

## **APPENDIX**

**APPENDIX A - ARIZONA SUPREME COURT  
ORDER DENYING PETITION FOR REVIEW**



**Supreme Court  
STATE OF ARIZONA**

**ROBERT  
BRUTINEL**

**Chief  
Justice**

**ARIZONA  
STATE  
COURTS  
BUILDING**

**1501 WEST WASHINGTON  
STREET, SUITE 402 PHOENIX,  
ARIZONA 85007  
TELEPHONE: (602) 452-3396**

**TRACIE K. LINDEMAN  
Clerk of the Court**

**January 4, 2024**

**RE: BOURNE, et al v BANNER UNIVERSITY**  
Arizona Supreme Court No. CV-23-0185-PR  
Court of Appeals, Division One No. 1 CA-CV 22-  
0588 Maricopa County Superior Court No. CV2019-  
052683

**GREETINGS:**

The following action was taken by the Supreme

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Court of the State of Arizona on January 4, 2024, in  
regard to the above-referenced cause:

**ORDERED: Petition for Review = DENIED.**

**FURTHER ORDERED: Request for Attorneys' Fees  
(Appellee Banner University) = DENIED.**

A panel composed of Vice Chief Justice Timmer,  
Justice Bolick, Justice Lopez and Justice Beene  
participated in the determination of this matter.

Tracie K. Lindeman, Clerk

TO:

Paula Bourne  
Douglas Bourne  
Elizabeth A Petersen  
Bradley W Petersen  
Amy M Wood

**APPENDIXB-ARIZONACOURTOFAPPEALS  
AFFIRMINGHON. ALISON SUE BACHUS'  
VEXATIOUSLITIGANTSAND CASE  
DISMISSAL APRIL 22, 2022 ORDER**

**IN THE  
ARIZONA COURT OF APPEALS  
DIVISION ONE**

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**PAULA BOURNE, et al., *Plaintiffs/Appellants,***

***V.***

**BANNER UNIVERSITY MEDICAL CENTER  
PHOENIX, LLC,  
*Defendant/Appellee.***

**No. 1 CA-CV 22-0588  
FILED 6-29-2023**

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**Appeal from the Superior Court in Maricopa  
County No. CV2019-052683**

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The Honorable Melissa Iyer Julian, Judge

**AFFIRMED**

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COUNSEL

Paula Bourne and Douglas Bourne, Dewey  
*Plaintiffs/Appellants*

Slattery Petersen PLLC, Phoenix  
By Elizabeth A. Petersen, Bradley W. Petersen  
*Counsel for Defendant/Appellee*

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**MEMORANDUM DECISION**

Judge Anni Hill Foster delivered the decision of the Court, in which Presiding Judge Samuel A. Thumma and Judge Randall M. Howe joined.

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**FOSTER, Judge:**

¶1 Plaintiffs Paula and Douglas Bourne appeal the superior court's dismissal with prejudice of their medical malpractice action. For the following reasons, the superior court's decision is affirmed.

**FACTS AND PROCEDURAL HISTORY**

¶2 In February 2019, the Bournes sued Banner University Medical Center Phoenix, LLC ("Banner") for medical malpractice. The suit stemmed from care provided to Paula after a knee surgery where a resident physician ordered an inappropriate dosage of narcotic pain medication. The Bournes alleged negligence and vicarious liability claiming that the dosage caused respiratory failure, impaired vision and other complications. The Bournes were initially represented by an attorney who withdrew, stating

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he was unable to locate or retain an expert that could support causation and differing opinions on case strategy. The Bournes then pursued their case as self-represented parties.

¶3 From the start, the Bournes failed to follow court procedures for prosecuting their case. They emailed letters directly to the superior court accusing their former attorney of unethical and unprofessional conduct. At one point, the Bournes attached email exchanges to a motion for protective order that contained vile, inappropriate, demeaning and insulting communications that Douglas directed at defense counsel. They accused Banner of criminally falsifying its medical records because the records did not contain the same information shared by medical personnel and recorded by Douglas during Paula's hospitalization. Another time, the Bournes interfered with the deposition of a third-party witness, manufactured a discovery problem that did not exist and accused the witness, her employer, Banner and defense counsel of perjury and suppressing evidence favorable to the Bournes.

¶4 Even after being instructed by the superior court on the proper process for filing documents with the court, the Bournes repeatedly filed motions, replies, improper "notices" or "letters" and included exhibits that were: (1) already part of the record (and sometimes hundreds of page)

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- (2) irrelevant to the underlying motions; and
- (3) prohibited by the Arizona Rules of Civil Procedure ("Rule" or "Rules"). The Bournes also repeatedly filed discovery documents with the court rather than simply serving them on the opposing party, as required by the Rules.

¶5 Further, the Bournes accused the superior court of interfering in an alleged criminal investigation at the Arizona Attorney General's Office and claimed the court was biased, prejudiced and would not give them a fair trial, because of the judge's prior employment. The Bournes threatened to file a federal civil rights lawsuit unless the court ruled in their favor. During one oral argument, the Bournes became visibly upset and interrupted defense counsel's presentation to the point that the superior court had to reschedule the hearing. After years of escalating misconduct, the superior court sua sponte scheduled a hearing to determine whether the Bournes should be subject to sanctions for their behavior and whether they should be declared vexatious litigants. The Bournes' misconduct, including a refusal to cooperate in preparing a joint statement of discovery dispute and a declaration by the Bournes that they would no longer participate in the discovery process, severely hampered the ability to resolve the case.

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¶6 Following this order, Banner moved to declare the Bournes vexatious litigants and requested sanctions. On May 18, 2021, the superior court held a six-hour evidentiary hearing at which Douglas admitted he would not allow Paula to be examined under Rule 35 until Banner admitted that it was negligent. Douglas also admitted he had failed to provide requested documents and audio recordings. The Bournes further stated they would not participate in discovery, and it was also revealed that Douglas sent copies of medical records to either a third-party witness or her attorney before her deposition in direct contravention of the Rules.

¶7 After the evidentiary hearing, in a detailed 38-page ruling, the superior court outlined approximately two years of escalating misconduct by the Bournes that resulted in the superior court's finding that they obstructed and delayed the discovery process and the case. The court declared the Bournes vexatious litigants under A.R.S. § 12-3201 and imposed sanctions due to repeated violations of the Rules but stopped short of dismissing the case. The court required the Bournes to: (1) seek leave before making filings; (2) to cease accusing Banner, its counsel, witnesses, or the court of being liars or any other pejorative descriptions;

(3) to limit objections at deposition to "form" or "foundation;" and (4) permitted Banner to seek

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further relief from the court if the Bournes failed to appear for deposition. The court admonished the Bournes and warned that if they violated the order the court could impose further sanctions, including dismissal of their complaint with prejudice.

¶8 In the wake of the vexatious-litigant ruling, the Bournes' failure to comply with the Rules and the court's orders continued. After being fully briefed, the court denied the Bournes' motion for summary judgment, concluding there were genuine issues of material fact yet to be resolved. Around this same time, Banner moved for the sanction of dismissal, alleging the Bournes again refused to sit for depositions and refused to allow their experts to be deposed. At oral argument on the motion, Douglas repeatedly attempted to argue the previously denied summary-judgment motion, which was not at issue. To provide the Bournes with the opportunity to pursue their case on the merits, the court granted the Bournes' request to expand the time for oral argument and permitted both parties to submit simultaneous supplemental briefing.

¶9 The Bournes, though, took this opportunity to file a brief that included a 128-slide PowerPoint presentation, as an exhibit, that was narrated by Douglas and lasted 3 hours and 48 minutes. Many of the slides focused on the merits of the claims against Banner, which were not at issue, repeated arguments and pointed out

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evidence already brought to the superior court's attention on previous occasions. The slides also continued personal attacks against defense counsel. Additionally, in advance of an evidentiary hearing on Banner's motion for sanctions, the Bournes filed applications seeking leave to file: (1) a request for court enforcement to "deny" Banner's exhibits, contending they were criminally falsified; and (2) an objection to the upcoming evidentiary hearing. The Bournes accused Banner, its counsel, and her colleagues of committing "potentially a very serious Cybercrime" by "crashing" the Bournes' Dropbox account.

¶10 The day before the scheduled evidentiary hearing, Douglas contacted the court, yelled at court staff to cancel the hearing and then hung up. The Bournes then filed a "notice cancellation" of the evidentiary hearing, argued their position regarding the motion for sanctions, accused defense counsel of committing criminal acts, including threatening them and demanded criminal prosecution. The Bournes declared the hearing cancelled, demanded Banner's alleged criminal falsification of medical records be addressed, and asked that the Department of Justice, Federal Bureau of Investigation and Phoenix Police Department move forward with a joint criminal investigation.

¶11 Despite having filed their notice of "canceling" the hearing, the Bournes appeared at the evidentiary hearing. The superior court

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admonished the Bournes to comport themselves in a professional manner with staff. Douglas admitted the failure to timely disclose exhibits to defense counsel. The court reviewed exhibits demonstrating the Bournes had not yet been deposed and would not cooperate in scheduling depositions. The court also learned that the Bournes refused to follow court orders at expert depositions and demonstrate basic, civil comportment by refraining from name-calling and personal attacks.

¶12 During the hearing, the Bournes repeated personal attacks against defense counsel. The court noted that it had attempted to move the case forward to trial and had set a jury trial date, but that the Bournes had "continued to obstruct the path towards trial and foment conflict." The court concluded that based on the Bournes' willful disregard for the Rules, court orders and refusal to litigate in good faith, sanctions lesser than dismissal had been ineffective. The superior court also found that the Bournes' refusal to focus on discrete issues permeated their filings and that presentation at hearings had made "conducting the business of the Court and adjudicating [the] case on the merits virtually impossible."

¶13 Ultimately, the superior court dismissed the Bournes' complaint with prejudice as a sanction for discovery violations under Rule 37. The 33-page ruling again meticulously detailed the

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conduct warranting imposition of the sanction of dismissal. The court entered final judgment for Banner and ordered the Bourne's to pay Banner's taxable costs.

¶14 This Court has jurisdiction pursuant to A.R.S. §§ 12- 120.21(A)(l) and 12- 2101(A)(l).

**DISCUSSION**

¶15 A trial court's order for dismissal based on discovery violations is reviewed for an abuse of discretion. *Rivers v. Solley*, 217 Ariz. 528, 530, if 11 (App. 2008).

¶16 Preliminarily, it is noted the Bourne's violated appellate court rules by failing to set forth relevant facts, identify discernible issues, develop arguments and cite authorities or relevant parts of the record in their briefs. *See* Ariz. R. Civ. App. P. 13(a)(5)-(7). This Court has attempted to discern their arguments as best it can and considers only adequately supported arguments. *See In re Aubuchon*, 233 Ariz. 62, 64-65, r 6 (2013). Arguments unsupported by law and fact are waived. *Id.*

I. This Court lacks jurisdiction over the denial of summary judgment.

¶17 The Bourne's argue the superior court erred in denying their motion for summary judgment. An order denying a motion for summary judgment is not appealable and generally is not subject to review from an appeal from a final

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judgment. *Fernandez v. Garza*, 93 Ariz. 318, 320 (1963); *Navajo Freight Lines, Inc. v. Liberty Mut. Ins. Co.*, 12 Ariz. App. 424, 427-28 (1970). When an appellate court grants review of a denial of summary judgment, it does so when the superior court has denied the motion on a point of law. See *Strojnik v. Gen. Ins. Co. of Am.*, 201 Ariz. 430, 433, ,r 11 (App. 2001).

¶18 Here, the superior court denied the Bournes' motion for summary judgment because it found a genuine factual dispute whether Banner's treatment fell below the standard of care. Because the superior court did not deny the motion on a point of law this Court lacks jurisdiction to review the denial of summary judgment. *Id.*

**II. The vexatious-litigant ruling was supported by the record.**

¶19 The Bournes state the superior court erred in declaring them vexatious litigants. The superior court may designate a litigant vexatious under A.R.S. § 12-3201 and through its inherent authority. See *Madison v. Groseth*, 230 Ariz. 8, 14, ,r 17 (App. 2012). Under A.R.S. § 12-3201, a self-represented litigant may be designated a vexatious litigant if the court finds he engaged in vexatious conduct. A.R.S. § 12-3201(C). Vexatious conduct includes conduct that unreasonably expands or delays proceedings, abuses discovery, and involves the "[r]epeated filing of documents or requests for relief

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that have been the subject of previous rulings by the court in the same litigation." A.R.S. § 12-3201(E). Once declared vexatious, a self- represented litigant may not file pleadings, motions, or the like without previous court approval. A.R.S. § 12-3201(B).

¶20 Aside from the conclusory statement that the vexatious- litigant ruling is unconstitutional, the Bournes fail to develop any argument providing a basis to vacate the ruling. For this reason, this argument is waived. *In re Aubuchon*, 233 Ariz. at 64-65, ¶ 6. Notwithstanding waiver, the Bournes seem to believe that because the superior court at one point early in the litigation stated that Plaintiffs" prosecuted this case to the best of their abilities," they were not-and could not be-vexatious litigants. The Bournes' belief ignores the conduct they engaged in after the court made this statement, conduct that provided the basis for the later vexatious-litigant ruling. Also, it ignores repeated direction and caution from the court on their behavior and conduct in prosecuting the case. The court meticulously documented the conduct it considered vexatious in its ruling, including the Bournes' unreasonable expansion of the proceedings, discovery abuses, repeated filing of the same documents, and requests for relief that the court had already ruled on. The superior court's ruling acknowledged that the Bournes were given too much leeway and this Court agrees. The record supports the court's ruling.

*Appendix B***III. The Bournes presented no basis to vacate the dismissal order.**

¶21 The Bournes assert the superior court erred in dismissing their complaint out of retaliation for filing several complaints with the Arizona Commission on Judicial Conduct and because the judge who entered the dismissal order had an alleged conflict of interest. The court, however, expressly stated that it was not sanctioning the Bournes for any contact they had with law enforcement or other disciplinary authorities or entities, such as the State Bar or the Arizona Commission on Judicial Conduct. The Bournes have made no factual showing to the contrary. Moreover, the record amply supports the court's ruling.

¶22 The record clearly supports the superior court's dismissal of the complaint as a sanction under Rule 37, which permits dismissal for the failure to comply with discovery orders and the failure to provide timely disclosures. Ariz. R. Civ. P. 37(b)(2)(A)(v), 37(c)(3)(C). Dismissal as a sanction requires due process, including an evidentiary hearing when indicated. *Rivers*, 217 Ariz. at 531, ¶ 13. The court must make an express finding that a party has obstructed discovery and the court must consider and reject lesser sanctions. *Id.*

¶23 Here, before dismissing the Bournes' claims, the record shows the superior court held two evidentiary hearings on sanctions. It initially

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imposed lesser sanctions to allow the Bournes to pursue their case. But, in short order, the Bournes continued the behavior that resulted in sanctions, willfully disobeyed the superior court's orders and willfully obstructed discovery. The court did not abuse its discretion by dismissing the complaint under these circumstances.

¶24 On the allegation of conflict of interest, the Bournes fail to develop any viable argument and thus waive the allegation; however, this Court will address the issue because our citizens deserve confidence in the integrity of the judiciary. *In re Aubuchon*, 233 Ariz. at 64-65, ¶ 6. Baseless personal attacks do not constitute evidence. Courts deal with facts and law, both of which have been absent in the Bournes' prosecution of their case. Instead, the Bournes have largely relied on unsupported allegations, invective, insults and manipulation to achieve the result they desire. These tactics have no place in the courts or justice system.

¶25 The Bournes were provided every opportunity- over and above that normally provided-to have their dispute heard in a court of law. They squandered that opportunity and instead focused on baseless allegations against every person involved in this case. They provided no facts or law to support their allegations. For these reasons there is no basis to vacate the dismissal order.

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**IV. The judgment of costs was appropriate.**

¶26 Finally, the Bournes contend the superior court erred in granting Banner judgment and awarding Banner costs, arguing the judgment is "null and void" because it is based on the previous dismissal order entered by a judge who allegedly had an unconstitutional judicial conflict of interest. The Bournes fail to develop any argument providing a basis to overturn the judgment or award of taxable costs and thus waive the same. *Id.* Costs to the prevailing party are mandatory under A.R.S. § 12-341.

**CONCLUSION**

¶27 For the foregoing reasons, the superior court's ruling is affirmed. Costs and fees are awarded to Banner upon compliance with Ariz. R. Civ. App. P. 21.



AMY M. WOOD • Clerk of the Court FILED: AA

**APPENDIX C - SUPERIOR COURT ORDER  
ADJUDICATING BANNER'S FACTUAL  
ADMISSIONS AND DENYING  
BANNER'S MOTION TO DISMISS**

**SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY**

Clerk of the Superior Court  
\*\*\* Electronically Filed \*\*\* 10/09/2020

**CV 2019-052683**

**HONORABLE THEODORE CAMPAGNOLO**

**PAULA BOURNE, et al**

**v.**

**BANNER UNIVERSITY MEDICAL CENTER  
PHOENIX, LLC**

**MINUTEENTRY**

An Oral Arguments Hearing was held on September 21, 2020 in regard to the following Motions, of which the Court has considered the relevant portions thereof:

1. Banner Health's Motion to Dismiss with Prejudice for Failure to Prosecute and Failure to

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Produce a Preliminary Affidavit from a Qualified Expert, filed on March 18, 2020;

2. Plaintiffs' Motion for Sanctions, filed on April 1, 2020;

3. Plaintiffs' Motion for Sanctions for Violating Discovery, Case Prosecution and Due Process *Rights*, filed on June 17, 2020

4. Plaintiffs' motion for Sanctions for BUMCP's Repetitive Lies (In Anticipation of 6-24-20 Status Conference, filed on June 21, 2020;

5. Plaintiffs Notice of Filing Clearly Identified Oral Argument Exhibits for Judge Campagnolo with Requested John Gilliam MD's Still Coming, filed on September 23, 2020;

6. Plaintiffs Notice of Filing Oral Argument Requested Clearly Identified Hospital Record Where Banner Doctors Made Opioid Overdose & Acute Hypoxic Resp. Failure Admissions and Clearly Identified Anoxic Brain Injury and Bilateral Blindness Diagnosis, filed on September 24, 2020.

7. Plaintiffs Notice of Filing Highly Qualified Standard of Care Expert Witness, John Gilliam, MD Curriculum Vitae and Report to the Court, filed on September 28, 2020. The Court has reviewed and considered the relevant

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portions of the above Motions, the respective Responses and Replies, the exhibits pertaining to the foregoing pleadings, other relevant filings, the oral arguments, and the applicable law. Plaintiffs filed a request for further oral arguments. The Court has already heard oral arguments on these issues, and the Court sees no further need for additional oral arguments. *See* Maricopa County Local Rule 3.2(d).

**The Motions for Sanctions**

All three of Plaintiffs' Motion for Sanctions were filed under Rule 11 of the Rules of Civil Procedure. Rule 11(c) requires that certain procedural steps be taken before a motion for sanctions is filed. None of the Motions for Sanctions showed that Plaintiffs followed the specific requirements under Rule 11(c)(2) and (c)(3)(C) & (D). From a procedural standpoint, therefore, Plaintiffs' Motions for Sanctions are defective.

Even though the Court cannot rule on the Motions for Sanctions on procedural grounds, the Court finds that, even if they were properly filed, they do not violate Rule 11 on a substantive basis. Rule 11 pertains to every "pleading, written motion and other document filed with the court or served."

There is no question that Plaintiffs believe that Defendant's counsel filed frivolous pleadings. Plaintiffs are not attorneys, and they are not used to litigating cases with attorneys on the other side. Nonetheless, the Court has reviewed the Motion to Dismiss and the Responses to Plaintiffs' Motion, and finds that

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Defendant's pleadings were not filed or prosecuted frivolously or for any improper purpose.

Defendant's counsel stated in writing that Plaintiffs' claim was without merit, and that Defendant would have to file a Motion to Dismiss if Plaintiffs continued to pursue their claim. Plaintiffs took this as an improper threat. Defendant's counsel believed that Plaintiffs' claim could not be maintained, because of the lack of a preliminary affidavit by a medical expert witness. Defendant's statement was not an improper threat, but an attempt to resolve the matter before a motion to dismiss would be filed. Based on the evidence as viewed by Defendant's counsel, they believed that there were grounds to file a motion to dismiss. The Court finds that the filing of the Motion to Dismiss was not improper, and was allowed by the facts and law.

Plaintiffs also claimed that Defendant's counsel violated Rule 11 by including in their pleadings, mostly in regard to the Responses to the Motion for Sanctions, what Plaintiffs considered to be untruthful statements about the strength or weakness of Plaintiffs' case. Defendant's pleadings in this regard were largely based on documents that Plaintiffs had disclosed to Defendants in discovery and/or attached to Plaintiffs' pleadings. Many of these documents were email communications from Plaintiffs' prior counsel about medical expert witnesses. Once those communications were disclosed by Plaintiffs, the attorney-client privilege as to those communications was waived. Defendants' allegations and conclusions based on those email communications were not improper.

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Plaintiffs also contended that Defendants' counsel refused to participate in discovery, and refused to comply with Rule 16(b) and (c), which resulted in Plaintiffs being unable to prosecute their case. Plaintiffs contended that this amounted to a violation of due process. Defendant's counsel admitted in oral arguments that they refused to comply with Rule 16, based upon a misinterpretation of the Court's Minute Entry of November 8, 2019. The Court admonished Defendant's counsel. The Court also informed Defendant's counsel that a motion for clarification may have been the appropriate action to take, rather than refusing to comply with Rule 16. Because this did not involve the filing or service of any pleadings, Defendant's inaction did not violate Rule 11.

It appears that this same misinterpretation of the Court's Minute Entry resulted in Defendant not participating in discovery. Again, Defendant should have filed an appropriate pleading to clarify the status of discovery as soon as the issue arose. Defendant did raise this issue at a hearing on June 24, 2020, at which time the Court stayed discovery, except as to certain written documents. Although the request should have been made sooner, the failure to do so was not a Rule 11 violation.

Plaintiffs correctly state that procedural due process entitles them to notice and an appropriate hearing. Plaintiffs have not been denied due process. They have received notice and appropriate hearings on the Motions. Due process includes the ability for both sides to seek

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pre-trial dispositions that might preclude a trial. This includes, for example, the filings of Motions to Dismiss and Motions for Summary Judgment. If such pleadings are filed, the opposing party has the ability to provide a response before the Court rules. That has occurred in this case.

Discovery disputes and Rule 16 disputes are part of the legal process. These sometimes cause delays. As long as the parties have their right to notice and appropriate hearings on these disputes, due process has not been denied. Further, no scheduling order has yet been entered, which means that any pre-trial deadlines have not even begun, yet.

Therefore, to the extent that Plaintiffs arguments pertained to the filing or service of written pleadings, the Court finds that the challenged actions or inactions of Defendant's counsel have not risen to the level of Rule 11 sanctions.

**Defendant's Motion to Dismiss**

Defendant's Motion seeks dismissal for two reasons. First, Defendant contends that dismissal is warranted, because Plaintiffs have failed to prosecute their case. Second, Defendant seeks dismissal on the ground that Plaintiffs have not complied with A.R.S. §§12-2603 and 12- 2604.

**Allegation of Failure to Prosecute**

Plaintiffs were represented by counsel until October 16, 2019. Plaintiffs' counsel was unable to locate or retain

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an expert witness on the standard of care. Thereafter, Plaintiffs attempted to retain an expert witness. The Court then ordered that the parties did not need to abide by the requirements of Rule 16(b) and (c) until December 2, 2019. Between December 2, 2019 and March 2, 2020 (the dismissal deadline), the evidence showed that Plaintiffs attempted to work with Defendant's counsel to submit a joint report and

proposed scheduling order. Based upon Defendant's counsel misinterpretation of the Court's Order, as discussed above, Plaintiffs' efforts were frustrated when Defendant's counsel refused to cooperate. The Plaintiffs designated Dr. John Gilliam on March 5, 2020. The evidence showed that Plaintiffs have prosecuted this case to the best of their abilities.

**The Preliminary Affidavit**

Defendant contended that Plaintiffs failed to comply with A.R.S. §§12-2603 and 12-2604 for a number of reasons. Defendant contended that Dr. Gilliam, Plaintiffs' designated standard- of-care expert witness, does not qualify to provide the statutory expert testimony.

Defendant contended that Dr. Gilliam's affidavit is defective, because:

1. The Affidavit does not provide the information required by §12-2603(B)(1)-(4);
2. Dr. Gilliam is not board certified in the same fields as any of the health care professionals in this case;

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3. Dr. Gilliam does not have experience with the nursing standard of care; and
4. Dr. Gilliam has not practiced in the same specialties as the health care professionals in this case during the last year or at any time.

Defendant also contended that Dr. Gilliam's Affidavit does not name the person or persons that allegedly committed negligence. Plaintiffs sued Defendant, not the individual health care professionals. Defendant is correct that Dr. Gilliam is not an expert on nursing standard of care, and Plaintiffs have presented no expert testimony as to nursing standard of care.

It is clear from the pleadings and Dr. Gilliam's Affidavit that Plaintiffs' only target in this case was Dr. Ryan Shelhamer, who was a second or third-year resident at the time of the incident. Dr. Shelhamer was Defendant's contract employee. He was not licensed as a medical doctor, and he was not board certified in any specialty. The Court finds that the Affidavit sufficiently complies with §12-2603(B)(1)-(4) as to Dr. Shelhamer.

Defendant contended that, because Dr. Shelhamer was not licensed as a medical doctor, Plaintiffs were required to designate an expert who practiced in the same specialty as Dr. Shelhamer's supervising physician. Dr. Gilliam's Affidavit alleged that Defendant fell below the standard of care when Dr. Shelhamer ordered an overdose of morphine for Ms. Bourne during her knee surgery post-operative stay at the hospital. Dr. Gilliam's affidavit does not allege that the knee surgery performed by Dr. Ahmed was negligent. Although Dr. Shelhamer was part of

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Dr. Ahmed's surgical team, the evidence is clear that Dr. Ahmed was not supervising Dr. Shelhamer in regard to ordering morphine. Therefore, there is no basis that Plaintiffs' expert should be board certified or specialize in orthopedic surgery.

Defendant also contended that Plaintiffs' expert must have worked in the following specialties, including board certification in the following fields: pain management akin to Dr. Kurt Lundberg, internal medicine, akin to Dr. Pacheco, and/or pharmacology.

Dr. Lundberg met with Mrs. Bourne on February 12, 2018, approximately two weeks before the surgery, and recommended that morphine and/or dilaudid should be prescribed after the surgery, and that dilaudid should be prescribed after her discharge from the hospital. It appears that was Dr. Lundberg's last involvement with Mrs. Bourne. Dr. Lundberg had no involvement in prescribing the overdose of morphine that was given to Mrs. Bourne. Plaintiffs do not allege that Dr. Lundberg was negligent, so there is no requirement for Plaintiffs to designate a specialist in pain management.

The only other physicians who were involved on February 28, 2018, the day of the morphine overdose, were Dr. Duran and Dr. Pacheco, both of whom are specialists in internal medicine, one of whom has a subspecialty in endocrinology. Both are employed by Defendant as hospitalists. Defendant presented a Declaration from Dr Pacheco. Dr. Pacheco avowed that:

1. Mrs. Bourne's morphine medications were made pursuant to consultation with the pharmacy, and that

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they were “appropriate;”

2. Dr. Shelhamer was a resident who was practicing under unidentified attending physicians;
3. Dr. Shelhamer did not make final decisions regarding Mrs. Bourne’s pain management; and
4. The Narcan dose ordered for Mrs. Bourne on March 1, 2018 was appropriate.

Dr. Pacheco’s Declaration is noteworthy for what it does not say. In the medical charts, there are notes that Dr. Duran and Dr. Pacheco ordered small amounts of morphine for Mrs. Bourne. Plaintiffs avowed at the oral arguments hearing that they were not challenging those dosages. However, Dr. Shelhamer was the only health care professional that prescribed 30 milligrams of morphine twice on February 28, 2020, which caused the overdose. In his Declaration, Dr. Pacheco does not avow that he was the supervising attending physician for Dr. Shelhamer. In fact, Dr. Pacheco’s notes seem to defer to Dr. Ahmed’s ortho team for pain management, even though there is no indication that Dr. Pacheco consulted with Dr. Ahmed.

Dr. Pacheco’s Declaration is inconsistent with the evidence, unless he was avowing under oath that an overdose of morphine was an “appropriate” medication for Mrs. Bourne. There is nothing in the Declaration or in the medical charts that indicate any supervising attending physician approved or signed off on the two doses of 30 milligrams of morphine. The evidence

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indicates that Dr. Shelhamer was acting on his own authority in prescribing the overdose.

There is no dispute that Mrs. Bourne received an overdose of morphine. The words "overdose" and "over sedation" are repeated many times in the medical records by various health care professionals. The existence of and the dangerousness of the morphine overdose was addressed by Dr. Ahmed when he met with Plaintiffs in Mrs. Bourne's hospital room on or about March 2, 2018. Defendant's counsel argued that the term "overdose" has a different and less onerous meaning to doctors than it does to lay people. Neither Dr. Ahmed nor the other personnel expressed this difference to Plaintiffs in the recordings that Mr. Bourne made, or in the medical records.

The argument that Dr. Shelhamer was operating without approval is highlighted by Mr. Bourne's recording of Plaintiffs' conversation with Dr. Shelhamer on or about March 2, 2018. It was clear from listening to the recording that Dr. Shelhamer had no understanding that Mrs. Bourne did not take prescribed narcotics. In fact, Dr. Shelhamer believed the 60 milligrams of morphine should have been appropriate based on his misreading of Mrs. Bourne's medical history. In Mr. Bourne's recording of Dr. Ahmed, the latter noted that such a high level of dosage should never be given to one who was not used to taking narcotics. Dr. Ahmed clearly was aware that Mrs. Bourne did not have a history of taking narcotic medications. The recording also indicated that Dr. Ahmed was taken aback by the dosage that was given to her.

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Dr. Pacheco's Declaration and the medical charts show that pain management may not have been within his specialty. It appears from the evidence that Dr. Lundberg or Dr. Ahmed was responsible for pain management. However, there is no indication in the medical records or Dr. Pacheco's Declaration that either of them was consulted by Dr. Shelhamer or Dr. Pacheco on February 28. Dr. Pacheco's Declaration stated that there had been consultation with the pharmacy. It is unclear who spoke with the pharmacy, or which pharmacist was consulted. Assuming there was such a conversation, it is unlikely that pharmacy would have recommended an overdose of morphine.

It is clear that Dr. Shelhamer had no specialty, because he was not even licensed to practice medicine. If a health care professional is acting outside of his or her specialty, then the need for a preliminary affidavit by one in the same specialty is absent. *Baker v. University Physicians Healthcare*, 231 Ariz. 379, ¶¶12-13 (2013). Plaintiffs' negligence claim is that Defendant, through Dr. Shelhamer, prescribed an overdose of morphine. The Court finds from the totality of the evidence that the issues of pain management and overdose amounts were outside of the specialty of Dr. Pacheco or Dr. Duran, and were certainly outside of any possible specialty of Dr. Shelhamer.

Dr. Gilliam is a specialist in opioid overdoses, which is an issue in this case. He is board certified in addiction medicine. None of the health care professionals in this case claims any specialty in this field. For the reasons stated above, Dr. Gilliam is qualified under §§12-2603 and 12-2604, and his Affidavit satisfies the statutory

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requirements. Whether or not Plaintiffs will be able to prove causation is a wholly different issue, which may be addressed through a Rule 56 proceeding or at trial.

**Expert Opinion Testimony Issues**

It does not appear that a Notice was filed under §12-2603(A). Nonetheless, Plaintiffs filed their designation of an expert witness. The Court notes that there may be an alternative basis to allow Dr. Gilliam's testimony under the doctrine of *res ipsa loquitur*. Although Mr. Bourne raised the issue during oral arguments, it was not specifically raised in the pleadings. The Court, therefore, is not ruling on this issue. The Court only mentions it as an aside.

This case is unlike the usual malpractice case, in which standard-of-care evidence is needed to interpret medical records and practices. In this case, there are admissions by Defendant's personnel that Mrs. Bourne received a morphine overdose that resulted in adverse effects to Mrs. Bourne, requiring her to be transferred to the intensive care unit. These admissions are contained not only in the medical records, but in the recordings made by Mr. Bourne of the health care professionals. The recordings are admissible evidence. Dr. Ahmed's notes in the medical records discuss the meeting in Mrs. Bourne's hospital room on March 2, 2018, in which the overdose was discussed. While the notes are not incorrect, they do not contain all of the admissions that were contained in the recordings.

The recording of Dr. Shelhamer only amplifies the

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circumstances surrounding the overdose. Dr. Pacheco's Declaration does not even mention the overdose, and there is no statement from him or anyone else in Defendant's employ that hospital guidelines encourage or recommend morphine overdoses in this type of case. A claim of *res ipsa loquitur* is not precluded in a medical malpractice case. *Sanchez v. Old Pueblo Anesthesia, P.C.*, 218 Ariz. 317, ¶¶11-14 (App. 2008).

IT IS ORDERED that Plaintiffs' Motion for Sanctions, filed on April 1, 2020; Plaintiffs' Motion for Sanctions for Violating Discovery, Case Prosecution and Due Process Rights, filed on June 17, 2020; and Plaintiffs' motion for Sanctions for BUMCP's Repetitive Lies (In Anticipation of 6-24-20 Status Conference, filed on June 21, 2020, are denied.

IT IS FURTHER ORDERED that Banner Health's Motion to Dismiss with Prejudice for Failure to Prosecute and Failure to Produce a Preliminary Affidavit from a Qualified Expert is denied. Plaintiffs' Affidavit applies to Defendant only as to Dr. Shelhamer, and not to the hospital's nursing staff.

IT IS FURTHER ORDERED that the parties shall conduct their Rule 16(b) early meeting immediately, and shall file a Joint Report and submit a proposed Scheduling Order to the Court no later than October 30, 2020.

IT IS FURTHER ORDERED that the discovery stay entered on June 24, 2020 is lifted.

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IT IS FURTHER ORDERED that any requested relief that was not granted above is denied.

**APPENDIX D - JOHN S. GILLIAM, MD LETTER  
TO THE COURT**

Saturday, September 26, 2020

RE Patient: Paula Rae Bourne (DOB: 5/8/1955) To

Whom It May Concern,

I have been asked by Plaintiffs representative to further comment on the case involving Mrs. Paula R. Bourne regarding events during a hospitalization at Banner University Medical Center (BUMC) during which she suffered severe hypoxic brain injury on or about March 1, 2018.

I have also been asked to explain my credentials to verify my expertise in rendering an expert opinion on this case and I will be happy to provide the Court with my Curriculum Vitae for that purpose. To summarize, I have been a career Emergency Department (ED) Physician for 30 years serving over two decades at a Midwest Tertiary Referral Center for Spine and Neurological Trauma as well as a General Hospital Emergency Department on Trauma call where I attended patients suffering from overdoses of all kinds including innumerable opioid overdose cases. I have extensive training in the effects of opioids and other mind-altering substances as a Board- Certified Addiction Medicine Physician. I also hold certification as a Medical Review Officer which provides additional training in interpretation of drug screening and application of the test results. I have also completed the COLA

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Laboratory Director Course for additional training in the laboratory procedures used in evaluating cases involving ingestion of opioids and other sedative drugs. I currently work for the Federal Government as an Emergency Department Physician with 10 years tenure. I am thoroughly qualified to evaluate this case, but I question why any expertise is required. I find it axiomatic that there can be no expert of any kind who can make a convincing argument that it could ever be acceptable under any imaginable circumstances for BUMC to admit a patient for routine knee surgery after which the patient inadvertently overdosed on opioids to the point of respiratory suppression causing severe oxygen deprivation and then fail to provide resuscitation in a timely enough fashion to rescue the patient from permanent severe anoxic brain injury with profound resulting permanent disability. This can never be acceptable medical practice under any conditions as I am certain that any of our friends and neighbors serving on a jury would easily appreciate. Furthermore, the case presents no specific questions that would require expert testimony from an Orthopedic Surgeon since none of the issues that arise in this case involve any technical matters related to the surgical procedure itself.

In my first communication to the court in my letter dated March 5, 2020, I made reference to what I called "records that appear to have been altered." I would like to clarify my position on this matter by referencing a portion of the medical record in this case annexed hereto as APPENDIX "A" which are

1. 6:04 MST - 0.02 mg. dose 1x only. 1/100th of a full adult opioid reversal dose and 1/5th of a pediatric reversal dose. Prescribed by Dr. Ryan Shelhamer.
2. 21:22 MST - 0.4 mg. dose 15 hours "*too late*" for prevention of permanent injuries by Rapid Response.
3. 22:00 MST - MARCH 3, 2018 (ICU)  
20.0 mg. enormous volume, slow drip, corrective opioid poisoning, IV. infusions.

**MARCH 2 2018, ICU  
DOCTOR'S MORPHINE DOSING  
ADMISSION ARIZONA SUPREME COURT  
APPENDIX B, AT PAGE 47**

DR. RYAN SHELHAMER: "Yeah. Yeah. No. *I agree. It was -- it was too much together. I -- I agree with that. And that's what I had said to you yesterday morning.*"

See Appendix V, post-surgical patient room fentanyl missing, never found, and or administered. Banner provided no record evidencing otherwise. "R.S." 90 mg. opioid poisoning instead (72a). Extreme negligence evidenced.

**BANNER DISCHARGE DIAGNOSES  
ARIZONA SUPREME COURT APPENDIX C**

Poisoning by opioids, opioid overdose, cognitive

changes, anomic brain injury (Tanzid Shams, MD, Professor and Director of Neurology). cognitive memory decline, acute kidney injury, acute kidney failure, acute respiratory failure with hypoxia, toxic encephalopathy, tremors, acidosis, enlarged heart, PTSD (severe), Blind both eyes – recheck Banner failed vision test- lack of oxygen killed both right and left optic nerves, irreversible. Mark Rummel, highly qualified and regarded Ophthalmologist, diagnosed on March 1, 2018, Banner causing Paula Bourne's anoxic brain injury and permanent blindness.

Dismissing this case was a disgraceful abuse of the Arizona and United States Judicial System. The Arizona Superior Court, Arizona Court of Appeals and Arizona Supreme Court allow Banner University Medical Center Phoenix to get out of review of justice, legal, criminal, and civil accountability, preventing Banner University Medical Center Phoenix from legally paying for causing egregious permanent disabilities and damages on March 1, 2018, to admissions victim, Paula Bourne, in this Medical Malpractice admissions case.

#### **REASONS FOR GRANTING THE PETITION**

FIRST, it is of national importance that our United States Supreme Court stop (reverse) this allowed (admission) medical malpractice standard-of-care. Evidenced morphine poisoning your patient, leaving them in that condition for more than 15 hours, and as

**APPENDIX E - REVERSAL AGENT DIRECTIONS  
FURNISHED BY JOHN GILLIAM, MD  
Naloxone for Treatment of Opioid Overdose**

**2. DOSE**

One US approved drug product label states that, in the absence of narcotics, naloxone exhibits essentially no pharmacologic activity (IMS, 2001). A small study including volunteers receiving 24 mg/70 kg did not demonstrate toxicity (Hospira, 2006). Naloxone has been used to reverse over 10,000 opioid-related overdoses since initial use of the drug in the US (Wheeler, 2012). Advocates insist that naloxone is safe and can be administered with minimal side effects other than those associated with opiate withdrawal (Massatti, 2013).

There are variations in the recommended doses with the British National Formulary advises 0.8- 2 mg boluses, repeated as necessary up to 10 mg for adults ( $10 \mu\text{g}/\text{kg}$  followed by  $100 \mu\text{g}/\text{kg}$  boluses for children), and Poisindex suggesting

0.4-2mg boluses. The dose of naloxone is influenced by the dose of opioid ingested or injected. Extremely high doses (up to 5.4 mg/kg boluses and 4 mg/kg/h infusions) of naloxone have been given to non-opioid dependent subjects without any reported adverse effects (Clarke et al., 2005). Nine patients with narcotic analgesic overdosage recovered consciousness immediately after intravenous

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injection of 0.4-1.2 mg of naloxone given in divided doses over 3 minutes (Evans et al., 1973).

The major side effect associated with naloxone is the precipitation of acute withdrawal symptoms in chronic opioid users, provoking an often violent reaction. Acute withdrawal symptoms also include agitation, nausea, vomiting, piloerection, diarrhea, lacrimation, yawning, and rhinorrhea. These are not generally life threatening (Chiang and Goldfrank, 1990).

Reported rates vary widely from 7-46% with 2-4 mg boluses (Clarke et al., 2005). Naloxone dose and route of administration can produce variable intensity of potential adverse reactions and opioid withdrawal symptoms: intravenous administration and higher doses produce more adverse events and more severe withdrawal symptoms in those individuals who are opioid dependent (Wermeling 2015). Withdrawal symptoms induced by naloxone administration tend to dissipate in a period of 30-60 minutes due to the relatively short half-life of naloxone (Ngai et al., 1976; Dowling et al., 2008).

In a study of 453 patients treated with naloxone, only 6 (1.3%) suffered complications such as cardiac arrest, pulmonary edema, and epileptic seizures, with the primary cause of cardiorespiratory complications from naloxone being a massive release of catecholamines (Osterwalder 1996). These risks, although small, warrant the

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cautious use of naloxone and adequate monitoring of the cardiorespiratory status of the patient after naloxone administration where indicated. Kerr et al. compared safety and effectiveness of a specially prepared concentrated naloxone formulation (2 mg/mL) given via the IN versus IM routes in a randomized, controlled, open-label trial. Eighty three received 1 mg/0.5 mL into each nostril (2 mg total) and 89 patients received 2 mg/mL IM. The authors concluded that a low adverse event rate was observed in both arms (Kerr et al., 2009).

### 3. TIMING

The logic behind naloxone take-home programs is that when it comes to reversing an opioid overdose, time matters. It has been well reported that many overdoses are witnessed by individuals who would be willing to intervene and provide assistance (Clark et al, 2014, Wakeman et al., 2009).

IV administration can provide rapid and relatively higher exposure to naloxone in an emergency compared with routes requiring drug adsorption. Routes of administration having an absorption phase, depending upon the dose, may provide a slower onset of revival that may be better tolerated during the recovery period. New products with an absorption phase adequate to reverse the overdose, but not providing peak levels of naloxone similar to an IV dose are likely to be successful in the prehospital treatment context. A balance should be struck between rapidity of opioid

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reversal versus frequency and intensity of adverse reactions and opioid withdrawal symptoms (Wermeling 2015). Tremor and hyperventilation associated with an abrupt return to consciousness has occurred in some patients receiving naloxone for opiate overdosage.

Naloxone has an onset of action within 1-2 minutes following IV administration and within 2-5 minutes following subcutaneous or IM administration. After 5 minutes, the naloxone dose is repeated if the person is not awakening or breathing well enough (10 or more breaths per minute). A repeat dose may be needed 3-90 minutes later if sedation and respiratory depression recur (Wermeling 2015). This is because most opioids (heroin, morphine, fentanyl) used by addicts have relatively long half-lives, whereas naloxone has a half-life of only 30 min (White and Irvine, 1999). It is necessary to monitor the patient.

Naloxone administration by intranasal and intramuscular administration has been shown to be safe and effective with minimal training (Hawk et al., 2015). A study compared the pharmacokinetic properties of intranasal naloxone (2-8 mg) delivered in low volumes (0.1-0.2 mL) to an approved (0.4 mg) intramuscular dose. All doses of intranasal naloxone resulted in plasma concentrations and areas under the curve greater than observed following the intramuscular dose; the time to reach maximum plasma concentrations was not different following intranasal and intramuscular administration

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(Krieter et al., 2016). Another study found that the exposure levels resulting from intranasal and sublingual administration of Naloxone 8 mg exceed the exposure levels of the intramuscular (0.4 mg) at 2, 4, 6, 8, and 10 minutes (Data on file).

One study estimated that using EMTs to administer naloxone could reduce time for intranasal naloxone delivery between 5.7 and 10.2 minutes, which has the potential to significantly reduce the mortality and morbidity associated with opioid overdose (Belz et al., 2006). Thus, it is imperative that no matter the type of device used, it should provide naloxone PK levels higher than IM levels at 2 minutes and beyond.

#### **4. PEDIATRICS**

According to the American Academy of Pediatrics, “[t]here is insufficient evidence to evaluate safety and efficacy of administering naloxone to a newborn with respiratory depression due to maternal opiate exposure. Animal studies and case reports cite complications from naloxone, including pulmonary edema, cardiac arrest, and seizures” (AAP/AHA 2015).

The following are off-label naloxone dosing recommendations, endorsed by the American Academy of Pediatrics and the American Heart Association, for cardiopulmonary resuscitation and emergency cardiovascular care for full reversal of opioid effects were used to recommend the doses indicated on the labeling:

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- Younger than 5 years or body weight 20 kg or less: 0.1 mg/kg administered by IV push, intraosseous push, or by ET tube. Follow each dose given via ET tube with at least 5 mL of isotonic sodium chloride injection
- 5 years and older or body weight more than 20 kg: 2 mg administered by IV push, intraosseous or by ET tube. Follow each dose given via ET tube with at least 5 mL of isotonic sodium chloride injection

Studies in normal, healthy pediatric patients would not feasible to determine the appropriate dose of the intranasal devices. Moreover, although naloxone appears to be readily absorbed after oral administration, its low bioavailability renders it less suitable for this administration route.

Additionally, following oral administration, naloxone undergoes extensive hepatic metabolism, indicating high first-pass effect (> 95%) (van Dorp et al., 2007). Thus, if naloxone cannot be administered through injection or intranasally, it will not provide the desired effect. However, it is not possible to design an ethical study to determine the correct dose for pediatric administration using the intranasal devices, thus the dose in pediatrics should be the same as the dose in adults.

## APPENDIX F - ADJUDICATIVE FACTS

### Ariz. R. Evid. 201

#### Rule 201 - Judicial Notice of Adjudicative Facts

**Scope.** This rule governs judicial notice of an adjudicative fact only, not a legislative fact.

**(a) Kinds of Facts That May Be Judicially Noticed.** The court may judicially notice a fact that is not subject to reasonable dispute because it:

(1) is generally known within the trial court's territorial jurisdiction; or

(2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

**(b) Taking Notice.** The court:

(1) may take judicial notice on its own; or

(2) must take judicial notice if a party requests it and the court is supplied with the necessary information.

**(c) Timing.** The court may take judicial notice at any stage of the proceeding.

**APPENDIX G - RESPONDENT EMAIL**

From: Lynndsie Poole  
Sent: Thursday, August 12, 2021 9:47 AM  
To: Douglas Bourne  
Cc: Libby Petersen

Subject: Bourne Deposition Requests

Hello,

We would like to continue taking depositions in this matter. We would like to depose the following parties and experts:

- Douglas Bourne
- Paula Bourne
- Tanzid Shams, MD
- John Gilliam, MD

Please provide dates you, Mrs. Bourne, and your experts are available for their depositions prior to the deadline of October 29, 2021. Also, we will be taking a custodian of records deposition for Elizabeth Leonard, PhD. Please let me know if you want to attend and if so, what dates in the next month that do not work for you.

Thank you!

Best regards,

Lynndsie Poole Paralegal  
Slattery Petersen LLC  
340 E. Palm Lane, Suite 250  
Phoenix, Arizona 85004  
602 507 6100 (Main)

**APPENDIX H - MOTION FOR SANCTIONS**

Elizabeth A. Petersen (#018377)  
Bradley W. Petersen (#019943)  
SLATTERY PETERSEN LLC  
340 East Palm Lane, Suite 250  
Phoenix, Arizona 85004  
Telephone: (602) 507-6101  
lpetersen@slatterypetersen.com  
bpetersen@slatterypetersen.com  
*Attorneys for Banner Health d/b/a  
Banner - University Medical Center Phoenix*

**IN THE SUPERIOR COURT OF THE STATE OF  
ARIZONA IN AND FOR THE COUNTY OF  
MARICOPA**

Paula Bourne and  
Douglas Bourne,  
husband and wife,

Plaintiffs,

vs.

BANNER UNIVERSITY  
MEDICAL CENTER  
PHOENIX, LLC,  
a political subdivision  
of the State of Arizona;  
and Does I-X,

Defendant.

Case No. CV2019-052683

**BANNER HEALTH'S  
MOTION FOR  
SANCTIONS**

(Assigned to the  
Honorable Alison  
Bachus)

Banner Health moves for sanctions pursuant to

*Appendix H*

Judge Campagnolo's Under Advisement Ruling as to Vexatious Litigants and Discovery Sanctions of June 18, 2021. The order entered sanctions against Plaintiffs and found them to be vexatious litigants. Among other things, Judge Campagnolo ordered Plaintiffs to participate appropriately in discovery and not threaten Banner Health or its counsel. Judge Campagnolo warned that, if Plaintiffs violate Order, "the Court may impose appropriate sanctions, including but not limited to, dismissal of the Complaint, with or without prejudice."

Plaintiffs have violated the order by refusing to sit for depositions, refusing to allow their experts to be deposed, and then threatening Banner Health and its counsel with filing "Complaints" with the Department of Justice, the Phoenix Police Department, the State of Arizona, and Banner Health. All this in response to Banner Health's request to depose Plaintiffs and Plaintiffs' experts consistent with the Arizona Rules of Civil Procedure. As ordered by the Court, Banner Health's communications with Plaintiffs have been in writing. The written communications, attached as

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Exhibit 1, document Banner Health's proper requests, Plaintiffs' refusals to cooperate with deposition discovery, Plaintiffs' threats, and thus Plaintiffs' violations of the vexatious litigant order.

Banner Health's motion for sanctions and related arguments are straightforward and will be kept short given Judge Campagnolo's lengthy, detailed order. Plaintiffs have yet again refused to participate in discovery. Plaintiffs' threats attack the judicial system and Banner Health's rights. Plaintiffs actions expressly violate the Court's June 18, 2021 Order. Plaintiffs have shown a complete disregard for the rules and the Court's orders, leading to more wasted time, money, and judicial resources. Enough is enough. Banner Health should not have to work this hard or spend as much as it has to defend itself in civil litigation. The Court has chosen not to enter monetary sanctions, and Plaintiffs have proven that no sanctions short of dismissal will affect their behavior. Given Plaintiffs' repeated refusal to proceed with reasonable discovery requests, Plaintiffs' violations of the Court's Order, and Plaintiffs' apparent contempt for the judicial system

*Appendix H*

and processes as a whole, Banner Health requests dismissal for the reasons set forth above and in Judge Campagnolo's Order of June 18, 2021.

RESPECTFULLY SUBMITTED this  
13th day of August, 2021.

SLATTERY PETERSEN LLC

By: /s/ Elizabeth A. Petersen  
*Attorneys for Banner Health d/b/a Banner  
- University Medical Center Phoenix*

The foregoing was filed via AZ TurboCourt and served by email this 13<sup>th</sup> day of August, 2021, to:

Douglas Bourne Paula Bourne  
10412 E. Buckskin Drive Dewey, AZ 86327  
*Pro Per Plaintiffs*  
DouglasMBourne@outlook.com

/s/ Lynndsie Poole

**APPENDIX I - RESPONDENT EMAIL  
CANCELING DEPOSITIONS**

From: Libby Petersen  
<LPetersen@slatterypetersen.com>  
Sent: Friday, October 15, 2021, 8:25 AM  
To: Douglas Bourne  
Cc: Lynndsie Poole  
Subject: Bourne

Hello,

I apologize for the late notice but I am at home today with a sick daughter. Would you be amenable to rescheduling your deposition? Thank you.

Regards  
Libby  
Elizabeth A. Petersen  
Slattery Petersen PLLC  
lpetersen@slatterypetersen.com  
602-507-6107

**APPENDIX J - RESPONDENT OFFICIALLY  
VACATING DEPOSITIONS**

Elizabeth A. Petersen (#018377) Bradley W. Petersen  
 (#019943) SLATTERY PETERSEN LLC  
 340 East Palm Lane, Suite 250  
 Phoenix, Arizona 85004  
 Telephone: (602) 507-6101  
 lpetersen@slatterypetersen.com  
 bpetersen@slatterypetersen.com *Attorneys for Banner  
 Health d/b/a  
 Banner - University Medical Center Phoenix*

IN THE SUPERIOR COURT OF THE STATE OF  
 ARIZONA IN AND FOR THE COUNTY OF  
 MARICOPA

Paula Bourne and  
 Douglas Bourne,  
 husband and wife,

Plaintiffs,

vs.

BANNER UNIVERSITY  
 MEDICAL CENTER  
 PHOENIX, LLC,  
 political subdivision of  
 the State of Arizona;  
 and Does I-X,

Defendant.

Case No. CV2019-  
 052683

**NOTICE VACATING  
 PLAINTIFFS PAULA  
 BOURNE AND  
 DOUGLAS  
 BOURNE'S  
 DEPOSITIONS**

(Assigned to the  
 Honorable Alison  
 Bachus)

Counsel for Defendant Banner Health d/b/a Banner University Medical Center Phoenix hereby gives notice vacating Paula Bourne and Douglas Bourne's depositions, scheduled for October 18, 2021 at 9:30 am and October 15, 2021 at 1:00 pm respectively, to be reset for a later date.

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*Appendix J*

DATED this 15th day of October, 2021.

SLATTERY PETERSEN LLC

*By: /s/ Elizabeth A. Petersen  
Attorneys for Banner Health d/b/  
a Banner - University Medical  
Center Phoenix*

**APPENDIX K - OFFICIAL NOTICE OF  
TANZID SHAMS , MD DEPOSITION**

Paula Bourne and Douglas Bourne  
10412 E. Buckskin Drive  
Dewey, Arizona 86327  
480-431-9064  
douglasmbourne@outlook.  
Pro Per Plaintiffs

IN THE SUPERIOR COURT OF THE STATE  
OF ARIZONA IN AND FOR THE COUNTY  
OF MARICOPA

PAULA BOURNE  
and DOUGLAS  
BOURNE,  
husband and wife,

Plaintiffs,

vs.

BANNER UNIVERSITY  
MEDICAL CENTER  
PHOENIX, LLC

Defendant.

Case No.  
CV2019-052683

**NOTICE OF  
DEPOSITION  
OF TANZID  
SHAMS, MD**

PLEASE TAKE NOTICE that, pursuant to Arizona  
Rules of Civil Procedure 26 and 30, the deposition will

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be taken upon oral examination of the person whose name is stated below, at the time and place stated below, before an officer authorized by law to administer the oath and will be recorded by stenographic means.

**PERSON TO BE EXAMINED: Tanzid Shams, MD**

**DATE OF DEPOSITION: October 14, 2021**

**TIME OF DEPOSITION: 8:00 am [11:00 am EST]**

**PLACE OF DEPOSITION: Via Zoom**

<https://us05web.zoom.us/j/83380120102?pwd=dUN2TGdWYTYvUys4K0dnbkRTdW15UT09>

Meeting ID: 833 8012 0102

Passcode: Adw7km

DATED this 1st day of October, 2021.

PRO PER PLAINTIFFS

By: /s/ Douglas Bourne  
Douglas Bourne

COPY of the foregoing emailed this 1st day of October 2021, to:

Elizabeth A. Petersen  
SLATTERY PETERSEN LLC  
340 E. Palm Lane, Ste. 250  
Phoenix, Arizona 85004

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*Appendix K*

lpetersen@slatterypetersen.com

Griffin Group International  
3200 East Camelback Road Suite 177  
Phoenix, Arizona 85018  
calendar@griffinreporters.com  
griffin@griffinreporters.com

By: /s/ Douglas Bourne  
Douglas Bourne Plaintiff

**APPENDIX L - OFFICIAL NOTICE OF JOHN  
GILLIAM, MD DEPOSITION**

Paula Bourne and Douglas Bourne  
10412 E. Buckskin Drive  
Dewey, Arizona 86327  
480-431-9064  
douglasmbourne@outlook.com  
Pro Per Plaintiffs

IN THE SUPERIOR COURT OF THE  
STATE OF ARIZONA IN AND FOR THE  
COUNTY OF MARICOPA

PAULA BOURNE  
and DOUGLAS  
BOURNE,  
husband and wife,  
  
Plaintiffs,  
  
vs.

BANNER UNIVERSITY  
MEDICAL CENTER  
PHOENIX, LLC

Defendant.

Case No.  
CV2019-052683

**NOTICE OF  
DEPOSITION  
OF JOHN  
GILLIAM, MD**

PLEASE TAKE NOTICE that, pursuant to Arizona  
Rules of Civil Procedure 26 and 30, the deposition will

*Appendix L*

be taken upon oral examination of the person whose name is stated below, at the time and place stated below, before an officer authorized by law to administer the oath and will be recorded by stenographic means.

**PERSON TO BE EXAMINED: John Gilliam, MD**

**DATE OF DEPOSITION: October 19, 2021**

**TIME OF DEPOSITION: 9 am**

**PLACE OF DEPOSITION: Via Zoom**

<https://us05web.zoom.us/j/81492067071?pwd=em1WS0tBM2c2M28rSXh3eXNuMDJTZz09>

Meeting ID: 814 9206 7071

Passcode: EVzwE1

DATED this 1st day of October, 2021.

**PRO PER PLAINTIFFS**

By: /s/ Douglas Bourne

Douglas Bourne

COPY of the foregoing emailed this 1st day of October 2021, to:

Elizabeth A. Petersen  
SLATTERY PETERSEN LLC  
340 E. Palm Lane, Ste. 250  
Phoenix, Arizona 85004  
lpetersen@slatterypetersen.com

*Appendix L*

Griffin Group International  
3200 East Camelback Road Suite 177  
Phoenix, Arizona 85018  
calendar@griffinreporters.com  
griffin@griffinreporters.com

By: /s/ Douglas Bourne  
Douglas Bourne Plaintiff

**APPENDIX M - BACKGROUND CHECK  
REVEALS JUDGE ALISON SUE BACHUS'  
JUDICIAL-CONFLICT-OF-INTEREST**

**Whitpages Background Check**

Bruce Floyd Bachus

(Bruce Bachus)

DOB [REDACTED]

[REDACTED]

Monitor @ get notified when Bruce Floyd Bachus's info changes.

**Phone Numbers (2)**

**Primary Home**

[REDACTED]

**Primary Cell**

[REDACTED]

**Current Address**

[REDACTED]

[REDACTED]

**Licenses & Permits**

ACTIVE

**Medical Doctor**

ACTIVE

*Appendix M*

Bruce Floyd Bachus, MD

**Pulmonologist**  
1112 E McDowell Rd, Phoenix, AZ 85006

**Hospital Affiliations**  
Banner - University Medical Center Phoenix  
1111 E McDowell Rd, Phoenix, AZ 85006

**Criminal & Traffic Records**

Confidential

<b>Four Relatives</b>	<b>Relationship</b>
Alison Sue Bachus	Judge and Daughter-in-Law
Benjamin Clay Bachus	Son and Alison's Husband
Jennifer A Bachus	Daughter
Cleo Jane Bachus	Wife

## **APPENDIX N - THE CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

### **Constitution of the United States**

#### **First Amendment**

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. Jefferson's Bill sets out four reasons why government can make no law that constrains our freedom of speech, conscience, or opinion. Those four reasons were summed up by Justice Brandeis in Whitney, and they have been further developed by the Supreme Court since then:

1. Freedom of conscience is an unalienable right because people can only think for themselves;
2. Free speech makes representatives accountable to We the People;
3. Free speech is necessary for the discovery of truth and the rejection of falsehood;
4. Free speech allows the public discussion necessary for democratic self government.

*Appendix N*

**The Fifth Amendment to the United States Constitution.**

Provides in relevant part: No person shall . . . be deprived of life, liberty, or property, without due process of law.

**Fourteenth Amendment to the United States Constitution.**

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

**U.S. Const. art. III provides in pertinent part:**

Section 1. The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

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Section 2. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;--to all cases affecting ambassadors, other public ministers and consuls;--to all cases of admiralty and maritime jurisdiction;--to controversies to which the United States shall be a party;--to controversies between two or more states;--between a state and citizens of another state;--between citizens of different states;--between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects. In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

**Supremacy Clause, Article VI, Clause 2, of the United States Constitution.**

Article VI, Clause 2:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the

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Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

**Arizona Revised Statutes**

**ARS § 13-2407**

**13-2407. Tampering with a public record; classification**

A. A person commits tampering with a public record if, with the intent to defraud or deceive, such person knowingly:

1. Makes or completes a written instrument, knowing that it has been falsely made, which purports to be a public record or true copy thereof or alters or makes a false entry in a written instrument which is a public record or a true copy of a public record; or
2. Presents or uses a written instrument which is or purports to be a public record or a copy of such public record, knowing that it has been falsely made, completed or altered or that a false entry has been made, with intent that it be taken as genuine; or
3. Records, registers or files or offers for recordation, registration or filing in a governmental office or agency a

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written statement which has been falsely made, completed or altered or in which a false entry has been made or which contains a false statement or false information; or

4. Destroys, mutilates, conceals, removes or otherwise impairs the availability of any public record; or

5. Refuses to deliver a public record in such person's possession upon proper request of a public servant entitled to receive such record for examination or other purposes.

B. In this section "public record" means all official books, papers, written instruments or records created, issued, received or kept by any governmental office or agency or required by law to be kept by others for the information of the government.

C. Tampering with a public record is a class 6 felony.

**ARS § 13-2702. Perjury; classification**

A. A person commits perjury by making either:

1. A false sworn statement in regard to a material issue, believing it to be false.

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2. A false unsworn declaration, certificate, verification or statement in regard to a material issue that the person subscribes as true under penalty of perjury, believing it to be false.

B. Perjury is a class 4 felony.

**ARS § 23-785**

23-785. False statement, misrepresentation or nondisclosure of material fact to obtain benefits; classification.

Any person who knowingly makes a false statement or representation believing it to be false or who knowingly fails to disclose a material fact in order to obtain or increase a benefit or other payment under this chapter either for himself or for another person, or under an employment security law of another state, the federal government or a foreign government, is guilty of a class 6 felony. Each such false statement or representation or failure to disclose a material fact shall constitute a separate offense.

**ARS § 12-541.** Malicious prosecution; false imprisonment; libel or slander; seduction or breach of promise of marriage; breach of employment contract; wrongful termination; liability created by statute; one year limitation.

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There shall be commenced and prosecuted within one year after the cause of action accrues, and not afterward, the following actions:

1. For malicious prosecution, or for false imprisonment, or for injuries done to the character or reputation of another by libel or slander.
2. For damages for seduction or breach of promise of marriage.
3. For breach of an oral or written employment contract including contract actions based on employee handbooks or policy manuals that do not specify a time period in which to bring an action.
4. For damages for wrongful termination.
5. Upon a liability created by statute, other than a penalty or forfeiture.

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**AR.S § 12-561**

**12-561. Definitions**

In this chapter, unless the context otherwise requires:

1. "Licensed health care provider" means both:
2. "Medical malpractice action" or "cause of action for medical malpractice" means an action for injury or death against a licensed health care provider based upon such provider's alleged negligence, misconduct, errors or omissions, or breach of contract in the rendering of health care, medical services, nursing services or other health-related services or for the rendering of such health care, medical services, nursing services or other health-related services, without express or implied consent including an action based upon the alleged negligence, misconduct, errors or omissions or breach of contract in collecting, processing or distributing whole human blood, blood components, plasma, blood fractions or blood derivatives.

**ARS § 13-2310. Fraudulent schemes and artifices; classification; definition**

A. Any person who, pursuant to a scheme or artifice to defraud, knowingly obtains any benefit by means of false or fraudulent pretenses, representations, promises or material omissions is guilty of a class 2 felony.

B. Reliance on the part of any person shall not be a necessary element of the offense described in subsection A of this section.

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- C. A person who is convicted of a violation of this section that involved a benefit with a value of one hundred thousand dollars or more or the manufacture, sale or marketing of opioids is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except pursuant to section 31-233, subsection A or B until the sentence imposed by the court has been served, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted.
- D. This state shall apply the aggregation prescribed by section 13-1801, subsection B to violations of this section in determining the applicable punishment.
- E. For the purposes of this section, "scheme or artifice to defraud" includes a scheme or artifice to deprive a person of the intangible right of honest services.

**12-563. Necessary elements of proof**

Both of the following shall be necessary elements of proof that injury resulted from the failure of a health care provider to follow the accepted standard of care:

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1. The health care provider failed to exercise that degree of care, skill and learning expected of a reasonable, prudent health care provider in the profession or class to which he belongs within the state acting in the same or similar circumstances.
2. Such failure was a proximate cause of the injury.

**ARS § 13-2407. Tampering with a public record; classification.**

A. A person commits tampering with a public record if, with the intent to defraud or deceive, such person knowingly:

1. Makes or completes a written instrument, knowing that it has been falsely made, which purports to be a public record or true copy thereof or alters or makes a false entry in a written instrument which is a public record or a true copy of a public record; or
2. Presents or uses a written instrument which is or purports to be a public record or a copy of such public record, knowing that it has been falsely made, completed or altered or that a false entry has been made, with intent that it be taken as genuine; or
3. Records, registers or files or offers for recordation, registration or filing in a governmental office or agency a

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written statement which has been falsely made, completed or altered or in which a false entry has been made or which contains a false statement or false information; or

4. Destroys, mutilates, conceals, removes or otherwise impairs the availability of any public record; or

5. Refuses to deliver a public record in such person's possession upon proper request of a public servant entitled to receive such record for examination or other purposes.

B. In this section "public record" means all official books, papers, written instruments or records created, issued, received or kept by any governmental office or agency or required by law to be kept by others for the information of the government.

C. Tampering with a public record is a class 6 felony.

**ARS § 36-2228. Administration of opioid antagonists; training; immunity; designation by director; definition**

A. Pursuant to a standing order issued by a physician licensed pursuant to title 32, chapter 13 or 17 or a nurse practitioner licensed pursuant to title 32, chapter 15 and authorized by law to prescribe drugs, an emergency medical care technician, peace officer or ancillary law

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enforcement employee who is trained in the administration of naloxone hydrochloride or any other opioid antagonist that is approved by the United States food and drug administration and designated by the director may administer naloxone hydrochloride or another opioid antagonist to a person who the emergency medical care technician, peace officer or ancillary law enforcement employee believes is suffering from an opioid-related drug overdose.

B. The department, in coordination with the Arizona peace officer standards and training board, shall develop a training module for emergency medical care technicians, peace officers and ancillary law enforcement employees that provides training regarding the identification of a person suffering from an opioid-related drug overdose and the use of naloxone hydrochloride or other opioid antagonists.

C. Physicians who are licensed pursuant to title 32, chapter 13 or 17 and who issue a standing order, nurse practitioners who are licensed pursuant to title 32, chapter 15 and authorized by law to prescribe drugs and who issue a standing order and emergency medical care technicians, peace officers and ancillary law enforcement employees who administer naloxone hydrochloride or any other opioid antagonist pursuant to this section are immune from professional liability and criminal prosecution for any decision made, act or omission or injury that results from that act *if those persons act with*

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*reasonable care and in good faith, in cases of wanton or wilful neglect.* This section does not create a duty to act or standard of care for peace officers or ancillary law enforcement employees to administer an opioid antagonist.

D. The director shall designate opioid antagonists that may be used pursuant to this section based on an evaluation of the opioid antagonist's safety and efficacy.

E. For the purposes of this section, "ancillary law enforcement employee" means a detention officer, a probation or surveillance officer, a police aide or assistant, a crime scene specialist, a crime laboratory employee or any other type of law enforcement employee or employee of the state department of corrections who is authorized by the person's employing agency to administer naloxone hydrochloride or any other opioid antagonist that is approved by the United States food and drug administration and designated by the director pursuant to this section.

**ARS §12-3201. Vexatious litigants; designation; definitions**

A. In a noncriminal case, at the request of a party or on the court's own motion, the presiding judge of the superior court or a judge designated by the presiding judge of the superior court may designate a pro se litigant a vexatious litigant.

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B. A pro se litigant who is designated a vexatious litigant may not file a new pleading, motion or other document without prior leave of the court.

C. A pro se litigant is a vexatious litigant if the court finds the pro se litigant engaged in vexatious conduct.

D. The requesting party may make an amended request at any time if the court either:

1. Determined that the party is not a vexatious litigant and the requesting party has new information or evidence that is relevant to the determination, even if there is not a pending case in the court.
2. Did not rule on the original request during the pendency of the action, even if there is not a pending case in the court.

E. For the purposes of this section:

1. "Vexatious conduct" includes any of the following:

- (a) Repeated filing of court actions solely or primarily for the purpose of harassment.

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- (b) Unreasonably expanding or delaying court proceedings.
- (c) Court actions brought or defended without substantial justification.
- (d) Engaging in abuse of discovery or conduct in discovery that has resulted in the imposition of sanctions against the pro se litigant.
- (e) A pattern of making unreasonable, repetitive and excessive requests for information.
- (f) Repeated filing of documents or requests for relief that have been the subject of previous rulings by the court in the same litigation.

2. "Without substantial justification" has the same meaning prescribed in section 12-349.

**Federal Statute**

**49 CFR § 1570.5. Fraud and intentional falsification of records.**

No person may make, cause to be made, attempt, or cause to attempt any of the following:

- (a) Any fraudulent or intentionally false statement in any record or report that is kept, made, or used to show compliance with the subchapter, or exercise any privileges under this subchapter.

**APPENDIX O – MEDICAL RECORDS  
CLINICAL DIAGNOSIS  
POISONING BY OTHER OPIOIDS**

Banner Health	Patient: BOURNE,
BANNER -- UNIVERSITY	PAULA RAE
MEDICAL CENTER	DOB: 5/8/1955
PHOENIX	Female Age: 63 years
1111 E. McDowell	MR#: 5594
Road Phoenix,	Patient Location:
AZ 85006-2612	01 06B; 0612; 01
	Attending Physician:
	AHMED MD,
	SARIM SHAKEEL

**CLINICAL DIAGNOSES**

Diagnosis: Poisoning by other opioids,  
accidental (unintentional), initial encounter  
Responsible Provider: Contributor\_system,DG1  
Diagnosis Date: 3/6/2018 Status: Active  
Confirmation: Confirmed

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**APPENDIX P – MEDICAL RECORDS**  
**0.02 MG. NALOXONE (NARCAN)**  
**6:04 MST – DOSE 1**

Banner Health	Patient: BOURNE,
BANNER -- UNIVERSITY	PAULA RAE
MEDICAL CENTER	DOB: 5/8/1955
PHOENIX	Female Age: 63 years
1111 E. McDowell	MR#: 5594
Road Phoenix,	Patient Location:
AZ 85006-2612	01 06B; 0612; 01
	Attending Physician:
	AHMED MD,
	SARIM SHAKEEL

**ORDERS – MEDICATIONS**

Order Date/Time: 3/1/2018 05:25 MST  
Order: naloxone (Narcan)  
Order Start Date/Time: 3/1/2018 05:25 MST  
Order Status: Completed Clinical Category: Medications  
Medication Type: Inpatient  
End-state Date/Time: 3/1/2018 06:04 MST End-state Reason:  
Ordering Physician: SHELHAMER MD,RYAN Consulting  
Physician:  
Entered By: Williams RN, Sarah E on 3/1/2018 05:25 MST

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Order Details: 0.02 mg = 0.05 mL, IV Push, Soln,  
1XONLY, PRN Other (see comment), First Dose: 3/1/18  
5:25:00 AM MST, First Dose Priority: Routine, Notify  
physician, Dilute Narcan (naloxone) 0.4 mg with 9 mL 0.9%  
NaCL  
(concentration 0.04 mg/mL). SEE ORDER COMMENTS  
Order Comment: Give 0.5 mL (0.02 mg) every 30  
seconds until RR > 12 and patient arousable  
Action Type: Complete Action Date/Time: 3/1/2018  
06:04 MST  
Electronically Signed By: SHELHAMER MD,RYAN  
Action Type: Order Action Date/Time: 3/1/2018 05:25 MST  
Electronically Signed By: SHELHAMER MD,RYAN

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**APPENDIX Q – MEDICAL RECORDS**

**RAPID RESPONSE**

**0.4 MG. NALOXONE (NARCAN)**

**21:22 MST – DOSE 2**

Banner Health	Patient: BOURNE,
BANNER -- UNIVERSITY	PAULA RAE
MEDICAL CENTER	DOB: 5/8/1955
PHOENIX	Female Age: 63 years
1111 E. McDowell	MR#: 5594
Road Phoenix,	Patient Location:
AZ 85006-2612	01 06B; 0612; 01
	Attending Physician:
	AHMED MD,
	SARIM SHAKEEL

***PHYSICIAN PROGRESS NOTES***

Document Name: Result Status: Signed By: Physician  
Progress Notes Auth (Verified)  
EDET MD, ITORO BASSEY (3/1/2018 21:31 MST)

Rapid response called for acute hypoxia with saturations in the 60s. She was also grossly unresponsive initially but then would awaken with verbal/tactile stimuli. Remainder of vitals notable for BP 127/96, respirations 10-14, heart rates 60-70. Patient

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placed on nonrebreather with improvement in saturations to 100%. EKG notable for sinus rhythm. Of note, patient with increased lethargy since this morning per her husband and EMIR and presumed to be secondary to narcotics. Her husband notes that after receiving pain medication patient has been drowsy. last narcotic administration yesterday and patient received 60 mg of long-acting morphine and 30 mg of short acting morphine. Labs from this morning notable for acute kidney injury. CBC/CMP ordered. CXR done and largely unchanged from CXR done today. Known type 1 diabetic and blood sugar 216. Patient able to be weaned to nasal cannula with appropriate sats. Given 0.4 of narcan and more awake and conversant. Will transfer to ICU for narcan drip. Narcotics discontinued. Will continue to monitor clinically.

**APPENDIX R – MEDICAL RECORDS**  
**10.0 MG. NALOXONE (NARCAN) ICU**  
**22:32 MST – DOSE 3 (IV)**

Banner Health	Patient: BOURNE,
BANNER -- UNIVERSITY	PAULA RAE
MEDICAL CENTER	DOB: 5/8/1955
PHOENIX	Female Age: 63 years
1111 E. McDowell	MR#: 5594
Road Phoenix,	Patient Location:
AZ 85006-2612	01 06B; 0612; 01
	Attending Physician:
	AHMED MD,
	SARIM SHAKEEL

*Continuous Infusions*

Admin Date/Time: 3/1/2018 22:32 MST  
Medication Name: naloxone (Narcan) infusion 10 mg + Sodium Chloride 0.9% 500 ml  
Charted Date/Time: 3/1/2018 22:32 MST  
Ingredients: NALO411SDV 10 mg 25 ml; NS500LVP 500 ml  
Admin Details: (Begin Bag) (Auth) 525 ml, 21.1 ml/hr, Arm, Left  
Action Details: Order: EDET MD, ITORO BASSEY 3/1/2018 21:47 MST; Perform: Hitchcock RN, Megan S 3/1/2018 22:32 MST; VERIFY: Hitchcock RN, Megan S 3/1/2018 22:32 MST

**APPENDIX S – MEDICAL RECORDS****10.0 MG. NALOXONE (NARCAN) ICU****15:20 MST – DOSE 4 (IV) (3/2/2018)**

Banner Health	Patient: BOURNE,
BANNER -- UNIVERSITY	PAULA RAE
MEDICAL CENTER	DOB: 5/8/1955
PHOENIX	Female Age: 63 years
1111 E. McDowell	MR#: 5594
Road Phoenix,	Patient Location:
AZ 85006-2612	01 06B; 0612; 01
	Attending Physician:
	AHMED MD,
	SARIM SHAKEEL

*Continuous Infusions*

Admin Date/Time: 3/2/2018 15:20 MST

Medication Name: naloxone (Narcan) infusion 10 mg +  
Sodium Chloride 0.9% 500 mL

Charted Date/Time: 3/2/2018 15:20 MST

Ingredients: NALO4I1SDV 10 mg 25 mL; NS500LVP  
500 mLAdmin Details: (Begin Bag) (Auth) 525 mL, 21.1 mL/  
hr, Arm, LeftAction Details: Order: EDET MD, ITORO BASSEY  
3/1/2018 21:47 MST; Perform: Lara RN, Vanessa

3/2/2018 15:18 MST

VERIFY: Lara RN, Vanessa 3/2/2018 15:18 MST

**APPENDIX T - MEDICAL RECORDS  
BANNER EVENT NURSES NOTES**

Banner Health	Patient: BOURNE,
BANNER -- UNIVERSITY	PAULA RAE
MEDICAL CENTER	DOB: 5/8/1955
PHOENIX	Female Age: 63 years
1111 E. McDowell	MR#: 5594
Road Phoenix, AZ 85006-2612	Patient Location: 01 06B; 0612; 01 Attending Physician: AHMED MD, SARIM SHAKEEL

***PROGRESS NOTES***

Document Name: Result Status: Signed By:  
Nurses Notes Auth (Verified)  
Warren RN. Ruth V (3/2/2018 04:54 MST)

Patient was seen around 2030 (3/1/2018) for an assessment. I spoke with the husband regarding place of care of patient including education on morphine and time frame in which patient's medications were given. I assessed the patient and found her to be responsive to physical stimuli. She was able to briefly answer questions but would doze off to sleep after 30-45 seconds of alertness. She was able to take her evening oral

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medications. I conducted a neural check on her as part of my assessment and noticed that she was having a difficult time breathing. She also stated that she had a headache and her oxygen saturation decreased to the high 60%. I increased her nasal canula flow to 6L and her saturations were still in the low 70%. She was less and less responsive. I requested that a manager come and assess the patient as well and then decided that a rapid response would be the most appropriate approach. After the assessment of the physicians and the rapid response team, and a dose of Narcan, it was determined that placing the patient on a Narcan drip was necessary. The patient was transferred to the ICU in order to have this medication administered. She was accompanied by her husband.

Document Name: Result Status: Signed By: Nurses  
Notes Auth (Verified)  
Elgar RN Ellie Rose (3/3/2018 16:16 MST)

Two officers with Phoenix Police Department came to the patient's room today at approximately 1200. The husband requested to file a formal criminical incident report regarding his wife's hospital stay. The officers and husband discussed the incident privately in the patient's room for approximately 30 mins. A nurse manager, Eddie, was available for questions from the officers. The husband has been distraught about his wife being over medicated with morphine and delayed upgrade to the ICU after a total knee replacement on 02/28. Both the patient and the husband were pleasant,

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reasonable, and cooperative with nursing staff and physicians today. They were appreciative of care and reiterated they wanted to file the report just in case of health complications down the road as a result of the overdose

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## **APPENDIX U – OPHTHALMOLOGIST DIAGNOSIS AND PLAN**

Rummel Eye Care, P.C. 1022 Willow Creek Rd,  
Prescott, AZ 86301 Phone: (928) 445-1341 Fax: (928)  
445-2180

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### **Diagnosis and Plan**

G93.1 Anoxic brain damage, not elsewhere classified  
OU.

Assessment: Anoxia brain damage by Hx. Pt has multi- system effects per hx. From an ocular standpoint, Optic Nerve damage supported, by history, with Neuro-Ophthalmology testing. I reviewed Dr. Brown's records today. Optic nerves today are pale.

H47.093 disorders of optic nerve, NEC, bilateral  
OU Assessment: Examination revealed pale Optic Nerves OU, Suspect due to hx of Hypoxia. Irreversible.

Plan: I am happy to follow pt for any reason she or her Neuro-Ophthalmologist feel there is a need.

296.1 Presence of intraocular lens OU

Assessment: Exam reveals Pseudophakia- doing well with her IOL in good position, OU.

Plan: Obs.

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Plan: I discussed with Mrs. Bourne and her husband, No further Ophthalmology testing is recommended as I feel it would not be productive. We are, however, available should further testing or treatment be needed.

E10.9 Type 1 diabetes mellitus without complications OU Assessment: Patient has type I diabetes without complications. No diabetic retinopathy seen today.

Plan: Discussed with patient the importance of controlling Blood Sugar and A1c levels with her PCP. Mrs. Bourne is advised of condition and to monitor signs and symptoms of changes.

Goals: Preserve Visual Acuity

Date: 7/5/2018

Educational Materials Provided This Visit Diabetes - National Diabetes Education Program.

Electronically Signed By:

R. Mark Rummel on 7/9/18

**APPENDIX V – MEDICAL RECORDS  
FENTANYL (NOT DONE)**

Banner Health	Patient: BOURNE,
BANNER --	PAULA RAE
UNIVERSITY MEDICAL	DOB: 5/8/1955
CENTER PHOENIX	Female Age: 63 years
1111 E. McDowell	MR#: 5594
Road Phoenix,	Patient Location:
AZ 85006-2612	01 06B; 0612; 01
	Attending Physician:
	AHMED MD,
	SARIM SHAKEEL

***Medications***

Admin Date/Time: 2/27/2018 21:58 MST Medication Name: fentaNYL (Sublimaze) Charted Date/Time: 2/28/2018 07:58 MST Admin Details: (Not Done) Patient Off Floor Pain/Sedation Reassessment PF Action Details: Perform: Martina RN. Kylie A 2/27/2018 21:58 MST