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JUL 11 2017  
CL

6 Attorneys for Defendant

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8 MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY

9 ROB QUIST, and BONNI QUIST,  
10 wife,

11 Plaintiffs,

12 vs.

13 ROCH R. BOYER, M.D.,

14 Defendant.

) Cause No. DV-94-526A

) **BRIEF IN RESPONSE TO PLAINTIFFS'**  
) **MOTION IN LIMINE**

15 COMES NOW the Defendant and files the following response to Plaintiffs' Motion  
16 in Limine.

17 Plaintiffs have asked to prohibit the mention of Plaintiff Rob Quist's marijuana use,  
18 the fact that Rob Quist has previously had genital herpes and TB test results.

19 The test for all evidence admitted during the trial of any case is whether that  
20 evidence is relevant. Rule 401 of the Montana Rules of Evidence defines relevant  
21 evidence as follows:

22 **Rule 401. Definition of relevant evidence.**

23 Relevant evidence means evidence having any tendency to  
24 make the existence of any fact that is of consequence to the  
25 determination of the action more probable or less probable than  
26 it would be without the evidence. Relevant evidence may  
27 include evidence bearing upon the credibility of a witness or  
hearsay declarant.

26 In this case, Rob Quist is claiming a variety of problems including lethargy,  
27 depression and lack of energy. Dr. Boyer is not interested in introducing evidence that is

1 not relevant and that would only tend to reflect adversely on Rob Quist. On the other  
2 hand, if any of the conditions that Rob Quist is complaining about are caused or  
3 contributed to by the things which his counsel is trying to exclude, then they should not  
4 be excluded. That is a question of fact and law which the presiding judge can best answer  
5 as the medical information, and other information, is developed during trial. Based on the  
6 discovery that has been done to date, Defendant is not in a position to agree that the  
7 information sought to be excluded is irrelevant. Defendant is aware of the fact that it is  
8 sensitive information and could affect adversely Rob Quist. However, to exclude it at this  
9 stage of the case would be premature.

10 Therefore, we urge the Court to reserve its ruling on these issues until those matters  
11 have been developed at the time of trial and the Court can better ascertain the relevancy  
12 or lack thereof. As a part of that, I have no problem in agreeing that I will not inquire  
13 into the specific items addressed in Plaintiffs' motion without first alerting the Court and  
14 counsel of my intention to do so in order that we might go into chambers and address that  
15 issue at that time. This procedure will afford the Plaintiffs' the protection to which they're  
16 entitled without compromising any rights of the Defendant.

17 DATED this 1st day of March, 1996.

18 Attorneys for Defendant

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