

IN THE SUPREME COURT OF THE STATE OF NEVADA

ESTATE OF MARY CURTIS,
DECEASED; LAURA LATRENTA, AS
PERSONAL REPRESENTATIVE OF
THE ESTATE OF MARY CURTIS;
AND LAURA LATRENTA,
INDIVIDUALLY,

Appellants,

vs.

ANNABELLE SOCAOCO, N.P.; IPC
HEALTHCARE, INC. aka THE
HOSPITALIST COMPANY, INC.;
INPATIENT CONSULTANTS OF
NEVADA, INC.; IPC HEALTHCARE
SERVICES OF NEVADA, INC.; and
HOSPITALISTS OF NEVADA, INC.,

Respondents.

Supreme Court Case No. 79116

District Court Case No. A-17-50520
Electronically Filed
Jul 29 2019 12:02 p.m.
Elizabeth A. Brown
Clerk of Supreme Court
**DOCKETING STATEMENT
CIVIL APPEALS**

DOCKETING STATEMENT CIVIL APPEALS

Appellants, Laura Latrenta, as Personal Representative of The Estate of Mary Curtis, and Laura Latrenta, Individually, by and through the undersigned counsel, hereby submit this Docketing Statement.

1. Judicial District: Eighth Judicial District

Department: XVIII

County: Clark

Judge: Mary Kay Holthus

District Ct. Case No.: A-17-750520-C

2. Attorney filing this docketing statement:

MICHAEL DAVIDSON, ESQ.
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Attorney for Appellants

Clients: Estate of Mary Curtis, Deceased; Laura Latrenta, As Personal Representative of the Estate of Mary Curtis; and Laura Latrenta, Individually

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

JOHN H. COTTON, ESQ.
Nevada Bar No. 005268
VINCENT J. VITATOE, ESQ.
Nevada Bar No. 012888
JOHN H. COTTON & ASSOCIATES, LTD.
7900 W. Sahara Ave., Ste. 200
Las Vegas, NV 89117
Attorney for Respondents

Client(s): Annabelle Socaoco, NP, IPC Healthcare, Inc. aka The Hospitalist Company, Inc., Inpatient Consultants of Nevada, Inc., IPC Healthcare Services of Nevada, Inc., Hospitalists of Nevada, Inc.

4. Nature of disposition below (check all that apply):

- | | |
|-------------------------------------------------------------|----------------------------------------------------------------------------------------------|
| <input type="checkbox"/> Judgment after bench trial | <input checked="" type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input checked="" type="checkbox"/> Other (specify): <u>barred by statute of limitations</u> |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify): |

5. Does this appeal raise issues concerning any of the following? No

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

The District Court case was a consolidated case with Annabelle Socaoco, NP, IPC Healthcare, Inc. aka The Hospitalist Company, Inc., Inpatient Consultants of Nevada, Inc., IPC Healthcare Services of Nevada, Inc., Hospitalists of Nevada, Inc. ("IPC Defendants" or "Respondents") and South Las Vegas Medical Investors, LLC dba Life Care Center of South Las Vegas f/k/a Life Care Center of Paradise Valley, South Las Vegas Investors

Limited Partnership; Life Care Centers Of America, Inc., and Carl Wagner (“Life Care Defendants”).

The case against the Life Care Defendants is currently the subject of an appeal. Appellant believes it is appropriate and judicially efficient to consolidate the appeals. The Supreme Court docket number of that proceeding is No. 77810. The caption is:

ESTATE OF MARY CURTIS, DECEASED; LAURA LATRENTA, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF MARY CURTIS; AND LAURA LATRENTA, INDIVIDUALLY, Appellants,

vs.

SOUTH LAS VEGAS MEDICAL INVESTORS, LLC, D/B/A LIFE CARE CENTER OF SOUTH LAS VEGAS, F/K/A LIFE CARE CENTER OF PARADISE VALLEY; SOUTH LAS VEGAS INVESTORS LIMITED PARTNERSHIP; LIFE CARE CENTERS OF AMERICA, INC.; AND CARL WAGNER, ADMINISTRATOR, Respondents.

- 7. Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

On September 10, 2017, the Eighth Judicial District Court (Clark County) consolidated *Estate of Mary Curtis v. Saxena*, Case No. A-17-754013-C, with *Estate of Mary Curtis v. South Las Vegas Medical Investors, LLC, et al.*, Case No. A-17-750520-C. A notice of appeal for *Estate of Mary Curtis v. South Las Vegas Medical Investors, LLC, et al.* was filed on December 27, 2018. The appeal, Case No. 77810, is currently pending before the Supreme Court.

- 8. Nature of the action.** Briefly describe the nature of the action and the result below:

On February 2, 2017, in Case No. A-17-750520-C, Plaintiffs filed a Complaint against Defendants South Las Vegas Medical Investors, LLC dba Life

Care Center of South Las Vegas f/k/a Life Care Center of Paradise Valley, South Las Vegas Investors Limited Partnership; Life Care Centers Of America, Inc., and Carl Wagner (“Life Care Defendants” or “Respondents”) alleging causes of action for (1) abuse/neglect of an older person pursuant to N.R.S. § 41.1395, (2) wrongful death by the Estate, (3) wrongful death by Ms. Curtis’ surviving daughter, and (3) bad faith tort.

In short, Plaintiffs’ claims against Life Care Defendants are based upon the injuries Ms. Curtis sustained during her residency at Life Care Defendants’ nursing home facility called Life Care Center of South Las Vegas f/k/a Life Care Center of Paradise Valley (“the facility”), resulting from management decisions to prioritize profits over patient care. Ms. Curtis entered the facility on March 2, 2016. Mary Curtis was 90 years old at the time of her admission and therefore was considered an “older person” under NRS 41-1395. Within a week of her admission, Ms. Curtis was twice permitted to fall. Additionally, Mrs. Curtis was administered morphine that had not been prescribed for her but, instead, for another patient. As found by the trial court, Ms. Curtis was administered “a dose of morphine prescribed to another resident.” Although aware that Ms. Curtis had been wrongly administered morphine, Ms. Curtis was retained as a resident until March 8, 2016. After Ms. Curtis’ daughter discovered Ms. Curtis in distress on March 8, 2016, 911 was called and emergency personnel transported Ms. Curtis to the hospital where she was

diagnosed with anoxic brain encephalopathy. Ms. Curtis died three days later of morphine intoxication.

On April 14, 2017, in Case No. A-17-754013-C, Plaintiffs filed a separate Complaint against Defendant Samir Saxena, M.D.

On September 10, 2017, the district court consolidated Case No. A-17-754013-C with Case No. A-17-750520-C.

On January 17, 2018, Plaintiffs filed a Motion to Amend Complaint to add the following defendants: Annabelle Socaoco, N.P., IPC Healthcare, Inc. aka The Hospitalist Company, Inc., Inpatient Consultants of Nevada, Inc., IPC Healthcare Services Of Nevada, Inc., Hospitalists Of Nevada, Inc. (collectively referred to as “IPC Defendants” or “Respondents”) after discovering the involvement of the IPC Defendants.

On February 6, 2018, Dr. Saxena opposed Plaintiffs’ Motion to Amend Complaint and moved for summary judgment, arguing that the statute of limitations defeated Plaintiffs’ claims both against him and against the prospective IPC Defendants.

On April 11, 2018, the District Court granted Plaintiffs’ Motion to Amend and denied without prejudice Dr. Saxena’s Countermotion for Summary Judgment as to the statute of limitations issue.

On May 1, 2018, Annabelle Socaoco, N.P., IPC Healthcare, Inc. aka The Hospitalist Company, Inc., Inpatient Consultants of Nevada, Inc., IPC Healthcare Services Of Nevada, Inc., Hospitalists Of Nevada, Inc. were added as defendants with Defendant Samir Saxena, M.D. to Case No. A-17-754013-C.

On June 12, 2018, the IPC Defendants filed their Motion to Dismiss, or, in the Alternative, for Summary Judgment seeking summary judgment on statute of limitations grounds.

On June 29, 2018, Plaintiffs filed her Opposition to Defendants' Motion to Dismiss/Motion for Summary Judgment.

On August 1, 2018, the district court held a hearing on the IPC Motion to Dismiss, or, in the Alternative, for Summary Judgment.

On November 7, 2018, the IPC Defendants filed the Notice of Entry of Order Granting In Part and Denying In Part IPC Defendants' Motion to Dismiss, Or, In the Alternative, For Summary Judgment. Specifically, the district court granted the IPC Defendants' Motion as to Plaintiffs' First Cause of Action for Abuse/Neglect of an Older Person and dismissed that claim. However, the district court denied the IPC Defendants' Motion to Dismiss based upon the statute of limitations because the district court found that the date of inquiry as to the identity of the IPC Defendants was a question of fact.

On November 26, 2018, the IPC Defendants filed their Motion for Reconsideration and Plaintiffs filed an Opposition on December 6, 2018.

On January 9, 2019, the new acting judge in the case entered Court Minutes denying “Plaintiff s Motion for Reconsideration of the Court’s ruling Granting Defendants Summary Judgement” because the previous Order was not clearly erroneous and “Plaintiff did not argue any new facts or law and did not introduce any substantially different evidence.” However, Plaintiffs never filed a Motion for Reconsideration.

On February 27, 2019, the district court filed its Order to Strike the Court Minutes on IPC Defendants’ Motion for Reconsideration finding that the acting judge ruled upon the IPC Defendants’ Motion that had already been previously ruled upon by the prior judge.

On that same day, February 27, 2019, the district court entered an Order granting IPC Defendants’ Motion for Reconsideration. In the Order, the district court ruled that the case against IPC Defendant was barred by the statute of limitations and ordered the case dismissed with prejudice, but directed counsel for Defendants to prepare an order.

On April 25, 2019, the IPC Defendants filed the Notice of Entry of Order Granting IPC Defendants’ Motion for Reconsideration. In the Granting of IPC

Defendants' Motion for Reconsideration, the district court dismissed the case against the IPC Defendants with prejudice.

On April 29, 2019, Plaintiffs filed a Motion for Reconsideration of the Order Granting the IPC Defendants' Motion for Reconsideration requesting the Court to reconsider and amend its order granting IPC Defendants' Motion for Reconsideration/Motion to Dismiss.

On June 5, 2019, the district court held a hearing on Plaintiffs' Motion for Reconsideration.

On June 27, 2019, the IPC Defendants filed the Notice of Entry of Order denying Plaintiffs' Motion for Reconsideration.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

A question of statewide public importance and upon which there is an inconsistency in the decision of the district court and the language of NRS 41A.097(2). The statute provides, in relevant part, that "an action for injury or death against a provider of health care may not be commenced more than 3 years after the date of injury or 1 year after the plaintiff discovers or through the use of reasonable diligence should have discovered the injury, whichever occurs first." NRS 41A.097(2). The district court misapplied the statute in holding that circumstances arguably commencing the three-year statute of limitations commenced the one-year statute of limitations.

The decision of the district court is also inconsistent with the Supreme Court's interpretation of NRS 41A.097 in *Libby v. Eighth Jud. Dist. Ct.*, 130 Nev. 359, 325 P.3d 1276 (2014), *Winn v. Sunrise Hosp. & Med. Ctr.*, 128 Nev. 246, 277 P.3d 458 (2012), and *Massey v. Litton*, 99 Nev. 723, 669 P.2d 248 (1983). Pursuant to the Supreme Court's interpretation in *Massey*, the one-year statute of limitations begins to run when the patient discovers her legal injury through knowledge of “**both** the fact of damage suffered **and** the realization that the cause was **the** health care provider's negligence.” 99 Nev. at 727 (emphasis added). The Supreme Court explained:

to adopt a construction that encourages a person who experiences an injury, dysfunction or ailment, and has **no knowledge of its cause**, to file a lawsuit against a health care provider to prevent a statute of limitations from running is not consistent with the unarguably sound proposition that unfounded claims should be strongly discouraged.

Id. at 727 (emphasis added).

Pursuant to the Supreme Court's interpretation in *Winn*, the accrual date for NRS 41A.097(2)'s one-year discovery period ordinarily presents a question of fact to be decided **by the jury** unless “the evidence **irrefutably** demonstrates that a plaintiff was put on inquiry notice of a cause of action.” 128 Nev. at 258 (emphasis added). Finally, pursuant to the Supreme Court's interpretation in *Libby*, having an

appreciable injury without knowledge of its possible cause commences NRS 41A.097(2)'s three-year statute of limitations, not its one-year statute of limitations.

Ms. Curtis passed away on March 11, 2016. The discovery of possible negligence by Annabelle Socaoco and the IPC Defendants did not occur until December 6, 2017 when an employee of the Life Care Defendants disclosed the information at her deposition. Thereafter, on January 4, 2018, the Life Care Defendants produced a medication error incident report identifying Annabelle Socaoco as the physician/NP. Upon this discovery, on January 17, 2018 – less than two years after the death of Ms. Curtis – Appellants promptly moved to amend the complaint to add as defendants Annabelle Socaoco and the other IPC Defendants. However, the district court misapplied the statute and relevant case law in holding that the circumstances arguably commencing the three-year statute of limitations commenced the one-year statute of limitations.

Further, there is a question of statewide public importance and upon which there is an inconsistency in the decision of the district court and *Siragusa v. Brown*, 114 Nev. 1384 (1998). Pursuant to the Supreme Court's decision in *Siragusa*, a plaintiff's cause of action does not accrue until she has or should have discovered the necessary facts, *including the identity of the specific tortfeasor*. The Supreme Court explained that whether a plaintiff's cause of action is time-barred is a question for the jury. Further, the Supreme Court held that whether the plaintiff exercised

reasonable diligence in discovering a specific tortfeasor's role is a question for *the jury*. Here, however, the district court improperly took the questions from the jury.

Finally, there is a question of statewide public importance and upon which there is an inconsistency in the decision of the district court and Nevada Rule of Civil Procedure 10(d). Rule 10(d) provides: "If the name of a defendant is unknown to the pleader, the defendant may be designated by any name. When the defendant's true name is discovered, the pleader should promptly substitute the actual defendant for a fictitious party." Nev. R. Civ. P. 10. In filing the Complaint, John Does were identified as potential individuals or entities that caused or contributed to injuries suffered by Ms. Curtis. Upon discovery of the names of Annabelle Socaoco and the IPC Defendants, Appellants promptly moved to amend the Complaint to add the actual defendants. However, the district court ignored the John Does pleadings and, in effect, ignored the importance of Rule 10(d).

10. Pending proceedings in this court raising the same or similar issues.

If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

N/A

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☒ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

Reversal of well-settled Nevada precedent (identify the case(s))

- *Libby v. Eighth Jud. Dist. Ct.*, 130 Nev. 359, 325 P.3d 1276 (2014). The district court ignored the rule from *Libby* that having an appreciable injury without knowledge of its possible cause commences NRS 41A.097(2)'s three-year statute of limitations, not its one-year statute of limitations.
- *Winn v. Sunrise Hosp. & Med. Ctr.*, 128 Nev. 246, 277 P.3d 458 (2012). The district court ignored the rule from *Winn* that the accrual date for NRS 41A.097(2)'s one-year discovery period ordinarily presents a question of fact to be decided *by the jury*.

- *Massey v. Litton*, 99 Nev. 723, 669 P.2d 248 (1983). The district court ignored the rule from *Massey* that the one-year statute of limitations begins to run when the patient discovers her legal injury through knowledge of “***both*** the fact of damage suffered ***and*** the realization that the cause was ***the*** health care provider’s negligence.” 99 Nev. at 727 (emphasis added).
- *Siragusa v. Brown*, 114 Nev. 1384 (1998). The district court ignored the rule from *Siragusa* that a plaintiff’s cause of action does not accrue until she has or should have discovered the necessary facts, ***including the identity of the specific tortfeasor***. The district court further ignored the rule from *Siragusa* whether the plaintiff exercised reasonable diligence in discovering a specific tortfeasor’s role is a question for ***the jury***.

An issue of public policy

- If a plaintiff must file a lawsuit within one-year of discovery of an injury but with no knowledge of the identity of the specific tortfeasor to prevent a statute of limitations from running, then unfounded claims will be encouraged.

13. **Assignment to the Court of Appeals or retention in the Supreme Court.** Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

The matter is presumptively retained by the Supreme Court under NRAP 17(a)(12) as the matters on appeal raise questions of statewide public importance and are upon which there is an inconsistency between the published decision of the Supreme Court and the district court's rulings.

- 14. Trial.** If this action proceeded to trial, how many days did the trial last?

N/A

Was it a bench or jury trial?

N/A

- 15. Judicial Disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

No

TIMELINESS OF NOTICE OF APPEAL

- 16. Date of entry of written judgment or order appealed from:**

April 24, 2019

- 17. Date written notice of entry of judgment or order was served:**

April 25, 2019

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59):

- (a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

Plaintiffs filed a Motion for Reconsideration, served electronically, on April 29, 2019.

☐ NRCP 50(b) ☐ NRCP 52(b) ☐ NRCP 59

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See *AA Primo Builders v. Washington*, 126 Nev. 578, 245 P.3d 1190 (2010).

- (b) Date of entry of written order resolving tolling motion

June 26, 2019

- (c) Date written notice of entry of order resolving tolling motion was served

June 27, 2019

19. Date notice of appeal filed:

July 1, 2019

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

N/A

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other:

NRAP 4(a)

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SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

☒ NRAP 3A(b)(1) ☐ NRS 38.205

☐ NRAP 3A(b)(2) ☐ NRS 233B.150

☐ NRAP 3A(b)(3) ☐ NRS 703.376

☐ Other (specify)

(b) Explain how each authority provides a basis for appeal from the judgment or order:

NRAP 3A(b)(1) applies because Appellants are appealing the final judgment entered in the action or proceeding commenced in the court in which the judgment was rendered.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Estate of Mary Curtis

Laura Latrenta (as Personal Representative of the Estate and individually)

South Las Vegas Medical Investors, LLC, d/b/a Life Care Center Of South

Las Vegas, f/k/a Life Care Center of Paradise Valley

South Las Vegas Investors Limited Partnership

Life Care Centers of America, Inc.

Bina Hribik Poretello

Carl Wagner

Samir Saxena, M.D.

Annabelle Socaoco, N.P.

IPC Healthcare, Inc. aka The Hospitalist Company, Inc.

Inpatient Consultants of Nevada, Inc.

IPC Healthcare Services of Nevada, Inc.

Hospitalists of Nevada, Inc.

- (b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

The parties stipulated to the dismissal of Bina Hribik Poretello. On July 17, 2017, the district court entered an order dismissing Bina Hribik Portello pursuant to the stipulation.

Appellants settled claims with Samir Saxena, M.D. The district court approved the settlement on July 2, 2018.

The Life Care Defendants are not parties to the appeal because they are currently parties to another pending appeal before this Court, Case No. 77810. At the time of that appeal, the final judgment was entered against only the Life Care Defendants.

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim:

- Wrongful Death by Estate against the IPC Defendants – June 27, 2019
- Wrongful Death by Individual against the IPC Defendants – June 27, 2019
- Medical Malpractice against the IPC Defendants – June 27, 2019
- Abuse/neglect of an Older Person Pursuant to N.R.S. § 41.1395 by Estate against the Life Care Defendants – December 11, 2018
- Wrongful Death by the Estate against the Life Care Defendants – December 11, 2018
- Wrongful death by Individual against the Life Care Defendants – December 11, 2018
- Bad Faith Tort by the Estate against the Life Care Defendants – December 11, 2018

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes ☐ No

25. If you answered “No” to question 24, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes ☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes ☐ No

26. If you answered “No” to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

N/A

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Estate of Mary Curtis, Laura Latrenta, as Michael D. Davidson, Esq.

Personal Representative and Individually Kolesar & Leatham

Name of Appellants

Name of counsel of record

July 29, 2019

Date

/s/ Michael D. Davidson, Esq.

Signature of counsel of record

Nevada, Clark County

State and county where signed

///

///

///

///

CERTIFICATE OF SERVICE

I certify that on the 29th day of July, 2019, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es):

JOHN H. COTTON, ESQ.
Nevada Bar No. 005268
VINCENT J. VITATOE, ESQ.
Nevada Bar No. 012888
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Attorney for Respondents

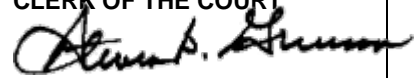
/s/ Kristina R. Cole

An Employee of KOLESAR & LEATHAM

EXHIBIT 1

Amended Complaint for Damages filed on 05/01/2018

EXHIBIT 1



ACOM

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-and-

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Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

Estate of MARY CURTIS, deceased; LAURA
LATRENTA, as Personal Representative of the
Estate of MARY CURTIS; and LAURA
LATRENTA, individually,

Plaintiffs,

vs.

SOUTH LAS VEGAS MEDICAL
INVESTORS, LLC dba LIFE CARE CENTER
OF SOUTH LAS VEGAS f/k/a LIFE CARE
CENTER OF PARADISE VALLEY; SOUTH
LAS VEGAS INVESTORS LIMITED
PARTNERSHIP; LIFE CARE CENTERS OF
AMERICA, INC.; BINA HRIBIK PORTELLO,
Administrator; CARL WAGNER,
Administrator; and DOES 1-50, inclusive,

Defendants.

Estate of MARY CURTIS, deceased; LAURA
LATRENTA, as Personal Representative of the
Estate of MARY CURTIS; and LAURA
LATRENTA, individually,

Plaintiffs,

vs.

SAMIR SAXENA, M.D.; ANNABELLE
SOCAOCO, N.P.; IPC HEALTHCARE, INC.
aka THE HOSPITALIST COMPANY, INC.;
INPATIENT CONSULTANTS OF NEVADA,
INC.; IPC HEALTHCARE SERVICES OF

CASE NO. A-17-750520-C

DEPT NO. XVII

Consolidated with:

CASE NO. A-17-754013-C

**AMENDED COMPLAINT FOR
DAMAGES**

1. Abuse/Neglect of an Older Person
2. Wrongful Death by Estate
3. Wrongful Death by Individual Medical Malpractice

KOLESAR & LEATHAM
400 S. Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145
Tel: (702) 362-7800 / Fax: (702) 362-9472

NEVADA, INC.; HOSPITALISTS OF
NEVADA, INC.; and DOES 51–100,

Defendant.

AMENDED COMPLAINT FOR DAMAGES

Plaintiffs Estate of Mary Curtis, deceased; Laura Latrenta, as Personal Representative of the Estate of Mary Curtis; and Laura Latrenta, individually, by and through their attorneys of record, Kolesar & Leatham and Wilkes & McHugh, P.A., hereby submit this Amended Complaint against Defendants Samir Saxena, M.D., Annabelle Socaoco, N.P., IPC Healthcare, Inc. aka IPC The Hospitalist Company, Inc., Inpatient Consultants of Nevada, Inc., IPC Healthcare Services of Nevada, Inc., Hospitalists of Nevada, Inc., and Does 51 through 100, and allege as follows:

GENERAL ALLEGATIONS

1. Decedent Mary Curtis suffered while a resident at Life Care Center of South Las Vegas f/k/a Life Care Center of Paradise Valley significant physical injury and ultimately a painful death. At all times relevant she resided in the City of Las Vegas in the County of Clark, Nevada and was an “older person” under N.R.S. § 41.1395. She died on March 11, 2016 in Las Vegas.

2. At all times material Plaintiff Laura Latrenta was a natural daughter and surviving heir of Ms. Curtis. At all relevant times she was an individual and resident of Harrington Park, New Jersey.

3. Plaintiffs are informed and believe and thereon allege that at all relevant times Defendant Samir Saxena, M.D. was a licensed physician who provided medical care at Life Care Center of South Las Vegas f/k/a Life Care Center of Paradise Valley and was Ms. Curtis’s treating physician thereat.

4. Defendant Samir Saxena, M.D., was and is a resident of the State of Nevada.

5. Plaintiffs are informed and believe and thereon allege that at all relevant times Defendant Annabelle Socaoco, N.P., was a licensed nurse practitioner who provided medical care under Defendant Saxena’s supervision at Life Care Center of South Las Vegas f/k/a Life

Care Center of Paradise Valley.

6. Defendant Annabelle Socaoco, N.P., was and is a resident of the State of Nevada.

7. Defendant IPC Healthcare, Inc., a Delaware corporation aka The Hospitalist Company, Inc., and/or its affiliated entities Inpatient Consultants of Nevada, Inc., a California corporation; IPC Healthcare Services of Nevada, Inc., a California corporation; and Hospitalists of Nevada, Inc., a Missouri corporation, was at all relevant times employer of Defendants Samir Saxena, M.D., and Annabelle Socaoco, N.P.

8. Defendant IPC Healthcare, Inc., and/or its affiliated entities Inpatient Consultants of Nevada, Inc.; IPC Healthcare Services of Nevada, Inc.; and Hospitalists of Nevada, Inc., as employer of Defendants Saxena and Socaoco, who were at all relevant times acting within the course and scope of their employment, is vicariously liable for the acts, omissions, and failures of Defendants Saxena and Socaoco.

9. Plaintiffs are informed and believe and thereon allege that Defendants Does 51 through 100 are other individuals or entities that caused or contributed to injuries suffered by Ms. Curtis as discussed below. (Hereinafter "IPC Defendants" refers to Samir Saxena, M.D., Annabelle Socaoco, N.P., IPC Healthcare, Inc., Inpatient Consultants of Nevada, Inc., IPC Healthcare Services of Nevada, Inc., Hospitalists of Nevada, Inc., and Does 51 through 100.)

10. Plaintiffs will ask leave of Court to amend this Complaint to show such true names and capacities of Doe Defendants when the names of such defendants have been ascertained. Plaintiffs are informed and believe and thereon allege that each defendant designated herein as Doe is responsible in some manner and liable herein by reason of negligence and other actionable conduct and by such conduct proximately caused the injuries and damages hereinafter further alleged.

11. Every fact, act, omission, event, and circumstance herein mentioned and described occurred in Clark County, Nevada, and each Defendant is a resident of Clark County, has its principal place of business in Clark County, or is legally doing business in Clark County.

12. Each Defendant, whether named or designated as Doe, was the agent, servant, or employee of each remaining Defendant. Each Defendant acted within the course and scope of

1 such agency, service, or employment with the permission, consent, and ratification of each co-
2 Defendant in performing the acts hereinafter alleged which gave rise to Ms. Curtis's injuries.

3 **FIRST CAUSE OF ACTION – ABUSE/NEGLECT OF AN OLDER PERSON**

4 **(Abuse/Neglect of an older person by the Estate of Mary Curtis against IPC Defendants)**

5 13. Plaintiffs hereby incorporate the allegations in all the foregoing paragraphs as
6 though fully set forth herein.

7 14. Mary Curtis was born on 19 December 1926 and was therefore an "older person"
8 under N.R.S. § 41.1395.

9 15. On approximately 2 March 2016 Ms. Curtis was admitted to Life Care Center of
10 South Las Vegas f/k/a Life Care Center of Paradise Valley, a nursing home, for care and
11 supervision.

12 16. Upon entering Life Care Center of South Las Vegas f/k/a Life Care Center of
13 Paradise Valley Ms. Curtis's past medical history included dementia, hypertension, COPD, and
14 renal insufficiency. She had been hospitalized after being found on her bathroom floor on 27
15 February 2016; during her hospitalization it was determined that she would not be able to
16 immediately return to her previous living situation and so following her hospital course she was
17 transferred to Life Care Center of South Las Vegas f/k/a Life Care Center of Paradise Valley for
18 continuing care.

19 17. During her Life Care Center of South Las Vegas f/k/a Life Care Center of
20 Paradise Valley residency Ms. Curtis was dependent on IPC Defendants for medical care.

21 18. IPC Defendants knew that Ms. Curtis relied on them for her medical care and that
22 without that care she would be susceptible to injury and death.

23 19. Life Care Center staff on 7 March 2016 administered to Ms. Curtis, who had not
24 been prescribed morphine, morphine prescribed to another resident.

25 20. Despite Dr. Saxena's notice and knowledge that Life Care Center of South Las
26 Vegas staff had wrongly administered morphine to Ms. Curtis resulting in a morphine overdose,
27 and although a reasonably trained physician would have recognized that she required treatment
28 in an acute care setting, he failed to timely order that she be sent to an acute care setting, leading

1 to Ms. Curtis's retention at Life Care Center of South Las Vegas f/k/a Life Care Center of
2 Paradise Valley until 8 March 2016 and contributing to her injuries and death.

3 21. Despite Dr. Saxena's notice and knowledge of Ms. Curtis's morphine overdose,
4 and although a reasonably trained physician would have recognized that she required a Narcan
5 IV drip (or ongoing dosages of Narcan equivalent thereto), he failed to order such a treatment.
6 He also knew or should have known that she required the close observation that an acute care
7 hospital would provide. These failures contributed to her injuries and death.

8 22. Despite NP Socaoco's notice and knowledge that Life Care Center of South Las
9 Vegas staff had wrongly administered morphine to Ms. Curtis resulting in a morphine overdose,
10 and although a reasonably trained nurse practitioner would have recognized that she required
11 treatment in an acute care setting, NP Socaoco failed to timely order that she be sent to an acute
12 care setting, leading to Ms. Curtis's retention at Life Care Center of South Las Vegas f/k/a Life
13 Care Center of Paradise Valley until 8 March 2016 and contributing to her injuries and death. NP
14 Socaoco instead ordered that Ms. Curtis be given Narcan.

15 23. Despite NP Socaoco's notice and knowledge of Ms. Curtis's morphine overdose,
16 and although a reasonably trained nurse practitioner would have recognized that she required a
17 Narcan IV drip (or ongoing dosages of Narcan equivalent thereto), she failed to order such a
18 treatment. She also knew or should have known that Ms. Curtis required the close observation
19 that an acute care hospital would provide. These failures contributed to her injuries and death.

20 24. Life Care Center of South Las Vegas staff eventually called 911 and emergency
21 personnel transported Ms. Curtis to Sunrise Hospital, where she was diagnosed with anoxic brain
22 encephalopathy and put on a Narcan IV drip. She was later transferred to Nathan Adelson
23 Hospice on 11 March 2016 and died shortly thereafter.

24 25. Ms. Curtis's death certificate records that her immediate cause of death was
25 morphine intoxication.

26 26. As a result of IPC Defendants' failures and conscious disregard of Ms. Curtis's
27 life, health, and safety, she suffered unjustified pain, injury, mental anguish, and death.

28 27. IPC Defendants' actions were abuse under N.R.S. § 41.1395(4)(a) and neglect

under N.R.S. § 41.1395(4)(c).

28. IPC Defendants' failures were made in conscious disregard for Ms. Curtis's health and safety and they acted with recklessness, oppression, fraud, or malice in commission of their neglect or abuse of Ms. Curtis.

29. As a direct and legal result of Ms. Curtis's injuries and death, her estate's personal representative is entitled to recover double her actual damages under N.R.S. § 41.1395.

30. As a direct and legal result of Ms. Curtis's injuries and death, her estate's personal representative is entitled to attorney fees and costs under N.R.S. § 41.1395.

31. Despite IPC Defendants' notice and knowledge that Ms. Curtis was dependent on them for her medical care, they willfully and deliberately ignored and failed to avoid the substantial risk and probability that she would suffer injury and death, so that Plaintiff is entitled to punitive damages under N.R.S. § 42.001.

32. As a direct and proximate result of IPC Defendants' willful negligence and intentional and unjustified conduct, they contributed to Ms. Curtis's significant injuries and death. Their conduct was a direct consequence of the motive and plans set forth herein, and they are guilty of malice, oppression, recklessness, and fraud, justifying an award of punitive and exemplary damages.

SECOND CAUSE OF ACTION

(Wrongful Death by the Estate of Mary Curtis against IPC Defendants)

33. Plaintiffs re-allege and incorporate by reference the allegations in the foregoing paragraphs as though fully set forth herein.

34. IPC Defendants, in providing medical care for Ms. Curtis, had a duty to exercise the level of knowledge, skill, and care of medical professionals in good standing in the community.

35. IPC Defendants breached their duties to Ms. Curtis and were negligent and careless in their actions and omissions as set forth above.

36. As a direct and proximate result of IPC Defendants' breaches Ms. Curtis died on 11 March 2016 in Las Vegas, Nevada.

1 37. As a direct and legal result of Ms. Curtis's death, her estate's personal
2 representative is entitled to maintain all actions on her behalf and is entitled under N.R.S. §
3 41.085 to recover special damages, including medical expenses incurred by Ms. Curtis before her
4 death, as well as funeral and burial expenses according to proof at trial.

5 38. Despite IPC Defendants' notice and knowledge that Ms. Curtis was dependent on
6 them for her medical care, they willfully and deliberately ignored and failed to avoid the
7 substantial risk and probability that she would suffer injury and death, so that Plaintiff is also
8 entitled to punitive damages under N.R.S. § 42.001.

9 **THIRD CAUSE OF ACTION**

10 **(Wrongful Death by Laura Latrenta individually against IPC Defendants)**

11 39. Plaintiffs re-allege and incorporate by reference the allegations in the foregoing
12 paragraphs as though fully set forth herein.

13 40. Plaintiff Laura Latrenta is a surviving daughter and natural heir of Mary Curtis.

14 41. IPC Defendants, in providing medical care to Ms. Curtis, had a duty to exercise
15 the level of knowledge, skill, and care of medical professionals in good standing in the
16 community.

17 42. IPC Defendants breached their duties to Ms. Curtis and were negligent and
18 careless in their actions and omissions as set forth above.

19 43. As a direct and proximate result of IPC Defendants' breaches Ms. Curtis died on
20 11 March 2016 in Las Vegas, Nevada.

21 44. Before her death, Ms. Curtis was a faithful, loving, and dutiful mother to her
22 daughter Laura Latrenta.

23 45. As a further direct and proximate result of IPC Defendants' negligence Plaintiff
24 Laura Latrenta has lost the love, companionship, comfort, affection, and society of her mother,
25 all to her general damage in a sum to be determined according to proof.

26 46. Under N.R.S. § 41.085 Plaintiff Laura Latrenta is entitled to recover pecuniary
27 damages for her grief, mental anguish, sorrow, physical pain, lost moral support, lost
28 companionship, lost society, lost comfort, and mental and physical pain and suffering.

1 **FOURTH CAUSE OF ACTION**

2 **(Medical malpractice by all Plaintiffs against IPC Defendants)**

3 47. Plaintiffs re-allege and incorporate by reference the allegations in the foregoing
4 paragraphs as though fully set forth herein.

5 48. Upon Ms. Curtis's admission to Life Care Center of South Las Vegas f/k/a Life
6 Care Center of Paradise Valley, IPC Defendants assumed responsibility for her medical care and
7 had a duty to use such skill, prudence, and diligence as other similarly situated medical
8 professionals in providing medical care to dependent and elderly residents such as Ms. Curtis.

9 49. Ms. Curtis was dependent on IPC Defendants for her medical care while at Life
10 Care Center of South Las Vegas f/k/a Life Care Center of Paradise Valley.

11 50. Despite IPC Defendants' knowledge of Ms. Curtis's dependence on them for
12 medical care, they failed to provide adequate medical care to her, as alleged above.

13 51. IPC Defendants failed to meet the applicable standard of care in their medical
14 care for Ms. Curtis, including by (1) failing to order that she be sent to an acute care hospital in
15 response to her morphine overdose; (2) failing to order that she receive a Narcan drip (or
16 ongoing dosages of Narcan equivalent thereto); and (3) failing to recognize or to act on their
17 recognition that she required the close observation that an acute care hospital would provide.

18 52. IPC Defendants' medical care of Ms. Curtis fell below the standard of care and
19 was a proximate cause of her injuries and damages, including by contributing to her death. This
20 allegation is supported by the Affidavit of Loren Lipson, MD, *see* Ex. 1, Lipson Aff., and by the
21 Affidavit of Kathleen Hill-O'Neill, RN, DNP, MSN, NHA. *See* Ex. 2, Hill-O'Neill Aff.

22 53. Ms. Curtis's injuries and death were therefore the result of IPC Defendants'
23 negligence.

24 54. The damages and injuries directly and proximately caused by IPC Defendants'
25 malpractice were permanent.

26 55. As a direct and proximate result of IPC Defendants' malpractice and Ms. Curtis's
27 resulting death, Laura Latrenta incurred damages of grief, sorrow, companionship, society,
28 comfort and consortium, and damages for pain and suffering, mental anguish, hospitalizations,

1 and medical and nursing care and treatment.

2 56. The damages and injuries directly and proximately caused by IPC Defendants'
3 malpractice were permanent, including future pain and suffering, loss of companionship, and
4 mental anguish from Ms. Curtis's untimely death.

5 57. Plaintiffs' past and future damages exceed \$10,000.

6 58. Wherefore, Plaintiffs pray for judgment against IPC Defendants as follows:

7 A. For compensatory damages in an amount in excess of \$10,000;

8 B. For special damages in an amount in excess of \$10,000;

9 C. For punitive damages in an amount in excess of \$10,000;

10 D. For reasonable attorney fees and costs incurred herein;

11 E. For additional damages pursuant to NRS Chapter 41;

12 F. For pre-judgment and post-judgment interest; and

13 G. For such other and further relief as the Court may deem just and proper in
14 the premises.

15 DATED this 1st day of May, 2018.

16 **KOLESAR & LEATHAM**

17 By /s/ Michael D. Davidson, Esq.

18 MICHAEL D. DAVIDSON, ESQ.

19 Nevada Bar No. 000878

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21 Las Vegas, Nevada 89145

22 -and-

23 MELANIE L. BOSSIE, ESQ. - *Pro Hac Vice*

24 **WILKES & MCHUGH, P.A.**

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26 Scottsdale, Arizona 85260

27 Attorneys for Plaintiffs

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(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by that Court's facilities to those parties listed on the Court's Master Service List.

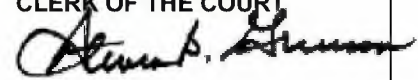
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EXHIBIT 2

Plaintiffs' Motion for Reconsideration filed on 04/29/2019

EXHIBIT 2



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Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

* * *

Estate of MARY CURTIS, deceased; LAURA
LATRENTA, as Personal Representative of the
Estate of MARY CURTIS; and LAURA
LATRENTA, individually,

Plaintiffs,

vs.

SOUTH LAS VEGAS MEDICAL INVESTORS,
LLC dba LIFE CARE CENTER OF SOUTH
LAS VEGAS f/k/a LIFE CARE CENTER OF
PARADISE VALLEY; SOUTH LAS VEGAS
INVESTORS LIMITED PARTNERSHIP; LIFE
CARE CENTERS OF AMERICA, INC.; BINA
HRIBIK PORTELLO, Administrator; CARL
WAGNER, Administrator; and DOES 1-50,
inclusive,

Defendants.

Case No. A-17-750520-C

Dept No. XVIII

Consolidated With:
Case No. A-17-754013-C

**PLAINTIFFS' MOTION FOR
RECONSIDERATION**

HEARING REQUESTED

Estate of MARY CURTIS, deceased; LAURA
LATRENTA, as Personal Representative of the
Estate of MARY CURTIS; and LAURA
LATRENTA, individually,

Plaintiffs,

vs.

SAMIR SAXENA, M.D.; ANNABELLE
SOCAOCO, N.P.; IPC HEALTHCARE, INC.
aka THE HOSPITALIST COMPANY, INC.;
INPATIENT CONSULTANTS OF NEVADA,
INC.; IPC HEALTHCARE SERVICES OF
NEVADA, INC.; HOSPITALISTS OF
NEVADA, INC.; and DOES 51-100,

Defendant.

Plaintiffs Estate of Mary Curtis, deceased; Laura Latrenta, as Personal Representative of
the Estate of Mary Curtis; and Laura Latrenta, individually ("Plaintiffs"), by and through their
attorneys at the law firms of Kolesar & Leatham, Bossie, Reilly & Oh, and Wilkes & McHugh,
P.A., hereby move the Court to reconsider its order granting Nurse Socaoco and the IPC
Defendants' motion for reconsideration.

DATED this 29th day of April, 2019.

KOLESAR & LEATHAM

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Court should reconsider its order granting the motion for reconsideration of Nurse Socaoco (and the IPC Defendants) because (1) the Court failed to acknowledge controlling caselaw interpreting NRS 41A.097; (2) the Court erroneously employed an analysis applicable not to discovery date but to injury date; (3) the twin *Siragusa/Spitler* decisions require that a jury decide whether Laura acted with due diligence in discovering Nurse Socaoco's identity; and (4) Laura's original complaint included Doe Defendants.

II. FACTUAL AND PROCEDURAL BACKGROUND

The following timeline provides the necessary dates for consideration of this motion:

- 7 March 2016: Life Care Center of South Las Vegas administers morphine to Mary Curtis. Ex. 1, Incident Report.
- 11 March 2016: Mary dies. Ex. 2, Death Cert.
- 31 March 2016: Mary's toxicology report is completed; it notes a positive finding of morphine. Ex. 3, Toxicology Report.
- 7 April 2016: Mary's autopsy report is signed; in it, the medical examiner notes, inter alia:
 - "The decedent became excessively sedated, and a physician was called to examine the decedent; and that afternoon the physician administered Narcan and Clonidine, with follow-up physician order for close observation and monitoring every 15 minutes for one hour, and every 4 hours thereafter."
 - "The decedent reportedly remained somnolent and was transferred to an acute care hospital the following day."
 - "Toxicological examination of blood obtained on admission to the acute care hospital, following transfer from the skilled nursing facility, showed morphine 20 ng/ml."
 - "It is my opinion that . . . Mary Curtis, died as a result of morphine intoxication with the other significant conditions of atherosclerotic and hypertensive cardiovascular disease, and dementia." Ex. 4, Autopsy Report.
- 14 April 2016: The ME leaves a message for Laura asking her to call him back so that he can discuss with her his findings; she calls him back either the same or the next day, and he informs her of his findings regarding Mary's cause of death; he does not discuss with her any physician or nurse practitioner involvement contributing to Mary's death. Ex. 14, Latrenta Decl. ¶¶ 2-3; Ex. 15, Email from Laura Latrenta to Melanie Bossie (Feb. 19, 2018) (reflecting the time of the ME's call and the length of his message).

- 15 April 2016: The medical examiner signs Mary's death certificate. Ex. 2, Death Cert.
- 18 April 2016: Mary's death certificate is issued; it identifies as her immediate cause of death morphine intoxication and labels her death an accident. *Id.*
- 30 June 2016: Laura requests her mother's complete record from Life Care. Ex. 5, Letter from Mary Ellen Spiece to Life Care Center – Paradise Valley (June 30, 2016).
- 17 August 2016: Life Care acknowledges Laura's request and requests payment. Ex. 6, Acknowledgement of Req. for Copies & Req. for Payment.
- 2 February 2017: Laura files suit against Life Care Defendants. Compl. (A-17-750520-C). In her Complaint, she
 - names as Defendants Does 1 through 50;
 - alleges that "Defendants Does 26 through 50 are other individuals or entities that caused or contributed to injuries suffered by Ms. Curtis," *id.* ¶ 6;
 - advises that she "will ask leave of Court to amend this Complaint to show such true names and capacities of Doe Defendants when the names of such defendants have been ascertained," *id.* ¶ 7; and
 - alleges that each Doe defendant "is responsible in some manner and liable herein by reason of negligence and other actionable conduct and by such conduct proximately caused [Mary's] injuries and damages." *Id.*
- 14 April 2017: Laura files suit against Dr. Saxena. Compl. (A-17-754013-C).
- 17 May 2017: Laura's counsel sends a letter to Life Care's counsel requesting that Life Care produce, inter alia, incident reports. Ex. 7, Letter from Melanie L. Bossie to S. Brent Vogel & Amanda Brookhyser 2 (May 17, 2017).
- 6 July 2017: Laura moves to consolidate her two suits. Pls.' Mot. Consol.
- 9 August 2017: Laura serves on Life Care her first set of production requests, including a request for incident/accident reports. Ex. 8, Pls.' 1st Set of Reqs. for Produc. to Life Care Defs. 3.
- 25 September 2017: Laura's counsel via letter meets and confers with Life Care's counsel regarding outstanding discovery, including incident reports. Ex. 9, Letter from Melanie L. Bossie to S. Brent Vogel & Amanda Brookhyser 2 (Sept. 25, 2017).
- 2 October 2017: Laura serves on Dr. Saxena her first set of production requests, including a request for incident/accident reports. Ex. 10, Pls.' 1st Set of Reqs. for Produc. to Def. Saxena 3.
- 10 October 2017: The district court orders Laura's two actions consolidated. Order Granting Pl.'s Mot. Consol. (Oct. 10, 2017).
- 24 October 2017: Laura's counsel discusses outstanding discovery with Life Care's counsel; Life Care refuses to produce incident reports without a protective order. Ex. 11, Letter from Melanie L. Bossie to Amanda Brookhyser 1 (Oct. 25, 2017).

- 1 • 8 November 2017: Laura files a motion to compel requesting that Life Care be
2 ordered to produce, inter alia, incident reports. *See* Pls.' Mot. Compel Further
Responses 5.
- 3 • 4 December 2017: Laura's counsel, via email, tells Life Care's counsel that she
4 needs Mary's incident reports for depositions taking place that week and offers to
5 treat them as confidential until the following week's hearing on the motion to
6 compel. Ex. 12, Letter from Melanie L. Bossie to Amanda Brookhyser (Dec. 4,
7 2017).
- 8 • 6 December 2017: Laura's counsel deposes Cecilia Sansome, a nurse formerly
9 employed at Life Care Center of South Las Vegas. Ex. 18, Sansome Dep. She
10 testifies as follows:
 - 11 ○ Annabelle Socaoco is a nurse practitioner, *id.* at 86:2–4, 104:8–11;
 - 12 ○ upon Ms. Sansome's entering the facility a staff member approached her
13 and told her that Mary had been given the wrong medication, *id.* at 45:18–
14 46:3;
 - 15 ○ Ms. Sansome, having asked whether the physician had been notified, was
16 told that he had not been and was asked to make the call, *id.* at 46:7–9;
 - 17 ○ Ms. Sansome first assessed Mary, *id.* at 46:10–25;
 - 18 ○ having done so, she then called the physician through the answering service
19 and was told that Nurse Socaoco would call her back, *id.* at 47:1–4;
 - 20 ○ Nurse Socaoco shortly thereafter called and, having been informed about
21 Mary, instructed that she be given Narcan and specified the dosage thereof,
22 *id.* at 47:4–9;
 - 23 ○ Nurse Socaoco arrived in person to the nursing station while Ms. Sansome
24 was still writing the order, asking Ms. Sansome if she had given the Narcan,
25 *id.* at 47:9–17, 104:12–15;
 - 26 ○ Ms. Sansome then took the medication out of the emergency pyxis and
27 administered it to Mary, *id.* at 47:18–20; and
 - 28 ○ Ms. Sansome did not speak to Dr. Saxena about Mary. *Id.* at 86:18–20.
- 13 December 2017: The discovery commissioner orders Life Care to produce
incident reports. *See* Disc. Comm'r's Report & Recommendation ¶ 2 (Dec. 13,
2017, 9:00 a.m.).
- 4 January 2018: Life Care serves its seventh supplemental disclosure, producing
therewith a medication error incident report identifying Ms. Socaoco as the
physician/NP notified. Ex. 13, Defs.' 7th Suppl. to Initial Discl. 43; Ex. 1, Incident
Report 2. Up to this time, no disclosure statement of any Defendant had identified
Nurse Socaoco.
- 17 January 2018: Laura moves to amend her complaint to add as a defendant Nurse
Socaoco (as well as the IPC entities). Pls.' Mot. Amend Compl.
- 6 February 2018: Dr. Saxena opposes Laura's motion to amend her Complaint and
countermoves for summary judgment, arguing that the statute of limitations defeats

Laura's claims both against him and against the prospective IPC Defendants. *See* Def. Saxena's Opp'n to Pls.' Mot. Amend Compl. & Countermot. Summ. J. 2 ("The statute of limitations and fatal legal flaws preclude all of Plaintiffs' claims as asserted against the parties Plaintiffs seek to add.").

- 28 February 2018: Judge Villani entertains oral argument on Laura's motion to amend. Ex. 19, Hr'g Tr. (Feb. 28, 2018). At the hearing,
 - Laura's counsel explains that the parties "were deposing Cecilia Sansome and she was one of the nurses that worked for Life Care—taking her through what happened; everyone presumed it was Dr. Saxena, the attending physician that saw Mary on that date. Cecilia said it was Annabelle." *Id.* at 2:25–3:4.
 - Laura's counsel explains that "neither Life Care nor Dr. Saxena even listed Annabelle [Socaoco] in their disclosure statements so she was kind of a surprise to everybody that she was involved." *Id.* at 3:14–16.
 - Judge Villani asks this question of defense counsel: "[I]f they're on inquiry notice mid-March but they only find out about Dr. Saxena, let's say June of the year in question, do they have the one year from the June or from the day of the inquiry?" *Id.* at 16:21–24.
 - Judge Villani asks both sides whether there has "been any evidence regarding when someone became aware of Dr. Saxena either through a—or report, his name in the reports?" Laura's counsel responds: "June,"; and elaborates that "Life Care is very strict in giving out the records so they don't give them to the family. I requested it and it took me 3 months to get them, so I got them in June of 2016 was when I even first got the records 'cause obviously the client had no idea who Dr. Saxena was, so that's when the records first became available to the client or her attorney. So, that would be the first record document . . . of him . . ." *Id.* at 25:4–22.
- 11 April 2018: The district court grants Laura's motion to amend her complaint, "thereby permitting Plaintiffs to pursue their proposed claims . . . against Defendant Annabelle Socaoco, N.P., and Defendants IPC," Order ¶ 10a (Apr. 11, 2018); and denies without prejudice Dr. Saxena's countermotion as to the statute of limitations issue. *Id.* ¶ 10c.
- 11 June 2018: Nurse Socaoco and the IPC Defendants seek summary judgment on statute of limitations grounds. *See* Defs.' Mot. Dismiss or in Alt. for Summ. J. 4 ("The statute of limitations bars Plaintiffs' lawsuit against IPC Defendants.").
- 1 August 2018: Judge Villani entertains oral argument on Defendants' motion to dismiss/motion for summary judgment. Ex. 20, Hr'g Tr. (Aug. 1, 2018). At the hearing,
 - Laura's counsel explains that "the whole relating back to when Dr. Saxena's complaint was filed has already been ruled on by this Court and should be the law of the case." *Id.* at 7:1–3.
 - Laura's counsel explains that "[e]ven in the coroner's report, all listed that the physician had seen her and ordered the Narcan. It wasn't until we were in the middle of the deposition on December 6, of 2017 . . . of Cecilia Sansome, who the name Annabelle Socaoco even became into existence—

and at the time I took her deposition I still did not even have the complete medical records.” *Id.* at 7:7–12.

○ Laura’s counsel explains that “[o]n January 3rd of 2018, the incident report was produced finally giving me a complete record of the medical records, and lo and behold, that is when it’s first determined from the medical records that it was not Dr. Saxena that was notified of what happened to [Mary], that it was Annabelle Socaoco. Of course, within 14 days, I filed my motion to amend the complaint.” *Id.* at 7:15–21.

○ Laura’s counsel explains that “legal injury in the *Massey versus Linton* Supreme Court of Nevada case is all essential elements of a malpractice cause of action. You got to have a tortfeasor in order to sue a tortfeasor.” *Id.* at 8:10–11.

○ Laura’s counsel explains that “Ms. Socaoco doesn’t even come in existence. Neither one of these Defendants didn’t even disclose her in their disclosure statement. We’re all sitting in the deposition room in December when her name is first mentioned and within 30 days, when I get the incident report to confirm that, I file my motion to amend. So, the statute of limitations . . . did not even begin to run as to Ms. Socaoco and IPC until all elements of a medical malpractice claim is known, and that includes who the tortfeasor is.” *Id.* at 8:11–18.

○ Laura’s counsel explains: “I did my due diligence and asked for the records from the beginning; didn’t get the records till June. Asked for the incident report; didn’t get the incident report—actually it took two weeks before I filed my motion to amend to include her.” *Id.* at 9:7–10.

○ Judge Villani asks: “Is it true that only during the deposition that the Plaintiff learned of nurse Socaoco? . . . I mean, how can they if they only learned on that day after the statute ran . . . and how can they be penalized for that?” *Id.* at 14:1–6.

○ To this question defense counsel responds thus: “to your question, yes, they learn about that in a deposition, the underlying issue still, as a matter of law, is was that first complaint timely filed and was it not.” *Id.* at 14:16–18.

○ Judge Villani decides “to take this matter under advisement.” *Id.* at 14:19–20.

• 6 November 2018: The district court, observing that “[t]he statute of limitations accrual date is a question of law only if the facts are uncontroverted,” holds that “a question of fact remains as to the date of inquiry as to the identity of the IPC Defendants” and so denies Nurse Socaoco’s motion “based upon the statute of limitations because the date of inquiry as to the identity of the IPC Defendants is a question of fact.” Order ¶¶ 8–10 (Nov. 6, 2018).

• 26 November 2018: Nurse Socaoco moves for reconsideration, seeking “rehearing on this Court’s Order on IPC Defendants’ Motion to Dismiss, or, in the alternative, for Summary Judgment.” IPC Defs.’ Mot. Recons. 4.

• 6 December 2018: Laura opposes Nurse Socaoco’s motion for reconsideration, observing that “relitigating this issue would be wrong (and tedious)” but offering “a brief reminder of the considerations underlying the Court’s previous ruling,” Pls.’ Opp’n 4, and, after summarizing that the motion should be denied “because

IPC has not shown and cannot show substantially different evidence or that the Court's decision is clearly erroneous," nevertheless stating that "if the Court desires to indulge IPC's repetitious motion, then Laura requests the right to meet the motion with a full opposition thereto." *Id.* at 6.

- 9 January 2019: Judge Holthus denies Nurse Socaoco's motion for reconsideration, which she erroneously calls Plaintiff's Motion for Reconsideration. Court Minutes (Jan. 9, 2019).
- 27 February 2019: Judge Holthus strikes the court minutes of 9 January 2019 on the theory that she "ruled upon a motion that was previously ruled upon by Judge Villani." Order to Strike (Feb. 27, 2019).
- 28 February 2019: The Court, having observed that "[i]t is only in 'very rare instances' that a Motion to Reconsider should be granted"; that "[t]he Nevada Supreme Court has repeatedly noted that the law does not favor multiple applications for the same relief"; that "[t]he previous court denied IPC's Motion as to the remaining claims because . . . a question of fact remains as to the date of inquiry as to the identity of the IPC Defendants"; and that "[t]his Court is allowed to make a determination as to the accrual date for the purposes of a statute of limitations only if the facts are uncontroverted," without oral argument grants Nurse Socaoco's motion for reconsideration and directs defense counsel to "submit a proposed order consistent with the foregoing within ten (10) days after counsel is notified of the ruling and distribute a filed copy to all parties involved pursuant to EDCR 7.21." Order (Feb. 28, 2019).

III. LEGAL ARGUMENT

A. The Court should reconsider its decision because in failing to apply *Massey* it ignored controlling caselaw.

Our supreme court taught in the medical malpractice case *Massey v. Litton*

- that the term "injury" in NRS 41A.097 "encompasses not only the physical damage but also the negligence causing the damage," 99 Nev. 723, 726 (1983);
- that to interpret "injury" as "the allegedly negligent act or omission; the physical damage resulting from the act or omission" would "defeat[] the purpose of a discovery rule" and would in cases in which negligence was not obvious "fail[] adequately to account for all relevant factors," *id.*;
- "that 'injury' as used in NRS 41A.097(1) means legal injury," *id.*;
- that "to adopt a construction that encourages a person who experiences an injury, dysfunction or ailment, and has no knowledge of its cause, to file a lawsuit against a health care provider to prevent a statute of limitations from running is not consistent with the unarguably sound proposition that unfounded claims should be strongly discouraged," *id.* at 727;
- that a patient's discovery of her legal injury "may be either actual or presumptive, but must be of both the fact of damage suffered and the realization that the cause was the health care provider's negligence," *id.*;

- that “[t]his rule has been clarified to mean that the statute of limitations begins to run when the patient has before him facts which would put a reasonable person on inquiry notice of his possible cause of action,” *id.* at 727–28;
- that “[t]he focus is on the patient’s knowledge of or access to facts rather than on her discovery of legal theories,” *id.* at 728;
- “that a patient discovers his legal injury when he knows or, through the use of reasonable diligence, should have known of facts that would put a reasonable person on inquiry notice of his cause of action,” *id.*; and
- “that ‘injury’ encompasses discovery of damage as well as negligent cause.” *Id.*

Because injury included discovery of negligent cause, the supreme court held that the district court’s grant of summary judgment to defendant on statute of limitations grounds was improper and so reversed and remanded. *Id.*¹

Five years later, the supreme court in *Pope v. Gray* (a wrongful death case based on medical malpractice) reaffirmed the conclusions that it had reached in *Massey*. 104 Nev. 358 (1988). Observing that it had in *Massey* “concluded that an interpretation providing that the statutory period commenced to run only when a plaintiff discovers or should have discovered ‘legal injury’ would be the most equitable construction of NRS 41A.097,” the court extended *Massey* by holding that the “statutory period for wrongful death medical malpractice actions does not begin to run until the plaintiff discovers or reasonably should have discovered the legal injury, i.e., both the fact of death and the negligent cause thereof.” *Id.* at 362.

Two years later, the supreme court in *Petersen v. Bruen* defended its discovery rule jurisprudence. 106 Nev. 271 (1990). It admitted that “[t]he general rule concerning statutes of limitation is that a cause of action accrues when the wrong occurs and a party sustains injuries for which relief could be sought,” but pointed to “[a]n exception to the general rule [that] has been

¹ See also *Catz v. Rubenstein*, 513 A.2d 98, 102 (Conn. 1986) (recognizing that Nevada is among those “jurisdictions [that] have also held that a plaintiff must have discovered or in the exercise of reasonable care should have discovered the essential elements of a possible cause of action before the statute of limitations commences to run”); *Hershberger v. Akron City Hosp.*, 516 N.E.2d 204, 207 (Ohio 1987) (citing the *Massey* court as among those “several courts [that] have asserted a preference for the ‘legal injury’ concept which definition includes all essential elements of a claim for medical malpractice”). The *Massey* rule was hardly a departure for the Nevada Supreme Court—it had held five years earlier in *Sorenson v. Pavlikowski* that a legal malpractice claim accrues only when the client both sustains damage and discovers or should discover his cause of action. 94 Nev. 440, 443–44 (1978).

1 recognized by this court and many others in the form of the so-called ‘discovery rule,’” under
2 which “the statutory period of limitations is tolled until the injured party discovers or reasonably
3 should have discovered facts supporting a cause of action.” *Id.* at 274. It justified its adoption of
4 this rule by explaining that “the policies served by statutes of limitation do not outweigh the
5 equities reflected in the proposition that plaintiffs should not be foreclosed from judicial remedies
6 before they know that they have been injured and can discover the cause of their injuries.” *Id.*

7 The court then taught in the medical malpractice case *Winn v. Sunrise Hospital & Medical*
8 *Center*

- 9 • “that the accrual date for NRS 41A.097(2)’s one-year discovery period ordinarily
10 presents a question of fact to be decided by the jury,” 128 Nev. 246, 258 (2012);
and
- 11 • that “[o]nly when the evidence irrefutably demonstrates that a plaintiff was put on
12 inquiry notice of a cause of action should the district court determine this discovery
date as a matter of law.” *Id.*

13 The *Winn* court thus rejected the district court’s conclusion that plaintiff had discovered his
14 daughter’s injury the day after her surgery when defendants were unable to explain her surgery’s
15 catastrophic result. *Id.* at 253.

16 The court did, however, then rule that father had discovered daughter’s injury no later than
17 the date on which he received his daughter’s partial medical record, by which time father had
18 already hired a lawyer to pursue a medical malpractice action and had access to the surgeon’s
19 postoperative report referencing air’s presence in daughter’s heart at inappropriate times during
20 the surgery: “By this point at the latest, [father] and his attorney had access to facts that would
21 have led an ordinarily prudent person to investigate further whether [daughter’s] injury may have
22 been caused by someone’s negligence,” so “the evidence irrefutably demonstrates that [father] was
23 put on inquiry notice of his potential cause of action no later than” that date. *Id.* at 253-54. The
24 court in reaching this result relied on its earlier decision in *Massey*, *see id.* at 252, and used it to
25 conclude that father discovered daughter’s injury “when he had facts before him that would have
26 led an ordinarily prudent person to investigate further into whether [daughter’s] injury may have
27 been caused by someone’s negligence.” *Id.* at 253. Of course, there was in *Wynn* no mystery about
28 who was the negligent cause of daughter’s injury-she had suffered a brain injury during a surgery

1 in which she had air in her heart at inappropriate times, and so if anyone was negligent it was either
2 the surgeon, the two perfusionists, or all three (and indeed father sued all three). *See id.* at 249.

3 Are *Massey* and *Winn* then at variance? No: the supreme court in *Libby v. Eighth Judicial*
4 *Court* synthesized the cases. 130 Nev. 359 (2014). It called *Massey* and *Winn* “the analytical
5 foundation established in previous cases in which [it] ha[d] interpreted NRS 41A.097(2)’s one-
6 year limitation period.” *Id.* at 364. Thus, “[b]eginning in *Massey*, [the court] explained that NRS
7 41A.097(2)’s one-year limitation period is a statutory discovery rule that begins to run when a
8 plaintiff ‘knows or, through the use of reasonable diligence, should have known of facts that would
9 put a reasonable person on inquiry notice of his cause of action.’” *Id.* (citation omitted). It “further
10 explained that the term ‘injury,’ as used in the one-year limitation period, encompasses a plaintiff’s
11 discovery of damages as well as discovery of the negligent cause of the damages.” *Id.* And “[l]ater
12 in *Winn*, [the court] recognized that by its terms, NRS 41A.097(2) requires a plaintiff to satisfy
13 both the one-year discovery rule and the three-year limitations period.” *Id.* So both “[i]n *Massey*
14 and *Winn*, [the court] construed the one-year limitation period as requiring a plaintiff to be aware
15 of the cause of his or her injury.” *Id.* at 365.²

16 *Winn* thus complements *Massey*; it neither contradicts nor constrains its holdings. So both
17 *Massey* and *Winn* must be read as a harmonious whole by a court considering whether to take from
18 the jury the determination of discovery date. But the Court’s order granting reconsideration relies
19 on *Winn* alone. *See* Order 3 (Feb. 28, 2019). *Winn* was of course unconcerned with the issue of
20 what individuals were the negligent cause of plaintiff’s injury, as the identities of the physicians
21 taking part in the surgery there were hardly shrouded in mystery. But that issue is at issue here, as
22 *Massey* makes clear.

23 *Massey* teaches that injury includes the negligence causing the damage; here, that
24 negligence was Nurse Socaoco’s. *Massey* teaches that limiting injury to the allegedly negligent act
25

26 ² The Second Circuit explained it thus: “The basic common law rule, the so-called ‘date of injury’ rule, is that the
27 statute of limitations period commences when the cause of action accrues. Several jurisdictions, including California
28 and Nevada, however, recognize an exception to the general rule for certain causes of action such that the limitations
period does not begin until the plaintiff discovers or reasonably should have discovered the facts supporting the cause
of action.” *Cantor Fitzgerald Inc. v. Lutnick*, 313 F.3d 704, 711 (2d Cir. 2002) (citations omitted).

or omission would fail to account for all relevant factors; here, Nurse Socaoco's participation is such a factor. *Massey* teaches that a plaintiff's discovery of her legal injury includes "the realization that the cause was the health care provider's negligence," 99 Nev. at 727; here, Laura did not realize and could not have realized that a cause of her mother's injury was Nurse Socaoco's negligence until Nurse Sansome's December 2017 deposition. *Massey* teaches that the focus is on a plaintiff's knowledge of or access to facts; here, Laura had no knowledge of Nurse Socaoco until Nurse Sansome's deposition and had no access to the facts of Nurse Socaoco's involvement until then (as she did not receive the incident report identifying Nurse Socaoco until January 2018). And *Massey* teaches that injury includes discovery of its negligent cause; here, Laura did not discover that Nurse Socaoco was a negligent cause of Mary's injury until Nurse Sansome's deposition. *Massey's* teachings on when an injury accrues under the discovery rule, when considered alongside *Winn's* holdings that the discovery period's accrual date is a question of fact to be decided by the jury unless the evidence irrefutably demonstrates the date on which a plaintiff discovered or should have discovered her legal injury, compel the conclusion that the Court could neither determine the discovery date for the causes of action against Nurse Socaoco (and the IPC entities) nor, having done so, decide whether Laura's suit against Nurse Socaoco is barred based on the time elapsed between that date and Nurse Socaoco's having been made a defendant. But the Court did so determine and did so decide. It should therefore reconsider its decision.

B. The Court should reconsider its decision because it imported the legal standard applicable to NRS 41A.097's three-year limitation period to the statute's one-year limitation period.

Section 41A.097 provides that "an action for injury or death against a provider of health care may not be commenced more than 3 years after the date of injury or 1 year after the plaintiff discovers or through the use of reasonable diligence should have discovered the injury, whichever occurs first." NRS 41A.097(2). So "consistent with the statute's language, which requires the plaintiff to commence her action within one year of discovering her injury or within three years of the injury date," the supreme court's "analysis in *Massey* and *Winn* recognize[s] that commencement of a malpractice action is bound by two time frames tied to two different events." *Libby*, 130 Nev. at 364-65. In those cases, of course, the supreme court had "construed the one-

year limitation period as requiring a plaintiff to be aware of the cause of his or her injury.” *Id.* at 365. So to construe the three-year limitation period likewise would render it irrelevant—something that the court would not do. *Id.* Instead, recognizing that “the purpose of the three-year limitation period is ‘to put an outside cap on the commencements of actions for medical malpractice, to be measured from the date of the injury, regardless of whether or when the plaintiff discovered its negligent cause,’” *id.* (citation omitted), it concluded that “the Nevada Legislature tied the running of the three-year limitation period to the plaintiff’s appreciable injury and not to the plaintiff’s awareness of that injury’s possible cause.” *Id.* at 366. The court therefore held that “NRS 41A.097(2)’s three-year limitation period begins to run once there is an appreciable manifestation of the plaintiff’s injury” and that “a plaintiff need not be aware of the cause of his or her injury in order for the three-year limitations period to begin to run.” *Id.*

Here, the court held that “Plaintiff was on inquiry notice no later than March 11, 2016 when Providers of Healthcare at Sunrise Hospital told plaintiff that negligent conduct had occurred.” Order 3 (Feb. 28, 2019). Now 11 March 2016 could arguably be the date of injury—it is the date on which Mary died and according to the Court the date on which Laura was told that negligent conduct had occurred.³ But assuming arguendo that Laura should have taken some time during her mother’s death throes on 11 March to mentally note that her mother had suffered an appreciable injury, she undoubtedly knew only that appreciable injury, not its cause. But under *Libby* having an appreciable injury without knowledge of its possible cause commences NRS 41A.097(2)’s three-year statute of limitations, not its one-year statute of limitations. The error is now apparent: the Court held that circumstances arguably commencing the three-year statute of limitations inarguably commenced the one-year statute of limitations. It should therefore reconsider its decision.

³ A cause of action for wrongful death cannot accrue before the date of death. *Pope v. Gray*, 104 Nev. at 363 n.6 (“[T]he very earliest that the statute of limitations could begin to run for a wrongful death action would be at death, and not before.”).

1 **C. The Court should reconsider its decision because it failed to apply *Siragusa/***
2 ***Spitler*'s holding that a statute of limitations does not begin to run until a**
3 **plaintiff discovers or should have discovered the tortfeasor's identity.**

4 Whether Laura's claims against Nurse Socaoco (and the IPC entities) are time-barred is a
5 jury question under *Siragusa v. Brown*, 114 Nev. 1384 (1998) and *Spitler v. Dean*, 436 N.W.2d
6 308 (Wis. 1989). The *Spitler* court held that "[t]he statute should not commence to run until the
7 plaintiff with due diligence knows to a reasonable probability of injury, its nature, its cause, and
8 the identity of the allegedly responsible defendant." 436 N.W.2d at 310. The Nevada Supreme
9 Court in *Siragusa* adopted and applied that holding. 114 Nev. at 1393.

10 In *Siragusa*, wife filed an adversary complaint in bankruptcy court against ex-husband after
11 he defaulted on his debt owed her under their divorce property settlement and filed for bankruptcy
12 before she could enforce her lien against his partnership interest, which interest he claimed to have
13 been forced to terminate before filing for bankruptcy. *Id.* at 1387-88. Her adversary complaint
14 "referred to [partnership's] counsel on several occasions," alleging that she had told wife's counsel
15 that the partnership's reorganization would not affect wife's interest; raising the issue whether
16 backdated documents had been used in the reorganization; and claiming that wife had discovered
17 evidence of fraud in the addendum prepared by partnership's counsel. *Id.* at 1388. Several months
18 later, one of the partners by affidavit described a scheme masterminded in part by partnership's
19 counsel in which the partners executed a "paper reorganization" (including using backdated
20 documents) in order to insulate partnership from ex-husband's liabilities to wife. *Id.* at 1388-89.
21 Wife later sued partnership's counsel, but the district court granted counsel summary judgment,
22 believing wife's claims time-barred. *Id.* at 1390. The Nevada Supreme Court reversed. *Id.* at
23 1402.

24 Overruling its previous holding that a civil conspiracy action runs from the date of the
25 injury, the supreme court, observing that "the policies served by statutes of limitation do not
26 outweigh the equities reflected in the proposition that plaintiffs should not be foreclosed from
27 judicial remedies before they know that they have been injured and can discover the cause of their
28 injuries," *id.* at 1392 (citation and emphasis omitted), held that "an action for civil conspiracy
accrues when the plaintiff discovers or should have discovered all of the necessary facts

1 constituting a conspiracy claim.” *Id.* at 1393. For this reason it accepted wife’s argument that
2 “part of discovering facts constituting a cause of action is discovering the identity of a specific
3 tortfeasor.” *Id.* Accordingly, it recognized that wife’s awareness by the time that she filed her
4 adversary complaint that partnership’s members had conducted a sham transfer of ex-husband’s
5 interests “did not, as a matter of law, constitute discovery by [wife] of facts constituting the fraud
6 allegedly perpetrated by [counsel].” *Id.* at 1391. Of course, wife’s “mere ignorance of [counsel’s]
7 identity will not delay accrual of even a discovery-based statute of limitations if the fact finder
8 determines that [wife] failed to exercise reasonable diligence in discovering [counsel’s] role in the
9 alleged tortious activities.” *Id.* at 1394. But that was a question for the trier of fact on remand. *Id.*

10 Then turning to wife’s state RICO claims, the court again “note[d] the general rule that the
11 question of when a claimant discovered or should have discovered the facts constituting a cause
12 of action is one of fact,” such that “[o]nly where uncontroverted evidence proves that the plaintiff
13 discovered or should have discovered the facts giving rise to the claim should such a determination
14 be made as a matter of law.” *Id.* at 1400–01. It then-again relying on *Massey*, as did the *Winn*
15 court-concluded that the term “injury” in Nevada’s RICO statute “encompasses discovery of both
16 an injury and the cause of that injury, in this case [defendant’s] racketeering activity,” and that
17 “such factual determinations cannot be made as a matter of law.” *Id.* at 1401. It therefore reversed
18 the trial court’s dismissal of plaintiff’s tort and state RICO claims. *Id.* at 1402.

19 As in *Siragusa*, Laura (1) generally knew of the underlying conduct, but not of a particular
20 individual’s role in the conduct (the lawyer’s role there, Nurse Socaoco’s here); and (2) discovered
21 that individual’s conduct later (by a partner’s affidavit there, by Nurse Sansome’s testimony here).
22 *Siragusa*’s reasoning, then, that because a plaintiff’s judicial remedies cannot be foreclosed before
23 she can discover the cause of her injuries her action does not accrue until she has or should have
24 discovered a claim’s necessary facts-including the identity of the specific tortfeasor-applies with
25 equal force to Laura’s claims against Nurse Socaoco. So does *Siragusa*’s recognition that
26 awareness of the general underlying conduct does not as a matter of law constitute discovery of
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1 facts constituting the tort allegedly committed by another-here, Nurse Socaoco.⁴ Now whether
2 Laura exercised reasonable diligence in discovering Nurse Socaoco's role is another question. But
3 it is a question that under *Siragusa* is for the jury.

4 The *Siragusa* court relied on and adopted the interpretation of the discovery rule announced
5 by the Wisconsin Supreme Court in *Spitler v. Dean*, see *Siragusa*, 114 Nev. at 1393-94, thus
6 counseling consideration of *Spitler* as well. In *Spitler*, plaintiff filed a tort claim "more than two
7 years after he was injured, but less than two years after he discovered the identity of the alleged
8 tortfeasor." 436 N.W.2d at 308. The Wisconsin Supreme Court therefore had to consider whether
9 the "discovery rule should be extended to allow a tort action to accrue only after the identity of the
10 defendant is known, or reasonably should have been known." *Id.* at 309.

11 The court recognized that "the identity of the tortfeasor is a critical element of an
12 enforceable claim," such that "[t]he statute should not commence to run until the plaintiff with due
13 diligence knows to a reasonable probability of injury, its nature, its cause, and the identity of the
14 allegedly responsible defendant." *Id.* at 310 (citation omitted). Indeed, "the public policy
15 justifying the accrual of a cause of action upon the discovery of the injury and its cause applies
16 equally to the discovery of the identity of the defendant." *Id.* The court had "consistently
17 recognized the injustice of commencing the statute of limitations before a claimant is aware of all
18 the elements of an enforceable claim." *Id.* So the *Spitler* plaintiff's "cause of action did not accrue
19 until [he] knew the identity of the defendant, or in the exercise of reasonable diligence, should
20 have discovered the identity of the defendant." *Id.* The issue of reasonable diligence being
21 "ordinarily one of fact," the supreme court thus remanded to the trial court "for a factual
22 determination whether [plaintiff] exercised reasonable diligence in attempting to discover the
23 identity of the defendant." *Id.* at 311.

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26 ⁴ For this reason whether a cause of action against B arose from the same transaction or occurrence as the earlier-
27 asserted cause of action against A cannot be dispositive. *Contra* Order 3 (Feb. 28, 2019) (erroneously concluding
28 that Laura as a matter of law was on inquiry notice because she "filed a Motion to Consolidate the case against South
Las Vegas Medical and IPC Defendants premised on the fact that the two cases arose out of the **same transaction or
occurrence**").

1 Under *Spitler*, Laura’s cause of action against Nurse Socaoco did not accrue until she knew
2 Nurse Socaoco’s identity or should by reasonable diligence have discovered it. Laura did not
3 know Nurse Socaoco’s identity until Nurse Sansome’s December 2017 deposition, and whether
4 she should have discovered Nurse Socaoco’s identity sooner is a fact question for the jury
5 (although it is hard to see how she could have earlier discovered her identity, as Life Care did not
6 relinquish the incident report identifying her until January 2018). So *Spitler* is as clear as *Siragusa*:
7 when Laura’s claims against Nurse Socaoco accrued is a question for the jury.

8 Now whether the *Siragusa/Spitler* rule that a cause of action does not accrue until a plaintiff
9 discovers or by reasonable diligence should have discovered a defendant’s identity is atypical is
10 of course irrelevant-it is the law of Nevada and cannot be disregarded by Nevada district courts.
11 But in any event the rule adopted by the Nevada and Wisconsin high courts does in fact accord
12 with that of other courts that have considered this discovery rule wrinkle. For example, the
13 Massachusetts Supreme Judicial Court in *Harrington v. Costello*, recognizing that “[c]ourts in a
14 number of other States . . . have concluded that for a cause of action to accrue, the identity of the
15 defendant must be known or reasonably knowable,” held that “a cause of action accrues when the
16 plaintiff discovers or with reasonable diligence should have discovered that (1) he has suffered
17 harm; (2) his harm was caused by the conduct of another; and (3) the defendant is the person who
18 caused that harm,” 7 N.E.3d 449, 455 (Mass. 2014); the Connecticut Supreme Court in *Tarnowsky*
19 *v. Socci* held that the statute of limitations “does not begin to run until a plaintiff knows, or
20 reasonably should have known, the identity of the tortfeasor,” 856 A.2d 408, 416 (Conn. 2004);
21 the West Virginia Supreme Court of Appeals in *Slack v. Kanawha County Housing &*
22 *Redevelopment Authority* held that “the statute of limitations does not begin to run until the
23 plaintiff knows, or by the exercise of reasonable diligence should know, that he has been injured
24 and the identity of the person or persons responsible,” 423 S.E.2d 547, 553 (W. Va. 1992); and the
25 Oregon Supreme Court in *Adams v. Oregon State Police* held that “[t]he period of limitations does
26 not commence to run until plaintiff has a reasonable opportunity to discovery his injury and the
27 identity of the party responsible for that injury.” 611 P.2d 1153, 1156 (Or. 1980).

1 Indeed, even intermediate appellate courts have gotten into the act: the Utah Court of
2 Appeals in *Robinson v. Marrow* held that “the discovery rule should be applied to situations
3 wherein the plaintiff can show that he . . . did not know the identity of the tortfeasor after
4 conducting a reasonable investigation,” 99 P.3d 341, 345 (Utah. Ct. App. 2004), while the
5 Washington Court of Appeals in *Orear v. International Paint Co.* “conclude[d] that the statutes of
6 limitations . . . did not begin to run until [plaintiff] knew or with reasonable diligence should have
7 known that [defendant] may have been a responsible party.” 796 P.2d 759, 764 (Wash. Ct. App.
8 1990). So a Nevada district court that fails to apply *Siragusa/Spitler* disregards not only Nevada
9 law but also a general rule of common law prevailing amongst the states.

10 **D. The Court should reconsider its decision because if Rule 10(d) could apply**
11 **here it would apply here.**

12 “If the name of a defendant is unknown to the pleader, the defendant may be designated by
13 any name. When the defendant’s true name is discovered, the pleader should promptly substitute
14 the actual defendant for a fictitious party.” Nev. R. Civ. P. 10(d). The rule thus “permits a plaintiff
15 to bring suit, before the limitations statute has run, against a defendant whose identity or
16 description is known, but whose true name cannot be discovered through the exercise of reasonable
17 diligence.” *Sullivan v. Terra Mktg. of Nev.*, 96 Nev. 232, 234 (1980).

18 The California Court of Appeal in *McOwen v. Grossman* reversed a summary judgment
19 granted to a defendant who had started life as a Doe. 63 Cal. Rptr. 3d 615 (Ct. App. 2007). The
20 *McOwen* plaintiff had lost a toe owing to gangrene on 2 April 2003 and had had his leg amputated
21 in July 2003. *Id.* at 618. He filed a medical malpractice action on 25 March 2004 against both
22 named and Doe defendants. *Id.* One of the named defendants (Caremore Medical Group)
23 supplemented its earlier discovery responses on 9 March 2005, in which supplement it identified
24 Marc Grossman, M.D., who had treated plaintiff’s infected foot on 20 and 28 March 2003, as an
25 individual who may have contributed to plaintiff’s injuries. *Id.* Plaintiff deposed Caremore’s
26 expert on 21 March 2005, at which deposition he opined that Dr. Grossman should have ordered
27 not the Doppler test that he did order but rather an angiogram. *Id.* at 618-19. On this opinion
28 Caremore’s supplemental response was apparently based. *Id.* at 619. Plaintiff amended his

1 complaint on 8 August 2005, substituting Dr. Grossman for one of the Does. *Id.* (Thus, as plaintiff
2 “point[ed] out . . . in his opening brief, ‘Grossman wouldn’t be in this lawsuit if it weren’t for
3 *Caremore’s* contentions.’” *Id.*) The trial court, finding that plaintiff had been treated by Dr.
4 Grossman in March 2003 and that plaintiff’s leg had been amputated in July 2003, held that
5 amputation put plaintiff on notice of his claim, triggering the statute of limitations. *Id.* It therefore
6 granted Grossman’s motion for summary judgment. *Id.* at 618. The California Court of Appeal
7 reversed. *Id.*⁵

8 The appellate court saw nothing in the record suggesting that Caremore’s theory of liability
9 for Dr. Grossman, a theory “which is quite specific in focusing *on the test ordered by respondent*
10 *in March 2003*, was known to [plaintiff] prior to March 2005, when Caremore first indicated in its
11 amended supplemental response that [Dr. Grossman] may have contributed to [plaintiff’s]
12 injuries.” 63 Cal. Rptr. 3d at 621. And while there was no evidence that Caremark’s expert’s
13 theory had been known to anyone but him, there was plaintiff’s “statement that he had no suspicion
14 of wrongdoing by [Dr. Grossman] prior to [Caremark’s expert’s] deposition.” *Id.* at 622. This
15 means that “it is a question of fact whether, at the time of the filing of the complaint, [plaintiff]
16 knew facts that indicated that [Dr. Grossman] ordered the wrong test in March 2003, and that he
17 should have ordered an angiogram.” *Id.* Dr. Grossman countered that plaintiff knew of him and
18 knew that he had treated him in March 2003. *Id.* But “[t]his is not the issue. The question is
19 whether [plaintiff] knew facts when he filed the complaint that indicated that [Dr. Grossman]
20 should have ordered an angiogram in March 2003, and not a Doppler test.” *Id.* And based on the
21 evidence “it was only when [Caremark’s expert] surfaced with his ‘wrong test’ theory in March
22 2005 that [plaintiff] learned of the role [Dr. Grossman] allegedly played in bringing about
23 [plaintiff’s] injuries.” *Id.* So the appellate court, holding that “it is a question of fact whether, at
24 the time [plaintiff] filed the complaint, he knew facts to cause a reasonable person to believe that
25 [Dr. Grossman] was probably liable,” reversed the trial court’s judgment. *Id.* at 624.

26
27
28 ⁵ California’s “medical malpractice statute of limitations is identical to Nevada’s statute.” *Libby*, 130 Nev. at 365.

1 Here, in rejecting Laura’s argument that the statute of limitations had been tolled until she
2 could discover Nurse Socaoco’s identity, the Court explained that “Plaintiff could have moved this
3 Court to amend their complaint to a ‘Doe’ pleading, which is commonly done in medical
4 malpractice cases; however Plaintiff failed to do so.” Order 4 (Feb. 28, 2019). It elaborated that
5 “[i]t is important to note that not only did Plaintiff fail to move this Court to amend their complaint
6 to include a ‘Doe’ pleading, but Plaintiff was actually in receipt of medical records that included
7 names of some of the IPC Defendants, but failed to move this Court to amend their complaint.”
8 *Id.*

9 Possibly, however, Laura failed to so move the Court because she had already included
10 Does 1 through 50 as Defendants in her original complaint and alleged therein that “Does 26
11 through 50 are other individuals or entities that caused or contributed to injuries suffered by Ms.
12 Curtis”; that she “will ask leave of Court to amend this Complaint to show such true names and
13 capacities of Doe Defendants when the names of such defendants have been ascertained”; and that
14 “each defendant designated herein as Doe is responsible in some manner and liable herein by
15 reason of negligence and other actionable conduct and by such conduct proximately caused
16 [Mary’s] injuries and damages.” Compl. (A-17-750520-C) ¶¶ 6-7. So if Rule 10(d) applies here
17 then the Court could and should have applied it.

18 *McOwen* bolsters this conclusion. As the *McOwen* plaintiff named Doe defendants and
19 did not discover his cause of action against Dr. Grossman until another defendant revealed it, so
20 here Laura named Doe Defendants and did not discover her causes of action against Nurse Socaoco
21 until Nurse Socaoco’s existence was revealed in a Life Care employee’s deposition (and then by
22 Life Care’s supplemental disclosure). Indeed, this is a much easier case than *McOwen*-the
23 *McOwen* plaintiff knew very well about Dr. Grossman, as he had been treated by him, while Laura
24 had no idea that Nurse Socaoco even existed. But even in *McOwen* the question was not whether
25 plaintiff knew Grossman but whether plaintiff knew when he filed his complaint facts indicating
26 that Grossman should have ordered a different test, which question was one of fact precluding
27 summary judgment. So a fortiori here, where Laura was ignorant not only of Nurse Socaoco’s
28 negligence but even of her existence, is whether Laura knew facts when she filed her complaint to

1 cause a reasonable person to believe Nurse Socaoco probably liable a jury question. The Court
2 thus erred in supposing summary judgment available on statute of limitations grounds.

3 In sum, the Court should reconsider its order granting Nurse Socaoco's motion for
4 reconsideration because (1) the Court failed to apply the *Massey* discovery rule; (2) it applied the
5 date of injury test rather than the date of discovery test; (3) it failed to adhere to *Siragusa*'s teaching
6 that an action does not accrue until a plaintiff discovers or should have discovered the tortfeasor's
7 identity; and (4) Laura included Does as Defendants, so if Rule 10(d) is applicable then the Court
8 should have applied it.

9 **IV. CONCLUSION**

10 Laura requests that the Court (1) grant her motion for reconsideration; (2) reconsider its
11 order granting Nurse Socaoco and the IPC entities' motion for reconsideration; and (3) deny their
12 motion for reconsideration seeking summary judgment.

13 DATED this 29th day of April, 2019.

14 **KOLESAR & LEATHAM**

15 By /s/ Michael D. Davidson, Esq.

16 MICHAEL D. DAVIDSON, ESQ.

17 Nevada Bar No. 000878

18 400 South Rampart Boulevard, Suite 400

19 Las Vegas, Nevada 89145

20 -and-

21 MELANIE L. BOSSIE, ESQ. - *Pro Hac Vice*

22 **BOSSIE, REILLY & OH, P.C.**

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24 Scottsdale, Arizona 85260

25 BENNIE LAZZARA, JR., ESQ. - *Pro Hac Vice*

26 **WILKES & MCHUGH, P.A.**

27 One North Dale Mabry Highway, Suite 700

28 Tampa, FL 33609

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Kolesar & Leatham, and that on the 29th day of April, 2019, I caused to be served a true and correct copy of foregoing **PLAINTIFFS' MOTION FOR RECONSIDERATION** in the following manner:

(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List.

/s/ Kristina R. Cole

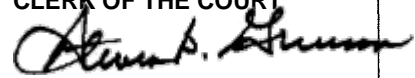
An Employee of KOLESAR & LEATHAM

KOLESAR & LEATHAM
400 S. Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145
Tel: (702) 362-7800 / Fax: (702) 362-9472

EXHIBIT 3

**Stipulation to Dismiss Bina Hribik Poretello Without Prejudice filed on
07/18/2017**

EXHIBIT 3



SODWOP

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E-Mail: Melanie@wilkesmchugh.com

Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

* * *

Estate of MARY CURTIS, deceased; LAURA
LATRENTA, as Personal Representative of the
Estate of MARY CURTIS; and LAURA
LATRENTA, individually,

Plaintiffs,

vs.

SOUTH LAS VEGAS MEDICAL INVESTORS,
LLC dba LIFE CARE CENTER OF SOUTH LAS
VEGAS f/k/a LIFE CARE CENTER OF
PARADISE VALLEY; SOUTH LAS VEGAS
INVESTORS LIMITED PARTNERSHIP; LIFE
CARE CENTERS OF AMERICA, INC.; BINA
HRIBIK PORTELLO, Administrator; CARL
WAGNER, Administrator; and DOES 1-50,
inclusive,

Defendants.

CASE NO. A-17-750520-C

DEPT NO. XXIII

**STIPULATION TO DISMISS
BINA HRIBIK PORETELLO
WITHOUT PREJUDICE**

KOLESAR & LEATHAM
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KOLESAR & LEATHAM
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Las Vegas, Nevada 89145
Tel: (702) 362-7800 / Fax: (702) 362-9472

COME NOW, the parties, by and through their undersigned attorneys, and respectfully requests the Court enter an Order dismissing Bina Hribik Portello without prejudice, each party to bear its own costs. The parties further stipulate to the withdrawal of Defendant Bina Hribik Portello's Motion for Summary Judgment and to vacate the hearing, currently scheduled for July 25, 2017.

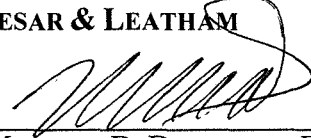
This Stipulation shall not affect the status of Plaintiff's claims against the remaining Defendants.

DATED this 6 day of July, 2017

DATED this ___ day of July, 2017

KOLESAR & LEATHAM

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: 
MICHAEL D. DAVIDSON, ESQ.
Nevada Bar No. 000878
400 South Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145

By: _____
S. BRENT VOGEL, ESQ.
Nevada Bar No. 006858
AMANDA J. BROOKHYSER, ESQ.
Nevada Bar No. 011526
6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118

-and-

MELANIE L. BOSSIE, ESQ. - *Pro Hac Vice*
Arizona Bar No. 022825
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Scottsdale, Arizona 85260

Attorneys for Defendants

Attorneys for Plaintiff

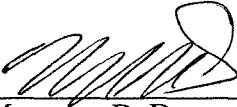
IT IS SO ORDERED.

DATED this ___ day of June, 2017.

See next page

DISTRICT COURT JUDGE

Submitted by:
KOLESAR & LEATHAM

By: 
MICHAEL D. DAVIDSON, ESQ.
Nevada Bar No. 000878
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-and-
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COME NOW, the parties, by and through their undersigned attorneys, and respectfully requests the Court enter an Order dismissing Bina Hribik Portello without prejudice, each party to bear its own costs. The parties further stipulate to the withdrawal of Defendant Bina Hribik Portello's Motion for Summary Judgment and to vacate the hearing, currently scheduled for July 25, 2017.

This Stipulation shall not affect the status of Plaintiff's claims against the remaining Defendants.

DATED this ___ day of July, 2017

KOLESAR & LEATHAM

By: _____
MICHAEL D. DAVIDSON, ESQ.
Nevada Bar No. 000878
400 South Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145

-and-

MELANIE L. BOSSIE, ESQ. - *Pro Hac Vice*
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Scottsdale, Arizona 85260

Attorneys for Plaintiff

DATED this 12 day of July, 2017

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: _____
S. BRENT VOGEL, ESQ.
Nevada Bar No. 006858
AMANDA J. BROOKHYSER, ESQ.
Nevada Bar No. 011526
6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118

Attorneys for Defendants

IT IS SO ORDERED.

DATED this 17 day of June, 2017.

Submitted by:
KOLESAR & LEATHAM

DISTRICT COURT JUDGE

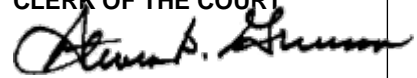
JUDGE STEFANY A. MILEY

By: _____
MICHAEL D. DAVIDSON, ESQ.
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-and-
MELANIE L. BOSSIE, ESQ. - *Pro Hac Vice*
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Scottsdale, Arizona 85260
Attorneys for Plaintiffs

EXHIBIT 4

**Notice of Entry of Stipulation to Dismiss Bina Hribik Poretello Without
Prejudice filed on 07/24/2017**

EXHIBIT 4



NESO

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E-Mail: Melanie@wilkesmchugh.com

Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

* * *

Estate of MARY CURTIS, deceased; LAURA
LATRENTA, as Personal Representative of the
Estate of MARY CURTIS; and LAURA
LATRENTA, individually,

Plaintiffs,

vs.

SOUTH LAS VEGAS MEDICAL
INVESTORS, LLC dba LIFE CARE CENTER
OF SOUTH LAS VEGAS f/k/a LIFE CARE
CENTER OF PARADISE VALLEY; SOUTH
LAS VEGAS INVESTORS LIMITED
PARTNERSHIP; LIFE CARE CENTERS OF
AMERICA, INC.; BINA HRIBIK PORTELLO,
Administrator; CARL WAGNER,
Administrator; and DOES 1-50, inclusive,

Defendants.

CASE NO. A-17-750520-C

DEPT NO. XXIII

**NOTICE OF ENTRY OF
STIPULATION AND ORDER TO
DISMISS BINA HRIBIK
PORTELLO WITHOUT
PREJUDICE**

///

///

///

KOLESAR & LEATHAM
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**NOTICE OF ENTRY OF STIPULATION AND ORDER TO DISMISS BINA HRIBIK
PORETELLO WITHOUT PREJUDICE**

Please take notice that a Stipulation and Order to Dismiss Bina Hribik Poretello Without Prejudice was entered with the above court on the 18th day of July, 2017, a copy of which is attached hereto as **Exhibit 1**.

DATED this 24th day of July, 2017.

KOLESAR & LEATHAM

By /s/ Michael D. Davidson, Esq.

MICHAEL D. DAVIDSON, ESQ.

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-and-

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Attorneys for Plaintiffs

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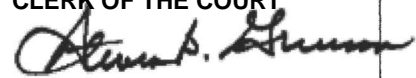
(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by that Court's facilities to those parties listed on the Court's Master Service List.

An Employee of KOLESAR & LEATHAM

2438986 (9770-1) Page 3 of 3

EXHIBIT 1

EXHIBIT 1



SODWOP

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Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

* * *

Estate of MARY CURTIS, deceased; LAURA
LATRENTA, as Personal Representative of the
Estate of MARY CURTIS; and LAURA
LATRENTA, individually,

Plaintiffs,

vs.

SOUTH LAS VEGAS MEDICAL INVESTORS,
LLC dba LIFE CARE CENTER OF SOUTH LAS
VEGAS f/k/a LIFE CARE CENTER OF
PARADISE VALLEY; SOUTH LAS VEGAS
INVESTORS LIMITED PARTNERSHIP; LIFE
CARE CENTERS OF AMERICA, INC.; BINA
HRIBIK PORTELLO, Administrator; CARL
WAGNER, Administrator; and DOES 1-50,
inclusive,

Defendants.

CASE NO. A-17-750520-C

DEPT NO. XXIII

**STIPULATION TO DISMISS
BINA HRIBIK PORTELLO
WITHOUT PREJUDICE**

KOLESAR & LEATHAM
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COME NOW, the parties, by and through their undersigned attorneys, and respectfully requests the Court enter an Order dismissing Bina Hribik Portello without prejudice, each party to bear its own costs. The parties further stipulate to the withdrawal of Defendant Bina Hribik Portello's Motion for Summary Judgment and to vacate the hearing, currently scheduled for July 25, 2017.

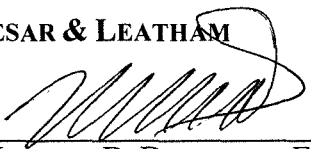
This Stipulation shall not affect the status of Plaintiff's claims against the remaining Defendants.

DATED this 6 day of July, 2017

DATED this ___ day of July, 2017

KOLESAR & LEATHAM

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: 
MICHAEL D. DAVIDSON, ESQ.
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By: _____
S. BRENT VOGEL, ESQ.
Nevada Bar No. 006858
AMANDA J. BROOKHYSER, ESQ.
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Attorneys for Defendants

Attorneys for Plaintiff

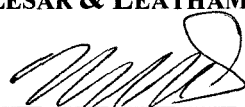
IT IS SO ORDERED.

DATED this ___ day of June, 2017.

See next page

DISTRICT COURT JUDGE

Submitted by:
KOLESAR & LEATHAM

By: 
MICHAEL D. DAVIDSON, ESQ.
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-and-
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Attorneys for Plaintiffs

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Tel: (702) 362-7800 / Fax: (702) 362-9472

COME NOW, the parties, by and through their undersigned attorneys, and respectfully requests the Court enter an Order dismissing Bina Hribik Portello without prejudice, each party to bear its own costs. The parties further stipulate to the withdrawal of Defendant Bina Hribik Portello's Motion for Summary Judgment and to vacate the hearing, currently scheduled for July 25, 2017.

This Stipulation shall not affect the status of Plaintiff's claims against the remaining Defendants.

DATED this ___ day of July, 2017

KOLESAR & LEATHAM

By: _____
MICHAEL D. DAVIDSON, ESQ.
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Las Vegas, Nevada 89145

-and-

MELANIE L. BOSSIE, ESQ. - *Pro Hac Vice*
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15333 N. Pima Rd., Ste. 300
Scottsdale, Arizona 85260

Attorneys for Plaintiff

DATED this 12 day of July, 2017

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: _____
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Nevada Bar No. 006858
AMANDA J. BROOKHYSER, ESQ.
Nevada Bar No. 011526
6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118

Attorneys for Defendants

IT IS SO ORDERED.

DATED this 17 day of June, 2017.

Submitted by:
KOLESAR & LEATHAM

DISTRICT COURT JUDGE

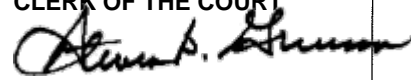
JUDGE STEFANY A. MILEY

By: _____
MICHAEL D. DAVIDSON, ESQ.
Nevada Bar No. 000878
400 South Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145
-and-
MELANIE L. BOSSIE, ESQ. - *Pro Hac Vice*
WILKES & MCHUGH, P.A.
15333 N. Pima Rd., Ste. 300
Scottsdale, Arizona 85260
Attorneys for Plaintiffs

EXHIBIT 5

**Order Granting Samir S. Saxena, M.D.'s Motion for Good Faith Settlement
on Order Shortening Time filed on 08/07/2018**

EXHIBIT 5



1 JOHN H. COTTON, ESQ.
2 Nevada Bar Number 5268
3 JHCotton@jhcottonlaw.com
4 VINCENT J. VITATOE, ESQ.
5 Nevada Bar Number 12888
6 VVitatoe@jhcottonlaw.com
7 **JOHN H. COTTON & ASSOCIATES, LTD.**
8 7900 West Sahara Avenue, Suite 200
9 Las Vegas, Nevada 89117
10 Telephone: (702) 832-5909
11 Facsimile: (702) 832-5910
12 *Attorneys for Defendant, Samir Saxena, M.D.*

8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 * * *

11 Estate of MARY CURTIS, deceased; LAURA
12 LATRENTA, as Personal Representative of the
13 Estate of MARY CURTIS; and LAURA
14 LATRENTA, individually,

15 Plaintiffs,

16 vs.

17 SOUTH LAS VEGAS MEDICAL
18 INVESTORS, LLC dba LIFE CARE CENTER
19 OF SOUTH LAS VEGAS f/k/a LIFE CARE
20 CENTER OF PARADISE VALLEY; SOUTH
21 LAS VEGAS INVESTORS LIMITED
22 PARTNERSHIP; LIFE CARE CENTERS OF
23 AMERICA, INC.; BINA HRIBIK PORTELLO,
24 Administrator; CARL WAGNER,
25 Administrator; and DOES 1-50, inclusive,

26 Defendants.

27 Estate of MARY CURTIS, deceased; LAURA
28 LATRENTA, as Personal Representative of the
Estate of MARY CURTIS; and LAURA
LATRENTA, individually,

Plaintiffs,

vs.

SAMIR SAXENA, M.D.; ANNABELLE
SOCACO, N.P.; IPC HEALTHCARE, INC.
aka THE HOSPITALIST COMPANY, INC.;
INPATIENT CONSULTANTS OF NEVADA,
INC.; IPC HEALTHCARE SERVICES OF
NEVADA, INC.; HOSPITALISTS OF

CASE NO. A-17-750520-C

DEPT NO. XVII

Consolidated with:
CASE NO. A-17-754013-C

**ORDER GRANTING DEFENDANT
SAMIR S. SAXENA, M.D.'S
MOTION FOR GOOD FAITH
SETTLEMENT ON ORDER
SHORTENING TIME**

John H. Cotton & Associates, Ltd.
7900 West Sahara, Suite 200
Las Vegas, Nevada 89117

RECEIVED BY
DEPT 17 ON
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NEVADA, INC.; and DOES 51–100,
Defendants.

This matter having come before the Court at 8:30am on June 13, 2018 with Vincent J. Vitatoe, Esq. of John H. Cotton & Associates, LTD., appearing on behalf of Defendant Samir Saxena, M.D., Melanie Bossie, Esq., of Wilkes & McHugh, P.A., appearing on behalf of the Plaintiffs, and Amanda J. Brookhyser, Esq. of Lewis Brisbois Bisgaard & Smith LLP, appearing on behalf of the Life Care Defendants. The Court, having considered the pleadings, Motion, Joinder, and Opposition together with arguments presented at the hearing on this matter and good cause appearing finds the following:

1. NRS 17.245 governs good faith settlements among multiple tortfeasors or co-obligors as is present in the instant matter.
2. The Court FINDS Defendant Dr. Saxena and Plaintiffs have satisfied the factors for good faith settlements as set forth in Otak Nev., LLC v. Eighth Judicial Dist. Court of Nev., 312 P.3d 491, 496 (Nev. 2013) citing In re MGM Grand Hotel Fire Litigation, 570 F. Supp. 913, 927 (D. Nev. 1983).
3. Specifically, the Court FINDS that, given Dr. Saxena's lack of involvement in the treatment of Mary Curtis on March 7 and 8, 2016, the settlement amount, the allocation of settlement proceeds, the insurance policy limits, and the financial condition of Dr. Saxena all support the conclusion that the settlement is made in good faith.
4. The Court further FINDS that the instant settlement lacks any evidence of collusion, fraud or tortious conduct aimed to injure the interests of non-settling defendants such as the Life Care Defendants.

///

///

John H. Cotton & Associates
7900 W. Sahara, Suite 200
Las Vegas, NV 89117

5. Therefore, the Court ORDERS that Defendant SAMIR S. SAXENA, M.D.'S MOTION
FOR GOOD FAITH SETTLEMENT ON ORDER SHORTENING TIME is hereby
GRANTED. *

DATED this 2 day of July, 2018.



DISTRICT JUDGE

Respectfully submitted by:

JOHN H. COTTON & ASSOCIATES, LTD.

By: 

JOHN H. COTTON, ESQ.
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*Attorneys for Defendant
Samir Saxena, M.D.*

Approved as to form and content:

DATED this 19 day of July, 2018

KOLESAR & LEATHAM,

By: 

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-and-
MELANIE L. BOSSIE, ESQ. - Pro Hac Vice
WILKES & MCHUGH, P.A.
15333 N. Pima Rd., Ste. 300
Scottsdale, Arizona 85260
Attorneys for Plaintiffs

DATED this 19 day of July, 2018

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: 

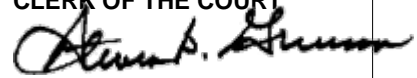
S. BRENT VOGEL, ESQ.
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Attorneys for Life Care Defendants

EXHIBIT 6

Notice of Entry of Order Granting Samir S. Saxena, M.D.'s Motion for Good Faith Settlement on Order Shortening Time filed on 08/08/2018

EXHIBIT 6



1 **NEOJ**

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5 VINCENT J. VITATOE, ESQ.

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12 Facsimile: (702) 832-5910

13 *Attorneys for Defendants, Samir Saxena, M.D.*

14 *Annabelle Socaoco, N.P. and IPC Healthcare, Inc.*

15 **DISTRICT COURT**

16 * * *

17 **CLARK COUNTY, NEVADA**

18 Estate of MARY CURTIS, deceased; LAURA
19 LATRENTA, as Personal Representative of
20 the Estate of MARY CURTIS; and LAURA
21 LATRENTA, individually,

22 Plaintiffs,

23 v.

24 SOUTH LAS VEGAS MEDICAL
25 INVESTORS, LLC dba LIFE CARE CENTER
26 OF SOUTH LAS VEGAS fka LIFE CARE
27 CENTER OF PARADISE VALLEY; SOUTH
28 LAS VEGAS INVESTORS LIMITED
PARTNERSHIP; LIFE CARE CENTERS OF
AMERICA INC., BINA HRIBIK
PROTELLO, Administrator; CARL
WAGNER, Administrator; AND does 1-50
inclusive,

Defendants.

Estate of MARY CURTIS, deceased; LAURA
LATRENTA, as Personal Representative of
the Estate of MARY CURTIS; and LAURA
LATRENTA, individually,

Plaintiffs,

v.

SAMIR S. SAXENA, M.D.; ANNABELLE
SOCAOCO, N.P.; IPC HEALTHCARE, INC.
a/k/a THE HOSPITALISTS COMPANY INC.;
INPATIENT CONSULTANTS OF NEVADA
INC.; IPC HEALTHCARE SERVICES OF
NEVADA INC.; HOSPITALISTS OF
NEVADA, INC.; and DOES 51-100,

Defendants.

CASE NO.: **A-17-750520-C**

DEPT. NO.: **XVII**

Consolidated with:

CASE NO.: **A-17-754013-C**

NOTICE OF ENTRY OF ORDER
GRANTING DEFENDANT SAMIR S.
SAXENA, M.D.'S MOTION FOR
GOOD FAITH SETTLEMENT ON
ORDER SHORTENING TIME

1 TO: ALL PARTIES AND THEIR COUNSEL OF RECORD:

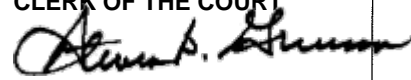
2 YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that an Order was entered in
3 the above entitled matter on the 7th day of August 2018, a copy of which is attached hereto.
4

5 Dated this 8th day of August 2018.

6 **JOHN H. COTTON & ASSOCIATES, LTD.**
7 7900 West Sahara Avenue, Suite 200
8 Las Vegas, Nevada 89117

9 /s/ Vincent J. Vitatoe

10 JOHN H. COTTON, ESQ.
11 VINCENT J. VITATOE, ESQ.
12
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11 Facsimile: (702) 832-5910
12 *Attorneys for Defendant, Samir Saxena, M.D.*

8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 * * *

11 Estate of MARY CURTIS, deceased; LAURA
12 LATRENTA, as Personal Representative of the
13 Estate of MARY CURTIS; and LAURA
14 LATRENTA, individually,

15 Plaintiffs,

16 vs.

17 SOUTH LAS VEGAS MEDICAL
18 INVESTORS, LLC dba LIFE CARE CENTER
19 OF SOUTH LAS VEGAS f/k/a LIFE CARE
20 CENTER OF PARADISE VALLEY; SOUTH
21 LAS VEGAS INVESTORS LIMITED
22 PARTNERSHIP; LIFE CARE CENTERS OF
23 AMERICA, INC.; BINA HRIBIK PORTELLO,
24 Administrator; CARL WAGNER,
25 Administrator; and DOES 1-50, inclusive,

26 Defendants.

27 Estate of MARY CURTIS, deceased; LAURA
28 LATRENTA, as Personal Representative of the
Estate of MARY CURTIS; and LAURA
LATRENTA, individually,

Plaintiffs,

vs.

SAMIR SAXENA, M.D.; ANNABELLE
SOCACO, N.P.; IPC HEALTHCARE, INC.
aka THE HOSPITALIST COMPANY, INC.;
INPATIENT CONSULTANTS OF NEVADA,
INC.; IPC HEALTHCARE SERVICES OF
NEVADA, INC.; HOSPITALISTS OF

CASE NO. A-17-750520-C

DEPT NO. XVII

Consolidated with:
CASE NO. A-17-754013-C

**ORDER GRANTING DEFENDANT
SAMIR S. SAXENA, M.D.'S
MOTION FOR GOOD FAITH
SETTLEMENT ON ORDER
SHORTENING TIME**

John H. Cotton & Associates, Ltd.
7900 West Sahara, Suite 200
Las Vegas, Nevada 89117

RECEIVED BY
DEPT 17 ON
AUG 01 2018

NEVADA, INC.; and DOES 51–100,
Defendants.

This matter having come before the Court at 8:30am on June 13, 2018 with Vincent J. Vitatoe, Esq. of John H. Cotton & Associates, LTD., appearing on behalf of Defendant Samir Saxena, M.D., Melanie Bossie, Esq., of Wilkes & McHugh, P.A., appearing on behalf of the Plaintiffs, and Amanda J. Brookhyser, Esq. of Lewis Brisbois Bisgaard & Smith LLP, appearing on behalf of the Life Care Defendants. The Court, having considered the pleadings, Motion, Joinder, and Opposition together with arguments presented at the hearing on this matter and good cause appearing finds the following:

1. NRS 17.245 governs good faith settlements among multiple tortfeasors or co-obligors as is present in the instant matter.
2. The Court FINDS Defendant Dr. Saxena and Plaintiffs have satisfied the factors for good faith settlements as set forth in Otak Nev., LLC v. Eighth Judicial Dist. Court of Nev., 312 P.3d 491, 496 (Nev. 2013) citing In re MGM Grand Hotel Fire Litigation, 570 F. Supp. 913, 927 (D. Nev. 1983).
3. Specifically, the Court FINDS that, given Dr. Saxena's lack of involvement in the treatment of Mary Curtis on March 7 and 8, 2016, the settlement amount, the allocation of settlement proceeds, the insurance policy limits, and the financial condition of Dr. Saxena all support the conclusion that the settlement is made in good faith.
4. The Court further FINDS that the instant settlement lacks any evidence of collusion, fraud or tortious conduct aimed to injure the interests of non-settling defendants such as the Life Care Defendants.

///

///

John H. Cotton & Associates
7900 W. Sahara, Suite 200
Las Vegas, NV 89117

5. Therefore, the Court ORDERS that Defendant SAMIR S. SAXENA, M.D.'S MOTION FOR GOOD FAITH SETTLEMENT ON ORDER SHORTENING TIME is hereby GRANTED. *

DATED this 2 day of July, 2018.



DISTRICT JUDGE

Respectfully submitted by:

JOHN H. COTTON & ASSOCIATES, LTD.

By:

JOHN H. COTTON, ESQ.
Nevada Bar No. 005262
VINCENT J. VITATOE, ESQ.
Nevada Bar No. 012888
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Las Vegas, Nevada 89117

*Attorneys for Defendant
Samir Saxena, M.D.*

Approved as to form and content:

DATED this 19 day of July, 2018

KOLESAR & LEATHAM,

By:

Melanie Bossie
MICHAEL D. DAVIDSON, ESQ.
Nevada Bar No. 000878
400 South Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145
-and-
MELANIE L. BOSSIE, ESQ. - Pro Hac Vice
WILKES & MCHUGH, P.A.
15333 N. Pima Rd., Ste. 300
Scottsdale, Arizona 85260
Attorneys for Plaintiffs

DATED this 19 day of July, 2018

LEWIS BRISBOIS BISGAARD & SMITH LLP

By:

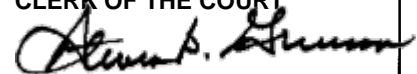
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Las Vegas, Nevada 89118

Attorneys for Life Care Defendants

EXHIBIT 7

Order Granting Motion for Reconsideration filed on 02/28/2019

EXHIBIT 7



1 ORDR

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5 Estate of MARY CURTIS, deceased; LAURA
6 LATRENTA, as Personal Representative of the
7 Estate of MARY CURTIS; and LAURA
8 LATRENTA, individually,

9 Plaintiffs,

10 vs.

11 SOUTH LAS VEGAS MEDICAL
12 INVESTORS, LLC dba LIFE CARE CENTER
13 OF SOUTH LAS VEGAS f/k/a LIFE CARE
14 CENTER OF PARADISE VALLEY; SOUTH
15 LAS VEGAS INVESTORS LIMITED
16 PARTNERSHIP; LIFE CARE CENTERS OF
17 AMERICA, INC.; BINA HRIBIK PORTELLO,
18 Administrator; CARL WAGNER,
19 Administrator; and DOES 1-50, inclusive,
20 Defendants.

CASE NO.: A-17-750520-C

Consolidated with:

CASE NO. A-17-754013-C

DEPT. NO.: XVIII

ORDER

21 LATRENTA, as Personal Representative of the
22 Estate of MARY CURTIS; and LAURA
23 LATRENTA, individually,

24 Plaintiffs,

25 vs.

26 SAMIR SAXENA, M.D.; ANNABELLE
27 SOCAOCO, N.P.; IPC HEALTHCARE, INC.
28 aka THE HOSPITALIST COMPANY, INC.;
INPATIENT CONSULTANTS OF NEVADA,
INC.; IPC HEALTHCARE SERVICES OF
NEVADA, INC.; HOSPITALISTS OF
NEVADA, INC.; and
DOES 51-100,

Defendants.

29 IPC Defendant's Motion for Reconsideration of Judge Villani's ruling on IPC's Motion to
30 Dismiss or in the Alternative, for Summary Judgment, came before this Court on the January 9,
31 2019, Chambers Calendar. This Court having reviewed the pleadings and papers on file herein,
32 GRANTS Defendant IPC's Motion for Reconsideration.

1 A District Court may reconsider a previously decided issue if substantially different evidence
2 is subsequently introduced or if the prior decision was clearly erroneous. *Masonry & Tile*
3 *Contractors Ass'n of Southern Nevada v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737,741, 941 P.2d
4 486, 489 (1976).

5 It is only in “very rare instances” that a Motion to Reconsider should be granted, as movants
6 bear the burden of producing new issues of fact and/or law supporting a ruling contrary to a prior
7 ruling. *Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976). The party
8 requesting a Motion for Reconsideration has a high burden to show that his motion is necessary to
9 “correct manifest errors of law or fact,” or that the subject Order is plainly wrong due to “newly
10 discovered or previously unavailable evidence,” or that the motion is necessary “to prevent manifest
11 injustice,” or that the Order must be altered due to a “change in controlling law.” *AA Primo*
12 *Builders, LLC v. Washington*, 126 Nev. 578, 582, 245 P.3d 1190, 1193 (2010).

13 The Nevada Supreme Court has repeatedly noted that the law does not favor multiple
14 applications for the same relief. *Whitehead v. Nevada Com’n. on Judicial Discipline*, 110 Nev. 380,
15 388, 873 P.2d 946, 951-52 (1994) (“it has been the law of Nevada for 125 years that a party will not
16 be allowed to file successive petitions for rehearing . . . The obvious reason for this rule is that
17 successive motions for rehearing tend to unduly prolong litigation”).

18 IPC Defendants (Annabelle Socaoco, N.P; IP Healthcare, Inc. a/k/a The Hospitalist
19 Company, Inc.; Inpatient Consultants of Nevada, Inc.; IPC Healthcare Services of Nevada, Inc.; and
20 Hospitalists of Nevada, Inc.) came before the previous Court on August, 1, 2018 for a hearing on
21 IPC’s Motion to Dismiss, or in the alternative, Motion for Summary Judgment. The previous Court
22 took this matter under advisement and issued a minute order GRANTING in part and DENYING in
23 part.

24 The previous court granted IPC’s Motion to Dismiss in part and found as a matter of law that
25 the complaint against IPC Defendants is for professional negligence. (*See* Order from November 6,
26 2018). The previous Court found that Plaintiff’s complaint was grounded in and involves medical
27 treatment and the standard of care, therefore the gravamen of the complaint, and all claims therein,
28 sounds in professional negligence. (*See* Order from December 7, 2018). The previous Court also

1 found that as a matter of law that IPC Defendants are a de facto provider of healthcare subject to
2 NRS 41A, because they provided medical services to Plaintiff. This Court does not disagree with the
3 previous Court's ruling on the above.

4 The previous court denied IPC's Motion as to the remaining claims because the previous
5 court found that NRS 41A.097(2)'s one year statute of limitations did not apply because "...a
6 question of fact remains as to the date of inquiry as to the identity of the IPC Defendants in this
7 matter." (See Order from November 6, 2018). This Court however, disagrees.

8 NRS 41A.907(2) states that an action for injury or death against a provider of healthcare may not be
9 commenced more than 3 years after the date of injury or 1 year after the plaintiff discovers or
10 through use of reasonable diligence should have discovered the injury, whichever occurs first.

11 This Court is allowed to make a determination as to the accrual date for the purposes of a
12 statute of limitations only if the facts are uncontroverted. *Winn v. Sunrise Hosp. & Med. Ctr.*, 128
13 Nev. 246, 252-53 (2012). The Nevada Supreme court has stated that "...a person is put on 'inquiry
14 notice' when he or she should have known of facts that 'would lead an ordinarily prudent person to
15 investigate the matter further.'" *Id.*

16 It is uncontroverted that the Plaintiff filed a Motion to Consolidate the case against South Las
17 Vegas Medical and IPC Defendants premised on the fact that the two cases arose out of the **same**
18 **transaction or occurrence**. This Motion was granted by Judge Allf on August 8, 2017. Therefore,
19 this Court FINDS that Plaintiff was on inquiry notice of IPC's alleged negligent conduct at the same
20 time they were on inquiry notice of Co-Defendant South Las Vegas Medical's alleged negligent
21 conduct.

22 This Court also FINDS that it is uncontroverted that Plaintiff was on inquiry notice no later
23 than March 11, 2016 when Providers of Healthcare at Sunrise Hospital told plaintiff that negligent
24 conduct had occurred. (See Defendant's Motion for Reconsideration 10:19-25).

25 This Court also FINDS that it is uncontroverted that the Plaintiff filed a complaint against
26 IPC Defendants on April 14, 2017. The one year statute of limitation period, for the purposes of
27 NRS 41A.097(2), would have run on March 11, 2017. Thus Plaintiff failed to file a timely complaint
28 against IPC Defendants by a month and a few days.

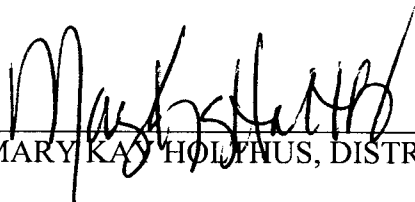
1 This Court also FINDS that Plaintiff's argument that the statute of limitations was tolled until
2 Plaintiff became aware of the identity of the IPC Defendant to be without merit. Plaintiff could have
3 moved this Court to amend their complaint to a "Doe" pleading, which is commonly done in
4 medical malpractice cases; however Plaintiff failed to do so. It is Important to note that not only did
5 Plaintiff fail to move this Court to amend their complaint to include a "Doe" Pleading, but Plaintiff
6 was actually in receipt of medical records that included names of some of the IPC Defendants, but
7 failed to move this Court to amend their complaint.

8 This Court further FINDS, that in light of the reasoning above, the previous Court's ruling on
9 the statute of limitations issue was clearly erroneous, and therefore GRANTS IPC Defendant's
10 Motion for Reconsideration. Thus the case against IPC Defendant's is barred by the statute of
11 limitations and is ordered DISMISSED with prejudice.

12 Defense Counsel is directed to submit a proposed order consistent with the foregoing within
13 ten (10) days after counsel is notified of the ruling and distribute a filed copy to all parties involved
14 pursuant to EDCR 7.21. Such order should set forth a synopsis of the supporting reasons proffered to
15 the court in briefing and be approved as to form and content by all parties.

16
17 IT IS SO ORDERED.

18 DATED: February 27, 2019.

19
20 
MARY KAY HOLTHUS, DISTRICT COURT JUDGE

21 **CERTIFICATE OF SERVICE**

22 I hereby certify that on or about the date filed, I electronically served, sent by facsimile,
23 emailed, or placed a copy of this order in the attorney's folder on the first floor of the
24 Regional Justice Center as follows:

25 Michael Davidson (mdavidson@klnevada.com)

26 S. Brent Vogel (brent.vogel@lewisbrisbois.com)

27 John Cotton (JHCotton@jhcottonlaw.com)

28 
Kelly Tibbs
Judicial Executive Assistant

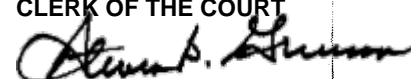
EXHIBIT 8

**Order Granting IPC Defendants' Motion for Reconsideration filed on
04/24/2019**

EXHIBIT 8

ORIGINAL

Electronically Filed
4/24/2019 2:19 PM
Steven D. Grierson
CLERK OF THE COURT



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7 *Attorneys for IPC Defendants*

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 * * *

11 Estate of MARY CURTIS, deceased; LAURA
LATRENTA, as Personal Representative of the
12 Estate of MARY CURTIS; and LAURA
LATRENTA, individually,

13 Plaintiffs,

14 vs.

15 SOUTH LAS VEGAS MEDICAL
INVESTORS, LLC dba LIFE CARE CENTER
16 OF SOUTH LAS VEGAS f/k/a LIFE CARE
CENTER OF PARADISE VALLEY; SOUTH
17 LAS VEGAS INVESTORS LIMITED
PARTNERSHIP; LIFE CARE CENTERS OF
18 AMERICA, INC.; BINA HRIBIK PORTELLO,
Administrator; CARL WAGNER,
19 Administrator; and DOES 1-50, inclusive,

20 Defendants.

21 Estate of MARY CURTIS, deceased; LAURA
LATRENTA, as Personal Representative of the
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LATRENTA, individually,

23 Plaintiffs,

24 vs.

25 SAMIR SAXENA, M.D.; ANNABELLE
SOCAOCO, N.P.; IPC HEALTHCARE, INC.
26 aka THE HOSPITALIST COMPANY, INC.;
INPATIENT CONSULTANTS OF NEVADA,
27 INC.; IPC HEALTHCARE SERVICES OF
28 NEVADA, INC.; HOSPITALISTS OF

CASE NO. A-17-750520-C

DEPT NO. XVII

Consolidated with:
CASE NO. A-17-754013-C

**ORDER GRANTING IPC
DEFENDANTS' MOTION FOR
RECONSIDERATION**

NEVADA, INC.; and DOES 51-100,
Defendants.

This matter having come before the Court on the January 9, 2019 Chambers Calendar with John H. Cotton, Esq. and Vincent J. Vitatoe, Esq. of John H. Cotton & Associates, LTD., on behalf of ANNABELLE SOCAOCO, N.P.; IPC HEALTHCARE, INC. aka THE HOSPITALIST COMPANY, INC.; INPATIENT CONSULTANTS OF NEVADA, INC.; IPC HEALTHCARE SERVICES OF NEVADA, INC.; HOSPITALISTS OF NEVADA, INC ("IPC Defendants"), Melanie Bossie, Esq. of Wilkes & McHugh, P.A. and Michael D. Davidson, Esq. of Kolesar & Leatham on behalf of the Plaintiffs. The Court, having considered the documents on file and IPC Defendants' Motion for Reconsideration, Opposition, and Reply with good cause appearing Orders as follows:

1. On February 2, 2017, Plaintiffs filed a Complaint (Case A-17-750520-C) against SOUTH LAS VEGAS MEDICAL INVESTORS, LLC dba LIFE CARE CENTER OF SOUTH LAS VEGAS f/k/a LIFE CARE CENTER OF PARADISE VALLEY; SOUTH LAS VEGAS INVESTORS LIMITED PARTNERSHIP; LIFE CARE CENTERS OF AMERICA, INC.; BINA HRIBIK PORTELLO, Administrator; CARL WAGNER (collectively, "Life Care Defendants").
2. Plaintiffs' Complaint in A-17-750520-C ("First Complaint") against Life Care Defendants concerned, *inter alia*, Life Care Defendants' nurses medication error in providing Mary Curtis with another patient's dose of morphine and then failing to take appropriate action thereafter including transfer to a hospital.
3. These events occurred over the course of March 7 and 8, 2016.
4. It is undisputed Mary Curtis was transferred to Sunrise Hospital on March 8, 2016 and subsequently passed away on March 11, 2016.
5. Plaintiffs' First Complaint did not attach an affidavit or declaration from a medical expert.

- 1 6. On April 14, 2017, Plaintiffs filed a Complaint in case A-17-754013-C initially naming
- 2 Samir S. Saxena, M.D. ("Second Complaint").
- 3 7. The Second Complaint set forth two factual bases for the alleged professional negligence
- 4 related to a morphine overdose of Mary Curtis: (a) a failure to timely transport Mary
- 5 Curtis to a hospital and (b) failure to administer a Narcan IV drip or ongoing doses of
- 6 Narcan.
- 7 8. On July 6, 2017, Plaintiffs filed a Motion to Consolidate Case A-17-750520-C with Case
- 8 A-17-754013-C.
- 9 9. Plaintiffs' Motion to Consolidate was premised upon the argument that the two actions
- 10 were based upon the same transaction and occurrence.
- 11 10. Specifically, Plaintiffs' Motion stated the following:
- 12 a. the "two actions implicate the same underlying facts: Mary's morphine overdose,
- 13 Defendants' reaction (or lack thereof) thereto, and her resulting injuries and
- 14 death...They therefore involve common questions of fact." (Emphasis added).
- 15 See Motion to Consolidate at 3:25-27; and
- 16 b. the cases "against both Life Care and Dr. Saxena involve common questions of
- 17 law, e.g., causation of and liability for [Mary Curtis's] injuries and death, and of
- 18 fact, e.g., [Mary's] morphine overdose and Defendants' untimely response
- 19 thereto." (Emphasis added). *Id.* at 6:8-10.
- 20 11. On October 10, 2017, the Court's order granting Plaintiffs' Motion to Consolidate was
- 21 filed.
- 22 12. On May 1, 2018, Plaintiffs filed an Amended Second Complaint in case A-17-754013-C
- 23 (involving the Second Complaint) naming the IPC Defendants.
- 24 13. The Amended Second Complaint contained the identical factual premises as were first
- 25 lodged against Dr. Saxena in the Second Complaint and as set forth in the expert affidavit
- 26 attached thereto.
- 27 14. The medical records in the case contained the name or signature of one of the IPC
- 28 Defendants, ANNABELLE SOCAOCO, N.P.

- 1 15. Plaintiff Laura Latrenta admitted that upon admission to Sunrise Hospital, certain Sunrise
2 Hospital providers stated "they should have brought her here as soon as this happened,
3 and we could have put her on a Narcan drip." See Latrenta Deposition at 77-78.
- 4 16. IPC Defendants argued that the statute of limitations barred the Second Complaint and,
5 by extension, the Amended Second Complaint.
- 6 17. Plaintiffs argued that the statute of limitations was tolled until Plaintiffs identified IPC
7 Defendants.
- 8 18. IPC Defendants further argued:
 - 9 a. Plaintiffs clearly knew of the purportedly negligent *conduct* at issue against both
10 Dr. Saxena and IPC Defendants given the filing of the Second Complaint along
11 with the expert affidavit against Dr. Saxena on April 14, 2017 which specified the
12 purportedly negligent conduct involving (a) failure to transfer to a hospital, and
13 (b) not providing a Narcan IV drip or ongoing doses of Narcan;
 - 14 b. The Second Complaint against Dr. Saxena was itself filed more than one (1) year
15 after inquiry notice commenced, at the latest, March 11, 2016;
 - 16 c. Amendment of the Second Complaint was therefore to no avail as there could be
17 no valid relation back pursuant to NRCP 15(c) against the IPC Defendants given
18 the initial untimeliness of the Second Complaint; and
 - 19 d. The statute of limitations thus barred suit against IPC Defendants.
- 20 19. NRS 41A.097(2) requires a plaintiff to file suit against a statutorily-defined provider of
21 health care within one (1) year "after the plaintiff discovers or through the use of
22 reasonable diligence should have discovered the injury".
- 23 20. In the context of NRS 41A, the Nevada Supreme Court ruled that a plaintiff "discovers"
24 and is, therefore on inquiry notice when a plaintiff "had facts before him that would have
25 led an ordinarily prudent person to investigate further into whether [plaintiff's] injury
26 may have been caused by someone's negligence." Winn v. Sunrise Hosp. & Med. Ctr.,
27 128 Nev. 246, 252-53, 277 P.3d 458, 462 (2012).
- 28

1 21. This Court is allowed to make a determination as to the accrual date for the purposes of
2 statute of limitations if the facts are uncontroverted. Id.

3 22. The pertinent facts in this case are uncontroverted as a matter of law.

4 23. IPC Defendants are providers of health care pursuant to NRS 41A.017.

5 24. Plaintiffs were on inquiry notice no later than March 11, 2016, the date of Mary Curtis's
6 death, because Plaintiffs admitted that providers of health care at Sunrise Hospital told
7 her negligent *conduct* occurred.

8 25. Moreover, Plaintiffs were on inquiry notice against IPC Defendants at the same time that
9 Plaintiffs were on inquiry notice as related to Life Care Defendants given Plaintiffs'
10 aforementioned arguments in support of their Motion to Consolidate.

11 26. Plaintiffs' argument is without merit regarding the position that the statute of limitations
12 was tolled until Plaintiffs learned the identity of IPC Defendants because:

- 13 a. Plaintiffs never sought to amend the First Complaint to add or otherwise
- 14 substitute IPC Defendants;
- 15 b. Plaintiffs' Second Complaint was filed more than one (1) year after March 11,
- 16 2016;
- 17 c. Plaintiffs knew of the purportedly negligent conduct even if Plaintiffs did not
- 18 know the specific identities of each provider of health care, and
- 19 d. Plaintiffs were in possession of medical records which contained the names of
- 20 some of the IPC Defendants.

21
22 ///



23
24 ///

25
26 ///

John H. Cotton & Associates
7900 W. Sahara, Suite 200
Las Vegas, NV 89117

27. Consequently, this Court GRANTS IPC Defendants' Motion for Reconsideration and
DISMISSES the case WITH PREJUDICE as it is barred by the one year statute of
limitations set forth in NRS 41A.097(3).

DATED this 14th day of April, 2019.


DISTRICT JUDGE 

Respectfully submitted by:

JOHN H. COTTON & ASSOCIATES, LTD.

By: 

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Attorneys for IPC Defendants

Approved as to form and content:

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-and-

MELANIE L. BOSSIE, ESQ. - *Pro Hac Vice*

BOSSIE, REILLY & OH, P.C.

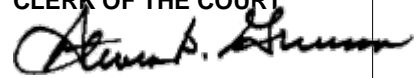
15333 N. Pima Rd., Ste. 300
Scottsdale, Arizona 85260

Attorneys for Plaintiffs

EXHIBIT 9

**Notice of Entry of Order Granting IPC Defendants' Motion for
Reconsideration filed on 04/25/2019**

EXHIBIT 9



1 **NEOJ**

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12 Facsimile: (702) 832-5910

13 *Attorneys for IPC Defendants*

14 **DISTRICT COURT**

15 * * *

16 **CLARK COUNTY, NEVADA**

17 Estate of MARY CURTIS, deceased; LAURA
18 LATRENTA, as Personal Representative of
19 the Estate of MARY CURTIS; and LAURA
20 LATRENTA, individually,

21 Plaintiffs,

22 v.

23 SOUTH LAS VEGAS MEDICAL
24 INVESTORS, LLC dba LIFE CARE CENTER
25 OF SOUTH LAS VEGAS fka LIFE CARE
26 CENTER OF PARADISE VALLEY; SOUTH
27 LAS VEGAS INVESTORS LIMITED
28 PARTNERSHIP; LIFE CARE CENTERS OF
AMERICA INC., BINA HRIBIK
PROTELLO, Administrator; CARL
WAGNER, Administrator; AND does 1-50
inclusive,

Defendants.

Estate of MARY CURTIS, deceased; LAURA
LATRENTA, as Personal Representative of
the Estate of MARY CURTIS; and LAURA
LATRENTA, individually,

Plaintiffs,

v.

SAMIR S. SAXENA, M.D.; ANNABELLE
SOCAOCO, N.P.; IPC HEALTHCARE, INC.
a/k/a THE HOSPITALISTS COMPANY INC.;
INPATIENT CONSULTANTS OF NEVADA
INC.; IPC HEALTHCARE SERVICES OF
NEVADA INC.; HOSPITALISTS OF
NEVADA, INC.; and DOES 51-100,

Defendants.

CASE NO.: **A-17-750520-C**

DEPT. NO.: **XVII**

Consolidated with:

CASE NO.: **A-17-754013-C**

NOTICE OF ENTRY OF ORDER
GRANTING IPC DEFENDANTS
MOTION FOR RECONSIDERATION

John H. Cotton & Associates, Ltd.
7900 West Sahara, Suite 200
Las Vegas, Nevada 89117

1 TO: ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that an Order was entered in
3 the above entitled matter on the 25th day of April 2019, a copy of which is attached hereto.

4 Dated this 25th day of November 2018.

5 **JOHN H. COTTON & ASSOCIATES, LTD.**

6 7900 West Sahara Avenue, Suite 200

7 Las Vegas, Nevada 89117

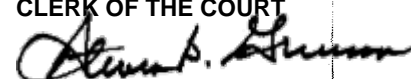
8 /s/ Vincent J. Vitatoe

9 JOHN H. COTTON, ESQ.

10 VINCENT J. VITATOE, ESQ.

ORIGINAL

Electronically Filed
4/24/2019 2:19 PM
Steven D. Grierson
CLERK OF THE COURT



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6 Facsimile: (702) 832-5910
7 *Attorneys for IPC Defendants*

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 * * *

11 Estate of MARY CURTIS, deceased; LAURA
LATRENTA, as Personal Representative of the
12 Estate of MARY CURTIS; and LAURA
LATRENTA, individually,

13 Plaintiffs,

14 vs.

15 SOUTH LAS VEGAS MEDICAL
INVESTORS, LLC dba LIFE CARE CENTER
16 OF SOUTH LAS VEGAS f/k/a LIFE CARE
CENTER OF PARADISE VALLEY; SOUTH
17 LAS VEGAS INVESTORS LIMITED
PARTNERSHIP; LIFE CARE CENTERS OF
18 AMERICA, INC.; BINA HRIBIK PORTELLO,
Administrator; CARL WAGNER,
19 Administrator; and DOES 1-50, inclusive,

20 Defendants.

21 Estate of MARY CURTIS, deceased; LAURA
LATRENTA, as Personal Representative of the
22 Estate of MARY CURTIS; and LAURA
LATRENTA, individually,

23 Plaintiffs,

24 vs.

25 SAMIR SAXENA, M.D.; ANNABELLE
SOCACO, N.P.; IPC HEALTHCARE, INC.
26 aka THE HOSPITALIST COMPANY, INC.;
INPATIENT CONSULTANTS OF NEVADA,
27 INC.; IPC HEALTHCARE SERVICES OF
28 NEVADA, INC.; HOSPITALISTS OF

CASE NO. A-17-750520-C

DEPT NO. XVII

Consolidated with:
CASE NO. A-17-754013-C

**ORDER GRANTING IPC
DEFENDANTS' MOTION FOR
RECONSIDERATION**

NEVADA, INC.; and DOES 51-100,
Defendants.

This matter having come before the Court on the January 9, 2019 Chambers Calendar with John H. Cotton, Esq. and Vincent J. Vitatoe, Esq. of John H. Cotton & Associates, LTD., on behalf of ANNABELLE SOCAOCO, N.P.; IPC HEALTHCARE, INC. aka THE HOSPITALIST COMPANY, INC.; INPATIENT CONSULTANTS OF NEVADA, INC.; IPC HEALTHCARE SERVICES OF NEVADA, INC.; HOSPITALISTS OF NEVADA, INC ("IPC Defendants"), Melanie Bossie, Esq. of Wilkes & McHugh, P.A. and Michael D. Davidson, Esq. of Kolesar & Leatham on behalf of the Plaintiffs. The Court, having considered the documents on file and IPC Defendants' Motion for Reconsideration, Opposition, and Reply with good cause appearing Orders as follows:

1. On February 2, 2017, Plaintiffs filed a Complaint (Case A-17-750520-C) against SOUTH LAS VEGAS MEDICAL INVESTORS, LLC dba LIFE CARE CENTER OF SOUTH LAS VEGAS f/k/a LIFE CARE CENTER OF PARADISE VALLEY; SOUTH LAS VEGAS INVESTORS LIMITED PARTNERSHIP; LIFE CARE CENTERS OF AMERICA, INC.; BINA HRIBIK PORTELLO, Administrator; CARL WAGNER (collectively, "Life Care Defendants").
2. Plaintiffs' Complaint in A-17-750520-C ("First Complaint") against Life Care Defendants concerned, *inter alia*, Life Care Defendants' nurses medication error in providing Mary Curtis with another patient's dose of morphine and then failing to take appropriate action thereafter including transfer to a hospital.
3. These events occurred over the course of March 7 and 8, 2016.
4. It is undisputed Mary Curtis was transferred to Sunrise Hospital on March 8, 2016 and subsequently passed away on March 11, 2016.
5. Plaintiffs' First Complaint did not attach an affidavit or declaration from a medical expert.

- 1 6. On April 14, 2017, Plaintiffs filed a Complaint in case A-17-754013-C initially naming
- 2 Samir S. Saxena, M.D. ("Second Complaint").
- 3 7. The Second Complaint set forth two factual bases for the alleged professional negligence
- 4 related to a morphine overdose of Mary Curtis: (a) a failure to timely transport Mary
- 5 Curtis to a hospital and (b) failure to administer a Narcan IV drip or ongoing doses of
- 6 Narcan.
- 7 8. On July 6, 2017, Plaintiffs filed a Motion to Consolidate Case A-17-750520-C with Case
- 8 A-17-754013-C.
- 9 9. Plaintiffs' Motion to Consolidate was premised upon the argument that the two actions
- 10 were based upon the same transaction and occurrence.
- 11 10. Specifically, Plaintiffs' Motion stated the following:
- 12 a. the "two actions implicate the same underlying facts: Mary's morphine overdose,
- 13 Defendants' reaction (or lack thereof) thereto, and her resulting injuries and
- 14 death...They therefore involve common questions of fact." (Emphasis added).
- 15 See Motion to Consolidate at 3:25-27; and
- 16 b. the cases "against both Life Care and Dr. Saxena involve common questions of
- 17 law, e.g., causation of and liability for [Mary Curtis's] injuries and death, and of
- 18 fact, e.g., [Mary's] morphine overdose and Defendants' untimely response
- 19 thereto." (Emphasis added). Id. at 6:8-10.
- 20 11. On October 10, 2017, the Court's order granting Plaintiffs' Motion to Consolidate was
- 21 filed.
- 22 12. On May 1, 2018, Plaintiffs filed an Amended Second Complaint in case A-17-754013-C
- 23 (involving the Second Complaint) naming the IPC Defendants.
- 24 13. The Amended Second Complaint contained the identical factual premises as were first
- 25 lodged against Dr. Saxena in the Second Complaint and as set forth in the expert affidavit
- 26 attached thereto.
- 27 14. The medical records in the case contained the name or signature of one of the IPC
- 28 Defendants, ANNABELLE SOCAOCO, N.P.

- 1 15. Plaintiff Laura Latrenta admitted that upon admission to Sunrise Hospital, certain Sunrise
2 Hospital providers stated "they should have brought her here as soon as this happened,
3 and we could have put her on a Narcan drip." See Latrenta Deposition at 77-78.
- 4 16. IPC Defendants argued that the statute of limitations barred the Second Complaint and,
5 by extension, the Amended Second Complaint.
- 6 17. Plaintiffs argued that the statute of limitations was tolled until Plaintiffs identified IPC
7 Defendants.
- 8 18. IPC Defendants further argued:
 - 9 a. Plaintiffs clearly knew of the purportedly negligent *conduct* at issue against both
10 Dr. Saxena and IPC Defendants given the filing of the Second Complaint along
11 with the expert affidavit against Dr. Saxena on April 14, 2017 which specified the
12 purportedly negligent conduct involving (a) failure to transfer to a hospital, and
13 (b) not providing a Narcan IV drip or ongoing doses of Narcan;
 - 14 b. The Second Complaint against Dr. Saxena was itself filed more than one (1) year
15 after inquiry notice commenced, at the latest, March 11, 2016;
 - 16 c. Amendment of the Second Complaint was therefore to no avail as there could be
17 no valid relation back pursuant to NRCP 15(c) against the IPC Defendants given
18 the initial untimeliness of the Second Complaint; and
 - 19 d. The statute of limitations thus barred suit against IPC Defendants.
- 20 19. NRS 41A.097(2) requires a plaintiff to file suit against a statutorily-defined provider of
21 health care within one (1) year "after the plaintiff discovers or through the use of
22 reasonable diligence should have discovered the injury".
- 23 20. In the context of NRS 41A, the Nevada Supreme Court ruled that a plaintiff "discovers"
24 and is, therefore on inquiry notice when a plaintiff "had facts before him that would have
25 led an ordinarily prudent person to investigate further into whether [plaintiff's] injury
26 may have been caused by someone's negligence." Winn v. Sunrise Hosp. & Med. Ctr.,
27 128 Nev. 246, 252-53, 277 P.3d 458, 462 (2012).
- 28

1 21. This Court is allowed to make a determination as to the accrual date for the purposes of
2 statute of limitations if the facts are uncontroverted. Id.

3 22. The pertinent facts in this case are uncontroverted as a matter of law.

4 23. IPC Defendants are providers of health care pursuant to NRS 41A.017.

5 24. Plaintiffs were on inquiry notice no later than March 11, 2016, the date of Mary Curtis's
6 death, because Plaintiffs admitted that providers of health care at Sunrise Hospital told
7 her negligent *conduct* occurred.

8 25. Moreover, Plaintiffs were on inquiry notice against IPC Defendants at the same time that
9 Plaintiffs were on inquiry notice as related to Life Care Defendants given Plaintiffs'
10 aforementioned arguments in support of their Motion to Consolidate.

11 26. Plaintiffs' argument is without merit regarding the position that the statute of limitations
12 was tolled until Plaintiffs learned the identity of IPC Defendants because:

- 13 a. Plaintiffs never sought to amend the First Complaint to add or otherwise
- 14 substitute IPC Defendants;
- 15 b. Plaintiffs' Second Complaint was filed more than one (1) year after March 11,
- 16 2016;
- 17 c. Plaintiffs knew of the purportedly negligent conduct even if Plaintiffs did not
- 18 know the specific identities of each provider of health care, and
- 19 d. Plaintiffs were in possession of medical records which contained the names of
- 20 some of the IPC Defendants.

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John H. Cotton & Associates
7900 W. Sahara, Suite 200
Las Vegas, NV 89117

27. Consequently, this Court GRANTS IPC Defendants' Motion for Reconsideration and
DISMISSES the case WITH PREJUDICE as it is barred by the one year statute of
limitations set forth in NRS 41A.097(3).

DATED this 14th day of April, 2019.


DISTRICT JUDGE

Respectfully submitted by:

JOHN H. COTTON & ASSOCIATES, LTD.

By: 

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Attorneys for IPC Defendants

Approved as to form and content:

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BOSSIE, REILLY & OH, P.C.

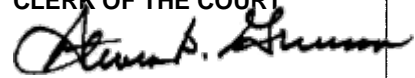
15333 N. Pima Rd., Ste. 300
Scottsdale, Arizona 85260

Attorneys for Plaintiffs

EXHIBIT 10

Order Denying Plaintiffs' Motion to Reconsider filed on 06/26/2019

EXHIBIT 10



ORIGINAL

1 **ODM**

2 MICHAEL D. DAVIDSON, ESQ.

3 Nevada Bar No. 000878

4 **KOLESAR & LEATHAM**

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17 BENNIE LAZZARA JR., ESQ. - *Pro Hac Vice*

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23 Email: bennie@wilkesmchugh.com

24 *Attorneys for Plaintiffs*

DISTRICT COURT

CLARK COUNTY, NEVADA

25 Estate of MARY CURTIS, deceased; LAURA
26 LATRENTA, as Personal Representative of the
27 Estate of MARY CURTIS; and LAURA
28 LATRENTA, individually,

Plaintiffs,

vs.

29 SOUTH LAS VEGAS MEDICAL INVESTORS,
30 LLC dba LIFE CARE CENTER OF SOUTH
31 LAS VEGAS f/k/a LIFE CARE CENTER OF
32 PARADISE VALLEY; SOUTH LAS VEGAS
33 INVESTORS LIMITED PARTNERSHIP; LIFE
34 CARE CENTERS OF AMERICA, INC.; BINA
35 HRIBIK PORTELLO, Administrator; CARL
36 WAGNER, Administrator; and DOES 1-50,
37 inclusive,

Defendants.

Case No. A-17-750520-C

Dept No. XVIII

Consolidated With:
Case No. A-17-754013-C

**ORDER DENYING PLAINTIFFS'
MOTION TO RECONSIDER**

Date: June 5, 2019

Time: 9:00 a.m.

1 Estate of MARY CURTIS, deceased; LAURA
2 LATRENTA, as Personal Representative of the
3 Estate of MARY CURTIS; and LAURA
4 LATRENTA, individually,

5
6 Plaintiffs,

7 vs.

8 SAMIR SAXENA, M.D.; ANNABELLE
9 SOCAOCO, N.P.; IPC HEALTHCARE, INC.
10 aka THE HOSPITALIST COMPANY, INC.;
11 INPATIENT CONSULTANTS OF NEVADA,
12 INC.; IPC HEALTHCARE SERVICES OF
13 NEVADA, INC.; HOSPITALISTS OF
14 NEVADA, INC.; and DOES 51-100,

15 Defendant.

16 This matter having come before the Court on the June 5, 2019 at 9:00am John H. Cotton,
17 Esq. and Vincent J. Vitatoe, Esq. of John H. Cotton & Associates, LTD., on behalf of
18 ANNABELLE SOCAOCO, N.P.; IPC HEALTHCARE, INC. aka THE HOSPITALIST
19 COMPANY, INC.; INPATIENT CONSULTANTS OF NEVADA, INC.; IPC HEALTHCARE
20 SERVICES OF NEVADA, INC.; HOSPITALISTS OF NEVADA, INC ("IPC Defendants"),
21 Melanie Bossie, Esq. of Bossie, Reilly & Oh, P.C. and Michael D. Davidson, Esq. of Kolesar &
22 Leatham on behalf of the Plaintiffs. The Court, having considered the documents on file,
23 Plaintiffs' Motion for Reconsideration, IPC Defendants' Opposition thereto, and Plaintiffs'
24 Reply, with good cause appearing Orders as follows:

25 1. Plaintiffs' Motion for Reconsideration provides no clear error of law present in
26 this Court's previous Order entered April 24, 2019.

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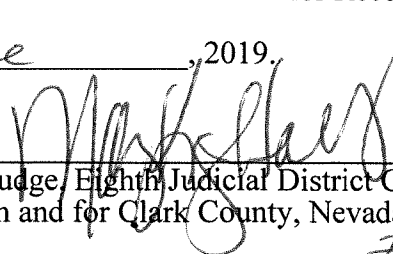
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KOLESAR & LEATHAM,
400 South Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145
Tel: (702) 362-7800 / Fax: (702) 362-9472

2. Consequently, this Court DENIES Plaintiffs' Motion for Reconsideration.

DATED this 26th day of June, 2019.



Judge, Eighth Judicial District Court
In and for Clark County, Nevada

Respectfully submitted by:

Approved as to form and content:

DATED this 21 day of June, 2019.

DATED this 21st day of June, 2019.

KOLESAR & LEATHAM

JOHN H. COTTON & ASSOCIATES, LTD.

By: 

By: Did not sign

MICHAEL D. DAVIDSON, ESQ.

Nevada Bar No. 000878

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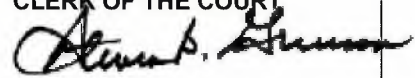
Email: bennie@wilkesmchugh.com

Attorneys for Plaintiffs

EXHIBIT 11

**Notice of Entry of Order Denying Plaintiffs' Motion to Reconsider filed on
06/27/2019**

EXHIBIT 11



NEOJ

MICHAEL D. DAVIDSON, ESQ.
Nevada Bar No. 000878

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Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

* * *

Estate of MARY CURTIS, deceased; LAURA
LATRENTA, as Personal Representative of the
Estate of MARY CURTIS; and LAURA
LATRENTA, individually,

Plaintiffs,

vs.

SOUTH LAS VEGAS MEDICAL
INVESTORS, LLC dba LIFE CARE CENTER
OF SOUTH LAS VEGAS f/k/a LIFE CARE
CENTER OF PARADISE VALLEY; SOUTH
LAS VEGAS INVESTORS LIMITED
PARTNERSHIP; LIFE CARE CENTERS OF
AMERICA, INC.; BINA HRIBIK PORTELLO,
Administrator; CARL WAGNER,
Administrator; and DOES 1-50, inclusive,

Defendants.

CASE NO. A-17-750520-C

DEPT NO. XVIII

Consolidated With:
Case No. A-17-754013-C

NOTICE OF ENTRY OF ORDER


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NOTICE OF ENTRY OF ORDER

Please take notice that an Order Denying Plaintiffs' Motion to Reconsider was entered with the above court on the 26th day of June, 2019, a copy of which is attached hereto.

DATED this 27 day of June, 2019.

KOLESAR & LEATHAM

By 
MICHAEL D. DAVIDSON, ESQ.
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MATTHEW T. DUSHOFF, ESQ.
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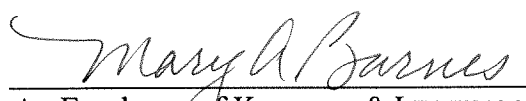
Attorneys for Plaintiffs

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TEL: (702) 362-7800 / FAX: (702) 362-9472

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of Kolesar & Leatham, and that on the 27th day
3 of June, 2019, I caused to be served a true and correct copy of foregoing NOTICE OF ENTRY
4 OF ORDER in the following manner:

5 (ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-
6 referenced document was electronically filed on the date hereof and served through the Notice of
7 Electronic Filing automatically generated by that Court's facilities to those parties listed on the
8 Court's Master Service List.

9 
10 An Employee of KOLESAR & LEATHAM

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Steven D. Grierson

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14 *Attorneys for Plaintiffs*

DISTRICT COURT

CLARK COUNTY, NEVADA

17 Estate of MARY CURTIS, deceased; LAURA
18 LATRENTA, as Personal Representative of the
19 Estate of MARY CURTIS; and LAURA
LATRENTA, individually,

20 Plaintiffs,

21 vs.

22 SOUTH LAS VEGAS MEDICAL INVESTORS,
23 LLC dba LIFE CARE CENTER OF SOUTH
LAS VEGAS f/k/a LIFE CARE CENTER OF
24 PARADISE VALLEY; SOUTH LAS VEGAS
INVESTORS LIMITED PARTNERSHIP; LIFE
25 CARE CENTERS OF AMERICA, INC.; BINA
HRIBIK PORTELLO, Administrator; CARL
26 WAGNER, Administrator; and DOES 1-50,
inclusive,

27 Defendants.
28

Case No. A-17-750520-C

Dept No. XVIII

Consolidated With:
Case No. A-17-754013-C

**ORDER DENYING PLAINTIFFS'
MOTION TO RECONSIDER**

Date: June 5, 2019

Time: 9:00 a.m.

KOLESAR & LEATHAM,
400 South Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145
Tel: (702) 362-7800 / Fax: (702) 362-9472

1 Estate of MARY CURTIS, deceased; LAURA
2 LATRENTA, as Personal Representative of the
3 Estate of MARY CURTIS; and LAURA
4 LATRENTA, individually,

5
6 Plaintiffs,

7 vs.

8 SAMIR SAXENA, M.D.; ANNABELLE
9 SOCAOCO, N.P.; IPC HEALTHCARE, INC.
10 aka THE HOSPITALIST COMPANY, INC.;
11 INPATIENT CONSULTANTS OF NEVADA,
12 INC.; IPC HEALTHCARE SERVICES OF
13 NEVADA, INC.; HOSPITALISTS OF
14 NEVADA, INC.; and DOES 51-100,

15 Defendant.

16 This matter having come before the Court on the June 5, 2019 at 9:00am John H. Cotton,
17 Esq. and Vincent J. Vitatoe, Esq. of John H. Cotton & Associates, LTD., on behalf of
18 ANNABELLE SOCAOCO, N.P.; IPC HEALTHCARE, INC. aka THE HOSPITALIST
19 COMPANY, INC.; INPATIENT CONSULTANTS OF NEVADA, INC.; IPC HEALTHCARE
20 SERVICES OF NEVADA, INC.; HOSPITALISTS OF NEVADA, INC ("IPC Defendants"),
21 Melanie Bossie, Esq, of Bossie, Reilly & Oh, P.C. and Michael D. Davidson, Esq. of Kolesar &
22 Leatham on behalf of the Plaintiffs. The Court, having considered the documents on file,
23 Plaintiffs' Motion for Reconsideration, IPC Defendants' Opposition thereto, and Plaintiffs'
24 Reply, with good cause appearing Orders as follows:

25 1. Plaintiffs' Motion for Reconsideration provides no clear error of law present in
26 this Court's previous Order entered April 24, 2019.

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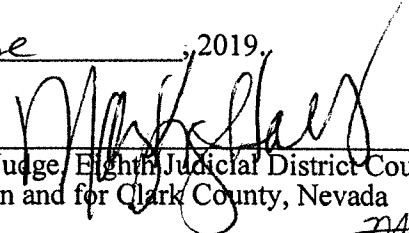
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Tel: (702) 362-7800 / Fax: (702) 362-9472

2. Consequently, this Court DENIES Plaintiffs' Motion for Reconsideration.

DATED this 26th day of June, 2019.


Judge, Eighth Judicial District Court
In and for Clark County, Nevada

Respectfully submitted by:

Approved as to form and content:

DATED this 21 day of June, 2019.

DATED this 21st day of June, 2019.

KOLESAR & LEATHAM

JOHN H. COTTON & ASSOCIATES, LTD.

By: 

By: Did not sign

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Nevada Bar No. 000878

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