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' APPENDIX VOLUME II OF II

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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:

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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. XVII Consolidated with: CASE NO. A-17-754013-C
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	**DEFENDANTS' MOTION TO DISMISS OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGEMENT**

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NEVADA, INC.; and DOES 51–100,

Defendants.

COMES NOW Defendants, SAMIR SAXENA, M.D.[1]; 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. (hereinafter "IPC Defendants") by and through their attorneys of record, John H. Cotton, Esq. and Vincent J. Vitatoe, Esq., of the law firm of the law firm JOHN H. COTTON & ASSOCIATES, LTD., hereby submit this Motion to Dismiss, or in the alternative, for Summary Judgment.

The Motion is made and based upon the papers, pleadings, and records on file herein, the attached Memorandum of Points and Authorities, and any oral argument this Court may allow at the time of the hearing on this matter.

DATED this 12th day of June, 2018.

JOHN H. COTTON & ASSOCIATES, LTD.

/s/ Vincent J. Vitatoe

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[1] Plaintiffs agreed to dismiss Dr. Saxena from this case with prejudice. Dr. Saxena filed a Motion for Good Faith Settlement which is set to be heard June 13, 2018. If granted, Dr. Saxena will no longer be a party to this Case and, thus, this Motion would only apply to the remaining IPC Defendants.

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NOTICE OF MOTION

TO: ALL INTERESTED PARTIES AND/OR THEIR COUNSEL OF RECORD

PLEASE TAKE NOTICE that the undersigned will bring the foregoing Defendants' Motion to Dismiss, or, in the alternative, for Summary Judgment for hearing in the above entitled Court on the 18 day of JULY, 2018 in Dept. 17, at the hour of 8:30A a.m./p.m. or as soon thereafter as counsel may be heard.

DATED this 12th day of June, 2018.

JOHN H. COTTON & ASSOCIATES, LTD.

/s/ Vincent J. Vitatoe

JOHN H. COTTON, ESQ.
VINCENT J. VITATOE, ESQ.

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I. INTRODUCTION.

The statute of limitations bars Plaintiffs' lawsuit against IPC Defendants. Plaintiff Laura Latrenta's admissions demonstrate no genuine issue of fact exists. Plaintiffs filed their professional negligence lawsuit more than one (1) year after they were on inquiry notice in violation of NRS 41A.097. Consequently, summary judgment is warranted as a matter of law.

II. BACKGROUND.

First Case: Life Care Center - A-17-750520

1. On February 2, 2017, Plaintiff filed a Complaint against Life Care Center. See Complaint on file.
2. The crux of Plaintiff's Complaint is the allegation that Life Care Center defendants (and their employees/agents) incorrectly administered morphine to Mary Curtis, an 89 year old woman allegedly leading to her death.
3. The primary complaints include:
    a. "Defendants voluntarily assumed responsibility for her care and to provide her food, shelter, clothing, and services necessary to maintain her physical and mental health." Id. at ¶13.
    b. "During her Life Care Center of South Las Vegas f/k/a Life Care Center of Paradise Valley residency Ms. Curtis was dependent on staff for her basic needs and her activities of daily living." Id. at ¶15.
    c. Defendants knew that Ms. Curtis relied on them for her basic needs and that without assistance from them she would be susceptible to injury and death." Id. at ¶16.
    d. "Despite Defendants' notice and knowledge of Ms. Curtis's fall risk they permitted her to fall (causing her injuries) shortly after she entered Life Care

Center of South Las Vegas f/k/a Life Care Center of Paradise Valley." Id. at ¶17.

e. "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." Id. at ¶22.

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

4. On April 14, 2017, more than two months later after filing the first Complaint, Plaintiff filed a Complaint against Dr. Saxena as the sole defendant. See Complaint on file.

5. Plaintiffs generally assert Dr. Saxena provided negligent health care to Ms. Curtis *after* the overdose of morphine occurred by allegedly failing to (1) supply a Narcan IV drip and (2) immediately send Curtis to an acute care setting.

6. The primary complaints include:

a. "During her Life Care Center of South Las Vegas f/k/a Life Care Center of Paradise Valley residency **Ms. Curtis was dependent on Dr. Saxena for medical care**." (Emphasis added). Id. at ¶10.

b. "Dr. Saxena knew that Ms. Curtis relied upon him for medical care and that without that care she would be susceptible to injury and death." Id. at ¶11.

c. 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

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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." Id. at ¶13.

d. "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." (Emphasis added). Id. at ¶14.

e. "Dr. Saxena, in providing medical care for Ms. Curtis, had a duty to exercise the level of knowledge, skill, and care of physicians in good standing in the community." Id. at ¶25.

f. "Upon Ms. Curtis's admission to Life Care Center of South Las Vegas f/k/a Life Care Center of Paradise Valley, Dr. Saxena assumed responsibility for her medical care and had a duty to use such skill, prudence, and diligence as other similarly situated physicians in providing medical care to dependent and elderly residents such as Ms. Curtis." Id. at ¶39.

7. Based on those allegations, Plaintiffs set forth the following causes of action: Abuse/Neglect of an Older Person; Wrongful Death by Estate; Wrongful Death by Individual; and Medical Malpractice.

Second Case Revised: Amended Complaint in Case A-17-754013

8. Plaintiffs sought to amend the second Complaint (A-17-754013) to add the following parties:

a. Annabelle Socaoco, N.P. ("NP Socaoco"); and

b. IPC Health Care, Inc. aka THE HOSPITALIST COMPANY, INC.; INPATIENT CONSULTANTS OF NEVADA, INC.; IPC HEALTHCARE SERVICES OF NEVADA, INC.; HOSPITALISTS OF NEVADA, INC. (collectively the "IPC Defendants"). See Amended Complaint on file.

9. The Amended Complaint contains the exact same causes of action as the second Complaint against Dr. Saxena, except the Amended Complaint also focuses on NP Socaoco. The core of the new allegations are as follows:

c. Despite NP Socaoco'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 nurse practitioner would have recognized** that she required treatment in an acute care setting, she 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. NP Socaoco instead ordered that Ms. Curtis be given Narcan." Id. at ¶13.

d. "Despite NP Socaoco's notice and knowledge of Ms. Curtis's morphine overdose, and although **a reasonably trained nurse practitioner would have recognized** that she required a Narcan IV drip (or ongoing dosages of Narcan equivalent thereto), she failed to order such a treatment. She 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." (Emphasis added). Id. at ¶14.

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III. LEGAL ARGUMENT

This Motion demonstrates that summary judgment is proper. First, case law supports the conclusion that access to facts is what triggers inquiry notice—the standard for determining when the statute of limitations commences. Second, there is no genuine issue of fact present because this Motion relies on the *admissions* of Plaintiff Laura Latrenta which are unable to be placed into genuine dispute. The admissions unequivocally establish that Plaintiffs *actually* knew of the facts which would become the exact basis of the current suit against IPC Defendants. Third, the Wrongful Death cause of action is similarly barred as untimely. Finally, this Court already ruled in favor of IPC Defendants regarding the Elder Abuse cause of action. In short, the entirety of the Amended Complaint should be adjudicated in favor of IPC Defendants as a matter of law.

a. General Standard.

Under NRCP 12(b)(5), a party may move to dismiss the operative pleading if it "fail[s] to state a claim upon which relief can be granted . . . ." In ruling on a motion to dismiss, a court must accept all of the plaintiff's factual allegations as true and draw every reasonable inference in his or her favor, in determining whether the allegations are sufficient to state a claim for relief. Sanchez v. Wal–Mart Stores, Inc., 125 Nev. 818, 823, 221 P.3d 1276, 1280 (2009). A complaint should be dismissed for failure to state a claim "only if it appears beyond a doubt that it could prove no set of facts, which, if true, would entitle it to relief." Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008). "Dismissal is proper where the allegations are insufficient to establish the elements of a claim for relief." Hampe v. Foote, 118 Nev. 405, 408, 47 P.3d 438, 439 (2002) (abrogated on other grounds by Buzz Stew, 124 Nev. 224, 181 P.3d 670 (2008)). If this Court considers matters outside the pleadings, then the motion is converted into one for summary judgment. Gallen v. Eighth Judicial Dist. Court, 112 Nev. 209, 212, 911 P.2d 858, 860 (1996).

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Summary judgment "shall be rendered forthwith" if there is no genuine issue of material fact and "the moving party is entitled to judgment as a matter of law." NRCP 56(c). A slight doubt or arguments built on "gossamer threads of whimsy, speculation and conjecture" will not defeat summary judgment. Wood v. Safeway, Inc., 121 Nev. 742, 731, 121 P.3d 1026, 1030-31 (2005). A plaintiff's *internally* inconsistent testimony fails to present a *genuine* issue of fact. See, e.g., 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).

b. Statute of Limitations Bars Medical Malpractice and Wrongful Death Claims.

Plaintiff Laura Latrenta conceded in sworn testimony that in mid-March of 2016 she knew of facts that placed her (or should have placed her on notice) on notice regarding a possible legal cause of action regarding the death of her mother, Mary Curtis. Yet, more than one (1) year later, on April 14, 2017, Plaintiffs filed their Complaint asserting professional negligence against Dr. Saxena (which they have now amended to include all IPC Defendants). As set forth below, Plaintiffs' delay causes their professional negligence-based Amended Complaint to be barred by the statute of limitations. This conclusion is not in genuine dispute given Plaintiff Laura Latrenta's repeated admissions.

1. Plaintiffs Failed to File the Complaint Within One (1) Year.

Professional negligence actions are subject to strict statutory timelines. NRS 41A.097(2) requires claims for medical malpractice to be commenced three (3) years after the date of the injury or one (1) year after the injury is discovered. Specifically, NRS 41A.097(2) states in pertinent part:

> Except as otherwise provided in subsection 3, 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, for:

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(a) Injury to or the wrongful death of a person occurring on or after October 1, 2002, based upon alleged professional negligence of the provider of health care;

(b) Injury to or the wrongful death of a person occurring on or after October 1, 2002, from professional services rendered without consent; or

(c) Injury to or the wrongful death of a person occurring on or after October 1, 2002, from error or omission in practice by the provider of health care.

Here, the incident involving Mary Curtis occurred in mid-March of 2016. Specifically, Curtis was allegedly provided morphine in error on March 7, 2016. The Amended Complaint as well as the second Complaint acknowledged that Curtis was provided Narcan by a provider of health care. The next day, on March 8, 2016, the Amended Complaint admits Curtis was transferred to Sunrise Hospital. See Amended Complaint at ¶20. The Complaint admits Curtis passed away that same week. Id.

The allegations against IPC Defendants concern the purported failure to (a) administer a Narcan IV drip, and (b) transfer Curtis to an acute care setting. Id. at ¶51. Both alleged omissions occurred March 7 and March 8 of 2016. The Complaint was filed on April 14, 2017, more than one (1) year after the incident—and purported professional negligence—occurred which gave rise to the lawsuit. Pursuant to NRS 41A.097(2), Plaintiffs failed to timely file their Complaint within the applicable one (1) time period. Therefore, the professional negligence claim (the Fourth Cause of Action) is barred as a matter of law.

2. Nevada Law Clearly Establishes that Inquiry Notice is the Operative Trigger for Statute of Limitations Analysis.

Plaintiffs' only possible argument to avoid the application of the statute of limitations will be an argument pursuant to the discovery rule. The Nevada Supreme Court explained that a discovery rule analysis begins by focusing on the plaintiff's knowledge, not the defendant's knowledge. Massey v. Litton, 99 Nev. 723, 669 P.2d 248 (1983). In Massey v. Litton, 99 Nev. 723, 669 P.2d 248 (1983), the Nevada Supreme Court "noted that the discovery rule has been clarified to mean that the statute of limitations begins to run when the patient has before him

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facts which would put a reasonable person on inquiry notice of his possible cause of action[.]" 99 Nev. at 728, 669 P.2d at 252. The Nevada Supreme Court recently reexamined its statute of limitations jurisprudence. Winn v. Sunrise Hosp. & Med. Ctr., 128 Nev. 246, 277 P.3d 458 (2012). The Winn Court interpreted the Massey decision regarding the date of inquiry notice. The Winn Court pointed out that:

> "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) Id. at 252.

The citation is important because it conveys that the focus is on a plaintiff's knowledge of facts which would cause further investigation regarding whether "someone's" negligence caused the injury. Id. at 252-53. Here, Laura Latrenta repeatedly admits (as cited at length herein, below) that she possessed facts in March of 2016 which led her to *subjectively* believe negligence caused her mother's death. These facts included direct statements made to Latrenta by a variety of health care professionals in mid-March of 2016 regarding the alleged need for immediate transfer and the need for a Narcan IV drip.

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 inquiry notice commenced. 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, or death

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certificates *can* certainly trigger 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, Plaintiff Laura Latrenta admittedly had access to those facts—from multiple sources—before Curtis passed away on March 11, 2016.

The case of Pope v. Gray also supports the instant Motion. Pope v. Gray, 104 Nev. 358, 760 P.2d 763 (1988). In Pope, a case with 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 the plaintiff is aware of possible negligence that caused the death prior to (or simultaneous with) the actual death. Presently, as detailed below, Plaintiff Laura Latrenta admitted her repeated exposure to facts suggesting possible negligence in connection with the administration of morphine to Curtis and her follow-up care.

3. Plaintiff Laura Latrenta's Admissions Demonstrate Statute of Limitations Applies.

Inquiry notice began in March 2016. Plaintiff Laura Latrenta provided detailed testimony that unquestionably establish that she *actually* believed professional negligence occurred.

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First, Latrenta acknowledged that she understood how serious a morphine overdose could be to Curtis and the gravity of the situation (**Exhibit A** at 50:1-25):

> 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.

Second, Latrenta admitted that a health care professional explicitly told her—on March 8th or 9th, 2016—that the health care providers at Life Care Center should have immediately sent Curtis to an acute care setting and placed her on an IV Narcan drip (Id. at 77-78):

///

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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.

The above testimony is an admission that on March 8th or 9th, 2016 (the first or second day Curtis was at Sunrise Hospital), a health care professional explicitly told Latrenta the exact two items which Latrenta now levels at the IPC Defendants: (1) Curtis required immediate transfer, and (2) a Narcan IV drip should have been used as opposed to shots of Narcan.[1] Stated differently, Latrenta knew the facts that Curtis was not immediately transferred nor provided a Narcan IV drip. Indeed, Latrenta admits that she witnessed two shots of Narcan being administered and stated she understood the purpose of Narcan (Id. at 59-60):

[1] While the IPC Defendants explicitly deny that the two criticisms are required by the standard of care, the merits of the case are not relevant to a statute of limitations analysis.

> 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 -- cops carry it. I knew what it was. And she got two of them.

Not only did Latrenta personally witness the Narcan shots, she admitted that "somebody" told her that Narcan shots would be administered. Latrenta readily admitted that she knew (and indeed relied upon) physicians and similarly situated providers of health care were treating her mother for *days* before the incident in question took place. Id. at 120:3-9. Any claim that Latrenta did not know a provider of health care was involved with her mother's care on March 7th and 8th is baseless.

Third, Latrenta testified that she actually gained an understanding from physicians at Sunrise Hospital that they believed the morphine caused her medical issues (Id. at 83:2-8, 83:21-25).

> 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.

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I was under the impression that after they said that that it wasn't going to get better. Her organs were shutting down from morphine. So I was -- what I deducted from it was there was nothing else that put her in that position.

Importantly, Latrenta similarly testified in an Interrogatory response that a physician (Dr. Jason Katz) and/or a nurse (Robert Firestone, RN), at a minimum, conveyed their criticisms regarding the alleged need for (a) Curtis's immediate transfer, and (b) use of a Narcan IV drip. See **Exhibit B** at Response 18.

Fourth, Latrenta bluntly admitted she *subjectively* believed negligence occurred and that two paramedics gave her a similar impression (**Exhibit A** at 114-115).

A. But they were feeling -- like, I was getting the impression from one of the guys that -- he said to me something maybe to the effect that, Well, this shouldn't -- you know, I can't remember. And I don't want to, like, guess anything. But should have not happened.

Q. All I want to know is what your recollection is.

A. That was my feeling. I don't recall the exact conversation.

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?

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A. Yes.

Q. Was it your perception they were negligent?

A. Yes.

Q. Just to close it off, anything else you can remember talking about with the paramedics before they took your mom off?

A. They might have said to me, one of the guys, I'm trying to remember. They might have made an offhand comment about a legal issue that, Well, this looks like something legal, something to that effect.

In other words, someone told Latrenta this appeared to be "something legal" and she *actually*, *subjectively* believed a "mistake" occurred. Such *actual* notice (and belief) far exceeds mere *inquiry* notice.

In sum, the admissions undermine any argument that issues of fact remain regarding whether Plaintiffs were on inquiry notice of their legal claims. Taken together, the following facts are unequivocally admitted:

- On March 7, 2016, Latrenta was told that Curtis improperly received 120mg of morphine.
- On March 7, 2016, Latrenta witnessed the administration of two shots of Narcan which she admitted her understanding of Narcan's purpose (to counteract the morphine) *at the time* the Narcan was provided. She also acknowledged that "somebody" told her about the imminent Narcan shots.
- On March 8, 2016, paramedics conveyed to Latrenta that the situation involving Mary Curtis "should not have happened" and that it looked like a legal matter.

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- Laura Latrenta explicitly admitted her own perception was a mistake occurred as the result of negligence as related to medical care provided to her mother, Mary Curtis.
- 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 (as opposed to shots of Narcan). These are the identical and exclusive criticisms Plaintiffs now assert against the IPC Defendants.
- 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.
- On March 11, 2016, Mary Curtis passed away.

The Massey, Winn, and Pope cases powerfully convey how the aforementioned facts triggered the statute of limitations in this case no later than March 11, 2016. Both the potentially negligent acts/omissions and the causal effect were conveyed to Latrenta in mid-March of 2016 by her own admissions. Doctors/nurses at Sunrise hospital informed Latrenta of their criticisms and the alleged need for (a) Curtis's immediate transfer, and (b) use of a Narcan IV drip. Paramedics conveyed their similar perceptions. Individuals at Nathan Adelson communicated their concerns regarding the administration of morphine to Curtis. Latrenta testified that her own personal perception of facts made her *subjectively* believe that negligent conduct occurred. In other words, Latrenta had facts before her which would put any reasonable person on inquiry notice.

The admitted evidence that Latrenta was on inquiry notice in mid-March of 2016 is therefore overwhelming and irrefutable. Latrenta knew (or should have known) *both* the "fact of

damage suffered and the realization that the cause was the health care provider's negligence" precisely as set forth in Massey. Id. at 727. And, even more, Plaintiffs filed a Complaint against Life Care within one (1) year of the incident, but failed to do so as related to Dr. Saxena (and the similarly-situated NP Socaoco/IPC Defendants). This failure bars any professional negligence-based pursuant to NRS 41A.097(2).

4. Wrongful Death Claims are also Barred by NRS 41A.097.

The Second and Third Cause of Action are for wrongful death. Both causes of action are premised upon the alleged professional negligence related to the purported failure to immediately transfer Curtis and place her on a Narcan IV drip. See Complaint and proposed Amended Complaint. In the context of a wrongful death action, the earliest that the statute of limitations begins to run is the date of death. Pope v. Gray, 104 Nev. 358, 760 P.2d 763 (1988). The statute of limitations still applies to these claims because Curtis passed away March 11, 2016. March 11, 2016 is, therefore, the date the statute of limitations began to run given that Plaintiff Laura Latrenta repeatedly admitted that just days prior (on March 7, 8, and 9, 2016) she acquired knowledge of the facts giving rise to the alleged professional negligence underlying the entire case. Therefore, NRS 41A.097(2) bars these two causes of action.

c. The First Cause of Action for Abuse/Neglect of an Older Person is Legally Defective.

This Court already ruled that Elder Abuse causes of action are unable to exist alongside of Professional Negligence claims when both claims are premised upon the same facts against a statutorily-defined provider of health care. The Amended Complaint still improperly contains an Elder Abuse cause of action against the IPC Defendants.

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IV. CONCLUSION.

The Amended Complaint sounds in professional negligence, and, consequently, the statute of limitations set forth in NRS 41A.097(2) bars the Second, Third, and Fourth Causes of Action because suit was brought outside the applicable one (1) year period. This Court already ruled in favor of IPC Defendants regarding the Elder Abuse cause of action. In sum, as a matter of law, the IPC Defendants respectfully request summary judgment.

Dated this 11th day of June 2018.

JOHN H. COTTON & ASSOCIATES, LTD.

/s/ Vincent J. Vitatoe

JOHN H. COTTON, ESQ.
VINCENT J. VITATOE, ESQ.

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CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that on 12th day of June 2018, I served a true and correct copy of the foregoing **DEFENDANTS' MOTION TO DISMISS, OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT** by electronic means Pursuant to EDCR 8.05(a), and was submitted electronically for filing and/or service with the Eighth Judicial District Court, made in accordance with the E-Service List, to the following individuals:

Michael D. Davidson, Esq.
KOLESAR & LEATHAM
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AND
Melanie L. Bossie, Esq.
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15333 North Pima Road, Suite 300
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Attorneys for Plaintiffs

An Employee of John H. Cotton & Associates

EXHIBIT A

IPC Defendants' Motion to Dismiss, or, in the alternative, for Summary Judgment

EXHIBIT A

IPC Defendants' Motion to Dismiss, or, in the alternative, for Summary Judgment

DISTRICT COURT

CLARK COUNTY, NEVADA

Estate of MARY CURTIS, deceased; LAURA LATRENTA, a 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 fka 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

DEPOSITION OF LAURA LATRENTA

Taken on Wednesday, November 29, 2017

At 9:01 a.m.

At Kolesar & Leatham

400 South Rampart Boulevard, Suite 400

Las Vegas, Nevada

REPORTED BY: CINDY MAGNUSSEN, RDR, CCR NO. 650

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.

At that point, the nurse started to cry. And say, I'm so sorry. I've never done this. And there was a lot of chaos. And during this whole time, my

Q. After the conversation with the supervisor where you learned all the information you learned, what happened next?

A. They asked me to hold the garbage can so my mother could vomit in it.

Q. Okay.

A. Why was I doing that? It should have never happened to my mother. This should have never happened. I sat down. I know they came in, and they gave her an injection. Maybe they gave her two injections of that Narcan. I asked them what it was. At this point I'm ...

And I found -- then she was, like, huddled in the bed.

Q. Your mother was?

A. Yeah. Like, she's throwing up. They are giving her injections. All of these things are happening to her. It was very, very chaotic. Okay.

So I'm trying my best. But it was chaotic. So I sat down. I need hip replacement, so I don't stand very well. So I sat down in the chair.

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 --

A. Yes.

Q. Okay. So during that time span --

A. Oh, not to be admitted. Well, I don't know. She was in that room. And the time, it meshes together now. I went home to sleep and came back. So it had to be at least two days she was in that room.

Q. So the first room that you saw her in when you first got to the hospital, she stayed there for about two days?

A. I think they moved her to another spot but in that same -- she was in emergency.

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.

Q. And do you know who that individual was?

A. I think his name was Jason.

There were two guys that I talked to. They were both very, very astute. And they gave her excellent care. They were all over her with everything. And then somebody took her also to get, I guess, an X-ray. It could have been a CAT scan. I don't know.

They had to take her away. Maybe it was a CAT scan. It was something, either an X-ray or CAT scan. They took her away for that and brought her back.

Q. Okay.

A. But there was this one gentleman, Jason, and then there was this -- another guy. And I -- Chris. I mean, please don't quote me on this. I don't remember. But they, you know, I would tell everybody who was listening to me what happened because I wanted them to all know what the condition was.

And they just were caring for her and taking

would not get better.

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.

Q. Sure. But my --

A. And monitoring parts of her.

Q. Okay. My question was more specific to words that they would have said to you.

A. I don't recall words.

Q. Did any of them ever specifically say to you, The administration of morphine is what is causing this problem? Whatever the medical problem would be.

A. I don't recall the exact words, but the doctors may have said to me, Because of the morphine dose, this is happening and this is happening. Her organs are slowing down.

I was under the impression that after they said that that it wasn't going to get better. Her organs were shutting down from morphine. So I was -- what I deducted from it was there was nothing else that put her in that position.

foundation.

You can answer.

THE WITNESS: What leads me to believe, because I would think that if you put your mother in a hospital or a rehab facility, and you depend on the people that work there, doctors, nurses, everyone, and something like this could actually happen, what would you call it? It's conscious disregard. Why wasn't anything in place to have this not happen to her?

PG 114

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.

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CERTIFICATE OF REPORTER

I, Cindy Magnussen, Certified Court Reporter, State of Nevada, do hereby certify:

That I reported the deposition of Laura Latrenta, commencing on Wednesday, November 29, 2017, at 9:01 a.m.

That prior to being deposed, the witness was duly sworn by me to testify to the truth. That I thereafter transcribed my said shorthand notes into typewriting and that the typewritten transcript is a complete, true and accurate transcription of my said shorthand notes. That prior to the conclusion of the proceedings, the reading and signing was requested by the witness or a party.

I further certify that I am not a relative or employee of counsel of any of the parties, nor a relative or employee of the parties involved in said action, nor a person financially interested in the action.

In witness whereof, I hereunto subscribe my name at Las Vegas, Nevada, this 13th day of December, 2017.

Cindy Magnussen

CINDY MAGNUSSEN, RDR, CCR No. 650

EXHIBIT B

IPC Defendants' Motion to Dismiss, or, in the alternative, for Summary Judgment

EXHIBIT B

IPC Defendants' Motion to Dismiss, or, in the alternative, for Summary Judgment

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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. XVII Consolidated with: CASE NO. A-17-754013-C **PLAINTIFFS' RESPONSES TO LIFE CARE DEFENDANTS' FIRST SET OF INTERROGATORIES TO LAURA LATRENTA, INDIVIDUALLY**
Estate of MARY CURTIS, deceased; LAURA LATRENTA, as Personal Representative of the Estate of MARY CURTIS; and LAURA LATRENTA, individually, Plaintiffs, vs. SAMIR S. SAXENA, M.D., Defendant.	

Interrogatory No. 18:

Have you had any conversations with anyone during which they criticized the care and treatment received by the decedent at Defendants' facility (excluding conversations covered by the attorney-client privilege)? If so, please state:

a. The name of each person making the statement.

b. The date of the statement.

c. The employer, occupation and last known address of the person or persons making the statement.

d. The contents, in as much detail as possible, of any criticisms expressed by said person.

Response to Interrogatory No. 18:

Ms. Latrenta cannot remember each and every conversation she had regarding her

mother's care and treatment. Dr. Timothy Dutra spoke with Ms. Latrenta shortly after the autopsy was completed to detail the results of his autopsy, including that Ms. Curtis' cause of death was attributed to the morphine she ingested due to the negligence of the Defendants facility. 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. Discovery is ongoing. Plaintiff reserves the right to supplement this response.

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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. XVII Consolidated with: CASE NO. A-17-754013-C **PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS/MOTION FOR SUMMARY JUDGMENT** Date: July 18, 2018 Time: 8:30 a.m.
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,	

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

Defendants.

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS/MOTION FOR SUMMARY JUDGMENT

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 and Wilkes & McHugh, P.A., hereby respond to Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment.

DATED this 29th day of June, 2018.

KOLESAR & LEATHAM

By */s/ Michael D. Davidson, Esq.*
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MEMORANDUM OF POINTS AND AUTHORITIES

I. ISSUE

An injury's accrual date is a question of fact for the jury. Defendants, parroting Dr. Saxena's unavailing arguments and unpersuasive evidence of a few months ago, urge the Court to rule that as a matter of law Laura's claims against Nurse Socaoco accrued at a time when Laura did not know and could not have known that Nurse Socaoco even existed and when no available evidence suggested her involvement in Mary's death. Are Defendants entitled to summary judgment on statute of limitations grounds?

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II. FACTUAL AND PROCEDURAL BACKGROUND

Responding to Laura's request to amend her complaint to add as defendants Nurse Practitioner Annabelle Socaoco and the IPC entities, *see* Pls.' Mot. Amend Compl., Defendant Samir Saxena, M.D., in February countermoved for summary judgment. *See* Def. Saxena's Opp'n to Mot. Amend & Countermot. Summ. J. The Court granted the countermotion as to the elder abuse claim but otherwise denied it without prejudice. *See* Order ¶ 10 (Apr. 11, 2018). Nurse Socaoco and the IPC entities now seek summary judgment. *See* Defs.' Mot. Dismiss or in Alt. Summ. J.[1] Their motion regurgitates the arguments and evidence that failed to secure Defendant Saxena summary judgment a few months ago. *Compare* Defs.' Mot. Dismiss or in Alt. Summ. J., *with* Def. Saxena's Opp'n to Mot. Amend & Countermot. Summ. J., *and* Def. Saxena's Reply in Supp. of Countermot. Laura's argument and evidence here are thus perforce largely derivative of her opposition to the countermotion for summary judgment, beginning with this timeline:

- 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."

[1] Defendant Saxena was also among the movants, but the Court has since granted his motion for good faith settlement.

- "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).
- 14 April 2017: Laura files suit against Dr. Saxena. Compl. (A-17-754013-C).

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- 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).
- 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.
- 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).
- 8 November 2017: Laura files a motion to compel requesting that Life Care be ordered to produce, inter alia, incident reports. *See* Pls.' Mot. Compel Further Responses 5.
- 4 December 2017: Laura's counsel, via email, tells Life Care's counsel that she needs Mary's incident reports for depositions taking place that week and offers to treat them as confidential until the following week's hearing on the motion to compel. Ex. 12, Letter from Melanie L. Bossie to Amanda Brookhyser (Dec. 4, 2017).
- 6 December 2017: Laura's counsel deposes Cecilia Sansome, a nurse formerly employed at Life Care Center of South Las Vegas. Ex. 18, Sansome Dep. She testifies as follows:

- Annabelle Socaoco is a nurse practitioner, *id.* at 86:2–4, 104:8–11;
- upon Ms. Sansome's entering the facility a staff member approached her and told her that Mary had been given the wrong medication, *id.* at 45:18–46:3;
- Ms. Sansome, having asked whether the physician had been notified, was told that he had not been and was asked to make the call, *id.* at 46:7–9;
- Ms. Sansome first assessed Mary, *id.* at 46:10–25;
- having done so, she then called the physician through the answering service and was told that Ms. Socaoco would call her back, *id.* at 47:1–4;
- Ms. Socaoco shortly thereafter called and, having been informed about Mary, instructed that she be given Narcan and specified the dosage thereof, *id.* at 47:4–9;
- Ms. Socaoco arrived in person to the nursing station while Ms. Sansome was still writing the order, asking Ms. Sansome if she had given the Narcan, *id.* at 47:9–17, 104:12–15;
- Ms. Sansome then took the medication out of the emergency pyxis and administered it to Mary, *id.* at 47:18–20; and
- 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.
- No disclosure statement of any Defendant identified Nurse Socaoco.

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III. LEGAL ARGUMENT

Defendants argue that determination of the accrual date of Laura's claims against Nurse Socaoco and the IPC entities can be made as a matter of law such that they are entitled to summary judgment on statute of limitations grounds.[2] That argument will work no better now than it did a few months ago.

A. Whether Laura's Claims Against Nurse Socaoco Are Time-Barred Is for the Jury.

"[T]he question of when a claimant discovered or should have discovered the facts constituting a cause of action is one of fact." *Siragusa v. Brown*, 114 Nev. 1384, 1400 (1998). So "[o]nly where uncontroverted evidence proves that the plaintiff discovered or should have discovered the facts giving rise to the claim should such a determination be made as a matter of law." *Id.* at 1401.

Whether Laura's claims against Nurse Socaoco (and the IPC entities) are time-barred is a jury question under *Siragusa*.[3] In *Siragusa*, wife filed an adversary complaint in bankruptcy court against ex-husband after he defaulted on his debt owed her under their divorce property settlement and filed for bankruptcy before she could enforce her lien against his partnership interest, which interest he claimed to have been forced to terminate before filing for bankruptcy. 114 Nev. at 1387–88. Her adversary complaint "referred to [partnership's] counsel on several occasions," alleging that she had told wife's counsel that the partnership's reorganization would not affect wife's interest; raising the issue whether backdated documents had been used in the reorganization; and claiming that wife had discovered evidence of fraud in the addendum prepared by partnership's counsel. *Id.* at 1388. Several months later, one of the partners by affidavit described a scheme masterminded in part by partnership's counsel in which the partners

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[2] Strictly speaking, they claim to seek dismissal for failure to state a claim and only in the alternative summary judgment. But the former is a nonstarter. *See Siragusa v. Brown*, 114 Nev. 1384, 1392 n.6 (1998) (rejecting a federal court's holding that a plaintiff relying on delayed discovery to avoid the statute of limitations must plead facts justifying his action's delayed accrual as "not the law of Nevada"); *see also Addison v. Countrywide Home Loans, Inc.*, No. 2:10-CV-1304, 2011 WL 146516, at *5 (D. Nev. Jan. 14, 2011) (explaining that "a plaintiff must prove, but need not plead, tolling facts").

[3] Laura explained in her previous opposition that *Siragusa* controls. *See* Pls.' Reply in Supp. of Mot. Amend & Opp'n to Def. Saxena's Countermot. Summ. J. 9–11. Defendants' present motion ignores the case.

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executed a "paper reorganization" (including using backdated documents) in order to insulate partnership from ex-husband's liabilities to wife. *Id.* at 1388–89. Wife later sued partnership's counsel, but the district court granted counsel summary judgment, believing wife's claims time-barred. *Id.* at 1390. The Nevada Supreme Court reversed. *Id.* at 1402.

The supreme court recognized that wife's awareness by the time that she filed her adversary complaint that partnership's members had conducted a sham transfer of ex-husband's interests "did not, as a matter of law, constitute discovery by [wife] of facts constituting the fraud allegedly perpetrated by [counsel]." *Id.* at 1391. It taught that "the policies served by statutes of limitation do not outweigh the equities reflected in the proposition that plaintiffs should not be foreclosed from judicial remedies before they know that they have been injured and can discover the cause of their injuries." *Id.* at 1392 (citation and italics omitted). Of course, wife's "mere ignorance of [counsel's] identity will not delay accrual of even a discovery-based statute of limitations if the fact finder determines that [wife] failed to exercise reasonable diligence in discovering [counsel's] role in the alleged tortious activities." *Id.* at 1394. But that was a question for the jury: "such a determination must be made by the trier of fact." *Id.* at 1402. The supreme court therefore reversed dismissal of wife's claims and remanded. *Id.*[4]

Here, Laura was aware of her mother's injuries, their causation by Life Care Defendants, and (eventually) their causation by Dr. Saxena. But she was not aware of their causation by Nurse Socaoco: she did not know—and could not have known, given Life Care's refusal to

[4] *See also Tarnowsky v. Socci*, 856 A.2d 408, 416 (Conn. 2004) (concluding that the statute of limitations "does not begin to run until a plaintiff knows, or reasonably should have known, the identity of the tortfeasor"); *Harrington v. Costello*, 7 N.E.3d 449, 455 (Mass. 2014) ("Courts in a number of other States . . . have concluded that for a cause of action to accrue, the identity of the defendant must be known or reasonably knowable."); *Adams v. Or. State Police*, 611 P.2d 1153, 1156 (Or. 1980) ("[T]he period of limitations does not commence to run until plaintiff has a reasonable opportunity to discover his injury and the identity of the party responsible for that injury."); *Robinson v. Morrow*, 99 P.3d 341, 345 (Utah Ct. App. 2004) ("[W]e hold the discovery rule should be applied to situations wherein the plaintiff can show that he . . . did not know the identity of the tortfeasor after conducting a reasonable investigation."); *Orear v. Int'l Paint Co.*, 796 P.2d 759, 764 (Wash. Ct. App. 1990) ("We conclude that the statutes of limitations applicable to Orear's cause of action against Seaport did not begin to run until he knew or with reasonable diligence should have known that Seaport may have been a responsible party."); *Slack v. Kanawha Cty. Housing & Redevelopment Auth.*, 423 S.E.2d 547, 553 (W. Va. 1992) ("[I]n actions where the discovery rule applies, the statute of limitations does not begin to run until the plaintiff knows, or by the exercise of reasonable diligence should know, that he has been injured and the identity of the person or persons responsible."); *Spitler v. Dean*, 436 N.W.2d 308, 310 (Wis. 1989) ("The public policy justifying the accrual of a cause of action upon the discovery of the injury and its cause applies equally to the discovery of the identity of the defendant in this case.").

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produce its incident report naming her until after the 13 December 2017 hearing on Laura's motion to compel, *see supra* Part II—of Nurse Socaoco's existence, much less her role in her mother's injuries, until Nurse Sansome's 6 December 2017 deposition. *See id.* So her awareness did not as a matter of law constitute discovery of facts constituting Nurse Socaoco's negligence. Nor is this a case of a plaintiff's "mere ignorance of [a defendant's] identity" resulting from failure to exercise reasonable diligence—neither Mary's medical record nor Defendants' disclosures revealed Nurse Socaoco's identity.[5] (Consider, for example, that the autopsy report of April 2016 records that "a physician was called to examine" Mary and that "the physician administered Narcan and Clonidine, with follow-up physician order." Ex. 4, Autopsy Report.) Under *Siragusa*, then, the accrual date of the causes of action against Nurse Socaoco must be determined by the trier of fact.

B. The IPC Entities Are Subject to the Elder Abuse Statute and to a Three-Year Statute of Limitations.

Generally, "if an older person or a vulnerable person suffers a personal injury or death that is caused by abuse or neglect . . . the person who caused the injury, death or loss is liable to the older person or vulnerable person for two times the actual damages incurred." N.R.S. § 41.1395(1). A plaintiff has three years in which to bring such a claim once it has been or should have been discovered. *See* § 11.190(3)(a) (establishing a three-year statute of limitations for "[a]n action upon a liability created by statute").

Under § 41A.017,

> "Provider of health care" means a physician licensed pursuant to chapter 630 or 633 of NRS, physician assistant, dentist, licensed nurse, dispensing optician, optometrist, registered physical therapist, podiatric physician, licensed psychologist, chiropractor, doctor of Oriental medicine, medical laboratory director or technician, licensed dietician or a licensed hospital, clinic, surgery center, physicians' professional corporation or group practice that employs any such person and its employees.

[5] As it turns out, Ms. Socaoco's signature (if it can be called that) does appear on two documents in Mary's record: first, she apparently signed Mary's 7 March 2016 Narcan order, but the attending physician listed on that order is Dr. Saxena—her printed name appears nowhere on it, Ex. 16, Phys. Tel. Orders; second, her signature appears on Mary's 7 March 2016 post-acute progress note—on this note her last name is printed, but only its first letter is legible, leading a reasonable reader to think that the name is Dr. Saxena's. Ex. 17, Post Acute Progress Note.

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For actions against such providers of health care the statute of limitations is typically one year after the injury's discovery. *See* § 41A.097(2).

The Court has held that Defendant Saxena, as a provider of health care, is not subject to the elder abuse statute. *See* Order ¶ 10 (Apr. 11, 2018). The law of the case therefore counsels that Nurse Socaoco, who as a licensed nurse is a provider of health care, be considered beyond the statute's reach as well.

That result does not, however, follow for the IPC entities. Defendants have not even attempted to show that any of these entities qualifies as a provider of health care under § 41A.017. *See* Defs.' Mot. Dismiss or in Alt. Summ. J. 19 (announcing without analysis that "[t]he Amended Complaint still improperly contains an Elder Abuse cause of action against the IPC Defendants"). Two conclusions follow: first, that the IPC entities are subject to liability for elder abuse under § 41.1395; second, that the claims against them enjoy § 11.190(3)(a)'s three-year statute of limitations. The IPC entities are therefore unentitled to summary judgment on Laura's claims against them.

IV. CONCLUSION

Laura requests that the Court deny Defendants' motion for summary judgment.

DATED this 29th day of June, 2018.

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Kolesar & Leatham, and that on the 29th day of June, 2018, I caused to be served a true and correct copy of foregoing **PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS/MOTION FOR SUMMARY JUDGMENT** 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 that Court's facilities to those parties listed on the Court's Master Service List.

/s/ Kristina R. Cole
An Employee of KOLESAR & LEATHAM

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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. XVII Consolidated with: CASE NO. A-17-754013-C
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	**DEFENDANTS' REPLY IN SUPPORT OF MOTION TO DISMISS OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT**

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NEVADA, INC.; and DOES 51–100,

Defendants.

COMES NOW Defendants, SAMIR SAXENA, M.D.[1]; 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. (hereinafter "Dr. Saxena" or "NP Socaoco" or, collectively, "IPC Defendants") by and through their attorneys of record, John H. Cotton, Esq. and Vincent J. Vitatoe, Esq., of the law firm of the law firm JOHN H. COTTON & ASSOCIATES, LTD., hereby submits this Reply in Support of Defendants' Motion to Dismiss, or, in the alternative, for Summary Judgment.

This Reply is made and based upon the papers, pleadings, and records on file herein, the attached Memorandum of Points and Authorities, and any oral argument this Court may allow at the time of the hearing on this matter.

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I. INTRODUCTION.

Plaintiffs' Opposition can be reduced to a single, tenuous argument: the statute of limitations was purportedly tolled until Plaintiffs discovered the identity of NP Socaoco. This argument falls flat in the context of professional negligence lawsuits in Nevada and based upon the procedural history of this case.

First, the explicit language of NRS 41A.071 *specifically* states that the *conduct*—and not the name—provides the information sufficient to bring a lawsuit. This is a fatal distinction Plaintiffs fail to address which undermines their non-professional negligence case law.

Second, Plaintiffs initially sued Dr. Saxena based upon *the conduct* they now attribute to NP Socaoco. The problem? The suit brought against Dr. Saxena was itself brought *after* the

[1] Plaintiffs agreed to dismiss Dr. Saxena from this case with prejudice. This Court granted Dr. Saxena's Motion for Good Faith Settlement on June 13, 2018. A stipulation and order to dismiss will be filed imminently once the written order is signed.

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statute of limitations expired. Thus, Plaintiffs' Amended Complaint adding NP Socaoco (and the IPC entities) relates back to an *untimely* professional negligence case first brought against Dr. Saxena. Plaintiffs *were* able to bring suit against Life Care within one year from the date Mary Curtis erroneously received morphine. However, Plaintiffs' inexplicable delay in filing suit against Dr. Saxena (and, subsequently, NP Socaoco/IPC) is case dispositive.

Third, Plaintiffs failed to even attempt to contest Plaintiff Laura Latrenta's clear, unequivocal admissions that she subjectively knew facts regarding (a) the negligent administration of morphine, (b) the administration of Narcan, and (c) criticisms from other providers of health care regarding the Narcan IV drip and purported failure to timely transfer Curtis to a hospital. Stated differently, Plaintiffs do not contest and, therefore, concede Plaintiff Laura Latrenta knew, in March of 2016, the very facts which would become the exact basis for her present lawsuit against the IPC Defendants.

Finally, for some reason, Plaintiffs contend—even after this Court's extremely clear ruling—that they can maintain elder abuse claims against the IPC entities. Of course they offer no analysis of NRS 41A.017, a statute which refutes their contention.

ADDITIONAL UNDISPUTED FACTS.

1. On January 2, 2018, Plaintiff Laura Latrenta served answers to Interrogatories propounded by Defendant Life Care. **Exhibit A.**
2. 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. at ROG 18.
3. 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." (Emphasis added). Id.

II. SUMMARY OF UNDISPUTED FACTS RELEVANT TO MOTION.

4. On March 7, 2016, an employee of Life Care erroneously supplied morphine to Mary Curtis.
5. On the same day, Latrenta was explicitly informed about the morphine overdose and the amount (120mg).
6. Latrenta testified that she recognized the gravity of the situation: "I know enough above morphine to know that that is a terrible dose."
7. Also on March 7, 2016, Latrenta testified that she witnessed two shots of Narcan being administered to Curtis and understood why it was provided. Specifically, she testified she "knew what that [Narcan] was because that was in the news about people with overdose…I knew what it was. And she got two of them."
8. On March 8, 2016, Curtis was transferred to Sunrise Hospital where she remained until March 11, 2016.
9. During Curtis's time at Sunrise Hospital, a health care professional *explicitly* told Latrenta that "they should have brought her [Curtis] here as soon as this happened, and we could have put her on a Narcan drip." When pressed further as to the identity of this individual, Latrenta testified that her best recollection was that the individual's name was "Jason."

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10. Latrenta's response to Interrogatory 18 specifically identified "Jason Katz, MD" as an individual with whom she had conversations regarding the injuries of Mary Curtis as being the result of morphine.

11. During Curtis's time to Sunrise Hospital, Latrenta also admitted that "all" of the physicians at Sunrise conveyed to her that Curtis's "organs were shutting down from morphine."

12. On March 11, 2016, Curtis was transferred to Nathan Adelson Hospice where she passed away that same day.

13. On February 2, 2017, Plaintiff filed a Complaint against Life Care Center.

14. The Complaint against Life Care Center asserts issues with the administration of morphine and a failure to timely transfer Curtis during the March 7 and 8, 2016 timeframe.

15. On April 14, 2017, Plaintiff filed a separate Complaint against Dr. Saxena.

16. The Complaint claimed medical malpractice based on an alleged failure to (a) timely transfer Curtis, and (b) use a Narcan IV drip as opposed to shots of Narcan. These are the identical criticisms communicated to Latrenta by Dr. Jason Katz and other health care providers sometime between March 8 and March 11, 2016.

17. The Amended Complaint adding NP Socaoco and the IPC entities assert the exact same causes of action based upon the exact same conduct and purported deviations from the standard of care.

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III. THE STATUTE OF LIMITATIONS APPLIES.

a. *Siragusa* is Inapplicable in this Professional Negligence Case.

Plaintiffs rest their entire opposition on the case of Siragusa v. Brown, 114 Nev. 1384, 1400 (1998). However, as this Court is well aware, professional negligence torts are treated *much* differently that other negligence-based torts. Indeed, an entire chapter of the Nevada Revised Statutes is devoted to these types of cases. The Nevada Supreme Court has *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).

When the professional negligence statutes are reviewed, Plaintiffs' reliance on Siragusa falls apart. Specifically, 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 name, **or describes by conduct**, 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.

The current iteration of NRS 41A.071 occurred well after the Siragusa case. Indeed, the enactment of NRS 41A itself occurred after the Siragusa case. The reality of professional negligence cases is that the purportedly negligent conduct *alone* of a provider of health care is sufficient to bring suit. See NRS 41A.071(3). The focus on the actual conduct of providers of health care in terms of initiating suit is understandable in these types of cases where literally dozens of different providers of health care may care for a patient. The concept is again reflected in the controlling NRS 41A statute governing time limitations to bring suit within one year "after the plaintiff discovers or through the use of reasonable diligence should have discovered the

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injury… based upon alleged professional negligence…[or] from error or omission in practice." See NRS 41A.097. The real question is when a person should reasonably *begin* investigating whether some negligent conduct occurred, also known as inquiry notice.

However, what must be remembered in this case is that *two* Complaints were filed: one against Life Care *within one year* of the March 2016 events and one against Dr. Saxena *more than one year* after the March 2016 event. The Plaintiffs just *incorrectly* identified the provider of health care as Dr. Saxena when, in reality, it was NP Socaoco. However, **the purportedly negligent conduct is exactly the same**. The fact that the conduct is the same is the fatal flaw in Plaintiffs' argument.

At the absolute most, Plaintiffs should be able to relate their claims against NP Socaoco back to the date they filed their Complaint against Dr. Saxena. The date of the Complaint against Dr. Saxena is April 14, 2017—more than one year *after* Mary Curtis died on March 11, 2016. Plaintiffs do not even attempt to contest the (repeatedly) admitted fact that Plaintiff Laura Latrenta actually, subjectively knew that (a) morphine was improperly administered to Mary Curtis on March 7, 2016 by a Life Care employee, (b) a Narcan IV drip was not provided, and (c) Curtis was not immediately transferred to a hospital. Plaintiffs also do not attempt to contest the admissions that Plaintiff Laura Latrenta was explicitly told by other providers of health care—in mid-March of 2016—that they were critical of conduct (b) and (c). Conduct (b) and (c) are the precise facts that Plaintiffs claim constitute professional negligence. The failure of Plaintiffs to contest these admissions of Plaintiff Latrenta's *actual* knowledge of this conduct in March of 2016 is a concession to the merit of Defendants' argument. Polk v. State, 126 Nev. 180, 233 P.3d 357 (2010). Consequently, Plaintiffs' admitted *actual* knowledge of the facts underlying the professional negligence claims puts to rest any issue about when inquiry notice

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occurred and proves, as a matter of law, that the professional negligence lawsuit is barred pursuant to NRS 41A.097(2).

In sum, the Siragusa case is of no help to Plaintiffs. They admittedly knew the factual conduct underlying their claim and simply sued the wrong person, Dr. Saxena. But the dispositive problem for Plaintiffs is that they sued Dr. Saxena in an untimely manner. That is the unavoidable legal reality. He was sued on April 14, 2017 when he should have been sued before March 11, 2017. The fact that Plaintiffs later learned that the *conduct* was actually attributable to NP Socaoco instead of Dr. Saxena fails to alter the statute of limitations analysis whatsoever given the plain language of NRS 41A.071, previously cited case law, and Plaintiffs' admissions.

b. Mountain of Admissions and Nevada Case Law Demonstrate No Issue of Fact.

Plaintiffs make passing reference that the statute of limitations issue may be a jury question. No analysis is provided. The reason: Nevada case law makes abundantly clear that statute of limitations questions *can and should* be decided as a matter of law when unequivocal evidence exists, as explained below.

First, the Nevada Supreme Court's recent interpretation of its decision in Massey regarding the date of inquiry notice supports the IPC Defendants' argument. The Court pointed out that:

> "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).

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The citation is important because it conveys that the focus is on a plaintiff's knowledge of facts which would cause further investigation regarding whether "someone's" negligence caused the injury. Winn v. Sunrise Hosp. & Med. Ctr., 128 Nev. 246, 252-53, 277 P.3d 458, 462 (2012). Here, Laura Latrenta repeatedly admits (as cited at length, above) that she possessed facts in March of 2016 which led her to believe negligence caused her mother's death. These facts included direct statements made to Latrenta by Dr. Katz in mid-March of 2016 regarding the alleged need for immediate transfer and the need for a Narcan IV drip.

Second, the Winn case is factually distinct from the present matter. In Winn, the "doctors were unable to provide an explanation [to father] for how this tragic result arose." Id. at 249. It was not until the (incomplete) medical record was received by the family that inquiry notice commenced. 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. The critical issue is when a plaintiff had *access to the facts* indicating injury due to some act of negligence. Here, Plaintiff Laura Latrenta admittedly had access to those facts—from multiple sources—before Curtis passed away on March 11, 2016.

The Winn case is also helpful for a proper understanding as to determining when the commencement date of the statute is a factual issue to be decided by the jury. Indeed, while the Winn Court readily acknowledged that a statute of limitations analysis is often a fact-intensive inquiry for a jury. The conduct of the Winn Court, however, demonstrates that statute of limitations determinations *can* be decided as a matter of law if unequivocal evidence exists which conveys the date that the operative facts were accessible by a plaintiff. Indeed, in Winn the 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

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contained the fact—the presence of air—underlying the potential negligence) became accessible. Id. at 463. It *is* irrefutable in this case that Plaintiff Laura Latrenta had access to facts which would put any reasonable person on notice to investigate further into whether Curtis's injury may have been caused by someone's negligence. The Court can determine that the evidence is irrefutable because it comes by way of Latrenta's own admissions. Latrena cannot create issues of fact with her own 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).

Third, the case of Pope v. Gray also supports the countermotion. Pope v. Gray, 104 Nev. 358, 760 P.2d 763 (1988). In Pope, a case with 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 the plaintiff is aware of possible negligence that caused the death prior to (or simultaneous with) the actual death. The present case presents a radically different factual situation wherein Plaintiff Laura Latrenta admitted her repeated exposure to

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facts suggesting possible negligence in connection with the administration of morphine to Curtis and her follow-up care. **Plaintiff Laura Latrenta admitted she believed, in March of 2017, that negligence caused Curtis's death**. Plaintiffs no longer even contest this point. As such, inquiry noticed commenced, at the latest, on the date of Curtis's death, March 11, 2016.

IV. ELDER ABUSE CLAIMS BARRED.

Plaintiffs unreasonably assert that they have an elder abuse claim against the IPC entities despite this Court's clear April 12, 2018 order precluding such claims. Such a contention is legally incoherent for a few reasons. First, Plaintiffs readily admit that both Dr. Saxena and NP Socaoco, as providers of health, are not subject to the elder abuse statute. There is absolutely no claim or allegation anywhere in the Amended Complaint that the IPC entities somehow acted in a manner apart from the conduct of employees Dr. Saxena and NP Socaoco. In fact, the Amended Complaint states the IPC entities are "vicariously liable." See Amended Complaint at ¶8. Thus, since the underlying conduct of Dr. Saxena/NP Socaoco cannot legally constitute elder abuse, it strains logic to claim that the *same* conduct *can* constitute elder abuse from the perspective of the vicariously liable employer entity(ies).

The more fundamental—and unavoidable—legal reality is that the IPC entities *are* in fact providers of health care pursuant to NRS 41A.017 *and as admitted by Plaintiffs' own Amended Complaint*. NRS 41A.017 defines providers of health care as follows (emphasis added):

> **NRS 41A.017 "Provider of health care" defined.** "Provider of health care" means a physician licensed pursuant to chapter 630 or 633 of NRS, physician assistant, dentist, licensed nurse, dispensing optician, optometrist, registered physical therapist, podiatric physician, licensed psychologist, chiropractor, doctor of Oriental medicine, medical laboratory director or technician, licensed dietitian or a licensed hospital, clinic, surgery center, **physicians' professional corporation or group practice that employs any such person and its employees**.

Moreover, Plaintiffs' Fourth Cause of Action is also levelled against the IPC entities. The Fourth Cause of Action is explicitly grounded in "medical malpractice." It

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appears that Plaintiffs' argument regarding elder abuse is simply an attempt to avoid the statute of limitations analysis which bars their lawsuit against the IPC Defendants.

V. CONCLUSION.

The Motion demonstrates that the statute of limitations bars the professional negligence claims against NP Socaoco and the IPC entities. Plaintiff Laura Latrenta repeatedly admitted she was on inquiry notice. In fact, she admitted that she actually and subjectively believed negligence occurred in March of 2017. Inexplicably, Plaintiffs sued Life Care within one year but failed to sue Dr. Saxena. The fact Plaintiffs later found out the conduct they attributed to Dr. Saxena was actually the conduct of NP Socaoco is irrelevant in a professional negligence lawsuit. Because the suit against Dr. Saxena was untimely, the suit against NP Socaoco is also untimely and must be barred pursuant to NRS 41A.097(2).

Dated this 26th day of July 2018.

JOHN H. COTTON & ASSOCIATES, LTD.

/s/ Vincent J. Vitatoe

JOHN H. COTTON, ESQ.
VINCENT J. VITATOE, ESQ.

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CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that on the 26th day of July, I served a true and correct copy of the foregoing **DEFENDANTS' REPLY IN SUPPORT OF MOTION TO DISMISS, OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT** by electronic means Pursuant to EDCR 8.05(a), and was submitted electronically for filing and/or service with the Eighth Judicial District Court, made in accordance with the E-Service List, to the following individuals:

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Attorneys for Defendants,
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d/b/a Life Care Center of South Las Vegas
f/k/a Life Care Center of Paradise Valley,
South Las Vegas Investors, LP, Life Care
Centers of America, Inc. and Carl Wagner

/s/ Vincent J. Vitatoe
An Employee of John H. Cotton & Associates

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EXHIBIT A

EXHIBIT A

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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. XVII Consolidated with: CASE NO. A-17-754013-C **PLAINTIFFS' RESPONSES TO LIFE CARE DEFENDANTS' FIRST SET OF INTERROGATORIES TO LAURA LATRENTA, INDIVIDUALLY**
Estate of MARY CURTIS, deceased; LAURA LATRENTA, as Personal Representative of the Estate of MARY CURTIS; and LAURA LATRENTA, individually, Plaintiffs, vs. SAMIR S. SAXENA, M.D., Defendant.	

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Interrogatory No. 18:

Have you had any conversations with anyone during which they criticized the care and treatment received by the decedent at Defendants' facility (excluding conversations covered by the attorney-client privilege)? If so, please state:

a. The name of each person making the statement.

b. The date of the statement.

c. The employer, occupation and last known address of the person or persons making the statement.

d. The contents, in as much detail as possible, of any criticisms expressed by said person.

Response to Interrogatory No. 18:

Ms. Latrenta cannot remember each and every conversation she had regarding her

mother's care and treatment. Dr. Timothy Dutra spoke with Ms. Latrenta shortly after the autopsy was completed to detail the results of his autopsy, including that Ms. Curtis' cause of death was attributed to the morphine she ingested due to the negligence of the Defendants facility. 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. Discovery is ongoing. Plaintiff reserves the right to supplement this response.

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Attorneys for Defendants, Samir Saxena, M.D. Annabelle Socaoco, N.P. and IPC Healthcare, Inc.

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, v. SOUTH LAS VEGAS MEDICAL INVESTORS, LLC dba LIFE CARE CENTER OF SOUTH LAS VEGAS fka LIFE CARE CENTER OF PARADISE VALLEY; SOUTH LAS VEGAS INVESTORS LIMITED PARTNERSHIP; LIFE CARE CENTERS OF AMERICA INC., BINA HRIBIK PROTELLO, Administrator; CARL WAGNER, Administrator; AND does 1-50 inclusive, Defendants.	CASE NO.: **A-17-750520-C** DEPT. NO.: **XVII** Consolidated with: CASE NO.: **A-17-754013-C**
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.	**NOTICE OF ENTRY OF ORDER GRANTING IN PART AND DENYING IN PART IPC DEFENDANTS' MOTION TO DISMISS, OR, IN THE ALTERATIVE, FOR SUMMARY JUDGMENT**

John H. Cotton & Associates, Ltd.
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Las Vegas, Nevada 89117

TO: ALL PARTIES AND THEIR COUNSEL OF RECORD:

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that an Order was entered in the above entitled matter on the 6th day of November 2018, a copy of which is attached hereto.

Dated this 7th day of November 2018.

JOHN H. COTTON & ASSOCIATES, LTD.
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/s/ *Vincent J. Vitatoe*
JOHN H. COTTON, ESQ.
VINCENT J. VITATOE, ESQ.

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CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that on the 7th day of November 2018, I served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING IN PART AND DENYING IN PART IPC DEFENDANTS' MOTION TO DISMISS, OR, IN THE ALTERATIVE, FOR SUMMARY JUDGMENT** by electronic means Pursuant to EDCR 8.05(a), and was submitted electronically for filing and/or service with the Eighth Judicial District Court, made in accordance with the E-Service List, to the following individuals:

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f/k/a Life Care Center of Paradise Valley,
South Las Vegas Investors, LP, Life Care
Centers of America, Inc. and Carl Wagner

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

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Steven D. Grierson
CLERK OF THE COURT

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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. XVII Consolidated with: CASE NO. A-17-754013-C
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	**ORDER GRANTING IN PART AND DENYING IN PART IPC DEFENDANTS' MOTION TO DISMISS, OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT**

NEVADA, INC.; and DOES 51–100,

Defendants.

This matter having come before the Court at 8:30am on August 1, 2018 with Vincent J. Vitatoe, Esq. of John H. Cotton & Associates, LTD., apearing 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")[1], 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, Opposition, and Reply together with arguments presented at the hearing on this matter and good cause appearing finds the following:

1. The Court hereby adopts its previous ruling via minute order dated March 21, 2018 and entered April 12, 2018.
2. The Court FINDS that Plaintiffs' Complaint against IPC Defendants is for professional negligence against health care providers, and, therefore NRS 41A governs.
3. The Court FINDS that it was not the legislative intent in enacting to cause NRS 41.1395 to supersede the caps set forth in NRS 41A.035;
4. The Court FINDS there is neither legislative purpose nor intent to carve out an exception for elderly patients for negligent conduct covered by NRS 41A .
5. The Court FINDS the reasoning of Brown v. Mt. General Hospital, 2013 WL 4523488 (D. Nev. 2013) to be persuasive as related to causes of action brought pursuant to NRS 41.1395 and NRS 41A when both causes of action are premised upon the provision of health care by a provider of health care.

[1] This Court granted Defendant Samir S. Saxena's Motion for Good Faith Settlement on June 13, 2018, and, therefore, this present Order applies only to the remaining IPC Defendants.

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6. NRS 41A.017 provides the definition of provider of health care.
7. The Court FINDS IPC Defendants fall within this definition, and, therefore, the elder abuse causes of action are improper in the instant matter against IPC Defendants.
8. The statute of limitations accrual date is a question of law only if the facts are uncontroverted. Winn v. Sunrise Hospital and Medical Center, 128 Nev. 246, 252-253 (2012) (citing Day v. Zubel, 112 Nev. 972, 977 (1996)).
9. The Court FINDS a question of fact remains as to the date of inquiry as to the identity of the IPC Defendants in this matter.
10. Consequently, the Court hereby ORDERS IPC Defendants' Motion is GRANTED IN PART and DENIED IN PART as follows:
    a. The IPC Defendants' Motion is GRANTED and Plaintiffs' First Cause of Action for Abuse/Neglect of an Older Person is hereby dismissed.
    b. The IPC Defendants' Motion is DENIED as to IPC Defendants' motion to dismiss based upon the statute of limitations because the date of inquiry as to the identity of the IPC Defendants is a question of fact.

DATED this 5 day of October, 2018.

DISTRICT JUDGE

Respectfully submitted by:

JOHN H. COTTON & ASSOCIATES, LTD.

By: _____
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VINCENT J. VITATOE, ESQ
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Attorneys for IPC Defendants

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Approved as to form and content:

DATED this 16 day of October, 2018

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By: 4975 for

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-and-
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Attorneys for Plaintiffs

DATED this ___ day of October, 2018

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Approved as to form and content:

DATED this ___ day of October, 2018

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DATED this 23 day of October, 2018

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Attorneys for IPC Defendants

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. XVII Consolidated with: CASE NO. A-17-754013-C
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	**IPC DEFENDANTS' MOTION FOR RECONSIDERATION**

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NEVADA, INC.; and DOES 51–100,

Defendants.

COMES NOW 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. (hereinafter "NP Socaoco" or, collectively, "IPC Defendants") by and through their attorneys of record, John H. Cotton, Esq. and Vincent J. Vitatoe, Esq., of the law firm of the law firm JOHN H. COTTON & ASSOCIATES, LTD., hereby submits this Motion for Reconsideration

This Motion is made and based upon the papers, pleadings, and records on file herein, the attached Memorandum of Points and Authorities, and any oral argument this Court may allow at the time of the hearing on this matter.

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NOTICE OF MOTION

TO: ALL INTERESTED PARTIES AND/OR THEIR COUNSEL OF RECORD

PLEASE TAKE NOTICE that the undersigned will bring the foregoing Defendants' Motion or Reconsideration for hearing in the above entitled Court on the 02 day of January, ~~2018~~ 2019 in Dept. 17, at the hour of In Chambers a.m./p.m. or as soon thereafter as counsel may be heard.

DATED this 26th day of November, 2018.

JOHN H. COTTON & ASSOCIATES, LTD.

/s/ Vincent J. Vitatoe

JOHN H. COTTON, ESQ.
VINCENT J. VITATOE, ESQ.

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I. BACKGROUND.

This Motion seeks rehearing on this Court's Order on IPC Defendants' Motion to Dismiss, or, in the alternative, for Summary Judgment. Notice of Entry of this Court's Order was filed November 7, 2018 (collectively the "Order"). In its Order, this Court determined that NRS 41A.097(2)'s one (1) year statute of limitations did not apply because "a question of fact remains as to the date of inquiry as to the identity of the IPC Defendants in this matter." See Order 3:7-8.

IPC Defendants restate and reincorporate the factual and procedural background set forth in the underlying (a) Motion to Dismiss, or, in the alternative, for Summary Judgment and (b) Reply in support thereof. To the extent certain facts and evidence are stated in this Motion, they will be specifically cited and supported for ease of reference.

I. SUMMARY OF ISSUES PRESENTED FOR RECONSIDERATION.

(1) Is it an error of law to maintain that an issue of fact exists regarding commencement of inquiry notice for purposes of a statute of limitations analysis in a professional negligence case involving *substituted* parties (IPC Defendants) when the underlying Complaint against the initial party (Dr. Saxena) is itself untimely and the purportedly negligent conduct identical?

Brief Answer: Yes, it is erroneous to toll or otherwise apply a different statute of limitations analysis to IPC Defendants as compared to Dr. Saxena because the underlying conduct is exactly the same as admitted by Plaintiffs and the Complaint against Dr. Saxena is untimely.

(2) Is it an error of law to conclude an issue of fact exists regarding commencement of inquiry notice when a plaintiff admits her subject knowledge of the facts giving rise to the suit, admits inquiry notice commenced against one co-defendant, Life Care, and admits the relevant facts giving rise to the suit against Life Care are the "same" as the facts giving rise to the suit against Dr. Saxena/IPC Defendants?

Brief Answer: Yes, Courts in this State can and should adjudicate statute of limitations issues when the facts are irrefutable—such as when they are admitted—and application of the admitted facts conclusively demonstrate the lawsuit is barred.

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II. INTRODUCTION.

The issue involving the application of the statute of limitations to the IPC Defendants warrants reconsideration as clear law, coupled with clear admissions, necessarily mandate dismissal of the untimely Complaint. Previously, this question was muddied by other important legal issues, but a singular focus on the statute of limitations, the evidence presented, a recent decision of this Court, and the completely inconsistent position of Plaintiffs demonstrates that this Court can correct the Order to conform with Nevada law.

First, it is critical for this Court to focus on the *binding* Nevada Supreme Court precedent which *specifically* addresses *professional* negligence (as opposed to other torts). This case law unequivocally demands that the statute of limitations commences upon "the plaintiff's general belief that **someone's** negligence may have caused his or her injury."

Second, this Court can conclusively know Plaintiffs had the requisite general belief because Plaintiffs admitted such repeatedly. Plaintiff admitted in no uncertain terms that the statute of limitations commenced no later than March 11, 2018 as related to their lawsuit against co-defendant, Life Care. **This is a significant admission because this Court recently ruled that Life Care *is subject to NRS 41A* meaning that Plaintiffs' suit against Life Care *also* sounds in professional negligence**. As this Court recalls, Plaintiffs represented that the case against both IPC Defendants and Life Care arose from the same facts, which was the Plaintiffs basis for consolidating the two cases. Taken together, there is absolutely no legal basis for Plaintiffs to claim that the statute of limitations applicable to professional negligence cases must be applied in piecemeal fashion against two different providers of health care based upon the same facts and circumstances.

In light of this Court's recent ruling and reevaluating this issue, this Motion becomes necessary to correct an error of law. The statute of limitations applies to IPC Defendants and bars

Plaintiffs' Complaint (and Amended Complaint).

III. LEGAL ARUGMENT

A. General Legal Standard.

A party may seek reconsideration within ten (10) days of notice of entry of an order. EDCR 2.24(b). A district court may consider a motion for reconsideration concerning a previously decided issue if the decision was clearly erroneous. Masonry and Tile v. Jolley, Urga & Wirth, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997). Here the Order was entered November 7, 2018 making the instant Motion timely when factoring in non-judicial court days.

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

Probably the two most important facts to keep in mind when analyzing this issue is (1) recognizing that the *initial* Complaint filed against Dr. Saxena was itself untimely as it was filed more than a year after March 11, 2016, the date whereby Plaintiffs unequivocally and admittedly had facts before them which commenced inquiry notice, and (2) the factual basis for the professional negligence claim against Dr. Saxena *is identical* to the factual basis for the professional negligence claim against IPC Defendants: there was a supposed failure to transport Curtis to a hospital and administer a Narcan IV drip. Focusing on these two realities avoids the confusion Plaintiffs present by arguing that they just did not know about the person of NP Socaoco until sometime during discovery.

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

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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, Plaintiffs 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) is identical. This distinction refutes Plaintiffs' entire position and warrants judgment in favor of IPC Defendants.

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

Plaintiffs never rebutted or otherwise argued that the binding Nevada Supreme Court case law somehow failed to apply to this case. A close reading of this precedent gives this Court a clear landmark for identifying when inquiry notice commences as a matter of law. The most relevant decision was handed down by the Winn Court 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. The use of "someone" is

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no accident and is actually *perfectly* in line with NRS 41A.071—the statute setting forth the threshold burdens 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 name, **or describes by conduct**, 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 **or** 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 allegedly negligent conduct even if the specific defendants' 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. See NRS 41A.097(2); NRCP 15(a) and (c).

D. Plaintiff *Actually* Knew Someone's Negligence May Have Caused Curtis's Injury No Later than March 11, 2016.

The issue before the Court is more straight-forward than most statute of limitations analyses as there is no need to deduce what Plaintiff *should* have known because in this case there is admitted evidence about what Plaintiff *actually* knew. As such, the discovery rule analysis becomes black and white.

The Winn Court provided helpful guidance in explaining that the commencement date of inquiry notice *can* be decided as a matter of law if unequivocal evidence exists which conveys

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the date that the operative facts suggesting professional negligence were accessible by a plaintiff. Indeed, in Winn the 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. In short, this Court retains the authority to assess the evidence in this present matter for purposes of the statute of limitations.

It *is* irrefutable in this case that Plaintiff Laura Latrenta had access to facts which would put any reasonable person on notice to investigate further into whether Curtis's injury may have been caused by someone's negligence **because Latrenta *admitted* the facts did put her on notice in mid-March 2016 that someone's negligence may have caused Mary Curtis's injuries**. The Court can therefore assess that the evidence as irrefutable 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 positions previously presented to this Court, the following list accounts for indisputable, irrefutable evidence of Plaintiff Laura Latrenta's *actual* knowledge that someone's negligence may have caused injury to Curtis:

- Motion to Consolidate Proves Knowledge of "Common" Facts. On July 7, 2016, Plaintiff filed a Motion to Consolidate and admitted (indeed, *forcefully argued*) that that the case against Dr. Saxena (and now IPC Defendants) 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**

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common questions of fact." (Emphasis added). See Motion to Consolidate at 3:25-27.

- Plaintiffs 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." Id. at 4-6.
- "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). Id. at 6:8-10.

- Plaintiffs Admitted Inquiry Notice 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..." See Opposition to Motion to Dismiss/Summary Judgment at 8:17. This is buttressed by Latrenta's deposition testimony, previously presented, where she answered "Yes" to the question of whether it was her subjective perception that Life Care acted negligently on March 7 and 8, 2016.
- Plaintiff Admitted Her Knowledge As Of March 2016 Regarding The Precise Facts At Issue In Her Lawsuit Against IPC Defendants. Plaintiff admitted in her deposition that no later than March 11, 2016, providers of health care at Sunrise Hospital told her negligent *conduct* occurred regarding the exact two factual bases Plaintiffs upon which Plaintiffs premise their entire lawsuit: (1) the alleged failure to transport Curtis to a hospital and (2) to provide a Narcan IV drip. Latrenta specifically testified that these Sunrise Hospital providers stated "they [IPC Defendants] should have brought her here as soon as this happened, and we could

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have put her on a Narcan drip." See **Exhibit A** at 77-78.

- Plaintiff Admitted that NP Socaoco's Name Is In The Medical Records. Plaintiffs 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 is in, in fact, in the medical record. Yet, Plaintiffs misleadingly claimed it is only present in two locations. See Plaintiffs' 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. See **Exhibit B**.

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? Here, inquiry notice must be triggered as a matter of law when the Plaintiffs actually admit that in March 2016 they (a) subjectively believed negligence occurred regarding the morphine error and follow up care, (b) had providers of health care advise them of the two alleged omissions at the heart of their case (immediate hospital transfer and lack of Narcan IV drip) in March 2016, and (c) argued to this Court that the cases involve the "same" facts regarding the reaction and follow up care in response to the morphine error.

E. The Analysis Is Strengthened By This Court's Recent Ruling That NRCP 41A Applies to Life Care.

While not necessary to the conclusion that inquiry notice commenced against IPC Defendants no later than March 11, 2016, this Court's ruling that Life Care is at least a de facto provider of health care subject to NRS 41A simply supports the analysis represented in this Motion. Again, the Winn case carefully discerned that facts which a claimant believed (or should have believed) indicated that injury "may have been caused by **someone's** negligence."

Here, Plaintiffs readily admitted that they knew another provider of health care, Life Care, acted in an allegedly negligent way no later than March 11, 2016 concerning *both* the

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morphine error **and the follow up medical care in the wake of the morphine error**. Once Plaintiffs subjectively and admittedly knew that at least "someone's negligence" (Life Care and its employee(s)) may have caused injury, Plaintiffs were obligated, as a matter of law, to inquire further beginning on the same date. Putting all the other admissions aside, this one fact disposes of the entire issue and proves the statute of limitations must apply. Plaintiffs offered absolutely no reason as to why they were able to file a lawsuit against Life Care *within* one (1) year but inexplicably delayed months before filing a lawsuit against IPC Defendants *more than* one (1) year after being on inquiry notice.

F. Plaintiffs' Reliance on 20 Year Old, Non-Professional Negligence Case Law is Inapposite.

This Court faces a decision: should a twenty year old case concerning *intentional* torts control the statute of limitations analysis in the present *professional* negligence case or should recent, binding Nevada precedent along with particular statutes specifically addressing professional negligence control? Plaintiffs argue the former. IPC Defendants argue the latter.

Plaintiffs rested their entire opposition on the case of Siragusa v. Brown, 114 Nev. 1384, 971 P.2d 801 (1998). This is a case involving a lawyer who purportedly was the mastermind behind a scheme to defraud the plaintiff which went undiscovered for several years. Id. at 1388. However, as this Court is well aware, 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

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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. In this regard, the 2015 amendments are in perfect harmony with the 2012 Winn case which announced that, for purposes of a statute of limitations analysis as to inquiry notice, the allegedly negligent *conduct* is the important operative fact(s) as opposed to determining the particular identity of the "someone." Moreover, Plaintiffs just got the "someone" wrong when they sued Dr. Saxena instead of NP Socaoco, but the actual conduct at issue is identical in both the Complaint and Amended Complaint. Plaintiffs' position (currently set forth in the Order) transforms *inquiry* notice into actual notice which is completely at odds with Nevada law.

G. No Legal Basis to Toll the Statute of Limitations.

There is only one statutory basis to toll the statute of limitations in a professional negligence case. This basis is set forth in NRS 41A.097(3) as follows: "this time limitation is tolled for any period during which the provider of health care has **concealed** any act, error or omission upon which the action is based." (Emphasis added). Plaintiffs' argument for tolling the statute of limitations is that (a) NP Socaoco's identity is not "revealed" in "Mary's medical record" and (b) Plaintiff allegedly had a difficult time getting information from Life Care—a party wholly distinct from the IPC Defendants.

The first point, as mentioned above, seems difficult to believe when NP Socaoco's name appears no less than five (5) times in a relatively brief medical record. See **Exhibit B**. According to Plaintiffs, 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 by in a medical record that had *different* first name

initials (and obviously different letters in the remainder of their last name) would almost certainly be entries by two *different* individuals. Yet, this attempted point is unsupported by any authority saying it could toll the statute of limitations. And, as demonstrated at length, it was not the medical record which contained the operative fact(s) that *first* put Laura Latrenta on inquiry notice. However this issue produces an important thought experiment that substantiates IPC Defendants' position. Suppose a plaintiff personally witnessed a nurse give medication to plaintiff that plaintiff *knew* was not intended for plaintiff and immediately caused harm. Would *inquiry* notice commence at on that same day, or would it be tolled for months until that plaintiff found out the nurse's specific name? It is the former because seeking would be *part* of the inquiry bound up within "inquiry notice/"

The second point is specifically refuted by the Winn Court which held that "one defendant's concealment cannot serve as a basis for tolling NRS 41A.097(2)'s statutory limitation periods as to defendants who played no role in the concealment." Winn v. Sunrise Hosp. & Med. Ctr., 128 Nev. 246, 259, 277 P.3d 458, 466, 2012 Nev. LEXIS 61, *24, 128 Nev. Adv. Rep. 23, 2012 WL 1949864. This specific holding of the Nevada Supreme Court renders completely moot Plaintiffs' argument regarding difficulties obtaining information from Life Care. There is zero evidence to support the notion that IPC Defendants played any role in Life Care's conduct in this regard.

In sum, Plaintiffs are left without any viable argument as to why they failed to bring suit against Dr. Saxena within one (1) year which necessarily renders untimely the suit against the substituted IPC Defendants.

///

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IV. CONCLUSION.

Analyzing this issue anew is critical to correct an error of law regarding when inquiry notice commenced in this case. Correcting the Order is consistent with Nevada law and this Court's recent ruling determining that Life Care is, in effect, a provider of health care subject to NRS 41A. Plaintiffs repeatedly admitted they knew negligent conduct occurred in March of 2016 which involved the follow up health care in the wake of the morphine error. Plaintiffs argued the two separate Complaints initially filed (one timely, one untimely) and then consolidated arose from the "same" facts regarding the follow up care. There is simply no way Plaintiffs' inquiry notice started any time other than on March 11, 2016, the date Mary Curtis passed. Consequently, NRS 41A.097(2) bars Plaintiffs' suit against IPC Defendants.

Dated this 26th day of November 2018.

JOHN H. COTTON & ASSOCIATES, LTD.

/s/ Vincent J. Vitatoe

JOHN H. COTTON, ESQ.
VINCENT J. VITATOE, ESQ.

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EXHIBIT A

EXHIBIT A

DISTRICT COURT

CLARK COUNTY, NEVADA

Estate of MARY CURTIS, deceased; LAURA LATRENTA, a 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 fka 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

CERTIFIED COPY

DEPOSITION OF LAURA LATRENTA

Taken on Wednesday, November 29, 2017

At 9:01 a.m.

At Kolesar & Leatham

400 South Rampart Boulevard, Suite 400

Las Vegas, Nevada

REPORTED BY: CINDY MAGNUSSEN, RDR, CCR NO. 650

A. Yes.

Q. Okay. So during that time span --

A. Oh, not to be admitted. Well, I don't know. She was in that room. And the time, it meshes together now. I went home to sleep and came back. So it had to be at least two days she was in that room.

Q. So the first room that you saw her in when you first got to the hospital, she stayed there for about two days?

A. I think they moved her to another spot but in that same -- she was in emergency.

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.

Q. And do you know who that individual was?

A. I think his name was Jason.

There were two guys that I talked to. They were both very, very astute. And they gave her excellent care. They were all over her with everything. And then somebody took her also to get, I guess, an X-ray. It could have been a CAT scan. I don't know.

They had to take her away. Maybe it was a CAT scan. It was something, either an X-ray or CAT scan. They took her away for that and brought her back.

Q. Okay.

A. But there was this one gentleman, Jason, and then there was this -- another guy. And I -- Chris. I mean, please don't quote me on this. I don't remember. But they, you know, I would tell everybody who was listening to me what happened because I wanted them to all know what the condition was.

And they just were caring for her and taking

EXHIBIT B

EXHIBIT B

BPCI

ipc

POST ACUTE PROGRESS NOTE

Date: 3/7/16 Time: 1830 AM (PM) Facility: LCPV

REASON FOR VISIT: F/U debility

Name: Curtis, Mary DOB: ______ Age: 89 Gender: M (F)

Advanced Directives: ______

☐ **Medications and Allergies Reviewed**

REVIEW OF SYSTEMS: Marked System Reviewed; Normal unless indicated

☐ GEN: st change, fatigue, weakness, wt. loss/gain
☐ Resp: cough, wheezing, trach O2
☐ Skin: bruising, pruritus, rash, intact, pressure ulcer
☐ Cardio: c/p, palps, fatigue, dyspnea, pacer
☐ Endocrine: heat/cold intolerance, wt. change
☐ Head: headache, dizziness, syncope
☐ Heme: bleeding, bruising, leukemia
☐ GI: n/v, heartburn, constipation, anorexia, diarrhea, feeding tube
☐ HEENT: double vision, pain, tinnitus; dentures, glasses, hearing loss
☐ GU: dysuria, freq, urgency, pain, retention, foley
☐ Musc: joint pain, stiff, deformity, falls, amputation
☐ Neuro: seizure, tremor, weak, dysphagia, hemiplegia, numbness, parathesia
☐ Psych: anxiety, depression, confusion, dementia, agitation
☐ Vascular: DVT, PVD, edema

INTERVAL HISTORY: Patient is stable, V/S stable, daughter @ bedside, Narcan given to reversed reaction. Was given by nurse (meds) - Incident report made. ↑ BP that's often [illegible] 190-200 Clonidine 0.2 mg given.

LABORATORY / STUDIES: ______

VITAL SIGNS: BP: 177/74 T: 98.5 P: 77 R: 20 Wt: ______ O2 Sat: 97 % ☐ Room Air ☐ O2@ ___ L/Min

Pain (0-10): ______ Site: ______ Other: ______

	Exam	Notes
General Appearance	☑ Well Nourished ☐ NAD	Continue to monitor
Skin	☑ Neg ☐ Rashes ☐ Decubitus ☐ Burns ☐ Wounds	pt overnight.
ENT	☑ Neg ☐ Own teeth ☐ Dentures ☐ Mucous membranes moist	take V/S Q15 for 1 hr.
Head	☑ Neg	then Q 4°
Eyes	☑ Neg ☐ PERRLA	
Neck	☑ Neg ☐ Bruits ☐ JVD ☐ thyroidmegaly ☐ node	
Heart/CV	☑ RRR ☐ IRIR ☐ murmur ☐ distal pulses ☐ S3 ☐ S4	
Lungs/Chest	☑ Neg ☐ CTA ☐ crackles ☐ rhonchi ☐ wheeze	
Abdomen	☐ Neg Bowel sounds: + / - ☐ Guarding ☐ Rigidity ☐ Tenderness ☐ Hernia ☐ Mass	
Psychological	☐ Neg ☐ A & O X 2-3 ☐ Confused ☐ Anxiety ☐ Depression	POC
Musculoskeletal	☐ Neg ☐ Edema ☐ Contractures ☐ Amputations ☐ OA ☐ RA	
Ambulation	☐ Unassisted ☑ Wheelchair ☐ walker ☐ Cane ☐ Unable to walk/bed ridden	
Neuro	☑ Neg ☐ Tremors ☐ Hemiparesis R / L	

Assessment / Plan:

Administered wrong meds to patient - Narcan given
continue to monitor PT.

Physical debility - PT/OT
Syncope / Fall - PT/OT
COPD - [illegible] O2, stable sat.
Cognitive disorder, CKD Stage 3
HTN - Amlodipine, Labetalol
Anemia - cont. monitor H/H

Pain - Tylenol
Supplements - multivit
Hyperlipidemia - Atorvastatin
DVT prophylaxis - ASA, [illegible]
~~Dementia~~ - [illegible]
[illegible]
SOB - [illegible]

Discussed with ☐ Patient/Resident ☐ Family ☐ DPOA

[signature] H. Sowar 3/7/16

Signature Print Last Name Date

BPCI

POST ACUTE PROGRESS NOTE

ipc

Date: 3/15/16 Time: 1700 AM (PM) Facility: LCAV

REASON FOR VISIT: F/U Debility

Name: Curtis Mary DOB: ______ Age: 84 Gender: M (F)

Advanced Directives: ______

☑ **Medications and Allergies Reviewed**

REVIEW OF SYSTEMS: Marked System Reviewed; Normal unless indicated

- ☐ GEN: st change, fatigue, weakness, wt. loss/gain
- ☐ Resp: cough, wheezing, trach O2
- ☐ Skin: bruising, pruritus, rash, intact, pressure ulcer
- ☐ Cardio: c/p, palps, fatigue, dyspnea, pacer
- ☐ Endocrine: heat/cold intolerance, wt. change
- ☐ Head: headache, dizziness, syncope
- ☐ Heme: bleeding, bruising, leukemia
- ☐ GI: n/v, heartburn, constipation, anorexia, diarrhea, feeding tube
- ☐ HEENT: double vision, pain, tinnitus; dentures, glasses, hearing loss
- ☐ GU: dysuria, freq, urgency, pain, retention, foley
- ☐ Musc: joint pain, stiff, deformity, falls, amputation
- ☐ Neuro: seizure, tremor, weak, dysphagia, hemiplegia, numbness, parathesia
- ☐ Psych: anxiety, depression, confusion, demetia, agitation
- ☐ Vascular: DVT, PVD, edema

INTERVAL HISTORY: Patient is seen, family members @ bedside, she stated did little of PT/OT rec. she was not feeling good. appetite is better. ⊖ pain, ⊖ N/V, other

LABORATORY / STUDIES: Reviewed

VITAL SIGNS: BP 137/85 T: 97.8 P: 72 R: 18 Wt: ______ O2 Sat: ____% ☐ Room Air ☐ 02@ ___ L/Min

Pain (0-10) 0 Site: ______ Other: ______

	Exam	Notes
General Appearance	☑ Well Nourished ☐ NAD	
Skin	☑ Neg ☐ Rashes ☐ Decubitus ☐ Burns ☐ Wounds	
ENT	☑ Neg ☐ Own teeth ☐ Dentures ☐ Mucous membranes moist	
Head	☑ Neg	
Eyes	☑ Neg ☐ PERRLA	
Neck	☑ Neg ☐ Bruits ☐ JVD ☐ thyroidmegaly ☐ node	
Heart/CV	☑ RRR ☐ IRIR ☐ murmur ☐ distal pulses ☐ S3 ☐ S4	
Lungs/Chest	☑ Neg ☐ CTA ☐ crackles ☐ rhonchi ☐ wheeze	
Abdomen	☐ Neg Bowel sounds: (+)/- ☐ Guarding ☐ Rigidity ☐ Tenderness ☐ Hernia ☐ Mass	
Psychological	☐ Neg ☐ A & O X 2-3 ☐ Confused ☑ Anxiety ☑ Depression	POC
Musculoskeletal	☐ Neg ☐ Edema ☐ Contractures ☐ Amputations ☐ OA ☐ RA	
Ambulation	☐ Unassisted ☑ Wheelchair ☐ walker ☐ Cane ☐ Unable to walk/bed ridden	
Neuro	☑ Neg ☐ Tremors ☐ Hemiparesis R / L	

Assessment / Plan:

Physical Debility - PT/OT
Syncope / Fall - PT/OT - no episode
COPD - 2LO2
Cognitive disorder
CKD stage 3
HTN - Amlodipine, labetalol
Anemia - CKD, monitoring H/H
Vitamin - Zyloprim
Supplements - multivit
Hyperlipidemia - Atorvastatin
DVT prophylaxis - ASA, Lovenox
Dementia - Donepezil, Memantine
SOB, Ipratropium, Albuterol

Discussed with ☐ Patient/Resident ☐ Family ☐ DPOA

Signature: [signature] Print Last Name: A Souro Date: 3/15/16

3/1/16
7658

POST ACUTE PROGRESS NOTE

ipc

Date: 3/2/16 Time: 1830 AM PM Facility: LCN

REASON FOR VISIT: NEW ADMIT

Name: Curtis Mary DOB: Age: 89 Gender: M F

Advanced Directives:

☑ Medications and Allergies Reviewed

REVIEW OF SYSTEMS: Marked System Reviewed; Normal unless indicated

- ☐ GEN: sl change, fatigue, weakness, wt. loss/gain
- ☐ Resp: cough, wheezing, trach O2
- ☐ Skin: bruising, pruritus, rash, intact, pressure ulcer
- ☐ Cardio: c/p, palps, fatigue, dyspnea, pacer
- ☐ Endocrine: heat/cold intolerance, wt. change
- ☐ Head: headache, dizziness, syncope
- ☐ Heme: bleeding, bruising, leukemia
- ☐ GI: n/v, heartburn, constipation, anorexia, diarrhea, feeding tube
- ☐ HEENT: double vision, pain, tinnitus, dentures, glasses, hearing loss
- ☐ GU: dysuria, freq, urgency, pain, retention, foley
- ☐ Musc: joint pain, stiff, deformity, falls, amputation
- ☐ Neuro: seizure, tremor, weak, dysphagia, hemiplegia, numbness, parathesia
- ☐ Psych: anxiety, depression, confusion, dementia, agitation
- ☐ Vascular: DVT, PVD, edema

INTERVAL HISTORY: Pt is seen, A/O x2, POR PT/OT eval today. Denies of pain as of this time. V/S stable, appetite good.

LABORATORY / STUDIES: Lab ordered in A.m.

VITAL SIGNS: BP: 140/69 T: 97.2 P: 98 R: 20 Wt: O2 Sat: 95 % ☐ Room Air ☐ 02@ ___ L/Min

Pain (0-10): Site: Other:

	Exam	Notes
General Appearance	☑ Well Nourished ☐ NAD	
Skin	☑ Neg ☐ Rashes ☐ Decubitus ☐ Burns ☐ Wounds	
ENT	☑ Neg ☐ Own teeth ☐ Dentures ☐ Mucous membranes moist	
Head	☑ Neg	
Eyes	☑ Neg ☐ PERRLA	
Neck	☑ Neg ☐ Bruits ☐ JVD ☐ thyroidmegaly ☐ node	
Heart/CV	☑ RRR ☐ IRIR ☐ murmur ☐ distal pulses ☐ S3 ☐ S4	
Lungs/Chest	☑ Neg ☐ CTA ☐ crackles ☐ rhonchi ☐ wheeze	
Abdomen	☐ Neg Bowel sounds (+ / -) ☐ Guarding ☐ Rigidity ☐ Tenderness ☐ Hernia ☐ Mass	
Psychological	☐ Neg ☐ A & O X 2-3 ☐ Confused ☐ Anxiety ☐ Depression	POC
Musculoskeletal	☐ Neg ☐ Edema ☐ Contractures ☐ Amputations ☐ OA ☐ RA	
Ambulation	☐ Unassisted ☐ Wheelchair ☐ walker ☐ Cane ☐ Unable to walk/bed ridden	
Neuro	☑ Neg ☐ Tremors ☐ Hemiparesis R / L	

Assessment / Plan:

Physical Deformity - PT/OT
Syncope / Fall - PT/OT - No episode noted
COPD - 2 L O2
Cognitive Disorder
CKD stage 3
HTN - Amlodipine; Labetalol
Anemia
Pain, Fever - Tylenol

Supplements - multivit.
Hyperlipidemia - Atorvastatin
DVT prophylaxis - ASA; Lovenox
Dementia - Donepezil
SOB - Ipratropium - Albuterol
Dementia - Memantine

Discussed with ☑ Patient/Resident ☐ Family ☐ DPOA

Signature ASOMOZU Print Last Name 3/2/16 Date

CHART CONTROL COPY — ATTACH ORIGINAL SIGNED COPY WHEN RECEIVED

TO EXPOSE ADHESIVE, REMOVE LINER

Telephone Orders

Facility Name: LCCPV | Address: LV NV | Signature of Nurse Receiving Order: [signature] | Date/Time: 3/14/16 13:20 | ☑ RAV

Family Name: Curtis | First Name: Mary | Admission Number: | Room Number: 313A | Attending Physician: S Sharma

Date Ordered	Time Ordered	Date D/C'd	MEDICATION/Order	Dose & Form	Route	Schedule	INDICATION - DX
3/7/16 PMN			NARCAN IM 0.4mg x1 NOW may repeat in 3 minutes #2				
			STAT	DO NOT MIS 3/10/1845			

Physician/Prescriber Signature: [signature] | Title: | Date: | ☐ Resident ☑ Family has been notified of the above treatment change. Date notified 3/10/16 | Name of person contacted Laura (Wife) | If not contacted, reason

NURSE: Please Initial The Documentation Record As Performed

Pharmacy	On Physician's Order Sheet	Med Sheet	TX Sheet	Nurse's Notes	Patient Care Plan	ADL/Flow	Signed	Date	Time
☐ Courier ☑ Faxed (Fax Original) ☐ Phone	✓	✓					[signature]	3/14/16	13:20

TO EXPOSE ADHESIVE, REMOVE LINER

Telephone Orders

Facility Name: LCCPV | Address: | Signature of Nurse Receiving Order: [signature] | Date/Time: 3/7/16 | ☑ RAV

Family Name: Curtis | First Name: Mary | Admission Number: | Room Number: 313A | Attending Physician: [signature]

Date Ordered	Time Ordered	Date D/C'd	MEDICATION/Order	Dose & Form	Route	Schedule	INDICATION - DX
3/7/16 PMN			Clonidine 0.2mg x1 NOW then @ 1700				↑BP > 200
			Clonidine 0.1mg 1 tab PO Q6° PRN ↑BP to give if SBP > 150				
			continue to monitor V/S Q4° call me for any Δ.				

Physician/Prescriber Signature: [signature] | Title: | Date: | ☐ Resident ☐ Family has been notified of the above treatment change. Date notified | Name of person contacted | If not contacted, reason

NURSE: Please Initial The Documentation Record As Performed

Pharmacy	On Physician's Order Sheet	Med Sheet	TX Sheet	Nurse's Notes	Patient Care Plan	ADL/Flow	Signed	Date	Time
☐ Courier ☐ Faxed (Fax Original) ☐ Phone							[signature]	3/7/16	

3 PHYSICIAN/PRESCRIBER PLEASE SIGN AND RETURN

☐ Send NO MEDS ☐ Send ALL MEDS ☐ Send ★ MEDS ONLY ☐ ____ Doses taken from Emergency/Backup Stock

ORIGINAL COPY

Telephone Orders

Facility Name: | Address: | Signature of Nurse Receiving Order: | Date/Time: | ☐ RAV

Family Name: | First Name: | Admission Number: | Room Number: | Attending Physician:

Date Ordered	Time Ordered	Date D/C'd	MEDICATION/Order	Dose & Form	Route	Schedule	INDICATION - DX

Physician/Prescriber Signature: | Title: | Date: | ☐ Resident ☐ Family has been notified of the above treatment change. Date notified | Name of person contacted | If not contacted, reason

NURSE: Please Initial The Documentation Record As Performed

Pharmacy	On Physician's Order Sheet	Med Sheet	TX Sheet	Nurse's Notes	Patient Care Plan	ADL/Flow	Signed	Date	Time
☐ Courier ☐ Faxed (Fax Original) ☐ Phone									

Resident: Curtis, Mary T(F) MRN: 7658 Location - 3 313 A

03/04/2016 07:22 PM PST

Chart Type: Default Charting Type Category: Nursing Notes

Notes:

Patient is alert and verbally responsive with confusion. Able to make needs known. S/P fall with no ill effects from fall. No change in ROM. No c/o pain. Assisted with all of her needs. Neuro checks in progress. Safety precautions in place. Call light in reach.

E-Signed By: *Ramos, Regina S LPN (03/04/2016 07:24:50 PM PST)*

03/03/2016 08:34 PM PST

Chart Type: Default Charting Type Category: Nursing Notes

Notes:

At 2:00pm this writer was called by staff in patient room. This writer came into room ASAP. When entered in patient room found patient laying on left side position in the bathroom. When asked the resident what happened patient stated "I gout out from my bed to go to the bathroom, I lost my balance ,then I fell. Pt. said she hit her head to the wall. Body checked done, no noted at this time, lump or bump on head. ROM + TO ALL EXTREMITIES. Neuro checks initiated. Tab-alarm not in place, patient disconnected tab-alarm. Explained the risk and benefits. Pt. verbalizes understanding. M.d and daughter notified.

E-Signed By: *Ramos, Regina S LPN (03/03/2016 08:43:25 PM PST)*

03/03/2016 08:15 AM PST

Chart Type: Default Charting Type Category: Nursing Notes

Notes:

Admitted an 89 y/o female patient, alert with confusion from Desert spring hospital with history of hypertension, COPD, chronic disease anemia. she is under the care of Dr. Samir Saxena. Skin assessment done and performed. Skin is intact, no open areas or wounds. With bruises in her R abdomen, R and L leg and in her L foot. With R hand heplock. Repositioned and made comfortable to bed. Instructed and reminded to use call light whenever needs assistance.

E-Signed By: *Elpa, Rowena D Registered Nurse (03/03/2016 08:22:07 AM PST)*

03/02/2016 06:49 PM PST

Chart Type: Default Charting Type Category: Admission, Re-admission

Notes:

Res is alert with confusion came from Desert Spring Hospital at 7AM with a diagnosis of COPD ,HTN ,CKD ,Anemia, has no allergies a patient of DR Saxena ANABEL has been notified meds faxed to pharmacy has a clear speech abdomen soft has a Foley catheter 16FR incontinent of bowel ,bruises In-front of her legs and stomach was oriented to the room on how to use the call light ,Pt verbalize understanding with return demonstration ,in bed resting ate 100% of her meals no distress noted complain of no pain safety precautions in place with call light within reach .

Vital Signs:

Temp	Pulse	Resp. Rate	Blood Pressure
97.2F	98/min	20/min	160/69 mmHg

E-Signed By: *Owusu, Abena LPN (03/02/2016 07:05:31 PM PST)*

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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. XVII Consolidated With: Case No. A-17-754013-C **PLAINTIFFS' OPPOSITION TO IPC DEFENDANTS' MOTION FOR RECONSIDERATION** Date: January 2, 2019 Time: In Chambers
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' OPPOSITION TO IPC DEFENDANTS' MOTION FOR RECONSIDERATION

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 and Wilkes & McHugh, P.A., hereby respond to IPC Defendants' Motion for Reconsideration.

DATED this 6th day of December, 2018.

KOLESAR & LEATHAM

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

No substantially different evidence has been introduced since the Court's decision that date of accrual is a jury question. Nor was that decision clearly erroneous. Reconsidering the decision would therefore be unjustified.

II. PROCEDURAL HISTORY

Dr. Saxena opposed Laura's motion to amend her Complaint to include Nurse Socaoco and the IPC entities and also countermoved for summary judgment, arguing that the statute of limitations defeated 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."). The Court denied without prejudice the countermotion as to the statute of limitations issue. *See* Order ¶ 10c (Apr. 11, 2018).

Two months after the Court's order, the IPC Defendants sought 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."). The Court granted in part and denied in part IPC's motion, holding that "[t]he statute of limitations accrual date is a question of law only if the facts are uncontroverted" and finding that "a question of fact remains as to the date of inquiry as to the names of the tortfeasors in this matter." Court Minutes 2 (Aug. 13, 2018). The corresponding order was filed three months later. *See* Order (Nov. 6, 2018).

The IPC Defendants now seek reconsideration of the statute of limitations issue. *See* IPC Defs.' Mot. Recons.

III. LEGAL ARGUMENT

A. IPC Has Not Satisfied the Standard for Reconsideration.

"A district court may reconsider a previously decided issue if substantially different evidence is subsequently introduced or the decision is clearly erroneous." *Masonry & Tile Contractors Ass'n of S. Nev. v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741 (1997). So "[o]nly in very rare instances in which new issues of fact or law are raised supporting a ruling contrary to

the ruling already reached should a motion for rehearing be granted." *Moore v. City of Las Vegas*, 92 Nev. 402, 405 (1976). The *Moore* court accordingly held that the district court had abused its discretion in entertaining a second motion for rehearing that "raised no new issues of law and made reference to no new or additional facts." *Id.*[1]

Here, IPC Defendants do not offer substantially different evidence. *See* Defs.' Mot. Recons. 4 ("IPC Defendants restate and reincorporate the factual and procedural background set forth in the underlying (a) Motion to Dismiss, or, in the alternative, for Summary Judgment and (b) Reply in support thereof."). Nor do they offer new issues of law to show that the Court's decision was clearly erroneous. *See id. passim* (regurgitating the arguments of their motion to dismiss and supporting reply).[2] No cause therefore exists under *Masonry & Tile Contractors* for the Court to reconsider this previously decided issue. Indeed, as IPC raises no new issues of law and refers to no new or additional facts, entertaining their motion for reconsideration would be an abuse of discretion under *Moore*. IPC's motion is therefore to be rejected.

B. IPC's Failure Is Understandable and Was Inevitable.

Although relitigating this issue would be wrong (and tedious), a brief reminder of the considerations underlying the Court's previous ruling seems not out of place here. In short, an injury's accrual date is a question of fact for the jury except in an exceptional case, and this is not an exceptional case.

The statute of limitations for professional negligence actions explicitly incorporates the discovery rule: "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."

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[1] *See also Achrem v. Expressway Plaza Ltd. P'ship*, 112 Nev. 737, 742 (1996) ("Points or contentions not raised in the original hearing cannot be maintained or considered on rehearing.").

[2] For example, they argue that the question of accrual is for some reason treated differently in professional negligence cases than in other tort cases—just as they did in their reply. *Compare* IPC Defs.' Mot. Recons. 5 (counseling the Court that "it is critical for this Court to focus on the *binding* Nevada Supreme Court precedent which *specifically* addresses *professional* negligence (as opposed to other torts)"), *with* Defs.' Reply 6 ("[A]s this Court is well aware, professional negligence torts are treated *much* differently tha[n] other negligence-based torts."). In fact, the discovery rule's applicability is even clearer in professional negligence cases as the rule is specifically provided for in the statutory language. *Compare* NRS 11.190(4)(e), *with* NRS 41A.097(2).

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NRS 41A.097(2). "Injury" here means not "the allegedly negligent act or omission" but rather "legal injury," i.e., "all essential elements of the malpractice cause of action." *Massey v. Litton*, 99 Nev. 723, 726 (1983). Discovery of this injury "must be of both the fact of damage suffered and the realization that the cause was the health care provider's negligence." *Id.* at 727.

"[T]he question of when a claimant discovered or should have discovered the facts constituting a cause of action is one of fact." *Siragusa v. Brown*, 114 Nev. 1384, 1400 (1998). So "[o]nly where uncontroverted evidence proves that the plaintiff discovered or should have discovered the facts giving rise to the claim should such a determination be made as a matter of law." *Id.* at 1401. It follows that whether a plaintiff exercised due diligence in discovering her cause of action is a jury question. *See Bemis v. Estate of Bemis*, 114 Nev. 1021, 1026 (1998) ("Whether [plaintiffs] exercised due diligence in discovering their cause of action is a question of fact which on remand should be determined by the trier of fact.").

IPC asserts that whether a claim is for professional negligence makes a difference. *See* Defs.' Mot. Recons. Section III.F. But in the medical malpractice case *Winn v. Sunrise Hospital & Medical Center* the supreme court taught that "the accrual date for subsection 2's one-year discovery period ordinarily presents a question of fact to be decided by the jury," such that "[o]nly when evidence irrefutably demonstrates this accrual date may a district court make such a determination as a matter of law." 128 Nev. 246, 251 (2012). That is the same rule as in other tort actions.

No reason therefore exists to reject reliance on *Siragusa v. Brown*, in which our supreme court, in reversing the district court's dismissal as time-barred of plaintiff's claims against a partnership's counsel who allegedly masterminded a scheme to insulate the partnership from plaintiff, reasoned that plaintiff's awareness upon filing her complaint that the partnership's members had conducted a sham transfer "did not, as a matter of law, constitute discovery by [plaintiff] of facts constituting the fraud allegedly perpetrated by counsel." 114 Nev. 1384, 1391 (1998). True, her "mere ignorance of [counsel's] identity will not delay accrual of even a discovery-based statute of limitations if the fact finder determines that [she] failed to exercise

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reasonable diligence in discovering [counsel's] role in the alleged tortious activities." *Id.* at 1394. But "such a determination must be made by the trier of fact." *Id.* at 1402.

Here, the jury is entitled to conclude that Laura not only did not know but could not have known that Nurse Socaoco and the IPC entities even existed, much less that they were involved, before Nurse Sansome's 6 December 2017 deposition. *See* Pls.' Opp'n to Defs.' Mot. Dismiss/Mot. Summ. J. Part II (providing the factual background leading to Laura's discovering these Defendants' existence and involvement). Recall that at that deposition Nurse Sansome revealed to all the parties Nurse Socaoco's existence by testifying (for example) that after she attempted to call the physician Nurse Socaoco called her back and (having been informed about Mary) instructed that Mary be given Narcan and specified its dosage, and that Nurse Socaoco herself arrived in person to the nursing station while Nurse Sansome was writing out the order. *See id.* Consider also that Life Care's incident report identifying Nurse Socaoco as the physician/NP notified was not produced until January 2018. *See id.* Nor did any Defendant—including Dr. Saxena—ever in their disclosures identify Nurse Socaoco. *See id.*

Dismissing these Defendants now on statute of limitations grounds would therefore not only usurp the jury's role but also ignore our supreme court's teaching that "the policies served by statutes of limitations do not outweigh the equities reflected in the proposition that plaintiffs should not be foreclosed from judicial remedies before they know that they have been injured and can discover the cause of their injuries." *Petersen v. Bruen*, 106 Nev. 271, 274 (1990).

In sum, because IPC has not shown and cannot show substantially different evidence or that the Court's decision is clearly erroneous, its motion for reconsideration should be denied. But if the Court desires to indulge IPC's repetitious motion, then Laura requests the right to meet the motion with a full opposition thereto.

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IV. CONCLUSION

Laura requests that the Court deny IPC's motion for reconsideration.

DATED this 6th day of December, 2018.

KOLESAR & LEATHAM

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

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Kolesar & Leatham, and that on the 6th day of December, 2018, I caused to be served a true and correct copy of **PLAINTIFFS' OPPOSITION TO IPC DEFENDANTS' 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 that Court's facilities to those parties listed on the Court's Master Service List.

/s/ Kristina R. Cole
An Employee of KOLESAR & LEATHAM

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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. XVII Consolidated with: CASE NO. A-17-754013-C
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	**IPC DEFENDANTS' REPLY IN SUPPORT OF MOTION FOR RECONSIDERATION**

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

NEVADA, INC.; and DOES 51–100,

Defendants.

COMES NOW 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. (hereinafter "NP Socaoco" or, collectively, "IPC Defendants") by and through their attorneys of record, John H. Cotton, Esq. and Vincent J. Vitatoe, Esq., of the law firm of the law firm JOHN H. COTTON & ASSOCIATES, LTD., hereby submits this Reply in Support of Motion for Reconsideration

This Reply is made and based upon the papers, pleadings, and records on file herein, the attached Memorandum of Points and Authorities, and any oral argument this Court may allow at the time of the hearing on this matter.

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I. LEGAL ARGUMENT.

Plaintiffs offer very little substantive opposition. Ignoring arguments are concessions to the merits of such arguments. This document will provide a brief refutation of the meager arguments Plaintiffs attempt to put forward as well as alert this Court to a recently decided case from the Nevada Court of Appeals which fully supports IPC Defendants' position in the Motion.

II. LEGAL ARUGMENT

A. Reconsideration is Appropriate.

Plaintiffs fail in their attempt to claim reconsideration is inappropriate as they blindly ignore Nevada Supreme Court precedent which grants this Court wide discretion to reconsider orders which may be erroneous. Masonry and Tile v. Jolley, Urga & Wirth, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997). Yet, in addition to this inherent discretion, IPC Defendants *did* alert this Court to a significant development: this Court ruled that the Life Care Defendants *are* providers of health care subject to NRS 41A and the Plaintiffs repeatedly argued to this Court that the two cases involved the same underlying facts. Specifically, Plaintiffs readily conceded that "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). See Motion to Consolidate at 3:25-27. If both cases are based in professional negligence and concern the same questions of fact, then obviously inquiry notice commenced at the same time. Plaintiffs provide no opposition to this point because none can be provided.

Second, a further clarification of the law recently occurred which powerfully confirms the IPC Defendants' position in this case. On December 10, 2018, the Nevada Court of Appeals issued a decision in the case of Callahan v. Johnson. See **Exhibit A**. The Callahan case further undermines Plaintiffs' misunderstanding of Nevada, namely, that statute of limitations issues

must always go to a jury except in extremely rare cases. Not so.

The *correct* understanding of Nevada's statute of limitations jurisprudence is that when the facts are uncontroverted, then a Court *should* rule on the pure legal issue of whether the statute of limitations applies. *That is true even when the plaintiff claims a different inquiry notice date should apply* as the Callahan decision makes clear. In Callahan, the plaintiff had her wisdom teeth removed and the dentist performing the extraction damaged her lingual nerve. During the corrective procedure, a different surgeon, Dr. Glyman, confirmed that the lingual "nerve had been cut in half." Id. at 4. On the intake form for the subsequent surgeon, Dr. Glyman, the plaintiff listed "lingual nerve injury." Id. at 3. Yet, the plaintiff took the position that she did not know of any malpractice until months after the corrective surgery by Dr. Glyman because it was not until months later that Dr. Glyman was explicitly critical of the initial surgery and the plaintiff did not fully understand what happened.

Despite this purported "issue of fact" put forward by plaintiff as a means of avoiding summary judgment, the district court and appellate court saw through the ploy. Specifically, the Callahan Court determined that "[a]lthough Callahan may have misunderstood which nerve was actually injured and why, she was still aware of the cause of her injury—that her nerve had been cut in half during the February 10 surgery—by no later than May 12, 2014...We conclude this knowledge 'would put a reasonable person on inquiry notice' of her cause of action, and that the record therefore irrefutably demonstrates Callahan was on inquiry notice more than a year before she filed her complaint." Id. at 4-5.

The Callahan case is highly relevant to the instant matter on a number of fronts. First, the "misunderstanding" of a plaintiff does not create an issue of fact or otherwise toll the state of limitations. In Callahan, the plaintiff misunderstood which nerve was injured, and, here, Plaintiffs misidentified Dr. Saxena as NP Socaoco. But the identity issue is a red herring because

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the case against Dr. Saxena *was already untimely* because Plaintiffs *admittedly* had facts before them that "someone's" negligence caused damage to Mary Curtis more than year before Plaintiffs brought suit. As pointed out previously, the identification issue is a non-starter in professional negligence cases where knowledge of the *conduct* alone is sufficient to bring suit. NRS 41A.071(3).

Second, the Callahan case demonstrates that the mere existence of a plaintiff's opposing view of the facts does not create a *genuine* issue of fact. This is the present situation before this Court. The facts here are uncontroverted because everything IPC Defendants rely upon are *admissions* of Plaintiff Laura Latrenta who readily admitted to her knowledge that (a) her mother was provided morphine in error, (b) Narcan was administered, (c) health care providers told her immediate hospital transfer and Narcan IV were necessary, and (d) she thought malpractice occurred in the morphine administration *and follow up care* which she forcefully argued were part of the same transaction and occurrence. Inexplicably, Plaintiff *did* timely file suit against Life Care yet waited *more than* one year to file suit against Dr. Saxena (who was dismissed in favor of the current IPC Defendants). The statute of limitations bars Plaintiffs' claims against IPC Defendants.

B. Previous Arguments Remain in Full Force.

The only argument Plaintiffs attempt to address in any detail is the identification issue and interaction of NRS 41A.071. However, Plaintiffs' Opposition misses the point entirely. Plaintiffs did not dare address the fact that NP Socaoco's name appears *repeatedly* in the record. Plaintiffs did not address the issue of how the suit against Dr. Saxena is itself untimely. Plaintiffs did not address how substituting a party into an *already* untimely Complaint containing *identical* allegations somehow cures the untimeliness of the underlying Complaint. No, Plaintiff avoids these issues because they are dispositive.

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Instead, Plaintiff focuses again on *Siragusa*, a case dealing with intentional torts. Plaintiff expects this Court to render a simplistic judgment instead of recognizing that the *Siragusa* case came *years* before NRS 41A was enacted and more than a *decade* before NRS 41A.071 was amended to clearly and specifically state that only the negligent *conduct* and its causal effect needs to be known to bring suit. The 2015 amendments render *Siragusa* inapposite.

III. CONCLUSION.

Careful consideration of this issue along with the recent decisions of this Court and the Court of Appeals reveal that IPC Defendants present the correct analysis of Nevada law. Plaintiffs admit the material facts making them uncontroverted. Consequently, a pure question of law exists which is still pending before this Court. The statute of limitations bars Plaintiffs' untimely lawsuit.

Dated this 27th day of December 2018.

JOHN H. COTTON & ASSOCIATES, LTD.

/s/ Vincent J. Vitatoe

JOHN H. COTTON, ESQ.
VINCENT J. VITATOE, ESQ.

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CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that on the 27th day of December 2018, I served a true and correct copy of the foregoing **IPC DEFENDANTS' REPLY IN SUPPORT OF MOTION FOR RECONSIDERATION** by electronic means Pursuant to EDCR 8.05(a), and was submitted electronically for filing and/or service with the Eighth Judicial District Court, made in accordance with the E-Service List, to the following individuals:

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f/k/a Life Care Center of Paradise Valley,
South Las Vegas Investors, LP, Life Care
Centers of America, Inc. and Carl Wagner

/s/ Vincent J. Vitatoe
An Employee of John H. Cotton & Associates

Exhibit A

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

NICOLE CALLAHAN, AN INDIVIDUAL,
Appellant,
vs.
BRENDAN G. JOHNSON, D.D.S., INDIVIDUALLY; AND HOLTZEN AND JOHNSON, LTD., D/B/A NEVADA ORAL AND FACIAL SURGERY, A NEVADA DOMESTIC PROFESSIONAL CORPORATION,
Respondents.

No. 74549-COA

ORDER OF AFFIRMANCE

Nicole Callahan appeals from an order granting summary judgment in a tort action. Eighth Judicial District Court, Clark County; Joanna Kishner, Judge.

Callahan went to Nevada Oral & Facial Surgery to have her wisdom teeth removed. She met with Dr. Brendan Johnson, who informed her that the wisdom teeth on the right side of her mouth were abnormally close to her nerves. Dr. Johnson removed Callahan's wisdom teeth on February 10, 2014. Immediately thereafter, Callahan experienced pain, numbness, and loss of taste on the left side of her tongue. Her symptoms did not resolve in subsequent weeks, and on March 10 Dr. Johnson mentioned the possibility of nerve damage and suggested that Callahan see a microsurgeon.

On April 22, 2014, Callahan had her first appointment with microsurgeon Dr. Mark Glyman. Callahan listed "lingual nerve damage" as the reason for that visit. Dr. Glyman examined Callahan and opined that she had sustained a nerve injury during the February 10 procedure. On

May 5, 2014, Dr. Glyman performed corrective surgery. He discovered that the nerve had been cut and pulled, and opined that the nerve had been caught in one of the surgical instruments. Dr. Glyman shared his findings with Callahan and her husband following the surgery and again at Callahan's follow-up appointment on May 12. Dr. Glyman told Callahan that the nerve could take eight months to heal. On May 7, Callahan called Dr. Johnson to report that her nerve had been cut. On October 7, 2014, Callahan, who had not recovered, spoke with Dr. Glyman about the February 10 surgery, and Dr. Glyman allegedly criticized the way Dr. Johnson had performed that surgery.

On September 28, 2015, Callahan filed a malpractice lawsuit against Dr. Johnson and Holtzen and Johnson, Ltd. d/b/a Nevada Oral & Facial Surgery (collectively "Dr. Johnson"). Dr. Johnson moved for summary judgment, arguing that the statute of limitations expired and thus barred the lawsuit. The district court ultimately agreed and granted the motion. This appeal followed.[1]

On appeal, Callahan contends the district court erred by concluding 1) the statute of limitations barred her lawsuit and 2) there was no concealment that would toll the statute of limitations. She asserts that Dr. Johnson misled her about the location of her injured lingual nerve and the reason for the injury. She claims Dr. Johnson told her that her lingual nerve was injured because it was abnormally close to her teeth, but in actuality her alveolar nerve was abnormally close to her teeth and the injured lingual nerve was not. She contends that the statute of limitations did not begin to accrue until after her conversation with Dr. Glyman on

[1]We do not recount the facts except as necessary to our disposition.

October 7, 2014, as until that point she had no reason to suspect that Dr. Johnson was negligent. We disagree.

We review an order granting summary judgment de novo, and consider the evidence in the light most favorable to the nonmoving party. *Winn v. Sunrise Hosp. & Med. Ctr.*, 128 Nev. 246, 252, 277 P.3d 458, 462 (2012). NRS 41A.097(2), the controlling statute of limitations, provides:

> Except as otherwise provided in subsection 3, 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 . . . .

A plaintiff must file suit within both the one-year and the three-year limitation periods. *Libby v. Eighth Judicial Dist. Court*, 130 Nev. 359, 364-65, 325 P.3d 1276, 1279 (2014); *Winn*, 128 Nev. at 251, 277 P.3d at 461. Only the one-year statute of limitations is at issue here. Under Nevada law, the one-year statute of limitations begins to run when the plaintiff "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." *Massey v. Litton*, 99 Nev. 723, 728, 669 P.2d 248, 252 (1983). Our supreme court has clarified that the plaintiff need not know the "precise legal theories" underlying her claim, so long as the plaintiff has a "general belief that someone's negligence may have caused his or her injury." *Winn*, 128 Nev. at 252-53; 277 P.3d at 462. Thus, at its core the one-year statute of limitation requires the "plaintiff to be aware of the cause of his or her injury." *Libby*, 130 Nev. at 365, 325 P.3d at 1279 (addressing the rule from *Massey* and *Winn*). The district court may determine the accrual date as a matter of law if the evidence irrefutably demonstrates that date. *Winn*, 128 Nev. at 253, 277 P.3d at 463.

We conclude the uncontroverted facts show that Callahan was on inquiry notice more than a year in advance of the date she filed her complaint. Critically, Callahan knew that her nerve had been cut during the February 10 surgery and that this injury caused her complained-of symptoms. Callahan testified that her symptoms began immediately following the February 10 surgery and that Dr. Johnson and Dr. Glyman both opined that her symptoms stemmed from nerve damage sustained during that surgery. On April 22, 2014, when Callahan first presented to Dr. Glyman, she listed "lingual nerve injury" as the reason for her visit. Moreover, Callahan testified that Dr. Glyman confirmed during the May 5 surgery that Callahan's nerve had been cut in half and that he told her of the injury no later than May 12.[2] Dr. Johnson's medical records also show that Callahan called Dr. Johnson shortly after her May 5 surgery to tell him that the nerve had been cut, but repaired in surgery.

Although Callahan may have misunderstood which nerve was actually injured and why, she was still aware of the cause of her injury—that her nerve had been cut in half during the February 10 surgery—by no later than May 12, 2014. *See Libby*, 130 Nev. at 365, 325 P.3d at 1279 (holding that the one-year statute of limitation requires the "plaintiff to be aware of the cause of his or her injury"). We conclude this knowledge "would put a reasonable person on inquiry notice" of her cause of action, and that the record therefore irrefutably demonstrates Callahan was on inquiry

[2]Notably, too, Dr. Glyman testified that he believed the nerve had been cut and then caught in a handpiece and stretched during the February surgery, and that he told Callahan and her husband of his findings following the May surgery.

notice more than a year before she filed her complaint. *See Massey*, 99 Nev. at 728, 669 P.2d at 252.

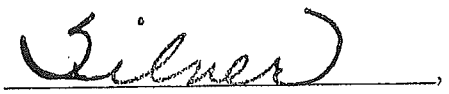
Callahan next argues that NRS 41A.097(3) tolled the statute of limitations here, where Dr. Johnson mislead Callahan to believe that her lingual nerve was injured because it was abnormally close to her teeth and that her symptoms were normal and would eventually pass. NRS 41A.097(3) tolls the statute "for any period during which the provider of health care has concealed any act, error or omission upon which the action is based." But, this provision applies only where the plaintiff proves that there was "an *intentional act* that objectively hindered a reasonably diligent plaintiff from timely filing suit." *Libby*, 130 Nev. at 367, 325 P.3d at 1281. Thus, to toll NRS 41A.097(2)'s statute of limitation, the plaintiff must show that 1) the provider intentionally concealed the information, and, 2) this concealment "would have hindered a reasonably diligent plaintiff" from timely pursuing the cause of action. *See Winn*, 128 Nev. at 251, 277 P.3d at 462 (discussing circumstances under which the one-year discovery rule would be tolled).

We conclude the record supports the district court's conclusion of no tolling. Callahan presents no evidence showing that Dr. Johnson intentionally concealed information that would have hindered Callahan from timely pursuing her claims. Callahan testified that Dr. Johnson described to her how he had performed the surgery, acknowledged she may have sustained nerve damage, and suggested she see a microsurgeon. To the extent Dr. Callahan misdiagnosed the exact cause of her pain, Callahan does not show an intentional act of concealment. Moreover, Callahan does not demonstrate that Dr. Johnson's actions hindered her ability to timely pursue her cause of action here. As set forth above, Callahan knew she had

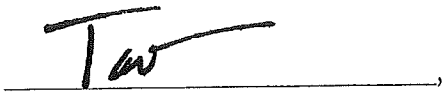
sustained a nerve injury during the February 10 surgery, she sought treatment for that injury in the spring of 2014, and she learned by no later than May 12, 2014 that her nerve had in fact been cut in half. Thus, the evidence does not show that NRS 41A.097(3)'s tolling provision applies here.

Accordingly, we conclude the district court properly granted summary judgment, and we

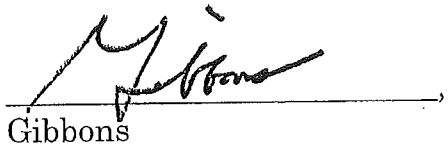
ORDER the judgment of the district court AFFIRMED.



_____, C.J.
Silver



_____, J.
Tao



_____, J.
Gibbons

cc: Hon. Joanna Kishner, District Judge
Sharp Law Center
Levy Law Firm
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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, v. SOUTH LAS VEGAS MEDICAL INVESTORS, LLC dba LIFE CARE CENTER OF SOUTH LAS VEGAS fka LIFE CARE CENTER OF PARADISE VALLEY; SOUTH LAS VEGAS INVESTORS LIMITED PARTNERSHIP; LIFE CARE CENTERS OF AMERICA INC., BINA HRIBIK PROTELLO, Administrator; CARL WAGNER, Administrator; AND does 1-50 inclusive, Defendants.	CASE NO.: **A-17-750520-C** DEPT. NO.: **XVII** Consolidated with: CASE NO.: **A-17-754013-C**
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.	**NOTICE OF ENTRY OF ORDER GRANTING IPC DEFENDANTS MOTION FOR RECONSIDERATION**

John H. Cotton & Associates, Ltd.
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TO: ALL PARTIES AND THEIR COUNSEL OF RECORD:

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

Dated this 25th day of November 2018.

JOHN H. COTTON & ASSOCIATES, LTD.
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/s/ *Vincent J. Vitatoe*
JOHN H. COTTON, ESQ.
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CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that on the 25th day of April 2019, I served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING IPC DEFENDANTS' MOTION FOR RECONSIDERATION** was submitted electronically for filing and/or service with the Eighth Judicial District Court, made in accordance with the E-Service List, to the following individuals:

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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. XVII Consolidated with: CASE NO. A-17-754013-C
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	**ORDER GRANTING IPC DEFENDANTS' MOTION FOR RECONSIDERATION**

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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.

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6. On April 14, 2017, Plaintiffs filed a Complaint in case A-17-754013-C initially naming Samir S. Saxena, M.D. ("Second Complaint").

7. The Second Complaint set forth two factual bases for the alleged professional negligence related to a morphine overdose of Mary Curtis: (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.

8. On July 6, 2017, Plaintiffs filed a Motion to Consolidate Case A-17-750520-C with Case A-17-754013-C.

9. Plaintiffs' Motion to Consolidate was premised upon the argument that the two actions were based upon the same transaction and occurrence.

10. Specifically, Plaintiffs' 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." (Emphasis added). See Motion to Consolidate at 3:25-27; and

    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." (Emphasis added). Id. at 6:8-10.

11. On October 10, 2017, the Court's order granting Plaintiffs' Motion to Consolidate was filed.

12. On May 1, 2018, Plaintiffs filed an Amended Second Complaint in case A-17-754013-C (involving the Second Complaint) naming the IPC Defendants.

13. The Amended Second Complaint contained the identical factual premises as were first lodged against Dr. Saxena in the Second Complaint and as set forth in the expert affidavit attached thereto.

14. The medical records in the case contained the name or signature of one of the IPC Defendants, ANNABELLE SOCAOCO, N.P.

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15. Plaintiff Laura Latrenta admitted that upon admission to Sunrise Hospital, certain Sunrise Hospital providers stated "they should have brought her here as soon as this happened, and we could have put her on a Narcan drip." See Latrenta Deposition at 77-78.

16. IPC Defendants argued that the statute of limitations barred the Second Complaint and, by extension, the Amended Second Complaint.

17. Plaintiffs argued that the statute of limitations was tolled until Plaintiffs identified IPC Defendants.

18. IPC Defendants further argued:

    a. Plaintiffs clearly knew of the purportedly negligent *conduct* at issue against both Dr. Saxena and IPC Defendants given the filing of the Second Complaint along with the expert affidavit against Dr. Saxena on April 14, 2017 which specified the purportedly negligent conduct involving (a) failure to transfer to a hospital, and (b) not providing a Narcan IV drip or ongoing doses of Narcan;

    b. The Second Complaint against Dr. Saxena was itself filed more than one (1) year after inquiry notice commenced, at the latest, March 11, 2016;

    c. Amendment of the Second Complaint was therefore to no avail as there could be no valid relation back pursuant to NRCP 15(c) against the IPC Defendants given the initial untimeliness of the Second Complaint; and

    d. The statute of limitations thus barred suit against IPC Defendants.

19. NRS 41A.097(2) requires a plaintiff to file suit against a statutorily-defined provider of health care within one (1) year "after the plaintiff discovers or through the use of reasonable diligence should have discovered the injury".

20. In the context of NRS 41A, the Nevada Supreme Court ruled that a plaintiff "discovers" and is, therefore on inquiry notice when a plaintiff "had facts before him that would have led an ordinarily prudent person to investigate further into whether [plaintiff's] injury may have been caused by someone's negligence." Winn v. Sunrise Hosp. & Med. Ctr., 128 Nev. 246, 252-53, 277 P.3d 458, 462 (2012).

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

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

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

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

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

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

    a. Plaintiffs never sought to amend the First Complaint to add or otherwise substitute IPC Defendants;

    b. Plaintiffs' Second Complaint was filed more than one (1) year after March 11, 2016;

    c. Plaintiffs knew of the purportedly negligent conduct even if Plaintiffs did not know the specific identities of each provider of health care, and

    d. Plaintiffs were in possession of medical records which contained the names of some of the IPC Defendants.

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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 11th day of April, 2019.

DISTRICT JUDGE

Respectfully submitted by:

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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).

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- 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).

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- 8 November 2017: Laura files a motion to compel requesting that Life Care be ordered to produce, inter alia, incident reports. *See* Pls.' Mot. Compel Further Responses 5.

- 4 December 2017: Laura's counsel, via email, tells Life Care's counsel that she needs Mary's incident reports for depositions taking place that week and offers to treat them as confidential until the following week's hearing on the motion to compel. Ex. 12, Letter from Melanie L. Bossie to Amanda Brookhyser (Dec. 4, 2017).

- 6 December 2017: Laura's counsel deposes Cecilia Sansome, a nurse formerly employed at Life Care Center of South Las Vegas. Ex. 18, Sansome Dep. She testifies as follows:

  - Annabelle Socaoco is a nurse practitioner, *id.* at 86:2–4, 104:8–11;

  - upon Ms. Sansome's entering the facility a staff member approached her and told her that Mary had been given the wrong medication, *id.* at 45:18–46:3;

  - Ms. Sansome, having asked whether the physician had been notified, was told that he had not been and was asked to make the call, *id.* at 46:7–9;

  - Ms. Sansome first assessed Mary, *id.* at 46:10–25;

  - having done so, she then called the physician through the answering service and was told that Nurse Socaoco would call her back, *id.* at 47:1–4;

  - Nurse Socaoco shortly thereafter called and, having been informed about Mary, instructed that she be given Narcan and specified the dosage thereof, *id.* at 47:4–9;

  - Nurse Socaoco arrived in person to the nursing station while Ms. Sansome was still writing the order, asking Ms. Sansome if she had given the Narcan, *id.* at 47:9–17, 104:12–15;

  - Ms. Sansome then took the medication out of the emergency pyxis and administered it to Mary, *id.* at 47:18–20; and

  - 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

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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—

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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

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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).

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

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

- "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," 128 Nev. 246, 258 (2012); and
- that "[o]nly when the evidence irrefutably demonstrates that a plaintiff was put on inquiry notice of a cause of action should the district court determine this discovery date as a matter of law." *Id.*

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

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

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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). *See id.* at 249.

Are *Massey* and *Winn* then at variance? No: the supreme court in *Libby v. Eighth Judicial Court* synthesized the cases. 130 Nev. 359 (2014). It called *Massey* and *Winn* "the analytical foundation established in previous cases in which [it] ha[d] interpreted NRS 41A.097(2)'s one-year limitation period." *Id.* at 364. Thus, "[b]eginning in *Massey*, [the court] explained that NRS 41A.097(2)'s one-year limitation period is a statutory discovery rule that begins to run when a plaintiff '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.* (citation omitted). It "further explained that the term 'injury,' as used in the one-year limitation period, encompasses a plaintiff's discovery of damages as well as discovery of the negligent cause of the damages." *Id.* And "[l]ater in *Winn*, [the court] recognized that by its terms, NRS 41A.097(2) requires a plaintiff to satisfy both the one-year discovery rule and the three-year limitations period." *Id.* So both "[i]n *Massey* and *Winn*, [the court] construed the one-year limitation period as requiring a plaintiff to be aware of the cause of his or her injury." *Id.* at 365.[2]

Winn thus complements *Massey*; it neither contradicts nor constrains its holdings. So both *Massey* and *Winn* must be read as a harmonious whole by a court considering whether to take from the jury the determination of discovery date. But the Court's order granting reconsideration relies on *Winn* alone. *See* Order 3 (Feb. 28, 2019). *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. But that issue is at issue here, as *Massey* makes clear.

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

[2] The Second Circuit explained it thus: "The basic common law rule, the so-called 'date of injury' rule, is that the statute of limitations period commences when the cause of action accrues. Several jurisdictions, including California 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).

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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-

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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.").

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

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

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

Overruling its previous holding that a civil conspiracy action runs from the date of the injury, the supreme court, observing that "the policies served by statutes of limitation do not outweigh the equities reflected in the proposition that plaintiffs should not be foreclosed from judicial remedies before they know that they have been injured and can discover the cause of their 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

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

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

As in *Siragusa*, Laura (1) generally knew of the underlying conduct, but not of a particular individual's role in the conduct (the lawyer's role there, Nurse Socaoco's here); and (2) discovered that individual's conduct later (by a partner's affidavit there, by Nurse Sansome's testimony here). *Siragusa*'s reasoning, then, that because a plaintiff's judicial remedies cannot be foreclosed before she can discover the cause of her injuries her action does not accrue until she has or should have discovered a claim's necessary facts-including the identity of the specific tortfeasor-applies with equal force to Laura's claims against Nurse Socaoco. So does *Siragusa*'s recognition that awareness of the general underlying conduct does not as a matter of law constitute discovery of

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facts constituting the tort allegedly committed by another-here, Nurse Socaoco.[4] Now whether Laura exercised reasonable diligence in discovering Nurse Socaoco's role is another question. But it is a question that under *Siragusa* is for the jury.

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

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

[4] For this reason whether a cause of action against B arose from the same transaction or occurrence as the earlier-asserted cause of action against A cannot be dispositive. *Contra* Order 3 (Feb. 28, 2019) (erroneously concluding 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***").

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

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

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

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

"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(d). The rule thus "permits a plaintiff to bring suit, before the limitations statute has run, against a defendant whose identity or description is known, but whose true name cannot be discovered through the exercise of reasonable diligence." *Sullivan v. Terra Mktg. of Nev.*, 96 Nev. 232, 234 (1980).

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

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

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

[5] California's "medical malpractice statute of limitations is identical to Nevada's statute." *Libby*, 130 Nev. at 365.

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

Possibly, however, Laura failed to so move the Court because she had already included Does 1 through 50 as Defendants in her original complaint and alleged therein that "Does 26 through 50 are other individuals or entities that caused or contributed to injuries suffered by Ms. Curtis"; 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"; and 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 [Mary's] injuries and damages." Compl. (A-17-750520-C) ¶¶ 6-7. So if Rule 10(d) applies here then the Court could and should have applied it.

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

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

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

IV. CONCLUSION

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

DATED this 29th day of April, 2019.

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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

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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. XVII Consolidated with: CASE NO. A-17-754013-C
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	**IPC DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR RECONSIDERATION**

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NEVADA, INC.; and DOES 51–100,

Defendants.

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. (hereinafter "NP Socaoco" or, collectively, "IPC Defendants") by and through their attorneys of record, John H. Cotton, Esq. and Vincent J. Vitatoe, Esq., of the law firm of the law firm JOHN H. COTTON & ASSOCIATES, LTD., hereby submits this Opposition to Plaintiffs' Motion for Reconsideration

This Opposition is made and based upon the papers, pleadings, and records on file herein, the attached Memorandum of Points and Authorities, and any oral argument this Court may allow at the time of the hearing on this matter.

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I. INTRODUCTION.

This Court granted IPC Defendants' Motion for Reconsideration after extensive briefing. Now, Plaintiffs seek to re-litigate the same arguments once again. They ask for reconsideration of this Court's reconsideration. Denial of this attempt is proper both procedurally and substantively. First, *all* of the arguments Plaintiffs now present in their Motion for Reconsideration were presented before for consideration (and reconsideration) in opposition to IPC Defendants' Motion for Reconsideration or *could* have been presented. The Motion is thus procedurally defective per EDCR 2.24 and related case law because this Court is under no obligation to rethink what it already thought.

Second, Plaintiffs' position *still* fails substantively. The lawsuit against Dr. Saxena (which was later amended to include IPC Defendants) was itself untimely pursuant to NRS 41A.071, binding Nevada case law, and Plaintiffs' own admissions. Indeed, Plaintiffs admitted that the consolidated cases arose from the same transaction and occurrence involving a morphine medication error and purported failure to timely and properly react—negligent conduct Plaintiff testified to knowing before March 11, 2016. Inquiry notice thus *indisputably* commenced more than one (1) year before Plaintiffs filed suit against Dr. Saxena and the IPC Defendants.

I. LEGAL ARUGMENT

A. PROCEDURAL DEFECTS: Improper to Stack Reconsideration Upon Reconsideration Regarding Same Issues.

It has long been held that rehearing is **only** appropriate when "substantially different evidence is subsequently introduced or the decision is clearly erroneous." (emphasis added) See Masonry & Tile Contractors Ass'n of S. Nev. v. Jolley, Urga & Wirth, Ltd., 113 Nev. 737, 741, 941 P.2d 486, 489 (1997). "[O]nly in **very rare instances** in which new issues of fact or law are raised supporting a ruling contrary to the ruling already reached should a motion for rehearing be granted. (emphasis added) See Moore v. City of Las Vegas, 92 Nev. 402, 405, 551 P.2d 244,

246 (1976). Moreover, re-hearings are not granted as a matter of right, and are not allowed for the purpose of re-argument, unless there is reasonable probability that the Court may have arrived at an erroneous conclusion. See Geller v. McCowan, 64 Nev. 106, 108, 178 P.2d 380, 381 (1947). ***Nor is reconsideration to be used to ask the Court to rethink what it has already thought***. See United States v. Rezzonico, 32 F.Supp.2d 1112, 1116 (D. Ariz. 1998).

Here, Plaintiffs ask this Court to re-analyze what it already thought, rethought, and conclusively determined. All of Plaintiffs' arguments either were or could have been presented during the original IPC Defendants' Motion for Reconsideration briefing. It is procedurally improper for Plaintiffs to seek reconsideration of issues this Court *already* reconsidered and decided. As such, the present Motion is procedurally defective and warrants denial out-of-hand.

B. SUBSTANTIVE DEFECTS: Statute of Limitations Barred Suit Against IPC Defendants.

Even if the Court looks beyond the procedural barrier, Plaintiffs present nothing new. No new law, no new facts. As such, IPC Defendants reincorporate all of the arguments previously made regarding why the statute of limitations bars Plaintiffs claims against IPC Defendants. For convenience, IPC Defendants re-presents several of the main arguments below and addresses Plaintiffs' other errors including Plaintiffs' intentional focus on the *wrong* order which decided the IPC Defendants' Motion for Reconsideration.

a. Inquiry Notice Loses Meaning Under Plaintiffs' Theory.

Plaintiffs' proposed position destroys the concept of inquiry notice in professional negligence cases. Under Plaintiffs' flawed approach, there would *never* be a time where any plaintiff in a professional negligence case would need to actually inquire about the existence of a potential lawsuit because, according to Plaintiffs, "inquiry notice" would not even begin until the plaintiff *already* had absolute clarity regarding the identity of the possible tortfeasors as well as sufficient facts for each and every element of their various legal causes of action. Certainly, a savvy plaintiff would argue that such "identification" does not happen until every last detail is

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known about a certain potential tortfeasor. Of course, such a position is directly at odds with the Nevada Supreme Court's binding case law.

A close reading of this precedent gave this Court a clear landmark for properly identifying when inquiry notice commenced as a matter of law in this case. The most relevant decision was handed down by the Winn Court 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 limitations 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." Plaintiffs argue the exact opposite and claim that a third party's knowledge matters (here, Life Care), that precise legal theories must be supported by facts for each element of the claim, and that knowledge that "someone" may have acted negligent is insufficient until that "someone" is specifically identified.

This last distinction is particularly relevant to the instant matter. The use of "someone" aligns *perfectly* in line with the plain language of NRS 41A.071—the statute setting forth the threshold burdens to bring a professional negligence case. How could the Winn Court specifically state that the mere *general* belief that "someone's" negligent conduct may have

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caused injury does legally commence inquiry notice if that "someone" must be identified *prior* to inquiry notice beginning as Plaintiffs claim? Importantly, Plaintiffs failed to address NRS 41A.071(3)'s recent amendment which conforms precisely to IPC Defendants' position and Winn. The amended statute *specifically* states that only the **conduct** is needed to commence suit, a position directly at odds with Plaintiffs' argument that name **and** conduct are required.

Plaintiffs can cite all the non-professional negligence cases they want—including cases from 20+ years ago before NRS 41A was enacted and cases which concern intentional fraud-based torts—but none change the specific statutes and case law in Nevada which render professional negligence cases distinct.

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 name, or describes by conduct**, 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.

Again, no accidents occurred in the drafting of NRS 41A.071 and the plain language interpretation must apply. Subsection 3 requires identity by name **or** a description of the **conduct** which is alleged to be negligent. If merely describing the negligent *conduct* is sufficient to commence actual litigation, it is more than sufficient to commence inquiry notice. In other words, professional negligence cases can be (and frequently are) commenced on the basis of the known allegedly negligent conduct even if the specific defendants' 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

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negligent **conduct** is known, plaintiffs in this State are obligated to inquire further, bring suit, and substitute the proper party as the case unfolds. See NRS 41A.097(2); NRCP 15(a) and (c).

Consequently, Plaintiffs primarily focus (again) on Siragusa, a case dealing with intentional torts, specifically civil conspiracy. The Siragusa Court recognized the fact that a civil conspiracy claim contains an element requiring the involvement of "two or more persons" and thus made its remarks concerning the identity of a tortfeasor within that context. The nature of the actual cause of action is thus highly relevant to a statute of limitations analysis. Plaintiffs expect this Court to render a simplistic judgment instead of recognizing that the Siragusa case came *years* before NRS 41A was enacted and more than a *decade* before NRS 41A.071 was amended to clearly and specifically state that only the negligent *conduct* and its causal effect needs to be known to bring suit. The 2015 amendments and a proper understanding of Winn render Siragusa inapposite. Interestingly, Plaintiffs attempts to side-step the clear import of Winn by claiming:

- *"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." See Plaintiffs' Motion for Reconsideration at 10:27-28.
- "Of course, there was in *Wynn* 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)." Id. at 11:20-22.

Yet, under Plaintiffs' logic, the appellant and the Winn Court 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 *inquiry* notice in Nevada particularly with regard to professional negligence cases. The only mystery is what more a potential plaintiff would inquire about if Plaintiffs' argument about the commencement of inquiry notice were true.

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However, another problem exists for Plaintiffs' argument. This was a situation where Plaintiffs *mistakenly* identified the wrong person, Dr. Saxena, as the tortfeasor. Thus, it was not as though Plaintiffs were unable to bring suit because they did not know the identity of the alleged tortfeasor, they simply got it wrong. The problem with that mistake, as explained below, is they failed to timely file suit against Dr. Saxena. In addition, Dr. Saxena and NP Socaoco have the same employer and appeared in the same medical records. If the suit against Dr. Saxena was untimely (and it was), would the suit still be timely as related to his employer because that employer's identity was not specifically known until some point after Plaintiffs knew of Dr. Saxena thus buying Plaintiffs more time at least as related to the employer? Plaintiffs' position leads to absurd results and shifts the statute of limitations around incalculably which destroys its underlying purpose: giving certitude for when claims are open and closed.

b. Inquiry Notice Commenced on March 11, 2016 Per Plaintiffs' Admissions.

The issue before the Court was more straight-forward than most statute of limitations analyses as there was no need to deduce what Plaintiff *should* have known because in this case IPC Defendants presented Plaintiff Laura Latrenta's admissions about what she *actually* knew and when. As such, the discovery rule analysis becomes black and white.

Indeed, the Winn Court provided helpful guidance in explaining that the commencement date of inquiry notice *can* be decided as a matter of law if uncontroverted evidence exists which conveys the date that the operative facts suggesting professional negligence were accessible by a plaintiff. In Winn the 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 identity of the actual tortfeasor was irrelevant because the *conduct* was known which placed or should have placed a reasonable person on

inquiry notice that *someone's* negligence may have caused injury. In short, this Court properly recognized the uncontroverted nature of the material evidence in the present matter for purposes of the statute of limitations.

As a consequence, this Court correctly decided that it *is* irrefutable in this case that Plaintiff Laura Latrenta had access to facts which would put any reasonable person on notice to investigate further into whether Curtis's injury may have been caused by someone's negligence **because Latrenta *admitted* the facts actually *did* put her on notice in mid-March 2016 that someone's negligence may have caused Mary Curtis's injuries**. 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 positions previously presented to this Court, the following list accounts for indisputable, irrefutable evidence of Plaintiff Laura Latrenta's *actual* knowledge that someone's potentially negligent conduct may have caused injury to Curtis:

- Motion to Consolidate Proves Knowledge of "Common" Facts. On July 7, 2016, Plaintiff filed a Motion to Consolidate and admitted (indeed, *forcefully argued*) that that the case against Dr. Saxena (and now IPC Defendants) 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). See Motion to Consolidate at 3:25-27.
    - Plaintiffs reiterated they "brought similar claims against both Life Care and Dr Saxena, i.e., that their negligence concerning her mother's

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morphine overdose caused her injuries and death." Id. at 4-6.

- "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). Id. at 6:8-10.

- Plaintiffs Admitted Inquiry Notice 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…" See Opposition to Motion to Dismiss/Summary Judgment at 8:17. This is buttressed by Latrenta's deposition testimony, previously presented, where she answered "Yes" to the question of whether it was her subjective perception that Life Care acted negligently on March 7 and 8, 2016.
- Plaintiff Admitted Her Knowledge As Of March 2016 Regarding The Precise Facts At Issue In Her Lawsuit Against IPC Defendants. Plaintiff admitted in her deposition that no later than March 11, 2016, providers of health care at Sunrise Hospital told her negligent *conduct* occurred regarding the exact two factual bases upon which Plaintiffs premise their entire lawsuit: (1) the alleged failure to transport Mary Curtis to a hospital and (2) to provide a Narcan IV drip. Latrenta specifically testified that these Sunrise Hospital providers stated "they [IPC Defendants] should have brought her here as soon as this happened, and we could have put her on a Narcan drip." See IPC Defendants' Motion for Reconsideration at **Exhibit A** at 77-78.
- Plaintiffs Admitted that NP Socaoco's Name Is In The Medical Records. Plaintiffs claimed NP Socaoco's name was not "revealed" in the medical record,

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but, in a footnote, were forced to admit that NP Socaoco's name is in, in fact, in the medical record. Yet, Plaintiffs misleadingly claimed it is only present in two locations. See Plaintiffs' Opposition to IPC Defendants' Motion to Dismiss/Summary Judgment 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. Id. at **Exhibit B**.

Given that the irrefutable, operative fact in Winn which trigged inquiry notice was a mere note in a medical record stating air was in the heart, the facts in this case presented this Court with much more irrefutable, uncontroverted evidence since Plaintiffs *admit* their actual knowledge and belief that negligent conduct caused injury. As such, this Court rightly decided inquiry notice must be triggered as a matter of law when the Plaintiffs conceded in March 2016 they (a) subjectively believed negligence occurred regarding the morphine error and follow up care, (b) had providers of health care directly advise them of the two alleged omissions at the heart of their case (immediate hospital transfer and lack of Narcan IV drip) in March of 2016, and (c) argued to this Court that the consolidated cases involve the "same" facts regarding the reaction and follow up care in response to the morphine error. Therefore, the Court properly applied the discovery rule set forth in NRS 41A.097(2) to the uncontroverted facts of this case.

c. The Case Against Dr. Saxena Was Untimely Making Any NRCP 15(c) Argument Moot.

Plaintiffs still misunderstands another fatal flaw in their argument: the initial suit against Dr. Saxena was itself untimely. The lawsuit against Dr. Saxena was the *first* suit which actually contained an expert affidavit supporting the professional negligence criticisms as required by NRS 41A.071. Indeed, the Nevada Supreme Court clearly held that a professional negligence complaint which lacks an expert affidavit is "void *ab initio*…a void complaint did not legally exist, it could not be amended." Washoe Med. Ctr. v. Second Judicial Dist. Court, 122 Nev.

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1298, 1300, 148 P.3d 790, 791 (2006). The first complaint against the Life Care Defendants did not legally exist as related to providers of health care accused of failing to transport and provide sufficient amounts of Narcan. This is important because Plaintiffs *did* commence suit against the Life Care Defendants within one year after inquiry notice commenced, yet failed to sue Dr. Saxena until more than a month *after* the one year deadline expired. The fact the complaint against the Life Care Defendants lacked an expert affidavit means that the complaint directed at the Life Care Defendants was unable to be amended and therefore unable to be related back under a NRCP 15(c) analysis—the first complaint did not legally exist as related to Dr. Saxena or IPC Defendants and their purportedly negligent conduct. It is for this reason that Plaintiffs did not even attempt to amend their initial lawsuit to add parties and include their claims against Dr. Saxen. Instead, Plaintiffs filed a separate suit two months later. However, filing a separate suit failed to avoid the statute of limitations bar against Dr. Saxena, and, by extension, the IPC Defendants because the purportedly negligent conduct was admittedly known more than one year prior.

A brief recitation of the timeline summarizes why the Court correctly determined the statute of limitations bars suit against providers of health care such as the IPC Defendants:

1. On February 2, 2017, Plaintiffs' filed a Complaint in case A-17-750520-C ("First Complaint") against Life Care Defendants which 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.
2. On April 14, 2017, Plaintiffs filed a Complaint in case A-17-754013-C initially naming Samir S. Saxena, M.D. ("Second Complaint").
3. The Second Complaint set forth two factual bases for the alleged professional negligence related to a morphine overdose of Mary Curtis: (a) a failure to timely transport Mary

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Curtis to a hospital and (b) failure to administer a Narcan IV drip or ongoing doses of Narcan.

4. Plaintiffs' Second Complaint was filed more than one (1) year after March 11, 2016.
5. On May 1, 2018, Plaintiffs filed an Amended Second Complaint in case A-17-754013-C (involving the Second Complaint) naming the IPC Defendants.
6. The Amended Second Complaint contained the identical factual premises as were first lodged against Dr. Saxena in the Second Complaint and as set forth in the expert affidavit attached thereto.
7. Amendment of the Second Complaint was therefore to no avail as there could be no valid relation back pursuant to NRCP 15(c) against the IPC Defendants given the initial untimeliness of the Second Complaint.

For the reasons set forth above, it is clear that Plaintiffs are unable to rely on NRCP 10(d), the rule concerning substituting parties, because that rule also invokes NRCP 15(c). The Nevada Supreme Court explicitly explained that NRCP 10(d) and NRCP 15(c) are intertwined: "the relation back effect of NRCP 15(c) **does** apply to the addition or substitution of parties." (Emphasis added) Costello v. Casler, 127 Nev. 436, 440 n.4, 254 P.3d 631, 634 (2011). Consequently, Plaintiffs are unable avoid the statute of limitations by relating back their amendment to add or otherwise substitute the IPC Defendants because the Second Complaint was itself untimely and barred.[1]

C. Additional Legal Errors: Imputation and Operative Order.

As a final matter, the Plaintiffs are unable to impute their alleged difficulties getting information from the Life Care Defendants onto the IPC Defendants. This is another clear holding of the Winn Court which concluded that "one defendant's concealment cannot serve as a

[1] The California case of McOwen v. Grossman fails to alter this analysis for two reasons. First, the initial complaint in McOwen *was* timely filed and then subsequently amended. Here, the pertinent complaint (Second Complaint) was *not* timely filed. Second, that case specifically notes that *the conduct* of the added provider of health care at issue was not reasonably known until much later. However, the commencement of inquiry notice and the relation back of an amendment are two different issues.

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basis for tolling subsection 2's limitation periods as to defendants who played no role in the concealment." Winn v. Sunrise Hosp. & Med. Ctr., 128 Nev. 246, 252, 277 P.3d 458, 462 (2012). There was never a claim that Life Care Defendants even concealed information let alone that IPC Defendants were somehow involved in such conduct.

Moreover, Plaintiffs repeatedly cite "Order 3" from February 28, 2019 instead of this Court's April 19, 2019 signed Order that *actually* laid out all the reasons, evidence, and legal bases upon which this Court granted IPC Defendants' Motion for Reconsideration. In addition to failing to even cite the operative April 19, 2019 Order, Plaintiffs' boldly claim in their Motion:

- "But the Court's order granting reconsideration relies on *Winn* alone. *See* Order 3 (Feb. 28, 2019)" See Plaintiffs' Motion for Reconsideration at 11:18-19
- "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)" Id. at 13:12-14.
- *"Contra* Order 3 (Feb. 28, 2019) (erroneously concluding 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***")." (emphasis in original) Id. at 16: 26-28.

This diversion from the operative April 19, 2019 Order highlights the nature of the argument presented by Plaintiffs. It also presents yet another legal error for Plaintiffs given that the instant Motion was certainly not filed within the appropriate timeframe for reconsideration under EDCR 2.24 if February 28, 2019 acts as an operative date. Ultimately, this Court signed the relevant April 19, 2019 Order which did, in fact, include the full bases for this Court's correct decision to grant the IPC Defendants' Motion for Reconsideration. That analysis should remain and this Court can simply deny the instant Motion without further explanation of its reasoning.

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II. CONCLUSION.

IPC Defendants respectfully request that this Court deny Plaintiffs' Motion to Reconsider.

Dated this 14th day of May 2019.

JOHN H. COTTON & ASSOCIATES, LTD.

/s/ Vincent J. Vitatoe

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CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that on the 14th day of May 2019, I filed and served a true and correct copy of the foregoing **IPC DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR RECONSIDERATION** by electronic means consistent with the applicable rules and in accordance with the E-Service List, to the following individuals:

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/s/ Vincent J. Vitatoe
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EXHIBIT A

EXHIBIT A

ELECTRONICALLY SERVED
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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. XVII Consolidated with: CASE NO. A-17-754013-C **PLAINTIFFS' RESPONSES TO LIFE CARE DEFENDANTS' FIRST SET OF INTERROGATORIES TO LAURA LATRENTA, INDIVIDUALLY**
Estate of MARY CURTIS, deceased; LAURA LATRENTA, as Personal Representative of the Estate of MARY CURTIS; and LAURA LATRENTA, individually, Plaintiffs, vs. SAMIR S. SAXENA, M.D., Defendant.	

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DISTRICT COURT

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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. XVII Consolidated with: CASE NO. A-17-754013-C
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	**ERRATA TO IPC DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR RECONSIDERATION**

NEVADA, INC.; and DOES 51–100,

Defendants.

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. (hereinafter "NP Socaoco" or, collectively, "IPC Defendants") by and through their attorneys of record, John H. Cotton, Esq. and Vincent J. Vitatoe, Esq., of the law firm of the law firm JOHN H. COTTON & ASSOCIATES, LTD., hereby notify this Court and all parties of a printing error contained in IPC Defendants' Opposition to Plaintiffs' Motion for Reconsideration filed May 14, 2019 ("Opposition").

IPC Defendants filed the May 14, 2019 Opposition which inadvertently contained an "Exhibit A" not relevant to the Opposition. The Opposition should have contained no exhibits. All references to exhibits in the Opposition simply refer to documents already on file with this Court in-line with EDCR 2.27(e). The corrected Opposition is attached hereto as **Exhibit A**. The corrected Opposition is substantively identical to the document filed and served on May 14, 2019. The only modification is the exclusion of the inadvertently attached exhibit.

Dated this 29th day of May 2019.

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/s/ Vincent J. Vitatoe

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CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that on the 29th day of May 2019, I filed and served a true and correct copy of the foregoing **ERRATA TO IPC DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR RECONSIDERATION** by electronic means consistent with the applicable rules and in accordance with the E-Service List, to the following individuals:

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/s/ Vincent J. Vitatoe
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EXHIBIT A

EXHIBIT A

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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. XVII Consolidated with: CASE NO. A-17-754013-C
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NEVADA, INC.; and DOES 51–100,

Defendants.

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. (hereinafter "NP Socaoco" or, collectively, "IPC Defendants") by and through their attorneys of record, John H. Cotton, Esq. and Vincent J. Vitatoe, Esq., of the law firm of the law firm JOHN H. COTTON & ASSOCIATES, LTD., hereby submits this Opposition to Plaintiffs' Motion for Reconsideration

This Opposition is made and based upon the papers, pleadings, and records on file herein, the attached Memorandum of Points and Authorities, and any oral argument this Court may allow at the time of the hearing on this matter.

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I. INTRODUCTION.

This Court granted IPC Defendants' Motion for Reconsideration after extensive briefing. Now, Plaintiffs seek to re-litigate the same arguments once again. They ask for reconsideration of this Court's reconsideration. Denial of this attempt is proper both procedurally and substantively. First, *all* of the arguments Plaintiffs now present in their Motion for Reconsideration were presented before for consideration (and reconsideration) in opposition to IPC Defendants' Motion for Reconsideration or *could* have been presented. The Motion is thus procedurally defective per EDCR 2.24 and related case law because this Court is under no obligation to rethink what it already thought.

Second, Plaintiffs' position *still* fails substantively. The lawsuit against Dr. Saxena (which was later amended to include IPC Defendants) was itself untimely pursuant to NRS 41A.071, binding Nevada case law, and Plaintiffs' own admissions. Indeed, Plaintiffs admitted that the consolidated cases arose from the same transaction and occurrence involving a morphine medication error and purported failure to timely and properly react—negligent conduct Plaintiff testified to knowing before March 11, 2016. Inquiry notice thus *indisputably* commenced more than one (1) year before Plaintiffs filed suit against Dr. Saxena and the IPC Defendants.

I. LEGAL ARUGMENT

A. PROCEDURAL DEFECTS: Improper to Stack Reconsideration Upon Reconsideration Regarding Same Issues.

It has long been held that rehearing is **only** appropriate when "substantially different evidence is subsequently introduced or the decision is clearly erroneous." (emphasis added) See Masonry & Tile Contractors Ass'n of S. Nev. v. Jolley, Urga & Wirth, Ltd., 113 Nev. 737, 741, 941 P.2d 486, 489 (1997). "[O]nly in **very rare instances** in which new issues of fact or law are raised supporting a ruling contrary to the ruling already reached should a motion for rehearing be granted. (emphasis added) See Moore v. City of Las Vegas, 92 Nev. 402, 405, 551 P.2d 244,

246 (1976). Moreover, re-hearings are not granted as a matter of right, and are not allowed for the purpose of re-argument, unless there is reasonable probability that the Court may have arrived at an erroneous conclusion. See Geller v. McCowan, 64 Nev. 106, 108, 178 P.2d 380, 381 (1947). ***Nor is reconsideration to be used to ask the Court to rethink what it has already thought.*** See United States v. Rezzonico, 32 F.Supp.2d 1112, 1116 (D. Ariz. 1998).

Here, Plaintiffs ask this Court to re-analyze what it already thought, rethought, and conclusively determined. All of Plaintiffs' arguments either were or could have been presented during the original IPC Defendants' Motion for Reconsideration briefing. It is procedurally improper for Plaintiffs to seek reconsideration of issues this Court *already* reconsidered and decided. As such, the present Motion is procedurally defective and warrants denial out-of-hand.

B. SUBSTANTIVE DEFECTS: Statute of Limitations Barred Suit Against IPC Defendants.

Even if the Court looks beyond the procedural barrier, Plaintiffs present nothing new. No new law, no new facts. As such, IPC Defendants reincorporate all of the arguments previously made regarding why the statute of limitations bars Plaintiffs claims against IPC Defendants. For convenience, IPC Defendants re-presents several of the main arguments below and addresses Plaintiffs' other errors including Plaintiffs' intentional focus on the *wrong* order which decided the IPC Defendants' Motion for Reconsideration.

a. Inquiry Notice Loses Meaning Under Plaintiffs' Theory.

Plaintiffs' proposed position destroys the concept of inquiry notice in professional negligence cases. Under Plaintiffs' flawed approach, there would *never* be a time where any plaintiff in a professional negligence case would need to actually inquire about the existence of a potential lawsuit because, according to Plaintiffs, "inquiry notice" would not even begin until the plaintiff *already* had absolute clarity regarding the identity of the possible tortfeasors as well as sufficient facts for each and every element of their various legal causes of action. Certainly, a savvy plaintiff would argue that such "identification" does not happen until every last detail is

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known about a certain potential tortfeasor. Of course, such a position is directly at odds with the Nevada Supreme Court's binding case law.

A close reading of this precedent gave this Court a clear landmark for properly identifying when inquiry notice commenced as a matter of law in this case. The most relevant decision was handed down by the Winn Court 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 limitations 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." Plaintiffs argue the exact opposite and claim that a third party's knowledge matters (here, Life Care), that precise legal theories must be supported by facts for each element of the claim, and that knowledge that "someone" may have acted negligent is insufficient until that "someone" is specifically identified.

This last distinction is particularly relevant to the instant matter. The use of "someone" aligns *perfectly* in line with the plain language of NRS 41A.071—the statute setting forth the threshold burdens to bring a professional negligence case. How could the Winn Court specifically state that the mere *general* belief that "someone's" negligent conduct may have

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caused injury does legally commence inquiry notice if that "someone" must be identified *prior* to inquiry notice beginning as Plaintiffs claim? Importantly, Plaintiffs failed to address NRS 41A.071(3)'s recent amendment which conforms precisely to IPC Defendants' position and Winn. The amended statute *specifically* states that only the **conduct** is needed to commence suit, a position directly at odds with Plaintiffs' argument that name **and** conduct are required.

Plaintiffs can cite all the non-professional negligence cases they want—including cases from 20+ years ago before NRS 41A was enacted and cases which concern intentional fraud-based torts—but none change the specific statutes and case law in Nevada which render professional negligence cases distinct.

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 name, or describes by conduct**, 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.

Again, no accidents occurred in the drafting of NRS 41A.071 and the plain language interpretation must apply. Subsection 3 requires identity by name **or** a description of the **conduct** which is alleged to be negligent. If merely describing the negligent *conduct* is sufficient to commence actual litigation, it is more than sufficient to commence inquiry notice. In other words, professional negligence cases can be (and frequently are) commenced on the basis of the known allegedly negligent conduct even if the specific defendants' 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

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negligent **conduct** is known, plaintiffs in this State are obligated to inquire further, bring suit, and substitute the proper party as the case unfolds. See NRS 41A.097(2); NRCP 15(a) and (c).

Consequently, Plaintiffs primarily focus (again) on Siragusa, a case dealing with intentional torts, specifically civil conspiracy. The Siragusa Court recognized the fact that a civil conspiracy claim contains an element requiring the involvement of "two or more persons" and thus made its remarks concerning the identity of a tortfeasor within that context. The nature of the actual cause of action is thus highly relevant to a statute of limitations analysis. Plaintiffs expect this Court to render a simplistic judgment instead of recognizing that the Siragusa case came *years* before NRS 41A was enacted and more than a *decade* before NRS 41A.071 was amended to clearly and specifically state that only the negligent *conduct* and its causal effect needs to be known to bring suit. The 2015 amendments and a proper understanding of Winn render Siragusa inapposite. Interestingly, Plaintiffs attempts to side-step the clear import of Winn by claiming:

- *"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." See Plaintiffs' Motion for Reconsideration at 10:27-28.

- "Of course, there was in *Wynn* 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)." Id. at 11:20-22.

Yet, under Plaintiffs' logic, the appellant and the Winn Court 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 *inquiry* notice in Nevada particularly with regard to professional negligence cases. The only mystery is what more a potential plaintiff would inquire about if Plaintiffs' argument about the commencement of inquiry notice were true.

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However, another problem exists for Plaintiffs' argument. This was a situation where Plaintiffs *mistakenly* identified the wrong person, Dr. Saxena, as the tortfeasor. Thus, it was not as though Plaintiffs were unable to bring suit because they did not know the identity of the alleged tortfeasor, they simply got it wrong. The problem with that mistake, as explained below, is they failed to timely file suit against Dr. Saxena. In addition, Dr. Saxena and NP Socaoco have the same employer and appeared in the same medical records. If the suit against Dr. Saxena was untimely (and it was), would the suit still be timely as related to his employer because that employer's identity was not specifically known until some point after Plaintiffs knew of Dr. Saxena thus buying Plaintiffs more time at least as related to the employer? Plaintiffs' position leads to absurd results and shifts the statute of limitations around incalculably which destroys its underlying purpose: giving certitude for when claims are open and closed.

b. Inquiry Notice Commenced on March 11, 2016 Per Plaintiffs' Admissions.

The issue before the Court was more straight-forward than most statute of limitations analyses as there was no need to deduce what Plaintiff *should* have known because in this case IPC Defendants presented Plaintiff Laura Latrenta's admissions about what she *actually* knew and when. As such, the discovery rule analysis becomes black and white.

Indeed, the Winn Court provided helpful guidance in explaining that the commencement date of inquiry notice *can* be decided as a matter of law if uncontroverted evidence exists which conveys the date that the operative facts suggesting professional negligence were accessible by a plaintiff. In Winn the 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 identity of the actual tortfeasor was irrelevant because the *conduct* was known which placed or should have placed a reasonable person on

inquiry notice that *someone's* negligence may have caused injury. In short, this Court properly recognized the uncontroverted nature of the material evidence in the present matter for purposes of the statute of limitations.

As a consequence, this Court correctly decided that it *is* irrefutable in this case that Plaintiff Laura Latrenta had access to facts which would put any reasonable person on notice to investigate further into whether Curtis's injury may have been caused by someone's negligence **because Latrenta *admitted* the facts actually *did* put her on notice in mid-March 2016 that someone's negligence may have caused Mary Curtis's injuries.** 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 positions previously presented to this Court, the following list accounts for indisputable, irrefutable evidence of Plaintiff Laura Latrenta's *actual* knowledge that someone's potentially negligent conduct may have caused injury to Curtis:

- Motion to Consolidate Proves Knowledge of "Common" Facts. On July 7, 2016, Plaintiff filed a Motion to Consolidate and admitted (indeed, *forcefully argued*) that that the case against Dr. Saxena (and now IPC Defendants) 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). See Motion to Consolidate at 3:25-27.
    - Plaintiffs reiterated they "brought similar claims against both Life Care and Dr Saxena, i.e., that their negligence concerning her mother's

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morphine overdose caused her injuries and death." Id. at 4-6.

- "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). Id. at 6:8-10.

- Plaintiffs Admitted Inquiry Notice 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..." See Opposition to Motion to Dismiss/Summary Judgment at 8:17. This is buttressed by Latrenta's deposition testimony, previously presented, where she answered "Yes" to the question of whether it was her subjective perception that Life Care acted negligently on March 7 and 8, 2016.

- Plaintiff Admitted Her Knowledge As Of March 2016 Regarding The Precise Facts At Issue In Her Lawsuit Against IPC Defendants. Plaintiff admitted in her deposition that no later than March 11, 2016, providers of health care at Sunrise Hospital told her negligent *conduct* occurred regarding the exact two factual bases upon which Plaintiffs premise their entire lawsuit: (1) the alleged failure to transport Mary Curtis to a hospital and (2) to provide a Narcan IV drip. Latrenta specifically testified that these Sunrise Hospital providers stated "they [IPC Defendants] should have brought her here as soon as this happened, and we could have put her on a Narcan drip." See IPC Defendants' Motion for Reconsideration at **Exhibit A** at 77-78.

- Plaintiffs Admitted that NP Socaoco's Name Is In The Medical Records. Plaintiffs 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 is in, in fact, in the medical record. Yet, Plaintiffs misleadingly claimed it is only present in two locations. See Plaintiffs' Opposition to IPC Defendants' Motion to Dismiss/Summary Judgment 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. Id. at **Exhibit B**.

Given that the irrefutable, operative fact in Winn which trigged inquiry notice was a mere note in a medical record stating air was in the heart, the facts in this case presented this Court with much more irrefutable, uncontroverted evidence since Plaintiffs *admit* their actual knowledge and belief that negligent conduct caused injury. As such, this Court rightly decided inquiry notice must be triggered as a matter of law when the Plaintiffs conceded in March 2016 they (a) subjectively believed negligence occurred regarding the morphine error and follow up care, (b) had providers of health care directly advise them of the two alleged omissions at the heart of their case (immediate hospital transfer and lack of Narcan IV drip) in March of 2016, and (c) argued to this Court that the consolidated cases involve the "same" facts regarding the reaction and follow up care in response to the morphine error. Therefore, the Court properly applied the discovery rule set forth in NRS 41A.097(2) to the uncontroverted facts of this case.

c. The Case Against Dr. Saxena Was Untimely Making Any NRCP 15(c) Argument Moot.

Plaintiffs still misunderstands another fatal flaw in their argument: the initial suit against Dr. Saxena was itself untimely. The lawsuit against Dr. Saxena was the *first* suit which actually contained an expert affidavit supporting the professional negligence criticisms as required by NRS 41A.071. Indeed, the Nevada Supreme Court clearly held that a professional negligence complaint which lacks an expert affidavit is "void *ab initio*...a void complaint did not legally exist, it could not be amended." Washoe Med. Ctr. v. Second Judicial Dist. Court, 122 Nev.

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1298, 1300, 148 P.3d 790, 791 (2006). The first complaint against the Life Care Defendants did not legally exist as related to providers of health care accused of failing to transport and provide sufficient amounts of Narcan. This is important because Plaintiffs *did* commence suit against the Life Care Defendants within one year after inquiry notice commenced, yet failed to sue Dr. Saxena until more than a month *after* the one year deadline expired. The fact the complaint against the Life Care Defendants lacked an expert affidavit means that the complaint directed at the Life Care Defendants was unable to be amended and therefore unable to be related back under a NRCP 15(c) analysis—the first complaint did not legally exist as related to Dr. Saxena or IPC Defendants and their purportedly negligent conduct. It is for this reason that Plaintiffs did not even attempt to amend their initial lawsuit to add parties and include their claims against Dr. Saxen. Instead, Plaintiffs filed a separate suit two months later. However, filing a separate suit failed to avoid the statute of limitations bar against Dr. Saxena, and, by extension, the IPC Defendants because the purportedly negligent conduct was admittedly known more than one year prior.

A brief recitation of the timeline summarizes why the Court correctly determined the statute of limitations bars suit against providers of health care such as the IPC Defendants:

1. On February 2, 2017, Plaintiffs' filed a Complaint in case A-17-750520-C ("First Complaint") against Life Care Defendants which 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.
2. On April 14, 2017, Plaintiffs filed a Complaint in case A-17-754013-C initially naming Samir S. Saxena, M.D. ("Second Complaint").
3. The Second Complaint set forth two factual bases for the alleged professional negligence related to a morphine overdose of Mary Curtis: (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.

4. Plaintiffs' Second Complaint was filed more than one (1) year after March 11, 2016.
5. On May 1, 2018, Plaintiffs filed an Amended Second Complaint in case A-17-754013-C (involving the Second Complaint) naming the IPC Defendants.
6. The Amended Second Complaint contained the identical factual premises as were first lodged against Dr. Saxena in the Second Complaint and as set forth in the expert affidavit attached thereto.
7. Amendment of the Second Complaint was therefore to no avail as there could be no valid relation back pursuant to NRCP 15(c) against the IPC Defendants given the initial untimeliness of the Second Complaint.

For the reasons set forth above, it is clear that Plaintiffs are unable to rely on NRCP 10(d), the rule concerning substituting parties, because that rule also invokes NRCP 15(c). The Nevada Supreme Court explicitly explained that NRCP 10(d) and NRCP 15(c) are intertwined: "the relation back effect of NRCP 15(c) **does** apply to the addition or substitution of parties." (Emphasis added) Costello v. Casler, 127 Nev. 436, 440 n.4, 254 P.3d 631, 634 (2011). Consequently, Plaintiffs are unable avoid the statute of limitations by relating back their amendment to add or otherwise substitute the IPC Defendants because the Second Complaint was itself untimely and barred.[1]

C. Additional Legal Errors: Imputation and Operative Order.

As a final matter, the Plaintiffs are unable to impute their alleged difficulties getting information from the Life Care Defendants onto the IPC Defendants. This is another clear holding of the Winn Court which concluded that "one defendant's concealment cannot serve as a

[1] The California case of McOwen v. Grossman fails to alter this analysis for two reasons. First, the initial complaint in McOwen *was* timely filed and then subsequently amended. Here, the pertinent complaint (Second Complaint) was *not* timely filed. Second, that case specifically notes that *the conduct* of the added provider of health care at issue was not reasonably known until much later. However, the commencement of inquiry notice and the relation back of an amendment are two different issues.

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basis for tolling subsection 2's limitation periods as to defendants who played no role in the concealment." Winn v. Sunrise Hosp. & Med. Ctr., 128 Nev. 246, 252, 277 P.3d 458, 462 (2012). There was never a claim that Life Care Defendants even concealed information let alone that IPC Defendants were somehow involved in such conduct.

Moreover, Plaintiffs repeatedly cite "Order 3" from February 28, 2019 instead of this Court's April 19, 2019 signed Order that *actually* laid out all the reasons, evidence, and legal bases upon which this Court granted IPC Defendants' Motion for Reconsideration. In addition to failing to even cite the operative April 19, 2019 Order, Plaintiffs' boldly claim in their Motion:

- "But the Court's order granting reconsideration relies on *Winn* alone. *See* Order 3 (Feb. 28, 2019)" See Plaintiffs' Motion for Reconsideration at 11:18-19
- "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)" Id. at 13:12-14.
- *"Contra* Order 3 (Feb. 28, 2019) (erroneously concluding 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***")." (emphasis in original) Id. at 16: 26-28.

This diversion from the operative April 19, 2019 Order highlights the nature of the argument presented by Plaintiffs. It also presents yet another legal error for Plaintiffs given that the instant Motion was certainly not filed within the appropriate timeframe for reconsideration under EDCR 2.24 if February 28, 2019 acts as an operative date. Ultimately, this Court signed the relevant April 19, 2019 Order which did, in fact, include the full bases for this Court's correct decision to grant the IPC Defendants' Motion for Reconsideration. That analysis should remain and this Court can simply deny the instant Motion without further explanation of its reasoning.

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II. CONCLUSION.

IPC Defendants respectfully request that this Court deny Plaintiffs' Motion to Reconsider.

Dated this 14th day of May 2019.

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/s/ Vincent J. Vitatoe

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CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that on the 14th day of May 2019, I filed and served a true and correct copy of the foregoing **IPC DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR RECONSIDERATION** by electronic means consistent with the applicable rules and in accordance with the E-Service List, to the following individuals:

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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' REPLY IN SUPPORT OF MOTION FOR RECONSIDERATION** **Date: June 5, 2019** **Time: 9:00 a.m.**

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 reply to IPC Defendants' Opposition to Plaintiffs' Motion for Reconsideration.

DATED this 31st day of May, 2019.

KOLESAR & LEATHAM

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Nevada Supreme Court in *Siragusa* decided that part of the discovery rule is the rule that a statute of limitations does not begin to run until the plaintiff knows or with due diligence should know the identity of the tortfeasor. If that rule applies here then whether Laura exercised due diligence in discovering Nurse Socaoco's identity is a jury question. IPC argues that *Siragusa* does not apply to professional negligence claims given NRS 41A.071's post-*Siragusa* promulgation and subsequent amendment. But NRS 41A.071 concerns expert affidavits in professional negligence actions. It effects a change neither to NRS 41A.097, which provides the statute of limitations in professional negligence actions and establishes the discovery rule's applicability in such actions, nor to our supreme court's discovery rule jurisprudence. It follows that (1) the *Siragusa* rule applies here, meaning that (2) whether Laura's claims against IPC are time-barred is a jury question, such that (3) the Court's granting IPC's motion for reconsideration was clearly erroneous, and accordingly (4) the Court should reconsider its order dismissing IPC.

II. LEGAL ARGUMENT

A. The threshold question: Should the Court reconsider this issue?

"Nevada Supreme Court precedent . . . grants this Court wide discretion to reconsider orders which may be erroneous." IPC Defs.' Reply in Supp. of Mot. Recons. 3. *See also* IPC Defs.' Mot. Recons. 6 ("A district court may consider a motion for reconsideration concerning a previously decided issue if the decision was clearly erroneous."). So the Court's discretion to reconsider is unquestioned.

But should it exercise that discretion? Yes, because the Court was likely disadvantaged by the limited picture before it when it made its first decision. This case had, of course, previously been under Judge Villani, and when the IPC Defendants requested reconsideration on the statute of limitations issue they did not argue anything that he had not heard before. *Compare* IPC Defs.' Mot. Recons., *with* Defs.' Mot. Dismiss or, in Alt., for Summ. J., *and* Defs.' Reply in Supp. of Mot. Dismiss or, in Alt., for Summ. J. In fact, he had already heard the same song twice before, as Dr. Saxena, who is represented by the same counsel by whom the IPC Defendants are

represented, made similar arguments in opposing Laura's motion to amend her complaint to add the IPC Defendants and in his countermotion for summary judgment. *See* Def. Saxena's Opp'n to Pls.' Mot. Amend Compl. & Countermot. Summ. J.; Def. Saxena's Reply in Supp. of Countermot. Summ. J. For this reason Laura in her opposition to IPC's motion strove for (and by lawyerly standards achieved) brevity, only briefly explaining to (as she supposed) Judge Villani that IPC's motion for reconsideration offered nothing new and reminding him why he had rightly ruled previously that whether Laura's claims against the IPC Defendants were time-barred was a jury question.[1]

Obviously, this case, with which Judge Villani was intimately familiar, was at some point transferred to Judge Holthus, who without the benefit of oral argument ordered granting IPC's motion (denominated one for reconsideration but in reality procuring Judge Holthus's first consideration) and dismissing with prejudice. Given the content of Judge Holthus's order—for example, it considers *Winn* but not *Massey*, *see* Order ¶ 20 (Apr. 19, 2019), although those cases must be considered together, *see Libby v. Eighth Jud. Dist. Ct.*, 130 Nev. 359, 364 (2014)—it seems not unlikely that more extensive briefing would be beneficial. So the Court both has discretion to consider Laura's motion for reconsideration and should exercise that discretion.

B. Does IPC's major argument—its attack on *Siragusa*—succeed?

In *Siragusa v. Brown*, 114 Nev. 1384 (1998), the Nevada Supreme Court adopted the holding of *Spitler v. Dean* that "[t]he statute should not commence to run until the plaintiff with due diligence knows to a reasonable probability of injury, its nature, its cause, *and the identity of the allegedly responsible defendant*." 436 N.W.2d 308, 310 (Wis. 1989) (citation omitted). *See* 114 Nev. at 1393–94 (reciting and applying that holding). If *Siragusa* applies here then there is little question that dismissal on statute of limitations grounds is inappropriate—Laura sued Nurse Socaoco within one year of finding out about her (she learned of her existence and role at a deposition in December 2017 and moved to amend her complaint to add her and the IPC entities

[1] At her opposition's conclusion, however, Laura added this: "But if the Court desires to indulge IPC's repetitious motion, then Laura requests the right to meet the motion with a full opposition thereto." Pls.' Opp'n to IPC Defs.' Mot. Recons. 6.

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the next month, *see* Pls.' Mot. Recons. 5) and whether she exercised reasonable diligence in discovering her existence and role is a jury question. *See Siragusa*, 114 Nev. at 1394 (holding that whether plaintiff exercised reasonable diligence in discovering defendant's role was a question for the trier of fact).

Although Laura does not wish to speak for the IPC Defendants, they do seem to her to recognize (without of course admitting) that if *Siragusa* applies then they lose. *See* IPC Defs.' Opp'n to Pls.' Mot. Recons. 7 ("Plaintiffs expect this Court to render a simplistic judgment instead of recognizing that the *Siragusa* case came *years* before NRS 41A . . . . The 2015 amendments and a proper understanding of *Winn* render *Siragusa* inapposite."). They therefore attempt to limit *Siragusa*'s rule to the particular tort at issue in that case. *See id.* ("The *Siragusa* Court recognized the fact that a civil conspiracy claim contains an element requiring the involvement of 'two or more persons' and thus made its remarks concerning the identity of a tortfeasor within that context. The nature of the actual cause of action is thus highly relevant to a statute of limitations analysis."). But the *Siragusa* court made no such distinction; instead, it accepted plaintiff's broad "argument that part of discovering facts constituting a cause of action is discovering the identity of a specific tortfeasor," 114 Nev. at 1393, and broadly "note[d] the general rule that the question of when a claimant discovered or should have discovered the facts constituting a cause of action is one of fact." *Id.* at 1400. Nor did the *Spitler* case whose holding it adopted concern civil conspiracy. In fact, the *Spitler* court simply extended the rule established in *Hansen v. A.H. Robins, Inc.*, 335 N.W.2d 578 (Wis. 1983), *see Spitler*, 436 N.W.2d at 308 (agreeing to extend the discovery rule adopted in *Hansen*), and *Hansen* was a medical negligence case. *See* 335 N.W.2d at 579 (observing that plaintiff had brought an action "to recover damages for personal injuries arising out of her use of the Dalkon Shield"). So to limit *Siragusa* to civil conspiracy claims or even to intentional torts is to err.

IPC also argues that NRS 41A.071 (and particularly its 2015 amendment) supports its position. *See* IPC Defs.' Opp'n to Pls.' Mot. Recons. 6 ("Importantly, Plaintiffs failed to address NRS 41A.071(3)'s recent amendment which conforms precisely to IPC Defendants' position and *Winn*."). The original version of NRS 41A.071 required that a medical malpractice claim be filed

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with "an affidavit, supporting the allegations contained in the action, 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 malpractice." NRS 41A.071 (amended 2015). The current version retains the requirements that the affidavit support the action's allegations and that it be submitted by a qualified medical expert and adds that the affidavit must "identif[y] by name, or describe[] by conduct, each provider of health care who is alleged to be negligent," NRS 41A.071(3), and must "set[] forth factually a specific act or acts of alleged negligence separately as to each defendant in simple, concise and direct terms." NRS 41A.071(4).

Both the original and amended versions of NRS 41A.071 thus do nothing more than require a supporting affidavit and specify its required contents. They therefore have no relevance to any statute of limitations or to the discovery rule, especially given that chapter 41A has its own statute of limitations—a statute of limitations that explicitly incorporates the discovery rule. *See* NRS 41A.097(2) (providing 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"). That the legislature by amending NRS 41A.071 to specify additional affidavit requirements intended to sub silentio abrogate both the statutory discovery rule of NRS 41A.097—a statute that is in pari materia with NRS 41A.071 and so must be read in harmony with it—and the Nevada Supreme Court's discovery rule jurisprudence is inconceivable.[2] No good reason therefore exists to reject *Siragusa*'s application to this case.

But good reason does exist to reject IPC's competing interpretation of inquiry notice. IPC argues that there was "indisputable, irrefutable evidence of Plaintiff Laura Latrenta's *actual*

[2] *See, e.g., Kondas v. Washoe Cty. Bank*, 254 P. 1080, 1083 (Nev. 1927) ("Of course when two sections or two acts are in pari materia they must be harmonized."); *Presson v. Presson*, 147 P. 1081, 1082 (Nev. 1915) ("Being in pari materia, the two acts must be read and construed together, and so harmonized as to give effect to them both, unless the latter act expressly repeals the former, or is so repugnant to it that the former should be held repealed by implication. Repeals by implication are not favored."). Of course, even if NRS 41A.071 did have some bearing on interpreting the statute of limitations, it would not have the effect claimed for it by IPC: the amended statute requires that the affidavit set forth "a specific act or acts of alleged negligence separately *as to each defendant*," NRS 41A.071(4) (emphasis added), which would prove a formidable challenge to one ignorant of a particular defendant's existence or involvement.

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knowledge that someone's potentially negligent conduct may have caused injury to Curtis," IPC Defs.' Opp'n to Pls.' Mot. Recons. 9, such that "this Court rightly decided that inquiry notice must be triggered as a matter of law." *Id.* at 11. Under IPC's theory that inquiry notice as to all possible tortfeasors necessarily commences upon inquiry notice that some tortfeasor may have caused injury it would follow that the statute of limitations can bar claims against a tortfeasor even if a plaintiff could not with reasonable diligence have discovered that tortfeasor's existence or involvement before the statute has run. But that conclusion's unsoundness is apparent not only from its evident injustice but also from the Nevada Supreme Court's teaching that "the policies served by statutes of limitation do not outweigh the equities reflected in the proposition that plaintiffs should not be foreclosed from judicial remedies before they know that they have been injured and can discover the cause of their injuries." *Petersen v. Bruen*, 106 Nev. 271, 274 (1990).[3]

Moreover, our supreme court has established that inquiry notice is "inquiry notice *of a cause of action*," *Winn v. Sunrise Hosp. & Med. Ctr.*, 128 Nev. 246, 258 (2012) (emphasis added), and a cause of action necessarily requires a tortfeasor, *see Spitler*, 436 N.W.2d at 310 (observing that "the identity of the tortfeasor is a critical element of an enforceable claim"), so it cannot be the case that inquiry notice of a cause of action as to one tortfeasor in every case means inquiry notice of all causes of action as to all tortfeasors. And so in asserting a theory of inquiry notice conflating inquiry notice of a cause of action with inquiry notice of all causes of action, which theory would if applied result in this suit's being time-barred as a matter of law, IPC errs. Instead, *Siragusa* controls and requires that the question whether the statute of limitations defeats Laura's claims against the IPC Defendants be resolved by the jury. *See Winn*, 128 Nev. at 258 ("Only when the evidence irrefutably demonstrates that a plaintiff was put on inquiry notice of a cause of action should the district court determine this discovery date as a matter of law.").

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[3] *See also id.* at 274 (describing the discovery rule as "[a]n exception to the general rule" concerning statutes of limitation under which "the statutory period of limitations is tolled until the injured party discovers or reasonably should have discovered facts supporting a cause of action").

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C. What of IPC's minor arguments?

So much for the IPC Defendants' main defense against reconsideration. They do, however, offer a few lesser arguments, which can be disposed of with less effort.

First, they argue that "the initial suit against Dr. Saxena was itself untimely," IPC Defs.' Opp'n to Pls.' Mot. Recons. 11, such that "Plaintiffs are unable [to] avoid the statute of limitations by relating back their amendment to add or otherwise substitute the IPC Defendants because the Second Complaint was itself untimely and barred." *Id.* at 13. Dr. Saxena did, in fact, seek to prevent Laura's amending her complaint against him to include Nurse Socaoco and the IPC Defendants and to obtain summary judgment on statute of limitations grounds, *see* Def. Saxena's Opp'n to Pls.' Mot. Amend Compl. & Countermot. Summ. J., but the Court granted the motion to amend and denied (without prejudice) Dr. Saxena's motion for summary judgment as to the statute of limitations, *see* Order ¶ 10 (Apr. 11, 2018), and Dr. Saxena and Laura later settled. *See* Def. Saxena's Mot. Good Faith Settlement. So whether Laura's claims against Dr. Saxena were time-barred is hardly a question that can be reopened now and in any event IPC lacks standing to argue that the claims *against Dr. Saxena* are time-barred.[4] And even if IPC both had such standing and could show that the claims against Dr. Saxena could be defeated with a limitations defense still nothing would follow: a complaint whose claims are subject to a statute of limitations defense is still a valid complaint—a limitations defense is after all an affirmative defense and so may be waived, *see* Nev. R. Civ. P. 8(c)—and so it can still be amended and relation-back is still available if necessary, and that Laura's IPC claims arise out of the same transaction or occurrence as those against Dr. Saxena that are ex hypothesi time-barred is under *Siragusa* hardly dispositive of the effect of the statute of limitations against the IPC claims. The whole question of the Saxena complaint is therefore irrelevant.

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[4] Standing is "the right to raise a legal argument or claim," *City of Arvada ex rel. Arvada Police Dep't v. Denver Health & Hosp. Auth.*, 403 P.3d 609, 613 ¶ 18 (Colo. 2017), and "[g]enerally, a party has standing to assert only its own rights and cannot raise the claims of a third party not before the court." *High Noon at Arlington Ranch Homeowners Ass'n v. Eighth Jud. Dist. Ct.*, 402 P.3d 639, 646 (Nev. 2017). *See also HealthONE v. Rodriguez ex rel. Rodriguez*, 50 P.3d 879, 891–92 (Colo. 2002) (explaining that standing "is concerned with a particular litigant's right to raise legal arguments or claims"); *cf. Allen v. State*, 91 Nev. 78, 81 (1975) ("In order to have standing to object to a search, the aggrieved party must be the one against whom the search has been directed.").

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Second, they argue that "Plaintiffs are unable to impute their alleged difficulties getting information from the Life Care Defendants onto the IPC Defendants." Defs.' Opp'n to Pls.' Mot. Recons. 13. This is true. Laura does not request imputation, nor does her motion for reconsideration depend on it. This issue is therefore irrelevant.

Finally, they say that Laura cited the Court's February 2019 order and that the April 2019 order is in fact the operative one. *See id.* at 14. This too is true. The grounds for the two orders do not conflict: the later order reaches the same conclusions as those in the earlier order that IPC cited in its opposition as having been cited by Laura (i.e., that the Court relied on *Winn* but not on *Massey* and that it decided as a matter of law that Laura was on inquiry notice by 11 March 2016). *See* Order ¶¶ 20, 24–25 (Apr. 19, 2019). This issue is therefore irrelevant.

D. So where do we stand now?

Both IPC's major argument (for *Siragusa*'s inapplicability and for its interpretation of inquiry notice) and its minor arguments have now been defused. So what live arguments are still before the Court?

First, Laura argued that the Court should reconsider its decision because in failing to apply *Massey v. Litton*'s teaching that "'injury' encompasses discovery of damage as well as negligent cause," 99 Nev. 723, 728 (1983) it ignored controlling caselaw. *See* Pls.' Mot. Recons. Section III.A. IPC did not undermine *Massey*'s applicability: it never discussed *Massey* at all; the case's sole mention in IPC's opposition is in a block quotation from *Winn* that if anything demonstrates *Massey*'s continuing force. *See* Defs.' Opp'n to Pls.' Mot. Recons. 5 (quoting *Winn*, 128 Nev. at 252–53). *Massey* therefore still stands, and therefore still counsels reconsideration.

Second, Laura argued that 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. *See* Pls.' Mot. Recons. Section III.B. She premised this argument on *Libby v. Eighth Judicial District Court*, in which our supreme court taught that "commencement of a malpractice action is bound by two time frames tied to two different events," 130 Nev. 359, 365 (2014), and that "NRS 41A.097(2)'s three-year limitation period begins to run once there is an appreciable manifestation of the plaintiff's injury" such that "a plaintiff need not be aware of the

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cause of his or her injury in order for the three-year limitations period to begin to run." *Id.* at 366. IPC in response never adverts to the statutory language of NRS 41A.097(2); nor does it acknowledge the statute's two timeframes and the differing rules for each; nor does it even mention, much less attempt to distinguish, *Libby*. NRS 41A.097(2) and *Libby* therefore still stand, and therefore still counsel reconsideration.[5]

Third, Laura argued that the Court should reconsider its decision because it failed to apply *Siragusa*/*Spitler*'s holding that a statute of limitations does not begin to run until a plaintiff discovers or should have discovered the tortfeasor's identity. *See* Pls.' Mot. Recons. Section III.C. Here, of course, IPC expended most of its efforts. But those efforts to limit *Siragusa*'s elaboration of the discovery rule to only civil conspiracy or intentional tort claims failed: the *Siragusa* court made no such limitation, nor does legal reason demand such a limitation, as difficulties in identifying tortfeasors can arise in any tort claim. Indeed, the *Siragusa* rule's applicability in professional negligence cases is especially ineluctable as the discovery rule governs such cases not only by judicial decision but also by legislative mandate. *See* NRS 41A.097(2); *see also Libby*, 130 Nev. at 364 (describing NRS 41A.097(2)'s one-year limitation period as "a statutory discovery rule"). So *Siragusa* still stands, and therefore still counsels reconsideration.

Finally, Laura argued that the Court should reconsider its decision because if Rule 10(d) could apply here it would apply here. *See* Pls.' Mot. Recons. Section III.D. IPC argued that "Plaintiffs are unable to rely on NRCP 10(d), the rule concerning substituting parties, because that rule also invokes NRCP 15(c)," such that "Plaintiffs are unable [to] avoid the statute of limitations by relating back their amendment to add or otherwise substitute the IPC Defendants because the Second Complaint was itself untimely and barred." Defs.' Opp'n to Pls.' Mot. Recons. 13. But Laura has already established that whether her claims against Dr. Saxena were subject to a limitations defense affects the validity neither of her complaint against him nor of relation back to

[5] *See generally* IPC Defs.' Reply in Supp. of Mot. Recons. 3 ("Ignoring arguments are concessions to the merits of such arguments.").

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that complaint were the relation-back doctrine's application necessary here. So Rule 10(d) still stands, and therefore still counsels reconsideration.

In sum, many reasons counsel reconsideration of the order granting IPC's motion and dismissing IPC, while none counsel against it. The Court has an opportunity to fix its mistake now. It should take it.

III. CONCLUSION

Laura requests that the Court grant her motion for reconsideration, reconsider its order, and reject dismissal of the IPC Defendants.

DATED this 31st day of May, 2019.

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Kolesar & Leatham, and that on the 31st day of May, 2019, I caused to be served a true and correct copy of foregoing **PLAINTIFFS' REPLY IN SUPPORT OF 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

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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

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 _____

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Kolesar & Leatham, and that on the 27th day of June, 2019, I caused to be served a true and correct copy of foregoing NOTICE OF ENTRY OF ORDER 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 that Court's facilities to those parties listed on the Court's Master Service List.

Mary A Barnes

An Employee of KOLESAR & LEATHAM

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ORIGINAL

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

ORDER DENYING PLAINTIFFS' MOTION TO RECONSIDER

Date: June 5, 2019
Time: 9:00 a.m.

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.

This matter having come before the Court on the June 5, 2019 at 9:00am 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 Bossie, Reilly & Oh, P.C. and Michael D. Davidson, Esq. of Kolesar & Leatham on behalf of the Plaintiffs. The Court, having considered the documents on file, Plaintiffs' Motion for Reconsideration, IPC Defendants' Opposition thereto, and Plaintiffs' Reply, with good cause appearing Orders as follows:

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

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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:

DATED this 21 day of June, 2019.

KOLESAR & LEATHAM

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Approved as to form and content:

DATED this 21st day of June, 2019.

JOHN H. COTTON & ASSOCIATES, LTD.

By: *Did not sign*

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