

1 LAW OFFICE OF DANIEL MARKS
2 DANIEL MARKS, ESQ.
3 Nevada State Bar No. 002003
4 NICOLE M. YOUNG, ESQ.
5 Nevada State Bar No. 12659
6 610 South Ninth Street
7 Las Vegas, Nevada 89101
8 E-Mail: office@danielmarks.net
9 Attorneys for Real Party in Interest
10 Choloe Green

Electronically Filed
Dec 07 2023 03:55 PM
Elizabeth A. Brown
Clerk of Supreme Court

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

8 ALI KIA, M.D.,

Case No. 87300

9 Petitioner,

10 v.

11 THE EIGHTH JUDICIAL DISTRICT
12 COURT OF THE STATE OF
13 NEVADA, THE HONORABLE
14 CRYSTAL ELLER, PRESIDING,

Respondent,

15 and

16 CHLOE GREEN, FRANK J.
17 DELEE, M.D., FRANK J. DELEE,
18 MD, PC, SUNRISE HOSPITAL AND
19 MEDICAL CENTER, LLC, AND
20 NEVADA HOSPITALIST GROUP,
21 LLP,

The Real Parties in Interest.

21 **REAL PARTY IN INTEREST CHLOE GREEN'S OPPOSITION TO**
22 **PETITIONER'S MOTION TO STRIKE OR DISREGARD CERTAIN**
23 **PORTIONS OF RESPONDENT'S (SIC) SUPPLEMENTAL APPENDIX**

24 COMES NOW Real Party in Interest Choloe Green ("Choloe"), by and
25 through her counsel, Daniel Marks, Esq., and Nicole M. Young, Esq., of the Law
26 Office of Daniel Marks, and hereby opposes Petitioner's Motion to Strike or
27 Disregard Certain Portions of Respondent's (Sic) Supplemental Appendix.

28 ////

////

1 The grounds for Choloe's opposition are set forth in the attached Memorandum of
2 Points and Authorities.

3 DATED this 1 day of December, 2023.

4 LAW OFFICE OF DANIEL MARKS

5
6 DANIEL MARKS, ESQ.
Nevada State Bar No. 002003
7 NICOLE M. YOUNG, ESQ.
Nevada State Bar No. 12659
8 610 South Ninth Street
Las Vegas, Nevada 89101
9 *Attorneys for Real Party in Interest*
Choloe Green

10
11 **MEMORANDUM OF POINTS AND AUTHORITIES**

12 **I. LEGAL ARGUMENT**

13 NRAP 21 governs writs of mandamus before this Court. The appendix filed
14 in relation to a writ petition "shall include a copy of any order or opinion, parts of
15 the record before the respondent judge, . . . *or any other original document that*
16 *may be essential to understand the matters set forth in the petition.*" NRAP
17 21(a)(4) (emphasis added).

18 The appendix requirements on a writ petition are distinguished from the
19 appendix requirements on appeal because appeals are based on the entry of a final
20 order, whereas writ relief is an extraordinary remedy that is discouraged,
21 discretionary, and will not issue if a "plain, speedy and adequate remedy [exists] in
22 the ordinary course of law." *See* NRCP 3A; *see* NRAP 21; and *see Smith v. Eighth*
23 *Jud. Dist. Ct.*, 113 Nev. 1343, 1344-45, 950 P.2d 280, 281 (Nev. 1997).

24 All of the legal authority cited by Kia relates to the record this Court
25 considers on appeal from matters where a final order was issued. *See Carson*
26 *Ready Mix v. First Natl. Bank*, 97 Nev474, 475-77, 635 P.2d 276 (1981) (holding
27 a party must preserve appellate issues by raising those issues before the district
28 court); and *see Alderson v. Gilmore*, 13 Nev. 84, 84-85 (1878) (holding findings of

1 the district court not included in the record cannot be considered on appeal). Kia's
2 citation to *Albemarle U.S. v. King*, 509 P.3d 49, 2022 Nev. Unpub. LEXIS 392
3 (2022) is similarly displaced because the cited to footnote (footnote 4, not 1 as
4 cited by Kia) simply states the Court cannot consider a transcript that is not
5 included in the record on appeal. Each of these cases relates to documents not
6 provided to the Court, not striking documents.

7 NRAP 21(a)(4) governs the documents that this Court considers for a writ
8 petition. NRAP 10 relates to the record on appeal, and as such is inapposite to this
9 case.

10 Here, the documents Kia seeks to strike relate to the current status of this
11 case and Kia's motives in seeking writ relief. Kia's responses to interrogatories,
12 the recent discovery schedule, the documents regarding the current discovery
13 dispute with Kia, and the Deposition of Kim Kozlowski all show that Kia's motive
14 in filing his instant writ petition is simply to delay discovery because he has failed
15 to comply with his NRCP 16.1 duties.

16 The timing of Kia filing the instant writ petition shows Kia's dilatory
17 motive. As he points out in the instant motion, the order denying his motion for
18 summary judgment ("MSJ") was entered on May 25, 2023. (APP874-75.) If he
19 truly believed that decision warranted writ relief, he should have filed his writ
20 petition sooner, not on the eve of the initial expert disclosure deadline. The Order
21 of Admonishment that awarded Choloe fees for Kia's improper judge-shopping
22 was entered on August 8, 2023. (APP892-95.) Kia used that order as his basis for
23 the instant writ petition. Kia should have filed a motion for reconsideration to
24 correct any errors or other issues with that order. A motion for reconsideration is
25 the speedy remedy, not a writ petition. *See* EDCR 2.24.

26 ////

27 ////

28 ////

1 The documents that Kia seeks to strike (and related arguments) relate to the
2 discovery issues that the parties are currently litigating. It appears Kia (and/or
3 NHG) destroyed documents that they should have preserved when they first
4 became parties to this case.

5 On November 30, 2023, the deposition of Monica Poulin (Kia and NHG's
6 biller) was taken and it was discovered Kia's billing documents that would show
7 he provided care under the NHG contract were destroyed in November of 2022.
8 Poulin admitted she utilized "ghost-billing" for Kia's care because he was not
9 covered under the NHG contract. This raises concerns of whether Kia was ever
10 authorized to provide Choloe medical care by Amerigroup and shows that Kia's
11 identity (which would be disclosed through the billing records) was concealed
12 from Choloe. (See Declaration of Nicole Young, attached hereto, at ¶ 3.) Choloe is
13 attempting to meet and confer with Kia one last time to try to avoid having to file a
14 discovery motion against Kia. Choloe expects the issue will not be resolved and
15 that a discovery motion will be filed in the next couple days.

16 Kia's motion ignores NRAP 21(a)(4), which explicitly states that a party
17 may attach "***any other original document that may be essential to understand the***
18 ***matters set forth in the petition.***" (Emphasis added). The documents Kia seeks to
19 strike fall squarely into that category of documents that this Court may consider in
20 connection to the extraordinary relief Kia seeks. The documents are further
21 relevant for this Court's consideration given the amount of time that has passed
22 since the order denying Kia's MSJ was entered. (APP874-75.) Initial expert
23 reports have not yet been exchanged in this case, and it should not be surprising
24 that new evidence now exists that further vindicate the district court's denial of
25 Kia's MSJ and its Order of Admonishment for Kia's abusive litigation tactics.

26 ////

27 ////

28 ////

1 The documents attached to Choloë's Supplemental Appendix are essential
2 for this Court to understand the legal issues and Kia's motive in filing his writ
3 petition. Because the inclusion of those documents are supported by NRAP
4 21(a)(4), this Court should deny Kia's instant motion.

5 **III. CONCLUSION**

6 Based on the foregoing, this Court should deny Kia's instant motion
7 because the documents in issue are essential for this Court's consideration of the
8 instant writ petition and are authorized under NRAP 21(a)(4).

9 DATED this 7 day of December, 2023.

10 LAW OFFICE OF DANIEL MARKS
11 
12

13 DANIEL MARKS, ESQ.
14 Nevada State Bar No. 002003
15 NICOLE M. YOUNG, ESQ.
16 Nevada State Bar No. 12659
17 610 South Ninth Street
18 Las Vegas, Nevada 89101
19 *Attorneys for Real Party in Interest*
20 *Choloë Green*
21
22
23
24
25
26
27
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

1. I am over the age of 18 years and have personal knowledge of the facts stated herein, except for those stated upon information and belief, and as to those, I believe those to be true. I am competent to testify as to the facts stated herein in a court of law and will so testify if called upon.

3. On November 30, 2023, the deposition of Monica Poulin (Kia and NHG's biller) was taken and it was discovered Kia's billing documents that would show he provided care under the NHG contract were destroyed in November of 2022. Poulin admitted she utilized "ghost-billing" for Kia's care because he was not covered under the NHG contract. This raises concerns of whether Kia was ever authorized to provide Choloe medical care by Amerigroup and shows that Kia's identity (which would be disclosed through the billing records) was concealed from Choloe. Because that deposition was taken one (1) week ago the deposition transcript is not yet available. This information is based upon my memory and notes from the deposition.

///

///

///

4. Choloe is attempting to meet and confer with Kia one last time to try to avoid having to file a discovery motion against Kia. Choloe expects the issue will not be resolved and that a discovery motion will be filed in the next couple days.

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

DATED this 7 day of December, 2023.

NICOLE M. YOUNG, ESQ

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the LAW OFFICE OF DANIEL MARKS, and that on the 7 day of December, 2023, I did serve by way of electronic filing, a true and correct copy of the above and foregoing **REAL PARTY IN INTEREST CHOLOE GREEN'S OPPOSITION TO PETITIONER'S MOTION TO STRIKE OR DISREGARD CERTAIN PORTIONS OF RESPONDENT'S (SIC) SUPPLEMENTAL APPENDIX** on the following:

Patricia E. Daehnke, Esq.
Linda K. Rurangirwa, Esq.
COLLISON, DAENHKE, INLOW & GRECO
2110 E. Flamingo Road, Suite 212
Las Vegas, Nevada 89119
Attorneys for Defendant Ali Kia, M.D.

Eric K. Stryker, Esq.
Justin Shiroff, Esq.
WILSON ELSER MOSKOWITZ EDELMAN & DICKER LLP
6689 Las Vegas Blvd., Suite 200
11th Floor
Las Vegas, Nevada 89119
Attorneys for Defendant Frank J. Delee, M.D. and Frank J. Delee, M.D., P.C.

Michael E. Prangle, Esq.
Tyson J. Dobbs, Esq.
HALL PRANGLE and SCHOONVELD LLC
1140 N. Town Center Drive, Suite 350
Las Vegas, Nevada 89114
Attorneys for Defendant and Third-Party Plaintiff Sunrise Hospital and Medical Center, LLC

Brent Vogel, Esq.
Melanie Thomas, Esq.
LEWIS BRISBOIS BISGAARD & SMITH
6385 S. Rainbow Blvd., Suite 600
Las Vegas, Nevada 89118
Attorney for Nevada Hospitalist Group, LLP

////

////

////

////

1 I further certify that I did deposit in the U.S. Mail in Las Vegas, Nevada,
2 with first class postage fully prepaid thereon a true and correct copy of the
3 **REAL PARTY IN INTEREST CHOLOE GREEN'S OPPOSITION TO**
4 **PETITIONER'S MOTION TO STRIKE OR DISREGARD CERTAIN**
5 **PORTIONS OF RESPONDENT'S (SIC) SUPPLEMENTAL APPENDIX** to
6 the addresses as follows:

7 The Honorable Crystal Eller
8 Eighth Judicial District Court
9 Department 19
200 Lewis Avenue
Las Vegas, Nevada 89155

10 
11 An employee of
12 LAW OFFICE OF DANIEL MARKS
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28