendant's
2 writ petition, if granted, would still have left Plaintiff's "Hospital
3 Negligence" claim pending against it, Desert Springs decided that filing a
4 petition of its own challenging the district court's order denying its motion
5 to dismiss was necessary. *Campbell*, 101 Nev. at 720-21, 710 P.2d at 71
6 (counsel's reversal in strategy vis-à-vis seeking writ review and filing
7 petition 16 months after entry of order did not warrant application of laches).
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10 In any event, this Court has previously rejected claims of inexcusable
11 delay in cases where the time between entry of the order and the filing of a
12 writ petition challenging that order was more than twice as long as alleged in
13 this case. *See e.g., Campbell*, 101 Nev. at 720, 710 P.2d at 71 (16-month
14 delay in filing petition for extraordinary relief did not support application of
15 the doctrine of laches); *Bonetti*, 514 P.3d at *2 (August 11, 2022)
16 (unpublished disposition) (13-month delay was not inexcusable to justify
17 barring writ relief by laches); *Widdis v. Second Judicial Dist. Court of State*
18 *In and For County of Washoe*, 114 Nev. 1224, 1227-28, 968 P.2d 1165,
19 1167 (1998) (filing of writ 7 months after entry of order sought to be
20 reviewed did not constituted inexcusable delay); *Moseley v. Eighth Judicial*
21 *Dist. Court ex rel County of Clark*, 124 Nev. 654, 659 n.6, 188 P.3d 1136,
22 1140, n.6 (2008) (holding that laches did not apply to bar consideration of
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writ petition filed approximately 4 months after entry of order sought to be reviewed).

Moreover, Plaintiff's bald assertions of implied waiver and prejudice are similarly without merit. During the intervening 6 months between entry of the district court's order denying Desert Spring's motion and the filing of its petition, the parties had not firmly scheduled, much less completed a single party/witness deposition. Nor has Plaintiff presented any evidence that Desert Springs' "acquiesced to existing conditions" and was not still considering seeking review of the district court's order. *See Widdis*, 114 Nev. at 1227-28, 968 P.2d at 1167 (doctrine of laches did not apply to bar petition because plaintiff failed to present any evidence that petitioner had impliedly waived issue or that plaintiff had suffered any prejudice). Thus, Desert Springs did not "impliedly waive the issue set forth" in its Petition nor has Plaintiff suffered any prejudice by Desert Springs' delay in filing its Petition. Accordingly, for each of these reasons, Plaintiff's assertion that laches should bar Desert Springs' Petition should be rejected.

II. Count I Of Plaintiff's Complaint Does Not Sufficiently State A Cause Of Action Under Nevada Law.

In her Answer, Plaintiff appears to concede that the allegations contained in Count I of her Complaint are designed to assert a direct negligence action against Desert Springs based on its alleged professional

1 negligence in providing care and treatment to her during the subject
2 admission. (Pl. Ans. at 8 (“These allegations clearly identify the acts or
3 omissions of the *medical providers* as Desert Springs *that fell below the*
4 *minimum acceptable standard of care.*”), 9 (Plaintiff’s Complaint also
5 “claimed Desert Springs was negligent by failing to provide proper care to
6 her during her stay.”). Based on this concession, she thereafter argues that
7 that there is no basis for this Court’s review because “a plain reading” of
8 NRS 41A.071 demonstrates that she need only “attach an affidavit to the
9 Complaint that identifies by name, *or by conduct*, the negligent
10 actions/omissions of the Defendant,” and her experts’ affidavits satisfy these
11 requirements. (Pl. Ans. at 7). Plaintiff’s “plain reading” of NRS 41A.071,
12 and her belief in the sufficiency of her experts’ affidavits, are mistaken.

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18 While NRS 41A.071 provides that the medical expert’s affidavit must
19 identify “by name or describes by conduct, each provider of healthcare who
20 is alleged to be negligent,” it also requires that the affidavit set “*forth*
21 *factually a specific act or acts of alleged negligence separately as to each*
22 *defendant in simple, concise and direct terms.*” NRS 41A.071(3) and (4).
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24 Here, neither Plaintiff’s Complaint, nor her experts’ affidavits satisfy this
25 last requirement. Indeed, while Count I of Plaintiff’s Complaints identifies
26 Desert Springs as the negligent provider of healthcare, it fails to separately
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1 set “forth factually a specific act or acts of alleged negligence” that it
2 committed during the course of her care and treatment. In fact, the
3 allegations do not more than generally allege that Desert Springs “breached
4 its duty to Plaintiff” and that as a “direct and proximate result” its breaches
5 of the standard of care, Plaintiff was injured. (P.A.8-9, at ¶¶42-43). If
6 Plaintiffs intention was to allege a claim based on a corporate theory of
7 liability, such claim had to contain allegations specifically describing the
8 allegedly negligent conduct, *e.g.*, negligent supervision. Likewise, if Count
9 I was intended to assert a claim against Desert Springs based on the conduct
10 of one of its employees, *e.g.*, nurse or technician, it had to identify the
11 employee(s) either by name or by conduct *and* set forth factually a specific
12 act or acts of negligence attributable to that employee(s).
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18 Ultimately, Plaintiff’s expert affidavits fail to fill gap left by the
19 allegations in Plaintiff’s Complaint. Indeed, her experts’ affidavits fail to
20 even identify Desert Springs by name or conduct, much less do so *and* set
21 forth factually any specific act or acts of alleged negligence separately as to
22 the hospital, its nurses, technicians, or other employees such that Desert
23 Springs could determine who they were when the alleged negligence
24 occurred, and how or if such alleged negligence was a proximate cause of
25 Plaintiff’s injuries. *See Soong, M.D. V. Eighth Judicial District Court*, 490
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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 and expert affidavits general assertions that defendant acted below the standard of care were insufficient, even when read together, to support claim for professional negligence). Thus, even when read together, Plaintiff’s Complaint and expert affidavits fail to comply with NRS 41A.071(3) and/or (4).

Accordingly, the district court erred in denying Desert Spring’s motion because, whether based on a corporate theory of liability, nursing negligence theory, or some other alternative theory of liability premised upon the hospital’s professional negligence in providing care and treatment, Count I of Plaintiff’s Complaint, even when read together with her experts’ affidavits, failed to satisfy *all* of the requirements set forth in NRS 41A.071.

III. Writ Relief Is Warranted And Appropriate.

Without citing any authority in support of her assertion, Plaintiff argues that writ relief is inappropriate because her 32-page-long complaint “is anything but threadbare and Defendant is on ample notice of the claims asserted against it.” (Pl. Ans. at 11). The sufficiency of a plaintiff’s complaint, however, is not determined by its length but on its substantive allegations and, as discussed in Point II, *supra*, the allegations contained

1 within Count I of her Complaint fail to allege facts sufficient to support each
2 element of that purported direct negligence claim, and/or comply with NRS
3 41A.071's specificity requirements.
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5 Furthermore, and contrary to her assertions, this is not yet another
6 example of a medical malpractice defendant "attempting to ask courts to
7 force injured plaintiffs to be able to prove every element of their claims
8 *before* discovery begins." (Pl. Ans. at 12). Rather, Petitioner is requesting
9 this Court's intervention because the district court's decision has allowed a
10 purported claim for direct negligence to proceed against it without any
11 allegations of specific acts of negligence by the hospital itself (or any of its
12 employees), and which lacks the support of an NRS 41A.071 affidavit filling
13 that gap and identifying (by name or by conduct) which of its employees
14 were negligent and identifying the alleged negligent act or acts committed
15 by those individuals.
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20 Contrary to Plaintiff's assertion, such specificity, especially in this
21 case, was absolutely achievable prior to initiating her action. She asserts
22 that she could not be more specific and identify the allegedly negligent
23 individuals without initiating the lawsuit and conducting discovery because
24 prior to doing so she does not have subpoena power and "must rely on the
25 records produced pre-litigation" to attempt to identify the allegedly culpable
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1 individuals. (Pl. Ans. at 12). By her argument, Plaintiff seems to suggest
2 that her medical records are handwritten and that the identities of the
3 allegedly culpable individuals cannot be ascertained without deciphering
4 signatures and/or conduct discovery. But the hospital medical records in
5 question are *all* in an electronic format, and specifically identify the various
6 physicians, nurses, and other personnel who interacted and provided care to
7 Plaintiff during the period at issue. *See e.g.*, R.A.1-5¹. Thus, Plaintiff's
8 implicit, if not explicit, assertion that she could not be more specific/identify
9 Desert Spring's alleged negligent employees and their specific negligent
10 actions without initiating her action is baseless.

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15 Ultimately, writ relief is warranted and appropriate here because the
16 district court's order has deprived Petitioner of the protections afforded it
17 under Nevada's Rules of Civil Procedure and NRS 41A.071, and it is now
18 left without a fair understanding of the nature or basis of Plaintiff's
19 purported "Hospital Negligence" claim asserted against it. If allowed to
20 stand, Petitioner will have no meaningful ability to protect itself by
21 developing its defense, *i.e.*, identify and meet with critical witnesses,
22 identify and timely retain any necessary experts, against an otherwise
23 undefined claim. Rather, Desert Springs will be forced to speculate on *both*
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28 ¹ "R.A." denotes Petitioner's Reply Appendix.

1 the nature and the merits of Plaintiff's direct negligence theories unless and
2 until those theories are revealed at some later point in the litigation.
3 Moreover, a finding that Plaintiff's allegations are devoid of the specificity
4 required under NRS 41A.071 will also serve to further guide litigants
5 seeking to assert/defend against allegations of professional negligence.
6 Accordingly, Petitioner requests that this Court grant its Petition.
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9 **CONCLUSION**

10 For the foregoing reasons, Petitioner respectfully requests that this
11 Court issue a Writ of Mandamus or Prohibition, as appropriate, directing
12 Respondent to vacate its January 26, 2022 Order (denying Desert Springs'
13 Motion for Partial Dismissal of Plaintiff's Complaint), and to enter an order
14 dismissing Count I of Plaintiff's Complaint against Petitioner.
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17 Respectfully submitted,
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CERTIFICATE OF COMPLIANCE

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

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

1. I further certify that this brief complies with the page- or type-volume limitations of NRAP 21(d) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more, and contains 2,609 words.

2. I have read this Reply in Support of Petition, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose, and that it complies with all applicable Nevada Rules of Appellate Procedure.

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

DATED this 4th day of November, 2022.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of HALL PRANGLE & SCHOONVELD, LLC; that on the 4th day of November 2022, I served a true and correct copy of the foregoing **PETITIONER VALLEY HEALTH SYSTEM, LLC dba DESERT SPRINGS HOSPITAL MEDICAL CENTER'S REPLY IN SUPPORT OF ITS 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:

The Honorable Gloria Sturman The Eighth Judicial District Court Regional Justice Center 200 Lewis Avenue Las Vegas, Nevada 89101 <i>Respondent</i>	Aaron Ford Attorney General Nevada Department of Justice 100 North Carson Street Carson City, Nevada 89701 <i>Counsel for Respondent</i>
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