

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA,
BILLINGS DIVISION

Estate of Robert W. Petersen, by and through Robert T. Petersen as
Personal Representative; Estate of Mary Ann Simons, by and
through Dean Simons as Personal Representative; and Estate of
Charlotte Elaine Guilford, by and through Charles Guilford as
Personal Representative v. Koelsch Senior Communities, LLC and
Billings Partners, LLC d/b/a Canyon Creek

No. CV 22-11-BLG-SPW (D. Mont. Dec. 12, 2025) · No. CV 22-11-BLG-SPW · Decided December 12, 2025

SUMMARY

The United States District Court for the District of Montana rules on defendants’ motion to exclude or limit the testimony of plaintiffs’ expert Janet McKee in a negligence action involving alleged failures in nutrition, hydration, staffing, and infection control at a memory care and assisted living facility. The court denies exclusion under Federal Rule of Evidence 702, finding McKee qualified and her opinions sufficiently reliable, but limits her from offering medical causation opinions. The court also finds plaintiffs violated Federal Rules of Civil Procedure 26 and 37 by disclosing new opinions and materials late, and addresses the resulting limitations on their use at trial.

CASE DETAILS

COURT	United States District Court for the District of Montana, Billings Division
WRITING FOR THE COURT	Susan P. Watters
JURISDICTION	United States District Court for the District of Montana, Billings Division
DECIDED	December 12, 2025
DOCKET	CV 22-11-BLG-SPW
DISPOSITION	other
PROCEDURAL POSTURE	Defendants moved to exclude plaintiffs' expert Janet McKee under Federal Rule of Evidence 702 and alternatively to limit her testimony under Federal Rules of Civil Procedure 26 and 37. The district court denied the motion to exclude, granted in part the motion to limit testimony as to eliciting medical causation opinions, and otherwise

	denied the alternative motion, imposing a lesser Rule 37 sanction requiring a supplemental report and reopening of the deposition.
STANDARD OF REVIEW	For expert admissibility, the court applied Federal Rule of Evidence 702's gatekeeping standard and assessed qualification and reliability by a preponderance of the evidence. For the motion in limine, the court applied the rule that evidence should be excluded before trial only if inadmissible on all potential grounds. For Rule 37(c)(1), the court considered whether the disclosure failure was substantially justified or harmless and exercised discretion regarding the degree of any sanction.
PRECEDENTIAL VALUE	unknown

TOPICS

expert testimony

daubert standard

motion in limine

sanctions

civil procedure

PRACTICE AREAS

Evidence

Civil Procedure

Personal Injury

Medical Malpractice

Health Law

QUESTIONS PRESENTED

1. Whether Janet McKee was qualified under Federal Rule of Evidence 702 to testify about the dietary standard of care applicable to assisted-living facilities.
2. Whether McKee's opinions were based on sufficient facts or data, reliable principles and methods, and a reliable application of those principles and methods.
3. Whether McKee should be prohibited from offering medical causation opinions while being permitted to testify about risks associated with inadequate nutrition.
4. Whether McKee could use identified statutes and regulations to inform the applicable standard of care and establish a duty.
5. Whether opinions and materials first disclosed in McKee's Violations Report and deposition violated Federal Rule of Civil Procedure 26 and required exclusion or another sanction under Rule 37(c)(1).

HOLDINGS

1. McKee was qualified under Rule 702 to testify about Canyon Creek's dietary standard-of-care duties because her education, licensure, board certification, professional experience, teaching, and research were relevant to the opinions she offered.
2. McKee's opinions satisfied Rule 702's reliability requirement, albeit marginally, because they were based on sufficient facts or data and reflected a reliable application of her experience, training, and education to the record evidence.

3. McKee may not be elicited to offer medical causation opinions, but she may testify about how inadequate nutrition can promote or increase the risk of weight loss, falls, pressure ulcers, and urinary tract infections.
4. McKee may opine on how the statutes and regulations she identified inform the standard of care and establish a duty in this case, provided she does not offer an ultimate-issue opinion.
5. Plaintiffs violated Rule 26 by failing to adequately disclose or timely supplement McKee's initial expert report with new opinions, materials, regulatory and legal framing, systemic criticisms, and criticisms of specifically identified personnel.
6. The late disclosure was neither substantially justified nor harmless, but the court declined to strike the opinions and instead imposed the lesser sanction of allowing a supplemental report and reopening McKee's deposition at plaintiffs' expense.

KEY QUOTATIONS

“The reliability inquiry ‘focuses not on ‘what the experts say,’ or their qualifications, ‘but what basis they have for saying it.’” (at 8)

“Disclosures by experts are not living documents that can be added to on a continuing basis.” (at 17)

“To now reopen the deposition at Defendants’ expense for Plaintiffs’ failure to disclose would certainly prejudice Defendants.” (at 19)

“The jury should be allowed to weigh the entirety of Plaintiffs’ experts’ opinions.” (at 21)

FACTUAL BACKGROUND

Plaintiffs alleged that Canyon Creek, a licensed memory-care and assisted-living facility, failed to provide adequate care to Robert Petersen, Mary Ann Simons, and Charlotte Guilford during the COVID-19 outbreak, causing injuries and deaths. Plaintiffs retained Janet McKee, a registered dietician and gerontological-nutrition specialist, to opine on the dietary standard of care and the facility's nutritional and hydration care. McKee's initial report addressed nutrition and hydration, but materials produced at her deposition and a later Violations Report included broader criticisms concerning infection control, staffing, regulations, and specific facility personnel. The defendants sought to exclude or limit that testimony.

PROCEDURAL HISTORY

Plaintiffs brought a negligence action arising from alleged failures by an assisted living and memory-care facility to provide adequate staffing, nutrition, hydration, and infection control during the COVID-19 outbreak. Plaintiffs disclosed registered dietician Janet McKee as an expert on the dietary standard of care. After her initial report and deposition, defendants challenged her qualifications, methodology, factual basis, causation opinions, use of statutes and regulations, and allegedly late-disclosed opinions and materials. The court ruled on the defendants' motions before trial.

DISPOSITION

other

REMAND INSTRUCTIONS

No remand. Plaintiffs may file a supplemental expert report for Janet McKee, and defendants may reopen McKee's deposition by Zoom or another remote means. Plaintiffs must bear the reasonable costs of the reopened deposition.

CASES CITED

- Primiano v. Cook, 598 F.3d 558, 564 (9th Cir. 2010)
- Hardesty v. Barcus, No. CV 11-103-M, 2012 WL 5906797, at *2 (D. Mont. Nov. 26, 2012)
- Hangarter v. Provident Life & Accident Ins., 373 F.3d 998, 1015-16 (9th Cir. 2004)
- Santos v. Posadas de Puerto Rico Assocs., Inc., 452 F.3d 59, 64 (1st Cir. 2006)
- Carroll v. Otis Elevator Co., 896 F.2d 210, 212 (7th Cir. 1990)
- United States v. Holguin, 51 F.4th 841, 854 (9th Cir. 2022)
- Daubert v. Merrell Dow Pharms., Inc., 43 F.3d 1311, 1316 (9th Cir. 1995)
- Daubert v. Merrell Dow Pharms., Inc., 509 U.S. 579, 595 (1993)
- United States v. Sandoval-Mendoza, 472 F.3d 645, 654 (9th Cir. 2006)
- In re Paoli R.R. Yard PCB Litig., 35 F.3d 717, 744 (3d Cir. 1994)
- Agan v. BNSF Ry., No. CV 19-83-BLG, 2022 WL 3700052, at *1 (D. Mont. Aug. 26, 2022)
- Colton Crane Co. v. Terex Cranes Wilmington, Inc., No. CV 08-8525, 2010 WL 2035800, at *1 (C.D. Cal. May 19, 2010)
- Luce v. United States, 469 U.S. 38, 41 (1984)
- Yeti by Molly, Ltd. v. Deckers Outdoor Corp., 259 F.3d 1101, 1106-07 (9th Cir. 2001)
- Asetek Danmark A/S v. CMI USA, Inc., No. 13-cv-00457, 2014 WL 6997670, at *1 n.1 (N.D. Cal. Dec. 9, 2014)
- Pineda v. City & County of San Francisco, 280 F.R.D. 317, 521-22 (N.D. Cal. 2012)
- Salgado by Salgado v. Gen. Motors Corp., 150 F.3d 735, 741 n.6 (7th Cir. 1998)
- Luke v. Fam. Care & Urgent Med. Clinics, 323 F. App'x 496, 500 (9th Cir. 2009)
- Keener v. United States, 181 F.R.D. 639, 640-41 (D. Mont. Sept. 9, 1998)
- Plentyhawk v. Sheikh, CV 14-44-BLG, 2016 WL 3086404, at *3 (D. Mont. May 31, 2016)
- Merchant v. Corizon Health, Inc., 993 F.3d 733, 740 (9th Cir. 2021)
- Wendt v. Host Int'l, Inc., 125 F.3d 806, 814 (9th Cir. 1997)
- Wanderer v. Johnston, 910 F.2d 652, 656 (9th Cir. 1990)