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# Hall v. Rocky Mountain Emergency Physicians Appellant's Brief Dckt. 39473

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IN THE SUPREME COURT OF THE STATE OF IDAHO

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HEATHER HALL,

Plaintiff-Appellant,

v.

ROCKY MOUNTAIN EMERGENCY  
PHYSICIANS, L.L.C. and KURTIS HOLT M.D.,  
and RANDALL FOWLER, M.D., and JEFF JOHNSON,

Defendants-Respondents.

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APPEAL FROM THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT FOR  
BANNOCK COUNTY IN CASE NO. CV-11-1740. APPEAL FROM THE JUDGMENT  
RENDERED AGAINST THE PLAINTIFF IN THIS CASE.  
HONORABLE DAVID C. NYE, DISTRICT JUDGE

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**APPELLANT'S BRIEF**

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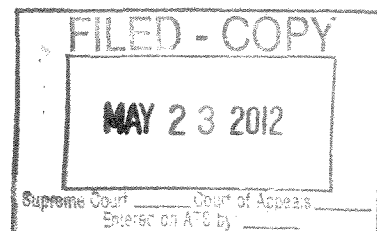


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## INTRODUCTION

This is a case about how to take a patient's pulse, and whether a licensed Idaho Falls physician is qualified, after familiarizing himself with the applicable Pocatello standard of care, and familiarizing himself with Idaho state law prohibiting abusing or exploiting patients in the course of treatment, can testify that removing a client's bra against her will, staring at her exposed breast under her gown and grabbing her breast for 15-20 seconds falls beneath the standard of care expected of a physician's assistant who was supposed to be taking this female patient's pulse.

## STATEMENT OF FACTS

On or about June 5, 2009, Heather Hall was suffering severe headaches and sought treatment at Portneuf Medical Center emergency room. Ms. Hall sought treatment during the day, when she believed Jeff Johnson would not be present, due to his prior inappropriate conduct toward her. *Affidavit of Heather Hall*, para. 3-4, Rec. p. 77.

At that time, Kurtis Hold(sic), M.D., was the physician on duty. He allowed a physician's assistant he was supervising, Jeff Johnson, to examine and treat Heather Hall for her headache. *Id.* at para. 5, Rec. p. 77.

During the June 5, 2009, visit, Ms. Hall explained she had headaches the night before. Johnson told her to undress from the waist up, but Plaintiff kept her bra on and put on a hospital gown. Johnson stated he needed to check her heartbeat and that he would have to go under her bra wire as it was in the way. Without consent, Johnson then completely lifted Plaintiff's bra up and over, exposing her left breast, looked under her gown and brushed his hand over her left nipple, then continued with the stethoscope while resting his hand on her left breast for approximately 15-20 seconds, while claiming to check her heartbeat. *Id.* at Para 5, Rec. p. 77.

These actions of Heather Hall were not consented to by her and were unnecessary. *Affidavit of Heather Hall*, Para. 5-6, Rec. p. 77.

None of the affidavits filed by the Respondent addressed this specific conduct.

### **STANDARD OF CONDUCT**

Dr. David Bowman is a licensed physician, licensed in Idaho since 1997. He examined the pleadings in this case, and spoke with a Pocatello physician, and expressly stated that he familiarized himself with the standard of care of physicians and physicians' assistants for the period May and June, 2009, the time period in which Heather Hall was fondled by Jeff Johnson. He stated that the conduct of Jeff Johnson was beneath the standard of care required of a physician or physicians' assistant in Pocatello in May and June of 2009. He noted that the affidavits supplied by the Respondent did not state the specific conduct alleged of Jeff Johnson met that standard of care; he noted that such a statement by any of the doctors supplying affidavits would have been "utter nonsense." Dr. Bowman also noted Jeff Johnson's conduct was governed by a statewide standard of care, and that this standard had been violated by Jeff Johnson. Because the sufficiency of affidavit of Dr. Bowman is the central issue on this appeal, it is quoted here verbatim:

1. That I am a physician licensed in Idaho and have been licensed in Idaho since 1997.
2. I have practiced in Idaho Falls since that time and I am familiar with the standard of care of physicians practicing in Pocatello in the year 2009. I am familiar with the standard of care necessary in Pocatello that was required for Jeff Johnson to carry out his duties as to Heather Hall in examining and treating her in May and June 2009.
3. That I am familiar with the standard of care of physicians practicing in Pocatello, Idaho, and know first-hand the applicable standard of care for physicians and physicians' assistants practicing in Pocatello, Idaho, in May 2009 and June 2009 which are relevant to the accusations made by Plaintiff Heather Hall in this case.

4. That I have reviewed the complaint in this case, the medical records of Heather Hall for May and June of 2009.

5. I believe I possess the requisite background and knowledge and expertise to render an opinion concerning whether the treatment given by physicians' assistant Jeff Johnson to Plaintiff Heather Hall met or failed to meet the applicable standard of health care practice of the community of Pocatello, Idaho, as such standard existed at the time and place of the alleged negligence of the physicians and physician's assistant in this case, as such standard then and there existed with respect to physicians and physicians' assistants operating or functioning in Jeff Johnson's capacity.

6. I became familiar with the standard of care for emergency treatment in Pocatello as follows:

- a. I previously hired a doctor from Pocatello to work for me, and he had emergency room privileges in Pocatello. Through him, I became aware the standard of care of emergency room treatment in Pocatello was the same as the standard of care of emergency room treatment in Idaho Falls.
- b. I have toured the emergency room at Portneuf Medical Center, and the standard or care in use there was the same as the standard of care in Idaho Falls, and I am qualified to treat patients in the emergency room in Idaho Falls at EIRMC, and have been so qualified for many years, and have been familiar with the standard of care of emergency room doctors in Idaho Falls for many years.
- c. Prior to signing this affidavit, I personally spoke to another medical doctor in Pocatello who also has privileges to practice emergency medicine in Pocatello. I described the conduct to that physician which Heather Hall described in her complaint in this case which she states occurred on or about June 5, 2009, and asked him if that conduct met the conduct expected of a doctor seeing a patient in the ER in a Pocatello hospital for a headache. He stated that it did not.
- d. I have been told that none of the defendants in this case, who all practice emergency medicine in Pocatello, have stated in their affidavits that the conduct described in Heather Hall's complaint as occurring on June 5, 2009, met the standard of care expected of physicians practicing emergency medicine in Pocatello, Idaho. I am sure they could not, as such a contention would be utter nonsense.
- e. Idaho Code Section 54-1814 states the basic grounds for discipline against physicians and surgeons, and also applies to physician assistants:

**“Grounds for medical discipline.** Every person licensed to practice medicine, licensed to practice as a physician assistant or registered as an extern, intern or resident in this state is subject to discipline by the board pursuant to the procedures set forth in this chapter and rules promulgated pursuant thereto upon any of the following grounds ... **(22) Engaging in**

**any conduct which constitutes an abuse or exploitation of a patient arising out of the trust and confidence placed in the physician by the patient.”**

Every doctor in Idaho, whether an emergency room physician, physician assistant or otherwise, knows that fondling a patient in the course of medical examination or treatment violates this section of the Idaho Code and subjects him or his physician assistant to discipline if he engages in it.

6. Based upon my knowledge of the standard of care required of emergency room physicians in Pocatello, and my review of the medical records and the complaint of Heather Hall in this case, I have formed an opinion concerning whether this standard was actually met, and I actually hold this opinion.

7. The opinions I hold are based upon a reasonable degree of medical certainty.

8. That said, it is my opinion that the treatment given by Jeff Johnson to Heather Hall, as described in paragraph 15 of her complaint, on June 5, 2009, failed to meet the standard of care of physicians and physicians’ assistants in Pocatello in June of 2009. The activity described would be far, far beneath the standard of care expected of any health care provider in Pocatello, whether in an emergency room or otherwise.

9. It is further my opinion that if Heather Hall’s report of what occurred on June 5, 2009, is accurate, Jeff Johnson’s conduct would probably have caused the “severe emotional distress, pain and suffering and humiliation” which Heather Hall ascribes to his conduct.

Affidavit of Dr. David Bowman, Rec. pp. 71-75. He specifically references, nine times in his affidavit, that the time period he is referring to is 2009, and the specific place to which he refers is Pocatello, Idaho. Additionally, he specifically refers to the conduct at issue as violating a statewide standard of care prohibiting abusing or exploiting patients in the course of medical care.

None of the affidavits of the Respondent addressed the statewide standard of care, or Dr. Bowman’s statement that the conduct of Jeff Johnson, as set forth in the affidavit of Heather Hall, fell beneath that statewide standard of care.



## ARGUMENT

### STANDARD OF REVIEW

In Kolln v. Saint Luke's Reg'l Med. Ctr., 130 Idaho 323, 327, 940 P.2d 1142, 1146 (1997),

this Court set forth the following standard of review:

When this Court reviews a district court's decision on summary judgment, it employs the same standard as that properly employed by the trial court when originally ruling on the motion. Thomson v. Idaho Ins. Agency, Inc., 126 Idaho 527, 529, 887 P.2d 1034, 1036 (1994). Summary judgment is proper "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." I.R.C.P. 56(c). Finally, this Court liberally construes all disputed facts and will draw all reasonable inferences and conclusions supported by the record in favor of the party opposing the motion. Thomson, 126 Idaho at 529, 887 P.2d at 1036. This is the proper standard to be applied in medical malpractice actions as well.... Rhedeouse v. Stutts, 125 Idaho 208, 210-11, 868 P.2d 1224, 1226-27 (1994).

Our standard of review for a decision whether to admit expert testimony is clear: that decision is within the sound discretion of the trial court, and will not be overturned except upon a showing of abuse of discretion. State v. Rubbermaid Inc., 129 Idaho 353, 357, 924 P.2d 615, 619 (1996).

Kolln, 130 Idaho at 327, 940 P.2d at 1146.

### DR. BOWMAN'S AFFIDAVIT SUFFICIENTLY ADDRESSED THE LOCAL STANDARD OF CARE.

The medical procedure in this case is so basic it is universally delegated to assistants: taking a patient's pulse. The Court should consider whether the record demonstrates Dr. Bowman is qualified to testify that removing a patient's bra against her will, grabbing her breast, staring at it and hanging on to it for 15-20 seconds constitutes a proper taking of pulse or a violation of a local standard of care.

There was no testimony that taking a patient's pulse requires the expertise of any specialist.

There was no testimony that the standard for how to take a patient's pulse varies from one town to the next in Idaho.

Experts testifying as to the standard of care in medical malpractice actions must show that they have familiarized themselves with the standard for a particular profession for the relevant community and time. *See Kolln v. Saint Luke's Reg'l Med. Ctr.*, 130 Idaho 323, 331, 940 P.2d 1142, 1150 (1997).

*Grover v. Smith*, 137 Idaho 247, 252, 46 P.3d 1105, 1110 (2002), quoting *In Perry v. Magic Valley Reg'l Med. Ctr.*, 134 Idaho 46, 995 P.2d 816 (2000). Dr. Bowman stated that he was familiar with this standard of care for Pocatello for May and June of 2009. Rec. p. 71-72. Dr. Bowman became familiar with the standard of care in Pocatello in 2009 as follows: he hired a doctor from Pocatello to work for him, and through him became aware the standard of care for emergency room treatment was the same in Pocatello as in Idaho Falls. He had personally evaluated the emergency room at Portneuf Medical Center (a Pocatello hospital), and the standard of care for the emergency room was the same in Pocatello as it was in Idaho Falls, and he has been familiar with the standard of care for emergency room doctors in Idaho Falls for many years. Dr. Bowman also consulted a Pocatello physician concerning the standard of care for treating a patient in the emergency room on June 5, 2009, and whether the conduct of Jeff Johnson met that standard, and the Pocatello physician stated it did not. Rec. p. 73.

Respondents cite, in their brief, *Dulaney v. St. Alphonsus Regional Medical Center*, 137 Idaho 160, 164, 45 P.3d 816 (2002). *Dulaney* required the following showing on behalf of the plaintiff to avoid summary judgment on a medical malpractice case “**(a) the opinion is actually held by the witness.**” In Dr. Bowman's affidavit, paragraphs 7-9, he states the opinions given by him are actually held by him. Rec. p. 74.

*Dulaney* next requires “**(b) that the expert witness can testify to the opinion with a reasonable degree of medical certainty.**” *Dulaney*, 137 Idaho at 164. Dr. Bowman’s affidavit affirms that at his affidavit, para. 8, Rec. p. 74.

*Dulaney* next requires “**(c) that the expert witness possesses professional knowledge and expertise;**” *Dulaney*, 137 Idaho at 164. Dr. Bowman is a licensed physician in Idaho practicing in Idaho Falls. He had been in practice in Idaho for 14 years prior to signing his affidavit:

5. I believe I possess the requisite background and knowledge and expertise to render an opinion concerning whether the treatment given by physicians’ assistant Jeff Johnson to Plaintiff Heather Hall met or failed to meet the applicable standard of health care practice of the community of Pocatello, Idaho, as such standard existed at the time and place of the alleged negligence of the physicians and physician’s assistant in this case, as such standard then and there existed with respect to physicians and physicians’ assistants operating or functioning in Jeff Johnson’s capacity.

Rec. p. 72. His credentials were not challenged with evidence. There is no evidence that Dr. Bowman was incapable of rendering an opinion concerning how to take a patient’s pulse who presented with a headache complaint.

The plaintiff must also show “**(d) that the expert witness has actual knowledge of the applicable community standard of care to which his expert opinion testimony is addressed.**” *Dulaney*, 137 Idaho at 164. When considering whether Dr. Bowman was qualified to testify concerning whether you may properly take a pulse in Pocatello by looking under a patient’s gown, forcibly removing her bra and the grabbing her exposed breast for 15-20 seconds, Dr. Bowman stated he had the following background which enabled him to give his opinion this was beneath the standard of care in Pocatello (note that throughout his affidavit, Dr. Bowman specifically stated he

was testifying concerning the standard of care in Pocatello for the time period of May and June, 2009):

1. He'd hired a doctor to work for him who had previously worked in Pocatello and who had emergency room privileges in Pocatello, and became aware through this doctor that the standard of care for emergency room doctors in Pocatello was no different from that in Idaho Falls, Idaho.
2. He had toured the emergency room of Portneuf Medical Center (a Pocatello, Idaho facility) and the standard of care there was no different from that in Idaho Falls.
3. He had spoken to a physician in Pocatello who had emergency room privileges and was told that the actions of Jeff Johnson were beneath the standard of care in Pocatello.
4. The actions of Jeff Johnson violated Idaho Code Section 54-1814, prohibiting doctors anywhere in Idaho from abusing or exploiting patients.

Rec., pp. 72-74.

Despite the clear facts in this case, and the Respondents' attempts to ignore those facts by asserting conclusory statements in affidavits that whatever Jeff Johnson did, it met the standard of care in Pocatello, Respondent claims Dr. Bowman's affidavit did not have sufficient foundation to allow him to testify that when taking a pulse for a female headache patient in Pocatello, groping the patient's breast falls beneath the applicable standard of care.

Respondent cited *Shane v. Blair*, 139 Idaho 126, 129 75 P.3de 180, 183 (2003). In *Shane*, an out-of-state expert submitted an affidavit concerning whether back surgery performed by a Pocatello orthopedic physician was beneath the standard of care in Pocatello in 1997. The district

court judge excluded the affidavits of the plaintiff and granted summary judgment; the Idaho Supreme Court found the last two affidavits sufficient to defeat summary judgment and reversed.

A fair reading of Dr. Bowman's affidavit demonstrates that he familiarized himself with the standard of care several different ways, and his testimony is all about the standard as it existed in 2009:

This case does not present a situation where an out-of-area doctor is required to become familiar with the local standard of care by consulting with local physicians. Instead,, \*\*185 \*131 this case deals with a doctor who was already familiar with the standard of care in Pocatello in 1997 based on forty years of experience in dealing with Pocatello orthopedic surgeons. Because Coleman's significant amount of experience demonstrates the requisite personal knowledge of the relevant standard of care in Pocatello in 1997, his affidavit is admissible. Also, Esses's fourth affidavit is admissible, as it satisfies the requirement that an out-of-area expert obtain knowledge of the local standard of care by consulting with a doctor familiar with the local standard of care.

*Shane v. Blair*, 139 Idaho 126, 130-31, 75 P.3d 180, 184-85 (2003). Similarly, Dr. Bowman's affidavit shows his significant dealing with Pocatello emergency rooms as well as his consulting a local Pocatello physician. Under *Shane v. Blair*, Dr. Bowman's affidavit is admissible. Note in *Shane*, the procedure concerned complex back surgery, not the taking of a pulse, which requires no specialization. Any licensed physician will have the expertise to take a pulse.

Respondent next cites *Rhodehouse v. Stutts*, 125 Idaho 208, 211, 868 P.2d 1224, 1227 (1994). In *Rhodehouse*, Plaintiff's expert affidavit concerning a negligent angioplasty procedure was excluded and the court affirmed. The court stated:

[S]uch expert testimony may only be admitted in evidence if the foundation therefor is first laid, establishing (a) that such an opinion is actually held by the expert witness, (b) that the said opinion can be testified to with reasonable medical certainty, and (c) that such expert witness possesses professional knowledge and expertise coupled with actual knowledge of the applicable said community standard to which his or her expert opinion testimony is addressed; ....

*Rhodehouse v. Stutts*, 125 Idaho 208, 212, 868 P.2d 1224, 1228 (1994). The court stated an expert affidavit must show that the expert has familiarized himself with the local standard of care, and how he has familiarized himself with that standard. The court then stated the out-of-state expert had made no effort to state how he become familiar with the standard of care, and then stated specifically why the affidavit was deficient:

In the case at bar, Jenkins stated in his affidavit that he was familiar with the applicable local standard of care but he did not state how he became familiar with this standard. Moreover, nothing in the affidavit indicates that Jenkins contacted a local doctor to inquire about the applicable standard of care.

*Rhodehouse v. Stutts*, 125 Idaho 208, 212, 868 P.2d 1224, 1228 (1994). *Rhodehouse* does not help Respondents, because Dr. Bowman specifically stated how he became familiar with the standard of care *and* that he had consulted a Pocatello physician with emergency room privileges.

Respondent next cites *Perry v. Magic Valley Regional Medical Center*, 134 Idaho 46, 51, 995 P.2d 816, 821 (2000). The Supreme Court in *Perry* affirmed a judgment against the medical provider in the amount of \$1,700,000. In doing so, the Supreme Court approved the trial court's admitting the affidavit of a Utah nurse who had not interviewed any local expert, but had relied upon a textbook which was in use nationally as demonstrating the procedure in question was governed by a national standard of care. Respondents cite some interesting principles from *Perry*, but the holding of that case is squarely against the Respondents here.

*Perry* stands for the rule that if the expert testifies a national standard applies, and can demonstrate that, it is not even necessary to consult a local physician:

An expert's review of a deposition stating that the local standard does not vary from the national standard, coupled with the expert's personal knowledge of the national standard, is sufficient to lay a foundation for the expert's opinion.

*Perry v. Magic Valley Reg'l Med. Ctr.*, 134 Idaho 46, 51, 995 P.2d 816, 821 (2000). Dr. Bowman referred to a statewide standard, based upon an Idaho statute. Certainly, he was more qualified to address how to take a pulse in a community 50 miles away from Idaho Falls than was the Utah nurse qualified to testify to the procedure of intramuscular injections in *Perry*, without having contacted anyone in the local community. Marlys Massey consulted a text used nationally; Dr. Bowman consulted a statute applied statewide. Under the *Perry* standard, the testimony of Dr. Bowman is admissible.

The Plaintiffs in the case at bar have provided the affidavit of a licensed Idaho physician with 14 years of practice in Idaho. The Respondents complain he did not reveal in his affidavit what area of specialization he has. Consider, however, that the person sued, Jeff Johnson, had no area of specialization whatsoever – he was not even a doctor; he was a physician’s assistant taking a pulse.

Respondent’s argument might have had more force had the malpractice complaint concerned a technical medical procedure requiring board certification. That is a different case. The Respondents have given this court no reason to believe any licensed physician in Idaho does not have sufficient expertise to distinguish between groping and taking a pulse.

In Respondents’ Reply Brief in Support of Motion for Summary Judgment, counsel muses that perhaps examination of Dr. Bowman’s background might reveal something lacking in his ability to testify. However, Respondents never bothered to take Dr. Bowman’s deposition. Dr. Bowman gave testimony in his affidavit concerning the basis for his opinions and they are sufficient to withstand Jeff Johnson’s Summary Judgment Motion. If the Respondents desired more information from Dr. Bowman, they should have taken his deposition.

The affidavit of Dr. Bowman repeats over and over, nine times, that the specific timeframe of conduct he refers to is May and June of 2009. It is disingenuous for Respondent to complain Dr. Bowman's affidavit does not sufficiently state a timeframe for the basis of his opinions.

The medical procedure in this case is so basic it is universally delegated to assistants: taking a patient's pulse. The Court should consider whether the record demonstrates Dr. Bowman is qualified to testify that removing a patient's bra against her will, grabbing her breast, staring at it and hanging on to it for 15-20 seconds constitutes a proper taking of pulse or a violation of a statewide standard of care enunciated in I.C. Section 54-1814:

**“Grounds for medical discipline.** Every person licensed to practice medicine, licensed to practice as a physician assistant or registered as an extern, intern or resident in this state is subject to discipline by the board pursuant to the procedures set forth in this chapter and rules promulgated pursuant thereto upon any of the following grounds ... (22) Engaging in any conduct which constitutes an abuse or exploitation of a patient arising out of the trust and confidence placed in the physician by the patient.”

Dr. Bowman stated this constituted a statewide standard which was violated by the conduct of Jeff Johnson, as described by Heather Hall. Rec. pp. 73-74.

There is no affidavit contradicting Dr. Bowman's testimony, as no affidavit submitted by Respondents addressed the specific conduct described by Heather Hall, and no affidavit submitted by Respondents addressed I.C. Section 54-1814.

Experts testifying as to the standard of care in medical malpractice actions must show that they have familiarized themselves with the standard for a particular profession for the relevant community and time. *See Kolln v. Saint Luke's Reg'l Med. Ctr.*, 130 Idaho 323, 331, 940 P.2d 1142, 1150 (1997). They must also state how they became familiar with the standard of care for the particular health care professional. *Id.*



A common means for an out-of-area expert to obtain knowledge of the local standard of care is by inquiring of a local specialist. *See, e.g., Watts v. Lynn*, 125 Idaho 341, 347, 870 P.2d 1300, 1306 (1994); *Strode v. Lenzi*, 116 Idaho 214, 216, 775 P.2d 106, 108 (1989). *This is not, however, the only means for obtaining knowledge of the local standard of care. **An expert's review of a deposition stating that the local standard does not vary from the national standard, coupled with the expert's personal knowledge of the national standard, is sufficient to lay a foundation for the expert's opinion.*** *See Kozlowski [v. Rush]*, 121 Idaho [825] at 828–29, 828 P.2d [854] at 857–58 [(1992)].

*Perry v. Magic Valley Reg'l Med. Ctr.*, 134 Idaho 46, 995 P.2d 816 (2000), *quoted in Grover v. Smith*, 137 Idaho 247, 252, 46 P.3d 1105, 1110 (2002). In *Perry*, a Utah nurse was allowed to testify to the local standard by testifying a national standard applied.

Likewise, the Respondents' citing of *Suhadolnik v. Pressman*, 254 P.3d 11 (2011) does not help Respondents:

Furthermore, where an expert demonstrates that a local standard of care has been replaced by a statewide or national standard of care, and further demonstrates that he or she is familiar with the statewide<sup>6</sup> or national standard,<sup>7</sup> the foundational requirements of I.C. § 6–1013 have been met.

*Suhadolnik v. Pressman*, 151 Idaho 110, 116, 254 P.3d 11, 17 (2011). *Suhadolnik* concerned the requirements for an expert to testify concerning the details of cataract surgery. In such surgery, specialized knowledge would be required. *Suhadolnik* did not concern itself with a basic procedure such as taking a pulse.

Was Dr. Bowman wrong, that the conduct described was not prohibited by I.C. Section 54-1814? There is no authority demonstrating he was wrong, or that the fondling –in-the-course-of-taking-a-pulse prohibited in Idaho Falls by this statewide statute is somehow not applicable 50 miles away in Pocatello, and that we must assume doctors and physician's assistants are free to fondle their patients everywhere in Idaho but Idaho Falls, where Dr. Bowman practices.

Respondent cited *Perry* as standing for the proposition that “One approved means for an out-of-area expert to obtain knowledge of the local standard of care is by inquiring of a local specialist.” Defendant’s Reply Brief in Support of motion for Summary Judgment, Rec. p. 83. As stated above, *Perry* allowed the testimony of a Utah nurse who had not consulted any local expert, because a national standard applied.

**CONCLUSION**

The Appellant has demonstrated by Affidavit of Dr. David Bowman, licensed physician from Idaho Falls, Idaho, that he knew the proper procedure for taking a headache patient’s pulse in Pocatello in May and June 2009. The Respondent is not a brain surgeon, he is not a board-certified anything. He is a physician’s assistant. His job was to take a pulse. Instead, he groped the patient. Dr. Bowman has shown sufficient foundation that he is capable of testifying Jeff Johnson’s actions did not meet the standard of care required to take a pulse in Pocatello in June of 2009.

DATED this 21<sup>st</sup> day of May, 2012.



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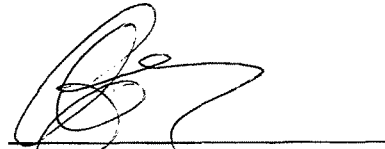
Allen H. Browning  
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 22<sup>nd</sup> day of May, 2012, a true and correct copy of the foregoing was delivered to the following attorney of record by placing same in the U.S. mail in a postage-paid envelope, hand delivery, or facsimile.

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