

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

ALI KIA, M.D.,

Petitioner,

v.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF
NEVADA, THE HONORABLE
CRYSTAL ELLER, PRESIDING,

Respondent,

and

CHLOE GREEN, FRANK J.
DELEE, M.D., FRANK J. DELEE,
MD, PC, SUNRISE HOSPITAL AND
MEDICAL CENTER, LLC, AND
NEVADA HOSPITALIST GROUP,
LLP,

The Real Parties in Interest.

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**PETITIONER'S MOTION TO STRIKE OR DISREGARD CERTAIN
PORTIONS OF RESPONDENT'S SUPPLEMENTAL APPENDIX**

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MOTION

Pursuant to NRAP 27(a)(1), Petitioner Ali Kia, M.D. (“Dr. Kia”) moves the Court for an order striking or disregarding the following documents in the Supplemental Appendix and any argument associated with those documents (references with the prefix “SUPP” are to the Supplemental Appendix filed on November 13, 2023):

1. Dr. Kia’s responses to real party in interest Choloe Green’s (“Ms. Green”) First Set of Interrogatories served on October 16, 2023 (SUPP459 – 466).
2. Notice of Entry of Order and Joint Motion to Extend Discovery and Extend the Trial filed on November 7, 2023 (SUPP467 – 476).
3. Documents Regarding Kia Billing Records Discovery Issues (SUPP477 – 484).
4. The deposition transcript of Kim L. Kozlowski, NRCP 30(b)(6) corporate designee for real party in interest Nevada Hospitalist Group, taken on October 30, 2023 (SUPP485 – 574).

These four documents will be referred to as the “Extrinsic Documents.” The Court should strike these documents because they were not part of the record before the District Court when the District Court decided and entered the orders that are the subject of this writ petition.

POINTS AND AUTHORITIES

A. The District Court Entered the Two Orders That Are the Subject of This Writ Petition on May 25, 2023, and August 8, 2023

This writ petition concerns two written orders. In the first, entered on May 25, 2023, the District Court denied Dr. Kia's motion for summary judgment and sanctioned him. (APPENDIX000874 – 875). The second order, entered on August 8, 2023, awarded attorney fees and costs to Ms. Green as a sanction. (APPENDIX000892 – 895).

B. Ms. Green Included the Extrinsic Documents in Her Supplemental Appendix, and They Are Not Part of the Record and Were Not Before the District Court When It Entered the Two Orders at Issue

Ms. Green filed a supplemental appendix with the Court on November 13, 2023, which as noted above included the Extrinsic Documents. These documents are all discovery or related materials that did not exist at the time the District Court entered its two orders. Furthermore, it does not appear that they have been brought to the District Court's attention even at this point in time because they do not look to be attached to any motion or other paper or pending that has been filed. Ms. Green cites these documents at pages 10 through 12 of her Answering Brief for the proposition that Dr. Kia has been attempting to conceal his role in her care.

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C. Striking the Documents Is Appropriate Because They Were Not Part of the Record Before the District Court

This Court has long held that it has no power to look beyond the record in a case. *Carson Ready Mix, Inc. v. First National Bank of Nevada*, 97 Nev. 474, 476, 635 P.2d 276, 277 (1981) (“As this court stated long ago in *Alderson v. Gilmore*, 13 Nev. 84, 85 (1878), ‘We have no power to look outside of the record of a case’. We have consistently recognized this limitation.” (citations omitted)). NRAP 10(a) defines the trial court record as “the papers and exhibits filed in the district court, the transcript of the proceedings, if any, the district court minutes, and the docket entries made by the district court clerk.” Arguments based on matters not in the record lack merit. *See, e.g., Albemarle U.S., Inc. v. King*, 509 P.3d 49, footnote 1, 2022 WL 1577650 (Nev. S.Ct. Case No. 81886, May 18, 2022) (unpublished disposition) (“[I]n making this argument [Petitioner] relies upon a transcript that this court refused to take judicial notice of, which is not included in the record on appeal, therefore this argument lacks merit.”).

None of these documents was part of the record because they had not even been created at the time of the orders at issue. (See APPENDIX000882 – 893 (District Court docket sheet)). Therefore, they and the arguments that rely on them at pages 10 through 12 of the Answering Brief should be stricken. 97 Nev. at 476, 635 P.2d at 277.

CONCLUSION

For the reasons stated above, Dr. Kia requests that the Court grant his motion.

Date: November 30, 2023

NAYLOR & BRASTER

By: /s/ John M. Naylor

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of NAYLOR & BRASTER, that service of the foregoing **PETITIONER'S MOTION TO STRIKE OR DISREGARD CERTAIN PORTIONS OF RESPONDENT'S SUPPLEMENTAL APPENDIX** was made on November 30, 2023, via mandatory electronic service via the Court's e-filing system to:

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