No. 130042

IN THE SUPREME COURT
OF THE STATE OF ILLINOIS

DONALD JAMES, as Executor of the Estate of Lucille Helen James, Deceased,

MARK R. DONESKE, as Executor of the Estate of Rose H. Doneske, Deceased,

FRANCES G. DEFRANCESCO, as Executor of the Estate of Jack P. DeFrancesco, Deceased,

PATRICIA VELCICH, as Executor of the Estate of Marion May Heotis, Deceased,

FAITH HEMBRODT, as Independent Administrator of the Estate of Carol Orlando, Deceased,

Plaintiffs-Appellants,

v.

GENEVA NURSING AND REHABILITATION CENTER, LLC, an Illinois Limited Liability Company d/b/a BRIA HEALTH SERVICES OF GENEVA,

Defendant-Appellee.

Petition for Leave to Appeal from the Appellate Court of Illinois, Second District, No. 2-22-0180

There Heard on Appeal from the Circuit Court of 16th Judicial Circuit, Kane County, Illinois, Case No.:

2020 L 247;
2020 L 259;
2020 L 260;
2020 L 264;
2020 L 273.

Hon. Susan Boles
Judge Presiding

Date of Judgment:
August 17, 2023

PLAINTIFFS' BRIEF AND APPENDIX

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PLAINTIFFS' BRIEF AND ARGUMENT

NATURE OF THE ACTION

This matter originates from an interlocutory appeal pursuant to Illinois Supreme Court Rule 308 involving a certified question regarding the immunity conferred by an executive order (Exec. Order No. 2020-19,

44 Ill. Reg. 6192 (Apr. 1, 2020, http://coronavirus.illinois.gov/content/dam/soi/en/web/coronavirus/documents/executiveorder-2020-19.pdf [http://perma.cc/FG32-BM6L]), issued by Governor J.B. Pritzker during the infancy of the coronavirus pandemic. The Plaintiffs, DONALD JAMES, as Executor of the Estate of Lucile Helen James, Deceased; MARK R. DONESKE, as Executor of the Estate of Rose H. Doneske, Deceased; FRANCES G. DEFRANCESCO, as Executor of the Estate of Jack P. DeFrancesco, Deceased; PATRICIA VELCICH, as Executor of the Estate of Marion May Heotis, Deceased; and FAITH HEMBRODT, as Independent Administrator of the Estate of Carol Orlando, Deceased (hereinafter collectively referred to as "Plaintiffs"), each filed individual wrongful-death and survival suits against Defendant, Geneva Nursing and Rehabilitation Center, LLC, d/b/a Bria Health Services of Geneva (hereinafter "Bria") alleging that Bria's negligence and willful and wanton conduct was a proximate cause of their contraction of COVID-19 and resulting complications that led to the decedents' untimely passing.

After unsuccessfully moving to dismiss the Plaintiffs' willful and wanton claims pursuant to 735 ILCS 5/2-615, Bria moved to dismiss the Plaintiffs' negligence claims pursuant to 735 ILCS 5/2-619(a)(9), arguing so long as it took steps to address the pandemic, it was immune from ordinary negligence claims pursuant to Executive Order 2020-19 (hereinafter "EO-19"), regardless of how the negligence claims arose. The

circuit court denied Bria's section 2-619 motion for involuntary dismissal and certified the following question for review pursuant to Illinois Supreme Court Rule 308:

> *"Does [Executive Order 2020-19] provide blanket immunity for ordinary negligence to healthcare facilities that rendered assistance to the State during the COVID-19 pandemic?"*

After reviewing the briefs submitted by the parties along with *amicus* briefs offered by the Illinois Trial Lawyers Association and the Illinois Attorney General, the appellate court determined the certified question, as presented, had misstated the relevant issues in the case and incorrectly described the scope of the immunity at issue as well as its source, and modified the certified question to state as follows:

> *"Does Executive Order 2020-19, which triggered the immunity provided in 20 ILCS 3305/21(c), grant immunity for ordinary negligence claims to healthcare facilities that rendered assistance to the State during the COVID-19 pandemic?"*

The appellate court thereafter answered the modified certified question in the affirmative. *James v. Geneva Nursing and Rehabilitation Center, LLC*, 2023 IL (2d) 220180. The appellate court further noted that with more challenging immunity questions, such as the one presented on appeal, the trial court will be in the best position to evaluate the quantum of evidence necessary to determine whether a given defendant qualifies for the statutory immunity at issue.

On November 29, 2023, this Court allowed Plaintiffs' timely Petition for Leave to Appeal.

ISSUES PRESENTED FOR REVIEW

1. Whether Executive Order 2020-19 confers immunity to healthcare facilities for all negligent conduct, regardless of whether such conduct bore any relationship to the assistance the facility rendered to the State, so long as it occurred at the time the facility was otherwise providing COVID-19 assistance.
2. Whether an executive order is to be construed in a manner that is consistent with the cannons of statutory construction.

STATEMENT OF JURISDICTION

The appellate court issued its published opinion in this cause on August 17, 2023. (A-1). A Petition for Rehearing was not filed following the issuance of the appellate court's opinion. The Petition for Leave to Appeal was filed by Plaintiffs on September 21, 2023, and on November 29, 2023, this Court allowed the Petition. Jurisdiction properly lies under Illinois Supreme Court Rule 315.

STATEMENT OF FACTS

In the early stages of the coronavirus pandemic, Governor J.B. Pritzker issued Executive Order 2020-19 ("EO-19"), when the virus was rapidly spreading throughout the State of Illinois and it was unclear as to whether there were adequate bed capacity, supplies, and medical providers to treat patients afflicted with COVID-19, as well as patients inflicted with other maladies. Exec. Order No. 2020-19, 44 Ill. Reg. 6192 (Apr. 1, 2020),

http://coronavirus.illinois.gov/content/dam/soi/en/web/coronavirus/documents/executiveorder-2020-19.pdf [http://perma.cc/FG32-BM6L]). EO-19 directed healthcare facilities in Illinois to render assistance in support of the State's response to COVID-19. *Id.* Accompanying that directive was the pronouncement that all healthcare facilities would "be immune from civil liability" for any injury or death caused by the facility's acts or omissions that occurred "at a time when [the facility was] engaged in the course of rendering assistance to the State by providing health care services in response to the COVID-19 outbreak, unless it is established that such injury or death was caused by gross negligence or willful misconduct." *Id.*

This matter originates from five consolidated wrongful death and survival lawsuits in Kane County, Illinois, brought by the administrators of estates of individuals who contracted COVID-19 and thereafter died from related respiratory complications or respiratory failure while in the care of Defendant, Geneva Nursing and Rehabilitation Center, LLC, d/b/a Bria Health Services of Geneva. In each separate complaint, Plaintiffs alleged that Bria engaged in both negligent and willful and wanton misconduct and further alleged that Bria, through its nonfeasance with respect to each decedent, had not rendered assistance to the State in its efforts to prevent the spread of or increase the treatment of COVID-19. (S.R. C 2-3; S.R. C82-83; S.R. C161-62; S.R. C239-40; S.R. C 318-19).

After the circuit court consolidated all five lawsuits for pretrial discovery, the parties remained in dispute regarding whether Bria had rendered qualifying assistance to the State so as to benefit from the immunity conferred by EO-19. Bria subsequently filed motions to involuntarily dismiss the Plaintiffs' ordinary negligence claims with prejudice, asserting Bria had "rendered assistance" to the State when the decedent's negligence claims arose and therefore was immune from suit for ordinary negligence. See 735 ILCS 5/2-619(a)(9); (S.R. C 396-97; C 804-05; C807-08; C1106-07; C1603-04). According to Bria, so long as it took steps to address the coronavirus pandemic, it was immune from ordinary negligence claims regardless of how the claims arose. *Id.*

The circuit court never ruled on whether Bria had, in fact, rendered the qualifying assistance, as EO-19 requires, and denied Bria's motions for involuntary dismissal. (S.R. C4449; C4449; C4450; C4451; C4452). The circuit court then certified the question as to whether EO-19 provides "blanket immunity for ordinary negligence to healthcare facilities that rendered assistance to the State during the COVID-19 pandemic" for interlocutory review pursuant to Illinois Supreme Court Rule 308. (S.R. C4509; C4510; C4511; C4512; C4513). Bria subsequently filed an application to the Second District Appellate Court for leave to appeal which was granted after briefing by the parties. (A2). The appellate court also received amicus briefs from the Illinois Trial Lawyers Association and,

pursuant to the appellate court's request, the Illinois Attorney General. (A6).

After considering the briefs submitted by each of the respective parties, the appellate court reframed the certified question to direct its focus on whether Governor Pritzker exceeded his authority in issuing EO-19. (A7). Despite the appellate court acknowledging that the statutory authority, EO-19, and the parties' respective arguments all acknowledged the immunity conferred by the executive order to be partial in nature, the appellate court explained the certified question's use of the phrase "blanket immunity" was inapt, as it could be taken to erroneously suggest Bria could be immune from *both* negligence claims *and* claims of willful misconduct. (A7). The appellate court further noted that any potential immunity would be derived from the Illinois Emergency Management Act, not the executive order invoking the Act, and therefore, the certified question misconceived the source of Bria's potential immunity. (A8).

In finding Governor Pritzker's executive order could not convey more than the statute that authorized it, the appellate court opined it did not have to parse the executive order's language, particularly the phrase "at a time" too closely, and ultimately concluded that Bria would have immunity for negligence claims arising during the Governor's disaster declaration *if and only if* it could show it was "render[ing] assistance" to the State during the COVID-19 pandemic. (A9). Accordingly, the appellate court modified the certified question to state as follows: "Does Executive Order No. 2020-

19, which triggered the immunity provided in 20 ILCS 3305/21(c), grant immunity for ordinary negligence claims to healthcare facilities that rendered assistance to the State during the COVID-19 pandemic?" (A10). The modified question was then answered in the affirmative. (A10).

The Petition for Leave to Appeal was filed by Plaintiffs on September 21, 2023, which was allowed by this Court on November 29, 2023.

STANDARD OF REVIEW

This Court's review of the appellate court's ruling on a certified question is governed by Rule 308. *Simmons v. Homatas*, 236 Ill. 2d 459, 466 (2010). Certified questions, by definition, are questions of law that are reviewed *de novo*. *Id.*

Similar to issues of statutory construction, the construction of an executive order presents questions of law that should be reviewed *de novo*. *Haage v. Zavala*, 2021 IL 125918, ¶ 41. Under the *de novo* standard, the reviewing court performs the same analysis that the trial court would perform. *Id.* (citing *People v. McDonald*, 2016 IL 118882, ¶ 32).

ARGUMENT

I. Executive Order 2020-19 only grants immunity for ordinary negligence that bears a relationship to, and occurred at a time the healthcare facility was rendering assistance to the State.

When the appellate court issued its opinion answering a modified version of the question—a question the parties did not require guidance on—it left a significant matter of first impression, with wide ranging

implications for hundreds of litigants throughout the State, completely unanswered. Each of the Plaintiffs represent one, in a significant group of individuals who were either injured or lost their lives as a consequence of ordinary negligence occurring at a healthcare facility during the early period of the coronavirus pandemic when EO-19 was in effect. As set forth above, EO-19 granted potential immunity for negligence that occurred *at a time* when the healthcare facility was *engaged in the course of* rendering COVID-19 assistance to the State. Exec. Order No. 2020-19, 44 Ill. Reg. 6192 (April 1, 2020). The relevant section of EO-19 at issue provides as follows:

> "Pursuant to Sections 15 and 21(b)-(c) of the IEMA Act, 20 ILCS 3305/21(c), I direct that during the pendency of the Gubernatorial Disaster Proclamation, Health Care Facilities, *** shall be immune from civil liability for any injury or death alleged to have been caused by any act or omission by the Health Care Facility, which injury or death occurred *at a time* when a Health Care Facility *was engaged in the course of* rendering assistance to the State by providing health care services in response to the COVID-19 outbreak, unless it is established that such injury or death was caused by *** willful misconduct of such Health Care Facility***." Exec. Order No. 2020-19, §3, 44 Ill. Reg. 6192 (April 1, 2020) (emphasis added).

Therefore, the viability of Plaintiffs' claims, and countless others raised against healthcare facilities throughout the State during the effective period of the executive order, necessarily hinged on the appellate court's interpretation of the scope of the immunity conferred through EO-19.

It is important to note that the purpose behind the question, as originally certified, was to ascertain whether EO-19 conferred immunity to all claims of ordinary negligence for conduct that had no connection to the healthcare facility's provision of COVID-19 assistance to the State. The underlying goal was to discern whether the immunity conferred through the executive fiat had limitations in its applicability, beyond the specific exclusion for willful and wanton conduct. To capture the essence of the question, the term "blanket immunity" was utilized by the parties with the implicit understanding that its use was purposefully limited to situations involving "ordinary negligence" as opposed to those involving willful and wanton conduct.

While the original certified question's utilization of the phrase "blanket immunity" was perhaps inartful as the appellate court critiqued in its opinion, any reasonable interpretation of the original question could not be interpreted to mean the parties had questioned whether a possibility existed where EO-19 conferred immunity for claims of ordinary negligence *and* willful and wanton conduct as the appellate court erroneously suggested. (A8). This is especially the case given the Illinois Emergency Management Act, EO-19, and the arguments raised by Plaintiffs *and* Bria recognized and agreed that willful and wanton conduct was indeed an expressed exception to the potential immunity conferred– all facts the appellate court's opinion acknowledged. (A8). By reworking and answering the certified question as modified, the appellate court

avoided providing an answer to the question certified by the trial court, which consequently left the parties in precisely the same position they were in prior to leave being granted to appeal pursuant to Rule 308. Ill. S. Ct. R. 308; *Kincaid v. Smith*, 252 Ill.App.3d 618, 623 (1st Dist. 2011) ("A meaningless opinion does not materially advance the underlying litigation.").

Rather than scrutinizing the language utilized by the Governor, the appellate court instead placed its focus on a narrow review of the Illinois Emergency Management Act (hereinafter "IEMA"), which triggered the potential statutory immunity for healthcare facilities. 20 ILCS 3305/1 et seq. The court's stated motivation for doing so was that the executive order could not convey anything more than the statute that authorized it. According to the appellate court, the relevant inquiry was not what EO-19 says, but rather what the relevant sections of the IEMA say. (A9). Yet when following the rules of statutory construction and reading the IEMA as a whole, it is evident that any immunity conferred was limited *only* to acts directly related to the coronavirus pandemic and *not* extended to acts wholly unrelated to the assistance rendered to the State. *Michigan Ave. Nat. Bank v. County of Cook*, 191 Ill. 2d 493, 504 (2000) (a fundamental principle of statutory construction is to view all provisions of an enactment as a whole); *Antunes v. Sookhakitch*, 146 Ill.2d 477, 484 (1992) (courts to also consider each part or section in connection with every other part or section).

Section 15 of the IEMA, which extends immunity to the Governor, various government entities, and their agents, sets forth that the immunity the Act provides only applies when a death, or injury to person or property occurs "while [the individual was] complying with or attempting to comply with [the IEMA] or any rule or regulations promulgated pursuant to [the IEMA]" and does not apply "to political subdivisions and principal executive officers required to maintain emergency services and disaster agencies that are not in compliance with Section 10 of this Act, notwithstanding the provisions of any other laws." *See* 20 ILCS 3305/15. Had the appellate court considered Section 15 as the rules of statutory construction require, it would have appreciated that the immunity provided by the IEMA is restricted to acts directly related to the declared disaster. *Id.* By limiting its focus to Section 21(c) of the IEMA, the appellate court ignored this obvious temporal limitation of the immunity conferred under the IEMA and erroneously concluded that Bria would be immune from ordinary negligence claims arising during the Governor's executive order *if and only if* it could demonstrate it was rendering assistance to the State during the disaster declaration, breathing life into Bria's overbroad interpretation of EO-19. (A10).

According to Bria's literal reading of the executive order, Bria could have purchased and locked facemasks in a closet at its facility, claiming to have preserved them while never actually using a facemask, and still be immune for any of its negligent conduct, regardless of whether its

misconduct bore any relation to the assistance provided to address COVID-19. Taking Bria's misguided logic to its limits, a healthcare facility that could demonstrate it preserved an insignificant amount of PPE would be entitled to immunity for any of the following hypothetical scenarios: (1) a wrongful death caused by a lethal dose of epidural medication being negligently administered during the delivery of a child, (2) an automobile collision caused by the agent of a healthcare facility while picking up a patient for dialysis treatment, (3) a surgeon's negligent emergency amputation of the wrong limb when addressing injuries wholly unrelated to COVID-19, (4) injuries sustained by a fall which were caused by a facility's negligent failure to maintain its premises, or (5) injuries caused by a surgeon's failure to diagnose a thiamine deficiency following a bariatric surgery. It is inconceivable that Governor Pritzker intended such results, as his clear and well-articulated purpose was to provide some measure of liability protection to those efforts that were actually calculated to assist the State's efforts during an unprecedented health crisis. Exec. Order No. 2020-19, 44 Ill. Reg. 6192 (April 1, 2020); *Castaneda v. Illinois Human Rights Comm.*, 132 Ill. 2d 304 (1989) ("Besides examining the language of an act, a court should look to the evil that the legislature sought to remedy[.]").

Moreover, extending immunity to scenarios such as the ones referenced above is precisely the type of absurd, inconvenient, and unjust result courts are to avoid when interpreting a statute, or an executive order

such as in this case. *Evans v. Cook County State's Attorney*, 2021 IL 125513, ¶ 27 (courts are not bound to a literal reading of a statute that leads to absurd results the drafter could not have intended); *In re Detention of Powell*, 217 Ill. 2d 123, 135 (2005) (it is presumed that the drafter did not intend absurdity, inconvenience, or injustice). This is especially true when considering the Governor's goal in issuing EO-19 was to promote public safety by solving medical resource issues that were caused by the unprecedented COVID-19 pandemic. *People v. Cassler*, 2020 IL 125117, ¶ 24 (court may consider the reason for the law, the problems sought to be remedied, the purposes to be achieved, and the consequences of construing the statute one way or another); *Rushton v. Dep't of Corr.*, 2019 IL 124552, ¶ 14. However, if the appellate court's decision in this case is left undisturbed, absurd outcomes such as the ones previously identified, are bound to result, which will only serve to undermine the stated goal of the executive order by providing an unwarranted and unintended escape hatch to healthcare facilities that provided inconsequential assistance to the State in order to trigger wholesale immunity for their negligent conduct that was wholly unrelated to COVID-19.

A significant consequence of the appellate court's failure to address the actual scope of the immunity conferred through EO-19 is Plaintiffs' claims and others throughout the State remain imperiled by the potential for courts to misinterpret EO-19 and consequently extend immunity to reach conduct that had no relation whatsoever to a facility's COVID-19

assistance. This Court can and should correct that error and construe EO-19 in a manner that declares EO-19 does not provide immunity to healthcare facilities for all negligent conduct, regardless of whether such conduct bore any relationship to the assistance the facility rendered to the State. A harmonious reading of Sections 15 and 21 of the IEMA demands the Court reach such an outcome. 20 ILCS 3305/15; 20 ILCS 3305/21(c); *See Susler v. Country Mut. Ins. Co.*, 147 Ill. 2d 548 (1992) (noting sections of a statute should be construed together to produce a "harmonious whole"). And because such a conclusion would indeed further the Governor's purpose behind EO-19, this Court should reverse the appellate court decision and answer the original certified question in the negative.

II. The appellate court further erred by failing to consider the salient points raised in the Illinois Attorney General's brief when answering the certified question as modified.

The appellate court not only erred when it failed to answer the original question certified by the circuit court, it compounded its error when it modified the certified question and gave no credence to the notable points raised in the Illinois Attorney General's brief, which consequently supported Plaintiffs' position concerning limitations of the immunity conferred through EO-19. (A13). The Attorney General is the chief legal officer of the State of Illinois. Ill. Const. 1970, art. V, §15. Therefore, the unique perspective his brief offered should, at a minimum, have been recognized by the appellate court as speaking persuasively regarding the intended scope of EO-19. *Scachitti v. UBS Fin. Services*, 215 Ill. 2d 484,

500-01 (Attorney General is the State's chief legal officer and only legal representative in the courts). Moreover, the points raised in his amicus brief should have been considered and treated as a meaningful addition to the issues raised by the parties based on the fact that the Attorney General, as a 'friend' of the court, constitutes an impartial advisor without an interest in the outcome of the underlying disputed litigation. *Burger v. Lutheran Gen. Hosp.*, 198 Ill.2d 21, 62 (2001) (quoting *People v. P.H.*, 145 Ill. 2d 209, 234 (1991)).

As the interlocutory appeal tasked the appellate court with the responsibility of construing EO-19, its duty was to consider the plain and ordinary meaning of language employed therein in order to ascertain the drafter's intent. *Evans v. Cook County State's Attorney*, 2021 IL 125513, ¶ 27; *Dynak v. Bd. Of Educ. Of Wood Dale Sch. Dist. 7*, 2020 IL 125062, ¶ 16. And to the extent that the language of EO-19 might be deemed unclear as to the scope of immunity provided, the interpretation set forth in the amicus brief by the State's chief legal officer provided a clear and authoritative reading of the Governor's intent. Ill. Const. 1970, art. V, §15.

The decision to ignore the Attorney General's points concerning the proper interpretation of EO-19 was particularly confounding when considering the stark contrast between the Plaintiffs' and Bria's interpretation of EO-19, which arguably suggested EO-19 was susceptible to more than one reasonable reading. *People v. Rinehart*, 2012 IL 111719, ¶ 26. By applying the cannons of statutory construction, the Attorney

General provided necessary guidance to resolve the issues framed by the parties, advising that the immunity EO-19 conferred was not limitless or "blanket immunity," but rather, immunity limited to negligent conduct that occurred *at a time* when the healthcare facility was *engaged in the course of* rendering assistance to the State in response to the COVID-19 outbreak. Because the immunity the Governor conferred through EO-19 was limited in this fashion, the Attorney General rightly argued no reason existed for the appellate court to consider whether the Governor exceeded his constitutional and statutory authority by granting immunity for ordinary negligence claims without limitation. Put another way, there was no basis in the interlocutory appeal to determine whether the Governor had the authority to provide the boundless type of immunity that had never actually been conferred. *Burnette v. Stroger*, 389 Ill.App.3d 321 (1st Dist. 2009) (purpose of an immediate, interlocutory appeal is solely to materially advance the ultimate termination of the litigation). Coincidentally, the constitutional avoidance in this case simultaneously promoted another "cardinal principle of statutory construction," which is to "save and not destroy" the executive order. *Tilton v. Richardson*, 403 U.S. 672, 684 (1971) (quoting *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 30 (1937)).

If the appellate court remained unconvinced of this reality, it should have reviewed the plain and ordinary language of the executive order as the Attorney General and the Plaintiffs implored it to do, since the primary

goal when interpreting EO-19 would be to ascertain and give effect to the Governor's intent. *Moon v. Rhode*, 2016 IL 119572, ¶ 22; *Mich. Ave. Nat'l Bank v. County of Cook*, 191 Ill. 2d 493, 503-04 (2000). Because the best evidence of the Governor's intent is the language of the executive order itself, the Court should have given each word, clause, and sentence of EO-19 its plain, ordinary, and popularly understood meaning without rendering any word superfluous. *See Slepicka v. Illinois Department of Public Health*, 2014 IL 116927, ¶ 14 (setting out the rules of statutory construction). But the appellate court did not do this, opining that it "need not parse the executive order's language too closely" particularly the Governor's use of the phrase "at a time"—words to which the parties' briefs had each rightly paid particular attention to. (A9); *See e.g. Cty. Of Knox ex rel. Masterson v. Highlands*, 188 Ill. 2d 546, 556 (1999) (applying the fundamental rule of statutory construction by looking to the words of the statute to give effect to the intention of the drafter).

The Governor's utilization of the phrase "at a time" establishes that he did not intend for the immunity conferred through EO-19 to extend beyond "the course of" providing COVID-19 assistance to the State and include conduct entirely unrelated to the provision of such assistance but happened to occur at the same time. The idiom "at a time" is commonly understood to mean "during one particular moment" or "during one period of time without stopping." Merriam-Webster Dictionary, http://www.merriam-webster.com/dictionary/at%20a%20time (last

visited September 20, 2023). Similarly, the Governor's intentional use of the phrase "engaged in the course of" following the phrase "at a time," plainly established the immunity the Governor conferred had to relate to the assistance the healthcare facility rendered. *See e.g. Fitzpatrick v. Chicago*, 112 Ill. 2d 211 (1986) (holding where evidence establishes that *at the time* of the alleged negligence a public employee was *engaged in a course of conduct* designed to carry out or put into effect any law, an affirmative defense based upon the Tort Immunity Act should be available to the governmental employee and his employer).

By limiting immunity to acts that occurred "at a time" the healthcare facility was "engaged in the course of" providing COVID-19 assistance, the Governor did not intend to extend immunity to conduct completely unconnected to the provision of such assistance but happened to occur at the same time. To construe EO-19 differently would render the phrases "at a time" and "engaged in the course of" meaningless, which is effectively what the appellate court did when it decided it need not parse the language contained in the executive order too closely. *Slepicka v. Illinois Department of Public Health*, 2014 IL 116927, ¶ 23. The deliberate decision to not "parse the language" of EO-19 too closely resulted in it being read in a manner that renders a word, clause, or phrase a nullity, which a court is to specifically refrain from doing. *Id.*

By the appellate court deciding to leave the persuasive argument offered by the Illinois Attorney General unaddressed and avoid interpreting

the language of EO-19 pursuant to the rules of statutory construction, all litigants, such as the Plaintiffs here, suffer the inequity of the executive order being applied in a manner contrary to what the Governor had intended. If the Governor's principal purpose behind issuing EO-19 is to be preserved while vanquishing the possibility of immunity being extended beyond the Governor's desired limits, the careful, thoughtful, and appropriate analysis of EO-19's scope provided by the Attorney General's amicus brief must be taken into consideration. After all, the "sole function of an *amicus* is to advise or make suggestions to the court [based on] the issues framed by the parties" which the Attorney General's brief provided in abundance. *Burger v. Lutheran Gen. Hosp.*, 198 Ill.2d 21, 62 (2001). Accordingly, this Court should construe EO-19 pursuant to the cannons of statutory construction and hold that EO-19 only grants immunity for ordinary negligence that bears a relationship to, and occurred *at a time* the healthcare facility was rendering assistance to the State.

CONCLUSION

The salient purpose behind EO-19 was to protect the people of Illinois by securing assistance from healthcare facilities throughout the State in combatting the unprecedented public health crisis the coronavirus pandemic presented. In exchange for rendering assistance, the Governor's executive order extended partial immunity to healthcare facilities which was limited to negligent conduct that *occurred at a time* the healthcare facility was *engaged in the course of* rendering assistance to the

State. The executive order was not a blank check for healthcare facilities to engage in negligence that was entirely unrelated to any COVID-19 assistance rendered. By failing to address, much less consider, the language Governor Pritzker used in EO-19, the appellate court left litigants and courts throughout the State in the precarious position of speculating as to the scope of the immunity the executive order conferred. And by avoiding analyzing EO-19 through the cannons of statutory construction in order to ascertain the Governor's true intent, the appellate court continued the risk of EO-19 being interpreted in a manner that would produce results that are absurd, inconvenient, and totally unjust.

For these reasons, the Plaintiffs' respectfully request this Honorable Court promote the Governor's true intent behind EO-19, reverse the appellate court's judgment, and answer the original certified question *in the negative*, holding EO-19 only grants immunity for ordinary negligence that bears a relationship to, and occurred *at a time* the healthcare facility was rendering assistance to the State.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this Petition for Leave to Appeal complies with the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), contains 22 pages.

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2023 IL App (2d) 220180
No. 2-22-0180
Opinion filed August 17, 2023

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

DONALD JAMES, as Executor of the Estate of Lucille Helen James, Deceased; MARK R. DONESKE, as Executor of the Estate of Rose H. Doneske, Deceased; FRANCES G. DeFRANCESCO, as Executor of the Estate of Jack DeFrancesco, Deceased; PATRICIA VELCICH, as Executor of the Estate of Marion May Heotis, Deceased; FAITH HEIMBRODT, as Independent Administrator of the Estate of Carol Orlando, Deceased,	)	Appeal from the Circuit Court of Kane County.
Plaintiffs-Appellees,	)	
v.	)	Nos. 20-L-247, 20-L-259, 20-L-260, 20-L-264 & 20-L-273
GENEVA NURSING AND REHABILITATION CENTER, LLC, d/b/a Bria Health Services of Geneva,	)	Honorable Susan Clancy Boles,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court, with opinion.
Justices Jorgensen and Birkett concurred in the judgment and opinion.

OPINION

¶ 1 This certified-question appeal under Illinois Supreme Court Rule 308 (eff. Oct. 1, 2019) comes to us from several consolidated wrongful-death suits against a nursing home where each decedent passed from COVID-19 complications during the opening weeks of the pandemic. Each

complaint alleges that the nursing home both negligently and willfully failed to control the spread of COVID-19 in the facility, which led to the deaths of the decedents. The nursing home sought immunity from the decedents' negligence claims under an executive order (Exec. Order No. 2020-19, 44 Ill. Reg. 6192 (Apr. 1, 2020), https://coronavirus.illinois.gov/content/dam/soi/en/web/coronavirus/documents/executiveorder-2020-19.pdf [https://perma.cc/FG32-BM6L]), issued by Governor J.B. Pritzker during the pandemic's beginning.

¶ 2 The parties presented a question to the circuit court, which was then certified for interlocutory review, asking whether Executive Order No. 2020-19 provides "blanket immunity for ordinary negligence [claims] to healthcare facilities that rendered assistance to the State during the COVID-19 pandemic." For the reasons explained below, we modify the question and answer "yes."

¶ 3 I. BACKGROUND

¶ 4 At this stage, we take as true all well-pled allegations from the estates' complaints. See *In re Chicago Flood Litigation*, 176 Ill. 2d 179, 184 (1997); *Coley v. Bradshaw & Range Funeral Home, P.C.*, 2020 IL App (2d) 190627, ¶ 16. With minor variations, the complaints are largely uniform and were consolidated in the trial court.

¶ 5 Each decedent was a resident of the Geneva Nursing and Rehabilitation Center, LLC, also known as Bria Health Services of Geneva (Bria). Some decedents had been long-term residents, while others were recent arrivals. According to the complaints, between March and May of 2020, each decedent contracted COVID-19 and died from related respiratory complications or respiratory failure (acute hypoxia) while in the nursing home's care. The complaints generally alleged that the decedents contracted COVID-19 from Bria's failure to quarantine symptomatic staff members and residents adequately and its failure to implement effective procedures for

maintaining hygiene and equipment, including personal protective equipment (PPE) such as masks and gowns, thereby exposing decedents to the virus during this period. The complaints alleged that this was a breach of the nursing home's duty of care, which proximately caused the decedents' deaths.

¶ 6 While the pandemic was in its ascendence, on April 1, 2020, pursuant to the Illinois Emergency Management Agency Act (Act) (20 ILCS 3305/1 *et seq.* (West 2020)), the Governor issued Executive Order No. 2020-19, which was one of the first directives in a series of proclamations to address the COVID-19 outbreak. Within 30 days, the Governor reissued Executive Order No. 2020-19 as Executive Order No. 2020-33 (Exec. Order No. 2020-33, 44 Ill. Reg. 8235 (Apr. 30, 2020), https://coronavirus.illinois.gov/content/dam/soi/en/web/coronavirus/documents/executiveorder-2020-33.pdf [https://perma.cc/6UA5-48NX]). See generally *Fox Fire Tavern, LLC v. Pritzker*, 2020 IL App (2d) 200623, ¶ 24. The Governor reissued his same executive order several times during the pandemic; however, this appeal is concerned only with the first two orders, which, for the reader's convenience, we reference collectively as "Executive Order No. 2020-19."

¶ 7 Executive Order No. 2020-19 invoked the Governor's authority under section 21(c) of the Act (20 ILCS 3305/21(c) (West 2020)) to extend ordinary governmental tort immunity (see 745 ILCS 10/1-101 *et seq.* (West 2020)) to nursing homes and health care facilities that "render[ed] assistance or advice at the request of the State" during the Governor's disaster declaration. Exec. Order No. 2020-19, 44 Ill. Reg. 6192 (Apr. 1, 2020). Relevant here, section 3 of Executive Order No. 2020-19 provided as follows:

> "Pursuant to Sections 15 and 21(b)-(c) of [the Act], 20 ILCS 3305/15 and 21(b)-(c), I direct that during the pendency of the Gubernatorial Disaster Proclamation, Health Care Facilities

> *** shall be immune from civil liability for any injury or death alleged to have been caused by any act or omission by the Health Care Facility, which injury or death occurred at a time when a Health Care Facility was engaged in the course of rendering assistance to the State by providing health care services in response to the COVID-19 outbreak, unless it is established that such injury or death was caused by *** willful misconduct ***." Exec. Order No. 2020-19, § 3, 44 Ill. Reg. 6192 (Apr. 1, 2020).

¶ 8 After the decedents' estates filed their complaints, Bria filed motions to dismiss the decedents' negligence claims with prejudice, asserting that Bria was "render[ing] assistance" to the State when decedents' negligence claims arose and therefore was immune from suit for ordinary negligence. Bria argued that its immunity under the order was an affirmative matter, barring those claims. See 735 ILCS 5/2-619(a)(9) (West 2020). The core of Bria's assertion was that as long as it took such steps to address the pandemic, it was immune from negligence claims regardless of how they arose. In other words, Bria asserted that it was immune from not only negligence claims tied to COVID-19, but also claims for willful misconduct.

¶ 9 Attached to Bria's motion were affidavits from an administrator stating that, in response to the pandemic and "at the direction of" the Illinois Department of Public Health (IDPH), Bria stored PPE, made beds available for incoming patients, and provided additional training to its staff on protective measures such as handwashing. The estates responded that Bria's interpretation of Executive Order No. 2020-19 was incorrect and that the affidavits were insufficient to resolve immunity at the pleading stage of the litigation. The trial court initially denied Bria's motion to dismiss, but after Bria filed a motion to reconsider, the court vacated the denial. Bria then submitted the following question for certification: "Does [EO20-19] provide blanket immunity for

ordinary negligence to healthcare facilities that rendered assistance to the State during the COVID-19 pandemic?"

¶ 10 The trial court agreed with Bria that Executive Order No. 2020-19 could reasonably be read in different ways and that answering that question could help resolve a substantial portion of the litigation. Thus, the court certified the question for our review. The court also denied the estates' motion to reconsider certification.

¶ 11 We granted Bria leave to appeal. Ill. S. Ct. R. 308 (eff. Oct. 1, 2019). We also granted leave for the Illinois Trial Lawyers Association to submit *amicus* briefs and received briefing from the Attorney General on the relevant statutory authority.

¶ 12 II. ANALYSIS

¶ 13 At the outset, we note that the certified question, as presented, misstates the relevant issues in this case. "By definition, certified questions are questions of law subject to *de novo* review" (*Rozsavolgyi v. City of Aurora*, 2017 IL 121048, ¶ 21), and "the scope of our review is limited to the certified question" (*Moore v. Chicago Park District*, 2012 IL 112788, ¶ 9). We are not, however, limited to the *language* of the question as certified. As a reviewing court, we may disregard words or phrases in the question that mischaracterize the issue and instead consider "the question remaining." *Moore*, 2012 IL 112788, ¶¶ 11-14. Here, as is often the case, the "certified question [was] framed as a question of law, but the ultimate disposition [may] depend[ ] on the resolution of a host of factual predicates." (Internal quotation marks omitted.) *Rozsavolgyi*, 2017 IL 121048, ¶ 21. Nevertheless, we can answer the certified question, as reframed, and we answer that modified question in the affirmative.

¶ 14 As the parties have briefed it, the certified question calls into question the constitutional separation of powers and the mechanics of Illinois civil procedure, which could have implications

for nearly every lawsuit in our state's courts. The parties' briefs manifest an awareness of these concepts to an extent, but both sides have given us a distorted presentation of the issues. The estates would have us declare that Executive Order No. 2020-19 exceeded the Governor's authority and is unconstitutional. Bria would like us to say that Executive Order No. 2020-19 grants them "blanket immunity" from nearly all claims arising during the COVID-19 pandemic. The Illinois Trial Lawyers Association suggests we go further and declare that, under Executive Order No. 2020-19, Bria could be immune only for acts directly connected to measures implemented in response to the pandemic. None of these results is tenable, and except for the Attorney General, all parties indirectly suggest that we review the trial court's order initially denying Bria's motion to dismiss the negligence counts—an order that was subsequently vacated. Nevertheless, this is *not* an interlocutory appeal of that order. Our task is to answer the certified question rather than to opine on the propriety of a now-vacated, nonfinal order denying a motion to dismiss. See *Rozsavolgyi*, 2017 IL 121048, ¶ 21. As we explain, with modifications, we can answer the certified question simply and directly under Rule 308.

¶ 15 After careful consideration, we determine that the certified question incorrectly describes the scope of the immunity at issue as well as its source. First, the question's use of the phrase "blanket immunity" is inapt. In modern legal vernacular, two primary modifiers denote the scope of the immunity in question. The first phrase, "absolute immunity," indicates that a defendant is completely exempt from suit for *any* conduct in performing (or not performing) the defendant's official duties. *E.g.*, *Cleavinger v. Saxner*, 474 U.S. 193, 202 (1985) (judicial immunity). Such exemptions are justified because "[i]n the absence of immunity, *** [certain] officials would hesitate to exercise their discretion *** even when the public interest required bold and unhesitating action." *Nixon v. Fitzgerald*, 457 U.S. 731, 744-45 (1982) (presidential immunity). In

contrast, there is also "qualified" or "partial" immunity. This immunity is typically a statutory limitation that bars negligence claims, but *not* claims for willful and wanton misconduct. See, *e.g.*, *Hernandez v. Lifeline Ambulance, LLC*, 2020 IL 124610, ¶ 26 (discussing partial immunity for paramedics); *Corbett v. County of Lake*, 2017 IL 121536, ¶ 35 (discussing partial immunity for state and local authorities for the maintenance of bike trails).

¶ 16 The phrase "*blanket* immunity" connotes *absolute* immunity (*e.g.*, *Cohen v. Chicago Park District*, 2017 IL 121800, ¶ 22; *Ries v. City of Chicago*, 242 Ill. 2d 205, 227 (2011)); yet the statutory authority, Executive Order No. 2020-19, and the parties' respective arguments, all conceive that the immunity at issue is only *partial*. In other words, the certified question, as presented, could be taken to erroneously suggest that Bria could be immune from *both* negligence claims *and* claims of willful misconduct. The latter suggestion is a bridge too far.

¶ 17 In addition, the certified question also misconceives where Bria's potential immunity derives from. Any potential immunity would derive from the Illinois Emergency Management Act, not the executive order invoking that Act. As the Attorney General points out, all Executive Order No. 2020-19 did was invoke the Governor's authority to declare a public health emergency, triggering the preexisting, potential statutory immunity for health care facilities under the Act. We look to section 7 of the Act, which empowers the Governor to declare that a disaster exists and to exercise emergency powers for 30 days. 20 ILCS 3305/7 (West 2020). Such orders may be reissued as well. See, *e.g.*, *Fox Fire Tavern, LLC*, 2020 IL App (2d) 200623, ¶¶ 4, 23. Relevant here, section 21(c) of the Act states:

> "(c) Any private person, firm or corporation, and any employee or agent of such person, firm or corporation, who renders assistance or advice at the request of the State, or any political subdivision of the State under this Act during an actual or impending disaster,

shall not be civilly liable for causing the death of, or injury to, any person or damage to any property except in the event of willful misconduct." 20 ILCS 3305/21(c) (West 2020).

¶ 18 We note that the Act does not define what it means to "render assistance," but Executive Order No. 2020-19 stated that "for Health Care Facilities, 'rendering assistance' in support of the State's response must include measures such as increasing the number of beds, preserving personal protective equipment, or taking necessary steps to prepare to treat patients with COVID-19." Exec. Order No. 2020-19, § 2, 44 Ill. Reg. 6192 (Apr. 1, 2020). We agree with the Attorney General that the executive order's elaboration is not inconsistent with the relevant portions of the Act. Consequently, we reject the estates' argument that Executive Order No. 2020-19 is unconstitutional, or *ultra vires*, as the executive order neither overrides nor is inconsistent with the General Assembly's grant of authority to the Governor under the Act.

¶ 19 The parties primarily dispute the phrase in section 3 of the executive order immunizing health care facilities when an "injury or death occurred *at a time* when [the facility] was engaged in the course of rendering assistance to the State," which was covered by the Governor's disaster proclamation. (Emphasis added.) Exec. Order No. 2020-19, § 3, 44 Ill. Reg. 6192 (Apr. 1, 2020). We need not parse the executive order's language too closely— particularly its use of the phrase "at a time"—as the parties have. It is axiomatic that an executive order, issued pursuant to statutory authority, cannot convey more than the statute that authorized it. Again, the question is not what the executive order says but rather what the relevant *statute* that the executive order invoked says. See Exec. Order No. 2020-19, § 3, 44 Ill. Reg. 6192 (Apr. 1, 2020) ("Pursuant to Sections 15 and 21(b)-(c) of [the Act], 20 ILCS 3305/15 and 21(b)-(c) ***").

¶ 20 We do not find any ambiguity in section 21(c) of the Act. The statutory authority is clear that, except for willful misconduct, any "private person, firm or corporation" who renders

"assistance or advice at the request of the State *** *during* [a] *** disaster[ ] shall not be civilly liable for causing the death of, or injury to, *any person*." (Emphases added.) 20 ILCS 3305/21(c) (West 2020). Thus, Bria would have immunity from negligence claims arising during the Governor's disaster declaration *if and only if* it can show it was "render[ing] assistance" to the State during this time. This interpretation is consistent with guidance from our supreme court, which has repeatedly observed that, "[w]here the legislature has chosen to limit an immunity to cover *only negligence*, it has unambiguously done so." (Emphasis added.) *In re Chicago Flood Litigation*, 176 Ill. 2d at 196; see also *Barnett v. Zion Park District*, 171 Ill. 2d 378, 391 (1996).

¶ 21 Thus, we modify the certified question to state as follows: "Does Executive Order No. 2020-19, which triggered the immunity provided in 20 ILCS 3305/21(c), grant immunity for ordinary negligence claims to healthcare facilities that rendered assistance to the State during the COVID-19 pandemic?" And we answer that question in the affirmative.

¶ 22 We further observe that what it means to "render assistance" to the State during the pandemic is apt to be a fact-bound question not easily disposed of through preliminary pleadings and process. While immunity from tort liability is an affirmative matter that *may* properly be raised in a section 2-619 motion (*Hernandez*, 2020 IL 124610, ¶ 14), it is often a "red flag" to ask courts to evaluate complex legal or factual disputes via a motion to dismiss. See *Reynolds v. Jimmy John's Enterprises, LLC*, 2013 IL App (4th) 120139, ¶ 26. We remind the parties that the purpose of a section 2-619 motion to dismiss is to "dispose of issues of law and *easily proved* issues of fact at the outset of litigation." (Emphasis added.) *Van Meter v. Darien Park District*, 207 Ill. 2d 359, 367 (2003). As with more challenging immunity questions, like this one, the trial court will be in the best position to evaluate the quantum of evidence necessary to determine whether a given defendant qualifies for the statutory immunity at issue. See, *e.g.*, *Cates v. Cates*, 156 Ill. 2d 76, 78

(1993) (determining scope of partial immunity on summary judgment).

¶ 23 Finally, we note that we have considered the three federal cases cited by the parties related to this issue—*Walsh v. SSC Westchester Operating Co.*, 592 F. Supp. 3d 737 (N.D. Ill. 2022); *Brady v. SSC Westchester Operating Co.*, 533 F. Supp. 3d 667 (N.D. Ill. 2021); *Claybon v. SSC Westchester Operating Co.*, No. 20-cv-04507, 2021 WL 1222803 (N.D. Ill. Apr. 1, 2021). All three of these cases focus on the text of the Governor's order but do not hinge their analyses on section 21(c) of the Act. Nevertheless, we determine that the result in our case today is consistent with those federal authorities, which may provide some guidance to the trial court on remand.

¶ 24 III. CONCLUSION

¶ 25 In sum, we modify the certified question, answer in the affirmative, and remand this cause to the circuit court of Kane County.

¶ 26 Certified question answered; cause remanded.

2023 IL App (2d) 220180

***James v. Geneva Nursing & Rehabilitation Center, LLC*, 2023 IL App (2d) 220180**

Decision Under Review:	Appeal from the Circuit Court of Kane County, Nos. 20-L-247, 20-L-259, 20-L-260, 20-L-264, 20-L-273; the Hon. Susan Clancy Boles, Judge, presiding.
Attorneys for Appellant:	Anne M. Oldenburg and LaDonna L. Boeckman, of HeplerBroom LLC, Robert Marc Chemers and David N. Larson, of Pretzel & Stouffer, Chtrd., and Mark D. Rosen, of IIT Chicago-Kent College of Law, all of Chicago, for appellant.
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No. 2-22-0180

IN THE
APPELLATE COURT OF ILLINOIS
SECOND JUDICIAL DISTRICT

E-FILED
Transaction ID: 2-22-0180
File Date: 1/13/2023 12:30 PM

Jeffrey H. Kaplan, Clerk of the Court
APPELLATE COURT 2ND DISTRICT

DONALD JAMES, as Executor of the Estate of Lucille Helen James, Deceased; MARK R. DONESKE, as Executor of the Estate of Rose H. Doneske, Deceased; FRACNES G. DEFRANCESCO, as Executor of the Estate of Jack P. Defrancesco, Deceased; and PATRICIA VELICH, as Executor of the Estate of Carol Orlando, Deceased,	)	Appeal from the Circuit Court of the Sixteenth Judicial Circuit, Kane County, Illinois
Plaintiffs-Appellees,	)	Nos. 20 L 247 20 L 259 20 L 264 20 L 260 20 L 273 (consol.)
v.	)	
GENEVA NURSING AND REHABILITATION CENTER, LLC, an Illinois Limited Liability Company d/b/a BRIA HEALTH SERVICES OF GENEVA,	)	The Honorable SUSAN BOLES, Judge Presiding.
Defendant-Appellee.	)	

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INTEREST OF AMICUS CURIAE

The Illinois Attorney General submits this amicus brief pursuant to this court's orders dated November 4 and December 1, 2022.

STATEMENT OF FACTS

The Governor issued Executive Order 2020-19 ("EO2020-19") on April 1, 2020, in the early days of the Covid-19 pandemic, when the virus was rapidly spreading throughout Illinois and it was unclear if there were "adequate bed capacity, supplies, and providers to treat patients afflicted with COVID-19, as well as patients afflicted with other maladies." A1-4.[1] To maximize available health care resources, the Governor exercised his authority under the Illinois Emergency Management Agency Act ("Act"), 20 ILCS 3305/15, 21(b), (c) (2020), and issued EO2020-19, which, among other things, directed all health care facilities to render assistance in support of the State's response to Covid-19. A3. As a complement to that directive, the Governor also ordered that all health care facilities "shall be immune from civil liability" for any injury or death caused by their acts or omissions that "occurred at a time when [they were] engaged in the course of rendering assistance to the State by providing health care services in response to the COVID-19 outbreak, unless it is established that such injury or death was caused by gross negligence or willful misconduct." A3-4.

This appeal arises from five consolidated actions brought by plaintiffs, the administrators of estates of individuals who died of Covid-19 in late April

[1] The common law record is cited as "C__," Bria's opening brief is cited as "AT Br.__," plaintiffs' response brief is cited as "AE Br.__," the Illinois Trial Lawyers Association's amicus brief is cited as "AC Br.__," the appendix to that amicus brief is cited as "A__," and Bria's reply brief is cited as "RY Br.__."

and early May of 2020 while they resided at Bria Health Services of Geneva ("Bria"). *See* C4486-87. Plaintiffs asserted several statutory and common law claims against Bria, alleging that it negligently and willfully failed to control the spread of Covid-19 within the facility. *See, e.g.*, C17-74. Bria moved to dismiss the negligence claims, arguing that it was immune from liability for ordinary negligence under EO2020-19 because it had provided the State with Covid-19 assistance in April and May 2020, and the decedents died during that time. *See, e.g.*, C401-02. The circuit court denied Bria's motion to dismiss, holding, in part, that EO2020-19 did not provide "blanket immunity" for health care facilities. C4449-52; C4471. The circuit court then certified the question of whether EO2020-19 provides "blanket immunity for ordinary negligence to healthcare facilities that rendered assistance to the State during the COVID-19 pandemic" for this court's interlocutory review under Illinois Supreme Court Rule 308, C4486-87; C4509-13, and this court granted leave to appeal, *see* AT Br. 8.

Bria argues on appeal that EO2020-19 grants blanket immunity to health care facilities for any negligent conduct that occurred at the same time they were also rendering Covid-19 assistance to the State. *See id.* at 13-14; RY Br. 10-12. In response, plaintiffs and the Illinois Trial Lawyers Association argue that EO2020-19 grants immunity for only those actions that were related to the Covid-19 assistance that was rendered and, they also contend, the Governor would have lacked the authority to grant the blanket immunity

that Bria proposes. *See* AE Br. 17-22; AC Br. 4-15. This court then ordered the Attorney General to file an amicus brief expressing the State's views in response to plaintiffs' argument.

ARGUMENT

EO2020-19 does not provide blanket immunity to health care facilities for ordinary negligence that was unrelated to any assistance they rendered in response to the Covid-19 outbreak.[2] That conclusion is compelled by the plain language of the executive order, which grants immunity from liability only for negligent conduct that "occurred at a time when a Health Care Facility *was engaged in the course of* rendering assistance to the State by providing health care services in response to the COVID-19 outbreak." A3 (emphasis added). Interpreting EO2020-19 to grant immunity for conduct that has no connection to the provision of Covid-19 assistance would not only be inconsistent with the relevant provision's text, but it would also fail to align the executive order's effect with its undisputed purpose, which was to eliminate barriers to health care services when the State faced a looming shortage of medical resources. And extending EO2020-19's immunity to reach conduct that had nothing to do with Covid-19 assistance would lead to consequences the Governor could not have intended.

For these reasons, this court should hold that EO2020-19 does not confer health care facilities with blanket immunity from liability for any and

[2] Given the limited scope of this brief, as defined by the certified question and this court's November 4 order, this brief does not address the related factual questions of whether Bria was "rendering assistance" during the times when the allegedly negligent conduct occurred and, if it was, whether that conduct was related to that assistance. Those factual issues would need to be resolved to determine whether Bria is entitled to immunity regardless of how this court answers the certified question.

all negligence that occurred during a time when they also provided Covid-19 assistance. This court therefore need not consider whether the Governor would have exceeded his constitutional and statutory authority by granting that type of blanket immunity. Indeed, there is no reason to decide if the Governor had the power to grant an immunity that he did not, in fact, provide.

I. The usual rules of statutory construction should govern this court's interpretation of EO2020-19.

To begin, although there does not appear to be any Illinois precedent deciding whether the usual rules of statutory construction govern this court's interpretation of an executive order, those rules should apply here because an executive order, like an administrative regulation, which is interpreted under the rules of statutory construction, has the force and effect of law. *See Haage v. Zavala*, 2021 IL 125918, ¶ 43 ("because administrative regulations have the force and effect of law, the familiar rules that govern construction of statutes also apply to the construction of administrative regulations"). That approach would also be consistent with the way executive orders are interpreted in other jurisdictions. *See City & Cnty. of S.F. v. Trump*, 897 F.3d 1225, 1238 (9th Cir. 2018); *United States v. Abu Marzook*, 412 F. Supp. 2d 913, 922 (N.D. Ill. 2006); *Ventilla v. Pac. Indem. Co.*, No. 1:20-cv-08462 (MKV), 2021 WL 5234404, at *2 (S.D.N.Y. 2021); *City of Morgan Hill v. Bay Area Air Quality Mgmt. Dist.*, 13 Cal. Rptr. 3d 420, 431 (Cal. Ct. App. 2004); *Matter of Murack*, 957 N.W.2d 124, 128 (Minn. Ct. App. 2021).

This court's primary objective when interpreting an executive order is therefore "to ascertain and give effect to the [Governor's] intent." *Moon v. Rhode*, 2016 IL 119572, ¶ 22. The best evidence of the Governor's intent will be the executive order's "plain and ordinary meaning." *In re Craig H.*, 2022 IL 126256, ¶ 25. This court may also consider "the reason or purpose for the [executive order], the problems it seeks to address, and the consequences of construing the [executive order] one way or another." *Robinson v. Vill. of Sauk Vill.*, 2022 IL 127236, ¶ 17. This court should consider EO2020-19 as a whole, so that its words and phrases are not construed in isolation, but are "interpreted in light of other relevant provisions." *Rushton v. Dep't of Corr.*, 2019 IL 124552, ¶ 14. Finally, this court should construe EO2020-19 in a way that "avoid[s] absurd results" and reject any reading that the Governor "could not have intended." *Dawkins v. Fitness Int'l, LLC*, 2022 IL 127561, ¶ 27.

II. EO2020-19 does not provide blanket immunity to health care facilities for negligence that was unrelated to the provision of Covid-19 assistance.

The plain language of EO2020-19 grants immunity for negligence that occurred while a health care facility was "engaged in the course of" rendering Covid-19 assistance and does not immunize conduct that was unrelated to such assistance but happened to occur at the same time. By granting immunity for conduct that occurred when a facility was "engaged in the course of" providing Covid-19 assistance, the Governor defined the immunity relative to the scope of the assistance that was rendered. Indeed, that phrase typically refers to

conduct that was taken within the scope of an individual's authority to carry out or effectuate a task. *See, e.g.*, *In the Course of Employment*, Black's Law Dictionary (11th ed. 2019) (defining phrase as "having happened to an on-the-job employee within the scope of employment"). In *Romito v. City of Chicago*, for example, this court noted that the defendant was immune from liability for negligence occurring while he "was engaged in a course of conduct designed to carry out or put into effect any law," and it decided that the immunity applied in that case because the evidence showed that he "was still engaged in a course of conduct that was enforcing or executing a law" when the alleged negligence occurred. 2019 IL App (1st) 181152, ¶¶ 43-44. This court should construe EO2020-19 in accord with the ordinary meaning of "engaged in the course of" and hold that the executive order does not grant blanket immunity to health care facilities for injuries or death caused by acts or omissions that occurred during a time when a facility was not engaged in rendering Covid-19 assistance or that was unrelated to the assistance they rendered to the State. *See Sharpe v. Crystal Westmoreland*, 2020 IL 124863, ¶ 10 (statutory language should be given its "plain and ordinary meaning," which "is the most reliable indicator of the legislative intent").

To the extent Bria argues that the phrase "at a time" demonstrates that the Governor intended to confer blanket immunity for all negligent conduct, regardless of whether it bore any relation to Covid-19 assistance, so long as it occurred during the same time a facility was rendering assistance, *see* AT Br.

13; RY Br. 11-12, it is incorrect. The phrase "at a time" means "during one particular moment," *At a time*, Merriam-Webster, https://www.merriam-webster.com/dictionary/at%20a%20time (last visited Jan. 13, 2023), and can be used to describe the number of items "involved in one action, place, or group," *At a time*, Collins https://www.collinsdictionary.com/us/dictionary/english/at-a-time (last visited Jan. 13, 2023), or "on each occasion," *At a time*, Macmillan, https://www.macmillandictionary.com/us/dictionary/american/at-a-time (last visited Jan. 13, 2023). And "moment" is defined as an "instant" or "a minute portion or point in time." *Moment*, Merriam-Webster, https://www.merriam-webster.com/dictionary/moment (last visited Jan. 13, 2023); *see also Moment*, Dictionary.com, https://www.dictionary.com/browse/moment (last visited Jan. 13, 2013) ("an indefinitely short period of time; instant"). The Governor's use of the phrase "at a time," which refers to a specific "moment" or "instant," therefore confirms that the Governor did not intend for the immunity to reach beyond "the course of" providing Covid-19 assistance and encompass conduct that was wholly unconnected to the provision of such assistance but happened to occur at the same time.

Bria further argues that EO2020-19 provides blanket immunity because the only exception to immunity is for "willful misconduct." AT Br. 10-11. But holding that EO2020-19 does not provide blanket immunity would not insert any unwritten exceptions into the executive order. *See 1550 MP Road LLC v. Teamsters Loc. Union No. 700*, 2019 IL 123046, ¶ 30 (courts may not insert

"exceptions, limitations, or conditions that conflict with the clearly expressed legislative intent"). Doing so would merely define the scope of the immunity consistent with the language that the Governor chose to use.

Also, while Bria argues that the Governor could have used the phrase "arising out of" Covid-19 assistance to impose a causation requirement if that was his intent, RY Br. 10, it overlooks that the language he did use — stating that the immunity reaches conduct that occurred when a facility "was engaged in the course of rendering assistance" — demonstrates that conduct entirely unrelated to the assistance rendered is not covered. The Governor was not required to use one phrase instead of another.

And even if the immunity provision's language could be susceptible to an expansive reading that confers blanket immunity, in addition to the more limited reading supported by the text's ordinary meaning, that interpretation would run afoul of other canons of statutory construction. Specifically, reading EO2020-19 to provide blanket immunity to health care facilities would create unnecessary inconsistencies within the executive order as a whole and fail to effectuate the order's stated purposes. If anything, a blanket immunity would undermine those purposes and produce consequences the Governor did not intend.

To start, interpreting EO2020-19 to grant blanket immunity to health care facilities would create an inconsistency with how the immunity operates with regard to health care professionals even though the language providing

the immunity to each group is the same. *See* A3 (using identical language in sections 3 and 4 to confer immunity to health care facilities and professionals). That is because health care facilities, by virtue of their size and nature, can simultaneously perform countless tasks in various locations throughout the facility, while a health care professional's conduct, as an individual person, is necessarily limited to a specific location and moment in time. As a result, a health care professional's actions during the time she is engaged in conduct that meets the definition of "rendering assistance" will always be related to that assistance. It is thus apparent that EO2020-19 does not grant blanket immunity to health care professionals for conduct that is wholly unconnected to Covid-19 assistance, and construing that same language to confer blanket immunity to health care facilities would read an unnecessary conflict into the executive order. *See Bd. of Educ. of City of Chi. v. Moore*, 2021 IL 125785, ¶ 40 ("sections of the same statute should be considered so that each section can be construed with every other part or section of the statute to produce a harmonious whole").

Interpreting EO2020-19 to grant blanket immunity also would not further the order's express purposes or help solve the problems the Governor sought to address. EO2020-19 granted immunity as part of a larger effort to ensure that the State had "adequate bed capacity, supplies, and providers to treat patients afflicted with COVID-19, as well as patients afflicted with other maladies," and "eliminat[e] obstacles or barriers to the provision of supplies

and health care services." A1. As Bria recognizes, that additional assistance could "increase a facility's potential exposure to liability," and "the Governor relieved those facilities of the risk of legal liability that might arise while they were rendering that assistance, by immunizing them from any liability except for willful misconduct." AT Br. 14; *see also* RY Br. 12 ("A good faith though ultimately inadequate or misguided effort to render assistance in combatting the pandemic is immunized."). Granting blanket immunity for conduct that had nothing to do with the provision of Covid-19 assistance would not relieve health care facilities of any additional liability they could potentially incur by rendering such assistance. Blanket immunity therefore would not address the problem that the Governor was indisputably trying to solve.

Although Bria hypothesizes that granting blanket immunity would encourage health care facilities to render Covid-19 assistance, RY Br. 10-11, that objective was directly addressed by the conferral of immunity for conduct related to that assistance. If anything, blanket immunity could undermine the Governor's goals by incentivizing facilities to render some minimal amount of Covid-19 assistance to trigger the immunity and then prioritize other, more lucrative services, free from any potential negligence liability. In any event, given that the Governor did not expressly grant blanket immunity, as the circuit court noted, C4471, and his undisputed objectives would be directly advanced by conferring immunity for conduct related to Covid-19 assistance,

construing EO2020-19 to also grant immunity for conduct that was unrelated to any Covid-19 assistance would not further the executive order's purposes.

Finally, interpreting EO2020-19 to grant blanket immunity would produce results that the Governor could not have intended. As explained, the purpose of the executive order was to encourage health care facilities to render Covid-19 assistance by immunizing them from liability for any negligence that occurred while they were "engaged in the course of" providing that assistance. A3. But if EO2020-19 granted blanket immunity, facilities would be immune from liability for conduct that had nothing to do with Covid-19. For example, a facility's negligent failure to maintain its parking lot or operate its kitchen would be protected even though those actions lacked any connection to the Covid-19 assistance the Governor was trying to promote. *See* AC Br. 14-15 (listing other examples of consequences Governor could not have intended). The Governor could not have intended to grant blanket immunity for conduct that was entirely unrelated to Covid-19 when the executive order was plainly aimed at solving the medical resource problems that were caused by the Covid-19 pandemic, and EO2020-19 should not be interpreted in a way that produces that result. *See Cassidy v. China Vitamins, LLC*, 2018 IL 122873, ¶ 17 (even "a literal reading must fail if it yields absurd, inconvenient, or unjust results").

In sum, this court should hold that EO2020-19 does not provide health care facilities with blanket immunity for negligent conduct that was entirely unrelated to the provision of Covid-19 assistance because that interpretation is

at odds with the rules of statutory construction. This court therefore need not decide if the Governor would have been authorized to grant blanket immunity because that is not what he, in fact, ordered.

CONCLUSION

For the foregoing reasons, this court should answer the certified question by holding that EO2020-19 does not grant health care facilities with blanket immunity for negligence that was entirely unrelated to any Covid-19 assistance that they rendered.

Respectfully submitted,

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January 13, 2023

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Supreme Court Rules 341(a) and (b). The length of this brief excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a) is 15 pages.

/s/ Frank H. Bieszczat
FRANK H. BIESZCZAT
Assistant Attorney General

E-FILED
Transaction ID: 2-22-0180
File Date: 1/13/2023 12:30 PM

Jeffrey H. Kaplan, Clerk of the Court
APPELLATE COURT 2ND DISTRICT

CERTIFICATE OF FILING AND SERVICE

I certify that on January 13, 2023, I electronically filed the foregoing **Brief of Amicus Curiae Illinois Attorney General** with the Clerk of the Court for the Appellate Court of Illinois, Second Judicial District, by using the Odyssey eFileIL system.

I further certify that the other participants in this appeal, named below are registered service contacts on the Odyssey eFileIL system, and thus will be served via the Odyssey eFileIL system:

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Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge, information, and belief.

/s/ Frank H. Bieszczat
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IN THE SIXTEENTH JUDICIAL CIRCUIT
KANE COUNTY, ILLINOIS
LAW DIVISION

Donald James, as Executor of the Estate of Lucille Helen James, deceased, Plaintiff,	)	Case No: 2020 L 00247
v.	)	
Geneva Nursing and Rehabilitation Center, LLC d/b/a Bria Health Services of Geneva, Defendant.	)	

Theresa E. Barreiro
Clerk of the Circuit Court
Kane County, Illinois
4/29/2022 8:19 AM
FILED/IMAGED

ORDER

The cause coming on for hearing on the Plaintiffs' Motion to Reconsider certifying a question for interlocutory review and corresponding stay of discovery, due notice given and the Court being fully advised in the premises, it is hereby ordered:

1. Plaintiffs' Motion to Reconsider is denied for the reasons stated on the record;

2. The Court finds that its order of March 16, 2022, involves a question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation;

3. The Court certifies the following question under Supreme Court Rule 308:

   Does Executive Order 2020-19 provide blanket immunity for ordinary negligence to healthcare facilities that rendered assistance to the State during the COVID-19 pandemic?

4. The Court stays discovery proceedings pending resolution of the Rule 308 process;

5. This matter is continued to July 26, 2022, at 9:00 a.m. for further status.

/s/ Susan Boles 4/29/2022 8:19:04 am
……, 2022

ENTERED:

……
Judge

IN THE SIXTEENTH JUDICIAL CIRCUIT
KANE COUNTY, ILLINOIS
LAW DIVISION

Mark R. Doneske, as Executor of the Estate of Rose H. Doneske, deceased, Plaintiff,	)	Case No: 2020 L 00259
v.	)	
Geneva Nursing and Rehabilitation Center, LLC d/b/a Bria Health Services of Geneva, Defendant.	)	

Theresa E. Barreiro
Clerk of the Circuit Court
Kane County, Illinois
4/29/2022 8:18 AM
FILED/IMAGED

ORDER

The cause coming on for hearing on the Plaintiffs' Motion to Reconsider certifying a question for interlocutory review and corresponding stay of discovery, due notice given and the Court being fully advised in the premises, it is hereby ordered:

1. Plaintiffs' Motion to Reconsider is denied for the reasons stated on the record;

2. The Court finds that its order of March 16, 2022, involves a question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation;

3. The Court certifies the following question under Supreme Court Rule 308:

   Does Executive Order 2020-19 provide blanket immunity for ordinary negligence to healthcare facilities that rendered assistance to the State during the COVID-19 pandemic?

4. The Court stays discovery proceedings pending resolution of the Rule 308 process;

5. This matter is continued to July 26, 2022, at 9:00 a.m. for further status.

/s/ Susan Boles 4/29/2022 8:18:43 am
……....…....., 2022

ENTERED:

C. Boles
……
Judge

IN THE SIXTEENTH JUDICIAL CIRCUIT
KANE COUNTY, ILLINOIS
LAW DIVISION

Frances G. DeFrancesco, as Executor of the Estate of Jack P. DeFrancesco, deceased, Plaintiff,	)	Case No: 2020 L 00260
v.	)	
Geneva Nursing and Rehabilitation Center, LLC d/b/a Bria Health Services of Geneva, Defendant.	)	

ORDER

The cause coming on for hearing on the Plaintiffs' Motion to Reconsider certifying a question for interlocutory review and corresponding stay of discovery, due notice given and the Court being fully advised in the premises, it is hereby ordered:

1. Plaintiffs' Motion to Reconsider is denied for the reasons stated on the record;

2. The Court finds that its order of March 16, 2022, involves a question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation;

3. The Court certifies the following question under Supreme Court Rule 308:

   Does Executive Order 2020-19 provide blanket immunity for ordinary negligence to healthcare facilities that rendered assistance to the State during the COVID-19 pandemic?

4. The Court stays discovery proceedings pending resolution of the Rule 308 process;

5. This matter is continued to July 26, 2022, at 9:00 a.m. for further status.

/s/ Susan Boles 4/29/2022 8:17:56 am
……....…....., 2022

ENTERED:

……
Judge

IN THE SIXTEENTH JUDICIAL CIRCUIT
KANE COUNTY, ILLINOIS
LAW DIVISION

Patricia Velcich, as Executor of the Estate of Marion May Heotis, deceased, Plaintiff,	)	Case No: 2020 L 00264
v.	)	
Geneva Nursing and Rehabilitation Center, LLC d/b/a Bria Health Services of Geneva, Defendant.	)	

Theresa E. Barreiro
Clerk of the Circuit Court
Kane County, Illinois
4/29/2022 8:18 AM
FILED/IMAGED

ORDER

The cause coming on for hearing on the Plaintiffs' Motion to Reconsider certifying a question for interlocutory review and corresponding stay of discovery, due notice given and the Court being fully advised in the premises, it is hereby ordered:

1. Plaintiffs' Motion to Reconsider is denied for the reasons stated on the record;

2. The Court finds that its order of March 16, 2022, involves a question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation;

3. The Court certifies the following question under Supreme Court Rule 308:

   Does Executive Order 2020-19 provide blanket immunity for ordinary negligence to healthcare facilities that rendered assistance to the State during the COVID-19 pandemic?

4. The Court stays discovery proceedings pending resolution of the Rule 308 process;

5. This matter is continued to July 26, 2022, at 9:00 a.m. for further status.

/s/ Susan Boles 4/29/2022 8:18:20 am
……....…....., 2022

ENTERED:

……
Judge

STATE OF ILLINOIS)
) SS
COUNTY OF KANE)

Firm ID # 55019

IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT
KANE COUNTY, ILLINOIS

FAITH HEIMBRODT, as Independent Administrator of the Estate of CAROL ORLANDO, Deceased,

Plaintiff,

versus

GENEVA NURSING AND REHABILITATION CENTER, LLC, an Illinois Limited Liability Company d/b/a BRIA HEALTH SERVICES OF GENEVA,

Defendant.

Court No: 2020 L 000273

ORDER

The cause coming on for hearing on the Plaintiffs' Motion to Reconsider certifying a question for interlocutory review and corresponding stay of discovery, due notice given and the Court being fully advised in the premises, it is hereby ordered:

1. Plaintiffs' Motion to Reconsider is denied for the reasons stated on the record;

2. The Court finds that its order of March 16, 2022, involves a question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation;

3. The Court certifies the following question under Supreme Court Rule 308:

   Does Executive Order 2020-19 provide blanket immunity for ordinary negligence to healthcare facilities that rendered assistance to the State during the COVID-19 pandemic?

4. The Court stays discovery proceedings pending resolution of the Rule 308 process;

5. This matter is continued to July 26, 2022, at 9:00 a.m. for further status.

/s/ Susan Boles 4/28/2022 2:11:13 pm

……....…....., 2022

ENTERED:

……

Judge

No. _____

IN THE SUPREME COURT
OF THE STATE OF ILLINOIS

DONALD JAMES, as Executor of the Estate of Lucille Helen James, Deceased,

MARK R. DONESKE, as Executor of the Estate of Rose H. Doneske, Deceased,

FRANCES G. DEFRANCESCO, as Executor of the Estate of Jack P. DeFrancesco, Deceased,

PATRICIA VELICH, as Executor of the Estate of Marion May Heotis, Deceased,

FAITH HEMBRODT, as Independent Administrator of the Estate of Carol Orlando, Deceased,

Plaintiffs-Petitioners,

v.

GENEVA NURSING AND REHABILITATION CENTER, LLC, an Illinois Limited Liability Company d/b/a BRIA HEALTH SERVICES OF GENEVA,

Defendant-Respondent.

Petition for Leave to Appeal from the Appellate Court of Illinois, Second District, No. ~~2-19-1113~~ 2-22-0180

There Heard on Appeal from the Circuit Court of 16th Judicial Circuit, Kane County, Illinois, Case No.:

2020 L 247;
2020 L 259;
2020 L 260;
2020 L 264;
2020 L 273.

Hon. Susan Boles
Judge Presiding

Date of Judgment:
August 17, 2023

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on **September 21, 2023**, we have filed with the Clerk of the Supreme Court of Illinois, **Plaintiffs-Petitioners' Petition For Leave To Appeal**.

130042

Respectfully submitted,

BY:/s/ *Christopher J. Warmbold*
Christopher J. Warmbold

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130042

PROOF OF SERVICE

The undersigned states that this Notice and attachment was served upon all counsel and/or party of record via electronic mail and *Odyssey e-File and Serve* on this **21st** day of **September**, 2023.

/s/ Chandra Shannon

[x] Under penalties as provided by law pursuant to IL.REV.STAT. CHAP 110 SEC 1-109, I certify that the statements set forth herein are true and correct.

130042

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130042

E-FILED
9/22/2023 10:28 AM
CYNTHIA A. GRANT
SUPREME COURT CLERK

No. 130042

IN THE SUPREME COURT
OF THE STATE OF ILLINOIS

DONALD JAMES, as Executor of the Estate of Lucille Helen James, Deceased,

MARK R. DONESKE, as Executor of the Estate of Rose H. Doneske, Deceased,

FRANCES G. DEFRANCESCO, as Executor of the Estate of Jack P. DeFrancesco, Deceased,

PATRICIA VELICH, as Executor of the Estate of Marion May Heotis, Deceased,

FAITH HEMBRODT, as Independent Administrator of the Estate of Carol Orlando, Deceased,

Plaintiffs-Petitioners,

v.

GENEVA NURSING AND REHABILITATION CENTER, LLC, an Illinois Limited Liability Company d/b/a BRIA HEALTH SERVICES OF GENEVA,

Defendant-Respondent.

Petition for Leave to Appeal from the Appellate Court of Illinois, Second District, No. 2-22-0180

There Heard on Appeal from the Circuit Court of 16th Judicial Circuit, Kane County, Illinois, Case No.:

2020 L 247;
2020 L 259;
2020 L 260;
2020 L 264;
2020 L 273.

Hon. Susan Boles
Judge Presiding

Date of Judgment:
August 17, 2023

AMENDED NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on **September 21, 2023**, we filed with the Clerk of the Supreme Court of Illinois, **Plaintiffs-Petitioners' Petition For Leave To Appeal** and served upon all counsel on September 21, 2023, with the exception of Robert Marc Chemers, who is being served a copy of the Petition as of today's date, September 22, 2023.

130042

Respectfully submitted,

BY:/s/ *Christopher J. Warmbold*
Christopher J. Warmbold

Attorneys for Plaintiffs-Petitioners

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PROOF OF SERVICE

The undersigned states that this Notice and attachment was served upon all counsel and/or party of record via electronic mail on this **22nd** day of **September**, 2023.

/s/ Chandra Shannon

[x] Under penalties as provided by law pursuant to IL.REV.STAT. CHAP 110 SEC 1-109, I certify that the statements set forth herein are true and correct.

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No. 130042

IN THE SUPREME COURT
OF THE STATE OF ILLINOIS

DONALD JAMES, as Executor of the Estate of Lucille Helen James, Deceased, MARK R. DONESKE, as Executor of the Estate of Rose H. Doneske, Deceased, FRANCES G. DEFRANCESCO, as Executor of the Estate of Jack P. DeFrancesco, Deceased, PATRICIA VELCICH, as Executor of the Estate of Marion May Heotis, Deceased, FAITH HEMBRODT, as Independent Administrator of the Estate of Carol Orlando, Deceased, Plaintiffs-Appellants, v. GENEVA NURSING AND REHABILITATION CENTER, LLC, an Illinois Limited Liability Company d/b/a BRIA HEALTH SERVICES OF GENEVA, Defendant-Appellant.	Petition for Leave to Appeal from the Appellate Court of Illinois, Second District, No. 2-22-0180 There Heard on Appeal from the Circuit Court of 16th Judicial Circuit, Kane County, Illinois, Case No.: 2020 L 247; 2020 L 259; 2020 L 260; 2020 L 264; 2020 L 273. Hon. Susan Boles Judge Presiding Date of Judgment: August 17, 2023

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on January 3, 2024, we have submitted to electronic filing with the Clerk of the Supreme Court of Illinois the attached **PLAINTIFFS' BRIEF AND APPENDIX**.

Respectfully submitted,

BY:*/s/ Christopher J. Warmbold*
Christopher J. Warmbold

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PROOF OF SERVICE

The undersigned states that on January 3, 2024, this Notice and attachment was served upon all counsel and/or party of record via electronic mail.

/s/ Michelle Ward

[x] Under penalties as provided by law Pursuant to IL. Rev. Stat. Chap. 110. Sec. 1-109, I certify that the statements Set forth herein are true and correct.

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