

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2013 MTWCC 20

WCC No. 2012-3024

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PETER NEASE

Petitioner

vs.

MONTANA CONTRACTOR COMPENSATION FUND

Respondent/Insurer.

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ORDER DENYING PETITIONER'S MOTION IN LIMINE AND OBJECTION TO  
MEDICAL RECORDS

**Summary:** Petitioner moved to exclude testimony of law enforcement officers, law enforcement records, and medical records relating to an altercation which occurred after his industrial injury, arguing that these witnesses and records were irrelevant and prejudicial. Respondent responded that it had not identified any law enforcement officers as witnesses and that it had not obtained any law enforcement records, but that it intended to offer the medical records which it believed to be relevant because the records indicated that the injuries Petitioner sustained in the altercation were to the same area of the body as his industrial injury.

**Held:** Since Respondent indicated that it does not intend to call any law enforcement officers as witnesses nor offer the law enforcement records regarding the altercation, Petitioner's motion to exclude those witnesses and records is premature. Petitioner's objections to the medical records go to their weight and not admissibility. Petitioner's motion to exclude the medical records is therefore denied.

¶ 1 Petitioner Peter Nease moves to exclude from evidence any proposed testimony, law enforcement record, or medical record pertaining to an assault that occurred upon

him on or about November 20, 2011.<sup>1</sup> Respondent Montana Contractor Compensation Fund (MCCF) opposes Nease's motion.<sup>2</sup>

¶ 2 Nease notes that MCCF has listed law enforcement officials related to an altercation for which Nease sought medical treatment, and has further listed other law enforcement records and the medical records from Fort Belknap Health Center which relate to the November 20, 2011, altercation. Nease argues that these witnesses and exhibits are not relevant to the case before this Court, which concerns his August 19, 2011, industrial accident and the resulting injury.<sup>3</sup> Nease contends that the occurrences of November 20, 2011, are not relevant to this case because they occurred after the date of injury and therefore the Court should not admit these witnesses and exhibits.<sup>4</sup> Nease further argues that the exhibits are irrelevant because his industrial injuries were to his rib, neck, and low back, and these body parts were not implicated in the medical records regarding the altercation.<sup>5</sup>

¶ 3 Alternatively, Nease argues that if the Court finds these witnesses and exhibits to be relevant, it should nonetheless exclude them because they are unduly prejudicial, confusing, and a waste of time. Nease contends that MCCF offers these witnesses and exhibits with the intention of vilifying his character and attacking his credibility.<sup>6</sup>

¶ 4 Finally, Nease argues that these exhibits are hearsay and that M. R. Evid. 803(8) does not allow investigative reports by police or law enforcement as an exception to the hearsay rule. Nease further argues that, although M. R. Evid. 803(4) allows the admission of statements for purposes of medical diagnosis or treatment, this does not mean that every statement within those medical records becomes admissible. Nease contends that MCCF would have to demonstrate that each statement within the records is admissible before the Court may consider them.<sup>7</sup>

¶ 5 MCCF responds that the witnesses and exhibits at issue are both relevant and admissible. MCCF contends that although Nease claims that he continues to be disabled as a result of fractured ribs he sustained in an August 19, 2011, industrial

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<sup>1</sup> Petitioner's Motion in Limine and Objection to Medical Records and Brief Is [sic] Support Thereof (Opening Brief), Docket Item No. 40.

<sup>2</sup> Respondent's Response to Petitioner's Motion in Limine (Response Brief), Docket Item No. 47.

<sup>3</sup> Opening Brief at 1.

<sup>4</sup> Opening Brief at 2.

<sup>5</sup> Petitioner's Reply to Respondent's Response to Petitioner's Motion in Limine (Reply Brief), Docket Item No. 56, at 2.

<sup>6</sup> Opening Brief at 2.

<sup>7</sup> *Id.*

accident, the evidence will demonstrate that Nease reached maximum medical improvement for this injury by October 28, 2011, and that the medical records which Nease seeks to exclude are relevant because they indicate that Nease was struck with a pipe and sustained contusions on his abdominal wall.<sup>8</sup> MCCF argues that under § 39-71-407(9), MCA, MCCF may be relieved of responsibility for Nease's present condition because he injured the same part of his body as he had injured in the industrial accident, and that to exclude the witnesses and exhibits pertaining to the November 20, 2011, altercation would deny MCCF the opportunity to raise this defense.<sup>9</sup> MCCF further contends that these medical records also pertain directly to Nease's credibility as they contradict some of Nease's deposition testimony.<sup>10</sup>

¶ 6 MCCF represents that at present, it has not obtained any law enforcement records concerning the November 20, 2011, altercation and therefore Nease's motion is premature. MCCF states that it has had difficulty contacting the pertinent law enforcement officials, but that if it does elect to call any law enforcement officials as witnesses, the witnesses will testify either by deposition or at trial and will therefore make Nease's hearsay objections moot.<sup>11</sup>

¶ 7 MCCF further notes that under ARM 24.5.317(4), medical records are admissible in this Court irrespective of any objections. MCCF argues that if Nease wishes to challenge these medical records, ARM 24.5.317 places the burden upon him to call the medical provider and cross-examine the provider if he wishes to challenge the records.<sup>12</sup> In reply, Nease argues that ARM 24.5.317(3) provides that a party may object to medical records being admissible, so long as the objection is in writing.<sup>13</sup>

¶ 8 As it pertains to the law enforcement testimony and related law enforcement records, MCCF has represented that it has not obtained any law enforcement records nor does it intend to call any law enforcement officers to testify. Therefore, Nease's motion to exclude evidence which MCCF does not intend to offer at this juncture is premature. If MCCF indicates that it intends to call any law enforcement officers to testify regarding the November 20, 2011, altercation, or if MCCF moves to admit any related law enforcement records as exhibits, Nease may renew this motion and I will consider his arguments regarding these records and witnesses at that time.

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<sup>8</sup> Response Brief at 1-2.

<sup>9</sup> Response Brief at 2.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> Response Brief at 1.

<sup>13</sup> Reply Brief at 1.

¶ 9 As for Nease's arguments regarding the medical records relating to the November 20, 2011, altercation, his arguments go to the weight rather than the admissibility of the evidence. Although Nease argues that these medical records are not relevant to his industrial injuries because they involve a different part of his body, I note that his industrial injuries included a rib injury and the medical records at issue indicate that he suffered trauma to his "abdominal wall." Certainly these body parts are close enough together as to make the medical records not unquestionably irrelevant.

¶ 10 As to Nease's argument that these medical records are unduly prejudicial and that MCCF offers them to vilify his character and attack his credibility, it is certainly within MCCF's right to challenge Nease's credibility. Regarding the vilification of Nease's character, both counsel are well aware that this Court takes a dim view of *ad hominem* character attacks, and based on my past experience with counsel in this case, I do not expect that the medical records will be used for such purpose. In the unlikely event that this occurs, it would provide grounds for an objection to the line of questioning at trial, not for the exclusion of the records themselves in advance of trial.

#### ORDER

¶ 11 Petitioner's motion in limine to exclude certain law enforcement officers' testimony and law enforcement records is **DENIED AS MOOT**. Petitioner may seek leave to refile this motion or raise objections at the time of trial if Respondent advises that it intends to call the law enforcement officers as witnesses or introduce the law enforcement records as exhibits.

¶ 12 Petitioner's motion to exclude the medical records relating to a November 20, 2011, altercation is **DENIED**.

SO ORDERED.

DATED in Helena, Montana, this 14<sup>th</sup> day of August, 2013.

(SEAL)

/s/ JAMES JEREMIAH SHEA  
JUDGE

c: Richard J. Martin  
Kelly M. Wills  
Submitted: July 24, 2013