

**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.:

Electronically Filed  
Jan 05 2023 10:25 AM  
Dist. Ct. Case No. Elizabeth A. Brown  
A-18-775572-6 Clerk of Supreme Court

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

TYSON J. DOBBS, ESQ.  
Nevada Bar No. 11953  
HALL PRANGLE & SCHOONVELD, LLC  
1160 North Town Center Drive, Suite 200  
Las Vegas, NV 89144  
Phone: 702-889-6400  
[tdobbs@hpslaw.com](mailto:tdobbs@hpslaw.com)  
*Attorneys for Petitioner Dignity Health d/b/a St.  
Rose Dominican Hospital – Siena Campus*

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of HALL PRANGLE & SCHOONVELD, LLC; that on the 5<sup>th</sup> 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.  
R. Todd Terry, Esq.  
Kendelea L. Works, Esq.  
Whitney J. Barrett, Esq.  
Keely A. Perdue, Esq.  
CHRISTIANSEN LAW OFFICES  
810 S. Casino Center Blvd., Suite 104  
Las Vegas, Nevada 89101  
*Attorneys for Real Parties in Interest*

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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Hi Esther,

Krista Molinaro is currently on maternity leave but will make herself available by zoom the week of October 5 as well.

Also Delaney is currently pregnant and at the time of her deposition will be 36 weeks so her preference is zoom as well however if its going to be a big issue she would like a very large conference room with 6 ft between everyone.

<image004.jpg>

**1140 North Town Center Dr.  
Suite 350  
Las Vegas, NV 89144  
F: 702.384.6025**

**Nicole Etienne**  
*Legal Assistant*  
O: 702.212.1446  
Email: [netienne@HPSLAW.COM](mailto:netienne@HPSLAW.COM)

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

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**From:** Esther Barrios Sandoval <[esther@christiansenlaw.com](mailto:esther@christiansenlaw.com)>  
**Sent:** Monday, August 23, 2021 3:34 PM  
**To:** Nicole M. Etienne <[netienne@HPSLAW.COM](mailto:netienne@HPSLAW.COM)>  
**Subject:** Re: Badoi v Dignity Health - Deposition Availability re Witnesses  
**Importance:** High

[External Email] CAUTION!.

Hi Nicole,

I am following up on this. As of today, we are available on September 20, 21, 25, 29 and 30 Also, we want to take the deposition of Amit Garg M.D., please let me know if we can reach out to him, or if your office will be providing dates for him. Thank you.

1. Krista Molinaro, RN
2. Delaney McCoy, RN
3. Tracy Jones, RN
4. Geraldine Bent
5. Geoconda Hughes RN
6. Erica Joy Carino
7. Rolando Abuan

Esther Barrios  
Legal Assistant  
Christiansen Trial Lawyers

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Las Vegas, NV 89101  
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---

**From:** Esther Barrios Sandoval <[esther@christiansenlaw.com](mailto:esther@christiansenlaw.com)>  
**Date:** Wednesday, August 18, 2021 at 3:59 PM  
**To:** "Nicole M. Etienne" <[netienne@HPSLAW.COM](mailto:netienne@HPSLAW.COM)>  
**Subject:** Re: Badoi v Dignity Health - Deposition Availability re Witnesses

Hi Nicole,

I am following up on this. Please advise. Thank you.

Esther Barrios  
Legal Assistant  
Christiansen Trial Lawyers  
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---

**From:** Esther Barrios Sandoval <[esther@christiansenlaw.com](mailto:esther@christiansenlaw.com)>  
**Date:** Thursday, August 12, 2021 at 4:44 PM  
**To:** "Nicole M. Etienne" <[netienne@HPSLAW.COM](mailto:netienne@HPSLAW.COM)>  
**Subject:** Re: Badoi v Dignity Health - Deposition Availability re Witnesses

Yes, Nicole. Thank you!

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---

**From:** "Nicole M. Etienne" <[netienne@HPSLAW.COM](mailto:netienne@HPSLAW.COM)>  
**Date:** Thursday, August 12, 2021 at 3:50 PM  
**To:** Esther Barrios Sandoval <[esther@christiansenlaw.com](mailto:esther@christiansenlaw.com)>  
**Subject:** RE: Badoi v Dignity Health - Deposition Availability re Witnesses

Hi Esther,

Are you looking for some August/September?

<image005.jpg>

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

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---

**From:** Esther Barrios Sandoval <[esther@christiansenlaw.com](mailto:esther@christiansenlaw.com)>  
**Sent:** Thursday, August 12, 2021 11:53 AM  
**To:** Nicole M. Etienne <[netienne@HPSLAW.COM](mailto:netienne@HPSLAW.COM)>  
**Subject:** Re: Badoi v Dignity Health - Deposition Availability re Witnesses

[External Email] CAUTION!.

Hi Nicole,

I am following up on this. Thank you.

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---

**From:** "Nicole M. Etienne" <[netienne@HPSLAW.COM](mailto:netienne@HPSLAW.COM)>  
**Date:** Friday, June 18, 2021 at 7:51 AM  
**To:** Esther Barrios Sandoval <[esther@christiansenlaw.com](mailto:esther@christiansenlaw.com)>  
**Subject:** RE: Badoi v Dignity Health - Deposition Availability re Witnesses

Yes I saw that, unfortunately these nurses don't have their schedules that far out so they can only give me the dates they know. Let me talk to Tyson and see how he wants to handle.

<image006.jpg>

**Nicole Etienne**  
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---

**From:** Esther Barrios Sandoval <[esther@christiansenlaw.com](mailto:esther@christiansenlaw.com)>  
**Sent:** Thursday, June 17, 2021 4:43 PM  
**To:** Nicole M. Etienne <[netienne@HPSLAW.COM](mailto:netienne@HPSLAW.COM)>  
**Subject:** Re: Badoi v Dignity Health - Deposition Availability re Witnesses

[External Email] CAUTION!.

Thank you so much for your help Nicole,

Our calendar is filling up so fast and we are already booked through half of July, which means that none of those dates will work. On my email sent on June 9<sup>th</sup>, I mentioned that we are looking to schedule between the last week of July and through August. Thank you and sorry for the inconvenience.

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---

**From:** "Nicole M. Etienne" <[netienne@HPSLAW.COM](mailto:netienne@HPSLAW.COM)>  
**Date:** Thursday, June 17, 2021 at 8:51 AM  
**To:** Esther Barrios Sandoval <[esther@christiansenlaw.com](mailto:esther@christiansenlaw.com)>  
**Subject:** RE: Badoi v Dignity Health - Deposition Availability re Witnesses

Hi Esther,

Tracy is available anytime July 12 or the afternoons of July 14 and 16. Let me know if any of these work.

Delaney is available July 9, 12, 14 and 16.

Rolando is on vacation and will return 6/23 so I will get his availability then.

I'm working on trying to contact Erica, Geoconda and Geraldine as they are no longer employed. If I can't reach them I will pass along their last knowns.

-----007-----

<image007.jpg>

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---

**From:** Esther Barrios Sandoval <[esther@christiansenlaw.com](mailto:esther@christiansenlaw.com)>  
**Sent:** Wednesday, June 09, 2021 12:53 PM  
**To:** Nicole M. Etienne <[netienne@HPSLAW.COM](mailto:netienne@HPSLAW.COM)>  
**Subject:** Re: Badoi v Dignity Health - Deposition Availability re Witnesses

[External Email] CAUTION!

Hi Nicole,

In addition to the availability for Krista Molinaro, RN and Delaney McCoy, RN, please provide with dates for:

- Geraldine Bent
- Geoconda Hughes RN
- Erica Joy Carino
- Rolando Abuan
- Scott Selco MD

We are now looking at the last week of July and first two weeks of August. Thank you!

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---

**From:** Esther Barrios Sandoval <[esther@christiansenlaw.com](mailto:esther@christiansenlaw.com)>  
**Date:** Tuesday, May 11, 2021 at 4:15 PM  
**To:** "Nicole M. Etienne" <[netienne@HPSLAW.COM](mailto:netienne@HPSLAW.COM)>  
**Subject:** Re: Badoi v Dignity Health - Deposition Availability re Witnesses

Hi Nicole,

Can you ask Ms. Brown if she would be okay doing in-person deposition? All in our office are vaccinated and we are still enforcing social distancing, Please advise. Thank you!

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---

**From:** "Nicole M. Etienne" <[netienne@HPSLAW.COM](mailto:netienne@HPSLAW.COM)>  
**Date:** Tuesday, May 11, 2021 at 12:35 PM  
**To:** Esther Barrios Sandoval <[esther@christiansenlaw.com](mailto:esther@christiansenlaw.com)>  
**Subject:** RE: Badoi v Dignity Health - Deposition Availability re Witnesses

Ok I will check back with Delaney

Mary Brown can do June 16 at 9 am however she's asked it take place via zoom.

<image008.jpg>

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**Legal Assistant to:**  
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Tyson Dobbs

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---

**From:** Esther Barrios Sandoval <[esther@christiansenlaw.com](mailto:esther@christiansenlaw.com)>  
**Sent:** Tuesday, May 11, 2021 10:34 AM  
**To:** Nicole M. Etienne <[netienne@HPSLAW.COM](mailto:netienne@HPSLAW.COM)>  
**Subject:** Re: Badoi v Dignity Health - Deposition Availability re Witnesses

<b>[External Email]</b> CAUTION!.
-----------------------------------

Hi Nicole,

Unfortunately the second week of June doesn't work for our office but we are

Unfortunately, the second week of June doesn't work for our office, but we are available during June 16<sup>th</sup>, 18<sup>th</sup>, 21<sup>st</sup>, 23<sup>rd</sup>, 25<sup>th</sup>, 29<sup>th</sup> and 30<sup>th</sup>. Thank you!

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---

**From:** "Nicole M. Etienne" <[netienne@HPSLAW.COM](mailto:netienne@HPSLAW.COM)>  
**Date:** Monday, May 10, 2021 at 3:55 PM  
**To:** Esther Barrios Sandoval <[esther@christiansenlaw.com](mailto:esther@christiansenlaw.com)>  
**Subject:** RE: Badoi v Dignity Health - Deposition Availability re Witnesses

Delaney is available on June 8 or 11

<image009.jpg>

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**Nicole Etienne**  
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**Legal Assistant to:**  
Casey Tyler  
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---

**From:** Esther Barrios Sandoval <[esther@christiansenlaw.com](mailto:esther@christiansenlaw.com)>  
**Sent:** Friday, April 30, 2021 1:57 PM  
**To:** Nicole M. Etienne <[netienne@HPSLAW.COM](mailto:netienne@HPSLAW.COM)>  
**Subject:** Re: Badoi v Dignity Health - Deposition Availability re Witnesses

[External Email] CAUTION!.

Hi Nicole – I am following up on this. Thank you!

Esther Barrios  
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Christiansen Trial Lawyers  
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---

**From:** Esther Barrios Sandoval <[esther@christiansenlaw.com](mailto:esther@christiansenlaw.com)>  
**Date:** Monday, April 12, 2021 at 3:53 PM  
**To:** "Nicole M. Etienne" <[netienne@HPSLAW.COM](mailto:netienne@HPSLAW.COM)>  
**Subject:** Re: Badoi v Dignity Health - Deposition Availability re Witnesses

Thank you!

Esther Barrios  
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---

**From:** "Nicole M. Etienne" <[netienne@HPSLAW.COM](mailto:netienne@HPSLAW.COM)>  
**Date:** Monday, April 12, 2021 at 3:27 PM  
**To:** Esther Barrios Sandoval <[esther@christiansenlaw.com](mailto:esther@christiansenlaw.com)>  
**Subject:** RE: Badoi v Dignity Health - Deposition Availability re Witnesses

Ok I'll reach back out

<image010.jpg>

**1140 North Town Center Dr.  
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Las Vegas, NV 89144  
F: 702.384.6025**

**Nicole Etienne**  
*Legal Assistant*  
O: 702.212.1446  
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**Legal Assistant to:**  
Casey Tyler  
Michael Shannon  
Tyson Dobbs

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---

**From:** Esther Barrios Sandoval <[esther@christiansenlaw.com](mailto:esther@christiansenlaw.com)>  
**Sent:** Monday, April 12, 2021 3:25 PM  
**To:** Nicole M. Etienne <[netienne@HPSLAW.COM](mailto:netienne@HPSLAW.COM)>  
**Subject:** Re: Badoi v Dignity Health - Deposition Availability re Witnesses

<b>[External Email] CAUTION!.</b>
-----------------------------------

Good afternoon Nicole,

I am following up this. I would appreciate if you could please provide with the nurses availability once more time. Your assistance is appreciated. We are probably looking at May and June. Thank you!

1. Krista Molinaro, RN
2. Delaney McCoy, RN
3. Mary Brown RN
4. Tracy Jones, RN

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Christiansen Trial Lawyers  
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---

**From:** Esther Barrios Sandoval <[esther@christiansenlaw.com](mailto:esther@christiansenlaw.com)>  
**Date:** Monday, February 8, 2021 at 1:20 PM  
**To:** Tyson Dobbs <[tdobbs@HPSLAW.COM](mailto:tdobbs@HPSLAW.COM)>, Adam Schneider <[aschneider@jhcottonlaw.com](mailto:aschneider@jhcottonlaw.com)>, "Nicole M. Etienne" <[netienne@HPSLAW.COM](mailto:netienne@HPSLAW.COM)>  
**Cc:** Todd Terry <[tterry@christiansenlaw.com](mailto:tterry@christiansenlaw.com)>  
**Subject:** Re: Badoi v Dignity Health - Deposition Availability re Witnesses

Good afternoon Counsel,

We would like to schedule the witnesses as follow:

Krista Mollinaro, RN – 3/8/21 at 2 P.M.  
Delaney McCoy, RN – 3/9/21 at 10 A.M.  
Tracy Jones, RN – 3/16/21 at 10 A.M.

Please let us know if this will work. If not, our office is also available on the following highlighted dates. Thank you!

Krista Molinaro RN  
Feb 25th,  
March 3rd, 8th , 11<sup>th</sup>, 15<sup>th</sup>, 19<sup>th</sup>

Delaney McCoy, RN  
March 4, 9, 11, 12, 16, 18

Tracy Jones, R.N  
March 16<sup>th</sup>, 19th, 25th, 26th

Esther Barrios  
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---

**From:** "Nicole M. Etienne" <[netienne@HPSLAW.COM](mailto:netienne@HPSLAW.COM)>  
**Date:** Monday, February 8, 2021 at 10:43 AM  
**To:** Esther Barrios Sandoval <[esther@christiansenlaw.com](mailto:esther@christiansenlaw.com)>  
**Cc:** Adam Schneider <[aschneider@jhcottonlaw.com](mailto:aschneider@jhcottonlaw.com)>, Tyson Dobbs <[tdobbs@HPSLAW.COM](mailto:tdobbs@HPSLAW.COM)>  
**Subject:** RE: Badoi v Dignity Health - Deposition Availability re Witnesses

Hi Esther,

Here is what I have for the nurses' availability:

Krista Molinaro RN  
Feb 25th,  
March 3rd, 8th, 11<sup>th</sup>, 15<sup>th</sup>, 19<sup>th</sup>

Delaney McCoy, RN  
March 4, 9, 11, 12, 16, 18

Mary Brown, R.N. is scheduled to have back surgery tomorrow so she will not be able to give me dates until the end of March when she knows how she's doing.

Tracy Jones, R.N  
March 16<sup>th</sup>, 19th, 25th, 26th

<image011.jpg>

1140 North Town Center Dr.  
Suite 350  
Las Vegas, NV 89144  
F: 702.384.6025

**Nicole Etienne**  
*Legal Assistant*  
O: 702.212.1446  
Email: [netienne@HPSLAW.COM](mailto:netienne@HPSLAW.COM)

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

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**From:** Esther Barrios Sandoval <[esther@christiansenlaw.com](mailto:esther@christiansenlaw.com)>  
**Sent:** Tuesday, February 02, 2021 2:51 PM  
**To:** Nicole M. Etienne <[netienne@HPSLAW.COM](mailto:netienne@HPSLAW.COM)>  
**Subject:** Re: Badoi v Dignity Health - Deposition Availability re Witnesses

[External Email] CAUTION!

Hi Nicole,

I'm just following up on this. Thank you.

Esther Barrios  
Legal Assistant  
Christiansen Law Offices  
810 S. Casino Center, Suite 104  
Las Vegas, NV 89101  
Phone: (702) 240-7979  
Fax (866) 412-6992  
[www.christiansenlaw.com](http://www.christiansenlaw.com)

---

**From:** "Nicole M. Etienne" <[netienne@HPSLAW.COM](mailto:netienne@HPSLAW.COM)>  
**Date:** Tuesday, January 26, 2021 at 8:19 AM  
**To:** Esther Barrios Sandoval <[esther@christiansenlaw.com](mailto:esther@christiansenlaw.com)>  
**Subject:** FW: Badoi v Dignity Health - Deposition Availability re Witnesses

Esther – I am Tyson's assistant, please direct future correspondence to me.  
I will request their availability and get back to you.  
<image012.jpg>

**Nicole Etienne**  
*Legal Assistant*  
O: 702.212.1446  
Email: [netienne@HPSLAW.COM](mailto:netienne@HPSLAW.COM)

**1140 North Town Center Dr.**  
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**Legal Assistant to:**  
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---

**From:** Esther Barrios Sandoval <[esther@christiansenlaw.com](mailto:esther@christiansenlaw.com)>

---

**Sent:** Friday, January 22, 2021 4:13 PM  
**To:** efile <[efile@HPSLAW.COM](mailto:efile@HPSLAW.COM)>  
**Subject:** Badoi v Dignity Health - Deposition Availability re Witnesses

[External Email] CAUTION!

Good afternoon Counsel,

Please be advise that our office would like to schedule the depositions of the following witnesses. Would you please provide with their availability during February and March? Thank you.

1. Krista Molinaro, RN
2. Delaney McCoy, RN
3. Mary Brown RN
4. Tracy Jones, RN

Esther Barrios  
Legal Assistant  
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# EXHIBIT 4

# EXHIBIT 4

1 TRAN

2

3

4 IN THE EIGHTH JUDICIAL DISTRICT COURT  
5 CLARK COUNTY, NEVADA

6

7

8 TRACY CANTRELL, an )  
9 individual, )  
10 Plaintiff, ) ROUGH DRAFT  
11 vs. ) Case No.  
12 ) A-09-591808-C  
13 SUMMERLIN HOSPITAL )  
14 MEDICAL CENTER, LLC; a ) Dept. XV  
15 foreign limited- )  
16 liability company; DR. )  
17 KEVIN PETERSEN, an )  
18 individual; DOES I )  
19 through 20, inclusive, )  
20 and ROES 1 through 20, )  
21 inclusive. )  
22 LLC, ET AL., )  
23 Defendants. )

24 -----

25 JURY TRIAL

26

27 Before the Honorable Abbi Silver  
28 Wednesday, October 23, 2013, 3:40 p.m.

29 Reporter's Transcript of Proceedings

30 -----

31

32 REPORTED BY: ROBERT A. CANGEMI, CCR 888

1 consequences.

2           The subsequent statements of the residents  
3 who did the circumcision fall into this category."

4           The Court went on to state that the facts of  
5 that case were indicative of negligence and  
6 inadvertence, not aggravated disregard of the  
7 Defendant's duties.

8           This Court does not believe that the facts  
9 of that case are similar to this case at all. It  
10 was real discussing gross negligence, which is not  
11 what is alleged for the malpractice in this case.

12           Here the Plaintiff's cited to Moscovitz  
13 versus Mt. Sinai Medical Center from the Supreme  
14 Court of Ohio.

15           The facts of that case are more similar to  
16 the facts of this case, as far as what Plaintiff's  
17 are presenting to the Court through the amended  
18 complaint.

19           In Moskovitz, the decedent died after the  
20 doctor failed to biopsy a lump on her leg, despite  
21 his knowledge of 2 prior biopsies and the finding  
22 that they were cancerous.

23           The Plaintiff's in that case also alleged  
24 punitive damages based on the alteration of  
25 records.



1           In that case the Plaintiff's alleged that  
2 doctor whited out some of the information on the  
3 patient chart, altering the record.

4           Changing the record where he would be  
5 absolved of liability. The Supreme Court of Ohio  
6 affirmed punitive damages, in addition to  
7 compensatory damages to the malpractice action, and  
8 held that no actual damages needed to be proved  
9 based on the altered records.

10           Rather the record altercation showed "actual  
11 malice by the doctor Defendant, that punitives were  
12 proper."

13           The Court stated, "thus Figgie -- that was  
14 the doctor in that case -- if Figgie's argument is  
15 taken to its logical conclusion, litigants and  
16 prospective legitimate could alter or destroy  
17 documents, so long as no actual damage was caused  
18 thereby."

19           The Court went on to state; in our  
20 judgement, Figgie's alteration of records was  
21 inextricably intertwined with the claims advanced by  
22 the appellant for medical malpractice.

23           In the award of compensatory damages on the  
24 survival claim formed the necessary predicate for  
25 the award of punitive damages based on the

1 alteration of the medical records.

2           The purpose of punitive damages is not to  
3 compensate a Plaintiff, but to the punish and detour  
4 certain conduct.

5           Therefore, it would make no sense for this  
6 Court to establish a rule requiring not malicious  
7 conduct giving rise to a claim for punitive damages  
8 must independently cause compensable harm before the  
9 punitive damages may be awarded, which is kind of  
10 where I was headed last Friday.

11           If the act of altering, and it goes on, the  
12 Court says; if the acts of altering and destroying  
13 records to avoid liability is to be tolerated in our  
14 society, we can think of no better way to encourage  
15 it than to hold that punitive damages were not  
16 available in this case.

17           We believe that such conduct is particularly  
18 deserving of punishment in the form of punitive  
19 damages, and that a civilized society governed by  
20 rules of law can require no less.

21           Figgie's conduct of altering records should  
22 not a good unpunished. We should warn others to  
23 refrain from similar conduct, and an award of  
24 punitive damages will do just that.

25           The Court concluded by stating that less

1 sufficient evidence for the finder of fact to make a  
2 determination that actual malice existed in that  
3 case, due to the doctor's whitening out and altering  
4 the record.

5           The Court concluded by stating; we hold that  
6 any case involving medical malpractice where  
7 liability is determined and compensatory damages are  
8 awarded, punitive damages pled in connection with a  
9 claim for malpractice, maybe awarded upon a showing  
10 of actual malice, as that term is defined in the  
11 syllabus of Preston versus Murty supra.

12           I am going to emphasize this portion; an  
13 intentional alteration, falsification or destruction  
14 of medical records by a doctor to avoid liability  
15 for his or her medical negligence is sufficient to  
16 show actual malice, and punitive damages may be  
17 awarded whether or not the act of altering,  
18 falsifying or destroying the records directly causes  
19 compensable harm.

20           However, we reiterate the purpose of  
21 punitive damages is to punish and detour.

22           That was something I was concerned about  
23 last Friday, but that Court after reading it makes  
24 that distinction, and that's Supreme Court of Ohio.

25           This Court finds that since there is no law

1 on this in Nevada, this Court will treat this  
2 medical malpractice no different than any other  
3 action pursuant to Countrywide versus the Feasner  
4 case.

5 Further, this case is not different than  
6 most cases, because it is jury's determination. It  
7 is not this Court's determination of what occurred  
8 in that operating room.

9 I have said it over and over again, what  
10 happened in there is the jury's determination. It  
11 is not something that I can decide as a matter of  
12 law.

13 Whether this was an intentional cover-up, as  
14 the Plaintiff argues, or adequate records as the  
15 defense maintains, the jury must make that fact-  
16 finding determination as to whether they believe  
17 Susan Johnson, or whether they believe the 2 doctors  
18 and the 2 nurses that testified on behalf of the  
19 defense.

20 As the stories are 180 degrees different  
21 from one another, the Court cannot make that  
22 determination as a matter of law.

23 Here the Plaintiff's have pled negligence  
24 in a medical malpractice action, in that the  
25 Plaintiff was not properly strapped to the

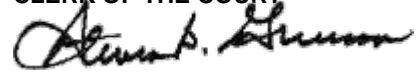
1 operating table, which led her to coming off of the  
2 table and onto the floor of the OR, and this caused  
3 her injuries.

4           And further that the failure to document  
5 this adverse event, to properly document it and/or  
6 intentionally conceal the adverse event is  
7 oppressive, a fraud, and that there is implied  
8 malice or actual malice with a conscious  
9 indifference to the rights of the Plaintiff patient.

10           The failure to document and/or the  
11 intentional concealment subjected the patient to  
12 further injury in conscious disregard to her health,  
13 as she did not know what was wrong with her back,  
14 because she was unaware of what actually happened in  
15 the OR regarding the adverse event.

16           And that -- this is all her allegations --  
17 and that both Defendants kept this information from  
18 her.

19           This arguably, as Plaintiff -- again this is  
20 Plaintiff's argument -- this arguably caused her  
21 problems both mentally and physically, as there were  
22 no medical records documenting the adverse event  
23 upon which the later doctors -- and when I say  
24 adverse event, I am calling it an adverse event, but  
25 I am saying she was put, either dropped to the



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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;

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;  
FIELDEN, HANSON, ISAACS, MIYADA,  
ROBISON, YEH, LTD., a Nevada  
Professional Corporation d/b/a USAP-  
Nevada; DOES I through X; and ROE  
BUSINESS ENTITIES XI through XX,  
inclusive,

Defendants.

CASE NO.: A-18-775572-C  
DEPT NO.: 9

**PLAINTIFFS' OPPOSITION TO DEFENDANT  
DIGNITY HEALTH D/B/A ST. ROSE  
DOMINICAN HOSPITAL'S MOTION TO  
DISMISS, OR ALTERNATIVELY, MOTION  
TO STRIKE**

DATE OF HEARING: OCTOBER 5, 2022  
TIME OF HEARING: 9:00 A.M.

SIMULTANEOUS AUDIOVISUAL  
TRANSMISSION EQUIPMENT

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,

1 hereby oppose Defendant Dignity Health d/b/a St. Rose Dominican Hospital's ("St. Rose")  
2 Motion to Dismiss, or Alternatively, Motion to Strike.

3 St. Rose seeks to dismiss Plaintiffs' Amended Complaint, arguing Plaintiffs' claims are  
4 barred by the statute of limitations. In moving for dismissal, St. Rose sets forth many of the same  
5 arguments that were brought before the Court prior to its Order Granting Plaintiffs' Motion for  
6 Leave to Amend—this Court squarely rejected those contentions. St. Rose's instant Motion  
7 likewise does not set forth any new binding caselaw or arguments that warrant dismissal. In short,  
8 Plaintiffs' claims are not barred by the statute of limitations because they relate back to the  
9 original Complaint under NRCP 15(c)(1) as they arise out of St. Rose's negligent care and  
10 treatment of Alina while she was admitted to St. Rose in May of 2016—which is the same  
11 occurrence set out in the original pleading. Because there is no basis for dismissal, St. Rose's  
12 Motion must be denied.

13 Alternatively, St. Rose seeks to strike Dr. Lanzkowsky's declaration under NRCP 12(f),  
14 asserting it is a rogue document and that it purportedly does not comply with NRS 41A.071  
15 because Dr. Lanzkowsky is an obstetrician, not a nurse, and does not identify by name the nursing  
16 staff alleged to have been negligent. As a preliminary matter, there is simply no basis for striking  
17 the declaration of Dr. Lanzkowsky under NRCP 12(f) because Plaintiffs filed the declaration with  
18 the Amended Complaint after obtaining leave of court to do so. Additionally, Nevada law does  
19 not require the affidavit of merit accompanying professional negligence complaints be submitted  
20 by a medical expert who specializes in the exact same area of medicine as the tortfeasor. NRS  
21 41A.071 governs the threshold requirements for initial pleadings in medical malpractice cases,  
22 not the ultimate trial of such matters, and only requires the affiant practice in an area substantially  
23 similar to that in which the defendant was engaged, giving rise to the malpractice action, which  
24 was certainly satisfied here.

25 Lastly, when taken together with the Amended Complaint, Dr. Lanzkowsky's declaration  
26 gives fair notice to St. Rose of the nature and basis of Plaintiffs' claims and meets the policy  
27 rationale underlying NRS 41A.071. The Amended Complaint and sworn declaration each  
28 identify by name and/or describe by conduct the particular breaches of the standard of care by St.

1 Rose's nursing and medical staff, which contributed to Alina's untimely death. For these reasons,  
2 the Motion must be denied.

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

5 **MEMORANDUM OF POINTS AND AUTHORITIES**

6 **I.**

7 **INTRODUCTION AND RELEVANT BACKGROUND**

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

18  
19 At 0215, Dr. Kim alleges he spoke with Ronaldo Abuan in the lab at St. Rose regarding  
20 his manual platelet count and subsequently advised that he would not place the epidural anesthetic  
21 in Alina due to a dramatic variance in the platelet count between the automated test and the  
22 manual test. *Id.* At 0300, Alina's OBGYN, Arthur Herpolsheimer, M.D. (hereinafter "Dr.  
23 Herpolsheimer"), purportedly discussed pain management options with Alina since Dr. Kim  
24 would not place an epidural. *Id.* at pg. 4. Despite that Alina's blood pressure remained  
25 dangerously high and her liver enzymes were elevated, Dr. Kim ultimately placed an epidural at  
26 0836.



1 At 1451, Alina delivered her baby Sophia vaginally with epidural anesthesia. *Id.* at pg.  
2 22. Within six (6) hours of delivery, Alina began to experience clinical complications postpartum.  
3 *Id.* At 2045, Alina developed symptoms of tingling and numbness (paresthesias) involving her  
4 lower extremities and associated with dizziness. *Id.* Dr. Herpolsheimer was notified of Alina's  
5 symptoms at 2058. *Id.* at pgs. 5 and 22.

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

13  
14 Alina subsequently developed epidural and subdural hematomas. Exhibit 1 at pg. 1,  
15 attached to Amended Complaint. Lumbar spinal and interventricular drains were placed during  
16 Alina's clinical course. *Id.*; Amended Complaint at ¶ 16. While attempting physical therapy at St.  
17 Rose, Alina coded and passed away on June 3, 2017. *Id.*

18 An autopsy was performed by Forensic Pathologist Dr. Alane M. Olson of the Clark  
19 County Coroner on June 4, 2017. Exhibit 2 at pg. 22, attached to Complaint. Dr. Olson issued her  
20 findings on August 7, 2017, at which time she concluded Alina's death was caused by bilateral  
21 pulmonary thromboemboli due to or as a consequence of deep venous thrombosis due to or as a  
22 consequence of acute spastic paraparesis following intradural hemorrhage associated with  
23 epidural anesthesia. Amended Complaint at ¶ 17, 21.

#### 24 **A. RELEVANT PROCEDURAL HISTORY.**

25 On June 5, 2018, Plaintiffs filed their Complaint against St. Rose, Dr. Kim, and U.S.  
26 Anesthesia Partners ("USAP"), alleging the following claims for relief: Professional Negligence;  
27 Negligent Credentialing (against St. Rose only); Fraudulent Concealment and/or Omissions;  
28

1 Negligent Hiring, Training, Retention and Supervision (against St. Rose and USAP); Ostensible  
2 Agency/Vicarious Liability (against St. Rose and USAP); and Wrongful Death Pursuant to NRS  
3 41.085. The original Complaint was supported by Yaakov Beilin, M.D. and Bruce J. Hirschfeld,  
4 M.D. Since that time, the parties engaged in extensive discovery, including twelve depositions  
5 and multiple sets of written discovery.

6 On April 27, 2022, during preparation for the then-existing initial expert disclosure  
7 deadline of May 2, 2022, Plaintiffs' expert, Jonathan Lanzkowsky, M.D. offered opinions that  
8 gave rise to additional breaches of the standard of care by St. Rose based on the conduct of its  
9 nurses and medical staff. After learning of Dr. Lanzkowsky's opinions, and in accordance with  
10 the deadline to add parties or amend pleadings, on May 2, 2022, Plaintiffs promptly moved for  
11 leave to amend their Complaint to include additional allegations concerning St. Rose's breaches  
12 of the standard of care consistent with the opinions of Dr. Lanzkowsky. *See* Motion dated May  
13 2, 2022 and Reply brief dated May 30, 2022, on file herein. On June 22, 2022, the Court granted  
14 Plaintiffs' Motion for Leave to File Amended Complaint. *See* Order dated August 2, 2022, on file  
15 herein. On August 9, 2022, Plaintiffs filed the Amended Complaint with the requisite  
16 affidavits/declarations of merit of Drs. Beilin, Hirschfeld, and Lanzkowsky attached thereto.  
17

18 **B. FACTUAL BACKGROUND RELATED TO ST. ROSE'S LIABILITY FOR**  
19 **MEDICAL MALPRACTICE.**

20 Pursuant to NRS 41A.071, Plaintiffs filed their Amended Complaint with sworn  
21 Declarations of Yaakov Beilin, M.D., Bruce Hirschfeld, M.D., and Jonathan Lanzkowsky, M.D.,  
22 FACOG. Dr. Lanzkowsky is board certified in the field of obstetrics and gynecology, is a Clinical  
23 Instructor in the Department of Ob/Gyn and Women's Health at The Mount Sinai School of  
24 Medicine in New York City, and has been in continuous practice in the field of obstetrics and  
25 gynecology for more than 25 years at The Mount Sinai Hospital. *See* Exhibit 3, attached to  
26 Amended Complaint, on file herein. Based on his education and years of experience, Dr.  
27 Lanzkowsky is intimately familiar with the standard of care as it applies to nurses during labor,  
28 delivery, and the postpartum period. *Id.*

1 In his sworn declaration, Dr. Lanzkowsky opined that the nursing and medical staff at St.  
2 Rose breached the standard of care by failing to timely render necessary treatment which resulted  
3 in delays in diagnosing Alina's condition and improperly treating Alina's hypertension, especially  
4 during the postpartum period. Specifically, Dr. Lanzkowsky opined that, St. Rose's medical staff  
5 failed to diagnose Alina with preeclampsia for nine hours after her first severe elevation in blood  
6 pressure, despite that on admission, Alina was noted to have elevated blood pressure, proteinuria,  
7 and low platelets—which met the criteria for pre-eclampsia. *Id.* Additionally, Alina had severe  
8 range blood pressures and despite her having multiple elevations in blood pressure in the severe  
9 range, Magnesium Sulfate was not ordered until several hours later. *Id.* Dr. Lanzkowsky opined  
10 that missing the significance of Alina's elevated blood pressures by medical and nursing staff is  
11 a breach of the standard of care and led to delayed treatment with Magnesium Sulfate and/or other  
12 medications to lower her blood pressure. *Id.*

14 Dr. Lanzkowsky noted that, although delivery is the ultimate treatment for preeclampsia,  
15 the disease process does not cease immediately at delivery and can often take days and sometimes  
16 weeks to resolve. *Id.* The patient remains at risk for complications of preeclampsia with the  
17 greatest elevations in blood pressure occurring in the immediate postpartum period. *Id.*

18 Alina successfully delivered her baby girl on May 16, 2017, at 1451. Approximately six  
19 hours later, Alina complained of tingling her legs on the postpartum floor. *Id.* After being  
20 notified, Dr. Garg ordered the MgSo4 held for one hour apparently to rule out MgSo4 toxicity as  
21 a cause. *Id.* During this time, Alina's symptoms did not improve and in fact worsened. *Id.* MgSo4  
22 was then restarted, however, no effort was made to ascertain the cause of Alina's symptoms after  
23 ruling out MgSo4 toxicity as a cause. *Id.* Dr. Lanzkowsky opined that failing to re-evaluate Alina  
24 after MgSo4 was discontinued to see if symptoms improved was a breach of the standard of care.  
25 *Id.*

26 Of significant concern to Dr. Lanzkowsky, Alina continued to have severe range blood  
27 pressure that should have been treated with fast acting anti-hypertensives (like hydralazine). *Id.*

1 On May 17, 2027, at 0402, Alina's blood pressure was 182/99. *Id.* Dr. Lanzkowsky opined that  
2 this elevated blood pressure required immediate medical treatment and failure to render such care  
3 was a breach of the standard of care. *Id.* Alina's repeat blood pressure 15 minutes later was  
4 183/97 which also went untreated. *Id.* Alina continued to have blood pressure in the severe ranges  
5 with worsening neurologic symptoms in her lower extremities. *Id.* At 0435, Nurse Taylor called  
6 Dr. Garg, who ordered oral labetalol without evaluating Alina. *Id.* Dr. Lanzkowsky opined that the  
7 management of these pressures with oral antihypertensives was a breach of the standard of care.  
8 *Id.*

9  
10 At 0547, Alina's blood pressure was 183/98. Dr. Garg ordered a small dose (5mg) of IV  
11 hydralazine. *Id.* According to Dr. Lanzkowsky, this was an unusually small dose that had a  
12 predictable minimal effect on Alina's pressures which remained in the severe range, including  
13 167/97 at 0602. By 0626, Alina's labs returned confirming HELLP syndrome (i.e., high blood  
14 pressure, elevated liver enzymes, and low platelets)—a form of severe preeclampsia. *Id.* As  
15 Alina's neurologic injuries progressed, she continued to have significantly elevated and untreated  
16 severe blood pressure, which was treated only with oral labetalol until 1824 when she was given  
17 an additional 20mg of hydralazine. *Id.* Dr. Lanzkowsky opined that the management of these  
18 pressures with oral antihypertensives represents a breach of the standard of care. *Id.* Dr.  
19 Lanzkowsky further opined that the nursing and medical staff at St. Rose breached the standard  
20 of care by improperly treating Alina's hypertension, especially during the postpartum period, and  
21 may have contributed to the worsening of Alina's intradural bleeding. *Id.*

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28

1 II.

2 **LEGAL ARGUMENT<sup>1</sup>**

3 **A. PLAINTIFFS' AMENDED COMPLAINT STATES VIABLE CAUSES OF**  
4 **ACTION AGAINST ST. ROSE.**

5 Under NRCP 12(b)(5), a plaintiff's complaint should be dismissed only if it appears  
6 beyond a doubt that it could prove no set of facts, which, if true, would entitle it to relief. *Buzz*  
7 *Stew, LLC v. City of North Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008). The primary  
8 inquiry is whether "the challenged pleading sets forth allegations sufficient to make out the  
9 elements of a right to relief." *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 846, 858 P.2d  
10 1258, 1260 (1993) (internal citations omitted). To set forth the elements of a right to relief, the  
11 Complaint must "give fair notice of the nature and basis of a legally sufficient claim and the relief  
12 requested." *Id.*

13 Here, each and every one of Plaintiffs' allegations meets the foregoing standard.  
14 Plaintiff's Amended Complaint contains statements that identify: (1) the parties related to the  
15 instant matter; (2) the relevant facts to the subject incident and each Defendants' known  
16 respective involvement; (3) the causes of actions against each Defendant and their elements; (4)  
17 the damages Plaintiffs have and will continue to suffer; and (5) the relief Plaintiffs are seeking.  
18 See Amended Complaint dated August 9, 2022, on file herein. In short, the Amended Complaint  
19 more than adequately sets forth allegations entitling Plaintiffs to relief against St. Rose based on  
20 vicarious liability/ostensible agency.

21 **B. NOTHING UNDER NEVADA LAW FORECELOSES PLAINTIFFS' CLAIMS**  
22 **AGAINST ST. ROSE BASED ON VICARIOUS LIABILITY/OSTENSIBLE**  
23 **AGENCY.**

24 St. Rose seeks dismissal of Plaintiffs' claims based on vicarious liability/ostensible  
25 agency, asserting that Plaintiffs are purportedly seeking an end-run around the statute of  
26 limitations in NRS 41A.097 by bringing claims only against the principal, not the agents. In

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27 <sup>1</sup> By way of stipulation dated August 25, 2022, Plaintiffs' cause of action for Fraudulent Concealment and/or  
28 Omissions was dismissed without prejudice, rendering the arguments set forth on pages 14:25-18:08 of St. Rose's  
Motion moot. Accordingly, the instant Opposition does not address those arguments, as they have been withdrawn  
by St. Rose. See Stipulation and Order for Dismissal Without Prejudice of Plaintiffs' Cause of Action for Fraudulent  
Concealment and/or Omissions Against All Defendants dated August 25, 2022, on file herein.

1 support of that assertion, St. Rose relies upon caselaw that actually undermines its position.  
2 Despite asserting that *Estate of Mary Curtis v. South Las Vegas Medical Investors*, 136 Nev. 350,  
3 466 P.3d 1263 (2020) purportedly stands for the proposition that a plaintiff cannot circumvent  
4 NRS 41A by asserting claims only against a principal in actions involving professional  
5 negligence, St. Rose tellingly goes on to concede “there is no Nevada case that directly addresses  
6 the factual situation present in the instant case.” Motion at 8:02-16. Indeed, nowhere in the *Curtis*  
7 decision did the Court find that a plaintiff cannot assert claims only against a principal in actions  
8 involving professional negligence. *See generally id.* Instead, the Court concluded that an  
9 affidavit of merit was required in order to sustain a complaint that included a claim for negligent  
10 hiring, supervision or training where the plaintiff’s claims were inextricably linked to underlying  
11 professional negligence. *See Curtis*, at 353-54.

12 Moreover, the facts in *Curtis* are entirely distinct from the instant case. There, the estate  
13 of a deceased nursing home resident brought claims arising from the death of Mary Curtis who  
14 died from morphine intoxication after a nurse at the care home administered morphine, which had  
15 been prescribed for a different resident. *Id.* at 351. The Complaint was not supported by **any**  
16 affidavit of merit. *Id.* On appeal, the panel concluded that although the nurse’s administration  
17 of the wrong medicine was a matter of ordinary negligence, the allegation the nursing staff failed  
18 to monitor the decedent after the administration of the morphine was one for professional  
19 negligence requiring a medical expert affidavit. *Id.* at 353-54. By contrast here, the underlying  
20 medical malpractice allegations are in fact, supported by an affidavit of merit, thereby satisfying  
21 the requirements of NRS 41A.071.

22 St. Rose’s reliance on *Huber v. Marlow*, 2008 WL 2199827 (Tenn. Ct. App. May 28,  
23 2008), an unpublished, nonbinding decision from Tennessee, is likewise unavailing. There, the  
24 plaintiffs failed to include in their complaint a vicarious liability claim against the principal.  
25 Conversely here, it is without dispute Plaintiffs’ original Complaint included a claim against St.  
26 Rose based on vicarious liability/ostensible agency. Additionally, St. Rose omits that, in *Abshire*  
27 *v. Methodist Healthcare-Memphis Hosps.*, 325 S.W.3d 98, 111 (Tenn. 2010) the Tennessee  
28 Supreme Court stated the procedural limitation on the plaintiff’s ability to pursue a vicarious

1 liability claim against a principal recognized in *Huber* does not apply in circumstances where the  
2 plaintiff has initially filed a vicarious liability claim against the principal, as Plaintiffs did here.

3 *Id.* The Tennessee Supreme Court reasoned as follows:

4       Extending the procedural limitation recognized in *Creech v. Addington* and *Huber*  
5       *v. Marlow* to plaintiffs who have included a vicarious liability claim in their  
6       original complaint would be contrary to the traditional principle that plaintiffs may  
7       elect to sue the principal, the agent, or both. In circumstances where the plaintiff  
8       has properly asserted a vicarious liability claim against the principal, the  
9       extinguishment of the plaintiff's claims against the agent, by voluntary dismissal  
10       or otherwise, “merely produce[s] the same effect as if the [agent] had never been  
11       sued....” *Rankhorn v. Sealtest Foods*, 63 Tenn.App. at 721, 479 S.W.2d at 652.

12 *Id.*

13       Simply put, there is nothing under Nevada law that precludes a plaintiff from bringing a  
14       vicarious liability claim only against the principal, not the agents. Even *Curtis*—the primary  
15       Nevada case upon which St. Rose relies—does not foreclose a plaintiff from bring such a claim.

16 **C. PLAINTIFFS’ CLAIMS ARE NOT BARRED BY THE STATUTE OF**  
17 **LIMITATION BECAUSE THEY RELATE BACK TO THE INITIAL**  
18 **COMPLAINT.**

19       St. Rose argues Plaintiffs’ claims set forth in the Amended Complaint are barred by the  
20       one-year statute of limitations, and the three-year statute of repose under NRS 41A.097. St. Rose  
21       contends that Plaintiffs’ claims do not “relate back” to the original Complaint because “the entire  
22       theory against St. Rose is brand new and independent of the claims asserted in the original  
23       complaint.” Motion at 11:22-24. First, St. Rose previously made this same argument in its  
24       Opposition to Plaintiffs’ Motion for Leave to File Amended Complaint (dated May 18, 2022),  
25       which the Court squarely rejected by granting Plaintiffs’ request for leave to amend. Second,  
26       there is no doubt that Plaintiffs’ claims relate back to their original Complaint, as the claims arise  
27       out of the same conduct and injuries that give rise to the malpractice action.

28       Pursuant to NRCP 15(c)(1), “An amendment to a pleading relates back to the date of the  
original pleading when: (1) 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.”

1 Here, Plaintiffs' claims "relate back" to the original Complaint because they arise out of St.  
2 Rose's negligent care and treatment of Alina while she was admitted to St. Rose in May of 2016.

3 St. Rose next asserts that Plaintiffs' claims are "akin to an amendment adding parties" and  
4 should be analyzed under NRCP 15(c)(2). Again, St. Rose made this same unavailing argument  
5 in its Opposition to Plaintiffs' Motion for Leave to File Amended Complaint, which the Court  
6 declined to follow. St. Rose has cited to many of the same cases and reiterates the very same  
7 points, which the Court previously rejected. Contrary to St. Rose's assertions otherwise, the  
8 Amended Complaint does NOT change or add any parties, but rather asserts claims that arose out  
9 of the conduct, transaction or occurrence set out in the original pleading. Pursuant to NRCP  
10 15(c)(1), an amendment of a pleading "relates back" to the date of the original pleading when the  
11 claim asserted in the amended pleading arose out of the "conduct, transaction, or occurrence" set  
12 forth in the original pleading. Here, there is no doubt the two additional breaches of the standard  
13 of care by St. Rose set forth in the Amended Complaint "relate back" to the original Complaint,  
14 as both arise out of the same negligent care and treatment of Alina while she was admitted to St.  
15 Rose.

16 In support of its position that the Amended Complaint is barred by the statute of  
17 limitations, St. Rose relies upon *Nelson v. City of Las Vegas*, 99 Nev. 548, 556, 665 P.2d 1141,  
18 1146 (1983). There, the plaintiff previously alleged intentional infliction of emotional distress  
19 and sought to add a battery cause of action, which was a new cause of action that described a new  
20 and entirely different source of damages.

21 Here, contrary to the plaintiff in *Nelson*, the Amended Complaint does not add any new  
22 causes of action. Nor have Plaintiffs changed any parties or their theory of liability in its entirety.  
23 The Amended Complaint still alleges St Rose was negligent in its care and treatment of Alina.  
24 Plaintiffs' source of damages remains the same. Consistent with the original Complaint, the  
25 Amended Complaint alleges St. Rose was negligent in its care and treatment of Alina vis-à-vis  
26 vicarious liability and/or ostensible agency. The Amended Complaint only seeks to hold St. Rose  
27 liable for additional breaches of the standard of care in its negligent care and treatment of Alina.  
28



1 Thus, the defense of this case will remain virtually the same, as St. Rose is still defending against  
2 Plaintiffs' malpractice claim.

3 Importantly, while sitting on the District Court bench, current Nevada Supreme Court  
4 Justice Silver allowed an amendment during the course of trial. See Trial Transcript in the matter  
5 of *Cantrell v. Summerlin Hospital Medical Center*, attached hereto as **Exhibit 1**. There, Judge  
6 Silver permitted the plaintiff to amend her complaint to add a new claim for intentional  
7 concealment and put forth a prayer for relief for punitive damages to the jury. *Id.* She further  
8 stated as follows:

9 The failure to document and/or the intentional concealment subjected the patient  
10 to further injury in conscious disregard to her health, as she did not know what  
11 was wrong with her back, because she was unaware of what actually happened in  
12 the OR regarding the adverse event.

13 *Id.*

14 Here, the Amended Complaint alleges two additional breaches of the standard of care  
15 against St. Rose based on vicarious liability (i.e., actual agency/ostensible agency) for the  
16 professional negligence of its own nurses and physicians, which contributed to the pulmonary  
17 embolism that ultimately caused Alina's death. Since the inception of this case, the Complaint  
18 against St. Rose has been based on vicarious liability/ostensible agency. Nothing about that is  
19 changing save and except for two additional breaches of the standard of care by St. Rose for: 1)  
20 the repeated failures of its physicians and nurses to properly monitor Alina's elevated blood  
21 pressure; and 2) awaiting necessary treatment which resulted in delays in diagnosing Alina's  
22 condition. These breaches of the standard of care occurred while Alina remained admitted to St.  
23 Rose after giving birth to her child and contributed to Alina's death.

24 **D. THERE IS NO BASIS FOR STRIKING DR. LANZKOWSKY'S DECLARATION.**

25 Relying on NRCP 12(f), St. Rose seeks to strike Dr. Lanzkowsky's declaration from the  
26 Amended Complaint because it was not attached to the proposed amended complaint for which  
27 leave was granted. Pursuant to NRCP 12(f), a "court may strike from a pleading an insufficient  
28 defense or any redundant, immaterial, impertinent, or scandalous matter." *Moulton v. Eugene Burger*  
*Management Corporation*, 2009 U.S. Dist LEXIS 8694 \*14-15, (D. Nev. 2009). A "redundant

1 matter” is that which “consists of allegations that constitute a needless repetition of other averments.”  
2 *Id.* at \*14, citing *Germaine Music v. Universal Songs of Polygram*, 275 F.Supp.2d 1288, 1299 (D.  
3 Nev. 2003). An “immaterial” matter is “that which has no essential or important relationship to the  
4 claim for relief or the defenses being pleaded.” *Id.* An “impertinent” matter consists of statements  
5 that do not pertain, and are not necessary to the issues in question. *Id.* A “scandalous” matter  
6 “improperly casts a derogatory light on someone, most typically on a party to the action.” *Id.*

7 There is nothing redundant, immaterial, impertinent, or scandalous about Dr. Lanzkowsky’s  
8 declaration. Indeed, St. Rose does not even make any such assertion. The contents of Dr.  
9 Lanzkowsky’s declaration have factual, documentary support and are the heart of Plaintiffs’ claims  
10 against St. Rose. There is simply no basis for striking Dr. Lanzkowsky’s declaration under NRC  
11 12(f).

12 In reliance upon EDCR 2.30, St. Rose asserts that Dr. Lanzkowsky’s declaration is a “rogue  
13 document” because it was not attached to the proposed amended complaint.<sup>2</sup> Notably, in its  
14 Opposition to Plaintiffs’ Motion for Leave to File Amended Complaint, St. Rose asserted the  
15 proposed amendment fails because an expert affidavit was not attached to Plaintiff’s motion.  
16 However, St. Rose failed to cite any legal authority for the proposition that an affidavit of merit must  
17 be attached to a motion for leave to amend. Plaintiff’s Motion for Leave to File Amended Complaint  
18 clearly and accurately stated: “The additional allegations concerning St. Rose’s breaches of the  
19 standard of care are supported by Plaintiffs’ expert, Jonathan Lanzkowsky, M.D.” *See* Motion dated  
20

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21 <sup>2</sup> As explained in Plaintiffs’ Opposition to St. Rose’s motion for reconsideration filed on November 9, 2022,  
22 prior to the filing of Plaintiffs’ motion for leave to amend, on April 27, 2022, Plaintiffs’ counsel received a report  
23 from Dr. Lanzkowsky that offered opinions giving rise to additional breaches of the standard of care by St. Rose  
24 based on the conduct of its nurses and medical staff. *Id.* After learning of Dr. Lanzkowsky’s opinion, on May 2,  
25 2022, Plaintiffs promptly moved for leave to amend their Complaint to include additional allegations concerning St.  
26 Rose’s breaches of the standard of care consistent with the newly asserted opinion of Dr. Lanzkowsky; meanwhile,  
27 Dr. Lanzkowsky reduced his report to a sworn declaration as required by NRS 41A.071. *Id.* There is no dispute  
28 Plaintiffs’ motion was filed within the deadline to amend pleadings or add parties.

26 That Plaintiffs were in possession of a report, rather than a sworn declaration, at the time Plaintiffs moved  
27 for leave to amend their complaint is a distinction without a difference because the substance of Dr. Lanzkowsky’s  
28 opinions contained in his report are identical to those contained in his sworn declaration. *Id.* The fact remains that at  
the time Plaintiffs filed their motion, Dr. Lanzkowsky had offered opinions giving rise to additional breaches of the  
standard of care by St. Rose based on the conduct of its own nurses and physicians. Plaintiffs promptly and timely  
moved for leave to amend to conform to the evidence unearthed in discovery, including the newly asserted opinions  
of Dr. Lanzkowsky.

1 May 2, 2022 at 6:09-11. In their Reply brief, Plaintiffs stated the affidavit of Dr. Lanzkowsky would  
2 be attached to the filed Amended Complaint in the event Plaintiffs' motion was granted. *See* Reply  
3 dated May 30, 2022 at 9:06-08. Contrary to St. Rose's assertions otherwise, an expert affidavit is  
4 NOT required for the proposed amended complaint. This issue was fully briefed by the parties and  
5 the Court considered all of the briefing and arguments by the parties in rendering its decision granting  
6 Plaintiffs' request for leave to file an amended complaint.

7 Plaintiffs acknowledge the filing of the Amended Complaint must be supported by an  
8 affidavit of merit pursuant to NRS 41A.071, which is exactly what occurred here. Plaintiffs complied  
9 with NRS 41A.071 by filing their Amended Complaint on August 9, 2022, with the requisite  
10 affidavits/declarations of merit attached, after obtaining leave of court to do so. The Amended  
11 Complaint currently on file is the same pleading that was attached to Plaintiff's underlying motion—  
12 —the only difference is that Plaintiffs attached the affidavits/declarations of merit of Drs. Beilin,  
13 Hirschfeld, and Lanzkowsky, as Plaintiffs said they would. In reliance on the Court's ruling,  
14 Plaintiffs filed their Amended Complaint with the requisite affidavits/declarations of merit  
15 attached. Perhaps most importantly, there is nothing in Dr. Lanzkowsky's declaration that is  
16 inconsistent with Plaintiffs' motion for leave to amend or the proposed amended complaint.  
17 Accordingly, there is no justification for striking Dr. Lanzkowsky's declaration.

18 **E. THE AMENDED COMPLAINT SATISFIES THE REQUIREMENTS OF NRS**  
19 **41A.071.**

20 **1. Dr. Lanzkowsky's Declaration Adequately Addresses Plaintiffs' Claim that**  
21 **St. Rose Breached the Standard of Care by Awaiting Necessary Treatment**  
22 **Which Resulted in Delays in Diagnosing Decedent's Condition.**

23 St. Rose seeks to dismiss Plaintiffs' claim based upon a delay in treatment, arguing it is  
24 not supported by Dr. Lanzkowsky's declaration. St. Rose's request should be denied because  
25 Plaintiffs properly plead their claim against St. Rose, and their accompanying declaration of Dr.  
26 Lanzkowsky fully complies with NRS 41A.071.

27 NRS 41A.071 is a "procedural rule of pleading" that courts "must liberally construe" in a  
28 manner consistent with NRCp 12. *Baxter v. Dignity Health*, 131 Nev.759, 763-64 , 357 P.3d 927,

1 930 (2015); *see also* *Zohar v. Zbiegien*, 130 Nev. 733, 334 P.3d 402, 406 (2014).<sup>3</sup> In particular,  
2 the purpose of a complaint is to “give fair notice of the nature and basis of a legally sufficient  
3 claim and the relief requested.” *Zohar* at 738, 334 P.3d at 406 (citing *Breliant v. Preferred*  
4 *Equities Corp.*, 109 Nev. 842, 846, 858 P.2d 1258, 1260 (1993)). The purpose of the supporting  
5 expert affidavit is to better enable the trial court to assess whether the medical malpractice claims  
6 contained within the complaint have merit. *Id.* Reading complaints and affidavits together is to  
7 ensure only frivolous cases are dismissed, the notice-pleading standard is met, and,

8 As we have previously acknowledged, the NRS 41A.071 affidavit requirement is  
9 a preliminary procedural rule subject to the notice pleading standard, and thus, it  
10 must be “liberally construe[d] ... in a manner that is consistent with our NRCP 12  
jurisprudence.”

11 *Id.* at 738, 334 P.3d at 406, (citing *Borger*, 120 Nev. at 1028, 102 P.3d at 605 (recognizing that  
12 “NRS 41A.071 governs the threshold requirements for initial pleadings in medical malpractice  
13 cases, not the ultimate trial of such matters.”)).

14 In his declaration, Dr. Lanzkowsky outlines the various breaches of the standard of care  
15 by St. Rose’s nursing and medical staff with respect to their delays in treating Alina, which are  
16 summarized as follows:

17 . . . On admission the patient was noted to have elevated blood pressure,  
18 proteinuria, and low platelets. These findings meet the criteria for pre-eclampsia.  
19 She evidenced systolic blood pressures of greater than 165 and therefore met  
20 criteria for preeclampsia with severe features. *This diagnosis would not be made  
by the medical staff until nine hours after her first severe elevation in blood  
pressure. . . .*

21 At 0641 the patient had severe range blood pressures . . . . *Despite the*  
22 *patient having multiple elevations in blood pressure in the severe range*  
23 *Magnesium Sulfate (MgSO4) was not ordered until 0945.* Missing the significance  
24 of Ms. Badoi’s elevated BP’s by medical and nursing staff is a breach of the  
standard of care and *led to delayed treatment* with Magnesium Sulfate and/or other  
medications to lower her BP. . . .

25 . . . Although delivery is the ultimate treatment for pre-eclampsia the  
26 disease-process does not cease immediately at delivery and can often take days  
and sometimes weeks to resolve. The patient remains at risk for complications of

27 \_\_\_\_\_  
28 <sup>3</sup> Although NRS 41A.071 was amended in 2015 subsequent to the *Zohar* decision, the amendment and *Zohar*  
are consistent with one another and thus, *Zohar* remains good law.

1 pre-eclampsia with the greatest elevations in BP occurring in the immediate  
2 postpartum period. . . .

3 On the postpartum floor at 2045 hrs., Ms. Badoi complained of tingling in  
4 her legs and when notified [sic] Dr. Garg was notified, he ordered the MgSO<sub>4</sub> held  
5 for one hour concerned that this was a possible reaction to MgSO<sub>4</sub>. *Although her*  
6 *symptoms did not improve and in fact worsened during this time*, the MgSO<sub>4</sub> was  
7 restarted, and *no effort was made to ascertain the cause of Badoi's symptoms*  
8 having ruled out MgSO<sub>4</sub> toxicity as a cause. Failing to re-evaluate Ms. Badoi after  
9 MgSO<sub>4</sub> was discontinued to see if her symptoms improved as a breach of the  
10 standard of care. . .

11 *See Exhibit 3, attached Amended Complaint, on file herein (emphasis added).*

12 As demonstrated above, Plaintiffs' claim based upon a delay in treatment is well supported  
13 by Dr. Lanzkowsky's declaration. The policy rationale underlying NRS 41A.071 has been met  
14 because St. Rose received sufficient notice of the nature and basis of Plaintiffs' claims against it,  
15 and this Court has sufficient information upon which it may determine that this action should be  
16 allowed to proceed.

17 **2. Dr. Lanzkowsky is Qualified as to the Nurses' Breaches of the Standard of**  
18 **Care.**

19 St. Rose argues the Amended Complaint fails to satisfy NRS 41A.071's affidavit  
20 requirements because Dr. Lanzkowsky is an obstetrician, not a nurse. St. Rose's argument is  
21 without merit because Nevada law does not require the affidavit of merit accompanying  
22 professional negligence complaints be submitted by a medical expert who practices or specializes  
23 in the exact same area of medicine as the tortfeasor. *See* NRS 41A.071(2).

24 Pursuant to NRS 41A.071(2), a complaint for professional negligence must be  
25 accompanied by an affidavit of a medical expert "who practices or has practiced in an area that is  
26 substantially similar to the type of practice engaged in at the time of the alleged professional  
27 negligence." As the Nevada Supreme Court has previously noted, "NRS 41A.071 governs the  
28 threshold requirements for initial pleadings in medical malpractice cases, not the ultimate trial of  
such matters," and "does not require that the affiant practice in the same area of medicine as the  
defendant... [but] that the affiant practice in an area substantially similar to that in which the  
defendant was engaged, giving rise to the malpractice action." *Borger v. Eighth Jud. Dist. Ct.*,  
120 Nev. 1021, 1027-28 102 P.3d 600, 605 (2004).

1           The plaintiff in *Borger* filed suit against a general surgeon and a gastroenterologist,  
2 attaching only an affidavit of a gastroenterologist to his complaint. *Id.* at 1024, 102 P.3d at 603.  
3 One of the defendant physicians, whose area of practice was general surgery, moved to dismiss  
4 due to the plaintiff's failure to comply with NRS 41A.071. *Id.* at 1025, 102 P.3d at 603. The  
5 district court dismissed the complaint, finding gastroenterology is not an area substantially similar  
6 to the type of practice engaged in by the defendant physician at the time of the alleged malpractice.  
7 *Id.* The plaintiff then sought writ relief before the Nevada Supreme Court. *Id.*

8           On appeal, the defendant physician asserted that the affidavit supporting the allegations  
9 against him must certify the affiant specifically engages in the same type of practice area as the  
10 defendant, despite that the diagnosis and treatment by the defendant involved issues related to the  
11 practice of gastroenterology. *Id.* at 1027, 102 P.3d at 604. In resolving the matter of whether an  
12 affiant practices in an area that is "substantially similar to the type of practice engaged in at the  
13 time of the alleged malpractice," the *Borger* Court approvingly cited a Connecticut court's  
14 interpretation of a similarly worded statute in holding the "that [t]he threshold question of  
15 admissibility is governed by the scope of the witness' knowledge and not the artificial  
16 classification of the witness by title." *Id.* at 1027-28, 102 P.3d at 605 (alteration in original)  
17 (internal quotation marks omitted); see *Marshall v. Yale Podiatry Grp.*, 496 A.2d 529, 531 (Conn.  
18 App. Ct. 1985).

19           Ultimately, the Nevada Supreme Court held that "the statute does not require that the  
20 affiant practice in the same area of medicine as the defendant," and the affidavit was compliant  
21 because the diagnosis and treatment rendered by the defendant physician implicated the affiant  
22 expert's area of expertise. *Id.* at 1028, 102 P.3d at 605. The Court further went on to hold that  
23 "because NRS 41A.071 governs the threshold requirements for initial pleadings in medical  
24 malpractice cases, not the ultimate trial of such matters, we must liberally construe this procedural  
25 rule of pleading in a manner that is consistent with our NRCP 12 jurisprudence." *Id.*

26           The Court's analysis in *Borger* is consistent with Nevada precedent concerning an  
27 expert's qualifications to testify at trial, which provides that "a physician or other medical  
28 provider is not automatically disqualified from testifying against a defendant who specializes in

1 a different area of medicine or who practices in a different medical discipline.” *Staccato v. Valley*  
2 *Hosp.*, 123 Nev. 526, 531–32, 170 P.3d 503, 506–07 (2007). In *Staccato*, the primary issue on  
3 appeal was “whether a physician is qualified to testify as to the proper standard of care in a  
4 malpractice action against a nurse when the allegedly negligent act implicates the physician’s  
5 realm of expertise.” *Id.* at 527, 170 P.3d at 504. The Court held the physician could opine on the  
6 nurse’s breaches of the standard of care, as “the proper measure for evaluating whether a witness  
7 can testify as an expert is whether that witness possesses the skill, knowledge, or experience  
8 necessary to perform or render the medical procedure or treatment being challenged as  
9 negligent...” *Id.* at 527, 170 P.3d at 504.

10 Here, Dr. Lankowsky is more than qualified to opine regarding the care and treatment  
11 provided by St. Rose’s nursing staff in order to meet the pleading standards set forth under NRS  
12 41A.071 and NRCP 8. As an obstetrician, Dr. Lankowsky’s opinions concerning the nursing  
13 staff’s breaches are directly related to Alina’s admission at St. Rose for induction of labor and the  
14 postpartum period, both of which Dr. Lankowsky is intimately familiar given his 25 years  
15 working with Mount Sinai Hospital in New York City. He is also a Clinical Instructor in  
16 Obstetrics and Gynecology at The Mount Sinai School of Medicine. As an obstetrician who has  
17 managed and cared for thousands of low and high-risk obstetrical patients, Dr. Lankowsky  
18 certainly possesses the skill, knowledge, and experience to opine as to the standard of care in  
19 treating patients during labor, delivery, and postpartum. His opinions concerning the nursing  
20 staff’s breaches of the standard care during Alina’s admission to St. Rose are particularly in the  
21 realm of his experience.

22 **3. Dr. Lankowsky’s Declaration Meets the Requirements of NRS 41A.071.**

23 St. Rose next takes issue with Dr. Lankowsky’s declaration, arguing he has failed to  
24 identify the nurses by name and separate out the specific acts of negligence of the nurses. Under  
25 Nevada law, a medical malpractice action must be filed with a medical expert affidavit, which  
26 supports the allegations contained therein, and “identifies by name, *or describes by conduct*, each  
27 provider of health care who is alleged to be negligent.” NRS 41A.071(3) (emphasis added). In  
28 applying that prerequisite, the Nevada Supreme Court has consistently held that “the NRS

1 41A.071 affidavit requirement is a preliminary procedural rule subject to the notice-pleading  
2 standard, and thus, it must be liberally construe[d] . . . in a manner that is consistent with our  
3 NRCPP 12 jurisprudence.” *Zohar*, 334 P.3d at 406 (citing *Borger v. Eighth Judicial Dist. Court*,  
4 120 Nev. 1021, 1028, 102 P.3d 600, 605 (2004). In particular, the purpose of a complaint is to  
5 “give fair notice of the nature and basis of a legally sufficient claim and the relief requested.” *Id.*  
6 (citing *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 846, 858 P.2d 1258, 1260 (1993)).

7 The affidavit must also set out the “specific acts or acts of alleged negligence separately  
8 as to each defendant in simple, concise and direct terms.” NRS 41A.071(4). “The object of NRS  
9 41A.071’s affidavit-of-merit requirement . . . is ‘to ensure that parties file malpractice cases in  
10 good faith, *i.e.*, to prevent the filing of frivolous lawsuits.’” *Baxter*, 131 Nev. at 763, 357 P.3d at  
11 930.

12 In *Zohar*, this Court specifically considered whether a NRS 41A.071 affidavit of merit  
13 “must independently state every fact required to demonstrate a cause of action for medical  
14 malpractice, or whether courts should read the affidavit of merit together with the Complaint, ‘to  
15 ensure that medical malpractice actions are filed in good faith based upon competent expert  
16 medical opinion.’” 130 Nev. at 739, 334 P.3d at 406 (citing *Washoe Med. Ctr. v. Second Jud.*  
17 *Dist. Ct.*, 122 Nev. 1298, 1304, 148 P.3d 790, 794 (2006)). The *Zohar* Court held in no uncertain  
18 terms that “reason and public policy dictate that courts should read the complaint and the plaintiffs  
19 NRS 41A.071 expert affidavit together...” when determining the sufficiency of a supporting  
20 affidavit. *Id.* at 739, 334 P.3d at 406. In sum, the affidavit of merit need not independently recite  
21 every fact necessary to prove medical malpractice and is to be read in conjunction with the  
22 allegations of the complaint. *Id.*

23 When taken together with Plaintiffs’ Amended Complaint, the declaration gives fair  
24 notice to St. Rose of the nature and basis of Plaintiffs’ claims and meets the policy rationale.  
25 Plaintiffs’ claims are well supported by an extensive affidavit of merit, thereby meeting the policy  
26 rationale underlying NR 41A.071. The contents of Dr. Lanzkowsky’s sworn declaration  
27 concerning the involvement of St. Rose’s nursing staff and their breaches of the standard of care  
28 which contributed to Alina’s death is discussed in detail in Section I. B., *supra*. Dr. Lanzkowsky’s



1 sworn declaration identifies Nurse Taylor by name, and describes by conduct St. Rose's nursing  
2 staff alleged to have been negligent. Dr. Lanzkowsky's declaration also sets forth the specific acts  
3 of their negligence in simple, concise and direct terms. When read together with the Amended  
4 Complaint, as well as the declarations of Drs. Beilin and Hirschfeld, there is no room for  
5 interpretation as to the nursing staff's negligence acts in giving rise to Plaintiffs' claims. Because  
6 the Amended Complaint and declaration of Dr. Lanzkowsky more than satisfy the requirements  
7 of NRCPP 8, NRS Chapter 41A, and the policy rationale behind the affidavit-of-merit requirement,  
8 dismissal is simply not warranted.

9  
10 **III.**

11 **CONCLUSION**

12 Based on the foregoing facts, law, and analysis, Plaintiffs respectfully request that this  
13 Court enter an Order denying Defendant Dignity Health d/b/a St. Rose Dominican Hospital's  
14 ("St. Rose") Motion to Dismiss, or Alternatively, Motion to Strike in its entirety.

15 Dated this 9th day of September, 2022.

16 CHRISTIANSEN TRIAL LAWYERS

17  
18 By

  
\_\_\_\_\_  
PETER S. CHRISTIANSEN, ESQ.  
KENDELEE L. WORKS, ESQ.  
KEELY P. 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 9th day of September, 2022 I caused the foregoing document entitled **PLAINTIFFS' OPPOSITION TO DEFENDANT DIGNITY HEALTH D/B/A ST. ROSE DOMINICAN HOSPITAL'S MOTION TO DISMISS, OR ALTERNATIVELY, MOTION TO STRIKE** 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.



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An employee of Christiansen Trial Lawyers

# **EXHIBIT 1**

# **EXHIBIT 1**

1 TRAN

2

3

4 IN THE EIGHTH JUDICIAL DISTRICT COURT  
5 CLARK COUNTY, NEVADA

6

7

8 TRACY CANTRELL, an )  
9 individual, )  
10 Plaintiff, ) ROUGH DRAFT  
11 vs. ) Case No.  
12 ) A-09-591808-C  
13 SUMMERLIN HOSPITAL )  
14 MEDICAL CENTER, LLC; a ) Dept. XV  
15 foreign limited- )  
16 liability company; DR. )  
17 KEVIN PETERSEN, an )  
18 individual; DOES I )  
19 through 20, inclusive, )  
20 and ROES 1 through 20, )  
21 inclusive. )  
22 LLC, ET AL., )  
23 Defendants. )

24 -----

25 JURY TRIAL

26

27 Before the Honorable Abbi Silver  
28 Wednesday, October 23, 2013, 3:40 p.m.

29 Reporter's Transcript of Proceedings

30 -----

31

32 REPORTED BY: ROBERT A. CANGEMI, CCR 888

1 consequences.

2           The subsequent statements of the residents  
3 who did the circumcision fall into this category."

4           The Court went on to state that the facts of  
5 that case were indicative of negligence and  
6 inadvertence, not aggravated disregard of the  
7 Defendant's duties.

8           This Court does not believe that the facts  
9 of that case are similar to this case at all. It  
10 was real discussing gross negligence, which is not  
11 what is alleged for the malpractice in this case.

12           Here the Plaintiff's cited to Moscovitz  
13 versus Mt. Sinai Medical Center from the Supreme  
14 Court of Ohio.

15           The facts of that case are more similar to  
16 the facts of this case, as far as what Plaintiff's  
17 are presenting to the Court through the amended  
18 complaint.

19           In Moskovitz, the decedent died after the  
20 doctor failed to biopsy a lump on her leg, despite  
21 his knowledge of 2 prior biopsies and the finding  
22 that they were cancerous.

23           The Plaintiff's in that case also alleged  
24 punitive damages based on the alteration of  
25 records.

1           In that case the Plaintiff's alleged that  
2 doctor whited out some of the information on the  
3 patient chart, altering the record.

4           Changing the record where he would be  
5 absolved of liability. The Supreme Court of Ohio  
6 affirmed punitive damages, in addition to  
7 compensatory damages to the malpractice action, and  
8 held that no actual damages needed to be proved  
9 based on the altered records.

10           Rather the record altercation showed "actual  
11 malice by the doctor Defendant, that punitives were  
12 proper."

13           The Court stated, "thus Figgie -- that was  
14 the doctor in that case -- if Figgie's argument is  
15 taken to its logical conclusion, litigants and  
16 prospective legitimate could alter or destroy  
17 documents, so long as no actual damage was caused  
18 thereby."

19           The Court went on to state; in our  
20 judgement, Figgie's alteration of records was  
21 inextricably intertwined with the claims advanced by  
22 the appellant for medical malpractice.

23           In the award of compensatory damages on the  
24 survival claim formed the necessary predicate for  
25 the award of punitive damages based on the

1 alteration of the medical records.

2 The purpose of punitive damages is not to  
3 compensate a Plaintiff, but to the punish and detour  
4 certain conduct.

5 Therefore, it would make no sense for this  
6 Court to establish a rule requiring not malicious  
7 conduct giving rise to a claim for punitive damages  
8 must independently cause compensable harm before the  
9 punitive damages may be awarded, which is kind of  
10 where I was headed last Friday.

11 If the act of altering, and it goes on, the  
12 Court says; if the acts of altering and destroying  
13 records to avoid liability is to be tolerated in our  
14 society, we can think of no better way to encourage  
15 it than to hold that punitive damages were not  
16 available in this case.

17 We believe that such conduct is particularly  
18 deserving of punishment in the form of punitive  
19 damages, and that a civilized society governed by  
20 rules of law can require no less.

21 Figgie's conduct of altering records should  
22 not a good unpunished. We should warn others to  
23 refrain from similar conduct, and an award of  
24 punitive damages will do just that.

25 The Court concluded by stating that less

1 sufficient evidence for the finder of fact to make a  
2 determination that actual malice existed in that  
3 case, due to the doctor's whitening out and altering  
4 the record.

5           The Court concluded by stating; we hold that  
6 any case involving medical malpractice where  
7 liability is determined and compensatory damages are  
8 awarded, punitive damages pled in connection with a  
9 claim for malpractice, maybe awarded upon a showing  
10 of actual malice, as that term is defined in the  
11 syllabus of Preston versus Murty supra.

12           I am going to emphasize this portion; an  
13 intentional alteration, falsification or destruction  
14 of medical records by a doctor to avoid liability  
15 for his or her medical negligence is sufficient to  
16 show actual malice, and punitive damages may be  
17 awarded whether or not the act of altering,  
18 falsifying or destroying the records directly causes  
19 compensable harm.

20           However, we reiterate the purpose of  
21 punitive damages is to punish and detour.

22           That was something I was concerned about  
23 last Friday, but that Court after reading it makes  
24 that distinction, and that's Supreme Court of Ohio.

25           This Court finds that since there is no law



1 on this in Nevada, this Court will treat this  
2 medical malpractice no different than any other  
3 action pursuant to Countrywide versus the Feasner  
4 case.

5           Further, this case is not different than  
6 most cases, because it is jury's determination. It  
7 is not this Court's determination of what occurred  
8 in that operating room.

9           I have said it over and over again, what  
10 happened in there is the jury's determination. It  
11 is not something that I can decide as a matter of  
12 law.

13           Whether this was an intentional cover-up, as  
14 the Plaintiff argues, or adequate records as the  
15 defense maintains, the jury must make that fact-  
16 finding determination as to whether they believe  
17 Susan Johnson, or whether they believe the 2 doctors  
18 and the 2 nurses that testified on behalf of the  
19 defense.

20           As the stories are 180 degrees different  
21 from one another, the Court cannot make that  
22 determination as a matter of law.

23           Here the Plaintiff's have pled negligence  
24 in a medical malpractice action, in that the  
25 Plaintiff was not properly strapped to the

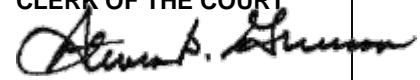
1 operating table, which led her to coming off of the  
2 table and onto the floor of the OR, and this caused  
3 her injuries.

4           And further that the failure to document  
5 this adverse event, to properly document it and/or  
6 intentionally conceal the adverse event is  
7 oppressive, a fraud, and that there is implied  
8 malice or actual malice with a conscious  
9 indifference to the rights of the Plaintiff patient.

10           The failure to document and/or the  
11 intentional concealment subjected the patient to  
12 further injury in conscious disregard to her health,  
13 as she did not know what was wrong with her back,  
14 because she was unaware of what actually happened in  
15 the OR regarding the adverse event.

16           And that -- this is all her allegations --  
17 and that both Defendants kept this information from  
18 her.

19           This arguably, as Plaintiff -- again this is  
20 Plaintiff's argument -- this arguably caused her  
21 problems both mentally and physically, as there were  
22 no medical records documenting the adverse event  
23 upon which the later doctors -- and when I say  
24 adverse event, I am calling it an adverse event, but  
25 I am saying she was put, either dropped to the



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*d/b/a St. Rose Dominican Hospital – Siena Campus*

**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

Plaintiffs,

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, inclusive;  
and ROE BUSINESS ENTITIES XI through  
XX, inclusive,

Defendants.

CASE NO.: A-18-775572-C  
DEPT NO.: 9

**DEFENDANT DIGNITY HEALTH d/b/a**  
**ST. ROSE DOMINICAN HOSPITAL'S**  
**REPLY IN SUPPORT OF MOTION FOR**  
**RECONSIDERATION OF THE ORDER**  
**GRANTING PLAINTIFFS' MOTION**  
**FOR LEAVE TO FILE AMENDED**  
**COMPLAINT**

**HEARING REQUESTED**

COMES NOW, Defendant, ST. ROSE DOMINICAN HOSPITAL – SIENA CAMPUS,  
by and through its attorneys of record, HALL PRANGLE & SCHOONVELD, LLC, hereby files  
this Reply in Support of its Motion for Reconsideration of the Order Granting Plaintiffs' Motion

1 for Leave to File Amended Complaint. This Reply is supported by the attached Points and  
2 Authorities, any other evidence that the Court deems just and proper, and any argument of  
3 counsel which may be heard at the time of any hearing on the matter.

4 DATED this 15<sup>th</sup> day of September, 2022.

5 HALL PRANGLE & SCHOONVELD, LLC

6 By: /s/:Tyson J. Dobbs

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17 *Dignity Health, a Foreign Non-Profit Corporation*

18 *d/b/a St. Rose Dominican Hospital – Siena Campus*

I.

**INTRODUCTION**

Plaintiffs' Opposition to the Motion for Reconsideration fails to adequately address the bases for reconsideration.

First, Plaintiffs attempt to minimize the misrepresentation about the existence of a declaration by claiming possession of an expert report. Notably, Plaintiffs do not share the "identical" report in the Opposition, nor offer the date of the expert's retention. Rather they contend that representing to the Court their Amended Complaint was supported by a declaration as opposed to a report is a "distinction without a difference." However, as set forth below, the Nevada Supreme Court disagrees. *See, e.g., Klingensmith v. Eighth Judicial District Court*, 494 P.3d 904 (unpublished) (finding a complaint filed with an expert report, albeit identical in substance to a later created declaration, to be void as a matter of law).

Next, Plaintiffs' Opposition utterly fails to address why the motion to amend was premised as a "motion to conform to evidence unearthed in discovery," but the expert support for the amendments did not consider *any* of the evidence unearthed in the four years of discovery. Instead, Plaintiffs' repeatedly claim that they "promptly" filed the motion to amend when their retained expert advised them of additional breaches by nurses and physicians at the hospital. As set forth below, however, Plaintiffs' liberal use of the word prompt in describing the five-year delay in bringing claims that should have been brought in the original complaint, is nothing short of disingenuous.

As follows, Plaintiffs' Opposition simply fails to offer any justification for filing the motion to amend four years into this litigation. The Opposition is devoid of any facts or arguments that would overcome any good cause analysis under NRCP 16 or prove that the motion was not dilatory or unduly delayed under NRCP 15.

**ARGUMENT**

**A. That Plaintiffs only learned of Dr. Lankowsky's opinions in April 2022 is indisputable evidence that the motion was unduly delayed and dilatory.**

Plaintiffs repeatedly argue in the Opposition that they "promptly" moved for leave to amend. The sole basis is that the motion was filed shortly after Dr. Lankowsky authored an

expert report in April 2022. However, the issue is not whether they promptly moved for leave to amend after obtaining an expert report, the issue is whether they promptly moved for leave to amend after being apprised of the factual basis for leave to amend. The answer is an emphatic no.

Indeed, the undisputed testimony from Plaintiff in 2019 was that, at the time of the treatment in 2017, he had concerns about the nursing staff's treatment of Plaintiff's blood pressure, and the timing of the interventions undertaken to diagnose Ms. Badoi's complications. He also understood a conversation with a neurosurgeon to mean that the epidural had been placed in the wrong spot and caused Ms. Badoi's resulting complications. For that reason, he requested the medical records while Ms. Badoi was still admitted to the hospital and sought an attorney within one month of her death in June of 2017. Plaintiffs' attorneys then proceeded to have the case reviewed by two experts in June of 2018 to identify instances of negligence. Subsequently, after the filing of the lawsuit, Plaintiff proceeded to take 10 depositions of healthcare providers involved in the treatment. After those depositions and due to Plaintiffs' continued efforts to take depositions that had nothing to do with the only allegedly negligent conduct set forth in the Complaint – placement of an epidural by an anesthesiologist – St. Rose Hospital filed a motion seeking confirmation that the case against it was limited to ostensible agency for Dr. Kim. The motion was essentially pending for six months and Plaintiffs filed what amounted to a non-opposition. Then at the hearing on the motion Plaintiffs' counsel stipulated in open court that the Original Complaint against St. Rose Hospital was indeed limited to claim for vicarious liability based on the alleged professional negligence of Dr. Kim. Apparently, six weeks later Plaintiffs obtained an expert report from Dr. Lanzkowsky and "promptly" filed a Motion to Amend.

Consequently, the better questions to evaluate whether the motion to amend was "promptly" filed, include:

- Why was Dr. Lanzkowsky or some other physician was not consulted when Plaintiffs consulted the other two expert physicians in 2018?

- Why was Dr. Lanzkosky or some other physician not consulted after Plaintiff Liviu Chisiu's deposition three years ago when he offered his own concerns about the treatment by the nursing staff of Plaintiff's blood pressures?
- Why was Dr. Lanzkowsy not consulted and a motion to amend filed after Plaintiffs completed the 10 depositions allowable under NRCP 30?
- Why was Dr. Lanzkowsky not consulted and motion to amend filed after St. Rose Hospital filed the Motion for Judgment on the Pleadings?
- When was Dr. Lanzkowsky retained?

Plaintiffs' opposition does not answer these questions because there is no good answer. That Plaintiffs only explored possible claims against other providers in April 2022 is inexcusable and is indisputable evidence that they were dilatory in seeking leave to amend.

Moreover, the Opposition simply ignores the fact that the motion to amend was premised as a motion to "conform to the evidence unearthed in discovery" when Dr. Lanzkowsky did not even review any of the discovery conducted over the 4 years that this case has been pending. Accordingly, the argument that the motion to amend was "promptly" filed is laughable.

**B. Plaintiffs' repeated arguments in the Opposition that the Amended Complaint did not change the theory of liability against St. Rose Hospital is disingenuous.**

Plaintiffs' Opposition similarly claims that St. Rose Hospital is overreacting because the Complaint, since its inception, has been based on "ostensible agency/vicarious liability." While it is true that the sole claims for relief against St. Rose in the original complaint were based on ostensible agency, that was ostensible agency for the professional negligence of a single anesthesiologist – a claim that has since been dismissed via summary judgment. The vicarious liability claims in the Amended Complaint concern *different* providers – Ms. Badoi's treating *obstetricians* and a labor and delivery nurse. That these new claims are premised on vicarious liability is irrelevant. The practical effect of the amendment is that St. Rose is left to defend the treatment of different providers in entirely different specialties which have never before been at issue in this case.

Again, the sole theory of liability asserted against St. Rose Hospital in the original complaint *no longer exists*. The Amended Complaint asserts entirely new theories of liability. Accordingly, Plaintiffs' argument that the claims in the Amended Complaint are still based on vicarious liability are knowingly misleading, irrelevant, and worthless to any issue at stake in this motion.

**C. An expert affidavit is required to be attached to a proposed amended complaint.**

Given it is undisputed that a declaration was not attached to the proposed Amended Complaint and did not even exist at the time of the motion to amend, Plaintiffs suggest there is no legal authority to require that exhibits be attached to a proposed amended complaint. Ironically, Plaintiffs offer no authority to support an argument that exhibits are not required to be attached to a proposed amended pleading, particularly when such a pleading would be "void ab initio" without the exhibit.

More importantly, Plaintiffs purposely ignore EDCR 2.30, which requires "all" exhibits "must" be attached to amended pleadings, and that a proposed amended pleading "must" be attached to a motion for leave to amend. Accordingly, EDCR 2.30 expressly requires that an exhibit be attached to a proposed amended complaint.

Again, this is especially true when the pleading itself is void as a matter of law if the exhibit is not attached. *See Washoe Med. Ctr. v. Second Judicial Dist. Court of State of Nev. ex rel. Cnty. of Washoe*, 122 Nev. 1298, 1300, 148 P.3d 790, 792 (2006) (holding that a complaint that does not comply with NRS 41A.071's affidavit requirement "is "void ab initio" and "does not legally exist"); *see also Klingensmith v. Eighth Judicial District Court*, 494 P.3d 904 (unpublished) (finding that although an expert had prepared a report prior to the filing of the complaint and converted it into a declaration after the complaint was filed, the complaint was "void ab initio" because the report did not "constitute an unsworn declaration made under penalty of perjury"). Certainly, leave to amend in a professional negligence case without a qualifying affidavit of merit would be futile. *See, e.g., Nutton v. Sunset Station, Inc.*, 131 Nev. 279, 290, 357 P.3d 966, 974 (Nev. App. 2015) (explaining that the futility doctrine for purposes



1 of NRCPP 15(a) applies to amendments that are “facially futile” without having to look outside  
2 the four corners of the pleadings.”

3 Plaintiffs are therefore wrong that there is no requirement that the proposed amended  
4 complaint include an expert’s declaration. Indeed, the Amended Complaint “did not legally  
5 exist” until that declaration was created three weeks after the deadline to amend had expired.  
6 Had Plaintiffs’ been forthcoming with the Court and counsel regarding the inexistence of a valid  
7 declaration to support a claim for professional negligence, the motion to amend would have  
8 necessarily been denied as futile and for noncompliance with EDCR 2.30.

9 **D. That there was no existing declaration at the time of the motion to amend is**  
10 **extremely significant under Nevada law.**

11 Plaintiffs’ Opposition also minimizes the misrepresentation in the pleadings regarding the  
12 existence of a declaration from Dr. Lanzkowsky. Plaintiffs Opposition specifically states that the  
13 possession of a report instead of a declaration “is a distinction without a difference . . . .” See  
14 Opposition at 7:3-4. If such were truly the case, why didn’t the proposed amended complaint  
15 state that it was supported by a “report”? Why did the proposed amended complaint specifically  
16 misrepresent to the Court and counsel that it was supported by a declaration?

17 The reason is that the Nevada Supreme Court considers the “distinction” to be extremely  
18 significant when it comes to the validity of a complaint for professional negligence. For  
19 example, in *Klingensmith v. Eighth Judicial District Court*, 494 P.3d 904 (unpublished), the  
20 plaintiff filed a complaint for professional negligence accompanied by an “Expert Report” that  
21 was “not in the form of an affidavit or an unsworn declaration made under penalty of perjury.”  
22 The Plaintiff then filed an Errata to the complaint with a report “made under penalty of perjury  
23 and dated after the complaint was filed.” The defendant moved to dismiss the complaint.

24 The district court denied the motion to dismiss finding that pursuant to *Baxter v. Dignity*  
25 *Health*, 131 Nev. 759, 357 P.3d 927 (2015), the expert report:

26 substantially complied with NRS 41A.071 because it was signed,  
27 prepared before the complaint was filed, made with a reasonable  
28 degree of medical probability, and the errata’s opinions were  
identical to those originally filed with the complaint.

1 *Id.* at \*1.

2 The Nevada Supreme Court reversed the district court order, reasoning that “a complaint  
3 that does not comply with NRS 41A.071’s affidavit requirement is void ab initio and does not  
4 legally exist.” *Id.* The Court distinguished the expert report from the declaration at issue in  
5 *Baxter*, which was “sworn under penalty of perjury before the plaintiff filed his complaint . . . .”  
6 *Id.* The declaration in *Baxter* thus existed but was simply not attached to the complaint. The  
7 Court found the expert report before it in *Klingensmith* to be neither an affidavit nor a  
8 declaration. The Court also noted there was no argument or evidence that the report was made  
9 under the penalty of perjury. *See id.* (citing *MountainView Hosp., Inc. v. Eighth Judicial Dist.*  
10 *Court*, 128 Nev. 180, 186, 273 P.3d 861, 865 (2012). The Court thus found the plaintiff’s  
11 arguments in that case that the expert report was “substantively identical” to the declaration to be  
12 “inconsequential.” *See Klingensmith* at \*2.

13 Likewise, here, Plaintiffs’ attempts to minimize the misrepresentation regarding the  
14 existence of a declaration supporting the allegations of the proposed amended complaint are  
15 unavailing. The Nevada Supreme Court considers the distinction quite significant and  
16 determinative. Again, had Plaintiffs been forthcoming about the inexistence of a declaration, the  
17 proposed amended complaint would have been undeniably futile until the declaration came into  
18 existence. The Amended Complaint could not have legally existed until three weeks after the  
19 deadline to amend the pleadings had expired. Accordingly, the motion was premature and  
20 improper, and when ripe, a good cause analysis should have been conducted to determine  
21 whether an NRCP 15(a) analysis should have even been undertaken.

22 **E. St. Rose Hospital is not making the “same failed arguments” but has offered**  
23 **new, indisputable facts that confirm that Plaintiff’s motion to amend was not**  
24 **filed in good faith and was not evaluated under the appropriate legal standard.**

25 Plaintiffs’ Opposition also suggests the Motion for Reconsideration is just St. Rose  
26 making the “same failed arguments” because it is unhappy with the Court’s order. Plaintiffs are  
27 correct that St. Rose is unhappy with Plaintiffs having obtained leave to assert claims that should  
28 have been raised four years ago based on misrepresentations regarding the support for those  
claims. However, St. Rose disputes that it is making the same arguments proffered in the Motion

1 for Reconsideration. On the contrary, at the time it filed its opposition to the motion to amend  
2 St. Rose was unable to verify Plaintiffs' arguments regarding the existence of a supporting  
3 declaration, or that the motion was delayed as it was "brought to conform to the evidence  
4 unearthed in discovery." The filing of the Amended Complaint confirmed that no declaration  
5 existed, and that the new declaration was premised exclusively on medical records within  
6 Plaintiffs' possession since 2017. Although Plaintiffs' Opposition offers a self-serving attempt  
7 to minimize the misrepresentation regarding the inexistent declaration, there is not even any  
8 attempt to explain away the misrepresentation regarding the motion to amend being premised on  
9 evidence "unearthed in discovery."

10 Again, the Court did not conduct an analysis of good cause under NRCP 16 because  
11 Plaintiff prematurely filed a motion to amend based upon a declaration that did not exist. *See,*  
12 *e.g. Nutton v. Sunset Station, Inc.*, 131 Nev. 279, 357 P.3d 966 (Nev. App. 2015)(holding that  
13 untimely motions to amend must be analyzed under NRCP 16.1 for good cause prior to  
14 conducting an analysis of whether leave should be granted pursuant to NRCP 15). Neither the  
15 Court nor counsel for Defendant were apprised of the true facts: first, that there was no  
16 declaration in existence as required by NRS 41A.071 to support the new claims against St. Rose;  
17 and second, that the new claims were based exclusively on a review of medical records Plaintiffs  
18 had within their possession since 2017. These undisclosed material facts precluded a proper  
19 analysis of the good cause for bringing the motion to amend under NRCP 16, as the well as the  
20 undue delay, bad faith, and dilatory conduct associated with the motion under NRCP 15. Had  
21 these facts been disclosed, an NRCP 16 analysis would have been undertaken and confirmed  
22 there was no good cause for the delay in filing the motion, and the undue delay and dilatory  
23 conduct associated with filing the motion would have been confirmed. Indeed, Plaintiffs were  
24 on inquiry notice as to all the claims asserted in the proposed amended complaint as of Alina  
25 Badoi's death, at the latest.

26 The fact of the matter is that Plaintiffs sat on their hands for four years and filed a motion  
27 to amend at the deadline. The motion came after Plaintiffs' counsel misled Defendant's counsel  
28 via a stipulation in open court regarding the claims to be asserted against the hospital.

Nevertheless, even when filed four years too late, Plaintiffs were still not ready with the requisite evidence to support the motion and had to misrepresent the nature of the support for the proposed amended complaint, and the justification for filing it so late in the litigation, to ensure the motion was granted. Plaintiffs should therefore be estopped from capitalizing on their misrepresentations and disregard for the court rules. *See e.g. In re Harrison Living Tr.*, 121 Nev. 217, 223, 112 P.3d 1058, 1061–62 (2005) (stating that “[e]quitable estoppel functions to prevent the assertion of legal rights that in equity and good conscience should not be available due to a party's conduct”).

**F. That the Motion to Amend was filed on the deadline for filing leave to amend does not “negate any notion of undue delay, bad faith, or dilatory motive.”**

Plaintiffs Opposition also concludes, without legal support, that the filing of the motion to amend on the deadline “negates any notion of undue delay, bad faith, or dilatory motive.” This is simply untrue since “[a] motion for leave to amend can be timely under an NRCP 16.1 scheduling order, yet fail to meet the criteria specified in NRCP 15(a)(2).” *In re Newport Corp. S'holder Litig.*, 507 P.3d 182 (Nev. 2022) (unpublished) (affirming the denial of leave to amend) (citing *AmerisourceBergen Corp. v. Dialysist West, Inc.*, 465 F.3d 946, 953 (9th Cir. 2006)). Moreover, to evaluate undue delay, Courts consider “whether the moving party knew or should have known the facts and theories raised by the amendment in the original pleading.” *Id.*

Here, that Plaintiffs filed the motion to amend on the deadline is irrelevant since the factual basis for the proposed amendment was known to Plaintiff for five years and should have been raised in the original pleading. Plaintiffs’ actions in this case are the epitome of undue delay and dilatory conduct.

**G. Plaintiff Chisiu’s deposition testimony is relevant to Plaintiffs’ notice of the claims brought three years later and is thus evidence of undue delay, bad faith, and a dilatory motive.**

Plaintiffs’ Opposition dismisses Plaintiff Liviu Chisiu’s deposition testimony three years ago as irrelevant to whether leave should have been granted because Mr. Chisiu is not a medical professional. This argument is simply absurd as Plaintiff Chisiu’s testimony is evidence that Plaintiff has been on notice of the claims brought in 2022 since 2017. Mr. Chisiu did not need to

1 be a medical professional to have concerns about the treatment provided. Again, why Plaintiffs'  
2 did not consult the existing experts or additional experts for another three years after Mr.  
3 Chisiu's deposition testimony defies explanation.

4 Nevertheless, Plaintiff Chisiu's testimony confirms that he had concerns about the  
5 treatment provided by the nursing staff contemporaneously in 2017. Thereafter, Ms. Badoi died  
6 and he hired attorneys and filed a lawsuit. Accordingly, it is inexcusable that these issues were  
7 not raised via a motion to amend until the deadline to bring such motions in 2022, particularly  
8 given the intervening discovery, motion practice, and stipulation by Plaintiffs' counsel.

9 Ultimately, however, Mr. Chisiu's testimony undermines Plaintiffs' argument that they  
10 were oblivious to the claims raised in the proposed amended complaint prior to Dr.  
11 Lanzkowsky's report on April 27, 2022. The argument is further refuted by Dr. Lanzkowsky's  
12 exclusive reliance on the medical records available to Plaintiffs since 2017.

13 **H. St. Rose Hospital was well within its right to object to more than 10 depositions**  
14 **given the only cause action asserted against it at the time was vicarious liability**  
15 **for Dr. Kim.**

16 Plaintiffs' argument that counsel for St. Rose refused to allow additional discovery is  
17 irrelevant to this motion. Plaintiff does not dispute that they had reached the 10 depositions  
18 allowable under NRCP 30. Accordingly, absent a stipulation or leave of court, Plaintiffs are not  
19 allowed to take additional depositions. St. Rose did not stipulate to additional depositions – and  
20 was not obligated to. Indeed, every person that possibly had knowledge regarding the  
21 negligently placed epidural had been deposed. Moreover, Plaintiff did not seek leave of court to  
22 take additional depositions.

23 Additionally, Plaintiffs' Opposition leaves out the fact that counsel for St. Rose stipulated  
24 to exceed the 10-deposition limit for expert witnesses, just not fact witnesses. Again, the only  
25 claim asserted against the hospital at the time was a vicarious liability claim for Dr. Kim's  
26 alleged negligence in placing an epidural. Plaintiffs' counsel likewise fails to mention that an  
27 invite from the undersigned for a meet and confer regarding the justification for additional fact  
28 witness depositions was not accepted.

Further, Plaintiffs' Opposition makes an irrelevant argument that an NRCP 30(b)(6) deposition of the hospital has yet to be conducted. For the record, Plaintiffs have never offered any proposed topics for an NRCP 30(b)(6) deposition. And it is difficult to imagine what topics those would be given the claims against the hospital are limited to vicarious liability for alleged medical treatment of a nurse<sup>1</sup> and physicians.

**I. St. Rose has been prejudiced and has not been afforded adequate time to defend itself against the newly asserted causes of action.**

Plaintiffs' Opposition suggests that there is plenty of time for St. Rose Hospital to defend itself in this litigation. Interestingly enough, however, the hearing on St. Rose Hospital's Motion to Dismiss Plaintiff's Amended Complaint is set to be heard *after* the deadline for the parties to disclose expert witnesses. In other words, if the motion for reconsideration is not granted, experts will be disclosed before St. Rose Hospital has even answered the Complaint or had its 12(b)(5) and NRS 41A.071 defenses considered.

In other words, it took four years for Plaintiffs to conduct discovery and get their experts ready for a single claim against Dr. Kim for negligence in relation to the placement of an epidural catheter. Yet, St. Rose is expected to defend newly asserted allegations of negligence by non-party health care providers – essentially new parties to the litigation – even before having filed an Answer to the Amended Complaint.

Again, it cannot be understated that Amended Complaint has completely changed the theory of the case against St. Rose Hospital. Instead of joining Dr. Kim's defense and expert witnesses regarding his placement of an epidural as an anesthesiologist, St. Rose Hospital is now scrambling to defend the care provided by Ms. Badoi's obstetricians and labor and delivery nurse(s).<sup>2</sup> Written discovery, expert retention, and depositions have all been completed over the

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<sup>1</sup> As set forth in the pending Motion to Dismiss Plaintiffs' Amended Complaint, Defendant disputes that the Complaint complies with NRS 41A.071 as to any negligence by the nursing staff.

<sup>2</sup> Again, the declaration of Dr. Lankowsky is creatively drafted to avoid naming any specific nurses, or even identifying the conduct of the nursing staff that was purportedly negligent. In fact, a close reading of the declaration confirms there are no specific instances of negligence by the nursing staff. On the contrary, Dr. Lankowsky has purposely lumped together the conduct of the nurses with Ms. Badoi's obstetricians to keep the hospital in this case. Yet, Plaintiffs and their counsel know very well that the vicarious liability claims against the hospital for the obstetricians are DOA as they will necessarily share the same fate as the vicarious liability claims based on Dr. Kim's conduct.

course of four years from the perspective of an anesthesiologist allegedly negligent during the placement of an epidural. The hospital must now abruptly shift course and re-evaluate and investigate the case from the perspective of providers in entirely different specialties that have not participated in this case, have not retained experts, nor conducted discovery.

Moreover, Plaintiffs' Opposition suggests that St. Rose is at fault because it stipulated to extend the deadlines. However, the fact that the motion to amend was filed on the deadline is irrelevant since Plaintiffs were dilatory and unduly delayed bringing the new claims. St. Rose Had no expectation that claims that should have been raised in the original complaint would be raised four years into the litigation, especially given that there had been no discovery for seven months prior to the motion to amend, and the motion to amend was preceded by a stipulation by Plaintiffs' counsel that Plaintiffs had no intention of proceeding on any claims other than that asserted against Dr. Kim. St. Rose Hospital did not anticipate Plaintiffs' counsel's about-face on the stipulation in open court which prevented the Court from ruling on the motion brought by St. Rose.

The reality is that the motion to amend was nothing more than a "last second amendment alleging meritless claims in an attempt to save a case from summary judgment." *See Nutton v. Sunset Station, Inc.*, 131 Nev. 279, 289, 357 P.3d 966, 973 (Nev. App. 2015). Indeed, Plaintiffs were well aware at that time of the motion to amend that a motion for summary judgment was imminent. In fact, the motion for summary judgment was granted because there will never be any evidence that Ms. Badoi believed her physicians to be hospital agents.

Notwithstanding, Plaintiffs' Amended Complaint asserts ostensible agency claims against the hospital for the actions of Plaintiffs' physicians with whom she had a *preexisting* relationship. Accordingly, Plaintiffs know these claims are meritless and will share the same fate as the vicarious liability claim arising from Dr. Kim's conduct.

**J. There is no relation back when the proposed amended complaint asserts an entirely new theory of liability that is void ab initio and should have been raised four years earlier.**

Plaintiffs' argument that the new claims against St. Rose Hospital relate back to the original complaint because they are still vicarious liability claims is baseless. As addressed in

1 detail above, Plaintiffs’ broad reference to the claims against St. Rose as vicarious liability  
2 claims ignores the fact that none of the claims or theories asserted against St. Rose Hospital in  
3 the original complaint are still pending. On the contrary, the unfounded claims for negligent  
4 credentialing, supervision, and hiring were dismissed on a Motion for Judgment on the  
5 Pleadings. The claim for fraudulent concealment was dismissed via stipulation. And the  
6 vicarious liability claim premised on Dr. Kim’s epidural placement was dismissed via summary  
7 judgment. Accordingly, the new vicarious liability claims against the hospital for the conduct of  
8 Ms. Badoi’s treating obstetricians and labor and delivery nurses for management of Ms. Badoi’s  
9 blood pressure, assert entirely new and distinct theories of the liability than those set forth in the  
10 original complaint.

11 In fact, these new derivative claims are *void ab initio* pursuant to NRS 41A.071, making  
12 relation back an impossibility. *See Washoe Med. Ctr. v. Second Judicial Dist. Court*, 122 Nev.  
13 1298, 1304, 148 P.3d 794 (2006) (stating that a complaint that does not comply with NRS  
14 41A.071 as to any defendant “*does not legally exist and cannot be amended*”) (emphasis added).  
15 The Supreme Court has previously explained the interplay between the NRCP 15 and NRS  
16 41A.071, stating that NRCP 15 is “inapplicable.” *Id.* at 1304, 148 P.3d at 794.

17 Similarly, the Supreme Court in Tennessee has adopted the logical premise that a plaintiff  
18 cannot pursue vicarious liability claims against a principal “after its right to assert a claim against  
19 the agent has become procedurally barred.” *See Abshire v. Methodist Healthcare-*  
20 *Memphis Hosps.*, 325 S.W.3d 98, 106 (Tenn. 2010). This is because “plaintiffs should not be  
21 permitted to engage in an ‘encircling movement’ against the principal when they cannot pursue a  
22 ‘frontal attack’ on the agent.” *See id.*

23 In fact, in announcing this logical premise, the Tennessee Supreme Court relied on an  
24 appellate court decision, which presents a nearly identical situation to that at issue in this case.  
25 *See, e.g. Huber v. Marlow*, 2008 WL 2199827 (Tenn. Ct. App. May 28, 2008). In *Huber*, the  
26 plaintiffs brought a timely suit against multiple defendants for alleged medical malpractice  
27 causing a fall and intracranial hemorrhage. Two of the initial defendants were a physician  
28 practice group called Internists of Knoxville, PLLC (“Internists”), and its employee, Dr. Marlow.



1 The plaintiffs later amended their complaint to bring an additional vicarious liability claim  
2 against Internists for the alleged negligence of a non-party employed physician also involved in  
3 the treatment, one Dr. Rankin. Because the timeframe for bringing suit directly against Dr.  
4 Rankin had expired under Tennessee law, Internists filed a motion for summary judgment,  
5 arguing that it could not be liable for its agent's negligence given the plaintiff's claims against  
6 the agent would be time-barred. The district court, agreed, and granted summary judgment for  
7 Internists.

8 In affirming the district court's decision, the Court of Appeals refuted the plaintiff's  
9 reliance on the relation back doctrine. The Court explained that although the relation back  
10 doctrine

11 would allow Plaintiffs to amend their complaint to include further  
12 allegations against Dr. Marlow (who was timely sued) and/or  
13 Internists of Knoxville *in its capacity as Dr. Marlow's*  
14 *employer*, they cannot be used to support an "end run" around the  
statute of repose as against Dr. Rankin or Internists of Knoxville in  
its capacity as Dr. Rankin's employer.

15 *Id.* (emphasis in original).

16 Additionally, the Court equated the amendment asserting a new vicarious liability claim  
17 against a non-party with adding a new party to the litigation, stating:

18 In the present case, although Plaintiffs did not add Dr. Rankin as a  
19 defendant, they have, for all practical purposes and effect, tried to  
20 add a new party defendant more than three years after the alleged  
negligence and injury-Internists of Knoxville, *in its capacity as Dr.*  
21 *Rankin's employer*-based solely upon the actions of Dr. Rankin, a  
22 nonparty employee against whom the Plaintiffs' cause of action has  
been extinguished by the statute of repose. The relation back  
23 doctrine of Tenn. R. Civ. P. 15.03 does not contemplate nor permit  
such a result.

24 *Id.*

25 As was the case in *Huber*, Plaintiffs' end-run around NRS 41A.097 should not be  
26 condoned. They are bringing new vicarious liability claims that are time-barred under NRS  
27 41A.097, as to the alleged agents.  
28

1           Nonetheless, consistent with this reasoning the Nevada Supreme Court has “refused to  
2 allow a new claim based upon a new theory of liability asserted in an amended pleading to relate  
3 back under NRCP 15(c) after the statute of limitations had run.” *Badger v. Eighth Jud. Dist. Ct.*,  
4 132 Nev. 396, 404, 373 P.3d 89, 95 (2016) (citing *Nelson v. City of Las Vegas*, 99 Nev. 548,  
5 556-557, 665 P.2d 1141, 1146 (1983)). If an amendment “states a new cause of action that  
6 describes a new and entirely different source of damages, the amendment does not relate back, as  
7 the opposing party has not been put on notice concerning the facts in issue.” *Nelson v. City of*  
8 *Las Vegas*, 99 Nev. 548, 556-557, 665 P.2d 1141, 1146 (1983) (citation omitted). The Supreme  
9 Court has also clarified that NRCP 15(c) “does not permit us to so liberalize limitation statutes  
10 when new facts, conduct and injuries are pleaded, that the limitation statutes lose their meaning.  
11 [Citations omitted.]” *Id.*

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

16           Similarly, here, the original complaint “gave absolutely no indication” that a claim for  
17 negligence against non-party obstetricians and nurses existed. In fact, the lack of notice is even  
18 more pronounced in this case since such claims were, as matter of law, an impossibility given  
19 they require expert support pursuant to NRS 41A.071. Thus, until Plaintiffs produced and  
20 attached a declaration specifically detailing the alleged negligence of the nurse and physicians  
21 believed to be negligent, the Complaint could *only* be premised on the alleged negligence of Dr.  
22 Kim in misplacing the epidural, which allegedly caused the bleeding in Ms. Badoi’s spine. As a  
23 matter of fact, just months before the Amended Complaint was filed Plaintiffs’ counsel stipulated  
24 that the only theory set forth in the original complaint was alleged negligence by Dr. Kim, for  
25 which St. Rose Hospital was alleged to be vicarious liability.

26           Finally, that the alleged negligence of the non-party nurse and physicians contemplate a  
27 “a new cause of action that describes a new and entirely different source of damages,” is very  
28 evident from the fact that not a single claim asserted against St. Rose Hospital in the original

pleading is still pending against St. Rose Hospital in the Amended Complaint. The proposed amended complaint does not relate back and leave to amend is futile.

**II.**

**CONCLUSION**

For the reasons set forth above, St. Rose Hospital respectfully requests this Court reconsider its prior order granting Plaintiffs leave to amend.

DATED this 15<sup>th</sup> day of September, 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 15<sup>th</sup> day of September, 2022, I served a true and correct copy of the foregoing **DEFENDANT DIGNITY HEALTH d/b/a ST. ROSE DOMINICAN HOSPITAL'S REPLY IN SUPPORT OF MOTION FOR RECONSIDERATION OF THE ORDER GRANTING 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:

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

1 ORDR

2 EIGHTH JUDICIAL DISTRICT COURT

3 CLARK COUNTY, NEVADA

4 LIVIU RADU CISUIU, as special  
5 administrator, et al.

Case No. A-18-775572-C

6 Plaintiffs,

Dept. No. IX

7 v.

8 DIGNITY HEALTH, et al.

9 Defendants.

10 ORDER DENYING MOTION FOR RECONSIDERATION OF THE ORDER  
11 GRANTING PLAINTIFFS' MOTION FOR LEAVE TO FILE AMENDED  
COMPLAINT

12 On August 19, 2022, Defendant St. Rose Dominican Hospital – Siena Campus  
13 filed a motion asking this Court to reconsider its order granting Plaintiffs leave to file  
14 an amended complaint. On September 2, 2022, Plaintiffs filed an opposition to the  
15 motion. On September 15, 2022, the Hospital filed a reply in support of the motion.  
16 Having reviewed the briefs and all pleadings and papers on file, the Court DENIES  
17 the motion consistent with the following:

18 “A district court may reconsider a previously decided issue if substantially  
19 different evidence is subsequently introduced or the decision is clearly erroneous.”  
20 *Masonry & Tile Contractors Ass’n of S. Nevada v. Jolley, Urga & Wirth, Ltd.*, 113  
21 Nev. 737, 741, 941 P.2d 486, 489 (1997).

22 The Hospital’s reconsideration motion is based on purported new evidence.  
23 More specifically, the Hospital asserts that Plaintiffs filed their amendment motion  
24 on May 2, 2022, referencing an affidavit of merit from Dr. Lanzkowsky but not  
25 attaching that affidavit as an exhibit. The Hospital points to EDCR 2.30, which  
26 states that “All amended pleadings must contain copies of all exhibits referred to in  
27 such amended pleadings.” The Hospital asserts that upon the recent filing of the  
28 amended complaint, it became apparent to the Hospital why Dr. Lanzkowsky’s

1 affidavit was not attached to the proposed amended complaint: because the affidavit  
2 was not created until May 24, 2022, three weeks after Plaintiffs filed their  
3 amendment motion. The Hospital asserts such “new” facts constitute sufficient  
4 circumstances for reconsideration. The Court disagrees.

5 The fact that Dr. Lanzkowsky’s affidavit was referenced in but unattached to  
6 the amended complaint is not a new fact. The Hospital knew of this fact and even  
7 argued the lack of an attached affidavit in its opposition to the amendment motion.  
8 In response, Plaintiffs argued—in this Court’s view correctly—that there is no legal  
9 authority for the proposition that an affidavit of merit must be attached to a motion  
10 for leave to amend and that, instead, it is merely the filing of the amended complaint  
11 that must be supported by an affidavit of merit. Consequently, the fact that Dr.  
12 Lanzkowsky did not execute his affidavit until May 24, 2022, has little meaning for  
13 this Court.

14 For the foregoing reasons, the reconsideration motion is DENIED.

15 IT IS SO ORDERED.

16  
17 Dated this 23rd day of September, 2022

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20 918 EA9 E6B4 2D16  
21 Maria Gall  
22 District Court Judge  
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1 **CSERV**

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3 **DISTRICT COURT**  
4 **CLARK COUNTY, NEVADA**

5  
6 Estate of Alina Badoi, Plaintiff(s) | CASE NO: A-18-775572-C  
7 vs. | DEPT. NO. Department 9  
8 Dignity Health, Defendant(s)  
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 9/23/2022

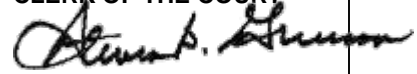
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**DISTRICT COURT**

**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

Plaintiffs,

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, inclusive;  
and ROE BUSINESS ENTITIES XI through  
XX, inclusive,

Defendants.

CASE NO.: A-18-775572-C  
DEPT NO.: 9

**DEFENDANT DIGNITY HEALTH d/b/a**  
**ST. ROSE DOMINICAN HOSPITAL'S**  
**REPLY IN SUPPORT OF MOTION TO**  
**DISMISS, OR ALTERNATIVELY,**  
**MOTION TO STRIKE**

**HEARING REQUESTED**

COMES NOW, Defendant, ST. ROSE DOMINICAN HOSPITAL – SIENA CAMPUS,  
by and through its attorneys of record, HALL PRANGLE & SCHOONVELD, LLC, hereby files  
this Reply in Support of its Motion to Dismiss, or, alternatively, Motion to Strike. This Reply is

supported by the attached Points and Authorities, any other evidence that the Court deems just and proper, and any argument of counsel which may be heard at the time of any hearing on the matter.

DATED this 28<sup>th</sup> day of September, 2022.

HALL PRANGLE & SCHOONVELD, LLC

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I.

**INTRODUCTION**

Plaintiffs' Opposition to the Motion to Dismiss ultimately argues that by suing St. Rose Hospital in 2018 for vicarious liability for Dr. Kim's alleged negligence – a claim that has since been dismissed – Plaintiffs tolled the statute of limitations as to any other claim for professional negligence against St. Rose arising from the conduct of any of the many providers that treated Alina Badoi at St. Rose Hospital in May or June of 2017. However, Plaintiffs' position would render both the one-year and three-year statute of limitations set forth in NRS 41A.097 meaningless by permitting Plaintiffs "to engage in an 'encircling movement' against the principal when they cannot pursue a "frontal attack" on the agent." *See, e.g. Abshire v. Methodist Healthcare-Memphis Hosps.*, 325 S.W.3d 98, 106 (Tenn. 2010). Such a result is inconsistent with Nevada law and should be denied.

Plaintiffs' Opposition also fails to overcome the insufficiency of the newly asserted claims against the "nursing staff" pursuant to NRS 41A.071, given the affidavit of merit purposely avoids identifying the negligent actor or negligent conduct. Moreover, passive aggressive allegations in the Complaint regarding a delay in obtaining an MRI, are not supported by the affidavit of merit, and must therefore be dismissed.

Accordingly, as addressed in detail below, each of Plaintiffs' arguments in the Opposition fails to justify a denial of St. Rose Hospital's Motion to Dismiss.

II.

**ARGUMENT**

**A. Plaintiffs' claims are barred by the one-year statute of limitations because they are new claims that do not relate back to the original complaint.**

**a. The Nevada Supreme Court's decision in *Estate of Curtis* does not support Plaintiffs' attempt to circumvent the one-year statute of limitations set forth in NRS 41A.097.**

Plaintiffs' attempt to distinguish *Estate of Curtis v. S. Las Vegas Med. Inv'rs, LLC*, 136 Nev. 350, 353, 466 P.3d 1263, 1267 (2020), from the instant case misses the mark. Defendant did not cite *Curtis* for the specific NRS 41A provision at issue, but for the Court's holding that

the plaintiff could not use direct claims against an entity “to circumvent NRS Chapter 41A’s requirements governing professional negligence lawsuits when the allegations supporting the claims sound in professional negligence.” *Id.* Defendant does not dispute that the provision the plaintiff in *Estate of Curtis* was attempting to circumvent was the affidavit or merit requirement (41A.071) and not the statute of limitations for professional negligence cases (41A.097). However, the distinction is entirely inconsequential. What is important is that the Court refused to allow the plaintiff in that case to avoid the NRS 41A statutory framework by directing claims at a principal (a nursing home) as opposed to an agent (a nurse). *See, e.g., id.* (stating: “[d]irect liability claims against a nursing home facility do not excuse compliance with NRS 41A.071’s affidavit requirement”)

Again, that the Plaintiffs here are seeking to circumvent a different NRS 41A provision than that at issue in *Curtis* is irrelevant. Like the plaintiff in *Estate of Curtis*, Plaintiffs seek an end run around an NRS 41A restriction by bringing untimely claims against a principal instead of the agent. The Nevada Supreme Court’s decision in *Estate of Curtis* is thus relevant to show that the Court does not condone such tactics, and would find the belated vicarious liability claims time-barred under NRS 41A.097.

**b. The facts of *Huber v. Marlow*, 2008 WL 2199827 (Tenn. Ct. App. May 28, 2008) are identical to the instant case and are persuasive given the lack of a Nevada case addressing this factual scenario.**

Plaintiffs’ Opposition also fails to distinguish the facts in *Huber v. Marlow*, 2008 WL 2199827 (Tenn. Ct. App. May 28, 2008) from the instant case. This is because Plaintiffs wrongly claim that in *Huber* there was no vicarious liability claim against the principal in the original complaint. This is blatantly false. In *Huber* the principal was Internists of Knoxville, a physician practice group (hereinafter referred to as “Internists”). The original complaint asserted a vicarious liability claim against Internists for professional negligence by Dr. Marlow. The plaintiff in that case then amended the complaint to assert additional vicarious liability claims against Internists – this time for the conduct of a non-party physician, Dr. Rankin. It was this latter vicarious liability claim the Court found barred as an “‘end run’ around the statute of

repose as against Dr. Rankin or Internists of Knoxville in its capacity as Dr. Rankin's employer." *Id.*

Accordingly, *Huber* presents the *exact* the scenario present in this case. Indeed, just as Internists was sued for Dr. Marlow's conduct in the original complaint, St. Rose Hospital was sued for Dr. Kim's conduct. Moreover, just as the amended complaint in *Huber* added claims against Internists for the conduct of non-party Dr. Rankin, the amended complaint in the instant case adds claims against St. Rose for non-party obstetricians and L&D nurse(s). Thus, as was the case in *Huber*, the "end-run" around the statute of limitations should be denied.

**c. *Abshure v. Methodist Healthcare Hosps.*, 325 S.W.3d 98, 106 (Tenn. 2010), does not stand for the proposition which Plaintiffs' Opposition promotes.**

Plaintiffs' Opposition cherry picks a paragraph from *Abshure v. Methodist Healthcare-Memphis Hosps.*, 325 S.W.3d 98, 106 (Tenn. 2010), ignores the facts of the case, and then misinterprets the Court's holding in *Abshure*. However, a close reading of *Abshure* confirms that it affirmed the analysis and holding in *Huber* – a plaintiff cannot "assert a vicarious liability claim against the principal *after* its right to assert a claim against the agent has become procedurally barred." *Id.* at 110 (emphasis added).

To illustrate, in *Abshure* the complaint asserted a vicarious liability claim against a hospital for the conduct of two physicians that treated the patient in an emergency department. *Id.* at 100. Both physicians and the hospital were all named as defendants in the initial complaint. *Id.* However, the plaintiff later voluntarily dismissed the claims against the physicians and proceeded solely against the hospital under a vicarious liability theory. *Id.* The hospital sought dismissal of the agency claims as a matter of law.

In concluding that the plaintiff in *Abshure* could proceed on the agency claims against the hospital notwithstanding the dismissal of the claims against the agents, the Tennessee Supreme Court affirmed and distinguished the facts before it from *Huber v. Marlow, supra*. See *Abshure*, at 109-110 (emphasis added), as follows:

The decisions in *Creech v. Addington* and *Huber v. Marlow* reflect a fourth limitation on a plaintiff's ability to assert a vicarious liability claim. *This limitation arises when the plaintiff*

1 *attempts to assert a vicarious liability claim against the principal*  
2 *after its right to assert a claim against the agent has become*  
3 *procedurally barred. It reflects one of the traditional policy*  
4 *reasons for refusing to permit a plaintiff to pursue a vicarious*  
5 *liability claim against a principal—plaintiffs should not be*  
6 *permitted to engage in an “encircling movement” against the*  
7 *principal when they cannot pursue a “frontal attack” on the*  
8 *agent. Graham v. Miller, 182 Tenn. at 441–42, 187 S.W.2d at 625–*  
9 *26; Raines v. Mercer, 165 Tenn. at 420, 55 S.W.2d at 264; see*  
10 *also Johnson v. LeBonheur Children's Med. Ctr., 74 S.W.3d at*  
11 *345–46; Huber v. Marlow, 2008 WL 2199827, at \*5 (ruling that*  
12 *the plaintiff could not make “an ‘end run’ around the statute of*  
13 *repose” by amending their complaint to raise a vicarious liability*  
14 *claim).*

15 *In both Creech v. Addington and Huber v. Marlow, the*  
16 *plaintiffs initially sued the principals but did not assert vicarious*  
17 *liability claims against them. While the plaintiffs' claims against*  
18 *the principal were pending, they lost their opportunity to mount a*  
19 *“frontal attack” on the agent or agents. In Huber v. Marlow, the*  
20 *statute of repose governing the claims against the agent ran.*  
21 *In Creech v. Addington, the doctrine of res judicata prevented the*  
22 *plaintiffs from resurrecting their previously dismissed claims*  
23 *against the agents. Thus, the plaintiffs' belated efforts to amend*  
24 *their complaints against the principals to add a vicarious liability*  
25 *claim were found to be nothing more than the sort of “encircling*  
26 *movement” prohibited by Graham v. Miller and Raines v. Mercer.*

27 *The decisions in both Creech v. Addington and Huber v.*  
28 *Marlow were heavily influenced by the fact that the plaintiffs did*  
29 *not assert a vicarious liability claim against the principal when*  
30 *they first filed suit, even though they could have. In Huber v.*  
31 *Marlow, the court emphasized that the plaintiffs' attempt to amend*  
32 *their complaint to assert a vicarious liability claim against the*  
33 *principal was untimely because it came after the statute of repose*  
34 *governing claims against the agent had run. Huber v.*  
35 *Marlow, 2008 WL 2199827, at \*1–5.15 Similarly, in Creech v.*  
36 *Addington, we noted that instead of filing their vicarious liability*  
37 *claim against the principal when they filed their original complaint,*  
38 *the plaintiffs delayed asserting their vicarious liability claim*  
39 *against the principal until after the doctrine of res judicata barred*  
40 *their claims against the agents. Creech v. Addington, 281 S.W.3d*  
41 *at 371–72 & nn. 10–11, 376–83.*

42 *Thus, the procedural limitation on the plaintiff's ability to*  
43 *pursue a vicarious liability claim against a principal recognized*  
44 *in Creech v. Addington and Huber v. Marlow is triggered only*  
45 *when a plaintiff belatedly attempts to amend its complaint to add*  
46 *a new vicarious liability claim against a principal after its claims*  
47 *against the agent have become barred by operation of law. The*

*limitation does not apply in circumstances where the plaintiff has initially filed a vicarious liability claim against the principal, and the plaintiff's claims against the principal's agents are later extinguished by operation of law.*

Extending the procedural limitation recognized in *Creech v. Addington* and *Huber v. Marlow* to plaintiffs who have included a vicarious liability claim in their original complaint would be contrary to the traditional principle that plaintiffs may elect to sue the principal, the agent, or both. In circumstances where the plaintiff has properly asserted a vicarious liability claim against the principal, the extinguishment of the plaintiff's claims against the agent, by voluntary dismissal or otherwise, “merely produce[s] the same effect as if the [agent] had never been sued...” *Rankhorn v. Sealtest Foods*, 63 Tenn.App. at 721, 479 S.W.2d at 652.

*Id.* at 110-112.

Hence, by citing only the last paragraph of the Court’s analysis, Plaintiffs’ Opposition mischaracterizes the Court’s holding and reasoning. Specifically, in the preceding uncited paragraph, the Court offers two differing scenarios for evaluating whether a procedural bar of a claim against an agent inures to the benefit of the principal. First, the Court explained that a “new vicarious liability claim”, i.e. a vicarious liability claim asserted *after* the claim against the agent has become barred, is also barred against the principal. On the contrary, if a vicarious liability claim arising from an agent’s conduct is filed before the action against the agent becomes barred, the vicarious liability claim against the principal may proceed even if the action against the agent subsequently becomes barred.

The *Abshire* Court concluded that *Huber* contemplated the first scenario, in which the claim against the principal was barred. However, the facts before it in *Abshire* contemplated the second scenario since the hospital was sued for vicarious liability for codefendant physician agents that were subsequently dismissed.

Here, as set forth in detail above, the facts in this case are *identical* to those in *Huber* and fall within the first scenario described by the Court in *Abshire*. This is because the vicarious liability claims against the obstetricians and L&D nurses asserted for the first time in the Amended Complaint are “new vicarious liability claims” that were not set forth in the original complaint. Indeed, pursuant to NRS 41A.071 those claims were “void ab initio” and did not

legally exist until the Amended Complaint was filed, as they had not previously been supported by an affidavit of merit. The claims against the alleged agents – the obstetricians and nurses – became procedurally barred under the one-year statute of limitations set forth in NRS 41A.097 long before the vicarious liability claims came into existence by way of the Amended Complaint.

Accordingly, the instant case is unlike the scenario in *Abshure*, where the hospital was sued for conduct of codefendant physicians that were named in the lawsuit but then dismissed. Rather, the *Abshure* factual scenario would be akin to Plaintiffs proceeding against St. Rose for vicarious liability for Dr. Kim’s alleged negligence after a voluntary dismissal of the professional negligence claim against Dr. Kim himself.<sup>1</sup>

Moreover, Plaintiffs’ suggestion in the Opposition that the vicarious liability claim arising from Dr. Kim’s conduct somehow renders the vicarious claims against the non-party obstetricians and nurses timely is a blatant mischaracterization of *Huber*, *Abshure*, and, frankly, defies common sense. That Plaintiffs had asserted a vicarious liability claim against St. Rose for Dr. Kim’s conduct in the original complaint is entirely irrelevant. It is clear from both *Abshure* and *Huber* that the vicarious liability claim must be tied to the specific agent and turns on whether the vicarious liability claim is asserted before the claim against the agent is barred. In other words, if professional negligence claims against the obstetricians and nurses were barred by the statute of limitations before those claims were asserted against St. Rose Hospital via vicarious liability, the vicarious liability claims are also barred. That is precisely what happened here since the vicarious liability claims arising from the obstetricians and nurses’ conduct were asserted for the first time more than five years after the treatment at issue, while the claims were subject to a one-year statute of limitations under NRS 41A.097.

In sum, Plaintiffs’ vicarious liability claim against St. Rose for Dr. Kim’s conduct did not toll the statute of limitations as to every possible claim against St. Rose for every conceivable agent.

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<sup>1</sup> This is just a hypothetical as the vicarious liability claims for Dr. Kim’s conduct were dismissed via summary judgment.



**d. Plaintiffs' claims do not relate back to the original Complaint under NRCP 15(c)(1) and *Nelson v. City of Las Vegas*, 99 Nev. 548, 665 P.2d 1141 (1983).**

Plaintiffs argue that the claims relate back under NRCP 15(c)(1) because the claims "arise out of St. Rose's negligent care and treatment of Alina while she was admitted to St. Rose in May 2016." This broad characterization of the claims ignores the fact that the original complaint included only claims arising from the alleged professional negligence by Dr. Kim. Accordingly, the claims did not arise out of any negligent care by St. Rose Hospital, or any other healthcare provider for that matter.

*Nelson v. City of Las Vegas*, 99 Nev. 548, 665 P.2d 1141 (1983) prohibits what Plaintiffs are attempting to do via the Amended Complaint – assert entirely new and distinct claims that should have been raised initially, long after the statute of limitations has expired. Plaintiffs' attempt to distinguish *Nelson* falls flat. *Nelson* by no means contemplates relation back for new claims against non-parties, premised on an entirely separate fact pattern and causation theory. It actually stands for the exact opposite proposition, holding that where 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).

Nevertheless, Plaintiffs position is that the Amended Complaint "does not add any new causes of action" because the claims against the hospital are still based on a theory of vicarious liability. *See Opp.* at 11:21-22. This is ridiculous. A professional negligence claim against Dr. Kim is not the same as a professional negligence claim against an obstetrician or nurse. These are separate claims. That the theory upon which Plaintiffs seek to hold St. Rose liable for these separate providers conduct is vicarious liability, does not mean the causes of action are the same.<sup>2</sup>

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<sup>2</sup> Plaintiffs' counsel argued in this very case that vicarious liability is not a "claim" but a theory of liability. The claims at issue are professional negligence. They are distinct as to the various providers alleged to have been negligent. These are separate causes of action for professional negligence asserted against Dr. Kim, the obstetricians, and the nurses.

1 In fact, there is not a single cause of action against St. Rose Hospital in the Amended  
2 Complaint that was set forth in the original complaint. Specifically, the original Complaint  
3 asserted only derivative claims against St. Rose arising from Dr. Kim's alleged professional  
4 negligence regarding placement of the epidural. The claims for Negligent Hiring, Training,  
5 Supervision and Credentialing were dismissed back in February of 2021. The sole remaining  
6 vicarious liability claim for vicarious liability arising from Dr. Kim's conduct was then  
7 dismissed via summary judgment at a hearing in June of 2022. Consequently, claims against the  
8 obstetricians and nurses are entirely new and distinct causes of action.

9 Plaintiffs' position that the claims in the Amended Complaint are not new claims because  
10 there was a previous, is even more self-serving and absurd given the vicarious liability claim  
11 against Dr. Kim was dismissed before the Amended Complaint was even filed.

12 Plaintiffs' position seems to be that by bringing a claim against Dr. Kim for negligent  
13 placement of an epidural, St. Rose Hospital was on notice that it may be held liable for any one  
14 of the potentially hundreds of health care providers involved in Ms. Badoi's treatment over the  
15 month in which she was admitted to the hospital and being treated on different hospital floors, by  
16 a variety of specialists. Apparently, St. Rose Hospital should have anticipated a claim against  
17 any one of these providers despite the fact that NRS 41A.071 imposes additional pleading  
18 requirements on plaintiffs, requiring that the negligent conduct of each provider of healthcare be  
19 separately identified in the affidavit of merit accompanying the original complaint.

20 *Nelson* clearly does not stand for such a broad proposition as it "would liberalize" both  
21 NRS 41A.097 and NRS 41A.071 such that they would lose their meaning and purpose. *See, e.g.*  
22 *Nelson* at 556-557, 665 P.2d 1141, 1146 (1983). In fact, *Nelson* stands for the opposite  
23 proposition, finding no relation back in that case since "the original complaint and first amended  
24 complaint gave absolutely no indication that a claim for battery existed." *Id.*

25 Likewise, here, the original Complaint gave absolutely no indication that a claim for  
26 vicarious liability against the obstetricians and/or nursing staff existed. In fact, any such claims  
27 did not exist as a matter of law as they were not supported by an affidavit of merit as required by  
28 NRS 41A.071. They only came into existence on August 9, 2022, when the Amended

Complaint was filed. Prior thereto the claims did “not legally exist.” *See, e.g. Washoe Med. Ctr. v. Second Judicial Dist. Court*, 122 Nev. 1298, 1304, 148 P.3d 794 (2006). Consequently, Plaintiffs’ Amended Complaint – which contains none of the claims asserted against St. Rose Hospital in the original complaint – is precisely the situation described in *Nelson* that does not relate back to the original complaint.

**e. That the Court granted leave to amend is irrelevant to whether Plaintiffs’ claims are barred by the statute of limitations.**

Plaintiffs argue that St. Rose made the same arguments regarding the statute of limitations in the Opposition to the Motion to Amend and that the Court rejected those arguments. This is not accurate. The Court expressly acknowledged and anticipated a motion to dismiss based on the expiration of the statute of limitations would be forthcoming. The Court simply granted leave to amend under NRCp 15 because leave is freely given, which is an entirely different standard than a motion to dismiss. Plaintiffs’ repeated reference to these issues being previously raised and addressed is nonsense.

**B. Plaintiffs’ newly asserted claims against the “nursing staff”, and claims unrelated to management of hypertension, must be dismissed pursuant to 41A.071.**

**a. Dr. Lanzkowsky’s Declaration does not support any allegations of negligence based on delays in performing MRIs.**

Plaintiffs’ citations in the Opposition to Dr. Lanzkowsky’s declaration may satisfy NRS 41A.071 as to a claim against the obstetricians based on “failing to properly monitor or treat Decedent’s elevated blood pressure.” However, the cited portions of the declaration do not support any negligence associated with other purported “delays in diagnosis”.

First, Plaintiffs’ citation to and reliance on *Zohar v. Zbiegien*, 130 Nev. 733, 334 P.3d 402 (2014) for the proposition that complaints and affidavits should be read together warrants clarification. First, in *Zohar*, the Court only condoned reading the complaint and affidavit together to identify the allegedly negligent actors. It did not stand for the proposition that allegations of negligence in the complaint could be read into the expert’s affidavit. If such were

the case the affidavit of merit requirement would be illusory as counsel’s allegations of negligence would control.

Additionally, *Zohar* preceded, and appears to have prompted, the current version of NRS 41A.071, which was enacted in 2015, shortly after *Zohar* was decided. NRS 41A.071 now requires that the affidavit itself identifies each allegedly negligent health care provider by name or conduct. Moreover, the specific acts of negligence of each health care provider must be “separately” identified *in the affidavit*. Consequently, the significance of *Zohar*’s holding has essentially been nullified by the legislative action and current language of the statute.

As it applies to the instant case, the Complaint includes passive aggressive allegations regarding delays in performing MRIs, that having nothing to do with the obstetricians or nurses described in the Declaration. Specifically, the Amended Complaint states:

17. 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.

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

Notably, there is no specific allegation in the Complaint that these timeframes were unreasonable or amounted to negligence. Indeed, Dr. Lankowsky’s declaration makes absolutely no mention to any negligence associated with the timing of the MRIs, nor would he be an appropriate expert to address the timing. Accordingly, even under a liberal application of *Zohar* any claim based on the timing of the MRIs does not satisfy NRS 41A.071. Consequently, to the extent Plaintiffs intend to proceed on any claim associated with anything other than purported delays associated with monitoring Ms. Badoi’s blood pressure, including the timing of the MRIs – which would implicate the treatment of separate and distinct health care providers whose conduct is not implicated by any complaint – the claim must be dismissed.

**b. Dr. Lankowsky’s declaration does satisfy NRS 41.071 as to claims against the labor and delivery nurse(s), nor give fair notice of the claim(s) against the nurses.**

Plaintiffs' Opposition cites *Zohar* for the proposition that the purpose of a complaint is to give fair notice of the nature and basis of a legally sufficient claim and the relief requested." *Zohar*, at 406. Plaintiffs' Opposition further identifies the purpose of the affidavit of merit requirement as ensuring "that parties file malpractices cases in good faith." *Baxter*, 131 Nev. At 763, 357 B.3d at 930. Additionally, the Opposition acknowledges NRS 41A.071 requires the affidavit of merit identify the "specific acts or acts of alleged negligence as to each defendant in simple, concise and direct terms." This element has a distinct meaning when the "defendant" is to be subjected to vicarious liability. In such a situation it is axiomatic that the "simple, concise, and direct terms," must, at a minimum, identify the provider for which the defendant is to be vicariously liable.

Indeed, Plaintiffs' Opposition acknowledges that NRS 41A.071 must "identif[y] by name, or describe[] by conduct, each provider of health care who is alleged to be negligent." *Id.* Presumably, the option to describe a negligent provider by "conduct" stems from the fact that an affidavit of merit is generally filed at the beginning of a case when it may be difficult to identify the negligent actor by name. In this case, however, discovery has been ongoing for four years. Twelve depositions have been taken, including the labor and delivery nurses involved in Ms. Badoi's treatment.

Nevertheless, Plaintiffs affidavit of merit fails to identify the providers for which St. Rose Hospital is to be vicariously liable. Plaintiffs know the names of these nurse(s) – they took their depositions. In fact, Dr. Lanzkowsky knows these nurses' names. Interestingly, however, when offering opinions of negligence in the affidavit he neglects to identify any provider by name. The failure to identify the allegedly negligent nurse(s) by name in Dr. Lanzkowky's Declaration is purposeful and not done in good faith.

This is particularly unhelpful since Dr. Lanzkowsky's declaration is about as clear as mud when it comes to what the nurses did wrong. Again, the single criticism in his affidavit of the nursing staff states that the nurse notified Dr. Herpolsheimer of the patient's high blood pressure. Since Plaintiffs' Opposition conveniently inserted an ellipses in place of these critical facts, the entirety of the paragraph states:

At 0641 the patient had severe range blood pressures *and nursing notified Dr. Herpolsheimer who treated the elevation with i.v. hydralazine to control the BP.* Despite the patient having multiple

elevations in blood pressure in the severe range Magnesium Sulfate (MgSO<sub>4</sub>) was not ordered until 0945. Missing the significance of Ms. Badoi's elevated BP's by medical and nursing staff is a breach of the standard of care and led to delayed treatment with Magnesium Sulfate and/or other medications to lower her BP. Mg So<sub>4</sub> is given to reduce the risks of seizure due to worsening pre-eclampsia and has the additional side effect of lowering maternal BP though it is not given for that purpose per-se.

*See* Dr. Lanzkowsky's Declaration (emphasis added to show language omitted by Plaintiffs in the Opposition); *cf* Plaintiffs' Opposition at 15:16-19.

Accordingly, the single criticism of the "nursing staff" is that she (or possibly they since Plaintiffs' Declaration is purposely vague) "miss[ed] the significance of Ms. Badoi's elevated blood pressure." What does that mean? "[N]ursing notified dr. Herpolsheimer" of the "severe range blood pressures." That Dr. Herpolsheimer did not order magnesium sulfate is not a nursing issue. Indeed, as a matter of law, the practice of nursing does not include "acts of medical diagnosis or prescription of therapeutic or corrective measures . . . ." *See* NRS 632.0169. This means the nurse could not order or prescribe any treatment for the elevated blood pressure. She could only advise the doctor of the elevated blood pressure, which she apparently did.

In sum, who is the nurse that is negligent? And what are the specific acts of alleged negligence? Dr. Lanzkowsky's Declaration does not answer these questions despite being statutorily required to do so. And there is no excuse for the non-compliance given we are four years into this litigation. Moreover, that Dr. Lanzkowsky is not a nurse makes the general, non-specific references to "some nurse having done something, but it is not clear what," even more egregious. This is exactly why it should be a nurse offering these opinions as opposed to physician with no background in hospital nursing.

Ultimately, if the hospital is going to be vicariously liable for this nurse, it has a right to know who that nurse is, and what it is that she did wrong. It is not sufficient to generally stated that the hospital is liable for the collective actions of the nursing or medical staff.

**c. Alternatively, Plaintiffs' claims against St. Rose Hospital must be limited to vicarious liability for Dr. Herpolsheimer, Dr. Garg, and Krista Molinaro, RN.**

The fact that Dr. Lanzkowsky's Declaration, prepared five years after the allegedly negligent conduct, and four years after the original complaint was filed, still fails to identify the negligent actors by name, is nothing short of gamesmanship. Plaintiffs are well aware that the obstetricians implicated by Dr. Lanzkowsky's declaration are Drs. Herpolsheimer and Dr. Garg.<sup>3</sup> Plaintiffs are also clearly aware that the nurse on shift at 0641 that reported the "severe range blood pressures" to Dr. Herpolsheimer is Krista Molinaro, RN. Consequently, in the event this Court denies the Motion to Dismiss the claims in their entirety, in the least Plaintiffs' claims against St. Rose Hospital must be limited to vicarious liability for these three providers. Any other result would be patently unfair to St. Rose Hospital who is already being compelled to defend an entirely new case four years into litigation simply because Plaintiffs' original claim for vicarious liability against Dr. Kim was dismissed.

### III.

#### CONCLUSION

Based upon the foregoing, Defendant respectfully request that this Court dismiss Plaintiffs' remaining claims against St. Rose Hospital.

DATED this 27<sup>th</sup> day of September, 2022.

HALL PRANGLE & SCHOONVELD, LLC

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<sup>3</sup> Plaintiffs' repeated references to these physicians as St. Rose Hospital's "own" physicians is purposely misleading given the depositions of each physician have been taken and Plaintiffs are fully informed that the physicians never were hospital employees. In fact, Ms. Badoi treated with each physician prior to presenting to St. Rose Hospital for her delivery. That Plaintiffs are even asserting ostensible agency claims related to these physicians is absurd, particularly given the Court already granted summary judgment regarding the ostensible agency claim for Dr. Kim, who did not have a preexisting relationship with the patient.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of HALL PRANGLE & SCHOONVELD, LLC; that on the 28<sup>th</sup> day of September, 2022, I served a true and correct copy of the foregoing **DEFENDANT DIGNITY HEALTH d/b/a ST. ROSE DOMINICAN HOSPITAL'S REPLY IN SUPPORT OF MOTION TO DISMISS, OR ALTERNATIVELY, MOTION TO STRIKE** 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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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Malpractice - Medical/Dental****COURT MINUTES****October 04, 2022**

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

<b>October 04, 2022</b>	<b>7:00 AM</b>	<b>Motion to Dismiss</b>	<b>Defendant Dignity Health D/B/A St. Rose Dominican Hospitals Motion To Dismiss, Or Alternatively, Motion To Strike</b>
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**HEARD BY:** Gall, Maria**COURTROOM:** Chambers**COURT CLERK:** Kory Schlitz

**PARTIES**      None - Minute Order Issued from Chambers  
**PRESENT:**

**JOURNAL ENTRIES**

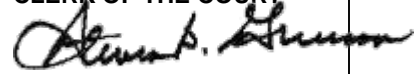
- The Court has reviewed Defendant Dignity Health's motion to dismiss, or alternatively, to strike and is of the position that it does not require oral argument to decide the motion, which largely asserts arguments this Court has already addressed in granting Plaintiffs leave to amend the complaint. For the reasons set forth in Plaintiffs opposition, the Court DENIES the motion, including the alternative relief. The Court's decision shall be made effective through an implementing order. Plaintiffs counsel shall prepare a proposed implementing order consistent with the arguments made in its opposition brief, providing Defense counsel an opportunity to review and comment pursuant to the Court's Department guidelines. The implementing order shall reference this minute order in the first paragraph. The October 5, 2022, hearing shall be vacated.

CLERK'S NOTE: Counsel are to ensure a copy of the forgoing minute order is distributed to all interested parties; additionally, a copy of the foregoing minute order was distributed to the registered service recipients via Odyssey eFileNV E-Service (10-4-2022 ks).

PRINT DATE: 10/04/2022

Page 1 of 1

Minutes Date: October 04, 2022



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9  
10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 LIVIU RADU CHISIU, as Special  
Administrator for the ESTATE OF ALINA  
13 BADOI, Deceased; LIVIU RADU CHISIU,  
14 as Parent and Natural Guardian of SOPHIA  
RELINA CHISIU, a minor, as Heir of the  
15 ESTATE OF ALINA BADOI, Deceased

16 Plaintiffs,

17 vs.

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

24 Defendants.

CASE NO.: A-18-775572-C  
DEPT NO.: 9

**DEFENDANT DIGNITY HEALTH d/b/a**  
**ST. ROSE DOMINICAN HOSPITAL'S**  
**MOTION FOR SUMMARY JUDGMENT**

**HEARING REQUESTED**

25 COMES NOW, Defendant, ST. ROSE DOMINICAN HOSPITAL – SIENA CAMPUS,  
26 by and through its attorneys of record, HALL PRANGLE & SCHOONVELD, LLC, and hereby  
27 files this Motion for Partial Summary Judgment pursuant to NRCP 56.

28 This Motion for Summary Judgment is made and based upon the papers and pleading on  
file herein, the Memorandum of Points and Authorities attached hereto, any other evidence that

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the Court deems just and proper, and any argument of counsel which may be heard at the time of any hearing on the matter.

DATED this 11<sup>th</sup> day of October, 2022.

HALL PRANGLE & SCHOONVELD, LLC

By: /s/:Tyson J. Dobbs

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**I.**

**INTRODUCTION**

St. Rose Hospital is entitled to summary judgment as to Plaintiffs’ claims for vicarious liability based on alleged professional negligence of Ms. Badoi’s obstetricians, Dr. Herpolsheimer and Dr. Garg. This is because it is undisputed that neither physician is a hospital employee, and the doctrine of ostensible agency is inapplicable since (1) the hospital did not select either physician to be Ms. Badoi’s physician; and (2) there is no evidence that Ms. Badoi had any belief, let alone a reasonable belief, that either doctor was a hospital employee. *See Renown Health, Inc. v. Vanderford*, 126 Nev. 221, 228, 235 P.3d 614, 618 (2010) (stating that the doctrine of ostensible agency is only applicable when a hospital (1) selects the doctor to treat the patient and (2) the patient reasonably believes that the doctor is employed by the hospital).

As set forth below, it is undisputed that Dr. Garg had a physician-patient relationship with Ms. Badoi that preexisted her treatment at issue in this case – treating her no less than six times at Womens’ Health Associates of Southern Nevada (“WHASN”) during her prenatal care. In fact, Dr. Garg *never* treated Ms. Badoi face-to-face at St. Rose Hospital. Rather, he was involved in her treatment by his practice group, given she was a WHASN patient, and his role

1 was limited to telephone communications with the nursing staff. He had no direct contact with  
2 Ms. Badoi while she was hospitalized. Moreover, Ms. Badoi was placed on notice of the  
3 physicians' independent contractor status through the various consents she signed expressly  
4 acknowledged the legal relationship between the hospital and the physicians, and due to her  
5 years of employment with St. Rose Hospital as a social worker. Consequently, summary  
6 judgment should be entered as Plaintiffs cannot establish the elements of selection and  
7 reasonable belief to proceed on a theory of ostensible agency.

8 Likewise, Ms. Badoi established a physician-patient relationship with Dr. Herpolsheimer  
9 at WHASN about six months prior to her treatment at St. Rose Hospital. In other words, it was  
10 Ms. Badoi that selected WHASN and Dr. Herpolsheimer for her prenatal care. St. Rose Hospital  
11 had no role in that choice. Moreover, when Ms. Badoi presented to St. Rose Hospital for the  
12 scheduled induction of labor, the same hospital at which she had been employed as a social  
13 worker for three years, she expressly acknowledged that Dr. Herpolsheimer was not a hospital  
14 employee in a consent form pre-delivery. Therefore, the elements of selection and belief are  
15 again absent, and St. Rose Hospital is thus entitled to summary judgment as to vicarious liability  
16 claims based on Dr. Herpolsheimer's alleged negligence.

17 As a matter of fact, summary judgment is even more clear as to claims based on the  
18 conduct of each of Drs. Herpolsheimer and Garg, than it was for the claims based on Dr. Kim's  
19 alleged negligence, which were previously disposed of in this case via summary judgment. As to  
20 Dr. Kim, the Court confirmed there was no evidence to support a reasonable belief by Ms. Badoi  
21 that Dr. Kim was a hospital employee. This was true even though Dr. Kim had never treated Ms.  
22 Badoi prior to administering the anesthesia at issue in this case. However, here, not only is there  
23 no evidence that Ms. Badoi had a reasonable belief that the physicians were employees, it is also  
24 undisputed that Ms. Badoi herself selected Drs. Herpolsheimer and Garg to be her physicians.  
25 They were not selected by St. Rose Hospital.

26 Accordingly, St. Rose Hospital respectfully requests partial summary judgment as to the  
27 vicarious liability claims arising from the alleged professional negligence of Dr. Garg and Dr.  
28 Herpolsheimer.

**II.**

**FACTUAL AND PROCEDURAL BACKGROUND**

According to the Complaint and expert affidavits, Alina Badoi was admitted to St. Rose Hospital on May 15, 2017, for induction of labor. *See generally* Amended Complaint. Prior to giving birth, the anesthesiologist, Dr. Joon Young Kim, placed an epidural catheter for pain. *See generally* Amended Complaint, 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 Dr. Joon Young Kim fell below the standard of care. *Id.* at p. 2. According to Plaintiffs' expert, Dr. Yaakov Beilin, 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.* 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.

The theory of recovery asserted against St. Rose Hospital via the original Complaint was derivative of the alleged professional negligence by Dr. Kim. *See* Original Complaint. The asserted claims were for Vicarious Liability, Negligent Hiring, Training, Supervision, and Credentialing. The Negligent Hiring, Training, Supervision, and Credentialing claims were dismissed via a Motion for Judgment on the Pleadings on December 11, 2020. *See* Order Granting Partial Judgment on the Pleadings, entered on February 10, 2021. Thereafter, this Court granted summary judgment on the Vicarious Liability claim based on Dr. Kim's alleged professional negligence at a hearing on June 22, 2022. *See* Order Granting Summary Judgment, entered on August 15, 2022.

Nevertheless, at the same hearing the Court granted Plaintiffs leave to amend the Complaint to assert additional vicarious liability claims against the hospital based on the conduct of a labor and delivery nurse, and two obstetricians. *See* Order Granting Motion for

1 Leave to Amend, entered on August 2, 2022. The Amended Complaint was filed on August 9,  
2 2022.

3 The theory of recovery now asserted against St. Rose Hospital is vicarious liability (i.e.  
4 agency or ostensible agency) for the alleged professional negligence of Dr. Garg, Dr.  
5 Herpolsheimer, and labor and delivery nurse, Krista Molinaro, RN. The instant motion seeks  
6 summary judgment as to the claims arising from the conduct of each of Dr. Garg and Dr.  
7 Herpolsheimer.

8 **III.**

9 **STATEMENT OF MATERIAL UNDISPUTED FACTS**

10 **A. Dr. Herpolsheimer is not an employee of St. Rose Hospital.**

11 1. At the time he provided medical care to Ms. Badoi, Dr. Herpolsheimer was a  
12 partner with Women's Health Associates of Southern Nevada (WHASN). *See* Excerpts of  
13 Deposition Transcript of Arthur Herpolsheimer, M.D., Vol. I, pg., 10:14-22, attached hereto as  
14 **Exhibit A.**

15 2. Dr. Herpolsheimer testified that WHASN is a multi-physician practice with about  
16 17 care centers. He is one of approximately 30 partners. *Id.*

17 3. Dr. Herpolsheimer has been a partner at WHASN since 2012. *Id.* at 11:2-4.

18 4. Dr. Herpolsheimer was not an employee of St. Rose Hospital at the time he  
19 treated Ms. Badoi and never has been. *See id.* at 12:20-23; *see also* Excerpts of Deposition  
20 Transcript of Arthur Herpolsheimer, M.D., Vol. II, pg., 31:21-32:14, attached hereto as **Exhibit**  
21 **B.**

22 5. In 2017, Dr. Herpolsheimer had hospital privileges at five or six Las Vegas area  
23 hospitals. *Id.* at 11:19-12:5.

24 **B. Dr. Garg is not an employee of St. Rose Hospital.**

25 6. Dr. Garg is one of six partners with whom Dr. Herpolsheimer works at WHASN.  
26 *See* Exhibit A at 8:19-9:6; *see* Exhibit B at 36:8-10; *see also* Excerpts of Deposition Transcript of  
27 Dr. Garg, at 28:21-29:5, attached hereto as **Exhibit C.**

28 7. In 2017, like Dr. Herpolsheimer, Dr. Garg was a partner with WHASN and was  
not a St. Rose Hospital employee. *See* Exhibit C at 48:6-8.

8. St. Rose Hospital - Siena Campus was just one of several hospitals at which Dr. Garg had privileges, including Southern Hills Hospital, Spring Valley Hospital, and San Martin Hospital. *Id.* at 48:14-22.

**C. St. Rose Hospital did not select Dr. Herpolsheimer or Dr. Garg to serve as Ms. Badoi's physicians.**

9. Ms. Badoi began treating with physicians at WHASN during her prenatal treatment on or about September 14, 2016 – approximately eight months before her labor and delivery at St. Rose Hospital in May 2017. *See* Excerpt of Medical Records from Womens' Health Associates of Southern Nevada, attached hereto as **Exhibit D** WHASN000002-4; *see also* Exhibit C at 30:7.

10. WHASN was managing Ms. Badoi's care in the hospital as well. *See* Exhibit A at 8:19-9:6.

11. The determination as to which WHASN physician would deliver a patient's baby would just depend on which physician was on-call with the group that day, as determined by WHASN. *See* Exhibit C at 31:18-22.

12. Ms. Badoi specifically treated with Dr. Herpolsheimer at WHASN on December 28, 2016, approximately five months before she was admitted to the hospital for the delivery of her child. *See* Exhibit D at WHASN000007; *see also* Exhibit A at 13:17-22.

13. Dr. Garg treated Ms. Badoi approximately six times at WHASN, before she was admitted to St. Rose Hospital. *See* Exhibit D at WHASN000007-WHASN0000013, Exhibit C at 48:23-49:16.

14. Specifically, Dr. Garg provided prenatal care to Ms. Badoi at WHASN on October 7, 2016, November 3, 2016, November 30, 2016, March 21, 2017, April 4, 2017, and April 18, 2017. *See* Exhibit D at WHASN000007-WHASN000008.

15. At his deposition, Plaintiff specifically identified Dr. Garg as one of the physicians from whom Ms. Badoi received prenatal care prior to her hospitalization:

Q: Okay. Prior to her delivery of Sophia, do you know if Alina had any kind of what's called prenatal care, which is basically health care from doctors who specialize in pregnant women before they deliver the baby?

A. Yes.

1 Q. Okay. Did you go to those appointments?

2 A. Yes.

3 Q. Okay. Every one?

4 A. Not all of them, but I went to as many as I could.

5 Q. Okay. Who did you go see?

6 A. Well, we went to see doctors at the gynecologist office.

7 Q. Okay. Who was that?

8 A. Dr. Garg.

9 Q. G-A-R-G?

10 A. I don't know how you spell his name.

11 Q. Okay. That's fine. Who else?

12 A. Dr. – well, there were various doctors there. At the  
13 appointments that I went there I saw Dr. Garg and I don't recall –  
14 well, the lady doctor, I don't know her name, starts with Y, but I  
15 think it was only one lady there.

16 Q. Okay. Who else?

17 A. There was another doctor which I really don't recall his name  
18 at all. And then I went with her and did many of the appointments  
19 at the high risk pregnancy, where it was Dr. – I'll remember. It's a  
20 Japanese name. I forgot the name.

21 *See* Excerpts of Deposition Transcript of Liviu Chisiu at 35:16-36:21, attached as **Exhibit E**.

22 16. In October 2016, Dr. Garg referred Ms. Badoi to the High Risk Pregnancy Center  
23 for “genetic counseling and prenatal diagnosis due to advancing maternal age.” *See* Excerpts of  
24 Medical Records from High Risk Pregnancy Center, attached hereto as **Exhibit F** (HRP000002-  
25 HRP000004).

26 17. As her treating obstetrician, Dr. Garg was thereafter copied on all of the notes  
27 from the High Risk Pregnancy Center. *See* Exhibit F at HRP000005-HRP000023.

28 18. Dr. Garg was the on-call physician for WHASN at the time he was involved in  
Ms. Badoi's treatment while she was hospitalized at St. Rose Hospital on May 17, 2017. Exhibit  
C at 49:17-24.

19. The call schedule was set months in advance by the partners at WHASN,  
including Dr. Garg. *Id.* at 49:17-50:7.



20. Dr. Garg was the group's on-call physician treating Ms. Badoi on May 17, 2017, pursuant to the scheduling decision made by his office, WHASN. *Id.*

**D. Ms. Badoi was made aware that Drs. Herpolsheimer and Garg were not employees of St. Rose Hospital**

21. Ms. Badoi treated with each of Dr. Herpolsheimer and Dr. Garg at WHASN during her prenatal treatment before her admission to St. Rose Hospital on May 15, 2017.

22. There is no evidence that Ms. Badoi held a mistaken belief that either Dr. Garg or Dr. Herpolsheimer was a hospital employee.

23. In fact, Dr. Garg was not present bedside while Ms. Badoi was hospitalized at St. Rose Hospital on May 16-17. His involvement was limited to phone calls with the nursing staff. *See id.* at 10:10-14, 12:20-13:4, 15:12-15, 27:4-17; *see also* Excerpt of St. Rose Medical Records regarding Dr. Garg's involvement in care, attached hereto as **Exhibit G**.

24. Consequently, the only time that Dr. Garg was face to face with Ms. Badoi was during his prenatal treatment at WHASN as Ms. Badoi's treating obstetrician.

25. There is no evidence that Ms. Badoi even knew Dr. Garg was involved in her treatment at St. Rose Hospital.

26. Furthermore, "[a]s of May 15, 2017, Alina Badoi had been employed at St. Rose Hospital as a social worker for more than three years, working closely with nurses and physicians for approximately 40 hours per week during that time." Order Granting Defendant Dignity Health d/b/a St. Rose Dominican Hospital's Motion for Summary Judgment, at ¶ 9; *see also* Exhibit E at 160:19-24.

27. "Liviu Chisiu, Ms. Badoi's partner of five years, and the Special Administrator for the Estate of Alina Badoi and parent and natural guardian of Sophia Relina Chisiu, a minor, as heir of the Estate of Alina Badoi, testified he assumed that as an employee of St. Rose Hospital for three years prior to her death, Ms. Badoi probably had some knowledge as to the relationship between the hospital and physicians." Order Granting Defendant Dignity Health d/b/a St. Rose Dominican Hospital's Motion for Summary Judgment, at ¶ 10; *see also* Exhibit E at 166:13-15.

28. In addition, months before presenting to the hospital for her delivery, “[o]n January 31, 2017, during a preadmission visit to St. Rose Hospital prior to the date of her admission on May 15, 2017, Ms. Badoi signed paperwork in anticipation of her admission to deliver her baby.” Order Granting Defendant Dignity Health d/b/a St. Rose Dominican Hospital’s Motion for Summary Judgment, at ¶ 12; *see also* Conditions of Admission, attached hereto as **Exhibit H**.

29. “In this preadmission paperwork, entitled the Conditions of Admission, Ms. Badoi expressly acknowledged that the physicians that would be treating her at St. Rose Hospital were not employees or agents of St. Rose Hospital.” Order Granting Defendant Dignity Health d/b/a St. Rose Dominican Hospital’s Motion for Summary Judgment, at ¶ 13; *see also* Exhibit J.

30. “Ms. Badoi separately initialed a paragraph entitled ‘Legal Relationship between Hospital and Doctors’,” stating:

**CONDITIONS OF ADMISSION**

**(For Use for Inpatients Outpatients and Emergency Department Patients)**

5. **Legal Relationship between Hospital and Doctors** *Patient/Legal Representative Initials: AB*  
Doctors and surgeons providing services to the Patient, including the radiologist, pathologist, emergency doctors, hospitalist, anesthesiologist, intensive care doctors and others, are not employees or agents of the Hospital. They have been granted the privilege of using the hospital for the care and treatment of their patients, but they are not employees. **You will receive a separate bill from the doctors for their services.**  
You understand that the Patient is under the care and supervision of the attending doctor. The Hospital and its staff are responsible for carrying out the doctor's instructions. Your doctor or surgeon is responsible for obtaining Your informed consent, when required, for medical or surgical treatment, special diagnostic or therapeutic procedures, or Hospital services provided to You under your doctor's general and special instructions.

Order Granting Defendant Dignity Health d/b/a St. Rose Dominican Hospital’s Motion for Summary Judgment, at ¶ 14; *see also* Exhibit H.

31. “Ms. Badoi also expressly certified that her signature on the Conditions of Admission meant that she had read and understood the form and was given the opportunity to ask questions”:

**11. Patient Certification: By signing this form, You certify that:**

- You have read this form
- You have received a copy of the form
- You were given the opportunity to ask questions
- You understand what it means
- You are the Patient or the Patient's Legal Representative
- You have received the Hospital Billing Process brochure.
- You have received information informing You of your Patient Rights and Responsibilities.
- You have received information advising You of the Hospital's policy for implementation of defined Advance Directives

CONDITIONS OF ADMISSION  
(For Use for Inpatients Outpatients and Emergency Department Patients)

Signature: [Signature] Date: 1/31/2017 Time: 1446 A.M.(P.M.)  
[Patient or Patient's Legal Representative]  
Name: ALINA BADOI Relationship to the Patient: SELF  
[Print Name]  
Witness Signature: [Signature]

Order Granting Defendant Dignity Health d/b/a St. Rose Dominican Hospital's Motion for Summary Judgment, at ¶ 15; *see also* Exhibit H.

32. "When Plaintiff presented to the hospital on May 15, 2017, for the scheduled induction of labor for the delivery of her child, she executed another consent form entitled 'Consent for Procedure.'" Order Granting Defendant Dignity Health d/b/a St. Rose Dominican Hospital's Motion for Summary Judgment, at ¶ 16; *see also* Consent for Procedure, attached hereto as **Exhibit I** (SRS1995-1996).

33. The Consent for Procedure form specifically refuted any agency relationship between the hospital and Dr. Herpolsheimer as follows:

Patient's Name: Alina Badoi Hospital Name: Siena

1. **Procedure to be Performed.** Your physician(s) has recommended the procedure(s) listed below, which we will refer to as "your procedure" or "the procedure":

Vaginal Delivery with or without Episiotomy  
with Repair

2. **Procedure Physician.** Dr. Herpolsheimer is the physician who will perform your procedure. The procedure physician is an independent practitioner and is not an employee, representative or agent of the Hospital. During your procedure, if your procedure physician believes that other procedures are needed for your health or safety, those other procedures will be performed at his or her direction. If your procedure physician cannot perform or complete the procedure, a trained substitute physician will do so.

...

11. **Acknowledgment and Signature.** By signing this form, you are indicating that:

- You have read and understand the information in this form;
- Your physician has discussed with you the procedure and explained its risks and benefits and any foreseeable problems;
- Your physician has discussed alternative methods of treatment available, their risks and benefits, and what would happen if you did not have the procedure;
- You had a chance to ask your physician any questions about the procedure;
- You authorize and consent to the performance of the procedure and the anesthesia.

Name: ALINA BADOI  
(Print Name)

Signature: [Signature] Date: 5/15/17 Time: 1545 A.M.(P.M.)  
(Patient/Parent/Legally Authorized Representative)

Exhibit I; *see also* Order Granting Defendant Dignity Health d/b/a St. Rose Dominican Hospital's Motion for Summary Judgment, at ¶ 17.

34. "Ms. Badoi executed the form on May 15, 2017, at 1545, acknowledging that she had read and understood the information contained therein." Order Granting Defendant Dignity Health d/b/a St. Rose Dominican Hospital's Motion for Summary Judgment, at ¶ 19; *see also* Exhibit I.

35. There is no evidence "to suggest that Ms. Badoi did not have an opportunity to review the forms signed. Indeed, Ms. Badoi was not emergently admitted to the hospital nor admitted in labor. She presented to the hospital for a scheduled induction of labor after previously presenting to the same hospital to sign preadmission paperwork. Furthermore, as a Dignity Health social worker working in a hospital setting with physicians for three years Ms. Badoi was not a typical patient." Order Granting Defendant Dignity Health d/b/a St. Rose Dominican Hospital's Motion for Summary Judgment, at ¶ 35.

36. "Thereafter, Ms. Badoi underwent several additional procedures over the next few weeks at St. Rose Hospital, including a laminectomy, lumbar drain placement, peripheral catheter placement, ventriculostomy, and CT of the head. For each of these procedures Ms Badoi or her representative executed a consent that states that the physician performing the procedure is 'not an employee, representative, or agent of the Hospital.'" Order Granting Defendant Dignity Health d/b/a St. Rose Dominican Hospital's Motion for Summary Judgment, at ¶ 20; *see also* Consents for Procedure, attached hereto as **Exhibit J**.

#### IV.

#### SUMMARY JUDGMENT LEGAL STANDARD

NRCP 56 allows for summary judgment when there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law. *Busch v. Flangas* 108 Nev. 821, 837 P.2d 438 (1992). Summary judgment promotes judicial economy and reduces litigation expense associated with actions clearly lacking merit. *Elizabeth E. v. APT Sec. Sys. W.* 108 Nev. 889, 839 P.2d 1308 (1992). Summary judgment does not involve resolution of factual issues but seeks to discover if any real issue of fact exists. *Daugherty v. Wabash Life Insurance Co.*, 87 Nev. 32, 482 P.2d 814 (1971). Where an essential element of a claim for relief is absent,

summary judgment is proper. *Bulbman, Inc. v. Nevada Bell* 108 Nev. 105, 111, 825 P.2d 588, 592 (1992). The party opposing summary judgment must set forth specific, admissible evidence which supports her claim. *Posadas v. City of Reno* 109 Nev. 448, 452, 851 P.2d 438, 442 (1993). A party opposing summary judgment may not rely on the allegations of her pleadings to raise a material issue of fact where the moving party supports his motion with competent evidence. *Barmettler v. Reno Air, Inc.* 956 P.2d 1382 (Nev. 1998). The nonmoving party bears the burden of showing there is more than “some metaphysical doubt” as to the operative facts in order to avoid summary judgment being entered in the moving party's favor. *Wood v. Safeway* 121 Nev. 724, 121 P.3d 1026 (2005).

Under Nevada Rule of Civil Procedure 56, a party seeking summary judgment must satisfy two substantive requirements: (1) There must be no genuine issue as to any material fact; and (2) The moving party must be entitled to judgment as a matter of law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1985). A material fact is one which will affect the outcome of the action. *Id.* at 248.

With respect to summary judgment regarding agency, “[t]he existence of an agency relationship is generally a question of fact for the jury if the facts showing the existence of agency are disputed, or if conflicting inferences can be drawn from the facts.” *Schlotfeldt v. Charter Hosp. of Las Vegas*, 112 Nev. 42, 47, 910 P.2d 271, 274 (1996) (citing *Latin American Shipping Co. Inc., v. Pan American Trading Corp.*, 363 So.2d 578, 579–80 (Fla.Dist.Ct.App.1978)). However, “[a] question of law exists as to whether sufficient competent evidence is present to require that the agency question be forwarded to a jury.” *Id.* (citing *In re Cliquot's Champagne*, 70 U.S. 114, 140, 18 L.Ed. 116 (1865)). And a conclusion that “agency does not exist requires only the negation of one element of the agency relationship.” *Schlotfeldt*, at n. 3.

Here, no issues of material fact exist with respect to Plaintiffs’ vicarious liability claim against St. Rose Hospital based on the conduct of Dr. Garg and Dr. Herpolsheimer because Plaintiffs cannot establish an actual or ostensible agency relationship between the hospital and physicians. Therefore, as set forth in detail below, summary judgment should be granted in its

favor as to such claims.

V.

**ARGUMENT**

Plaintiffs cannot succeed on their vicarious liability theory against St Rose Hospital for the alleged professional negligence of Dr. Garg and Dr. Herpolsheimer because neither physician an employee of St. Rose Hospital and there is no evidence to suggest Plaintiff held a mistaken belief about either physician's employment status.

"The general rule of vicarious liability is that an employer is liable for the negligence of its employee but not the negligence of an independent contractor." *McCroskey v. Carson Tahoe Regional Medical Center*, 408 P.3d 149 (Nev. 2017) (citing *Oehler v. Humana Inc.*, 105 Nev. 348, 351, 775 P.2d 1271 (Nev. 1989)). However, an exception to this rule exists when a hospital (1) selects the doctor to treat the patient **and** (2) the patient reasonably believes that the doctor is employed by the hospital. *Id.* (emphasis added) (citing *Renown Health, Inc. v. Vanderford*, 126 Nev. 221, 228, 235 P.3d 614, 618 (2010) (finding ostensible agency applicable "when a patient goes to the hospital and the hospital selects the doctor to treat the patient, such that it is reasonable for the patient to assume the doctor is an agent of the hospital"); *see also Schlotfeldt v. Charter Hosp. of Las Vegas*, 112 Nev. 42, 48, 910 P.2d 271, 275 (1996) (holding that "[t]he ostensible agency theory applies when a patient comes to a hospital and the hospital selects a doctor to serve the patient"). If such is the case, the hospital may be "vicariously liable for the doctor's actions under the doctrine of ostensible agency." *Id.* (citing *Schlotfeldt v. Charter Hosp. of Las Vegas*, 112 Nev. 42, 48, 910 P.2d 271, 275 (1996)). "[A] doctor's mere affiliation with a hospital is not sufficient to hold a hospital vicariously liable for the doctor's negligent conduct." *Id.* at 48. And "a hospital does not generally expose itself to vicarious liability for a doctor's actions by merely extending staff privileges to that doctor." *Id.*

Accordingly, to succeed on their vicarious liability claims against St. Rose Hospital for the conduct of Drs. Garg and Herpolsheimer, Plaintiffs must show either that: (1) Drs. Garg and Herpolsheimer were actual agents (i.e. and employees) of St. Rose Hospital or, (2) Drs. Garg and Herpolsheimer were ostensible agents of St. Rose Hospital. As set forth in detail below, neither physician was an actual or ostensible agent of St. Rose Hospital.

***a. Neither Dr. Garg nor Dr. Herpolsheimer was an actual agent of St. Rose Hospital.***

It is undisputed that both Dr. Garg and Herpolsheimer have never been employed by St. Rose Hospital. Although both physicians have privileges to treat patients at St. Rose Hospital, their relationship to St. Rose Hospital is that of an independent contractor. Therefore, Plaintiff can present no evidence that shows that St. Rose Hospital is responsible for either physician's actions based on an actual agency relationship. On the contrary, both Dr. Garg and Dr. Herpolsheimer are partners with WHASN, which is the physician practice group from whom Ms. Badoi chose to receive prenatal care. Therefore, St. Rose Hospital is entitled to summary judgment as to Plaintiff's claim for vicarious liability premised on actual agency for Drs. Garg and Herpolsheimer.

***b. Drs. Garg and Herpolsheimer were not ostensible agents of St. Rose Hospital because the hospital did not select them to treat Ms. Badoi and Ms. Badoi did not have a reasonable belief that they were employees of St. Rose Hospital.***

Since neither Dr. Garg nor Dr. Herpolsheimer has ever been an employee of St. Rose Hospital, Plaintiffs' entire claim that St. Rose is vicariously liable for their actions rests on proving that these physicians were ostensible agents of St. Rose Hospital.

To prove ostensible agency Plaintiffs must establish that St. Rose Hospital both (a) selected Dr. Kim to treat Ms. Badoi, **and** (b) that Ms. Badoi had a reasonable belief that Dr. Kim was employed by St. Rose Hospital. *See, e.g. McCroskey v. Carson Tahoe Regional Medical Center*, 408 P.3d 149 (Nev. 2017) (citing *Renown Health, Inc. v. Vanderford*, 126 Nev. 221, 228, 235 P.3d 614, 618 (2010)). In addition, to evaluate the reasonableness of a patient's belief about the agency status of a physician, the Nevada Supreme Court also considers "whether the patient was put on notice that a doctor was an independent contractor." *McCroskey v. Carson Tahoe Regional Medical Center*, 408 P.3d 149 (Nev. 2017) (citing *Schlotfeldt v. Charter Hosp. of Las Vegas*, 112 Nev. 42, 48, 910 P.2d 271, 274 (1996)).

Here, St. Rose Hospital did not select either physician to be Ms. Badoi's physician. Rather, Ms. Badoi entrusted herself to, and selected WHASN as the group from whom she would receive prenatal care, including the delivery of her baby. Ms. Badoi even treated with both physicians at WHASN prior to presenting to St. Rose Hospital for the delivery of her child.

Moreover, the involvement of the physicians in Ms. Badoi's treatment at St. Rose Hospital was precipitated by the preexisting relationship between Ms. Badoi and WHASN. The hospital had no role in selecting either physician to treat Ms. Badoi at the hospital.

Additionally, Plaintiffs cannot prove that Ms. Badoi held a reasonable belief that an agency relationship existed between these two physicians and St. Rose Hospital. In fact, there is no evidence suggesting Ms. Badoi had any belief, let alone a reasonable belief, about the employment status of Drs. Herpolsheimer and Garg. Notwithstanding, even assuming Ms. Badoi had a mistaken belief about the employment status of Garg and Herpolsheimer, such a belief would have been *unreasonable*.

First, Plaintiffs cannot present any evidence that Ms. Badoi had any interaction with Dr. Garg while she was hospitalized at St. Rose Hospital. Dr. Garg was never bedside and his involvement in her care was limited to telephone communication with the nursing staff. Consequently, Ms. Badoi's only first-hand experience with Dr. Garg was at WHASN during the six times he personally saw her therefore prenatal treatment.

Next, Ms. Badoi expressly acknowledged the independent contractor status of the physicians in the various forms she signed during her hospitalization – forms that she would have dealt with daily as a social worker in the hospital. In the first form, the "Conditions of Admission" signed prior to the admission at issue in this case, Ms. Badoi expressly confirmed that she understood that the "doctors and surgeons . . . are not employees or agents of the Hospital." Thereafter, on the date she presented for her delivery, Ms. Badoi executed another consent that *expressly refuted any employment relationship between Dr. Herpolsheimer and St. Rose Hospital*. Thus, as stated by this Court previously:

the only evidence of Ms. Badoi's subjective belief regarding the relationship between Dr. Kim and the hospital is set forth in the various hospital forms she signed. Ms. Badoi acknowledged reading and understanding the forms, which notified her of the independent contractor status of anesthesiologists such as Dr. Kim.

Court's Order Granting Motion for Summary Judgment at ¶ 34.

As a matter of fact, Ms. Badoi or her representatives executed at least eight consents for procedures that expressly refuted an agency relationship between physicians and the hospital.



Furthermore, as found by this Court in its Order Granting Summary Judgment on the vicarious liability claims arising from Dr. Kim's conduct:

There was no evidence presented to suggest that Ms. Badoi did not have an opportunity to review the forms signed. Indeed, Ms. Badoi was not emergently admitted to the hospital nor admitted in labor. She presented to the hospital for a scheduled induction of labor after previously presenting to the same hospital to sign preadmission paperwork. Furthermore, as a Dignity Health social worker working in a hospital setting with physicians for three years Ms. Badoi was not a typical patient.

[U]nlike situations in which a plaintiff offers a declaration or testifies regarding her subjective belief, Ms. Badoi is deceased. There will be no forthcoming declaration or testimony from her to contradict the representations in the existing evidence regarding her acknowledgement of Dr. Kim's relationship to the hospital.

Finally, as referenced by the Court, Ms. Badoi herself was employed by St. Rose Hospital as a social worker for three years prior to and including her admission. During that time she worked closely with both physicians and nurses, and would have been very familiar with the independent contractor relationship of the physicians and hospital. In fact, the Special Administrator of Ms. Badoi's estate conceded that, as an employee of the hospital, Ms. Badoi likely understood the relationship between the hospital and the physicians that worked there. More importantly, Ms. Badoi had treated with both physicians at WHASN, the physician practice group that she herself had selected for her prenatal treatment.

Accordingly, there is no evidence that Ms. Badoi held a mistaken belief about Dr. Garg or Dr. Herpolsheimer's relationship with St. Rose. On the contrary, she was intimately aware, through both her employment with St. Rose Hospital, the various consents that she signed both before and during her admission, and her treatment at WHASN over the course of her pregnancy, that both physicians were affiliated with WHASN. Consequently, there is no genuine issue of material fact for trial as to any claims premised on vicariously liability for these physicians. Summary judgment is thus appropriate and should be granted as it was for vicarious liability claims arising from Dr. Kim's conduct.

**VI.**

**CONCLUSION**

For the reasons set forth below, St. Rose Hospital respectfully requests this Court grant its Motion for Partial Summary Judgment.

DATED this 11<sup>th</sup> day of October, 2022.

HALL PRANGLE & SCHOONVELD, LLC

By: /s/: Tyson J. Dobbs  
TYSON J. DOBBS, ESQ.  
Nevada Bar No. 11953  
TRENT L. EARL, ESQ.  
Nevada Bar No. 15214  
1140 North Town Center Drive, Ste. 350  
Las Vegas, Nevada 89144  
*Attorneys for Defendant*  
*Dignity Health, a Foreign Non-Profit Corporation*  
*d/b/a St. Rose Dominican Hospital – Siena Campus*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of HALL PRANGLE & SCHOONVELD, LLC; that on the 11<sup>th</sup> day of October, 2022, I served a true and correct copy of the foregoing **DEFENDANT DIGNITY HEALTH d/b/a ST. ROSE DOMINICAN HOSPITAL'S MOTION FOR SUMMARY JUDGMENT** 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.  
Kendelea L. Works, Esq.  
Whitney J. Barrett, Esq.  
Keely A. Perdue, Esq.  
CHRISTIANSEN LAW OFFICES  
810 S. Casino Center Blvd., Suite 104  
Las Vegas, Nevada 89101  
*Attorneys for Plaintiff*

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

# **Exhibit A**

# **Exhibit A**

1 DISTRICT COURT

2 CLARK COUNTY, NEVADA

3  
4 LIVIU RADU CHISIU, as Special )  
5 Administrator of the ESTATE OF ALINA )  
6 BADOI, Deceased; LIVIU RADU CHISIU, as )  
7 Parent and Natural Guardian of SOPHIA )  
8 RELINA CHISIU, a minor, as Heir of the )  
9 ESTATE OF ALINA BADOI, Deceased; )  
10 Plaintiff, ) Case No.: A-18-775572-C  
11 vs. )  
12 DIGNITY HEALTH, a Foreign Non-Profit ) Dept. No.: XXXII  
13 Corporation d/b/a ST. ROSE DOMINICAN )  
14 HOSPITAL - SIENA CAMPUS; JOON )  
15 YOUNG KIM, M.D., an Individual; U.S. )  
16 ANESTHESIA PARTNERS, INC., a Foreign )  
17 Corporation; DOES I through X; and ROE )  
18 BUSINESS ENTITIES XI through XX, )  
19 inclusive, )  
20 )

21 RECORDED DEPOSITION OF ARTHUR HERPOLSHEIMER, M.D.

22 Taken on January 15, 2021

23 At 10:05 a.m.

24 30 Brookridge Drive

25 Henderson, Nevada 89052

Page 6

1 A transcript certified by the Deposition Officer will be created  
2 from the audiovisual recording of this deposition by Elevate  
3 Reporting, LLC. Would all attorneys present please identify  
4 themselves, their firm, anybody with them, and the party they  
5 represent, beginning with the party noticing this proceeding?  
6 TODD TERRY: Todd Terry, Christiansen Law  
7 Offices, on behalf of plaintiffs.  
8 ADAM SCHNEIDER: Adam Schneider for John H.  
9 Cotton & Associates, representing Dr. Kim and US Anesthesia  
10 Partners.  
11 TYSON DOBBS: Tyson Dobbs, representing, uh,  
12 Dignity Health.  
13 MS. MADSEN: Okay. Thank you.  
14 DIRECT EXAMINATION  
15 BY: MR. R. TODD TERRY  
16 Q: Uh, good morning, Doctor. Uh, have you ever given  
17 a deposition before?  
18 A: Yes.  
19 Q: About how many times?  
20 A: Five.  
21 Q: Uh, when was the last time?  
22 A: A month ago.  
23 Q: All right. Uh, do you want me to go over the  
24 admonitions with you or are you comfortable going ahead without  
25 those?

Page 8

1 get ready for your deposition today?  
2 A: I pulled up our clinic notes, um, on Ms. Badoi.  
3 Q: And did those clinic notes cover the timeframe  
4 before Ms. Badoi was, uh, admitted to the hospital for the  
5 delivery of her baby?  
6 A: Yes, but I didn't review that. I just looked at  
7 the delivery report. I wasn't sure what was going on, but that  
8 reminded me of the case.  
9 Q: Okay. And I was going to ask, do -- do you have a  
10 recollection of Ms. Badoi or her family or her child?  
11 A: Yes.  
12 Q: All right. Uh, have you talked to anyone about  
13 Ms. Badoi or having to give a deposition?  
14 A: I told my partners that I'm giving a des--  
15 deposition on Ms. Badoi. That was it.  
16 Q: Okay. Uh, did you have any conversations with Dr.  
17 Kim, the anesthesiologist?  
18 A: No.  
19 Q: And I -- I -- it's documented on the record that  
20 it -- during the time that Ms. Badoi was in the hospital, uh,  
21 you had conversations with other doctors, nursing staff, things  
22 of that nature. Um, after Ms. Badoi passed away, do you recall  
23 having any conversations with any other individual about her or  
24 her condition or anything of the like?  
25 A: No, just partners. As part of our hand off 'cause

Page 7

1 A: I'm co-- I'm okay.  
2 Q: Okay. Uh, let me just give you one that's  
3 particular to me. It sometimes takes me a second to spit out  
4 the question, so if you could try to make sure I've got it out  
5 completely before you start answering, that way, we're not, uh,  
6 talking over each other, is that fair enough?  
7 A: Yes.  
8 Q: Okay. Uh, my intent here today is not to trick  
9 you or trip you up. And if I ask a -- a question that is  
10 confusing to you or I mispronounce a medical term, which is  
11 very, very likely, um, please ask me to clarify if you don't  
12 understand it, okay?  
13 A: Okay.  
14 Q: All right. Uh, have you testified in a court  
15 room?  
16 A: Yes.  
17 Q: How many times?  
18 A: Just once.  
19 Q: And how long ago was that?  
20 A: Um, long time ago, probably about 10 years ago, 12  
21 years ago.  
22 Q: Okay. Uh, was that in your capacity as a treating  
23 physician or an expert witness?  
24 A: Uh, treating physician.  
25 Q: All right. Uh, did you review any documents to

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1 we would -- managing her care up until that point. I believe  
2 one of my partners was actually on service when she passed.  
3 Q: Okay. And was that Dr. Gart?  
4 A: I'm not sure. Um, you know, I -- I have six  
5 partners. Um, it may have been Dr. Garg or Dr. Ivie. I -- I --  
6 I didn't review that portion of the record.  
7 Q: Okay. And did you review any re-- any of the  
8 records from the hospital that were generated and created as a  
9 result of you, um, seeing or treating Ms. Badoi?  
10 A: Not in preparation for this deposition, um, but,  
11 of course, I reviewed them in the past.  
12 Q: Uh, was that at or near the time that you were  
13 providing treatment to her?  
14 A: Yes.  
15 Q: And have you reviewed any records since she  
16 passed?  
17 A: Just in the delivery note that's copied into our  
18 EMR.  
19 Q: Okay. Uh, before we start talking in substance,  
20 let me just get some background information from you. Uh, where  
21 did you graduate from medical school?  
22 A: Uh, Uniformed Services University.  
23 Q: And where's that?  
24 A: Bethesda, Maryland.  
25 Q: And do you hold licenses to practice medicine in

Page 10

1 any other states other than Nevada?

2 A: No. Just currently in Nevada. I have inactive

3 status in Washington and Ohio.

4 Q: All right. And has any -- have any of your

5 licenses ever been acted on as far as, uh, any disciplinary or

6 sanction or anything like that?

7 A: Never been sanctioned.

8 Q: Uh, ha-- have you ever been disciplined?

9 A: Never been disciplined.

10 Q: Okay. Uh, when did you, um, move to Nevada to

11 practice medicine?

12 A: Uh, 1999 or 2000. I -- uh, it was right around

13 the holiday. I think it was 2000.

14 Q: Okay. And by, uh, well, you mentioned six

15 partners. Uh, what entity is that?

16 A: Uh, the overall entity is Women's Health

17 Associates of Southern Nevada, um, and we're a multi-physician

18 practice. We have about 17 different care centers and our care

19 centers where -- we actually have the partners. On top of that,

20 I have about 30 other partners, but they're more at the entity

21 level. The six others are the -- those I've actually practiced

22 with.

23 Q: Okay.

24 A: It's kind of complicated.

25 Q: Uh, and is it okay if I refer to that as WHASN?

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1 Henderson Hospital was open then, but if it was, I had

2 privileges there.

3 Q: Okay. And do you still have privileges at all of

4 those hospitals now?

5 A: Yeah. We don't really have --

6 Q: And -- uh, I'm -- I'm sorry I talked over you.

7 A: There -- there's a different kind of business

8 relationship at de Lima. Uh, we take care of their referrals,

9 but we take it on site at Siena. So, I think I can still go

10 there to operate, but I haven't gone there in years.

11 Q: Okay. All right. And do you know the -- the

12 privilege term or the cre-- credential term, uh, that you had

13 with St. Rose - Siena in 2017, was it a two-year, one-year,

14 four-year period, or what?

15 A: I don't know. I -- I think I was active and I --

16 I think they have active and you have to renew your active

17 status once a year, and that's more by participation on

18 different boards and going to meetings. Otherwise, you have,

19 uh, something, underactive.

20 Q: Okay. And at the time you saw Ms. Badoi in 2017,

21 you were not an employee of the St. Rose system or Dignity

22 system, were you?

23 A: No.

24 Q: All right. Uh, have your privileges to any

25 hospital in your medical career ever been, um, suspended,

Page 11

1 A: Yeah, that'll be fine.

2 Q: Okay. Uh, how long have you been associated or

3 affiliated with WHASN?

4 A: Uh, since 2012.

5 Q: And how 'bout prior to that, where were you

6 working or what practice did you have?

7 A: Yeah. Prior to that, I was, um, in a partner with

8 Miller & Turner. We go by the business name of Essential

9 Women's Health Associates, um, and we formed up and kind of

10 merged our practices in 2011. Um, prior to that, I was in

11 private practice under my own, um, S Corp, Arthur Herpolsheimer,

12 M.D., and prior to that, I was military service.

13 Q: Okay. So, once you came to Nevada in 1999 or

14 2000, uh, the first, uh, entity was the S Corp, your own S Corp

15 --

16 A: Correct.

17 Q: -- that you practiced under? All right.

18 A: Yeah.

19 Q: All right. Uh, let's just say in, uh, 19 or 2017,

20 di-- did you have privileges at any hospitals or groups of

21 hospitals?

22 A: Yes.

23 Q: What were they?

24 A: Uh, the hospitals were St. Rose - Siena, San

25 Martin, de Lima, Southern Hills, Spring Valley. I don't know if

Page 13

1 revoked, or otherwise, uh, acted upon?

2 A: Um, maybe for charting deficiencies.

3 Q: Do you consider that administrative issues?

4 A: I don't know. Um, you know, every now and then

5 they send you a -- a letter saying you have to sign something

6 off and you do and then you're taken off the suspension list. I

7 don't know if I was ever actively suspended, but I've gotten

8 quite a few letters over the years.

9 Q: Okay. And do you recall, um, if there -- there

10 was any of that going on at the time you first saw Ms. Badoi in

11 May of 2017 at, uh, St. Rose - Siena?

12 A: No.

13 Q: There wasn't or you don't know?

14 A: Um, there shouldn't have been. I mean, I -- I

15 believe I was her admitting physician, and one of the things

16 they take away when you're suspended would be admitting rights.

17 Q: Okay. Uh, now, it's my understanding that at

18 most, you may have seen Ms. Badoi before sh-- um, she was

19 admitted in May -- mid-May of 2017, maybe one time at, uh, the

20 WHASN clinics. Uh, do you have any recollection of that or

21 knowledge about that?

22 A: No.

23 Q: Okay. How clear is your memory about all the

24 events that were transpiring concerning Ms. Badoi in mid-May of

25 2017?

# **Exhibit B**

# **Exhibit B**



1 DISTRICT COURT

2 CLARK COUNTY, NEVADA

3  
4 LIVIU RADU CHISIU, as Special )

5 Administrator of the ESTATE OF ALINA )

6 BADOI, Deceased; LIVIU RADU CHISIU, as )

7 Parent and Natural Guardian of SOPHIA )

8 RELINA CHISIU, a minor, as Heir of the )

9 ESTATE OF ALINA BADOI, Deceased; )

10 Plaintiff, ) Case No.: A-18-775572-C

11 vs. )

12 DIGNITY HEALTH, a Foreign Non-Profit ) Dept. No.: XXXII

13 Corporation d/b/a ST. ROSE DOMINICAN )

14 HOSPITAL - SIENA CAMPUS; JOON )

15 YOUNG KIM, M.D., an Individual; U.S. )

16 ANESTHESIA PARTNERS, INC., a Foreign )

17 Corporation; DOES I through X; and ROE )

18 BUSINESS ENTITIES XI through XX, )

19 inclusive, )

20 \_\_\_\_\_)  
21 ONGOING RECORDED DEPOSITION OF ARTHUR HERPOLSHEIMER, M.D.

22 Taken on May 17, 2021

23 At 2:05 p.m.

24 30 Brookridge Drive

25 Henderson, Nevada 89052

Page 30

1 topline is Dr. JP Kim, anesthesia, has been seeing patient  
2 daily, do you see that?

3 A: I don't see it on the screen.

4 MS. MADSEN: Do you have an exhibit --

5 MR. SCHNEIDER: Okay.

6 MS. MADSEN: -- number, Adam?

7 MR. SCHNEIDER: Uh, I believe it's Exhibit 30,  
8 right Todd? It's one of the more recent --

9 MR. TERRY: No, the Evernote is -- is 28.

10 MR. SCHNEIDER: Twenty-eight.

11 MS. MADSEN: You said Page 2?

12 MR. SCHNEIDER: Yeah.

13 MS. MADSEN: Sorry, I need to -- I need to have  
14 it zoomed so he can see it and then -- there we go.

15 A: Okay, yeah.

16 Q: Okay. And then we see on the topline there,  
17 Doctor, it says, "Dr. JP Kim (anesthesia) has been seeing  
18 patient daily"?

19 A: Yes.

20 Q: Is that something that you obs-- that you  
21 personally observed or is that something that got reported to  
22 you?

23 A: Uh, I was on vacation at that time. That's an  
24 entry by one of my associates.

25 Q: Do we know which one?

Page 32

1 Q: Um, have you ever been an employee at St. Rose  
2 Hospital?

3 A: Say that again, oh, St. Rose?

4 Q: Yeah.

5 A: Only -- only at labor nurse.

6 Q: I mean by St. Rose.

7 A: No, not directly.

8 Q: And that's what my question is, uh, your -- you  
9 treat patients at St. Rose Hospital because you have, uh,  
10 privileges of the hospital, is that right?

11 A: Yes.

12 Q: And my question is, are you an actual employee of  
13 St. Rose Hospital?

14 A: No.

15 Q: Um, you had treated Ms. Badoi at your, uh, private  
16 practice with Women's Health, uh, prior to the delivery, is that  
17 true?

18 A: Yes.

19 Q: And do you recall Ms., uh, Badoi like, uh, having  
20 an independent recollection of her?

21 A: Yes.

22 Q: Uh, did you, uh, know that she was an employee of  
23 Dignity Health as a social worker?

24 A: There was an entry on the -- on the EMR saying  
25 that she was a social worker.

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1 A: Yeah, hold on. That would have been, uh -- can  
2 you scroll up and show me the date.

3 Q: Yeah, I can represent to you it's from Ap-- um,  
4 May 22nd.

5 A: May 22nd. Okay that would have been Monday, May  
6 22nd at that time, Dr. Ivie, um, was on hospital week so she  
7 would have been rounding.

8 Q: Okay. Uh, and then if we go a couple of sentences  
9 lower for the May 24th entry, the second sentence says, "Spoke  
10 with Dr. Selco." Would that have been you or that would have  
11 been one of your partners?

12 A: That would have been Dr. Ivie, uh, through the  
13 26th.

14 Q: Okay. And so, kind of the same question as it  
15 relates to the entry for May 26, that would be a Dr. Ivie entry,  
16 not a Dr. Herpolsheimer entry, right? Okay. Uh, Doctor, those  
17 are all the questions I have for you and I appreciate your time.

18 A: Well, thank you.

19 CROSS EXAMINATION

20 By: Mr. Tyson Dobbs

21 Q: Doctor, this is Tyson Dobbs, um, I represent  
22 Dignity Health, I have a few questions for you. Um, I believe  
23 at your first deposition you testified that, uh, you are  
24 employed by Women's Health Associates of Nevada, is that right?

25 A: Yeah, Southern Nevada.

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1 Q: Okay. But prior to, uh, treating her at the  
2 hospital, did you have that information, do you know her from  
3 your, uh, from the -- your time, uh, delivering, uh, babies at  
4 the hospital?

5 A: No.

6 Q: Okay. So, the only -- the only, uh, knowledge you  
7 have of Ms. Badoi was as -- as she as your patient?

8 A: Yes.

9 Q: Uh, you talked about the HELLP syndrome earlier  
10 and I just want to make, uh, ask this question to see if I'm  
11 clear on it. Um, prior to Miss, uh, the delivery of Ms. Badoi's  
12 child, did you actually make a diagnosis of HELLP syndrome?

13 A: Yeah, I believe so. Can we scroll up on this  
14 thing right here?

15 Q: Uh, I can't scroll up on it, sorry.

16 A: Yeah, stop there. Yeah, it looks like I would --  
17 I -- it looks like I added it in my 11:30 note, and that would  
18 have been on the -- I guess the 15th.

19 Q: And the 11:30 note, are you saying that this  
20 hypertension on, uh, Ap-- Apresoline protocol, elevated AST, ALT  
21 and low platelet, started on mag, Mg, and Pitocin?

22 A: Yeah, that's correct. HELLP syndrome. They don't  
23 need all of the components of the HELLP syndrome. And if you  
24 refer back to the 5-15 labs, we can confirm that.

25 Q: Okay.

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1 A: Uh, excuse me a second. Sorry, my phone was --

2 Q: And so, when you talked about -- uh, let me just

3 see if I understand that. When you're making a diagnosis of

4 HELLP syndrome, you're not exactly going to document HELLP on

5 the records?

6 A: Um, no. I mean I -- I work on the components that

7 we have, it's in my delivery note as well, you know the elevated

8 liver enzymes. Um, yeah. But --

9 Q: Okay. And I guess you're not necessarily going to

10 write down the acronym in the records anywhere?

11 A: I beg your pardon?

12 Q: You're not going to -- going to specifically

13 document the acronym?

14 A: I -- I may not, no.

15 Q: No, I'm just asking, is that something that you

16 would generally do, or --

17 A: Typically --

18 Q: -- no?

19 A: -- we don't do additional documentation beyond

20 intake of most patients. Um, then we do the delivery. I mean

21 it's kind of like a dynamic process. Um, I don't add inerrant

22 notes in most cases, especially when I'm taking care of the

23 patients start to end. Um, but all the information is there for

24 any physicians to review.

25 Q: The plan for Ms. Badoi from the outset was that

Page 36

1 Q: That was information that you also documented in

2 the records, correct?

3 A: Yes.

4 Q: Do you know Dr. Dr. Leejon Moore?

5 A: No.

6 Q: He's not a, a partner of yours at your group?

7 A: No.

8 Q: Okay. What about, uh, Dr. Garg, is -- is he one

9 of your partners?

10 A: Yes.

11 Q: I think that's all I have, thanks Doc.

12 A: Okay.

13 MR. SCHNEIDER: This is Adam Schneider again --

14 Oh, go ahead Todd.

15 MR. TERRY: Oh, sorry, go -- uh, if you want to

16 go, you can go, I've got maybe 10 questions.

17 MR. SCHNEIDER: Yeah, okay.

18 RECCROSS EXAMINATION

19 BY: Mr. Adam Schneider

20 Q: Uh, Dr. Herpolsheimer, this is Adam Schneider

21 again, I just want to circle back with you on the, um, HELLP

22 syndrome issue. So, it's my understanding that in order to have

23 bona fide HELLP syndrome, the patient has to have all components

24 of that acronym? Uh, am I wrong about that?

25 A: Yes.

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1 she be induced, is that right?

2 A: Yes.

3 Q: And is that what actually happened?

4 A: Yes.

5 Q: And -- and we looked at that, uh, documentation

6 earlier that indicates you had a discussion with Ms. Badoi about

7 pain management options, did you recall that?

8 A: Yes.

9 Q: And did that actually happened, is that correct?

10 A: I -- I think it must have.

11 Q: Okay. And you don't have a specific recollection

12 of it, but you don't dispute that it, that it actually happened,

13 true?

14 A: Well, as I said, I was in the hospital that night

15 and yeah, I mean the documentation I was there, so we had a

16 discussion.

17 MR. MCBRIDE: Doctor, just listen to his

18 question, he asked you if you have a specific recollection of

19 that discussion?

20 A: Um, the answer would be no, I don't have a

21 specific recollection of that discussion.

22 Q: And Doctor, with the, uh, documentation earlier

23 that you, uh, I believe you documented there was a 100 cc of

24 blood loss during the delivery, is that right?

25 A: Yes.

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1 Q: Okay. And then tell -- tell me why I am wrong

2 because I was under the impression that in order to have HELLP

3 syndrome the patient has to have at the same time hemolysis,

4 elevated liver enzymes and low platelets.

5 A: In terms of management, it -- it wouldn't make a

6 difference in terms of the OB management of the case. Um,

7 anyone can fall in all that would be enough to give a patient a

8 diagnosis of HELLP syndrome. Um, preeclampsia with severe

9 feature is a evolving process and if you left it untreated, the

10 patient may or may not progress to elevate liver enzymes, to

11 have a significant drop in platelets. Um, and to have them all

12 as evidence on a peripheral smear. Uh, the whole thing that we

13 try to do is -- is deliver the baby which effectively treats the

14 condition before it progresses to that level. Um, so, I mean,

15 we -- I've -- we -- we use the term HELLP syndrome, realizing

16 that it's -- it's -- it's not a hard and fast designation. And

17 you don't wait for everything to develop before you decide to

18 intervene. Um, but it a--it is well based on science that there

19 is some sort of insult to the liver, uh, there is something

20 going on with the blood system, um, and so that's why we do

21 things like inductions and we treat with magnesium and -- and

22 use a Apresoline for the blood pressure.

23 Q: Uh, I understand your testimony now Doctor, I

24 appreciate the clarification.

25 A: Okay.

# **Exhibit C**

# **Exhibit C**

DISTRICT COURT  
CLARK COUNTY, NEVADA

LIVIU RADU CHISIU, as Special ) Case No.: A-18-775572-C  
Administrator of the ESTATE OF ALINA ) Dept. No.: 2  
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 )

RECORDED DEPOSITION OF DR. AMIT GARG

Taken on November 22, 2021

At 8:05 a.m.

8329 West Sunset Road, Suite 260

Las Vegas, Nevada 89113

Page 10

1 A: Correct.

2 Q: All right. Other than your counsel, have you

3 talked about your deposition or Alina Badoi -- er, talked about

4 Alina Badoi with anyone else?

5 A: I have not.

6 Q: Do you remember Alina Badoi?

7 A: I do not.

8 Q: Uh, y-- you do now, or you do not?

9 A: I do not.

10 Q: Okay. The records that you reviewed from the

11 hospital, uh, did -- did those cover a specific time period?

12 A: It was -- well I was -- my involvement in the

13 case was overnight I was on call, um, so that was what I was

14 focused on.

15 Q: Okay, and when did you review the records?

16 A: This weekend.

17 Q: Okay, uh, we've got 22 exhibits marked. Uh, 20

18 of them are certain records from Alina's chart at, uh, at St.

19 Rose. Um, there are some WHASN records and -- and those

20 exhibits will face well. And I think it will be emailed, all

21 those around. Uh, if I have questions about a specific record,

22 Dr. Garg, we'll put it up on the screen so, uh, you can at least

23 see it on the screen if you don't have a hard copy on -- and do

24 you have hard copies of any records?

25 A: I have nothing in front of -- with me.

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1 uh, did you start working for WHASN or was it another entity?

2 A: It was another entity.

3 Q: To your knowledge, Dr. Garg, have you had any

4 conversations about Alina Badoi with any of the other physicians

5 at -- at WHASN, could be Dr. Herpolsheimer, Dr. Ivie or anyone

6 else?

7 A: Nothing since this la-- since -- during the time

8 of her care, no.

9 Q: Okay. Now, you -- you mentioned that you were on

10 call overnight, uh, May 16 was a Monday of 2017. May 17th was a

11 Tuesday, uh, wha-- were you working a certain on call schedule

12 back in May of 2017, or was it just a -- a more ad hoc, um,

13 arrangement?

14 A: I don't understand your question.

15 Q: Were -- were you working an on call schedule back

16 in May of 2017?

17 A: Yes.

18 Q: And what was the schedule?

19 A: I was on from 6:00 p.m. till 6:00 a.m.

20 Q: All right. And in the records you reviewed, for

21 the hospital records, you know -- during May of 2017, did you

22 see that your involvement was limited to one day, um, in May of

23 2017?

24 A: I'm not sure -- again -- yeah, I mean, that's --

25 they have -- they have -- I saw nursing records from that night,

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1 MR. SCHNEIDER: Todd, this is Adam. When you

2 made mention that the exhibits were emailed around, I didn't get

3 anything from Esther, uh, or any of your team, but I don't know

4 if -- if I missed it. Tyson did you get something to that

5 effect?

6 MR. DOBBS: No, I haven't seen anything. I was

7 just gonna browse my emails, but I didn't see anything. Uh --

8 MR. TERRY: I -- I -- I'll -- I'll --

9 MR. SCHNEIDER: Yeah, uh, T-- Todd the last email

10 I got from your team was the -- was the Zoom link.

11 MR. TERRY: -- I'll send -- I'll send it right

12 now Adam.

13 MR. SCHNEIDER: Thank you.

14 MR. TERRY: All right. Uh, Sean, what's -- give

15 me your email.

16 MR. KELLY: It's S-M-KELLY, K-E-L-L-Y

17 @mcbridehall.com.

18 MR. TERRY: Okay. Okay, alright, I just sent all

19 those out.

20 MR. KELLY: Thank you, sir.

21 Q: All right Doctor. Dr. Garg, uh, when I -- if I

22 ask about a specific record, I'll have it put up on the screen

23 as well. Hopefully counsel gets those in just a minute. Uh,

24 Dr. Garg, before I ask about specific records, just a few more

25 things about your background. When you first moved to Nevada,

Page 13

1 uh, regarding, uh, phone calls that they made to me.

2 Q: So that night would have been May 16, the

3 following, um, morning would be on May 17th. Is that all true?

4 A: Yes.

5 Q: All right, uh, do you recall if there were any

6 other physicians, uh, with your group, who were on call at the

7 same time that you were?

8 A: No.

9 Q: You -- you don't remember or is-- uh, there

10 weren't any?

11 A: N-- no, there would not be any.

12 Q: Okay. And was that -- how it worked? Uh, one

13 OBGYN would be on call from your group during specified periods?

14 A: Correct.

15 Q: All right, Dr. Garg, uh, do you know what signs

16 and symptoms of an epidural hematoma are?

17 A: A -- a little bit. It's not my area of

18 expertise.

19 Q: All right. Uh, wha-- wh-- what's the extent of

20 your knowledge in that regard?

21 A: There would be neurologic, uh, symptoms in the

22 lower extremity.

23 Q: So, would that -- uh, could that include leg

24 weakness?

25 A: It could.

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1 Q: Does it include tingling in the lower  
2 extremities?

3 A: Potentially.

4 Q: Okay, are -- are there any other neurologic, um,  
5 issues associated with the signs and symptoms of an epidural  
6 hematoma in the lower extremities, of which you're aware?

7 A: It's -- again, this is not my area of expertise.  
8 I'm not a neurologist or an anesthesiologist, um, but those  
9 would be broad -- broad, um, symptoms.

10 Q: Uh, do you know what the signs and symptoms of an  
11 intradural hematoma are?

12 A: I wouldn't distinguish between the two.

13 Q: Okay. In the records that you reviewed, uh, did  
14 -- uh, strike that. How long have you had privileges at St.  
15 Rose Siena?

16 A: I don't know the exact timeline, um. At least  
17 for the last six years.

18 Q: Okay, uh, do you have privileges at other  
19 hospitals in Nevada?

20 A: I do.

21 Q: Uh, have you ever had your privileges at any  
22 hospital revoked, suspended, um, even for administrative  
23 reasons?

24 A: I -- not that I'm aware of. We get letters  
25 saying that the privileges are suspended for medical records,

Page 16

1 any committees there?

2 A: At St. Rose Siena I did not.

3 Q: Uh, wh-- when -- when you started working at St.  
4 Rose Siena, and since you have privileges there, have you ever  
5 had occasion to draft or revise any policies and procedures?

6 A: I have not.

7 Q: Uh, are you familiar with St. Rose Siena's  
8 policies and procedures as it relates to your specific scope of  
9 practice?

10 A: In general, yes. But I not -- have not reviewed  
11 those policies in quite some time specifically.

12 Q: All right. Do you remember the last time you  
13 actually reviewed any policies from St. Rose?

14 A: No.

15 Q: We-- we're gonna -- I'm gonna ask some questions  
16 about magnesium sulfate. Uh, you -- you saw some references in  
17 the records you reviewed related to that medicine, didn't you?

18 A: I did.

19 Q: Uh, what -- what is mag sulfate given for in a  
20 pregnant -- pregnant patient?

21 A: It's given to -- i-- it can be given for several  
22 reasons. Um, it could be helped -- used to be -- could be given  
23 to prevent complications or preeclampsia. As one of the exam--  
24 one of the reasons.

25 Q: And what is preeclampsia?

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1 uh, periodically, but it never affects our ability to provide  
2 clinical care. I mean, they're usually resolved quite quickly,  
3 but never for any clinical -- never for any patient care issues.

4 Q: All right. So, in regard to medical records, it  
5 may be that an order needed to be electronically signed or  
6 something like that?

7 A: Correct.

8 Q: Okay. Uh, when you reviewed records to get ready  
9 for this deposition, did it refresh your memory about any of the  
10 circumstances, uh, related to Alina Badoi?

11 A: It did not.

12 Q: Uh, and did you review any nurse's records? I  
13 thought -- I heard you say you did, but I -- I wanna confirm.

14 A: You were correct. I saw notes where they  
15 mentioned calling me and the orders they received.

16 Q: So, if -- if you were on call back in May of  
17 2017, if the nurse contacted you, would that be internally  
18 through some hospital system, or would that be through a  
19 cellphone or a pager or something like that?

20 A: Th-- they would be calling me on my cellphone.

21 Q: And -- was that a cellphone that was specific to  
22 you or was it a group's cellphone?

23 A: My -- my personal cellphone.

24 Q: Since you've have privileges at St. Rose Siena,  
25 have you ever participated in any type of committee or been on

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1 A: Preeclampsia is a condition where blood pressures  
2 are elevated in a pregnant patient and that could lead to  
3 complications to both the baby and to mom.

4 Q: What kind of complications, um, are you talking  
5 about in regard to mom?

6 A: It can lead to str-- um, to seizures, to injury  
7 to the liver, um, to, um, to strokes. It can lead to, uh, renal  
8 failure, multiple different potentials.

9 Q: And is mag sulfate something that's given or  
10 administered through an IV?

11 A: It is.

12 Q: As you reviewed the records related to Alina  
13 Badoi, uh, did -- did you determine whether or not she had  
14 preeclampsia?

15 A: I did not make any determinations of her care.

16 Q: In the records that you reviewed, did it appear  
17 that Alina Badoi had preeclampsia?

18 A: I didn't have full access to every -- uh, in her  
19 entire records, but the, uh, what her lab findings did suggest  
20 that that would be the case.

21 MR. SCHNEIDER: Um, this is Adam. Sorry, I was  
22 on mute. I have a belated objection as to vague, ambiguous as  
23 to time?

24 Q: Uh, Dr. Garg, do you know what HELLP syndrome is?

25 A: I do.

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1 having that is out of the norm, I would be expected to know.  
2 Q: And as an OBGYN on call back in May 2017, are  
3 there circumstances when regardless of what you're doing at the  
4 time -- well not regardless, but a-- are there circumstances  
5 when you, as -- as the on call OBGYN, need to come see a  
6 patient? With your own eyes, and analyze her yourself?  
7 A: There certainly can be.  
8 Q: Right, and what types of situations would those  
9 be?  
10 A: Usually those regard around the immediacy of  
11 delivery, so delivering a patient's baby, evaluating maybe for  
12 hemorrhage, bleeding, complications of those sort would be the  
13 norm.  
14 Q: You -- you've mentioned that you-- uh, certain  
15 neurologic issues are beyond the area of your expertise. Uh, a-  
16 - are there circumstances where you call a neurologist or a  
17 neurosurgeon, in regard to a patient's neurologic signs and  
18 symptoms?  
19 A: I have never done that to date in my career, um,  
20 but if I were -- But typically I would call anesthesia, uh, if I  
21 had a concern regarding the immediacy of a concern, at time of  
22 delivery. But I could always call a neurosurgeon or neurologist  
23 if needed. Typically, that would be --  
24 Q: Do you believe that a --  
25 MR. DOBBS: Oh, hold on.

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1 ahead Doc.  
2 A: I-- if that was my suspicion, that would be the  
3 next step.  
4 Q: And did you do -- have any suspicions that Alina  
5 had a spinal hematoma, uh, when you were involved in her care  
6 and treatment in May of 2017 at St. Rose Siena?  
7 A: It was too early to suspect that at the time,  
8 from what I can see from the records.  
9 Q: Uh, ex-- explain that to me, too early.  
10 A: Meaning we were still seeing if her symptoms  
11 would abate with magnesium. It's also possible that she had  
12 nerve symptoms from pushing -- you know, having her legs  
13 retracted back. That can create, uh, nerve sensations in the  
14 leg. So multiple possibilities, and it wasn't clear yet what  
15 was going on.  
16 Q: And did you rule out at any t-- time that those  
17 symptoms she was having did not relate to magnesium sulfate?  
18 A: No, I -- I -- I -- I-- uh, I -- by the morning  
19 when her symptoms still weren't better, you -- we had to start  
20 looking elsewhere. For other possibilities.  
21 Q: A-- and in the records, did you see documentation  
22 of, um, what you ordered or what was done to, uh, determine if  
23 there were other possibilities that were causing those symptoms?  
24 A: Well, I know later on that day my partner saw her  
25 and ordered imaging to evaluate and, uh, and so that's when they

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1 Q: I'm sorry, I cut you off.  
2 A: Typically, that would be, you know, in a  
3 situation where I've seen an exam of the patient.  
4 Q: I -- I noticed there was a reference to o-- one  
5 of the nurses calling you, and you being in the OR. Did you  
6 happen to see that in the records you reviewed?  
7 A: I did see that.  
8 Q: Okay, and do you know if you were delivering a  
9 baby or -- it was some other issue?  
10 A: I don't know, I actually tried to see, but I  
11 couldn't find out where I was.  
12 Q: And when you were on call back in May of 2017 at  
13 St. Rose Siena, you were there for 12 hours, right?  
14 A: I was not there. I was on call.  
15 Q: Oh, okay. So, you can be on call but not  
16 necessarily be at the hospital, is that right?  
17 A: Correct.  
18 Q: Is a patient who has signs and symptoms  
19 consistent with a spinal hematoma one of those situations where  
20 you would contact a neurologist or a neurosurgeon?  
21 MR. DOBBS: Incomplete--  
22 A: I--  
23 MR. DOBBS: Sorry--  
24 A: I--  
25 MR. DOBBS: I said incomplete hypothetical. Go

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1 looked for other -- then they saw other -- other signs that  
2 could be causing this, the hematoma.  
3 Q: The -- the partner who ordered the imaging, who  
4 is that?  
5 A: I believe that was Dr. Herpolsheimer.  
6 Q: Uh, do you know if a patient who has HELLIP, uh --  
7 well, i-- is HELLIP a risk factor in the development of a spinal  
8 hematoma?  
9 A: It can be.  
10 Q: How is HELLIP treated?  
11 A: Delivery.  
12 Q: And typically, delivery solves, uh -- uh,  
13 delivery resolves those symptoms or conditions?  
14 A: Y-- yes. It helps get the patient on the road to  
15 recovery.  
16 Q: And -- just so I'm clear, uh, your involvement  
17 with Alina Badoi on the night that you were on call, May Fif--  
18 May 16, 2017, the morning of May 17, 2017. Was that after  
19 Alina's baby had been delivered?  
20 A: Yes.  
21 Q: And, uh, i-- in preparing for this deposition,  
22 did you -- uh, I thought you said you reviewed some records from  
23 your clinic, WHASN, in regard to Alina? Uh--  
24 A: Yes.  
25 Q: -- did you see it? Uh, I -- I saw in there that



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1 there was a reference to Alina having ane-- anemia. Did you see  
2 that?

3 A: Yes.

4 Q: Uh, did you determine the cause of Alina's a--  
5 anemia?

6 A: It seemed to be iron deficiency.

7 Q: And what -- what happens if anemia is not treated  
8 or, uh, well, yeah, is not treated?

9 A: It leaves the patient more vulnerable to the  
10 complications of blood loss, primarily.

11 Q: What -- what type of complications?

12 A: She-- she'll be more vulnerable to getting a  
13 blood transfusion, cause if -- she -- she's starting out lower.  
14 Your gas tank's lower, you are closer to running out of gas.

15 Q: Okay, uh, Dr. Garg, there's gonna be some -- a  
16 few pauses here while I get the right exhibit and, uh -- so if  
17 you don't hear something for a few moments, um, intentional.  
18 How -- how did it work at WHASN back then in 2016 and 2017, in  
19 terms of, uh, was it the group who was assigned to the patient  
20 or was it a p-- particular doctor who was assigned to the  
21 patient, within the group?

22 A: I'm not following how to answer your question.

23 Q: So, um, just in the sequence of events, Alina saw  
24 you, uh, a few times for prenatal visits and saw some other  
25 physicians there at WHASN. Did you see that in the records you

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1 A: I -- I believe I only saw one reference to her  
2 reflexes and at that time the reference was that they were good.

3 Q: A magnesium level of 6.3, uh, I don't have any  
4 context for that un-- u-- unfortunately. I-- is -- is that a --  
5 a level that's within the norm?

6 MR. DOBBS: Incomplete hypothetical.

7 A: It is a l-- elevated level consistent with  
8 therapy -- the therapy we were providing.

9 Q: And in terms of mag sulfate toxicity, is that  
10 something that you can determine by looking at a lab value? Or  
11 is that something that you determine more by a patient's sign  
12 and symptoms?

13 A: You use both together.

14 MR. TERRY: All right, uh, Vicki, if you could  
15 pull up for me Exhibit 7. And Doctor, this is, uh, an exhibit  
16 that's got multiple pages. So, the, uh, first page is more  
17 recent in times than the last page of that group. Uh, if you  
18 could go to -- 2605 and 2606. Probably start at 2606, because  
19 that's --

20 DR. GARG: Did you move the page?

21 MR. TERRY: -- older than the other page.

22 DR. GARG: Oh, okay, gotcha.

23 MS. MADSEN: 2606?

24 Q: All right, Dr Garg, is the screen that you're  
25 looking at big enough to -- or i-- is the -- information suf--

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1 reviewed?

2 A: Yes.

3 Q: Okay, and so was any -- any one of you assigned  
4 to be the doctor who was going to deliver Alina's baby? Or was  
5 it just the clinic itself?

6 A: It i-- it is our practice, yes. We -- we -- n--  
7 not one person.

8 Q: Okay. Uh, in the records related to the prenatal  
9 care, uh, there were some o-- some blood work done. Um, did you  
10 happen to review any of those records?

11 A: I'm not sp-- what are you specifically asking me?

12 Q: Uh, there was a record that r-- uh, regard to  
13 platelets, that talked about, um, Alina having low platelet  
14 values and there being a manual count done. Um, a discussion  
15 about p-- platelet clumping or giant patele-- platelets. Do you  
16 remember seeing those records?

17 A: I do not.

18 Q: So back then, in May of 2017, if a patient shows  
19 up to the hospital on a particular day and it's a patient of  
20 your practice, is it the physician who is assigned to that  
21 particular shift the one who would be doing the delivery?

22 A: Yes.

23 Q: In the records that you reviewed, do you remember  
24 seeing references to nurses reporting to you that either Alina  
25 had good reflexes or had deficiencies in reflexes?

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1 sufficiently big for you to read it?

2 A: Y-- yes.

3 Q: Okay. Um, going to the "Textual Results" in the  
4 middle of the page, it's, uh, T488. Do you see that?

5 A: Yes.

6 Q: Okay, and that's on May 16, 2017 at 20:45, so  
7 that's, what, 8:45 p.m. on May 16, 2017?

8 A: Yes.

9 Q: All right. And I'm not gonna read all of it, but  
10 at some point in that entry it says, "Patient verbalized she's  
11 having a lot of tingling in her legs and very dizzy". Do you  
12 see that?

13 A: Yes.

14 Q: And then in the next one above that, at 20:58 or  
15 8:58 p.m. on May 16 it says, "Notified doct--", uh, "notified MD  
16 of patient having a lot of tingling in lower extremities and  
17 feeling very dizzy. MD verbalized to stop magnesium infusion  
18 for now and restart at 1.5 grams in an hour." Do you see that?

19 A: I do.

20 Q: Is magnesium sulfate a medicine that can cause  
21 patients dizziness?

22 A: It can.

23 Q: Okay, and dizziness can be a neurologic sign,  
24 can't it?

25 A: Sure.

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1 Q: So, when you were on call, back in May of 2017 at  
2 the St. Rose Siena, if certain blood pressure values were, uh,  
3 found and elevated, that was something you would expect nursing  
4 staff to let you know of, true?

5 A: Yes.

6 Q: And if there were any changes in a patient's  
7 conditions or a new symptom, say a neurologic symptom, um, that  
8 is something that you expect nurses to convey to you, true?

9 A: Yes.

10 Q: And i-- did you have an expectation how soon and  
11 after, say a blood pressure value that was severely elevated, u-  
12 - uh, in terms of the timing that the nurse should be calling  
13 you about it, is that a immediate type of phone call situation  
14 or could that be a 45 minute or later?

15 A: Within the hour, if it's not getting better, I  
16 would expect to be notified.

17 Q: Okay. And if it's severely high, say, you know,  
18 180 over 111, or something like that, is that the type of  
19 situation you -- where you would expect, uh, an immediate phone  
20 call or within a very short time thereafter?

21 MR. DOBBS: Uh, form. Incomplete hypothetical.

22 A: Yeah, if the blood pressure is still within  
23 severe range, I would like to be known.

24 Q: And what happens with a patient like Alina, if  
25 her blood pressure isn't treated? I mean, what -- what e-- what

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1 a representative of Dignity Health. Um, I just got a few follow  
2 up questions for you, okay?

3 A: Okay.

4 CROSS EXAMINATION

5 By: Mr. Tyson Dobbs, Esq.

6 Q: Okay. First is, uh who -- who is your employer  
7 or -- let me just ask you now. Who is your employer currently?

8 A: I work with Women's Health Associates of Southern  
9 Nevada.

10 Q: And, uh, were you also working for Women's Health  
11 Associates in May of two-thousand-eight-- or 2017, treating only  
12 for them?

13 A: I was.

14 Q: Uh, the, uh -- Mr. Terry asked you about the --  
15 the privileges. And I -- I know you had privileges at -- at St.  
16 Rose Hospital s-- s-- in May of 2017, correct?

17 A: I did.

18 Q: Uh, what other hospitals did you have privileges  
19 at, at that time?

20 A: I believe it would be Southern Hills Hospital,  
21 Spring Valley Hospital, St. Martin Hospital, um, and that would  
22 be it.

23 Q: I -- in reviewing your records, uh, it -- it  
24 appeared to me, uh, that you had seen this patient approximately  
25 five times. Does that sound like, uh, fair to you?

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1 can happen?

2 MR. KELLY: Incomplete hypothetical.

3 MR. DOBBS: Join.

4 MR. SCHNEIDER: This is Adam, I join.

5 A: A-- anything. I mean, any complications of  
6 hypertensive crisis, so heart attack, stroke, um, and you know -  
7 - and organ damage.

8 Q: Do you recall having any conversations about  
9 Alina Badoi with, uh, Dr. Kim, the anesthesiologist?

10 A: No.

11 Q: You recall having conversations about Alina Badoi  
12 with Dr. Selco, a neurologist?

13 A: No.

14 Q: Do you recall having any conversations a-- about  
15 Alina Badoi with, uh, Dr. Seiff, he's a neurosurgeon?

16 A: No.

17 Q: All right, is there anything about Alina Badoi's  
18 case that you recall that we haven't talked about?

19 A: No.

20 Q: All right, those are all the questions I have for  
21 you, Dr. Garg. I appreciate your time; I think others might  
22 have some questions.

23 MR. SCHNEIDER: This is Adam, I have no  
24 questions. Thank you.

25 MR. DOBBS: Uh, Dr. Garg, my name is Tyson Dobbs,

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1 A: It's -- it's about right, yes.

2 Q: It may say five times, I meant five times prior  
3 to her, uh, admission for delivery at St. Rose Hospital I--

4 A: I'm assuming you're referring to in the office.  
5 Yes.

6 Q: It -- yeah, that's right. And that was gonna be  
7 my question. When you s-- saw her as documented in the WHASN  
8 record, uh, those visits all occurred in your office, true?

9 A: Yes.

10 Q: And so, you had seen her approximately f-- five  
11 times at your office before she was ever admitted to the  
12 hospital for her, uh, delivery.

13 A: I'm assuming the five is correct, but yes, that's  
14 possible.

15 Q: Assuming my -- I counted correctly, of course.

16 A: Yes.

17 Q: Um, you talked about your -- your call schedule,  
18 um, is it your, um, office, uh, that, uh, determines whether  
19 it's gonna be you or some other physician on call, from your  
20 office?

21 A: Y-- we set the schedule ahead of time, like  
22 months in advance. And so, we have somebody who covers the  
23 hospital for the week. Um, and then at night, there's a  
24 different person on every night.

25 Q: So, amongst you and your partners at WHASN,

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1 that's -- you guys determine who's gonna be on call, what  
2 specific days?  
3 A: Yes.  
4 Q: And that would have been true for this specific  
5 call? As I understand, that you were on call on May 17th, 2017.  
6 That was a determination made by your office.  
7 A: Yes.  
8 Q: And as -- a-- we talked about some of the  
9 symptoms of mag sulfate, uh, earlier. Is, uh, weakness is -- i-  
10 - i-- muscle weakness, is that a -- a -- a potential symptom of  
11 mag sulfate?  
12 A: Yes.  
13 Q: And if we look there -- the exhibit that's still  
14 up on the screen up there [Exhibit 7]. Um, we looked at T482, we  
15 already looked at that one. But I believe, and it says,  
16 "Updated patient on plan of care. Patient very anxious, reports  
17 numbness in legs. Tried to get patient out of bed, unable to  
18 put weight on legs." Um, that's a note from 6:35 a.m., correct?  
19 A: It is.  
20 Q: And that would have been after you were now off  
21 shift, true?  
22 A: Correct.  
23 Q: And that, uh, notation right there at the end,  
24 "patient unable to put weight on legs". That would be, uh, a --  
25 as far as the records, you probably knew, that's a new, uh,

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1 MS. MADSEN: Okay.  
2 MR. KELLY: And then before we go off the record,  
3 Todd, just, I think I talked about this with Esther, but, uh --  
4 uh, we went about an hour and a half today, so the check kit for  
5 Dr. Garg can be sent to our office. We'll provide it to him.  
6 MR. TERRY: Okay. Hey, Sean, can you just send  
7 me something so I can get all that processed?  
8 MR. KELLY: Absolutely.  
9 MR. TERRY: A simple email will do.  
10 MR. KELLY: Will do.  
11 MS. MADSEN: Okay.  
12 MR. KELLY: Thanks everyone.  
13 MR. TERRY: Thanks everyone.  
14 MS. MADSEN: We're now going off --  
15 MR. TERRY: H-- hey Adam, I'll call you, uh --  
16 MS. MADSEN: We are now going off the record and  
17 the time is 9:27 a.m.  
18  
19 (Deposition adjourned at 9:27 a.m.)  
20  
21  
22  
23  
24  
25

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1 finding here, right?  
2 A: Yes.  
3 Q: That's -- that's not a symptom that when we saw  
4 any of the other records where it talked about the tingling and  
5 -- and other symptoms from hypertension, true?  
6 A: Yes.  
7 Q: And if you look above it, it looks like we got a,  
8 uh, um, Leejon Moore at 7 o'clock. He's in the room at 7:00,  
9 uh, assessing the patient, at least per this record. True?  
10 A: Yes.  
11 Q: Uh, Doctor, did you, uh -- i-- in reviewing the  
12 records here, did you form any criticisms of the -- the nursing  
13 staff at -- at St. Rose Hospital?  
14 A: I did not.  
15 Q: All right, that's all the questions that I have.  
16 MR. TERRY: No questions from me.  
17 MS. MADSEN: Okay. This concludes the recorded  
18 deposition of Dr. Amit Garg. Before going off the record,  
19 please stipulate if the reading and signing by the witness will  
20 take place.  
21 MR. KELLY: Do you wanna read and sign, or do you  
22 want to waive that?  
23 DR. GARG: Read and sign.  
24 MR. KELLY: So, he'll read and sign and you can  
25 sent it to my office and we'll provide it to him.

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1 CERTIFICATE OF RECORDER  
2 STATE OF NEVADA )  
3 )  
4 COUNTY OF CLARK )  
5  
6 NAME OF CASE: ESTATE OF ALINA BADOI, ET. AL., PLAINTIFFS, VS.  
7 DIGNITY HEALTH, ET. AL., DEFENDANTS  
8  
9 I, VICKI MADSEN, a duly commissioned Notary Public,  
10 authorized to administer oaths or affirmations in the State of  
11 Nevada, do hereby certify: That I recorded the foregoing  
12 deposition of DR. AMIT GARG, on November 22, 2021.  
13 That prior to being examined, the witness was duly sworn to  
14 testify to the truth. That I thereafter transcribed or  
15 supervised transcription from the recorded audio and visual  
16 record and said deposition is a complete, true, and accurate  
17 transcription of the deposition testimony. Before completion of  
18 the deposition, a review of the transcript [X] was [ ] was not  
19 requested by the deponent and [X] was [ ] was not requested by a  
20 party of the action. If a review was requested, any changes  
21 communicated to me by the deponent during the period allowed are  
22 appended hereto.  
23 I further certify that I am not a relative or employee of  
24 an attorney or counsel of any of the parties, nor a relative or  
25 employee of an attorney or counsel involved in said action, nor

# **Exhibit D**

# **Exhibit D**

## WHASN - Desert Inn History and Physical

<b>Patient Name:</b>	[REDACTED]	<b>Visit Date:</b>	September 14, 2016
<b>Patient ID:</b>	[REDACTED]	<b>Provider:</b>	Paul Chao, MD
<b>Sex:</b>	Female	<b>Location:</b>	WHASN - Desert Inn
<b>Birthdate:</b>	[REDACTED]	<b>Location Address:</b>	2860 E Desert Inn Las Vegas, NV 891213616
		<b>Location Phone:</b>	(702) 476-5595

### **Chief Complaint**

- Annual Exam
- secondary amenorrhea
- rule out pregnancy

### **History Of Present Illness**

The patient is a married, 41 year old Caucasian/White female, G0 P0000, whose last normal menstrual period was on 11/20/2015. She requests birth control counseling. Her periods are regular, occur every 28 days and last for 4 days.

She denies dysmenorrhea.

#### **Sexually History:**

She is sexually active and reports no problems with intercourse.. The patient is not using any current method of birth control. The patient states she is satisfied with her current method of birth control.

#### **Preventive Medicine History:**

She does not perform breast self-exams.

The patient's past medical history is non-contributory.

The patient denies a history of liver disease, clotting disorder, migraine headaches, and having irregular periods.

The patient does not drink alcohol, does not use recreational drugs, and does not smoke.

The patient does exercise regularly. GYM

The patient has requested STD testing.

This is a 41 year old Latino female who thinks she may be pregnant. She did do a pregnancy test and this was positive. She is having nausea. She is not feeling tired. She is not having any spotting/bleeding this time.

### **Past Medical History**

+HPV; Hypothyroidism; Routine gynecological examination; Yeast Infection

### **Past Surgical History**

Thyroidectomy

### **Medication List**

DIFLUCAN 150MG; DIFLUCAN 150 MG; iron 325 mg (65 mg iron) oral capsule, extended release; MACROBID 100MG; Tirosint 13 mcg oral capsule

### **Allergy List**

NO KNOWN DRUG ALLERGIES

### **Family Medical History**

No known family history

**Reproductive History**

Gravida 0 Para 0 0 0 0

**Social History**

Alcohol (Current some day); Single; Substance Abuse (Never); Tobacco (Never)

**Review of Systems****Constitutional**

- o Denies : fatigue, fever, chills

**Eyes**

- o Denies : double vision, blurred vision

**HENT**

- o Denies : headaches, hearing loss, tinnitus

**Breasts**

- o Denies : lumps, tenderness, swelling, nipple discharge

**Cardiovascular**

- o Denies : chest pain, syncope

**Respiratory**

- o Denies : shortness of breath, wheezing, cough

**Gastrointestinal**

- o Denies : nausea, vomiting, diarrhea, constipation, loss of appetite, early satiety, abdominal pain, blood in stools, bloating

**Genitourinary**

- o Denies : urgency, frequency, dysuria, incontinence, additional genitourinary symptoms except as noted in the HPI

**Integument**

- o Denies : rash, changes to existing skin lesions or moles, hirsutism

**Neurologic**

- o Denies : muscular weakness, incoordination, tingling or numbness

**Musculoskeletal**

- o Denies : joint pain, muscle pain, back pain

**Endocrine**

- o Denies : polyuria, polydipsia, cold intolerance, heat intolerance, decreased libido, weight gain, weight loss, hot flashes, night sweats, mood swings

**Psychiatric**

- o Denies : anxiety, depression, difficulty sleeping

**Heme-Lymph**

- o Denies : easy bleeding, easy bruising, lymph node enlargement or tenderness

**All Others Negative****Physical Examination****Constitutional**

- o Appearance : well-nourished, well developed, alert, in no acute distress

**Breasts**

- o Inspection of Breasts : breasts symmetrical, no skin changes, no discharge present, no skin retraction present
- o Palpation of Breasts and Axillae : no masses present on palpation, no breast tenderness
- o Axillary Lymph Nodes : no lymphadenopathy present

**Genitourinary**

- o External Genitalia : normal appearance for age, no discharge present, no tenderness present, no inflammatory lesions present
- o Vagina : normal vaginal vault without central or paravaginal defects, no discharge present, no inflammatory lesions present, no masses present
- o Bladder : nontender to palpation
- o Urethra :
  - Urethral Body : urethra palpation normal, urethra structural support normal
  - Urethral Meatus : no erythema or lesions present
- o Cervix : appearance healthy, no lesions present, nontender to palpation, no bleeding present
- o Uterus : nontender to palpation, no masses present, position midline/midplane, mobility: ENLARGED TO 8 WKS BUT COULD BE DUE TO AN OVARIAN CYST SHE HAS HAD FOR A LONG TIME
- o Adnexa : no adnexal tenderness present, no adnexal masses present

## **Assessment**

- Routine gynecological examination V72.31/Z01.419
- Amenorrhea 626.0/N91.2
- Ovarian cyst 620.2/N83.20

## **Plan**

### **Orders**

- Urine Culture-Aerobic (Dx 791.9 nonspecific findings on UA) (87086) - - 09/14/2016
- Chlamydia and gonorrhea screenings documented as performed (HIV) (3511F) - - 09/14/2016
- Cytopathology, cervical or vaginal thin prep (88175-1) - - 09/14/2016
- Transvaginal ultrasound (76830) - - 09/14/2016

### **Instructions**

- Encouraged monthly breast exams
- U/S CONFIRMS A VERY SMALL FETAL POLE WITH CARDIAC ACTIVITY. SHE WILL GET A FORMAL U/S TO ASSESS OVARIAN CYST. RV FOR OB SCREEN

**Electronically Signed by:** Tikva Butler, APN -Author on September 14, 2016 04:17:10 PM

## Prenatal Flowsheet

Patient Name:

Create Date:

October 7, 2016

Patient ID:

Sex:

Female

Birthdate:

### Pregnancy Details

Age/Race: 41yo/ Caucasian/White Init. Visit: 10/07/2016

Gravida Para: G 1P 0 0 0 0 Init. Weight:

LMP: 08/03/2016 Init. BP: /

EDD: 05/10/2017 (LMP)

### OB Problem List

- AMA - NT 2.2mm, cfDNA low risk, female
- anemia - hgb 10 with iron, 2nd tri 8.3. Rx Ferralet. @ 32 wks - 7.8
- hypothyroid - followed by Litchfield, elev TSH at 9wks, nl T4 - 75mcg qd
- GBS POS -
- Social worker in hospital/Romanian - BABY GIRL
- polyhydramnios -
- IOL @ SIENA - 5/15 @ 3:00PM
- \* -

### Encounter History

Encounter Date Time Provider (Provider Id) [Modified By]	Gest.	Fundal Ht.	Pres.	FHR	Fetal Mov.	Contractions	Cervix Exam	B.P.	Edema	Wt.	Urine Glu./Protein	Pain Scale
10/07/2016 08:04:50 AM Garg MD, Amit () [marlas]	9 (2/7)						//	/			/	
Next Appt:				Note:		Demographics.						
11/03/2016 04:26:46 PM Garg MD, Amit () [agarg]	13 (1/7)			positive			//	102 / 68	- negative	144 lbs.	- negative / - negative	
Next Appt:		4 weeks		Note:		Nausea better.						
11/30/2016 04:14:47 PM Garg MD, Amit () [agarg]	17			positive	Positive	- Negative	//	102 / 66	- negative	149 lbs.	- negative / - negative	
Next Appt:		4 weeks		Note:		Doing well. PLEASE call HRPC and change pt appts to be with Dr. Masaki and let pt know if new appt please						
12/28/2016 02:54:42 PM Herpolsheimer MD, Arthur () [aherpolsheimer]	21	22		positive	Positive	- Negative	//	113 / 71		154 lbs.	- negative / - negative	
Next Appt:		4 weeks		Note:		Pt doing well.						
01/23/2017 08:02:07 AM Brill MD, Keith () [kbrill]	24 (5/7)	25		150	Positive	- Negative	//	100 / 66		161 lbs.	/	
Next Appt:		4 weeks		Note:		Pt c/o feeling light headed, unable to void, 2hr GTT done today. Enc to significantly increase her po fluids intake						
02/20/2017 04:13:54 PM Ivie MD, Jocelyn () [jivie]	28 (5/7)	27		positive	Positive	Braxton Hicks	//	110 / 71	- negative	171 lbs.	- negative / - negative	
Next Appt:		3 weeks		Note:		Pt doing well. Pt has been taking iron daily entire pregnancy with Hb 8.3 from 10. Rx of Ferralet 90 & coupon given. Check CBC in 1-2 visits. Pt given information re: cord blood/tissue banking.						
03/07/2017 03:54:11 PM Pack MD, Edmond () [epack]	30 (6/7)	31		positive	Positive	Braxton Hicks	0 / 0 /	116 / 73	- negative	173 lbs.	- negative / - negative	
Next Appt:		2 weeks		Note:		Pt c/o braxton hicks x3wks, lower back pain. Tdap next visit.						
03/21/2017 03:08:14 PM Garg MD, Amit () [agarg]	32 (6/7)	33		positive	Positive	- Negative	//	111 / 77	- negative	177 lbs.	- negative / - negative	
Next Appt:		2 weeks		Note:		Pt doing well. CBC today, growth US next wk with HRPC						



04/04/2017 03:47:40 PM Garg MD, Amit () [agarg]	34 (6/7)		positive	Positive	- Negative	/ /	121 / 73	- negative	178 lbs.	- negative / - negative	
	<b>Next Appt:</b>		2 weeks		<b>Note:</b>	Pt doing well.					
04/18/2017 04:07:21 PM Garg MD, Amit () [agarg]	36 (6/7)		positive	Positive	- Negative	/ /	119 / 73	- negative	180 lbs.	- negative / - negative	
	<b>Next Appt:</b>		1 week		<b>Note:</b>	Pt doing well, GBS done today - will schedule 39-40wks					
04/25/2017 04:01:16 PM Brill MD, Keith () [kbrill]	37 (6/7)		Vertex	150	Positive	- Negative	0 / 30 / -4	117 / 74		180 lbs.	- negative / - negative
	<b>Next Appt:</b>		7 weeks		<b>Note:</b>	Pt doing well. Has IOL next week for polyhydramnios. Needs PP visit in 7 weeks.					
05/03/2017 01:11:19 PM Pack MD, Edmond () [epack]	39		Vertex	positive	Positive	- Negative	0 / 30 / -4	111 / 71	- negative	181 lbs.	/
	<b>Next Appt:</b>				<b>Note:</b>	Pt c/o nose bleeds xwks. AFI 29					
05/10/2017 01:06:47 PM Ivie MD, Jocelyn () [jivie]	40		Vertex	positive	Positive	- Negative	FT / 30 / -4	121 / 78	- negative	177 lbs.	- negative / - negative
	<b>Next Appt:</b>		6 weeks		<b>Note:</b>	Pt seen at L&D last night and pt cancelled her induction due to unfavorable cervix. After further discussion today, pt desires to sched for next Mon if possible for IOL. Memb stripping performed. Pt will need NST/AFI this Fri.					

Electronically Signed by: Jocelyn Ivie, MD -Author on June 8, 2017 08:52:17 PM

## WHASN - South Valley East Procedure Note

<b>Patient Name:</b>	[REDACTED]	<b>Visit Date:</b>	October 7, 2016
<b>Patient ID:</b>	[REDACTED]	<b>Provider:</b>	Amit Garg, MD
<b>Sex:</b>	Female	<b>Location:</b>	WHASN - South Valley East
<b>Birthdate:</b>	[REDACTED]	<b>Location Address:</b>	2821 W. Horizon Ridge Parkway Suite 130 Henderson, NV 890524429
		<b>Location Phone:</b>	(702) 862-8862

The patient is a 41 year old Caucasian/White female G1 P0000 for first trimester ultrasound. Her LMP is 08/03/2016 and EDC is 5/10/2017 by dates.

The indication for this sonogram is dating and check viability. The patient has not had a previous ultrasound.

### **FINDINGS**

Ultrasound method --- transvaginal

Gestation-- single

Amniotic Fluid-- normal

CRL----- 2.57 centimeters ----- 9 weeks 2 days

Cul de sac normal

Adnexae normal

Cardiac Movement present

### **Findings**

Ultrasound reveals a live intrauterine pregnancy. The pregnancy measures consistent with dates.

### **Assessment**

- Amenorrhea 626.0/N91.2

### **Plan**

#### **Orders**

- o T Vag Ultrasound (76817) - - 10/07/2016

**Electronically Signed by:** Amit Garg, MD -Author on October 7, 2016 09:28:57 AM

## WHASN - South Valley East History and Physical

<b>Patient Name:</b>		<b>Visit Date:</b>	October 7, 2016
<b>Patient ID:</b>		<b>Provider:</b>	Amit Garg, MD
<b>Sex:</b>	Female	<b>Location:</b>	WHASN - South Valley East
<b>Birthdate:</b>		<b>Location Address:</b>	2821 W. Horizon Ridge Parkway Suite 130 Henderson, NV 890524429
		<b>Location Phone:</b>	(702) 862-8862

### Chief Complaint

- "I'm pregnant"

NOB, Imp 8/3/2016, last pap 9/14/2016 normal.

### History Of Present Illness

This 41 year old Caucasian/White female, G1 P0000, LMP 08/03/2016 presents with amenorrhea and positive home pregnancy test. Based on her LMP, her EDC is 5/10/2017 and her EGA is 9 weeks, 2 days. Cycles are regular and occur approximately every 28 days. Last pap smear: 2016 Results: Normal  
She had a urine pregnancy test which was positive 1 month ago. Her last menstrual period was normal and lasted for 4 days. Since her LMP she claims she has been without significant complaints. She denies vaginal bleeding. Her past medical history is noncontributory. This is her first pregnancy.  
Since her LMP, she denies the use of alcohol, tobacco, and street drugs. She claims her weight has not changed. The patient report neither she or FOB is of Jewish ancestry.  
There are no cats in the home in the home .  
She denies close contact with children on a regular basis.  
She has never had chicken pox in the past.  
Patient denies issues with domestic violence.

### Genetic Screening/Teratology Counseling: (Includes patient, baby's father, or anyone in either family with:)

1. Patient's age  $\geq 35$  at EDC yes
  17. Recurrent pregnancy loss, or stillbirth no
  18. Any medications since LMP other than prenatal vitamins (include vitamins, supplements, OTC meds, drugs, alcohol) no
  2. Patient or partner has history of genital herpes no
- Other: IS THERE ANY OTHER PERTINENT INFORMATION

### Past Medical History

Disease Name	Date Onset	Notes
+HPV	--	--
Hypothyroidism	--	--
Ovarian cyst	09/14/2016	--
Routine gynecological examination	12/15/2015	--
Yeast Infection	--	--

### Past Surgical History

Procedure Name	Date	Notes
Thyroidectomy	--	--

### Medication List

Name	Date Started	Instructions
iron 325 mg (65 mg iron) oral capsule,		--

extended release

PNV-DHA 27-1-300 mg oral capsule

take 1 capsule by oral route once daily

Tirosint 13 mcg oral capsule

--

**Allergy List**

Allergen Name	Date	Reaction	Notes
NO KNOWN DRUG ALLERGIES	--	--	--

**Family Medical History**

Disease Name	Relative/Age	Notes
No known family history	/	--

**Reproductive History****Menstrual**

Age Menarche: 15

Last Menstrual Period: 08/03/2016

Cycle Interval(Days): 28

Method of Birth Control: None

Menses Duration(Days): 6

**Pregnancy Summary**

Total Pregnancies: 1

Ab Induced: 0

Multiples: 0

Full Term: 0

Ab Spontaneous: 0

Living: 0

Premature: 0

Ectopics: 0

**Social History**

Finding	Status	Start/Stop	Quantity	Notes
Alcohol	Current some day	--/--	--	11/06/2014 - rt Occasionally
Single	--	--/--	--	--
Substance Abuse	Never	--/--	--	--
Tobacco	Never	--/--	--	11/06/2014 - jl

**Review of Systems****Constitutional**

- o Denies : body aches, night sweats

**Eyes**

- o Denies : impaired vision

**HENT**

- o Denies : headaches, lightheadedness

**Breasts**

- o Denies : additional symptoms except as noted in the HPI

**Cardiovascular**

- o Denies : chest pain, syncope

**Respiratory**

- o Denies : shortness of breath, wheezing, TB exposure

**Gastrointestinal**

- o Denies : additional symptoms except as noted in the HPI

**Genitourinary**

- o Denies : additional symptoms except as noted in the HPI

**Integument**

- o Denies : rash, changes to existing skin lesions or moles

**Musculoskeletal**

- o Denies : joint pain, muscle pain

**Endocrine**

- o Denies : polydipsia, constipation

**Psychiatric**

- Denies : anxiety, depression

#### **Heme-Lymph**

- Denies : easy bleeding, lymph node enlargement or tenderness

### **Physical Examination**

#### **Constitutional**

- **Appearance** : well-nourished, well developed, alert, in no acute distress

#### **Eyes**

- **Pupils and Irises** : pupils equal and round, pupils reactive to light bilaterally

#### **HENT**

- **Head and Face** :
  - **Head** : normocephalic, atraumatic
- **Ears** :
  - **External Ears** : external ears within normal limits

#### **Neck**

- **Lymph Nodes** : no lymphadenopathy present

#### **Chest**

- **Respiratory Effort** : breathing unlabored
- **Auscultation** : normal breath sounds

#### **Cardiovascular**

- **Heart** :
  - **Auscultation** : regular rate, normal rhythm, no murmurs present
  - **Palpation** : PMI location normal

#### **Gastrointestinal**

- **Abdominal Examination** : abdomen nontender to palpation, normal bowel sounds, tone normal without rigidity or guarding, no masses present
- **Hernias** : no hernias present

#### **Lymphatic**

- **Lymph Nodes** : no other lymphadenopathy present

#### **Skin**

- **General Inspection** : no rashes present, no lesions present, no areas of discoloration
- **General Palpation** : no abnormalities or tenderness on palpation

#### **Neurologic/Psychiatric**

- **Mental Status** :
  - **Orientation** : grossly oriented to person, place and time
  - **Judgment and Insight** : judgment and insight intact
  - **Mood and Affect** : mood normal, affect appropriate
- **Sensation** : sensation intact to light touch in extremities

### **Results**

#### **In-Office Procedures**

**In progress do not delete**

**upt (81025)**

- HCG Ur Ql: Positive

### **Assessment**

- Amenorrhea, Rule Out Pregnancy 626.0/N91.2

### **Plan**

#### **Orders**

- GC/CT endocervical/Urine Culture (Q/L/LMC).. (87491, 87591) - - 10/07/2016
- Urine Culture.. (87086) - - 10/07/2016
- WHASN Prenatal Panel... (87350) - - 10/07/2016
- TSH.. (84443) - - 10/07/2016
- T4, Free.. (84439) - - 10/07/2016
- Herpes Simplex type 2 IgG... (86694) - - 10/07/2016

#### **Medications**

- CitraNatal 90 DHA (algal oil) 90 mg iron-1 mg -50 mg-300 mg oral combo pack  
SIG: take 1 pack by oral route daily for 30 days  
DISP: (1) 60 ct blist pack with 11 refills  
**Prescribed on 10/07/2016**

**Instructions**

- Avoid alcoholic beverages.
- Patient encouraged not to smoke.
- Discontinue the use of all non-medicinal drugs and chemicals.
- First Trimester Screening discussed. Referral to HRPC please.
- Take prenatal vitamins daily.
- New Prenatal Bag given.
- Nutrition, fish and cheese advisories, and exercise discussed. Referred to literature in the NPN packet.
- Told to avoid nitrites in processed meat foods such as bacon, hot dogs, salami and pepperoni.
- Hospital and practice style discussed with cross coverage system.
- Handouts were provided
- pt to return to office next week for cfDNA

**Disposition**

- Return Visit Request in/on 4 weeks +/- 2 days (124073).

**Electronically Signed by:** Amit Garg, MD -Author on October 7, 2016 09:27:21 AM

# **Exhibit E**

# **Exhibit E**

<div>Page 1</div> <div>1 DISTRICT COURT</div> <div>2 CLARK COUNTY, NEVADA</div> <div>3</div> <div>4 LIVIU RADU CHISIU, as Special</div> <div>5 Administrator of the ESTATE OF</div> <div>6 ALINA BADOI, deceased; LIVIU</div> <div>7 RADU CHISIU, as Parent and</div> <div>8 Natural Guardian of SOPHIA</div> <div>9 RELINA CHISIU, a minor, as</div> <div>10 Heir of the ESTATE OF ALINA</div> <div>11 BADOI, deceased,</div> <div>12 Plaintiffs,</div> <div>13 vs. CASE NO. A-18-775572-C</div> <div>14 DEPT. NO. XXXII</div> <div>15 DIGNITY HEALTH, a Foreign</div> <div>16 Non-Profit Corporation d/b/a</div> <div>17 ST. ROSE DOMINICAN HOSPITAL-</div> <div>18 SIENA CAMPUS; JOON YOUNG KIM,</div> <div>19 M.D., an individual; U.S.</div> <div>20 ANESTHESIA PARTNERS, INC., a</div> <div>21 Foreign Corporation; DOES I</div> <div>22 through X and ROE BUSINESS</div> <div>23 ENTITIES XI through XX,</div> <div>24 Defendants.</div> <div>25</div> <div>16 DEPOSITION OF</div> <div>17 LIVIU RADU CHISIU</div> <div>18</div> <div>19 December 4, 2019</div> <div>20</div> <div>21 1:05 p.m.</div> <div>22</div> <div>23 7900 West Sahara Avenue</div> <div>24 Suite 200</div> <div>25 Las Vegas, Nevada</div> <div>26 Gary F. Decoster, CCR No. 790</div>	<div>Page 3</div> <div>1 INDEX OF EXAMINATION</div> <div>2</div> <div>3 WITNESS: LIVIU RADU CHISIU</div> <div>4</div> <div>5 EXAMINATION PAGE</div> <div>6 By Mr. Schneider 4</div> <div>7 By Mr. Dobbs 141</div> <div>8</div> <div>9</div> <div>10</div> <div>11</div> <div>12</div> <div>13</div> <div>14</div> <div>15 INDEX TO EXHIBITS</div> <div>16</div> <div>17</div> <div>18 Exhibit No. Description Initial</div> <div>19 Reference</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div> <div>18 Exhibit A Conditions of Admission 163</div>
<div>Page 2</div> <div>1 APPEARANCES OF COUNSEL</div> <div>2</div> <div>3 For the Plaintiffs:</div> <div>4 CHRISTIANSEN LAW OFFICES</div> <div>5 R. TODD TERRY, ESQ.</div> <div>6 810 South Casino Center Boulevard</div> <div>7 Las Vegas, Nevada 89101</div> <div>8 702.240.7979</div> <div>9 866.412.6992 Fax</div> <div>10 todd@christiansenlaw.com</div> <div>11</div> <div>12 For the Defendant Dignity Health d/b/a</div> <div>13 St. Rose Dominican Hospital-Siena Campus:</div> <div>14</div> <div>15 HALL PRANGLE &amp; SCHOONVELD, LLC</div> <div>16 TYSON J. DOBBS, ESQ.</div> <div>17 1140 North Town Center Drive</div> <div>18 Suite 350</div> <div>19 Las Vegas, Nevada 89144</div> <div>20 702.889.6400</div> <div>21 702.384.6025 Fax</div> <div>22 tdobbs@hpslaw.com</div> <div>23</div> <div>24 For the Defendants Joon Young Kim, M.D. and</div> <div>25 U.S. Anesthesia Partners, Inc.:</div> <div>26</div> <div>27 JOHN H. COTTON &amp; ASSOCIATES, LTD.</div> <div>28 ADAM A. SCHNEIDER, ESQ.</div> <div>29 7900 West Sahara Avenue</div> <div>30 Suite 200</div> <div>31 Las Vegas, Nevada 89117</div> <div>32 702.832.5909</div> <div>33 702.832.5910 Fax</div> <div>34 aschneider@jhcottonlaw.com</div>	<div>Page 4</div> <div>1 Deposition of Liviu Radu Chisiu</div> <div>2 December 4, 2019</div> <div>3 (Prior to the commencement of the</div> <div>4 deposition, all of the parties present agreed to</div> <div>5 waive statements by the court reporter, pursuant</div> <div>6 to Rule 30(b)(4) of NRCP.)</div> <div>7</div> <div>8 LIVIU RADU CHISIU, having been first duly</div> <div>9 sworn, was examined and testified as follows:</div> <div>10 EXAMINATION</div> <div>11 BY MR. SCHNEIDER:</div> <div>12 Q. Please state your name for the record.</div> <div>13 A. Liviu Chisiu.</div> <div>14 Q. Can you spell it for the court reporter,</div> <div>15 please?</div> <div>16 A. L-I-V-I-U, last name C-H-I-S, as in Sam, I-U.</div> <div>17 Q. And we introduced ourselves off the record,</div> <div>18 but for the record, you go by Leo?</div> <div>19 A. Leo. Leo.</div> <div>20 Q. Leo?</div> <div>21 A. Leo, L-E-O, um-hum.</div> <div>22 Q. And we would spell that L --</div> <div>23 A. L-E-O.</div> <div>24 Q. Leo, have you ever been deposed before?</div> <div>25 A. To what, I'm sorry?</div>



<p style="text-align: right;">Page 33</p> <p>1 A. Yes.</p> <p>2 Q. It's just that I have to finish the question.</p> <p>3 A. Yes, please.</p> <p>4 Q. Okay. So let me finish the question without</p> <p>5 interrupting me, that way Gary doesn't sue me for</p> <p>6 carpal tunnel syndrome, okay?</p> <p>7 To my understanding, your testimony is that</p> <p>8 Alina, at the time of her death, made somewhere</p> <p>9 approximately between 70,000 and \$80,000 a year?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. Was the source of that income</p> <p>12 exclusively from Dignity Health?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. So to your knowledge, she had no other</p> <p>15 sources of income, be it rental properties or an</p> <p>16 online business or things that she would sell on</p> <p>17 craigslist or whatever?</p> <p>18 A. Not at that moment, no.</p> <p>19 Q. Okay. So at the time in June of 2017, to</p> <p>20 your knowledge, as the special administrator of the</p> <p>21 estate --</p> <p>22 A. Yes.</p> <p>23 Q. -- the sole source of income that Alina Badoi</p> <p>24 had in June of 2017 was the Dignity Health paychecks,</p> <p>25 true?</p>	<p style="text-align: right;">Page 35</p> <p>1 Q. Was your mother living in the United States</p> <p>2 at the time of Alina's death?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. Was your mother living with you and</p> <p>5 Alina at the time of Alina's death?</p> <p>6 A. No.</p> <p>7 Q. Am I safe to say that by virtue of Alina</p> <p>8 passing away in June of 2017, you had asked your mom</p> <p>9 to move in with you to provide help with raising</p> <p>10 Sophia?</p> <p>11 A. Definitely, to provide help, not just move in</p> <p>12 with me, but just, yeah, to provide help.</p> <p>13 Q. Since Alina's death, besides Sophia and your</p> <p>14 mother, have you lived with anybody else?</p> <p>15 A. No.</p> <p>16 Q. Okay. Prior to her delivery of Sophia, do</p> <p>17 you know if Alina had any kind of what's called</p> <p>18 prenatal care, which is basically health care from</p> <p>19 doctors who specialize in pregnant women before they</p> <p>20 deliver the baby?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Did you go to those appointments?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. Every one?</p> <p>25 A. Not all of them, but I went to as many as I</p>
<p style="text-align: right;">Page 34</p> <p>1 A. That's correct.</p> <p>2 Q. Okay. Do you have an understanding of any</p> <p>3 kind of 401(k) structure, health savings accounts that</p> <p>4 she would have as a benefit of working at Dignity</p> <p>5 Health?</p> <p>6 A. Yes, she was contributing to a 401(k), and I</p> <p>7 think it's the maximum that was supposed to be matched</p> <p>8 by, the 3 percent or something like that.</p> <p>9 Q. Okay. Any other benefits that you're aware</p> <p>10 of that Alina would have had vis-a-vis being an</p> <p>11 employee of Dignity Health?</p> <p>12 A. Well, she had health insurance through them.</p> <p>13 Q. Okay. What else?</p> <p>14 A. The 401(k).</p> <p>15 Q. What else?</p> <p>16 A. Some -- I'm guessing some vacation that we</p> <p>17 didn't get much to take of, but I'm not recalling any</p> <p>18 other ones.</p> <p>19 Q. Okay. All right. Sophia lives with you</p> <p>20 presently?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Who else lives with you and Sophia?</p> <p>23 A. My mom.</p> <p>24 Q. Anybody else?</p> <p>25 A. No, that's it.</p>	<p style="text-align: right;">Page 36</p> <p>1 could.</p> <p>2 Q. Okay. Who did you go see?</p> <p>3 A. Well, we went to see doctors at the</p> <p>4 gynecologist office.</p> <p>5 Q. Okay. Who was that?</p> <p>6 A. Dr. Garg.</p> <p>7 Q. G-A-R-G?</p> <p>8 A. I don't know how you spell his name.</p> <p>9 Q. Okay. That's fine. Who else?</p> <p>10 A. Dr. -- well, there were various doctors</p> <p>11 there. At the appointments that I went there I saw</p> <p>12 Dr. Garg and I don't recall -- well, the lady doctor,</p> <p>13 I don't know her name, starts with Y, but I think it</p> <p>14 was only one lady there.</p> <p>15 Q. Okay. Who else?</p> <p>16 A. There was another doctor which I really don't</p> <p>17 recall his name at all.</p> <p>18 And then I went with her and did many of the</p> <p>19 appointments at the high risk pregnancy, where it was</p> <p>20 Dr. -- I'll remember. It's a Japanese name. I forgot</p> <p>21 the name.</p> <p>22 Q. Who else?</p> <p>23 A. So that's about it.</p> <p>24 Q. Okay. In those visits with the</p> <p>25 gynecologist's office or the high risk pregnancy</p>

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1 A. Eventually, yes.

2 Q. Okay. So the plan, even before she was born,

3 that you would have to put her in day care?

4 A. Depending on our schedule and how we can,

5 yes.

6 Q. Okay. Because --

7 A. I mean, we were not planning to raise her

8 home, if that's the question.

9 Q. So you weren't planning for someone to stay

10 home with her all the time?

11 A. No.

12 Q. True?

13 A. Yes.

14 Q. Okay. So there was -- at least the

15 anticipation was that we're going to have to have day

16 care for her because both of us are working and our

17 schedules aren't always going to match up?

18 A. Yes.

19 Q. Okay.

20 A. Which, since she is passed, I wasn't able to,

21 because, you know, she went from day care -- yes, the

22 answer to your question is yes.

23 Q. Did Alina have life insurance?

24 A. Yes.

25 Q. And who was the beneficiary of the life

Page 158

1 insurance policy?

2 A. Sophia.

3 Q. Did that money go into a trust or is that

4 something you received to pay for Sophia?

5 A. No, as of now, I just let the insurance

6 company what happened and they decide -- I mean, they

7 put Sophia as the beneficiary. The money is at the

8 insurance company.

9 Q. Okay. So is it something that she gets

10 periodic distribution or is it going to be in the

11 future, do you know?

12 A. It's going to be in the future if she --

13 Q. How much was the policy?

14 A. Around 70,000.

15 Q. And I think you went over this and I just

16 want to confirm: Prior to going to St. Rose Hospital

17 for the delivery of Sophia, did you know Alina to have

18 been ever diagnosed with any sort of bleeding

19 disorder?

20 A. Not any bleeding disorder, no.

21 Q. Okay. And you've discussed the fact that

22 Alina had talked with her physicians about nosebleeds?

23 A. Yes.

24 Q. What physicians specifically? I'm trying --

25 I don't remember if you said or if you couldn't

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1 remember.

2 A. From the gynecologist's office.

3 Q. So it was just whoever it was that she was

4 seeing there?

5 A. Yes.

6 Q. You don't recall the names?

7 A. No.

8 Q. And my understanding of your conversation was

9 you never had any conversations with Dr. Kim about his

10 relationship to Dignity Health, true?

11 A. Yes.

12 Q. And you believe that he worked for

13 U.S. Anesthesia Partners, true?

14 A. Yes.

15 Q. And then on the 17th of May, you saw Dr. Kim

16 in the hospital and he told you he had actually come

17 from another hospital?

18 A. That was on the 17th, yes, after, yes, yes.

19 Q. So May 17th, while Alina's in the hospital,

20 you were informed by Dr. Kim that he was working at

21 another hospital and he was now at St. Rose?

22 A. That's correct.

23 Q. And it's my understanding that Alina, she

24 worked for Dignity Health as of 2014; is that true?

25 A. Yes.

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1 Q. And she was employed as a social worker?

2 A. Yes.

3 Q. Do you know what her job responsibilities

4 were as a social worker, what she did generally?

5 A. Well, she was dealing with the people at the

6 hospital with the --

7 Q. And she was working at the hospital that's

8 off of Lake Mead and Boulder Highway?

9 A. That's correct.

10 Q. And was her schedule pretty much 9:00 to 5:00

11 every day?

12 A. Yes.

13 Q. Or five days a week, I should say?

14 A. That's correct.

15 Q. And did you understand, at least was it your

16 understanding that she was working closely every day

17 with nurses and physicians at the hospital?

18 A. Yes.

19 Q. And so she had been working closely with

20 nurses and physicians at a Dignity Health hospital for

21 approximately 40 hours a week for five years?

22 A. Yes.

23 Q. Or I shouldn't say five, for three years?

24 A. Yeah.

25 Q. It's my understanding that on May 9th, 2017,

<p style="text-align: right;">Page 165</p> <p>1 A. Okay.</p> <p>2 Q. And so you'd agree with me by signing the</p> <p>3 form, Alina was saying that she had read the form?</p> <p>4 A. Yeah.</p> <p>5 Q. And if you look at Paragraph 5, which is on</p> <p>6 the first page, and you see it's entitled legal</p> <p>7 relationship between hospitals and doctors?</p> <p>8 A. Okay.</p> <p>9 Q. And do you see the initials AB right there?</p> <p>10 A. That's correct.</p> <p>11 Q. Do you recognize that as Alina's handwriting?</p> <p>12 A. I guess so, yes.</p> <p>13 Q. Okay. Those are her initials, though, right?</p> <p>14 A. Yes.</p> <p>15 Q. If you could read that first paragraph right</p> <p>16 under the legal relationship between hospitals and</p> <p>17 doctors.</p> <p>18 A. Doctors and surgeons providing services to</p> <p>19 patients, including radiologists, pathologists,</p> <p>20 emergency doctors, hospitalists, anesthesiologists,</p> <p>21 intensive care doctors and others, are not employees</p> <p>22 or agents of the hospital.</p> <p>23 Q. And then one more sentence -- or two more</p> <p>24 sentences, I should say.</p> <p>25 A. They have been granted the privilege of using</p>	<p style="text-align: right;">Page 167</p> <p>1 THE DEPONENT: No, if we're out by 5:30, I</p> <p>2 don't need to call nobody.</p> <p>3 THE COURT REPORTER: How about if we take a</p> <p>4 five-minute break?</p> <p>5 MR. DOBBS: Let's do that, five minute break.</p> <p>6 (Recess taken.)</p> <p>7 MR. DOBBS: Back on the record.</p> <p>8 BY MR. DOBBS:</p> <p>9 Q. We were talking about the admission to</p> <p>10 St. Rose --</p> <p>11 A. Yes.</p> <p>12 Q. -- for the delivery of Sophia.</p> <p>13 A. Yes.</p> <p>14 Q. Were you involved in any way in the decision</p> <p>15 or discussion about where the -- where Alina was going</p> <p>16 to deliver?</p> <p>17 A. If we're going to pick St. Rose or --</p> <p>18 Q. Yeah, St. Rose or some other hospital?</p> <p>19 A. Well, we decided together to pick St. Rose</p> <p>20 since she knew it's a good hospital and, yeah.</p> <p>21 Q. And she had worked there?</p> <p>22 A. Yeah.</p> <p>23 Q. And was that a decision that was made quite a</p> <p>24 long time in advance? Do you know when it was made?</p> <p>25 A. Well, right from the beginning, we was not</p>
<p style="text-align: right;">Page 166</p> <p>1 the hospital for the care and treatment of their</p> <p>2 patients, but they are not employees.</p> <p>3 Q. Okay. And you'd agree with me that it</p> <p>4 appears that Alina had, in fact, initialed that</p> <p>5 paragraph right there indicating she had read that?</p> <p>6 A. Correct.</p> <p>7 Q. And she actually had worked at the hospital,</p> <p>8 too, so --</p> <p>9 A. Correct.</p> <p>10 Q. -- I would assume she had some knowledge as</p> <p>11 to --</p> <p>12 A. Yeah.</p> <p>13 Q. -- the relationship between the hospital and</p> <p>14 physicians; you'd agree with that?</p> <p>15 A. Probably she did, yes.</p> <p>16 Q. Okay. Can we -- it's 4:25.</p> <p>17 A. Yeah.</p> <p>18 Q. Let's -- I think I probably have a half an</p> <p>19 hour.</p> <p>20 A. Perfect.</p> <p>21 Q. Get out of here by 5 o'clock?</p> <p>22 A. Yeah, if we're done by 5:30, that's perfect.</p> <p>23 Q. Let's --</p> <p>24 MR. SCHNEIDER: But you need to make a call,</p> <p>25 do you not?</p>	<p style="text-align: right;">Page 168</p> <p>1 really -- we didn't kind of choose between other</p> <p>2 things because it was like, okay, that's -- since she</p> <p>3 was working for them, yeah, not far from the house.</p> <p>4 Q. Did Dr. Herpolsheimer, did he have any say in</p> <p>5 the decision as to where he was going to deliver the</p> <p>6 baby?</p> <p>7 A. No.</p> <p>8 Q. It was Alina's decision?</p> <p>9 A. Yes.</p> <p>10 Q. You discussed earlier that at some point in</p> <p>11 the hospital, Alina had discussed with Dr. Kim, I</p> <p>12 think you called it the thyroid problem she had?</p> <p>13 A. Yes.</p> <p>14 Q. If you could explain for me, what did you</p> <p>15 mean when you said she had the thyroid problem?</p> <p>16 A. Well, she discussed that with all the</p> <p>17 doctors, with the gynecologist, with everybody. I</p> <p>18 mean, that's the only problem that she had. She had a</p> <p>19 thyroid -- a surgery of the thyroid when she was</p> <p>20 younger and part of the -- yeah, she was under</p> <p>21 treatment for that before the pregnancy and during the</p> <p>22 pregnancy and that was one of the -- yeah, I mean, she</p> <p>23 was disclosing that, I mean, disclosing, telling them</p> <p>24 that.</p> <p>25 Q. So when you said a problem, was there any</p>

# **Exhibit F**

# **Exhibit F**



# Consultation and Diagnostic Services Request

Phone 702-382-3200 Fax 702-362-3575

Enrique J. Lopez, MD    Stephen M. Wong, MD    Wilson H. Huang, MD  
 Laura A. Gorski, DO    Damon J. Masarik, MD    Brian D. Smith, MD  
 Lauren E. Giacchino, MD    Patricia M. Pierce, MD

Date: 10/2/16  
 Patient Name: [REDACTED]  
 Date of Birth: [REDACTED]  
 Home Phone: [REDACTED]  
 Cell Phone: [REDACTED]

Appointment Date: 10/28  
 Appointment Time: 7:45 AM ARRIVAL  
 New Patients please arrive 1/2 hr prior to appointment time  
 Social Security #: [REDACTED]  
 Acc #: [REDACTED] Initials of Preparer: (EW)

Primary Insurance: NPN  
 Subscriber: Self  
 ID#: 1400589600  
 Group #: [REDACTED]  
 Employer: St Rose  
 Phone #: DOB [REDACTED]

Secondary Insurance: [REDACTED]  
 Subscriber: [REDACTED]  
 ID#: [REDACTED]  
 Group #: [REDACTED]  
 Employer: [REDACTED]  
 Phone #: [REDACTED]

Must check one box:

- ☒ Consultation and indicated diagnostic services (ultrasound, antepartum testing)  
☒ Diagnostic services (ultrasound, antepartum testing) and indicated consultation

Reason for Referral:

Ama Hypo the / Roid on meds

LMP: 8/3/16 EDC: 5/10/17 by LMP / sonc / exam: (circle one) Weeks Pregnant: 9+ weeks Height: 5'8" Weight: 141  
 Single: [REDACTED] Twins: [REDACTED] Other: [REDACTED] Gravida: 1 Fullterm: 0 Preterm: 0 SAB: 0 TAB: 0 Living: 0  
 Referring Provider: 9AR9 Office Phone: 862-8861 Take With: Alicia

• Pinto Lane Office  
 2011 Pinto Ln., Ste 200  
 Las Vegas, NV 89106

• Siena Heights Office  
 2845 Siena Heights Dr., Ste 250  
 Henderson, NV 89052

• Post Road Office  
 9090 W. Post Rd., Ste 100  
 Las Vegas, NV 89145

Visit us on the web @ [www.HRPregnancy.com](http://www.HRPregnancy.com)  
 702-362-3200



## GENETIC CONSULTATION

RE: [REDACTED]  
DOB: [REDACTED]  
Date of Consult: 10/28/16

Referring Physician: Amit Garg, M.D.  
2821 W. Horizon Pkwy  
Suite 130  
Henderson, NV 89052

### Reason for Referral:

Ms. Badoi is a G1 P0 Eastern European woman who will be 41 years old at EDC. She was not accompanied by her 41 year old Caucasian husband, Liviu Chisiu. She was referred for genetic counseling and prenatal diagnosis due to advancing maternal age.

### Pregnancy/Family History:

A careful evaluation of family and pregnancy histories did not reveal any other significant genetic or teratogenic risk factors. Of note, the patient has already had a negative MaterniT21 Plus screen result.

### Counseling/Risk Assessment:

Genetic counseling focused on the association between maternal age and fetal chromosome abnormalities. The various approaches to prenatal screening for Down syndrome and chromosome abnormalities were discussed with the patient. The risks, benefits, and limitations of all prenatal diagnostic and screening procedures were fully discussed. The above-mentioned family history issues were also discussed. Specifically,

- 1) The age related risk for Down syndrome in this pregnancy is 1/65, the age-related risk for Trisomy 18 is 1/255, and the age-related risk for any chromosome abnormality is 1/30. The MaterniT21 Plus screen analyzes circulating cell-free placental DNA and was designed to detect increased representation of chromosomes 21, 18, 13, X & Y. The reported sensitivity and specificity are 99.1% and 99.7 for Trisomy 21, >99.9% and 99.6% for Trisomy 18, and 91.7% and 99.7% for Trisomy 13 respectively. The patient understands that this testing is limited to the detection of Trisomy 21, 18, 13, X & Y and that further analysis would be required for the detection of other chromosomal/genetic abnormalities.
- 2) Second trimester high-resolution ultrasound is a nondiagnostic screening tool that can detect fetal ultrasound markers indicating an increased risk for chromosome abnormalities. However, approximately 50% of affected fetuses will have no detectable markers.
- 3) Amniocentesis and chorionic villus sampling (CVS) are both diagnostic procedures that can detect approximately 99% of chromosome abnormalities. Amniocentesis is performed at 16-22 weeks gestation and has a rate of complication including miscarriage of 1/600. CVS is performed at 11-13 weeks and has a complication rate of 1/300-1/200. Approximately 1% of individuals undergoing CVS will need to consider amniocentesis either due to inconclusive results (mosaicism) or an increased risk for neural tube defects identified through AFP screening or second trimester high-resolution ultrasound.

2011 Pinto Lane, Suite 200,  
Las Vegas, NV 89106  
Fax: (702) 382-3575  
(Off Charleston & I-15)

2845 Siena Heights, Suite 350,  
Henderson, NV 89052  
Fax: (702) 932-2299  
(Near the campus of St. Rose Siena Hospital)

9090 W. Post Road, Suite 100,  
Las Vegas, NV 89148  
Fax: (702) 946-3411  
(Near the campus of Southern Hills Hospital)

RE: [REDACTED]  
DOB: [REDACTED]  
Date of Consult: 10/28/16  
Page 2

- 4) There is a 3-4% background risk for birth defects, most of which cannot be diagnosed prenatally.
- 5) The population risk of having a child with an open neural tube defect is 1-2/1000 live births. Maternal serum alpha-fetoprotein (MSAFP) screening can detect approximately 80% of open neural tube defects. Second-trimester high-resolution ultrasound, with or without MSAFP screening, can detect approximately 90-95% of open neural tube defects and amniocentesis can detect approximately 98% of open neural tube defects.
- 6) Alina's MCV is 71.0. An MCV < 80 can be due to iron-deficiency or may be indicative of an individual being a carrier of a hemoglobinopathy. The patient stated that she was followed by a hematologist years ago and that she does not have thalassemia, however there are no current labs on file that could support this claim. The patient understands that her risk to have a child with a hemoglobinopathy may be increased above that for the general population. She understands that additional testing is available that can if both she and her partner are carriers and prenatal diagnosis is available if that were found to be the case.

Tests Performed/Recommended:

- 1) The patient understood the above information including her risk for chromosome abnormalities. The majority of time (>50%) was spent on counseling and coordination of care with this patient, which was greater than 20 minutes.
- 2) The patient has declined diagnostic testing stating that she is comfortable with the negative Maternal T21 Plus screen result and normal high-resolution ultrasound. She understands these are screening tools only and are not diagnostic of an abnormality.
- 3) First trimester screening and cell free dna screening do not detect open neural tube defects. High resolution ultrasound around 18 weeks is recommended.
- 4) The patient declined carrier screening for cystic fibrosis.
- 5) The patient was given a lab slip for hemoglobinopathy evaluation. Results will be reviewed and the patient notified.

Thank you for this referral. If you have any questions, please feel free to contact us directly.

  
Lisa Otting, M.S. CGC

  
Laura A. Gorski, D.O.



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FETAL ECHOCARDIOGRAPHY

2845 Siena Heights Dr., Suite 350  
Henderson, NV 89052  
(702) 382-3200 • Fax: (702) 932-2299

### Ultrasound Report

October 28th, 2016

RE: [REDACTED]

MR#: [REDACTED]

DOB: [REDACTED]

(Exam #: BA73736-U-1-1)

To: Amit Garg, M.D.

2821 W Horizon Ridge Pkwy, Ste 130

Henderson, NV 89052

Fax: (702) 862-8774

The LMP of this 41 year old, gravida 1, para 0 patient was AUG 3 2016, giving her an EDD of MAY 10 2017 and a current gestational age of 12 weeks 2 days by dates. The ultrasound examination was performed using abdominal technique.

Multiple longitudinal and transverse sections revealed a singleton intrauterine pregnancy. The placenta is posterior in implantation, grade 0 in appearance.

#### INDICATIONS

Supervision of elderly primigravida, unspecified trimester [O09519]

Anemia complicating pregnancy, unspecified trimester [O8901R]

Hypothyroidism, unspecified [E039]

Encounter for antenatal screening of mother [Z36]

12 weeks gestation of pregnancy [Z3A12]

#### Exam Types

76801 Complete Scan <14.0 wks

76813 OB US Nuchal Screen

#### MEASUREMENTS

CRL 6.05 cm 12 weeks 2 days\* Nuchal Trans 2.2 mm

THE AVERAGE GESTATIONAL AGE is 12 weeks 2 days  $\pm$  7 days.

#### UTERUS

The uterus was visualized.

#### ADNEXA

The left ovary was visualized and measured 6.7 x 4.2 x 4.9 cm with a volume of 72.1 cc. The right ovary was visualized and measured 3.7 x 3.2 x 2.3 cm with a volume of 14.2 cc.

#### IMPRESSION

Singleton IUP

12 weeks and 2 days by this ultrasound. (EDD=MAY 10 2017)

Regular fetal heart rate of 150 bpm

Posterior placenta

#### GENERAL COMMENT

AMA (41), Negative MaterniT21. Hypothyroid. Anemia (Hgb elec. ordered)

Viable singleton IUP.

The fetal CRL is consistent with EDC.

The nuchal thickness at this gestational age was within normal limits. It measured 2.2 mm by transabdominal sonography. This finding decreases the risk of aneuploidy by approximately 50%. The nasal bone is present.

For detection of open neural tube defects the patient has the option of MSAFP only screening (80% detection rate) versus targeted perinatal sonography (90-95% detection rate).

Anatomic detail is limited at this gestational age. However, the fetal cranium appeared normal in shape. The intracranial anatomy was unremarkable. There were no apparent choroid plexus cysts. The spine revealed no obvious evidence for a neural tube defect. Anatomy of the fetal thorax appeared within normal limits. The cardiac rhythm was regular. There was no obvious evidence of echogenic intracardiac foci. The fetal bowel was normal in echogenicity. Active movement of the fetal body & extremities was seen.



RE: [REDACTED]  
Exam Date: OCT 28, 2016

Page 2

Two ovarian cysts were noted: left, measuring 5.8 x 3.8 x 4.8; and right, measuring 2.6 x 2.2 x 2.2 cm.

Recommend repeat ultrasound in 7 weeks to evaluate the fetal anatomy and routine cervical length to assess the risk for preterm delivery.

Today's results were discussed with the patient.



Laura Goreki, D.O.  
Perinatologist  
Electronically signed 10/28/16 13:36



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## **Ultrasound Report**

December 19th, 2016

RE: [REDACTED]

MR#: [REDACTED]

DOB: [REDACTED]

(Exam #: BA73736-LI-1-2)

To: Amit Garg, M.D.

2821 W Horizon Ridge Pkwy, Ste 130

Henderson, NV 89052

Fax: (702) 852-8774

The LMP of this 41 year old, gravida 1, para 0 patient was AUG 3 2016, giving her an EDD of MAY 10 2017 and a current gestational age of 19 weeks 5 days by dates. The ultrasound examination was performed using abdominal & vaginal techniques.

Multiple longitudinal and transverse sections revealed a singleton intrauterine pregnancy with the fetus in vertex presentation. The placenta is posterior in implantation, grade 0 in appearance, and there is no placenta previa.

### **INDICATIONS**

Supervision of elderly primigravida, unspecified trimester [O09519]

Anemia complicating pregnancy, unspecified trimester [O98019]

Hypothyroidism, unspecified [E039]

Encounter for antenatal screening of mother [Z38]

19 weeks gestation of pregnancy [Z3A19]

### **Exam Types**

76811 Complete Scan + Detail Fetal Anatomy

76817 Transvaginal OB

### **MEASUREMENTS**

BPD	4.6 cm	20 weeks 4 days*	[85%]	OFD	8.8 cm		
HC	17.4 cm	19 weeks 6 days*	[55%]	AC	14.9 cm	19 weeks 6 days*	[59%]
Femur	3.2 cm	20 weeks 0 days*	[45%]				
Nuchal Fold	4.6 mm			Humerus	3.1 cm	20 weeks 1 day	[64%]
Cerebellum	2.1 cm	20 weeks 6 days		Cisterna Magna	3.2 mm		
Lateral Ventr.	3.8 mm						
HC/AC	1.17			FL/AC	0.21		
FL/BPD	0.85			Ceph Index	0.82		
EFW (Ac/FL/HC)	323 grams - 0 lbs 11 oz						

THE AVERAGE GESTATIONAL AGE is 20 weeks 1 day  $\pm$  10 days.

### **CERVICAL EVALUATION**

#### **SUPINE**

Cervical Length: 6.30 cm

#### **POST TRANS FUNDAL PRESSURE**

Cervical Length: 6.30 cm

#### **OTHER TEST RESULTS**

Funnelling?: No Resp. To TFP?: No

### **ANATOMY**

	Normal	Abnormal	Not Visualized	Not Optimally	See Details
Head	✓				
Face/Neck	✓				
Th. Cav.	✓				
Heart	✓				
Abd. Cav.	✓				

RE: [REDACTED]  
Exam Date: DEC 19, 2016

Page 2

	Normal	Abnormal	Not Visualized	Not Optimally	See Details
Stomach	✓				
Right Kidney	✓				
Left Kidney	✓				
Bladder	✓				
Abd. Wall	✓				
Spine	✓				
Extremes	✓				
Genitalia	✓				
Placenta	✓				
Umbil. Cord	✓				
Plac. Cord Ins.			?		

#### ANATOMY DETAILS

##### Visualized Appearing Sonographically Normal:

HEAD: (CSP, Calvarium, Lateral Ventricles, Choroid Plexus, Cerebellum, Cisterna Magna); FACE/NECK: (Neck, Nuchal Fold, Profile, Nose/Lips, Face); TH. CAV.: (Lungs, Diaphragm); HEART: (3 vessel trachea view, Four Chamber View, Proximal Left Outflow, Proximal Right Outflow, Distal Left Outflow, Distal Right Outflow, Short Axis of Greater Vessels, Cardiac Axis, Interventricular Septum, Interatrial Septum, IVC, SVC, Cardiac Position); ABD. CAV.: (Liver, Bowel); STOMACH, RIGHT KIDNEY, LEFT KIDNEY, BLADDER, ABD. WALL, SPINE: (Cervical Spine, Thoracic Spine, Lumbar Spine, Sacrum); EXTREMS: (Lt Humerus, Rt Humerus, Lt Femur, Rt Femur); GENITALIA (Female), PLACENTA, UMBIL. CORD

##### Not Optimally Visualized:

FACE/NECK: (Nasal Bone)

##### Not Visualized:

PLAC. CORD INS.

#### ADNEXA

The left ovary was not visualized. The right ovary was not visualized.

#### AMNIOTIC FLUID

Amniotic Fluid: Normal

#### IMPRESSION

Singleton IUP

20 weeks and 1 day by this ultrasound. (EDD=MAY 7 2017)

Vertex presentation

Estimated Fetal Weight = 323 grams Hadlock 85 (AC, FL, HC)

Estimated Fetal Weight = 0 lbs 11 oz Hadlock 85 (AC, FL, HC)

Regular fetal heart rate of 130 bpm

Posterior placenta

No placenta previa

#### GENERAL COMMENT

AMA (41). Negative Maternal T21. Hypothyroid (followed by endocrinologist). Anemia (Hgb electrophoresis normal), iron def history.

Normal fetal growth.

Normal fetal anatomic survey.

There is a left ovarian simple cyst seen measuring 4.4 x 2.5 x 4.1 cm.

#### COMPREHENSIVE PERINATAL FETAL ANATOMIC SURVEY:

Indication: AMA

Cranium: Normal midline fab, intraventricular system, cavum septum pellucidum, cerebellum and cisterna magna. The cerebellar vermis is intact and the brain parenchyma appears normal without calcifications.

Face: Upper lip and palate appear intact. The profile is normal. The nasal bone is normal. The neck is without evidence of masses. Maxilla and mandible appear normal.

Thorax: Lung parenchyma appears normal without masses. No pleural or pericardial effusions noted. The diaphragm

RE: [REDACTED]  
Exam Date: DEC 19, 2018

Page 3

appears intact. The cardiac axis is normal. The proximal outflow tracts appear to cross. The aortic arch, IVC and SVC, 3-vessel view and 3-vessel trachea view appear normal.

Abdomen: Normal bowel echogenicity. No esoles seen.

Extremities: All four limbs were noted. The long bones have a normal ossification pattern without evidence of fractures or bowing. Proximal long bones within normal limits and the distal long bones appeared grossly normal. The hands were in normal position. The feet were in normal position.

Placenta: No evidence of masses.

Fetal ultrasound markers for aneuploidy were evaluated including: structural malformations (including cardiac), increased nuchal fold thickness, short femur, short humerus, echogenic bowel, pyelectasis, choroid plexus cysts ( $>5$  mm), hypoplasia of the middle phalanx of the fifth digit and a 2-vessel umbilical cord. Despite the absence of any of these markers, the patient was counseled that current literature estimates the detection of Down Syndrome via ultrasound to be approximately 50-80% at most centers.

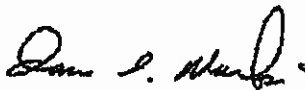
Over the past five years, our accredited facility has displayed a second trimester ultrasound detection rate for Trisomy 21 of 74%. Our center's above noted sensitivity for detection of Down Syndrome and its limitations in finding approximately one-fourth of cases of Trisomy 21 were discussed with the patient. The patient was also informed that other chromosomal abnormalities besides Trisomy 21 may be discovered with amniocentesis. After extensive counseling, the patient declined genetic amniocentesis.

High resolution transvaginal ultrasound was performed. The sole purpose of this exam was to visualize the architecture of the cervix and measure cervical length. Intra-amniotic sludge was not present. The cervix measures 5.3 cm.

Due to the patient being AMA (age 40 or greater), serial sonography for growth is recommended starting at 32-34 weeks of gestational age.

Repeat sonography for growth is recommended at 32-34 weeks for the following reasons: 1) due to the increased risk of growth restriction with advanced maternal age, 2) secondary to the late evolution of fetal markers for aneuploidy in occasional cases. Additionally, antepartum testing is recommended on a weekly basis at 37 weeks of gestation due to the association of an increasing risk of term stillbirth with AMA. Delivery is also recommended prior to 41 weeks of gestation.

Today's results were discussed with the patient.



Damon Masaki, M.D.  
Perinatologist  
Electronically signed 12/19/16 17:30



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### Ultrasound Report

February 14th, 2017

RE: [REDACTED]

MR#: [REDACTED]

DOB: [REDACTED]

(Exam #: BA73736-U-1-3)

To: Amit Garg, M.D.

2821 W Horizon Ridge Pkwy, Ste 130

Henderson, NV 89052

Fax: (702) 862-8774

The LMP of this 41 year old, gravida 1, para 0 patient was AUG 3 2016, giving her an EDD of MAY 10 2017 and a current gestational age of 27 weeks 6 days by dates. The ultrasound examination was performed using abdominal technique.

Multiple longitudinal and transverse sections revealed a singleton intrauterine pregnancy with the fetus in breech presentation. The placenta is anterior, right lateral in implantation, grade I in appearance, and there is no placenta previa.

### INDICATIONS

Supervision of elderly primigravida, unspecified trimester [O09518]

Anemia complicating pregnancy, unspecified trimester [O99019]

Hypothyroidism, unspecified [E039]

Encounter for antenatal screening of mother [Z36]

27 weeks gestation of pregnancy [Z3A27]

### Exam Types

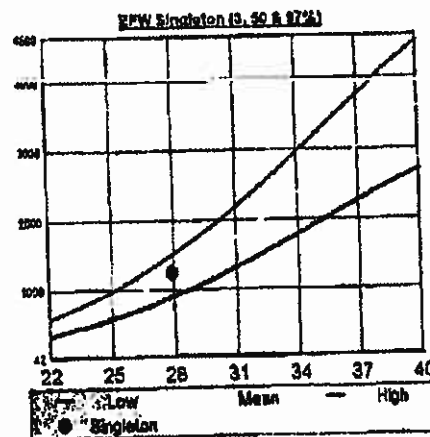
76816 Follow-up/Repeat Ultrasound

### MEASUREMENTS

BPD 7.2 cm 28 weeks 6 days\* [74%]  
OFD 9.8 cm  
HC 27.4 cm 29 weeks 4 days\* [82%]  
AC 24.5 cm 28 weeks 5 days\* [70%]  
Femur 5.2 cm 27 weeks 5 days\* [26%]

Humerus 4.6 cm 27 weeks 2 days [31%]  
Cerebellum 3.2 cm 29 weeks 1 day  
Clavicle/Magna 7.2 mm  
Lateral Ventrals 3.6 mm

HC/AC 1.12  
FL/AC 0.21  
FL/BPD 0.72  
Ceph Index 0.74  
EFW (Ac/FL/Hc) 1246 grams - 2 lbs 12 oz [83%]



THE AVERAGE GESTATIONAL AGE is 28 weeks 6 days  $\pm$  18 days.

### ANATOMY

	Normal	Abnormal	Not Visualized	Not Optimally	See Details
Head	✓				
Face/Neck	✓				
Th. Cav.	✓				
Heart	✓				
Abd. Cav.	✓				
Stomach	✓				
Right Kidney	✓				
Left Kidney	✓				
Bladder	✓				
Abd. Wall	✓				
Spine	✓				

RE: [REDACTED]  
Exam Date: FEB 14, 2017

	Normal	Abnormal	Not Visualized	Not Optimally	See Details
Extremes	✓				
Genitalia	✓				
Placenta	✓				
Umbil. Cord	✓				
Plac. Cord Ins.	✓				

#### ANATOMY DETAILS

##### Visualized Appearing Sonographically Normal:

HEAD: (CSP, Calvarium, Lateral Ventricles, Choroid Plexus, Cerebellum, Cisterna Magna); FACE/NECK: (Neck, Nuchal Fold, Profile, Nose/Lips, Face); TH. CAV.: (Lungs, Diaphragm); HEART: (3 vessel trachea view, Four Chamber View, Proximal Left Outflow, Proximal Right Outflow, Cardiac Axis, Interventricular Septum, Interatrial Septum, Cardiac Position); ABD. CAV.: (Liver, Bowel); STOMACH, RIGHT KIDNEY, LEFT KIDNEY, BLADDER, ABD. WALL, SPINE: (Cervical Spine, Thoracic Spine, Lumbar Spine, Sacrum); EXTREMS: (Lt Humerus, Rt Humerus, Lt Femur, Rt Femur); GENITALIA (Female), PLACENTA, UMBIL. CORD, PLAC. CORD INS.

##### Not Optimally Visualized:

FACE/NECK: (Nasal Bone)

#### UTERUS

The uterus was visualized.

#### ADNEXA

The left ovary was not visualized. The right ovary was not visualized.

#### AMNIOTIC FLUID

8.4 | 0.0  
6.1 | 10.5

AFI Total = 25.0

Amniotic Fluid: POLYHYDRAMNIOS

#### IMPRESSION

Singleton IUP

28 weeks and 5 days by this ultrasound. (EDD=MAY 4 2017)

Breech presentation

Fetal growth appeared normal

Estimated Fetal Weight = 1246 grams Hadlock 85 (AC, FL, HC)

Estimated Fetal Weight = 2 lbs 12 oz Hadlock 85 (AC, FL, HC)

Normal anatomy survey

Regular fetal heart rate of 146 bpm

Polyhydramnios

Anterior, right lateral placenta

No placenta previa

#### GENERAL COMMENT

AMA (41). Negative MaterniT21. Hypothyroid (followed by Dr. Litchfield, endocrinologist). Anemia (Hgb electrophoresis normal), iron def history.

Normal fetal growth.

Normal fetal anatomic survey.

Polyhydramnios is present (AFI 25 cms). GTT normal.

The previously noted 4.4 cm simple left ovarian cyst was not seen due to overlying bowel.

Due to the patient being AMA (age 40 or greater), serial sonography for growth is recommended starting at 32-34 weeks of gestational age.

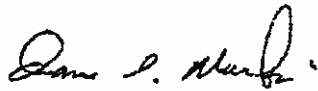
Repeat sonography for growth is recommended at 32-34 weeks for the following reasons: 1) due to the increased risk of growth restriction with advanced maternal age, 2) secondary to the late evolution of fetal markers for aneuploidy in occasional cases.

Additionally, antepartum testing is recommended on a weekly basis at 37 weeks of gestation due to the association of an increasing risk of term stillbirth with AMA. Delivery is also recommended prior to 41 weeks of gestation.

RE: [REDACTED]  
Exam Date: FEB 14, 2017

Page 3

Today's results were discussed with the patient.



Damon Masaki, M.D.  
Perinatologist  
Electronically signed 02/14/17 19:58



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### Ultrasound Report

March 28th, 2017

RE: [REDACTED]

MR#: [REDACTED]

DOB: [REDACTED]

(Exam #: BA73736-U-1-4)

To: Amit Garg, M.D.

2821 W Horizon Ridge Pkwy, Ste 130

Henderson, NV 89052

Fax: (702) 862-8774

The LMP of this 41 year old, gravida 1, para 0 patient was AUG 3 2016, giving her an EDD of MAY 10 2017 and a current gestational age of 33 weeks 6 days by dates. The ultrasound examination was performed using abdominal technique.

Multiple longitudinal and transverse sections revealed a singleton intrauterine pregnancy with the fetus in vertex presentation. The placenta is anterior in implantation, grade I in appearance, and there is no placenta previa.

### INDICATIONS

Supervision of elderly primigravida, unspecified trimester [O09519]

Anemia complicating pregnancy, unspecified trimester [O99018]

Hypothyroidism, unspecified [E039]

Encounter for antenatal screening of mother [Z38]

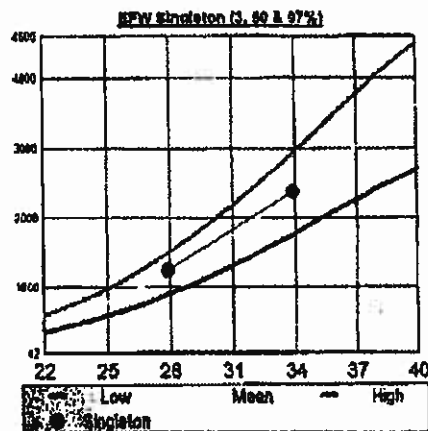
33 weeks gestation of pregnancy [Z3A33]

### Exam Types

76816 Follow-up/Repeat Ultrasound

### MEASUREMENTS

BPD	8.9 cm	35 weeks 6 days *	[92%]
OFD	11.4 cm		
HC	32.8 cm	36 weeks 5 days *	[91%]
AC	30.1 cm	34 weeks 1 day *	[61%]
Femur	6.3 cm	32 weeks 4 days *	[15%]
Humerus	5.6 cm	32 weeks 2 days	[24%]
Cerebellum	4.4 cm	35 weeks 1 day	
Cisterna Magna	8.5 mm		
Lateral Vents	4.8 mm		
HC/AC	1.09		
FL/AC	0.21		
FL/BPD	0.72		
Ceph Index	0.77		
EFW (Ac/FW/Hc)	2374 grams - 5 lbs 4 oz		[52%]



THE AVERAGE GESTATIONAL AGE is 34 weeks 5 days  $\pm$  21 days.

### ANATOMY

	Normal	Abnormal	Not Visualized	Not Optimally	See Details
Head	✓				
Face/Neck	✓				
Th. Cav.	✓				
Heart	✓				
Abd. Cav.	✓				
Stomach	✓				
Right Kidney	✓				
Left Kidney	✓				
Bladder	✓				
Abd. Wall	✓				
Spine	✓				



RE: [REDACTED]  
Exam Date: MAR 28, 2017

Page 2

	Normal	Abnormal	Not Visualized	Not Optimally	See Details
Extremis					-
Genitalia	✓				
Placenta	✓				
Umbil. Cord	✓				

**ANATOMY DETAILS**Visualized Appearing Sonographically Normal:

HEAD: (CSP, Calvarium, Lateral Ventricles, Choroid Plexus, Cerebellum, Cisterna Magna); FACE/NECK: (Neck, Profile, Nose/Lips, Face); TH. CAV.: (Lungs, Diaphragm); HEART: (Four Chamber View, Proximal Left Outflow, Proximal Right Outflow, Cardiac Axis, Interventricular Septum, Interatrial Septum, Cardiac Position); ABD. CAV.: (Liver, Bowel); STOMACH, RIGHT KIDNEY, LEFT KIDNEY, BLADDER, ABD. WALL, SPINE: (Cervical Spine, Thoracic Spine, Lumbar Spine, Sacrum); EXTREMS: (Rt Humerus, Lt Femur, Rt Femur); GENITALIA (Female), PLACENTA, UMBIL. CORD

Not Optimally Visualized:

FACE/NECK: (Nasal Bone)

Not Visualized:

EXTREMS: (Lt Humerus)

**UTERUS**

The uterus was visualized.

**ADNEXA**

The left ovary was not visualized. The right ovary was not visualized.

**AMNIOTIC FLUID**

3.3	6.3	AFI Total = 30.7
13.0	8.1	Amniotic Fluid: POLYHYDRAMNIOS

**IMPRESSION**

Singleton IUP  
34 weeks and 6 days by this ultrasound. (EDD=MAY 3 2017)  
Vertex presentation  
Fetal growth appeared normal  
Estimated Fetal Weight = 2374 grams Hadlock 85 (AC, FL, HC)  
Estimated Fetal Weight = 6 lbs 4 oz Hadlock 85 (AC, FL, HC)  
Regular fetal heart rate of 125 bpm  
Polyhydramnios  
Anterior placenta  
No placenta previa

**GENERAL COMMENT**

AMA (41). Negative MaterniT21. Hypothyroid (followed by Dr. Litchfield, endocrinologist) and now euthyroid. Anemia (Hgb electrophoresis normal), iron def history with referral to hematologist for IV iron infusion due to Hgb of 7.8.

Normal fetal growth. The EFW is at the 52nd percentile.

Normal fetal anatomic survey with limited views of the extremities due to fetal position.

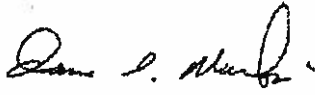
Polyhydramnios is present (AFI 30.7 cms). Weekly antepartum testing recommended due to polyhydramnios.

Initiation of antepartum testing is recommended on a weekly basis at 37 weeks of gestation due to the association of an increasing risk of term stillbirth with AMA. Delivery is also recommended prior to 41 weeks of gestation.

Today's results were discussed with the patient.

RE: [REDACTED]  
Exam Date: MAR 28, 2017

Page 3

A handwritten signature in black ink, appearing to read "Damon Masaki".

Damon Masaki, M.D.  
Perinatologist  
Electronically signed 03/28/17 22:24



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**Fetal Diagnostics Report**

March 28th, 2017

RE:

MR#:

DOB:

(Exam #: BA73738-F-1-1)

To: Amit Garg, M.D.

2821 W Horizon Ridge Pkwy, Ste 130

Henderson, NV 89052

Fax: (702) 862-8774

The LMP of this 41 year old, gravida 1, para 0 patient was AUG 3 2016, giving her an EDD of MAY 10 2017 and a current gestational age of 33 weeks 6 days by dates. Her blood pressure today was 131/77, with a pulse of 79 bpm.

**INDICATIONS**

33 weeks gestation of pregnancy [Z3A33]  
Encounter for antenatal screening of mother [Z36]  
Supervision of elderly primigravida, unspecified trimester [O09519]  
Anemia complicating pregnancy, unspecified trimester [O99019]  
Hypothyroidism, unspecified [E039]

**Exam Types**

78818 Biophysical Profile (w/NST)

**AMNIOTIC FLUID**

AFI Total = 30.0  
Amniotic Fluid: POLYHYDRAMNIOS

**BIOPHYSICAL PROFILE**

The Biophysical Profile score was 8/10.  
Breathing: 2 Movement: 2 Tone: 2 AFV: 2 NST: 0

**IMPRESSION**

Singleton IUP  
Vertex presentation  
Regular fetal heart rate of 120 bpm  
Polyhydramnios  
Moderate fetal variability

**NST**

The NST was reactive with no decelerations.

**RECOMMENDATION**

BPP: Weekly

**GENERAL COMMENT**

Fetal kick counts reviewed.

Damon Masaki, M.D.

Perinatologist

Electronically signed 03/28/17 23:42



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**Fetal Diagnostic Report**

April 6th, 2017

RE: [REDACTED]

MR#: [REDACTED]

DOB: [REDACTED]

(Exam #: BA73736-F-1-3)

To: Amit Garg, M.D.

2821 W Horizon Ridge Pkwy, Ste 130

Henderson, NV 89052

Fax: (702) 862-8774

The LMP of this 41 year old, gravida 1, para 0 patient was AUG 3 2016, giving her an EDD of MAY 10 2017 and a current gestational age of 35 weeks 1 day by dates. Her blood pressure today was 115/88, with a pulse of 63 bpm.

**INDICATIONS**

35 weeks gestation of pregnancy [Z3A35]  
Encounter for antenatal screening of mother [Z36]  
Supervision of elderly primigravida, unspecified trimester [O09519]  
Anemia complicating pregnancy, unspecified trimester [O99019]  
Hypothyroidism, unspecified [E039]  
Polyhydramnios, third trimester [O403]

**Exam Types**

76618 Biophysical Profile (w/NST)

**AMNIOTIC FLUID**

AFI Total = 28.0

Amniotic Fluid: POLYHYDRAMNIOS

**BIOPHYSICAL PROFILE**

The Biophysical Profile score was 10/10.

Breathing: 2 Movement: 2 Tone: 2 AFV: 2 NST: 2

**IMPRESSION**

Singleton IUP  
Cephalic presentation  
Regular fetal heart rate of 120 bpm  
Polyhydramnios  
Moderate fetal variability

**NST**

The NST was reactive with no decelerations.

**RECOMMENDATION**

BPP: Weekly

**GENERAL COMMENT**

Instructions given for increased rest, increase PO water, fetal kick counts as well as PTL precautions.

Laura Gorski, D.O.

Perinatologist

Electronically signed 04/06/17 14:52



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**Fetal Diagnostics Report**

April 14th, 2017

RE: [REDACTED]

MR#: [REDACTED]

DOB: [REDACTED]

(Exam #: BA73738-F-1-4)

To: Amit Garg, M.D.

2821 W Horizon Ridge Pkwy, Ste 130

Henderson, NV 89062

Fax: (702) 862-8774

The LMP of this 41 year old, gravida 1, para 0 patient was AUG 3 2016, giving her an EDD of MAY 10 2017 and a current gestational age of 36 weeks 2 days by dates. Her blood pressure today was 122/77, with a pulse of 60 bpm.

2 contractions were observed in 20 minutes.

**INDICATIONS**

36 weeks gestation of pregnancy [Z3A36]  
Encounter for antenatal screening of mother [Z36]  
Supervision of elderly primigravida, unspecified trimester [O09519]  
Anemia complicating pregnancy, unspecified trimester [O99019]  
Hypothyroidism, unspecified [E039]  
Polyhydramnios, third trimester [O403]

**Exam Types**

76818 Biophysical Profile (w/NST)

**AMNIOTIC FLUID**

AFI Total = 27.6

Amniotic Fluid: POLYHYDRAMNIOS

**BIOPHYSICAL PROFILE**

The Biophysical Profile score was 10/10.

Breathing: 2 Movement: 2 Tone: 2 AFI: 2 NST: 2

**IMPRESSION**

Singleton IUP  
Cephalic presentation  
Regular fetal heart rate of 125 bpm  
Polyhydramnios

**NST**

The NST was reactive with no decelerations.

**RECOMMENDATION**

BPP: Weekly

Wilson H. Huang, M.D.-

Perinatologist

Electronically signed 04/14/17 14:11



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DETAILED FETAL ANATOMIC EXAMINATION  
FETAL ECHOCARDIOGRAPHY

2845 Siena Heights Dr., Suite 350  
Henderson, NV 89052  
(702) 382-3200 • Fax: (702) 992-2299

**Fetal Diagnostics Report**

April 19th, 2017

RE: [REDACTED]

MR#: [REDACTED]

DOB: [REDACTED]

(Exam #: BA73736-F-1-5)

To: Amit Garg, M.D.

2821 W Horizon Ridge Pkwy, Ste 130

Henderson, NV 89052

Fax: (702) 862-8774

The LMP of this 41 year old, gravida 1, para 0 patient was AUG 3 2016, giving her an EDD of MAY 10 2017 and a current gestational age of 37 weeks 0 days by dates. Her blood pressure today was 107/68, with a pulse of 62 bpm.

**INDICATIONS**

37 weeks gestation of pregnancy [Z3A37]

Encounter for antenatal screening of mother [Z36]

Supervision of elderly primigravida, unspecified trimester [O09519]

Anemia complicating pregnancy, unspecified trimester [O99019]

Hypothyroidism, unspecified [E039]

Polyhydramnios, third trimester [O403]

**Exam Types**

76818 Biophysical Profile (w/NST)

**AMNIOTIC FLUID**

AFI Total = 26.0

Amniotic Fluid: POLYHYDRAMNIOS

**BIOPHYSICAL PROFILE**

The Biophysical Profile score was 10/10.

Breathing: 2 Movement: 2 Tone: 2 AFV: 2 NST: 2

**IMPRESSION**

Singleton IUP

Vertex presentation

Regular fetal heart rate of 125 bpm

Polyhydramnios

Moderate fetal variability

**NST**

The NST was reactive with no decelerations.

**RECOMMENDATION**

BPP: Weekly

Damon Masaki, M.D.

Perinatologist

Electronically signed 04/19/17 16:16



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FETAL ECHOCARDIOGRAPHY

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**Fetal Diagnostics Report**

May 3rd, 2017

RE: [REDACTED]

MR#: [REDACTED]

DOB: [REDACTED]

(Exam #: BA73736-F-1-7)

To: **Amit Garg, M.D.**

2821 W Horizon Ridge Pkwy, Ste 130

Henderson, NV 89052

Fax: (702) 862-8774

The LMP of this 41 year old, gravida 1, para 0 patient was AUG 3 2016, giving her an EDD of MAY 10 2017 and a current gestational age of 39 weeks 0 days by dates. Her blood pressure today was 108/68, with a pulse of 66 bpm.

1 contraction was observed in 20 minutes.

**INDICATIONS**

39 weeks gestation of pregnancy [Z3A39]  
Encounter for antenatal screening of mother [Z36]  
Supervision of elderly primigravida, unspecified trimester [O09519]  
Anemia complicating pregnancy, unspecified trimester [O99019]  
Hypothyroidism, unspecified [E039]  
Polyhydramnios, third trimester [O403]

**Exam Types**

76818 Biophysical Profile (w/NST)

**AMNIOTIC FLUID**

AFI Total = 26.5

Amniotic Fluid: POLYHYDRAMNIOS

**BIOPHYSICAL PROFILE**

The Biophysical Profile score was 10/10.

Breathing: 2 Movement: 2 Tone: 2 AFI: 2 NST: 2

**IMPRESSION**

Singleton IUP  
Vertex presentation  
Regular fetal heart rate of 120 bpm  
Polyhydramnios  
Moderate fetal variability

**NST**

The NST was reactive with no decelerations.

**RECOMMENDATION**

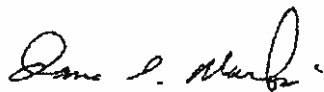
BPP: Not Required

**GENERAL COMMENT**

Alina is scheduled for an induction of labor on 05/09/2017 Tuesday at St. Rose Siena Hospital. Fetal kick count instructions were reinforced.

RE: Aline Badoi  
Exam Date: MAY 3, 2017

Page 2

A handwritten signature in black ink, appearing to read "Damon L. Masaki".

Damon Masaki, M.D.  
Perinatologist  
Electronically signed





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**Fetal Diagnostics Report**

May 12th, 2017

RE: [REDACTED]

MR#: [REDACTED]

DOB: [REDACTED]

(Exam #: BA73736-F-1-8)

To: Amit Garg, M.D.

2821 W Horizon Ridge Pkwy, Ste 130

Henderson, NV 89052

Fax: (702) 862-8774

The LMP of this 41 year old, gravida 1, para 0 patient was AUG 3 2016, giving her an EDD of MAY 10 2017 and a current gestational age of 40 weeks 2 days by dates. Her blood pressure today was 118/78, with a pulse of 63 bpm.

3 contractions were observed in 20 minutes.

**INDICATIONS**

40 weeks gestation of pregnancy [Z3A40]  
Encounter for antenatal screening of mother [Z36]  
Supervision of elderly primigravida, unspecified trimester [O09519]  
Anemia complicating pregnancy, unspecified trimester [O99019]  
Hypothyroidism, unspecified [E039]  
Polyhydramnios, third trimester [O403]  
Post-term pregnancy [O480]

**Exam types**

76818 Biophysical Profile (w/NST)

**AMNIOTIC FLUID**

AFI Total = 16.5

Amniotic Fluid: Normal

**BIOPHYSICAL PROFILE**

The Biophysical Profile score was 10/10.

Breathing: 2 Movement: 2 Tone: 2 AFI: 2 NST: 2

**IMPRESSION**

Singleton IUP

Cephalic presentation

Regular fetal heart rate of 110 bpm

Moderate fetal variability

**NST**

The NST was reactive with no decelerations.

**RECOMMENDATION**

BPP: Not Required

**GENERAL COMMENT**

Alina is scheduled for induction of labor on Monday, 05/15/2017 at St. Rose Siena Hospital.  
Instructions reviewed for fetal kick counts as well as active labor precautions.

RE: [REDACTED]  
Exam Date: MAY 12, 2017

Page 2

A handwritten signature in black ink, appearing to read 'Wilson H. Huang', with a long horizontal stroke extending to the right.

Wilson H. Huang, M.D.  
Perinatologist  
Electronically signed

# **Exhibit G**

# **Exhibit G**

**St Rose Dominican Hospital-Siena Campus**

3001 St Rose Parkway

Henderson, NV. 89052

Facility Phone #: 702-616-5000

Name: [REDACTED]  
MRN: [REDACTED]  
Acct #: [REDACTED]  
Pt loc: SRS DICU; 2201; P

DOB: [REDACTED] Age: 41 years Sex: F  
Admit Date: 5/15/2017  
Disch Date: 6/3/2017  
Physician: Selco, Scott L MD  
PCP: Ivie, Jocelyn MD

**General Information**

	Charted By	Brown, Mary E. RN		
	Charted Date	5/17/2017		
	Charted Time	07:00 PDT		
Procedure		Units	Reference Range	
Activity Status	Bedrest			
Peri care	Complete assist			
Position	HOB up, Left side			

	Charted By	Taylor, Stacy RN		
	Charted Date	5/17/2017		
	Charted Time	07:00 PDT		
Procedure		Units	Reference Range	
Name of Clinician Contacted	MOORE, LEEJON MD			
Time Provider Contacted	07:00:00			
Clinician Contact	Provider/MD present			
Reason for Call/Info Given to MD	Other: MD in room assessing pt.			

	Charted By	Taylor, Stacy RN		
	Charted Date	5/17/2017		
	Charted Time	06:50 PDT		
Procedure		Units	Reference Range	
Events	CRN, in room assessing pt.			

	Charted By	Taylor, Stacy RN		
	Charted Date	5/17/2017		
	Charted Time	06:35 PDT		
Procedure		Units	Reference Range	
Events	See Below <sup>T482</sup>			

**Textual Results**

T482: 5/17/2017 06:35 PDT (Events)

updated pt. on plan of care. Pt. very anxious, reports numbness in legs. Tried to get pt. out of bed, pt. unable to put wt. on legs.

	Charted By	Taylor, Stacy RN		
	Charted Date	5/17/2017		
	Charted Time	06:27 PDT		
Procedure		Units	Reference Range	
Name of Clinician Contacted	Garg, Amit MD			
Time Provider Contacted	06:27:00			
Clinician Contact	Communication by phone			
Reason for Call/Info Given to MD	<b>See Below</b> <sup>T585 @30</sup>			

**St Rose Dominican Hospital-Siena Campus**

3001 St Rose Parkway

Henderson, NV. 89052

Facility Phone #: 702-616-5000

Name: [REDACTED]  
MRN: [REDACTED]  
Acct #: [REDACTED]  
Pt loc: SRS DICU; 2201; P

DOB: [REDACTED] Age: 41 years Sex: F  
Admit Date: 5/15/2017  
Disch Date: 6/3/2017  
Physician: Selco, Scott L MD  
PCP: Ivie, Jocelyn MD

**General Information****Textual Results**

T585: 5/17/2017 06:27 PDT (Reason for Call/Info Given to MD)

Other: notified MD of blood pressures, recieved orders

**Corrected Results**

@30: Reason for Call/Info Given to MD

Corrected from Other: notified MD of bloody pressures, recieved orders on 5/17/2017 06:30 PDT by Taylor, Stacy RN

	Charted By Charted Date Charted Time	Taylor, Stacy RN 5/17/2017 05:53 PDT		
Procedure			Units	Reference Range
Events		hydralazine given as ordered.		

	Charted By Charted Date Charted Time	Taylor, Stacy RN 5/17/2017 05:50 PDT		
Procedure			Units	Reference Range
Name of Clinician Contacted		Garg, Amit MD		
Time Provider Contacted		05:50:00		
Clinician Contact		Communication by phone		
Reason for Call/Info Given to MD		See Below <sup>T586</sup>		

**Textual Results**

T586: 5/17/2017 05:50 PDT (Reason for Call/Info Given to MD)

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

	Charted By Charted Date Charted Time	Taylor, Stacy RN 5/17/2017 05:33 PDT	Taylor, Stacy RN 5/17/2017 05:30 PDT		
Procedure				Units	Reference Range
Events		-	See Below <sup>T483</sup>		
Name of Clinician Contacted		Garg, Amit MD	-		
Time Provider Contacted		05:33:00	-		
Clinician Contact		Paged provider	-		
Reason for Call/Info Given to MD		See Below <sup>T587</sup>	-		

**Textual Results**

T483: 5/17/2017 05:30 PDT (Events)

pt denies headache, blurring vision or epigastric pain

T587: 5/17/2017 05:33 PDT (Reason for Call/Info Given to MD)

Other: regarding BP's still elevated

**St Rose Dominican Hospital-Siena Campus**

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Henderson, NV. 89052

Facility Phone #: 702-616-5000

Name: [REDACTED]  
MRN: [REDACTED]  
Acct #: [REDACTED]  
Pt loc: SRS DICU; 2201; P

DOB: [REDACTED] Age: 41 years Sex: F  
Admit Date: 5/15/2017  
Disch Date: 6/3/2017  
Physician: Selco, Scott L MD  
PCP: Ivie, Jocelyn MD

**General Information**

	Charted By Charted Date Charted Time	Taylor, Stacy RN 5/17/2017 04:40 PDT		
Procedure			Units	Reference Range
Events		po labetolol given as ordered.		

	Charted By Charted Date Charted Time	Taylor, Stacy RN 5/17/2017 04:35 PDT		
Procedure			Units	Reference Range
Events		See Below <sup>T484</sup>		
Name of Clinician Contacted		Garg, Amit MD		
Time Provider Contacted		04:35:00		
Clinician Contact		Communication by phone		
Reason for Call/Info Given to MD		See Below <sup>T588</sup>		

**Textual Results**

T484: 5/17/2017 04:35 PDT (Events)

clarified with MD that he did not want IV hydralazine, MD stated not at this time.

T588: 5/17/2017 04:35 PDT (Reason for Call/Info Given to MD)

Other: notified MD of pt's blood pressures, and numbness in right leg. MD ordered po labetolol. Pt. unable to tolerate magnesium

	Charted By Charted Date Charted Time	Taylor, Stacy RN 5/17/2017 04:25 PDT	Taylor, Stacy RN 5/17/2017 04:20 PDT		
Procedure				Units	Reference Range
Name of Clinician Contacted		Garg, Amit MD	Garg, Amit MD		
Time Provider Contacted		04:25:00	04:20:00		
Clinician Contact		Paged provider	Paged provider		
Reason for Call/Info Given to MD		Other: regarding BP	Other: regarding BP		

	Charted By Charted Date Charted Time	Taylor, Stacy RN 5/17/2017 01:25 PDT		
Procedure			Units	Reference Range
Name of Clinician Contacted		Garg, Amit MD		
Time Provider Contacted		01:25:00		
Clinician Contact		Communication by phone		
Reason for Call/Info Given to MD		See Below <sup>T589</sup>		

**Textual Results**

T589: 5/17/2017 01:25 PDT (Reason for Call/Info Given to MD)

Other: notified MD of pt.'s mg level and that she cannot stand the tingling in her legs. MD stated to turn magnesium off.

**St Rose Dominican Hospital-Siena Campus**

3001 St Rose Parkway

Henderson, NV. 89052

Facility Phone #: 702-616-5000

Name: [REDACTED]  
MRN: [REDACTED]  
Acct #: [REDACTED]  
Pt loc: SRS DICU; 2201; P

DOB: [REDACTED] Age: 41 years Sex: F  
Admit Date: 5/15/2017  
Disch Date: 6/3/2017  
Physician: Selco, Scott L MD  
PCP: Ivie, Jocelyn MD

**General Information**

	Charted By	Taylor, Stacy RN	Taylor, Stacy RN		
	Charted Date	5/17/2017	5/17/2017		
	Charted Time	01:20 PDT	00:00 PDT		
Procedure				Units	Reference Range
Events		See Below <sup>T485</sup>	pericare done		

**Textual Results**

T485: 5/17/2017 01:20 PDT (Events)  
pt complaining of tingling in her legs, unable to sleep or stand it.

	Charted By	Molinaro, Krista RN	Molinaro, Krista RN		
	Charted Date	5/16/2017	5/16/2017		
	Charted Time	23:00 PDT	22:00 PDT		
Procedure				Units	Reference Range
Events		Patient resting in bed.	See Below <sup>T486</sup>		

**Textual Results**

T486: 5/16/2017 22:00 PDT (Events)  
Patient resting in bed holding baby.

	Charted By	Molinaro, Krista RN	Molinaro, Krista RN		
	Charted Date	5/16/2017	5/16/2017		
	Charted Time	21:30 PDT	21:28 PDT		
Procedure				Units	Reference Range
Events		Patient resting in bed.	-		
Education on Med purpose/side effect		-	Patient		

	Charted By	Molinaro, Krista RN	Molinaro, Krista RN		
	Charted Date	5/16/2017	5/16/2017		
	Charted Time	21:26 PDT	21:15 PDT		
Procedure				Units	Reference Range
Peri care		-	With assist		
Events		-	See Below <sup>T487</sup>		
Education on Med purpose/side effect		Patient	-		

**Textual Results**

T487: 5/16/2017 21:15 PDT (Events)  
RN assisted patient back to bed at this time. Pericare done. Gown changed.

	Charted By	Molinaro, Krista RN		
	Charted Date	5/16/2017		
	Charted Time	20:58 PDT		
Procedure			Units	Reference Range
Name of Clinician Contacted		Garg, Amit MD		
Time Provider Contacted		20:58:00		

**St Rose Dominican Hospital-Siena Campus**

3001 St Rose Parkway

Henderson, NV. 89052

Facility Phone #: 702-616-5000

Name: [REDACTED]  
MRN: [REDACTED]  
Acct #: [REDACTED]  
Pt loc: SRS DICU; 2201; P

DOB: [REDACTED] Age: 41 years Sex: F  
Admit Date: 5/15/2017  
Disch Date: 6/3/2017  
Physician: Selco, Scott L MD  
PCP: Ivie, Jocelyn MD

**General Information**

	Charted By Charted Date Charted Time	Molinaro, Krista RN 5/16/2017 20:58 PDT		
Procedure			Units	Reference Range
Clinician Contact		Communication by phone		
Reason for Call/Info Given to MD		See Below <sup>T590</sup>		

**Textual Results****T590:** 5/16/2017 20:58 PDT (Reason for Call/Info Given to MD)

Other: 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.

	Charted By Charted Date Charted Time	Molinaro, Krista RN 5/16/2017 20:45 PDT		
Procedure			Units	Reference Range
Events		See Below <sup>T488</sup>		

**Textual Results****T488:** 5/16/2017 20:45 PDT (Events)

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.

	Charted By Charted Date Charted Time	Molinaro, Krista RN 5/16/2017 20:07 PDT		
Procedure			Units	Reference Range
Isolation Types		None		
Fall Risk Score		15		
Barriers to Learning		None evident		
Individuals Taught		Patient		
Preferences to Learning		Any/all		
Readiness to Learn		Accepting		
Teaching Method		See Below <sup>T290</sup>		
Response to Teaching		Communicated understanding		
Isolation Status		None		
Eating		Self		
Bathing		Self		
Dressing		Self		
Transferring		Self		
Toileting		Self		
Walking		Self		
Balancing		Self		
Infection Control Education Topics		See Below <sup>T413</sup>		



**St Rose Dominican Hospital-Siena Campus**

3001 St Rose Parkway

Henderson, NV. 89052

Facility Phone #: 702-616-5000

Name: [REDACTED]  
MRN: [REDACTED]  
Acct #: [REDACTED]  
Pt loc: SRS DICU; 2201; P

DOB: [REDACTED] Age: 41 years Sex: F  
Admit Date: 5/15/2017  
Disch Date: 6/3/2017  
Physician: Selco, Scott L MD  
PCP: Ivie, Jocelyn MD

**General Information**

	Charted By Charted Date Charted Time	Molinaro, Krista RN 5/16/2017 20:07 PDT		
Procedure			Units	Reference Range
Patient is High Risk		Yes		
Fall History last 6 months (JH)		None		
Injury Risk Criteria		None		
Acute Organ Dysfunction Criteria		None		
General Variable Criteria		None		
Fall Risk Interventions		Yes		
Fall Safety Interventions Implemented		Yes		
Fall Safety Interventions		See Below <sup>T644</sup>		
Fall Risk Scale Type		Johns Hopkins		
Fall This Hospitalization		None		
Complete Paralysis or Immobilized		No		

**Textual Results**

T290: 5/16/2017 20:07 PDT (Teaching Method)

Demonstration, Explanation, Printed materials

T413: 5/16/2017 20:07 PDT (Infection Control Education Topics)

Hand hygiene, Respiratory hygiene, How to report safety concerns, How to request assistance, Surgical/invasive procedure site infection prevention, Fall prevention

T644: 5/16/2017 20:07 PDT (Fall Safety Interventions)

Maintain safe environment, Bed locked and low, Locked stretchers/wheelchairs, Room clutter and obstacle free, Proper lighting assured, Call light within pt reach, Hourly rounding, Fall prevention education provided to pt/family, Properly fitted nonskid footwear applied, Oriented pt to surroundings

	Charted By Charted Date Charted Time	Molinaro, Krista RN 5/16/2017 20:00 PDT	Molinaro, Krista RN 5/16/2017 19:55 PDT		
Procedure				Units	Reference Range
Events		Patient resting in bed	-		
Name of Clinician Contacted		-	Garg, Amit MD		
Time Provider Contacted		-	19:55:00		
Clinician Contact		-	Provider/MD present		
Reason for Call/Info Given to MD		-	See Below <sup>T591</sup>		

**Textual Results**

T591: 5/16/2017 19:55 PDT (Reason for Call/Info Given to MD)

Other: notified MD of magnesium level done at 1835 was 6.3. Patient does not have any symptoms, reflexes are good, urine output is good. MD verbalized he is ok with this magnesium level.

# **Exhibit H**

# **Exhibit H**

**CONDITIONS OF ADMISSION**  
(For Use for Inpatients Outpatients and Emergency Department Patients)

**Terms Used in this Form**

**"Hospital"** means: **St. Rose Dominican Hospital - Siena Campus**

**"Patient"** means the person identified in the registration block.

**"Patient's legal representative"** can be the Patient's parent, guardian, conservator, or any other person authorized to sign this document for the Patient's, such as an agent under an advanced directive.

**"You"** or **"Your"** refers to the person signing this document and can be the Patient or the Patient's legal representative.

**"We"** or **"us"** or **"our"** refers to the Hospital.

**"Insurance company"** means a HMO, health plan, indemnity plan, government plan or insurance company.

**"Full charges"** means the Hospital's published rates (called the chargemaster), prior to any discounts or reductions.

By signing this form, you agree to all of the following provisions:

**1. Consent to Medical and Surgical Procedures**

You consent to the procedures that may be performed during this Hospital stay or provided as an outpatient. These may include emergency treatment or services, laboratory procedures, X-ray examinations, medical or surgical treatment or procedures, anesthesia, or other hospital services provided to the Patient under the general and special instructions of the doctor. Some treatment or services may be provided through telemedicine. You agree that the Hospital and doctors may access and use your non-hospital pharmacy records in connection with this Hospital stay or visit. You understand that the practice of medicine and surgery is not an exact science. You understand that diagnosis and treatment may involve risks of injury or even death. You acknowledge that We make no guarantees to You about the result of examination or treatment in this Hospital. If the Patient delivers an infant(s) at this Hospital, You agree that these same Conditions of Admission apply to the infant(s).

**2. Consent to Electronic Recording**

You consent to our use of photography, audio or video recording or other electronic imaging as required for diagnosis or treatment of the Patient and for other internal Hospital purposes. We will not use the Patient's image for marketing or fundraising unless we get Your separate authorization in writing. We may take the Patient's picture to confirm and protect his/her identity.

**3. General Duty Nursing Care**

The Hospital provides only general nursing care and services ordered by the doctor(s). If You want a private duty nurse and the doctor agrees, You agree to make the arrangements at the Patient's expense. The Hospital is not responsible for not providing a private duty nurse. You release the Hospital from any and all liability from the use of a private duty nurse or the fact that the Hospital does not provide this additional care.

**4. Participation of Residents and Health Care Students**

We may participate in programs to teach resident doctors, medical students, student nurses, and/or other health care students. These persons may observe or participate in the Patient's care under the supervision of doctors, nurses and other professionals on the Hospital's staff.



CONDITIONS OF ADMISSION AND TREATMENT



DH-COA-E-521 (04/15)

COA

PATIENT IDENTIFICATION

Badoi, Alina  
5-24-1975

Page 1 of 4

## CONDITIONS OF ADMISSION

(For Use for Inpatients Outpatients and Emergency Department Patients)

- 5. Legal Relationship between Hospital and Doctors** *Patient/Legal Representative Initials: AB*  
Doctors and surgeons providing services to the Patient, including the radiologist, pathologist, emergency doctors, hospitalist, anesthesiologist, intensive care doctors and others, are not employees or agents of the Hospital. They have been granted the privilege of using the hospital for the care and treatment of their patients, but they are not employees. **You will receive a separate bill from the doctors for their services.**  
You understand that the Patient is under the care and supervision of the attending doctor. The Hospital and its staff are responsible for carrying out the doctor's instructions. Your doctor or surgeon is responsible for obtaining Your informed consent, when required, for medical or surgical treatment, special diagnostic or therapeutic procedures, or Hospital services provided to You under your doctor's general and special instructions.
- 6. Release of Information**  
You will be given a Notice of Privacy Practices that explains how the hospital may use information about the Patient. The Notice of Privacy Practices is available on the Hospital's website under *Patient Privacy Notice*. The Notice of Privacy Practices explains that we will obtain Your written authorization to release information about the Patient, unless We are allowed or required by law to disclose the information without authorization.
- 7. Personal Belongings**  
You should leave personal items at home. The Hospital has a fireproof safe for the safekeeping of money and valuables. The Hospital is not liable for the loss or damage to any money, jewelry, documents or other articles not placed in the safe. Hospital liability for loss of any property given to the Hospital for safekeeping is limited by law to five hundred dollars (\$500) unless You receive a written receipt for a greater amount.
- 8. Financial Agreement; Assignment of Benefits/Appeal Rights**  
**a. Insured Patients.** We will bill the patient's insurance company for all the services provided during this stay. Co-payments, co-insurance and deductibles required by the insurance company must be paid by the Patient. Payment may be requested before or at the time of service. If the insurance company or benefit plan denies all or part of the payment, the Patient agrees to be responsible to pay any amounts due to the Hospital under the law. The Patient also assigns all the Patient's rights under the Employee Retirement Income Security Act ("ERISA") or any other applicable state or federal law to Hospital to appeal the denial or underpayment and to seek all legal remedies on behalf of the Patient in any forum against any entity. Some common reasons an insurance company may deny payment are:
- The service is not covered
  - The hospital is not in the insurance company's network
  - Advance authorization from the insurance company was required and not obtained
  - The insurance company determines the service is not medically necessary
- By signing this form, You authorize us to submit a claim for payment to the Patient's insurance company or benefit plan for the services provided to the Patient. You authorize us to dispute any denials or underpayments to, or legally pursue legal remedies against, the Patient's insurance company or benefit plan. You authorize and direct the insurance company or benefit plan to make direct payments to us for such services, and to accept and adjudicate appeals from the Hospital on your behalf. You appoint Hospital as the Patient's personal representative to pursue all benefit rights. You also agree the Patient is financially responsible as allowed by law for any charges not paid by the insurer or benefit plan.



**Dignity Health.**  
St. Rose Dominican  
Siena Campus

CONDITIONS OF ADMISSION AND TREATMENT



DH-COA-E-521 (04/15)

COA

PATIENT IDENTIFICATION

Badoi, Alina

\* Auth (Verified) \*

### CONDITIONS OF ADMISSION

(For Use for Inpatients Outpatients and Emergency Department Patients)

- b. **Uninsured Patients.** Patients without insurance must pay for services at full charges, unless other discounts apply. Uninsured patients may qualify for government programs or financial assistance. Financial assistance may include a discount from the Hospital's full charges, free care, interest free payment plans or other assistance. Patients asking for government or financial assistance must complete an application (see Paragraph 9).
- c. **Additional Terms.** (i) We may disclose your information to other agencies or firms as needed, for the sole purpose of getting a standard credit report on the undersigned. That credit report may include investigations of personal credit history, employment and other financial situations. (ii) All past due accounts will be charged interest at the legal rate. If we send the Patient's account to a collection agency or an attorney, the Patient agrees to pay the Hospital's reasonable attorneys' fees, costs and collection expenses. (iii) If a person other than You (or the Patient's estate) agrees to pay for the services provided to the Patient during this stay, that person must sign the Financial Responsibility Agreement below.
- d. **Title to Property Used in Services.** Title to all tangible items delivered to or used in providing services ("medical supplies", which excludes durable medical equipment) to Medicare patients will pass to the Patient on the first date the medical supplies are used in treating the Patient. Any warranty for that property is limited to the manufacturer's warranty, if any. Patient consents to the Hospital's disposal of any medical waste as required by law.

#### 9. Financial Assistance

We can help uninsured patients enroll in government health care programs, such as Medi-Cal. If the Patient is uninsured and does not qualify for government programs, financial assistance may be available under Dignity Health's Patient Financial Assistance Policy. To get assistance under this policy, You must complete an application and give certain financial information. You will be given a brochure that explains our billing process and our financial assistance programs. You may ask to talk to financial counseling staff at any time.

#### 10. Third Party Liability

If We are treating the Patient for injuries caused by the actions of others, We may have the right to additional payments if the Patient recovers money from the person or entity that caused the injury. If allowed by law, We may make a claim against any award of money to the Patient. We may recover an amount equal to the difference between full charges and the amount the Patient or the Patient's insurance company paid for the Hospital services. You agree to provide us the name of any person that may have caused the Patient's injuries, the name of the person's insurance company, the name of the Patient's lawyer and any other information that may help us exercise our rights.

#### 11. Patient Certification: By signing this form, You certify that:

- You have read this form
- You have received a copy of the form
- You were given the opportunity to ask questions
- You understand what it means
- You are the Patient or the Patient's Legal Representative
- You have received the Hospital Billing Process brochure.
- You have received information informing You of your Patient Rights and Responsibilities.
- You have received information advising You of the Hospital's policy for implementation of defined Advance Directives



**Dignity Health.**  
St. Rose Dominican  
Siena Campus

CONDITIONS OF ADMISSION AND TREATMENT



DH-COA-E-521 (04/15)

COA

PATIENT IDENTIFICATION

Badoi, Alina



Page 3 of 4

Patient Name: [REDACTED]  
Date of Birth: [REDACTED]

\* Auth (Verified) \*

**CONDITIONS OF ADMISSION**  
(For Use for Inpatients Outpatients and Emergency Department Patients)

Signature: [Signature] Date: 1/31/2017 Time: 1446 A.M./P.M. (P.M.)  
[Patient or Patient's Legal Representative]

Name: ALINA BADOI Relationship to the Patient: Self  
[Print Name]

Witness Signature: [Signature]

**Financial Responsibility Agreement by Person Other than the Patient or Patient's Legal Representative:**  
I agree to accept financial responsibility for services given to the Patient. In particular, I accept the terms of the Financial Agreement, Assignment of Insurance Benefits, and Third Party Liability provisions as stated above.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_ A.M./P.M.  
[Financially Responsible Party]

Name: \_\_\_\_\_ Relationship to the Patient: \_\_\_\_\_  
[Print Name]

Witness Signature: \_\_\_\_\_

**For Hospital Use Only: Compliance with Advance Directive Policies**  
**Hospital representative must check one and sign:**

- ☐ The Patient is incapacitated or otherwise unable to communicate, the advance directive information has been provided to the patient's family or surrogate in accordance with Federal and State law.
- ☐ The Patient is unable to receive information regarding advance directives at this time and is not accompanied by a legal representative. A referral will be made to the Hospital Department responsible for follow-up.
- ☐ The Patient has been given written information about his/her right under state laws to make advance directives and written Hospital policies regarding the Hospital's implementation of such right.

**Also select from below:**

- ☐ The Patient has a written advance directive about health care decisions and:
  - ☐ A copy has been given to the Hospital.
  - ☐ A copy has not been given to the Hospital, but the Patient has been informed of Patient's responsibility to give a copy to the Hospital.
- OR**
- ☒ The Patient does not have a written advance directive about health care decisions and:
  - ☐ Wants information; a follow-up referral will be made.
  - ☒ Does not wish further information now.

Completed by: MLOGGINS Date: 1/31/2017 Time: \_\_\_\_\_



**CONDITIONS OF ADMISSION AND TREATMENT**



DH-COA-E-521 (04/15)

COA

PATIENT IDENTIFICATION

Badoi, Alina



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# **Exhibit I**

# **Exhibit I**

Patient Name: [REDACTED]  
Date of Birth: [REDACTED]

MRN: [REDACTED]  
FIN: [REDACTED]

\* Auth (Verified) \*

Patient's Name: Alina Badoi Hospital Name: Siena

1. **Procedure to be Performed.** Your physician(s) has recommended the procedure(s) listed below, which we will refer to as "your procedure" or "the procedure":

Vaginal Delivery With or Without Episiotomy  
With Repair

2. **Procedure Physician.** Dr. Herpelsheimer is the physician who will perform your procedure. The procedure physician is an independent practitioner and is not an employee, representative or agent of the Hospital. During your procedure, if your procedure physician believes that other procedures are needed for your health or safety, those other procedures will be performed at his or her direction. If your procedure physician cannot perform or complete the procedure, a trained substitute physician will do so.
3. **Procedure Assistants.** Your procedure physician may elect to be assisted by other physicians, registered nurses, radiological technologists or physician assistants. Such procedure assistants are all professionally trained and perform under the supervision of the procedure physician and within the scope of their licenses and medical staff privileges. In some cases, resident physicians may assist in your procedure, under the guidance of your primary procedure physician. Resident physicians are physicians who are in the Hospital's accredited teaching program or an approved external program.
4. **Your Right to Information; Right to Refuse.** Your procedure has some risks including the risk of unsuccessful results, complications, injury or even death, from both known and unforeseen causes. No promise or guarantee is made about the result or cure. You have the right to be told about:
- the nature of the procedure;
  - the expected benefits and risks of the procedure, including potential problems that might occur during recuperation;
  - the likelihood of achieving your treatment goals;
  - reasonable alternatives to the procedure and their benefits and risks, including what might happen if you do not receive the procedure;
  - any research or financial interests your physicians may have related to your procedure.

Except in an emergency, your procedure will not be performed until you have received this information and have given your consent to have the procedure. You may refuse to have the proposed procedure at any time before the procedure begins.

5. **Anesthesia.** The following type(s) of anesthesia are scheduled for your procedure (check all that apply and complete "Other" if required): ☒ General; ☒ Regional; ☒ Sedation Monitored Anesthesia Care; ☒ Local; ☒ Other Epidural/Spinal.

An Anesthesia Provider is a physician (such as an anesthesiologist) or a specially trained nurse called a Certified Registered Nurse Anesthetist (CRNA). An Anesthesia Provider will discuss the anesthesia plan with you prior to your procedure. The anesthesia plan may change in order to respond to events that happen during the procedure. In most cases, the anesthesia will be administered by an Anesthesia Provider. For certain forms of sedation, a registered nurse may administer the anesthesia under the supervision of the procedure physician, other physicians or the CRNA. Anesthesiologists and CRNA's are independent practitioners and are not employees or agents of the Hospital.

6. **Staff and Facilities.** Other physicians, such as pathologists and radiologists, may be involved with the performance of some part of your procedure. Most physicians on our medical staff are independent practitioners and are not employees or agents of the Hospital or the primary procedure physician. The Hospital is responsible for providing the facilities, equipment, supplies and staff to help your procedure physician and the other physicians carry out the procedure.
7. **Medical Device Representatives.** Your procedure physician may have requested that representatives from a medical device company be present to assist with the medical devices or equipment used during your procedure. The representatives' names will be documented in your medical record. These representatives are not physicians or nurses or agents or representatives of the Hospital. You have the right to refuse to have them present. Please discuss any questions about their presence with your physicians. By signing this form, you agree that they may be present in the room during your procedure.



CONSENT FOR PROCEDURE



X1105 (10/13)

CONSENT

Page 1 of 2  
Green - Chart Yellow - Patient

PATIENT IDENTIFICATION

Pt#:	<span style="background-color: black; color: black;">[REDACTED]</span>	MR#:	<span style="background-color: black; color: black;">[REDACTED]</span>
BADOI, ALINA			
F 41 05/15/17			



\* Auth (Verified) \*

8. **Other Observers.** Other persons who will not take part in your procedure may be present in the room, or may be observing your procedure by audio or video communication, as part of their education or training or in connection with medical staff oversight. These observers may include resident physicians, medical staff members, students or trainees enrolled in a health professional training program affiliated with the hospital.
9. **Blood Transfusions.** Your physician will tell you if you might need a blood transfusion as a result of your procedure. You have the right to have adequate time before your procedure to arrange for pre-donation. You can give up this right if you do not wish to wait. Blood transfusions have certain risks. For example, blood can carry disease, such as hepatitis or Human Immunodeficiency Virus (HIV). You have the right to refuse any transfusion. You should discuss any questions that you may have about transfusions with your physician.
10. **Disposal of Tissues.** By signing this consent form, you give permission for the pathologist to decide how to dispose of any body part, organ or other tissue removed from you during your procedure. If you want to place special conditions on the use or disposal of your tissues, you may do so below:
11. **Acknowledgment and Signature.** By signing this form, you are indicating that:
- You have read and understand the information in this form;
  - Your physician has discussed with you the procedure and explained its risks and benefits and any foreseeable problems;
  - Your physician has discussed alternative methods of treatment available, their risks and benefits, and what would happen if you did not have the procedure;
  - You had a chance to ask your physician any questions about the procedure;
  - You authorize and consent to the performance of the procedure and the anesthesia.

Name: ALINA BADOI  
(Print Name)

Signature: [Signature] Date: 5/15/17 Time: 1545AM/PM  
(Patient/Parent/Legally Authorized Representative)

If signed by other than patient, indicate name, relationship, and reason for signing for patient: \_\_\_\_\_

Witness: A. Willets RN Name: Analisa Willets  
(Signature) (Print Name)

**PHYSICIAN CERTIFICATION**

I, the undersigned physician, hereby certify that I have discussed the operation or procedure described in this consent form with this patient (or the patient's legal representative), including:

- The risks and benefits of the procedure;
- Any adverse reactions that may reasonably be expected to occur;
- Any alternative efficacious methods of treatment which may be medically viable;
- The anticipated results of not having the procedure;
- The potential problems that may occur during recuperation; and
- Any research or economic interest I may have regarding this treatment.

Date: 5/16/17  
Signature: [Signature]  
(Physician)

Time: 1300 A.M./P.M.  
Name: 9320  
(Print)



**CONSENT FOR PROCEDURE**



X1105 (10/13)

CONSENT

**PATIENT IDENTIFICATION**

Pt# [REDACTED] MR# [REDACTED]  
**BADOI, ALINA**  
[REDACTED] F 41 05/15/17



Page 2 of 2

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# **Exhibit J**

# **Exhibit J**

Patient Name: [REDACTED]  
Date of Birth: [REDACTED]

\* Auth (Verified) \*

Patient's Name: Badoi, Alina

Hospital Name: St. Rose Siena Campus

1. **Procedure to be Performed.** Your physician(s) has recommended the procedure(s) listed below, which we will refer to as "your procedure" or "the procedure":

T9-11 Posterior Decompression for Hematoma ; Thoracic Nine to eleven  
W. Seiff

2. **Procedure Physician.** Dr. Michael Seiff is the physician who will perform your procedure. The procedure physician is an independent practitioner and is not an employee, representative or agent of the Hospital. During your procedure, if your procedure physician believes that other procedures are needed for your health or safety, those other procedures will be performed at his or her direction. If your procedure physician cannot perform or complete the procedure, a trained substitute physician will do so.

3. **Procedure Assistants.** Your procedure physician may elect to be assisted by other physicians, registered nurses, radiological technologists or physician assistants. Such procedure assistants are all professionally trained and perform under the supervision of the procedure physician and within the scope of their licenses and medical staff privileges. In some cases, resident physicians may assist in your procedure, under the guidance of your primary procedure physician. Resident physicians are physicians who are in the Hospital's accredited teaching program or an approved external program.

4. **Your Right to Information; Right to Refuse.** Your procedure has some risks including the risk of unsuccessful results, complications, injury or even death, from both known and unforeseen causes. No promise or guarantee is made about the result or cure. You have the right to be told about:

- the nature of the procedure;
- the expected benefits and risks of the procedure, including potential problems that might occur during recuperation;
- the likelihood of achieving your treatment goals;
- reasonable alternatives to the procedure and their benefits and risks, including what might happen if you do not receive the procedure;
- any research or financial interests your physicians may have related to your procedure.

Except in an emergency, your procedure will not be performed until you have received this information and have given your consent to have the procedure. You may refuse to have the proposed procedure at any time before the procedure begins.

5. **Anesthesia.** The following type(s) of anesthesia are scheduled for your procedure (check all that apply and complete "Other" if required): ☒ **General;** ☐ **Regional;** ☐ **Sedation Monitored Anesthesia Care;** ☐ **Local;**

Other

An Anesthesia Provider is a physician (such as an anesthesiologist) or a specially trained nurse called a Certified Registered Nurse Anesthetist (CRNA). An Anesthesia Provider will discuss the anesthesia plan with you prior to your procedure. The anesthesia plan may change in order to respond to events that happen during the procedure. In most cases, the anesthesia will be administered by an Anesthesia Provider. For certain forms of sedation, a registered nurse may administer the anesthesia under the supervision of the procedure physician, other physicians or the CRNA. Anesthesiologists and CRNA's are independent practitioners and are not employees or agents of the Hospital.

6. **Staff and Facilities.** Other physicians, such as pathologists and radiologists, may be involved with the performance of some part of your procedure. Most physicians on our medical staff are independent practitioners and are not employees or agents of the Hospital or the primary procedure physician. The Hospital is responsible for providing the facilities, equipment, supplies and staff to help your procedure physician and the other physicians carry out the procedure.

7. **Medical Device Representatives.** Your procedure physician may have requested that representatives from a medical device company be present to assist with the medical devices or equipment used during your procedure. The representatives' names will be documented in your medical record. These representatives are not physicians or nurses or agents or representatives of the Hospital. You have the right to refuse to have them present. Please discuss any questions about their presence with your physicians. By signing this form, you agree that they may be present in the room during your procedure.



**CONSENT FOR PROCEDURE**




X1105 (10/13)

CONSENT

**PATIENT IDENTIFICATION**

BADOL, ALINA	
DOB: <span style="background-color: black; color: black;">[REDACTED]</span>	Admit Dt: 05/15/2012
MR: <span style="background-color: black; color: black;">[REDACTED]</span>	Acct: <span style="background-color: black; color: black;">[REDACTED]</span>
MRN-ACCT: <span style="background-color: black; color: black;">[REDACTED]</span>	



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\* Auth (Verified) \*

8. **Other Observers.** Other persons who will not take part in your procedure may be present in the room, or may be observing your procedure by audio or video communication, as part of their education or training or in connection with medical staff oversight. These observers may include resident physicians, medical staff members, students or trainees enrolled in a health professional training program affiliated with the hospital.
9. **Blood Transfusions.** Your physician will tell you if you might need a blood transfusion as a result of your procedure. You have the right to have adequate time before your procedure to arrange for pre-donation. You can give up this right if you do not wish to wait. Blood transfusions have certain risks. For example, blood can carry disease, such as hepatitis or Human Immunodeficiency Virus (HIV). You have the right to refuse any transfusion. You should discuss any questions that you may have about transfusions with your physician.
10. **Disposal of Tissues.** By signing this consent form, you give permission for the pathologist to decide how to dispose of any body part, organ or other tissue removed from you during your procedure. If you want to place special conditions on the use or disposal of your tissues, you may do so below:
11. **Acknowledgment and Signature.** By signing this form, you are indicating that:
- You have read and understand the information in this form;
  - Your physician has discussed with you the procedure and explained its risks and benefits and any foreseeable problems;
  - Your physician has discussed alternative methods of treatment available, their risks and benefits, and what would happen if you did not have the procedure;
  - You had a chance to ask your physician any questions about the procedure;
  - You authorize and consent to the performance of the procedure and the anesthesia.

Name: Badoi, Alina  
(Print Name)

Signature: [Signature] Date: 06/01/2017 Time: 16.00 AM/PM  
(Patient/Parent/Legally Authorized Representative)

If signed by other than patient, indicate name, relationship, and reason for signing for patient: \_\_\_\_\_

Witness: [Signature] Name: Ric Bisnar, RN  
(Signature) (Print Name)

#### PHYSICIAN CERTIFICATION

I, the undersigned physician, hereby certify that I have discussed the operation or procedure described in this consent form with this patient (or the patient's legal representative), including:

- The risks and benefits of the procedure;
- Any adverse reactions that may reasonably be expected to occur;
- Any alternative efficacious methods of treatment which may be medically viable;
- The anticipated results of not having the procedure;
- The potential problems that may occur during recuperation; and
- Any research or economic interest I may have regarding this treatment.

Date: \_\_\_\_\_ Time: \_\_\_\_\_ A.M./P.M.

Signature: \_\_\_\_\_ Name: \_\_\_\_\_  
(Physician) (Print)



#### CONSENT FOR PROCEDURE



X1105 (10/13)

CONSENT

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#### PATIENT IDENTIFICATION

BADOL ALINA  
DOB: [REDACTED] Admit Dt: 05/15/2017  
MR: [REDACTED] Acct: [REDACTED]  
MRN-ACCT:



Patient Name: [REDACTED]  
Date of Birth: [REDACTED]

\* Auth (Verified) \*

Patient's Name: ALINA BADOL Hospital Name: Siena

1. **Procedure to be Performed.** Your physician(s) has recommended the procedure(s) listed below, which we will refer to as "your procedure" or "the procedure":

Thoraco Lumbar Laminectomy for Decompression  
Thoracic 8 through Lumbar 3 on the right

2. **Procedure Physician.** Dr. Veiff is the physician who will perform your procedure. The procedure physician is an independent practitioner and is not an employee, representative or agent of the Hospital. During your procedure, if your procedure physician believes that other procedures are needed for your health or safety, those other procedures will be performed at his or her direction. If your procedure physician cannot perform or complete the procedure, a trained substitute physician will do so.

3. **Procedure Assistants.** Your procedure physician may elect to be assisted by other physicians, registered nurses, radiological technologists or physician assistants. Such procedure assistants are all professionally trained and perform under the supervision of the procedure physician and within the scope of their licenses and medical staff privileges. In some cases, resident physicians may assist in your procedure, under the guidance of your primary procedure physician. Resident physicians are physicians who are in the Hospital's accredited teaching program or an approved external program.

4. **Your Right to Information; Right to Refuse.** Your procedure has some risks including the risk of unsuccessful results, complications, injury or even death, from both known and unforeseen causes. No promise or guarantee is made about the result or cure. You have the right to be told about:

- the nature of the procedure;
- the expected benefits and risks of the procedure, including potential problems that might occur during recuperation;
- the likelihood of achieving your treatment goals;
- reasonable alternatives to the procedure and their benefits and risks, including what might happen if you do not receive the procedure;
- any research or financial interests your physicians may have related to your procedure.

Except in an emergency, your procedure will not be performed until you have received this information and have given your consent to have the procedure. You may refuse to have the proposed procedure at any time before the procedure begins.

5. **Anesthesia.** The following type(s) of anesthesia are scheduled for your procedure (check all that apply and complete "Other" if required): ☒ **General;** ☐ **Regional;** ☐ **Sedation Monitored Anesthesia Care;** ☐ **Local;** ☐ **Other**

An Anesthesia Provider is a physician (such as an anesthesiologist) or a specially trained nurse called a Certified Registered Nurse Anesthetist (CRNA). An Anesthesia Provider will discuss the anesthesia plan with you prior to your procedure. The anesthesia plan may change in order to respond to events that happen during the procedure. In most cases, the anesthesia will be administered by an Anesthesia Provider. For certain forms of sedation, a registered nurse may administer the anesthesia under the supervision of the procedure physician, other physicians or the CRNA. Anesthesiologists and CRNA's are independent practitioners and are not employees or agents of the Hospital.

6. **Staff and Facilities.** Other physicians, such as pathologists and radiologists, may be involved with the performance of some part of your procedure. Most physicians on our medical staff are independent practitioners and are not employees or agents of the Hospital or the primary procedure physician. The Hospital is responsible for providing the facilities, equipment, supplies and staff to help your procedure physician and the other physicians carry out the procedure.

7. **Medical Device Representatives.** Your procedure physician may have requested that representatives from a medical device company be present to assist with the medical devices or equipment used during your procedure. The representatives' names will be documented in your medical record. These representatives are not physicians or nurses or agents or representatives of the Hospital. You have the right to refuse to have them present. Please discuss any questions about their presence with your physicians. By signing this form, you agree that they may be present in the room during your procedure.



**CONSENT FOR PROCEDURE**



X1105 (10/13)

CONSENT

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**PATIENT IDENTIFICATION**

BADOL, ALINA	
DOB: <span style="background-color: black; color: black;">[REDACTED]</span>	Admit Dt: 05/15/2017
MR: <span style="background-color: black; color: black;">[REDACTED]</span>	Acct: <span style="background-color: black; color: black;">[REDACTED]</span>
MRN-ACCT:	

Patient Name: [REDACTED]  
Date of Birth: [REDACTED]

\* Auth (Verified) \*

8. **Other Observers.** Other persons who will not take part in your procedure may be present in the room, or may be observing your procedure by audio or video communication, as part of their education or training or in connection with medical staff oversight. These observers may include resident physicians, medical staff members, students or trainees enrolled in a health professional training program affiliated with the hospital.
9. **Blood Transfusions.** Your physician will tell you if you might need a blood transfusion as a result of your procedure. You have the right to have adequate time before your procedure to arrange for pre-donation. You can give up this right if you do not wish to wait. Blood transfusions have certain risks. For example, blood can carry disease, such as hepatitis or Human Immunodeficiency Virus (HIV). You have the right to refuse any transfusion. You should discuss any questions that you may have about transfusions with your physician.
10. **Disposal of Tissues.** By signing this consent form, you give permission for the pathologist to decide how to dispose of any body part, organ or other tissue removed from you during your procedure. If you want to place special conditions on the use or disposal of your tissues, you may do so below:
11. **Acknowledgment and Signature.** By signing this form, you are indicating that:
- You have read and understand the information in this form;
  - Your physician has discussed with you the procedure and explained its risks and benefits and any foreseeable problems;
  - Your physician has discussed alternative methods of treatment available, their risks and benefits, and what would happen if you did not have the procedure;
  - You had a chance to ask your physician any questions about the procedure;
  - You authorize and consent to the performance of the procedure and the anesthesia.

Name: ALINA BADOL  
(Print Name)

Signature: X [Signature] Date: May 17, 2017 Time: 2:45 AM/PM  
(Patient/Parent/Legally Authorized Representative)

If signed by other than patient, indicate name, relationship, and reason for signing for patient: \_\_\_\_\_

Witness: [Signature] RN Name: ELVIRA ROBERSON  
(Signature) (Print Name)

#### PHYSICIAN CERTIFICATION

I, the undersigned physician, hereby certify that I have discussed the operation or procedure described in this consent form with this patient (or the patient's legal representative), including:

- The risks and benefits of the procedure;
- Any adverse reactions that may reasonably be expected to occur;
- Any alternative efficacious methods of treatment which may be medically viable;
- The anticipated results of not having the procedure;
- The potential problems that may occur during recuperation; and
- Any research or economic interest I may have regarding this treatment.

Date: \_\_\_\_\_

Time: \_\_\_\_\_ A.M./P.M.

Signature: \_\_\_\_\_  
(Physician)

Name: \_\_\_\_\_  
(Print)



#### CONSENT FOR PROCEDURE



X1105 (10/13)

CONSENT

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#### PATIENT IDENTIFICATION

BADOL, ALINA  
DOB: [REDACTED] Admit Dt: 05/15/2017  
MR: [REDACTED] Acct: [REDACTED]  
MRN-ACCT:



Patient Name: [REDACTED]  
Date of Birth: [REDACTED]

\* Auth (Verified) \*

Patient's Name: Badoi, Alina Hospital Name: Sierra campus

1. **Procedure to be Performed.** Your physician(s) has recommended the procedure(s) listed below, which we will refer to as "your procedure" or "the procedure":

Lumbar Drain Placement

2. **Procedure Physician.** Dr. Kenchada is the physician who will perform your procedure. The procedure physician is an independent practitioner and is not an employee, representative or agent of the Hospital. During your procedure, if your procedure physician believes that other procedures are needed for your health or safety, those other procedures will be performed at his or her direction. If your procedure physician cannot perform or complete the procedure, a trained substitute physician will do so.

3. **Procedure Assistants.** Your procedure physician may elect to be assisted by other physicians, registered nurses, radiological technologists or physician assistants. Such procedure assistants are all professionally trained and perform under the supervision of the procedure physician and within the scope of their licenses and medical staff privileges. In some cases, resident physicians may assist in your procedure, under the guidance of your primary procedure physician. Resident physicians are physicians who are in the Hospital's accredited teaching program or an approved external program.

4. **Your Right to Information; Right to Refuse.** Your procedure has some risks including the risk of unsuccessful results, complications, injury or even death, from both known and unforeseen causes. No promise or guarantee is made about the result or cure. You have the right to be told about:

- the nature of the procedure;
- the expected benefits and risks of the procedure, including potential problems that might occur during recuperation;
- the likelihood of achieving your treatment goals;
- reasonable alternatives to the procedure and their benefits and risks, including what might happen if you do not receive the procedure;
- any research or financial interests your physicians may have related to your procedure.

Except in an emergency, your procedure will not be performed until you have received this information and have given your consent to have the procedure. You may refuse to have the proposed procedure at any time before the procedure begins.

5. **Anesthesia.** The following type(s) of anesthesia are scheduled for your procedure (check all that apply and complete "Other" if required): ☐ General; ☐ Regional; ☐ Sedation Monitored Anesthesia Care; ☒ Local;

Other

An Anesthesia Provider is a physician (such as an anesthesiologist) or a specially trained nurse called a Certified Registered Nurse Anesthetist (CRNA). An Anesthesia Provider will discuss the anesthesia plan with you prior to your procedure. The anesthesia plan may change in order to respond to events that happen during the procedure. In most cases, the anesthesia will be administered by an Anesthesia Provider. For certain forms of sedation, a registered nurse may administer the anesthesia under the supervision of the procedure physician, other physicians or the CRNA. Anesthesiologists and CRNA's are independent practitioners and are not employees or agents of the Hospital.

6. **Staff and Facilities.** Other physicians, such as pathologists and radiologists, may be involved with the performance of some part of your procedure. Most physicians on our medical staff are independent practitioners and are not employees or agents of the Hospital or the primary procedure physician. The Hospital is responsible for providing the facilities, equipment, supplies and staff to help your procedure physician and the other physicians carry out the procedure.

7. **Medical Device Representatives.** Your procedure physician may have requested that representatives from a medical device company be present to assist with the medical devices or equipment used during your procedure. The representatives' names will be documented in your medical record. These representatives are not physicians or nurses or agents or representatives of the Hospital. You have the right to refuse to have them present. Please discuss any questions about their presence with your physicians. By signing this form, you agree that they may be present in the room during your procedure.



**CONSENT FOR PROCEDURE**



X1105 (10/13)

CONSENT

Page 1 of 2

Green - Chart Yellow - Patient

**PATIENT IDENTIFICATION**

BADOI, ALINA	
DOB: <span style="background-color: black; color: black;">[REDACTED]</span>	Admit Dt: 05/15/2017
MR: <span style="background-color: black; color: black;">[REDACTED]</span>	Acct: <span style="background-color: black; color: black;">[REDACTED]</span>
MRN-ACCT:	

Patient Name: [REDACTED]  
Date of Birth: [REDACTED]

\* Auth (Verified) \*

8. **Other Observers.** Other persons who will not take part in your procedure may be present in the room, or may be observing your procedure by audio or video communication, as part of their education or training or in connection with medical staff oversight. These observers may include resident physicians, medical staff members, students or trainees enrolled in a health professional training program affiliated with the hospital.
9. **Blood Transfusions.** Your physician will tell you if you might need a blood transfusion as a result of your procedure. You have the right to have adequate time before your procedure to arrange for pre-donation. You can give up this right if you do not wish to wait. Blood transfusions have certain risks. For example, blood can carry disease, such as hepatitis or Human Immunodeficiency Virus (HIV). You have the right to refuse any transfusion. You should discuss any questions that you may have about transfusions with your physician.
10. **Disposal of Tissues.** By signing this consent form, you give permission for the pathologist to decide how to dispose of any body part, organ or other tissue removed from you during your procedure. If you want to place special conditions on the use or disposal of your tissues, you may do so below:
11. **Acknowledgment and Signature.** By signing this form, you are indicating that:
- You have read and understand the information in this form;
  - Your physician has discussed with you the procedure and explained its risks and benefits and any foreseeable problems;
  - Your physician has discussed alternative methods of treatment available, their risks and benefits, and what would happen if you did not have the procedure;
  - You had a chance to ask your physician any questions about the procedure;
  - You authorize and consent to the performance of the procedure and the anesthesia.

Name: + VIORICA HABARA - Sister  
(Print Name)

Signature: + [Signature] Date: 05/23/17 Time: 1135 AM/PM  
(Patient/Parent/Legally Authorized Representative)

If signed by other than patient, indicate name, relationship, and reason for signing for patient: \_\_\_\_\_

Witness: [Signature] Name: JESSY PAUL  
(Signature) (Print Name)

#### PHYSICIAN CERTIFICATION

I, the undersigned physician, hereby certify that I have discussed the operation or procedure described in this consent form with this patient (or the patient's legal representative), including:

- The risks and benefits of the procedure;
- Any adverse reactions that may reasonably be expected to occur;
- Any alternative efficacious methods of treatment which may be medically viable;
- The anticipated results of not having the procedure;
- The potential problems that may occur during recuperation; and
- Any research or economic interest I may have regarding this treatment.

Date: 5/23/17  
Signature: [Signature]  
(Physician)

Time: 330 A.M./P.M.  
Name: Kondach  
(Print)



**Dignity Health.**  
St. Rose Dominican

#### CONSENT FOR PROCEDURE



X1105 (10/13)

CONSENT

Page 2 of 2  
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#### PATIENT IDENTIFICATION

BADOL, ALINA  
DOB: [REDACTED] Admit Dt: 05/15/2017  
MR: [REDACTED] Acct: [REDACTED]  
MRN-ACCT:





Patient Name: [REDACTED]  
Date of Birth: [REDACTED]

\* Auth (Verified) \*

Patient's Name: Badol, Alina

Hospital Name: Siena

1. **Procedure to be Performed.** Your physician(s) has recommended the procedure(s) listed below, which we will refer to as "your procedure" or "the procedure":

Peripheral Inserted Central Catheter

2. **Procedure Physician.** Dr. \_\_\_\_\_ is the physician who will perform your procedure. The procedure physician is an independent practitioner and is not an employee, representative or agent of the Hospital. During your procedure, if your procedure physician believes that other procedures are needed for your health or safety, those other procedures will be performed at his or her direction. If your procedure physician cannot perform or complete the procedure, a trained substitute physician will do so.
3. **Procedure Assistants.** Your procedure physician may elect to be assisted by other physicians, registered nurses, radiological technologists or physician assistants. Such procedure assistants are all professionally trained and perform under the supervision of the procedure physician and within the scope of their licenses and medical staff privileges. In some cases, resident physicians may assist in your procedure, under the guidance of your primary procedure physician. Resident physicians are physicians who are in the Hospital's accredited teaching program or an approved external program.
4. **Your Right to Information; Right to Refuse.** Your procedure has some risks including the risk of unsuccessful results, complications, injury or even death, from both known and unforeseen causes. No promise or guarantee is made about the result or cure. You have the right to be told about:
- the nature of the procedure;
  - the expected benefits and risks of the procedure, including potential problems that might occur during recuperation;
  - the likelihood of achieving your treatment goals;
  - reasonable alternatives to the procedure and their benefits and risks, including what might happen if you do not receive the procedure;
  - any research or financial interests your physicians may have related to your procedure.

Except in an emergency, your procedure will not be performed until you have received this information and have given your consent to have the procedure. You may refuse to have the proposed procedure at any time before the procedure begins.

5. **Anesthesia.** The following type(s) of anesthesia are scheduled for your procedure (check all that apply and complete "Other" if required): ☐ **General**; ☐ **Regional**; ☐ **Sedation Monitored Anesthesia Care**; ☐ **Local**;  
☐ **Other**

An Anesthesia Provider is a physician (such as an anesthesiologist) or a specially trained nurse called a Certified Registered Nurse Anesthetist (CRNA). An Anesthesia Provider will discuss the anesthesia plan with you prior to your procedure. The anesthesia plan may change in order to respond to events that happen during the procedure. In most cases, the anesthesia will be administered by an Anesthesia Provider. For certain forms of sedation, a registered nurse may administer the anesthesia under the supervision of the procedure physician, other physicians or the CRNA. Anesthesiologists and CRNA's are independent practitioners and are not employees or agents of the Hospital.

6. **Staff and Facilities.** Other physicians, such as pathologists and radiologists, may be involved with the performance of some part of your procedure. Most physicians on our medical staff are independent practitioners and are not employees or agents of the Hospital or the primary procedure physician. The Hospital is responsible for providing the facilities, equipment, supplies and staff to help your procedure physician and the other physicians carry out the procedure.
7. **Medical Device Representatives.** Your procedure physician may have requested that representatives from a medical device company be present to assist with the medical devices or equipment used during your procedure. The representatives' names will be documented in your medical record. These representatives are not physicians or nurses or agents or representatives of the Hospital. You have the right to refuse to have them present. Please discuss any questions about their presence with your physicians. By signing this form, you agree that they may be present in the room during your procedure.



CONSENT FOR PROCEDURE



X1105 (10/13)

CONSENT

PATIENT IDENTIFICATION

BADOL, ALINA  
DOB: [REDACTED] Admit Dt: 05/15/2017  
MR: [REDACTED] Acct: [REDACTED]  
MRN-ACCT:



Page 1 of 2

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Patient Name: [REDACTED]  
Date of Birth: [REDACTED]

\* Auth (Verified) \*

8. **Other Observers.** Other persons who will not take part in your procedure may be present in the room, or may be observing your procedure by audio or video communication, as part of their education or training or in connection with medical staff oversight. These observers may include resident physicians, medical staff members, students or trainees enrolled in a health professional training program affiliated with the hospital.
9. **Blood Transfusions.** Your physician will tell you if you might need a blood transfusion as a result of your procedure. You have the right to have adequate time before your procedure to arrange for pre-donation. You can give up this right if you do not wish to wait. Blood transfusions have certain risks. For example, blood can carry disease, such as hepatitis or Human Immunodeficiency Virus (HIV). You have the right to refuse any transfusion. You should discuss any questions that you may have about transfusions with your physician.
10. **Disposal of Tissues.** By signing this consent form, you give permission for the pathologist to decide how to dispose of any body part, organ or other tissue removed from you during your procedure. If you want to place special conditions on the use or disposal of your tissues, you may do so below:
11. **Acknowledgment and Signature.** By signing this form, you are indicating that:
- You have read and understand the information in this form;
  - Your physician has discussed with you the procedure and explained its risks and benefits and any foreseeable problems;
  - Your physician has discussed alternative methods of treatment available, their risks and benefits, and what would happen if you did not have the procedure;
  - You had a chance to ask your physician any questions about the procedure;
  - You authorize and consent to the performance of the procedure and the anesthesia.

Name: Alina Badol  
(Print Name)

Signature: [Signature] Date: 5/26/17 Time: 1430 AM/PM  
(Patient/Parent/Legally Authorized Representative)

If signed by other than patient, indicate name, relationship, and reason for signing for patient: \_\_\_\_\_

Witness: [Signature] Name: Cortney Cole RN  
(Signature) (Print Name)

#### PHYSICIAN CERTIFICATION

I, the undersigned physician, hereby certify that I have discussed the operation or procedure described in this consent form with this patient (or the patient's legal representative), including:

- The risks and benefits of the procedure;
- Any adverse reactions that may reasonably be expected to occur;
- Any alternative efficacious methods of treatment which may be medically viable;
- The anticipated results of not having the procedure;
- The potential problems that may occur during recuperation; and
- Any research or economic interest I may have regarding this treatment.

Date: \_\_\_\_\_ Time: \_\_\_\_\_ A.M./P.M.

Signature: \_\_\_\_\_ Name: \_\_\_\_\_  
(Physician) (Print)



#### CONSENT FOR PROCEDURE



X1105 (10/13)

CONSENT

Page 2 of 2  
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#### PATIENT IDENTIFICATION

DOB: [REDACTED] Admit Dt: 05/15/2017  
MR: [REDACTED] Acct: [REDACTED]  
MRN-ACCT:



Patient's Name: Badoi, Alina Hospital Name: St. Rose Siena

1. **Procedure to be Performed.** Your physician(s) has recommended the procedure(s) listed below, which we will refer to as "your procedure" or "the procedure": Lumbar drain placement

2. **Procedure Physician.** Dr. Kanchada is the physician who will perform your procedure. The procedure physician is an independent practitioner and is not an employee, representative or agent of the Hospital. During your procedure, if your procedure physician believes that other procedures are needed for your health or safety, those other procedures will be performed at his or her direction. If your procedure physician cannot perform or complete the procedure, a trained substitute physician will do so.

3. **Procedure Assistants.** Your procedure physician may elect to be assisted by other physicians, registered nurses, radiological technologists or physician assistants. Such procedure assistants are all professionally trained and perform under the supervision of the procedure physician and within the scope of their licenses and medical staff privileges. In some cases, resident physicians may assist in your procedure, under the guidance of your primary procedure physician. Resident physicians are physicians who are in the Hospital's accredited teaching program or an approved external program.

4. **Your Right to Information; Right to Refuse.** Your procedure has some risks including the risk of unsuccessful results, complications, injury or even death, from both known and unforeseen causes. No promise or guarantee is made about the result or cure. You have the right to be told about:

- the nature of the procedure;
- the expected benefits and risks of the procedure, including potential problems that might occur during recuperation;
- the likelihood of achieving your treatment goals;
- reasonable alternatives to the procedure and their benefits and risks, including what might happen if you do not receive the procedure;
- any research or financial interests your physicians may have related to your procedure.

Except in an emergency, your procedure will not be performed until you have received this information and have given your consent to have the procedure. You may refuse to have the proposed procedure at any time before the procedure begins.

5. **Anesthesia.** The following type(s) of anesthesia are scheduled for your procedure (check all that apply and complete "Other" if required): General; Regional; Sedation Monitored Anesthesia Care; Local;

Other dentamyl

An Anesthesia Provider is a physician (such as an anesthesiologist) or a specially trained nurse called a Certified Registered Nurse Anesthetist (CRNA). An Anesthesia Provider will discuss the anesthesia plan with you prior to your procedure. The anesthesia plan may change in order to respond to events that happen during the procedure. In most cases, the anesthesia will be administered by an Anesthesia Provider. For certain forms of sedation, a registered nurse may administer the anesthesia under the supervision of the procedure physician, other physicians or the CRNA. Anesthesiologists and CRNA's are independent practitioners and are not employees or agents of the Hospital.

6. **Staff and Facilities.** Other physicians, such as pathologists and radiologists, may be involved with the performance of some part of your procedure. Most physicians on our medical staff are independent practitioners and are not employees or agents of the Hospital or the primary procedure physician. The Hospital is responsible for providing the facilities, equipment, supplies and staff to help your procedure physician and the other physicians carry out the procedure.
7. **Medical Device Representatives.** Your procedure physician may have requested that representatives from a medical device company be present to assist with the medical devices or equipment used during your procedure. The representatives' names will be documented in your medical record. These representatives are not physicians or nurses or agents or representatives of the Hospital. You have the right to refuse to have them present. Please discuss any questions about their presence with your physicians. By signing this form, you agree that they may be present in the room during your procedure.



CONSENT FOR PROCEDURE



X1105 (10/13)

CONSENT

PATIENT IDENTIFICATION

NAME: BADOI, ALINA Admit Dt: 05/15/2017  
DOB: [REDACTED] Acct: [REDACTED]  
MR: [REDACTED]  
MRN-ACCT: [REDACTED]

Patient Name: [REDACTED]  
Date of Birth: [REDACTED]

\* Auth (Verified) \*

8. **Other Observers.** Other persons who will not take part in your procedure may be present in the room, or may be observing your procedure by audio or video communication, as part of their education or training or in connection with medical staff oversight. These observers may include resident physicians, medical staff members, students or trainees enrolled in a health professional training program affiliated with the hospital.
9. **Blood Transfusions.** Your physician will tell you if you might need a blood transfusion as a result of your procedure. You have the right to have adequate time before your procedure to arrange for pre-donation. You can give up this right if you do not wish to wait. Blood transfusions have certain risks. For example, blood can carry disease, such as hepatitis or Human Immunodeficiency Virus (HIV). You have the right to refuse any transfusion. You should discuss any questions that you may have about transfusions with your physician.
10. **Disposal of Tissues.** By signing this consent form, you give permission for the pathologist to decide how to dispose of any body part, organ or other tissue removed from you during your procedure. If you want to place special conditions on the use or disposal of your tissues, you may do so below:
11. **Acknowledgment and Signature.** By signing this form, you are indicating that:
- You have read and understand the information in this form;
  - Your physician has discussed with you the procedure and explained its risks and benefits and any foreseeable problems;
  - Your physician has discussed alternative methods of treatment available, their risks and benefits, and what would happen if you did not have the procedure;
  - You had a chance to ask your physician any questions about the procedure;
  - You authorize and consent to the performance of the procedure and the anesthesia.

Name: Alina Badoi  
(Print Name)

Signature: [Signature] Date: 5-25-17 Time: 11:22 AM/PM  
(Patient/Parent/Legally Authorized Representative)

If signed by other than patient, indicate name, relationship, and reason for signing for patient: \_\_\_\_\_

Witness: [Signature] Name: Gerry Mathew  
(Signature) (Print Name)

#### PHYSICIAN CERTIFICATION

I, the undersigned physician, hereby certify that I have discussed the operation or procedure described in this consent form with this patient (or the patient's legal representative), including:

- The risks and benefits of the procedure;
- Any adverse reactions that may reasonably be expected to occur;
- Any alternative efficacious methods of treatment which may be medically viable;
- The anticipated results of not having the procedure;
- The potential problems that may occur during recuperation; and
- Any research or economic interest I may have regarding this treatment.

Date: 5/25/17  
Signature: [Signature]  
(Physician)

Time: 4:30 A.M./P.M.  
Name: Kehndak  
(Print)



**Dignity Health.**  
St. Rose Dominican

#### CONSENT FOR PROCEDURE



X1105 (10/13)

CONSENT

Page 2 of 2

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#### PATIENT IDENTIFICATION

BADOI, ALINA	
DOB: [REDACTED]	Admit Dt: 05/15/2017
MR: [REDACTED]	Acct: [REDACTED]
MRN-ACCT:	

Patient Name: [REDACTED]  
Date of Birth: [REDACTED]

\* Auth (Verified) \*

Patient's Name: \_\_\_\_\_ Hospital Name: \_\_\_\_\_

1. **Procedure to be Performed.** Your physician(s) has recommended the procedure(s) listed below, which we will refer to as "your procedure" or "the procedure":

Ventriculostomy

2. **Procedure Physician.** Dr. Forage is the physician who will perform your procedure. The procedure physician is an independent practitioner and is not an employee, representative or agent of the Hospital. During your procedure, if your procedure physician believes that other procedures are needed for your health or safety, those other procedures will be performed at his or her direction. If your procedure physician cannot perform or complete the procedure, a trained substitute physician will do so.

3. **Procedure Assistants.** Your procedure physician may elect to be assisted by other physicians, registered nurses, radiological technologists or physician assistants. Such procedure assistants are all professionally trained and perform under the supervision of the procedure physician and within the scope of their licenses and medical staff privileges. In some cases, resident physicians may assist in your procedure, under the guidance of your primary procedure physician. Resident physicians are physicians who are in the Hospital's accredited teaching program or an approved external program.

4. **Your Right to Information; Right to Refuse.** Your procedure has some risks including the risk of unsuccessful results, complications, injury or even death, from both known and unforeseen causes. No promise or guarantee is made about the result or cure. You have the right to be told about:

- the nature of the procedure;
- the expected benefits and risks of the procedure, including potential problems that might occur during recuperation;
- the likelihood of achieving your treatment goals;
- reasonable alternatives to the procedure and their benefits and risks, including what might happen if you do not receive the procedure;
- any research or financial interests your physicians may have related to your procedure.

Except in an emergency, your procedure will not be performed until you have received this information and have given your consent to have the procedure. You may refuse to have the proposed procedure at any time before the procedure begins.

5. **Anesthesia.** The following type(s) of anesthesia are scheduled for your procedure (check all that apply and complete "Other" if required): ☐ General; ☐ Regional; ☐ Sedation Monitored Anesthesia Care; ☐ Local; ☐ Other

An Anesthesia Provider is a physician (such as an anesthesiologist) or a specially trained nurse called a Certified Registered Nurse Anesthetist (CRNA). An Anesthesia Provider will discuss the anesthesia plan with you prior to your procedure. The anesthesia plan may change in order to respond to events that happen during the procedure. In most cases, the anesthesia will be administered by an Anesthesia Provider. For certain forms of sedation, a registered nurse may administer the anesthesia under the supervision of the procedure physician, other physicians or the CRNA. Anesthesiologists and CRNA's are independent practitioners and are not employees or agents of the Hospital.

6. **Staff and Facilities.** Other physicians, such as pathologists and radiologists, may be involved with the performance of some part of your procedure. Most physicians on our medical staff are independent practitioners and are not employees or agents of the Hospital or the primary procedure physician. The Hospital is responsible for providing the facilities, equipment, supplies and staff to help your procedure physician and the other physicians carry out the procedure.

7. **Medical Device Representatives.** Your procedure physician may have requested that representatives from a medical device company be present to assist with the medical devices or equipment used during your procedure. The representatives' names will be documented in your medical record. These representatives are not physicians or nurses or agents or representatives of the Hospital. You have the right to refuse to have them present. Please discuss any questions about their presence with your physicians. By signing this form, you agree that they may be present in the room during your procedure.



CONSENT FOR PROCEDURE



X1105 (10/13)

CONSENT

Page 1 of 2

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PATIENT IDENTIFICATION

BADOI, ALINA  
DOB: [REDACTED] Admit Dt: 05/15/2017  
MR: [REDACTED] Acct: [REDACTED]  
MRN-ACCT:





Patient Name: [REDACTED]  
Date of Birth: [REDACTED]

\* Auth (Verified) \*

8. **Other Observers.** Other persons who will not take part in your procedure may be present in the room, or may be observing your procedure by audio or video communication, as part of their education or training or in connection with medical staff oversight. These observers may include resident physicians, medical staff members, students or trainees enrolled in a health professional training program affiliated with the hospital.
9. **Blood Transfusions.** Your physician will tell you if you might need a blood transfusion as a result of your procedure. You have the right to have adequate time before your procedure to arrange for pre-donation. You can give up this right if you do not wish to wait. Blood transfusions have certain risks. For example, blood can carry disease, such as hepatitis or Human Immunodeficiency Virus (HIV). You have the right to refuse any transfusion. You should discuss any questions that you may have about transfusions with your physician.
10. **Disposal of Tissues.** By signing this consent form, you give permission for the pathologist to decide how to dispose of any body part, organ or other tissue removed from you during your procedure. If you want to place special conditions on the use or disposal of your tissues, you may do so below:
11. **Acknowledgment and Signature.** By signing this form, you are indicating that:
- You have read and understand the information in this form;
  - Your physician has discussed with you the procedure and explained its risks and benefits and any foreseeable problems;
  - Your physician has discussed alternative methods of treatment available, their risks and benefits, and what would happen if you did not have the procedure;
  - You had a chance to ask your physician any questions about the procedure;
  - You authorize and consent to the performance of the procedure and the anesthesia.

Name: Miorica HABARA  
(Print Name)

Signature: [Signature] Date: 5/24/2017 Time: 3 AM/PM  
(Patient/Parent/Legally Authorized Representative)

If signed by other than patient, indicate name, relationship, and reason for signing for patient: \_\_\_\_\_

Witness: [Signature] Name: Debbie Jarwick  
(Signature) (Print Name)

#### PHYSICIAN CERTIFICATION

I, the undersigned physician, hereby certify that I have discussed the operation or procedure described in this consent form with this patient (or the patient's legal representative), including:

- The risks and benefits of the procedure;
- Any adverse reactions that may reasonably be expected to occur;
- Any alternative efficacious methods of treatment which may be medically viable;
- The anticipated results of not having the procedure;
- The potential problems that may occur during recuperation; and
- Any research or economic interest I may have regarding this treatment.

Date: \_\_\_\_\_

Time: \_\_\_\_\_ A.M./P.M.

Signature: \_\_\_\_\_  
(Physician)

Name: \_\_\_\_\_  
(Print)



#### CONSENT FOR PROCEDURE

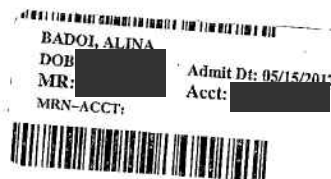


X1105 (10/13)

CONSENT

Page 2 of 2  
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#### PATIENT IDENTIFICATION



Patient Name: [REDACTED]  
Date of Birth: [REDACTED]

M [REDACTED]  
F [REDACTED]

\* Auth (Verified) \*

Patient's Name: Alina Badoi Hospital Name: Sienna

1. **Procedure to be Performed.** Your physician(s) has recommended the procedure(s) listed below, which we will refer to as "your procedure" or "the procedure":

Computer Tomography of Head

2. **Procedure Physician.** Dr. Dicamillo is the physician who will perform your procedure. The procedure physician is an independent practitioner and is not an employee, representative or agent of the Hospital. During your procedure, if your procedure physician believes that other procedures are needed for your health or safety, those other procedures will be performed at his or her direction. If your procedure physician cannot perform or complete the procedure, a trained substitute physician will do so.

3. **Procedure Assistants.** Your procedure physician may elect to be assisted by other physicians, registered nurses, radiological technologists or physician assistants. Such procedure assistants are all professionally trained and perform under the supervision of the procedure physician and within the scope of their licenses and medical staff privileges. In some cases, resident physicians may assist in your procedure, under the guidance of your primary procedure physician. Resident physicians are physicians who are in the Hospital's accredited teaching program or an approved external program.

4. **Your Right to Information; Right to Refuse.** Your procedure has some risks including the risk of unsuccessful results, complications, injury or even death, from both known and unforeseen causes. No promise or guarantee is made about the result or cure. You have the right to be told about:

- the nature of the procedure;
- the expected benefits and risks of the procedure, including potential problems that might occur during recuperation;
- the likelihood of achieving your treatment goals;
- reasonable alternatives to the procedure and their benefits and risks, including what might happen if you do not receive the procedure;
- any research or financial interests your physicians may have related to your procedure.

Except in an emergency, your procedure will not be performed until you have received this information and have given your consent to have the procedure. You may refuse to have the proposed procedure at any time before the procedure begins.

5. **Anesthesia.** The following type(s) of anesthesia are scheduled for your procedure (check all that apply and complete "Other" if required): ☐ General; ☐ Regional; ☐ Sedation Monitored Anesthesia Care; ☐ Local; ☐ Other

An Anesthesia Provider is a physician (such as an anesthesiologist) or a specially trained nurse called a Certified Registered Nurse Anesthetist (CRNA). An Anesthesia Provider will discuss the anesthesia plan with you prior to your procedure. The anesthesia plan may change in order to respond to events that happen during the procedure. In most cases, the anesthesia will be administered by an Anesthesia Provider. For certain forms of sedation, a registered nurse may administer the anesthesia under the supervision of the procedure physician, other physicians or the CRNA. Anesthesiologists and CRNA's are independent practitioners and are not employees or agents of the Hospital.

6. **Staff and Facilities.** Other physicians, such as pathologists and radiologists, may be involved with the performance of some part of your procedure. Most physicians on our medical staff are independent practitioners and are not employees or agents of the Hospital or the primary procedure physician. The Hospital is responsible for providing the facilities, equipment, supplies and staff to help your procedure physician and the other physicians carry out the procedure.

7. **Medical Device Representatives.** Your procedure physician may have requested that representatives from a medical device company be present to assist with the medical devices or equipment used during your procedure. The representatives' names will be documented in your medical record. These representatives are not physicians or nurses or agents or representatives of the Hospital. You have the right to refuse to have them present. Please discuss any questions about their presence with your physicians. By signing this form, you agree that they may be present in the room during your procedure.



CONSENT FOR PROCEDURE



X1105 (10/13)

CONSENT

PATIENT IDENTIFICATION

BADOI, ALINA	
DOB: <span style="background-color: black; color: black;">[REDACTED]</span>	Admit Dt: 05/15/2017
MR: <span style="background-color: black; color: black;">[REDACTED]</span>	Ext: <span style="background-color: black; color: black;">[REDACTED]</span>
MRN-ACCT: <span style="background-color: black; color: black;">[REDACTED]</span>	

Page 1 of 2

Green - Chart Yellow - Patient

Patient Name: [REDACTED]  
Date of Birth: [REDACTED]

\* Auth (Verified) \*

8. **Other Observers.** Other persons who will not take part in your procedure may be present in the room, or may be observing your procedure by audio or video communication, as part of their education or training or in connection with medical staff oversight. These observers may include resident physicians, medical staff members, students or trainees enrolled in a health professional training program affiliated with the hospital.
9. **Blood Transfusions.** Your physician will tell you if you might need a blood transfusion as a result of your procedure. You have the right to have adequate time before your procedure to arrange for pre-donation. You can give up this right if you do not wish to wait. Blood transfusions have certain risks. For example, blood can carry disease, such as hepatitis or Human Immunodeficiency Virus (HIV). You have the right to refuse any transfusion. You should discuss any questions that you may have about transfusions with your physician.
10. **Disposal of Tissues.** By signing this consent form, you give permission for the pathologist to decide how to dispose of any body part, organ or other tissue removed from you during your procedure. If you want to place special conditions on the use or disposal of your tissues, you may do so below:
11. **Acknowledgment and Signature.** By signing this form, you are indicating that:
- You have read and understand the information in this form;
  - Your physician has discussed with you the procedure and explained its risks and benefits and any foreseeable problems;
  - Your physician has discussed alternative methods of treatment available, their risks and benefits, and what would happen if you did not have the procedure;
  - You had a chance to ask your physician any questions about the procedure;
  - You authorize and consent to the performance of the procedure and the anesthesia.

Name: VIORICA TABARA  
(Print Name)

Signature: [Signature] Date: 5/20/2017 Time: \_\_\_\_\_ AM/PM  
(Patient/Parent/Legally Authorized Representative)

If signed by other than patient, indicate name, relationship, and reason for signing for patient: \_\_\_\_\_

Witness: [Signature] Name: Jamie LLOYD RN / E-CAP RN  
(Signature) (Print Name)

**PHYSICIAN CERTIFICATION**

I, the undersigned physician, hereby certify that I have discussed the operation or procedure described in this consent form with this patient (or the patient's legal representative), including:

- The risks and benefits of the procedure;
- Any adverse reactions that may reasonably be expected to occur;
- Any alternative efficacious methods of treatment which may be medically viable;
- The anticipated results of not having the procedure;
- The potential problems that may occur during recuperation; and
- Any research or economic interest I may have regarding this treatment.

Date: \_\_\_\_\_

Time: \_\_\_\_\_ A.M./P.M.

Signature: \_\_\_\_\_  
(Physician)

Name: \_\_\_\_\_  
(Print)



**Dignity Health**  
St. Rose Dominican

**CONSENT FOR PROCEDURE**



X1105 (10/13)

CONSENT

Page 2 of 2

Green - Chart Yellow - Patient

**PATIENT IDENTIFICATION**

BADOI, ALINA  
DOB: [REDACTED] Admit Dt: 05/15/2017  
MR: [REDACTED] Acct: [REDACTED]  
MRN-ACCT: [REDACTED]





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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;

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.: 9

**ORDER DENYING DEFENDANT  
DIGNITY HEALTH D/B/A ST. ROSE  
DOMINICAN HOSPITAL'S MOTION  
TO DISMISS, OR ALTERNATIVELY,  
MOTION TO STRIKE**

Defendant Dignity Health d/b/a St. Rose Dominican Hospital's Motion to Dismiss, or  
Alternatively, Motion to Strike, filed on August 23, 2022 (hereinafter the "Motion"), came before  
this Honorable Court for hearing in Chambers on October 4, 2022, *see* Minute Order on file  
herein. Pursuant to EDCR 2.23(c) and (d), this matter is being decided on the briefs and pleadings  
filed by the parties without oral argument because the Court is of the position that it does not

1 require oral argument to decide the Motion, which largely asserts arguments this Court has  
2 already addressed in granting Plaintiffs leave to amend the complaint. .

3       Upon the Court's consideration of the pleadings and papers on file herein, and good cause  
4 appearing therefore, the Court hereby finds as follows:

5       1.       Under NRCP 12(b)(5), a plaintiff's complaint should be dismissed only if it  
6 appears beyond a doubt that it could prove no set of facts, which, if true, would entitle it to relief.  
7 *Buzz Stew, LLC v. City of North Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008).

8       2.       The primary inquiry is whether "the challenged pleading sets forth allegations  
9 sufficient to make out the elements of a right to relief." *Breliant v. Preferred Equities Corp.*, 109  
10 Nev. 842, 846, 858 P.2d 1258, 1260 (1993) (internal citations omitted). To set forth the elements  
11 of a right to relief, the Complaint must "give fair notice of the nature and basis of a legally  
12 sufficient claim and the relief requested." *Id.*

13       3.       Plaintiffs' claims set forth in the Amended Complaint are not barred by the statute  
14 of limitations because they relate back to the original Complaint under NRCP 15(c)(1) as they  
15 arise out of the "same conduct, transaction or occurrence set out in the original pleading."

16       4.       The Amended Complaint does not change or add any parties. The Amended  
17 Complaint does not add any new causes of action nor have Plaintiffs changed their theory of  
18 liability in its entirety. Consistent with the original Complaint, the Amended Complaint still  
19 alleges St. Rose was negligent in its care and treatment of Alina Badoi, based on vicarious liability  
20 and/or ostensible agency, while Ms. Badoi was admitted to St. Rose, and Plaintiffs' source of  
21 damages remains the same.

22       5.       There is no basis for striking the declaration of Dr. Lanzkowsky.

23       6.       Pursuant to NRCP 12(f), the "court may strike from a pleading an insufficient  
24 defense or any redundant, immaterial, impertinent, or scandalous matter."  
25

1           7.       There is no legal authority for the proposition that an affidavit of merit must be  
2 attached to a motion for leave to amend. Instead, it is merely the filing of the amended complaint  
3 that must be supported by an affidavit of merit. *See* NRS 41A.071 and EDCR 2.30.

4           8.       Plaintiffs properly filed their Amended Complaint with the declaration of Dr.  
5 Lanzkowsky attached thereto, among others, after obtaining leave of court to do so. Dr.  
6 Lanzkowsky's declaration is not a rogue document.

7           9.       NRS 41A.071 is a "procedural rule of pleading" that courts "must liberally  
8 construe" in a manner consistent with NRCP 12. *Baxter v. Dignity Health*, 131 Nev. 759, 763-  
9 64, 357 P.3d 927, 930 (2015); *see also* *Zohar v. Zbiegien*, 130 Nev. 733, 334 P.3d 402, 406  
10 (2014). The purpose of a complaint is to "give fair notice of the nature and basis of a legally  
11 sufficient claim and the relief requested." *Zohar* at 738, 334 P.3d at 406 (citing *Breliant v.*  
12 *Preferred Equities Corp.*, 109 Nev. 842, 846, 858 P.2d 1258, 1260 (1993)). The purpose of the  
13 supporting expert affidavit is to better enable the trial court to assess whether the medical  
14 malpractice claims contained within the complaint have merit. *Id.* Reading complaints and  
15 affidavits together is to ensure only frivolous cases are dismissed and the notice-pleading standard  
16 is met. *Id.* at 738, 334 P.3d at 406, (citing *Borger*, 120 Nev. at 1028, 102 P.3d at 605 (recognizing  
17 that "NRS 41A.071 governs the threshold requirements for initial pleadings in medical  
18 malpractice cases, not the ultimate trial of such matters."))).

19  
20           10.       Pursuant to NRS 41A.071(2), a complaint for professional negligence must be  
21 accompanied by an affidavit of a medical expert "who practices or has practiced in an area that is  
22 substantially similar to the type of practice engaged in at the time of the alleged professional  
23 negligence." The law does not require that the affiant practice in the same area of medicine as the  
24 defendant. *See Borger v. Eighth Jud. Dist. Ct.*, 120 Nev. 1021, 1028, 102 P.3d 600, 605 (2004).

25           11.       In *Staccato v. Valley Hosp.*, 123 Nev. 526, 527, 170 P.3d 503, 504 (2007), the  
26 Nevada Supreme Court held, "the proper measure for evaluating whether a witness can testify as  
27

28

1 an expert is whether that witness possesses the skill, knowledge, or experience necessary to  
2 perform or render the medical procedure or treatment being challenged as negligent. . .”

3 12. Pursuant to NRS 41A.071(3), a medical malpractice action must be filed with a  
4 medical expert affidavit, which supports the allegations contained therein, and “identifies by  
5 name, or describes by conduct, each provider of health care who is alleged to be negligent.”

6 13. Dr. Lanzkowsky's declaration meets the requirements of NRS 41A.071.

7 14. As an obstetrician, Dr. Lanzkowsky practices in an area that is substantially similar  
8 to the type of practice engaged in by obstetric physicians and nurses treating obstetric patients,  
9 including during labor, delivery, and postpartum.

10 15. Dr. Lanzkowsky's declaration adequately addresses Plaintiffs' claims regarding  
11 the alleged breaches of the standard of care by St. Rose's nursing and medical staff and gives  
12 sufficient notice to St. Rose of the nature and basis of Plaintiff's claims against it. Additionally,  
13 Dr. Lanzkowsky's declaration identifies the relevant players by name and describes by conduct  
14 those alleged to have been negligent. Dr. Lanzkowsky's declaration also sets forth the specific  
15 acts of their negligence in simple, concise, and direct terms.

16  
17 IT IS HEREBY ORDERED, ADJUDGED AND DEGREED that the Motion is DENIED  
18 in its entirety.

19 IT IS SO ORDERED.

Dated this 14th day of November, 2022



CC9 4C2 05CC D1A8  
Maria Gall  
District Court Judge

1 Dated this 31st day of October, 2022.

2 CHRISTIANSEN TRIAL LAWYERS

3  
4 */s/ Keely P. Chippoletti*

5 \_\_\_\_\_  
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14 Tel: (702) 240-7979

15 *Attorneys for Plaintiffs*

Dated this 31st day of October, 2022.

JOHN H. COTTON & ASSOCIATES

*/s/ Adam Schneider*

\_\_\_\_\_  
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*Attorneys for Defendant Joon Young Kim,  
MD and U.S. Anesthesia Partners, Inc.*

Dated this 31st day of October, 2022.

HALL PRANGLE & SCHOONVELD

*/s/ Tyson Dobbs*

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

Nevada Bar No. 11953

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*Attorneys for Defendant Dignity Health  
d/b/a St. Rose Dominican Hospital – Siena*

**Subject:** RE: Badoi v. Dignity Health, et al  
**Date:** Thursday, October 27, 2022 at 12:48:59 PM Central Daylight Time  
**From:** Adam Schneider  
**To:** Tyson Dobbs, Keely Perdue  
**CC:** Todd Terry, Aileen Bencomo, Nicole M. Etienne  
**Attachments:** image001.jpg

I approve as well.

Adam Schneider, Esq.  
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**Sent:** Thursday, October 27, 2022 10:11 AM  
**To:** Keely Perdue <[keely@christiansenlaw.com](mailto:keely@christiansenlaw.com)>; Adam Schneider <[aschneider@jhcottonlaw.com](mailto:aschneider@jhcottonlaw.com)>  
**Cc:** Todd Terry <[tterry@christiansenlaw.com](mailto:tterry@christiansenlaw.com)>; Aileen Bencomo <[ab@christiansenlaw.com](mailto:ab@christiansenlaw.com)>; Nicole M. Etienne <[netienne@HPSLAW.COM](mailto:netienne@HPSLAW.COM)>  
**Subject:** RE: Badoi v. Dignity Health, et al

You can use my e-signature



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**From:** Keely Perdue <[keely@christiansenlaw.com](mailto:keely@christiansenlaw.com)>  
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**To:** Adam Schneider <[aschneider@jhcottonlaw.com](mailto:aschneider@jhcottonlaw.com)>; Tyson Dobbs <[tdobbs@HPSLAW.COM](mailto:tdobbs@HPSLAW.COM)>

**Cc:** Todd Terry <[tterry@christiansenlaw.com](mailto:tterry@christiansenlaw.com)>; Aileen Bencomo <[ab@christiansenlaw.com](mailto:ab@christiansenlaw.com)>; Nicole M. Etienne <[netienne@HPSLAW.COM](mailto:netienne@HPSLAW.COM)>  
**Subject:** Re: Badoi v. Dignity Health, et al

[External Email] CAUTION!.

Revised draft attached. I'm fine with both of your changes, but I made an additional revision on page 1-2 so the language tracks the minute order. Please advise if any additional changes are necessary, or if we can submit with your e-signature.

Thanks,

Keely P. Chippoletti, Esq.  
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1 **CSERV**

2  
3 **DISTRICT COURT**  
4 **CLARK COUNTY, NEVADA**

5  
6 Estate of Alina Badoi, Plaintiff(s) | CASE NO: A-18-775572-C  
7 vs. | DEPT. NO. Department 9  
8 Dignity Health, Defendant(s)  
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 11/14/2022

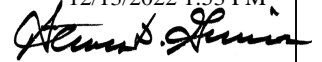
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CLERK OF THE COURT

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7 *Attorneys for Defendant*  
8 *Dignity Health, a Foreign Non-Profit Corporation*  
*d/b/a St. Rose Dominican Hospital – Siena Campus*

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11  
12 LIVIU RADU CHISIU, as Special  
Administrator for the ESTATE OF ALINA  
13 BADOI, Deceased; LIVIU RADU CHISIU,  
as Parent and Natural Guardian of SOPHIA  
14 RELINA CHISIU, a minor, as Heir of the  
ESTATE OF ALINA BADOI, Deceased  
15

16 Plaintiffs,

17 vs.

18 DIGNITY HEALTH, a Foreign Non-Profit  
Corporation d/b/a ST. ROSE DOMINICAN  
19 HOSPITAL – SIENA CAMPUS; JOON  
YOUNG KIM, M.D., an Individual;  
20 FIELDEN, HANSON, ISAACS, MIYADA,  
ROBISON, YEH, LTD. a Nevada  
21 Professional Corporation dba USAP-Nevada;  
DOES I through X, inclusive; and ROE  
22 BUSINESS ENTITIES XI through XX,  
inclusive,  
23  
24

25 Defendants.

CASE NO.: A-18-775572-C  
DEPT NO.: 9

**ORDER GRANTING DEFENDANT  
DIGNITY HEALTH d/b/a ST. ROSE  
DOMINICAN HOSPITAL'S MOTION  
FOR SUMMARY JUDGMENT**

26 Defendant Dignity Health d/b/a St. Rose Dominican Hospital – Siena Campus' Motion  
27 for Summary Judgment came before the Court on November 16, 2022. Plaintiffs appeared by  
28

1 and through their counsel, Keely P. Chippoletti, Esq. of Christiansen Trial Lawyers; Defendants  
2 Joon Young Kim, M.D. and FIELDEN, HANSON, ISAACS, MIYADA, ROBISON, YEH,  
3 LTD. dba USAP-Nevada, appeared by and through their attorney, Adam Schneider, Esq. of the  
4 law firm of John Cotton & Associates; and Defendant Dignity Health d/b/a St. Rose Dominican  
5 Hospital – Siena Campus appeared by and through its attorney, Tyson J. Dobbs, Esq. of the law  
6 firm HALL PRANGLE & SCHOONVELD, LLC.

7 The Court having reviewed the pleadings and papers on file by the parties and hearing  
8 the oral arguments relating thereto, and good cause appearing, hereby enters the Following  
9 Findings of Fact, Conclusions of Law, and Order:

10 **FINDINGS OF FACT**

11 1. Plaintiffs allege Dignity Health is vicariously liable for the alleged professional  
12 negligence of Arthur Herpolsheimer, M.D. and Amit Garg, M.D. via agency and/or ostensible  
13 agency.

14 2. Alina Badoi began treating with physicians at Women’s’ Health Associates of  
15 Southern Nevada (WHASN) for her prenatal treatment on or about September 14, 2016.

16 3. WHASN is a multi-physician practice with multiple care centers.

17 4. At the time of their treatment of Alina Badoi, both Dr. Herpolsheimer and Dr.  
18 Garg were partners at WHASN. Neither physician was an employee of Dignity Health d/b/a St.  
19 Rose Hospital – Siena Campus.

20 5. St. Rose Hospital – Siena Campus was one of several Las Vegas area hospitals at  
21 which each physician had privileges to treat patients.

22 6. Alina was a WHASN patient, and the plan was for a WHASN physician to  
23 deliver her baby. The physician covering call for WHASN at the time of delivery would be the  
24 physician to deliver the baby.

25 7. Ms. Badoi specifically treated with Dr. Herpolsheimer at WHASN for prenatal  
26 care on December 28, 2016.

27 8. Dr. Garg provided prenatal care to Ms. Badoi at WHASN on October 7, 2016,  
28 November 3, 2016, November 30, 2016, March 21, 2017, April 4, 2017, and April 18, 2017.

1           9.       Plaintiff Liviu Chisiu testified that Dr. Garg was one of the physicians that he  
2 recalled provided prenatal care to Ms. Badoi. Both he and Ms. Badoi went to appointments “at  
3 the gynecologist office.” Mr. Chisiu testified that there were “various doctors there” and he  
4 recalled seeing Dr. Garg and a female physician there.

5           10.      The note from Dr. Garg’s treatment of Ms. Badoi at WHASN on April 18, 2017,  
6 indicates the delivery would be scheduled at 39-40 weeks of gestation.

7           11.      At her next visit at WHASN it was confirmed by a Dr. Brill that “IOL”, i.e.,  
8 induction of labor, had been scheduled for the “next week.”

9           12.      On May 9, 2017, Ms. Badoi presented to St. Rose Hospital for her scheduled  
10 induction of labor with the physician scheduled by WHASN to perform deliveries on that date,  
11 Dr. Herpolsheimer.

12           13.      Dr. Garg ordered the admission and was identified on the records as the attending  
13 physician. His order indicated that Ms. Badoi was not to be a “full admit yet, but [that] she may  
14 possibly become a full admit shortly.”

15           14.      Ms. Badoi indicated that she “want[ed] to be induced at a later date” and she was  
16 discharged home by Dr. Herpolsheimer.

17           15.      In the discharge paperwork, Ms. Badoi was instructed to follow up with her  
18 “regular physician”, who was identified as Amit Garg, M.D. She was also instructed to follow  
19 up with Dr. Herpolsheimer at his WHASN address, and the High Risk Pregnancy Center.

20           16.      Ms. Badoi had been receiving treatment from the High Risk Pregnancy Center  
21 per a referral by Dr. Garg.

22           17.      Plaintiff Liviu Chisiu testified that he went with Ms. Badoi to “many  
23 appointments” at the High Risk Pregnancy Center.

24           18.      The day after discharge from St. Rose Hospital – Siena Campus on May 9, 2017,  
25 Ms. Badoi returned to WHASN on May 10, 2017. She was seen by Dr. Jocelyn Ivie, who  
26 documented that:

27                   Pt. seen at L&D last night and pt cancelled her induction due to  
28                   unfavorable cervix. After further discussion today, pt. desires to

1 sched for next Mon if possible for IOL. Memb stripping  
2 performed. Pt will need NST/AFI this Fri.

3 19. As planned with her treating physicians, on Monday May 15, 2015, Alina Badoi  
4 was admitted to St. Rose Hospital for a scheduled induction of labor.

5 20. When Ms. Badoi presented to the hospital on May 15, 2017, for the scheduled  
6 induction of labor for the delivery of her child, she executed a consent form entitled "Consent  
7 for Procedure."

8 21. That form identifies the procedure to be performed as "Vaginal Delivery with or  
9 without Episiotomy with Repair." The physician performing the procedure is identified as Dr.  
10 Herpolsheimer. As to the relationship between Dr. Herpolsheimer and the hospital, the form  
11 expressly states:

12 Dr. Herpolsheimer is the physician who will perform your  
13 procedure. The procedure physician is an independent contractor  
14 and is not an employee, representative, or agent of the Hospital.

15 22. Ms. Badoi executed the consent form on May 15, 2017, at 1545, acknowledging  
16 that she had read and understood the information contained therein.

17 23. In addition, during a preadmission visit to St. Rose Hospital on January 31, 2017,  
18 Ms. Badoi signed paperwork in anticipation of her admission to deliver her baby.

19 24. In this preadmission paperwork, entitled the Conditions of Admission, Ms. Badoi  
20 expressly acknowledged that the physicians that would be treating her at St. Rose Hospital were  
21 not employees or agents of St. Rose Hospital.

22 25. Ms. Badoi separately initialed a paragraph entitled "Legal Relationship between  
23 Hospital and Doctors," that expressly states in part:

24 Doctors and Surgeons providing services to the Patient, including  
25 the radiologist, pathologist, emergency doctors, hospitalists,  
26 anesthesiologist, intensive care doctors and others, are not  
27 employees or agents of the Hospital. They have been granted the  
28 privilege of using the hospital for the care and treatment of their  
patients, but they are not employees. You will receive a separate  
bill from the doctors for their services.

1           26.    Ms. Badoi also expressly certified that her signature on the Conditions of  
2 Admission meant that she had read and understood the form and was given the opportunity to  
3 ask questions.

4           27.    Dr. Herpolsheimer delivered Ms. Badoi's baby on May 16, 2017.

5           28.    Dr. Herpolsheimer was the WHASN physician that delivered Ms. Badoi's baby  
6 because he was the labor physician for WHASN that week.

7           29.    Dr. Herpolsheimer took care of Ms. Badoi immediately post-partum and then  
8 handed the patient off to his partner, Dr. Garg.

9           30.    Dr. Garg was not present bedside while Ms. Badoi was hospitalized at St. Rose  
10 Hospital on May 16-17.

11           31.    No evidence has been presented of any interaction between Ms. Badoi and Dr.  
12 Garg while she was hospitalized at St. Rose. The only direct interaction between Dr. Garg and  
13 Ms. Badoi occurred during Ms. Badoi's prenatal treatment at WHASN.

14           32.    No evidence has been presented that Ms. Badoi knew Dr. Garg was involved in  
15 her treatment at St. Rose Hospital.

16           33.    Ms. Badoi remained hospitalized at St. Rose from May 15, 2017, until she passed  
17 away on June 3, 2017.

18           34.    During her hospitalization Ms. Badoi underwent several additional procedures at  
19 St. Rose Hospital, including a laminectomy, lumbar drain placement, peripheral catheter  
20 placement, ventriculostomy, and CT of the head. For each of these procedures Ms. Badoi or her  
21 representative executed a consent that states that the physician performing the procedure is "not  
22 an employee, representative, or agent of the Hospital."

23           35.    As of her admission to St. Rose Hospital on May 15, 2017, Alina Badoi had been  
24 employed at St. Rose Hospital as a social worker for more than three years, working closely  
25 with nurses and physicians for approximately 40 hours per week during that time.

26           36.    Liviu Chisiu, Ms. Badoi's partner of five years, and the Special Administrator for  
27 the Estate of Alina Badoi and parent and natural guardian of Sophia Relina Chisiu, a minor, as  
28 heir of the Estate of Alina Badoi, testified he assumed that as an employee of St. Rose Hospital

1 for three years prior to her death, Ms. Badoi probably had some knowledge as to the relationship  
2 between the hospital and physicians.

3 37. Ms. Badoi passed away while still hospitalized at St. Rose Hospital on June 3,  
4 2017.

5 38. There is no evidence of any affirmative statement from Ms. Badoi in the form of  
6 a Declaration, Affidavit, or Answers to Interrogatories concerning Ms. Badoi's belief regarding  
7 either Dr. Herpolsheimer or Dr. Garg's relationship to St. Rose Hospital because Ms. Badoi is  
8 deceased.

9 **CONCLUSIONS OF LAW**

10 39. NRCP 56 allows for summary judgment when there is no genuine issue of  
11 material fact, and the moving party is entitled to a judgment as a matter of law. *Busch v. Flangas*  
12 108 Nev. 821, 837 P.2d 438 (1992). Summary judgment does not involve resolution of factual  
13 issues but seeks to discover if any real issue of fact exists. *Daugherty v. Wabash Life Insurance*  
14 *Co.*, 87 Nev. 32, 482 P.2d 814 (1971).

15 40. Where an essential element of a claim for relief is absent, summary judgment is  
16 proper. *Bulbman. Inc. v. Nevada Bell* 108 Nev. 105, 111, 825 P.2d 588, 592 (1992). The party  
17 opposing summary judgment must set forth specific, admissible evidence which supports her  
18 claim. *Posadas v. City of Reno* 109 Nev. 448, 452, 851 P.2d 438, 442 (1993). A party opposing  
19 summary judgment may not rely on the allegations of her pleadings to raise a material issue of  
20 fact where the moving party supports his motion with competent evidence. *Barmettler v. Reno*  
21 *Air, Inc.* 956 P.2d 1382 (Nev. 1998).

22 41. The nonmoving party bears the burden of showing there is more than "some  
23 metaphysical doubt" as to the operative facts in order to avoid summary judgment being entered  
24 in the moving party's favor. *Wood v. Safeway* 121 Nev. 724, 121 P.3d 1026 (2005).

25 42. "The existence of an agency relationship is generally a question of fact for the  
26 jury if the facts showing the existence of agency are disputed, or if conflicting inferences can be  
27 drawn from the facts." *Schlotfeldt v. Charter Hosp. of Las Vegas*, 112 Nev. 42, 47, 910 P.2d  
28 271, 274 (1996) (citing *Latin American Shipping Co. Inc., v. Pan American Trading Corp.*, 363

1 So.2d 578, 579–80 (Fla.Dist.Ct.App.1978)). However, “[a] question of law exists as to whether  
2 sufficient competent evidence is present to require that the agency question be forwarded to a  
3 jury.” *Id.* (citing *In re Cliquot's Champagne*, 70 U.S. 114, 140, 18 L.Ed. 116 (1865)).

4 43. The determination of “whether an issue of fact exists for a jury to decide is  
5 similar to determining whether a genuine issue of fact is present to preclude summary  
6 judgment.” *Id.* (citing *Oehler v. Humana, Inc.*, 105 Nev. 348, 351-352, 775 P.2d 1271, 1273  
7 (1989)).

8 44. “The general rule of vicarious liability is that an employer is liable for the  
9 negligence of its employee but not the negligence of an independent contractor.” *McCroskey v.*  
10 *Carson Tahoe Regional Medical Center*, 408 P.3d 149 (Nev. 2017) (citing *Oehler v. Humana*  
11 *Inc.*, 105 Nev. 348, 351, 775 P.2d 1271 (Nev. 1989)).

12 45. An exception to this rule exists when a hospital (1) selects the doctor to treat the  
13 patient and (2) the patient reasonably believes that the doctor is employed by the hospital. *Id.*  
14 (emphasis added) (citing *Renown Health, Inc. v. Vanderford*, 126 Nev. 221, 228, 235 P.3d 614,  
15 618 (2010); see also *Schlotfeldt v. Charter Hosp. of Las Vegas*, 112 Nev. 42, 48, 910 P.2d 271,  
16 275 (1996). If such is the case, the hospital may be “vicariously liable for the doctor’s actions  
17 under the doctrine of ostensible agency.” *Id.* (citing *Schlotfeldt v. Charter Hosp. of Las Vegas*,  
18 112 Nev. 42, 48, 910 P.2d 271, 275 (1996)). On the contrary, a conclusion that “agency does not  
19 exist requires only the negation of one element of the agency relationship.” *Schlotfeldt*, at n. 3.

20 46. “[A] doctor's mere affiliation with a hospital is not sufficient to hold a hospital  
21 vicariously liable for the doctor's negligent conduct.” *Id.* at 48. And “a hospital does not  
22 generally expose itself to vicarious liability for a doctor's actions by merely extending staff  
23 privileges to that doctor.” *Id.*

24 47. With respect to ostensible agency, the Nevada Supreme Court has stated that  
25 “typical questions of fact for the jury include, 1) whether a patient entrusted herself to the  
26 hospital; 2) whether the hospital selected the doctor to serve the patient; 3) whether a patient  
27 reasonably believed the doctor was an employee or agent of the hospital; and 4) whether the  
28 patient was on notice that a doctor was an independent contractor.” *Id.* at 49.



1           48. Here, it is undisputed that both Dr. Herpolsheimer and Dr. Garg were not  
2 employees of St. Rose Hospital. They were independent contractors. Accordingly, there can be  
3 no vicarious liability premised on an actual agency relationship between either physician and St.  
4 Rose Hospital.

5           49. With respect to ostensible agency, Plaintiffs have not offered evidence that St.  
6 Rose Hospital selected Drs. Herpolsheimer and Garg as Ms. Badoi's physicians. On the  
7 contrary, the evidence is undisputed that Ms. Badoi selected WHASN for prenatal care and then  
8 treated with WHASN physicians throughout her pregnancy. In fact, at WHASN Ms. Badoi was  
9 treated by Dr. Herpolsheimer on one occasion and Dr. Garg on six occasions.

10           50. That Ms. Badoi opted to deliver at St. Rose Hospital is immaterial given she had  
11 previously entrusted WHASN and its physicians with her prenatal care, including the ultimate  
12 delivery of her child. Plaintiff Liviu Chisui's declaration that Ms. Badoi did not specifically  
13 select Dr. Herpolsheimer to deliver her child is likewise immaterial given it is undisputed that  
14 Ms. Badoi selected WHASN and WHASN in turn selected Dr. Herpolsheimer to deliver Ms.  
15 Badoi's baby. Dr. Garg's limited involvement in the treatment at St. Rose thereafter was  
16 likewise the consequence of his relationship to WHASN and Ms. Badoi.

17           51. Accordingly, this case is not akin to a situation in which a patient presents to an  
18 emergency department and is assigned an ER doctor by the hospital, or even a situation where a  
19 patient presents emergently to a hospital in labor and is treated by an obstetrician with whom she  
20 has never treated. *Cf. See e.g. Renown Health v. Vanderford*, 126 Nev. 221, 228, 235 P.3d 614,  
21 618 (2010) (stating that the patients "entrusted themselves to Renown by going to its emergency  
22 room" where they did not choose the doctor "but were subject to the choice by Renown, as is the  
23 case in most emergency room scenarios"); *McCroskey v. Carson Tahoe Regional Medical*  
24 *Center*, 408 P.3d 149 (Nev. 2017) (involving a patient presenting to a hospital in labor and being  
25 treated by an obstetrician that she had never met before). Rather, Ms. Badoi presented to St.  
26 Rose Hospital for a scheduled induction of labor by a WHASN physician with whom she had a  
27 physician-patient relationship. The involvement of Drs. Herpolsheimer and Dr. Garg at St. Rose  
28 Hospital was precipitated by, and a consequence of that preexisting relationship.

1           52.     Additionally, Plaintiffs have offered no evidence that Ms. Badoi believed either  
2 Dr. Herpolsheimer or Dr. Garg to be an employee of St. Rose Hospital. As Ms. Badoi is  
3 deceased, there is no affirmative statement from her in the form of a Declaration, Affidavit, or  
4 Answers to Interrogatories to support a conclusion that Ms. Badoi held a reasonable belief that  
5 either Dr. Herpolsheimer or Dr. Garg was an agent or employee of St. Rose Hospital.

6           53.     Instead, it is undisputed that Dr. Garg had a physician-patient relationship with  
7 Ms. Badoi that preexisted her treatment at issue in this case – treating her no less than six times  
8 at WHASN during her prenatal care. In fact, no evidence has been presented that Dr. Garg *ever*  
9 interacted with Ms. Badoi while she was hospitalized at St. Rose Hospital. His personal  
10 interactions with Ms. Badoi were limited to her six visits with him for prenatal care at WHASN.  
11 Moreover, Ms. Badoi was further placed on notice of the physicians’ independent contractor  
12 status through her employment with St. Rose Hospital, and through the various consents she  
13 signed wherein she expressly acknowledged the legal relationship between the hospital and the  
14 physicians.

15           54.     Likewise, Ms. Badoi established a physician-patient relationship with Dr.  
16 Herpolsheimer at WHASN about six months prior to her treatment at St. Rose Hospital. Then,  
17 when Ms. Badoi presented to St. Rose Hospital for the scheduled induction of labor, the same  
18 hospital at which she had been employed as a social worker for three years, she expressly  
19 acknowledged that Dr. Herpolsheimer was not a hospital employee in a consent form she  
20 executed upon admission.

21           55.     In sum, the only evidence of Ms. Badoi’s subjective belief regarding the  
22 relationship between Drs. Garg and Herpolsheimer and the hospital is set forth in the various  
23 hospital forms she signed, which refute an agency relationship between the hospital and  
24 physicians. Ms. Badoi acknowledged reading and understanding the forms, which notified her  
25 of the independent contractor of the physicians. *See e.g. McCroskey v. Carson Tahoe Regional*  
26 *Medical Center*, 408 P.3d 149 (Nev. 2017) (explaining that “whether the patient was put on  
27 notice that a doctor was an independent contractor” is a factor considered to determine the  
28

1 reasonably of a patient's belief about the agency status of a physician) (citing *Schlotfeldt v.*  
2 *Charter Hosp. of Las Vegas*, 112 Nev. 42, 48, 910 P.2d 271, 274 (1996)).

3         56. Furthermore, the context in which Ms. Badoi executed these forms precludes any  
4 reasonable inference or speculation that Ms. Badoi held a belief contrary to that reflected by the  
5 representations contained in the consent forms. Again, Ms. Badoi had a preexisting physician-  
6 patient relationship with each of Dr. Herpolsheimer and Dr. Garg. There was also no evidence  
7 presented to suggest that Ms. Badoi did not have an opportunity to review the forms signed. Ms.  
8 Badoi was not emergently admitted to the hospital nor admitted in labor. She presented to the  
9 hospital for a scheduled induction of labor after previously presenting to the same hospital to  
10 sign preadmission paperwork.

11         57. Lastly, Plaintiffs' NRCP 56(d) declaration has not shown how the additional  
12 discovery sought "will lead to the creation of a genuine issue of material fact". *See Aviation*  
13 *Ventures, Inc. v. Joan Morris, Inc.*, 121 Nev. 113, 118, 110 P.3d 59, 62 (2005); *see also See*  
14 *Feliciano v. American West Homes, Inc.*, 2012 Nev. Unpub. LEXIS 1087, 2012 WL 3079106,  
15 July 27, 2012, unpublished disposition at n. 5 (finding it within the Court's discretion to deny a  
16 motion for a continuance as futile where the requested depositions of defendant's principals  
17 were unlikely to produce relevant evidence). Moreover, the Court believes the four and a half  
18 years in which this case has been pending to have been sufficient time for Plaintiff to conduct  
19 the relevant discovery.

20         58. Regardless, this case is unlike situations in which a plaintiff offers a declaration  
21 or testifies regarding her subjective belief, since Ms. Badoi is deceased. *Cf. McCroskey v.*  
22 *Carson Tahoe Regional Medical Center*, 408 P.3d 149 (Nev. 2017) (involving a living patient  
23 that offered a declaration in opposition to a motion for summary judgment as to ostensible  
24 agency, wherein the patient attested to a belief that the allegedly negligent physician was an  
25 agent of the Defendant hospital). There will be no forthcoming declaration or testimony from  
26 her to contradict the representations in the existing evidence regarding her acknowledgement of  
27 Dr. Herpolsheimer and Dr. Garg's relationship to the hospital. There will likewise be no  
28 discovery to refute the undisputed fact that Ms. Badoi had a preexisting relationship with each of

the physicians and treated with them at WHASN before presenting to St. Rose to deliver her baby. Accordingly, relief under NRCP 56(d) to conduct additional discovery is unwarranted. *See Aviation Ventures, Inc. v. Joan Morris, Inc.*, 121 Nev. 113, 118, 110 P.3d 59, 62 (2005) (holding motions for NRCP 56(d) relief are “appropriate only when the movant expresses how further discovery will lead to the creation of a genuine issue of material fact”); *see also See Feliciano v. American West Homes, Inc.*, 2012 Nev. Unpub. LEXIS 1087, 2012 WL 3079106, July 27, 2012, unpublished disposition at n. 5 (finding it within the Court’s discretion to deny a motion for a continuance as futile where the requested depositions of defendant’s principals were unlikely to produce relevant evidence).

59. Summary judgment is therefore appropriate as there has to be a material issue of fact, not just an issue of fact. And there is no genuine issue of material fact for trial as to Plaintiff’s claim for vicarious liability against St. Rose Hospital for the alleged negligence of Drs. Herpolsheimer and Garg. The evidence is insufficient to establish the elements necessary to prove an agency/ostensible agency relationship between St. Rose Hospital and either physician, or to “require the agency question be forwarded to a jury”. *See, e.g., Schlotfeldt v. Charter Hosp. of Las Vegas*, 112 Nev. 42, at n.4, 910 P.2d 271 (1996) (citing *In re Cliquot's Champagne*, 70 U.S. 114, 140, 18 L.Ed. 116 (1865)).

**ORDER**

IT IS THEREFORE ORDERED, AJUDGED, AND DECREED that Defendant Dignity Health d/b/a St. Rose Dominican Hospital – Siena Campus’ Motion for Summary Judgement is GRANTED as to Plaintiffs’ claim for Vicarious Liability/Agency/Ostensible Agency for the alleged professional negligence of Arthur Herpolsheimer, M.D. and Amit Garg, M.D.

**IT IS SO ORDERED.**

Dated this 13th day of December, 2022



39A 855 39C8 90F0  
Maria Gall  
District Court Judge

<p>Respectfully Submitted by:</p> <p><b>HALL PRANGLE &amp; SCHOONVELD, LLC</b></p> <p><u>/s/ Tyson Dobbs</u></p> <p>MICHAEL E. PRANGLE, ESQ.  Nevada Bar No. 8619  TYSON J. DOBBS, ESQ.  Nevada Bar No. 11953  1140 North Town Center Drive, Ste. 350  Las Vegas, Nevada 89144</p>	<p>Approved as to Form and Content:</p> <p><b>CHRISTIANSSEN LAW OFFICES</b></p> <p><u>/s/ Keely Chippoletti</u></p> <p>PETER S. CHRISTIANSSEN, ESQ.  Nevada Bar No. 5254  R. TODD TERRY, ESQ.  Nevada Bar No. 6519  KEELY P. CHIPPOLETTI, ESQ.  Nevada Bar No. 13931  810 S. Casino Center Blvd., Ste. 104  Las Vegas, Nevada 89101  <i>Attorneys for Plaintiffs</i></p>
<p>Approve as to form and content:</p> <p><b>JOHN COTTON &amp; ASSOCIATES</b></p> <p><u>/s/ Adam Schneider</u></p> <p>Adam Schneider, Esq.  7900 W. Sahara Ave. Suite 200  Las Vegas Nevada 89117  <i>Attorneys for U.S. Anesthesia Partners, Inc. and Joon Young Kim, M.D.</i></p>	

## Nicole M. Etienne

---

**From:** Adam Schneider <aschneider@jhcottonlaw.com>  
**Sent:** Monday, December 12, 2022 10:00 PM  
**To:** Keely P. Chippoletti; Nicole M. Etienne  
**Cc:** Todd Terry; Tyson Dobbs; Esther Barrios Sandoval  
**Subject:** RE: Order Granting Agency MSJ as to Garg and Herp (Badoi)

[External Email] CAUTION!.

Please use my e-signature.

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

**From:** Keely P. Chippoletti <keely@christiansenlaw.com>  
**Sent:** Monday, December 12, 2022 4:40 PM  
**To:** Nicole M. Etienne <netienne@HPSLAW.COM>  
**Cc:** Todd Terry <tterry@christiansenlaw.com>; Adam Schneider <aschneider@jhcottonlaw.com>; Tyson Dobbs <tdobbs@HPSLAW.COM>; Esther Barrios Sandoval <esther@christiansenlaw.com>  
**Subject:** RE: Order Granting Agency MSJ as to Garg and Herp (Badoi)

You can use my e-signature.

Keely Perdue Chippoletti  
Attorney  
Christiansen Trial Lawyers  
710 South 7th Street  
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Fax (866) 412-6992

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----- Original Message -----

On Monday, December 12th, 2022 at 12:08 PM, Nicole M. Etienne <[netienne@HPSLAW.COM](mailto:netienne@HPSLAW.COM)> wrote:

Good Morning,

Following up on the attached. If we don't hear back by the end of today we will submit as is. Thanks!



**1140 North Town Center Dr.  
Suite 350  
Las Vegas, NV 89144  
F: 702.384.6025**

**Nicole Etienne**  
*Legal Assistant*  
O: 702.212.1446  
Email: [netienne@HPSLAW.COM](mailto:netienne@HPSLAW.COM)

**Legal Assistant to:**  
Casey W. Tyler Esq.  
Michael J. Shannon Esq.  
Tyson J. Dobbs Esq.

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**From:** Nicole M. Etienne  
**Sent:** Monday, December 05, 2022 3:55 PM  
**To:** Todd Terry <[tterry@christiansenlaw.com](mailto:tterry@christiansenlaw.com)>; Keely Perdue <[keely@christiansenlaw.com](mailto:keely@christiansenlaw.com)>; Adam Schneider (<[aschneider@jhcottonlaw.com](mailto:aschneider@jhcottonlaw.com)>) <[aschneider@jhcottonlaw.com](mailto:aschneider@jhcottonlaw.com)>  
**Cc:** Tyson Dobbs <[tdobbs@HPSLAW.COM](mailto:tdobbs@HPSLAW.COM)>  
**Subject:** RE: Order Granting Agency MSJ as to Garg and Herp (Badoi)

Following up on the attached.

---

**From:** Nicole M. Etienne  
**Sent:** Monday, November 28, 2022 10:19 AM  
**To:** Todd Terry <[tterry@christiansenlaw.com](mailto:tterry@christiansenlaw.com)>; Keely Perdue <[keely@christiansenlaw.com](mailto:keely@christiansenlaw.com)>; Adam Schneider (<[aschneider@jhcottonlaw.com](mailto:aschneider@jhcottonlaw.com)>) <[aschneider@jhcottonlaw.com](mailto:aschneider@jhcottonlaw.com)>  
**Cc:** Tyson Dobbs <[tdobbs@HPSLAW.COM](mailto:tdobbs@HPSLAW.COM)>  
**Subject:** Order Granting Agency MSJ as to Garg and Herp (Badoi)

Good Morning,

Attached please find a draft Order Granting Dignity's MSJ for your review. Please let us know if you have any revisions or if we may use your electronic signature. Thank you!



1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Estate of Alina Badoi, Plaintiff(s) | CASE NO: A-18-775572-C  
7 vs. | DEPT. NO. Department 9  
8 Dignity Health, Defendant(s)  
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

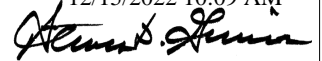
14 Service Date: 12/13/2022

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CLERK OF THE COURT

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*Attorneys for Defendants*  
*Joon Young Kim, MD and*  
*Fielden Hanson Isaacs Miyada Robison Yeh, Ltd.*  
*d/b/a USAP-Nevada*

**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,

v.

DIGNITY HEALTH, a Foreign Non-Profit  
Corporation d/b/a ST. ROSE DOMINICAN  
HOSPITAL-SIENA CAMPUS; JOON YOUNG  
KIM, M.D., an individual; FIELDEN, HANSON,  
ISAACS, MIYADA, ROBISON, YEH, LTD., a  
Nevada Professional Corporation d/b/a USAP-  
Nevada; DOES I through X and ROE  
BUSINESS ENTITIES XI through XX,

Defendants.

Case No.: A-18-775572-C

Dept. No.: 9

**STIPULATION AND ORDER TO  
DISMISS WITH PREJUDICE  
DEFENDANTS JOON YOUNG KIM, M.D.  
AND FIELDEN HANSON ISSACS  
MIYADA ROBISON YEH, LTD. D/B/A  
USAP-NEVADA ONLY**

IT IS HEREBY STIPULATED by and between Plaintiff LIVIU RADU CHISIU as  
Special Administrator of the ESTATE OF ALINA BADOI and as Parent and Natural Guardian  
of SOPHIA RELINA CHISIU, a minor, as Heir of the ESTATE OF ALINA BADOI, by and  
through his counsel of record CHRISTIANSEN TRIAL LAWYERS, and Defendants JOON  
YOUNG KIM and FIELDEN, HANSON, ISAACS, MIYADA, ROBISON, YEH, LTD., a

1 Nevada Professional Corporation d/b/a USAP-Nevada (herein USAP-Nevada), by and through  
2 their counsel of record the law firm of JOHN H. COTTON & ASSOCIATES, LTD., that as to  
3 only Defendants JOON YOUNG KIM and USAP-Nevada, the above referenced matter may be  
4 DISMISSED WITH PREJUDICE, each party to bear its own costs and attorneys' fees.

5 All presently set hearing dates and deadlines remain.

6  
7 After the filing of the Notice of Entry of Order associated with this Stipulation and  
8 Order, the case caption for all filings in this matter shall be amended to no longer include  
9 "JOON YOUNG KIM, M.D., an individual; FIELDEN, HANSON, ISAACS, MIYADA,  
10 ROBISON, YEH, LTD., a Nevada Professional Corporation d/b/a USAP-Nevada."

11  
12 DATED this 15<sup>th</sup> day of December 2022.

DATED this 14<sup>th</sup> day of December, 2022.

13 **JOHN H. COTTON & ASSOCIATES, LTD.**

**HALL PRANGLE & SCHOONVELD**

14 By: /s/ Adam Schneider  
15 JOHN H. COTTON, ESQ.  
16 Nevada Bar No. 005262  
17 ADAM SCHNEIDER, ESQ  
18 Nevada Bar No. 10216  
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Las Vegas, Nevada 89117  
*Attorneys for Defendants Joon Young  
Kim, M.D. and USAP Nevada*

By: /s/ Tyson Dobbs  
TYSON DOBBS, ESQ.  
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1140 North Town Center Drive, Suite 350  
Las Vegas, Nevada 89144  
*Attorneys for Defendant Dignity Health  
d/b/a St. Rose Dominican Hospital – Siena<sup>1</sup>*

19 DATED this 14<sup>th</sup> day of December, 2022.

20 **CHRISTIENSEN TRIAL LAWYERS**

21 By: /s/ Todd Terry  
22 PETER S. CHRISTIENSEN, ESQ.  
23 Nevada Bar No. 5254  
24 R. TODD TERRY, ESQ.  
25 Nevada Bar No. 6519  
26 KEELY P. CHIPPOLETTI, ESQ.  
Nevada Bar No. 13931  
710 South 7th Street, Suite B  
Las Vegas, Nevada 89101  
*Attorneys for Plaintiffs*

27  
28 <sup>1</sup> Dignity Health takes no affirmative position on this Stipulation and Order, and is a signator for NCRP 41(a) purposes.

Case name: Chisiu v. Dignity Health, et al.  
Case no.: A-18-775572-C

**ORDER**

IT IS SO ORDERED.

Dated this 15th day of December, 2022

A handwritten signature in black ink, appearing to read "Maria Gall", is written over a horizontal line.

6BA 4AA B806 2B7B  
Maria Gall  
District Court Judge

Respectfully submitted by:

**JOHN H. COTTON & ASSOCIATES, LTD.**

/s/ Adam Schneider

John H. Cotton, Esq.

Adam Schneider, Esq.

*Attorneys for Defendants*

*Joon Young Kim, MD and*

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*d/b/a USAP-Nevada*

**From:** [R. Todd Terry](#)  
**To:** [Adam Schneider](#); [Nicole M. Etienne](#); [Keely P. Chippoletti](#)  
**Cc:** [Tyson Dobbs](#); [Esther Barrios Sandoval](#); [Arielle Atkinson](#)  
**Subject:** Re: A-18-775572-C, Badoi/Chisiu v. Kim, et al- draft SODW  
**Date:** Wednesday, December 14, 2022 6:02:53 PM

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On Wed, Dec 14, 2022 at 5:04 PM, Adam Schneider <[aschneider@jhcottonlaw.com](mailto:aschneider@jhcottonlaw.com)> wrote:

Counsel- see attached draft Stipulation and Order for dismissal with prejudice of only Dr. Kim and USAP-NV; all deadlines and hearings remain as-is; each party to bear their own fees and costs.

Please advise if I have your e-signature authority, and my office will submit to D9 tomorrow before any further depositions and/or hearings occur.

Thank you kindly.

Adam Schneider, Esq.

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**Subject:** A-18-775572-C, Badoi/Chisiu v. Kim, et al- draft SODW

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Thank you kindly.

Adam Schneider, Esq.

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Estate of Alina Badoi, Plaintiff(s) | CASE NO: A-18-775572-C  
7 vs. | DEPT. NO. Department 9  
8 Dignity Health, Defendant(s)  
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District  
12 Court. The foregoing Stipulation and Order was served via the court's electronic eFile system  
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14 Service Date: 12/15/2022

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