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ELKO CO DISTRICT COURT

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1 Case No. CV-C-15-407
2 Dept. No. 1

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6 IN THE FOURTH JUDICIAL DISTRICT COURT
7 OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO
8

9 RICHARD BROWN, an individual,
10 Plaintiff,

**ORDER REGARDING THE
EXPERT TESTIMONY OF
DR. ANDREW GEISLER**

11 V.

12 SPRING CREEK ASSOCIATION, a
13 Nevada Domestic Non-Profit
14 Corporation; and DOES I-X, and ROE
15 BUSINESS ENTITIES XI-XX, inclusive,
16 Defendants.

17 A hearing was held in this matter, outside the presence of the jury, on Wednesday, the 3rd day
18 of May 2017. Present at said hearing were Sean Claggett, Esq., and Barbara Gallagher, Esq.,
19 representing Richard Brown (hereinafter "Plaintiff"). Plaintiff was not personally present at said
20 hearing. Also present at said hearing was Kristine Austin-Preston, the designated representative of
21 Spring Creek Association (hereinafter "Defendant"). Defendant was represented by counsel Loren
22 Young, Esq., and Kylee Gloeckner, Esq.

23 Plaintiff sought to elicit testimony from Dr. Andrew Geisler, one of Plaintiff's treating
24 physicians, about future pain and suffering. On May 3, 2017, outside the presence of the jury, the
25 Court conducted an evidentiary hearing on Dr. Geisler's qualifications to give expert testimony as
26 to future pain and suffering.

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1 The Nevada Supreme Court has recognized the “wide discretion” of the District Court to act
2 as gatekeeper in determining the admissibility of expert testimony. *Higgs v. State*, 126 Nev. 1, 17
3 (2010). Expert testimony is generally governed by NRS 50.275, which states,

4 If scientific, technical or other specialized knowledge will assist the
5 trier of fact to understand the evidence or to determine a fact in issue,
6 a witness qualified as an expert by special knowledge, skill,
7 experience, training or education may testify to matters within the
8 scope of such knowledge.

9 The Nevada Supreme Court has interpreted this statute as having three factors. First, the witness
10 must “be qualified in an area of ‘scientific, technical or other specialized knowledge’ (the
11 qualification requirement). . . .” *Hallmark v. Eldridge*, 124 Nev. 492, 498 (2008). Second, the
12 witness’s “specialized knowledge must ‘assist the trier of fact to understand the evidence or to
13 determine a fact in issue’ (the assistance requirement). . . .” *Id.* Third, the witness’s “testimony must
14 be limited ‘to matters within the scope of [his or her specialized] knowledge’ (the limited scope
15 requirement).” *Id.*

16 Based on the testimony presented, the Court finds that Dr. Geisler possesses specialized
17 knowledge. He has a medical degree and three board certifications. His main certification is in
18 physical medicine rehabilitation, which focuses on musculoskeletal and back injuries, and trying to
19 bring people back to functioning physically. Dr. Geisler’s other certifications are in electro-
20 diagnostic medicine and musculoskeletal stenography. Dr. Geisler has treated hundreds of patients
21 with lumbar facet syndrome. Defendant in this case has been diagnosed with lumbar facet syndrome.
22 Dr. Geisler meets the qualification requirement of *Hallmark*.

23 Under the Nevada Rules of Civil Procedure, each party must provide disclosure of expert
24 testimony including “a written report prepared and signed by the witness.” NRCPP 16.1(2)(B). The
25 report is to contain “complete statement of all opinions to be expressed and the basis and reasons
26 therefor; the data or other information considered by the witness in forming the opinions; any
exhibits to be used as a summary of or support for the opinions” as well as information regarding
the qualification and compensation of the witness. *Id.* A treating physician is exempt from the

1 requirement to file an expert witness report so long as the testimony of the treating physician is
2 confined to opinions formed during the course of treatment. *FCHI, LLC. v. Rodriguez*, 326 P.3d
3 440, 445 (Nev. 2014).

4 Dr. Geisler is one of Plaintiff's treating physicians. However, Plaintiff seeks to elicit opinion
5 testimony from Dr. Geisler based, in part, on records that were not disclosed to Defendant. A
6 treating physician is not exempt from the expert witness report requirement of NRCP 16.1 when he
7 testifies outside opinions formed during the course of treatment. Dr. Geisler did not prepare an
8 expert witness report, and the documents upon which Dr. Geisler bases his opinion regarding future
9 pain and suffering were not disclosed to Defendant. Therefore, Dr. Geisler will not be allowed to
10 give expert witness testimony as to future pain and suffering.

11 Even if Dr. Geisler were entirely exempt from the expert witness reporting requirement, the
12 Court would not be inclined to allow him to testify as to future pain and suffering. Dr. Geisler's
13 testimony as to future pain and suffering does not meet the assistance requirement of *Hallmark*.

14 Under *Hallmark*, an expert witness's testimony is only admissible where the specialized
15 knowledge of the expert would "assist the trier of fact to understand the evidence or to determine a
16 fact in issue. . . ." 124 Nev. at 498. Dr. Geisler testified on direct examination that Plaintiff would
17 "very likely" have pain the rest of his life. He stated this opinion "to a reasonable degree of medical
18 probability." Later, Dr. Geisler testified that he could "give a fairly accurate. . .emphasizing fairly
19 accurate prognosis" regarding pain. This is not the same as "very likely to a reasonable degree of
20 medical probability."

21 Plaintiff seeks to elicit Dr. Geisler's opinion based on the need for future radiofrequency
22 ablations (hereinafter "RFAs"). However, Dr. Geisler testified that half of his patients do not get
23 repeat RFAs. Dr. Geisler was asked if Plaintiff would have the same pain level in April 2018 as he
24 does today, and answered, "I assume he will be at the same pain level he is now." However, the
25 doctor does not know Plaintiff's current pain level. He does not know what Plaintiff's pain level was
26 before the incident. He does not know Plaintiff's pain level on January 31, 2014, when Plaintiff was

1 released from care by another treating physician.

2 Dr. Geisler stated he has no opinion whether Plaintiff was in pain on January 17, 2017, when
3 Dr. Geisler saw Plaintiff. However, the record from that date states Plaintiff said his low back pain
4 was getting worse. Dr. Geisler has not seen Plaintiff for his low back pain since January 31, 2017.

5 Dr. Geisler testified that he “probably” did not know that Plaintiff had an L4/5 herniation in
6 2008. He later stated that he knows of the 2008 injuries because he saw the imaging studies. These
7 statements are inconsistent. Plaintiff did not tell Dr. Geisler that Plaintiff fell in 2014, approximately
8 one year before he first saw Dr. Geisler.

9 Based upon the testimony of Dr. Geisler, the Court finds that his testimony as to future pain
10 and suffering would not assist the trier of fact to understand the evidence or determine a fact in issue.

11 Therefore, Dr. Geisler shall not be allowed to testify in this matter as to future pain and
12 suffering.

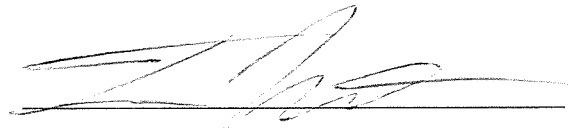
13 SO ORDERED this 9 day of May, 2017.

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16 _____
17 NANCY PORTER
18 DISTRICT JUDGE - DEPT. 1
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1 CERTIFICATE OF HAND DELIVERY

2 Pursuant to NRCP 5(b), I certify that I am an employee of the Fourth Judicial District Court,
3 Department 1, and that on this 11th day of May, 2017, I personally hand delivered a file-stamped
4 copy of the foregoing **ORDER REGARDING THE EXPERT TESTIMONY OF DR. ANDREW**
5 **GEISLER** addressed to:

6 Barbara W. Gallagher, Esq.
7 Kidwell & Gallagher, Ltd.
8 790 Commercial Street
9 Elko, NV 89801
10 [Box in Clerk's Office]

11 

12 CERTIFICATE OF MAILING

13 Pursuant to NRCP 5(b), I certify that I am an employee of the Fourth Judicial District
14 Court, Department 1, and that on this 11th day of May, 2017, I deposited for mailing in the
15 U.S. mail at Elko, Nevada, postage prepaid, a copy of the foregoing **ORDER REGARDING**
16 **THE EXPERT TESTIMONY OF DR. ANDREW GEISLER** addressed to:

17 Loren S. Young, Esq.
18 Lincoln, Gustafson & Cercos
19 3960 Howard Hughes Parkway, Ste. 200
20 Las Vegas, NV 89169-5968

21 Sean K. Claggett, Esq.
22 Claggett & Sykes Law Firm
23 4101 Meadows Lane, Suite 100
24 Las Vegas, NV 89107

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