

APPLICATION FOR

DISTRICT COURT JUDGESHIP
Fourth Judicial District

A. PERSONAL INFORMATION

1. Full Name: **Travis Benjamin Dye**
- a. What name do you commonly go by? **Travis**
2. Birthdate: [REDACTED] Are you a U.S. citizen? **Yes**
3. Home Address: [REDACTED]
4. Office Address: **225 Adams, Missoula, MT 59802** Phone: **(406) 721-9800**
5. Length of residence in Montana: **45 years total**
6. Place of residence for the last five years:
- | <u>Dates</u> | <u>City</u> | <u>State</u> |
|--------------------------|-----------------|--------------|
| June 1994-Present | Missoula | MT |

B. EDUCATIONAL BACKGROUND

7. List the names and location of schools attended beginning with high school:

| <u>Name</u> | <u>Location</u> | <u>Date of Degree</u> | <u>Degree</u> |
|--|---------------------|-----------------------|---|
| Hellgate High School | Missoula, MT | May 1990 | Diploma |
| Seattle University | Seattle, WA | N/A | N/A |
| University of Montana | Missoula, MT | May 1997 | B.A. Political Science & Sociology (High Honors) |
| University of Montana School of Law | Missoula, MT | May 2001 | J.D. (High Honors) |

8. List any scholarships, awards, honors and citations that you have received:

As an undergraduate at the University of Montana, I received the Susan K. Grebeldinger Scholarship and the Kain-McKay Scholarship. I was named to the Dean's List each quarter (Seattle University) and each semester (University of Montana) from 1993-1997.

In law school, I received the Mott Miller Memorial Scholarship, the Judge Lester H. Loble Scholarship, and was a co-recipient of the Judge Russell E. and Mary Ruth Larison Smith Award. I also received the West Group Outstanding Scholastic Achievement Award and the American Bankruptcy Institute Medal of Excellence in Bankruptcy.

As an attorney, I have been recognized by *Mountain States Super Lawyers* in Civil Litigation in 2011 (*Rising Star*), 2012, 2013, 2014, 2018, and 2019. I have had an AV-Preeminent rating from Martindale-Hubbell since 2012. Most significant to me, I was a co-recipient of the 2017 Neil Haight Pro Bono Award given by the State Bar of Montana.

9. Were you a member of the Law Review? If so, provide the title and citation of any article that was published and the subject area of the article.

I was a member of the Montana Law Review for two years, first as a staff member (1999-2000), then as Co-Editor-in-Chief (2000-01). I did not publish an article while in law school. In 2011, however, I co-authored a comment with my colleague, Helia Jazayeri, *When Due Process Is Due: Implications of Logerstedt v. Taylor and the Supreme Court's Contravention of the Rules of Appellate Procedure*, 72 Mont. L. Rev. 171 (2011). The comment discussed the application of the Rules of Appellate Procedure in a case before the Montana Supreme Court on a petition for writ of supervisory control.

C. PROFESSIONAL BACKGROUND AND EXPERIENCE

10. List all courts (including state and federal bar admissions) and administrative bodies having special admission requirements in which you are presently admitted to practice, giving the dates of admission in each case.

| <u>Court or Administrative Body</u> | <u>Date of Admission</u> |
|---|--------------------------|
| Montana State Courts | October 25, 2001 |
| United States District Court, District of Montana | October 25, 2001 |
| United States Court of Appeals, Ninth Circuit | February 12, 2002 |

11. Indicate your present employment. (List professional partners or associates, if any).

I am a non-equity partner with Kalkstein & Dye, P.C. I practice law with Gary Kalkstein, Helia Jazayeri, and Joe Newman.

12. State the name, dates and addresses of law firms with which you have been associated in practice, governmental agencies or private business organizations in which you have been employed, periods you have practiced as a sole practitioner, and other prior practice:

| <u>Employer's Name</u> | <u>Position</u> | <u>Dates</u> |
|--|------------------------------------|--------------------------|
| Kalkstein & Dye, P.C. | Associate | June 2007-Dec. 2010 |
| (f/k/a Kalkstein, Johnson & Dye f/k/a Kalkstein & Johnson) | Non-equity partner | Dec. 2010-Present |
| Missoula County | Substitute Justice of the Peace | Jan. 2007-Present |
| Phillips, Bohyer & Hedger, P.C. | Associate | Sept. 2003- June 2007 |
| (f/k/a Phillips & Bohyer) | | |
| Hon. Donald W. Molloy, Chief Judge United States District Court, District of Montana | Law Clerk | Aug. 2001-Aug. 2003 |

13. If you have not been employed continuously since completion of your formal education, describe what you were doing.

Not applicable.

14. Describe the nature of your present law practice, listing the major types of law that you practice and the percentage each constitutes of your total practice.

I presently have a civil litigation practice. Many of my recent cases have been medical and dental malpractice defense cases in which I have represented doctors, dentists, and other healthcare providers in professional negligence claims before the Montana Medical Legal Panel and in court. I have also defended healthcare providers against professional licensing complaints before their respective licensing boards. In addition, my practice includes general defense litigation, plaintiff's personal injury cases, construction defect litigation, consumer law (non-bankruptcy), landlord-tenant matters, and occasional misdemeanor criminal defense work. In the landlord-tenant matters, I have primarily represented tenants, but have occasionally advised and represented landlords. I estimate the breakdown of my practice as follows: Medical malpractice defense (50%); construction defect litigation-plaintiff (15%); landlord-tenant (10%); general defense litigation (10%); plaintiff's personal injury (10%); consumer law, criminal defense, other (5%).

15. List other areas of law in which you have practiced, including teaching, lobbying, etc.

I have also practiced in the following areas during my career: state and federal felony criminal defense; insurance coverage opinions and litigation; simple wills and estate planning; contract drafting and litigation; and defense of claims under 42 U.S.C. § 1983. I have not lobbied; however, I have testified before the Montana Legislature on two occasions. I have also given presentations on jury instructions

and direct examination to the UM School of Law's Trial Practice class and have helped judge mock trials for the UM trial team and Trial Practice class.

16. If you specialize in any field of law, what is your specialty?

My broad specialty is civil litigation with an emphasis on medical/dental malpractice defense in recent years.

17. Do you regularly appear in court? **Yes.**

What percentage of your appearance in the last five years was in:

| | |
|---------------------------------|------------|
| Federal court | 5% |
| State or local courts of record | 85% |
| Administrative bodies | 10% |
| Other | 0% |

18. During the last five years, what percentage of your practice has been trial practice? **85%**

19. How frequently have you appeared in court? **1-2 times per month on average.**

20. How frequently have you appeared at administrative hearings? **<1 time per month on average.**

21. What percentage of your practice involving litigation has been:

| | |
|----------|------------|
| Civil | 90% |
| Criminal | 10% |
| Other | 0% |

22. Have you appeared before the Montana Supreme Court within the last five years? If so, state the number and types of matters handled. Include the case caption, case citation (if any), and names, addresses and phone numbers of all opposing counsel for the five most recent cases.

During the past five years, I have appeared before the Montana Supreme Court in three cases, as follows:

***Kathy Howard v. Robert Edward Replogle, M.D.*, Montana Supreme Court Cause No. DA 19-0102 (pending).**

- I represent the defendant/appellee in an appeal from a defense verdict by a Billings jury in a medical malpractice action.**
- The plaintiff/appellant is represented by Steve Harman, Steve Harman Law, PLLC, 2611 Minnesota Ave, Billings, MT 59101, (406) 969-4498 and Jim Edmiston and Tanis Holm, Edmiston & Colton, 310 Grand Ave, Billings, MT 59101, (406) 259-9986.**

Edward D. Wrzesien and Lacey Van Grinsven, individually and on behalf of all similarly situated persons, and Megan Ashton, individually v. State of Montana and Montana Public Employee Retirement Administration, 2016 MT 242, 385 Mont. 61, 380 P.3d 805.

- I represented the plaintiffs/appellants in a constitutional challenge to the distribution of the employer-paid retirement contribution for those participating in the Public Employee Retirement System's defined contribution plan versus those participating in the defined benefit plan.
- The defendants/appellees were represented by J. Stuart Segrest, Assistant Attorney General, Montana Department of Justice, 215 North Sanders, P.O. Box 201401, Helena, MT 59620, (406) 444-2026.

Donna Pickett v. Florian M. Cortese, 2014 MT 166, 375 Mont. 320, 328 P.3d 660.

- Along with my colleague, Gary Kalkstein, I represented the defendant/appellant in a medical malpractice action. The appeal presented an issue of first impression regarding the specificity of claim presentation requirements before the Montana Medical Legal Panel to allow a district court to obtain jurisdiction over a medical malpractice claim. I handled all briefing before the Montana Supreme Court.
- The plaintiff/appellee was represented by Dennis Conner and Keith Marr, Connor & Marr, PLLP, 520 3rd Ave. N, Great Falls, MT 59401, (406) 727-3550.

23. State the number of jury trials that you have tried to conclusion in the last ten years.

In the last ten years, I have tried 3 jury trials to conclusion. I have also presided over 2-3 jury trials as a substitute Justice of the Peace.

24. State the number of non-jury trials that you have tried in the last ten years.

In the last ten years, I have tried 1 bench trial to conclusion. I have also presided over 8-10 bench trials as a substitute Justice of the Peace.

25. State the names, addresses and telephone numbers of adversary counsel against whom you have litigated your primary cases over the last two years. Include the caption, dates of trial, and the name and telephone number of the presiding judge. If your practice does not involve litigation, provide the same information regarding opposing counsel and the nature of the matter.

Kathy Howard v. Robert Edward Replogle, M.D. and Spineology, Inc., Montana 13th Judicial District Court, Cause No. DV 13-0244.

- Dates of trial: October 29-November 2, 2018 (co-defendant Spineology, Inc. settled before trial).

- Presiding judge: Hon. Gregory Todd, (406) 256-2970.

- Counsel for Plaintiff:

Steve Harman
Steve Harman Law, PLLC
2611 Minnesota Ave
Billings, MT 59101
(406) 969-4498

Jim Edmiston
Tanis Holm
Edmiston & Colton
310 Grand Ave
Billings, MT 59101
(406) 259-9986

- Counsel for Spineology, Inc.:

Gerry Fagan
Moulton Bellingham, PLLP
P.O. Box 2559
Billings, MT 59103
(406) 248-7731

Rachelle Velgersdyk
Alana Bassin
Bowman & Brooke LLP
150 S. 5th St. #3000
Minneapolis, MT 55402
(612) 656-4025

Lone Peak Contracting, LLC, Allen James and Russell Jones v. Kristin Tripp / Lone Peak Contracting, LLC, Allen James and Russell Jones v. Done Right Foundations, Inc, Fite Enterprises, LLC d/b/a Remote Power Systems, Lynch Insulation, Inc., Grossman Enterprises, Inc., Gary Grossman, Surface Purveyors, LLC, Does 1-5 and Does 6-10 / Fite Enterprises, LLC d/b/a Remote Power Systems v. Russell L. Giese and Sapphire Construction, Inc., Montana 21st Judicial District Court, Cause No. DV 16-404.

- Dates of trial: None. The case settled at a second mediation in March 2019.

- Presiding judge: Hon. Jeffrey Langton, retired.

- Co-counsel for Kristin Tripp:

Paul Haffeman
Davis, Hatley, Haffeman & Tighe, PC
P.O. Box 2103
Great Falls, MT 59403
(406) 761-5243

- Counsel for Lone Peak Contracting, Allen James & Russell Jones:

Marshal Mickelson
Corette Black Carlson & Mickelson
P.O. Box 509
Butte, MT 59703
(406) 782-5800

Cory Gangle
Gangle Law Firm, PC
P.O. Box 16356
Missoula, MT 59808
(406) 273-4304

- **Counsel for Done Right Foundations & Surface Purveyors, LLC:**
Hannah Stone
Milodragovich, Dale & Steinbrenner, PC
P.O. Box 4947
Missoula, MT 59806
(406) 728-1455

- **Counsel for Lynch Insulation, Inc., Grossman Enterprises, Inc. & Gary Grossman:**

| | |
|--|--|
| P. Brad Condra | Katie Guffin |
| Milodragovich, Dale & Steinbrenner, PC | Bohyer, Erickson, Beaudette & Tranel, P.C. |
| P.O. Box 4947 | 283 W. Front Ste. 201 |
| Missoula, MT 59806 | Missoula, MT 59802 |
| (406) 728-1455 | (406) 532-7800 |

- **Counsel for Fite Enterprises, LLC d/b/a Remote Power Systems:**
David Markette
Megan Winderl
Markette & Chouinard, PC
P.O. Box 515
Hamilton, MT 59840
(406) 363-1110

- **Counsel for Russell Giese and Sapphire Construction, Inc.:**
Shelly Brander
Kaufman Vidal Hileman Ellingson, PC
22 Second Avenue West, Ste. 4000
Kalispell, MT 59901
(406) 755-5700

Cindy Galbraith v. Professional Property Management, Inc., Montana 4th Judicial District Court, Cause No. DV 16-928.

- Dates of trial: None. The case is pending.
- Presiding judge: Hon. Leslie Halligan, (406) 258-4771.
- **Counsel for Professional Property Management, Inc.:**
Brian Taylor
Michael Johnson
Hall & Evans, LLC
175 North 27th Street, Ste. 1101
Billings, MT 59101
(406) 969-5227

Amber Ochoa & Tim Ochoa v. Plum Property Management, LLC, Montana 4th Judicial District Court, Cause No. DV 16-988.

- Dates of trial: None. The case settled in April 2018.
- Presiding judge: Hon. John Larson, (406) 258-4773.
- Counsel for Plum Property Management, LLC:
Hannah Stone
Patrick HagEstad
Milodragovich, Dale & Steinbrenner, PC
P.O. Box 4947
Missoula, MT 59806
(406) 728-1455

K.B., J.C., William George Croft, Pamela Sandall, and Katie Croft v. Tamarack Management, Inc., Providence St. Joseph Medical Center, Lewis Croft, Mary Croft, and ABC Corporations I-XX, Montana 20th Judicial District Court, Cause No. DV 17-184.

- Dates of trial: None. The case is pending.
- Presiding judge: Hon. Deborah Kim Christopher, (406) 883-7360.
- Counsel for Plaintiffs:
Matthew Lowy
Kathleen Molsberry
Lowy Law, PLLC
2419 Mullan Road, Ste. B
Missoula, MT 59808
(406) 926-6500
- Counsel for Providence St. Joseph Medical Center:
W. Carl Mendenhall
Worden Thane P.C.
321 W. Broadway, Ste. 300
Missoula, MT 59802
(406) 721-3400

William and Susan Burgan v. Buscher Construction and Development, Inc., Dennis Buscher and John Does A and B, Montana 13th Judicial District Court, Cause No. DV 14-498.

- Dates of trial: None. The case settled at mediation in November 2018.
- Presiding judge: Hon. Jessica Fehr, (406) 256-2916 (*Hon. Ingrid Gustafson was the assigned judge until February 2018 when she was appointed to the Montana Supreme Court).

- **Counsel for Defendants:**
James Ragain
Ragain & Cook, PC
3936 Avenue B, Ste. A2
Billings, MT 59102
(406) 651-8888

David Peuse v. Dr. Christopher Wicher, Five Valleys Urology, and Jane Does 1 through 4, Montana 4th Judicial District Court, Cause No. DV 16-777.

- **Dates of trial:** None. Plaintiff voluntarily dismissed the case in February 2019, approximately three weeks before trial.
- **Presiding judge:** Hon. Leslie Halligan, (406) 258-4771.
- **Counsel for Plaintiff:**
Tina Morin
Morin Law Firm, PLLC
125 West Granite, Ste. 109
Butte, MT 59701
(406) 782-5621

Kathleen Cameron v. Donald Sullivan, PA-C, Mercury Street Medical Group, PLLC d/b/a Focused Medcare/MSM, and John Doe Individuals and Business Entities 1-5, Montana 2nd Judicial District Court, Cause No. DV 17-297.

- **Dates of trial:** None. The case settled in June 2018 after the Montana Medical Legal Panel hearing but before Defendants appeared in the lawsuit.
- **Presiding judge:** Hon. Brad Newman, retired.
- **Counsel for Plaintiff:**
John Fitzpatrick
Towe & Fitzpatrick
P.O. Box 1745
Missoula, MT 59806
(406) 829-1669

*T.M., as Personal Representative of the Estate of S.K. v. C. Nursing Home, Montana Medical Legal Panel, Claim No. 1845 (*Because Montana Medical Legal Panel proceedings are confidential, I have used initials in place of the parties' full names).*

- **Dates of trial:** None. The case settled in April 2019 before the Panel hearing.
- **Presiding judge:** None.

- **Counsel for Plaintiff:**
Robert McCarthy
McCarthy Law PC
2009 Harrison Ave
Butte, MT 59701
(406) 494-2500

Colbert's Electric, Inc. v. LocaLoop, Inc., Montana 3rd Judicial District Court, Cause No. DV 18-116.

- **Dates of trial:** None. The case is pending.
- **Presiding judge:** Hon. Ray Dayton, (406) 563-4044.
- **Counsel for Plaintiff:**
Randall Colbert
Garlington Lohn & Robinson, PLLP
P.O. Box 7909
Missoula, MT 59807
(406) 523-2500

26. Summarize your experience in adversary proceedings before administrative boards or commissions during the last five years.

I have appeared as counsel-of-record in five proceedings before the Montana Medical Legal Panel during the past five years. One case was a negligence claim against a physician assistant. A second was against a dentist. A third case, a negligence claim against a nursing home, settled after we appeared but before the Panel hearing. Two cases are pending before the Panel with hearings set in May and June 2019. Both pending cases involve negligence claims against physicians. I have also represented a physician assistant and dentist before the Screening Panel of the Board of Medical Examiners and Board of Dentistry, respectively.

27. If you have published any legal books or articles, other than Law Review articles, list them, giving citations, dates, and topics involved. If you lectured on legal issues at continuing legal education seminars or otherwise, state the topic, date, and group to which you spoke.

I have not published any legal books or articles. I wrote the President's Message for the Western Montana Bar Association's newsletter, *De Die In Diem*, in October and November 2015 and January, February, March, April, and May 2016 while I was president. Each message addressed a topic pertinent to the legal profession or our local bar. On January 25, 2019, I gave a demonstration on direct examination to two sections of the Trial Practice class at the UM Law School. I have also given presentations on jury instructions to the Trial Practice class on two or three occasions, though I do not recall exact dates.

D. PROFESSIONAL AND PUBLIC SERVICE

28. List all bar associations and legal professional societies of which you are a member. Provide the titles and dates of any office that you have held in such groups and committees to which you belong. These activities are limited to matters related to the legal profession. List the dates of your involvement.

State Bar of Montana

Member (October 2001-Present)

Western Montana Bar Association

Member (2003-Present)

Secretary (2018-Present)

Immediate Past President (2016-17)

President (2015-16)

Vice President (2015)

Director-at-Large (2013-14, 2017-18)

Montana Law Review Advisory Board

Member (2014-17)

29. List organizations and clubs, other than bar associations and professional societies, of which you have been a member during the last five years. State the title and date of any office that you have held in each organization. If you held any offices, describe briefly your activities in the organization.

Friends of Missoula Parks, Board of Directors (2014-Present; President 2018-Present)

- **Friends of Missoula Parks is a 501(c)(3) non-profit that supports parks and recreation in and around Missoula. FMP raises money to support and enhance parks and recreational facilities and acts as a fiscal sponsor for other groups and organizations who are raising money to support these facilities. As a board member, I have helped raise money to support FMP's mission.**

Fit to Fight, Board of Directors (2013-2017)

- **Fit to Fight is a 501(c)(3) non-profit that sponsors an 8-week, exercise-based support program for people who have been diagnosed with cancer and are undergoing treatment or are in remission and striving to return to their desired quality of life. The program is free to participants. As a board member, I helped raise money and otherwise supported FTF's mission.**

University of Montana Alumni Association, Life Member (2007-Present)

Adventure Cycling Association, Life Member (2016-Present)

I, along with my family, am a current member of AAA, the Missoula YMCA, Montana Natural History Center, Mountain Bike Missoula, and spectrUM Discovery Area.

30. Have you ever run for or held public office? If so, provide the details.

In 2004, I ran for a seat on the Missoula City Local Government Study Commission. The purpose of the commission was "to study the existing form and powers of [the City of Missoula] government and procedures for delivery of local government services and to compare them with other forms available under the laws of [Montana]." I was one of 30 candidates for 7 positions on the commission. I was not among the 7 who received the most votes.

31. Explain your philosophy of public involvement and practice of giving your time to community service.

I believe it is important for everyone to engage with others through community and civic service. By participating in service activities, we make connections with people with whom we might not otherwise interact. It is these connections that help break down barriers and create a civil society. In addition to helping and making connections, it is important for lawyers to volunteer in our communities to combat stereotypes that lawyers are rude, aloof, arrogant, or generally not nice to be around.

To that end, I have volunteered my time in several ways. I was a member of the Missoula Bicycle-Pedestrian Advisory Board for six years, from 2004-10. I served on the board of directors of Fit to Fight and currently serve on the board of directors of Friends of Missoula Parks. I have helped with fundraising efforts for organizations such as the Missoula YMCA, Camp Mak-A-Dream, Montana Public Radio, and the West Central Montana Avalanche Center. I have volunteered as a youth soccer coach for Missoula Strikers over the past five years. In service of the legal profession, I have served on the Western Montana Bar Association board of directors and the Montana Law Review Advisory Board. I have volunteered to speak to classes or groups at the law school on various topics and have volunteered to judge moot court competitions, trial team practices, and Trial Practice class trials. If appointed to the district court, I will continue to volunteer my time as appropriate and as allowed under the Montana Code of Judicial Conduct.

E. PROFESSIONAL CONDUCT AND ETHICS

32. Have you ever been publicly disciplined for a breach of ethics or unprofessional conduct (including Rule 11 violations) by any court, administrative agency, bar association, or other professional group? If so, provide the details.

No.

33. Have you ever been found guilty of contempt of court or sanctioned by any court for any reason? If so, provide the details.

No.

34. Have you ever been arrested or convicted of a violation of any federal law, state law, or county or municipal law, regulation or ordinance? If so, provide the details. Do not include traffic violations unless they also included a jail sentence.

Yes. In August 1990, when I was 18 years old, I was charged with disorderly conduct following an altercation with another 18-year-old male at the fair in Missoula. I argued self-defense at a bench trial in Missoula Municipal Court. I was convicted and fined ten dollars. In November or December 1990, at age 18, I received a minor-in-possession of alcohol citation in Missoula. The case was also in Missoula Municipal Court. I do not recall whether I pled guilty and paid a fine or the citation was dismissed. In April 1991, at age 19, I received a minor-in-possession of alcohol citation in Tempe, Arizona. I pled guilty and paid a \$400 fine.

35. Have you ever been found guilty or liable in any civil or criminal proceedings with conduct alleged to have involved moral turpitude, dishonesty and/or unethical conduct? If so, provide the details.

No.

36. Is there any circumstance or event in your personal or professional life that would, if brought to the attention of the Commission, Governor or Montana Supreme Court, affect adversely your qualifications to serve on the court for which you have applied? If so, provide the details.

No.

F. BUSINESS AND FINANCIAL INFORMATION

37. Since being admitted to the Bar, have you ever engaged in any occupation, business or profession other than the practice of law? If so, provide the details, including dates.

Yes. I have served as a substitute Justice of the Peace for Missoula County since 2007.

38. If you are an officer, director, or otherwise engaged in the management of any business, provide the name of the business, its nature, and the nature of your duties. If appointed as a district court judge, state whether you intend to resign such position immediately upon your appointment.

I am currently the President of the Board of Directors of Friends of Missoula Parks, a 501(c)(3) non-profit that raises money to support and enhance parks and recreational facilities in and around Missoula and acts as a fiscal sponsor for other groups and organizations with similar goals. This is a volunteer position for which I do not receive compensation. I will resign from the Board of Directors if I am appointed to the district court.

I am currently employed by Missoula County as a substitute Justice of the Peace. I will resign this position if appointed to the district court.

39. State whether during the last five years you have received any fees or compensation of any kind, other than for legal services rendered, from any business enterprise or organization. If so, identify the source and the approximate percentage of your total income it constituted over the last five years.

During the last five years, I have received compensation from Missoula County for serving as a substitute Justice of the Peace. The amount of income has varied from year-to-year but has always made up less than 0.5% of my total income.

40. Do you have any personal relationships, financial interests, investments or retainers that might conflict with the performance of your judicial duties or that in any manner or for any reason might embarrass you? If so, please explain.

My spouse works in the DNA/Serology section at the Montana State Crime Lab and is the State Administrator for the Combined DNA Index System (CODIS), the FBI's nationwide DNA database. Given her current duties, my spouse does not regularly perform case work and rarely testifies in court. However, her position could present a conflict in a case that involves a CODIS "hit." To avoid this conflict, I would recuse myself from any case where my spouse would likely be a material witness. To avoid the appearance of a conflict, I would monitor cases and disclose my spouse's role at the Crime Lab in any case that may involve testimony or evidence from the Crime Lab, regardless of whether she was involved in the case.

41. If appointed by the Governor, are you prepared to disclose the information required under 2-2-106, MCA (i.e., the name, address and type of your business; any present or past employer from which you currently receive benefits; any business or professional entity or trust in which you hold an interest; any entity in which you are an officer or director; and any real property, other than a personal residence, in which you hold an interest)?

Yes.

42. Have you filed appropriate tax returns as required by federal, state, local and other government authorities? ☒ Yes ☐ No

If not, please explain. Not applicable.

43. Do you have any liens or claims outstanding against you by the Internal Revenue Service (IRS)?
☐ Yes ☒ No

If yes, please explain. Not applicable.

44. Have you ever been found by the IRS to have willfully failed to disclose properly your income during the last five years? If so, provide the details.

No.

G. WRITING SKILLS

45. In the last five years, explain the extent to which you have researched legal issues and drafted briefs. State if associates or others have generally performed your research and the writing of briefs.

During the last five years, I have regularly researched a variety of legal issues and have drafted numerous briefs that have been filed in state and federal district courts, as well as the Montana Supreme Court. I have occasionally asked my colleagues, Helia Jazayeri and Joe Newman, to assist with researching legal issues or drafting portions of briefs. Accounting for their assistance, I have personally performed at least 90% of the legal research and writing for briefs filed under my signature.

46. If you have engaged in any other types of legal writing in the last five years, such as drafting documents, etc., explain the type and extent of writing that you have done.

During the last five years, in addition to drafting briefs, I have drafted legal opinion letters, demand letters and settlement agreements, written discovery requests and responses, and jury instructions for issues not covered in the Montana Pattern Jury Instructions. I have also prepared at least two written orders for civil cases that I presided over as a substitute Justice of the Peace.

47. Attach a writing sample of no more than ten pages that you have written yourself. A portion of a brief or memorandum is acceptable. The writing sample should be as recent as possible.

Please see attached.

48. What percentage of your practice for the last five years has involved research and legal writing?
70 %

49. Are you competent in the use of Westlaw and/or Lexis?

I am proficient with Westlaw. I was proficient with Lexis, however, it has been about 9 years since I have used it.

H. MISCELLANEOUS

50. Briefly describe your hobbies and other interests and activities.

I have played co-rec soccer during the spring, summer, and fall since 2005 when I picked up the sport for the first time since I was in seventh grade. Playing has led to a true love of the sport, so I try to attend at least one MLS match each year with my family. I have volunteered as a youth soccer coach for Missoula Strikers for the past five years. I enjoy attending University of Montana football, men's and women's basketball, and soccer games. My family regularly attends community theater performances. I also enjoy hiking, camping, mountain and road biking, downhill and cross-country skiing, gardening, and reading. I have tried to enjoy running with varying degrees of success.

51. Describe the jobs that you have held during your lifetime.

My first job was working for my uncle building a fence when I was 16. Shortly after I graduated from high school, I began working as a delivery driver for *Zimorino's Red Pies Over Montana* in Missoula where I worked from 1990-92 and again from 1994-98. I was promoted to pizza cook and dispatcher (more-or-less a shift supervisor of the pizza cooks and delivery drivers) and later to busser and waitstaff. From 1992-94 I lived in Seattle where I worked as a pizza cook at *Trattoria Mitchell* in Pioneer Square and later as counter-server at *Danken's Ice Cream* in the University District. During my final year of undergraduate studies, I was a peer advisor where my role was to assist first- and second-year undergraduate students with major selection and course registration. During law school, I interned at Dye & Moe, PLLP, the summer after my first year. Following my second year through graduation, I was the head intern at the Missoula County Attorney's Office. I also worked as a "Junior Partner" teaching assistant during my second and third years.

52. Identify the nature and extent of any pro bono work that you have personally performed during the last five years.

I have personally performed 50-70 hours of pro bono work each year during the past five years. My pro bono work has primarily involved advising and representing tenants in landlord-tenant matters and low-income individuals in civil cases. In 2017, my colleague, Helia Jazayeri, and I received the Neil Haight Pro Bono Award from the State Bar of Montana for our work representing low-income tenants.

53. In the space provided, explain how and why any event or person has influenced the way that you view our system of justice.

It is not a single person or event that has influenced the way I view our system of justice, but observations throughout my career. Our system of justice is excellent in design but imperfect in implementation. While our system is open to everyone, in practice it is becoming inaccessible to many. Lawyers are expensive and many people cannot afford one. Indeed, many of us in the legal profession would be hard-pressed to pay legal fees and costs required to fully litigate a civil or criminal case, and certainly not without taking out a loan, tapping into retirement, or otherwise going into debt. The expense associated with our legal system has led to more *pro se* litigants without legal training handling more cases, often involving complex legal and procedural issues. This means judges, clerks, and other court staff spend more time on cases with *pro se* litigants which causes backlogs and additional time and expense to all litigants.

This is not to suggest that *pro se* litigants should be discouraged or that their cases should be given short shrift. All litigants deserve the right of full access to our courts and the right to due process once they get there. The unfortunate reality is that, as fewer people can afford legal services, be it in civil, criminal, family law, or dependency and neglect cases, the safety nets we have implemented, such as public defenders, civil legal aid groups, and pro bono service from attorneys, cannot keep up. This challenges our system because, as more people represent themselves in increasingly complex matters, there is greater risk that litigants will feel they are not being treated fairly. This can lead to cynicism that can cause irreparable damage to our justice system. Thus, while the foundation of our system is solid, it is facing significant challenges that we need to address.

54. In the space provided, explain the qualities that you believe to be most important in a good district court judge.

A good district court judge will have a well-run court, make reasoned decisions, and inspire confidence in the court and the legal system. This is accomplished when the judge is patient, fair, intelligent, an effective communicator, humble, and personable.

- **Patient:** A good district court judge does not decide an issue before considering all relevant information. He or she also recognizes that not everyone has the eloquence of Clarence Darrow and gives lawyers, litigants, witnesses, and others who appear in court a full and fair opportunity to be heard.
- **Fair:** A good district court judge makes decisions with an open mind based on the evidence presented and the applicable law rather than relying on his or her own ideas, experiences, and opinions. He or she also treats people with respect, regardless of why they are before the court.
- **Intelligent:** A good district court judge researches and strives to understand new and often complex areas of law. A good district court judge recognizes when he or she is not familiar with a concept or area of law and asks questions or performs necessary research to gain an understanding.
- **Effective communicator:** A good district court judge communicates clearly and concisely in the courtroom and in written opinions. In the courtroom, a good district court judge clearly explains procedural and legal issues and rulings so that attorneys, litigants, witnesses, jurors, and observers can understand what is happening and why. In written opinions, a good district court judge clearly and concisely explains the reasoning for each decision made.
- **Humble:** A good district court judge recognizes that he or she is a public servant and has not descended from the heavens. While order and decorum are important, a good district court judge recognizes the power and authority he or she has and does not use that power or authority wantonly. A good district court judge also recognizes that he or she can make mistakes and acknowledges when one has been made.
- **Personable:** A good district court judge does not strike fear into attorneys, litigants, witnesses, or jurors, but balances the need for order and decorum with allowing people to feel welcome and comfortable in the courtroom. A good district court judge is also approachable in the community to help inspire confidence in the courts and the legal system.

55. In the space provided, explain how a court should reach the appropriate balance between establishment of a body of precedent and necessary flexibility in the law.

Predictability sets our legal system apart from many others around the world and is one reason we are looked to as an example by countries attempting to change or re-build their own legal systems. Predictability, built on a foundation of statutes, procedural rules, and court opinions, allows individuals, businesses, and governments to know that they will not be subject to the whims of a particular judge. Thus, a judge must follow established law, even if he or she disagrees with it. This is one of the basic tenets of our form of government.

Of course, issues that arise in cases are rarely clear-cut. If that was true, a computer could decide everything, and we would not need courts or judges. A judge must consider all facts and legal arguments that have been presented before deciding an issue. If the facts indicate that the situation before the court can be distinguished from earlier cases, the judge should explain how the facts and circumstances of the case make it distinguishable from earlier decisions. If the judge believes a party has made a compelling argument for a departure from otherwise applicable precedent, the judge must thoroughly analyze the applicable law and the facts of the case and explain why a departure from precedent is necessary to render a just and appropriate decision. That being said, it is not the role of a district court to overrule established case law; that authority belongs to the Montana Supreme Court or the United States Supreme Court.

56. In the space provided, state the reasons why you are seeking office as a district court judge.

Other than my clerkship out of law school, I have spent my legal career in private practice. However, I believe public service is important and have often considered how and when I could act on this belief. I did not want to wait until the twilight of my career to do so, which is one reason I am applying for this position during what some would consider the prime of my private-practice career.

Further, I believe my civil litigation experience will serve the Fourth Judicial District well. Civil cases made up 37% of the filings in the Fourth Judicial District in 2018 and have been (+/-) one-third of the filings over the past several years. While criminal, family law, and dependency and neglect cases collectively take up most of a district court's time in the courtroom, civil cases take up much of the out-of-court time. I have heard anecdotally that 80-90 percent of a judge's in-court time is spent on criminal/family law/dependency and neglect matters, while 80-90 percent of out-of-court time is spent on civil cases. The procedural rules, evidentiary issues, and substantive law that arise in civil cases can be complex and difficult to grasp for those without relevant experience. Thus, I believe a strong background in civil litigation is very important, and it is a background I have.

I also believe my reputation for being patient, pragmatic, and fair will serve the Fourth Judicial District well. Early in my career, as with many new lawyers, I was quick to try to display my knowledge of the finer points of civil procedure and evidence in what might be described as "litigation gotcha." Though appropriate on a law school exam, this is not the best practice in litigation. I have always worked to represent my clients to the best of my ability. I have learned over the years, however, that it is more effective to work with rather than against people, including opposing parties and opposing counsel. To that end, be it in pleadings, briefs, or settlement negotiations, I have tried my best to avoid an "us-versus-

them” mentality and have instead worked to present fair and reasoned arguments and to come up with pragmatic and fair resolutions.

Finally, I would like to work to continue to improve the Fourth Judicial District. It is no secret that large caseloads lead to significant delays and increased costs to litigants. While many solutions are beyond what one judge can do, there are steps I would take to try to improve efficiency and case management. For example, having a judge involved from the beginning of a case can help avoid problems and delays down the road. This is not to suggest that a judge should micromanage cases, but a judge’s early involvement can help identify the needs of each case so pretrial activities can be tailored to those needs. Likewise, several judges around the state have successfully used informal conferences to head off discovery fights. Finally, alternatives to standard procedures in criminal cases, such as treatment courts, veteran courts, and other similar concepts can help identify and treat underlying causes of crime, which can reduce recidivism by helping individuals become productive members of society.

57. What items or events in your career have distinguished you or of which you are most proud?

I am very proud of the work my colleague, Helia Jazayeri, and I have done on behalf of tenants in landlord-tenant matters. Our landlord-tenant practice started with referrals from Montana Legal Services seven or eight years ago. Since then, we have fielded calls from hundreds of tenants and have helped many of them with issues with their landlords. Often the tenants have limited means and nowhere else to turn. Many of our tenant clients have faced wrongful eviction, have been living in nearly uninhabitable conditions, or have faced claims that they owe thousands of dollars in fines, fees, rent, and damages. When our tenant clients have owed rent or damages, we have tried to work with landlords or their attorneys to reach a fair and just resolution. When we have concluded that an eviction was improper or claimed damages were not owed or were overstated, we have challenged those claims. Our work has helped many of our clients maintain stability by avoiding homelessness, negative credit entries, and other impacts of eviction and court judgments. In 2017, we were awarded the Neil Haight Pro Bono Award by the State Bar of Montana for our work.

58. Provide any pertinent information reflecting positively or adversely on you that you believe should be disclosed to the Judicial Nomination Commission.

I believe all pertinent information has been disclosed in this application.

59. Is there any comment that you would like to make that might differentiate you from other applicants or that is unique to you that would make you the best district court judge applicant?


I am certain the Commission will receive applications from several well-qualified candidates, each of whom will have his or her own strengths. However, I believe my overall experience will best serve the Fourth Judicial District. During my nearly two decades of practice, I have primarily been involved in civil litigation and am well-versed in the Montana Rules of Civil Procedure and Rules of Evidence, as well as concepts of negligence, professional malpractice, products liability, and insurance law. I have been involved in cases with multiple parties, multiple claims, and multiple experts. This experience is important, as civil cases have made up the largest percentage of filings in the Fourth Judicial District over the past several years. In 2018, civil filings were nearly equal to criminal and domestic relations filings combined.

While I believe civil litigation experience carries over to other practice areas, I also have experience in other areas that district court judges routinely handle. For example, I handled several dependency and neglect matters early in my career and have a working familiarity with the statutes and procedures that govern these proceedings. Prior to 2009, I represented criminal defendants charged with misdemeanor and felony offenses, primarily in federal, but also state, court. This, along with my experience as a legal intern at the Missoula County Attorney's Office during my third year of law school, and my 12 years of service as a substitute Justice of the Peace, gives me working knowledge of criminal law and procedure. Finally, my service as a substitute Justice of the Peace has allowed me to experience the role of a judge from the inside. In this role, I have had to make sometimes difficult decisions in criminal and civil cases after weighing testimony, evidence, or arguments of counsel. Because many litigants in Justice Court appear *pro se*, I have experience explaining legal concepts and decisions so they can be understood by people with little or no legal training. I believe this experience will set me apart from other applicants and make me a well-rounded choice for district judge.

CERTIFICATE OF APPLICANT

I understand that the submission of this application expresses my willingness to accept appointment as District Court Judge for the 4th Judicial District, if tendered by the Governor, and further, my willingness to abide by the rules of the Judicial Nomination Commission with respect to my application and the Montana Code of Judicial Conduct, if appointed.

5/9/2019
(Date)


(Signature of Applicant)

A signed original and an electronic copy of your application and writing sample must be submitted by
5:00 p.m. on Thursday, May 30, 2019.

Mail the signed original to:

**Office of Court Administrator
c/o Lois Menzies
P.O. Box 203005
Helena, MT 59620-3005**

Send the electronic copy to: mtsupremecourt@mt.gov

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MONTANA FOURTH JUDICIAL DISTRICT COURT,
MISSOULA COUNTY

DAVID PEUSE,

Plaintiff,

vs.

DR. CHRISTOPHER WICHER, FIVE
VALLEYS UROLOGY and JANE
DOES 1 THROUGH 4,

Defendants.

Cause No. DV-16-777

Dept. No. 1

Hon. Leslie Halligan

**DEFENDANTS' RESPONSE TO
PLAINTIFF'S MOTION *IN*
*LIMINE***

I. Introduction

Plaintiff has filed a motion *in limine* asking the Court to preclude Dr. Wicher and Five Valleys Urology (collectively "Dr. Wicher") from refuting Plaintiff's claim that he sustained injuries, including nerve damage, erectile dysfunction, and "severe and horrifying pain," as the result of a hematoma that formed after a

prostate biopsy performed by Dr. Wicher. If the jury determines that Dr. Wicher departed from the standard of care, causation of Plaintiff's alleged injuries will be a key point of contention. Plaintiff's attempt to prevent Dr. Wicher from presenting evidence to refute causation relies on a fundamental misinterpretation of Montana law and Plaintiff's apparent belief that it is undisputable that he sustained injuries because of the biopsy. Dr. Wicher asserts, and the facts show, that the alleged injuries were not caused by the biopsy but existed long before. The jury is entitled to hear all the facts, and the Court should deny Plaintiff's motion.

II. Factual Background

As the Court is aware from other briefing, this case arises out of a transrectal ultrasound with prostate biopsy ("the procedure") that was performed by Dr. Wicher on November 1, 2012. Plaintiff had been a patient of Five Valleys Urology for several years where his prostate specific antigen (PSA) level had been monitored. After Plaintiff's PSA level showed a significant increase over a 12-14-month period, Dr. Wicher recommended that Plaintiff have a biopsy to determine whether he had prostate cancer. While the procedure itself was uneventful, Plaintiff returned later that day complaining of an inability to urinate and some lower abdominal pain. Plaintiff was ultimately diagnosed with a hematoma, which is a rare but known complication of a prostate biopsy. Plaintiff contends that the hematoma caused him to suffer severe and ongoing pain, nerve damage, and

erectile dysfunction. Plaintiff's medical history is significant for pain, erectile dysfunction, and symptoms similar, if not identical, to those he relates to alleged nerve damage.

III. Argument

Plaintiff's attempt to muzzle Dr. Wicher's defense is based on a misapplication of the indivisible injury rule. According to Plaintiff, Dr. Wicher should be precluded from challenging causation because his experts have not opined that Plaintiff's claimed injuries are divisible. However, Dr. Wicher does not contend that Plaintiff's injury is divisible between two distinct events. Rather, Dr. Wicher contends that the biopsy did not cause the injuries alleged. Thus, the divisibility standard advocated by Plaintiff does not apply.

A plaintiff in a negligence action has the burden to prove causation. *Cheff v. BNSF R.R. Co.*, 2010 MT 235, ¶36, 358 Mont. 144, 243 P.3d 1115. A defendant may submit evidence of other injuries to challenge a claim that the defendant was a cause, or the sole cause, of the claimed injuries. *Id.* Alternatively, when a defendant has acknowledged that he or she aggravated an existing injury or condition, the defendant may attempt to prove that he or she is liable for only a portion of the alleged injuries by affirmatively proving that the injury is divisible. *Id.* In the latter situation, the defendant must produce evidence to establish "to a

reasonable medical probability that the injury is divisible.” *Id.* In the former situation, no such proof is required. *Id.*

“An ‘indivisible injury’ occurs when more than one incident contributes to a single injury and there is no logical or rational basis for dividing that injury.”

Truman v. Montana Eleventh Jud. Dist. Court, 2003 MT 91, ¶25, 315 Mont. 165, 68 P.3d 654. As noted, a defendant is required to prove divisibility to a reasonable degree of medical certainty only when the defendant is claiming he is responsible for only a portion of an otherwise indivisible injury. *Id.*, ¶32. Thus, a defendant must prove by a reasonable medical probability that an injury is divisible only when the defendant “asserts that the plaintiff’s injuries can be apportioned to other causes and wants the jury to reduce the defendant’s obligation by *the portion of* plaintiff’s damages for which he has proven he is not responsible.” *Clark v. Bell*, 2009 MT 390, ¶23, 353 Mont. 331, 220 P.3d 650 (internal quotations and brackets omitted; emphasis in original).

In *Clark*, the district court allowed the defendant to cross-examine the plaintiff and her experts regarding pre-existing injuries to defeat the causation element of a negligence claim. *Id.*, ¶20. The district court had reasoned that the plaintiff’s alleged injuries, including head, cervical, and lumbar injuries; chronic pain; and depression, “were similar, if not identical, to the types of injuries attributed by [the plaintiff] to the subject accident at issue.” *Id.*, ¶26. Testimony at

trial revealed that the plaintiff had sought extensive treatment before the accident for the exact type of injuries she claimed were caused by the accident. *Id.* The defendant used this evidence to challenge the plaintiff's claim that the defendant was the cause of the plaintiff's injuries. The defendant did not ask the jury to apportion the plaintiff's injuries between the accident at issue and other causes or accidents. *Id.*

On appeal, the plaintiff argued that the defendant, who had not disclosed an expert, was required to offer expert medical evidence to establish that the plaintiff's injuries could be divided between the accident and preexisting conditions before he could cross-examine her experts about those conditions. *Id.*, ¶20. The Montana Supreme Court concluded that evidence proffered by the defendant "was relevant and submitted for a proper purpose" and that it was not an abuse of discretion for the district court to allow it. In reaching this conclusion, the Court referenced prior cases that

have demonstrated that a defendant may submit evidence of other injuries to negate allegations that he or she is the cause or sole cause of the current injury, subject to the trial court's application of traditional evidentiary considerations.

Id., ¶25. *See also Cheff*, ¶37 (concluding that the district court erred when it prohibited the defendant from introducing medical records "as evidence of alternate cause and, consequently, impeachment evidence" where the defendant had asserted a lack of causation defense to claimed injuries).

Other cases support the proposition that a defendant is entitled to use relevant evidence to refute causation. In *Neal v. Nelson*, for example, the plaintiff claimed that he was forced to give up his career as a firefighter due to a neck injury sustained in an auto accident. *Neal v. Nelson*, 2008 MT 426, ¶11, 347 Mont. 431, 198 P.3d 819. The defendant elicited testimony from the plaintiff's healthcare providers to refute the contention. Specifically, two of the plaintiff's healthcare providers testified that the plaintiff had not told them about his alleged neck injury, with one of the providers also testifying that the plaintiff had told her that he would continue working for a county haz-mat team after he retired from the fire department. *Id.*, ¶23. The Montana Supreme Court found these facts, among others, relevant to refute the plaintiff's claim that he had been forced to retire because of his alleged neck injury. *Id.*, ¶¶23-24. *See also Ele v. Ehnes*, 2003 MT 131, ¶¶12-13, 316 Mont. 69, 68 P.3d 835 (defendant allowed to elicit testimony from plaintiff's treating physician that plaintiff had not been honest in reporting medical history); *Jenks v. Bertelsen*, 2004 MT 50, ¶34, 320 Mont. 139, 86 P.3d 24 (plaintiff's treating neurologist permitted to testify on cross-examination that work restrictions were based on false information provided by plaintiff regarding prior injuries).

Plaintiff's motion is based on the inaccurate premise that Dr. Wicher wants the jury to apportion Plaintiff's alleged injuries between the biopsy and prior events. To the contrary, Dr. Wicher does not contend that he is responsible for only

a portion of the injuries Plaintiff claims to have sustained. Rather, Dr. Wicher contends that he did not cause the claimed injuries because each condition pre-dates the biopsy. Dr. Wicher is not obligated to present expert or other testimony to establish that the biopsy *did not* cause Plaintiff's claimed injuries. It is Plaintiff's burden to prove that each condition that he contends was caused by the biopsy was, in fact, caused by the biopsy. Dr. Wicher is entitled to use any relevant evidence - including Plaintiff's medical history - to refute Plaintiff's contention.

To be sure, Plaintiff's medical history includes significant complaints of numbness in the groin area, erectile dysfunction, and pain. Plaintiff received significant treatment for pain related to a work injury that forced him to retire from his job. The pain complaints, which led to prescriptions for narcotic pain medication, continued through the time of the biopsy. A jury is entitled to hear this evidence to determine whether the "severe and horrifying pain" from which he allegedly suffers was in any way caused by the biopsy.

Likewise, Plaintiff had received treatment for erectile dysfunction for years before the biopsy. While he now attempts to differentiate between "partial" and "complete" erectile dysfunction, a jury should be able to consider his medical history to determine whether the biopsy caused this alleged damage.¹

¹ This assumes, in light of the Court's July 6, 2018, Order on Dr. Wicher's motions *in limine*, that Plaintiff is permitted to offer testimony related to his erectile dysfunction.

The same can be said of the nerve damage Plaintiff claims was caused by the biopsy. No medical provider has diagnosed nerve damage in Plaintiff. Despite this, Plaintiff relates numbness in his groin and buttocks area to “nerve damage” he contends was caused by the biopsy. However, Plaintiff complained of numbness in his groin and buttocks before the biopsy. The jury should be allowed to consider this information to determine whether Plaintiff has proven that Dr. Wicher caused alleged nerve damage or numbness.

In his motion, Plaintiff relies on *Callihan v. Burlington Northern, Inc.* and *Priest v. Taylor*. This reliance is misplaced, as neither case stands for the proposition for which it is asserted. In *Callihan*, evidence of prior injuries was not excluded. Instead, the jury heard evidence that the plaintiff had sustained two prior work-related back injuries. 201 Mont. 350, 354, 654 P.2d 972, 974-75 (1982). The issue was whether the jury should have also heard evidence regarding monetary settlements related to the two back injuries. *Id.* at 356, 654 P.2d at 975-76. Likewise, in *Priest*, the issue was not whether evidence of prior injuries should have been excluded, but how the jury should have been instructed if it found a preexisting condition had been aggravated. 227 Mont. 370, 373-74, 740 P.2d 648, 650 (1987). Thus, neither case requires the Court to exclude evidence of Plaintiff’s medical history. To the contrary, the cases support Dr. Wicher’s argument that evidence of preexisting conditions is admissible.

IV. Conclusion

Montana law clearly allows a defendant to present evidence of preexisting injuries and conditions to refute a plaintiff's claim that alleged injuries and damages were caused by the defendant. Each of the injuries and conditions that Plaintiff contends was caused by the biopsy was something Plaintiff suffered from or had been treated for in the past. Plaintiff's medical history is relevant and admissible to rebut his causation claim. Accordingly, the Court should deny Plaintiff's motion.

DATED this 8th day of February, 2019.

KALKSTEIN & DYE, P.C.

By /s/ Travis Dye
Gary Kalkstein
Travis Dye
Attorneys for Defendants

CERTIFICATE OF SERVICE

I, Travis B. Dye, hereby certify that I have served true and accurate copies of the foregoing Answer/Brief - Response Brief to the following on 02-08-2019:

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Dated: 02-08-2019