IN THE SUPREME COURT OF THE STATE OF NEVADA

JOON YOUNG KIM, M.D., an individual; FIELDEN, HANSON, ISAACS, MIYADA, ROBISON, YEH, LTD., a Nevada Professional Corporation, d/b/a USAP-Nevada,
Petitioners,

v.

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA ex rel. THE COUNTY OF CLARK, AND THE HONORABLE CARLI L. KIERNY,
Respondent,

and

LIVIU RADU CHISIU, as Special Administrator of the ESTATE OF ALINA BADOI, deceased; LIVIU RADU CHISIU, as Parent and Natural Guardian of SOPHIA RELINA CHISIU, a minor, as Heir of the ESTATE OF ALINA BADOI, Deceased;
Real Parties In Interest.

Supreme Court No.:

District Court No.: A-18-775572-C

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PETITION FOR WRIT OF MANDAMUS

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record of this nongovernmental party 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 judges of this court may evaluate possible disqualification or recusal:

The parent corporation of Fielden Hansen Isaacs, Miyada, Robison, Yeh, Ltd., a Nevada Professional Corporation d/b/a USAP-Nevada is USAP of Nevada (Isaacs), PLLC. No publicly held company owns 10% or more of its stock or other ownership interest.

John H. Cotton & Associates, Ltd. is the only law firm that has appeared for, and is expected to appear for, Fielden Hansen Isaacs, Miyada, Robison, Yeh, Ltd., a Nevada Professional Corporation d/b/a USAP-Nevada in this matter.

No litigant is using a pseudonym to the best of the undersigned counsel's knowledge.

Dated this 29th day of August 2022.

/s/ Adam Schneider
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CERTIFICATE OF COMPLIANCE

1. Pursuant to NRAP 21(e), I hereby certify this Petition complies with NRAP 32(a)(9), and the formatting requirements of NRAP 32(a), including that this Petition has been prepared in a proportionally spaced typeface using Microsoft Word in 14 point Times New Roman type style.

2. I further certify that this petition complies with the word-count limitation of NRAP 21(d), because, using the computation guidelines in NRAP 32(a)(7)(C), it contains 5,430 words and thereby less than the 7,000 words per NRAP 21(d).

2. I further certify that I have read this Petition and to the best of my knowledge, that this Petition is not frivolous or interposed for any improper purpose such as to harass or cause unnecessary delay or needless increase in the cost of litigation.

3. I further certify that this Petition complies with NRAP 28(e) that references to matters in the record be supported by a reference to the appendix where the matter relied upon is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

//

4. I declare under penalty of perjury of the State of Nevada that the foregoing is true and correct.

Executed this 29th day of August 2022.

/s/ Adam Schneider
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I. RELIEF SOUGHT AND SUMMARY OF ARGUMENT

Petitioners seek a writ of mandamus pursuant to NRAP 21, this Court's original jurisdiction as set forth in Article 6 § 4 of the Nevada Constitution, NRS 34.160, and NRS 34.320, directing Respondent to vacate its "Order Regarding Defendant Dignity Health d/b/a St. Rose Dominican Hospital's Motion for Summary Judgement and Defendant Joon Young Kim's Joinder Thereto"[1] entered in matter entitled *Estate of Badoi, et al. v. Young, M.D., et al.* in the Eighth Judicial District Court no. A-18-775572-C. Respondent manifestly abused its discretion when it:

1) failed to find irrefutable evidence of inquiry notice despite substantially similar facts in this Court's holding in *Valley Health Sys. v. Eighth Judicial Dist. Ct. of Nev.*, 497 P.3d 278 (2021) (unpublished disposition)[2]; and consequently

2) denied motion for summary judgement premised on the Complaint's violation of the statute of limitations under NRS 41A.097(2).

Petitioners does not have a plain, speedy and adequate remedy in the ordinary course of law.

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[1] This Petition *does not* concern the other component of the "Order Regarding Defendant Dignity Health d/b/a St. Rose Dominican Hospital's Motion For Partial Judgement on the Pleadings."

[2] Petitioners cite to the same for its persuasive value (*see* NRAP 36(c)(3)) but also based upon Respondent entertaining two oral arguments and supplemental briefing specific to it.

II. NRAP 17(a) ROUTING STATEMENT

The Nevada Supreme Court shall hear and decide "matters raising as a principal issue a question of statewide public importance . . ." NRAP 17(a)(12). This Petition raises such an issue applicable to all healthcare providers and patients of this State as to when a reasonable person is placed on inquiry notice, and when a claimant testifies to a suspicion of the defendant's professional negligence that the statute of limitations then commences under NRS 41A.097(2).

III. ISSUES PRESENTED

1) When a plaintiff provides sworn testimony that he sought medical records because he "realized" that the healthcare he observed in real time "was not done right" after talking with the remedial treating surgeon who told him the subject procedure went "past the right place" more than a year prior to filing a Complaint for professional negligence/wrongful death, does that Complaint violate the statute of limitations under NRS 41A.097(2)?

2) Did Respondent manifestly abuse its discretion denying summary judgment when it failed to find irrefutable evidence of inquiry notice through Plaintiff's own sworn testimony despite this Court's holding in *Valley Health Sys. v. Eighth Jud. Dist. Ct. of Nev.*, 497 P.3d 278 (2021) (unpublished disposition)?

Each of the above interrelated questions' answers is "Yes" as demonstrated in the Legal Argument section, infra.

IV. FACTS NECESSARY TO UNDERSTAND ISSUES OF PETITION

A. Statement of Substantive Facts

On May 15, 2017, Alina Badoi was admitted to St. Rose Hospital for a scheduled induction of labor to deliver her child and on May 16, 2017 delivered her daughter real party in interest (RPI) Sophia. (1PET APP004.) Prior to delivery, Petitioner Joon Young Kim, M.D. (herein "Petitioner" or "Dr. Kim") a board-certified Ob-Gyn anesthesiologist, at Alina Badoi's request administered an epidural catheter for pain. (Id.)

Thereafter on May 17, 2017, Alina Badoi experienced acute spastic paraparesis. (Id.) Alina Badoi's friend and nurse, Ileana Miron, contemporaneously interacted with Alina's nurses and explained to RPI Liviu Chisiu per his testimony that:

> the blood pressure is way too high and they should do something to lower that and that the legs are hurting and tingling and she cannot feel the legs. And by the time I got there, I talked with Ileana on the phone and she was saying like, hey, I don't know what's going on with her legs, it's -- *something is not right.*

(1PET APP069 at 90:7-13.) (emphasis added).

An MRI performed the same day revealed a hematoma in her spine. (1PET APP027.)

On May 17, 2017 and into May 18, 2017, an emergent laminectomy was performed by a neurosurgeon to evacuate the spinal hematoma. (1PET APP030.)

At or about 5:00 a.m. on May 18, 2017, the neurosurgeon had a discussion with Mr. Chisiu post-operatively, wherein Mr. Chisiu was informed that "the epidural was intradural." (1PET APP072 at 103:2.) As to Mr. Chisiu's understanding of the significance of such information:

> Q. Okay. What does the surgeon tell you postoperatively?
> A. Well, it was like probably like 5:00 in the morning [on May 18, 2017] and he said that he went, he did the surgery, the epidural was intradural, there were blood clots everywhere, he did his best to clean it up, and that's part of what I recall.
>
> Q. Okay. So you used the word intradural.
> A. Yes.
>
> Q. What do you – what's your understanding of what intradural means?
> A. Meaning that he was explaining somehow that the epidural, *instead of going in the right place, it went past the right place* and punctured the dura.

(1PET APP072 at 102:24-103:11) (emphasis added).

On June 1, 2017, with Alina Badoi still hospitalized, Mr. Chisiu requested Alina Badio's medical records:

> Q. And what was the purpose of requesting those records?
> A. Well, because *I realized that something is not done right*. When you go happy, when you leave healthy from the house to give birth to a baby and things like this happen, *I realize that something maybe is not quite right*.
>
> Q. And so what you knew was you came in with Alina for her to give birth –
> A. Yes.
>
> Q. --and after the birth, she is now having paralysis, correct?

A. Yes.

Q. She has to have a laminectomy?
A. Yes.

Q. And then you had a conversation with a surgeon who said that basically, what I understood that your conversation was that he told you that the *dura had been perforated*?
A. That's correct.

Q. So you had all this information as of May of 2017?
A. Yeah, I had that information 17, 18 of May, and I requested the records I think end of May, like first of June or the last day of May, when *I saw that things are not quite going the right way.*

(1PET APP082-083 at 144:4-145:9; *see also* 1PET APP116-119) (emphasis added).

On June 2, 2017, Mr. Chisiu received the requested records. (1PET APP116-119.)

On June 3, 2017, while attempting physical therapy Alina Badoi coded and passed away. (1PET APP004.)

"[R]ight after it happened, after, in the first month" Mr. Chisiu decided to seek an attorney in relation to Alina's death. (1PET APP084 at 150:8.)

One of the experts that provided an affidavit in support of the Complaint was Dr. Bruce Hirschfeld. (*See generally* 1PET APP018-46.) Dr. Hirschfeld's affidavit was executed on June 2, 2018. (1PET APP018.) Ala the treating neurosurgeon per Mr. Chisiu's sworn testimony telling him that the epidural needle

caused the hematoma because it punctured the dura, Dr. Dr. Hirschfeld continues that very same thesis that the epidural anesthesia led to the death:

> The epidural anesthetic *caused* the development of an intrathecal spinal bleed, which *caused* a compressive effect on the thoracolumbar spinal cord, and required emergency decompression on May 17, 2017. Ms. Badoi remained paraparetic and/or paraplegic for some time, and was immobilized in the ICU. . . . All of these events led to a *cascade of clinical consequence*, which resulted in the activation of the body's coagulation system, which physiologically is turned on in order to prevent ongoing bleeding and subsequently death. . . . *If not but for the complications of the epidural anesthetic*, Ms. Badoi would not have developed the noxious cascade of events that culminated in the pulmonary embolism and her death.

(1PET APP045) (emphasis added).

Ala what the treating neurosurgeon per Mr. Chisiu's sworn testimony told him (*see* 1PET APP072, 082-083) the Clark County Coroner concluded Decedent's death was caused by: "bilateral pulmonary thromboemboli due to or as a consequence of deep venous thrombosis due to or as a *consequence of acute spastic paraparesis following intradural hemorrhage associated with epidural anesthesia*." (1PET APP005) (emphasis added).

B. Statement of Procedural Facts

On June 5, 2018, Mr. Chisiu filed his Complaint, more than one year after Alina Badoi's death. (*See generally* 1PET APP001-014.)

On December 4, 2019, Mr. Chisiu was deposed. (*See generally* 1PET APP047-096.)

On October 18, 2021, this Court issued *Valley Health Sys. v. Eighth Judicial Dist. Court of Nev.*, 497 P.3d 278 (2021) (unpublished disposition). That same day, Dignity Health filed a Motion for Summary Judgment based upon Mr. Chisiu's own sworn testimony which irrefutably demonstrated that the Complaint violated the statute of limitations under NRS 41A.097(2)(a) and (c). (1PET APP097-157.)

On October 25, 2021, Dr. Kim filed a Joinder to the Motion for Summary Judgment. (1PET APP158-160.)

On November 8, 2021, Mr. Chisiu filed an Opposition to the Motion for Summary Judgment. (2PET APP001-100.)

On December 1, 2021, Dignity Health filed a Reply in support of the Motion for Summary Judgment, inclusive of multiple citations to *Valley Health Sys.* (2PET APP101-110.)

On December 8, 2021, Respondent heard oral argument on the Motion for Summary Judgment. (2PET APP111-146.) Therein, Respondent was made aware that what Mr. Chisiu offered to defeat summary judgment here were essentially the very same arguments which the trial court in *Valley Health Sys. v. Eighth Judicial Dist. Court of Nev.* adopted to deny summary judgment yet which resulted in a Writ of Mandamus upon that trial court. (2PET APP 127-128.)

Respondent was further made aware of the substantially similar set of facts of the RPIs in *Valley Health Sys.* observing in real time the rapid deterioration of the patient's health while under the defendant healthcare providers' care, i.e., just like Mr. Chisiu observed here with Alina Badoi and then confirmed by the treating neurosurgeon that he believed the epidural needle went too deep into the spine causing her injury of a spinal hematoma requiring neurosurgery, hospitalization, and physical therapy. (*Cf. Valley Health Sys.* at n.3 *with* 1PET APP072, 083-084.)

Respondent stated during oral argument "the facts of what Mr. Schneider referred to as the *Powell* case are somewhat similar and are concerning to the Court in the similarity of this layout -- of the layout of these facts" and asked Mr. Chisiu's counsel to reconcile or explain how this matter and *Powell* differ. (2PET APP131-132.)

But because Mr. Chisiu's counsel had not had an adequate opportunity to respond to the applicability of *Valley Health Sys.,* Respondent granted the oral request for supplemental briefing specific to *Valley Health Sys.* (2PET APP134-136.)

On January 10, 2022, Mr. Chisiu filed a Supplemental Brief in Support of Opposition. (2PET APP147-174.)

On January 24, 2022, Dr. Kim filed a "Response to Plaintiffs' Supplemental Brief" (2PET APP187-231 - 3PET APP001-146) and Dignity Health filed a

"Supplemental Brief." (2PET APP175-186.) Both the Response and the Supplemental Brief offered a detailed analysis and synthesis of this matter's violation of the statute of limitations based upon substantially similar facts and holding therein of *Valley Health Sys.* (*See generally* 2PET APP187-231 - 3PET APP001-146 and 2PET APP175-186.) As but one example, Dr. Kim expressly argued to Respondent:

> As *Powell* makes clear, once the statute of limitations commences the plaintiff cannot cite to subsequently obtain facts that according to plaintiff creates a genuine dispute of material fact. And yet this is exactly the argument that Plaintiff makes here, exactly the argument that was accepted by Judge Wiese, and exactly the arguments which the Nevada Supreme Court rejected and an issuance of a Writ in *Powell*.

(2PET APP195.)

On February 2, 2022, Respondent heard oral argument on the supplemental briefing and the Motion for Summary Judgment overall. (3PET APP147-187.) Respondent was further apprised of the similarities between *Valley Health Sys.* and this case, e.g.:

> And the similarities with *Powell* here are, one, that the plaintiff actually observed the alleged negligence as it happened. We know that plaintiff, Mr. Leo Chisiu, he was there at all pertinent times during the hospitalization. He was there when the anesthesiologist was initially reluctant to place the epidural. He was there when the neurosurgeon tells him that the bleeding and paralysis was caused by misplacement of the epidural. He was there for her death. He was there for the subsequent surgeries. So, just like in *Powell*, he was there and witnessed every act of negligence that's alleged in the Complaint. The most critical similarity with *Powell* is the plaintiff's subjective belief of negligence.

(3PET APP164) (italics in original).

> What is important in *Powell* that the Nursing Board complaint was evidenced that the plaintiff held a subjective belief that somebody had committed an act of negligence. That's what we have here from Mr. -- plaintiff, Mr. Leo Chisiu's deposition testimony. He unambiguously and undeniably held a subjective belief that something was done incorrectly that had caused Alina's condition, caused her paralysis and ultimately led to her death. That's what important, what his subjective belief was. And we have that here.

(3PET APP165) (italics in original).

Without any acknowledgment of this Court's long-recognized standard of "should have known," Respondent questioned:

> . . . how is Leo -- how is a layperson to really have known when there's these intervening factors if there's negligence relating to the death versus relating to the paralysis?"

(3PET APP174.)

Respondent then took the matter under advisement. (3PET APP185.)

On April 29, 2022, Respondent filed its Order which denied summary judgement and the Notice of Entry of Order was filed that same day. (3PET APP188-200.)

Respondent held as the basis for denying summary judgment:

> Plaintiff knew in mid-May 2017 that Ms. Badoi's paralysis was something he needed to investigate further, when the surgeon told him her dura had been pierced at the time of her epidural. But he did not necessarily know what caused her death when she passed on June 3, 2017.
>
> . . .
>
> Here, Plaintiff knew something went wrong to cause her paralysis. But, there is not irrefutable evidence in front of the Court that Plaintiff knew

> ON June 3, 2017 that Ms. Badoi's death was caused by the same wrongdoing that caused her paralysis, or by any wrongdoing at all.

(3PET APP192-193) (all capitals in original).

V. REASONS WHY WRIT SHOULD ISSUE

Petitioners understand that generally this Court will not exercise discretion to consider writ petitions that challenge district court orders denying summary judgment motions unless no disputed factual issues remain and summary judgment is clearly required by a statute or rule, or an important issue of law requires clarification. *Smith v. Eighth Jud. Dist. Ct.*, 113 Nev. 1343, 1345, 950 P.2d 280, 281 (1997). Petitioners further understand that it is the petitioner which bears the burden of demonstrating that extraordinary relief is warranted. *Pan v. Eighth Jud. Dist. Ct.*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

But while this Court gives deference to a district court's factual findings, it reviews a district court's conclusions of law including statutory interpretations issues de novo. *See, e.g., Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009). Here, Respondent manifestly abused its discretion in its interpretation of NRS 41A.097(2) and this Court's interpretive caselaw of the same statute.

"[W]here an important issue of law needs clarification and public policy is served by this court's invocation of its original jurisdiction, our consideration of a petition for extraordinary relief may be justified." *Business Computer Rentals v. State Treasurer*, 114 Nev. 63, 67 (1998). A claimant's sworn testimony irrefutably

establishing inquiry notice and/or when a treating physician apprises a claimant more than a year before filing a Complaint about the cause of the injury is a recurring and significant question of law. Therefore this Court accepting this Petition would further be beneficial to all patients and all providers of healthcare in this State. *See Buckwalter, M.D. v. Eight Jud. Dist. Ct.*, 126 Nev. 200, 201, 234 P.3d 920, 921 (2010) (this Court accepting a Petition for Writ upon a denied Motion to Dismiss due to involving an unsettled and potentially significant, recurring question of law.)

Petitioners further appreciate that this Court within its discretion may instead hear the presented issues through an appeal under NRAP 3. But the issues presented in this Petition are far better addressed now due to: 1) a Writ of Mandamus will be entirely case dispositive for Petitioners (3PET APP201-211, 3PET APP212-224) (dismissals of concurrent causes of action); 2) clarification will occur on the standard of irrefutable evidence of inquiry notice in a professional negligence/wrongful death case examined by this Court most recently in *Valley Health Sys. v. Eighth Judicial Dist. Ct. of Nev.*, 497 P.3d 278 (2021) (unpublished disposition), as well as in *Pope v. Gray*, 104 Nev. 358, 760 P.2d 763 (1988) and its citations to *Gilloon v. Humana, Inc.*, 100 Nev. 518, 521 687 P.2d 80, 82 (1984).

Multiple precedents exist for this Court to hear such a Petition when the trial court errs as to when a complaint is barred by the statute of limitations. *See, e.g., Ash Springs Dev. Corp. v. O'Donnell*, 95 Nev. 846, 847, 603 P.2d 698, 699 (1979) ("Where an action is barred by the statute of limitations no issue of material fact exists and mandamus is a proper remedy to compel entry of summary judgment.") *See also Libby, D.O. v. Eighth Jud. Dist. Ct.*, 130 Nev. 359, 363, 325 P.3d 1276, 1279 (2014) (granting writ of mandamus and directing the district court to grant defendant physician's motion for summary judgment and dismissal of plaintiff's complaint due to violation of the NRS 41A.097(2) statute of limitations.)

The date on which the one-year statute of limitation began to run *can* be decided *as a matter of law* where the uncontroverted facts establish the accrual date. *See Winn v. Sunrise Hosp. & Med. Ctr.*, 128 Nev. 246, 251, 277 P.3d 458, 462 (2012).

A Writ of Mandamus is the only proper way to compel the performance of acts by Respondent from the office held by Respondent. Absent this Court issuing a Writ of Mandamus, Petitioners has no plain, speedy, or adequate remedy at law to compel the Respondent to perform its duty, and to prevent further damages upon Petitioners. *See Cote H. v. Eighth Jud. Dist. Ct*., 124 Nev. 36, 39, 175 P.3d 906, 907-908 (2008).

Petitioners have suffered significant damages and will continue to suffer such damages by now having to proceed to trial and incur the costs of costly medical experts which otherwise could have been avoided but for Respondent's abuse of discretion and disregard of this Court's most recent treatment of NRS 41A.097(2).

VI. LEGAL ARGUMENT

A. Real Party In Interests' Complaint filed more than a year after the death violates the statute of limitations of NRS 41A.097(2)

Pursuant to NRS 41A.097(2) "an action for injury or wrongful death against a provider of health care may not be commenced more than 3 years after the date of injury or 1 year after the plaintiff discovers or through the use of reasonable diligence should have discovered the injury, whichever occurs first . . ." (emphasis added).

At issue is the one-year component of NRS 41A.097(2). The one-year period begins to run, and the focus necessarily involves, when the putative plaintiff "knows or . . . should have known of the facts that would put a reasonable person on inquiry notice of his cause of action." *Massey v. Litton*, 99 Nev. 723, 726-728, 669 P.2d 248, 250-52 (1983). "[A] person is on 'inquiry notice' when he or she should have known of facts that 'would lead an ordinarily prudent person to investigate the matter further." *Winn v. Sunrise Hosp. and Med. Ctr*., 128 Nev.

246, 252-53, 277 P.3d 458, 462-63 (2012) (quoting Black's Law Dictionary 1165 (9th ed. 2009). "[T]hese facts need not pertain to precise legal theories the plaintiff may ultimately pursue, but merely to the plaintiff's general belief that someone's negligence may have caused his or her injury." *Id.* at 728.

In wrongful death actions based upon professional negligence, the earliest the statute of limitations begins to run is at the patient's death. *See Pope v. Gray*, 104 Nev. 358, n. 4, 760 P.2d 763 (1988) (citing *Gilloon v. Humana, Inc.*, 100 Nev. 518, 521 687 P.2d 80, 82 (1984)). However, if the plaintiff is placed on inquiry notice of professional negligence before the death, the death triggers the statute of limitations. *See id.* (stating that in *Gilloon*, because the plaintiff discovered the negligence before death occurred, death was the final element necessary to trigger the statute of limitations).

The above the exact argument the petitioners in *Valley Health Sys.* made to this Court in the Petition for Writ of Mandamus (3PET APP 94), and which this Court agreed with warranting extraordinary writ relief. *See generally Valley Health Sys. v. Eighth Jud. Dist. Ct.*, 497 P.3d 278 (2021) (unpublished disposition).

Here, the evidence irrefutably demonstrates that Plaintiff's injury was discovered as of June 3, 2017, the date of Alina Badoi's death. As of that date, Plaintiff was clearly aware that Ms. Badoi had presented to the hospital on May 15, for the scheduled delivery of her child. Mr. Chisiu was aware that Ms. Badoi was

healthy at the time of admission and prior to the delivery but was essentially paralyzed within approximately 24 hours of the delivery of her child due to bleeding in her spine, which bleeding required emergent spine surgery on May 18. (*See generally* 1PET APP001-005.)

In fact, Mr. Chisiu has acknowledged that he "realized that something is not done right" when Alina Badoi arrived to the hospital happy, and left healthy from her house to give birth to a baby and things like acute paralysis and a stat spinal neurosurgery happens unexpectedly. (1PET APP082 at 144:6-10.)

Mr. Chisiu's circumstances are not unprecedented. In fact the above is no different than the patient in *Barcelona v. Eight Jud. Dist. Ct.*, 448 P.3d 544 (2019) (unpublished disposition). In *Barcelona*, that female patient presented for another kind of specific Ob-Gyn service than here, a hysterectomy, but expired. The trial court granted the healthcare provider's motion to dismiss based upon the statute of limitations. *Id.*

RPI Barcelona then filed a petition for writ of mandamus. This Court then affirmed the trial court's Order, and citing to *Winn* at 253, 277 P.3d at 462 held:

> the fact that Barcelona died following surgery "would [lead] an ordinarily prudent person to investigate further into whether [Barcelona's] injury may have been caused by someone's negligence."

Id.

Once the plaintiff has a suspicion of wrongdoing, and so long as a suspicion exists, the "plaintiff must go find the facts; [he] cannot wait for the facts to find [him]." *Jolly v. Eli Lilly & Co.*, 44 Cal.3d 1103, 1110-1111 (1988). This is exactly what Mr. Chisiu did. He requested the medical records while Alina Badoi was still hospitalized after the remedial surgery because he knew something was not right. He spoke to the treating neurosurgeon about the cause of the spinal hematoma being the needle of the epidural catheter likely punctured the dura, and therefore occurred in "not the right place." Proof positive of that suspicion is he retained personal injury counsel less than month after the death where his understanding as of May 18, 2017 regarding the reason for the bleeding and subsequent paralysis, is the very theory asserted in the Complaint – the hematoma in Ms. Badoi's spine was caused by a puncture in the dura by the epidural administered during her labor. (*Cf.* 1PET APP072, 082-083 *with* 1PET APP001-48.)

Consequently, it is irrefutable that Plaintiff "discovered the negligence before death occurred, death was the final element necessary to trigger the [one-year] statute of limitations." *See Pope v. Gray*, 104 Nev. 358, n. 4, 760 P.2d 76 (1988) (citing *Gilloon v. Humana, Inc.*, 100 Nev. 518, 521 687 P.2d 80, 82 (1984)). The statute of limitations therefore commenced on June 3, 2017 and thus

the statute of limitations had therefore expired as of the filing of the Complaint on June 5, 2018.

B. Respondent's Order demonstrates a manifest abuse of discretion warranting extraordinary writ relief

Respondent's Order is remarkably similar to the very same bases which resulted in this Court issuing a Writ of Mandamus in *Valley Health Sys. v. Eighth Judicial Dist. Court of Nev.* (*Cf.* 3PET APP058-66 *with* 3PET APP188-200.)

Respondent's Order in this matter is despite Petitioners specifically supplying Respondent with the below argument from the Petition for Writ of Mandamus in *Valley Health Sys. v. Eighth Judicial Dist. Court of Nev.* of which this Court ultimately agreed with warranting extraordinary writ relief*:*

> . . . most of the individually named Plaintiffs contemporaneously observed the alleged negligence and Ms. Powell's rapid deterioration leading up to her death on May 11, 2017. Since Plaintiffs allege that they contemporaneously observed the alleged negligence and deterioration of Ms. Powell leading up to her death, the Plaintiffs knew, or should have known, of facts that would put a reasonably person on inquiry notice by May 11, 2017. Plaintiffs were aware of facts that would lead an ordinarily prudent person to investigate the matter further at that time.

(3PET APP094) (appendix footnote citation omitted).

Respondent even cited to *Massey v. Litton*, 99 Nev. 723 (1983) for the proposition that a Plaintiff discovers the injury when "when he knows or, through the use of reasonable diligence, should have known of facts that would put a reasonable person on inquiry notice of his cause of action." (3PET APP191.) But

any citation to *Massey,* strictly as to its facts, renders it inapposite where the appellant's discovery of *symptoms* did not necessarily mean a discovery of negligence or a cause to suspect negligence couple coupled with the appellant's doctor showed no great concern until months later. *Massey*, 99 Nev. at 728 (emphasis in original). Whereas here, Mr. Chisiu knew about the complication and the cause and consequences. He knew, according to his own sworn testimony, that the treating neurosurgeon told him the needle went past the right part of the spine. He therefore "realized" and "saw" that the subject healthcare "was not right," which would place any reasonable person on inquiry notice under Nevada law.

Respondent erroneously distinguished from this matter *Valley Health Sys. v. Eighth Judicial Dist. Court of Nev.* merely because there RPI Powell's "potential inquiry notice [on June 11, 2017 and possibly earlier on May 23, 2017] were AFTER Ms. Powell's death on May 11, 2017." (3PET APP193) (all capitals in original).

But Respondent manifestly abused its discretion when its cited standard is only half the standard. The standard is "knew *or should have known*." *Winn v. Sunrise Hosp. and Med. Ctr*., 128 Nev. 246, 252-53, 277 P.3d 458, 462-63 (2012) (quoting Black's Law Dictionary 1165 (9th ed. 2009) ("[A] person is on 'inquiry notice' when he or she should have known of facts that 'would lead an ordinarily prudent person to investigate the matter further.") (emphasis added).

While the facts proving inquiry notice might have come in different forms between RPI Powell and RPI Chisiu, the uncontroverted fact remains that no reasonable person could say they were not on inquiry notice at the time of the decedent's death in this case.

As provided to and discussed with Respondent, the trial court in *Valley Health Sys.* manifestly abused its discretion with its Order denying summary judgment holding:

> Although the Complaints filed by Brian Powell, suggest that Plaintiff may have at least been on inquiry notice in 2017, the fact that the family was notified shortly after the decedent's death that the cause of death was determined to be a "suicide," causes this Court some doubt or concern about what the family knew at that time period.
>
> Since the family did not receive the report from the State Department of Health and Human Services, indicating that their previously determined cause of death was in error, it is possible that the Plaintiffs were not on inquiry notice until February 4, 2019. [sic][3] This Court is not to grant a Motion to Dismiss or a Motion for Summary Judgment on the issue of a violation of the Statute of Limitations, unless the facts and evidence irrefutably demonstrate that Plaintiff was put on inquiry notice more than one year prior to the filing of the complaint. This Court does not find that such evidence is irrefutable, and there remains a genuine issue of material fact as to when the Plaintiffs were actually put on inquiry notice.

(3PET APP062-063.)

[3] This is a typographical error given 2019 is the year the Complaint was filed, 2018 was year the Department of Health & Human Services issued a report, and 2017 was the year the death occurred.

Therefore this Petition is even more poignant and worthy of this Court's issuance of a Writ of Mandamus given Respondent had the benefit of *Valley Health Sys.* yet still had no appreciation for this Court's interpretation of NRS 41A.097(2) and what inquiry notice means.

C. There is no concealment of records sufficient to toll the statute of limitations

Irrespective of the cause of action for fraudulent concealment which has since been dismissed without prejudice (3 PET APP201-211), Mr. Chisiu was not "hindered . . . from timely filing suit" is further evidenced by the undisputed fact that the medical records disclosed by Mr. Chisiu in this action are from September 2017. Moreover, the affidavit of Bruce Hirschfeld, M.D., which is attached to Plaintiff's Complaint, is dated within the one-year statute of limitations period – June 2, 2017. Accordingly, it is undisputed that there was no concealment that precluded Mr. Chisiu from satisfying the statutory requirement to obtain an affidavit of merit. *See Kushnir, M.D. v. Eighth Judicial District Court*, 495 P.3d 137 (Nev. Ct. of App. Aug 5. 2021) (explaining that for purposes of demonstrating concealment to toll the statute of limitations "the concealment must have interfered with a reasonable plaintiff's ability to satisfy the statutory requirement that the complaint be accompanied by an expert affidavit").

Here there is no such argument from either one of Mr. Chisiu's experts that they could not or were inhibited from providing expert opinions in this matter. (*See generally* 1PET APP015-46.)

VII. CONCLUSION

This Court must issue a Writ of Mandamus directing Respondent[4] to: 1) vacate the Order filed April 29, 2022 denying summary judgment; and thereafter 2) grant summary judgment in favor of Petitioners.

Executed this 29th day of August 2022.

/s/ Adam Schneider
Adam Schneider, Esq. NSB 10216
7900 West Sahara Avenue, Suite 200
Las Vegas, Nevada 89117
Attorneys for Petitioners
Joon Young Kim, M.D. and
Fielden Hansen Isaacs, Miyada, Robison, Yeh, Ltd., a Nevada Professional Corporation d/b/a USAP-Nevada

[4] Jurisdiction presently resides with Department 9 after administrative transfer from Department 2 on or about April 4, 2022.

DECLARATION OF PETITIONERS' ATTORNEY AS VERIFICATION TO PETITION FOR WRIT OF MANDAMUS

ADAM SCHNEIDER, ESQ., declares and submits:

1. I am licensed to practice law in this Court and am an attorney at John H. Cotton & Associates, Ltd., counsel for Petitioners Joon Young Kim, M.D. and Fielden Hansen Isaacs, Miyada, Robison, Yeh, Ltd., a Nevada Professional Corporation d/b/a USAP-Nevada.

2. I make this Declaration pursuant to NRAP 21(a)(5). This Declaration is not made by Petitioners personally because the issues and relief sought with the instant Petition regard procedural and legal analysis. Instead the facts stated in the instant Petition as supported by the Petitioners' Appendix are within my personal knowledge in my capacity as Petitioners' counsel except as to those matters stated upon information and belief.

3. I have discussed this Petition with the appropriate persons with USAP-Nevada as well as with Dr. Kim and have obtained authorization for this filing.

4. I declare under penalty of perjury of the State of Nevada that the foregoing is true and correct.

Executed this 29th day of August 2022.

/s/ Adam Schneider
Adam Schneider, Esq. NSB 10216
7900 West Sahara Avenue, Suite 200
Las Vegas, Nevada 89117
Attorneys for Petitioners

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that I am an employee of JOHN H. COTTON & ASSOCIATES and that on the 29th day of August 2022, the foregoing **PETITION FOR WRIT OF MANDAMUS** was caused to be served upon those persons designated by the parties in the E-Service Master List for the above-referenced matter via U.S. Mail, postage prepared as noted below, as follows:

CHRISTIANSEN TRIAL LAWYERS
c/o Todd Terry, Esq., Keely Perdue, Esq. Kendelee Leascher Works, Esq.
710 S. 7th St., Ste. B
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Attorneys for Real Parties in Interest

Regional Justice Center
Attn: Eighth Judicial District Court
Judge Carli I. Kearny/ Department 2
Judge Maria Gall/Department 9
200 Lewis Ave.
Las Vegas, NV 89155
Respondent
Via electronic delivery

/s/ Arielle Atkinson
Employee of John H. Cotton & Associates