IN THE SUPREME COURT OF THE STATE OF NEVADA

Estate of MARY CURTIS, deceased; LAURA LATRENTA, a Personal Representative of the Estate of MARY CURTIS; and LAURA LATRNETA, individually, Plaintiffs/Appellants,

Appellants,

vs.

ANNABELLE SOCAOCO, NP; IPC HEALTHCARE, INC. a/k/a THE HOSPITALIST COMPANY, INC.; INPATIENT CONSULTANTS OF NEVADA, INC.; IPC HEALTHCARE, SERVICES OF NEVADA, INC.; HOSPITALISTS OF NEVADA, INC.,

Respondents.

Supreme Court No.: 79116

District Court Case No.: A750520
Consolidated with:
District Court Case No.: A754013

RESPONDENTS' ANSWERING BRIEF

JOHN H. COTTON & ASSOCIATES, LTD.
John H. Cotton, Esq. (Bar No. 5268)
JHCotton@jhcottonlaw.com
Vincent J. Vitatoe, Esq. (Bar No.: 12888)
VVitatoe@jhcottonlaw.com
7900 West Sahara Avenue, Suite 200
Las Vegas, Nevada 89117
Telephone: (702) 832-5909
Facsimile: (702) 832-5910
Attorneys for Respondents

Respondents, 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., by and through their counsel of record, John H. Cotton, Esq. and Vincent J. Vitatoe, Esq. of the law firm of John H. Cotton & Associates, Ltd., hereby submits their Answering Brief and Memorandum of Points and Authorities Opposing Appellants' Opening Brief.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes and Rules of Procedure

I. INTRODUCTION AND SUMMMARY OF ARGUMENT.

The well-reasoned decision of the District Court applying NRS 41A.097(2)'s statute of limitations warrants affirmation. As set forth in specific detail below, this case concerns a morphine overdose involving an 89 year old woman, Mary Curtis, in March of 2016 which occurred during Ms. Curtis's stay at Life Care[1]. The medication error transpired at the hands of a Life Care nurse who inadvertently supplied Ms. Curtis with morphine intended for another patient. Three (3) days after ingesting this morphine, Ms. Curtis passed away. Ms. Curtis's daughter, Laura Latrenta, was present at Life Care immediately after this medication error, was aware of the mistake, and its grave consequences. She was also aware and, in fact, witnessed other health care professionals provide Ms. Curtis with doses of Narcan to counteract the morphine, monitor her, and then order her transfer to the hospital. Latrenta then accompanied Ms. Curtis to the hospital.

[1] Throughout this appeal "Life Care" and "Life Care Defendants" refers to long-term care facility where Mary Curtis was located as owned and operated by 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.

During the case, Latrenta testified repeatedly that she was informed of the medication error, understood its gravity, and received the opinion of *multiple* providers of health care **in March of 2016** that sufficient Narcan and immediate hospital transfer was required, but not timely provided by the health care professionals operating at Life Care, including Respondents. Appellants[2] subsequently brought suit against Life Care within one year of Ms. Curtis's demise. This initial suit (Case No. A-17-750520-C) lacked an expert affidavit.

More problematic for purposes of this appeal, Appellants failed to bring suit against Respondents[3] within that same one year period. Instead, Latrenta brought a **separate** lawsuit (Case No. A-17-754013-C) *more* than one year later, **in April of**

---

[2] "Appellants" shall mean Estate of MARY CURTIS, deceased; LAURA LATRENTA, as Personal Representative of the Estate of MARY CURTIS; and LAURA LATRENTA, individually. At times during this Brief, CURTIS or LATRENTA will be referred to directly by name for ease of understanding.

[3] "Respondents" shall mean 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.. In the District Court, these Respondents were referred to as IPC Defendants a reference which, for a time, also included SAMIR S. SAXENA, M.D. Dr. Saxena was also a named defendant who provided health care at Life Care but was dismissed in the underlying case. ANNABELLE SOCAOCO, N.P. ("NP Socaoco") is also a provider of health care who worked at Life Care. At times during this Brief, Dr. Saxena and NP Socaoco will be referred to directly by name for ease of understanding.

2016, initially naming Dr. Samir Saxena as a defendant. The complaint in this second lawsuit included a medical affidavit asserting two primary deviations from the standard of care: (1) failure to administer sufficient amounts of Narcan to reverse the effects of morphine, and (2) untimely transfer to the hospital.

During the case, Appellants realized that their suit was better directed at a nurse practitioner, Annabelle Socaoco ("NP Socaoco"), who worked closely with Dr. Saxena. Appellants sought leave to amend to add NP Socaoco to the *second* lawsuit and ultimately filed an amended complaint. Notably, this amended complaint lacked an expert affidavit and instead relied upon the initial affidavit lodged against Dr. Saxena because identical *conduct* was at issue: untimely transport and Narcan mismanagement.

The simple factual and legal conclusion explained in this Answering Brief is that the second lawsuit against Respondents (first brought against Dr. Saxena and then against NP Socaoco and their employers) is untimely and barred by the statute of limitations set forth in NRS 41A.097(2) because Appellants filed suit more than one year later in April of 2017 after discovering their injury in March of 2016. A detailed factual recitation follows.

II. FACTUAL AND PROCEDURAL STATEMENT.

A. FACTUTAL BACKGROUND.

1. First Case: Life Care - A-17-750520

1. On February 2, 2017, Appellants filed a Complaint (Case A-17-750520-C) against the Life Care Defendants which lacked an expert affidavit. RESP1-9. Appellants' Complaint in A-17-750520-C ("First Complaint") against Life Care Defendants concerned, *inter alia*, a nurse employed by Life Care Defendants who allegedly made a medication error in providing an 89 year old woman, Mary Curtis, with another patient's dose of morphine. Id. This error was followed by a collective failing in taking appropriate action thereafter including patient transfer to a hospital. Id. The primary allegations included:

> a. "Despite Defendants' notice and knowledge that Ms. Curtis was dependent on them for proper medication administration, they on 7 March 2016 administered to her a dose of morphine prescribed to another resident. Ms. Curtis was not prescribed morphine." RESP5.
>
> b. "Despite Defendants' notice and knowledge that they had wrongly administered morphine to Ms. Curtis, they failed to act timely upon that discovery, instead retaining Ms. Curtis as a resident until 8 March 2016." RESP6.

2. It is undisputed Mary Curtis was transferred to Sunrise Hospital on March 8, 2016 and subsequently passed away on March 11, 2016. Id.

2. Second Case: Dr. Samir Saxena - A-17-754013

3. On April 14, 2017, Appellants filed a Complaint in case A-17-754013-C naming Samir S. Saxena, M.D. ("Second Complaint") as the defendant for alleged professional negligence premised upon: (a) a failure to timely transport Mary Curtis to a hospital and (b) failure to administer a Narcan IV drip or ongoing doses of Narcan. In particular, the primary factual allegations included:

> a. "Despite Dr. Saxena's notice and knowledge that Life Care Center of South Las Vegas staff had wrongly administered morphine to Ms. Curtis resulting in a morphine overdose and although a reasonably trained physician would have recognized that she required treatment in an acute care setting, he failed to timely order that she be sent to an acute care setting, leading to Ms. Curtis's retention at Life Care Center of South Las Vegas f/k/a Life Care Center of Paradise Valley until 8 March 2016 and contributing to her injuries and death." RESP15.
>
> b. "Despite Dr. Saxena's notice and knowledge of Ms. Curtis's morphine overdose, and although a reasonably trained physician would have recognized that she required a Narcan IV drip (or ongoing dosages of Narcan equivalent thereto), he failed to order such a treatment. He also knew or should have known that she required the close observation that an acute care hospital would provide. These failures contributed to her injuries and death." Id.

4. Based on those allegations, Appellants set forth the following causes of action: Abuse/Neglect of an Older Person[4]; Wrongful Death by Estate; Wrongful Death by Individual; and Medical Malpractice. RESP13-19.

[4] The Abuse/Neglect of an Older Person cause of action is not an issue in this appeal as it was adjudicated against Appellants on non-statute of limitations

B. PROCEDURAL HISTORY.

1. On July 6, 2017, Appellants filed a Motion to Consolidate Case A-17-750520-C with Case A-17-754013-C which was ultimately granted. RESP43-48. Appellants' Motion to Consolidate was premised upon the argument that the two actions were based upon the same transaction and occurrence. Specifically, Appellants' Motion stated the following:

   a. the "two actions implicate the same underlying facts: Mary's morphine overdose, Defendants' reaction (or lack thereof) thereto, and her resulting injuries and death…They therefore involve common questions of fact." RESP45.

   b. the cases "against both Life Care and Dr. Saxena involve common questions of law, e.g., causation of and liability for [Mary Curtis's] injuries and death, and of fact, e.g., [Mary's] morphine overdose and Defendants' untimely response thereto." RESP47.

2. On May 1, 2018, Appellants filed an Amended Second Complaint in case A-17-754013-C (involving the Second Complaint) against Respondents. RESP33-42.

3. The Amended Second Complaint contained the **identical** factual premises against Respondents as were first lodged against Dr. Saxena in the Second Complaint and as set forth in the expert affidavit attached thereto. RESP10-42.

---

grounds. The only causes of action at issue include Second Cause of Action: Wrongful Death by Estate of Mary Curtis, Third Cause of Action: Wrongful Death by Laura Latrenta; Fourth Cause of Action: Medical Malpractice

4. Respondents filed a Motion to Dismiss the Amended Complaint due to the statute of limitations which was denied. RESP91-123.

5. On November 7, 2018, Respondents' filed a Motion for Reconsideration which was ultimately granted. RESP159-183. This appeal followed.

C. ADDITIONAL FACTS RELEVANT TO APPEAL.

1. On November 29, 2017, Appellant Laura Latrenta testified that on March 7, 2016, employees of Life Care explicitly informed her about the morphine overdose provided to Mary Curtis earlier that same day and the dosage amount (120mg). Specifically, Latrenta testified as follows (RESP114):

A. I walked in to the facility. And whenever I see my mother, I try to put on a happy face. I'm sure she was unhappy being there. And I came in, and I went, Hi, Mom.

And somebody said to me, You're not going to be smiling when we tell you what happened.

Q. Okay.

A. I look at her, and I said, What are you talking about? She says, Don't worry. Now, I don't know if this phrase came before or after this next sentence, but she said, Don't worry, you're going to have your mother back in six hours. I think first she said, She was given the wrong medication.

I said -- and then she didn't offer anything after that. So I said, What medication? She said, Morphine. Nothing after that. Morphine, I repeated. These things I know exactly. How much morphine? By that time, my heart is racing.

And she says, Don't worry. You will have your mother back in six hours. And I believe she said, 120 milligrams. I know enough about morphine to know that that is a terrible dose.

2. The testimony also established Latrenta's actual understanding regarding the gravity of the situation: "I know enough above morphine to know that that is a terrible dose." Id.

3. Latrenta testified that on March 7, 2016 she witnessed two shots of Narcan being administered to Curtis and understood why it was provided. (RESP115):

> And that's when they were coming in, taking her blood pressure. And they said, We're going to give her this injection, somebody said. I don't know who it was. And I knew what Narcan was because that was in the news about people with overdoses, getting the --

4. Not only did Latrenta personally witness the Narcan shots, she admitted that "somebody" told her that Narcan shots would be administered. RESP119. Latrenta readily admitted that she knew physicians and similarly situated providers of health care, such as nurse practitioners, were treating her mother for *days* before the incident in question took place as part of the health care provided to Life Care residents. Id.

5. Latrenta then admitted that multiple providers of health care *explicitly* told her that after the morphine overdose, the health care providers at Life Care should have immediately sent Curtis to an acute care setting and placed her on an IV Narcan drip—the exact two factual allegations which would later become the basis

for her lawsuit against Dr. Saxena and then Respondents. Specifically, Latrenta testified as follows: (RESP116-117):

Q. All right. On that first day when she's there, did you have any conversations with her physicians?
A. Not that I remember physicians, but I had conversation with -- I don't know if there were technicians or doctors or what. But the people that were taking care of her.
Q. So you just don't know their positions, but you did have conversations with personnel --
A. Lots of conversations because I told them what happened.
Q. Okay. Did they tell you any kind of diagnosis of what they thought was going on with your mother?
A. They -- one gentleman said to me, and I think it was on the second day, that -- because we became -- I know them. I started, you know, Oh, where do you live? And he says, You know what, they should have brought her here as soon as this happened, and we could have put her on a Narcan drip.
Q. Okay.
A. They said that to me.

6. These providers also specifically told her that Curtis was receiving their treatment due to the morphine overdose (RESP118).

Q. Okay. Did any of those physicians ever tell you that the administration of morphine at Life Care Center is what was causing the problems that she was experiencing?

A. All of them. They all knew she was in there from a morphine overdose. They were treating her as such.

7. On January 2, 2018, Appellant Laura Latrenta served answers to Interrogatories propounded by Defendant Life Care. RESP122-123.

8. Defendant Life Care's Interrogatory 18 asked for "any conversations with anyone during which they criticized the care and treatment received by the decedent at Defendants' facility [Life Care]." Id.

9. Latrenta included the following as part of her response to Interrogatory 18:

"In addition, Ms. Latrenta had conversations with health care providers at Sunrise Hospital **and** Nathan Adelson Hospice pertaining to the extent of the injuries of Mary Curtis **as a result of being provided the morphine, including but not limited to conversations with Jason Katz, MD and Robert Firestone, RN**. See Ms. Latrenta's deposition testimony and Plaintiff's disclosure statement and all supplements." Id. (Emphasis added).

10. These conversations all occurred on or before March 11, 2016. RESP10-32.

11. Latrenta bluntly admitted she *subjectively* believed negligence occurred and testified as such. (RESP119).

Q. When they told you that they had administered morphine to your mother --
A. Who is "they"?
Q. The people at Life Care.
A. Okay.
Q. Was it your perception that they had made a mistake?

A. Yes.
Q. Was it your perception they were negligent?
A. Yes.

6. The medical records in the case contained the name or signature of one of the Respondents, ANNABELLE SOCAOCO, N.P., in multiple places. Indeed, NP Socaoco's *printed* name or signature appear no less than **five (5) places** in the record. RESP179-183.

D. SUMMARY OF FACTUAL TIMELINE.

- On March 7, 2016, Latrenta was told that Curtis improperly received 120mg of morphine intended for another patient. RESP114.
- On March 7, 2016, Latrenta witnessed the administration of two shots of Narcan, a medication she understood was used to counteract morphine. RESP115.
- Laura Latrenta explicitly admitted her own subject belief—in March of 2016—that a mistake occurred as the result of negligence related to medical care provided to her mother, Mary Curtis. RESP119.
- Sometime between March 8 and March 11, 2016, Dr. Jason Katz (and other providers of health care) explicitly told Latrenta that Curtis should have (a) been

transferred to the hospital immediately, and (b) provided a Narcan IV drip—the identical and exclusive criticisms Appellants would later assert against Dr. Saxena and then the Respondents. RESP116-117, RESP122-123

- Health care professionals at both Sunrise Hospital and Nathan Adelson informed Latrenta of their opinion that the circumstances involving the administration of morphine caused Curtis's physical ailments and death. RESP118
- On March 11, 2016, Mary Curtis passed away. RESP15.
- *Less* than one year after these events, on February 2, 2017, Appellants filed the first lawsuit against Life Care Defendants without an expert affidavit. RESP1-9.
- *More* than one year after these events, on April 14, 2017, Appellants filed a second, separate lawsuit against Dr. Saxena **with** an expert affidavit. RESP10-32.
- *More* than two years after these events, on May 1, 2018, Appellants filed an Amended Complaint against Dr. Saxena and also the Respondents in the second lawsuit **without** an expert affidavit. RESP 33-42.

III. LEGAL ARGUMENT.

The legal issues favor Respondents. **First**, the District Court was well within its discretion to reconsider the statute of limitations issue to ensure it arrived at the correct legal conclusion. **Second**, Nevada statutes and this Court's rulings make clear that the undisputed, admitted facts commenced the statute of limitations on claims sounding in professional negligence claim no later than March 11, 2016 as a matter of law. **Third**, overwhelming evidence demonstrates that Appellants had *actual* notice of a potential claim against Respondents more than one year before filing suit. At the absolute minimum, Appellants were on at least inquiry notice one year before filing suit. For these reasons, the District Court made the correct legal

decision in barring Appellants' lawsuit against Respondents due to the expiration of the one year statute of limitations.

A. RECONDISERATION WAS JUSTIFIED.

The District Court was certainly entitled to reconsider its Order Granting In Part and Denying In Part Respondents' Motion to Dismiss, or, in the Alternative for Summary Judgment entered on November 7, 2018 ("Order"). Ample case law establishes that the District Court possesses the inherent authority to reconsider its decisions especially if a matter of law was overlooked or misapprehended. See Nevius v. Warden, 114 Nev. 664, 667, 960 P.2d 805, 806 (1998). That was the case here as the initial order denying Respondents' Motion to Dismiss failed to appreciate that Latrenta's wide-ranging *admitted* knowledge of the key facts underlying the lawsuit meant that there was *irrefutable* evidence present which made the statute of limitations issue ripe for a legal decision.

The District Court enjoys wide discretion in reconsidering its orders particularly in its efforts to promote substantial justice. Harvey's Wagon Wheel, Inc. v. MacSween, 96 Nev. 215, 217, 606 P.2d 1095, 1097 (1980); see also Nevius, 114 Nev. at 664. This case represents precisely that type of situation where the District Court properly exercised its discretion and examined its decision to ensure it was just and legally proper.

B. NEVADA LAW SUPPORTS THE DISTRICT COURT DECISION

A. Guiding Principle: The Initial Complaint Against Dr. Saxena Was Untimely—Any Relation Back Of The Amended Complaint Is Unavailing.

Two important items to keep in mind when analyzing this issue are: (1) the fact that the *initial* Complaint filed against Dr. Saxena in Case No. A-17-754013-C was itself untimely as it was filed more than a year after March 11, 2016, the date upon which Appellants unequivocally and admittedly had facts before them which constituted "discovery" of their legal injury (as will be proven, below), and (2) the factual bases for the professional negligence claim against Dr. Saxena *is identical* to the factual bases for the professional negligence claim against Respondents: there was a purported failure to transport Curtis to a hospital and administer a Narcan IV drip. Focusing on these two realities avoids the confusion Appellants present by arguing that they just did not know about the person of NP Socaoco until sometime during discovery which only serves to obscure the plain fact they knew of the negligence conduct and generally the health care providers involved.

The bottom line is that substituting NP Socaoco into the lawsuit via an Amended Complaint invokes the relation back doctrine of NRCP 15(c) and therefore brings the critical question front and center: was the initial Complaint itself timely? The answer: No. The purportedly negligent conduct occurred in

March 2016 and Appellants failed to file suit against Dr. Saxena until April 2016, more than a year later.

If the initial suit against Dr. Saxena was untimely, then relation back to an untimely complaint leads to the same outcome: it's barred by the statute of limitations set forth in NRS 41A.097(2). Stated differently, Appellants cannot avoid the one (1) year statute of limitations applicable to the Complaint by filing an Amended Complaint naming/substituting a different defendant when the factual conduct underlying the claims against both parties (Dr. Saxena and NP Socaoco/IPC Defendants) is identical. Appellants' misapprehension regarding which provider to sue fails to create a wormhole in time. This distinction refutes Appellants' entire position and demonstrates the District Court ruled correctly in favor of Respondents.

B. Nevada Supreme Court Case Law Clearly Establishes How to Determine When Inquiry Notice Commences in Professional Negligence Lawsuits.

1. Knowledge of "Someone's" Negligent Conduct Commences Inquiry Notice in Nevada Professional Negligence Cases.

A close reading of this Court's precedent provides a clear landmark for identifying when inquiry notice commences as a matter of law. The most relevant decision was handed down by this Court in Winn which summarized the relevant statute of limitations jurisprudence and elaborated as follows:

> "While difficult to define in concrete terms, a person is put on "inquiry notice" when he or she should have known of facts that 'would lead an ordinarily prudent person to investigate the matter further.' Black's Law Dictionary 1165 (9th ed. 2009). We reiterated in Massey that these facts need not pertain to precise legal theories the plaintiff may ultimately pursue, but merely to the plaintiff's general belief that **someone's** negligence may have caused his or her injury. 99 Nev. at 728, 669 P.2d at 252. Thus, Winn "discovered" Sedona's injury at a point when he had facts before him that would have led an ordinarily prudent person to investigate further into whether Sedona's injury may have been caused by **someone's** negligence." (Emphasis added).Winn v. Sunrise Hosp. & Med. Ctr., 128 Nev. 246, 252-53, 277 P.3d 458, 462 (2012).

The citation is important because it makes three key distinctions: (1) the analysis focuses on a *plaintiff's* knowledge, (2) only facts—not precise legal theories—are material to the statute of limitation issue, and (3) the requisite facts are merely those which would cause an ordinarily prudent person to *investigate* whether an injury was caused by "someone's negligence."

This last distinction is particularly relevant to the instant matter. This Court's use of "someone" is no accident and is *perfectly* in line with NRS 41A.071—the statute setting forth the threshold burden to bring a professional negligence case. Indeed, NRS 41A.071 states the following (emphasis added):

> **NRS 41A.071 Dismissal of action filed without affidavit of medical expert.** If an action for professional negligence is filed in the district court, the district court shall dismiss the action, without prejudice, if the action is filed without an affidavit that:
>
> 1. Supports the allegations contained in the action;
> 2. Is submitted by a medical expert who practices or has practiced in an area that is substantially similar to the type of practice engaged in at the time of the alleged professional negligence;

> 3. **Identifies by <u>name</u>, *<u>or</u>* <u>describes by conduct</u>**, each provider of health care who is alleged to be negligent; and
> 4. Sets forth factually a specific act or acts of alleged negligence separately as to each defendant in simple, concise and direct terms.

Here, again, no accidents occurred in the drafting of NRS 41A.071. Subsection 3 requires a name **<u>or</u>** a description of the **conduct** which is alleged to be negligent. In other words, professional negligence cases can be (and frequently are) commenced on the basis of the known negligent conduct even if the specific defendants' complete name remains unknown. This makes perfect sense given that the statute of limitations is short and frequently *dozens* of providers of health care can be involved in the care and treatment of a person. When the negligent *conduct* is known, plaintiffs in this State are obligated to bring suit within one (1) year and are permitted to substitute the proper party as the case unfolds. <u>See</u> NRS 41A.097(2); NRCP 15(a) and (c).

2. <u>Focus of Analysis is on Presence of Operative Facts Indicating Negligence.</u>

The <u>Winn</u> case provides helpful guidance in explaining that discovery of a legal injury *can* be decided as a matter of law if indisputable evidence exists establishing the date a plaintiff had access to the operative facts suggesting professional negligence by a provider of health care. Indeed, in <u>Winn</u> this Court noted that "the evidence does irrefutably demonstrate that Winn discovered

Sedona's injury no later than February 14, 2007" because that is the date when an operative record (which contained the fact—the presence of air—underlying the potential negligence) became accessible. Id. at 463.

The Winn case is factually distinct from the present matter. In Winn, the "doctors were unable to provide an explanation [to a father] for how this tragic result arose." Id. at 249. It was not until the (incomplete) medical record was received by the family that "discovery" occurred due to inquiry notice. The reason that inquiry notice commenced was obviously *not* due to the fact the (admittedly incomplete) records were received, but, rather because the records contained the operative fact (a notable volume of air in the heart) which should have caused further investigation. Id. at 249. Thus, while the receipt of medical records, autopsy reports, hiring a lawyer, or death certificates *can* constitute the point at which "discovery" occurs by, for example, triggering inquiry notice in professional negligence cases, the critical issue is when a plaintiff had *access to the facts* indicating injury due to some act of negligence. Here, as evidenced below, Appellants (specifically, Laura Latrenta) admittedly had access to those facts—from multiple sources—before Curtis passed away on March 11, 2016.

3. Statute of Limitations Commences Upon Death if Operative Facts *Already* Known.

The case of Pope v. Gray also supports the District Court's decision to dismiss the case against Respondents due to the expiration of the statute of limitations. Pope v. Gray, 104 Nev. 358, 760 P.2d 763 (1988). In Pope, a case with some factual similarities, a seventy-four year old woman received two surgical procedures over the course of two days. Id. at 360. She died shortly after the second procedure and "[o]ne of the three doctors told [plaintiff] that her mother had died and they were not sure why." Id.

The Court concluded that it was reasonable for the plaintiff to argue that the statute of limitations did not run until receipt of the death certificate because "[e]ven though the doctors told Pope, on the day of her mother's death, that they did not know why she died, given Magill's age, surgical treatment, and serious manifestation of poor health two days before her death, death alone would not necessarily suggest, to a reasonably prudent person, that the decedent succumbed to the effects of medical malpractice." Id. at 358. Equally important, the Court commented that those facts distinguished a California case where the "plaintiff was aware, before death, of the possible negligence that caused decedent's death." Id. at 364 n.8. citing Larcher v. Wanless, 18 Cal. 3d 646, 650, 135 Cal. Rptr. 75, 77, 557 P.2d 507, 509 (1976). Thus, by implication, Pope stands for the proposition that a wrongful death cause of action commences on the date of death if a plaintiff *is*

aware of possible negligence that caused the death prior to (or simultaneous with) the actual death. Presently, as detailed below, Appellant Laura Latrenta admitted her repeated exposure to operative facts indicating negligence in connection with the administration of morphine to Curtis and her follow-up care.

4. Reliance on *Siragusa* is Misplaced.

Appellants' entire position rests upon a distorted interpretation of Siragusa v. Brown, 114 Nev. 1384, 971 P.2d 801 (1998). Siragusa involved a lawyer who purportedly was the mastermind behind a scheme to defraud the plaintiff which went undiscovered for several years. Id. at 1388. Appellants' reliance is misplaced for two reasons.

First, this Court is well aware that professional negligence torts are treated *much* differently than intentional torts or even other negligence-based torts. An entire chapter of the Nevada Revised Statutes is devoted to these highly specialized professional negligence cases. The Nevada Supreme Court explicitly held that NRS 41A takes precedence over more general legal authorities when professional negligence is at issue. Piroozi v. Eighth Judicial Dist. Ct., 131 Nev. Adv. Op. 100, 363 P.3d 1168 (2015).

The enactment of NRS 41A itself occurred after the Siragusa case. And the current iteration of NRS 41A.071 (via the 2015 amendments) occurred almost 20

years after the Siragusa case. As cited above, it was the 2015 amendments which further clarified that only the *conduct* (and not the specific defendant name) was sufficient to bring suit. It therefore follows that it is the known *conduct* (and not the specific defendant name) which commences inquiry notice in professional negligence cases.

Second, Siragusa concerned and limited itself to the intentional tort of civil conspiracy which necessarily requires the involvement of "two or more persons". This Court thus made its remarks concerning the identity of a tortfeasor within that context. The nature of the actual lawsuit is thus highly relevant to a statute of limitations analysis. The clarifying 2015 amendments to NRS 41A.071 and a proper understanding of Winn render Siragusa inapposite.

Interestingly, Appellant attempted to side-step the clear import of Winn by claiming:

- "Of course, there was in *Winn* no mystery about who was the negligent cause of daughter's injury-she had suffered a brain injury during a surgery in which she had air in her heart at inappropriate times, and so if anyone was negligent it was either the surgeon, the two perfusionists, or all three (and indeed father sued all three)." RESP224-225.

- *"Winn* was of course unconcerned with the issue of what individuals were the negligent cause of plaintiff's injury, as the identities of the physicians taking part in the surgery there were hardly shrouded in mystery." RESP225.

Yet, under Appellant's logic, this Court in Winn should have immediately

concluded that inquiry notice never commenced because it was not clear *which* particular provider of health care's act or omission caused the injury. But that did *not* occur because that is not the test for "discovery" or when *inquiry* notice occurs in Nevada particularly with regard to professional negligence cases. The only mystery is *what more* a potential plaintiff could even inquire about under Appellants' reading of law. The point of "inquiry" is to open a window of time whereby a plaintiff can learn enough to bring suit. Appellant's concept of "inquiry" would freeze time *until* the plaintiff learns everything needed to bring suit.

However, another problem exists for Appellants' argument. This was a situation where Appellants *mis*identified Dr. Saxena as the tortfeasor. Thus, it was not as though Appellants were unable to bring suit because they did not know the identity of the alleged tortfeasor, they simply got it wrong. Naming Dr. Saxena shows Appellants actually knew the group of providers likely responsible just like in Winn. The fundamental problem for Appellants is they failed to timely file suit against Dr. Saxena. It defies logic to conclude that a suit against Dr. Saxena is untimely but not against NP Socaoco (and Respondents generally).

5. Recent Decision of this Court in *Barcelona* Strongly Supports Respondents.

This Court's recent jurisprudence *directly dealing with professional negligence cases* supports Respondents' position. On September 12, 2019, this

Court addressed that discovery rule issue in the context of professional negligence cases in Barcelona v. Eighth Judicial Dist. Court, 448 P.3d 544 (September 12, 2019 2019)(unpublished disposition, docket 78395) with strikingly similar facts to the present matter. Barcelona involved a woman who underwent surgery and died from surgical complications shortly thereafter on November 4, 2015. Id. On October 29, 2016, the estate and relatives filed a complaint against several providers of health care including the hospital. Id. The lower court dismissed the complaint as to the hospital because the expert affidavit lacked any description of conduct which constituted a deviation from the standard of care by the hospital as required by NRS 41A.071. Id.

During discovery ten months later on August 30, 2017, the plaintiff allegedly learned via deposition testimony of the identity and even unknown conduct of hospital nurses regarding the patient's receipt of "too much pain medication" as well as the hospital's purported failure to have other doctors available to deal with medical emergencies. Id. The plaintiff was granted leave to amend to include the hospital. Id. at *2. However, the District Court then subsequently dismissed the case against the hospital on statute of limitations grounds. Id. This Court agreed with the District Court's reasoning and saw that the plaintiff in Barcelona had sufficient information to commence inquiry notice but

failed to timely bring suit against the hospital. Id. at *4.

Barcelona thus illustrates how inquiry notice must operate. If a party generally knows who was involved and that the conduct of those involved (individually or collectively) caused the injury, then inquiry notice begins even if the exact detail about identities or even the conduct remains imprecise. This is why Winn notes that knowledge of precise legal theories is not prerequisite. This simple to apply concept is succinctly captured by this Court's conclusion in Barcelona that: "Petitioners' hiring of an attorney, suing Summerlin Hospital, and inclusion of an affidavit opining on other defendants' negligence with the initial complaint further show that petitioners *had enough information* to conclude that Barcelona's physical injury was caused by **a** medical provider's negligence such that they should have further investigated Summerlin Hospital's role in the injury." Id. at *4 (emphasis added).

The idea basically boils down to the common sense notion expressed in Winn: if a person has facts before them that "someone's" negligence caused an injury, then that person should start investigating because inquiry notice commenced. And while this Court in Barcelona focused primarily upon inquiry notice, this Court did make it a point to comment that discovery of the legal injury *also* occurs if a claimant has actual knowledge of the injury (e.g., subjective

knowledge of facts that make the claimant believe negligence caused harm). Id. at *3 (stating "a plaintiff 'discovers' a legal injury either when the plaintiff has actual knowledge of the injury or 'when the [plaintiff] has before him facts which would put a reasonable person on inquiry notice of his possible cause of action.'"). In short, either actual notice or inquiry notice commences the one year statute of limitations pursuant to NRS 41A.097(2).

C. ADMITTED FACTS PROVIDE IRREFUTABLE EVIDENCE STATUE OF LIMITATIONS COMMENCED.

The statute of limitations certainly commenced in this case either via actual knowledge or, at a minimum, inquiry notice. Indeed, there is no need to deduce what Appellants *should* have known because in this case there is admitted evidence about what Appellant Laura Latrenta *actually* knew. As such, the discovery rule analysis becomes black and white.

It *is* irrefutable in this case that there is indisputable evidence Appellant Laura Latrenta discovered the legal injury in March of 2016 **because Latrenta *admitted* her actual knowledge of specific facts did put her on notice in mid-March 2016 that someone's negligence may have caused Mary Curtis's injuries**. RESP119. The Court can therefore assess that the evidence as irrefutable and ripe for legal determination because the relevant evidence is Latrenta's own

admissions and representations to this Court. Latrena cannot create issues of fact with her own internally inconsistent statements. Block v. City of Los Angeles, 253 F.3d 410 (9th Cir. 2001); Bank of Las Vegas v. Hoopes, 84 Nev. 585, 586, 445 P.2d 937, 938 (1968). Without belaboring all the factual evidence recited above, the following list accounts for indisputable, irrefutable evidence of Appellant Laura Latrenta's *actual* knowledge that someone's negligence may have caused injury to Curtis:

- Latrenta Testified to Her Subjective Belief that Negligence Caused Curtis's Injury. Latrenta answered "Yes" to the question of whether it was her subjective perception that medical providers at Life Care acted negligently on March 7 and 8, 2016. RESP119.
- Appellants Admitted "Discovery" Commenced in March of 2016 as Related to Life Care. "Here, Laura [Latrenta] **was aware** of her mother's injuries, [and] their causation by Life Care Defendants…" RESP131.
- Latrenta Admitted Her Knowledge As Of March 2016 Regarding The Precise Operative Facts At Issue In Her Lawsuit Against Respondents. Latrenta admitted in her deposition that no later than March 11, 2016, providers of health care at Sunrise Hospital *explicitly* told her negligent *conduct* occurred regarding the exact two factual bases Appellants premised their entire lawsuit against Respondents: (1) untimely transport Curtis to a hospital and (2) failure to provide a Narcan IV drip or ongoing Narcan doses. Latrenta specifically testified that these Sunrise Hospital providers stated "they [Respondents] should have brought her here as soon as this happened, and we could have put her on a Narcan drip." RESP116-117, 122-123.
- Appellants Admitted that NP Socaoco's Name Is In The Medical Records. Appellants claimed NP Socaoco's name was not "revealed" in the medical record, but, in a footnote, were forced to admit that NP Socaoco's name, in fact, *is* in the medical record. Yet, Appellants misleadingly claimed it is only present in two locations. See Appellants' Opposition to Motion at 9:26-28. This claim is demonstrably false. NP Socaoco's *printed* name or signature appear no less than **five (5) places** in the record. RESP179-183. According to Appellants,

somehow "A. Socaoco" is easily confused with "S. Saxena" because both last names begin with an "S." Of course, simple logic and common sense would cause a reasonable person to deduce that entries in a medical record by persons with *different* first name initials (and obviously different letters in the remainder of their last name) would almost certainly be entries by two *different* individuals.

- Motion to Consolidate Proves Knowledge of "Common" Facts. On July 7, 2016, Appellants filed a Motion to Consolidate and admitted (indeed, *forcefully argued*) that that the case against Dr. Saxena (and now Respondents) arose from the same facts as the case against Life Care:
    - "Laura's two actions implicate **the same underlying facts**: Mary's morphine overdose, Defendants' reaction (or lack thereof) thereto, and her resulting injuries and death. *See supra* Part II. **They therefore involve common questions of fact**." (Emphasis added). RESP45.
    - Appellants reiterated they "brought similar claims against both Life Care and Dr Saxena, i.e., that their negligence concerning her mother's morphine overdose caused her injuries and death." RESP46.
    - "Laura's actions against **both** Life Care and Dr. Saxena involve common questions of law, e.g., causation of and liability for her mother's injuries and death, and of fact, e.g., her mother's morphine overdose and Defendants' untimely response thereto." (Emphasis added). RESP47.

If the operative fact in Winn which trigged inquiry notice was a mere note in a medical record stating air was in the heart, then how much more irrefutable and definitive are the facts in this case? Appellant Latrenta actually believed negligence caused injury, was specifically told by providers of health care about the acts and omissions which caused injury (untimely transfer and lack of ongoing Narcan), was physically present with Curtis on March 7-11, 2016, and generally

knew the health care providers to be investigated (e.g., those working at Life Care). The aforementioned facts provide overwhelming, irrefutable evidence of actual knowledge. At a minimum, these facts certainly supply the irrefutable evidence needed to commence inquiry notice given that any reasonable person would be obligated to investigate.

In light of Winn, Pope, and Barcelona, Appellants had more than enough information to commence the running of the statute of limitations once Mary Curtis passed away on March 11, 2016. Inexplicably, Appellants *were* able to sue Life Care Defendants within one year in case A-17-750520-C but failed to file case A-17-754013-C until months later and *after* the one year limitation period expired against Respondents. This delay in light of the irrefutable facts demonstrates the District Court properly dismissed the Amended Complaint pursuant to NRS 41A.097(2).[5]

[5] Appellants' difficulties obtaining records from Life Care are irrelevant to the statute of limitations analysis applicable to Respondents. One parties' concealment is unable to be imputed to separate party, another clear holding of this Court's decision in Winn. Winn v. Sunrise Hosp. & Med. Ctr., 128 Nev. 246, 259, 277 P.3d 458, 466.

IV. CONCLUSION

In light of the foregoing, Respondents request that this Court affirm the District Court's ruling.

Dated this 13th day of December, 2019.

JOHN H. COTTON & ASSOCIATES, LTD.

By /s/ Vincent J. Vitatoe
John H. Cotton, Esq.
Nevada Bar No. 4949
Vincent J. Vitatoe, Esq.
Nevada Bar No. 12888
7900 W. Sahara Ave
Las Vegas, Nevada 89117
Attorneys for Respondents

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2007 in 14-point Times New Roman font.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is:

☒ proportionally spaced, has a typeface of 14 points or more and contains 5781 words; and/or

☒ does not exceed 30 pages.

3. Finally, I hereby certify that I have read this brief, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to

sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 13th day of December 2019.

JOHN H. COTTON & ASSOCIATES, LTD.

By /s/ Vincent J. Vitatoe
John H. Cotton, Esq.
Nevada Bar No. 4949
Vincent J. Vitatoe, Esq.
Nevada Bar No. 12888
7900 W. Sahara Ave
Las Vegas, Nevada 89117
Attorneys for Respondents

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of December 2019 a true and correct copy of the foregoing **RESPONDENTS' ANSWERING BRIEF** pursuant to NRAP 24(c)(1)(B), was served on the following counsel of records as follows:

Michael Davidson, Esq.
KOLESAR & LEATHAM
400 South Rampart Blvd., Suite 400
Las Vegas, NV 89145
AND
Melanie Bossie, Esq.
BOSSIE REILLEY & OH, P.C.
1533 North Pima Road, Suite 300
Scottsdale, AZ 85260
AND
Bennie Lazzara, Jr., Esq.
One North Dale Mabry Hwy., Suite 700
Tampa, Florida 33609
Attorneys for Plaintiffs/Appellants

/s/ Terri Bryson
Employee of John H. Cotton & Associates