

IN THE IOWA DISTRICT COURT IN AND FOR CERRO GORDO COUNTY

KRISTINE CHRISTENSEN, Individually)	
and as Executor of the Estate of MARIA)	LAW NO. LACV069306
O'BRIEN, STEPHANIE PROHASKI,)	
Indiviudally, ANTHONY SAVAS,)	
Indiviudally, and TEODORE SAVAS,)	
Plaintiffs,)	DEFENDANTS' MOTION IN LIMINE
)	
v.)	
)	
GOOD SHEPHERD, INC. d/b/a GOOD)	
SHEPHERD HEALTH CENTER,)	
Defendants.)	

Defendants, by and through their undersigned counsel, move this court in limine for an order directing the plaintiffs named herein and the plaintiffs' counsel that would prevent the plaintiffs or the plaintiffs' attorneys, witnesses, or representatives from making or eliciting any comments or references as set forth below during voir dire, opening statements, questioning of witnesses, trial, closing arguments, or at any other time during the trial of this cause that may be heard by jurors or potential jurors as to any of the following:

1. **ALLEGED HEARSAY STATEMENTS BY PLAINTIFFS' DECEDENT:**

Plaintiffs' decedent in this cause of action, Maria O'Brien, passed away prior to trial, and her estate has been substituted as a plaintiff in this action. This claim involves allegations that are made by the plaintiffs concerning the care, services, and treatment provided to Maria O'Brien by the staff of defendant Good Shepherd, Inc., a nursing facility, prior to Maria O'Brien's death on April 1, 2015. The plaintiffs' witnesses, including Maria O'Brien's daughters, Stephanie Prohaski and Kris Christensen, have provided deposition testimony concerning statements that Ms. O'Brien allegedly made to them concerning various matters prior to her death. Defendants anticipate that the plaintiffs and the plaintiffs' witnesses will likely attempt to introduce such hearsay statements to the jury during the course of trial.

Any such statements by the plaintiffs or the plaintiffs' witnesses would constitute

inadmissible hearsay, and would not be subject to cross-examination by the defendants, due to the unavailability of Ms. O'Brien. Any testimony by plaintiffs' witnesses concerning statements allegedly made by Ms. O'Brien prior to her death, or opinion statements of plaintiffs' witnesses as to what may have transpired, based upon previous communications with Ms. O'Brien, would be extremely and unfairly prejudicial to the defendants. Any such evidence or testimony is inadmissible and should be excluded pursuant to Rules of Evidence 5.801 and 5.802.

2. ANY ALLEGED OUT-OF-COURT STATEMENTS BY MEDICAL PRACTITIONERS REGARDING THE PLAINTIFF'S CONDITION OR PROGNOSIS:

Any such statements by the plaintiffs or plaintiffs' witnesses would constitute hearsay and will not be subject to cross-examination by the defendants. The plaintiffs' treating physicians for the injury that is the subject of this claim will have been deposed, and will have been given ample opportunity to express their opinions through videotaped deposition testimony that will be presented at trial, such that the plaintiffs and plaintiffs' witnesses should not be allowed to recount any further conversations, statements, or opinions allegedly expressed by any medical practitioners to them. Any such statements would constitute inadmissible hearsay pursuant to Rules of Evidence 5.801 and 5.802.

3. EVIDENCE CONCERNING LIABILITY INSURANCE COVERAGE, SETTLEMENT NEGOTIATIONS, AND ANY OFFERS TO CONFESS JUDGMENT

"Iowa Rule of Evidence 5.408 requires exclusion of evidence relating to compromise or offers to compromise if the evidence being introduced is used to provide liability for or in validity of the claim." Gail v. Clark, 410 N.W.2d 662 (Iowa 1987). The justification for this rule is the strong policy considerations favoring settlements and discouraging their use in a manner which might place a chill on settlement proposals or attempts. Id. (internal citations omitted). See also Laguna v. Prouty, 300 N.W.2d 98 (Iowa 1981).

This evidence is clearly inadmissible pursuant to IRE 5.402, 5.403, 5.411 and decisions of the Iowa Supreme Court. See Mihalovich v. Appanoose County, 217 N.W.2d 564, 568 (Iowa 1974); Hall v. Montgomery Ward & Company, 252 N.W.2d 421 (Iowa 1977).

Further, evidence concerning any offers of compromise or settlement negotiations between the parties, including any written offers to confess judgment, are inadmissible pursuant to IRE 5.402, 5.403, 5.408, 5.409, 5.411, and decisions of the Iowa Supreme Court. See Lewis v. Kennison, 278 N.W.2d 12 (Iowa 1979).

4. FINANCIAL STATUS OF DEFENDANTS GOOD SHEPHERD, INC. D/B/A GOOD SHEPHERD HEALTH CENTER:

Any evidence or testimony or reference to the financial status of the defendants is irrelevant, immaterial, and would be extremely and unfairly prejudicial to the defendants, and should be precluded pursuant to IRE 5.402 and 5.403. See also Vanarsdol v. Farlow, 203 N.W. 794, 795 (Iowa 1925).

5. EVIDENCE OR TESTIMONY CONCERNING ANY CLAIMS FOR ITEMS OF DAMAGES NOT PREVIOUSLY DISCLOSED BY PLAINTIFFS:

It is anticipated that the plaintiffs or their witnesses may attempt to render opinions about Maria O'Brien's character, honesty, that she was a good person, etc. Such evidence is clearly inadmissible pursuant to IRE 5.404.

6. MEDICAL DOCUMENTS OR EVIDENCE NOT PREVIOUSLY DISCLOSED:

Any reference to any documents, medical condition, expense, diagnosis or prognosis or testimony by any medical care provider, or testimony of any witness who was not previously identified in the plaintiffs' answers to interrogatories, or in the plaintiffs' response to request for production of documents should be inadmissible. Such references and/or testimony would be in violation of the supplementation requirements of the Iowa Rule of Civil Procedure 1.503(4) and 1.508, and would be unfairly prejudicial to the defendants, and should therefore be precluded. Further, such records would be inadmissible hearsay under IRE 5.801 and 5.802.

7. EVIDENCE OR TESTIMONY CONCERNING ATTORNEYS' FEES

Any comments, statements, or innuendos by the plaintiffs or plaintiffs' witnesses that the plaintiffs may be required to pay an attorneys' fee out of any damage recovery that is awarded by the jury would be irrelevant and unfairly prejudicial to the defendants, and is inadmissible pursuant to IRE 5.402 and 5.403.

8. EVIDENCE OR TESTIMONY CONCERNING ANY CLAIMS FOR ITEMS OF DAMAGES NOT PREVIOUSLY DISCLOSED BY PLAINTIFFS:

Any and all references to or evidence of any claims for damages which the plaintiffs have failed to identify and describe in answers to interrogatories or through deposition should be precluded from evidence. The plaintiffs have been asked to provide through discovery, including through interrogatory answers, a summary and description of the nature and extent of all items of damages the plaintiffs intend to claim at trial. Accordingly, the defendants request that any claims for damages beyond those claims previously identified in the plaintiffs' discovery responses be precluded from evidence pursuant to IRCP 1.509(2) and IRE 5.403.

9. EVIDENCE REGARDING OTHER INCIDENTS OR INJURIES AT GOOD SHEPHERD, INC NOT INVOLVING PLAINTIFF:

Defendants submit that any documents, testimony, or evidence concerning any incidents or injuries involving persons not parties to this action would be irrelevant at trial, and that the introduction of such evidence at trial would be extremely prejudicial to the defendants, and should be precluded from trial. Such evidence may include, but would not necessarily be limited to, evidence of injuries or deaths of other residents at Good Shepherd, Inc., or its affiliated entities. In similar fashion, evidence or testimony concerning any investigations by any state agencies or other investigating agencies of incidents or matters not involving Ms. O'Brien would similarly be irrelevant and unfairly prejudicial, and presentation of such evidence to the jury could result in confusion of the issues and misleading the jury. Accordingly, the defendants submit that all such evidence as referenced above should be precluded at trial pursuant to IRE 5.402 and 5.403.

10. SAVAS ARTICLE DATED APRIL 15, 2015:

Plaintiffs have produced through discovery an article written by one of the plaintiffs, Theodore Savas, in April of 2015, entitled "This is How I Came to Publish Books." The article includes reminiscences of his mother, Maria O'Brien, and is a somewhat emotional description of his contacts and communications with his mother, including in the last days of her life. Defendants submit that the article written by Mr. Savas, which does not discuss or address any of the factual allegations made by the plaintiffs in this lawsuit, would not be relevant to any of the issues or allegations made by the plaintiffs in this lawsuit, and that the narrative and descriptions set forth in the article, if presented to the jury, would serve only to seek sympathy and emotional empathy from the jury, to the unfair prejudice of the defendants. The defendants therefore submit that the article written by Mr. Savas should be precluded from evidence under IRE 5.402 and 5.403.

11. ANY ATTEMPT TO OFFER GOLDEN RULE ARGUMENTS ON THE ISSUE OF LIABILITY OR DAMAGES.

Russell v. Chicago, R.I. & P.R. Co., 86 N.W.2d 843 (Iowa 1957).

12. ANY TESTIMONY BY ANY EXPERT INCONSISTENT WITH OR BEYOND THE FAIR SCOPE OF THOSE EXPERTS' PREVIOUS DISCLOSURES AND ANSWERS TO INTERROGATORIES SERVED BY DEFENDANTS UNDER IOWA R. CIV. P. 1.508.

13. ANY EVIDENCE OR TESTIMONY OF DAMAGES NOT PREVIOUSLY PRESENTED IN DISCOVERY RESPONSES UNDER IOWA R. CIV. P. 1.503.

See White v. Citizens Bank of Boone, 262 N.W.2d 812 (Iowa 1978). Any and all references to or evidence of any claims for damages which Plaintiff has failed to identify in his answers to interrogatories or through depositions should be precluded from evidence. Pursuant to IRCP 1.509(2), Defendant may request a specific statement as to the nature and existence of damages being claimed by Plaintiff. See also Gordon v. Noel, 356 N.W.2d 559, 564 (Iowa 1984). Plaintiff has previously provided through discovery, including interrogatory answers, a

summary of the nature and extent of all items of damages he intends to claim at trial. Accordingly, Defendants request that any claims for damages beyond those claims previously identified in Plaintiff's discovery responses and deposition testimony be precluded from evidence pursuant to IRCP 1.509(2) and IRE 5.403.

14. ANY REFERENCE TO JURY VERDICTS IN SIMILAR OR ANALOGOUS CAUSES OF ACTION IN THIS OR OTHER JURISDICTIONS.

15. UNLESS USED FOR THE PURPOSE OF IMPEACHMENT, ANY ANSWER TO INTERROGATORY OR ANY REPORT PREPARED BY ANY EXPERT WHO IS TESTIFYING AT TRIAL AS SUCH EVIDENCE IS CUMULATIVE UNDER IOWA R. EVID. 5.403.

See State v. Hemm, 662 N.W.2d 373 (Iowa Ct. App. 2003) (barring cumulative evidence, although relevant); See also, J.E. Merit Constructors, Inc. v. Cooper, 44 S.W.3d 336, 345 (Ark. 2001) (holding expert's medical report was properly excluded where report was adequately summarized in his testimony and as such report was cumulative).

16. ANY USE OF DEMONSTRATIVE EVIDENCE PREPARED BY A WITNESS IN THE COURSE OF THE WITNESS' TESTIMONY BECAUSE SUCH EXHIBITS ARE IMPROPER, MISLEADING, AND NOT NECESSARY TO THE JURY'S UNDERSTANDING OF THE WITNESS' TESTIMONY.

See San Mateo County v. Christen, 71 P2d 88, 89 (Cal. App. 1937) (excluding demonstrative exhibit on the grounds that it was misleading).

17. ANY USE OF DEMONSTRATIVE EXHIBITS CREATED DURING A WITNESS' TESTIMONY BY PLAINTIFFS' ATTORNEY ON THE GROUNDS THAT SUCH AN EXHIBIT IS IMPROPER, MISLEADING, AND CONSTITUTES A FORM OF LEADING THE WITNESS.

See Connelly v. Nolte, 21 N.W.2d 311, 318-19 (Iowa 1946).

18. PLAINTIFFS' ATTORNEYS' USE OF LEADING QUESTIONS DURING DIRECT EXAMINATION OF PLAINTIFFS' WITNESSES UNDER RULE 5.611(C).

See French v. Univ. C.I.T. Credit Corp., 120 N.W.2d 476, 482-83 (Iowa 1963).

19. **USE OF OUT-OF-COURT STATEMENTS IMBEDDED IN AN ATTORNEY'S QUESTIONS ON THE GROUNDS THAT SUCH QUESTIONS CONTAIN INADMISSIBLE HEARSAY EVEN IF THE QUESTIONS ARE POSED ON CROSS-EXAMINATION OR FOR IMPEACHMENT PURPOSES UNDER IOWA R. EVID.**

5.802.

20. **ANY USE OF A POWERPOINT PRESENTATION TO SHOW EXHIBITS OR EVIDENCE THAT THE COURT HAS NOT RECEIVED INTO EVIDENCE.**

21. **ANY USE OF EXHIBITS IN A POWERPOINT PRESENTATION MARKED WITH COUNSEL'S OWN COMMENTS.**

Counsel's comments are argument, not evidence. See R.5.402.

22. **ANY USE OF A POWERPOINT PRESENTATION OR OTHER VISUAL AID NOT PREVIOUSLY PROVIDED TO OPPOSING COUNSEL BEFORE TRIAL FOR REVIEW.**

23. **ANY ATTEMPT BY AN EXPERT WITNESS TO (1) TESTIFY THAT OTHER EXPERTS SUBSCRIBE TO OR SUPPORT HIS OR HER OPINION OR (2) REPRESENT THE FACTS OR OPINIONS UNDERLYING A TESTIFYING EXPERT'S OPINIONS ARE ADMITTED FOR THEIR TRUTH IN AN ATTEMPT TO BOLSTER THE TESTIFYING EXPERT'S OPINIONS.**

See C.S.I. Chem. Sales, Inc. v. Mapco Gas Prods., Inc., 557 N.W.2d 528, 531 (Iowa Ct. App. 1996).

24. **ANY ATTEMPT BY PLAINTIFF TO CROSS-EXAMINE ANY OF DEFENDANTS' WITNESSES BASED UPON OR UTILIZING ANY JUDICIAL RECORD, INCLUDING ANY COURT'S DECISION OR ORDER, WITHOUT CALLING THE SOURCE OF THAT RECORD TO TESTIFY LIVE AT TRIAL.**

Such attempt by Plaintiff to introduce evidence of prior bad acts would be irrelevant, prejudicial, and constitutes inadmissible hearsay. IA R. Evid. 5.404(b); 5.608; 5.801; 5.802.

25. **ANY ARGUMENT THAT THE JURY SHOULD "SEND A MESSAGE" TO DEFENDANTS'**

See Betts v. City of Chicago, Ill., 784 F.Supp.2d 1020 (N.D. Ill. 2011).

26. EVIDENCE OF GOOD CHARACTER, INTEGRITY, OR HONESTY OF PLAINTIFFS.

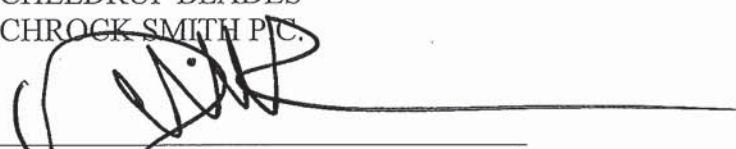
Evidence of good character of a party to a civil action is ordinarily not admissible, except where the party's character is put directly into issue. Koonts v. Farmers Mut. Ins. Assn' of Van Buren County, 16 N.W.2d 20 (Iowa 1944). Such evidence is clearly inadmissible under R. 5.404 and unfairly prejudicial under R. 5.403.

27. OPINION WHETHER ANOTHER WITNESS WAS LYING.

Plaintiff's counsel should be prohibited from asking any witness whether another witness was lying, and all witnesses should be precluded from offering any testimony that another witness was lying, as such an inquiry is not proper. It is not appropriate to ask a witness whether another witness was lying under any circumstances. See State v. Graves, 668 N.W.2d 860 (Iowa 2003).

WHEREFORE, defendants respectfully request the court to instruct the plaintiffs and plaintiffs' attorneys not to mention, refer to, interrogate concerning or attempt to convey to the jury in any manner, either directly or indirectly, any of the above-mentioned matters, and to further instruct the plaintiffs and their attorneys not to make any reference to the fact that this motion has been filed and granted, and to warn and caution each and every one of their witnesses to follow these same instructions.

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