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

**DIGNITY HEALTH D/B/A ST. ROSE DOMINICAN HOSPITAL – SIENA CAMPUS,**

*Petitioner,*

v.

**THE EIGHT JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA** *er rel.* **THE COUNTY OF CLARK**, and **THE HONORABLE JUDGE MARIA GALL**,

*Respondents,*

And,

**LIVIU RADU CHISIU**, as special administrator for the Estate of **ALINA BADOI**, and as parent of **SOPHIA RELINA CHISIU**, a minor and heir of the Estate,

*Real Parties in Interest.*

Supreme Court Case No.:

Dist. Ct. Case No.: A-18-775572-C



**PETITIONER'S APPENDIX TO THE PETITION WRIT OF MANDAMUS**
**Vol. 2 of 5**

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of HALL PRANGLE & SCHOONVELD, LLC; that on the 5th day of January 2023, I served a true and correct copy of the foregoing **PETITIONER'S APPENDIX (VOL. 1-5) TO THE PETITION FOR WRIT OF MANDAMUS** via USPS mail and/or E-Service Master List for the above referenced matter in the Nevada Supreme 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:

Peter S. Christiansen, Esq.
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Judge Maria Gall
Department IX
Eighth Judicial District Court
200 Lewis Avenue
Las Vegas, NV 8915

*/s/ Nicole Etienne*
An employee of HALL PRANGLE & SCHOONVELD, LLC

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| | | | |

# EXHIBIT 2

# EXHIBIT 2

General
Vascular
Specialists

Earl D. Cottrell, M.D., F.A.C.S.
Bruce J. Hirschfeld, M.D., F.A.C.S.
Frank T. Jordan, M.D., F.A.C.S.

June 02, 2018

R. Todd Carey, Esquire
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**COMPREHENSIVE RECORD REVIEW**

**Regarding : Alina Badoi**

Dear Todd:

I am in receipt of a Dropbox with records and documents regarding the peripartum events that occurred, as they relate to the death of your client, Alina Badoi. The following records/documents were reviewed by me in this matter: Quest Lab; Comprehensive Cancer Centers; WHASN Records [Women's Health Association of Southern Nevada]; op and consultation reports; pregnancy records; Affidavit; Affidavit of Identification; Autopsy Report; certification of records; record of examination; records reviewed by Coroner; report of investigation; Clark County Coroner; Affidavit of Death; x-rays and scene photographs; exam photos; St. Rose Dominican Hospital Sienna Campus Records; x-rays and autopsy photos. You have asked me to evaluate the medical records and to opine as to what medical facts and/or factors resulted in her death. None of the conclusions reached in this report reflect any opinions I may have, with respect to any standards of care in this matter. All conclusions in this report are to a reasonable degree of medical probability and reflect my opinions as they relate to medical causation in this matter.

**10/07/2016- May 10, 2017 WHASN RECORDS (Pages 32-70 of 70 Pages)**
Pregnancy records, ultrasound and lab reports
Copies of St. Rose records [op reports and consultations] (Pages 1-30 of 70 pages)

**10/07/016 QUEST LABORATORY (Page 3 of 3)**
Hemoglobin 10.6 g/dL
Hematocrit 35.2%
MCV 71.0 fL
MCH 21.4 pg
MCHC 30.1 g/dL

Red Cell Distribution 20.1%

**01/23/2017 QUEST LABORATORY (Page 2 of 3)**
Hemoglobin 8.3 g/dL
Hematocrit 27.5%
MCV 69.7 fL
MCH 21.0 pg
MCHC 30.1 g/dL
Red Cell Distribution 20.8%

**03/23/2017 QUEST LABORATORY (Page 1 of 3)**
Hemoglobin 7.8 g/dL
Hematocrit 26.5%
MCV 67.8 fL
MCH 20.0 pg
MCHC 29.5 g/dL
Red Cell Distribution 22.6%

**03/29/2017 COMPREHENSIVE CANCER CENTERS OF NEVADA CONSULT (Page 1 of 10)**
Referral from: Amit Garg, M.D.

Attending Physician: Ghulam Kashef, M.D.

Reason for Consult: Iron Deficiency Anemia

History of Present Illness:
The patient is a very pleasant female who has been seen and evaluated by her primary care physician. The patient is pregnant. She has complained of fatigue. A CBC obtained has shown a hemoglobin of 7.8. MCV was 67.8. White blood cell count was 9.5 and platelet count normal. She has been placed on oral iron supplementation with poor toleration. She has been referred to this clinic for further evaluation and recommendations.

On my evaluation, she reported fatigue. She did not report any fevers, chills, or night sweats. No chest pain or cough. No melena or hematochezia. No hematuria. No musculoskeletal or neurological symptoms.

Past Medical History:
1. History of hypothyroidism
2. History of anemia

Assessment:

1. Iron deficiency anemia
2. Poor toleration of oral iron
3. Fatigue secondary to anemia

Plan:

1. We will schedule for IV iron infusion with iron sucrose 200 mg weekly for three weeks.
2. Return to clinic in six weeks, with repeat labs. She was instructed to call in the interim if she needs to be seen earlier.

**05/09/2017 ST. ROSE DOM-SIENA RECORDS ASSESSMENT DOCUMENTATION Page 3815 of 4,422 Pages**

Triage/Observation Status and Plan PCM Entered on 05/09/2017 20:18 PDT
Assessment Triage OB: Scheduled induction that would like to reschedule her induction for another time if everything looks ok with baby and it is ok with her MD
Name of Clinician Contracted: Herpolsheimer, Arthur MD
Reason for Call: Notified patient here for her induction but is requesting to be induced at a later time as long as everything is ok with baby. Patient being induced for polyhydramnios and AMA. SVE done 0/20/-3. Orders given to call back once NST done.

**05/09/2017 ST. ROSE DOM-SIENA RECORDS GENERAL INFORMATION Page 3836 - 3838 of 4,422 Pages**

05/09/2017 20:37 PDT
Patient discharged at this time. Verbalized understanding of all instructions

05/09/2017 20:21 PDT Call to MD
Notified of category 1 strip. Patient contracting every 4-8 minutes. Patient verbalizes she does not feel contractions. MD verbalized patient can be discharged to follow up in office and with HRPC tomorrow.

**05/15/2017 ST ROSE DOM-SIENA RECORDS ORDERS (Page 1466 of 4,422 Pages)**

Order Date/Time 05/15/2017 16:29 PDT
Ordering Physician: Herpolsheimer, Arthur
Order Details: "If patient desires epidural, please contact anesthesia"

**05/16/2017 ST. ROSE DOM-SIENA RECORDS GENERAL INFORMATION (Page 2605 of 4,422 Pages**

05/16/2017 Charted Time: 00:58 PDT

Charted by Krista Molinaro, RN
"Kim MD in room to discuss POC with patient about epidural placement, Kim, J. **is concerned with patient's platelet count being low and patient having a nose bleed at this moment. MD ordered for another platelet count to be manually done before epidural"**

Corrected Results
@28 Events: Corrected from Kim MD in room to discuss POC with patient about epidural placement on 5/16/2017 01:10 PDT by Molinaro, Krista RN

**05/16/2017 ST. ROSE DOM-SIENA RECORDS GENERAL INFORMATION (Page 2604 of 4,422 Pages)**
05/16/2017 Charted Time: 02:15 PDT
"Kim J MD spoke with Abuan, Ronaldo in lab about manual platelet count. After speaking with him Kim, J verbalized he **would not place epidural due to the dramatic variance in the number between the automated test and the manual test."**

05/16/2017 Charted Time 03:00 PDT
"Herpolsheimer MD in room to discuss pain management options with patient since Kim, J. **will not place epidural."**

**05/16/2017 ST. ROSE DOM-SIENA RECORDS GENERAL INFORMATION (Page 2598 of 4,422 pages)**
05/16/2017 14:45 PDT (Events)
Charted by Delaney McCoy, RN
Dr. Herpolsheimer at bedside for delivery

05/15/2017 17:45 PDT (Events)
Peri-care done, pads changed, pt. tolerated well, **epidural cath removed, tip intact**

**05/16/2017 WHASN RECORDS OP REPORT DR. HERPOLSHEIMER (Page 30 of 70 Pages)**
Procedure Performed: Spontaneous vaginal delivery and midline episiotomy with repair

Postoperative Diagnosis: Intrauterine pregnancy, delivered

**Anesthesia: Epidural**

Findings: A 6 pound 7 ounce female infant with Apgar scores of 9 and 9, delivered at 1451 Pacific Time on 05/16/2017

**05/16/2017 ST. ROSE DOM-SIENA RECORDS PROGRESS NOTES Page 669 of 4,422 Pages**
Delivery Note
05/16/2017 15:28 PDT
Physician Arthur Herpolsheimer, MD
Preoperative Diagnosis: Intrauterine pregnancy

Procedure Performed: Spontaneous vaginal delivery and midline episiotomy with repair

Postoperative Diagnosis: Intrauterine pregnancy, delivered

**Anesthesia: Epidural**

**05/16/2017 ST. ROSE DOM-SIENA RECORDS GENERAL INFORMATION (Page 2596 of 4,422 Pages)**
Charted by Krista Molinaro RN
Chart Time: 20:58 PDT
Name of Clinician Contacted: Amit Garg, MD

05/16/2017 20:45 PDT
Patient up to chair at side of bed. RN placed overlay on bed and changed all linens. Patient verbalized she is feeling a lot of tingling in her legs and very dizzy. Verbalized I would call MD to discuss these symptoms with him.

05/16/2017 20:58 PDT
Notified MD of patient having a lot of tingling in lower extremities and feeling very dizzy. MD verbalized to stop magnesium infusion for now and restart it at 1.5 gms in 1 hour

**05/17/2017 ST. ROSE DOM-SIENA RECORDS GENERAL INFORMATION (Page 2587 of 4,422 Pages)**
05/17/2017 10:45 PDT
Charted by Mary Brown RN
Name of Clinician contacted: Herpolsheimer, Arthur H. M.D.
Time Provider Contacted 10:45:00
Reason for Call/Info Given to MD:
"Other: Dr. in to visit pt. he assess pt. concerns with leg heaviness and tingling. He reviews with RN concern for an epidural hematoma and requests on call neurologist and neuro surgeon phone #'s to consult, will follow for new orders.

**05/17/2017 ST. ROSE DOM-SIENA RECORDS GENERAL INFORMATION (Page 2595 of 4,422 Pages)**
05/17/2017
Charted by Stacy Taylor, RN
Charted Time: 01:20 PDT
"Patient complaining of tingling in her legs, unable to sleep or stand it."

**05/17/2017 ST. ROSE DOM-SIENA RECORDS GENERAL INFORMATION (Page 2594 of 4,422 Pages)**
05/17/2017 Charted Time: 01:25 PDT
Charted by Stacy Taylor, RN
Name of Clinician Contacted: Amit Garg, MD
"Other notified MD of patient's mg level and that she cannot stand the tingling in her legs. MD stated to turn magnesium off."

05/17/2017 04:35
Other: Notified MD of patient's blood pressures and numbness in right leg. MD ordered p.o. labetalol. Pt. unable to tolerate magnesium
Clarified with MD that he did not want IV hydralazine, MD stated not at this time

**05/17/2017 ST. ROSE DOM-SIENA RECORDS GENERAL INFORMATION (Page 2593 of 4,422 Pages)**
05/17/2017 Charted Time: 05:33 PDT
Charted by Stacy Taylor, RN
Name of Clinician Contacted: Amit Garg, MD

05/17/2017 05:30 Events: patient denies headache, blurring vision or epigastric pain

05/17/2017 05:33 PDT Other: call given to MD regarding BP's still elevated

05/17/2017 06:27 PDT Other: Notified MD of blood pressures, received orders on 5/17/2017 06:30 PDT

**05/17/2017 ST. ROSE DOM-SIENA RECORDS GENERAL INFORMATION (Page 2592 of 4,422 Pages)**
05/17/2017 Charted Time: 05:33 PDT
Charted by Stacy Taylor, RN
Name of Clinician Contacted: Amit Garg, MD

05/17/2017 05:50

Other: no call back, called MD, MD in OR, informed of pt. BP's, received order for hydralazine

**05/17/2017 ST. ROSE DOM-SIENA RECORDS GENERAL INFORMATION (Page 2591 of 4,422 Pages)**
05/17/2017 Charted Time: 06:35 PDT
Charted by Stacy Taylor, RN
"Updated patient on plan of care. Patient very anxious, reports numbness in legs. Tried to get patient out of bed, patient unable to put weight on legs."

**05/17/2017 ST. ROSE DOM-SIENA RECORDS GENERAL INFORMATION (Page 2591 of 4,422 Pages)**
05/17/2017 Charted Time: 07:15 PDT
Charted by Stacy Taylor, RN
Name of Clinician Contacted: Leejon Moore, MD

05/17/2017 07:05 PDT (Events)
Anesthesiologist states **he does not think itching, pain numbness is related to epidural.**

05/17/2017 07:30 PDT (Events)
B/P is noted, pt. has been medicated with labetalol, she is showing signs of escalating anxiety which she states is not pain related but that she is itching like crazy and her legs are tingling, it appears from report this started around 0500

05/17/2017 07:30 PDT (Events)
Calming techniques reviewed and practiced, POC to request Benadryl from Dr. Moore who was just in to see pt. and keep pt. turned off her back side and positioned to her sides reviewed and started to the left and propped for comfort, will follow.

05/17/2017 07:30 PDT (Reason for Call/Info given to MD)
Dr. Called concerning patient's itching which is escalating her anxiety. He gives verbal order for Benadryl and requests RN call OB to review labs

**05/17/2017 ST. ROSE DOM-SIENA RECORDS GENERAL INFORMATION (Page 2588 of 4,422 Pages)**
05/17/2017 Charted Time: 09:45 PDT
Charted by Mary Brown, RN
Name of Clinician Contacted: Arthur Herpolsheimer, MD

"Dr. on unit and updated on pt. status, concerns with itching and lower legs being heavy and tingling, we review labs together and that she has been seen by Dr. Moore this am about these concerns, will follow

05/17/2017 Charted Time: 10:45 am
Dr. in to visit pt. he assess pt. concerns with leg heaviness and tingling, he reviews with RN concern for an epidural hematoma and requests on call neurologist and neuro surgeon phone #'s to consult, will follow for new orders.

**05/17/2017 ST. ROSE DOM-SIENA RECORDS GENERAL INFORMATION (Page 2587 of 4,422 Pages)**
05/17/2017 Charted Time: 11:20 PDT
Charted by Mary Brown, RN
Name of Clinician Contacted: Arthur Herpolsheimer, MD
Provider/MD present, Other: Dr. alerts RN and requests pt. be n.p.o. and to start NS at 125 mL/hr and a bolus of 500 ml's discussed and he ok's, will follow

05/17/2017 13:00 PDT
HOB up. Other: Pt. returned back to her backside, boosted up in bed, peri-care done, preparing for MRI

05/17/2017 13:15 PDT
Pt. leaves unit with stable assessment no changes. RN has reviewed MRI process with her will follow

**05/17/2017 ST. ROSE DOM-SIENA RECORDS GENERAL INFORMATION (Page 2586 of 4,422 Pages)**
05/17/2017 15:15 PDT
Charted by Mary Brown RN
Name of Clinician contacted: Herpolsheimer, Arthur H. M.D.
Time Provider Contacted 15:05:00
Reason for Call/Info Given to MD:
Other: Dr. call unit to update on MRI results, RN is at BS checking pt. into room, he leaves word with Pam T, RN that POC is to do laminectomy and remove hematoma, pt. to be n.p.o.

**05/17/2017 ST ROSE DEM-SIENA RECORDS MRI Page 3695 of 4,422 Pages**
05/17/2017 14:50 PDT
Reason for Exam: MR T Spine wo+w Con B LE Paresis s/p epidural anesthesia

Impression:

1. Significantly limited study secondary to patient motion artifact
2. There is prominent nodular enhancing epidural soft tissue within the anterior and lateral epidural space extending from approximately T2 through T6-T7. This results in moderate to several central canal stenosis at approximately T3. This appearance is nonspecific, and can be seen with lymphoma, metastatic disease (in the case of breast cancer) and infection (infection is unlikely to cause this appearance within 24 hours following the epidural injection). Confirmation with CT may be of benefit
3. Ill-defined patchy and enhancement is also seen within the posterior aspect of the central canal at the mid and lower thoracic levels related to #2.
4. There is a suggestion of an epidural fluid collection extending from approximately T5-6 extending into the lumbar levels. A primary differential consideration is an epidural hematoma. Epidural abscess is less likely. Further evaluation with contrast-enhanced Ct may be of benefit. There is a small nonspecific enhancing lesion within the T11 vertebral body. The main differential considerations include atypical hemangioma versus metastatic disease.

Findings were discussed with Dr. Seiff at approximately 2:50 PM on 5/17/2017.

**05/17/2017 ST ROSE DEM-SIENA RECORDS MRI Page 3693 of 4,422 Pages**
05/17/2017 18:53 PDT
Reason for Exam: MR L Spine wo Con bilateral lower extremity weakness s/p epidural

Impression:
Extensive abnormal epidural process causes extensive mass effect on the thecal sac in the lumbar spine. This is probably partly related to the epidural process described in the thoracic spine but is also probably partly due to the fluid from recent epidural anesthesia administration.

**05/17/2017 ST. ROSE DEM-SIENA RECORDS MRI Page 3692 of 4,422 Pages**
05/17/2017 19:32 PDT
Reason for Exam: MR T Spine wo Con bilateral lower extremity weakness s/p epidural

Impression:
Extensive heterogeneous epidural process is re-demonstrated. There are some areas where it contacts the cord but does not cause mass effect on the cord.

**05/17/2017 ST. ROSE DEM-SIENA RECORDS PROGRESS NOTES - NURSING (Page 1964 of 4,422 Pages)**
5/17/2017 19:35 PDT

"rec'd patient came from MRI arrived to room 2227 placed on cardiac monitor and oriented to room and equipment, patient is AAO x 3 still c/o numbness and tingling sensation to bilateral lower extremities. VS see on computer data and Dr. McPherson will be here.

**05/17/2017 ST ROSE DEM-SIENA RECORDS ICU HISTORY AND PHYSICAL (Pages 21-23 of 4,422 Pages)**
05/17/2017 20:48 PDT
Reason for ICU Admission: Paraparesis, possible epidural hematoma

History of Present Illness:
Ms. Badoi is a 41-year-old female, who is generally well most of her life. She has a history of Hashimoto's thyroiditis and had a partial thyroidectomy and is on thyroid replacement therapy. She is gravida 1, para 1, status post normal vaginal delivery on 05/16/2017 after an epidural anesthesia. Subsequent to delivery, the patient started noticing some tingling and abnormal sensations in her legs. Became clear that the legs were quite weak and quite spastic. MRI of the lumbar spine was done on 05/17 at 1420 for further evaluation and this was normal. Thoracic spine was done at 1450 and this showed abnormality. Had enhancing epidural soft tissue within the anterior and lateral epidural space T2 through T6 to T7 with moderate to severe central canal stenosis at approximately T3. Ill-defined patchy enhancement is also seen in the posterior aspect of the central canal at the mid and lower thoracic levels. Suggestion of epidural fluid collection extending from approximately T5 to T6 into lumbar areas. Possible epidural hematoma abscess less likely. Also enhancing lesion in T11 vertebral body, which may be due to an atypical hemangioma versus metastatic disease per radiologist, Dr. Seiff was notified. Repeat MRI of the L-spine was done at 1853 and this showed extensive abnormal epidural process now causing extensive mass effect along the thecal sac in the lumbar spine. **This is probably related to the epidural process in the thoracic spine and is also partly due to fluid from the recent epidural anesthesia administration as the radiologist's report.** Repeat CT-spine was also done and showed extensive heterogeneous epidural process re-demonstrated some areas where it contacts the cord but does not seem to cause mass effect on the cord.

Laboratory Data: On admission to the hospital on 05/15, she was mildly anemic with hemoglobin of 10. Normal white count. MCV was reduced at 77. Platelets reduced at 94,000. Subsequent CBC showed an estimated platelet count of 140,000 to 160,000 on 05/17 at 6:26 a.m. It is estimated to be 80,000 to 100,000. Repeat done on 1644 today showed a platelet count of 74,000. Coags have not yet been done. Sodium was slightly reduced at 130. LFTs were elevated. ALT 142, AST 146, and alkaline phosphatase 149. Urinalysis unremarkable on admission. No chest x-ray performed.

Impression:

1. Acute spastic paraparesis on 05/17/2016 with abnormal MRI in thoracic and L-spine, possible epidural hematoma
2. Thrombocytopenia
3. Unknown coagulation status
4. Gravida 1, para 1, normal vaginal delivery with epidural anesthesia on 05/16
5. Hypertension
6. History of Hashimoto's thyroiditis, status post previous partial thyroidectomy
7. Abnormal liver function tests and preeclampsia

Plan:

1. We will monitor in the ICU
2. Continue neuro checks
3. Neurosurgical consult with Dr. Seiff
4. Check DIC panel
5. Platelet transfusion
6. Blood pressure control

**05/17/2017 WHASN RECORDS CONSULTATION DR. SEIFF (Pages 25-26 of 70 Pages)**

History of Present Illness:

This is a 41-year-old female, who is post delivery day #1. I got a call earlier in the day by Dr. Herpolsheimer with concern for possible spinal epidural hematoma, since the patient had developed significant bilateral lower extremity motor deficit, had received an epidural catheter for labor, and there was a question of possible thrombocytopenia during her course. The initial MRI had too much motion artifact for interpretation with respect to surgical decision making. Therefore, she was sent back to the MRI scanner for additional images, also transferred to the ICU so she could receive mannitol, she also received high-dose Decadron. The follow up imaging was suggestive of an epidural hematoma from the mid thoracic spine to the mid lumbar spine, and she was taken to surgery emergently for evacuation.

Past Medical History: Hashimoto thyroiditis
Surgical History: Partial thyroidectomy

Laboratory Data: Labs are significant for hyponatremia to 130 and platelets 274 and then 86K. D-dimer is also elevated. Through, there was no complaints suggestive of venous thromboembolism.

The MRI's revealed a mixed density collection that was both ventral, dorsal and lateral to the cord from the mid lumbar spine up to the mid thoracic spine. Interestingly, there was

also a sizeable nodular lesion up at the T3-T4 level, ventral to the cord which enhanced. I reviewed the case with 3 radiologists, 2 of them neuro-radiologist, and the consensus was that this represented an epidural hematoma, with the rostral thoracic lesion being somewhat enigmatic and possibly consistent with metastasis of lymphoma.

Impression:
A 41-year-old female, post delivery day #1, who had what looks like a thoracolumbar epidural hematoma with significant mass effect on the spinal cord, and she was taken to surgery emergently, however, intraoperatively an intradural hematoma was found. She underwent complete evacuation. For now she is intubated and to be extubated when deemed stable and she is awake.

**05/17/2017 WHASN RECORDS OP REPORT T8 THROUGH L3 LAMINECTOMIES FOR EVACUATION MICHAEL SEIFF, M.D. (Page 27-29 of 70 Pages)**

Preoperative Diagnosis: Thoracolumbar Epidural Hematoma

Procedure:
1. T8 through L3 laminectomies for evacuation of intradural hematoma
2. Operative microscope for microsurgical technique
3. Intraoperative fluoroscopy for localization

Indication: The patient is a 41-year-old female, who is postpartum and developed bilateral lower extremity paresthesias followed by spastic paraplegia, workup ultimately revealed what was thought to be an epidural hematoma and she was taken to surgery emergently for evacuation. Intraoperatively an intradural hematoma was found.

She was taken to ICU in hemodynamically stable condition.

**05/18/2017 ST. ROSE DOM-SIENA RECORDS ONCOLOGY/HEMATOLOGY CONSULT DR. GHANI (Page 24-26 of 4,422 Pages**
Medical Oncology/Hematology Consult

Impression:
1. Thrombocytopenia with some clumping, question immune mediated with some effect of pseudothrombocytopenia i.e. platelet clumping
2. Postpartum day #3
3. T8-L3 laminectomy for evacuation of intradural hematoma
4. Leukocytosis, question reactive
5. History of iron deficiency

6. Elevated LFTs

Plan:

1. I discussed with the patient further workup. WE will check peripheral smear B12 folate and iron studies
2. Platelet count should be drawn on citrate tube
3. Watch platelet count closely. Currently, platelet count is going towards normal. Today's platelet count is 149. We will follow along with you
4. Above discussed with patient and her husband

**05/18/2017 ST. ROSE DOM-SIENA RECORDS CONSULT DR. SELCO (Page 26-32 of 4,422 Pages)**

Chief Complaint:
Epidural Hematoma B/L LE Weakness

History of Present Illness:
She developed B/L LE progressive paraparesis and numbness on post-partum day #1 after epidural anesthesia. She delivered via NSVD following the onset of gestational hypertension. Dr. Herpolsheimer contacted me. I advised STAT MRI T+L spine. She had a thoracolumbar intradural hematoma. She was taken to the OR last night by Dr. Seiff and had a T8-L3 lami for intradural hematoma evacuation.

Her husband is present. She is awake and alert on the vent. She has some movement in the proximal thighs, she can flex her knees somewhat and she can plantar flex and dorsiflex her bilateral feet somewhat. She has normal sensation post-operatively.

She did not receive enoxaparin or heparin SQ this admission.

Nothing specific other than the mentioned above is reportedly making the symptoms commence, improve or worsen.

**05/18/2017 WHASN RECORDS QUEST LAB BLOOD CLOTS FROM EPIDURAL (Page 22 of 70 Pages)**

Diagnosis:
Blood clots from epidural

Gross:
Received in formalin labeled "Badoi, Alina DOB 05/24/1975" and "blood clots" is an aggregate of dark maroon clot 4.0 x 3.0 x 0.6 cm. The tissue is soft and friable.

**05/19/2017 ST. ROSE DOM-SIENA RECORDS SOCIAL SERVICES DOCUMENTATION (Page 2281 of 4,422 Pages)**

"MSW met with Radu (patient's boyfriend) who voiced his concern that surgery was from T8-L3 lami due to hematoma that there was a delay in care as it was brought to medical team's attention at 10 a.m. and *nothing was done about it for 12+ hours."*

**05/20/2017 WHASN RECORDS OP REPORT CHARLES MCPHERSON, M.D. (Page 21 of 70 Pages)**

Pre and Postoperative Diagnosis: Altered mental status, intubation needed for airway protection

Procedure: Endotracheal intubation

Procedure in Detail: The patient recently had a spontaneous vaginal delivery and then developed lower extremity paraparesis due to epidural hematoma, for which she underwent extensive laminectomy yesterday. She was extubated. Post-procedure was doing well, however, late in the evening of 05/19 according to the nurses, the patient began getting confused and then more somnolent. The patient was sent for stat CT scan of the brain which showed intraventricular and some subdural blood with enlargement of the ventricles consistent with hydrocephalus. The patient had been transferred to the ICU prior to the CAT scan. I was called with the results when the patient arrived after she came back from the CAT scan and neurosurgeons have been called. When I arrived, the patient was somnolent with some response to stimulation and voice, therefore endotracheal intubation was recommended. Sister was at the bedside. The patient was administered 20 mg of etomidate using a MAC 4 blade. When the blade was first placed into the mouth, the patient then began biting down very hard and chipped her left front tooth. The patient was given 50 mg of Rocuronium for paralysis, then with a MAC 4 blade the airway was well visualized with a grade 1 view. There is a small amount of yellow dried mucus in the hypopharynx which was suctioned. A #7.5 endotracheal tube was placed on first attempt under direct visualization without difficulty. There was good color change to C02 sensor. Good breath sounds bilaterally and good oxygenation.

Complications: Left front upper tooth chipped when patient bit on laryngoscope. No other complications.

**05/20/2017 WHASN RECORDS OP REPORT JAMES FORAGE, M.D. (Pages 20 of 70 Pages)**

Pre and Postoperative Diagnosis: Hydrocephalus

Procedure Performed:
Right frontal ventriculostomy

Indication for Procedure:
This is a 41-year-old female, who developed altered mental status, and was found to have an intraventricular hemorrhage and was found to have hydrocephalus, which requires diversion of CSF.

**05/22/2017 ST. ROSE DOM-SIENA RECORDS MRI (Page 3684-3685 of 4,422 Pages)**
05/22/2017 17:00 PDT
Reason for Exam: (MR L spine wo+w Con) Thoracolumbar intradural hemorrhage after epidural anesthesia; epidural enhancement present on pre-op images??

Addendum:
After review of the medical record the patient is noted to have **HELLP**. Given this is a diagnosis of spinal complications of HELLP is more favored

Impression:
Postoperative changes with intradural blood products noted as described above. The largest collection of blood products is noted anteriorly at L4-L5. No definite enhancement is identified

**06/01/2017 ST. ROSE DOM-SIENA RECORDS PROGRESS NOTE – NURSING Page 1929 of 4,422 Pages**
07:00 PDT
"Gave report to Neelam, RN at pt. bedside. Updated her on new orders. Pt. has been placed in Trendelenburg for 15 minutes hourly. Headache resulted, and Tylenol given. Vitals table, however blood pressure has remained in the 140s to 150s. Pt. received 1 dose IV Labetalol prn. Pt. is alert and oriented x 4, and is still weak on the right lower extremity. See assessment for further details.

**06/01/2017 ST. ROSE DOM-SIENA RECORDS PROGRESS NOTE – NURSING Page 1926 of 4,422 Pages**
15:00 PDT
"Physical therapist started working with the patient brought head end of the bed up and pt. started c/o pain, unable to tolerate pain. Pt. requested pain medication. Methocarbamol given as ordered. St. pt. couldn't tolerate pain and started crying. Head end of bed put down and pt. repositioned to make comfortable. Continue to follow."

**06/02/2017 WHASN RECORDS OP REPORT MICHAEL SEIFF, M.D. (Pages 15-16 of 70 Pages)**
Pre and Post-operative Diagnosis: Thoracic epidural hematoma

Procedure Performed: Evacuation of thoracic epidural hematoma. Intraoperative neurophysiologic monitoring of somatosensory and motor evoked potentials and EMGs.

Indications:
The patient is a 42 year-old female, several weeks out from T8 through L3 laminectomy for evacuation of intradural hematoma, who has been improving slowly with regard to lower extremity function, she has spastic paraplegia preoperatively, but postoperative imaging has revealed an epidural hematoma with persistent mass effect on the thoracic spine, especially opposite T9 through 11. It was therefore elected to take her to surgery to evacuate this collection.

**06/03/2017 ST. ROSE DOM-SIENA RECORDS PROGRESS NOTE – NURSING Page 1965 of 4,422 Pages**
11:25 PDT
"Patient sitting up in bed working with physical therapy. C/o dizziness. Assisted by PT Karl to laying position. Became unresponsive and witness seizure activity. Hypotensive following seizure. Dr. Hutchison to room immediately. Patient began to awaken calling out for the MD to remove the oxygen mask from her face. Again became unresponsive, hypotensive, Code Blue called.

**06/03/2017 WHASN RECORDS CODE BLUE NOTE WILLIAM HUTCHISON, M.D. (Pages 6-7 of 70 Pages)**
Code Blue Note

"I was on the unit and was called into the room because the patient had a seizure. When I got there, she had already completed a clonic-tonic seizure and was slightly postictal. She had a very lower blood pressure of 60/40. We supported her in her breathing. Respiratory was in the room and we assisted her oxygenation. She awoke from that and started moving around groaning and moaning, answering questions appropriately. She denied any pain. Her pressure, however, remained very low. We were in the process of starting Levophed drip when the patient's eyes deviated to the right and it appeared that she had another seizure. At this juncture, the decision to continue bagging her, intubate her was made. I made two attempts to intubate her orally. We did not have a good color change on the C02 monitor, although I did have good breath sounds bilaterally and the 02 sats were greater than 85%. We elected to discontinue the endotracheal tube and bag her. However, we had the same experience. Finally, I was able to intubate her using a GlideScope. However, by

this time, she had lost a pulse and CPR was underway. We ran CPR, ACLS for pulseless electrical activity for over 75 minutes using multiple amps of epinephrine, multiple amps of sodium bicarbonate. We obtained blood gases during the code blue. Her initial blood gas showed pH less than 6.92, pC02 of 102, but this is a venous blood gas with a p02 of 31 (throughout CPR, her oxygen saturation was greater than 90% for most of the CPR activity). We gave her a total of 6 amps of sodium bicarbonate. Her next blood gas showed a pH of 6.99, pC02 of 123, but the p02 was 31. This may be a venous blood gas. Her oxygen saturation again peripherally was 100%. We placed the end-tidal C02 monitor which initially was 9, but after giving multiple amps of sodium bicarbonate, improved to greater than 33. However, it drifted back down again. Family was at bedside obviously distraught. I explained the situation to the daughter as well as a friend of the daughters who is an RN and personal friend of Dr. Dijana Jefic. I spoke with Dr. Dijana Jefic over the telephone explaining the situation to her and she did explain the situation to the friend, as did I, who is an RN. The friend agreed that we had run ACLS for PEA over 75 minutes and the change for a meaningful recovery as almost 0. At this time, the code was called. The family was distraught at the bedside and I did my best to comfort them. Nursing supervisors present as well as charge nurse, Liz, who assisted throughout the code. Dr. Seiff's coverage was present and we explained the situation to him. To the best of our ability to determine what happened, the patient appears to have had some sort of catastrophic CNS event, possibly extension of her hemorrhage, possibly a clot, it is difficult to say. The puzzling thing was the profound hypotension initially, which we cannot explain."

**06/03/2017 ST. ROSE DOM-SIENA RECORDS DISCHARGE SUMMARY (Pages 9-14 of 4,422 Pages)**
Date of Admission: 05/15/2017

Date of Discharge: 06/03/2017

Reason for Admission: Intrauterine pregnancy with spontaneous vaginal delivery

Final Diagnoses:

1. Cardiac arrest. Presumably due to catastrophic event, differential diagnosis including pulmonary embolus, catastrophic CNS event, or myocardial infarction.
2. Seizure
3. Acute spastic paraparesis on 05/17 with an abnormal MRI of the thoracic and lumbar spine, status post T8-L3 laminectomy for epidural hematoma evacuation on 05/18.
4. Status post spinal hematoma evacuation on June 2nd per Dr. Seiff
5. Status post placement of lumbar drain, 05/23

6. Acute confusion and somnolence on 05/19 with demonstrated subdural hemorrhage and dilated ventricles compatible with hydrocephalus. 05/20, status post right frontal ventriculostomy
7. Large respiratory failure on 05/18, extubated 05/19, transferred to ICU and re-intubated on 05/20 for altered mental status. Extubated on 05/22.
8. Status post normal vaginal delivery with epidural 05/16 G1, P1
9. Hypertension
10. History of Hashimoto's thyroiditis, status post partial thyroidectomy and thyroid replacement
11. Abnormal liver function studies with preeclampsia
12. Leukocytosis
13. Thrombocytopenia
14. Elevated D-dimer with normal Pro Time

Hospital Course:
This 42 year-old white female delivered a 6 pound 7 ounce female infant with Apgars of 9 and 9 on 05/16 via spontaneous vaginal delivery. She did have an epidural placed. On 05/17, she had acute spastic paraparesis with abnormalities seen on MRI of the thoracic and lumbar spine possibly consistent with epidural hematoma. She did have thrombocytopenia. She was taken to a laminectomy for intradural hematoma evacuation on 05/18 per Dr. Michael Seiff. Apparently, there was an epidural hematoma present. There was question of possible thrombocytopenia during her course. However, per Dr. Selco's note, she did not receive any enoxaparin or heparin. Dr. Ghani was consulted from Hematology-Oncology and noted that she had thrombocytopenia with platelet clumping. He ordered further testing. Her plated count was 94,000 with a CBC platelet count showing between 140 and 160,000 on 05/17 and a repeat was done which was 74,000. On 05/18 in the morning platelet count was 104 and platelets on 05/17 dropped to 86,000. On 05/17 at 1644 it was 74,000. D-dimer was 5817. Fibrinogen 308. PT 10.3. INR 0.9 with PTT of 24. Dr. Ghani noted the MRI of the thoracic spine showed extensive heterogeneous epidural process. MRI of the lumbar spine showed extensive abnormal epidural process causing extensive mass on the thecal sac. Bilateral lower extremity Dopplers did not reveal deep vein thrombosis. The patient was given mannitol and Decadron on a taper. By 05/18 she was successfully extubated but had some nausea. She was downgraded to maternal and child floor. However, she had altered mental status and needed to be reintubated on 05/20, transferred back to ICU. Apparently, she was getting more confused, more somnolent. She was sent for stat CT scan of her brain which showed intraventricular and some subdural blood with enlargement of the ventricles consistent with hydrocephalus. On 05/20 at 4:30 in the morning, a right frontal ventriculostomy drain was placed because of need for diversion of CSF. Echocardiogram done on 05/20 showed ejection fraction of 65-70%. Her encephalopathy did improve after the interventricular drain was placed. She

was following commands. After placement of the right ventricular shunt catheter, the degree of ventricular dilation decreased and mild intraventricular hemorrhage was noted in the occipital horns in 3rd and 4th ventricle with mild infiltrative extra-axial blood products and subdural and subarachnoid hemorrhage at the region of the foramen magnum and extra medullary to the ventral upper cervical spinal cord and the visualized portions. There may have been a tiny lacunar infarct noted at the left aspect of the splenium of the corpus collosum at 4 mm.

Dr. Anthony Nguyen noted that she had transient thrombocytopenia with some clumping question and immune-mediated effect. He recommended keeping the platelets greater than 100 and recommended 1 unit of platelets. On 05/21, the EVD was draining clear CSF. The hemoglobin dropped to 7.4 without obvious bleeding. On 05/22, the patient was extubated. She was comfortable with mild stridor. Decadron and racemic epi were given to treat the mild stridor but she remained awake, alert and communicative. A von Willebrand's panel was drawn and the results were pending on 05/22. On 05/23 her thrombocytopenia was better with platelet count of 224,000. MRI of the spine on 05/22 showed intradural blood products mixed intensity. A Lumbar drain was recommended as well as bed positioning maneuvers to facilitate more rapid removal of CSF. Dr. Kashef saw the patient on 05/23 from Hem/Onc. On 05/23 Dr. Konchada from IR placed a lumbar drain. About 15 mL of straw-colored CSF was aspirated from the colostomy collection cylinder using sterile technique. On 05/24 the patient was more awake, her voice improved. The lumbar drain stopped draining on 04/24 and Dr. Selco was following. The output was darkly colored bloody CSF, but the EVD showed the ICP was at 10 mm and it was draining well. On 05/24 the lumbar drain was flushed. She was started on Mestinon 30 mg p.o. t.i.d. per Dr. Selco. On 05/25, a lumbar drain was flushed with Isovue contrast and repositioned. Then it was functioning better. On 05/26 she was drowsy but arousable. She felt tingling and numbness to bilateral lower extremities. On 05/26 the EVD was clamped. The ICP was 1. The lumbar drain was draining freely, with 20 mL every 4 hours. The EVD was draining 20 mL every 4 hours alternating with the lumbar drain every 4 hours per Dr. Selco's order. The patient had bilateral lower extremity pain especially with being turned and sitting. Additional history was obtained where she had a thyroidectomy and blood internally at age 15, developing hematoma that cause neck compression and compromised talking and swallowing for several months. This raised the question of von Willebrand's disease. She has heavy menses also raising the question of von Willebrand's disease. Dr. Litchfield increased her levothyroxine from 50 mcg p.o. every day to 112 mcg every day during her pregnancy. TSH during this admission was 3.27, within normal limits. The transferrin was 314 from 05/19, vitamin B12 level was 252, folate 113.1, ferritin 125, CA-19.9 was okay. The CA 27.29 was 21.7, the CEA was 0.74, CA-125 was 104.6 which is high, normal being between 0-35. The rheumatoid factor was less than 14, the ANA was negative. Mitochondrial M2 was 6.1, artifact and antibody was 10. It was felt that she had

platelet clumping possibly due to the blood draw tube EDTA sensitivity. There was the question of von Willebrand's disease based on the clinical results. She was started on trazodone for a poor sleep on 05/27. It was noted that the drainage slowed between 05/26 and 05/27 on her lumbar drain. Order was given to clamp the EVD, continue Ancef 1 g every 8 hours, and open the lumbar drain every 2 hours to drain 20 mL in reverse Trendelenburg. CT scan or CT myelogram of the spine to rule out AVM once blood removed from the intradural space was recommended. On 05/28 it was noted her CSF was dark auburn. On 05/29, family refused to have medication noted at 6:50. On 05/29 Dr. Kashef noted that the patient had possible von Willebrand's disease. Need to repeat labs for a definitive diagnosis once her clinical condition is stabilized. On 05/29 Dr. Selco noted that her pain was better on tapentadol and that she slept well. Her sister refused the trazodone. She was eating a little more and had a small bowel movement. Her abdomen was less distended and she was passing gas. On 05/29 Dr. Selco aspirated about 20 mL of darkly colored CSF from the lumbar drain using sterile technique. On 05/30, she was more awake and in better mood, complained of minor headache but just took some Tylenol and had good sleep. Her EVD was continued to be clamped with ICP 10-16 and LD in the lumbar drain rather draining 20 mL every 4 hours, dark brown colored. Her bilateral lower extremities were still weak and she was unable to move her legs. She had a decent lunch on 05/29 and with bladder training and felt a pressure. Her Foley was clamped and her bladder was full and when unclamped, emptied 1060 mL from the Foley. On 05/31 the EVD and LD were both clamped as she was scheduled for an MRI. She did not complain of any headache. She did have some breast discomfort and lactation nurse was sent in, recommended ibuprofen and pseudoephedrine to stop the lactation, but ibuprofen and other non steroidals were not an option at that time because of bleeding. On 05/31 it was noted that she slept well passing some gas and having some bowel movement smears. She had asymmetric bilateral lower extremity weakness, left stronger than right, and both were improving. On 06/01, it was noted that her extraventricular drain was open but not draining and the lumbar drain was clamped. She did not sleep well because Trendelenburg was ordered for drainage. She was feeling the pressure on bladder training. Dr. Selco noted that her EVD was draining at 20 mL every 4 hours and her intracranial pressure was normal with a CSF fairly clear. Lumbar drain was to be left in for the CT myelogram before removing it. On 06/02 she was awake and alert and felt much better than yesterday. She was anxious and hoping to undergo surgery. The EVD and LD were clamped. She underwent evacuation of a thoracic epidural hematoma per Dr. Seiff on 06/02. She was in the prone position for surgery. The wound was opened and the hematoma was evacuated throughout the entire length of the lamina though the entire length of the laminectomy deficit was visualized. A 1/8 inch Hemovac drain was left in place and tunneled out from the incision beneath the muscle. The muscle was reapproximated. Fascia was approximated. Subdural layer was reapproximated and the epidermis was reapproximated as well. Dressings were applied and exudating drain was anchored and there were no

complications. On 06/03 the patient was awake, working with Speech Therapy. Family was in the room. She was moving all 4 extremities well. The EVD was still in place but not draining.

I was suddenly called into the room because the patient had a seizure. When I got there she had completed a tonic-clonic seizure, was slightly postictal. She had a very low blood pressure of 60/40 with supported breathing and oxygenation. She awoke from the post-ictal phase in a couple of minutes and starting moving around groaning and moaning and answering questions appropriately. She denied any pain. Her pressure increased a bit and dropped again. We gave her a fluid bolus. We were in the process of starting a Levophed drip when her eyes deviated to the right and it appeared she was having another seizure. At this point, the decision to keep bagging her was made and the decision was made to intubate her. I made 2 attempts to intubate her orally but we did not have a good color change on her C02 monitor, although I did have good breath sounds bilaterally and the oxygen saturations were greater than 85%. Because of color change being more than slightly yellow, we discontinued the endotracheal tube to bag her once again. Oxygen saturation improved to 100%. I tried intubating her with a bougie. I felt the endotracheal rings were well with the bougie and the endotracheal tube went in without a problem. However, we had the same experience with the carbon-dioxide indicator, so once again we disconnected the ET tube and bagged her. Finally, I intubated her with a glide scope. We did have a good C02 indicator at this time. However, by this time she lost her pulse and CPR was underway. Then extensive CPR with ACLS for over 75 minutes ensued using multiple amps of epinephrine, multiple amps of sodium bicarbonate. WE obtained blood gases during the Code Blue. Initial blood gas showed a pH less than 6.92, pC02 of 102, but this was felt to be a venous blood gas with a P02 was 31. Throughout most of this CPR, her oxygen saturation was 100%. We gave her a total of 6 amps of sodium bicarbonate and the next blood gas showed a pH of 6.99, pC02 of 123, but the patient remained in PEA> Throughout the extension ACLs we never recovered pulses although we had excellent femoral pulses on cardiac compression.

The family was at the bedside and I comforted them at bedside and spoke with the family as well as a friend of the daughters who was an RN and a personal friend of Dijana Jefic, M.D. I did speak with Dr. Jefic by phone to explain the situation to her and she did explain the situation to her daughter which was as follows:

Basically, the patient was in PEA for about 75-80 minutes. We did not recover the heart and at that point the Code Blue was called.

Dr. Seiff's coverage was present and reviewed the above with him. Dr. Selco had been contacted by phone during the code and wondered about the possibility of pulmonary

embolus. The differential diagnosis of her terminal event includes pulmonary embolus, catastrophic CNS event, as well as myocardial infarction.

**06/04/2017 AFFIDAVIT RECORDS AUTOPSY REPORT OF ALANE M. OLSON MD PATHOLOGIST Page 2 of 9 Pages**

Cause of Death:

"It is my opinion that this 42-year-old Caucasian female, Alina Badoi, died as a result of bilateral pulmonary thromboemboli due to deep venous thrombosis due to acute spastic paraparesis following intradural hemorrhage associated with epidural anesthesia. Other significant conditions include recent pregnancy, pre-eclampsia, probable von Willebrand disease.

Manner of Death: ACCIDENT (Therapeutic complication)

SUMMARY

At the time of events reviewed above, Ms. Badoi was 41 years of age, and her obstetrical history was uncomplicated. She presented to St. Rose Dominican hospital Siena Campus on May 09, 2017, in the late third term of her first pregnancy, and she was supposed to be induced, at that time, but requested that the induction be put off one week, if it was medically feasible. This was deemed acceptable to her obstetrician, Dr. Herpolsheimer, and Ms. Badoi was discharged and readmitted to St. Rose on May 16, 2017, for a vaginal delivery, with epidural anesthetic. It is noted and of clinical significance that Dr. Kim, of anesthesia, appears to have been initially consulted for the purposes of placing an epidural anesthetic in Ms. Badoi, but he had concerns, because of her presentation with thrombocytopenia and epistaxis. He ordered that a manual platelet count be done before he would make a decision regarding epidural anesthesia for Ms. Badoi. Dr. Kim, apparently, spoke with Ronaldo Abuan in the lab at St. Rose regarding this manual platelet count, and after this, he advised that he would not place the epidural anesthetic in Ms. Badoi, because of a dramatic variance in the platelet count, as determined by the automated test versus the manual test.

Records reflect that around 3 p.m. on May 16, 2017, Ms. Badoi delivered a 6 pound, 7 ounce female infant via a spontaneous vaginal delivery, with midline episiotomy and repair. Intrauterine pregnancy was felt to be uncomplicated, and anesthesia was documented to be epidural. Within 6 hours of delivery, there was chart documentation of clinical complications postpartum. Charting at 8:45 p.m. indicated that Ms. Badoi had developed symptoms of tingling and numbness (paresthesias) involving her lower extremities and associated with dizziness. Her physician was first notified of this fact at approximately 9 p.m., on the day of delivery, and by 10:45 p.m., on May 16th, Dr. Herpolsheimer personally

evaluated Ms. Badoi, and raised initial concern about a possible epidural hematoma. Ms. Badoi's lower extremity symptoms became progressive to include not only paresthesias of her lower extremities, but also weakness, for which she could really not effectively put weight on her legs, and she became progressively anxious and developed lower extremity pruritus, making it impossible for her to rest or sleep. Beginning at about 1:20 a.m. on May 17th, there is documentation of multiple calls to the covering physician for Ms. Badoi's ongoing lower extremity complaints, as well as for hypertension. On the morning of May 17, 2017, Dr. Moore, of anesthesia, was notified of Ms. Badoi's lower extremity pruritus, pain, and numbness, and it was his clinical opinion that this was unrelated to her epidural anesthetic. He did evaluate Ms. Badoi that morning, and prescribed Benadryl for the pruritus and anxiety, as well as instituted "calming techniques."

By 10:45 a.m., on the 17th, Dr. Herpolsheimer was still concerned that Ms. Badoi's lower extremity symptoms were related to an epidural hematoma, and he was given the phone numbers of the on-call neurologist and neurosurgeon, in order to request appropriate consultations. By 11:20 a.m., Ms. Badoi was made n.p.o., and was given a 500-cc bolus of fluids, and IV fluids were started, at 125 cc/hour. Stat thoracic and lumbar spine MRIs were ordered at about 1:15 p.m., and were difficult studies, because of motion artifact. By 3:15 p.m., the MRIs had been completed, with results indicating a significant thoracolumbar epidural process, for which Ms. Badoi was to be scheduled for laminectomy and evacuation of hematoma of the spinal canal.

Ms. Badoi was kept n.p.o., and was transferred to the ICU by Dr. Charles McPherson, of pulmonary medicine, and was stabilized there between around 7:35 p.m. and 8:48 p.m., with lower extremity spastic paraparesis felt to be due to an epidural hematoma, confirmed by thoracic and lumbar spine MRIs. Dr. McPherson noted her medical history to be significant for Hashimoto's thyroiditis status post thyroidectomy and on thyroid replacement therapy. She was noted to be gravida 1, para 1, with complications of her epidural anesthetic. Thrombocytopenia was noted, with a platelet count of 94,000 and a hemoglobin of 10. Dr. McPherson noted that other platelet counts ranged from 80,000 to 100,000, all the way as high as 140,000 to 160,000. He additionally noted the development of postpartum hyponatremia, with a sodium of 130 and elevation of liver function tests of a mild degree, with an ALT, AST, and alkaline phosphatase in the 140 to 150 range. He also documented ongoing postpartum hypertension, and set up a protocol of neuromonitoring in the ICU, and was to check a DIC panel, control blood pressure, and ordered platelet transfusions.

Dr. Michael Seiff, of neurosurgery, evaluated Ms. Badoi, and brought her to the operating room on May 17, 2017, with a diagnosis of thoracolumbar epidural hematoma. He noted her to be a 41-year-old female one day postpartum, who, unfortunately developed bilateral

lower extremity paresthesias, followed by spastic paraplegia, with evaluation subsequently determining the likelihood of an epidural hematoma, for which she was emergently brought to the operating room. Intraoperatively, Dr. Seiff documented that an intradural hematoma was found, requiring T8 through L3 laminectomies for evacuation of the intradural hematoma.

Ms. Badoi remained intubated on postoperative day #1, and ongoing supportive care and management was given. She was seen by Dr. Ghani, of hematology, on May 18th, with thrombocytopenia associated with platelet clumping, reactive leukocytosis, iron deficiency anemia, and elevated liver function tests. She was noted to have gestational hypertension and a platelet count, at that time, of 149,000. A full hematology evaluation was ordered, along with supportive hematology care, including checking for Von Willebrand disease.

Additionally, on May 18, 2017, Ms. Badoi underwent neurology evaluation by Dr. Selco for an epidural hematoma, with bilateral lower extremity weakness. He documented that he had been notified by Dr. Herpolsheimer the day before, and he had advised a stat MRI of the thoracic and lumbar spines, which resulted in the defined clinical diagnosis of a thoracolumbar intradural hematoma, which was evacuated by Dr. Seiff.

Ms. Badoi was noted to be awake and alert on a ventilator at the time of Dr. Selco's neurologic evaluation, and had some movement in the proximal thighs and some ability to flex her knees and plantar flex and dorsiflex her feet. Sensation was felt to be normal postoperatively. Note was made that she received no regular or low-molecular weight heparins during the current admission.

On May 19, 2017, a social service note indicates that there was a discussion with Radu (the patient's boyfriend), and he voiced his concern that there was a delay in getting Ms. Badoi to the O.R. for laminectomy and evacuation of intradural hematoma, with the clinical problem first observed at 10 a.m., and surgery for definitive clinical intervention not being performed for more than 12 hours. The following day, Ms. Badoi developed altered mental status requiring emergency orotracheal intubation for airway protection, which was performed by Dr. McPherson, and complicated by a chip to the left front upper tooth. An MRI of the brain, at that time, for altered mental status revealed intraventricular hemorrhage and hydrocephalus, for which she was seen by Dr. Jim Forage, of neurosurgery, and brought to the operating room for placement of a right ventricular catheter. Note is made that the patient had an echocardiogram, which showed a good and well-preserved ejection fraction, and that a von Willebrand's panel was drawn, but not definitively conclusive for the presence of that disease. By May 22nd, a repeat MRI of the lumbar spine showed intradural blood products of mixed intensity, for which a lumbar drain was subsequently placed by interventional radiologist, Dr. Konchada, on May 23rd. It

was around this time that there was first mention of the clinical problem of HELLP syndrome (hemolysis, elevated liver enzymes, and low platelet count).

Supportive care continued for Ms. Badoi, with adjustment of her medications, and for which primary cancers and/or immunologic/rheumatologic diseases were considered, but ruled out. Ms. Badoi clinically progressed to become more awake and responsive, but continued to complain of a headache intermittently. By May 31st, she was felt to have a better sleep pattern, but persistent, asymmetric bilateral lower extremity weakness, with the left lower extremity being stronger than the right, but both lower extremities were felt to be clinically improving. Bladder training was begun, and intracranial pressures were normal, and the lumbar drain was left in place for possibly proceeding with CT-myelography before removing it. Eventually, her EVD and LD were clamped. An MRI of the thoracic spine revealed an epidural hematoma, for which Dr. Seiff confirmed a diagnosis of a thoracic epidural hematoma. Dr. Seiff returned Ms. Badoi to the operating room on June 02, 2017, for evacuation of thoracic epidural hematoma, including intraoperative neurophysiologic neuromonitoring. Dr. Seiff noted that Ms. Badoi had been progressing approximately two weeks status post T8-L3 laminectomies for evacuation of intradural hematoma, but with ongoing spastic paraplegia, for which postoperative imaging revealed an epidural hematoma, with persistent mass effect on the thoracic spine, especially at the T9-T11 levels, for which elective surgical evacuation was performed.

By the next morning, on June 03, 2017, at 11:25 a.m., Ms. Badoi was sitting up in bed and working with physical therapy, when she reported becoming dizzy, and was laid down, after which she became unresponsive, had seizure-like activity, and was hypotensive. A Code Blue was called, and Ms. Badoi lost her electrical rhythm and pulse, and extensive resuscitation occurred over more than 75 minutes, before she was eventually pronounced dead, after aggressive resuscitative efforts failed. The moribund event was felt to be: pulmonary embolism versus catastrophic CSN event versus MI.

An autopsy was performed by Dr. Alane Olson on June 04, 2017. The cause of death was felt to be as a result of bilateral pulmonary thromboemboli due to deep venous thrombosis secondary to acute spastic paraparesis, following intradural hemorrhage associated with epidural anesthesia. Other comorbid conditions included recent pregnancy, pre-eclampsia, and possible von Willebrand disease. Ms. Badoi's manner of death was ruled accidental (therapeutic complication).

After review of the medical records, I am in agreement with the pathologist, Dr. Olson, as it relates to the causation in this matter. Unfortunately, Ms. Badoi suffered severe complications of an epidural anesthetic at the time of her vaginal delivery, with the development of paresthesias, weakness, and subsequently spastic paraplegia of her lower

extremities. A thoracolumbar pathologic process was clearly identified on postpartum MRIs, requiring Dr. Seiff to emergently bring Ms. Badoi to the operating room for extensive T8-L3 laminectomies and evacuation of a compressive intradural spinal cord hematoma. Ms. Badoi's clinical course remained complicated, with the development of altered mental status and an intracranial subarachnoid hemorrhage requiring CSF diversion in the form of a right ventriculostomy catheter. She also subsequently required ongoing lumbar drainage by placement of a lumbar drain. Ms. Badoi's course was complicated by the presentation with and ongoing problems of thrombocytopenia, for which hematologic evaluation was never clearly definitive for the presence of von Willebrand disease, which, however, was suspected. Despite aggressive surgical treatment, she developed another thoracic epidural process requiring another surgery by Dr. Seiff on June 2nd. On the following day, she had an acute cardiopulmonary event resulting in pulseless asystole and for which resuscitation was unsuccessful, and for which she was pronounced dead.

Clinically, during her hospitalization, Ms. Badoi was felt to possibly have HELLP syndrome, which is a known complication of pregnancy, and at least, by some, felt to be a severe form of preeclampsia, otherwise known as gestational hypertension accompanied by proteinuria in the third trimester of pregnancy. The exact etiology of HELLP syndrome is not definitively known, but Ms. Badoi had a known risk factor of her age greater than 40. I am unaware of any known preventative management that could have been employed to avoid gestational hypertension and its complications in Ms. Badoi. HELLP syndrome has three definitive features, which include hemolysis, elevated liver enzymes, and platelet counts below normal. Ms. Badoi had at least two of these elements, though the records do not definitively reflect the presence of hemolysis after a very thorough hematologic workup. HELLP syndrome is known to be rare and occurs in less than 1% of all pregnancies, but possibly in 5% to 10% of patients with preeclampsia. Older maternal age, with pregnancy, is a known risk factor in the development of this syndrome, where preeclampsia is felt to occur in younger patients. While the possibility of HELLP syndrome as a clinical diagnosis was raised within the medical records of Ms. Badoi, no clinical classification was noted, and I will leave this to an obstetrical expert to discuss whether or not Ms. Badoi, in fact, had HELLP syndrome, and whether she had the presentation consistent with Class I disease, which is when statistically mortality can occur. The prognosis for HELLP syndrome is good, with most patients stabilizing within 24 to 48 hours, and noted protracted postpartum recovery times occurring in patients with Class I disease. Class I disease or that of complete HELLP syndrome is associated with the highest incidence of perinatal maternal morbidity and mortality, with death occurring in 1% to 3% of patients that develop HELLP, and with perinatal mortality rates of up to one-third. Morbid outcomes include DIC (disseminated intravascular coagulation), placental abruption, pulmonary edema, and renal failure.

Whether or not Ms. Badoi clinically developed a form of HELLP syndrome does not appear to be relevant to her cause of death. She clinically did present with elevated liver function tests and thrombocytopenia, and along with a clinical presentation of epistaxis, prompted Dr. Kim, of anesthesia, to appropriately refuse epidural anesthetic. Records document, however, that an epidural anesthetic was administered to Ms. Badoi for her vaginal delivery, which included episiotomy and subsequent repair. Unfortunately, the epidural anesthetic resulted in the development of an extensive intradural thoracolumbar hematoma. As a consequence of this intradural spinal cord bleed, symptomatic compression of Ms. Badoi's spinal cord developed and resulted in lower extremity paresthesias, numbness, and spastic weakness/paralysis. This resulted in the need for an emergency evacuation of the intradural hematoma, which occurred on the day after her vaginal delivery. Her clinical course was one of continued and ongoing lower extremity paraparesis and immobilization in the ICU, further complicated by altered mental status and intracranial subarachnoid hemorrhage, with hydrocephalus, requiring CSF diversion, with a right ventriculostomy. Despite aggressive management, her spinal cord hematoma redeveloped, requiring a return to the operating room more than two weeks after her initial spinal surgery. The following day, Ms. Badoi suffered a massive bilateral pulmonary embolism, which resulted in her death.

At autopsy, the pathologist correctly laid out the course of events that were causative in Ms. Badoi's death. To summarize, Ms. Badoi developed a rare and terrible complication of an epidural anesthetic at the time of her vaginal delivery. 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. Other bleeding events were noted, and she was given blood products to inhibit further bleeding complications. 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. Unfortunately, the cascade of events leading to activation of the clotting mechanisms resulted in the development of a likely pelvic vein thrombosis due to activation of the clotting cascade, as well as the pressure of intrauterine pregnancy and lower extremity immobilization in the ICU, and with lower extremity paraparesis/paraplegia. The thromboembolic event that culminated in this unfortunate cascade was that of a massive pulmonary embolism, and causally was the event, which led to the death of Ms. Badoi. 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. I reserve the right to amend or addend these findings as further records or documents become available.

I declare under penalty of perjury that the foregoing is true and correct pursuant to NRS 53.045.

Sincerely,

Bruce J. Hirschfeld, M.D., F.A.C.S.
BJH:kk

# CURRICULUM VITAE
# BRUCE J. HIRSCHFELD, M.D.

**ADDRESS**

| | | |
|---|---|---|
| | **OFFICE:** | General Vascular Specialists<br>7200 W Cathedral Rock, Suite 130<br>Las Vegas, Nevada 89128<br>702-228-8600 Fax 702-228-8689 |
| **PERSONAL** | **Date of Birth:** | July 30, 1958<br>New York City, New York |
| | **Marital Status:** | Divorced |
| | **Children:** | Two (Hailey & Hillary Hirschfeld) |
| **EDUCATION** | **Premedical:** | Duke University<br>Durham, North Carolina<br>Bachelor of Sciences (Magna Cum Laude)<br>September 1976 - May 1980 |
| | **Medical School:** | Baylor College of Medicine<br>Houston, Texas<br>Doctorate of Medicine, 1984 |
| | **Internship:** | Baylor College of Medicine<br>Houston, Texas<br>General Surgery Intern<br>July 1984 - June 1985 |
| | **Residency:** | Baylor College of Medicine<br>Houston, Texas<br>General Surgery Residency<br>July 1985 - June 1987 |
| | | Baylor University Medical Center<br>Houston, Texas<br>General Surgery Residency<br>July 1987 - June 1989 |
| | **Fellowship:** | Baylor College of Medicine<br>Houston, Texas<br>Vascular Surgery Fellowship<br>July 1989 - June 1990 |

## LICENSURE

| | | |
|---|---|---|
| Texas | G-8178 | Effective 8/23/85 |
| Texas Controlled Substance Certificate | M8859776 | |
| Nevada | 6059 | Effective 7/1/90 |
| Nevada Controlled Substance Certificate | CS5654 | |
| Federal DEA Certificate | AH3221986 | |
| Alaska | 4544 | Effective 11/2/00 |
| Hawaii | 11232 | Effective 10/13/00 |

## BOARD CERTIFICATION

| | | |
|---|---|---|
| American Board of Surgery | #34955 | 2/5/90 - 7/1/2020 |
| General Vascular Surgery | #46079 | 5/22/91 - 7/1/2023 |
| Surgical Critical Care | #774 | 10/18/91 - 7/1/2013 |

## PRIVATE PRACTICE

| | |
|---|---|
| May 15, 2002 - Present | General Vascular Specialists<br>7200 W Cathedral Rock, Suite 130<br>Las Vegas, Nevada 89128<br>702-228-8600 Fax 702-228-8689 |
| February 2, 2002 - May 14, 2002 | Leave of Absence |
| May 1, 1993 - February 1, 2002 | The Nevada Surgical Group<br>7200 W Cathedral Rock, Suite 130<br>Las Vegas, Nevada 89128<br>702-258-7788<br>3100 W Charleston Blvd., Suite 204<br>Las Vegas, NV 89102<br>3201 S Maryland Parkway, Suite 218<br>Las Vegas, NV 89109 |
| August 1, 1990 - April 30, 1993 | Vascular Surgical Specialists<br>3100 W Charleston Blvd., Suite 204<br>Las Vegas, NV 89102 |

## PROFESSIONAL SOCIETIES

American College of Surgeons (Associate Fellow)
Michael E. DeBakey International Surgical Society
Peripheral Vascular Surgery Society
Society for Critical Care Medicine
National Oncology Society

**PROFESSIONAL SOCIETIES (cont.)**

Nevada State Medical Association
Clark County Medical Association
The Society of Laparoscopic Surgeons
International Society of Endovascular Specialists
Association for the Advancement of Wound Care
SAGES (Society of American Gastrointestinal Endoscopic Surgeons)

**APPOINTMENTS**

| | |
|---|---|
| | Clinical Assistant Professor of Surgery<br>Department of Surgery<br>University of Nevada |
| 2009 | Medical Director<br>Medical Services of America Home Health |
| March, 2005- 2009 | Medical Director<br>Oasis Home Health, Inc. |
| 2005 – 2007 | Medical Director<br>Valley Hospital Medical Center<br>Wound Care Center |
| April 2, 2000 - 2004 | Medical Director<br>Summerlin Medical Center<br>Wound Care Center |
| June 1999 - Present | State of Nevada Medical/Dental Screening Panel<br>Participant |
| August 16, 2001 | Chief Investigator Western Institutional Review Board<br>Performance evaluation of changes to Ancure<br>Endograft System and instructions for use |
| January 17-31, 2012 | Shadowing by Henry Chen |

**PUBLICATIONS**

Hirschfeld, B.J., McAlister, D.S., Pizzo S., and Thompson, W.M.,: Evaluation of the Anode and Cathode for Transcatheter Electrocoagulation. Acta Radiologica Diagnosis 22:133, 1981.

Philpott, C.C., Hirschfeld, B.J., Clark, H.C., and Thompson, W.M.,: The Mechanism of Transcatheter Electrocoagulation (TCEC). Investigative Radiology 18:100, 1983.

## LECTURES

| | |
|---|---|
| May 9, 2000 | Summerlin Medical Center, Medical Director<br>Wound Care Clinic Grand Opening<br>Topic: Ischemic Wounds |
| May 25, 2000 | DVT Prevention and Treatment<br>Pharmacia & UpJohn |
| September 29, 2000 | UMC Grand Rounds<br>Peripheral Arterial Disease<br>Intermittent Claudication and Pletal |
| November 15, 2000 | Pharmacia & UpJohn<br>Low Molecular Weight Heparin<br>Prevention and Treatment of Venous Thromboembolism |
| March 21, 2001 | Intermittent Claudication<br>Periferal Arterial Disease<br>The Latest Pharmaceutical Therapy, Pletal |
| June29 - July 1, 2002 | Scleroderma Foundation<br>National Conference 2002 "Living Well with Scleroderma"<br>Wound Care Management in Scleroderma |
| July 20, 2002 | Summerlin Hospital Medical Center<br>Multidisciplinary Education Lecture<br>Lymphedema: Etiology, Diagnosis & Management |

## HOSPITAL AFFILLIATIONS

| | |
|---|---|
| September 30, 1990<br>Associate / Surgery | University Medical Center of Southern Nevada<br>1800 W Charleston Blvd.<br>Las Vegas, Nevada 89102 |
| September 1, 1990<br>Active / Surgery | Sunrise Hospital<br>3186 S Maryland Parkway<br>Las Vegas, Nevada 89109 |
| January 21, 2003<br>Courtesy | Desert Springs Hospital<br>2075 E Flamingo Road<br>Las Vegas, Nevada 89119 |

## HOSPITAL APPOINTMENTS (cont.)

| | |
|---|---|
| January 17, 1991<br>Associate / Surgery<br><br>Sienna Campus | Saint Rose Dominican Hospital<br>102 E Lake Mead Drive<br>Henderson, Nevada 89015<br>3001 Saint Rose Parkway<br>Henderson, Nevada 89052 |
| August 17, 2000<br>Active / Surgery | Mountain View Hospital<br>3100 N Tenaya Way<br>Las Vegas, Nevada 89128 |
| May 31, 2011<br>Courtesy | North Vista Hospital<br>1409 E Lake Mead Blvd.<br>N. Las Vegas, Nevada 89030 |
| February 17, 2010<br>Provisional Status | Southern Hills Hospital<br>9300 W Sunset Road<br>Las Vegas, NV 89148 |
| November, 2011<br>Active/Surgery | Spring Valley Hospital<br>5400 Rainbow Blvd<br>Las Vegas, Nevada 89118 |
| November 30, 2011<br>Active/Surgery | Valley Hospital<br>620 Shadow Lane<br>Las Vegas, Nevada 89106 |

## CME COURSES AND ANNUAL MEETINGS

| | | |
|---|---|---|
| 6/25/88 | Tulane Medical Center<br>New Orleans, Louisiana<br>**Surgical Forum** | 4 Credit Hrs |
| 11/17 - 11/19/89 | Albert Einstein College of Medicine<br>Montefiore Medical Center<br>**16th Annual Current Critical Problems in Vascular Surgery** | 22 Credit Hrs |
| 9/24 - 9/28/90 | U.C.L.A. Medical Center<br>Los Angeles, California<br>**8th Annual UCLA Symposium: A Comprehensive Review & Update of What's New In Vascular Surgery** | 32 Credit Hrs |
| 8/1 - 8/4/91 | Huntington Memorial Hospital<br>San Francisco, California<br>**Computed Sonography Imaging and Doppler Course** | 15 Credit Hrs |

## CME COURSES AND ANNUAL MEETINGS (cont.)

| | | |
|---|---|---|
| 9/27 - 9/29/91 | University of Utah School of Medicine<br>Salt Lake City, Utah<br>**Laparoscopic Cholestectomy** | 24 Credit Hrs |
| 10/10 - 10/13/91 | University of Health Sciences / The Chicago Medical School<br>Chicago, Illinois<br>**10th Annual Chicago Critical Care Symposium & Board Review** | 26 Credit Hrs |
| 3/21 - 3/26/93 | Medical Education Collaborative<br>Aspen, Colorado<br>**The Rocky Mountain Vascular Disease Symposium** | 20 Credit Hrs |
| 12/1 - 12/2/95 | Education Design<br>Marietta, Georgia<br>**Advanced Operative Laparoscopy for General Surgeons** | 14 Credit Hrs |
| 1/28 - 2/2/96 | The American Institute of Ultrasound in Medicine<br>Kauai, Hawaii<br>**5th Annual Symposium: Diagnostic and Therapeutic Approach to Vascular Diseases** | 32 Credit Hrs |
| 3/19/96 | Johnson & Johnson Interventional Systems Company<br>**Palmaz Balloon - Expandable Stent For Use In Iliac Arteries** | |
| 3/3/97 | Endo-Surgery Institute<br>Cincinnati, Ohio<br>**Advanced Laparoscopic Hernia Procedures** | 3 Credit Hrs<br>Hands on Exp. |
| 3/3 - 3/4/97 | Endo-Surgery Institute<br>Cincinnati, Ohio<br>**Advanced Laparoscopic Gastric Procedures** | 3 Credit Hrs<br>Hands on Exp. |
| 6/12 - 6/14/97 | The Institute for Medical Education<br>**8th Annual Symposium on Interventional Therapy for Vascular Disease** | 19 Credit Hrs |
| 10/12 - 10/15/97 | Medical Education Collaborative<br>**Frontiers in Vascular Disease 97** | 18 Credit Hrs |

## CME COURSES AND ANNUAL MEETINGS (cont.)

| | | |
|---|---|---|
| 11/13 - 11/14/97 | University of Cincinnati College of Medicine<br>**Laparoscopic Abdominal Solid Organ Surgery**<br>Snowmass, Colorado<br>**Rocky Mountain Vascular Disease Symposium** | 14 Credit Hrs |
| 3/23 - 3/25/99 | Arizona Heart Institute<br>**Intermediate Endovascular Interventions**<br>**Hands on Training course** | 17 Credit Hrs |
| 5/21/99 | Medical Ethic and Professional Responsibility<br>**1998 - 1999 Update for the Nevada Physician** | 3 Credit Hrs |
| 11/11 - 11/12/99 | Arizona Heart Institute<br>**The AnueRx Stent Graft Physician Training Program** | |
| 1/25/00 | Vanderbilt University Hospital<br>**AAA training program for the application of the Ancure Endograft System for Abdominal Aortic Aneurysm Repair** | |
| 2/13 - 2/17/00 | International Society of Endovascular Specialists<br>**International Congress 2000 on Endovascular Interventions** | 11.5 Credit Hrs |
| 3/24/00 | Valley Hospital Medical Center<br>**Endovascular Repair for Aneurysm privileges granted** | |
| 9/12/00 | Ethicon, Inc.<br>Somerville, New Jersey<br>**Integra Artificial Skin Physician Training Program** | |
| 2/9 - 2/10/01 | Society of Critical Care Medicine<br>San Francisco, California<br>**Fifth Critical Care Refresher Course** | 14.5 Credit Hrs |
| 2/13/01 | International Society of Endovascular Specialists<br>Arizona Heart Institute<br>**International Congress XIV on Endovascular Interventions** | 2.5 Credit Hrs |
| 2/14/01 | Arizona Heart Institute<br>**ELCA Laboratory Training** | 8 Credit Hrs |

## CME COURSES AND ANNUAL MEETINGS (cont.)

| | | |
|---|---|---|
| 2/11 - 2/15/01 | International Congress XIV<br>Arizona Heart Institute<br>**Endovascular Interventions** | 12.5 Credit Hrs |
| 5/3/01 | **14th Annual Symposium on Advanced Wound Care & Medical Research Forum on Wound Repair** | 4 Credit Hrs |
| 5/31/01 | InforMed<br>**Medical Ethics and Professional Responsibility** | 2 Credit Hrs |
| 8/5 - 8/12/01 | American Seminar Institute<br>**Cardiology Review** | 20 Credit Hrs |
| 8/24/01 | Audio Digest Foundation<br>**Family Practice**<br>**Pediatrics**<br>**Emergency Medicine**<br>**Internal Medicine** | <br>10 Credit Hrs<br>2 Credit Hrs<br>4 Credit Hrs<br>4 Credit Hrs |
| 8/16 - 8/20/02 | Society of Critical Care Medicine<br>Chicago, Illinois<br>**SCCM/ACCP 4th Combined Critical Care Course** | |
| 4/26/03 | Nevada Oncology Society<br>Joint Sponsored by University of Kentucky<br>Las Vegas, NV<br>**AMA Physicians Recognition Award** | 3.5 Credit Hrs |
| 8/25 - 8/28/03 | Summerlin Hospital Hyperbaric Medicine Center<br>**Hyperbaric Medicine** | 40 Credit Hrs |
| 6/17 - 6/29/04 | Audio Digest Foundation<br>**Imaging in Vascular Surgery**<br>**Medicolegal Misadventures**<br>**Spotlight on Endocrine Surgery**<br>**When Cells Go Wild**<br>**Issues in Gastrointestinal Disorders**<br>**Gastrointestinal Complications**<br>**Topics in Endocrine Surgery**<br>**Advances in Breast Cancer Surgery**<br>**Medical Errors**<br>**What's New in Colorectal Surgery** | <br>2 Credit Hrs<br>2 Credit Hrs<br>2 Credit Hrs<br>2 Credit Hrs<br>2 Credit Hrs<br>2 Credit Hrs<br>2 Credit Hrs<br>2 Credit Hrs<br>2 Credit Hrs<br>2 Credit Hrs<br>2 Credit Hrs |

## CME COURSES AND ANNUAL MEETINGS (cont.)

| | | |
|---|---|---|
| 5/18/05 | Thomson American Health Consultants | |
| | **Professionalism and Ethics in the ED** | 2 Credit Hrs |
| | **The Medical Malpractice Crisis: Why Are Physicians Losing?** | 1 Credit Hr |
| | **Missed MI: Costly, Deadly, and Sometimes Unpreventable** | 1 Credit Hr |
| | **Appropriate Documentation: Your First (and Best) Defense** | 1 Credit Hr |
| 5/26/05 | Thomson American Health Consultants | |
| | **Raising the Ghost of 1918: Could Flu be the Ultimate Bioweapon?** | 1 Credit Hr |
| 5/27/05 | Thomson American Health Consultants | |
| | **Plague in the Big Apple: Rare Cases Trigger Bioterrorism Response** | 1 Credit Hr |
| | **Be Alert for Ricin Poison Cases after Deadly Toxin Used in Threat** | 1 Credit Hr |
| | **Wise or Ill-Advised? Smallpox Vaccine Program Hits Hiatus** | 1 Credit Hr |
| 6/27/05 | Audio-Digest Foundation | |
| | **Critical Care Update** | 2 Credit Hrs |
| | **Spotlight on Trauma** | 2 Credit Hrs |
| | **Traumatic Injuries** | 2 Credit Hrs |
| | **Tips on Trauma** | 2 Credit Hrs |
| | **Orthopaedic Trauma** | 2 Credit Hrs |
| | **Trauma Wounds** | 2 Credit Hrs |
| | **ATLS: Fact or Fiction?** | 2 Credit Hrs |
| | **Head Trauma** | 2 Credit Hrs |
| | **Trauma of the Torso** | 2 Credit Hrs |
| | **More on Trauma** | 2 Credit Hrs |
| 1/16 – 1/21/06 | The North American Center for Continuing Medical Education<br>American College of Hyperbaric Medicine<br>Columbus, Ohio<br>**Principles of Wound Healing and Hyperbaric Medicine** | 47.5 Credit Hrs |
| 4/27/07 | The University of Nevada School of Medicine | |
| | **Risk Management for the Physician Office** | 3.5 Credit Hrs |
| 1/14 – 1/15/08 | Gore Advanced AAA Symposium<br>Las Vegas, Nevada | |

## CME COURSES AND ANNUAL MEETINGS (cont.)

| | | |
|---|---|---|
| 5/26/09 | The University of Oklahoma College of Medicine<br>Oklahoma City, Oklahoma<br>**Medical Ethics Today: A CME Update** | 2 Credit Hrs |
| 3/31/09 | Oakstone Medical Publishing<br>**The New York General Surgery Board Review** | 41.5 Credit Hrs |
| 10/1/09 | American College of Surgeons<br>**Surgical Education and Self-Assessment Program No.13** | 60 Credit Hrs |
| 12/28/09-01/01/10 | American Seminar Institute<br>Playa Del Carmen, Mexico<br>**General Surgery Review** | 18 Credit Hrs |
| 2/28/10 | Audio-Digest Foundation | |
| | **Resistent Bugs** | 2 Credit Hrs |
| | **Laparoscopy Update** | 2 Credit Hrs |
| | **A New Look at Surgery** | 2 Credit Hrs |
| | **Renal Failure/Hyperbaric Medicine** | 2 Credit Hrs |
| | **Issues in the Pelvic Region** | 2 Credit Hrs |
| | **Anticoagulants and Blood** | 2 Credit Hrs |
| | **Weighty Surgical Issues** | 2 Credit Hrs |
| | **GI Surgery** | 2 Credit Hrs |
| | **Thyroid Surgery** | 2 Credit Hrs |
| 5/16/11 | Johns Hopkins University School Of Medicine<br>**Practical Reviews in General Surgery** | 3 Credit Hrs |
| 5/28/11 | Medical Risk Management<br>**Risk Management Consult: Avoiding Medical Systems Failures** | 4 Credit Hrs |
| 8/9/11 | Society for Vascular Surgery<br>**Vascular Educatioon and Self-Assessment Program VESAP 1** | 45 Credit Hrs |
| 8/12-8/14/2011 | American Physician Institute for Advanced Professional Studies<br>Schaumburg, Illinois<br>**Vascular Surgery Comprehensive Review Course** | 29 Credit Hours |
| 3/18/12 | Medical Risk Management<br>**Risk Management Consult: Documentation** | 5 Credit Hrs |

## CME COURSES AND ANNUAL MEETINGS (cont.)

| | | |
|---|---|---|
| 10/2012 | American Physician Institute for Advanced Professional Studies<br>Oak Brook, Illinois<br>**Vascular Surgery Comprehensive review** | 27 Credit Hrs |
| 9/10/2012 | David Geffen School of Medicine at UCLA<br>Hollywood, California<br>**What's New in Vascular and Endovascular Surgery** | 34.5 Credit Hrs |
| 4/27/2013 | Medical Risk Management<br>**Risk Management: Managing Disruptive Physician Behavior** | 5 Credit Hrs |
| 4/15/15 | Medical Risk Management<br>Risk management: Avoiding Medical System Failures, | 5 Credit Hrs |
| 5/2/16 | Medical Risk Management<br>Risk management: Essentials for physicans second edition | 10 credit Hrs |
| 4/5/17 | Medical Risk Management<br>Risk management: The Complete Series second edition | 6 Credit Hrs |
| 3/3/18 | Medical Risk Management<br>Risk management: Avoiding Medical System Failures | 6 Credit Hrs |
| 3/28/18 | Med-IG<br>Can a known complication be Malpractice | 1 Credit Hr |
| 4/1/18 | David Geffen School of Medicine at UCLA<br>Comprehensive Review and Update of<br>Whats new in Vascular and Endovascular Surgery | 25 Credit Hrs |

# EXHIBIT B

MICHAEL E. PRANGLE, ESQ.
Nevada Bar No. 8619
TYSON J. DOBBS, ESQ.
Nevada Bar No. 11953
HALL PRANGLE & SCHOONVELD, LLC
1140 North Town Center Drive, Ste. 350
Las Vegas, Nevada 89144
Phone: 702-889-6400
Facsimile: 702-384-6025
efile@hpslaw.com
*Attorneys for Defendant*
*Dignity Health d/b/a St. Rose Dominican*
*Hospital – Siena Campus*

HALL PRANGLE & SCHOONVELD, LLC
1140 NORTH TOWN CENTER DRIVE, STE. 350
LAS VEGAS, NEVADA 89144
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

**DISTRICT COURT**
**CLARK COUNTY, NEVADA**

| | |
|---|---|
| LIVIU RADU CHISIU, as Special Administrator for 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;<br><br>Plaintiff,<br><br>vs.<br><br>DIGNITY HEALTH, a Foreign Non-Profit Corporation d/b/a ST. ROSE DOMINICAN HOSPITAL – SIENA CAMPUS; JOON YOUNG KIM, M.D., an Individual; U.S. ANESTHESIA PARTNERS, INC., a Foreign Corporation; DOES I through X, inclusive; and ROE BUSINESS ENTITIES XI through XX, inclusive,<br><br>Defendants. | CASE NO. A-18-775572-C<br>DEPT NO. 2<br><br>**ORDER GRANTING DEFENDANT DIGNITY HEALTH D/B/A ST. ROSE DOMINICAN HOSPITAL'S MOTION FOR JUDGMENT ON THE PLEADINGS AS TO PLAINTIFFS' CLAIMS FOR NEGLIGENT CREDENTIALING AND NEGLIGENT HIRING, TRAINING, AND SUPERVISION AND DEFENDANT U.S. ANESTHESIA PARTNERS, INC.'S PARTIAL JOINDER THERETO** |

This matter having come before the Honorable Carli Kierny, for oral argument, on January 27, 2021, regarding Defendant Dignity Health d/b/a St. Rose Dominican Hospital's Motion for Judgment on the Pleadings as to Plaintiffs' Claims for Negligent Credentialing and

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LAS VEGAS, NEVADA 89144
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

Negligent Hiring, Training, and Supervision, and Defendant U.S. Anesthesia Partners, Inc.'s Partial Joinder Thereto. Plaintiffs, Liviu Radu Chisiu, as Special Administrator of the Estate of Alina Badoi, Deceased, and Liviu Radu Chisiu, as Parent and Natural Guardian of Sophia Relina Chisiu, a minor, as Heir of the Estate of Alina Badoi, Deceased, appearing by and through their attorney of record, KENDELEE L. WORKS, ESQ. of CHRISTIANSEN LAW OFFICES; and Defendant Dignity Health d/b/a St. Rose Dominican Hospital – Siena Campus, appearing by and through its attorney of record, TYSON J. DOBBS, ESQ. of the law firm HALL PRANGLE & SCHOONVELD, LLC; and Defendant U.S. Anesthesia Partners, Inc. appearing by and through its attorney of record, ADAM SCHNEIDER, ESQ. The Court, having read the pleadings and papers on file herein, and good cause appearing therefore, rules as follows:

Defendants requests for Judgement on the pleadings under Rule 12(c) is not premature. NRCP 12(c) provides that motion for judgment on the pleadings can be filed after the pleadings are closed but within such a time as not to delay trial. NRCP 7 defines the pleadings as: (1) a complaint; (2) an answer to a complaint; (3) an answer to a counterclaim designated as a counterclaim; (4) an answer to a crossclaim; (5) a third-party complaint; (6) an answer to a third-party complaint; and (7) if the court orders one, a reply to an answer. While Plaintiff contends Defendants NRCP 12(c) motions are premature because the deadline to amend pleading and add parties has not yet expired, they provide no cited authority for this proposition. Furthermore, plaintiff did not ask to continue this motion past February 11 (the date cited in their motion) to add any additional parties or amend their pleadings. If such motion was made, it would have been freely granted. Therefore, the Court finds that Defendants requests are ripe for decision.

Plaintiffs' claims as to negligent credentialing and negligent hiring, training, supervision, or retention both sound in professional negligence, not ordinary negligence.

NRS 41A.015 defines professional negligence as the failure of a provider of health care, in rendering services, to use the reasonable care, skill, or knowledge ordinarily used under similar circumstances by similarly trained and experienced providers of healthcare. A claim of negligent hiring, supervision or training does not fall under NRS 41A.015, but is rather classified as ordinary negligence, where the underlying facts of the case do not fall within this

definition. *Szymborski v. Spring Mountain Treatment Ctr.*, 133 Nev. 638, 647 (2017). The Plaintiffs contend that the negligent hiring, training, supervision or retention claims are ordinary negligence.

To determine whether a claim sounds in professional or ordinary negligence, the Court must look to whether Plaintiffs' claims involved medical diagnosis, judgment, or treatment, or were based on the performance of nonmedical services. *Id.* at 641. If an alleged breach involves medical judgment, diagnosis, or treatment, it is likely a claim for medical malpractice. *Id*. There are circumstances where the negligence alleged involves a medical diagnosis, judgment, or treatment but the jury can evaluate the reasonableness of the health care provider s actions using common knowledge and experience, a situation that was addressed by the Nevada Supreme Court in *Estate of Curtis v. South Las Vegas Medical Investors LLC*, 136 Nev. Adv. Op. (2020). The court further held that negligent hiring, training, and supervision claims cannot be used to circumvent NRS Chapter 41A's requirements governing professional negligence lawsuits when the allegations supporting the claims sound in professional negligence. Where the allegations underlying negligent hiring claims are inextricably linked to professional negligence, courts have determined that the negligent hiring claim is better categorized as vicarious liability rather than an independent tort.

Applying that rule here, Plaintiffs' complaint alleged that defendants had a duty to exercise due care in the selection, training, supervision, oversight, direction, retention and control of its employees and/or agents, retained by it to perform and provide services. Plaintiffs further alleged that the breach of that duty caused Ms. Badoi's death. However, if the underlying negligence did not cause Alina's death, no other factual basis is alleged for finding Defendants liable for negligent hiring, training, and supervision. As the NV Supreme Court stated in *Zhang*, the medical injury could not have resulted from the negligent hiring, training, and supervision without the negligent rendering of professional medical services. Plaintiffs' claims are inextricably linked to the underlying negligence, which is professional negligence. Therefore, the Plaintiffs' complaint is subject to NRS 41A.071's affidavit requirement.

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Plaintiffs' affidavit does not conform with these requirements and this Court has no discretion but to grant the defendants' motion.

NRS 41A.071 provides that if an action for professional negligence is filed in the district court, the district court shall dismiss the action, without prejudice, if the action is filed without a supporting affidavit from a medical professional. The affidavit must: (1) support the allegations contained in the action; (2) Be submitted by a medical professional who practices or has practiced in an area that is substantially similar to the type of practice engaged in at the time of the alleged professional negligence; (3) Identify by name or describe by conduct, each provider of health care who is alleged to be negligent; and (4) Set forth factually a specific act or acts of alleged negligence separately as to each defendant in simple, concise, and direct terms. In the present case, the Plaintiffs' affidavit, completed by licensed anesthesiologist Dr. Yaakov Beilin, is devoid of any support whatsoever for a negligent hiring or credentialing claim. Therefore, the Court finds that Dr. Beilin's affidavit is insufficient to satisfy the requirements of NRS 41A.071, and the Court must dismiss the claims that do not comply with 41A.071.

Accordingly, it is hereby ordered that both Defendant Dignity Health's Motion for Judgment on the Pleadings and Defendant USAP's Partial Joinder to Defendant Dignity Health's Motion are GRANTED and the Plaintiffs' second and fourth claims are dismissed.

Defendant Dignity Health did raise additional issues related to the negligent credentialing claim and the negligent hiring, training, supervision, or retention claim; however, as this decision dismisses those claims, those arguments are presently moot.

**IT IS SO ORDERED.**

Dated this 10th day of February, 2021

DB8 DE2 96DD 5242
Carli Kierny
District Court Judge

Respectfully Submitted by:

**HALL PRANGLE & SCHOONVELD, LLC**

/s/ Tyson Dobbs
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Nevada Bar No. 8619
TYSON J. DOBBS, ESQ.
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Approve as to form and content:

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## Nicole M. Etienne

**From:** Adam Schneider <aschneider@jhcottonlaw.com>
**Sent:** Tuesday, February 02, 2021 2:50 PM
**To:** Nicole M. Etienne; Kendelee Works
**Cc:** Tyson Dobbs
**Subject:** RE: Badoi -- Order re Mtn for Judgment

**[External Email]** CAUTION!.

I approve the use of my e-signature.

Adam Schneider, Esq.
JOHN H. COTTON & ASSOCIATES, LTD.
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---

**From:** Nicole M. Etienne
**Sent:** Tuesday, February 2, 2021 2:42 PM
**To:** Kendelee Works; Adam Schneider
**Cc:** Tyson Dobbs
**Subject:** Badoi -- Order re Mtn for Judgment

Good Afternoon,

Attached please find a draft order for the Motion for Judgment on the Pleadings. Please review and let us know if you have any revisions. If acceptable, please advise if we have your permission to use your e-signature. Thank you!

HALL PRANGLE+ SCHOONVELD LLC
WHERE TRIAL LAWYERS ARE THE NORM

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**Nicole Etienne**
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**Legal Assistant to:**
Casey Tyler
Michael Shannon
Tyson Dobbs

## Nicole M. Etienne

**From:** Kendelee Works <kworks@christiansenlaw.com>
**Sent:** Tuesday, February 09, 2021 1:17 PM
**To:** Tyson Dobbs
**Cc:** Nicole M. Etienne; Esther Barrios Sandoval; Whitney Barrett; Keely Perdue
**Subject:** Re: Badoi -- Order re Mtn for Judgment

**[External Email]** CAUTION!.

Yes, please go ahead and submit. Apologies for my delay.

Thanks,
KLW

On Feb 9, 2021, at 1:12 PM, Tyson Dobbs <tdobbs@HPSLAW.COM> wrote:

Kendelee,

Can we send the order along to the judge? We simply used the judge's language from the minute order. Per the rules today is our deadline to submit the order.

Thanks

<hps_logo_sm_7a5e5323-7fb9-4eb7-9623-1cb12df58917.jpg>

**Tyson Dobbs**
*Partner*
O: 702.212.1457
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**Legal Assistant:** Nicole Etienne
O: 702.212.1446
Email: netienne@hpslaw.com



**From:** Nicole M. Etienne <netienne@HPSLAW.COM>
**Sent:** Monday, February 8, 2021 10:52 AM
**To:** Kendelee Works <kworks@christiansenlaw.com>; Esther Barrios Sandoval

<esther@christiansenlaw.com>
**Cc:** Tyson Dobbs <tdobbs@HPSLAW.COM>
**Subject:** FW: Badoi -- Order re Mtn for Judgment

Following up on this please. thanks!

<image001.jpg>

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Tyson Dobbs



---

**From:** Nicole M. Etienne
**Sent:** Tuesday, February 02, 2021 2:42 PM
**To:** Kendelee Works <kworks@christiansenlaw.com>; Adam Schneider <aschneider@jhcottonlaw.com>
**Cc:** Tyson Dobbs <tdobbs@HPSLAW.COM>
**Subject:** Badoi -- Order re Mtn for Judgment

Good Afternoon,

Attached please find a draft order for the Motion for Judgment on the Pleadings. Please review and let us know if you have any revisions. If acceptable, please advise if we have your permission to use your e-signature. Thank you!

**CSERV**

DISTRICT COURT
CLARK COUNTY, NEVADA

| | |
|---|---|
| Estate of Alina Badoi, Plaintiff(s) | CASE NO: A-18-775572-C |
| vs. | DEPT. NO. Department 2 |
| Dignity Health, Defendant(s) | |

**AUTOMATED CERTIFICATE OF SERVICE**

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

Service Date: 2/10/2021

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# EXHIBIT C

DISTRICT COURT
CLARK COUNTY, NEVADA

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,

Plaintiffs,

vs.

CASE NO. A-18-775572-C
DEPT. NO. XXXII

DIGNITY HEALTH, a Foreign Non-Profit Corporation d/b/a ST. ROSE DOMINICAN HOSPITAL-SIENA CAMPUS; JOON YOUNG KIM, M.D., an individual; U.S. ANESTHESIA PARTNERS, INC., a Foreign Corporation; DOES I through X and ROE BUSINESS ENTITIES XI through XX,

Defendants.

~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~

DEPOSITION OF
LIVIU RADU CHISIU

December 4, 2019

1:05 p.m.

7900 West Sahara Avenue
Suite 200
Las Vegas, Nevada

Gary F. Decoster, CCR No. 790



APPEARANCES OF COUNSEL

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INDEX OF EXAMINATION

WITNESS: LIVIU RADU CHISIU



INDEX TO EXHIBITS





Deposition of Liviu Radu Chisiu
December 4, 2019

(Prior to the commencement of the deposition, all of the parties present agreed to waive statements by the court reporter, pursuant to Rule 30(b)(4) of NRCP.)

LIVIU RADU CHISIU, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. SCHNEIDER:

Q. Please state your name for the record.
A. Liviu Chisiu.
Q. Can you spell it for the court reporter, please?
A. L-I-V-I-U, last name C-H-I-S, as in Sam, I-U.
Q. And we introduced ourselves off the record, but for the record, you go by Leo?
A. Leo. Leo.
Q. Leo?
A. Leo, L-E-O, um-hum.
Q. And we would spell that L --
A. L-E-O.
Q. Leo, have you ever been deposed before?
A. To what, I'm sorry?
~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~

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Q. Was there -- what was the triggering event to you guys deciding to go to the hospital?
A. Well, the triggering event was that the prior week, nothing happened and the baby kind of was supposed to come out, so the triggering event, that they scheduled an appointment to go to have the delivery.
Q. Yeah. So in other words, it's not as if her water broke and then you guys went to deliver the baby?
A. No, no.
Q. Am I correct?
A. That's correct, yes, so that's what I was saying, it wasn't like the water broke on the way and then we were driving fast to the hospital.
Q. Okay. So you guys arrive at the hospital, and it's my understanding, this would be on May 16th, 2017; is that your understanding as well?
A. No, we arrived at the hospital on May 15.
Q. May 15th?
A. Yes.
Q. Okay. Morning, afternoon, evening?
A. Afternoon.
Q. Okay. And at that time did she undergo any kind of labs or tests or imaging?

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A. I don't know, everything was happening so fast. So she was on -- I mean, we got admitted, she was like, yeah, like they were doing some, I think, how you call it, EKG, or they were monitoring like all that.
Q. Okay.
A. Yeah, I don't know what type of blood work was done, but yes, she was monitored.
Q. And that's fine, Leo. It's just like I said, you know, an hour ago: If you don't remember, tell me that.
A. Yeah.
Q. If you don't know, tell me that.
A. Yeah.
Q. Like I said, I'm just trying to find out what you know, why you know it, what you don't know, why you don't know it, understood?
A. Yes.
Q. Okay. So on May 15th, was an epidural discussed?
A. No, no, not on May 15th.
Q. Okay. But to my understanding, on May 16th an epidural was discussed?
A. Yes.
Q. Okay. Tell me about the facts and

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circumstances of that.
A. Well, the fact is that her pain was getting stronger and then the nurse is telling this to the doctor and then Dr. Kim came to discuss with us the possibility of an epidural.
And when he first arrived, he said -- we explained -- I don't remember how it started, who was there first or what. He said that he's -- at some point he got to the point that he said he's not -- he doesn't feel comfortable giving the epidural because the platelet level is very low. We didn't know much about platelets and epidural at that time, but what we were told, yeah, so that's --
Q. Okay. Okay. Relative to your testimony about platelets, I presume that platelets were not discussed in the three classes that you went to about the birthing process where epidural was discussed?
A. No.
Q. Okay. Am I correct?
A. Yes, you are correct.
Q. Okay. So it's my understanding from your testimony, correct me if I'm wrong, that at some point in the labor process, Alina's pain was so intense that she felt like she needed an epidural; is that correct?
A. Yes, the pain was getting more intense and we

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were talking about the epidural, yes.
Q. Okay. And when you say we, is that you and her or is that in consultation with her OB-GYNs, is that in consultation with her L & D nurses, L & D standing for labor and delivery?
A. Yeah, so it was between us and also with the nurses, and then from what I recall, after that, I don't know who, but I think the nurses called Dr. Kim. I don't know how, yeah.
Q. Okay.
A. And then we discussed that with him.
Q. Okay. So it's my understanding that you and Alina approached either a nurse -- well, I guess, strike that.
It's my understanding that you and Alina approached a nurse about the possibility of getting an epidural; is that correct?
A. No, we didn't requested a nurse -- we didn't requested the nurse that we want the epidural. We just were explaining her -- Alina was explaining her that the pain is getting -- I mean, the water broke sometime in the middle of the night and then she was dilating and the pain was getting to be worse then, yeah, so that's when the conversation about the epidural came.

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Q. And knowing Alina as you know her --
A. Yes.
Q. -- if she felt that she couldn't feel her face or she had tingling in her face, you would expect her to tell you that?
A. Yes.
Q. Correct?
A. Yes.
Q. Same thing with her arms and legs: If she felt like she couldn't move her arms and her legs, knowing her as you know her, you would have expected her to tell you, hey, I can't move my arms and legs?
A. Well, right after the epidural, I mean, there was -- that's the whole purpose of the epidural, I'm guessing, to your legs to get numb, to numb away the pain also.
Q. Right, and I'm trying --
A. Yes.
Q. -- to understand, knowing -- you knowing Alina as you know her --
A. Yeah.
Q. -- when she has a complaint about her health --
A. Yes, she would tell me.
Q. -- she would tell you that?

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A. Yes, she would tell you. She would let everybody know. I know she would let me know.
Q. Right. And to your memory, she never told anybody like, hey, I can't move my arms or I'm feeling numbness in my arms or anything to that effect, right?
A. Not right -- no, not right after the epidural, no.
Q. Okay. After getting the epidural, did she complain about being sleepy or drowsy?
A. I don't recall, might or might not, but it was -- the epidural was somewhere in the morning around 8 o'clock after a pretty painful night and I don't know, drowsy. I know that the blood pressure was starting to be a little higher, which it seemed to me be higher than normal because I knew that usually her blood pressure was pretty low.
Q. Okay. And let me just kind of get back to the original question.
A. Yeah.
Q. After Dr. Kim gave the epidural, did your partner tell you, hey, I'm feeling really sleepy or I'm feeling really drowsy?
A. I don't recall that.
Q. Okay. Did Alina say that the epidural gave her pain relief, like, in other words, did the

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epidural work?
A. I guess it did, yes.
Q. Okay. Anything else about the epidural administration process that we haven't talked about yet?
A. Not that I can recall about.
Q. Okay. Okay. Anything about the delivery of Sophia that we haven't talked about yet?
A. No.
Q. Okay.
A. If you have any question, I mean, I don't know.
Q. Yeah, I mean, I'm just trying to find out, hey, is there any sort of memory that really sticks out relative to the delivery of Sophia and Alina's health and any complaints that she had?
A. No, just, no.
Q. Okay. All right, so we deliver Sophia. This is in, what, the afternoon of the --
A. 2:51 p.m.
Q. Of the 16th, right?
A. Yes.
Q. Okay. In the remaining part of the calendar day of the 16th, so really the next nine hours, does Alina complain about feeling paralyzed?

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A. She wasn't complaining about feeling paralyzed, but she was saying that she feels tingling in her legs.
Q. Okay. And so that's what I'm trying to zero in on, is I'm trying to find out if those complaints were happening on the 16th versus in the early morning of the 17th.
A. I think they started more in the early morning of the 17th.
Q. Okay.
A. Because I guess in the 16th, she was still under the anesthesia or, how you call it, the epidural effects, so we didn't know how -- it was her first epidural, so it was nothing to compare it with.
Q. Right, okay.
A. So she was just, she was just numb and it was like, okay, well, that's normal.
Q. Okay.
A. So I don't know.
Q. And again, that's what I'm trying to understand. You were there.
A. Yes.
Q. I wasn't.
A. That's, yes.
Q. I didn't see anything in the records that

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A. All staff.
Q. If you're not including Dr. Kim in that all staff comment, that's fine.
A. Yeah.
Q. That's what I'm trying to find out.
A. Well, I'm including any doctor that would have worked there, anybody. I mean, if I was asking the staff to bring a doctor, I don't know, just bring a doctor, anybody. That's why I'm referring to all of them.
Q. Okay. Let me ask it a different --
A. They didn't care.
Q. That's fine. Let me ask it a different way. Was it your understanding that Dr. Kim was being apprised of your partner's blood pressure in the late evening hours of the 16th into the early morning hours of the 17th?
A. I'm not aware of the word apprised, if you can -- I'm sorry --
Q. Being apprised meaning being told about.
A. I don't know if he was told about or not.
Q. Okay. All right. So the blood pressure is high. You're asking the nurses can we do something about it. The nurses say, hey, it's all part of the epidural process. Is that an accurate summary?

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A. No, they didn't answer that about the blood pressure.
Q. Okay.
A. They say about the numbness in the leg is just, is just, oh, she's -- almost got to the point like she's kind of like, oh, Alina is overreacting or something, I don't know what's the word, but it will come to mind. Like, yeah, she's complaining for no reason, it's just a side effect of the epidural, there's no problems there.
Q. Okay.
A. But by the time I got there, I mean, she could not move her legs and I realized right away there's some problem and I said, well, you got to talk and bring a doctor here to take a look at it.
Q. Okay. And you told the nurses that?
A. Yes.
Q. And then how did the nurses respond? Did they then say, okay, let me call a doctor?
A. Yeah, they called a doctor after.
Q. Okay. Which doctor arrived?
A. Dr. H.
Q. Dr. H, okay. What did Dr. H say about Alina's complaints?
A. Tickle, tickle, check, so it's not really

Page 95

good, and then he's like, oh, I'm going to need to talk, to send a specialist to see, to take a look at.
Q. And I saw you move your fingers like he was tickling on the legs.
A. Yeah, like he was tickling Alina's toes and see if she has feelings in them and like pinching and what's going on and he's like, okay, well, I'm going to send a neurologist or specialist or whatever to see what's going on.
Q. Okay.
A. Because, yeah.
Q. Okay. So then another doctor presents once Dr. H says let me get a specialist involved?
A. Well, by that time, her pain started to start to be pretty bad, so I don't recall another doctor coming, and she was in big pain, and I don't recall -- I know that they, at some point late in the afternoon -- it took them a while to schedule to get to an MRI.
Q. Okay.
A. And for me in that moment, it seemed like forever, so I, yeah.
Q. Okay. After Dr. H leaves Alina's bedside --
A. Yeah.
Q. -- are there any doctors that come to Alina's bedside before she goes and gets an MRI?

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A. Honestly, I don't recall.
Q. Okay.
A. I don't know.
Q. That's fine. So she gets an MRI; is that right?
A. Yes.
Q. Okay. Do you know what the MRI was of, like what body part?
A. Well, I'm guessing the spine and to see what's the problem with the legs, so I'm guessing the spine.
Q. Right, and I don't want you to guess.
A. Yeah.
Q. So if you know that she got an MRI of the spine --
A. Yeah, the spine.
Q. -- then tell me that.
A. Yeah, the spine.
Q. But if you -- okay.
A. Yes.
Q. Okay. So she gets an MRI of the spine. Are you told about those results?
A. Not really. We were said that something moved, she moved, the results are not -- they were very -- nobody was really wanting to tell us anything,

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A. Yeah.
Q. And you found him to be very concerned about --
A. Yeah.
Q. -- Alina's health and --
A. Yeah.
Q. Is that right?
A. Yeah.
Q. Okay. All right. So she undergoes a second set of imaging?
A. That's correct.
Q. Are you told about those results?
A. Not really. Late that evening there's some -- by now her pain was unbearable, the legs are starting to be stiff, and by then at some point there's like, yeah, there's some bleeding in the spine and she's going to need to get, to get to surgery.
Q. Okay.
A. But this was like already late. I mean, we're talking about she was screaming of pain.
Q. And do you know if a nurse told you that or a doctor told you that?
A. Well, it must have been a doctor, but I don't recall which and how. Yeah, I don't, I don't recall.
Q. Okay.

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A. Things happened way too --
Q. So eventually she undergoes a spine surgery; is that right?
A. That's correct.
Q. Okay. Prior to the surgery, did you speak to the surgeon?
A. Prior to the surgery, we had a chance just to -- she was taken down at the ICU. I was staying there with her. Yes, we spoke with the surgeon and he said he's going to try to do a surgery, it's called a laminectomy, and to try to see what's going on there. This was really late in the night already.
Q. Okay.
A. But by then she was already -- the legs were already stiff like and the pain was unbearable.
Q. What else did the surgeon tell you and Alina preoperatively?
A. Nothing. They're not too -- they're not too talkative, or what's the word?
Q. All right. So she undergoes surgery. Does the surgeon talk to you postoperatively?
A. Yes.
Q. Okay. What does the surgeon tell you postoperatively?
A. Well, it was like probably like 5:00 in the

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morning 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.
Q. Okay, so it's your testimony that the surgeon told you that Dr. Kim's epidural went into the intradural space; is that what your testimony is?
A. No, my testimony is not that he said the Dr. Kim epidural. He just said the epidural was intradural.
Q. Okay.
A. Yeah.
Q. So let me go back then.
A. Yes.
Q. Is it your testimony --
A. Yes.
Q. -- that in speaking with the surgeon, the surgeon said that the epidural, whomever performed it,

Page 104

went into the intradural space?
A. Yes, and he had to go and clean through the nerve piece by piece under the microscope each of the blood things that he could have, yes.
Q. Okay. So the surgeon tells you that the epidural went past the epidural space and into the intradural space; that's what I'm trying to find out.
A. I don't know what exactly his words were, past or beneath or underneath, but it went in the dura, yeah, it punctured the dura.
Q. That's a direct quote from the surgeon, that the epidural punctured the dura?
A. Something like that, yes. Yeah, I'm not recalling if it's a direct, but that was the, yes.
Q. Okay. Well, let me ask it a different way, because what you're telling me is sort of news to me. So again, I wasn't there, you were. Tell me exactly what the surgeon told you postoperatively.
A. That he had -- that the -- initially he said the surgery is going to -- first of all, he said that it took so much longer than he thought it's going to be because there was blood all over the spine, that the laminectomy, instead of being -- it had to be I don't recall on how many vertebraes and that his job was pretty tough because he had to go to pick up the

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or than getting more involved.
Q. Got it.
MR. SCHNEIDER: Okay. Pass the witness. I appreciate the time.
THE DEPONENT: Thank you.
EXAMINATION
BY MR. DOBBS:
Q. All right, Mr. Chisiu, I introduced myself -- do you guys want to take a break?
MR. TERRY: I do not.
MR. SCHNEIDER: You mispronounced it, by the way.
MR. DOBBS: Is it Chisiu, did I say it right?
MR. TERRY: Chisiu.
THE DEPONENT: Chisiu.
MR. DOBBS: Chisui, I'm sorry.
THE DEPONENT: It's okay, don't worry.
MR. DOBBS: I'm pronouncing phonetically.
MR. TERRY: I did that on the other case; you were there.
BY MR. DOBBS:
Q. I apologize for mispronouncing your name.
A. That's okay.
Q. I represent Dignity Health in this litigation. I'm probably going to jump around quite a

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bit.
A. Oh, that's wonderful.
Q. And I apologize in advance. I've been taking notes and so I'm just going to go through the way I took the notes and not try to keep it all together.
MR. TERRY: Sorry to interrupt, but do you -- just he's got child care issues.
MR. DOBBS: What time, I mean --
THE DEPONENT: If I can be out of here by 5:30, if not, we can, or whatever.
MR. DOBBS: Okay. Well, let's keep going.
THE DEPONENT: Yeah.
MR. DOBBS: I mean --
MR. TERRY: Do you need to make a call?
THE DEPONENT: If I need to stay more, I'm going to probably just need to let somebody know.
MR. DOBBS: What time do you need to make a call to make an arrangement in the event that we run that long?
THE DEPONENT: 4:30.
MR. DOBBS: 4:30. Okay, let's get started and see where we're at by 4:30 --
THE DEPONENT: Perfect.
MR. DOBBS: -- and then we can decide, all right?

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THE DEPONENT: Yes, please.
BY MR. DOBBS:
Q. When did you -- well, let me try to back up a little bit.
You stated that at some point prior to the deposition here today, you reviewed Alina's medical records?
A. Yes.
Q. And you assumed that that was thousands of pages of medical records; is that correct?
A. Yeah, I looked through, yeah.
Q. There was quite a few medical records?
A. Yes.
Q. When did you first request those medical records from St. Rose Hospital?
A. I requested some records even before her passing. I don't recall exactly the date.
Q. And so that was while she was still admitted to the hospital?
A. Yes, I think end of June.
Q. Well, she passed away the beginning of --
A. End of May, I'm sorry.
Q. Okay.
A. End of May.
Q. So the end of May of 2007, you requested the

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records from the hospital while she was still at the hospital?
A. Yes.
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 had you already had that conversation with the surgeon by that point who told you that the epidural was in the intradural space?
A. I guess after that, yeah. I don't -- I don't recall being that . . .
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

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Q. And then did you make any additional requests for the records after that or was that the last time that you personally requested the records?
A. Me personally, I requested with the attorney after the -- all the legal thing was done.
Q. Okay. So after the lawsuit was filed, you had an attorney, there was another request made for the records?
A. That's correct.
Q. Okay.
A. And that was made, yeah.
Q. And do you recall how long that took for you to get those records that time?
A. I have no idea. I don't know.
Q. After the -- strike that.
When was the first time -- or let me ask it a different way.
When was it that you decided to seek an attorney to represent you in this case? Was it while Alina was still in the hospital or was it after she had passed?
A. After she had passed.
Q. Do you remember approximately how long had passed before you sought an attorney?
A. Not that long. After that the days went

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pretty by -- I cannot recall, but it was pretty -- it should be in there when.
Q. Was it a month or less?
A. Till we consulted or what -- could you please repeat the question?
Q. When you decided to seek an attorney.
A. When we decided to seek, probably like, yeah, right after it happened, after, in the first month, we decided that we're going to seek it.
Q. When you say we, is that you and Alina's sister?
A. Yes.
Q. Could you provide me your educational background?
A. I have a degree in physical therapy.
Q. Where did you get that degree?
A. In Romania.
Q. Romania?
A. Yes.
Q. In what year?
A. Graduated in 2000.
Q. And when did you move to the United States?
A. Oh, no, I'm sorry, 2000 -- I moved to the United States -- I graduated in -- gosh, I'm old. I think -- I think I graduated '98.

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Q. And then you said you moved to the States in 2000?
A. 2000, yes.
Q. And do you practice physical therapy for a living?
A. No.
Q. And what do you do for a living?
A. Real estate.
Q. And how long have you been doing real estate?
A. From 2005, '6.
Q. Other than having a physical therapy degree, do you have any other medical training?
A. No.
Q. When was the last time that you practiced physical therapy, if you did practice after you got your degree?
A. I didn't really practice.
Q. You got the degree in physical therapy but didn't really work as a physical therapist ever?
A. No.
Q. And you and Alina were not married, true?
A. Correct.
Q. Did you guys have any plans to get married?
A. Yes.
Q. And what were the plans as far as getting

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married? Was it that you had a date set or --
A. No, we didn't have the date set. In the future.
Q. Was there a plan in place between you and Sophia -- not Sophia, sorry, strike that.
As far as you and Alina, had you discussed how it was that you and Alina would be caring for Sophia once she was born?
A. Together like a family.
Q. Was there any discussion of you or Alina quitting your job for one of you to stay at home with Sophia?
A. Well, I would be to spend a little bit more time since my time, my schedule, was flexible, and her to spend time on the afternoon and the evening time when she --
Q. So you, as a real estate agent, you're able to kind of pick and choose your hours?
A. Kind of, exactly, so she had the weekends, I'm more busy on the weekends, and . . .
Q. So neither of you were going to quit your job to stay at home?
A. No.
Q. Am I correct?
A. That's correct, yes.

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A. No.
Q. This is the first set of medical records you've ever seen?
A. Unfortunately, yes.
Q. And besides the two anesthesia pages, are there any specific medical records regarding any specific procedure that you say is not reflected in the medical records?
A. Well, there's bunch of things, whole things missing.
Q. And I understand --
A. I'm not an expert, so probably we need to get it -- yeah, in my opinion, there's a lot of things missing there.
Q. But you can't cite us one specific example, true?
A. For example, they were doing measurements when they were doing the drainage. None of that is in the records. I was there nights and nights, so it's too, it's too many things to go through the specifics that's missing there.
Q. Do you believe that the -- your statement there that there was no drainage documented, do you have any evidence that the lack of documentation that you're alleging was done with the intention of

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defrauding you?
A. I don't know. I'm not sure. I don't know. I don't know what was the intention.
Q. Do you even know if a nurse or physician or anybody has a duty to document that kind of information?
A. I know of other instances when the nurses did not have a clue, they did not have clue, the discussion between them and the way that things, when they were changing the shifts, were done, it was completely -- there was no cooperation, let me call it.
Q. Are you an RN?
A. No, I'm not.
Q. Have you ever been in school to be an RN?
A. No.
Q. Have you ever worked in a hospital as an RN?
A. No, that's why I said I don't know, but I hope I will be able to prove it with the lack of records.
Q. Okay. So you don't know what the standard of care is for a nurse as far as change of shift or anything like that, true?
A. I don't know what the standard of care is. I know they should be talking to the other, that way

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when the other take the shift, knows what happened in the one before.
Q. Do you contend that any provider at St. Rose refused to keep certain health care records related to Alina Badoi?
A. I don't know. If I can -- I'm sorry, could -- if I can --
Q. Yeah, is it your contention that any provider at St. Rose Hospital refused to keep certain health care records --
A. Yeah.
Q. -- related to Alina?
A. I don't know.
Q. Okay. And I think we already talked about it. Did St. Rose Hospital ever refuse to provide you with Alina Badoi's medical records?
A. No, other than taking very long the second time, no.
Q. And do you contend that any entries in Alina's medical records are altered?
A. I don't know.
Q. Do you contend that any of Alina's medical records were destroyed by St. Rose Hospital?
A. I don't know.
Q. Do you contend that any of Alina's medical

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records were forged by St. Rose Hospital?
A. I don't know.
Q. Do you contend that St. Rose Hospital concealed Alina's cause of death?
A. Well, I never got -- St. Rose hospital never told me the cause of death. The coroner's office told me.
Q. The coroner's office, so they had to do an autopsy to determine it?
A. That's correct, so St. Rose Hospital, yes, I mean, I don't know if they concealed it, but they never --
Q. Okay.
A. Yeah.
Q. Okay. So you don't know if they concealed it --
A. Yeah, I don't know.
Q. -- but you weren't told what the cause of death was?
A. That's correct, no, yeah.
Q. And as far as you were told, they didn't know what the cause of death was at the time of her death, true?
A. That's correct.
Q. And you'd agree with me that every time

# EXHIBIT D

## DECLARATION OF AMY VANIK

I, AMY VANIK, declare and state:

1. I am over the age of eighteen and am competent to make this Declaration. I am the Director of Health Information Management at St. Rose Dominican Hospital – Siena Campus. The facts stated in this Declaration are within my personal knowledge.

2. On June 1, 2017, Alina Badoi requested a copy of her medical records covering the period of healthcare from May 15, 2017, through the date of the request. *See* Patient's Request for Access to Protected Health Information, dated June 7, 2017, attached hereto as Exhibit 1. The next day, June 2, 2017, a complete copy of the requested records was released on CD to Alina Badoi's sister, Vioria Habara, who had power of attorney for Ms. Badoi.

3. On June 7, 2017, Viorica Habara requested a copy of Alina Badoi's medical records covering the period of healthcare from May 9, 2017, through June 3, 2017. *See* Patient's Request for Access to Protected Health Information, dated June 7, 2017, attached hereto as Exhibit 2. A complete copy of these records was released to Ms. Habara on CD on June 15, 2017.

4. On or about September 6, 2017, Ms. Habara requested a certified copy of the records that she had received on June 14, 2017. A complete copy of the records was released to Ms. Habara on September 13, 2017. *See* Correspondence dated September 13, 2017, bates stamped BADOI000002, attached hereto as Exhibit 3.

5. On January 29, 2018, the Christiansen Law Offices requested Alina Badoi's medical records via subpoena. *See* Subpoena, attached hereto as Exhibit 4. As there was no authorization form served with the subpoena, on January 31, 2018, an objection letter was sent in response to the Subpoena. *See* correspondence, attached hereto as Exhibit 5.

6. On March 20, 2018, the Christiansen Law Offices requested Alina Badoi's medical records again via subpoena. *See* subpoena, attached hereto as Exhibit 6. A complete certified copy was provided to the law firm via CD on April 11, 2018.

7. Pursuant to NRS 53.045, I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Executed on: 10/15/2021
Date

AMY VANIK

# EXHIBIT 1

# EXHIBIT 1

Date: 6-1-17 M.R. # or Account #: _____

Patient Name: Alina Badoi AKA/Other Names: N/A

Date of Birth: _____ Phone: _____

Address: _____

Covering the period of healthcare from (date) 5-15-17 to (date) _____

You have requested access to health information about yourself. To enable us to process your request, please read the following carefully and complete the requested information below.

**There may be fees associated with your request.** The form in which you access your information may determine the amount of such fees.

A. You would like access to the health information about you maintained by St. Rose Dominican Hospitals as follows (check one).
- ☐ Inspect only
- ☐ Copy only (Fees may apply. See attached price list.)
  - ☐ Paper ☒ Electronic: CD
- ☐ Inspect and copy (Fees may apply.)

B. Tell us which type of health information you want to access (check all that apply):

| | | |
|---|---|---|
| ☑ Complete Health Record(s) | ☐ Emergency Room Records | ☐ Pertinent Information (All dictated reports, specialized tests, labs, xrays, path reports) |
| ☑ Discharge Summary | ☐ Progress Notes | |
| ☑ History and Physical | ☑ Laboratory Tests | |
| ☐ Consultation Reports | ☑ X-ray Reports | |
| ☐ Billing Records | | |
| ☑ Others (please specify) MRI, Physician notes | | |

C. ☐ **ONLINE PATIENT CENTER/PATIENT PORTAL ACCESS ONLY**

Email Address: _____

D. Patient's Right to Direct Health Information to another person. You have the right to ask us to send your health information to a person of your choice. We need that person's name and full address. Please give that person's name and full address here:

_____
Print Person's First, Last Name

_____ _____
Print Address Print City, State, Zip Code

The following classes of information are protected by special privacy laws and access may be subject to special rules or may be restricted under certain circumstances or access may require consultation with your physician or healthcare provider responsible for your care before release. If you are requesting access to records relating to any of the following, please initial each applicable item to confirm your request.

Dignity Health.
St. Rose Dominican

PATIENT IDENTIFICATION
BADOI, ALINA
DOB: Admit Dt: 05/15/2017
MR: Acct:
MRN-ACCT:

**PATIENT'S REQUEST FOR ACCESS TO PROTECTED HEALTH INFORMATION**

S1916 (REV. 12/16)
(FORMERLY XRX-276)

ROI


White – Chart Canary – Patient

Dignity Health - St. Rose Dominican Hospitals (Nevada Dignity Health Facilities):

_____ Initial — Mental health (excludes "psychotherapy notes") – To be released upon approval of your caregiver.

_____ Initial — Substance abuse treatment records

_____ Initial — Genetic testing information

_____ Initial — HIV-related information and other communicable diseases

All patients' (or personal representative's) request(s) for access to their health information are processed in the order received. Upon the hospital's receipt and review of your request, we will contact you for a time and place when and now you may inspect and/or obtain a copy of the records requested.

**I have read and confirm the terms of access stated herein.**

* A Dadol — Patient or Personal Representative's Signature

6-1-17 — Date

Print Name if Other Than Patient

Telephone #

Relationship to Patient or Personal Representative

Employee (Delima Care) — ID Presented

Joni Kurata, MSW, LSW — Name of hospital employee verifying signatory info.

ICU Social Worker - Coordination — Title and Department

Viorica Habara — Patient Directed Right of Access - Pick up Signature

6-1-17 — Date

**FOR PSYCHIATRIC OR MENTAL HEALTH RECORDS**
**CAREGIVER'S APPROVAL TO RELEASE OF INFORMATION**
(Hospital use only)

☐ Approved

☐ Approved, subject to the following restrictions: _____

☐ Denied, reason for denial: _____

**(NOTE:** Access may only be restricted or denied if you believe that providing access is reasonably likely to endanger the life or physical safety of the patient.)

Signature: _____ Role: _____ (physician, psychologist, social worker)

Date: _____ Telephone Number: _____

Dignity Health.
St. Rose Dominican

PATIENT IDENTIFICATION
DADOL, ALINA
DOB: Admit Dt: 05/15/2017
MR: Acct:
MRN-ACCT:

**PATIENT'S REQUEST FOR ACCESS TO PROTECTED HEALTH INFORMATION**

S1916 (REV. 12/16)
(FORMERLY XRX-276)

ROI


White – Chart Canary – Patient

# EXHIBIT 2

# EXHIBIT 2

Date: JUNE 7 2017 M.R. # or Account #: ____

Patient Name: BADOI ALINA AKA/Other Names: ____

Date of Birth: ____ Phone: ____

Address: ____

Covering the period of healthcare from (date) MAY 9 2017 to (date) JUNE 3rd 2017

You have requested access to health information about yourself. To enable us to process your request, please read the following carefully and complete the requested information below.

**There may be fees associated with your request.** The form in which you access your information may determine the amount of such fees.

A. You would like access to the health information about you maintained by St. Rose Dominican Hospitals as follows (check one).
- ☐ Inspect only
- ☑ Copy only (Fees may apply. See attached price list.)
  - ☑ Paper ☐ Electronic: CD
- ☐ Inspect and copy (Fees may apply.)

B. Tell us which type of health information you want to access (check all that apply):

| | | |
|---|---|---|
| ☐ Complete Health Record(s) | ☐ Emergency Room Records | ☑ Pertinent Information (All dictated reports, specialized tests, labs, xrays, path reports) |
| ☐ Discharge Summary | ☐ Progress Notes | |
| ☐ History and Physical | ☐ Laboratory Tests | |
| ☐ Consultation Reports | ☐ X-ray Reports | |
| ☐ Billing Records | | |
| ☐ Others (please specify) ____ | | |

C. ☐ **ONLINE PATIENT CENTER/PATIENT PORTAL ACCESS ONLY**

Email Address: ____

D. Patient's Right to Direct Health Information to another person. You have the right to ask us to send your health information to a person of your choice. We need that person's name and full address. Please give that person's name and full address here:

VIORICA HABARA
Print Person's First, Last Name

6641 DIAMOND CREEK DR
Print Address

LAS VEGAS, NV 89122
Print City, State, Zip Code

The following classes of information are protected by special privacy laws and access may be subject to special rules or may be restricted under certain circumstances or access may require consultation with your physician or healthcare provider responsible for your care before release. If you are requesting access to records relating to any of the following, please initial each applicable item to confirm your request.

Dignity Health.
St. Rose Dominican

PATIENT IDENTIFICATION

2 DOS

**PATIENT'S REQUEST FOR ACCESS TO PROTECTED HEALTH INFORMATION**

S1916 (REV. 12/16)
(FORMERLY XRX-276)

ROI


White – Chart Canary – Patient

BADOI 000005

Dignity Health - St. Rose Dominican Hospitals (Nevada Dignity Health Facilities):

_____ Initial — Mental health (excludes "psychotherapy notes") – To be released upon approval of your caregiver.

_____ Initial — Substance abuse treatment records

_____ Initial — Genetic testing information

_____ Initial — HIV-related information and other communicable diseases

All patients' (or personal representative's) request(s) for access to their health information are processed in the order received. Upon the hospital's receipt and review of your request, we will contact you for a time and place when and now you may inspect and/or obtain a copy of the records requested.

**I have read and confirm the terms of access stated herein.**

| | |
|---|---|
| Patient or Personal Representative's Signature | Date: JUNE 7 2017 |
| Print Name if Other Than Patient: VIORICA HABARA | Telephone #: (702) 290-9885 |
| Relationship to Patient or Personal Representative: SISTER | ID Presented: NV. DL. |
| Name of hospital employee verifying signatory info. | Title and Department: ROS. IPS |
| Patient Directed Right of Access - Pick up Signature | Date |

**FOR PSYCHIATRIC OR MENTAL HEALTH RECORDS**
**CAREGIVER'S APPROVAL TO RELEASE OF INFORMATION**
(Hospital use only)

☐ Approved

☐ Approved, subject to the following restrictions: _____

☐ Denied, reason for denial: _____

(NOTE: Access may only be restricted or denied if you believe that providing access is reasonably likely to endanger the life or physical safety of the patient.)

Signature: _____ Role: _____ (physician, psychologist, social worker)

Date: _____ Telephone Number: _____

Dignity Health.
St. Rose Dominican

**PATIENT'S REQUEST FOR ACCESS TO PROTECTED HEALTH INFORMATION**

PATIENT IDENTIFICATION

Approved by:
SUSAN
BADOI, ADINA
b2902154

S1916 (REV. 12/16)
(FORMERLY XRX-276)

ROI


White – Chart Canary – Patient

BADOI 000006

## DURABLE POWER OF ATTORNEY FOR HEALTH CARE DECISIONS

This is the form of a "Durable Power of Attorney" for healthcare decisions provided for under Nevada Statutes: (NRS 449.540 to 449-690), inclusive and Sections 2 to 12, inclusive of Chapter 158, Statutes of Nevada 1991:

1. DESIGNATION OF HEALTH CARE AGENT

I, Alina Marina Badoi (insert your name)
do hereby designate and appoint;

Name: VIORICA HABARA
Address: HV at Lee & DIAMOND CARE Telephone # [illegible]

as my attorney-in-fact to make health care decisions for me as authorized in this document.

(Insert the name and address of the person you wish to designate as your attorney-in-fact to make health care decisions for you. Unless the person is also your spouse, legal guardian or the person most closely related to you by blood, none of the following may be designated as your attorney-in fact: (1) your treating provider of health care; (2) an employee of your treating provider of health care; (3) an operator of a health care facility; or (4) an employee of an operator of a health care facility.

2. CREATION OF A DURABLE POWER OF ATTORNEY FOR HEALTH CARE

By this document I intend to create a durable power of attorney by appointing the person designated above to make health care decisions for me. This power of attorney shall not be affected by my subsequent incapacity.

3. GENERAL STATEMENT OF AUTHORITY GRANTED

In the event that I am incapable of giving informed consent with respect to health care decisions, I hereby grant to the attorney-in-fact named above full power and authority to make health care decisions for me before, or after my death, including: consent, refusal of consent, or withdrawal of consent to any care, treatment, service, or procedure to maintain, diagnose, or treat physical or mental condition, subject only to the limitations and special provisions, if any, set forth in paragraph 4 or 6.

4 SPECIAL PROVISIONS AND LIMITATIONS

(Your attorney-in-fact is not permitted to consent to any of the following: commitment to or placement in a mental health treatment facility, convulsive treatment, psycho-surgery, sterilization, or abortion. If there are any other types of treatment or placement that you do not want your attorney-in-fact's authority to give consent for or other restrictions you wish to place on his or her attorney-in-fact's authority, you should list them in the space below. If you do not write any limitations, your attorney-in-fact will have the broad powers to make health care decisions on your behalf which are set forth in paragraph 3, except to the extent that there are limits provided by law.)

In exercising the authority under this durable power of attorney for health care, the authority of my attorney-in-fact is subject to the following special provisions and limitations:

BADOI, ALINA

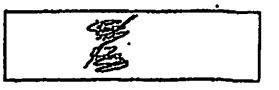
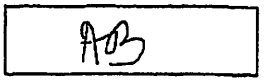
5. DURATION

I understand that this power of attorney will exist indefinitely from the date I execute this document unless I establish a shorter time. If I am unable to make health care decisions for myself when this power of attorney expires, the authority I have granted my attorney-in-fact will continue to exist until the time when I become able to make health care decisions for myself.

(IF APPLICABLE) I wish to have this power of attorney end on the following date: _____.

6. STATEMENT OF DESIRES

(With respect to the decisions to withhold or withdraw life-sustaining treatment, your attorney-in-fact must make health care decisions that are consistent with your known desires. You can, but are not required to, indicate your desires below. If your desires are unknown, your attorney-in-fact has the duty to act in your best interests; and, under some circumstances, a judicial proceeding may be necessary so that a court can determine the health care decision that is in your best interests. If you wish to indicate your desires, you may INITIAL the statement or statements that reflect your desires and/or write your own statements in the space below.)

| | | |
|---|---|---|
| 1 | I desire that my life be prolonged to the greatest extent possible, without regard to my condition, the chances I have for recovery or long-term survival, or the cost of the procedures. |  |
| 2 | If I am in a coma which my doctors have reasonably concluded is irreversible, I desire that life-sustaining or prolonging treatments not be used. (Also should utilize provisions of NRS 449.540 to 449-690, inclusive, and Sections 2 to 12, inclusive, of Chapter 258, Statutes of Nevada 1991, if this paragraph is initialed.) |  |
| 3 | If I have an incurable or terminal condition or illness and no reasonable hope of long-term recovery or survival, I desire that life-sustaining or prolonging treatment not be used. (Also should utilize provisions of NRS 449-540 to 449-690, inclusive, and Sections 2 to 12 inclusive, of Chapter 158, Statutes of Nevada 1991 in this subparagraph is initialed.) |  |
| 4 | I do not desire treatment to be provided and/or continued if the burdens outweigh the expected benefits. My attorney-in-fact is to consider the relief of suffering, the preservation or restoration of functioning, and the quality as well as the extent of the possible extension of my life. |  |
| 5. | Withholding or withdrawal of artificial nutrition and hydration may result in death by starvation or dehydration. Initial this box if you want to receive or continue receiving artificial nutrition and hydration by way of the gastrointestinal tract after all other treatment is withheld pursuant to this declaration. |  |

(If you wish to change your answer, you may do so by drawing an "X" through the answer you do not want, and circling the answer you prefer.)

Other or Additional Statements of Desires: BADOI, ALINA

8. DESIGNATION OF ALTERNATE ATTORNEY-IN-FACT

(You are not required to designate any alternative attorney-in fact, but you may do so. Any alternative attorney-you in-fact designate will be able to make the same health care decisions as the attorney-in-fact.

Also, if the attorney-in-fact designated in paragraph 1 is your spouse, his or her designation as your attorney-in fact is automatically revoked by law if your marriage is dissolved.)

If the person designated in paragraph 1 as my attorney-in-fact is unable to make health care decisions for me, then I designate the following persons to serve as my attorney-in-fact to make health care decisions for me as authorized in this document, such person

A. First Alternative Attorney-in-Fact
Name: ~~[illegible]~~ VICTORIA HARGRAVE
Address: NV 89122 Telephone #

B. Second Alternative Attorney-in-Fact
Name: CHEGUE LAVIE RADU
Address: 3045 TOPAZ STREET, LAS VEGAS, NV 89121
Telephone # 702 480 5166

9. PRIOR DESIGNATIONS REVOKED (I revoke any prior durable power of attorney for health care.)

**(YOU MUST DATE AND SIGN THIS POWER OF ATTORNEY.)**

I sign my name on this Durable Power of Attorney for Health Care on:

6/2/17 (Date) Henderson (City) Nevada (State)

(Signature)

**(THIS POWER OF ATTORNEY WILL NOT BE VALID FOR MAKING HEALTH CARE DECISIONS UNLESS IT IS EITHER (1) SIGNED BY AT LEAST TWO QUALIFIED WITNESSES WHO ARE PERSONALLY KNOWN TO YOU AND WHO ARE PRESENT WHEN YOU SIGN OR ACKNOWLEDGE YOUR SIGNATURE, OR (2) ACKNOWLEDGED BEFORE A NOTARY PUBLIC.)**

CERTIFICATE OF ACKNOWLEDGEMENT OF NOTARY PUBLIC

(You may use acknowledgement before a notary public instead of statement of witnesses.)

State of Nevada )
: ss:
County of Clark

On this 2 day of June, in the year 2017, before me, Rebekah J. Koshnick (here insert name of notary public) personally appeared Aline Marina Badoi (here insert name of principal) personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that he or she executed it.

I declare under penalty of perjury that the person whose name is ascribed to this instrument appears to be of mind and sound under no duress, fraud, or undue influence.

NOTARY SEAL

REBEKAH J. KOSHNICK
Notary Public State of Nevada
No. 97-4078-1
My Appt. Exp. Oct. 21, 2017

Rebekah J. Koshnick
(Signature of Notary Public)

BADOI, ALINA

## STATEMENT OF WITNESS

(You should carefully read and follow this witnessing procedure. This document will not be valid unless you comply with the witnessing procedure. If you elect to use witnesses instead of having this document notarized, you must use two qualified adult witnesses. None of the following may be used as a witness: (1) a person you designate as the attorney-in-fact; (2) a provider of health care; (3) an employee of a provider of health care; (4) the operator of a health care facility; (5) an employee of an operator of a health care facility. At least one of the witnesses must make the additional declaration set out following the place where the witnesses sign.)

I declare under the penalty of perjury that the principal is personally known to me, that the principal signed or acknowledged this durable power of attorney in my presence, that the principal appears to be of sound mind and under no duress, fraud, or undue influence, that I am not the person appointed as attorney-in-fact by this document, and that I am not a provider of health care, an employee of a provider of health care, the operator of a community care facility, nor an employee of an operator of a health care facility.

Signature:_____ Residence Address: _____

Print Name: _____ _____

Date: _____

Signature:_____ Residence Address:_____

Print Name: _____ _____

Date: _____

(AT LEAST ONE OF THE ABOVE WITNESSES MUST ALSO SIGN THE FOLLOWING DECLARATION.)

I declare under the penalty of perjury that I am not related to the principal by blood, marriage, or adoption, and to the best of my knowledge I am not entitled to any part of the estate of the principal upon the death of the principal under a will now existing or by operation of law.

Signature: _____

Print Name:_____

Address:_____

_____

COPIES: You should retain an executed copy of this document and give one to your attorney-in-fact. The power of attorney should be available so a copy may be given to your providers of health care.

Under Section 11 of Chapter 258, Nevada Statutes 1991, a health care provider is allowed to transfer care of a patient to another provider if the first provider objects on the basis of conscience to implementation of an advance directive.

BADOI, ALINA

# EXHIBIT 3

# EXHIBIT 3

Dignity Health.
St. Rose Dominican

**Date:** **September 13, 2017**

**To:** **Viorica Habara**

**Re:** **Badoi, Alina- Date of Service: 05/09/2017-06/06/2017**

Password: ***BA10LZ487MN**

You will need the above password in order to access the encrypted CD with the requested medical records. The encrypted CD will be mailed separately.

Thank you in advance for your cooperation in this matter.

Sincerely,

Health Information Management Department
Release of Information
St Rose Dominican Hospital-Siena Campus
702.616.5642

Dignity Health.
St. Rose Dominican

**Date:** **September 13, 2017**

**To:** **Viorica Habara**

**Re:** **Badoi, Alina- Date of Service: 05/09/2017-06/06/2017**

Attached are the requested medical records on an encrypted CD. You will need to input the password, which will be provided in a separate envelope in order to access the files.

Thank you in advance for your cooperation in this matter.

Sincerely,

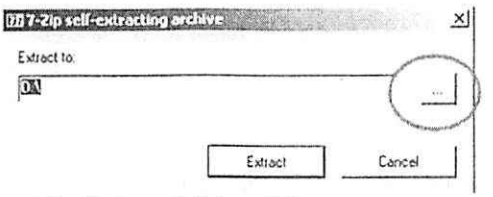
Health Information Management Department
Release of Information
St Rose Dominican Hospital-Siena Campus
702.616.5642

Dignity Health
St. Rose Dominican

## Instructions to access the medical records on CD

### Instructions For Windows:

1. Enter the CD in to the computer's disk drive.
2. A window will appear that will show the file that is on the CD. Double click on the file.
3. The *7-Zip self-extracting archive* window will appear. Click on the ellipsis button (button with three dots).




4. Select a location to extract the file to and click on **OK**.
5. Click on the **Extract** button.
6. Enter the password given and click on **OK**.
7. The file will then be extracted to the location you specified on the computer.

### Instructions For Mac OS X:

Please ensure you have WinZip® Mac Edition installed or a compatible unzipping utility that is capable of unzipping password protected .ZIP files.

**"file name" in the instructions below is in reference to the actual file name that is on your CD**

1. Insert provided disk into your computer
2. Double-click your disk drive. A window opens displaying the file "file name".exe
3. Click the file "file name".exe and drag the file to your desktop
4. Ensure the file "file name".exe is still selected on your desktop and click the File menu. Next, click the Get Info menu
5. A window opens displaying information about the "file name".exe file
6. In the Name & Extension box, click to the right of the file name so that the cursor is immediately to the right of the last character
7. Press the Delete key three times to remove the EXE portion of the filename. With the cursor now to the right of the period, type ZIP. The filename should now read "file name".Zip. Press Enter
8. A message appears asking if you are sure you want to change the extension from .EXE to .ZIP. Confirm by clicking the Use .ZIP button
9. Close the file Info window
10. Double-click the file, "file name".zip
11. Your computer's default unzipping application opens displaying the file or files located within the .ZIP file
12. Double-click the desired file to view
13. You will be prompted for your password that was provided to you. Enter the password exactly as it is depicted. Click OK confirming the password was entered correctly
14. If the password was entered correctly the file will open
    **Please note: if the password entered is incorrect, you will continue to be prompted for the correct password. The password is case sensitive.**

# EXHIBIT 4

# EXHIBIT 4

PETER S. CHRISTIANSEN, ESQ.
Nevada Bar No. 5254
pete@christiansenlaw.com
R. TODD TERRY, ESQ.
Nevada Bar No. 6519
tterry@christiansenlaw.com
WHITNEY J. BARRETT, ESQ.
Nevada Bar No. 13662
wbarrett@christiansenlaw.com
CHRISTIANSEN LAW OFFICES
810 S. Casino Center Blvd., Suite 104
Las Vegas, Nevada 89101
Telephone: (702) 240-7979
Facsimile: (866) 412-6992
*Attorneys for the Estate of Alina Badoi*



CHRISTIANSEN LAW OFFICES
810 S. Casino Center Blvd. Suite 104
Las Vegas, Nevada 89101
702-240-7979 • Fax 866-412-6992

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

| | |
|---|---|
| In the Matter of Estate of ALINA BADOI.<br><br>Deceased. | **SUBPOENA DUCES TECUM**<br><br>**CASE NO.: P-17-093721-E**<br>**DEPT NO.:** |

**THE STATE OF NEVADA SENDS GREETINGS TO:**

**Custodian of Records**
**St. Rose Hospital – Siena Campus**
**3001 St Rose Parkway**
**Henderson NV 89052**

**YOU ARE HEREBY COMMANDED,** that all and Singular, business and excuses set aside, you appear and attend on the **14th day of February, 2018 at 9:00 a.m.** at **Christiansen Law Offices, 810 S. Casino Center Blvd, Suite 104, Las Vegas, Nevada 89101.**

**YOU ARE FURTHER ORDERED** to bring with you at time of your appearance the following items to be produced:

1. Any and all medical records, including imaging, studies, films related to Alina Badoi, DOB .

**IN LIEU OF APPEARANCE**, you are permitted to provide a copy of the documentation together with a signed and notarized Certificate of Custodian of Records, on or

10159147
objection to truth

before February 12th, 2018, to R. Todd Terry, Esq., of CHRISTIANSEN LAW OFFICES, 810 South Casino Center Blvd., Suite 104, Las Vegas, Nevada 89101; (702) 240-7979.

IF YOU FAIL TO ATTEND, you will be deemed guilty of contempt of court and liable to pay all losses and damages caused by your failure to appear and in addition forfeit One Hundred Dollars ($100.00). Please see Exhibit 1 for information regarding the rights of the person subject to this subpoena.

DATED this 25th day of January, 2018.

**CHRISTIANSEN LAW OFFICES**

PETER S. CHRISTIANSEN, ESQ.
Nevada Bar No. 5254
R. TODD TERRY, ESQ.
Nevada Bar No. 6519
*Attorneys for Plaintiff*

CHRISTIANSEN LAW OFFICES
810 S. Casino Center Blvd. Suite 104
Las Vegas, Nevada 89101
702-240-7979 • Fax 866-412-6992

CHRISTIANSEN LAW OFFICES
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Las Vegas, Nevada 89101
702-240-7979 • Fax 866-412-6992

## CERTIFICATE OF CUSTODIAN OF RECORDS

State of _____)
) ss.
County of _____)

NOW COMES _____, who after first being duly sworn and says:

1. That the deponent is the _____ (position or title) of _____ (name of employer) and in that capacity is a custodian of the records of _____ (name of employer).

2. That _____ (name of employer) is licensed to do business as a _____ in the State of Nevada.

3. That on the _____ day of _____, 20__, the deponent was served a request for records in connection with the above entitled cause, calling for the production of records pertaining to **ST. ROSE HOSPITAL – SIENA CAMPUS**

4. That the deponent has examined the original of those records and has made or caused to be made a true and exact copy of all medical and billing records related to Alina Badoi, and that the reproduction of them attached hereto is true and complete.

5. That the original of those records was made at or near the time of the act, event, condition, opinion or diagnosis recited therein by or from information transmitted by a person with knowledge, in the course of a regularly conducted activity of the deponent or _____(name of employer).

SUBSCRIBED AND SWORN to before me
this ____ day of _____, 20__.

_____
NOTARY PUBLIC in and for said
State and County

CHRISTIANSEN LAW OFFICES
810 S. Casino Center Blvd. Suite 104
Las Vegas, Nevada 89101
702-240-7979 • Fax 866-412-6992

**Exhibit 1**

Nevada Rules of Civil Procedure, Rule 45:

**(c) Protection of Persons Subject to Subpoena.**

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

CHRISTIANSEN LAW OFFICES
810 S. Casino Center Blvd. Suite 104
Las Vegas, Nevada 89101
702-240-7979 • Fax 866-412-6992

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

**(d) Duties in Responding to Subpoena.**

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

# EXHIBIT 5

# EXHIBIT 5

Dignity Health.
St. Rose Dominican

3001 St Rose Parkway
Henderson, NV 89052
direct 702-616-5642
fax 702-616-5235
dignityhealth.org

Date: **January 31, 2018**

Re: **Alina Badoi**

Dear **Christiansen Law Offices,**

Please be advised that, pursuant to N.R.C.P.45©(2)(B), this letter shall constitute a written objection by St Rose Dominican Hospitals (the "Hospital") to the inspection and copying of the medical records of the above-referenced Patient. *See*, *Humana, Inc. vs. District Court*, 110 Nev. 121, 867 P.2d 1147 (1994).

Specifically, on **01/29/2018**, the Hospital's Custodian of Medical Records received a Subpoena Duces Tecum issued by you in the above-referenced case (the "Subpoena"). The Subpoena requested that the Hospital's Custodian: (i) appear for a deposition on **02/14/2018** at your office; and (ii) bring the Patient's medical records for inspection and/or copying. The Subpoena was not accompanied by a consent/authorization which is compliant with the requirements of the Health Insurance Portability and Accountability Act of 1996, as amended (commonly known as "HIPAA") or a specific court order allowing the Hospital to disclose the Patient's medical records and/or other protected health information to you and/or your office.

As you are probably aware, the Hospital's position on the disclosure of a patient's medical record and/or other protected health information is simply that: (i) under Nevada law a patient has a statutory right to "privacy concerning his program of medical care" and all "communications and records concerning the patient are confidential" and (ii) under federal law such records/information are deemed privileged and confidential. See, NRS 449.720 and 45 CFR Parts 160 and 164. Additionally, numerous courts have held that a patient has a federal constitutional right of privacy as to matters contained in his/her medical records. *See, e.g. Division of Medical Quality Assurance vs. Gherardini*, 156 Cal. Rptr. 55, 59-61 (Cal. App. 1979) ("The state of a person's gastrointestinal tract is as much entitled to privacy from unauthorized public snooping as is that person's bank account, the contents of his library or his membership in the NAACP.") A health care provider is permitted to disclose such confidential and privileged communications and records only to certain state agencies or to persons having the written authorization of the patient. *See*, NRS 629.061. Thus, in cases where the written authorization of the patient (on a HIPAA-compliant form) has not been obtained, it is the policy of the Hospital to uniformly protect the patient's confidential and privileged medical information by refusing to release such information to-anyone other than the agencies enumerated in NRS 629.061 or those permitted entities identified in HIPAA's regulations.

It should be noted that the Hospital has standing to raise and assert the Patient's right to privacy and confidentiality. *See, e.g. Tucson Medical Center vs. Roles*, 520 P.2d 518, 523

Dignity Health.
St. Rose Dominican

(Ariz. 1974) (holding that the hospital is required to assert the patient's rights); and *Gherardini*, 156 Cal. Rptr. At 58-59.

In order to fully comply with both NRS 629.061 and HIPAA, and to protect a patient's right to privacy with respect to his/her medical records, the Hospital requires, as a condition precedent to disclosure, either the written authorization of the Patient (on a HIPAA-compliant form) or a specific court order. Presentations of a subpoena duces tecum alone will not suffice since a subpoena maybe obtained without any judicial oversight.

The Hospital is not a party to the subject case and has no interest in its outcome. The Hospital's only concern is that it does not wrongfully destroy or otherwise violate its patient's right to privacy.

Since your Subpoena and/or cover letter indicates that the Hospital's Custodian of Records need not appear at the scheduled deposition if the requested records are provided, accompanied by a custodian's certificate, based on the written objection set forth herein, we will not attend the deposition unless you instruct otherwise. If you have any questions or concerns, please feel free to contact the Hospital's Legal Department at (702) 616-5552.

Sincerely,

Health Information Management
Release of Information

Cc: Dignity Health Legal Department

# EXHIBIT 6

# EXHIBIT 6

PETER S. CHRISTIANSEN, ESQ.
Nevada Bar No. 5254
pete@christiansenlaw.com
R. TODD TERRY, ESQ.
Nevada Bar No. 6519
tterry@christiansenlaw.com
WHITNEY J. BARRETT, ESQ.
Nevada Bar No. 13662
wbarrett@christiansenlaw.com
CHRISTIANSEN LAW OFFICES
810 S. Casino Center Blvd., Suite 104
Las Vegas, Nevada 89101
Telephone: (702) 240-7979
Facsimile: (866) 412-6992
*Attorneys for the Estate of Alina Badoi*





**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

| | |
|---|---|
| In the Matter of Estate of ALINA BADOI.<br><br>Deceased. | **SUBPOENA DUCES TECUM**<br><br>**CASE NO.: P-17-093721-E**<br>**DEPT NO.:** |

**THE STATE OF NEVADA SENDS GREETINGS TO:**

**Custodian of Records**
**St. Rose Hospital – Siena Campus**
**3001 St Rose Parkway**
**Henderson NV 89052**

**YOU ARE HEREBY COMMANDED,** that all and Singular, business and excuses set aside, you appear and attend on the **30th day of March, 2018 at 9:00 a.m.** at **Christiansen Law Offices, 810 S. Casino Center Blvd, Suite 104, Las Vegas, Nevada 89101.**

**YOU ARE FURTHER ORDERED** to bring with you at time of your appearance the following items to be produced:

1. Any and all medical records, including films for Alina Badoi,

**IN LIEU OF APPEARANCE**, you are permitted to provide a copy of the documentation together with a signed and notarized Certificate of Custodian of Records, on or before March 28th, 2018, to R. Todd Terry, Esq., of CHRISTIANSEN LAW OFFICES, 810 South Casino Center Blvd., Suite 104, Las Vegas, Nevada 89101; (702) 240-7979.

WCC/BR. 5/9/17 6/3/17
2 DOS

IF YOU FAIL TO ATTEND, you will be deemed guilty of contempt of court and liable to pay all losses and damages caused by your failure to appear and in addition forfeit One Hundred Dollars ($100.00). Please see Exhibit 1 for information regarding the rights of the person subject to this subpoena.

DATED this 20th day of March, 2018.

**CHRISTIANSEN LAW OFFICES**

PETER S. CHRISTIANSEN, ESQ.
Nevada Bar No. 5254
R. TODD TERRY, ESQ.
Nevada Bar No. 6519
*Attorneys for Plaintiff*

**CHRISTIANSEN LAW OFFICES**
810 S. Casino Center Blvd. Suite 104
Las Vegas, Nevada 89101
702-240-7979 • Fax 866-412-6992

CHRISTIANSEN LAW OFFICES
810 S. Casino Center Blvd. Suite 104
Las Vegas, Nevada 89101
702-240-7979 • Fax 866-412-6992

## CERTIFICATE OF CUSTODIAN OF RECORDS

State of _____)
) ss.
County of _____)

NOW COMES _____, who after first being duly sworn and says:

1. That the deponent is the _____ (position or title) of _____ (name of employer) and in that capacity is a custodian of the records of _____ (name of employer).

2. That _____ (name of employer) is licensed to do business as a _____ in the State of Nevada.

3. That on the _____ day of _____, 20__, the deponent was served a request for records in connection with the above entitled cause, calling for the production of records pertaining to **ST. ROSE HOSPITAL – SIENA CAMPUS**

4. That the deponent has examined the original of those records and has made or caused to be made a true and exact copy of them and that the reproduction of them attached hereto is true and complete.

5. That the original of those records was made at or near the time of the act, event, condition, opinion or diagnosis recited therein by or from information transmitted by a person with knowledge, in the course of a regularly conducted activity of the deponent or _____(name of employer).

SUBSCRIBED AND SWORN to before me
this ____ day of _____, 20__.

_____
NOTARY PUBLIC in and for said
State and County

CHRISTIANSEN LAW OFFICES
810 S. Casino Center Blvd. Suite 104
Las Vegas, Nevada 89101
702-240-7979 • Fax 866-412-6992

**Exhibit 1**

Nevada Rules of Civil Procedure, Rule 45:

**(c) Protection of Persons Subject to Subpoena.**

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

**(d) Duties in Responding to Subpoena.**

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

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Las Vegas, Nevada 89101
702-240-7979 • Fax 866-412-6992

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Steven D. Grierson
CLERK OF THE COURT

PETER S. CHRISTIANSEN, ESQ.
Nevada Bar No. 5254
pete@christiansenlaw.com
R. TODD TERRY, ESQ.
Nevada Bar No. 6519
tterry@christiansenlaw.com
WHITNEY J. BARRETT, ESQ.
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CHRISTIANSEN LAW OFFICES
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Las Vegas, Nevada 89101
Telephone: (702) 240-7979
Facsimile: (866) 412-6992
*Attorneys for the Estate of Alina Badoi*

CHRISTIANSEN LAW OFFICES
810 S. Casino Center Blvd. Suite 104
Las Vegas, Nevada 89101
702-240-7979 • Fax 866-412-6992

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

In the Matter of Estate of ALINA BADOI,

Deceased.

**CASE NO.: P-17-093721-E**
**DEPT NO.:**

**AMENDED ORDER APPOINTING SPECIAL ADMINISTRATOR**

Upon the application of Petitioner, LIVIU RADU CHISIU, and submission of a verified Petition for Letters of Special Administration representing as follows:

1. Decedent, ALINA BADOI, died intestate on or about **June 3, 2017.**

2. Decedent, at the time of her death, was a resident of County of Clark, Nevada.

3. Decedent, at the time of her death left property in the County of Clark, State of Nevada.

4. The decedent's estate consists of a potential personal injury/medical malpractice claim. To that end, Petitioner has commenced the process to investigate whether claims exist and Petitioner is hereby given the ability to subpoena records related to said investigation.

5. By reason of ALINA BADOI, having died intestate, LIVIU RADU CHISIU, is entitled to be the Special Administrator of the Estate and is under no disability to so act.

6. That the value of the estate to be administered is currently unknown.

NOW THEREFORE, upon the foregoing and other good and sufficient cause appearing, it is:

ORDERED, ADJUDGED, AND DECREED that special administration be had upon the Estate of ALINA BADOI, be and is hereby, appointed Special Administrator of the Estate of ALINA BADOI and that Letters of Special Administration shall be issued to LIVIU RADU CHISIU upon her taking the oath required by law;

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that no bond shall be required;

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that all monies received by this estate be placed in the attorney's trust account until further ordered by this Court;

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that any and all settlements entered into shall be approved by this Court.

DATED: 1/26/18

DISTRICT COURT JUDGE

Respectfully Submitted,

CHRISTIANSEN LAW OFFICES

PETER S. CHRISTIANSEN, ESQ.
Nevada Bar No.: 5254
R. TODD TERRY, ESQ.
Nevada Bar No.: 6519
WHITNEY J. BARRETT, ESQ.
Nevada Bar No.: 13662
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*Attorneys for the Estate of Alina Badoi*

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810 S. Casino Center Blvd. Suite 104
Las Vegas, Nevada 89101
702-240-7979 • Fax 866-412-6992

STATE OF NEVADA

CERTIFICATION OF VITAL RECORD

# DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF PUBLIC AND BEHAVIORAL HEALTH
VITAL STATISTICS

## CERTIFICATE OF DEATH

CASE FILE NO. 3976424

2017017047
STATE FILE NUMBER

TYPE OR PRINT IN PERMANENT BLACK INK

**DECEDENT**

| 1a. DECEASED-NAME (FIRST, MIDDLE, LAST, SUFFIX) | | 2. DATE OF DEATH (Mo/Day/Year) | 3a. COUNTY OF DEATH |
|---|---|---|---|
| Alina Marina | BADOI | June 03, 2017 | Clark |

| 3b. CITY, TOWN, OR LOCATION OF DEATH | 3c. HOSPITAL OR OTHER INSTITUTION - Name (If not either, give street address) | 3d. If Hosp. or Inst., Indicate DOA, OP/Emer. Rm., Inpatient (Specify) | 4. SEX |
|---|---|---|---|
| Henderson | St Rose Dominican Hospital Siena Campus | Inpatient | Female |

| 5. RACE (Specify) | 6. Hispanic Origin? Specify No - Non-Hispanic | 7a. AGE-Last Birthday (Years) | 7b. UNDER 1 YEAR MOS. / DAYS | 7c. UNDER 1 DAY HOURS / MINS | 8. DATE OF BIRTH (Mo/Day/Yr) |
|---|---|---|---|---|---|
| Romanian | | 42 | | | |

IF DEATH OCCURRED IN INSTITUTION SEE HANDBOOK REGARDING COMPLETION OF RESIDENCE ITEMS

| 9a. STATE OF BIRTH (If not USA, name country) | 9b. CITIZEN OF WHAT COUNTRY | 10. EDUCATION | 11. MARITAL STATUS (Specify) | 12. SURVIVING SPOUSE'S NAME (Last name prior to first marriage) |
|---|---|---|---|---|
| Romania | Romania | 18 | Never Married | |

| 13. SOCIAL SECURITY NUMBER | 14a. USUAL OCCUPATION (Give Kind of Work Done During Most of Working Life) | 14b. KIND OF BUSINESS OR INDUSTRY | Ever In US Armed Forces? |
|---|---|---|---|
| | Social Worker | Health | No |

| 15a. RESIDENCE - STATE | 15b. COUNTY | 15c. CITY, TOWN OR LOCATION | 15d. STREET AND NUMBER | 15e. INSIDE CITY LIMITS (Specify Yes or No) |
|---|---|---|---|---|
| Nevada | Clark | | | No |

**PARENTS**

| 16. FATHER/PARENT - NAME (First Middle Last, Suffix) | 17. MOTHER/PARENT - NAME (First Middle Last, Suffix) |
|---|---|
| Marin BADOI | Petruta MARINCEA |

| 18a. INFORMANT - NAME (Type or Print) | 18b. MAILING ADDRESS (Street or R.F.D. No, City or Town, State, Zip) |
|---|---|
| Viorica HABARA | |

**DISPOSITION**

| 19a. BURIAL, CREMATION, REMOVAL, OTHER (Specify) | 19b. CEMETERY OR CREMATORY - NAME | 19c. LOCATION - City or Town, State |
|---|---|---|
| Cremation | Palm Crematory | Las Vegas Nevada 89101 |

| 20a. FUNERAL DIRECTOR - SIGNATURE (Or Person Acting as Such) | 20b. FUNERAL DIRECTOR LICENSE NUMBER | 20c. NAME AND ADDRESS OF FACILITY |
|---|---|---|
| LAWRENCE NEUBAUER SIGNATURE AUTHENTICATED | FD27 | Affordable Cremation and Burial Services 2127 W Charleston Blvd Las Vegas NV 89102 |

**TRADE/CALL**

TRADE CALL - NAME AND ADDRESS: Palm Mortuary-Downtown 1325 North Main Street Las Vegas NV 89101

**CERTIFIER**

To Be Completed by Certifier/Attending Physician

21a. To the best of my knowledge, death occurred at the time, date and place and due to the cause(s) stated. (Signature & Title)

| 21b. DATE SIGNED (Mo/Day/Yr) | 21c. HOUR OF DEATH |
|---|---|
| | |

21d. NAME OF ATTENDING PHYSICIAN IF OTHER THAN CERTIFIER (Type or Print)

To Be Completed by Coroner's Office

22a. On the basis of examination and/or investigation, in my opinion death occurred at the time, date and place and due to the cause(s) stated. (Signature & Title)
ALANE OLSON MD SIGNATURE AUTHENTICATED

| 22b. DATE SIGNED (Mo/Day/Yr) | 22e. HOUR OF DEATH |
|---|---|
| September 11, 2017 | 13:51 |

| 22d. PRONOUNCED DEAD (Mo/Day/Yr) | 22e. PRONOUNCED DEAD AT (Hour) |
|---|---|
| June 03, 2017 | 13:51 |

| 23a. NAME AND ADDRESS OF CERTIFIER (PHYSICIAN, ATTENDING PHYSICIAN, MEDICAL EXAMINER, OR CORONER) (Type or Print) | 23b. LICENSE NUMBER |
|---|---|
| Alane Olson MD 1704 Pinto Lane Las Vegas NV 89106 | 9482 |

**REGISTRAR**

| 24a. REGISTRAR (Signature) | 24b. DATE RECEIVED BY REGISTRAR (Mo/Day/Yr) | 24c. DEATH DUE TO COMMUNICABLE DISEASE |
|---|---|---|
| NANCY BARRY SIGNATURE AUTHENTICATED | September 13, 2017 | YES [ ] NO [X] |

**CAUSE OF DEATH**

CONDITIONS IF ANY WHICH GAVE RISE TO IMMEDIATE CAUSE STATING THE UNDERLYING CAUSE LAST

25. IMMEDIATE CAUSE (ENTER ONLY ONE CAUSE PER LINE FOR (a), (b), AND (c).)

PART I

| | | Interval between onset and death |
|---|---|---|
| (a) | Bilateral Pulmonary Thromboemboli | |
| | DUE TO, OR AS A CONSEQUENCE OF: | Interval between onset and death |
| (b) | Deep Venous Thrombosis | |
| | DUE TO, OR AS A CONSEQUENCE OF: Acute Spastic Paraparesis Following Epidural Hemorrhage Associated With Epidural Anesthesia | Interval between onset and death |
| (c) | | |
| | DUE TO, OR AS A CONSEQUENCE OF: | Interval between onset and death |
| (d) | | |

PART II OTHER SIGNIFICANT CONDITIONS-Conditions contributing to death but not resulting in the underlying cause given in Part 1. Recent Pregnancy, Pre-eclampsia, Probable von Willebrand Disease.

| 26. AUTOPSY (Specify Yes or No) | 27. WAS CASE REFERRED TO CORONER (Specify Yes or No) |
|---|---|
| Yes | Yes |

| 28a. ACC., SUICIDE, HOM., UNDET., OR PENDING INVEST. (Specify) | 28b. DATE OF INJURY (Mo/Day/Yr) | 28c. HOUR OF INJURY | 28d. DESCRIBE HOW INJURY OCCURRED |
|---|---|---|---|
| ACCIDENT | June 03, 2017 | | Hemorrhage And Clotting Following Epidural Anesthesia For Childbirth |

| 28e. INJURY AT WORK (Specify Yes or No) | 28f. PLACE OF INJURY - At home, farm, street, factory, office building, etc. (Specify) | 28g. LOCATION STREET OR R.F.D. No. | CITY OR TOWN | STATE |
|---|---|---|---|---|
| No | Hospital | 3001 Lk. Mead Parkway | Henderson | Nevada |

STATE REGISTRAR

"CERTIFIED TO BE A TRUE AND CORRECT COPY OF THE DOCUMENT ON FILE WITH THE REGISTRAR OF VITAL STATISTICS, STATE OF NEVADA." This copy was issued by the Southern Nevada Health District from State certified documents authorized by state Board of Health pursuant to NRS 440.175.

VRS-Rev-20120424

457517

457517

DATE ISSUED: SEP 15 2017

Registrar of Vital Statistics
By:

This copy not valid unless prepared on watermarked security paper displaying date, seal and signature of Registrar.
SOUTHERN NEVADA HEALTH DISTRICT • P.O. Box 3902 • Las Vegas, NV 89127 • 702-759-1010 • Tax ID # 88-0151573

THE GREAT SEAL OF THE STATE OF NEVADA

SNHD SOUTHERN NEVADA HEALTH DISTRICT

IF ANY ALTERATION OR ERASURE VOIDS THIS CERTIFICATE

CHRISTIANSEN LAW OFFICES
TRIAL ATTORNEYS

PETER S. CHRISTIANSEN
PETER J. CHRISTIANSEN
R. TODD TERRY
KENDELEE LEASCHER WORKS
WHITNEY J. BARRETT
KEELY A. PERDUE

## AUTHORIZATION FOR INFORMATION

in accordance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA)

**TO:** St Rose Hospital Siena Campus

**Patient Information:**

Name: Alina Badoi

DOB: _____ SSN: _____

**Information to be released to:** Christiansen Law Offices

**Information to be released:** Photocopies of all medical records, to include, but not be limited to, records, reports, handwritten notes, memorandum, correspondence, nurse's notes, physician's orders, operative reports, pain questionnaires, histories, in-take sheets, laboratory results, and all diagnostic reports and films, including x-rays, MRI films, CT scans, and discography films, all itemized billing statements for the dates of services listed concerning my physical condition, treatment and hospitalization, all information and records regarding employment, taxes, insurance, investigative information and police records.

**Dates of Service:** Any and All Medical Records-Complete file

**Purpose for which disclosure is being made:** ☒ Attorney ☐ Insurance

**Patient Authorization & Rights:**

I hereby authorize you to release the requested information to the above stated entity. I understand that I may revoke this authorization at any time and I must do so in writing. I understand that the revocation does not apply to information already released in response to this authorization. I further understand that once the above information is disclosed, it may be re-disclosed by the recipient and the information may not be protected by federal privacy laws or regulations. This authorization expires at the conclusion of my claim. My treatment, payment, enrollment or eligibility for benefits may not be conditioned on signing this authorization. I understand that when the information is used or disclosed, pursuant to this authorization, it may be subject to re-disclosure by the recipient and may no longer be protected health information. I understand that drug, alcohol and/or HIV/AIDS related information may be released.

As a condition to the use of this Authorization, the Recipient (if not Christiansen Law Offices) agrees to, and will promptly, provide Christiansen Law Offices, copies of any and all documents or other items obtained by virtue of this Authorization, without charge.

This Authorization, if not being used by *Christiansen Law Offices or their designated agent, representative or expert witnesses*, does not allow the recipient to have any direct communication with my medical providers, other than to request records and billing from the medical providers without written permission from Christiansen Law Offices.

SIGNATURE: _____ DATE: Jan 24, 2018

PRINT NAME: Liviu Radu Chisiu, Special Administrator of the Estate and Decedent, Alina Badoi

SUBSCRIBED AND SWORN TO before me this 24 day of January, 2018.

_____
NOTARY PUBLIC

NOTARY PUBLIC
State of Nevada County of Clark
CHANDI MELTON
Appointment Exp. 07-20-2020
Certificate No: 98-49100-1

*It is understood that a photocopy of this Authorization shall be considered as effective and valid as the original.*
*I understand that I am voluntarily authorizing the disclosure of past, current, and future health information.*
*This authorization shall remain in full force and effect for a period of 2 years from the date.*

810 S. Casino Center Boulevard, Suite 104 • Las Vegas, NV 89101
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www.christiansenlaw.com

# EXHIBIT E

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DISTRICT COURT
CLARK COUNTY, NEVADA

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,

Plaintiffs,

vs. CASE NO. A-18-775572-C
DEPT. NO. XXXII

DIGNITY HEALTH, a Foreign Non-Profit Corporation d/b/a ST. ROSE DOMINICAN HOSPITAL-SIENA CAMPUS; JOON YOUNG KIM, M.D., an individual; U.S. ANESTHESIA PARTNERS, INC., a Foreign Corporation; DOES I through X and ROE BUSINESS ENTITIES XI through XX,

Defendants.

~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~

DEPOSITION OF
VIORICA HABARA

December 9, 2019

2:00 p.m.

7900 West Sahara Avenue
Suite 200
Las Vegas, Nevada

Gary F. Decoster, CCR No. 790

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APPEARANCES OF COUNSEL

For the Plaintiffs:
CHRISTIANSEN LAW OFFICES
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todd@christiansenlaw.com

For the Defendant Dignity Health d/b/a St. Rose Dominican Hospital-Siena Campus:
HALL PRANGLE & SCHOONVELD, LLC
TYSON J. DOBBS, ESQ.
1140 North Town Center Drive
Suite 350
Las Vegas, Nevada 89144
702.889.6400
702.384.6025 Fax
tdobbs@hpslaw.com

For the Defendants Joon Young Kim, M.D. and U.S. Anesthesia Partners, Inc.:
JOHN H. COTTON & ASSOCIATES, LTD.
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aschneider@jhcottonlaw.com

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INDEX OF EXAMINATION

WITNESS: VIORICA HABARA



INDEX TO EXHIBITS



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Deposition of Viorica Habara
December 9, 2019

(Prior to the commencement of the deposition, all of the parties present agreed to waive statements by the court reporter, pursuant to Rule 30(b)(4) of NRCP.)

VIORICA HABARA, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. SCHNEIDER:

Q. Please state your name for the record.

A. Viorica Habara.

Q. Viorica?

A. Um-hum, or Viorica. It depends, some people call Viorica, some Viorica.

Q. What do you prefer?

A. Viorica.

Q. So basically the letter V, the word or --

(Brief interruption.)

BY MR. SCHNEIDER:

Q. I just want to get it right, when I go back and read the transcript, that I mentally am pronouncing your name right. So it's the letter V, the word or, and the word rica?
~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~

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A. On May 17.
Q. And what time did you come back?
A. It was probably 4 o'clock.
Q. And in the time you came back on May 17th, there was already an MRI that was ordered?
A. Yes.
Q. Okay. Now, and so you weren't there during the time period where she was actually making these complaints about the numbness and tingling and the blood pressure, is that -- it being up?
A. I was there on the 16, her blood pressure was high already.
Q. Okay.
A. And she was telling me about the legs. And then our best friend, she spent the time with her -- she spent the night with her.
So she texted me, my best friend texted me, and she was like, your sister is complaining a lot, she is making, you know, a lot of complaints to the nurses. Can you please call her, calm her down, because she is like very, very strong about her legs not feeling okay, something going on. So that's why I know, because she texted me and asked me to call her and calm her down.
Q. Okay.

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A. And explain her because she said I went and talked to the nurses and they said it's just a side effect, a normal side effect from epidural.
Q. So the reason that you are aware of these concerns about the communication between the nurses with the doctors as far as Alina's complaints is because your best friend had told you about it?
A. Right.
Q. Okay.
A. She was there and she texted me to call her and --
Q. Okay.
A. -- talk to her.
Q. Now, to call and talk to Alina?
A. Yes.
Q. And did you call and talk to Alina?
A. Yes, I called her and talked to her and she was telling me that there's something wrong with her legs, and I was trying to explain what my friend said that the nurses explained her and my friend that it's a side effect from the epidural.
Q. Okay. But eventually the doctors did come and see Alina about that complaint?
A. He came next day in the morning around 10 o'clock, from what I heard.

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Q. Okay. And you heard that from who?
A. From my friend and Leo.
Q. Any other concerns you had about the nursing care?
A. Beside what I said, no.
Q. Were you ever trained in using that instrument on the bed?
A. No.
Q. As far as ratios in the hospital, I think you said that the ratio in the ICU when you were discussing it was one nurse for two patients?
A. For two rooms, yes.
Q. Okay. And you don't have any knowledge or understanding as to what an appropriate ratio of nurse to patients is, true?
A. I have friends working in ICU as a nurse.
Q. Okay.
A. And I know from her that usually in ICU, you have only one patient, one room.
Q. And who is your friend?
A. Her name is Emilia.
Q. Last name?
A. Roman.
Q. She's an ICU nurse somewhere?
A. Yes.

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Q. Do you know where?
A. Now she lives in Salt Lake City.
Q. Okay. Now, so your friend has told you that a ratio in the ICU is one to one?
A. Yes.
Q. Other than the conversation with your friend, do you have any other basis for knowing what an appropriate ICU staffing ratio is?
A. No.
Q. And you said something -- I think you said I guess they were short of staff earlier, and I may not be quoting you correctly.
A. Yeah, yeah.
Q. But when you say that you guess they were short of staff, are you just referencing the fact that their ratio was one to two and not one to one?
A. Yes.
Q. Did you ever request any of the medical records in this case?
A. Yes, I did.
Q. And when did you make the request for the medical records?
A. I'm not sure, I believe it was about a week or two after my sister passed away.
Q. And did you get those records?

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A. Yes, I did.
Q. Did anybody refuse to provide you those records?
A. No.
Q. You spoke to counsel earlier about Leo and he had discussed with you that there may be some records that were missing or inaccurate.
A. Correct.
Q. Is that right?
Did he ever -- in your conversations with Leo, did Leo ever suggest to you that he thought that the records were forged?
A. He didn't use that word, no.
Q. Did he ever suggest to you that he thought the records were fraudulent?
A. He said there were parts missing or not accurate.
Q. Okay. And so in that -- from your discussion with him, you understood him to say that there were facts that he recalled during the hospitalization that he couldn't find in the records?
A. Correct.
Q. And as far as inaccuracies, do you have any specifics as to what was inaccurate?
A. No.

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Q. Did he ever suggest to you that he believed that the records were somehow concealed purposely or that he just couldn't find the information that he was looking for in the records?
A. He just told me that there are records missing.
Q. But he didn't tell you what specific records?
A. No.
Q. And did you ever review the records?
A. No.
Q. So you never did any investigation to see if records were missing?
A. No.
Q. True?
A. True.
MR. DOBBS: All right. I don't think I have any other questions.
MR. SCHNEIDER: No questions here.
MR. TERRY: We're done. Read and sign, please.
(Thereupon, the deposition concluded at 5:55 p.m.)

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CERTIFICATE OF REPORTER

STATE OF NEVADA )
) ss:
COUNTY OF CLARK )

I, Gary F. Decoster, CCR 790, licensed by the State of Nevada, do hereby certify: That I reported the deposition of VIORICA HABARA, on Monday, December 9, 2019, commencing at 2:00 p.m.

That prior to being deposed, the witness was duly sworn by me to testify to the truth. That I thereafter transcribed my said stenographic notes via computer-aided transcription into written form, and that the typewritten transcript is a complete, true and accurate transcription of my said stenographic notes. That review of the transcript was requested.

I further certify that I am not a relative, employee or independent contractor of counsel or of any of the parties involved in the proceeding, nor a person financially interested in the proceeding, nor do I have any other relationship that may reasonably cause my impartiality to be questioned.

IN WITNESS WHEREOF, I have set my hand in my office in the County of Clark, State of Nevada, this 25th day of December, 2019.

GARY F. DECOSTER, CCR NO. 790

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DEPOSITION ERRATA SHEET

Our Assignment No. J4618535
Case Caption: CHISIU vs. DIGNITY HEALTH

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that I have read the entire transcript of my Deposition taken in the captioned matter or the same has been read to me, and the same is true and accurate, save and except for changes and/or corrections, if any, as indicated by me on the DEPOSITION ERRATA SHEET hereof, with the understanding that I offer these changes as if still under oath.

Signed on the _____ day of

_____, 20___.

_____

VIORICA HABARA

# EXHIBIT F

PETER S. CHRISTIANSEN, ESQ.
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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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;

Plaintiff,

vs.

DIGNITY HEALTH, a Foreign Non-Profit Corporation d/b/a ST. ROSE DOMINICAN HOSPITAL – SIENA CAMPUS; JOON YOUNG KIM, M.D., an Individual; U.S. ANESTHESIA PARTNERS, INC., a Foreign Corporation; DOES I through X; and ROE BUSINESS ENTITIES XI through XX, inclusive,

Defendants.

Case No.: A-18-775572-C
Dept. No.: XVII

**PLAINTIFFS' INITIAL DISCLOSURE OF WITNESSES AND DOCUMENTS PURSUANT TO NRCP 16.1 AND PRE-TRIAL DISCLOSURES PURSUANT TO NRCP 16.1(a)(3)**

Plaintiffs, 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, by and through their attorneys, PETER S. CHRISTIANSEN, ESQ., R. TODD TERRY, ESQ. and KEELY A.

Plaintiffs reserve the right to call any witness named by Defendant. Plaintiffs reserve the right to call any witness as may be necessary for the purpose of impeachment. Plaintiffs may call any and all witnesses called in rebuttal to testimony given by Defendant's witnesses. Plaintiffs reserve the right to object to any of Defendant's witnesses at the time of trial.

**II.**

**PLAINTIFF'S EXHIBITS PURSUANT TO N.R.C.P. 16.1 (a)(3)(B)**

| | EXHIBIT | EXPECT TO USE | MAY USE |
|---|---|---|---|
| 1. | Medical Records from Desert Endocrinology<br>(To be produced upon receipt of Custodian of Records Affidavit) | | X |
| 2. | Medical Records from St. Rose Dominican Hospital - Siena<br>BADOI 000001 – BADOI 004458 | | X |
| 3. | Clark County Coroner's Records<br>BADOI 004459 – BADOI 005035 | | X |
| 4. | Medical Records from Women's Health Association of Southern Nevada<br>BADOI 005036 – BADOI 005105 | | X |
| 5. | Medical Records from Quest Diagnostics<br>BADOI 005106 – BADOI 005108 | | X |
| 6. | Medical Records from Comprehensive Cancer Centers of Nevada<br>BADOI 005109 – BADOI 005118 | | X |
| 7. | Report of Bruce J. Hirschfeld, M.D., F.A.C.S. dated June 2, 2018<br>BADOI 005119 – BADOI 005146 | | X |
| 8. | Declaration of Yaakov Beilin, M.D. dated June 5, 2018<br>BADOI 005147 – BADOI 005148 | | X |
| 9. | Imaging from St. Rose Dominican Hospital – Siena<br>BADOI 005149 – BADOI 005151 | | X |

Plaintiffs may use any and all writings, published works, journals, treatises, medical texts, affidavits, films, drawings, graphs, charts, photographs, reports, computer tapes, computer discs, and other data compilations, and other medical reference materials which Plaintiffs and/or Plaintiffs' expert use in support of Plaintiffs' allegations.

CHRISTIANSEN LAW OFFICES
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Dignity Health.
St. Rose Dominican

# Certificate of Custodian of Records

Now comes _____**Tiffany Hubbard** _____who after first being duly sworn, deposes and says:

1. That he/she is the custodian of records for St. Rose Dominican Hospitals-Siena Campus and in such capacity is the custodian of the medical records of the office or institution;

2. That on the _____**07**_____, day of ____**June**____ **2017**, the deponent received a subpoena and/or request and an authorization for the production of records pertaining to _____**Alina Badoi**_____.

3. That the deponent has examined the original records on file, and has made a true and exact copy of them and that the reproduction of them attached hereto is true and complete; and

4. That the original of those records was made at or near time of the acts, events, conditions, opinions, or diagnosis recited therein by or from information transmitted by a person with knowledge of the course of the regularly conducted activity of deponent of the office or the company in which the deponent is engaged or employed.

_____
Deponent Signature

3001 St. Rose Parkway
Henderson NV 89052
702.616.5642

A-18-775572-C Estate of Alina Badoi, Plaintiff(s)
vs.
Dignity Health, Defendant(s)

February 24, 2022 03:00 AM Minute Order

HEARD BY: Kierny, Carli COURTROOM: RJC Courtroom 16B

COURT CLERK: Chambers, Jill

RECORDER:

REPORTER:

PARTIES PRESENT:

**JOURNAL ENTRIES**

This case is before the Court on "Defendant Dignity Health d/b/a St. Rose Dominican Hospital's Motion for Summary Judgment and Alternatively, Motion for Partial Summary Judgment on the Pleadings" and "Defendants Kim, M.D. and U.S. Anesthesia Partners, Inc.'s Partial Joinder to Defendant Dignity Health's Motion for Summary Judgment." The Court has considered the Motion and all oppositions, replies, supplemental briefing, and oral argument. The main point of contention is whether Plaintiff's filing of his Complaint on June 5, 2018 violated the 1-year accrual date for NRS 41A.097. It is undisputed that Ms. Badoi passed away on June 3, 2017, after being admitted to the hospital on May 15, 2017 to give birth to her daughter. Defendants argue that the time to file suit lapsed one year after Ms. Badoi's death on June 3, 2017, on June 4, 2018 (the Court notes here that June 3, 2018 was a Sunday, making June 4, 2018 one year from Ms. Badoi's death, in court days). Defendants assert that the complaint was therefore filed one day late for purposes of NRS 41A.097.
In Massey v. Litton, 99 Nev. 723 (1983), the Nevada Supreme Court held that a Plaintiff "discovers" his injury "when he knows or, through the use of reasonable diligence, should have known of facts that would put a reasonable person on inquiry notice of his cause of action." The time does not begin when plaintiff discovers the precise facts pertaining to his legal theory but when there is a general belief that negligence may have caused the injury. Id. at 728. "While difficult to define in concrete terms, a person is put on "inquiry notice" when he or she should have known of facts that 'would lead an ordinary prudent person to investigate the matter further." See Winn v. Sunrise Hospital and Medical Center, 128 Nev. 246, 252 (2012) (quoting Black's Law Dictionary 1165 (9th ed. 2009)). The Nevada Supreme Court has held that the accrual date for NRS 41A.097's one-year discovery period ordinarily presents a question of fact to be decided by the jury. See Winn, 128 Nev. at 258. "Only when the evidence irrefutably demonstrates that a plaintiff was put on inquiry notice of a cause of action should the district court determine this discovery date as a matter of law." Id. Plaintiffs argue that the instant motions for Summary Judgment should be denied, as there are genuine issues of material fact regarding when Plaintiff knew of the cause of Ms. Badoi's death.

The defense contends that Plaintiff felt something was not right in mid-May 2017, placing him on inquiry notice at that point. After all, Ms. Badoi came into the hospital, healthy, to have her baby. Some thereafter, Ms. Badoi suffered paralysis and a laminectomy had to be performed. A surgeon told Plaintiff around May 17-18, 2017 that Ms. Badoi's dura had been perforated. At his deposition, Plaintiff indicated he had a feeling that "things are not going quite right," which led him to request medical records. He received the records June 2, 2017 one day before Ms. Badoi passed away. Thus, Defendants aver that Plaintiff was on inquiry notice as of that date.

However, pursuant to the Gilloon case, Defendants use the date of Ms. Badoi's death, June 3, 2017 as Ms. Badoi's final injury (her tragic death) was complete at that point.

The Court finds that the evidence before it does not irrefutably demonstrate Plaintiff was put on inquiry notice of Ms. Badoi's ultimate injury on the date of Ms. Badoi's death. If the ultimate injury was Ms. Badoi's paralysis, then Plaintiff missed the deadline to file. However, the ultimate injury was her death. 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. Ms. Badoi had shown signs of recovery, and Plaintiff was not expecting her death. Also, he did not have a complete set of medical records at the time of her death, as the records he received on June 2, 2017 obviously did not cover her death on June 3, 2017.

The Court finds that this case is factually distinguishable from the "Powell case" (Valley Health System v. Eighth Judicial District Court). In that case, Ms. Powell passed away on May 11, 2017, and Plaintiff filed suit on February 4, 2019. In an unpublished opinion, the Supreme Court found that Plaintiff was on inquiry notice when he filed a complaint with the nursing board on June 11, 2017, and possibly on inquiry notice on May 23, 2017, when Plaintiff filed a similar complaint with the Nevada Department of Health and Human Services. Both of those dates for potential inquiry notice were AFTER Ms. Powell's death on May 11, 2017. At that point, Plaintiff was aware of facts surrounding Plaintiff's ultimate injury (her death), and was able to synthesize them into a written complaint. That is not what we have here. 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. In this case, the defense is essentially saying that Plaintiff was on notice of facts that led to Ms. Badoi's death BEFORE she died. That is factually inapposite to the Powell case.

Overall, the Court finds that there are genuine issues of material fact as to when Plaintiff knew the cause of Ms. Badoi's death, rather than irrefutable evidence. It would be improper for the Court to grant summary judgment on these facts, and will leave that question to the jury. The Motion for Summary Judgement and Joinder thereto are DENIED. However, the Court has not heard argument on Dignity Health's alternative prayer, for Partial Summary Judgment on the Pleadings. The Court hereby sets that portion of the Motion for argument on March 9, 2022 at 9:30 AM.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Jill Chambers, to all registered parties for Odyssey File & Serve. jmc 2/24/22

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*Attorneys for Defendant*
*Dignity Health d/b/a St. Rose Dominican*
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**DISTRICT COURT**
**CLARK COUNTY, NEVADA**

| | |
|---|---|
| LIVIU RADU CHISIU, as Special Administrator for 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;<br><br>Plaintiff,<br><br>vs.<br><br>DIGNITY HEALTH, a Foreign Non-Profit Corporation d/b/a ST. ROSE DOMINICAN HOSPITAL – SIENA CAMPUS; JOON YOUNG KIM, M.D., an Individual; U.S. ANESTHESIA PARTNERS, INC., a Foreign Corporation; DOES I through X, inclusive; and ROE BUSINESS ENTITIES XI through XX, inclusive,<br><br>Defendants. | CASE NO. A-18-775572-C<br>DEPT NO. 2<br><br>**ORDER REGARDING DEFENDANT DIGNITY HEALTH D/B/A ST. ROSE DOMINICAN HOSPITAL'S MOTION FOR SUMMARY JUDGMENT AND DEFENDANT JOON YOUNG KIM'S JOINDER THERETO**<br><br>**ORDER REGARDING DEFENDANT DIGNITY HEALTH D/B/A ST. ROSE DOMINICAN HOSPITAL'S MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS** |

This case came before the Court on "Defendant Dignity Health d/b/a St. Rose Dominican Hospital's Motion for Summary Judgment and Alternatively, Motion for Partial Judgment on the

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Pleadings" and "Defendants Kim, M.D. and U.S. Anesthesia Partners, Inc.'s Partial Joinder to Defendant Dignity Health's Motion for Summary Judgment."

Defendant Dignity Health d/b/a St. Rose Dominican Hospital's Motion for Summary Judgment and Defendant Joon Young Kim's Joinder thereto first came before this Court for oral argument, on December 8, 2021. Per the request of Plaintiffs' counsel at the hearing, the Court invited supplemental briefing regarding the Nevada Supreme Court's unpublished decision in *Valley Health Sys., LLC v. Eighth Judicial Dist. Court in & for County of Clark*, 497 P.3d 278 (Nev. 2021), referred to by the parties as the "Powell case". Each party submitted supplemental briefing and the matter came before the Court a second time for oral argument on February 2, 2022.

On February 24, 2022, the Court issued a minute order regarding the Motion for Summary Judgment and set a hearing on Dignity Health's Motion for Judgment on the Pleadings. The Motion for Judgment on the Pleadings thereafter came before this Court for oral argument, on March 16, 2022.

The Court has considered the Motion and all oppositions, replies, supplemental briefing, and oral argument, and rules as follows:

**MOTION FOR SUMMARY JUDGMENT**

The main point of contention is whether Plaintiff's filing of his Complaint on June 5, 2018 violated the 1-year accrual date for NRS 41A.097. It is undisputed that Ms. Badoi passed away on June 3, 2017, after being admitted to the hospital on May 15, 2017 to give birth to her daughter. Defendants argue that the time to file suit lapsed one year after Ms. Badoi's death on June 3, 2017, on June 4, 2018 (the Court notes here that June 3, 2018 was a Sunday, making June 4, 2018 one year from Ms. Badoi's death, in court days). Defendants assert that the complaint was therefore filed one day late for purposes of NRS 41A.097.

In *Massey v. Litton*, 99 Nev. 723 (1983), the Nevada Supreme Court held that a Plaintiff "discovers" his injury "when he knows or, through the use of reasonable diligence, should have known of facts that would put a reasonable person on inquiry notice of his cause of action." The time does not begin when plaintiff discovers the precise facts pertaining to his legal theory but

when there is a general belief that negligence may have caused the injury. *Id.* at 728. "While difficult to define in concrete terms, a person is put on "inquiry notice" when he or she should have known of facts that 'would lead an ordinary prudent person to investigate the matter further." *See Winn v. Sunrise Hospital and Medical Center*, 128 Nev. 246, 252 (2012) (quoting Black's Law Dictionary 1165 (9th ed. 2009)). The Nevada Supreme Court has held that the accrual date for NRS 41A.097's one-year discovery period ordinarily presents a question of fact to be decided by the jury. *See Winn*, 128 Nev. at 258. "Only when the evidence irrefutably demonstrates that a plaintiff was put on inquiry notice of a cause of action should the district court determine this discovery date as a matter of law." *Id.*

Plaintiffs argue that the instant motions for Summary Judgment should be denied, as there are genuine issues of material fact regarding when Plaintiff knew of the cause of Ms. Badoi's death. The defense contends that Plaintiff felt something was not right in mid-May 2017, placing him on inquiry notice at that point. After all, Ms. Badoi came into the hospital, healthy, to have her baby. Some thereafter, Ms. Badoi suffered paralysis and a laminectomy had to be performed. A surgeon told Plaintiff around May 17-18, 2017 that Ms. Badoi's dura had been perforated. At his deposition, Plaintiff indicated he had a feeling that "things are not going quite right," which led Ms. Badoi to request medical records. Ms. Badoi's sister, Viorica Habara, received the records June 2, 2017 one day before Ms. Badoi passed away. Thus, Defendants aver that Plaintiff was on inquiry notice as of that date. However, pursuant to the *Gilloon* case, Defendants use the date of Ms. Badoi's death, June 3, 2017 as Ms. Badoi's final injury (her tragic death) was complete at that point.

The Court finds that the evidence before it does not irrefutably demonstrate Plaintiff was put on inquiry notice of Ms. Badoi's ultimate injury on the date of Ms. Badoi's death. If the ultimate injury was Ms. Badoi's paralysis, then Plaintiff missed the deadline to file. However, the ultimate injury was her death. 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. Ms. Badoi had shown signs of recovery, and Plaintiff was not

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expecting her death. Also, he did not have a complete set of medical records at the time of her death, as the records Ms. Badoi's sister received on June 2, 2017 obviously did not cover her death on June 3, 2017. The Court finds that this case is factually distinguishable from the "Powell case" (*Valley Health System v. Eighth Judicial District Court*). In that case, Ms. Powell passed away on May 11, 2017, and Plaintiff filed suit on February 4, 2019. In an unpublished opinion, the Supreme Court found that Plaintiff was on inquiry notice when he filed a complaint with the nursing board on June 11, 2017, and possibly on inquiry notice on May 23, 2017, when Plaintiff filed a similar complaint with the Nevada Department of Health and Human Services. Both of those dates for potential inquiry notice were AFTER Ms. Powell's death on May 11, 2017. At that point, Plaintiff was aware of facts surrounding Plaintiff's ultimate injury (her death), and was able to synthesize them into a written complaint. That is not what we have here. 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. In this case, the defense is essentially saying that Plaintiff was on notice of facts that led to Ms. Badoi's death BEFORE she died. That is factually inapposite to the Powell case. Overall, the Court finds that there are genuine issues of material fact as to when Plaintiff knew the cause of Ms. Badoi's death, rather than irrefutable evidence. It would be improper for the Court to grant summary judgment on these facts, and will leave that question to the jury.

The Motion for Summary Judgment and Joinder thereto are DENIED.

**MOTION FOR JUDGMENT ON THE PLEADINGS**

Per the stipulation of the parties at the hearing on Dignity Health's Motion for Partial Judgment on the Pleadings, IT IS HEREBY ORDERED AND DECREED THAT Plaintiffs' Complaint against Dignity Health d/b/a St. Rose Hospital – Siena Campus is limited to a cause of action for professional negligence based on a theory of vicarious liability (i.e. actual agency/ostensible agency) for the alleged professional negligence of Defendant Joon Young Kim, M.D.

**IT IS SO ORDERED.**

**Dated this 29th day of April, 2022**

**B1A C26 F21D AF32**
**Carli Kierny**
**District Court Judge**

Respectfully Submitted by:

**HALL PRANGLE & SCHOONVELD, LLC**

/s/ Tyson Dobbs
MICHAEL E. PRANGLE, ESQ.
Nevada Bar No. 8619
TYSON J. DOBBS, ESQ.
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Approved as to Form and Content:

**CHRISTIANSEN LAW OFFICES**

/s/ Keely Perdue
PETER S. CHRISTIANSEN, ESQ.
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KEELY A. PERDUE, ESQ.
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*Attorneys for Plaintiffs*

Approve as to form and content:

JOHN COTTON & ASSOCIATES

/s/ Adam Schneider

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## Nicole M. Etienne

**From:** Adam Schneider <aschneider@jhcottonlaw.com>
**Sent:** Friday, April 29, 2022 9:40 AM
**To:** Tyson Dobbs; Keely Perdue
**Cc:** Nicole M. Etienne; Todd Terry; Esther Barrios Sandoval
**Subject:** RE: Badoi v Dignity Health - Order on MSJ

**[External Email]** CAUTION!.

Confirmed.

Adam Schneider, Esq.
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---

**From:** Tyson Dobbs <tdobbs@HPSLAW.COM>
**Sent:** Friday, April 29, 2022 9:38 AM
**To:** Keely Perdue <keely@christiansenlaw.com>
**Cc:** Nicole M. Etienne <netienne@HPSLAW.COM>; Adam Schneider <aschneider@jhcottonlaw.com>; Todd Terry <tterry@christiansenlaw.com>; Esther Barrios Sandoval <esther@christiansenlaw.com>
**Subject:** RE: Badoi v Dignity Health - Order on MSJ

Thanks Keely. Assuming Adam has no objection, we will make the changes and file. Adam, please confirm.

Thanks.

HALL PRANGLE+ SCHOONVELD LLC
WHERE TRIAL LAWYERS ARE THE NORM

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**Tyson Dobbs**
*Partner*
O: 702.212.1457
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**Legal Assistant:** Nicole Etienne
O: 702.212.1446
Email: netienne@hpslaw.com

**From:** Keely Perdue <keely@christiansenlaw.com>
**Sent:** Thursday, April 28, 2022 4:54 PM
**To:** Tyson Dobbs <tdobbs@HPSLAW.COM>
**Cc:** Nicole M. Etienne <netienne@HPSLAW.COM>; Adam Schneider (aschneider@jhcottonlaw.com) <aschneider@jhcottonlaw.com>; Todd Terry <tterry@christiansenlaw.com>; Esther Barrios Sandoval <esther@christiansenlaw.com>
**Subject:** Re: Badoi v Dignity Health - Order on MSJ

**[External Email]** CAUTION!.

Tyson,

Just a couple factual corrections:

- Page 3 line 17 should say ". . .which led ~~him~~ **Ms. Badoi** to request medical records. ~~He~~ **Ms. Badoi's sister, Viorica Habara,** received the records on June 2, 2017 . . ."
- Page 3, line 1 should say ". . . as the records ~~he~~ **Ms. Badoi's sister** received on June 2, 2017 . . ."

With those changes, you can use my e-signature.

Keely P. Chippoletti, Esq.
Christiansen Trial Lawyers
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> On Apr 28, 2022, at 1:25 PM, Tyson Dobbs <tdobbs@HPSLAW.COM> wrote:
>
> Just following up on this Keely. The language regarding the MSJ comes directly from the Court's minute order and the language on the MJP is the language agreed to at the hearing. Feel free to give me a call with any questions.
>
> <hps_logo_sm_7a5e5323-7fb9-4eb7-9623-1cb12df58917.jpg>
>
> **Tyson Dobbs**
> *Partner*

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**Legal Assistant:** Nicole Etienne
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Email: netienne@hpslaw.com



**From:** Keely Perdue <keely@christiansenlaw.com>
**Sent:** Wednesday, April 27, 2022 9:56 AM
**To:** Nicole M. Etienne <netienne@HPSLAW.COM>
**Cc:** Adam Schneider (aschneider@jhcottonlaw.com) <aschneider@jhcottonlaw.com>; Todd Terry <tterry@christiansenlaw.com>; Esther Barrios Sandoval <esther@christiansenlaw.com>; Tyson Dobbs <tdobbs@HPSLAW.COM>
**Subject:** Re: Badoi v Dignity Health - Order on MSJ

**[External Email]** CAUTION!.

Hi Nicole,

Thank you for following up. I'll get you our revisions, if any, later this afternoon or tomorrow.

Thank you,

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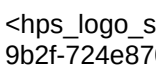
keely@christiansenlaw.com

On Apr 26, 2022, at 10:38 AM, Nicole M. Etienne <netienne@HPSLAW.COM> wrote:

Following up on the below.



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**Legal Assistant to:**
Casey Tyler
Michael Shannon
Tyson Dobbs



**From:** Nicole M. Etienne
**Sent:** Wednesday, April 20, 2022 2:38 PM
**To:** Keely Perdue <keely@christiansenlaw.com>; Adam Schneider (aschneider@jhcottonlaw.com) <aschneider@jhcottonlaw.com>
**Cc:** Todd Terry <tterry@christiansenlaw.com>; Esther Barrios Sandoval <esther@christiansenlaw.com>; Tyson Dobbs <tdobbs@HPSLAW.COM>
**Subject:** Badoi v Dignity Health - Order on MSJ

Good Afternoon,

Please review the attached order. Let me know if you have any revisions. If acceptable, please provide your authorization to electronically sign. Thanks!
<Order re MSJ 4861-7726-7228 v.1.pdf>

**CSERV**

DISTRICT COURT
CLARK COUNTY, NEVADA

| | |
|---|---|
| Estate of Alina Badoi, Plaintiff(s) | CASE NO: A-18-775572-C |
| vs. | DEPT. NO. Department 9 |
| Dignity Health, Defendant(s) | |

**AUTOMATED CERTIFICATE OF SERVICE**

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

Service Date: 4/29/2022

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*Attorneys for Plaintiffs*

**DISTRICT COURT**
**CLARK COUNTY, NEVADA**

| | |
|---|---|
| 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;<br><br>Plaintiff,<br><br>vs.<br><br>DIGNITY HEALTH, a Foreign Non-Profit Corporation d/b/a ST. ROSE DOMINICAN HOSPITAL – SIENA CAMPUS; JOON YOUNG KIM, M.D., an Individual; U.S. ANESTHESIA PARTNERS, INC., a Foreign Corporation; DOES I through X; and ROE BUSINESS ENTITIES XI through XX, inclusive,<br><br>Defendants. | Case No: A-18-775572-C<br><br>Dept. No: 9<br><br>**MOTION FOR LEAVE TO FILE AMENDED COMPLAINT**<br><br>**[HEARING REQUESTED]** |

Pursuant to Nevada Rule of Civil Procedure ("NRCP") 15, Plaintiffs Liviu Radu Chisiu, as Special Administrator of the Estate of Alina Badoi, Deceased, and Liviu Radu Chisiu, as Parent and Natural Guardian of Sophia Relina Chisiu, a minor, as Heir of the Estate of Alina Badoi, Deceased, by and through their undersigned counsel, hereby file this Motion for Leave to File Amended Complaint to assert additional factual allegations against Defendant Dignity Health d/b/a St Rose Dominican Hospital – Siena Campus ("St. Rose") to conform to the evidence

unearthed in discovery. Specifically, Plaintiffs seek to allege additional breaches of the standard of care by St. Rose for the repeated failures of its physicians and nurses to properly monitor and treat Alina's blood pressure. St. Rose's failure to properly treat Alina's hypertension led to vascular injuries, including an epidural bleed and a brain bleed, and contributed to the pulmonary embolism which ultimately caused Alina's death. The final date to amend pleadings and add parties expires on May 2, 2022, therefore, the time is ripe for Plaintiffs to amend their Complaint to conform to the evidence.

This Motion is based upon the pleadings and papers on file in this action, the Points and Authorities set forth herein, and argument to be made by counsel at the time of hearing.

## MEMORANDUM OF POINTS AND AUTHORITIES

## I.

## INTRODUCTION AND RELEVANT BACKGROUND

This is a professional negligence case arising out of care rendered to Decedent Alina Badoi ("Alina" or "Decedent") during her hospitalization at St. Rose Dominican Hospital's Siena Campus from May 15 through June 3, 2017. On May 15, 2017, Alina was admitted to St. Rose to give birth to her child, Sophia. Complaint at ¶ 15, on file herein. Sophia was delivered vaginally on May 16, 2017. *Id*. On May 16, 2017 at 0058, prior to the delivery of her child, Defendant Joon Young Kim, M.D. ("Dr. Kim"), an anesthesiologist, was consulted for the purpose of placing an epidural. Exhibit 2 at pg. 4 and 22, attached to Complaint. However, Dr. Kim noted concerns about Alina's presentation with thrombocytopenia (low platelet count) and epistaxis (nose bleed). *Id*. Dr. Kim ordered a manual platelet count be done before he would make a decision regarding placement of epidural anesthesia. *Id*.

At 0215, Dr. Kim alleges he spoke with Ronaldo Abuan in the lab at St. Rose regarding his manual platelet count and subsequently advised that he would not place the epidural anesthetic in Alina due to a dramatic various in the platelet count between the automated test and the manual test. *Id*. At 0300, Alina's OBGYN, Arthur Herpolsheimer, M.D. (hereinafter "Dr.

Herpolsheimer"), purportedly discussed pain management options with Alina since Dr. Kim would not place an epidural. *Id*. at pg. 4.

At 1445, Alina delivered her baby Sophia vaginally with epidural anesthesia. *Id*. at pg. 22. Within six (6) hours of delivery, Alina began to experience clinical complications postpartum. *Id*. At 2045, Alina developed symptoms of tingling and numbness (parathesias) involving her lower extremities and associated with dizziness. *Id*. Dr. Herpolsheimer was notified of Alina's symptoms at 2058. *Id*. at pgs. 5 and 22.

On May 17, 2017, at 0705, the records state, "anesthesiologist does does not think itching, pain numbness is related to epidural." *Id*. at pg. 7. Around 1045, Dr. Herpolsheimer personally evaluated Alina and raised initial concern about a possible epidural hematoma. *Id*. at pg. 8. Alina's lower extremity symptoms became progressively worse and she subsequently developed acute spastic paraparesis and underwent a laminectomy from T8 to L3 for an intradural hematoma, *inter alia*, more than twelve (12) hours after her clinical problem was first observed. Complaint at ¶ 16; Exhibit 2 at pg. 24, attached to Complaint.

Alina subsequently developed epidural and subdural hematomas. Exhibit 1 at pg. 1, attached to Complaint. Lumbar spinal and interventricular drains were placed during Alina's clinical course. *Id*.; Complaint at ¶ 16. While attempting physical therapy at St. Rose, Alina coded and passed away on June 3, 2017. *Id*.

An autopsy was performed by Forensic Pathologist Dr. Alane M. Olson of the Clark County Coroner on June 4, 2017. Exhibit 2 at pg. 22, attached to Complaint. Dr. Olson issued her findings on August 7, 2017, at which time she concluded Alina'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. Complaint at ¶ 17, 21.

On June 5, 2018, Plaintiffs filed their Complaint against St. Rose, Dr. Kim, and U.S. Anesthesia Partners ("USAP"), alleging the following claims for relief: Professional Negligence;

Negligent Credentialing (against St. Rose only); Fraudulent Concealment and/or Omissions; Negligent Hiring, Training, Retention and Supervision (against St. Rose and USAP); Ostensible Agency/Vicarious Liability (against St. Rose and USAP); and Wrongful Death Pursuant to NRS 41.085.

The parties have completed substantial discovery and are on the virtual eve of disclosing initial expert reports.[1] According to the Stipulation and Order to Extend Discovery Deadlines (Tenth Request) filed on February 25, 2022, the last day to add parties or amend pleadings is May 2, 2022. Accordingly, Plaintiffs request leave to amend their Complaint to add and/or clarify the following factual allegations and breaches of the standard of care by St. Rose:[2]

> 16. From admission to discharge, Alina had elevated blood pressure. Throughout her hospital course, St. Rose failed to properly monitor or treat Alina's blood pressure.
>
> 17. By 0030 on May 16, 2017, Alina met the diagnostic criteria for severe preeclampsia. However, the staff at St. Rose did not show concern nor did they order the urgently needed medications until later in the day.
>
> 18. Early in the morning on May 16, 2017, prior to delivery of her child, Alina's estimated platelet count showed higher levels on two subsequent readings. Alina's blood pressure also remained dangerously high and her liver enzymes were elevated, Defendant Joon Young Kim, M.D. (hereinafter "Kim" or "Dr. Kim"), an anesthesiologist, administered an epidural catheter for pain at 0836.
>
> 19. After the delivery of her baby girl, Alina's epidural catheter was removed at 1745 without a recheck of Alina's platelet level.
>
> 20. At 1930, Alina's knee reflexes became reduced, and at 2045, she complained of tingling in her legs which progressively increased over the following hours. By 0120 on May 17, 2017, Alina could no longer stand or ambulate.
>
> 21. In that someone thought Alina's symptoms were attributed to magnesium sulfate treatment she had been receiving, the magnesium sulfate infusion was discontinued at 0126. However, Alina's symptoms did not improve and in fact worsened during this time. After ruling out magnesium sulfate toxicity as a cause, the magnesium sulfate treatment was restarted, and no effort was made to ascertain the cause of Alina's symptoms.
>
> 22. Despite her elevated blood pressures and her abnormal labs, Alina was not diagnosed with HELLP syndrome.

[1] The parties recently stipulated to continue the initial expert disclosure from May 2, 2022 to July 1, 2022.

23. At 0635, Alina remained unable to put weight on her legs. It was not until 1042 that Dr. Herpolsheimer assessed Alina and became concerned of the possibility of an epidural hematoma.

24. STAT MRIs were ordered at 1042, but were not performed under after 1400—a more than 3-hour delay. These MRIs showed the possibility of an epidural hematoma but were limited by patient movement.

25. Repeat MRIs were not performed until 1900—an additional 5-hour delay—by which time Alina had an extensive spinal hematoma.

26. Subsequently, Alina developed acute spastic paraparesis and underwent a laminectomy from T8 to L3 for an intradural hematoma, inter alia.

27. Alina was kept intubated and admitted to the ICU where she stayed less than 48 hours.

28. On May 19, 2017, Alina was downgraded to the maternal child unit.

29. After the transfer, Alina experienced progressive loss of consciousness and was eventually diagnosed with brain hemorrhages.

30. Alina was re-admitted to ICU where she continued to suffer spinal and brain bleeding.

31. Lumbar spinal and intraventricular drains were placed during Alina's clinical course.

32. On June 2, 2017, Alina underwent another spinal surgery for an epidural hematoma.

33. While attempting physical therapy on June 3, 2017, Alina experienced a seizure and passed away.

. . .

35. St. Rose's delay in treatment of Alina's significantly elevated and untreated severe blood pressure led to vascular injuries, including an epidural bleed and a brain bleed, and contributed to the pulmonary embolism which ultimately caused Alina's death.

. . .

40. Defendants' treatment and care of Decedent fell below the applicable standard of care, including but not limited to:

. . .

c. Repeatedly failing to properly monitor or treat Decedent's elevated blood pressure.

d. Awaiting necessary treatment which resulted in delays in diagnosing Decedent's condition.

. . .

62. Decedent entrusted her care and treatment to Defendants; Defendant St. Rose selected Defendant Kim, an anesthesiologist, *and other nurses and*

> *physicians to monitor and* treat Decedent and Decedent reasonably believed Defendant Kim *and other nurses and physicians* were employees or agents of Defendant St. Rose. . .
>
> 63. While committing the above acts of negligence, thereby causing harm and death to Defendant, Defendant Dr. Kim *and other nurses and physicians* and/or DOE/ROE Defendants were operating under a partnership . . . .
>
> 64. Defendants St. Rose and U.S. Anesthesia Partners are responsible and liable for the negligence of Defendant Kim *and other nurses and physicians* and/or DOE/ROE Defendants, under one or more of the following theories . . .
>
> 65. The negligent acts and omissions by Defendant Dr. Kim *and other nurses and physicians* and/or DOE ROE Defendants occurred within the course and scope of Defendant Dr. Kim's *and the nurses' and physicians'* and/or DOE/ROE Defendants' joint venture, agency . . . .

Plaintiffs' proposed Amended Complaint is attached as "**Exhibit 1"**. The additional allegations concerning St. Rose's breaches of the standard of care are supported by Plaintiffs' expert, Jonathan Lanzkowsky, M.D.

## II.

## LEGAL ARGUMENT

### A. PLAINTIFFS SHOULD BE PERMITTED LEAVE TO FILE THEIR AMENDED COMPLAINT ATTACHED HERETO AS EXHIBIT 1.

Plaintiffs seek to amend their Complaint to include additional factual allegations against St. Rose for its repeated failures to properly monitor or treat Alina's blood pressure. These failures were in breach of the standard of care and led to vascular injuries, including an epidural bleed and a brain bleed, and contributed to the pulmonary embolism which ultimately caused Alina's death. The instant request for leave to amend the Complaint is necessary in order to conform to the evidence in discovery.

Nevada Rule of Civil Procedure ("NRCP") 15(a) permits a party to amend his or her pleading by leave of court and states that "[t]he court should freely give leave when justice so requires." NRCP 15(a). NRCP 15(b) further allows a party to amend his or her pleading in order to conform to the evidence. NRCP 15(b). Such an amendment is allowed even after judgment. *Id*. If at the time of trial, a party objects to the presentation of evidence on the ground that it is not within the issues made by the pleadings, the court may allow amendment and shall do so freely

when the presentation of merits of the action will be subserved unless the objecting party can show that admission of such evidence would prejudice the party's action or defense upon the merits. *Id*.

The Nevada rule mirrors that of the Federal Rules of Civil Procedure, and the Ninth Circuit has similarly held that the policy of granting leave to amend "is to be applied with extreme liberality." *Owens v. Kaiser Found Health Plan, Inc.*, 244 F.3d 708, 712 (9th Cir. 2001). Moreover, the Nevada Supreme Court maintains a "general policy to decide cases upon the merits." *Cohen v. Mirage Resorts, Inc.*, 119 Nev. 1, 23, 62 P.3d 720, 735 (2003); *see also DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 186 (9th Cir. 1987)("In exercising its discretion a court must be guided by the underlying purpose of Rule 15 – to facilitate decision on the merits rather than on the pleadings or technicalities."). Therefore, "justice requires" that leave to amend be freely given "in the absence of any apparent or declared reason – such as undue delay, bad faith or dilatory motive on the part of the movant." *Stephens v. Southern Nevada Music Co., Inc.*, 89 Nev. 104, 105-06, 507 P.2d 138, 139 (1973); *see also* 3 Moore's Federal Practice – Civil 15.14 (2011)(discussing FRCP 15(a) and stating that "[d]enial of leave to amend is disfavored; and a district judge should grant leave absent a substantial reason to deny"). An amended pleading relates back to the date of the original pleading whenever "the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out—or attempted to be set out—in the original pleading." NRCP 15(c).

The decision to grant leave to amend is well within the discretion of this Court and is one that will not be disturbed absent an abuse of that discretion. *Adamson v. Bowker*, 85 Nev. 115, 450 P.2d 796 (1969); *Stephens*, *supra*. In the absence of any apparent or declared reason, such as undue delay, bad faith, or dilatory motive on the part of the movant, leave to amend should be freely given. *Kantor v. Kantor*, 116 Nev. 886, 891, 8 P.3d 825, 828 (2000).

Here, Plaintiffs request leave to amend their Complaint to alleged additional breaches of the standard of care by St. Rose to confirm to the evidence and to clarify the scope of the issues

at trial. It is well known that professional negligence cases are costly to litigate and try given the number of experts required. Thus, Plaintiffs seek to file an Amended Complaint for the sake of efficiency and cost effectiveness.

The Court's granting of leave to amend the Complaint will not cause any undue delay nor will Defendants be unduly prejudiced as a result. A defendant is unduly prejudiced if granting the proposed amendment would burden him excessively. *McGlinchy v. Shell Chemical Co.*, 845 F.2d 802, 809 (9th Cir. 1988). Plaintiffs' instant request for leave to amend their Complaint is timely and within the deadline set by the Court. The deadline to amend pleadings and add parties expires on May 2, 2022. The parties recently stipulated to continue the initial expert disclosure deadline to July 1, 2022, with rebuttal expert disclosures due thirty days after on August 1, 2022. Thus, the time is ripe for Plaintiffs to amend their Complaint to conform to the evidence.

Plaintiffs' proposed Amended Complaint will not cause any undue burden, as Plaintiffs are moving to amend their Complaint only add factual allegations and breaches of the standard of care by St. Rose in order to conform to the evidence in discovery, which will clarify the issues at stake for trial. Defendants have no reasonable basis to argue Plaintiffs are acting in bad faith or with any dilatory motive. Justice requires that such claims be brought into this lawsuit so Plaintiffs may pursue all avenues of recourse against St. Rose and pursue necessary discovery related to St. Rose's breaches of the standard of care which contributed to Alina's death. Therefore, Plaintiffs request this Court exercise its broad discretion and grant Plaintiffs leave to amend their Complaint.

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## III.

## CONCLUSION

Based upon the foregoing facts, law, and analysis, Plaintiffs respectfully requests that this Honorable Court enter an Order granting Plaintiffs' Motion for Leave to File Amended Complaint.

Dated this 2nd day of May, 2022.

CHRISTIANSEN TRIAL LAWYERS

By_____
PETER S. CHRISTIANSEN, ESQ.
R. TODD TERRY, ESQ.
KEELY PERDUE CHIPPOLETTI, ESQ.
*Attorneys for Plaintiffs*

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of CHRISTIANSEN TRIAL LAWYERS, and that on this 2nd day of May, 2022 I caused the foregoing document entitled **MOTION FOR LEAVE TO FILE AMENDED COMPLAINT** to be served upon those persons designated by the parties in the E-Service Master List for the above-referenced matter in the Eighth Judicial District Court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules.

An employee of Christiansen Trial Lawyers

# EXHIBIT 1

# EXHIBIT 1

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*Attorneys for Plaintiff*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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;

Plaintiff,

vs.

DIGNITY HEALTH, a Foreign Non-Profit Corporation d/b/a ST. ROSE DOMINICAN HOSPITAL – SIENA CAMPUS; JOON YOUNG KIM, M.D., an Individual; U.S. ANESTHESIA PARTNERS, INC., a Foreign Corporation; DOES I through X; and ROE BUSINESS ENTITIES XI through XX, inclusive,

Defendants.

CASE NO.: A-18-775572-C
DEPT NO.: 2

**AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL**

***Arbitration Exemption requested: Medical Malpractice***

COMES NOW, Plaintiffs, LIVIU RADU CHISIU as Special Administrator of the ESTATE OF ALINA BADOI, Deceased, and LIVIU RADU CHISIU, as Natural Parent and Guardian of SOPHIA RELINA CHISIU, a minor, as Heir of the ESTATE OF ALINA BADOI, Deceased, by and through their attorneys, PETER S. CHRISTIANSEN, ESQ., R. TODD TERRY, ESQ., KENDELEE L. WORKS, ESQ., WHITNEY J. BARRETT, ESQ. and KEELY PERDUE CHIPPOLETTI, ESQ. of the law firm Christiansen Trial Lawyers, and for their causes of action against the above-named Defendants, and each of them, allege as follows:

**IDENTIFICATION OF THE PARTIES**

1. At all times relevant hereto, Plaintiff, SOPHIA RELINA CHISIU, a minor and the biological child of Decedent, Alina Badoi, is and was a resident of Clark County, Nevada.

2. At all times relevant hereto, upon information and belief, Decedent, ALINA BADOI ("Decedent"), was and is a resident of Clark County, Nevada.

3. On or about January 23, 2018, LIVIU RADU CHISIU was duly appointed as Special Administrator of the ESTATE OF ALINA BADOI, and at all times relevant hereto, is and was a resident of Clark County, Nevada.

4. At all times relevant hereto, Defendant, DIGNITY HEALTH d/b/a ST. ROSE DOMINICAN HOSPITALS, was and is a Foreign Non-Profit Corporation authorized to do and doing business in the State of Nevada. At all times relevant hereto, Defendant DIGNITY HEALTH d/b/a ST. ROSE DOMINICAN HOSPITALS owned and operated a general acute care hospital in Clark County, Nevada, which hospital was called ST. ROSE DOMINICAN HOSPITAL – SIENA CAMPUS (hereinafter "St. Rose").

5. ST. ROSE DOMINICAN HOSPITAL – SIENA CAMPUS is licensed in the State of Nevada under Chapter 449 of the Nevada Revised Statutes.

6. At all times relevant hereto, Defendant JOON YOUNG KIM, M.D. (hereinafter "Kim" and/or "Dr. Kim"), was and is an individual licensed to practice medicine in the State of Nevada, and practicing in the specialty of anesthesia in Clark County, Nevada.

7. At all times relevant hereto, Defendant, U.S. ANESTHESIA PARTNERS, INC., was and is a Foreign Corporation authorized to do and doing business in Clark County, Nevada. At all times relevant hereto, Defendant U.S. ANESTHESIA PARTNERS, INC. employed Defendant Kim.

8. The names and capacities of Defendants DOES I through X, whether individual, corporate, associate or otherwise, are unknown to the Plaintiffs at the time of the filing of this complaint, and Plaintiffs therefore sue said Defendants by such fictitious names. Plaintiffs are informed and believe, and therefore allege, that each of the DOE Defendants is legally responsible for the injuries and damages to the Plaintiffs as herein alleged. At such time that the Plaintiffs determine the true identities of DOES I through X, Plaintiffs will amend this Complaint to set forth the proper names of those Defendants, as well as asserting appropriate charging allegations. Plaintiffs additionally believe that one or more of the DOE DEFENDANTS is liable under an agency theory as the principal tortfeasor acting within the scope and authority of the agency relationship.

9. Plaintiffs are further informed and believe, and on that basis allege, that certain physicians, physicians assistants, general surgeons, patient floor nurses, registered nurses, nurse practitioners, nurse aides, or other medical personnel, or their employers, whose true and correct names are either unknown, not annotated or not legible in Decedent's medical records, were responsible for her care and treatment that lead to her damages as stated herein. The negligent acts and omissions by DOE Defendants' employees in treating Decedent occurred within the course and scope of their agency, employment, or contractual relationship with Defendants and/or DOE Defendants, wherefore said Defendants and/or DOE Defendant employers are vicariously liable for the damages sustained by Plaintiffs as a result of the negligent conduct of their employees. Further, the negligent acts and omissions of Defendants in treating Decedent occurred within the course and scope of their agency, employment, or contractual relationship with DOE Defendants, wherefore said employers are vicariously liable for the damages sustained by Plaintiff as a result of the negligent conduct of Defendants.

10. In doing the acts herein alleged, each of the Defendants' agents, servants, and employees were acting in the course and scope of their employment with the Defendants, and each of them, and in furtherance of the Defendants' business.

11. Defendants have refused to keep certain health care records as required by NRS 629.051 and other regulations, or otherwise refused to provide Plaintiffs or their agents with the same, such that certain aspects of Decedent's medical care is undiscoverable and cannot be determined. Due to the failure to provide or maintain certain health care records as required by law, the statute of limitations has been tolled pursuant to NRS 41A.097(3) until such time the records are provided to Plaintiffs or their agents.

12. Plaintiffs are further informed and believe, and on that basis allege, that DOES/ROES are certain physicians, physicians assistants, general surgeons, patient floor nurses, registered nurses, nurse practitioners, nurse aides, or other medical personnel, or their employers, whose actions and correct names are unknown due to the missing medical records, were responsible for Decedent's care and treatment that lead to Plaintiff's damages as stated herein.

13. Pursuant to NRCP 10(a) and *Nurenberger Hercules-Werke GMBH v. Virostek*, 107 Nev. 873, 822 P.2d 1100 (1991), the identity of resident and non-resident defendants designated herein as DOES I-X and ROES XI-XX include, but are not limited to, those persons, associations, partnerships, corporations, and other entities and individuals whose conduct is the subject of this Complaint and which owned, operated, managed, ratified or otherwise were, and are legally accountable for the acts and omissions of the other Defendants named herein, and managed, controlled, and coordinated the care, budget and staffing levels of the other Defendants which led to Decedent's death.

## FACTUAL ALLEGATIONS

14. All the facts and circumstances that give rise to the subject lawsuit occurred in the County of Clark, State of Nevada.

15. On May 15, 2017, Decedent, Alina Badoi (hereinafter "Alina" or "Decedent"), was admitted to St. Rose to give birth to her child, Sophia. Sophia was delivered vaginally on May 16, 2017.

16. From admission to discharge, Alina had elevated blood pressure. Throughout her hospital course, St. Rose failed to properly monitor or treat Alina's blood pressure.

17. By 0030 on May 16, 2017, Alina met the diagnostic criteria for severe preeclampsia. However, the staff at St. Rose did not show concern nor did they order the urgently needed medications until later in the day.

18. Early in the morning on May 16, 2017, prior to delivery of her child, Alina's estimated platelet count showed higher levels on two subsequent readings. Alina's blood pressure also remained dangerously high and her liver enzymes were elevated, Defendant Joon Young Kim, M.D. (hereinafter "Kim" or "Dr. Kim"), an anesthesiologist, administered an epidural catheter for pain at 0836.

19. After the delivery of her baby girl, Alina's epidural catheter was removed at 1745 without a recheck of Alina's platelet level.

20. At 1930, Alina's knee reflexes became reduced, and at 2045, she complained of tingling in her legs which progressively increased over the following hours. By 0120 on May 17, 2017, Alina could no longer stand or ambulate.

21. In that someone thought Alina's symptoms were attributed to magnesium sulfate treatment she had been receiving, the magnesium sulfate infusion was discontinued at 0126. However, Alina's symptoms did not improve and in fact worsened during this time. After ruling out magnesium sulfate toxicity as a cause, the magnesium sulfate treatment was restarted, and no effort was made to ascertain the cause of Alina's symptoms.

22. Despite her elevated blood pressures and her abnormal labs, Alina was not diagnosed with HELLP syndrome.

23. At 0635, Alina remained unable to put weight on her legs. It was not until 1042 that Dr. Herpolsheimer assessed Alina and became concerned of the possibility of an epidural hematoma.

24. STAT MRIs were ordered at 1042, but were not performed under after 1400—a more than 3-hour delay. These MRIs showed the possibility of an epidural hematoma but were limited by patient movement.

25. Repeat MRIs were not performed until 1900—an additional 5-hour delay—by which time Alina had an extensive spinal hematoma.

26. Subsequently, Alina developed acute spastic paraparesis and underwent a laminectomy from T8 to L3 for an intradural hematoma, inter alia.

27. Alina was kept intubated and admitted to the ICU where she stayed less than 48 hours.

28. On May 19, 2017, Alina was downgraded to the maternal child unit.

29. After the transfer, Alina experienced progressive loss of consciousness and was eventually diagnosed with brain hemorrhages.

30. Alina was re-admitted to ICU where she continued to suffer spinal and brain bleeding.

31. Lumbar spinal and intraventricular drains were placed during Alina's clinical course.

32. On June 2, 2017, Alina underwent another spinal surgery for an epidural hematoma.

33. While attempting physical therapy on June 3, 2017, Alina experienced a seizure and passed away.

34. 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. The Certificate of Death was issued September 15, 2017.

35. St. Rose's delay in treatment of Alina's significantly elevated and untreated severe blood pressure led to vascular injuries, including an epidural bleed and a brain bleed, and contributed to the pulmonary embolism which ultimately caused Alina's death.

**FIRST CAUSE OF ACTION**

**PROFESSIONAL NEGLIGENCE**

36. Plaintiffs hereby incorporate the allegations in the preceding and ensuing paragraphs as though fully set forth herein.

37. Decedent ALINA BADOI presented to St. Rose Hospital to give birth on or about May 15, 2017, and passed away at St. Rose Hospital on June 3, 2017 from bilateral pulmonary thromboemboli and deep venous thrombosis.

38. In undertaking the aforementioned care and treatment of Decedent, Defendants and/or DOE/ROE Defendants had a duty to perform said care and treatment with the skill, learning and ability commensurate with other similarly situated personnel possessing the same or similar education, training, and experience in the same or similar circumstances.

39. From May 15, 2017 to June 3, 2017, Defendants, and each of them, examined, diagnosed, treated, cared for, performed surgery upon, prescribed and administered medicines or drugs, and supervised the care and treatment of Decedent. In so doing, the Defendants, and each of them, negligently failed to possess or to exercise that degree of knowledge or skill ordinarily possessed or exercised by other physicians, nurse practitioners, nurses, attendants and the like who engage in like professions in the same area as said Defendants, and each of them, inclusive, negligently failed to warn Plaintiff of the dangers and untoward consequences and hazards involved in the examination, diagnosis, care, treatment, prescription and administration of medicines and drugs and the surgical operations, which they intended to and did, use and perform upon the persons of Plaintiff; that said Defendants, and each of them, induced Plaintiff to undergo said examination, diagnosis, care and treatment, surgical operations and receive said medicine or drugs as aforesaid. Plaintiffs, in the exercise of reasonable diligence, could not have discovered that Decedent's injuries and death were or may have been the result of negligence until on or about August 7, 2017, (at the earliest) when the Clark County Coroner issued her findings. These conclusions were also listed in the Certificate of Death issued September 15, 2017.

40. Defendants' treatment and care of Decedent fell below the applicable standard of care, including but not limited to:

a. Failure to fully assess Alina Badoi's bleeding risk prior to placing the epidural catheter for labor analgesia; and

b. Placing an epidural catheter in a patient at significant risk for bleeding.

c. Repeatedly failing to properly monitor or treat Decedent's elevated blood pressure.

d. Awaiting necessary treatment which resulted in delays in diagnosing Decedent's condition.

41. Defendants' failure to properly treat and care and Defendants' breach of the standard of care was a proximate and legal cause of Alina Badoi's. (*See* Exhibit 1, Declaration of Yaakov Beilin, M.D.; *see also* Exhibit 2, Declaration and C.V. of Bruce Hirschfeld, M.D.; *see also* Exhibit 3, Declaration and C.V. of Johnathan Lanzkowsky, M.D., F.A.C.O.G.).

42. As a further proximate result of the conduct of Defendants, and each of them, Decedent was required to and did employ physicians, surgeons, and hospitals to examine, treat and care for her, and incurred medical and other related expenses in connection therewith. The exact amount of such past expense is unknown to Plaintiffs at this time, and Plaintiffs therefore ask leave to prove and, if required by Court, to amend their Complaint to show the reasonable value of such medical services at time of trial.

43. Plaintiffs' professional negligence cause of action is supported by the Declarations of Yaakov Beilin, M.D., Bruce Hirschfeld, M.D., and Jonathan Lanzkowsky, M.D. (attached hereto as Exhibits 1, 2, and 3, respectively) pursuant to Nevada Revised Statutes § 41A.071.

44. That the above actions by Defendants, and each of them, were done with a conscious and/or reckless disregard for the probable harmful consequences which could flow therefrom and were otherwise the result of a willful and deliberate failure to act to avoid those consequences.

45. That as a result of Defendants' conscious and/or reckless disregard for and indifference to the health and welfare of Decedent, Plaintiffs suffered damages, and accordingly, Plaintiffs are seeking an award in an amount in excess of fifteen thousand dollars ($15,000.00).

46. Plaintiffs have been required to retain legal counsel to prosecute this action and, therefore, are entitled to reasonable attorney fees, interest, and costs of suit incurred in this action.

**SECOND CAUSE OF ACTION**

**FRAUDULENT CONCEALMENT AND/OR OMISSIONS**

47. Plaintiffs hereby incorporate the allegations in the preceding and ensuing paragraphs as though fully set forth herein.

48. Based upon the special relationship between Plaintiffs, Decedent, and Defendants, each of the Defendants assumed the responsibility to provide Plaintiffs and Decedent with true, accurate and complete medical records and to convey truthful, accurate and complete information regarding Decedent's care and treatment with Defendants.

49. Defendants have altered, destroyed and/or concealed Decedent's confidential medical records, and the cause of Decedent's death.

50. Defendants have concealed, suppressed and/or omitted material facts regarding their care and treatment of Decedent.

51. Defendants had a duty to disclose to Decedent and Plaintiffs true, accurate and complete medical records and information regarding Defendants' care and treatment of Decedent.

52. Upon information and belief, Defendants acted to alter, conceal, suppress, omit and/or destroy Decedent's records in an attempt to conceal their own conduct with the intention of inducing Plaintiffs to refrain from prosecuting their claims against Defendants.

53. Despite Plaintiffs' request for and entitlement to true and complete information regarding Decedent's care and treatment with Defendants, Defendants failed to provide and/or willfully concealed material facts regarding their care and treatment of the Plaintiff and the cause of Plaintiff's debilitating condition.

54. To date, Plaintiffs remain unaware of the true circumstances surrounding Defendants' care and treatment of Decedent.

55. Upon information and belief, if Plaintiffs and Decedent had been made aware of the true circumstances surrounding Defendants' care and treatment of Decedent, they would have been able to make more informed decisions with respect to Decedent's care and treatment.

56. If Plaintiffs had been made aware of the true circumstances surrounding Defendants' care and treatment of Decedent, they would be better able to make additional decisions regarding this litigation and would have pursued additional causes of action and/or additional theories of liability.

57. Because the medical records, documents, and information necessary to plead a fraudulent concealment and/or omissions claim are peculiarly within Defendants' knowledge and/or

control or are readily obtainable by Defendants, Plaintiffs are unable to plead the instant claim with more particularity than that contained herein. Accordingly, pursuant *to Rocker v. KPMG LLP*, 122 Nev. 1185, 148 P.3d 703 (2006), a relaxed pleading standard should be applied and Plaintiffs should be afforded the opportunity to conduct discovery relevant to such claims with leave to amend with more particularity at a later time.

58. As a direct and proximate result of the conduct of Defendants described hereinabove, Plaintiffs have sustained damages in excess of fifteen thousand dollars ($15,000.00).

59. That DOE and/or ROE Defendants who are presently unknown to Plaintiffs are in some manner liable to Plaintiffs for damages under this cause of action. Once their identities are ascertained, Plaintiffs will seek leave of this Court to amend their Complaint to insert their true names and identities.

60. Plaintiffs have been required to retain legal counsel to prosecute this action and, therefore, are entitled to reasonable attorney fees, interest, and costs of suit incurred in this action.

**THIRD CAUSE OF ACTION**

**OSTENSIBLE AGENCY/VICARIOUS LIABILITY –**

**AGAINST ST. ROSE AND U.S. ANESTHESIA PARTNERS**

61. Plaintiffs hereby incorporate the allegations in the preceding and ensuing paragraphs as though fully set forth herein.

62. Decedent entrusted her care and treatment to Defendants; Defendant St. Rose selected Defendant Kim, an anesthesiologist, and other nurses and physicians to monitor and treat Decedent and Decedent reasonably believed Defendant Kim and other nurses and physicians were employees or agents of Defendant St. Rose; Decedent and Plaintiffs were not put on notice Defendant Kim was an independent contractor.

63. While committing the above noted acts of negligence, thereby causing harm and death to Decedent, Defendant Dr. Kim and other nurses and physicians and/or DOE/ROE Defendants were operating under a partnership, joint venture, agency, ostensible agency, contractual, and/or employment relationship with Defendants, St. Rose, U.S. Anesthesia Partners and/or DOE/ROE Defendants, and each of them.

64. Defendants St. Rose and U.S. Anesthesia Partners are responsible and liable for the negligence of Defendant Dr. Kim and other nurses and physicians and/or DOE/ROE Defendants, under one or more of the following theories: agency theory as the principal of a tortfeasor acting within the course and scope of an agency relationship; ostensible agency as the principal of a tortfeasor acting within the course and scope of an agency relationship; partnership; joint venture; contractual; respondeat superior, and/or vicarious liability.

65. The negligent acts and omissions by Defendant Dr. Kim and other nurses and physicians and/or DOE/ROE Defendants occurred within the course and scope of Defendant Dr. Kim's and the nurses' and physicians' and/or DOE/ROE Defendants' joint venture, agency, ostensible agency, contractual, or employment relationship with Defendants St. Rose and/or U.S. Anesthesia Partners. Therefore, Defendants St. Rose Hospital and/or U.S. Anesthesia Partners are vicariously liable for the damages sustained by Plaintiffs as a result of the negligent conduct of Defendants and/or DOE/ROE Defendants.

66. That as a result of Defendants' reckless disregard for and indifference to the health and welfare of Decedent, Plaintiffs suffered damages, and accordingly, Plaintiffs are seeking an award in an amount in excess of fifteen thousand dollars ($15,000.00).

67. As a direct result and proximate cause and result of Defendants' above-referenced breach, Plaintiffs incurred damages of grief, sorrow, loss of probable support, companionship, society, comfort and consortium, and damages for pain, suffering, and disfigurement of the Decedent in an amount in excess of fifteen thousand dollars ($15,000.00).

68. As a direct result and proximate cause and result of Defendant St. Rose Hospital's above-referenced breach, the Estate of Alina Badoi incurred special damages including medical and funeral expenses in an amount in excess of fifteen thousand dollars ($15,000.00).

69. Plaintiffs have been required to retain legal counsel to prosecute this action and, therefore, are entitled to reasonable attorney fees, interest, and costs of suit incurred in this action.

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/ / /

**FOURTH CAUSE OF ACTION**

**WRONGFUL DEATH PURSUANT TO NRS 41.085**

70. Plaintiffs hereby incorporate the allegations in the preceding and ensuing paragraphs as though fully set forth herein.

71. Plaintiff, SOPHIA RELINA CHISIU, is the natural child of Decedent and is the heir to Decedent's estate.

72. Defendants and/or DOE Defendants neglected to provide proper care for Decedent, causing Decedent's death.

73. But for the substandard care provided by Defendants and/or DOE/ROE Defendants, Decedent would not have died from bilateral pulmonary thromboemboli and deep venous thrombosis.

74. That as a result of Defendants' and/or DOE/ROE Defendants' reckless disregard for and indifference to the health and welfare of Decedent, Plaintiffs suffered damages, and accordingly, Plaintiffs are seeking an award in an amount in excess of fifteen thousand dollars ($15,000.00).

75. As a direct result and proximate cause and result of Defendants' and/or DOE/ROE Defendants' above-referenced breach, Plaintiffs incurred damages of grief, sorrow, loss of probable support, companionship, society, comfort and consortium, and damages for pain, suffering, and disfigurement of the Decedent in an amount in excess of fifteen thousand dollars ($15,000.00).

76. As a direct result and proximate cause and result of Defendants' and/or DOE Defendants above-referenced conduct, the Estate of Alina Badoi incurred special damages including medical and funeral expenses.

77. Plaintiffs have been required to retain legal counsel to prosecute this action and, therefore, are entitled to reasonable attorney fees, interest, and costs of suit incurred in this action.

**PUNITIVE DAMAGES**

78. Plaintiffs hereby incorporate the allegations in the preceding and ensuing paragraphs as though fully set forth herein.

79. Defendants and/or DOE/ROE Defendants were consciously indifferent to the consequences of their conduct and disregarded Alina Badoi's health, safety and welfare.

80. Defendants and/or DOE Defendants conduct was intentional, malicious, oppressive and/or in reckless disregard of the consequences to Decedent, and thereby subjecting Defendants to punitive damages pursuant to N.R.S. 42.005. 42.005(1) provides:

> Except as otherwise provided in NRS 42.007, in an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud or malice, express or implied, the plaintiff, in addition to the compensatory damages, may recover damages for the sake of example and by way of punishing the defendant....

81. Plaintiffs have been required to retain legal counsel to prosecute this action and, therefore, are entitled to reasonable attorney fees, interest, and costs of suit incurred in this action.

**DEMAND FOR JURY TRIAL**

82. Plaintiffs hereby demand a trial by jury for all issues triable.

**PRAYER FOR RELIEF**

Wherefore, Plaintiffs pray for relief and judgment as against Defendants as follows:

1. Compensatory damages in excess of $15,000.00, according to proof at trial;
2. Special damages in excess of $15,000.00, according to proof at trial;
3. Punitive and exemplary damages in an amount to be determined at trial;
4. Interest from the time of service of this complaint as allowed by NRS 17.130;
5. Costs of suit and attorney fees; and
6. For such other and further relief as the court may deem appropriate.

Dated this ___ day of May, 2022.

CHRISTIANSEN TRIAL LAWYERS

By_____
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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

| | |
|---|---|
| LIVIU RADU CHISIU, as Special Administrator for 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<br><br>Plaintiffs,<br><br>vs.<br><br>DIGNITY HEALTH, a Foreign Non-Profit Corporation d/b/a ST. ROSE DOMINICAN HOSPITAL – SIENA CAMPUS; JOON YOUNG KIM, M.D., an Individual; U.S. ANESTHESIA PARTNERS, INC., a Foreign Corporation; DOES I through X, inclusive; and ROE BUSINESS ENTITIES XI through XX, inclusive,<br><br>Defendants. | CASE NO.: A-18-775572-C<br>DEPT NO.: 9<br><br>**DEFENDANT DIGNITY HEALTH d/b/a ST. ROSE DOMINICAN HOSPITAL'S OPPOSITION TO PLAINTIFFS' MOTION FOR LEAVE TO FILE AMENDED COMPLAINT** |

COMES NOW, Defendant, ST. ROSE DOMINICAN HOSPITAL – SIENA CAMPUS, by and through its attorneys of record, HALL PRANGLE & SCHOONVELD, LLC, hereby submits its Opposition to Plaintiffs' Motion for Leave to File Amended Complaint.

This Opposition is made and based upon the papers and pleadings on file herein, the points and authorities attached hereto, and any argument of counsel which may be allowed at the time of the hearing on this matter.

DATED this 18th day of May 2022.

HALL PRANGLE & SCHOONVELD, LLC

By: */s/:Tyson J. Dobbs*

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## MEMORANDUM OF POINTS AND AUTHORITIES

### I.

### INTRODUCTION

Plaintiffs' Motion to Amend requests leave to assert multiple claims for vicarious liability against St. Rose Hospital for the apparent professional negligence of several unnamed physicians and nurses that are *not* defendants in this action. The Motion literally comes on the heels of a stipulation and order that the Complaint against the Hospital be limited to vicarious liability for the alleged professional negligence of the anesthesiologist co-defendant, Dr. Joon Young Kim. There is no good faith basis for the about face on the Court's order, which was entered one judicial day before the Motion to Amend.

First, there has been no discovery undertaken since November of last year – approximately seven months prior to the Motion to Amend. In fact, in October of last year St. Rose Hospital filed a Motion for Partial Judgment on the Pleadings ("MJP") seeking an order from the Court limiting the Complaint to vicarious liability for Dr. Kim. In response thereto, Plaintiff conceded the only theory levied against the hospital was vicarious liability for Dr. Kim. Notably, Plaintiff never requested leave to amend in the multiple briefs and oral arguments

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related to the MJP, notwithstanding the fact that all the discovery undertaken thus far in this case had been completed. Rather, at the MJP hearing in March, Plaintiffs' counsel stipulated that the Complaint against St. Rose Hospital was limited to vicarious liability for Dr. Kim's professional negligence. Despite the fact that nothing has changed since the hearing – there having been no discovery completed since November 2021 – Plaintiffs unjustifiably delayed filing their Motion to Amend until the last day to file motions to amend pleadings.

Even so Plaintiffs' proposed Amended Complaint fails to comply with EDCR 2.30 and NRS 41A.071 as Plaintiff has not attached an expert affidavit to support the allegations asserted therein. This is particularly inexcusable given the facts included in the proposed Amended Complaint are facts Plaintiffs have had knowledge of since the filing of the original Complaint in 2018. As a matter of fact, Plaintiffs have been in possession of the medical records since June of 2017. Plaintiff Liviu Chisiu himself raised the issues addressed by the proposed amended complaint in his deposition in 2019. Accordingly, the filing of this Motion two years after his deposition and four years after the Complaint was filed is the definition of dilatory.

Additionally, the self-serving argument in the Motion that Defendant would not be prejudiced by the amendment ignores the nature of the claims Plaintiffs seek to add by way of amendment. For the past four years St. Rose Hospital has been defending a vicarious liability case premised on the allegation that Dr. Kim misplaced an epidural causing bleeding in Ms. Badoi's spine. Plaintiffs' new claims are premised on the hospital being vicariously liable for unidentified non-party nurses and physicians causing not only the bleeding in Ms. Badoi's spine, but a brain bleed. In other words, five years after the subject treatment, four years after the Complaint was filed, one-month before expert disclosures, and on the last day for amending pleadings pursuant to the TENTH extension of deadlines, St. Rose Hospital is expected to defend treatment provided by multiple unidentified healthcare providers in a variety of different medical specialties that are alleged to have caused entirely new injuries. To suggest that such a change of course would not prejudice St. Rose Hospital is laughable. Indeed, upon filing of the proposed amended complaint there will necessarily be a motion to dismiss filed given the new claims are are *void ab initio* under NRS 41A.071 and are barred by the statute of limitations. Nevertheless, if the claims survive dismissal, St. Rose Hospital is entitled to contribution or indemnity from the

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allegedly negligent providers. Given the deadline for amending the complaint or adding parties has expired, St. Rose Hospital would be precluded from adding these allegedly negligent providers into this litigation. Regardless, the discovery deadlines and trial will need to be extended to contemplate additional expert retention and discovery into these allegations.

Accordingly, as set forth in detail below, Plaintiffs' Motion to Amend should be denied because it is not brought in good faith and is dilatory. Furthermore, leave should be denied due to the futility of the amendments and the resulting prejudice to St. Rose Hospital.

## II.

## RELEVANT FACTS AND PROCEDURAL HISTORY

### A. Plaintiffs' Complaint and the information available at the time the original Complaint was filed four years ago.

Four years ago, on June 5, 2018, Plaintiff filed the Complaint in this action alleging professional negligence by an anesthesiologist, Defendant Dr. Joon Young Kim, M.D. *See* Plaintiff's Complaint, attached hereto as **Exhibit A**. Specifically, the Complaint alleges Dr. Kim failed to "fully assess Alina Badoi's bleeding risk prior to placing the epidural catheter for labor analgesia;" and then erred by placing "the epidural in a patient at significant risk for bleeding." *See* Exhibit A at ¶ 22.

The Complaint included two Declarations from physicians. The first was from Yaakov Beilin, M.D., who had reviewed the St. Rose Hospital records and the autopsy report. Dr. Beilin states in his Declaration that "[t]he records show that Alina had *preeclampsia, [and] a dramatic variation in platelet counts . . .*" He thus concludes that Dr. Kim was negligent by (1) failing to full assess Alina's bleeding risk; and (2) by placing the epidural catheter at all. He opines that these failures caused the hematoma in Alina Badoi's spine. *See* Dr. Beilin's Declaration attached to Exhibit A.

The second Declaration is that of Bruce Hirschfeld. Dr. Hirschfeld reviewed Alina Badoi's prental records, hospital records, death certificate, cororner's report, and several other records. In fact, he specifically states that he was in possession of 4,422 pages of St. Rose Hospital records for Alina Badoi. From those records Dr. Hirschfield provides a comprehensive timeline of the treatment, that includes a discussion of all of the facts pertinent to Plaintiff's new claims for relief in the proposed amended Complaint. Specifically, Dr. Hirschfield discusses Ms.

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Badoi's's platelet levels, elevated blood pressure, epidural catheter removal, subsequent complaints of numbness, tingling and inability to stand, the orders and treatment regarding magnesium sulfate, the timing of the MRIs, and a discussion of HELLP syndrome. Nevertheless, Dr. Hirschfield limits his opinion a causation opinion, which essentially was that the epidural placed by Dr. Kim ultimately caused the bleed that caused the pulmonary embolism that caused Ms. Badoi's death. *See* Dr. Hirschfeld's Declaration attached to Exhibit A.

Based on the factual allegations, the Complaint included six separate causes of action: (1) Professional Negligence (2) Negligent Credentialing; (3) Fraudulent Concealment and/or Omissions; (4) Negligent Hiring, Training, Retention and Supervision; (5) Ostensible Agency/Vicarious Liability; and (6) Wrongful Death Pursuant to NRS 41.085.

On January 29, 2021, Judgment on the Pleadings was granted under NRS 41A.071 as to Plaintiff's claims for Negligent Credentialing and Negligent Hiring, Training, and Supervision. *See* Court's Minute Order, attached hereto as **Exhibit B**. This meant the sole theory of liability against St. Rose Hospital was for vicarious liability for the professional negligence of Dr. Kim.

**B. <u>In 2019 Plaintiff confirmed knowledge of all the allegations and criticisms set forth in the proposed amended Complaint.</u>**

On December 4, 2019, Defendants took the deposition of the administrator of Alina Badoi's estate, Plaintiff Liviu Chisiu. Mr. Chisiu was Ms. Badoi's partner and the father of her child. He testified that even before Alina's death he requested and received her medical records because he realized that something was "not quite right" with her treatment. *See* Excerpts of Deposition Transcript of Liviu Chisiu, at 143:14-144:10, attached hereto as **Exhibit C**. Plaintiff testified that within a month of Alina's Badoi's death in June 2017, he consulted an attorney for a potential lawsuit. *Id*. at 149:23-150:12.

In December of 2019, Plaintiff also testified about his firsthand observations of the treatment provided to Alina regarding her high blood pressure. He even raised these concerns with the nurses and physicians at the time. *Id*. at 170:1-175:15. Likewise, Plaintiff testified regarding his knowledge of the timing of the MRI's performed to diagnose Alina's hematoma. He specifically identified the times in which he believed the MRIs to have been ordered and completed, and even voiced frustration about how long it took for the MRIs and surgery to be

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completed. At that time, Plaintiff also claimed to have been told by a specialist that the surgery would have been less complicated had Alina been taken to surgery sooner. *Id*. at 175:16-179:22.

Notwithstanding Plaintiff's testimony years ago, there was no discovery conducted by Plaintiff for over a year and there were no motions to amend the complaint filed until the instant motion.

**C. <u>Plaintiff's discovery and the subsequent Motion for Partial Judgment on the Pleadings filed by St. Rose Hospital.</u>**

Plaintiff finally began taking depositions of in February of 2021 – just under three years from the filing of the Original Complaint. Between February 18, 2021, and November 22, 2021, Plaintiff took ten depositions of various nurses and physicians involved in Alina Badoi's treatment. The hospital nursing staff deposed included Mary Brown, RN (June 16, 2021), Kirsta Molinaro Fulks, RN (October 4, 2021), Delaney McCoy, RN (October 6, 2021), and Tracy Jones, RN (October 6, 2021).

At the conclusion of the depositions taken of its staff, St. Rose Hospital filed a Motion for Summary Judgment and, alternatively, Motion for Partial Judgment on the Pleadings on October 18, 2021. *See* Motion, attached hereto as **Exhibit D**. At that time, Plaintiffs had been in possession of the 4,000+ pages of St. Rose Hospital records for four years, Plaintiff's deposition had been taken two years earlier, and nine of the ten depositions taken by Plaintiff had been completed.

The basis for the motion for summary judgment was the expiration of the statute of limitations given the Complaint was filed more than one year after the patient's death. The Motion for Partial Judgment on the Pleadings sought alternative relief by way of dismissal of the redundant multiple claims asserted in the Complaint, including wrongful death and professional negligence, since the factual allegations contemplated only a single claim for vicarious liability against St. Rose Hospital for the alleged malpractice of the anesthesiologist, co-defendant Dr. Kim. *See id*.

On November 8, 2021, Plaintiff filed an opposition to the Motion. As it relates to the alternative relief, the Opposition amounted to a non-opposition as it conceded that the single theory of liability was Vicarious Liability against St. Rose Hospital for the alleged professional

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negligence of Dr. Kim. The Opposition did not request leave to amend despite the fact that Plaintiff had been in possession of the 4,000 pages of hospital records for four years, had those records reviewed by two medical experts, had the benefit of Plaintiff's deposition completed two years earlier, and Plaintiffs' counsel had completed nine additional depositions. *See* Opposition, attached hereto as **Exhibit E**.

In fact, after the last deposition in this case was taken on November 22, 2021, the first hearing on the Motion for Summary Judgment was held on December 8, 2021. There was no suggestion at the hearing that Plaintiff would be seeking leave to amend the complaint.

Additionally, Plaintiff submitted supplemental briefing on January 10, 2021, and a second round of oral argument was entertained on February 2, 2022. Again, there was no suggestion that Plaintiffs intended to seek leave to amend the complaint.

The Court's minute order denying the Motion for Summary Judgment was issued on February 24, 2024, which set an additional hearing on the alternative relief for March 16, 2022. *See* Court's Minute Order, attached hereto as **Exhibit F**.

On March 16, 2022, the Motion for Partial Judgment on the Pleadings came before the Court. At the hearing Plaintiffs' counsel reiterated the non-opposition to the motion, stating that the Complaint was indeed limited to a Vicarious Liability claim against St. Rose premised on Dr. Kim's conduct. Moreover, Plaintiffs' counsel was once again silent regarding any intention to amend the complaint. On the contrary, rather than await the Court's ruling on the Motion for Partial Judgment on the Pleadings, *Plaintiffs' counsel stipulated on the record that the Complaint against St. Rose Hospital is limited to a claim for vicarious liability based on the alleged professional negligence of the codefendant physician, Dr. Kim*. *See* Transcript of Hearing from March 16, 2022, attached hereto as **Exhibit G**.

The formal order regarding the Motion for Summary Judgment and Motion for Partial Judgment on the Pleadings was thereafter entered on Friday April 29, 2022. The Order expressly states:

> Per the stipulation of the parties at the hearing on Dignity Health's Motion for Partial Judgment on the Pleadings, IT IS HEREBY ORDERED AND DECREED THAT Plaintiffs' Complaint against Dignity Health d/b/a St. Rose Hospital – Siena Campus is limited to a cause of action for professional negligence based on a theory

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> of vicarious liability (i.e. actual agency/ostensible agency) for the alleged professional negligence of Defendant Joon Young Kim, M.D.

*See* Order Regarding Motion for Summary Judgment and Moton for Partial Judgment on the Pleadings, attached hereto as **Exhibit H**.

Three days after this Order was entered confirming the limitation on Plaintiffs' claims, Plaintiff filed this Motion to Amend, which essentially is a motion to add multiple unidentified health care providers as defendants in this case, without technically adding them as parties.[1] This is notwithstanding the fact that nothing has changed since the stipulation and order in March. In fact, there has been no additional discovery undertaken since November 2021.

The motion comes four years after the complaint was filed on the last day to amend pleadings and add parties set pursuant to the *tenth* extension of the deadlines. Experts are being disclosed on July 1, 2022, with a trial date set for January 3, 2022. Accordingly, as set forth below, the motion was not filed in good faith, and is dilatory, prejudicial, and futile. Therefore, the Motion should be denied.

## III.

## ARGUMENT

### A. Plaintiff's Motion should be denied because it is dilatory and was not brought in good faith.

Although NRCP 15 provides that leave to amend should be given when justice so requires, "this does not mean that a trial judge may not, in a proper case, deny a motion to amend." *Kantor v. Kantor*, 116 Nev. 886, 891, 8 P.3d 825, 828 (2000) (denying a motion to amend a pleading where the movant was "dilatory in requesting leave to amend") (quoting *Stephens v. Southern Nevada Music Co.*, 89 Nev. 104, 105, 507 P.2d 138, 139 (1973)). "Sufficient reasons to deny a motion to amend a pleading include undue delay, bad faith or dilatory motives on the part of the movant. *Id.* The Ninth Circuit has added that "[l]ate amendments to assert new theories are not reviewed favorably when the facts and the theory have been known to the party seeking amendment since the inception of the cause of action." *In*

[1] The proposed amended complaint includes no direct claims against St. Rose Hospital. The new claims are all premised on negligence of unidentified physicians or nurses for which Plaintiffs seek to subject the hospital to vicarious liability.

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*re W. States Wholesale Nat. Gas Antitrust Litig.*, 715 F.3d 716, 739 (9th Cir. 2013), *aff'd sub nom. Oneok, Inc. v. Learjet, Inc.*, 135 S. Ct. 1591 (2015); *see also State, Univ. & Cmty. Coll. Sys. v. Sutton*, 120 Nev. 972, 988, 103 P.3d 8, 19 (2004) (upholding denial of leave to amend where the information subject to the motion to amend was within the movant's knowledge nine months prior to the motion).

In *Kantor v. Kantor*, the Nevada Supreme Court upheld a district court's denial of a request for leave to amend on grounds that movant was dilatory in requesting leave, where the motion was filed 11 months after the filing of the original complaint, and the information providing the grounds for the motion was available to the movant at that time. *See Kantor*, at 893, 8 P.3d at 829 (movant sought leave to contest validity of premarital agreement). The Court further reasoned that allowing the movant leave to amend a mere seven weeks before trial in a "multimillion dollar divorce case . . . would have necessitated an extensive delay." *Id.*

Here, Plaintiffs have filed a Motion to Amend on the last day to amend the pleadings after the discovery deadlines were extended 10 times. More egregiously, the Motion comes on the heels of a stipulation and order limiting Plaintiffs' case against St. Rose Hospital to vicarious liability for Dr. Kim's negligence. There is no basis to reverse that order, being the motion was filed just days after the hearing and Plaintiffs have not moved for reconsideration of that order. In fact, given it was a stipulation, Plaintiffs cannot in good faith request reconsideration, and cannot in good faith request leave to amend now.

Plaintiffs have had all the information that is now proposed as basis to amend the complaint at the time of the stipulation and Court's order. In fact, discovery had been completed for six months prior to Plaintiffs' counsel entering the stipulation at the hearing on the Motion for Partial Judgment on the Pleadings. Nothing has changed since November 2021. Nevertheless, Plaintiffs' counsel never requested leave to amend at any time before or during that hearing.

The reality is that the new claims – an alleged failure to "monitor or treat Decedent's elevated blood pressure" and negligence in "awaiting necessary treatment which resulted in delays in diagnosing Decedent's condition" – contemplate information available to Plaintiff at the time the original complaint was filed four years ago. This is apparent from the original

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affidavits attached to the Complaint, which provided a detailed timeline of the medical treatment provided to Alina Badoi. Plaintiff even addressed these issues in his deposition in 2019. There is simply no excuse for Plaintiffs Motion to Amend.

Furthermore, Plaintiffs' suggestion that the Motion is essentially a "clarification" of the claims against St. Rose Hospital is simply disingenuous. Again, just a month ago counsel stipulated in open court that the only claim being asserted against the hospital was vicarious liability for Dr. Kim. The attempt to recharacterize the nature of the Motion and allegations is thus more evidence of bad faith in bringing this Motion four years into the litigation, five years after the treatment, and one month after a stipulation regarding the claims at issue. This is especially true since Plaintiff Liviu Chisu himself was a firsthand observer to all the alleged negligence in both the Complaint and proposed amended complaint as it happened.

Lastly, the proposed claims for relief contemplate negligence by unidentified nurses and/or physicians and/or other specialities, for which St. Rose Hospital is to be vicariously liable. In essence, therefore, Plaintiffs are adding multiple additional parties to the litigation. And by the time this Motion is decided St. Rose Hospital will have one month to figure out who Plaintiffs are alleging was negligent, what fact depositions may be necessary in relation to those allegations, retain experts to address the treatment provided by those specific individuals, and potentially bring motions for leave to assert third-party contribution or indemnity claims against those parties. Accordingly, the pending deadlines and trial date are insufficient and will need to be continued to accommodate the additional discovery necessitated by Plaintiffs' 180 degree turn from the representations by their counsel in March.

The reality is that Plaintiffs know very well that summary judgment is inevitable on the sole claim for relief they have maintained against St. Rose Hospital for four years. That is because it is undisputed that Dr. Kim was not an employee of the hospital. Moreover, Ms. Badoi was well aware of the relationship between Dr. Kim and the hospital given she herself was an employee of Dignity Health. Cf. *Schlotfeldt v. Charter Hosp. of Las Vegas*, 112 Nev. 42, 48, 910 P.2d 271, 274 (1996) (allowing ostensible agency where a physician is selected by the hospital and the patient holds a *reasonable* belief that the physician was a hospital employee); *See also* Motion for Summary Judgment, filed May 18, 2022, attached hereto as **Exhibit I**.

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Accordingly, the dilatory Motion to Amend is simply a belated attempt to change the theory of liability against St. Rose Hospital to avoid summary judgment. Such tactics are improper and should be denied. *See*, e.g., *Nutton v. Sunset Station, Inc.*, 131 Nev. 279, 284, 357 P.3d 966, 970 (Nev. App. 2015) (stating that a proposed amended complaint should be denied if it is a "last-second amendment[ ] alleging meritless claims in an attempt to save a case from summary judgment").

**B. <u>The proposed amendment and timing is unduly prejudicial to St. Ros Hospital.</u>**

In addition to being dilatory and lacking good faith, the request for leave to amend should be denied at this stage of the litigation because the proposed amendments would result in significant prejudice to St. Rose Hospital. Prejudice to the opposing party is identified by the Nevada Supreme Court as another reason to deny a motion for leave to amend. *See Nutton v. Sunset Station, Inc.*, 131 Nev. 279, 284, 357 P.3d 966, 970 (Nev. App. 2015) (citing *Stephens v. Southern Nevada Music Co.*, 89 Nev. 104, 105, 507 P.2d 138, 139 (1973)).

Plaintiffs' self-serving suggestion in the Motion that there would be no prejudice to St. Rose Hospital should the Motion be granted is simply ridiculous. Again, this case has been a vicarious liability case for the conduct of a physician in placing an epidural catheter for four years. For four years Plaintiffs' theory of liability has been that the misplacement of this catheter caused a hemorrhage in Ms. Badoi's spine. Now, however, one month before expert disclosures, Plaintiffs are adding claims against St. Rose Hospital, not for its own conduct, but for conduct of third-party physicians and nurses that have never been parties to this lawsuit. Plaintiffs are also now seeking to subject St. Rose Hospital to liability for a brain bleed.

In other words, the claims are derivative claims against non-parties alleging new injuries for which St. Rose Hospital would have an equitable or contractual right to indemnity or contribution. Given Plaintiffs inexcusably waited until the very last day to amend the pleadings after misleading the Court and hospital with a stipulation and order just a month prior, the deadline for adding parties via a third-party contribution or indemnity action has expired. Therefore, should the Motion be granted St. Rose Hospital will be forced to defend the actions of these unidentified non-parties with only one month prior to expert disclosures. Again, as it stands, however, Plaintiff has not even identified the health care providers that are allegedly

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negligent. Consequently, there is insufficient time to identify the allegedly negligent parties, conduct discovery and depositions related to the potential negligence, and retain experts in the relevant specialties implicated to defend their care. Therefore, Plaintiffs' Motion to Amend should be denied, and the Court's April 29 Order enforced.

**C. Plaintiff's proposed claims are futile because they are void ab initio and time-barred.**

In addition to the reasons set forth above, Plaintiffs' Motion must be dismissed because the proposed amended complaint fails to comply with NRS 41A.071. The new allegations and claims are also barred by the statute of limitations.

The Nevada Supreme Court has expressly held that leave to amend should not be granted if the proposed amendment would be futile. *Halcrow, Inc. v. Eighth Jud. Dist. Ct.*, 129 Nev. Adv. Op. 42, 302 P.3d 1148, 1152 (2013), *as corrected* (Aug. 14, 2013). "A proposed amendment may be deemed futile if the plaintiff seeks to amend the complaint in order to plead an impermissible claim, such as one which would not survive a motion to dismiss under NRCP 12(b)(5) or a 'last-second amendment[ ] alleging meritless claims in an attempt to save a case from summary judgment.'" *Nutton v. Sunset Station, Inc.*, 131 Nev. 279, 289, 357 P.3d 966, 973 (Nev. App. 2015) (quoting *Soebbing v. Carpet Barn, Inc.*, 109 Nev. 78, 84, 847 P.2d 731, 736 (1993)).

**1. Plaintiff's proposed complaint fails to comply with EDCR 2.30 and does not satisfy NRS 41A.071 as to any claims against St. Rose Hospital.**

Plaintiff has failed to comply with EDCR 2.30 and NRS 41A.071 because there is no affidavit of merit attached to the proposed complaint supporting the newly asserted claims.

EDCR 2.30 is entitled "Amended Pleadings" and states:

> (a) A copy of a proposed amended pleading must be attached to any motion to amend the pleading. Unless otherwise permitted by the court, every pleading to which an amendment is submitted as a matter of right, or has been allowed by order of the court, must be re-typed or re-printed and filed so that it will be complete in itself, including exhibits, without reference to the superseded pleading. No pleading will be deemed to be amended until there has been compliance with this rule.

> (b) All amended pleadings must contain copies of all exhibits referred to in such amended pleadings. A pleader may, upon ex parte application, obtain an order from the court directing the clerk to remove any exhibit attached to prior pleadings and attach the same to the amended pleading.

In addition, the law is very clear that where a complaint contemplates professional negligence, a district court "shall dismiss" each claim that is not supported by an expert affidavit in accordance with NRS 41A.071. *See* NRS 41A.071; *see also Fierle v. Perez*, 125 Nev. 728, 738, 219 P.3d 906, 912 (2009) (affirming dismissal of a negligent training and supervision claim for the failure to comply with the affidavit requirement although a claim for *Res Ipsa Loquitur* survived) *overruled on other grounds by Egan v. Chambers*, 129 Nev. Adv. Op. 25, 299 P.3d 364, 367 (2013). To comply with NRS 41A.071 the affidavit must (1) be from an expert in the *particular practice area*; (2) support the allegations; (3) *specifically identify by name or conduct the allegedly negligent health care provider*; and (4) "separately" identify the alleged negligence "*as to each defendant*." *See* NRS 41A.071 (emphasis added).

Here, there is no affidavit supporting Plaintiff's new allegations of negligence against non-party nurses and physicians for which Plaintiff intends to subject St. Rose Hospital to liability. Accordingly, the new claims proposed in the amended complaint is *void ab initio* under Nevada law. Allowing Plaintiffs leave to amend would therefore be futile since the new claims would be subject to dismissal as a matter of law.

**2. <u>Plaintiff's proposed claims against St. Rose Hospital are untimely.</u>**

As is clear from the procedural history, St. Rose Hospital takes the position that even Plaintiff's original Complaint was untimely under Nevada law. Although the Court denied the Motion for Summary Judgment after multiple hearings and supplemental briefing, the Court's order acknowledges Plaintiff's firsthand notice of possible negligence at the time of the treatment at issue. *See* Court's Order, attached hereto as **Exhibit J**. Now, four years into the litigation Plaintiff seeks to add entirely new claims and damages against St. Rose Hospital. In essence, new parties are being added as St. Rose Hospital is now being subjected to vicarious liability for non-parties to the litigation.

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*

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*plaintiff discovers or through the use of reasonable diligence should have discovered the injury,* whichever occurs first...." (emphasis added). The Nevada Supreme Court has clarified that a Plaintiff must "satisfy *both* the one-year discovery rule and the three-year limitations period." *Wynn v. Sunrise Hosp. & Med. Ct.*, 128 Nev., 277 P.3d 458, 461 (2012) (emphasis added).

Given Plaintiffs' proposed amended complaint would fail under either the one-year or three-year statute of limitations, the newly proposed claims are untimely unless they relate back to the amended complaint. NRCP 15(a) only allows relation back for amendments that arise "out of the conduct, transaction, or occurrence set out – or attempted to be set out – in the original pleading." Moreover, pursuant to NRCP 15(c), amendments changing parties do not relate back unless the reason the party to be added was not named in the original complaint was that there was a mistake in identifying that party.

In addition, the Nevada Supreme Court has held that if an amendment "states a new cause of action that describes a new and entirely different source of damages, the amendment does not relate back, as the opposing party has not been put on notice concerning the facts in issue." *Nelson v. City of Las Vegas,* 99 Nev. 548, 556-557, 665 P.2d 1141, 1146 (1983) (citation omitted). The Supreme Court has also clarified that NRCP 15(c) "does not permit us to so liberalize limitation statutes when new facts, conduct and injuries are pleaded, that the limitation statutes lose their meaning. [Citations omitted.]" *Id.*

In *Nelson*, the Nevada Supreme Court found a complaint for battery time-barred where "the original complaint and first amended complaint gave absolutely no indication that a claim for battery existed." *Id.* The Court cited the fact that the complaints did not allege the factual predicate for the battery, i.e., the "physical contact" between the parties.

Here, pursuant to counsel's stipulation at the hearing just one month prior to the Motion it is very clear that the original Complaint did not place St. Rose Hospital on notice that it would be subject to liability for the conduct of unidentified nurses and physicians. Like *Nelson*, the allegedly negligent conduct of unidentified non-party health care providers is not alleged in the original Complaint. The original Complaint solely attributes Plaintiff's injuries to negligence by Dr. Kim in placing the epidural catheter.

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Practically speaking, however, the timeliness of Plaintiff's claims should be analyzed under NRCP 15(c), since the claims are in essence claims that "change" the parties to the litigation. Under NRCP 15(c), the claims clearly do not relate back as Plaintiff made a conscious election proceed on a theory of negligence by Dr. Kim from the outset. *See e.g. Garvey v. Clark County*, 91 Nev. 127, 129, 532 P.2d 269, 271 (1975) (holding that amendments adding parties the plaintiff "consciously elected" not to name when the action was commenced, do not relate back to the original pleading). Rather, relation back for new parties applies when the failure to name a defendant in an original pleading "was not a conscious election, but a mistake in nomenclature . . . ." *Jimenez v. State*, 98 Nev. 204, 644 P.2d 1023 (1982); *see also Costello v. Casler*, 127 Nev. 436, 254 P.3d 631 (2011) (applying relation back to a claim mistakenly filed against a deceased party as opposed to the decedent's estate)*; Echols v. Summa Corp*., 95 Nev. 720, 722, 601 P.2d 716, 717 (1979) (finding relation back where a plaintiff sued the wrong corporate entity because the right corporate entity was aware that it was only not named in the original pleading due to a "misnomer").

Here, there was no "mistake concerning the proper party's identity" in the original Complaint. Plaintiff's change of heart four years later about who should have been sued is insufficient to justify relation back. Plaintiff's claims are therefore untimely and futile.

## IV.

## CONCLUSION

For the reasons set forth above, St. Rose Hospital respectfully requests this Court deny Plaintiff's Motion to Amend.

DATED this 18th day of May 2022.

HALL PRANGLE & SCHOONVELD, LLC

By: */s/: Tyson J. Dobbs*
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of HALL PRANGLE & SCHOONVELD, LLC; that on the 18th day of May 2022, I served a true and correct copy of the foregoing **DEFENDANT DIGNITY HEALTH d/b/a ST. ROSE DOMINICAN HOSPITAL'S OPPOSITION TO PLAINTIFFS' MOTION FOR LEAVE TO FILE AMENDED COMPLAINT** via the 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:

Peter S. Christiansen, Esq.
R. Todd Terry, Esq.
Kendelee L. Works, Esq.
Whitney J. Barrett, Esq.
Keely A. Perdue, Esq.
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*Attorneys for Plaintiff*

*/s/ Nicole Etienne*
An employee of HALL PRANGLE & SCHOONVELD, LLC

# EXHIBIT A

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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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;

Plaintiff,

vs.

DIGNITY HEALTH, a Foreign Non-Profit Corporation d/b/a ST. ROSE DOMINICAN HOSPITAL – SIENA CAMPUS; JOON YOUNG KIM, M.D., an Individual; U.S. ANESTHESIA PARTNERS, INC., a Foreign Corporation; DOES I through X; and ROE BUSINESS ENTITIES XI through XX, inclusive,

Defendants.

A-18-775572-C

Case No.:
Dept. No.: Department 17

**COMPLAINT**
**AND DEMAND FOR JURY TRIAL**

***Arbitration Exemption requested: Medical Malpractice***

COMES NOW, Plaintiffs, LIVIU RADU CHISIU as Special Administrator of the ESTATE OF ALINA BADOI, Deceased, and LIVIU RADU CHISIU, as Natural Parent and

Guardian of SOPHIA RELINA CHISIU, a minor, as Heir of the ESTATE OF ALINA BADOI, Deceased, by and through their attorneys, PETER S. CHRISTIANSEN, ESQ., R. TODD TERRY, ESQ., KENDELEE L. WORKS, ESQ., WHITNEY J. BARRETT, ESQ. and KEELY A. PERDUE, ESQ. of the law firm Christiansen Law Offices, and for their causes of action against the above-named Defendants, and each of them, allege as follows:

**IDENTIFICATION OF THE PARTIES**

1. At all times relevant hereto, Plaintiff, SOPHIA RELINA CHISIU, a minor and the biological child of Decedent, Alina Badoi, is and was a resident of Clark County, Nevada.

2. At all times relevant hereto, upon information and belief, Decedent, ALINA BADOI ("Decedent"), was and is a resident of Clark County, Nevada.

3. On or about January 23, 2018, LIVIU RADU CHISIU was duly appointed as Special Administrator of the ESTATE OF ALINA BADOI, and at all times relevant hereto, is and was a resident of Clark County, Nevada.

4. At all times relevant hereto, Defendant, DIGNITY HEALTH d/b/a ST. ROSE DOMINICAN HOSPITALS, was and is a Foreign Non-Profit Corporation authorized to do and doing business in the State of Nevada. At all times relevant hereto, Defendant DIGNITY HEALTH d/b/a ST. ROSE DOMINICAN HOSPITALS owned and operated a general acute care hospital in Clark County, Nevada, which hospital was called ST. ROSE DOMINICAN HOSPITAL – SIENA CAMPUS (hereinafter "St. Rose").

5. ST. ROSE DOMINICAN HOSPITAL – SIENA CAMPUS is licensed in the State of Nevada under Chapter 449 of the Nevada Revised Statutes.

6. At all times relevant hereto, Defendant JOON YOUNG KIM, M.D. (hereinafter "Kim" and/or "Dr. Kim"), was and is an individual licensed to practice medicine in the State of Nevada, and practicing in the specialty of anesthesia in Clark County, Nevada.

7. At all times relevant hereto, Defendant, U.S. ANESTHESIA PARTNERS, INC., was and is a Foreign Corporation authorized to do and doing business in Clark County, Nevada. At all times relevant hereto, Defendant U.S. ANESTHESIA PARNTERS, INC. employed Defendant Kim.

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8. The names and capacities of Defendants DOES I through X, whether individual, corporate, associate or otherwise, are unknown to the Plaintiffs at the time of the filing of this complaint, and Plaintiffs therefore sue said Defendants by such fictitious names. Plaintiffs are informed and believe, and therefore allege, that each of the DOE Defendants is legally responsible for the injuries and damages to the Plaintiffs as herein alleged. At such time that the Plaintiffs determine the true identities of DOES I through X, Plaintiffs will amend this Complaint to set forth the proper names of those Defendants, as well as asserting appropriate charging allegations. Plaintiffs additionally believe that one or more of the DOE DEFENDANTS is liable under an agency theory as the principal tortfeasor acting within the scope and authority of the agency relationship.

9. Plaintiffs are further informed and believe, and on that basis allege, that certain physicians, physicians assistants, general surgeons, patient floor nurses, registered nurses, nurse practitioners, nurse aides, or other medical personnel, or their employers, whose true and correct names are either unknown, not annotated or not legible in Decedent's medical records, were responsible for her care and treatment that lead to her damages as stated herein. The negligent acts and omissions by DOE Defendants' employees in treating Decedent occurred within the course and scope of their agency, employment, or contractual relationship with Defendants and/or DOE Defendants, wherefore said Defendants and/or DOE Defendant employers are vicariously liable for the damages sustained by Plaintiffs as a result of the negligent conduct of their employees. Further, the negligent acts and omissions of Defendants in treating Decedent occurred within the course and scope of their agency, employment, or contractual relationship with DOE Defendants, wherefore said employers are vicariously liable for the damages sustained by Plaintiff as a result of the negligent conduct of Defendants.

10. In doing the acts herein alleged, each of the Defendants' agents, servants, and employees were acting in the course and scope of their employment with the Defendants, and each of them, and in furtherance of the Defendants' business.

11. Defendants have refused to keep certain health care records as required by NRS 629.051 and other regulations, or otherwise refused to provide Plaintiffs or their agents with the

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same, such that certain aspects of Decedent's medical care is undiscoverable and cannot be determined. Due to the failure to provide or maintain certain health care records as required by law, the statute of limitations has been tolled pursuant to NRS 41A.097(3) until such time the records are provided to Plaintiffs or their agents.

12. Plaintiffs are further informed and believe, and on that basis allege, that DOES/ROES are certain physicians, physicians assistants, general surgeons, patient floor nurses, registered nurses, nurse practitioners, nurse aides, or other medical personnel, or their employers, whose actions and correct names are unknown due to the missing medical records, were responsible for Decedent's care and treatment that lead to Plaintiff's damages as stated herein.

13. Pursuant to NRCP 10(a) and *Nurenberger Hercules-Werke GMBH v. Virostek*, 107 Nev. 873, 822 P.2d 1100 (1991), the identity of resident and non-resident defendants designated herein as DOES I-X and ROES XI-XX include, but are not limited to, those persons, associations, partnerships, corporations, and other entities and individuals whose conduct is the subject of this Complaint and which owned, operated, managed, ratified or otherwise were, and are legally accountable for the acts and omissions of the other Defendants named herein, and managed, controlled, and coordinated the care, budget and staffing levels of the other Defendants which led to Decedent's death.

**FACTUAL ALLEGATIONS**

14. All the facts and circumstances that give rise to the subject lawsuit occurred in the County of Clark, State of Nevada.

15. On May 15, 2017, Decedent, Alina Badoi (hereinafter "Decedent"), was admitted to St. Rose to give birth to her child, Sophia. Sophia was delivered vaginally on May 16, 2017.

16. On May 16, 2017, prior to delivery of her child, Defendant, JOON YOUNG KIM, M.D. (hereinafter "Kim" and/or "Dr. Kim"), an anesthesiologist, administered an epidural catheter for pain. Subsequently, Decedent developed acute spastic paraparesis and underwent a laminectomy from T8 to L3 for an intradural hematoma, ***inter alia***. Lumbar spinal and

intraventricular drains were placed during Decedent's clinical course and while attempting physical therapy Alina Badoi coded and passed away on June 3, 2017.

17. 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. The Certificate of Death was issued September 15, 2017.

**FIRST CAUSE OF ACTION**

**PROFESSIONAL NEGLIGENCE**

18. Plaintiffs hereby incorporate the allegations in the preceding and ensuing paragraphs as though fully set forth herein.

19. Decedent ALINA BADOI presented to St. Rose Hospital to give birth on or about May 15, 2017, and passed away at St. Rose Hospital on June 3, 2017 from bilateral pulmonary thromboemboli and deep venous thrombosis.

20. In undertaking the aforementioned care and treatment of Decedent, Defendants and/or DOE/ROE Defendants had a duty to perform said care and treatment with the skill, learning and ability commensurate with other similarly situated personnel possessing the same or similar education, training, and experience in the same or similar circumstances.

21. From May 15, 2017 to June 3, 2017, Defendants, and each of them, examined, diagnosed, treated, cared for, performed surgery upon, prescribed and administered medicines or drugs, and supervised the care and treatment of Decedent. In so doing, the Defendants, and each of them, negligently failed to possess or to exercise that degree of knowledge or skill ordinarily possessed or exercised by other physicians, nurse practitioners, nurses, attendants and the like who engage in like professions in the same area as said Defendants, and each of them, inclusive, negligently failed to warn Plaintiff of the dangers and untoward consequences and hazards involved in the examination, diagnosis, care, treatment, prescription and administration of medicines and drugs and the surgical operations, which they intended to and did, use and perform upon the persons of Plaintiff; that said Defendants, and each of them, induced Plaintiff to undergo said examination, diagnosis, care and treatment, surgical operations and receive said medicine or

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drugs as aforesaid. Plaintiffs, in the exercise of reasonable diligence, could not have discovered that Decedent's injuries and death were or may have been the result of negligence until on or about August 7, 2017, (at the earliest) when the Clark County Coroner issued her findings. These conclusions were also listed in the Certificate of Death issued September 15, 2017.

22. Defendants' treatment and care of Decedent fell below the applicable standard of care, including but not limited to:

a. Failure to fully assess Alina Badoi's bleeding risk prior to placing the epidural catheter for labor analgesia; and

b. Placing an epidural catheter in a patient at significant risk for bleeding.

23. Defendants' failure to properly treat and care and Defendants' breach of the standard of care was a proximate and legal cause of Alina Badoi's. (*See* Exhibit 1, Declaration of Yaakov Beilin, M.D.; *see also* Exhibit 2, Declaration and C.V. of Bruce Hirschfeld, M.D.).

24. As a further proximate result of the conduct of Defendants, and each of them, Decedent was required to and did employ physicians, surgeons, and hospitals to examine, treat and care for her, and incurred medical and other related expenses in connection therewith. The exact amount of such past expense is unknown to Plaintiffs at this time, and Plaintiffs therefore ask leave to prove and, if required by Court, to amend their Complaint to show the reasonable value of such medical services at time of trial.

25. Plaintiffs' professional negligence cause of action is supported by the Declarations of Yaakov Beilin, M.D. and Bruce Hirschfeld, M.D. (attached hereto as Exhibit 1 and Exhibit 2, respectively) pursuant to Nevada Revised Statutes § 41A.071.

26. That the above actions by Defendants, and each of them, were done with a conscious and/or reckless disregard for the probable harmful consequences which could flow therefrom and were otherwise the result of a willful and deliberate failure to act to avoid those consequences.

27. That as a result of Defendants' conscious and/or reckless disregard for and indifference to the health and welfare of Decedent, Plaintiffs suffered damages, and

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accordingly, Plaintiffs are seeking an award in an amount in excess of fifteen thousand dollars ($15,000.00).

28. Plaintiffs have been required to retain legal counsel to prosecute this action and, therefore, are entitled to reasonable attorney fees, interest, and costs of suit incurred in this action.

**SECOND CAUSE OF ACTION**

**NEGLIGENT CREDENTIALING – AGAINST DEFENDANT ST. ROSE**

29. Plaintiffs hereby incorporate the allegations in the preceding and ensuing paragraphs as though fully set forth herein.

30. Defendant St. Rose had a duty to its patients, including Decedent, to protect their health, safety and welfare in relevant part, by properly credentialing and extending privileges only to duly qualified physicians and/or medical providers.

31. Defendant St. Rose breached its duty to protect the health, safety and welfare of its patients, specifically Decedent, by negligently credentialing and/or extending hospital privileges to Dr. Kim despite being on actual and/or constructive notice of numerous issues demonstrating that Dr. Kim was unfit and/or lacked the requisite qualifications and/or integrity to be entrusted with the welfare of its patients.

32. Defendant St. Rose breach of its duty caused Alina Badoi's death as described herein and Plaintiffs' damages.

33. Defendant St. Rose's actions constitute a reckless and conscious disregard for the rights, health, safety and well-being of Decedent.

34. In order to deter the aforementioned conduct and reckless and conscious disregard on the part of Defendants, punitive damages are warranted.

35. As a direct and proximate result of the conduct of Defendants described herein, Plaintiffs have sustained damages in excess of $15,000.00.

36. DOE and/or ROE Defendants who are presently unknown to Plaintiffs are in some manner liable to Plaintiffs for damages under this cause of action. Once their identities are ascertained, Plaintiffs will seek leave of this Court to amend this Complaint to insert their true names and identities.

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37. Plaintiffs have been required to retain legal counsel to prosecute this action and, therefore, are entitled to reasonable attorney fees, interest, and costs of suit incurred in this action.

## THIRD CAUSE OF ACTION

## FRAUDULENT CONCEALMENT AND/OR OMISSIONS

38. Plaintiffs hereby incorporate the allegations in the preceding and ensuing paragraphs as though fully set forth herein.

39. Based upon the special relationship between Plaintiffs, Decedent, and Defendants, each of the Defendants assumed the responsibility to provide Plaintiffs and Decedent with true, accurate and complete medical records and to convey truthful, accurate and complete information regarding Decedent's care and treatment with Defendants.

40. Defendants have altered, destroyed and/or concealed Decedent's confidential medical records, and the cause of Decedent's death.

41. Defendants have concealed, suppressed and/or omitted material facts regarding their care and treatment of Decedent.

42. Defendants had a duty to disclose to Decedent and Plaintiffs true, accurate and complete medical records and information regarding Defendants' care and treatment of Decedent.

43. Upon information and belief, Defendants acted to alter, conceal, suppress, omit and/or destroy Decedent's records in an attempt to conceal their own conduct with the intention of inducing Plaintiffs to refrain from prosecuting their claims against Defendants.

44. Despite Plaintiffs' request for and entitlement to true and complete information regarding Decedent's care and treatment with Defendants, Defendants failed to provide and/or willfully concealed material facts regarding their care and treatment of the Plaintiff and the cause of Plaintiff's debilitating condition.

45. To date, Plaintiffs remain unaware of the true circumstances surrounding Defendants' care and treatment of Decedent.

46. Upon information and belief, if Plaintiffs and Decedent had been made aware of the true circumstances surrounding Defendants' care and treatment of Decedent, they would have been able to make more informed decisions with respect to Decedent's care and treatment.

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47. If Plaintiffs had been made aware of the true circumstances surrounding Defendants' care and treatment of Decedent, they would be better able to make additional decisions regarding this litigation and would have pursued additional causes of action and/or additional theories of liability.

48. Because the medical records, documents, and information necessary to plead a fraudulent concealment and/or omissions claim are peculiarly within Defendants' knowledge and/or control or are readily obtainable by Defendants, Plaintiffs are unable to plead the instant claim with more particularity than that contained herein. Accordingly, pursuant *to Rocker v. KPMG LLP*, 122 Nev. 1185, 148 P.3d 703 (2006), a relaxed pleading standard should be applied and Plaintiffs should be afforded the opportunity to conduct discovery relevant to such claims with leave to amend with more particularity at a later time.

49. As a direct and proximate result of the conduct of Defendants described hereinabove, Plaintiffs have sustained damages in excess of fifteen thousand dollars ($15,000.00).

50. That DOE and/or ROE Defendants who are presently unknown to Plaintiffs are in some manner liable to Plaintiffs for damages under this cause of action. Once their identities are ascertained, Plaintiffs will seek leave of this Court to amend their Complaint to insert their true names and identities.

51. Plaintiffs have been required to retain legal counsel to prosecute this action and, therefore, are entitled to reasonable attorney fees, interest, and costs of suit incurred in this action.

**FORTH CAUSE OF ACTION**

**NEGLIGENT HIRING, TRAINING, RETENTION AND SUPERVISION – AGAINST ST. ROSE AND U.S. ANESTHESIA PARTNERS**

52. Plaintiffs hereby incorporate the allegations in the preceding and ensuing paragraphs as though fully set forth herein.

53. Defendants and/or DOE/ROE Defendants had a duty to exercise due care in the selection, training, supervision, oversight, direction, retention and control of its employees and/or agents, retained by it to perform and provide services.

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54. Defendants and/or DOE/ROE Defendants breached the above-referenced duty when they negligently, carelessly, and recklessly hired, trained, supervised, oversaw, directed and/or retained physicians, physicians assistants, general surgeons, patient floor nurses, registered nurses, nurse practitioners, nurses aides, or other medical personnel, including but not limited to, Defendant Dr. Kim and/or DOE/ROE Defendants.

55. That as a result of Defendants' and/or DOE/ROE Defendants' reckless disregard for and indifference to the health and welfare of Decedent, Plaintiffs suffered damages, and accordingly, Plaintiffs are seeking an award in an amount in excess of fifteen thousand dollars ($15,000.00).

56. As a direct result and proximate cause and result of Defendants' and/or DOE/ROE Defendants' above-referenced breach, Plaintiffs incurred damages of grief, sorrow, loss of probable support, companionship, society, comfort and consortium, and damages for pain, suffering, and disfigurement of the Decedent in an amount in excess of fifteen thousand dollars ($15,000.00).

57. As a direct result and proximate cause and result of Defendants' and/or DOE/ROE Defendants' above-referenced breach, the Estate of Alina Badoi incurred special damages including medical and funeral expenses in an amount in excess of fifteen thousand dollars ($15,000.00).

58. Plaintiffs have been required to retain legal counsel to prosecute this action and, therefore, are entitled to reasonable attorney fees, interest, and costs of suit incurred in this action.

**FIFTH CAUSE OF ACTION**

**OSTENCIBLE AGENCY/VICARIOUS LIABILITY –**

**AGAINST ST. ROSE AND U.S. ANESTHESIA PARTNERS**

59. Plaintiffs hereby incorporate the allegations in the preceding and ensuing paragraphs as though fully set forth herein.

60. Decedent entrusted her care and treatment to Defendants; Defendant St. Rose selected Defendant Kim to treat Alina Badoi as an anesthesiologist and Decedent reasonably

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believed Defendant Kim was an employee or agent of Defendant St. Rose; Decedent and Plaintiffs were not put on notice Defendant Kim was an independent contractor.

61. While committing the above noted acts of negligence, thereby causing harm and death to Decedent, Defendant Dr. Kim and/or DOE/ROE Defendants were operating under a partnership, joint venture, agency, ostensible agency, contractual, and/or employment relationship with Defendants, St. Rose, U.S. Anesthesia Partners and/or DOE/ROE Defendants, and each of them.

62. Defendants St. Rose and U.S. Anesthesia Partners are responsible and liable for the negligence of Defendant Dr. Kim and/or DOE/ROE Defendants, under one or more of the following theories: agency theory as the principal of a tortfeasor acting within the course and scope of an agency relationship; ostensible agency as the principal of a tortfeasor acting within the course and scope of an agency relationship; partnership; joint venture; contractual; respondeat superior, and/or vicarious liability.

63. The negligent acts and omissions by Defendant Dr. Kim and/or DOE/ROE Defendants occurred within the course and scope of Defendant Dr. Kim's and/or DOE/ROE Defendants' joint venture, agency, ostensible agency, contractual, or employment relationship with Defendants St. Rose and/or U.S. Anesthesia Partners. Therefore, Defendants St. Rose Hospital and/or U.S. Anesthesia Partners are vicariously liable for the damages sustained by Plaintiffs as a result of the negligent conduct of Defendants and/or DOE/ROE Defendants.

64. That as a result of Defendants' reckless disregard for and indifference to the health and welfare of Decedent, Plaintiffs suffered damages, and accordingly, Plaintiffs are seeking an award in an amount in excess of fifteen thousand dollars ($15,000.00).

65. As a direct result and proximate cause and result of Defendants' above-referenced breach, Plaintiffs incurred damages of grief, sorrow, loss of probable support, companionship, society, comfort and consortium, and damages for pain, suffering, and disfigurement of the Decedent in an amount in excess of fifteen thousand dollars ($15,000.00).

66. As a direct result and proximate cause and result of Defendant St. Rose Hospital's above-referenced breach, the Estate of Alina Badoi incurred special damages

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including medical and funeral expenses in an amount in excess of fifteen thousand dollars ($15,000.00).

67. Plaintiffs have been required to retain legal counsel to prosecute this action and, therefore, are entitled to reasonable attorney fees, interest, and costs of suit incurred in this action.

**SIXTH CAUSE OF ACTION**

**WRONGFUL DEATH PURSUANT TO NRS 41.085**

68. Plaintiffs hereby incorporate the allegations in the preceding and ensuing paragraphs as though fully set forth herein.

69. Plaintiff, SOPHIA RELINA CHISIU, is the natural child of Decedent and is the heir to Decedent's estate.

70. Defendants and/or DOE Defendants neglected to provide proper care for Decedent, causing Decedent's death.

71. But for the substandard care provided by Defendants and/or DOE/ROE Defendants, Decedent would not have died from bilateral pulmonary thromboemboli and deep venous thrombosis.

72. That as a result of Defendants' and/or DOE/ROE Defendants' reckless disregard for and indifference to the health and welfare of Decedent, Plaintiffs suffered damages, and accordingly, Plaintiffs are seeking an award in an amount in excess of fifteen thousand dollars ($15,000.00).

73. As a direct result and proximate cause and result of Defendants' and/or DOE/ROE Defendants' above-referenced breach, Plaintiffs incurred damages of grief, sorrow, loss of probable support, companionship, society, comfort and consortium, and damages for pain, suffering, and disfigurement of the Decedent in an amount in excess of fifteen thousand dollars ($15,000.00).

74. As a direct result and proximate cause and result of Defendants' and/or DOE Defendants above-referenced conduct, the Estate of Alina Badoi incurred special damages including medical and funeral expenses.

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75. Plaintiffs have been required to retain legal counsel to prosecute this action and, therefore, are entitled to reasonable attorney fees, interest, and costs of suit incurred in this action.

**PUNITIVE DAMAGES**

76. Plaintiffs hereby incorporate the allegations in the preceding and ensuing paragraphs as though fully set forth herein.

77. Defendants and/or DOE/ROE Defendants were consciously indifferent to the consequences of their conduct and disregarded Alina Badoi's health, safety and welfare.

78. Defendants and/or DOE Defendants conduct was intentional, malicious, oppressive and/or in reckless disregard of the consequences to Decedent, and thereby subjecting Defendants to punitive damages pursuant to N.R.S. 42.005. 42.005(1) provides:

> Except as otherwise provided in NRS 42.007, in an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud or malice, express or implied, the plaintiff, in addition to the compensatory damages, may recover damages for the sake of example and by way of punishing the defendant....

79. Plaintiffs have been required to retain legal counsel to prosecute this action and, therefore, are entitled to reasonable attorney fees, interest, and costs of suit incurred in this action.

**DEMAND FOR JURY TRIAL**

68. Plaintiffs hereby demand a trial by jury for all issues triable.

**PRAYER FOR RELIEF**

Wherefore, Plaintiffs pray for relief and judgment as against Defendants as follows:

1. Compensatory damages in excess of $15,000.00, according to proof at trial;
2. Special damages in excess of $15,000.00, according to proof at trial;
3. Punitive and exemplary damages in an amount to be determined at trial;
4. Interest from the time of service of this complaint as allowed by NRS 17.130;
5. Costs of suit and attorney fees; and

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6. For such other and further relief as the court may deem appropriate.

Dated this 4th day of June, 2018.

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# EXHIBIT 1

# EXHIBIT 1

## DECLARATION OF YAAKOV BEILIN, M.D., PER NRS 53.045

1. My name is **Yaakov Beilin**, and I am over the age of 18 and competent to make this Declaration. All matters stated herein are within my personal knowledge and are true and correct to the best of my knowledge.

2. I am a medical doctor duly licensed to practice medicine in the State of New York. I am board-certified in Anesthesiology and I am a Professor of Anesthesiology and Obstetrics, Gynecology and Reproductive Sciences at the Icahn School of Medicine at Mount Sinai where I am the Director of Obstetric Anesthesiology. In addition to my teaching responsibilities, I practice medicine in Obstetric Anesthesiology. My C.V. is attached hereto.

3. I have thoroughly reviewed the medical records produced by St Rose Dominican Hospital-Siena Campus related to **Alina Badoi's** labor and delivery, and the records from the Clark County Coroner's office. St Rose Dominican Hospital-Siena Campus records indicate that **Alina Badoi** was admitted May 15, 2017 with an intrauterine pregnancy with spontaneous vaginal delivery on May 16, 2017. Prior to delivery of her child, it appears that Dr. Joon Kim, M.D., an anesthesiologist, administered an epidural catheter for pain. Subsequently, **Alina** developed acute spastic paraparesis and underwent a laminectomy from T8 to L3 for an intradural hematoma. She subsequently also developed epidural and subdural hematomas. Lumbar spinal and interventricular drains were placed during **Alina's** clinical course and **Alina** remained at St Rose Dominican Hospital-Siena Campus until she coded and passed away on June 3, 2017. The cause of death, as determined by the Clark County Coroner, was pulmonary thromboemboli.

4. I am familiar with the standard of medical care required of anesthesiologists and hospitals in the Las Vegas area in 2017 when **Alina Badoi** was a patient and gave birth to a viable female infant. Prior to placing an epidural catheter, the standard of care for hospitals such as St Rose Dominican-Siena Campus and **Alina's** anesthesiologist required a full and thorough assessment of **Alina's** bleeding risks and if there are significant risks for bleeding, an epidural catheter should not be placed. The records show that **Alina** had preeclampsia, a dramatic variation in platelet counts, an active nose-bleed, a history of Hashimoto's thyroiditis and a thyroidectomy. The thyroidectomy was complicated by bleeding. **Alina** also experienced heavy menses throughout her adult life and after conception, **Alina** experienced nose-bleeds at least once per

week in the early stages of her pregnancy and 2-3 times per week in the late stages of her pregnancy.

5. Based upon my education, training, experience and a review of the aforementioned records, it is my opinion, to a reasonable degree of medical probability, that the epidural catheter should not have been placed and **Alina Badoi** was subjected to substandard medical treatment and deviations from the standard of care by St Rose Dominican Hospital-Siena Campus and her anesthesiologist(s), including, but not limited to:

a. Failure to fully assess the bleeding risk of **Alina Badoi** prior to placing her epidural catheter for labor analgesia; and

b. Placing an epidural catheter in a patient at significant risk for bleeding.

6. It is my opinion, to a reasonable degree of medical probability, that these deviations in the accepted standard of care by St Rose Dominican Hospital-Siena Campus and **Alina's** anesthesiologist(s) were substantial factors in the development of the subdural, intradural and epidural hematoma and ultimate demise of **Alina Badoi.**

7. All of my opinions stated herein are made to a reasonable degree of medical probability. However, these opinions are subject to change depending upon the review and/or existence of additional medical records and depositions.

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

Executed this 5th day of June, 2018.

YAAKOV BEILIN, M.D.

# EXHIBIT 2

# EXHIBIT 2

General
Vascular
Specialists

Earl D. Cottrell, M.D., F.A.C.S.
Bruce J. Hirschfeld, M.D., F.A.C.S.
Frank T. Jordan, M.D., F.A.C.S.

June 02, 2018

R. Todd Carey, Esquire
Christiansen Law Firm
810 South Casino Center Boulevard
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Las Vegas, NV 89101

**COMPREHENSIVE RECORD REVIEW**

**Regarding : Alina Badoi**

Dear Todd:

I am in receipt of a Dropbox with records and documents regarding the peripartum events that occurred, as they relate to the death of your client, Alina Badoi. The following records/documents were reviewed by me in this matter: Quest Lab; Comprehensive Cancer Centers; WHASN Records [Women's Health Association of Southern Nevada]; op and consultation reports; pregnancy records; Affidavit; Affidavit of Identification; Autopsy Report; certification of records; record of examination; records reviewed by Coroner; report of investigation; Clark County Coroner; Affidavit of Death; x-rays and scene photographs; exam photos; St. Rose Dominican Hospital Sienna Campus Records; x-rays and autopsy photos. You have asked me to evaluate the medical records and to opine as to what medical facts and/or factors resulted in her death. None of the conclusions reached in this report reflect any opinions I may have, with respect to any standards of care in this matter. All conclusions in this report are to a reasonable degree of medical probability and reflect my opinions as they relate to medical causation in this matter.

**10/07/2016- May 10, 2017 WHASN RECORDS (Pages 32-70 of 70 Pages)**
Pregnancy records, ultrasound and lab reports
Copies of St. Rose records [op reports and consultations] (Pages 1-30 of 70 pages)

**10/07/016 QUEST LABORATORY (Page 3 of 3)**
Hemoglobin 10.6 g/dL
Hematocrit 35.2%
MCV 71.0 fL
MCH 21.4 pg
MCHC 30.1 g/dL

Red Cell Distribution 20.1%

**01/23/2017 QUEST LABORATORY (Page 2 of 3)**
Hemoglobin 8.3 g/dL
Hematocrit 27.5%
MCV 69.7 fL
MCH 21.0 pg
MCHC 30.1 g/dL
Red Cell Distribution 20.8%

**03/23/2017 QUEST LABORATORY (Page 1 of 3)**
Hemoglobin 7.8 g/dL
Hematocrit 26.5%
MCV 67.8 fL
MCH 20.0 pg
MCHC 29.5 g/dL
Red Cell Distribution 22.6%

**03/29/2017 COMPREHENSIVE CANCER CENTERS OF NEVADA CONSULT (Page 1 of 10)**
Referral from: Amit Garg, M.D.

Attending Physician: Ghulam Kashef, M.D.

Reason for Consult: Iron Deficiency Anemia

History of Present Illness:
The patient is a very pleasant female who has been seen and evaluated by her primary care physician. The patient is pregnant. She has complained of fatigue. A CBC obtained has shown a hemoglobin of 7.8. MCV was 67.8. White blood cell count was 9.5 and platelet count normal. She has been placed on oral iron supplementation with poor toleration. She has been referred to this clinic for further evaluation and recommendations.

On my evaluation, she reported fatigue. She did not report any fevers, chills, or night sweats. No chest pain or cough. No melena or hematochezia. No hematuria. No musculoskeletal or neurological symptoms.

Past Medical History:
1. History of hypothyroidism
2. History of anemia

Assessment:

1. Iron deficiency anemia
2. Poor toleration of oral iron
3. Fatigue secondary to anemia

Plan:

1. We will schedule for IV iron infusion with iron sucrose 200 mg weekly for three weeks.
2. Return to clinic in six weeks, with repeat labs. She was instructed to call in the interim if she needs to be seen earlier.

**05/09/2017 ST. ROSE DOM-SIENA RECORDS ASSESSMENT DOCUMENTATION Page 3815 of 4,422 Pages**

Triage/Observation Status and Plan PCM Entered on 05/09/2017 20:18 PDT
Assessment Triage OB: Scheduled induction that would like to reschedule her induction for another time if everything looks ok with baby and it is ok with her MD
Name of Clinician Contracted: Herpolsheimer, Arthur MD
Reason for Call: Notified patient here for her induction but is requesting to be induced at a later time as long as everything is ok with baby. Patient being induced for polyhydramnios and AMA. SVE done 0/20/-3. Orders given to call back once NST done.

**05/09/2017 ST. ROSE DOM-SIENA RECORDS GENERAL INFORMATION Page 3836 - 3838 of 4,422 Pages**

05/09/2017 20:37 PDT
Patient discharged at this time. Verbalized understanding of all instructions

05/09/2017 20:21 PDT Call to MD
Notified of category 1 strip. Patient contracting every 4-8 minutes. Patient verbalizes she does not feel contractions. MD verbalized patient can be discharged to follow up in office and with HRPC tomorrow.

**05/15/2017 ST ROSE DOM-SIENA RECORDS ORDERS (Page 1466 of 4,422 Pages)**

Order Date/Time 05/15/2017 16:29 PDT
Ordering Physician: Herpolsheimer, Arthur
Order Details: "If patient desires epidural, please contact anesthesia"

**05/16/2017 ST. ROSE DOM-SIENA RECORDS GENERAL INFORMATION (Page 2605 of 4,422 Pages**

05/16/2017 Charted Time: 00:58 PDT

Charted by Krista Molinaro, RN
"Kim MD in room to discuss POC with patient about epidural placement, Kim, J. **is concerned with patient's platelet count being low and patient having a nose bleed at this moment. MD ordered for another platelet count to be manually done before epidural"**

Corrected Results
@28 Events: Corrected from Kim MD in room to discuss POC with patient about epidural placement on 5/16/2017 01:10 PDT by Molinaro, Krista RN

**05/16/2017 ST. ROSE DOM-SIENA RECORDS GENERAL INFORMATION (Page 2604 of 4,422 Pages)**
05/16/2017 Charted Time: 02:15 PDT
"Kim J MD spoke with Abuan, Ronaldo in lab about manual platelet count. After speaking with him Kim, J verbalized he **would not place epidural due to the dramatic variance in the number between the automated test and the manual test."**

05/16/2017 Charted Time 03:00 PDT
"Herpolsheimer MD in room to discuss pain management options with patient since Kim, J. **will not place epidural."**

**05/16/2017 ST. ROSE DOM-SIENA RECORDS GENERAL INFORMATION (Page 2598 of 4,422 pages)**
05/16/2017 14:45 PDT (Events)
Charted by Delaney McCoy, RN
Dr. Herpolsheimer at bedside for delivery

05/15/2017 17:45 PDT (Events)
Peri-care done, pads changed, pt. tolerated well, **epidural cath removed, tip intact**

**05/16/2017 WHASN RECORDS OP REPORT DR. HERPOLSHEIMER (Page 30 of 70 Pages)**
Procedure Performed: Spontaneous vaginal delivery and midline episiotomy with repair

Postoperative Diagnosis: Intrauterine pregnancy, delivered

**Anesthesia: Epidural**

Findings: A 6 pound 7 ounce female infant with Apgar scores of 9 and 9, delivered at 1451 Pacific Time on 05/16/2017

**05/16/2017 ST. ROSE DOM-SIENA RECORDS PROGRESS NOTES Page 669 of 4,422 Pages**
Delivery Note
05/16/2017 15:28 PDT
Physician Arthur Herpolsheimer, MD
Preoperative Diagnosis: Intrauterine pregnancy

Procedure Performed: Spontaneous vaginal delivery and midline episiotomy with repair

Postoperative Diagnosis: Intrauterine pregnancy, delivered

**Anesthesia: Epidural**

**05/16/2017 ST. ROSE DOM-SIENA RECORDS GENERAL INFORMATION (Page 2596 of 4,422 Pages)**
Charted by Krista Molinaro RN
Chart Time: 20:58 PDT
Name of Clinician Contacted: Amit Garg, MD

05/16/2017 20:45 PDT
Patient up to chair at side of bed. RN placed overlay on bed and changed all linens. Patient verbalized she is feeling a lot of tingling in her legs and very dizzy. Verbalized I would call MD to discuss these symptoms with him.

05/16/2017 20:58 PDT
Notified MD of patient having a lot of tingling in lower extremities and feeling very dizzy. MD verbalized to stop magnesium infusion for now and restart it at 1.5 gms in 1 hour

**05/17/2017 ST. ROSE DOM-SIENA RECORDS GENERAL INFORMATION (Page 2587 of 4,422 Pages)**
05/17/2017 10:45 PDT
Charted by Mary Brown RN
Name of Clinician contacted: Herpolsheimer, Arthur H. M.D.
Time Provider Contacted 10:45:00
Reason for Call/Info Given to MD:
"Other: Dr. in to visit pt. he assess pt. concerns with leg heaviness and tingling. He reviews with RN concern for an epidural hematoma and requests on call neurologist and neuro surgeon phone #'s to consult, will follow for new orders.

**05/17/2017 ST. ROSE DOM-SIENA RECORDS GENERAL INFORMATION (Page 2595 of 4,422 Pages)**
05/17/2017
Charted by Stacy Taylor, RN
Charted Time: 01:20 PDT
"Patient complaining of tingling in her legs, unable to sleep or stand it."

**05/17/2017 ST. ROSE DOM-SIENA RECORDS GENERAL INFORMATION (Page 2594 of 4,422 Pages)**
05/17/2017 Charted Time: 01:25 PDT
Charted by Stacy Taylor, RN
Name of Clinician Contacted: Amit Garg, MD
"Other notified MD of patient's mg level and that she cannot stand the tingling in her legs. MD stated to turn magnesium off."

05/17/2017 04:35
Other: Notified MD of patient's blood pressures and numbness in right leg. MD ordered p.o. labetalol. Pt. unable to tolerate magnesium
Clarified with MD that he did not want IV hydralazine, MD stated not at this time

**05/17/2017 ST. ROSE DOM-SIENA RECORDS GENERAL INFORMATION (Page 2593 of 4,422 Pages)**
05/17/2017 Charted Time: 05:33 PDT
Charted by Stacy Taylor, RN
Name of Clinician Contacted: Amit Garg, MD

05/17/2017 05:30 Events: patient denies headache, blurring vision or epigastric pain

05/17/2017 05:33 PDT Other: call given to MD regarding BP's still elevated

05/17/2017 06:27 PDT Other: Notified MD of blood pressures, received orders on 5/17/2017 06:30 PDT

**05/17/2017 ST. ROSE DOM-SIENA RECORDS GENERAL INFORMATION (Page 2592 of 4,422 Pages)**
05/17/2017 Charted Time: 05:33 PDT
Charted by Stacy Taylor, RN
Name of Clinician Contacted: Amit Garg, MD

05/17/2017 05:50

Other: no call back, called MD, MD in OR, informed of pt. BP's, received order for hydralazine

**05/17/2017 ST. ROSE DOM-SIENA RECORDS GENERAL INFORMATION (Page 2591 of 4,422 Pages)**
05/17/2017 Charted Time: 06:35 PDT
Charted by Stacy Taylor, RN
"Updated patient on plan of care. Patient very anxious, reports numbness in legs. Tried to get patient out of bed, patient unable to put weight on legs."

**05/17/2017 ST. ROSE DOM-SIENA RECORDS GENERAL INFORMATION (Page 2591 of 4,422 Pages)**
05/17/2017 Charted Time: 07:15 PDT
Charted by Stacy Taylor, RN
Name of Clinician Contacted: Leejon Moore, MD

05/17/2017 07:05 PDT (Events)
Anesthesiologist states **he does not think itching, pain numbness is related to epidural.**

05/17/2017 07:30 PDT (Events)
B/P is noted, pt. has been medicated with labetalol, she is showing signs of escalating anxiety which she states is not pain related but that she is itching like crazy and her legs are tingling, it appears from report this started around 0500

05/17/2017 07:30 PDT (Events)
Calming techniques reviewed and practiced, POC to request Benadryl from Dr. Moore who was just in to see pt. and keep pt. turned off her back side and positioned to her sides reviewed and started to the left and propped for comfort, will follow.

05/17/2017 07:30 PDT (Reason for Call/Info given to MD)
Dr. Called concerning patient's itching which is escalating her anxiety. He gives verbal order for Benadryl and requests RN call OB to review labs

**05/17/2017 ST. ROSE DOM-SIENA RECORDS GENERAL INFORMATION (Page 2588 of 4,422 Pages)**
05/17/2017 Charted Time: 09:45 PDT
Charted by Mary Brown, RN
Name of Clinician Contacted: Arthur Herpolsheimer, MD

"Dr. on unit and updated on pt. status, concerns with itching and lower legs being heavy and tingling, we review labs together and that she has been seen by Dr. Moore this am about these concerns, will follow

05/17/2017 Charted Time: 10:45 am
Dr. in to visit pt. he assess pt. concerns with leg heaviness and tingling, he reviews with RN concern for an epidural hematoma and requests on call neurologist and neuro surgeon phone #'s to consult, will follow for new orders.

**05/17/2017 ST. ROSE DOM-SIENA RECORDS GENERAL INFORMATION (Page 2587 of 4,422 Pages)**
05/17/2017 Charted Time: 11:20 PDT
Charted by Mary Brown, RN
Name of Clinician Contacted: Arthur Herpolsheimer, MD
Provider/MD present, Other: Dr. alerts RN and requests pt. be n.p.o. and to start NS at 125 mL/hr and a bolus of 500 ml's discussed and he ok's, will follow

05/17/2017 13:00 PDT
HOB up. Other: Pt. returned back to her backside, boosted up in bed, peri-care done, preparing for MRI

05/17/2017 13:15 PDT
Pt. leaves unit with stable assessment no changes. RN has reviewed MRI process with her will follow

**05/17/2017 ST. ROSE DOM-SIENA RECORDS GENERAL INFORMATION (Page 2586 of 4,422 Pages)**
05/17/2017 15:15 PDT
Charted by Mary Brown RN
Name of Clinician contacted: Herpolsheimer, Arthur H. M.D.
Time Provider Contacted 15:05:00
Reason for Call/Info Given to MD:
Other: Dr. call unit to update on MRI results, RN is at BS checking pt. into room, he leaves word with Pam T, RN that POC is to do laminectomy and remove hematoma, pt. to be n.p.o.

**05/17/2017 ST ROSE DEM-SIENA RECORDS MRI Page 3695 of 4,422 Pages**
05/17/2017 14:50 PDT
Reason for Exam: MR T Spine wo+w Con B LE Paresis s/p epidural anesthesia

Impression:

1. Significantly limited study secondary to patient motion artifact
2. There is prominent nodular enhancing epidural soft tissue within the anterior and lateral epidural space extending from approximately T2 through T6-T7. This results in moderate to several central canal stenosis at approximately T3. This appearance is nonspecific, and can be seen with lymphoma, metastatic disease (in the case of breast cancer) and infection (infection is unlikely to cause this appearance within 24 hours following the epidural injection). Confirmation with CT may be of benefit
3. Ill-defined patchy and enhancement is also seen within the posterior aspect of the central canal at the mid and lower thoracic levels related to #2.
4. There is a suggestion of an epidural fluid collection extending from approximately T5-6 extending into the lumbar levels. A primary differential consideration is an epidural hematoma. Epidural abscess is less likely. Further evaluation with contrast-enhanced Ct may be of benefit. There is a small nonspecific enhancing lesion within the T11 vertebral body. The main differential considerations include atypical hemangioma versus metastatic disease.

Findings were discussed with Dr. Seiff at approximately 2:50 PM on 5/17/2017.

**05/17/2017 ST ROSE DEM-SIENA RECORDS MRI Page 3693 of 4,422 Pages**
05/17/2017 18:53 PDT
Reason for Exam: MR L Spine wo Con bilateral lower extremity weakness s/p epidural

Impression:
Extensive abnormal epidural process causes extensive mass effect on the thecal sac in the lumbar spine. This is probably partly related to the epidural process described in the thoracic spine but is also probably partly due to the fluid from recent epidural anesthesia administration.

**05/17/2017 ST. ROSE DEM-SIENA RECORDS MRI Page 3692 of 4,422 Pages**
05/17/2017 19:32 PDT
Reason for Exam: MR T Spine wo Con bilateral lower extremity weakness s/p epidural

Impression:
Extensive heterogeneous epidural process is re-demonstrated. There are some areas where it contacts the cord but does not cause mass effect on the cord.

**05/17/2017 ST. ROSE DEM-SIENA RECORDS PROGRESS NOTES - NURSING (Page 1964 of 4,422 Pages)**
5/17/2017 19:35 PDT

"rec'd patient came from MRI arrived to room 2227 placed on cardiac monitor and oriented to room and equipment, patient is AAO x 3 still c/o numbness and tingling sensation to bilateral lower extremities. VS see on computer data and Dr. McPherson will be here.

**05/17/2017 ST ROSE DEM-SIENA RECORDS ICU HISTORY AND PHYSICAL (Pages 21-23 of 4,422 Pages)**
05/17/2017 20:48 PDT
Reason for ICU Admission: Paraparesis, possible epidural hematoma

History of Present Illness:
Ms. Badoi is a 41-year-old female, who is generally well most of her life. She has a history of Hashimoto's thyroiditis and had a partial thyroidectomy and is on thyroid replacement therapy. She is gravida 1, para 1, status post normal vaginal delivery on 05/16/2017 after an epidural anesthesia. Subsequent to delivery, the patient started noticing some tingling and abnormal sensations in her legs. Became clear that the legs were quite weak and quite spastic. MRI of the lumbar spine was done on 05/17 at 1420 for further evaluation and this was normal. Thoracic spine was done at 1450 and this showed abnormality. Had enhancing epidural soft tissue within the anterior and lateral epidural space T2 through T6 to T7 with moderate to severe central canal stenosis at approximately T3. Ill-defined patchy enhancement is also seen in the posterior aspect of the central canal at the mid and lower thoracic levels. Suggestion of epidural fluid collection extending from approximately T5 to T6 into lumbar areas. Possible epidural hematoma abscess less likely. Also enhancing lesion in T11 vertebral body, which may be due to an atypical hemangioma versus metastatic disease per radiologist, Dr. Seiff was notified. Repeat MRI of the L-spine was done at 1853 and this showed extensive abnormal epidural process now causing extensive mass effect along the thecal sac in the lumbar spine. **This is probably related to the epidural process in the thoracic spine and is also partly due to fluid from the recent epidural anesthesia administration as the radiologist's report.** Repeat CT-spine was also done and showed extensive heterogeneous epidural process re-demonstrated some areas where it contacts the cord but does not seem to cause mass effect on the cord.

Laboratory Data: On admission to the hospital on 05/15, she was mildly anemic with hemoglobin of 10. Normal white count. MCV was reduced at 77. Platelets reduced at 94,000. Subsequent CBC showed an estimated platelet count of 140,000 to 160,000 on 05/17 at 6:26 a.m. It is estimated to be 80,000 to 100,000. Repeat done on 1644 today showed a platelet count of 74,000. Coags have not yet been done. Sodium was slightly reduced at 130. LFTs were elevated. ALT 142, AST 146, and alkaline phosphatase 149. Urinalysis unremarkable on admission. No chest x-ray performed.

Impression:

1. Acute spastic paraparesis on 05/17/2016 with abnormal MRI in thoracic and L-spine, possible epidural hematoma
2. Thrombocytopenia
3. Unknown coagulation status
4. Gravida 1, para 1, normal vaginal delivery with epidural anesthesia on 05/16
5. Hypertension
6. History of Hashimoto's thyroiditis, status post previous partial thyroidectomy
7. Abnormal liver function tests and preeclampsia

Plan:

1. We will monitor in the ICU
2. Continue neuro checks
3. Neurosurgical consult with Dr. Seiff
4. Check DIC panel
5. Platelet transfusion
6. Blood pressure control

**05/17/2017 WHASN RECORDS CONSULTATION DR. SEIFF (Pages 25-26 of 70 Pages)**

History of Present Illness:

This is a 41-year-old female, who is post delivery day #1. I got a call earlier in the day by Dr. Herpolsheimer with concern for possible spinal epidural hematoma, since the patient had developed significant bilateral lower extremity motor deficit, had received an epidural catheter for labor, and there was a question of possible thrombocytopenia during her course. The initial MRI had too much motion artifact for interpretation with respect to surgical decision making. Therefore, she was sent back to the MRI scanner for additional images, also transferred to the ICU so she could receive mannitol, she also received high-dose Decadron. The follow up imaging was suggestive of an epidural hematoma from the mid thoracic spine to the mid lumbar spine, and she was taken to surgery emergently for evacuation.

Past Medical History: Hashimoto thyroiditis
Surgical History: Partial thyroidectomy

Laboratory Data: Labs are significant for hyponatremia to 130 and platelets 274 and then 86K. D-dimer is also elevated. Through, there was no complaints suggestive of venous thromboembolism.

The MRI's revealed a mixed density collection that was both ventral, dorsal and lateral to the cord from the mid lumbar spine up to the mid thoracic spine. Interestingly, there was

also a sizeable nodular lesion up at the T3-T4 level, ventral to the cord which enhanced. I reviewed the case with 3 radiologists, 2 of them neuro-radiologist, and the consensus was that this represented an epidural hematoma, with the rostral thoracic lesion being somewhat enigmatic and possibly consistent with metastasis of lymphoma.

Impression:
A 41-year-old female, post delivery day #1, who had what looks like a thoracolumbar epidural hematoma with significant mass effect on the spinal cord, and she was taken to surgery emergently, however, intraoperatively an intradural hematoma was found. She underwent complete evacuation. For now she is intubated and to be extubated when deemed stable and she is awake.

**05/17/2017 WHASN RECORDS OP REPORT T8 THROUGH L3 LAMINECTOMIES FOR EVACUATION MICHAEL SEIFF, M.D. (Page 27-29 of 70 Pages)**

Preoperative Diagnosis: Thoracolumbar Epidural Hematoma

Procedure:
1. T8 through L3 laminectomies for evacuation of intradural hematoma
2. Operative microscope for microsurgical technique
3. Intraoperative fluoroscopy for localization

Indication: The patient is a 41-year-old female, who is postpartum and developed bilateral lower extremity paresthesias followed by spastic paraplegia, workup ultimately revealed what was thought to be an epidural hematoma and she was taken to surgery emergently for evacuation. Intraoperatively an intradural hematoma was found.

She was taken to ICU in hemodynamically stable condition.

**05/18/2017 ST. ROSE DOM-SIENA RECORDS ONCOLOGY/HEMATOLOGY CONSULT DR. GHANI (Page 24-26 of 4,422 Pages**
Medical Oncology/Hematology Consult

Impression:
1. Thrombocytopenia with some clumping, question immune mediated with some effect of pseudothrombocytopenia i.e. platelet clumping
2. Postpartum day #3
3. T8-L3 laminectomy for evacuation of intradural hematoma
4. Leukocytosis, question reactive
5. History of iron deficiency

6. Elevated LFTs

Plan:

1. I discussed with the patient further workup. WE will check peripheral smear B12 folate and iron studies
2. Platelet count should be drawn on citrate tube
3. Watch platelet count closely. Currently, platelet count is going towards normal. Today's platelet count is 149. We will follow along with you
4. Above discussed with patient and her husband

**05/18/2017 ST. ROSE DOM-SIENA RECORDS CONSULT DR. SELCO (Page 26-32 of 4,422 Pages)**

Chief Complaint:
Epidural Hematoma B/L LE Weakness

History of Present Illness:
She developed B/L LE progressive paraparesis and numbness on post-partum day #1 after epidural anesthesia. She delivered via NSVD following the onset of gestational hypertension. Dr. Herpolsheimer contacted me. I advised STAT MRI T+L spine. She had a thoracolumbar intradural hematoma. She was taken to the OR last night by Dr. Seiff and had a T8-L3 lami for intradural hematoma evacuation.

Her husband is present. She is awake and alert on the vent. She has some movement in the proximal thighs, she can flex her knees somewhat and she can plantar flex and dorsiflex her bilateral feet somewhat. She has normal sensation post-operatively.

She did not receive enoxaparin or heparin SQ this admission.

Nothing specific other than the mentioned above is reportedly making the symptoms commence, improve or worsen.

**05/18/2017 WHASN RECORDS QUEST LAB BLOOD CLOTS FROM EPIDURAL (Page 22 of 70 Pages)**

Diagnosis:
Blood clots from epidural

Gross:
Received in formalin labeled "Badoi, Alina DOB 05/24/1975" and "blood clots" is an aggregate of dark maroon clot 4.0 x 3.0 x 0.6 cm. The tissue is soft and friable.

**05/19/2017 ST. ROSE DOM-SIENA RECORDS SOCIAL SERVICES DOCUMENTATION (Page 2281 of 4,422 Pages)**

"MSW met with Radu (patient's boyfriend) who voiced his concern that surgery was from T8-L3 lami due to hematoma that there was a delay in care as it was brought to medical team's attention at 10 a.m. and *nothing was done about it for 12+ hours."*

**05/20/2017 WHASN RECORDS OP REPORT CHARLES MCPHERSON, M.D. (Page 21 of 70 Pages)**

Pre and Postoperative Diagnosis: Altered mental status, intubation needed for airway protection

Procedure: Endotracheal intubation

Procedure in Detail: The patient recently had a spontaneous vaginal delivery and then developed lower extremity paraparesis due to epidural hematoma, for which she underwent extensive laminectomy yesterday. She was extubated. Post-procedure was doing well, however, late in the evening of 05/19 according to the nurses, the patient began getting confused and then more somnolent. The patient was sent for stat CT scan of the brain which showed intraventricular and some subdural blood with enlargement of the ventricles consistent with hydrocephalus. The patient had been transferred to the ICU prior to the CAT scan. I was called with the results when the patient arrived after she came back from the CAT scan and neurosurgeons have been called. When I arrived, the patient was somnolent with some response to stimulation and voice, therefore endotracheal intubation was recommended. Sister was at the bedside. The patient was administered 20 mg of etomidate using a MAC 4 blade. When the blade was first placed into the mouth, the patient then began biting down very hard and chipped her left front tooth. The patient was given 50 mg of Rocuronium for paralysis, then with a MAC 4 blade the airway was well visualized with a grade 1 view. There is a small amount of yellow dried mucus in the hypopharynx which was suctioned. A #7.5 endotracheal tube was placed on first attempt under direct visualization without difficulty. There was good color change to C02 sensor. Good breath sounds bilaterally and good oxygenation.

Complications: Left front upper tooth chipped when patient bit on laryngoscope. No other complications.

**05/20/2017 WHASN RECORDS OP REPORT JAMES FORAGE, M.D. (Pages 20 of 70 Pages)**

Pre and Postoperative Diagnosis: Hydrocephalus

Procedure Performed:
Right frontal ventriculostomy

Indication for Procedure:
This is a 41-year-old female, who developed altered mental status, and was found to have an intraventricular hemorrhage and was found to have hydrocephalus, which requires diversion of CSF.

**05/22/2017 ST. ROSE DOM-SIENA RECORDS MRI (Page 3684-3685 of 4,422 Pages)**
05/22/2017 17:00 PDT
Reason for Exam: (MR L spine wo+w Con) Thoracolumbar intradural hemorrhage after epidural anesthesia; epidural enhancement present on pre-op images??

Addendum:
After review of the medical record the patient is noted to have **HELLP**. Given this is a diagnosis of spinal complications of HELLP is more favored

Impression:
Postoperative changes with intradural blood products noted as described above. The largest collection of blood products is noted anteriorly at L4-L5. No definite enhancement is identified

**06/01/2017 ST. ROSE DOM-SIENA RECORDS PROGRESS NOTE – NURSING Page 1929 of 4,422 Pages**
07:00 PDT
"Gave report to Neelam, RN at pt. bedside. Updated her on new orders. Pt. has been placed in Trendelenburg for 15 minutes hourly. Headache resulted, and Tylenol given. Vitals table, however blood pressure has remained in the 140s to 150s. Pt. received 1 dose IV Labetalol prn. Pt. is alert and oriented x 4, and is still weak on the right lower extremity. See assessment for further details.

**06/01/2017 ST. ROSE DOM-SIENA RECORDS PROGRESS NOTE – NURSING Page 1926 of 4,422 Pages**
15:00 PDT
"Physical therapist started working with the patient brought head end of the bed up and pt. started c/o pain, unable to tolerate pain. Pt. requested pain medication. Methocarbamol given as ordered. St. pt. couldn't tolerate pain and started crying. Head end of bed put down and pt. repositioned to make comfortable. Continue to follow."

**06/02/2017 WHASN RECORDS OP REPORT MICHAEL SEIFF, M.D. (Pages 15-16 of 70 Pages)**
Pre and Post-operative Diagnosis: Thoracic epidural hematoma

Procedure Performed: Evacuation of thoracic epidural hematoma. Intraoperative neurophysiologic monitoring of somatosensory and motor evoked potentials and EMGs.

Indications:
The patient is a 42 year-old female, several weeks out from T8 through L3 laminectomy for evacuation of intradural hematoma, who has been improving slowly with regard to lower extremity function, she has spastic paraplegia preoperatively, but postoperative imaging has revealed an epidural hematoma with persistent mass effect on the thoracic spine, especially opposite T9 through 11. It was therefore elected to take her to surgery to evacuate this collection.

**06/03/2017 ST. ROSE DOM-SIENA RECORDS PROGRESS NOTE – NURSING Page 1965 of 4,422 Pages**
11:25 PDT
"Patient sitting up in bed working with physical therapy. C/o dizziness. Assisted by PT Karl to laying position. Became unresponsive and witness seizure activity. Hypotensive following seizure. Dr. Hutchison to room immediately. Patient began to awaken calling out for the MD to remove the oxygen mask from her face. Again became unresponsive, hypotensive, Code Blue called.

**06/03/2017 WHASN RECORDS CODE BLUE NOTE WILLIAM HUTCHISON, M.D. (Pages 6-7 of 70 Pages)**
Code Blue Note

"I was on the unit and was called into the room because the patient had a seizure. When I got there, she had already completed a clonic-tonic seizure and was slightly postictal. She had a very lower blood pressure of 60/40. We supported her in her breathing. Respiratory was in the room and we assisted her oxygenation. She awoke from that and started moving around groaning and moaning, answering questions appropriately. She denied any pain. Her pressure, however, remained very low. We were in the process of starting Levophed drip when the patient's eyes deviated to the right and it appeared that she had another seizure. At this juncture, the decision to continue bagging her, intubate her was made. I made two attempts to intubate her orally. We did not have a good color change on the C02 monitor, although I did have good breath sounds bilaterally and the 02 sats were greater than 85%. We elected to discontinue the endotracheal tube and bag her. However, we had the same experience. Finally, I was able to intubate her using a GlideScope. However, by

this time, she had lost a pulse and CPR was underway. We ran CPR, ACLS for pulseless electrical activity for over 75 minutes using multiple amps of epinephrine, multiple amps of sodium bicarbonate. We obtained blood gases during the code blue. Her initial blood gas showed pH less than 6.92, pC02 of 102, but this is a venous blood gas with a p02 of 31 (throughout CPR, her oxygen saturation was greater than 90% for most of the CPR activity). We gave her a total of 6 amps of sodium bicarbonate. Her next blood gas showed a pH of 6.99, pC02 of 123, but the p02 was 31. This may be a venous blood gas. Her oxygen saturation again peripherally was 100%. We placed the end-tidal C02 monitor which initially was 9, but after giving multiple amps of sodium bicarbonate, improved to greater than 33. However, it drifted back down again. Family was at bedside obviously distraught. I explained the situation to the daughter as well as a friend of the daughters who is an RN and personal friend of Dr. Dijana Jefic. I spoke with Dr. Dijana Jefic over the telephone explaining the situation to her and she did explain the situation to the friend, as did I, who is an RN. The friend agreed that we had run ACLS for PEA over 75 minutes and the change for a meaningful recovery as almost 0. At this time, the code was called. The family was distraught at the bedside and I did my best to comfort them. Nursing supervisors present as well as charge nurse, Liz, who assisted throughout the code. Dr. Seiff's coverage was present and we explained the situation to him. To the best of our ability to determine what happened, the patient appears to have had some sort of catastrophic CNS event, possibly extension of her hemorrhage, possibly a clot, it is difficult to say. The puzzling thing was the profound hypotension initially, which we cannot explain."

**06/03/2017 ST. ROSE DOM-SIENA RECORDS DISCHARGE SUMMARY (Pages 9-14 of 4,422 Pages)**
Date of Admission: 05/15/2017

Date of Discharge: 06/03/2017

Reason for Admission: Intrauterine pregnancy with spontaneous vaginal delivery

Final Diagnoses:

1. Cardiac arrest. Presumably due to catastrophic event, differential diagnosis including pulmonary embolus, catastrophic CNS event, or myocardial infarction.
2. Seizure
3. Acute spastic paraparesis on 05/17 with an abnormal MRI of the thoracic and lumbar spine, status post T8-L3 laminectomy for epidural hematoma evacuation on 05/18.
4. Status post spinal hematoma evacuation on June 2nd per Dr. Seiff
5. Status post placement of lumbar drain, 05/23

6. Acute confusion and somnolence on 05/19 with demonstrated subdural hemorrhage and dilated ventricles compatible with hydrocephalus. 05/20, status post right frontal ventriculostomy
7. Large respiratory failure on 05/18, extubated 05/19, transferred to ICU and re-intubated on 05/20 for altered mental status. Extubated on 05/22.
8. Status post normal vaginal delivery with epidural 05/16 G1, P1
9. Hypertension
10. History of Hashimoto's thyroiditis, status post partial thyroidectomy and thyroid replacement
11. Abnormal liver function studies with preeclampsia
12. Leukocytosis
13. Thrombocytopenia
14. Elevated D-dimer with normal Pro Time

Hospital Course:
This 42 year-old white female delivered a 6 pound 7 ounce female infant with Apgars of 9 and 9 on 05/16 via spontaneous vaginal delivery. She did have an epidural placed. On 05/17, she had acute spastic paraparesis with abnormalities seen on MRI of the thoracic and lumbar spine possibly consistent with epidural hematoma. She did have thrombocytopenia. She was taken to a laminectomy for intradural hematoma evacuation on 05/18 per Dr. Michael Seiff. Apparently, there was an epidural hematoma present. There was question of possible thrombocytopenia during her course. However, per Dr. Selco's note, she did not receive any enoxaparin or heparin. Dr. Ghani was consulted from Hematology-Oncology and noted that she had thrombocytopenia with platelet clumping. He ordered further testing. Her plated count was 94,000 with a CBC platelet count showing between 140 and 160,000 on 05/17 and a repeat was done which was 74,000. On 05/18 in the morning platelet count was 104 and platelets on 05/17 dropped to 86,000. On 05/17 at 1644 it was 74,000. D-dimer was 5817. Fibrinogen 308. PT 10.3. INR 0.9 with PTT of 24. Dr. Ghani noted the MRI of the thoracic spine showed extensive heterogeneous epidural process. MRI of the lumbar spine showed extensive abnormal epidural process causing extensive mass on the thecal sac. Bilateral lower extremity Dopplers did not reveal deep vein thrombosis. The patient was given mannitol and Decadron on a taper. By 05/18 she was successfully extubated but had some nausea. She was downgraded to maternal and child floor. However, she had altered mental status and needed to be reintubated on 05/20, transferred back to ICU. Apparently, she was getting more confused, more somnolent. She was sent for stat CT scan of her brain which showed intraventricular and some subdural blood with enlargement of the ventricles consistent with hydrocephalus. On 05/20 at 4:30 in the morning, a right frontal ventriculostomy drain was placed because of need for diversion of CSF. Echocardiogram done on 05/20 showed ejection fraction of 65-70%. Her encephalopathy did improve after the interventricular drain was placed. She

was following commands. After placement of the right ventricular shunt catheter, the degree of ventricular dilation decreased and mild intraventricular hemorrhage was noted in the occipital horns in 3rd and 4th ventricle with mild infiltrative extra-axial blood products and subdural and subarachnoid hemorrhage at the region of the foramen magnum and extra medullary to the ventral upper cervical spinal cord and the visualized portions. There may have been a tiny lacunar infarct noted at the left aspect of the splenium of the corpus collosum at 4 mm.

Dr. Anthony Nguyen noted that she had transient thrombocytopenia with some clumping question and immune-mediated effect. He recommended keeping the platelets greater than 100 and recommended 1 unit of platelets. On 05/21, the EVD was draining clear CSF. The hemoglobin dropped to 7.4 without obvious bleeding. On 05/22, the patient was extubated. She was comfortable with mild stridor. Decadron and racemic epi were given to treat the mild stridor but she remained awake, alert and communicative. A von Willebrand's panel was drawn and the results were pending on 05/22. On 05/23 her thrombocytopenia was better with platelet count of 224,000. MRI of the spine on 05/22 showed intradural blood products mixed intensity. A Lumbar drain was recommended as well as bed positioning maneuvers to facilitate more rapid removal of CSF. Dr. Kashef saw the patient on 05/23 from Hem/Onc. On 05/23 Dr. Konchada from IR placed a lumbar drain. About 15 mL of straw-colored CSF was aspirated from the colostomy collection cylinder using sterile technique. On 05/24 the patient was more awake, her voice improved. The lumbar drain stopped draining on 04/24 and Dr. Selco was following. The output was darkly colored bloody CSF, but the EVD showed the ICP was at 10 mm and it was draining well. On 05/24 the lumbar drain was flushed. She was started on Mestinon 30 mg p.o. t.i.d. per Dr. Selco. On 05/25, a lumbar drain was flushed with Isovue contrast and repositioned. Then it was functioning better. On 05/26 she was drowsy but arousable. She felt tingling and numbness to bilateral lower extremities. On 05/26 the EVD was clamped. The ICP was 1. The lumbar drain was draining freely, with 20 mL every 4 hours. The EVD was draining 20 mL every 4 hours alternating with the lumbar drain every 4 hours per Dr. Selco's order. The patient had bilateral lower extremity pain especially with being turned and sitting. Additional history was obtained where she had a thyroidectomy and blood internally at age 15, developing hematoma that cause neck compression and compromised talking and swallowing for several months. This raised the question of von Willebrand's disease. She has heavy menses also raising the question of von Willebrand's disease. Dr. Litchfield increased her levothyroxine from 50 mcg p.o. every day to 112 mcg every day during her pregnancy. TSH during this admission was 3.27, within normal limits. The transferrin was 314 from 05/19, vitamin B12 level was 252, folate 113.1, ferritin 125, CA-19.9 was okay. The CA 27.29 was 21.7, the CEA was 0.74, CA-125 was 104.6 which is high, normal being between 0-35. The rheumatoid factor was less than 14, the ANA was negative. Mitochondrial M2 was 6.1, artifact and antibody was 10. It was felt that she had

platelet clumping possibly due to the blood draw tube EDTA sensitivity. There was the question of von Willebrand's disease based on the clinical results. She was started on trazodone for a poor sleep on 05/27. It was noted that the drainage slowed between 05/26 and 05/27 on her lumbar drain. Order was given to clamp the EVD, continue Ancef 1 g every 8 hours, and open the lumbar drain every 2 hours to drain 20 mL in reverse Trendelenburg. CT scan or CT myelogram of the spine to rule out AVM once blood removed from the intradural space was recommended. On 05/28 it was noted her CSF was dark auburn. On 05/29, family refused to have medication noted at 6:50. On 05/29 Dr. Kashef noted that the patient had possible von Willebrand's disease. Need to repeat labs for a definitive diagnosis once her clinical condition is stabilized. On 05/29 Dr. Selco noted that her pain was better on tapentadol and that she slept well. Her sister refused the trazodone. She was eating a little more and had a small bowel movement. Her abdomen was less distended and she was passing gas. On 05/29 Dr. Selco aspirated about 20 mL of darkly colored CSF from the lumbar drain using sterile technique. On 05/30, she was more awake and in better mood, complained of minor headache but just took some Tylenol and had good sleep. Her EVD was continued to be clamped with ICP 10-16 and LD in the lumbar drain rather draining 20 mL every 4 hours, dark brown colored. Her bilateral lower extremities were still weak and she was unable to move her legs. She had a decent lunch on 05/29 and with bladder training and felt a pressure. Her Foley was clamped and her bladder was full and when unclamped, emptied 1060 mL from the Foley. On 05/31 the EVD and LD were both clamped as she was scheduled for an MRI. She did not complain of any headache. She did have some breast discomfort and lactation nurse was sent in, recommended ibuprofen and pseudoephedrine to stop the lactation, but ibuprofen and other non steroidals were not an option at that time because of bleeding. On 05/31 it was noted that she slept well passing some gas and having some bowel movement smears. She had asymmetric bilateral lower extremity weakness, left stronger than right, and both were improving. On 06/01, it was noted that her extraventricular drain was open but not draining and the lumbar drain was clamped. She did not sleep well because Trendelenburg was ordered for drainage. She was feeling the pressure on bladder training. Dr. Selco noted that her EVD was draining at 20 mL every 4 hours and her intracranial pressure was normal with a CSF fairly clear. Lumbar drain was to be left in for the CT myelogram before removing it. On 06/02 she was awake and alert and felt much better than yesterday. She was anxious and hoping to undergo surgery. The EVD and LD were clamped. She underwent evacuation of a thoracic epidural hematoma per Dr. Seiff on 06/02. She was in the prone position for surgery. The wound was opened and the hematoma was evacuated throughout the entire length of the lamina though the entire length of the laminectomy deficit was visualized. A 1/8 inch Hemovac drain was left in place and tunneled out from the incision beneath the muscle. The muscle was reapproximated. Fascia was approximated. Subdural layer was reapproximated and the epidermis was reapproximated as well. Dressings were applied and exudating drain was anchored and there were no

complications. On 06/03 the patient was awake, working with Speech Therapy. Family was in the room. She was moving all 4 extremities well. The EVD was still in place but not draining.

I was suddenly called into the room because the patient had a seizure. When I got there she had completed a tonic-clonic seizure, was slightly postictal. She had a very low blood pressure of 60/40 with supported breathing and oxygenation. She awoke from the post-ictal phase in a couple of minutes and starting moving around groaning and moaning and answering questions appropriately. She denied any pain. Her pressure increased a bit and dropped again. We gave her a fluid bolus. We were in the process of starting a Levophed drip when her eyes deviated to the right and it appeared she was having another seizure. At this point, the decision to keep bagging her was made and the decision was made to intubate her. I made 2 attempts to intubate her orally but we did not have a good color change on her C02 monitor, although I did have good breath sounds bilaterally and the oxygen saturations were greater than 85%. Because of color change being more than slightly yellow, we discontinued the endotracheal tube to bag her once again. Oxygen saturation improved to 100%. I tried intubating her with a bougie. I felt the endotracheal rings were well with the bougie and the endotracheal tube went in without a problem. However, we had the same experience with the carbon-dioxide indicator, so once again we disconnected the ET tube and bagged her. Finally, I intubated her with a glide scope. We did have a good C02 indicator at this time. However, by this time she lost her pulse and CPR was underway. Then extensive CPR with ACLS for over 75 minutes ensued using multiple amps of epinephrine, multiple amps of sodium bicarbonate. WE obtained blood gases during the Code Blue. Initial blood gas showed a pH less than 6.92, pC02 of 102, but this was felt to be a venous blood gas with a P02 was 31. Throughout most of this CPR, her oxygen saturation was 100%. We gave her a total of 6 amps of sodium bicarbonate and the next blood gas showed a pH of 6.99, pC02 of 123, but the patient remained in PEA> Throughout the extension ACLs we never recovered pulses although we had excellent femoral pulses on cardiac compression.

The family was at the bedside and I comforted them at bedside and spoke with the family as well as a friend of the daughters who was an RN and a personal friend of Dijana Jefic, M.D. I did speak with Dr. Jefic by phone to explain the situation to her and she did explain the situation to her daughter which was as follows:

Basically, the patient was in PEA for about 75-80 minutes. We did not recover the heart and at that point the Code Blue was called.

Dr. Seiff's coverage was present and reviewed the above with him. Dr. Selco had been contacted by phone during the code and wondered about the possibility of pulmonary

embolus. The differential diagnosis of her terminal event includes pulmonary embolus, catastrophic CNS event, as well as myocardial infarction.

**06/04/2017 AFFIDAVIT RECORDS AUTOPSY REPORT OF ALANE M. OLSON MD PATHOLOGIST Page 2 of 9 Pages**

Cause of Death:

"It is my opinion that this 42-year-old Caucasian female, Alina Badoi, died as a result of bilateral pulmonary thromboemboli due to deep venous thrombosis due to acute spastic paraparesis following intradural hemorrhage associated with epidural anesthesia. Other significant conditions include recent pregnancy, pre-eclampsia, probable von Willebrand disease.

Manner of Death: ACCIDENT (Therapeutic complication)

SUMMARY

At the time of events reviewed above, Ms. Badoi was 41 years of age, and her obstetrical history was uncomplicated. She presented to St. Rose Dominican hospital Siena Campus on May 09, 2017, in the late third term of her first pregnancy, and she was supposed to be induced, at that time, but requested that the induction be put off one week, if it was medically feasible. This was deemed acceptable to her obstetrician, Dr. Herpolsheimer, and Ms. Badoi was discharged and readmitted to St. Rose on May 16, 2017, for a vaginal delivery, with epidural anesthetic. It is noted and of clinical significance that Dr. Kim, of anesthesia, appears to have been initially consulted for the purposes of placing an epidural anesthetic in Ms. Badoi, but he had concerns, because of her presentation with thrombocytopenia and epistaxis. He ordered that a manual platelet count be done before he would make a decision regarding epidural anesthesia for Ms. Badoi. Dr. Kim, apparently, spoke with Ronaldo Abuan in the lab at St. Rose regarding this manual platelet count, and after this, he advised that he would not place the epidural anesthetic in Ms. Badoi, because of a dramatic variance in the platelet count, as determined by the automated test versus the manual test.

Records reflect that around 3 p.m. on May 16, 2017, Ms. Badoi delivered a 6 pound, 7 ounce female infant via a spontaneous vaginal delivery, with midline episiotomy and repair. Intrauterine pregnancy was felt to be uncomplicated, and anesthesia was documented to be epidural. Within 6 hours of delivery, there was chart documentation of clinical complications postpartum. Charting at 8:45 p.m. indicated that Ms. Badoi had developed symptoms of tingling and numbness (paresthesias) involving her lower extremities and associated with dizziness. Her physician was first notified of this fact at approximately 9 p.m., on the day of delivery, and by 10:45 p.m., on May 16th, Dr. Herpolsheimer personally

evaluated Ms. Badoi, and raised initial concern about a possible epidural hematoma. Ms. Badoi's lower extremity symptoms became progressive to include not only paresthesias of her lower extremities, but also weakness, for which she could really not effectively put weight on her legs, and she became progressively anxious and developed lower extremity pruritus, making it impossible for her to rest or sleep. Beginning at about 1:20 a.m. on May 17th, there is documentation of multiple calls to the covering physician for Ms. Badoi's ongoing lower extremity complaints, as well as for hypertension. On the morning of May 17, 2017, Dr. Moore, of anesthesia, was notified of Ms. Badoi's lower extremity pruritus, pain, and numbness, and it was his clinical opinion that this was unrelated to her epidural anesthetic. He did evaluate Ms. Badoi that morning, and prescribed Benadryl for the pruritus and anxiety, as well as instituted "calming techniques."

By 10:45 a.m., on the 17th, Dr. Herpolsheimer was still concerned that Ms. Badoi's lower extremity symptoms were related to an epidural hematoma, and he was given the phone numbers of the on-call neurologist and neurosurgeon, in order to request appropriate consultations. By 11:20 a.m., Ms. Badoi was made n.p.o., and was given a 500-cc bolus of fluids, and IV fluids were started, at 125 cc/hour. Stat thoracic and lumbar spine MRIs were ordered at about 1:15 p.m., and were difficult studies, because of motion artifact. By 3:15 p.m., the MRIs had been completed, with results indicating a significant thoracolumbar epidural process, for which Ms. Badoi was to be scheduled for laminectomy and evacuation of hematoma of the spinal canal.

Ms. Badoi was kept n.p.o., and was transferred to the ICU by Dr. Charles McPherson, of pulmonary medicine, and was stabilized there between around 7:35 p.m. and 8:48 p.m., with lower extremity spastic paraparesis felt to be due to an epidural hematoma, confirmed by thoracic and lumbar spine MRIs. Dr. McPherson noted her medical history to be significant for Hashimoto's thyroiditis status post thyroidectomy and on thyroid replacement therapy. She was noted to be gravida 1, para 1, with complications of her epidural anesthetic. Thrombocytopenia was noted, with a platelet count of 94,000 and a hemoglobin of 10. Dr. McPherson noted that other platelet counts ranged from 80,000 to 100,000, all the way as high as 140,000 to 160,000. He additionally noted the development of postpartum hyponatremia, with a sodium of 130 and elevation of liver function tests of a mild degree, with an ALT, AST, and alkaline phosphatase in the 140 to 150 range. He also documented ongoing postpartum hypertension, and set up a protocol of neuromonitoring in the ICU, and was to check a DIC panel, control blood pressure, and ordered platelet transfusions.

Dr. Michael Seiff, of neurosurgery, evaluated Ms. Badoi, and brought her to the operating room on May 17, 2017, with a diagnosis of thoracolumbar epidural hematoma. He noted her to be a 41-year-old female one day postpartum, who, unfortunately developed bilateral

lower extremity paresthesias, followed by spastic paraplegia, with evaluation subsequently determining the likelihood of an epidural hematoma, for which she was emergently brought to the operating room. Intraoperatively, Dr. Seiff documented that an intradural hematoma was found, requiring T8 through L3 laminectomies for evacuation of the intradural hematoma.

Ms. Badoi remained intubated on postoperative day #1, and ongoing supportive care and management was given. She was seen by Dr. Ghani, of hematology, on May 18th, with thrombocytopenia associated with platelet clumping, reactive leukocytosis, iron deficiency anemia, and elevated liver function tests. She was noted to have gestational hypertension and a platelet count, at that time, of 149,000. A full hematology evaluation was ordered, along with supportive hematology care, including checking for Von Willebrand disease.

Additionally, on May 18, 2017, Ms. Badoi underwent neurology evaluation by Dr. Selco for an epidural hematoma, with bilateral lower extremity weakness. He documented that he had been notified by Dr. Herpolsheimer the day before, and he had advised a stat MRI of the thoracic and lumbar spines, which resulted in the defined clinical diagnosis of a thoracolumbar intradural hematoma, which was evacuated by Dr. Seiff.

Ms. Badoi was noted to be awake and alert on a ventilator at the time of Dr. Selco's neurologic evaluation, and had some movement in the proximal thighs and some ability to flex her knees and plantar flex and dorsiflex her feet. Sensation was felt to be normal postoperatively. Note was made that she received no regular or low-molecular weight heparins during the current admission.

On May 19, 2017, a social service note indicates that there was a discussion with Radu (the patient's boyfriend), and he voiced his concern that there was a delay in getting Ms. Badoi to the O.R. for laminectomy and evacuation of intradural hematoma, with the clinical problem first observed at 10 a.m., and surgery for definitive clinical intervention not being performed for more than 12 hours. The following day, Ms. Badoi developed altered mental status requiring emergency orotracheal intubation for airway protection, which was performed by Dr. McPherson, and complicated by a chip to the left front upper tooth. An MRI of the brain, at that time, for altered mental status revealed intraventricular hemorrhage and hydrocephalus, for which she was seen by Dr. Jim Forage, of neurosurgery, and brought to the operating room for placement of a right ventricular catheter. Note is made that the patient had an echocardiogram, which showed a good and well-preserved ejection fraction, and that a von Willebrand's panel was drawn, but not definitively conclusive for the presence of that disease. By May 22nd, a repeat MRI of the lumbar spine showed intradural blood products of mixed intensity, for which a lumbar drain was subsequently placed by interventional radiologist, Dr. Konchada, on May 23rd. It

was around this time that there was first mention of the clinical problem of HELLP syndrome (hemolysis, elevated liver enzymes, and low platelet count).

Supportive care continued for Ms. Badoi, with adjustment of her medications, and for which primary cancers and/or immunologic/rheumatologic diseases were considered, but ruled out. Ms. Badoi clinically progressed to become more awake and responsive, but continued to complain of a headache intermittently. By May 31st, she was felt to have a better sleep pattern, but persistent, asymmetric bilateral lower extremity weakness, with the left lower extremity being stronger than the right, but both lower extremities were felt to be clinically improving. Bladder training was begun, and intracranial pressures were normal, and the lumbar drain was left in place for possibly proceeding with CT-myelography before removing it. Eventually, her EVD and LD were clamped. An MRI of the thoracic spine revealed an epidural hematoma, for which Dr. Seiff confirmed a diagnosis of a thoracic epidural hematoma. Dr. Seiff returned Ms. Badoi to the operating room on June 02, 2017, for evacuation of thoracic epidural hematoma, including intraoperative neurophysiologic neuromonitoring. Dr. Seiff noted that Ms. Badoi had been progressing approximately two weeks status post T8-L3 laminectomies for evacuation of intradural hematoma, but with ongoing spastic paraplegia, for which postoperative imaging revealed an epidural hematoma, with persistent mass effect on the thoracic spine, especially at the T9-T11 levels, for which elective surgical evacuation was performed.

By the next morning, on June 03, 2017, at 11:25 a.m., Ms. Badoi was sitting up in bed and working with physical therapy, when she reported becoming dizzy, and was laid down, after which she became unresponsive, had seizure-like activity, and was hypotensive. A Code Blue was called, and Ms. Badoi lost her electrical rhythm and pulse, and extensive resuscitation occurred over more than 75 minutes, before she was eventually pronounced dead, after aggressive resuscitative efforts failed. The moribund event was felt to be: pulmonary embolism versus catastrophic CSN event versus MI.

An autopsy was performed by Dr. Alane Olson on June 04, 2017. The cause of death was felt to be as a result of bilateral pulmonary thromboemboli due to deep venous thrombosis secondary to acute spastic paraparesis, following intradural hemorrhage associated with epidural anesthesia. Other comorbid conditions included recent pregnancy, pre-eclampsia, and possible von Willebrand disease. Ms. Badoi's manner of death was ruled accidental (therapeutic complication).

After review of the medical records, I am in agreement with the pathologist, Dr. Olson, as it relates to the causation in this matter. Unfortunately, Ms. Badoi suffered severe complications of an epidural anesthetic at the time of her vaginal delivery, with the development of paresthesias, weakness, and subsequently spastic paraplegia of her lower

extremities. A thoracolumbar pathologic process was clearly identified on postpartum MRIs, requiring Dr. Seiff to emergently bring Ms. Badoi to the operating room for extensive T8-L3 laminectomies and evacuation of a compressive intradural spinal cord hematoma. Ms. Badoi's clinical course remained complicated, with the development of altered mental status and an intracranial subarachnoid hemorrhage requiring CSF diversion in the form of a right ventriculostomy catheter. She also subsequently required ongoing lumbar drainage by placement of a lumbar drain. Ms. Badoi's course was complicated by the presentation with and ongoing problems of thrombocytopenia, for which hematologic evaluation was never clearly definitive for the presence of von Willebrand disease, which, however, was suspected. Despite aggressive surgical treatment, she developed another thoracic epidural process requiring another surgery by Dr. Seiff on June 2nd. On the following day, she had an acute cardiopulmonary event resulting in pulseless asystole and for which resuscitation was unsuccessful, and for which she was pronounced dead.

Clinically, during her hospitalization, Ms. Badoi was felt to possibly have HELLP syndrome, which is a known complication of pregnancy, and at least, by some, felt to be a severe form of preeclampsia, otherwise known as gestational hypertension accompanied by proteinuria in the third trimester of pregnancy. The exact etiology of HELLP syndrome is not definitively known, but Ms. Badoi had a known risk factor of her age greater than 40. I am unaware of any known preventative management that could have been employed to avoid gestational hypertension and its complications in Ms. Badoi. HELLP syndrome has three definitive features, which include hemolysis, elevated liver enzymes, and platelet counts below normal. Ms. Badoi had at least two of these elements, though the records do not definitively reflect the presence of hemolysis after a very thorough hematologic workup. HELLP syndrome is known to be rare and occurs in less than 1% of all pregnancies, but possibly in 5% to 10% of patients with preeclampsia. Older maternal age, with pregnancy, is a known risk factor in the development of this syndrome, where preeclampsia is felt to occur in younger patients. While the possibility of HELLP syndrome as a clinical diagnosis was raised within the medical records of Ms. Badoi, no clinical classification was noted, and I will leave this to an obstetrical expert to discuss whether or not Ms. Badoi, in fact, had HELLP syndrome, and whether she had the presentation consistent with Class I disease, which is when statistically mortality can occur. The prognosis for HELLP syndrome is good, with most patients stabilizing within 24 to 48 hours, and noted protracted postpartum recovery times occurring in patients with Class I disease. Class I disease or that of complete HELLP syndrome is associated with the highest incidence of perinatal maternal morbidity and mortality, with death occurring in 1% to 3% of patients that develop HELLP, and with perinatal mortality rates of up to one-third. Morbid outcomes include DIC (disseminated intravascular coagulation), placental abruption, pulmonary edema, and renal failure.

Whether or not Ms. Badoi clinically developed a form of HELLP syndrome does not appear to be relevant to her cause of death. She clinically did present with elevated liver function tests and thrombocytopenia, and along with a clinical presentation of epistaxis, prompted Dr. Kim, of anesthesia, to appropriately refuse epidural anesthetic. Records document, however, that an epidural anesthetic was administered to Ms. Badoi for her vaginal delivery, which included episiotomy and subsequent repair. Unfortunately, the epidural anesthetic resulted in the development of an extensive intradural thoracolumbar hematoma. As a consequence of this intradural spinal cord bleed, symptomatic compression of Ms. Badoi's spinal cord developed and resulted in lower extremity paresthesias, numbness, and spastic weakness/paralysis. This resulted in the need for an emergency evacuation of the intradural hematoma, which occurred on the day after her vaginal delivery. Her clinical course was one of continued and ongoing lower extremity paraparesis and immobilization in the ICU, further complicated by altered mental status and intracranial subarachnoid hemorrhage, with hydrocephalus, requiring CSF diversion, with a right ventriculostomy. Despite aggressive management, her spinal cord hematoma redeveloped, requiring a return to the operating room more than two weeks after her initial spinal surgery. The following day, Ms. Badoi suffered a massive bilateral pulmonary embolism, which resulted in her death.

At autopsy, the pathologist correctly laid out the course of events that were causative in Ms. Badoi's death. To summarize, Ms. Badoi developed a rare and terrible complication of an epidural anesthetic at the time of her vaginal delivery. 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. Other bleeding events were noted, and she was given blood products to inhibit further bleeding complications. 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. Unfortunately, the cascade of events leading to activation of the clotting mechanisms resulted in the development of a likely pelvic vein thrombosis due to activation of the clotting cascade, as well as the pressure of intrauterine pregnancy and lower extremity immobilization in the ICU, and with lower extremity paraparesis/paraplegia. The thromboembolic event that culminated in this unfortunate cascade was that of a massive pulmonary embolism, and causally was the event, which led to the death of Ms. Badoi. 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. I reserve the right to amend or addend these findings as further records or documents become available.

I declare under penalty of perjury that the foregoing is true and correct pursuant to NRS 53.045.

Sincerely,

Bruce J. Hirschfeld, M.D., F.A.C.S.
BJH:kk

# EXHIBIT B

**A-18-775572-C**

**DISTRICT COURT**
**CLARK COUNTY, NEVADA**

| **Malpractice - Medical/Dental** | **COURT MINUTES** | **January 29, 2021** |
|---|---|---|

A-18-775572-C Estate of Alina Badoi, Plaintiff(s)
vs.
Dignity Health, Defendant(s)

**January 29, 2021** **3:00 AM** **Minute Order**

**HEARD BY:** Kierny, Carli **COURTROOM:** Chambers

**COURT CLERK:** Alice Jacobson

**RECORDER:**

**REPORTER:**

**PARTIES PRESENT:**

**JOURNAL ENTRIES**

- Estate of Alina Badoi v. Dignity Health A-18-775572-C Having considered Defendant Dignity Health s Motion for Judgment on the Pleadings and Defendant U.S. Anesthesia Partners (USAP) s Partial Joinder to Defendant Dignity Health s Motion and the parties opposition and replies to the same, as well as oral argument on January 27, 2021, the Court rules as follows:

Defendants requests for Judgement on the pleadings under Rule 12(c) is not premature.

NRCP 12(c) provides that motion for judgment on the pleadings can be filed after the pleadings are closed but within such a time as not to delay trial. NRCP 7 defines the pleadings as: (1) a complaint; (2) an answer to a complaint; (3) an answer to a counterclaim designated as a counterclaim; (4) an answer to a crossclaim; (5) a third-party complaint; (6) an answer to a third-party complaint; and (7) if the court orders one, a reply to an answer. While Plaintiff contends Defendants NRCP 12(c) motions are premature because the deadline to amend pleading and add parties has not yet expired, they provide no cited authority for this proposition. Furthermore, plaintiff did not ask to continue this motion past February 11 (the date cited in their motion) to add any additional parties or amend their pleadings. If such motion was made, it would have been freely granted. Therefore, the Court finds that Defendants requests are ripe for decision.

Plaintiff s claims as to negligent credentialing and negligent hiring, training, supervision, or retention both sound in professional negligence, not ordinary negligence.

NRS 41A.015 defines professional negligence as the failure of a provider of health care, in rendering services, to use the reasonable care, skill, or knowledge ordinarily used under similar circumstances by similarly trained and experienced providers of healthcare. A claim of negligent hiring, supervision or training does not fall under NRS 41A.015, but is rather classified as ordinary negligence, where the underlying facts of the case do not fall within this definition. Szymborski v. Spring Mountain Treatment Ctr., 133 Nev. 638, 647 (2017). The Plaintiff contends that the negligent hiring, training, supervisions or retention claims are ordinary negligence.

To determine whether a claim sounds in professional or ordinary negligence, the Court must look to whether Plaintiff s claims involved medical diagnosis, judgment, or treatment, or were based on the performance of nonmedical services. Id. at 641. If an alleged breach involves medical judgment, diagnosis, or treatment, it is likely a claim for medical malpractice. Id. There are circumstances where the negligence alleged involves a medical diagnosis, judgment, or treatment but the jury can evaluate the reasonableness of the health care provider s actions using common knowledge and experience, a situation that was addressed by the Nevada Supreme Court in Estate of Curtis v. South Las Vegas Medical Investors LLC. 136 Nev. Adv. Op. (2020). The court further held that negligent hiring, training, and supervision claims cannot be used to circumvent NRS Chapter 41A s requirements governing professional negligence lawsuits when the allegations supporting the claims sound in professional negligence. Where the allegations underlying negligent hiring claims are inextricably linked to professional negligence, courts have determined that the negligent hiring claim is better categorized as vicarious liability rather than an independent tort.

Applying that rule here, Plaintiff s complaint alleged that defendants had a duty to exercise due care in the selection, training, supervision, oversight, direction, retention and control of its employees and/or agents, retained by it to perform and provide services. Plaintiff further alleged that the breach of that duty caused Ms. Badoi s death. However, if the underlying negligence did not cause Alina s death, no other factual basis is alleged for finding Defendants liable for negligent hiring, training, and supervision. As the NV Supreme Court stated in Zhang, the medical injury could not have resulted from the negligent hiring, training, and supervision without the negligent rendering of professional medical services. Plaintiff s claims are inextricably linked to the underlying negligence, which is professional negligence. Therefore, the plaintiff s complaint is subject to NRS 41A.071 s affidavit.

Plaintiff s affidavit does not conform with these requirements and this Court has no discretion but to grant the defendant s motion

NRS 41A.071 provides that if an action for professional negligence is filed in the district court, the district court shall dismiss the action, without prejudice, if the action is filed without a supporting

affidavit from a medical professional. The affidavit must: (1) support the allegations contained in the action (2) Be submitted by a medical professional who practices or has practiced in an area that is substantially similar to the type of practice engaged in at the time of the alleged professional negligence; (3) Identify by name or describe by conduct, each provider of health care who is alleged to be negligent; and (4) Set forth factually a specific act or acts of alleged negligence separately as to each defendant in simple, concise, and direct terms. In the present case, the Plaintiff s affidavit, completed by licensed anesthesiologist Dr. Yaakov Beilin, is devoid of any support whatsoever for a negligent hiring or credentialing claim. Therefore, the Court finds that Dr. Beilin s affidavit is insufficient to satisfy the requirements of NRS 41A.071, and the Court must dismiss the claims that do not comply with 41A.071.

Accordingly, it is hereby ordered that both Defendant Dignity Health s Motion for Judgment on the Pleadings and Defendant USAP s Partial Joinder to Defendant Dignity Health s Motion are GRANTED and the Plaintiff s second and fourth claims are dismissed. Defendant Dignity Health did raise additional issues related to the negligent credentialing claim and the negligent hiring, training, supervision, or retention claim; however, as this decision dismisses those claims, those arguments are presently moot.

# EXHIBIT C

DISTRICT COURT
CLARK COUNTY, NEVADA

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,

Plaintiffs,

vs.

CASE NO. A-18-775572-C
DEPT. NO. XXXII

DIGNITY HEALTH, a Foreign Non-Profit Corporation d/b/a ST. ROSE DOMINICAN HOSPITAL-SIENA CAMPUS; JOON YOUNG KIM, M.D., an individual; U.S. ANESTHESIA PARTNERS, INC., a Foreign Corporation; DOES I through X and ROE BUSINESS ENTITIES XI through XX,

Defendants.

~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~

DEPOSITION OF
LIVIU RADU CHISIU

December 4, 2019

1:05 p.m.

7900 West Sahara Avenue
Suite 200
Las Vegas, Nevada

Gary F. Decoster, CCR No. 790



APPEARANCES OF COUNSEL

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WITNESS: LIVIU RADU CHISIU



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Deposition of Liviu Radu Chisiu
December 4, 2019

(Prior to the commencement of the deposition, all of the parties present agreed to waive statements by the court reporter, pursuant to Rule 30(b)(4) of NRCP.)

LIVIU RADU CHISIU, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. SCHNEIDER:

Q. Please state your name for the record.
A. Liviu Chisiu.
Q. Can you spell it for the court reporter, please?
A. L-I-V-I-U, last name C-H-I-S, as in Sam, I-U.
Q. And we introduced ourselves off the record, but for the record, you go by Leo?
A. Leo. Leo.
Q. Leo?
A. Leo, L-E-O, um-hum.
Q. And we would spell that L --
A. L-E-O.
Q. Leo, have you ever been deposed before?
A. To what, I'm sorry?
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or than getting more involved.
Q. Got it.
MR. SCHNEIDER: Okay. Pass the witness. I appreciate the time.
THE DEPONENT: Thank you.
EXAMINATION
BY MR. DOBBS:
Q. All right, Mr. Chisiu, I introduced myself -- do you guys want to take a break?
MR. TERRY: I do not.
MR. SCHNEIDER: You mispronounced it, by the way.
MR. DOBBS: Is it Chisiu, did I say it right?
MR. TERRY: Chisiu.
THE DEPONENT: Chisiu.
MR. DOBBS: Chisui, I'm sorry.
THE DEPONENT: It's okay, don't worry.
MR. DOBBS: I'm pronouncing phonetically.
MR. TERRY: I did that on the other case; you were there.
BY MR. DOBBS:
Q. I apologize for mispronouncing your name.
A. That's okay.
Q. I represent Dignity Health in this litigation. I'm probably going to jump around quite a

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bit.
A. Oh, that's wonderful.
Q. And I apologize in advance. I've been taking notes and so I'm just going to go through the way I took the notes and not try to keep it all together.
MR. TERRY: Sorry to interrupt, but do you -- just he's got child care issues.
MR. DOBBS: What time, I mean --
THE DEPONENT: If I can be out of here by 5:30, if not, we can, or whatever.
MR. DOBBS: Okay. Well, let's keep going.
THE DEPONENT: Yeah.
MR. DOBBS: I mean --
MR. TERRY: Do you need to make a call?
THE DEPONENT: If I need to stay more, I'm going to probably just need to let somebody know.
MR. DOBBS: What time do you need to make a call to make an arrangement in the event that we run that long?
THE DEPONENT: 4:30.
MR. DOBBS: 4:30. Okay, let's get started and see where we're at by 4:30 --
THE DEPONENT: Perfect.
MR. DOBBS: -- and then we can decide, all right?

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THE DEPONENT: Yes, please.
BY MR. DOBBS:
Q. When did you -- well, let me try to back up a little bit.
You stated that at some point prior to the deposition here today, you reviewed Alina's medical records?
A. Yes.
Q. And you assumed that that was thousands of pages of medical records; is that correct?
A. Yeah, I looked through, yeah.
Q. There was quite a few medical records?
A. Yes.
Q. When did you first request those medical records from St. Rose Hospital?
A. I requested some records even before her passing. I don't recall exactly the date.
Q. And so that was while she was still admitted to the hospital?
A. Yes, I think end of June.
Q. Well, she passed away the beginning of --
A. End of May, I'm sorry.
Q. Okay.
A. End of May.
Q. So the end of May of 2007, you requested the

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records from the hospital while she was still at the hospital?
A. Yes.
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 had you already had that conversation with the surgeon by that point who told you that the epidural was in the intradural space?
A. I guess after that, yeah. I don't -- I don't recall being that . . .
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

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Q. And then did you make any additional requests for the records after that or was that the last time that you personally requested the records?
A. Me personally, I requested with the attorney after the -- all the legal thing was done.
Q. Okay. So after the lawsuit was filed, you had an attorney, there was another request made for the records?
A. That's correct.
Q. Okay.
A. And that was made, yeah.
Q. And do you recall how long that took for you to get those records that time?
A. I have no idea. I don't know.
Q. After the -- strike that.
When was the first time -- or let me ask it a different way.
When was it that you decided to seek an attorney to represent you in this case? Was it while Alina was still in the hospital or was it after she had passed?
A. After she had passed.
Q. Do you remember approximately how long had passed before you sought an attorney?
A. Not that long. After that the days went

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pretty by -- I cannot recall, but it was pretty -- it should be in there when.
Q. Was it a month or less?
A. Till we consulted or what -- could you please repeat the question?
Q. When you decided to seek an attorney.
A. When we decided to seek, probably like, yeah, right after it happened, after, in the first month, we decided that we're going to seek it.
Q. When you say we, is that you and Alina's sister?
A. Yes.
Q. Could you provide me your educational background?
A. I have a degree in physical therapy.
Q. Where did you get that degree?
A. In Romania.
Q. Romania?
A. Yes.
Q. In what year?
A. Graduated in 2000.
Q. And when did you move to the United States?
A. Oh, no, I'm sorry, 2000 -- I moved to the United States -- I graduated in -- gosh, I'm old. I think -- I think I graduated '98.

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Q. And then you said you moved to the States in 2000?
A. 2000, yes.
Q. And do you practice physical therapy for a living?
A. No.
Q. And what do you do for a living?
A. Real estate.
Q. And how long have you been doing real estate?
A. From 2005, '6.
Q. Other than having a physical therapy degree, do you have any other medical training?
A. No.
Q. When was the last time that you practiced physical therapy, if you did practice after you got your degree?
A. I didn't really practice.
Q. You got the degree in physical therapy but didn't really work as a physical therapist ever?
A. No.
Q. And you and Alina were not married, true?
A. Correct.
Q. Did you guys have any plans to get married?
A. Yes.
Q. And what were the plans as far as getting

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married? Was it that you had a date set or --
A. No, we didn't have the date set. In the future.
Q. Was there a plan in place between you and Sophia -- not Sophia, sorry, strike that.
As far as you and Alina, had you discussed how it was that you and Alina would be caring for Sophia once she was born?
A. Together like a family.
Q. Was there any discussion of you or Alina quitting your job for one of you to stay at home with Sophia?
A. Well, I would be to spend a little bit more time since my time, my schedule, was flexible, and her to spend time on the afternoon and the evening time when she --
Q. So you, as a real estate agent, you're able to kind of pick and choose your hours?
A. Kind of, exactly, so she had the weekends, I'm more busy on the weekends, and . . .
Q. So neither of you were going to quit your job to stay at home?
A. No.
Q. Am I correct?
A. That's correct, yes.

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A. By the time I got back, yes.
Q. Okay.
A. But during the night, they were telling them the same thing, they were telling the nurses the same thing, the same thing.
Q. And when you had the discussion with the nurse about the elevated blood pressure and the numbness and tingling, what was the nurse's response to you?
A. They're going to talk to the doctor probably.
Q. And do you remember the name of this nurse that you spoke with?
A. Oh, no, no, but they were -- by the morning time, there was a different nurse, I'm sorry, yeah, so --
Q. But that's the nurse we're talking about, the morning of the 17th.
A. Yeah, no, I don't know her name.
Q. Okay. And she told you she was going to talk to the doctor?
A. Yes.
Q. And did she talk to the doctor, as far as you know?
A. I don't know. I don't know. As far as I know, I'm not sure, and I don't think that they did

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because I don't know that they gave her any medication to lower it. But my biggest concern, it was why was -- why they left it so high during the nighttime, a whole night.
Q. Did you ask them about that?
A. Why did they left it, no.
Q. But did you see a doctor that day, the 17th?
A. Yes.
Q. Okay. And so you come in in the morning at 8 o'clock. You talk to the nurse around that time. She tells you she's going talk to the doctor and then at some point later in the day the doctor comes in and you see the doctor?
A. That's correct, but in that moment, I was more worried about the numbness in the leg than the blood pressure.
Q. And do you recall who the first doctor was that you saw that day on the 17th?
A. H.
Q. And did you talk with him about the numbness and the blood pressure?
A. Yes.
Q. Do you recall exactly or precisely, approximately what time you spoke with Dr. H? Was it early afternoon, late afternoon?

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A. In the morning, but probably around 10:00-ish. I'm not sure, I don't, yeah.
Q. So closer to the morning, before noon?
A. Closer to -- somewhere there, yes.
Q. Okay. So you spoke with the nurse about your concerns around 8 o'clock or so and then you saw Dr. H around 10 o'clock or closer to noon?
A. Yeah, but the concerns to the nurse, they were addressed in the nighttime, too, about the blood pressure.
Q. And Dr. H's -- what was the plan of care at that time as far as he verbalized to you?
A. He forgot probably about the blood pressure and he went to bring the specialist to see why she's numb. I don't know, they didn't . . .
Q. And was it that after Dr. H comes in and has a specialist come, orders the specialist to come see Alina, there's the MRI -- is the MRI ordered at that time, after or do you recall specifically?
A. Well, the first MRI was sometime after noon and the second MRI was later after noon, like 7, 8 o'clock, the first one around 2 o'clock.
Q. Okay.
A. Something around, something like that.
Q. And do you know how long it took to get that

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first MRI done?
A. Not sure.
Q. Has any health care provider been critical of the timing of that MRI?
A. I'm sorry, could you please repeat?
Q. Has any health care provider voiced a criticism to you that that MRI should have been done sooner?
A. If any health care provider said that, no. Meaning like if another doctor came and they said, Well, did you --
Q. Yeah, did another doctor come in and say, or at any point in time, any health care provider, doctor, physician, nurse, that you've spoken with said, yeah, it took them too long to get that MRI done?
A. I don't recall.
Q. And I ask just because it seemed to me that you had suggested earlier that you were frustrated that it seemed to take long to get the MRI done.
A. Definitely.
Q. Okay. And when you say it took long, as far as an estimate, it took a couple hours to get it done, it -- how long from the time that you knew that an MRI was supposed to be done till the time it was

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completed?
A. Well, I'm not sure about the MRI, but when I look at the whole time from how long it took from the time that the problem started for her to get to the surgery, that seems like a long time because from -- yeah, so that seemed like a long time, being in -- considering the fact that you are in a hospital, you're not scheduling somewhere to go to.
Q. Has any health care provider, and that's a physician, nurse, expert, anybody that you've spoken with, told you that Alina should have been taken to surgery sooner than she was?
A. I don't recall.
Q. You don't recall if anybody's ever said that to you?
A. No. I was, we were talking, many people were giving opinions, I don't know, and it depending when, yeah, so I don't recall.
Q. It depends on when, like what do you mean?
A. Like right in that moment somebody to say, well, why are we waiting till 7 o'clock, which physician was -- no, I don't recall that.
Q. And I'm talking about at any point in time from during the hospitalization till today, that you've spoken with some sort of provider, expert or

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someone that has told you personally, yeah, it took too long for that surgery to get done?
A. If a physician from the hospital told me that or if it's my opinion or if it's my --
Q. And I'm not asking your opinion because you're not --
A. I'm not a, yeah.
Q. You're not a doctor, right?
A. Correct.
Q. And you're -- I mean, you had some training to be a physical therapist?
A. Yeah.
Q. But you've never worked in a hospital?
A. Correct.
Q. And you don't know how long it typically takes to get an MRI done, true?
A. Yes.
Q. And you don't know how long it takes to get a neurosurgeon or a spine surgeon in to do a back procedure?
A. Correct.
Q. So what I'm asking is, is not your opinion. I'm asking has anybody told you, be it a physician or a nurse or other person with medical expertise, that this procedure that was done on Alina took too long,

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that it should have been a lot sooner?
A. Well, I've been told that, but I'm not sure if they were experts or, yeah, I don't, I don't know of an expert to tell me that as of now.
Q. Okay. So as far as -- you said you've been told that. Who has told you that?
A. Well, I don't recall, but if it takes that many hours being in the hospital, to me it seems that it could have happened faster, and going back to what Dr. Seiff said after the surgery, that his opinion was that it's going to be just on couple vertebraes and it just got extended on eight of them.
So now if we're talking about if that surgery would have done faster, if that laminectomy should have been done on eight vertebrae or not, then I can say that a specialist told me that, yeah, if it would have been done faster, then it would not be that -- on that many levels, on that many vertebraes.
Q. Okay.
A. That bleeding was happening as we -- if those people were waiting for MRIs to work or not work, that bleeding was making her more paralyzed, so --
Q. Did Dr. Seiff tell you anything about that how much Alina had bled in her spine between the time that the MRI was done and the time that he did the

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surgery?
A. No, but I guess that can be seen in the records. He said when he went into surgery -- when he went out of the surgery that he expect it to go much faster and he expect it to be just on couple vertebrae, and instead of that, it was on eight.
Q. But did he say to you, had I gotten in there earlier, I could have done a lot better or we could have had a much better result?
A. Not that I recall.
Q. And it's my understanding that eventually, after the surgery, Alina was transferred to the ICU, correct?
A. Correct.
Q. And then it was a couple days later she was transferred back to the lower -- to another floor?
A. No, she was transferred to Mommy and the Baby, yes.
Q. Okay. So the Mommy and Baby floor --
A. Is where the, yes, the third floor, where the delivery is. She was not transferred to intermediate care or other type of thing, so right from the ICU one day after the surgery, sent her up to, yeah.
Q. Okay. And how long was she on that floor before she started -- the confusion started?

# EXHIBIT D

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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

| | |
|---|---|
| LIVIU RADU CHISIU, as Special Administrator for 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<br><br>Plaintiffs,<br><br>vs.<br><br>DIGNITY HEALTH, a Foreign Non-Profit Corporation d/b/a ST. ROSE DOMINICAN HOSPITAL – SIENA CAMPUS; JOON YOUNG KIM, M.D., an Individual; U.S. ANESTHESIA PARTNERS, INC., a Foreign Corporation; DOES I through X, inclusive; and ROE BUSINESS ENTITIES XI through XX, inclusive,<br><br>Defendants. | CASE NO.: A-18-775572-C<br>DEPT NO.: XVII<br><br>**DEFENDANT DIGNITY HEALTH d/b/a ST. ROSE DOMINICAN HOSPITAL'S MOTION FOR JUDGMENT ON THE PLEADINGS AS TO PLAINTIFF'S CLAIMS FOR NEGLIGENT CREDENTIALING AND NEGLIGENT HIRING, TRAINING, AND SUPERVISION**<br><br>**HEARING REQUESTED** |

COMES NOW, Defendant, ST. ROSE DOMINICAN HOSPITAL – SIENA CAMPUS, by and through its attorneys of record, HALL PRANGLE & SCHOONVELD, LLC, and hereby files this Motion for Judgment on the Pleadings as to Plaintiff's Claims for Negligent Credentialing and Negligent Hiring, Training, and Supervision.

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This Motion is made and based on the papers and pleadings on file herein, the following points and authorities submitted in support hereof, the Exhibits attached hereto and any oral arguments that be heard regarding this matter.

DATED this 11th day of December, 2020.

HALL PRANGLE & SCHOONVELD, LLC

By: */s/:Tyson J. Dobbs*

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## MEMORANDUM OF POINTS & AUTHORITIES

### I.

### INTRODUCTION

Plaintiffs' Complaint is premised on professional negligence of an anesthesiologist, Defendant Joon Young Kim, M.D., during Plaintiff Alina Badoi's admission to St. Rose Hospital in May of 2017. Specifically, Plaintiffs allege that negligent placement of an epidural led to a pulmonary thromboemboli that caused Alina Badoi's death.

The Complaint identifies the following causes of action arising from the factual allegations: (1) Professional Negligence; (2) Negligent Credentialing - against Defendant St. Rose Hospital; (3) Fraudulent Concealment and/or Omissions; (4) Negligent Hiring, Training, Retention, and Supervision - against Defendants St. Rose Hospital and U.S. Anesthesia; (5) Ostensible Agency/Vicarious Liability- against Defendants St. Rose Hospital and U.S. Anesthesia; and (6) Wrongful Death Pursuant to NRS 41.085.

As set forth in detail below, Judgment on the Pleadings is appropriate as to Plaintiffs' Second and Fourth Causes of Action – Negligent Credentialing and Negligent Hiring, Training, and Supervision, respectively. First, Plaintiffs' claim for Negligent Credentialing should be dismissed because it is not a recognized cause of action in Nevada. Next, Plaintiffs have not

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stated a claim for relief pursuant to NRCP 12(b)(5) for Negligent Hiring, Training, and Supervision given the Complaint acknowledges Dr. Kim was an independent contractor rather than an employee of St. Rose Hospital. Nevertheless, both Plaintiffs' claims of Negligent Credentialing and Negligent Hiring, Training, and Supervision sound in professional negligence but fail to comply with NRS 41A.071. Judgment on the Pleadings should therefore be entered as to each claim.

## II.

## STATEMENT OF FACTS

According to the Complaint and expert affidavits,[1] Alina Badoi was admitted to St. Rose Hospital on May 15, 2017 for induction of labor. *See generally* Complaint. Prior to giving birth, the anesthesiologist, Dr. Joon Young Kim, placed an epidural catheter for pain. *See generally* Complaint, Exhibit A at p. 1. Ms. Badoi developed spastic paraparesis and an intradural hematoma for which she underwent a laminectomy from T8 to L3. *Id.* Lumbar spinal and interventricular drains were placed, and Ms. Badoi remained hospitalized. *Id.* She passed away on June 3, 2017 due to pulmonary thromboemboli. *Id.*

Plaintiffs' Complaint alleges that Ms. Badoi's care and treatment by St. Rose Hospital and Dr. Joon Young Kim fell below the standard of care. *Id.* at p. 2. According to Plaintiffs' expert, Dr. Yaakov Beilin, St. Rose Hospital and Dr. Kim Young Joon "failed to fully assess the bleeding risk of Alina Badoi prior to place her epidural catheter" and placed "an epidural catheter in a patient at significant risk for bleeding." *Id.* Additionally, Dr. Beilin believes these deviations from the standard of care resulted in the subdural, intradural, and epidural hematomas Ms. Badoi developed which, in turn, resulted in her death. *Id. Dr. Beilin's declaration does not, however, offer an opinion that any healthcare provider involved in Plaintiff's treatment was improperly hired, trained, or credentialed. See id.*

Relevant to Plaintiffs' claims for Negligent Hiring, Training, Retention and Supervision, the Complaint alleges that Dr. Kim was employed by Defendant U.S. Anesthesia Partners and was an independent contractor of St. Rose Hospital, as follows:

[1] Plaintiffs' factual allegations are to be treated as true for purposes of this motion only.

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> 6. At all times relevant hereto, Defendant Joon Young Kim, M.D. (hereinafter "Kim" and/or "Dr. Kim"), was and is an individual licensed to practice medicine in the State of Nevada, and practicing in the specialty of anesthesia in Clark County, Nevada.
>
> 7. At all time relevant hereto, Defendant, U.S. Anesthesia Partners, Inc., was and is a Foreign Corporation authorized to do and doing business in Clark County, Nevada. At all times relevant hereto, ***Defendant U.S. Anesthesia Partners, Inc. employed Defendant Kim***.
>
> . . .
>
> 60. Decedent entrusted her care and treatment to Defendants; Defendant St. Rose selected Defendant Kim to treat Alina Badoi as an anesthesiologist and Decedent reasonably believed Defendant Kim was an employee or agent of Defendant St. Rose; Decedent and Plaintiffs were not put on notice ***Defendant Kim was an independent contractor***.

As set forth below, St. Rose Hospital is entitled to judgment on the pleadings as to Plaintiffs' claims for Negligent Credentialing and Negligent Hiring, Training, and Supervision.

## III.

## STANDARD OF REVIEW

A 12(c) motion provides "a means for disposing of cases" when judgment on the merits presents only a question of law. *Bernard v. Rockhill Dev. Co.*, 103 Nev. 132, 135, 734 P.2d 1238, 1241 (1987). "After the pleadings are closed but within such time as not to delay trial, any party may move for judgment on the pleadings." Nev. R. Civ. P. 12(c). The standard under Rule 12(c) is the same as for a 12(b)(5) motion to dismiss for failure of the pleading to state a claim for relief. *Sadler v. PacifiCare of Nev.*, 130 Nev. Adv. Op. 98, at 3, 340 P.3d 1264, 1266 (2014). The district court may grant a motion for judgment on the pleadings when the material facts of the case "are not in dispute and the movant is entitled to judgment as a matter of law." NRCP 12(c); *Bonicamp v. Vasquez*, 120 Nev. 377, 379, 91 P.3d 584, 585 (2004). In reviewing a judgment on the pleadings, the court accepts the factual allegations in the complaint as true and draw all inferences in favor of the nonmoving party. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d, 670, 672 (2008) (setting forth the standing of review for an order dismissing a complaint under NRCP 12(b)(5)).

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## IV.

## ARGUMENT

### A. Judgment on the Pleadings is warranted as to Plaintiffs' claim for Negligent Credentialing – Second Cause of Action – since no such claim is recognized in Nevada.

The Nevada Supreme Court has never recognized a cause of action for negligent credentialing. *See, e.g. Nogle v. Beech St. Corp.*, No. 2:10-CV-01092-KJD, 213 WL 1182680, at *3 (D. Nev. Mar. 20, 2013) (stating that "no [Nevada] authority has specifically recognized a cause of action for negligent credentialing"), *aff'd*, 619 F. Appx. 639 (9th Cir. 2015). Since the elements of such a cause of action have not been established, Plaintiffs' attempt to plead such a cause of action necessarily fails.

Nonetheless, this Court should consider the allegation of negligent credentialing contradicted by Plaintiff's concession in the Complaint that "[a]t all times relevant . . . Defendant Joon Young Kim, M.D. . . . was and is an individual licensed to practice medicine in the State of Nevada, and practicing in the specialty of anesthesia in Clark County, Nevada." Therefore, St. Rose Hospital is entitled to judgment on the pleadings given the inexistence of a viable cause of action for Negligent Credentialing in Nevada.

### B. Judgment on the Pleadings is warranted as to Plaintiffs' Claim for Negligent Hiring, Training, Supervision, or Retention – Fourth Cause of Action – since the Complaint does not state a claim for relief against St. Rose Hospital under NRCP 12(b)(5).

Plaintiffs' Claim for Negligent Hiring, Training, and Supervision fails since Dr. Kim is alleged to have been employed by U.S. Anesthesia Partners – not St. Rose Hospital. As stated by the Nevada Supreme Court: "[i]t is a basic tenet that for an employer to be liable for negligent hiring, training, or supervision of an employee, *the person involved must actually be an employee.*" *Rockwell v. Sun Harbor Budget Suites*, 112 Nev. 1217, 1226, 925 P.2d 1175, 1181 (1996) (emphasis added).

Here, however, as specifically alleged in the Complaint: "[a]t all times relevant hereto, *Defendant U.S. Anesthesia Partners, Inc. employed Defendant Kim*." *See* Exhibit A at ¶ 7 (emphasis added). On the contrary, to support their claim for Ostensible Agency against St. Rose Hospital – the Fifth Cause of Action – Plaintiff's expressly acknowledge that Dr. Kim was an

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*independent contractor*. *See id*. at ¶ 60. Therefore, even when the allegations of the Complaint are assumed to be true for the purposes of this Motion, Plaintiffs' have failed to plead a necessary element of a Negligent Hiring claim – that Dr. Kim was an employee of St. Rose Hospital. Plaintiffs' have not alleged an employment relationship between Dr. Kim and St. Rose Hospital because they know there is no such relationship. Therefore, Judgment on the Pleadings should be entered for St. Rose Hospital as to Plaintiffs' Cause of Action for Negligent Hiring, Training, and Supervision.

**C. Plaintiffs' Second and Fourth Causes of Action fail under NRS 41A.071.**

Defendant is also entitled to Judgment on the Pleading as to Plaintiffs' claims for Negligent Credentialing and Negligent Hiring, Training, or Supervision because such claims contemplate professional negligence of a provider of health care but are not supported by an affidavit of merit as required by NRS 41A.071.

Nev. Rev. Stat § 41A.071 states:

> If an action for professional negligence is filed in the district court, the district court *shall dismiss the action*, without prejudice, if the action is filed without an affidavit that:
>
> 1. Supports the allegations contained in the action;
> 2. Is submitted by a medical expert who practices or has practiced in an area that is substantially similar to the type of practice engaged in at the time of the alleged professional negligence;
> 3. Identifies by name, or describes by conduct, each provider of health care who is alleged to be negligent; *and*
> 4. Sets forth factually a specific act or acts of alleged negligence separately as to each defendant in simple, concise and direct terms.

Nev. Rev. Stat § 41A.071 (emphasis added).

The Nevada Supreme Court has held that a complaint filed without a qualifying expert affidavit is "is void and must be dismissed; no amendment is permitted." *Washoe Med. Ctr. v. Second Judicial Dist. Court*, 122 Nev. 1298, 1304, 148 P.3d 794 (2006). District courts "have no discretion with respect to dismissal" where a complaint fails to comply with NRS 41A.071. *Id.*

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The Nevada Supreme Court has further clarified that NRS 41A.071 "applies even when only some of the claims violate the NRS 41A.071 affidavit requirement." *Fierle v. Perez*, 125 Nev. 728, 738, 219 P.3d 906, 912 (2009) (affirming dismissal of a negligent training and supervision claim for the failure to comply with the affidavit requirement although a claim for Res Ipsa Loquitur survived) *overruled on other grounds by Egan v. Chambers*, 129 Nev. Adv. Op. 25, 299 P.3d 364, 367 (2013). Thus "the claims can be severed, dismissing some while allowing others to proceed." *Id.* Accordingly, where a Complaint contemplates professional negligence, each claim that is not supported by an expert affidavit in accordance with NRS 41A.071 must be dismissed.

Here, as set forth below, Plaintiffs' claims for Negligent Credentialing and Negligent Hiring, Training, and Supervision contemplate professional negligence because they are inextricably tied to the alleged misplacement of an epidural. However, the claims are subject to dismissal given there is no support for the claims in the affidavit of merit attached to the Complaint.

**1. Plaintiffs' Claims for Negligent Credentialing and Negligent Hiring, Training, and Supervision are subject to NRS 41A.**

Professional Negligence is defined by NRS 41A.017 as "the failure of a provider of health care, in rendering services, to use the reasonable care, skill or knowledge ordinarily used under similar circumstances by similarly trained and experienced providers of health care." A "provider of health care" is specifically defined to include physicians, nurses, and hospitals. Nev. Rev. Stat. 41A.017. St. Rose Hospital is therefore a provider of health care warranting protection under NRS 41A given its status as a hospital.

Hence, the dispositive issue for application of NRS 41A is whether an alleged failure by a hospital to credential a physician, or otherwise fail to hire, train or supervise a healthcare provider, constitutes "rendering services" under NRS 41A.017. To answer the question the Nevada Supreme Court conducts a two-part analysis: (1) does the underlying negligence that ultimately caused injury implicate medical judgment, treatment, or diagnosis; and (2) is the direct claim against the facility inextricably tied to the underlying negligence. Since both these

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questions are answered in the affirmative, each claim is subject to NRS 41A and must be dismissed since they are not supported by an expert affidavit as required by NRS 41A.071.

***a. The underlying conduct alleged to have caused injury – misplacement of an epidural by a physician – constitutes medical treatment subject to NRS 41A.***

To determine whether conduct contemplates professional as opposed to ordinary negligence, Courts look to the "gravamen or substantial point of essence" of each claim for relief. *Szymborski v. Spring Mountain Treatment Ctr.*, 133 Nev. 638, 647, 403 P.3d 1280, 1288 (2017). The Nevada Supreme Court has held that "[a]llegations of breach of duty involving medical judgment, diagnosis, or treatment indicate that a claim is for medical malpractice." *Szymborski v. Spring Mountain Treatment Ctr.*, 403 P.3d 1280, 1284 (Nev. 2017). Moreover, "if the jury can only evaluate the plaintiff's claims after presentation of the standards of care by a medical expert, then it is a medical malpractice claim." *Id*. (citing *Bryant v. Oakpointe Villa Nursing Centre*, 471 Mich. 411, 684 N.W.2d 864, 872 (2004); *Humboldt Gen. Hosp. v. Sixth Judicial Dist. Court*, 132 Nev. ——, 376 P.3d 167, 172 (2016)).

Here, Plaintiffs' contention supporting liability of both Dr. Kim and St. Rose Hospital is that Dr. Kim "failed to fully assess the bleeding risk of Alina Badoi prior to placing her epidural catheter," and Dr. Kim placed "an epidural catheter in a patient at significant risk for bleeding." Allegedly, these failures resulted in an intradural hematoma that then led to a pulmonary thromboemboli that caused Alina Badoi's death. These allegations undoubtedly contemplate medical judgment, treatment, or diagnosis under *Szymborski*, and are therefore appropriately designated by Plaintiffs' Complaint as claims sounding in professional negligence.

***b. Plaintiffs' derivative claims – Negligent Credentialing and Negligent Hiring, Training, and Supervision – are inextricably tied to the underlying professional negligence.***

Direct claims against a hospital are subject to NRS 41A if they are "inextricably linked" to underlying professional negligence. *See Estate of Curtis v. S. Las Vegas Med. Inv'rs, LLC*, 136 Nev. Adv. Op. 39, 466 P.3d 1263, 1267 (2020). The "direct claim" at issue in *Estate of Curtis*, was negligent, hiring, training, and supervision. The Court specifically held:

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> negligent hiring, training, and supervision claims cannot be used to circumvent NRS Chapter 41A's requirements governing professional negligence lawsuits when the allegations supporting the claims sound in professional negligence.

*Id.* at 1267.

In *Estate of Curtis* a nurse was alleged to have provided plaintiff-decedent, Curtis, with the wrong medication and thereafter is alleged to have failed to monitor or treat Curtis leading to her death. *Id.* The plaintiff alleged that the defendant facility's "negligent mismanagement, understaffing, and operation of the nursing home led to the erroneous administration of morphine and the failure to treat and monitor Curtis as the morphine took her life." *Id.*

The plaintiff in *Estate of Curtis* argued against the applicability of NRS 41A stating that the claims in that case were direct claims against the employer and that the claims contemplated ordinary negligence. The Supreme Court of Nevada disagreed stating: *"[d]irect liability claims against a nursing home facility do not excuse compliance with NRS 41A.071's affidavit requirement." Id*. at 1267 (emphasis added). The court added that a direct liability claim against a facility *only* "escapes NRS 41A.071's affidavit requirement 'where the underlying facts of the case do not fall within the definition of professional negligence." *Id.* The Court further explained that "[w]here the allegations underlying negligent hiring claims are inextricably linked to professional negligence, . . . *the negligent hiring claim is better categorized as vicarious liability rather than an independent tort.*" *Id.* at 1267. Accordingly, applying its rational to the facts in *Estate of Curtis*, the Nevada Supreme Court reasoned:

> Applying that rule here, the Estate's complaint alleged that LCC 'had a duty to properly train and supervise its staff and employees,' i.e., that LCC negligently trained and supervised its nurses, and it further alleged that the breach of that duty caused Curtis's death. ***Thus, critically, if the underlying negligence did not cause Curtis's death, no other factual basis was alleged for finding LCC liable for negligent staffing, training, and budgeting.*** We conclude that the Estate's claims are inextricably linked to the underlying negligence, and if the underlying negligence is professional negligence,. . . the Estate's complaint is subject to NRS 41A.071's affidavit requirement.

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*Id.* (emphasis added).[2]

Likewise, here, if the underlying professional negligence regarding the placement of the epidural catheter did not cause Ms. Badoi's death, "no other factual basis is alleged" for finding St. Rose Hospital liable for negligent credentialing or negligent hiring, training, or supervision. Accordingly, Plaintiffs' claims are inextricably linked to the underlying negligence, and since the underlying negligence is indisputably professional negligence, Plaintiffs' claims are subject to NRS 41A.

**2. The Declaration attached to the Complaint does not satisfy NRS 41A.071 as to the claims for Negligent Credentialing or Negligent Hiring, Training, or Supervision.**

Given Plaintiff's claims are subject to NRS 41A, the claims must be supported by an affidavit of merit. As set forth above, NRS 41A.071 "applies even when only some of the claims violate the NRS 41A.071 affidavit requirement." *Fierle v. Perez*, 125 Nev. 728, 738, 219 P.3d 906, 912 (2009) (affirming dismissal of a negligent training and supervision claim for the failure to comply with the affidavit requirement although a claim for Res Ipsa Loquitur survived) *overruled on other grounds by Egan v. Chambers*, 129 Nev. Adv. Op. 25, 299 P.3d 364, 367

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[2] Courts in other jurisdictions have applied similar reasoning to find allegations of negligent credentialing to be "professional negligence". *See, e.g. Bell v. Sharp Cabrillo Hosp.*, 260 Cal. Rptr. 886, 896 (Ct. App. 1989) (concluding that a claim for negligent credentialing is properly characterized as professional negligence); *See, also Garland v. Community Hosp., v. Rose*, 156 S.W.3d 541, 545-46 (Tex. 2004) (finding "the quality of a health care provider's medical staff is intimately connected with patient care" and, therefore, "[a] hospital's credentialing of doctors is necessary to that core function and . . . an inseparable part of the health care rendered to patients"); *Winona Mem'l Hosp., Ltd. P'ship v. Kuester*, 737 N.E. 2d 824, 828 (Ind. Ct. App. 2000) (holding negligent credentialing claims "directly related to the provision of health care" and thus within Indian's Medical Malpractice Act). In *Bell v. Sharp Cabrillo Hosp.*, the California Court of Appeals for the Fourth District reasoned that:

> the competent selection and review of medical staff is precisely the type of professional service a hospital is licensed and expected to provide, for it is in the business of providing medical care to patients and protecting them from an unreasonable risk of harm while receiving medical treatment. . . . [T]he competent performance of this responsibility is "inextricably interwoven" with delivering competent quality medical care to hospital patients.
>
> . . .
>
> [b]ecause a hospital's effectiveness in selecting and periodically reviewing the competency of its medical staff is a necessary predicate to delivering quality health care, its inadequate fulfillment of that responsibility constitutes "professional negligence" involving conduct necessary to the rendering of professional services within the scope of the services a hospital is licensed to provide.

*Bell*, 260 Cal. Rptr. 886, 896 (Ct. App. 1989).

(2013). Thus "the claims can be severed, dismissing some while allowing others to proceed." *Id.* As stated by the Nevada Court of Appeals:

> NRS 41A.071 requires dismissal of any medical malpractice ***claim*** that is unaccompanied by an affidavit of merit supporting the allegations contained in the complaint and signed by a medical expert who practices or has practiced in an area that is substantially similar to the type of practice engaged in at the time of the alleged malpractice.

*See Dauksavage v. Hulka*, 67034, 2015 WL 9485180, at *2 (Nev. App. Dec. 17, 2015) (unpublished) (citing to *Fierle v. Perez*, 125 Nev. at 736, 219 P.2d at 911) (Emphasis added).

Here, although Plaintiffs have attached to the Complaint a declaration from Yaakov Beilin, M.D., the affidavit makes no reference to any negligence in the credentialing process. Likewise, Dr. Beilin offers no criticisms of the hiring, training, or supervision of any provider at St. Rose Hospital. On the contrary, Dr. Beilin merely offers an opinion that Dr. Kim failed to assess the patient's bleeding risk prior to placing an epidural catheter. Therefore, although Dr. Beilin's affidavit may be sufficient to state a professional negligence claim against Dr. Kim in relation to the epidural placement, as well as an ostensible agency claim against the hospital arising out of Dr. Kim's treatment, the claims for Negligent Credentialing and Negligent Hiring, Training, and Supervision are *void ab initio*. Judgment on the Pleadings should therefore be entered in favor of St. Rose Hospital as to these claims.

## V.

## CONCLUSION

Based upon the foregoing, Defendant respectfully request that this Court enter Judgment on the Pleadings as to Plaintiffs' Claims for Negligent Credentialing and Negligent Hiring, Training, and Supervision.

DATED this 11th day of December, 2020.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of HALL PRANGLE & SCHOONVELD, LLC; that on the 11th day of December 2020, I served a true and correct copy of the foregoing **DEFENDANT DIGNITY HEALTH d/b/a ST. ROSE DOMINICAN HOSPITAL'S MOTION FOR JUDGMENT ON THE PLEADINGS AS TO PLAINTIFF'S CLAIMS FOR NEGLIGENT CREDENTIALING AND NEGLIGENT HIRING, TRAINING, AND SUPERVISION** via the 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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# EXHIBIT E

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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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;

Plaintiff,

vs.

DIGNITY HEALTH, a Foreign Non-Profit Corporation d/b/a ST. ROSE DOMINICAN HOSPITAL – SIENA CAMPUS; JOON YOUNG KIM, M.D., an Individual; U.S. ANESTHESIA PARTNERS, INC., a Foreign Corporation; DOES I through X; and ROE BUSINESS ENTITIES XI through XX, inclusive,

Defendants.

CASE NO.: A-18-775572-C
DEPT NO.: 2

**PLAINTIFFS' OPPOSITION TO DEFENDANT DIGNITY HEALTH D/B/A ST. ROSE DOMINICAN HOSPITAL'S MOTION FOR JUDGMENT ON THE PLEADINGS AS TO PLAINTIFF'S CLAIM FOR NEGLIGENT CREDENTIALING AND NEGLIGENT HIRING, TRAINING AND SUPERVISION AND DEFENDANT U.S. ANESTHESIA PARTNERS, INC.'S PARTIAL JOINDER THERETO**

Date of Hearing: 1/26/2021
Time of Hearing: 1:30 p.m.

Plaintiffs Liviu Radu Chisiu, as Special Administrator of the Estate of Alina Badoi, Deceased, and Liviu Radu Chisiu, as Parent and Natural Guardian of Sophia Relina Chisiu, a minor, as Heir of the Estate of Alina Badoi, Deceased, by and through their undersigned counsel, hereby oppose Defendant Dignity Health d/b/a St. Rose Dominican Hospital's ("St. Rose")

Motion for Judgment on the Pleadings as to Plaintiff's Claims for Negligent Credentialing and Negligent, Hiring, Training and Supervision and Defendant U.S. Anesthesia Partners Inc.'s ("USAP") Partial Joinder Thereto ("Defendants' Motion"). Decedent Alina Badoi received substandard prenatal, labor and delivery care and medical treatment during her admission at St. Rose, and ultimately died as a result.

Defendants argue Plaintiffs' negligent credentialing and negligent hiring, supervision and retention claims should be dismissed because they are not supported by an expert affidavit made pursuant to NRS 41A.071 and in any event, lack a sufficient factual basis. Defendants' Motion fails because these causes of action are not subject to the expert affidavit requirements of NRS 41A.071, given they are claims of ordinary negligence, not professional malpractice. Nevertheless, even if an expert affidavit was required, Plaintiffs have met that burden because the underlying medical malpractice allegations are supported by the affidavit of Dr. Yaakov Beilin.

Moreover, assuming the truth of Plaintiffs' allegations, there is more than a sufficient factual basis for negligent credentialing. To the extent there is any deficiency, Plaintiffs are entitled to the benefit of a relaxed pleading standard because the documents, information and records needed to include more specificity (or an expert affidavit specific to negligent credentialing) are solely within Defendants' knowledge and control. *See Rocker v. KPMG LLP*, 112 Nev. 1185, 148 P.3d 703 (2006)(overruled on other grounds in *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 181 P.3d 670 (2008)).

This Opposition is made and based upon the following Memorandum of Points and Authorities, the pleadings and papers on file herein and any oral argument this Court may entertain at the time of the hearing in this matter.

## MEMORANDUM OF POINTS AND AUTHORITIES

## I.

## FACTS

### A. FACTS ALLEGED IN THE COMPLAINT.

On May 15, 2017, Decedent Alina Badoi (hereinafter "Alina") was admitted to St. Rose to give birth to her child, Sophia. Complaint at ¶ 15, on file herein. Sophia was delivered vaginally

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on May 16, 2017. *Id*. On May 16, 2017 at 00:58 PDT, prior to the delivery of her child, Defendant Joon Young Kim, M.D. (hereinafter "Dr. Kim"), an anesthesiologist,[1] was consulted for the purpose of placing an epidural. Exhibit 2 at pg. 4 and 22, attached to Complaint. However, Dr. Kim noted concerns about Alina's presentation with thrombocytopenia (low platelet count) and epistaxis (nose bleed). *Id*. Dr. Kim ordered a manual platelet count be done before he would make a decision regarding placement of epidural anesthesia. *Id*.

At 2:15 PDT, Dr. Kim apparently spoke with Ronaldo Abuan in the lab at St. Rose regarding his manual platelet count and subsequently advised that he would not place the epidural anesthetic in Alina due to a dramatic various in the platelet count between the automated test and the manual test. *Id*. At 3:00 PDT, Dr. Herpolsheimer purportedly discussed pain management options with Alina since Dr. Kim would not place an epidural. *Id*. at pg. 4.

At 14:45 PDT, Alina delivered her baby Sophia vaginally with epidural anesthesia. *Id*. at pg. 22. Within six (6) hours of delivery, Alina began to experience clinical complications postpartum. *Id*. At 20:45 PDT, Alina developed symptoms of tingling and numbness (parathesias) involving her lower extremities and associated with dizziness. *Id*. Alina's OBGYN, Arthur Herpolsheimer, M.D. (hereinafter "Dr. Herpolsheimer"), was notified of this at 20:58 PDT. *Id*. at pgs. 5 and 22.

According to the records, on May 17, 2017 at 7:05 PDT, Dr. Kim "state[d] he does not thinking itching, pain numbness is related to epidural." *Id*. at pg. 7. At 10:45 PDT, Dr. Herpolsheimer personally evaluated Alina and raised initial concern about a possible epidural hematoma. *Id*. at pg. 8. Alina's lower extremity symptoms became progressively worse and she subsequently developed acute spastic paraparesis and underwent a laminectomy from T8 to L3 for an intradural hematoma, *inter alia*, more than twelve (12) hours after her clinical problem was first observed. Complaint at ¶ 16; Exhibit 2 at pg. 24.

Alina subsequently developed epidural and subdural hematomas. Exhibit 1 at pg. 1, attached to Plaintiffs' Complaint. Lumbar spinal and interventricular drains were placed during

[1] Defendant Dr. Kim is employed by and/or associated with Defendant USAP.

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Alina's clinical course. *Id*.; Complaint at ¶ 16. While attempting physical therapy at St. Rose, Alina coded and passed away on June 3, 2017. *Id*.

An autopsy was performed on June 4, 2017. Exhibit 2 at pg. 22. The Clark County Coroner concluded Alina'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. Complaint at ¶ 17.

**B. RELEVANT PROCEDURAL HISTORY.**

In the days following Alina's untimely death, Alina's partner and Sophia's father, Liviu Radu Chisiu (hereinafter "Leo"), requested Alina's entire medical file from St. Rose. Some records were eventually provided to him. On January 23, 2018, Leo was duly appointed as Special Administrator of the Alina's Estate. The Order Appointing Special Administrator granted Leo the ability to subpoena records related to the investigation of the instant action. *See* Order, on file in Case No. P-17-093721-E. Thereafter, on February 23, 2018, and again on March 20, 2018, Plaintiffs served St. Rose with subpoenas duces tecum, requesting the production of Alina's entire medical file. The responsive records were provided to Plaintiffs' counsel on or about May 11, 2018. Plaintiffs commenced the instant litigation on June 5, 2018. On August 30, 2018, St. Rose served its Initial List of Witnesses and Documents Pursuant to NRCP 16.1, which contained another set of Alina's medical records.

To date, Plaintiffs have received at least three (3) sets of records—each one with differing numbers of pages. Each production of records contained a Certificate of Custodian of Records from St. Rose dated June 7, 2017, July 18, 2017, and March 20, 2018, respectively. The June 7th production contained approximately 4,448 pages of records; the July 18th production contained approximately 4,297 pages of records; and the March 20th production contained approximately 3,658 pages of records. Importantly, none of the Certificates of Custodian of Records indicates the number of pages produced. Rather, the affidavits vaguely state that "the deponent has examined the original records on file, and has made a true and exact copy of them and that the reproduction of them attached hereto is complete." Plaintiffs remain unable to confirm whether

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they have received a complete copy of Alina's medical records. Confirming which records may have been intentionally omitted and/or altered will have to be ascertained through discovery.

## II.

## LEGAL ARGUMENT

### A. DEFENDANT'S NRCP 12(C) MOTION IS PREMATURE AND MUST BE SUMMARILY DENIED.

Pursuant to NRCP 12(c), "*[a]fter the pleadings are closed* but early enough not to delay the trial, a party may move for judgment on the pleadings." (emphasis added). Thus, a motion under NRCP 12(c) is appropriate only after the deadline to amend pleadings and add parties has expired. In this case, the deadline to amend pleadings and add parties does not expire until February 11, 2021. Therefore, the pleadings in this case are not "closed" and Defendants' Motion should be denied as premature.

Even if Defendants' Motion was not premature, it nevertheless fails as a substantive matter. Judgment on the pleadings under NRCP 12(c) is appropriate "when material facts are not in dispute and a judgment on the merits can be achieved by focusing on the content of the pleadings." *Bernard v. Rockhill Dev. Co.*, 103 Nev. 132, 136, 734 P.2d 1238, 1241 (1987). "Moreover, a defendant will not succeed on a motion under Rule 12(c) if there are allegations in the plaintiff's pleadings that, if proved, would permit recovery." *Id*. A motion under this rule "has utility only when all material allegations of fact are admitted in the pleadings and only questions of law remain." *Id*.

Also significant here, if the facts necessary for pleading with more particularity are uniquely within the defendant's knowledge or readily obtainable by the defense, a relaxed pleading standard is applied. *See Rocker*, 122 Nev. at 1193. Where the requisite knowledge and information is uniquely held by a defendant, a plaintiff, "cannot be expected to have personal knowledge of the relevant facts." *Id.* In such cases, a plaintiff should be permitted to conduct discovery as to those claims so long as such circumstances are alleged within the complaint. *Id.*

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**B. NOTHING UNDER NEVADA LAW FORECLOSES A CLAIM FOR NEGLIGENT CREDENTIALING.**

While the Nevada Supreme Court has not expressly recognized the specific claim of "negligent credentialing," at common law, plaintiffs have traditionally "been given broad latitude to plead, and attempt to prove, claims that are fundamentally grounded in allegations of negligence. This is because 'the infinite variety of situations which may arise makes it impossible to fix definite rules in advance for all conceivable human conduct.'" *Rossi v. Ming-Wei Wu, D.O. et al*, Eighth Judicial District Court Case No. A61650, August 3, 2011 Order of the Honorable Jerome Tao, at 4:1-6, a copy of which is attached hereto as Exhibit 1 (citing Prosser and Keaton on Torts, sec. 32, p. 173 (5th Ed. 1984)).

In *Rossi*, current Appellate Judge Tao, while sitting on the District Court bench, allowed the plaintiff to amend her complaint to add a claim for negligent credentialing. *See generally id.* The Court expressly acknowledged that simply because the Nevada Supreme Court has not yet had the opportunity to address a particular cause of action should not, by itself, be dispositive of whether such a claim exists or ought to be allowed to proceed. *Id.* at 4:20-26. Rather, so long as the plaintiff can allege and prove duty, breach, causation and a legally cognizable injury, it is of no legal relevance that a particular set of facts or specific legal duty have not yet been litigated. *Id.* Again in 2014, then District Court Judge Tao stood firm on the decision to permit a plaintiff to bring a claim for negligent credentialing. *Shannon Smith v. Elizabeth Moore, M.D., et al*., Eighth Judicial District Court Case No. A658697, May 14, 2014 Minute Order of the Honorable Jerome Tao, a copy of which is attached hereto as Exhibit 2.

Although Defendant St. Rose points this court to a federal district court decision as support for the proposition that negligent credentialing is not cognizable under Nevada law, that reliance is simply misplaced. Motion at 6 (citing *Nogle v. Beech St. Corp*., No. 2:10-CV-01092-KJD, 2013 WL 1182680 at *3 (D. Nev. Mar. 20, 2013) aff'd 619 F. Appx. 639 (9th Cir. 2015)). While the federal court noted "no [Nevada] authority has specifically recognized a cause of action for negligent credentialing," it declined to "speculate" as to whether Nevada would recognize such a

claim because it found the analysis moot given the plaintiff's claim in that case would have been time barred. *Nogle*, 2013 WL 1182680 at *3.

Additionally, the Nevada Supreme Court has in fact, recognized the duty of a hospital to exercise reasonable care in the provision of health services and equally as important, the duty to protect patients from harm by third persons. *See Wickliffe v. Sunrise Hospital, Inc.,* 1010 Nev. 542, 706 P.2d 1383 (1985). The Restatement of Torts 320 (1934) further supports a claim for negligent credentialing as a natural extension of the common law.[2]

**C. PLAINTIFFS' NEGLIGENT CREDENTIALING AND NEGLIGENT HIRING, TRAINING, SUPERVISION AND RETENTION CLAIMS ARE FOR ORDINARY NEGLIGENCE AND THE MEDICAL MALPRACTICE CAUSE OF ACTION IS SUFFICIENTLY SUPPORTED BY A PHYSICIAN'S AFFIDAVIT OF MERIT.**

It is axiomatic that to prevail on a negligence theory, Plaintiffs must show that: (1) St. Rose had a duty to exercise due care towards him; (2) St. Rose breached that duty**;** (3) St. Rose's breach was an actual and proximate cause of injury to Scott; and (4) Scott suffered damage as a result. *Perez v. Las Vegas Medical Ctr.,* 107 Nev. 1, 4-5, 805 P.2d 589, 590-91 (1991). In arguing that Plaintiffs' negligent credentialing and negligent hiring, training, supervision and retention claims must be supported by an expert affidavit, Defendants rely upon case law that actually undermines their position. More specifically, NRS 41A.071's requirements do not apply to claims based in ordinary negligence.

"[W]hen a hospital performs nonmedical services, it can be liable under principles of ordinary negligence." *Szymborski*, *supra*, 133 Nev. at 641. As Defendant USAP aptly points out, if "the reasonableness of the health care provider's actions can be evaluated by jurors on the basis of their common knowledge and experience, then the claim is likely based in ordinary negligence." USAP's Joinder at 4:9-13. (citing *Szymborski,* 403 P.3d 1280, 1284 (2017)). This "distinction between medical malpractice and negligence may be subtle in some cases," and in fact "a single set of circumstances may sound in both ordinary negligence and medical

[2] Public policy likewise favors a separate cause of action for negligent credentialing and courts in other jurisdictions have recognized the tort of negligent credentialing as a natural extension of negligent hiring or negligence in selection of independent contractor causes of action. *See Domingo v. Doe,* 985 F.Supp. 1241 (D. Haw. 1997); *Cortelo v. Shore Memorial Hospital,* 138 N.J. Super. 302, 350 A.2d 534 (1975).

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malpractice." *Id*. at 642-43. The determination hinges upon whether the claims involve "medical diagnosis, judgment or treatment," or are based on the "performance of nonmedical services." *See id.* at 641.

Here, Defendants argue that absent a supporting expert affidavit, Plaintiffs' negligent credentialing and negligent hiring, retention and supervision claims must be dismissed because they are "rooted" in the alleged professional negligence of Dr. Kim and that credentialing and hiring of physicians involves "medical judgment." Defendants ignore however, that the allegations of medical malpractice against Dr. Kim are indeed supported by an expert affidavit of merit.

Plaintiffs recognize that in a panel decision, the Nevada Supreme Court recently concluded that an affidavit of merit was required in order to sustain a complaint that included a claim for negligent hiring, supervision or training where the plaintiff's claims were inextricably linked to underlying professional negligence. *See Estate of Mary Curtis v. South Las Vegas Medical Investors*, 136 Nev. Adv. Op. 39, 2020 WL 3885614 (July 9, 2020). However, nowhere in that decision did the Court find that the affidavit of merit must specifically support the negligent supervision claim as opposed to only the underlying professional negligence. *See generally id.* In fact, on appeal, even the respondent nursing home did not proffer such an expansive reading of NRS 41A.071 and instead asserted only that "substantiating the underlying professional negligence of the health care provider (via the medical expert affidavit) is a prerequisite to showing that there was any negligence in the decision to hire, train, or supervise the health care provider." *Estate of Curtis*, Nevada Supreme Court Case No. 77810, Respondents' Answering Brief, filed October 16, 2019, at pp. 24; 27 (noting, "The staffing or budgeting is a problem only if the licensed nurses' underlying negligence caused Ms. Curtis' death, but it is precisely those allegations that require the medical-expert affidavit.").

Moreover, the facts in *Curtis* are entirely distinct from the instant case. There, the estate of a deceased nursing home resident brought claims arising from the death of Mary Curtis who died from morphine intoxication after a nurse at the care home administered morphine, which had been prescribed for a different resident. *Id.* at *5. The Complaint was not supported by ***any***

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affidavit of merit. *Id.* at *3. On appeal, the panel concluded that although the nurse's administration of the wrong medicine was a matter of ordinary negligence, the allegation the nursing staff failed to monitor the decedent after the administration of the morphine was one for professional negligence requiring a medical expert affidavit.

By contrast, here the underlying medical malpractice allegations are in fact, supported by an affidavit of merit, thereby satisfying the requirements of NRS 41A.071.[3] More importantly, the facts supporting Plaintiffs' cause of action for Negligent Credentialing do not involve "medical judgment, diagnosis, or treatment," but are based in common law ordinary negligence.[4] Defendants' insistence that credentialing or hiring and supervision of a physician requires medical judgment is at best, a stretch.[5] For example, a juror using their own common knowledge and experience would be able to determine that a hospital should not reasonably extend privileges to a physician who has been found to have intentionally falsified or altered medical records, or been the subject of disciplinary proceedings or court orders questioning his or her honesty. Likewise, a jury could readily determine that under those same circumstances, a practice group such as USAP should not reasonably hire or retain that physician. Hiring and credentialing do not involve medical judgment or patient care, but rather require hospital and medical practice administrators

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[3] As addressed more fully in *Section II* herein, requiring an additional affidavit, specific to negligent credentialing, would be contrary to both the intent of the statute and the interest of the public.

[5] Defendant USAP's claim that Dr. Beilin is unqualified to render an expert opinion as to the conduct of USAP as an entity is likewise unavailing. Although no affidavit specifically directed to the negligent hiring, training, supervision and retention claim is required, Dr. Beilin would nevertheless be qualified to render such opinions given his years of supervising and training other physicians and medical professionals. While he may not be employed with a private practice group, he, much like a layperson, certainly has the skill set to opine as to whether a physician was fit to be hired or retained.

to give due consideration to a physician's qualifications and prior conduct to determine whether privileges should be extended and whether a physician should be hired, disciplined or retained.[6]

**D. ASSUMING THE TRUTH OF PLAINTIFFS' ALLEGATIONS AS PLEAD, DEFENDANTS ARE NOT ENTITLED TO JUDGMENT AS A MATTER OF LAW WITH RESPECT TO NEGLIGENT CREDENTIALING OR NEGLIGENT HIRING, SUPERVISION AND RETENTION.**

Plaintiffs' Complaint contains allegations, which must be accepted as true, outlining Defendants' duties, breach of that duty, causation and damages. Specifically, Plaintiffs have alleged St. Rose had a duty to protect its patients' "health, safety and welfare in relevant part, by properly credentialing and extending privileges only to duly qualified physicians and/or medical providers" and "protect and secure confidential patient information and/or medical records." Complaint at ¶¶ 30-31. St. Rose breached this duty by "negligently credentialing and/or extending hospital privileges to Dr. Kim despite being on actual and/or constructive notice of numerous issues demonstrating that Dr. Kim was unfit and/or lacked the requisite qualifications and/or integrity to be entrusted with the welfare of its patients" causing injury to Alina. *Id*. at ¶ 31. Plaintiffs are unable to plead specifics about what St. Rose knew when it afforded Dr. Kim privileges because such knowledge and documentation is peculiarly and solely within the possession of Defendants, who have already provided three different sets of medical records. Thus, under *Rocker*, Plaintiffs have met the requisite pleading standard and at a minimum, should be permitted to conduct discovery regarding such issues.

Likewise, with respect to their claim for Negligent Hiring, Training and Retention, Plaintiffs allege, "Defendants and/or DOE/ROE Defendants had a duty to exercise due care in the

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[6] Defendants are likely to point out in their Reply Brief, that then sitting District Court Judge William Kephart dismissed a plaintiff's negligent credentialing claim under circumstances where the underlying medical malpractice action was supported by an expert affidavit. *See Bordelove. V. Derek A. Duke, M.D., et al,* Case No. A-20-811705-C, September 15, 2020 Order Granting Defendant Southern Hills Medical Center, LLC, d/b/a Southern Hills Hospital and Medical Center's Motion to Dismiss Plaintiffs' Claim for Negligent Credentialing. It should be noted however, that Plaintiffs' counsel handles a significant amount of medical malpractice cases and is thus far, aware of only former Judge Kephart making any such ruling. In so doing, former Judge Kephart found there is no cognizable claim for negligent credentialing under Nevada law – a ruling, which entirely disregarded the prior findings of both Judge Tao and Justice Silver during their time on the district court bench. Judge Kephart further misconstrued *Curtis* as requiring an expert affidavit specific to negligent credentialing itself, versus only the underlying medical malpractice claim. *Curtis* contains no such holding, and the undersigned Counsel intends to seek appellate relief by way of a forthcoming writ petition.

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selection, training, supervision, oversight, direction, retention and control of its employees and/or agents, retained by it to perform and provide services." *Id*. at ¶ 53. Plaintiffs further contend Defendants breached those duties, "when they negligently, carelessly and recklessly hired, trained, supervised, oversaw, directed and/or retained physicians, physicians assistants, general surgeons, patient floor nurses, registered nurses, nurse practitioners, nurses aides, or other medical personnel, including but not limited to, Defendant Dr. Kim and/or DOE/ROE Defendants." *Id*. at ¶ 54. As to the identity of such DOE/ROE Defendants, Plaintiffs Complaint specifies that the names of such physicians, physicians assistants, general surgeons, patient floor nurses, registered nurses, nurse practitioners, nurse aides, or other medical personnel, are "either unknown, not annotated or not legible in Decedent's medical records." *Id*. at ¶ 9. Accordingly, Defendant St. Rose's contention that it is entitled to judgment as a matter of law because Defendant Dr. Kim was not an employee, is wholly without merit.

First, the status of Dr. Kim's agency relationship and/or employment with Defendant St. Rose has not been conclusively proven because Defendants are solely in possession of all credentialing and personnel files. So again, Plaintiffs are well within the bounds of *Rocker*'s relaxed pleading standard. In any case, Plaintiffs have alleged negligence against Defendant St. Rose, who acts through its agents – i.e., its nurses and other medical staff, who are expressly identified as DOE/ROE Defendants within the Complaint. So even if Dr. Kim is not an "employee" of Defendant, St. Rose remains liable for the conduct of its nurses and medical staff who are presently named as DOE/ROE Defendants, each of whom may be identified through discovery and specifically named by way of an amended complaint.

**E. FORECLOSING PLAINTIFFS' NEGLIGENT CREDENTIALING AND NEGLIGENT HIRING, TRAINING SUPERVISION AND RETENTION CLAIMS AT THIS JUNCTURE WOULD BE INCONSISTENT WITH THE PURPOSE OF NRS 41A.071.**

The Nevada Supreme Court has repeatedly clarified that "[t]he object of NRS 41A.071's affidavit-of-merit [] requirement is to ensure that parties file malpractice cases in good faith, *i.e.*, to prevent the filing of frivolous lawsuits." *Baxter v. Dignity Health*, 131 Nev. Adv. Op. 76, 357 P.3d 927, 930 (2015) (citing *Borger v. Eighth Judicial Dist. Ct.*, 120 Nev. 1021, 1026, 102 P.3d

600, 604 (2004)). NRS 41A.071 is to be applied only to allow for the dismissal of frivolous cases. Where, as here, Plaintiffs' professional negligence claims are well supported by an extensive affidavit of merit, the policy rationale underlying NR 41A.071 has been met.

To be clear, Defendants received sufficient notice of the nature and basis of not only the underlying medical malpractice claims against Dr. Kim, but Plaintiffs' negligent credentialing and negligent hiring, training, supervision and retention claims as well. Such a finding is consistent with the Court's holding in the *Estate of Curtis* because nowhere did the panel find that an affidavit of merit was required specific to the negligent supervision claims versus the underlying professional negligence allegations. *See generally* 136 Nev. Adv. Op. 39, 2020 WL 3885614. Although Plaintiffs' claim here is for both negligent credentialing and negligent hiring, supervision and retention, the latter of which consists of entirely administrative conduct, there is no basis for requiring an additional affidavit of merit specific to either credentialing or alleged hiring, training, retention or supervisory conduct.

Requiring a plaintiff to provide an affidavit of merit ***specific*** to negligent credentialing or negligent hiring, training, supervision and retention claims would be an impossibility in nearly every case because hospitals and practice groups are solely in possession of physician credentialing and personnel files. Without exception, hospitals and other medical providers strenuously object to disclosure of such information even after litigation has been filed. Absent the subpoena power and a court order, obtaining a physician's credentialing file is almost certainly an impossibility. *See* NRS 439.875.

With very little, if any exception, any qualified expert would be unable to render an affidavit of merit absent a review of the relevant credentialing and personnel files and information. This would result in premature dismissal of ordinary negligence claims, which have been brought in good faith and for which no expert testimony is even needed.[7] Such a result is inconsistent with the objective of NRS 41.A071's affidavit of merit requirement and contrary to

[7] In the context of *Res Ipsa* under NRS 41A100, the Nevada Supreme Court recognized, [i]t would be unreasonable to require a plaintiff to expend unnecessary effort and expense to obtain an affidavit from a medical expert when expert testimony is not necessary for the plaintiff to succeed at trial." *Jaramillo v. Ramos*, 136 Nev. Adv. Op. No. 17 at *5, 460 P.3d 460, 462 (April 2, 2020)(citing *Szydel v. Markman*, 121 Nev. 453, 460, 117 P.3d 200, 204 (2005)).

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public policy, which can only be served by holding negligent parties accountable for their damaging conduct. Plaintiffs have satisfied the demands of NRS 41A.071 by bringing their claims in good faith and also with a supporting affidavit of merit with respect to the professional negligence action. Given that the pleadings shall be liberally construed and Plaintiffs' allegations must be accepted as true, Defendants' Motion is without merit and should be denied.

## III.

## CONCLUSION

For the foregoing reasons, Plaintiffs request that the Court enter an Order denying Defendant Dignity Health d/b/a St. Rose Dominican Hospital's ("St. Rose") Motion for Judgment on the Pleadings as to Plaintiff's Claims for Negligent Credentialing and Negligent, Hiring, Training and Supervision and Defendant U.S. Anesthesia Partners Inc.'s Partial Joinder Thereto.

Dated this 4th day of January, 2021.

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## CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of CHRISTIANSEN LAW OFFICES, and that on this 4th day of January, 2021 I caused the foregoing document entitled **PLAINTIFFS' OPPOSITION TO DEFENDANT DIGNITY HEALTH D/B/A ST. ROSE DOMINICAN HOSPITAL'S MOTION FOR JUDGMENT ON THE PLEADINGS AS TO PLAINTIFF'S CLAIM FOR NEGLIGENT CREDENTIALING AND NEGLIGENT HIRING, TRAINING AND SUPERVISION AND DEFENDANT U.S. ANESTHESIA PARTNERS, INC.'S PARTIAL JOINDER THERETO** to be served upon those persons designated by the parties in the E-Service Master List for the above-referenced matter in the Eighth Judicial District Court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules.

An employee of Christiansen Law Offices

**CHRISTIANSEN LAW OFFICES**
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# EXHIBIT F

**A-18-775572-C**

# DISTRICT COURT
# CLARK COUNTY, NEVADA

**Malpractice - Medical/Dental** **COURT MINUTES** **February 24, 2022**

A-18-775572-C Estate of Alina Badoi, Plaintiff(s)
vs.
Dignity Health, Defendant(s)

**February 24, 2022** **3:00 AM** **Minute Order**

**HEARD BY:** Kierny, Carli **COURTROOM:** RJC Courtroom 16B

**COURT CLERK:** Jill Chambers

**RECORDER:**

**REPORTER:**

**PARTIES PRESENT:**

## JOURNAL ENTRIES

- This case is before the Court on "Defendant Dignity Health d/b/a St. Rose Dominican Hospital's Motion for Summary Judgment and Alternatively, Motion for Partial Summary Judgment on the Pleadings" and "Defendants Kim, M.D. and U.S. Anesthesia Partners, Inc.'s Partial Joinder to Defendant Dignity Health's Motion for Summary Judgment." The Court has considered the Motion and all oppositions, replies, supplemental briefing, and oral argument. The main point of contention is whether Plaintiff's filing of his Complaint on June 5, 2018 violated the 1-year accrual date for NRS 41A.097. It is undisputed that Ms. Badoi passed away on June 3, 2017, after being admitted to the hospital on May 15, 2017 to give birth to her daughter. Defendants argue that the time to file suit lapsed one year after Ms. Badoi's death on June 3, 2017, on June 4, 2018 (the Court notes here that June 3, 2018 was a Sunday, making June 4, 2018 one year from Ms. Badoi's death, in court days). Defendants assert that the complaint was therefore filed one day late for purposes of NRS 41A.097. In Massey v. Litton, 99 Nev. 723 (1983), the Nevada Supreme Court held that a Plaintiff "discovers" his injury "when he knows or, through the use of reasonable diligence, should have known of facts that would put a reasonable person on inquiry notice of his cause of action." The time does not begin when plaintiff discovers the precise facts pertaining to his legal theory but when there is a general belief that negligence may have caused the injury. Id. at 728. "While difficult to define in concrete terms, a person is put on "inquiry notice" when he or she should have known of facts that 'would lead

an ordinary prudent person to investigate the matter further." See Winn v. Sunrise Hospital and Medical Center, 128 Nev. 246, 252 (2012) (quoting Black's Law Dictionary 1165 (9th ed. 2009)). The Nevada Supreme Court has held that the accrual date for NRS 41A.097's one-year discovery period ordinarily presents a question of fact to be decided by the jury. See Winn, 128 Nev. at 258. "Only when the evidence irrefutably demonstrates that a plaintiff was put on inquiry notice of a cause of action should the district court determine this discovery date as a matter of law." Id. Plaintiffs argue that the instant motions for Summary Judgment should be denied, as there are genuine issues of material fact regarding when Plaintiff knew of the cause of Ms. Badoi's death.

The defense contends that Plaintiff felt something was not right in mid-May 2017, placing him on inquiry notice at that point. After all, Ms. Badoi came into the hospital, healthy, to have her baby. Some thereafter, Ms. Badoi suffered paralysis and a laminectomy had to be performed. A surgeon told Plaintiff around May 17-18, 2017 that Ms. Badoi's dura had been perforated. At his deposition, Plaintiff indicated he had a feeling that "things are not going quite right," which led him to request medical records. He received the records June 2, 2017 one day before Ms. Badoi passed away. Thus, Defendants aver that Plaintiff was on inquiry notice as of that date. However, pursuant to the Gilloon case, Defendants use the date of Ms. Badoi's death, June 3, 2017 as Ms. Badoi's final injury (her tragic death) was complete at that point.

The Court finds that the evidence before it does not irrefutably demonstrate Plaintiff was put on inquiry notice of Ms. Badoi's ultimate injury on the date of Ms. Badoi's death. If the ultimate injury was Ms. Badoi's paralysis, then Plaintiff missed the deadline to file. However, the ultimate injury was her death. 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. Ms. Badoi had shown signs of recovery, and Plaintiff was not expecting her death. Also, he did not have a complete set of medical records at the time of her death, as the records he received on June 2, 2017 obviously did not cover her death on June 3, 2017.

The Court finds that this case is factually distinguishable from the "Powell case" (Valley Health System v. Eighth Judicial District Court). In that case, Ms. Powell passed away on May 11, 2017, and Plaintiff filed suit on February 4, 2019. In an unpublished opinion, the Supreme Court found that Plaintiff was on inquiry notice when he filed a complaint with the nursing board on June 11, 2017, and possibly on inquiry notice on May 23, 2017, when Plaintiff filed a similar complaint with the Nevada Department of Health and Human Services. Both of those dates for potential inquiry notice were AFTER Ms. Powell's death on May 11, 2017. At that point, Plaintiff was aware of facts surrounding Plaintiff's ultimate injury (her death), and was able to synthesize them into a written complaint. That is not what we have here. 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. In this case, the defense is essentially saying that Plaintiff was on notice of facts that led to Ms. Badoi's death BEFORE she died. That is factually inapposite to the Powell case.

Overall, the Court finds that there are genuine issues of material fact as to when Plaintiff knew the cause of Ms. Badoi's death, rather than irrefutable evidence. It would be improper for the Court to grant summary judgment on these facts, and will leave that question to the jury. The Motion for Summary Judgement and Joinder thereto are DENIED. However, the Court has not heard argument on Dignity Health's alternative prayer, for Partial Summary Judgment on the Pleadings. The Court hereby sets that portion of the Motion for argument on March 9, 2022 at 9:30 AM.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Jill Chambers, to all registered parties for Odyssey File & Serve. jmc 2/24/22