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FIFTH JUDICIAL DISTRICT COURT – CEDAR CITY

IRON COUNTY - STATE OF UTAH

DAVID HINSON, Plaintiff, v. DARRELL L. WILSON, M.D.; JARED C. COX, D.O.; KIMBERLY D. HAYCOCK, P.A.; IHC HEALTH SERVICES, INC.; IHC HEALTH SERVICES, INC. dba VALLEY VIEW MEDICAL CENTER; IHC HEALTH SERVICES, INC. dba CEDAR CITY HOSPITAL; JEFFERY L. BLEAZARD, M.D.; and DOE INDIVIDUALS 1 through 10; and ROE ENTITIES 1 through 10, inclusive, Defendants.	**DEFENDANTS' JOINT MOTIONS IN LIMINE 1-18** Case No. 170500085 Judge Jeffrey C. Wilcox

Defendants, by and through their respective undersigned counsel, hereby submit the following Motions in Limine, Nos. 1 through 18:

DEFENDANTS' MOTION IN LIMINE NO. 1: COLLATERAL SOURCES

Defendants hereby move in limine for an order requiring that any damages awarded to Plaintiff for economic losses be reduced by the amount of collateral sources available to Plaintiff. See Utah Code § 78B-3-405; see also, MUJI 2d CV 2024.

ARGUMENT

The Utah Health Care Malpractice Act ("the Malpractice Act") requires that the Court reduce the amount of any damages awarded to Plaintiff as compensation for economic losses by the amount paid by or available through collateral sources. "In all malpractice actions against health care providers . . . in which damages are awarded to compensate the plaintiff for losses sustained, the court shall reduce the amount of the award by the total of all amounts paid to the plaintiff from all collateral sources which are available to him." Utah Code § 78B-3-405(1).

The Utah legislature defined collateral sources to encompass the following: Payments made to or for the benefit of the plaintiff for:

(a) medical expenses and disability payments payable under the United States Social Security Act, any federal, state or local income disability act, or any other public program, except the federal programs which are required by law to seek subrogation;

(b) any health, sickness, or income replacement insurance . . . and any other similar insurance benefits, except life insurance benefits available to the plaintiff, whether purchased by the plaintiff or provided by others;

(c) any contract or agreement of any person, group, organization, partnership, or corporation to provide, pay for or reimburse the costs of hospital, medical, dental or other health care services, except benefits received as gifts, contributions, or assistance made gratuitously; and

(d) any contractual or voluntary wage continuation plan provided by employers, or any other system intended to provide wages during a period of disability.

Id. § 78B-3-405(3).

Defendants respectfully move for an order in limine requiring that damages awarded to Plaintiff for economic losses, if any, be reduced by all collateral sources available to Plaintiff pursuant to Utah Code § 78B-3-405 and in accordance with MUJI 2d CV 2024. Application of the collateral source rule and instruction per MUJI 2d CV 2024 must be allowed, especially if evidence of Plaintiff's medical expenses are allowed into evidence.

DEFENDANTS' MOTION IN LIMINE NO. 2: INSURANCE POLICIES OR INSURANCE COVERAGE

Defendants hereby move in limine for an order excluding any evidence, testimony, or argument regarding insurance coverage that Defendants have or may have had at the time of the incident giving rise to this action. *See* Utah R. Evid. 411 ("Evidence that a person was or was not insured against liability is not admissible to whether the person acted negligently or otherwise wrongfully."). *See also* Utah R. Evid. 401, 402, 403; *Robinson v. Hreinson*, 409 P.2d 121, 123 (Utah 1965).

ARGUMENT

The Court should exclude any evidence or testimony or argument by counsel that Defendants have or may have had liability insurance at the time of the incident giving rise to this action. Evidence of insurance is generally inadmissible at trial. Rule 411 of the Utah Rules of

Evidence states in relevant part: "Evidence that a person was or was not insured against liability is not admissible to prove whether the person acted negligently or otherwise wrongfully."

Utah appellate courts have consistently upheld Rule 411. *See Robinson v. Hreinson*, 409 P.2d 121, 123 (Utah 1965); *Young v. Barney*, 433 P.2d 846, 848 (Utah 1967). In *Robinson*, the Utah Supreme Court reiterated that although it has become the almost universal custom to carry insurance, "the question of insurance is immaterial and should not be injected into the trial" and "it is the duty of both counsel and the court to guard against it." *Robinson*, 409 P.2d at 123.

In addition, Rules 401 and 402 of the Utah Rules of Evidence provide that only "relevant" evidence is admissible. The possession of liability insurance is not relevant to the validity of Plaintiff' claims in this matter.

Rule 403 of the Utah Rules of Evidence also prohibits the admission of relevant evidence if its "probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury." The presentation to the jury of evidence or testimony regarding Defendants' professional liability insurance would be highly prejudicial to Defendants and would substantially outweigh its probative value. Since it is prejudicial error to deliberately inject insurance into a trial, the Court should resolve this issue now, rather than waiting for Plaintiff to commit prejudicial error, and Defendants to object at trial. *See Young v. Barney*, 433 P.2d 846, 848 (Utah 1967).

DEFENDANTS' MOTION IN LIMINE NO. 3: SETTLEMENT DISCUSSIONS

Defendants hereby move in limine for an order excluding evidence or argument regarding any settlement discussions that may have taken place between or among the parties. Such evidence is absolutely irrelevant to prove liability or the validity or amount of a disputed claim, and the prejudicial effect of such evidence or argument is substantially outweighed by its

probative value, if any. *See* Utah R. Evid. 408; *Anderson v. Thompson*, 176 P.3d 464, 474-475 (Utah Ct. App. 2008); *see also* Utah R. Evid. 103, 401–403.

ARGUMENT

Evidence of a party furnishing, promising, or offering a valuable consideration to attempt to compromise a claim or conduct or a statement made in compromise negotiations is inadmissible either to prove liability for or the validity or amount of a disputed claim. *See* Utah R. Evid. 408. The Court should prohibit Plaintiff from presenting evidence at trial of the existence or content of settlement discussions. This includes any suggestion by Plaintiff as to settlement discussions between the parties, such as their attendance at a mediation. *See* Utah R. Evid. 103 ("To the extent practicable, the court must conduct a jury trial so that inadmissible evidence is not suggested to the jury by any means.").

Only relevant evidence is admissible at trial, *see* Utah R. Evid. 401, 402, and settlement discussions between the parties are not relevant to the determination of the claims in this lawsuit. Even if evidence of settlement discussions were relevant, Rule 403 of the Utah Rules of Evidence prohibits the admission of relevant evidence if the evidence's "probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury…." Utah R. Evid. 403. The prejudicial effect of evidence or argument suggesting that Defendants were or are willing to settle Plaintiff' claims substantially outweigh any probative value such evidence or argument may have, if any. The Court should therefore exclude any evidence or argument concerning settlement discussions between or among the parties.

DEFENDANTS' MOTION IN LIMINE NO. 4: OTHER LAWSUITS AGAINST DEFENDANTS

Defendants hereby move in limine for an order excluding evidence of prior or current lawsuits, disputes, or settlements in which Defendants have been or are currently involved. Such

evidence has no relevance to this action and its probative value, if any, is substantially outweighed by its prejudicial effect. See Utah R. Evid. 401–403.

ARGUMENT

Plaintiff should not be permitted to introduce evidence or argument at trial regarding any prior or current lawsuits against Defendants. Utah law defines relevant evidence as that "having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Utah R. Evid. 401. The fact that Defendants may be or have been involved in other lawsuits has no bearing on the validity of Plaintiff' claims in the current lawsuit and is therefore irrelevant.

Even if the Court determines that evidence regarding other prior or current claims or lawsuits against Defendants is somehow relevant, such evidence should be excluded pursuant to Rule 403 of the Utah Rules of Evidence. The probative value, if any, of evidence concerning unrelated claims against Defendants does not warrant its introduction considering the substantial risk of juror confusion and undue prejudice. *See* Utah R. Evid. 403. Defendants are already obliged to defend against Plaintiff' claims and allegations, and the Court should not require them to also address questions, argument, or evidence concerning unrelated allegations or claims. Such evidence should therefore be excluded.

DEFENDANTS' MOTION IN LIMINE NO. 5: CHARACTERIZATION OF DEFENDANTS' RETAINED ATTORNEYS, LAW FIRMS, AND THEIR PRACTICES

Defendants hereby move in limine for an order excluding testimony, argument, and comment regarding the number of attorneys at Defendants' retained law firms, or the number and types of clients the firm represents. Similarly, the Court should exclude any testimony or suggestion that the attorneys for Defendants regularly represent them or other defendants, corporations, and health care providers in lawsuits. Such matters are irrelevant to the claims in

this matter and, even if relevant, will cause prejudice to Defendants that substantially outweighs any probative value. *See* Utah R. Evid. 401–403.

DEFENDANTS' MOTION IN LIMINE NO. 6: EFFORTS TO EXCLUDE OR LIMIT EVIDENCE

Defendants hereby move in limine for an order excluding evidence, argument, or comment to the effect that Plaintiff, Plaintiff's counsel, or Plaintiff's expert witnesses would like to bring more evidence to the attention of the jury but, by Court order, are not allowed to do so. *See* Utah R. Evid. 401–403.

DEFENDANTS' MOTION IN LIMINE NO. 7: REQUESTS FOR STIPULATION IN FRONT OF THE JURY

Defendants hereby move in limine for an order prohibiting Plaintiff from requesting that Defendants stipulate to the admissibility of any evidence or stipulate to any factual or legal issue in front of the jury. Utah R. Evid. 401, 402, 403.

DEFENDANTS' MOTION IN LIMINE NO. 8: SEQUENCE OF TESTIFYING WITNESSES

Defendants hereby move in limine for an order that Plaintiff produce the sequence of their witnesses in advance of trial to permit the parties to efficiently prepare for trial and to promote judicial economy. Utah's courts have a longstanding policy of considering and encouraging judicial economy. *See Kennedy v. New Era Indus., Inc.*, 600 P.2d 534, 535 (Utah 1979), *Watkiss & Saperstein v. Williams*, 931 P.2d 840, 849 (Utah 1997); *Anderson v. Wilshire Investments, LLC*, 123 P.3d 393, 397 (Utah 2005) (citing *Kennedy*); *Centro de la Familia de Utah v. Carter*, 94 P.3d 261, 262 (Utah 2004). Plaintiff will present their case-in-chief first and it will be beneficial to all parties if the Court and all counsel know in advance who Plaintiff will call as witnesses and in what sequence. This will allow Defendants to adequately prepare their examinations of the witnesses and to have the pertinent file material at court. This procedure is

within the discretion of the Court and will serve to enhance the Court's control over the orderly flow of evidence. Requiring Plaintiff to disclose their witnesses and their sequence before trial will not result in any prejudice. Defendants will similarly disclose to the Plaintiff the sequence of their witnesses.

DEFENDANTS' MOTION IN LIMINE NO. 9: BAR NON-PARTY WITNESSES FROM THE HEARING

Defendants move the Court for an order in limine excluding Plaintiff's non-party witnesses from the trial, except when called to provide testimony unless that witness's presence at trial is essential to Plaintiff' claim or defense—specifically, Plaintiff's disclosed retained expert witnesses. *See* Utah R. Evid. 615. The Court has broad power to sequester witnesses before, during, and after their testimony. *State v. Carter*, 776 P.2d 886, 892 n. 20 (Utah 1989) (citing *Geders v. United States*, 423 U.S. 80, 87 (1976)) (overruled on other grounds by *Archuleta v. Galetka*, 267 P.3d 232 (Utah 2011)). Other jurisdictions have also recognized witness sequestration as a means of preventing a witness's testimony from influencing that of another witness. *See Nesvig v. Nesvig*, 712 N.W.2d 299, 305 (N.D. 2006); *Kiker v. State*, 919 So.2d 190, 194 (Miss. App. 2005); *Edmonds v. State*, 771 A.2d 1094, 1100 (Md. App. 2001).

DEFENDANTS' MOTION IN LIMINE NO. 10: REFERENCE TO WITNESSES NOT CALLED AT TRIAL

Defendants move the Court for an order in limine barring any testimony, reference, or argument that Defendants have not called to testify any witness equally available by subpoena to both parties and any reference or suggestion to the jury what would have been the testimony of any such witness Defendants have not called to testify.

DEFENDANTS' MOTION IN LIMINE NO. 11: EXCLUDE UNDISCLOSED OPINIONS AND TESTIMONY FROM PLAINTIFF' EXPERT WITNESSES

Defendants move the Court for an order in limine barring Plaintiff's expert witnesses from offering any testimony, opinion, or subject matter not disclosed in the expert witness's written report, or, if a deposition has been taken, in the deposition of the expert witness. *See* Utah R. Civ. P. 26. Importantly, the Advisory Committee Notes to URCP Rule 26 specifically encourage the courts to enforce this rule. The Advisory Committee Notes read in pertinent part,

> *If a party elects a written report, the expert must provide a signed report containing a complete statement of all opinions the expert will express and the basis and reasons for them. The intent is not to require a verbatim transcript of exactly what the expert will say at trial; instead the expert must fairly disclose the substance of and basis for each opinion the expert will offer.* ***The expert may not testify in a party's case in chief concerning any matter that is not fairly disclosed in the report. To achieve the goal of making reports a reliable substitute for depositions, courts are expected to enforce this requirement.***

Defendants request the Court enforce this rule and not allow Plaintiff's experts, particularly the damages experts, to testify outside what has been disclosed in their reports.

DEFENDANTS' MOTION IN LIMINE NO. 12: PRECLUDE LAY WITNESSES FROM OFFERING EXPERT TESTIMONY

This Court should enter an order in limine precluding lay witnesses disclosed by Plaintiffs from offering expert opinions at trial.

ARGUMENT

The Court should enter an order in limine precluding Plaintiff and all other lay witnesses called by Plaintiff from testifying or giving their personal opinions on medical issues and any other matter that requires expert testimony.

To the extent lay non-expert witnesses would offer testimony beyond their lay observations of Plaintiff David Hinson ("Mr. Hinson") and the medical care he received, such testimony lacks foundation and runs afoul of Rule 701 and Rule 702 of the Utah Rules of

Evidence. Furthermore, such testimony cannot serve as evidence to support Plaintiffs' claims in this case, which must be proved by expert witness testimony. Rule 701 of the Utah Rules of Evidence governs opinion testimony provided by lay witnesses and states as follows:

If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is:

(a) rationally based on the witness's perception;

(b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and

(c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.Utah R. Evid. 701.

The Court should prohibit lay witnesses from testifying or opining as to the cause of David Hinson's physical, mental, or psychological condition; Mr. Hinson's health, life expectancy, and physical capabilities; and all other medical and scientific issues beyond the common knowledge and experience of a lay person. Testimony regarding these subjects requires specialized scientific and technical knowledge, *see* U.R.E. 702(a).

DEFENDANTS' MOTION IN LIMINE NO. 13: PRECLUDE "REPTILE THEORY" "GOLDEN RULE" AND "SAFETY" ARGUMENTS

This Court should preclude the Plaintiff from presenting or attempting to present evidence, comments, or arguments to the jury asking jurors to step into the shoes of Plaintiff, to act as "safety advocates," or to apply the "Golden Rule" in their deliberations. Defendants also anticipate that Plaintiff will, throughout the course of trial, argue to the empaneled jurors that they have the power to improve the safety of themselves, their family members, and their community by rendering a verdict that will reduce or eliminate "dangerous" conduct. These trial

tactics are taught in plaintiff's trial advocacy courses and are based on a book by David Bell and Don Keenan entitled "Reptile: The 2009 Manual of the Plaintiff's Revolution."

The thesis of Bell and Keenan's "Reptile" is that jurors, like all humankind, have brains consisting of three parts which include the "reptilian complex." The reptilian complex, also known as the reptilian brain, includes the brain stem and the cerebellum which control our basic life functions such as breathing, hunger, and survival; instinctively the reptilian brain overpowers the cognitive and emotional parts of the brain when life functions become threatened. *Id.* at 17. Mr. Ball and Mr. Keenan posit that "[w]hen the Reptile sees a survival danger, even a small one, she protects her genes by impelling the juror to protect himself and the community." *Id.* at 17, 19, 73. The authors suggest that reducing danger in the community facilitates survival, which awakens the reptilian part of the brain in each juror and overcomes logic or emotion. *Id* at 45.

The authors further suggest that plaintiff's lawyers must appeal to the jurors' own sense of self-protection in order to persuade and prevail. According to Mr. Bell and Mr. Keenan, appealing to a juror's self-protective interests will reverberate and convince better than any other argument. Because the most powerful thinking occurs when one is protecting one's life, a lawyer can communicate most effectively by converting every issue into one of self-protection or its cousin, community safety. By linking each argument in some way to a juror's sense of personal or community safety, this plaintiff's strategy gives jurors a compelling reason to rule in favor of a plaintiff over the defendants despite what their logic and the evidence might tell them. Mr. Bell and Mr. Keenan instruct plaintiff lawyers to "use powerful Reptilian imperative to use devastating events as a springboard from which to create safety." The authors further instruct that "[e]very injury presents a hope for a safer future. Position the jurors as the cultivators of that hope."

Any mention, comment, reference, testimony, or argument regarding personal safety, community safety, or public safety rules should be precluded because they are akin to "Golden Rule" arguments, which Utah law prohibits in cases such as this where the standard of care must be proved through expert witness testimony[1]. Personal safety, community safety, and public safety rule arguments also violate Utah Civil Jury Instructions and undermine Defendants' due process right to an impartial jury and fair trial. Finally, personal safety, community safety, or public safety evidence should be precluded pursuant to Utah Rules of Evidence 401, 402, and 403 because such evidence is irrelevant and its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, and misleading the jury in an action where punitive damages are not alleged.

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[1] "Reptile" strategy is a veiled Golden Rule argument because it urges jurors to decide a case not on the evidence but, rather, on the potential harms and losses that might occur within the community—including the jurors and their families. As shown by the following quotations from the book by David Bell and Don Keenan entitled "Reptile: The 2009 Manual of the Plaintiff's Revolution,"the strategy is to invoke the Golden Rule by asking each juror to put themselves in the same position as the plaintiff:

- Safety rules are powerful trial tools. But the only kind of safety-rule violation the Reptile cares about is the kind that can endanger her. The greater the danger, the more the Reptile cares. (51)
- Every case needs an umbrella rule. The umbrella rule is the widest general rule the defendant violated — wide enough to encompass every juror's Reptile. Here's the umbrella rule for almost every plaintiff's—even commercial—case:
  A driver [or physician, company, policeman, lawyer, accounting firm, etc.] is not allowed to needlessly endanger the public [or patients]. In some case, you may want to word it this way: "A [physician] is never allowed to gamble needlessly with **escape, because there are almost always unavoidable risks: risks of surgery, act of God, unavoidable event, etc. The defendant is at fault only for creating or allowing danger beyond that.** (55-56)
- In shaping the rule, go beyond your specific kind of defendant. **Instead of "A lawyer is never allowed to needlessly endanger a client's interests," go wider: "Any professional hired to give advice—such as a doctor, a lawyer, or an accounting firm —is never allowed to needlessly endanger whoever hired him." This broadened version touches more people.** (56)
- Another negligence characteristic the Reptile loves: The more dangerous something is, the more careful a _____ [e.g. driver, doctor, products manufacturer] must be. (66)
- The Reptile is not fooled by defense standard-of-care claims. Jurors are, but not Reptiles. When there are two or more ways to achieve exactly the same result, the Reptile allows — demands— only one level of care: the safest. . . . Here's how:
  1. A doctor [or whatever] is never allowed to **needlessly endanger** a patient [or whoever]. **In other words, a "prudent" [or careful, depending on the instruction] doctor does not needlessly endanger a patient.**
  2. When there's more than one available way to achieve exactly the same level of benefit, the doctor is not allowed to select a way that carries more danger than the other. That would allow unnecessary danger, which doctors are not allowed to do.
  3. So a "prudent" doctor must select the safest way. If she selects the second-safest, she's not prudent because she's allowing unnecessary danger. (62-63)

All of these strategies are designed with one purpose in mind: to elicit a "Reptilian" response in jurors, thus invoking their passion and prejudice to protect the safety of the community. Such are veiled "Golden Rule" tactics. *Reptile: The 2009 Manual of the Plaintiff's Revolution,* at 51, 55-56, 62-63, 66 (emphasis added).

ARGUMENT

1. This Court should prevent Plaintiff from mentioning, commenting on, referring to, testifying, or making any argument about personal safety, community safety, or public safety rules.

Defendants seek an order excluding any evidence, comment, reference, or argument regarding "personal safety," "community safety," or "safety rules" because such evidence and statements ask the jury to depart from their role of as impartial fact finders and to decide the case based on personal interest in protecting themselves and their communities. The Court should exclude such evidence and statements as contrary to Utah law and unfairly prejudicial to Defendants.

2. Plaintiffs must not be allowed to introduce impermissible "Golden Rule" arguments to determine liability and damages in this medical negligence action.

The Court should prohibit Plaintiff from asking the jury to place themselves in the position of a party or to otherwise urge them to act on behalf of the community at large for purposes of determining liability or damages. Such references, evidence, or arguments are inadmissible "Golden Rule" arguments because they serve no purpose but to inflame the passions and prejudice of the jury and because they offer no probative value on any remaining issue in the case. *See* Utah R. Evid. 403.

Utah courts have soundly rejected appeals to apply the Golden Rule—either through Reptile Theory or simply by arguing that Plaintiff may urge jurors to step into their shoes to judge Defendants' medical care. In a Utah Third District case, Judge Barry Lawrence issued an order, in part, barring any party from arguing or inferring (1) that jurors should send a message to the community with their verdict; (2) asking the jury to prevent "this" from happening again; (3) that jurors should apply either a general "safety standard" or a "community standard of

safety" based on the jurors' own beliefs; (4) that jurors serve as the "conscience of the community" in rendering a verdict; and (5) that jurors should be swayed by emotion, sympathy, passion, or prejudice rather than by the facts and the applicable law.[2]

At least one Utah federal district court has rejected frank Reptile Theory trial strategy. Judge Clark Waddoups, applying Utah law, granted the defendants motion in limine to bar the plaintiff from using veiled Golden Rule or "Reptilian" arguments or evidence at trial.[3]

True, the Supreme Court of Utah ruled in *Green v. Louder* that "Golden Rule" arguments are "are improper only 'with respect to damages,'" 29 P.3d 638, 648 (Utah 2011) (citing *Shultz v. Rice*, 809 F.2d 643, 651-52 (10th Cir. 1986) (other citation omitted)); however, unlike *Green v. Louder*—a case involving a car crash—this action involves the standard of care concerning the emergency department diagnosis and treatment of a brachial plexus hematoma, issues far afield of a typical lay juror's experience and knowledge. As such, expert witnesses must define the standard of care applicable to Defendants and how a breach, if any, caused Plaintiff's damages. *See, e.g., DeAdder v. Intermountain Healthcare, Inc.*, 308 P.3d 543, 547-548 (Ct. App. Utah 2013) (holding that, in order to recover on a claim for medical malpractice, a plaintiff must produce expert testimony to establish that a health care provider breached the applicable standard of care, and that the breach proximately caused the plaintiff's injury). Jurors may not use their own experiences in this case to determine the standard of care or whether Defendants breached that standard. *See* Utah Model Jury Instructions 2d, CV301C.[4]

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[2] *See* Order, *Lois Smith v.Volkswagen Southtowne, Inc., et al.*, Case no. 130908362 PI, June 7, 2018, attached as Exh. "1."

[3] *See Waddoups v. Noorda*, M.D., No. 1:11-cv-00133 (D. Utah June 18, 2014), attached as Exh. "2."

[4] Utah Model Jury Instruction CV301C states, in pertinent part, as follows:
The standard of care is established through expert witnesses and other evidence. *You may not use a standard based on your own experience or any other standard of your own.* It is your duty to decide, based on the evidence, what the standard of care is. The expert witnesses may disagree as

Utah district court judges have reasoned that, in medical malpractice actions, *Green v. Louder* does not apply. For example, Judge Thomas Wilmore in the First District distinguished *Green*, concluding that the application of Golden Rule arguments to determine liability in medical malpractice actions is improper.[5] Likewise, Judge Lawrence distinguished *Green i*n a Third District medical negligence action in rejecting the introduction of Reptile Theory or the Golden Rule in a medical negligence action and concluded as follows:

> *This is a medical malpractice case and so the relevant measure of defendants' conduct is the applicable standard of care—to be established by qualified medical experts. Plaintiff's standard of care experts may rely on what they believe is the standard of care as established by medical practitioners in this medical community. By this Order, the Court does not intend to limit the scope of any standard of care expert (provided, of course, that they meet the proper foundational requirements and were properly disclosed.) However, it would be inappropriate to argue to the jury—either directly or inferentially—that a lesser, or different standard of care applies—such as a "community standard." Although plaintiff correctly points out that one of [the] goals of tort law is to enhance safety and prevent future injuries to the extent possible, their argument is misplaced. Those concepts are the reasons that we have laws that allow for recovery in tort cases; they are baked into this State's jurisprudence. The jury's job is to apply that law to the facts of this case; not to apply their subjective concept of what safety should be.*[6]

By asking the jury to put themselves in Plaintiff's position for purposes of liability (i.e., the "Golden Rule") or to act as the "conscience of the community," Plaintiff asks jury members to disregard the expert witnesses' opinions on the applicable standard of care and to substitute their own opinion for what medical treatment they would have wanted to receive or to judge what would protect their community. *See also,* Point 3, *infra.* The Court should prohibit Plaintiff from offering any evidence, argument, comment, or suggestion to the jury that jury members render a verdict for any reason other than the evidence and expert testimony in the

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to what the standard of care is and what it requires. If so, it will be your responsibility to determine the credibility of the experts and to resolve the dispute.
(Emphasis added.)

[5] *See Collier v. Grover*, 2013 WL 5951254, at *2 (Utah Dist. Ct. July 10, 2013), attached as Exh. "3."

[6] Order, *Sprague v. Avalon Care Center, et al.*, Case no. 140908104, Third Judicial District Court, September 22, 2017, attached as Exh. "4."

record. Plaintiff should not—and cannot—be allowed to ask the jury to substitute their own opinions about the standard of care for those of the expert witnesses.

3. By asserting Reptile or Golden Rule arguments, Plaintiff would improperly appeal to jurors' emotions, passions, and prejudices

Evidence or argument regarding personal or community safety should be excluded because it asks the jury to decide the case based on personal or community interest and emotion, rather than based on the facts and applicable law. This principle is well-developed in Utah. In *State v. Wright*, 304 P.3d 887 (Ct. App. Utah 2013), the Utah Court of Appeals held that a prosecutor's closing argument, "You have the power to make that [(the abuse)] stop," to be improper because it appealed "to the juror's emotions by contending that the jury has a duty to protect the alleged victim to become her partisan, which diverts their attention from their legal duty to impartially apply the law to the facts." *Id.* at 41, 304 P.3d at 902. In criminal cases, "the prosecutor should refrain from argument which would divert the jury from its duty to decide the case on the evidence." *State v. Todd*, 173 P.3d 170, 175 (quoting authority). The Utah Model Jury Instructions echo Utah case law, barring such emotional arguments in civil cases as follows: "You must decide this case based on the facts and the law, without regard to sympathy, passion or prejudice. You must not decide for or against anyone because you feel sorry for or angry at anyone." Model Utah Jury Instructions 2d, CV107. Because "reptile" arguments—i.e., appeals to protect the "community" from perceived danger—appeal to emotion rather than to evidence and law, they should be excluded from this trial. These arguments encourage jurors to violate their oath and to ignore standard jury instructions to decide cases based upon the facts and evidence presented and not to decide the case based upon passion, prejudice, and emotion.

4. Utah law governing medical negligence claims does not condone a "community" standard of care or "safety rules" as standards by which jurors should evaluate Defendants' care

In this case, the jury will hear from expert witnesses what constitutes reasonable medical care and the standard of care applicable to Defendants. The jury will likely be instructed to determine liability based only on those experts' opinions, not based upon their own standard or what could be considered "community" standards. *See, e.g.,* MUJI 2d CV301C ("The standard of care is established through expert witnesses and other evidence. *You may not use a standard based on your own experience or any other standard of your own.*"). By asking the jury to put themselves in Plaintiffs' position or to view themselves as the "conscience of the community" for purposes of liability, Plaintiffs would be asking jury members to disregard the expert witnesses' opinions on the applicable standard of care and substitute their own opinions for what medical treatment they would have wanted to receive or what treatment would protect the community at large. Plaintiff should be prohibited from any evidence, argument, or suggestion that would ask the jury to render their verdict for any reason other than the evidence and expert testimony in the record.

DEFENDANTS' MOTION IN LIMINE NO. 14: PRECLUDE ANY REFERENCE TO PLAINTIFF'S CHARITABLE WORK, CHURCH WORK, CHURCH ACTIVITY OR VOLUNTEER SERVICE.

This Court should preclude any comment or reference regarding the Plaintiff's charitable work, church membership, or volunteer service. This is not relevant and could improperly garner sympathy and unfairly prejudice with the jury. Any such evidence should be barred pursuant to Utah R. of Evid. 401, 402 and 403.

DEFENDANTS' MOTION IN LIMINE NO. 15: NO REFERENCE TO, OR SHOW TO THE JURY OF, ANY PROPOSED EXHIBIT, UNLESS THE SAME EXHIBITS HAVE PREVIOUSLY BEEN SHOWN TO DEFENSE COUNSEL TO ASSESS ITS RELEVANCY AND WHETHER TO OBJECT TO ADMISSIBILITY

This Court should preclude the Plaintiff from introducing any exhibit to the jury or to a witness (unless solely for impeachment) that has not been previously provided to counsel for the Defendants.

DEFENDANTS' MOTION IN LIMINE NO. 16: TO EXCLUDE OPINIONS OF SHERYL J. WAINWRIGHT AND ALAN A. STEPHENS

Pursuant to Rule 702 of the Utah Rules of Evidence, this Court should exclude the opinions and testimony of Plaintiff's life care planner, Sheryl J. Wainwright ("Wainwright") and economist Alan A. Stephens ("Stephens"). Wainwright prepared a life care plan containing recommendations she is not qualified to make. Wainwright lacks the expertise to opine on the future care needs recommended in the life care plan and she has not supported those recommendations with testimony from qualified experts. Therefore, Wainwright's unsupported opinions should be excluded from evidence at trial. Likewise, Stephens should be precluded from offering opinions, since those opinions are based entirely on Wainwright's life care plan.

STATEMENT OF FACTS

1. Plaintiff designated Wainwright to prepare a life care plan ("LCP") setting forth her opinions as to care Plaintiff will need in the future and the projected costs of such care.[7]

2. Plaintiff designated Stephens, an economist, to calculate the dollar value of Plaintiff's future care needs.[8] These calculations are based entirely on Wainwright's LCP.[9]

3. Wainwright is a registered nurse and certified life care planner, not a licensed physician, psychologist, physical therapist or mental health therapist/counselor.[10]

4. In her LCP, Wainwright recommends future needs in the areas of pain management,

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[7] Wainwright LCP, Sept. 13, 2019, attached as Exh. "5."
[8] Stephens CV, attached as Exh. "6;" Stephens Rpt., Feb. 20, 2020, attached as Exh. "7."
[9] *Id.*, *passim*.
[10] Wainwright CV, attached as Exh. "8."

physical therapy, individual and couples counseling, medications, yard care, season clean up, assistant care and car maintenance.[11]

5. With regard to "assistant care," the LCP fails to state what type of assistance Mr. Hinson allegedly needs and by what specialist(s).[12]

6. The LCP states: "This report has been approved by Dr. Will [Willfred] Miller ["Dr. Miller"] and Dr. Julius Bishop ["Dr. Bishop]."[13]

7. Wainwright submitted approval forms for Dr. Miller and Dr. Bishop with her LCP.[14]

8. Dr. Miller is a family practice doctor with no sub-specialty.[15]

9. Dr. Bishop is an orthopedic surgeon.[16]

10. On the approval forms Wainwright submitted for Dr. Bishop, he marked all boxes regarding the categories of treatment in the LCP as "agreed."[17] However, when asked about what portions of the LCP he has the expertise to opine upon, Dr. Bishop testified that he cannot comment on pain management or physical therapy needs, is not an expert in couple's counseling and cannot opine on whether and how often Plaintiff may need his own counseling.[18]

11. Although Dr. Bishop later testified that the physical therapy recommendations seemed reasonable, this is based only on him referring patients to physical therapy. He does not know how often Mr. Hinson even receives physical therapy.[19]

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[11] Exh. "5," pp. 8-14.
[12] *Id.*, p. 14.
[13] *Id.*, p. 5.
[14] Miller approval forms, attached as Exh. "9;" Bishop approval forms, attached as Exh. "10."
[15] Texas Medical Board profile information for Dr. Miller, https://profile.tmb.state.tx.us/PublicProfile.aspx?fad37a3d-e830-4e59-9ecd-cab941565b99 . (The Court must take judicial notice of these facts pursuant to Rule 201 of the Utah Rules of Evidence. These facts can be accurately and readily determined from the Texas Medical Board's website, which is a source for which accuracy cannot reasonably be questioned. Defendants have requested the Court to take judicial notice and Defendants have supplied the Court with the necessary information via the above link. (URE 201(b)(2) and (c)(2)).
[16] Bishop CV, attached as Exh. "11."
[17] Exh. "10," *passim*.
[18] Bishop Dep., Feb. 12, 2020, pp. 63:18-64:3; 65:23-66:1, attached as Exh. "12."
[19] *Id.* p. 66:2-16.

12. Dr. Bishop would defer to a pain management specialist as to the future need for pain management and nerve pain medication.[20]

13. Also, although Dr. Bishop generally believes Plaintiff needs support with yard care and car maintenance, he acknowledges that is not within his expertise.[21]

ARGUMENT

In order to establish a claim for medical malpractice, Plaintiff must prove: (1) the standard of care by which Defendants conduct is to be measured; (2) breach of that standard by the Defendants, (3) injury to Plaintiff proximately caused by Defendants' negligence; and, (4) damages that occurred as the result of Defendants' breach.[22] Plaintiff must prove each of these elements through expert testimony.[23]

Proper foundation qualifying an expert witness is required for the expert's testimony to be admitted at trial.[24] Rule 702 of the Utah Rules of Evidence governs the admissibility of expert testimony. Relevant to this Motion, Rule 702 provides:

> (a) Subject to the limitations in paragraph (b), a witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue.
> (b) Scientific, technical, or other specialized knowledge may serve as the basis for expert testimony only if there is a threshold showing that the principles or methods that are underlying in the testimony
> (b)(1) are reliable,
> (b)(2) are based upon sufficient facts or data, and
> (b)(3) have been reliably applied to the facts.[25]

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[20] *Id.* p. 65:19-22; 66:17-22.
[21] *Id.*, p. 64:4-9.
[22] See *Kent v. Pioneer Valley Hospital*, 930 P.2d 904, 906 (Utah App. 1997); *Dalley v. Utah Valley Regional Medical Center*, 791 P.2d 193, 195 (Utah 1990); *Chadwick v. Nielsen*, 763 P.2d 817, 821 (Utah App. 1988).
[23] *Kent*, 930 P.2d at 906; *Chadwick*, 763 P.2d at 821.
[24] See *Burton v. Youngblood*, 711 P.2d 245, 248 (Utah 1985).
[25] URE R. 702.

"By definition, an expert is one who possesses a significant depth and breadth of knowledge on a given subject."[26] In exercising discretion, the trial court is charged with the duty to serve as a gatekeeper to screen out unreliable expert testimony.[27] To that end, the Utah Supreme Court has advised trial courts to approach expert testimony with "rational skepticism."[28]

Application of Rule 702 involves a two-part test. First, under section 701(a), the trial court considers whether the proposed expert is qualified and competent to offer expert testimony and opinions in light of the witness's knowledge, skill, experience, training or education regarding the subject testimony.[29] Second, under section 702(b), the trial court determines whether the basis of the expert's testimony is the product of reliable principles and methodology.[30] Reliability is demonstrated if the expert's opinions are based on sufficient facts or data that have been reliably applied to the facts of the case.[31]

Finally, Rule 702 assigns "[t]he trial Judge the task of ensuring that an expert's testimony . . . rests on a reliable foundation. . . ."[32] Absent an accurate factual basis, expert testimony amounts to nothing more than conjecture.

I. Wainwright's recommendations lack foundation

Only persons with medical training are qualified to offer medical opinions. Unless an expert is a medical doctor, the expert will "not [be] qualified to state an expert medical opinion."[33] A non-medical expert is "not qualified to render an expert medical opinion."[34] While

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[26] *Dikeou v. Osborn*, 881 P.2d 943, 947 (Utah App. 1994).
[27] See URE 702, Advisory Committee Notes; see also *Eskelson v. Davis Hospital*, 2010 Ut 59, ¶ 12, 242 P.3d 762, 766; *State v. Larsen*, 865 P.2d 1255, 1361 (Utah 1993) ("The trial court has wide discretion in determining the admissibility of expert testimony."
[28] *Eskelson*, 2010 UT 59 at ¶ 3.
[29] See *Gunn Hill Dairy v. Los Angeles Dept. of Water & Power*, 2012 UT App 20, ¶ 30, 269 P.3d 980; see also *Robb v. Anderton, 863 P.2d 1322 (Utah App. 1993).*
[30] *Id.*
[31] *Id.*
[32] *State v. Brown*, 948 P.2d 337, 342 (Utah 1997).
[33] *Combs v. Norfolk and Western Railway Co*., 256 Va. 490, 496-497 (Va. 1998).
[34] *Ex Parte American Color Graphics*, 838 So.2d 385, 388 (Ala. 2002).

life care planners such as Wainwright "may be qualified to testify to a patient's future care needs and the costs of the care . . . [i]n many cases, those recommendations come from a patient's doctors."[35]

Wainwright is not qualified to render the medial opinions set forth in her LCP. Ms. Wainwright is a life care planner and a legal nurse consultant. Her background does not qualify her to testify as to the areas of medical and psychological needs in her LCP.[36] In *Costello*, the court prevented a nurse from opining on causation in a medical malpractice case. In so doing, the court upheld the general proposition that "[a]lthough it is generally true that a licensed registered nurse has more education and training on medical issues that a lay person, a nursing license does not automatically qualify the registered nurse as an expert on every medical subject."[37] Notably, Wainwright's opinions have been excluded by Utah courts for speculation and lack of foundation.[38]

Wainwright has no training, licensing, or credentialing as a medical doctor, physical therapist psychiatrist, or psychologist. Her training as a nurse and life are planner does not qualify her to render opinions on Mr. Hinson's future medical, physical therapy and psychological needs.

II. Wainwright's opinions are not supported by qualified experts

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[35] *Rios v. Ramage*, 2012 WL 2255050, *8 (D. Kan. 2021). See also *Snider v. New Hampshire Ins. Co*., 2016 WL 3193473 at *2 (E.D. La. 2016) ("[T]his Court allows life care planners to testify as to future health care needs, predicated upon the testimony of treating physicians as to the reasonable need for such care, and the cost of such care."); *Kilcrease v. T.W.E. L.T.D.*, No. 03-1013, 2004 WL 5509089 at *1 (D. Kan. May 18, 2024) (noting that life care planners typically base their opinions on conclusions by treating physicians and other professionals).

[36] See *Costello v. Christus Santa Rosa Health Care Corp*., 141 S.W.3d 245 (Tex. App. 2004).

[37] *Id.* at 248; see also *Kent*, 930 P.2d 904, 906 (precluding a nurse from testifying as to causation because she lacked the appropriate qualifications).

[38] See *State v. Ogden*, 416 P3d 1132, 1144-47 (Utah 2018) (holding that Wainwright's recommendations and estimated costs for certain medications, psychological treatments, evaluations, and future hospitalizations were based on unqualified speculation). *Marland v. Asplundh Tree Expert Co*., 2016 WL 7447840 (precluding Wainwright from testifying in part that minor child would need twenty additional surgeries and laser therapy sessions because she provided no factual basis for that opinion).

In an effort to get around her lack of qualifications, Wainwright asserts that her opinions are supported by Dr. Miller and Dr. Bishop. Dr. Miller is a family practice physician with no sub-specialty and Dr. Bishop is an orthopedic surgeon, yet they are purportedly supporting Wainwright's recommendations for future nerve pain care and medication, physical therapy, individual and marriage counseling, yard work, car maintenance and future attendant care needs. These doctors are not qualified in these areas. In fact, as noted in the fact section above, Dr. Bishop was deposed and admits he cannot comment on pain management or physical therapy needs, is not an expert in marriage counseling and cannot opine on whether and how often Plaintiff may need his own counseling. Although Dr. Bishop later testified that the physical therapy recommendations seemed reasonable, this is based only on him referring patients to physical therapy and he does not know how often Mr. Hinson even receives physical therapy. Also, Dr. Bishop would defer to a pain management specialist as to the future need for pain management and nerve pain medication. Finally, although Dr. Bishop generally believes Plaintiff needs support with yard care and car maintenance, he acknowledges these are not within his expertise. Moreover, there is no evidence that Wainwright ever spoke with Dr. Miller or Dr. Bishop to ask them details regarding their scope of practice or whether they could support her recommendations; she simply sent them boilerplate forms to complete.

Wainwright's LCP lacks the appropriate foundation for admission under URE 702. Therefore, she should be precluded from testifying at trial.

III. As Stephens relies on the LCP, he should be precluded from testifying

Stephens' opinions regarding economic losses are based entirely on the LCP.[39] It follows therefore, that Stephens should be prcluded from testifying as well.

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[39] Exh. "7," *passim*.

CONCLUSION

For the foregoing reasons, Wainwright and Stephens should be precluded from testifying at trial. Under URE 702 Wainwright lacks the expertise to opine on Mr. Hinson's future care needs. In turn, because Stephens' opinions are based entirely on Wainwright's LCP, Stephens should also be precluded from testifying.

DEFENDANTS' MOTION IN LIMINE NO. 17: TO EXCLUDE UNTIMELY DISCLOSED EVIDENCE.

Pursuant to Rule 7(h) of the Utah Rules of Civil Procedure, Defendants request that Plaintiff be precluded from using recently produced documentation at trial. Plaintiff has produced approximately 800 pages of new records more than 3 ½ years after the close of fact discovery. Pursuant to Rule 26(d)(4) of the Utah Rules of Civil the untimely produced records should be excluded.

STATEMENT OF FACTS

1. Fact discovery closed on December 2, 2019.[40]
2. On June 14, 2023, Plaintiffs submitted their Fourth Supplemental Initial Disclosures.[41]
3. With his Fourth Supplemental Disclosures Plaintiff produced more than 800 pages of new documents, dated as follows:[42]
    a. Baylor Regional Medical Center billing: 7/15/15 – 7/22/15
    b. Bent Tree Family Physicians billing: 12/27/07 – 3/12/19

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[40] See Sixth Amend. CMO, attached as Exh. "13."

[41] Pl.'s Fourth Supplemental Initial Disclosures, June 14, 2023, attached as Exh. "14."

[42] Index, Pl.'s 4th Supp IDs, attached as Exh. "15." (The index that accompanied the disclosures is attached to avoid attaching more than 800 pages of records. As an officer of the court, undersigned counsel represents that the dates listed in this statement of fact are accurate to the best of her knowledge based on her review of the date ranges in the records. However, should the Court wish to review the records, counsel is happy to provide them in supplementation to this Motion).

c. Baylor Scott & White Institute for Rehabilitation billing: 6/22/16 – 4/13/17

d. Functional Health Centers billing: 9/9/15 – 12/10/15

e. ConquestMD Spine Care & Sports Medicine billing: 9/8/15 – 5/27/16

f. Health Texas Provider Network billing: 9/3/16 - 5/15/19

g. 287 Family Medicine billing: 2/2/18 – 1/16/20

h. Baylor Scott & White Institute for Rehabilitation records: 6/22/16 - 8/24/16

i. Bent Tree Family Physicians records: 10/22/03 - 7/02/18

j. Functional Health Centers records: 9/08/15 – 12/10/15

k. ConquestMD Spine Care & Sports Medicine records: 3/15/16 - 4/12/19

l. Family Eye Clinic records: 1/08/19 – 1/11/19

m. Precision Cardiac & Vascular Care records: 1/24/20 – 2/21/20

n. Baylor Scott & White Dallas Diagnostic Association records: 8/13/15 – 5/15/19

o. Digestive Health Associates of Texas records: 7/24/17 – 4/08/19

p. 287 Family Medicine records: 3/06/18 – 6/28/19

q. [Eleven pages of the production are lien documents that would not become relevant until after trial, if the jury were to return a verdict in Plaintiff's favor].

ARGUMENT

I. URCP 26 imposes a penalty for untimely disclosures

Plaintiff should be precluded from using untimely produced documents at trial. The penalty for failing to make timely disclosures is that the evidence may not be used in the party's case-in chief. Specifically, Rule 26(d)(4) states, "If a party fails to disclose or to supplement timely a disclosure or response to discovery, that party may not use the undisclosed witness, document, or material at any hearing or trial unless the failure is harmless or the party shows

good cause for the failure."[43]

The Advisory Committee Notes provide guidance and explain the sound rationale for excluding untimely produced evidence:

> "Not being able to use evidence that a party fails properly to disclose provides a powerful incentive to make complete disclosures. This is true only if trial courts hold parties to this standard. Accordingly, although a trial court retains discretion to determine how properly to address this issue in a given case, the usual and expected result should be exclusion of the evidence." [44]

As demonstrated below, Plaintiff cannot show good cause and allowing him to use the documents at trial would not be harmless. Therefore, the evidence should be excluded.

II. Plaintiff cannot show good cause for the untimely production

Fact discovery closed on December 2, 2019. There is no good cause for Plaintiff's failure to supplement disclosures for more than 3 ½ years later. As demonstrated in statement of fact number three above, the overwhelming majority of these records were available before the close of fact discovery and the few that were not, closely followed. These records have been available for years and Plaintiff could have easily produced them.

III. The late production of documents is not harmless

The late discovery is not harmless. These records will require the re-opening of fact discovery so Defendants can depose witnesses and issue subpoenas for yet additional records. Moreover, Defendants conducted expert discovery in reliance on what was produced during fact discovery, so the additional fact discovery Defendants would have to conduct, would in turn necessitate re-opening expert discovery. Therefore, permitting Plaintiff to use the documents would not be harmless.

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[43] URCP 26(d)(4).
[44] URCP 26, Advisory Committee Notes to 26(d).

CONCLUSION

For the foregoing reasons, Defendants motion should be granted and the untimely produced documents should be excluded. Plaintiff's late production is not supported by good cause, nor is it harmless.

DEFENDANTS' MOTION IN LIMINE NO. 18: TO LIMIT PLAINTIFF'S EXPERT MICHAEL GURG, MD TO STANDARD OF CARE OPINIONS:

Plaintiff designated Michael Burg, M.D. as a "standard of care" expert.[45] Defense counsel deposed Dr. Burg and confirmed that the he would be opining only on standard of care, not causation.[46] Dr. Burg went on to speculate about causation, but admitted this exceeded the scope of the opinions he was offering as an expert. Specifically, he testified that "[a]s far as the outcome, I suspect that he would have had – Mr. Hinson would have had a better outcome had he been treated earlier in the course of his desease rather than – or his presentation rather than later." [47] Dr. Burg then agreed that this testimony was just his general sense, that it was "not being offered for expert testimony to a reasonable degree of medical probability."[48]

Based on Plaintiff's designations, Dr. Burg should be precluded from offering causation opinions at trial. Preclusion of causation opinions is further supported by Dr. Burg's

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[45] See Pl.'s Amended Designation of Witnesses and Exhs., attached as Exh. "16" ("Dr. Burg is a board-certified emergency medicine physician who has reviewed the medical records, deposition testimony, and medical literature pertaining to this case. Dr. Burg will testify that the standard of care applicable to this patient . . . .").

[46] Dep. Michael Burg, M.D., Feb. 11, 2020, pp. 32:12-18; attached as Exh. "17"

[47] *Id.* at 48:8-12.

[48] Id. at 48:23-49:4.

deposition testimony.

DATED this 3rd day of July, 2023.

CAMPBELL, HOUSER, FERENCE & HALL

/s/ Vaun B. Hall
VAUN B. HALL
CAMERON BEECH
Attorneys for Darrell L. Wilson, M.D.

DATED this 3rd day of July, 2023.

KIPP & CHRISTIAN

/s/ Nan Bassett
NAN BASSETT
Attorney for Jared Cox, D.O. and Kimberly D. Haycock, PA

MAILING CERTIFICATE

On this 3rd day of July, 2023, I delivered, by the method indicated below, a true and correct copy of the foregoing **DEFENDANTS' JOINT MOTIONS IN LIMINE 1-18** to the following:

___ VIA FACSIMILE ___ VIA HAND DELIVERY ___ VIA U.S. MAIL _X_ VIA COURT'S E-FILING SYSTEM	Ashton J. Hyde John M. MacFarlane Jayden G. Gray YOUNKER HYDE MACFARLANE 257 East 200 South, Suite 1080 Salt Lake City, UT 84111 *Attorneys for Plaintiff*

KIPP & CHRISTIAN, PC

/s/ Crystal Bowden
Crystal Bowden
Paralegal to Nan T. Bassett