No. 25-____

IN THE

Supreme Court of the United States

WILLIAM LOGINOV,

Petitioner,

v.

SHERIDAN MEMORIAL HOSPITAL, a/k/a Memorial Hospital of Sheridan County, and THE BOARD OF TRUSTEES OF SHERIDAN MEMORIAL HOSPITAL,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

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PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether Article III, the Rules of Decision Act, and the *Erie* doctrine mandate that federal courts sitting in diversity must certify novel state law questions to State supreme courts — rather than substituting their own admitted "best guess" interpretation — when the State's highest court has not interpreted the statute, certification procedures are available, and the interpretation eliminates federal constitutional rights, regardless of whether the parties requested certification.

PARTIES AND RELATED PROCEEDINGS

PARTIES

Petitioner William Loginov was Plaintiff-Appellant before the United States Court of Appeals for the Tenth Circuit and Plaintiff in the United States District Court for the District of Wyoming.

Respondents Sheridan Memorial Hospital and The Board of Trustees of Sheridan Memorial Hospital were Defendants—Appellees before the Tenth Circuit and Defendants in the United States District Court for the District of Wyoming.

RELATED PROCEEDINGS

The following proceedings are directly related to this case within the meaning of Rule 14.1(b)(iii):

Loginov v. Sheridan Memorial Hospital et al., No. 23-CV-181-KHR, United States District Court for the District of Wyoming. Judgment entered April 22, 2024.

Loginov v. Sheridan Memorial Hospital et al., No. 24-8032, United States Court of Appeals for the Tenth Circuit. Direct appeal from summary judgment. Affirmed on July 10, 2025. Petition for rehearing and rehearing en banc was denied on August 6, 2025.

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PETITION FOR A WRIT OF CERTIORARI

William Loginov respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Tenth Circuit.

OPINIONS BELOW

The opinion of the court of appeals (Pet.App. 1a-15a) is unreported but available at 2025 WL 1904470 (10th Cir. July 10, 2025) and is reproduced at Appendix A. The order of summary judgment by the district court (Pet.App. 16a-40a) is unreported but available at 2024 WL 2263185 (D. Wyo. Apr. 22, 2024) and is reproduced at Appendix B. The order (Pet.App. 67a) denying the petition for rehearing is unreported and reproduced at Appendix E.

JURISDICTIONAL STATEMENT

This Court has jurisdiction under 28 U.S.C. § 1254(1). The court of appeals judgment entered on July 10, 2025. The order denying rehearing entered on August 6, 2025.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. CONSTITUTION

Article III, Section 1

"The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish..."

Article III, Section 2

"The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws

of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State,—between Citizens of different States..."

Article IV, Section 2 (Privileges and Immunities Clause)

"The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

Amend. X

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Amend. XIV, sec. 1 (Due Process Clause)

"… nor be deprived of life, liberty, or property, without due process of law; …."

FEDERAL STATUTES

28 U.S.C § 1652 (Rules of Decision Act)

"The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply."

STATE STATUTES

Wyo. Stat. § 35-4-114(d) (Immunity from liability)

"(d) Any health care provider, person or entity shall be immune from liability for damages in an action involving a COVID-19 liability claim unless the person seeking damages proves that the health care provider, person or entity took actions that constitutes gross negligence or willful or wanton misconduct..."

Wyo. Stat. 35-4-114 is reproduced as Appendix D at Pet.App. 65a-66a.

Wyo. Stat. § 1-1-141(a)(iii)(B) (Definition of "COVID-19 liability claim")

"Acts or omissions by a health care facility or provider in arranging for or providing health care services or medical care to the claimant that resulted in injury to or death of the claimant, or where the response to COVID-19 reasonably interfered with the arranging for or the providing of health care services or medical care for the claimant..."

Wyoming Rules of Appellate Procedure, Rule 12.10 (Certification of questions)

"The Supreme Court of Wyoming may answer questions of law certified to it by... a United States District Court... when requested by the certifying court if there are involved in any proceeding before that court questions of law of this state which may be determinative of the cause then pending in the certifying court and as to which it appears to the certifying court there is no controlling precedent in the decisions of the Supreme Court of Wyoming..."

STATEMENT OF THE CASE

A. The Novel State Immunity Statute

In May 2020, at the height of the COVID-19 pandemic, Wyoming enacted W.S. § 35-4-114(d), providing immunity from liability for healthcare providers during the declared public health emergency. The statute was amended in April 2021 to add subsection (d) specifically addressing "COVID-19 liability claims," along with heightened pleading requirements and burden of proof standards.

The immunity statute provides that healthcare providers "shall be immune from liability for damages in an action involving a COVID-19 liability claim unless the person seeking damages proves that the health care provider... took actions that constitutes gross negligence or willful or wanton misconduct." W.S. § 35-4-114(d).

The critical definitional provision, W.S. § 1-1-141(a)(iii), defines "COVID-19 liability claim" through three distinct categories. The category at issue here is subsection (B), which encompasses:

"Acts or omissions by a health care facility or provider in arranging for or providing health care services or medical care to the claimant that resulted in injury to or death of the claimant, or where the response to COVID-19 reasonably interfered with the arranging for or the providing of health care services or medical care for the claimant."

This statute is entirely novel — enacted in May 2020, amended in April 2021, and never interpreted by any Wyoming court. The scope of "COVID-19 liability claim," the meaning of "reasonably interfered," the required nexus between COVID-19 and alleged

negligence, and the constitutional limits on immunity are all questions of first impression.

Wyoming, like most States, has established a procedure for federal courts to obtain authoritative state court interpretations: Wyoming Rules of Appellate Procedure, Rule 12.10 permits federal courts to certify "questions of law of this state... as to which it appears to the certifying court there is no controlling precedent in the decisions of the Supreme Court of Wyoming."

Despite the novelty of the statute, the admitted absence of controlling precedent, and the availability of certification, the federal courts below did not certify. Instead, they did what the district court explicitly admitted: interpreted the statute "in the absence of any Wyoming Supreme Court case" — substituting federal judicial conjecture for state legal authority.

Emergency Powers Context

Wyoming enacted this immunity statute during a declared emergency pursuant to executive emergency powers. The statute applies retroactively to eliminate tort remedies for injuries during a temporal window determined by executive declarations — not judicial determinations of actual emergency conditions affecting specific decisions.

When government invokes emergency powers to eliminate established rights, courts have heightened responsibility to ensure such power is exercised within constitutional bounds. As this Court recognized in *Ex parte Milligan*, "[t]he Constitution of the United States is a law for rulers and people, equally in war and in peace." 71 U.S. (4 Wall.) 2, 120-21 (1866).

Emergency statutes merit particularly careful state court interpretation because: (1) urgency can lead to

overly broad construction; (2) emergency conditions varied dramatically across time and geography; and (3) state courts understand local conditions better than federal courts. The combination of emergency powers, novel legislation, and federal constitutional rights creates precisely the circumstances where state interpretation should be mandatory, not discretionary.

B. Factual Background

In September 2021, Petitioner William Loginov was hospitalized at Sheridan Memorial Hospital with altered mental status, body aches, fatigue, and slurred speech. He tested positive for COVID-19 and was admitted with a diagnosis that included hyponatremia (extremely low sodium levels). He received sodium repletion treatment during his hospitalization from September 24-29, 2021.

Loginov alleges that the hospital administered this treatment too rapidly, causing Osmotic Demyelination Syndrome (ODS) — an often fatal neurological condition resulting from overly rapid correction of low sodium levels.[1] He returned to the hospital twice more in early October 2021 with worsening neurological symptoms, which he alleges resulted from the ODS caused during the first admission.

Any relationship between Loginov's claims and COVID-19 is attenuated: His injury (ODS) resulted from the rate of sodium administration — a standard medical decision unrelated to pandemic conditions. The hospital's failure to transfer him promptly was partially attributed to other facilities being at capacity

[1] Osmotic Demyelination Syndrome occurs when saline levels are corrected too rapidly, causing severe and often irreversible neurological damage including permanent disability or death.

due to COVID-19 admissions, but this did not cause the underlying ODS injury.

C. District Court Proceedings

Loginov filed his complaint on September 29, 2023, in the United States District Court for the District of Wyoming. The negligence claims alleged that treatment caused or failed to properly diagnose and treat ODS and inflicted permanent neurological injury.

Only four months after filing, and one month after discovery began, the hospital defendants moved for summary judgment based on immunity under Wyo. Stat. § 35-4-114(d).

The district court made three critical holdings:

First, on statutory interpretation, the court held that Loginov's claims fell within the immunity statute's definition of "COVID-19 liability claim." The court reasoned:

"Defendants had diagnosed and were treating Plaintiff for COVID-19. Part of that treatment was replenishing Plaintiff's sodium levels. According to Plaintiff, Defendants replenished those levels too rapidly, causing ODS. Clearly, that is an act 'by a health care facility or provider in arranging for or providing [COVID-19] health care services or medical care to the claimant that resulted in injury to [] the claimant.'" Pet.App. 30a.

The court further held that the hospital's delayed transfer efforts due to COVID-19 capacity issues at other facilities satisfied the alternative "reasonably interfered" prong of the statute. Pet.App. 33a.

Second, the district court acknowledged it was interpreting without state court guidance:

"Defendants cite to caselaw from other jurisdictions addressing civil liability immunity in the context of COVID-19 claims in the absence of any Wyoming Supreme Court case analyzing the applicability of W.S. § 35-4-114(d).". Pet.App. 27a.

This admission is fatal to the court's exercise of authority. By acknowledging it was interpreting "in the absence of" state guidance, the court confessed it was guessing at state law — not applying established Wyoming legal principles but making first-impression interpretations that properly belong to the Wyoming Supreme Court.

Despite this admission of uncertainty and the availability of Wyoming's certification procedure, the court did not consider certification. Instead it proceeded to interpret the statute based on its "best guess" of what the Wyoming Supreme Court would hold.

Third, on the gross negligence issue, the court granted summary judgment holding that Loginov's allegations showed at most "ordinary negligence" and could not support a finding of "gross negligence or willful or wanton misconduct" required to overcome immunity. Pet.App. 35a. The court made this determination based on a records review from the hospital's Chief Medical Officer (who was not the treating physician), without allowing discovery, expert testimony, or jury consideration.

The district court granted summary judgment, finding the hospital immune from liability under the statute. Pet.App. 40a. Loginov appealed, raising three grounds: premature summary judgment without adequate discovery; improper consideration of unqualified expert testimony; and erroneous interpretation of Wyoming's immunity statute.

D. Tenth Circuit Proceedings

The Tenth Circuit affirmed in all respects. Pet.App. 15a. The court affirmed the district court's interpretation of Wyoming law, agreeing that Loginov's claims fell within the immunity statute. Pet.App. 10a. The panel did not discuss certification or the propriety of federal court interpretation of a novel state statute.

The Tenth Circuit's interpretation is now binding precedent for all federal district courts in six states: Wyoming, Kansas, Colorado, Utah, Oklahoma, and New Mexico. Its holding that immunity applies to all healthcare provided during COVID-19 hospitalization, even for injuries unrelated to COVID-19 treatment itself, will constrain how these federal courts interpret similar state immunity statutes.

E. Rehearing Petition and Denial

Neither party requested certification during district court proceedings, and the issue was not raised in initial appellate briefing. After the Tenth Circuit issued its opinion, Loginov retained new counsel and raised the certification issue for the first time in a petition for rehearing en banc. Pet.App. 41a.

The Tenth Circuit denied rehearing without addressing the certification argument. Pet.App. 67a.

This procedural history demonstrates the systemic problem: even experienced counsel on both sides, a federal district judge, and a Tenth Circuit panel of judges all failed to recognize that certification might be required rather than merely prudent. Current federal court practice universally treats certification as a discretionary case management tool — something courts may use if they wish, but need not.

This universal failure proves that discretionary certification cannot protect structural constitutional principles and demonstrates the urgent need for this Court to establish clear parameters defining when certification shifts from optional to obligatory.

REASONS FOR GRANTING THE WRIT

This case presents a fundamental question about allocation of interpretive authority between federal and state courts. When federal courts sitting in diversity confront novel state statutes that no state court has interpreted, may they substitute their own best guess for an authoritative state court construction? Or do Article III, the Rules of Decision Act, and the *Erie* doctrine mandate certification to state supreme courts under these circumstances?

Federal courts in diversity cases exercise jurisdiction based on party citizenship, not because they possess authority to make state law. When a federal court admits it is interpreting "in the absence of" state guidance, it has moved from applying state law to creating it — from prediction to prescription. Three independent structural principles prohibit this: Article III's limits on federal judicial power; the Rules of Decision Act's statutory command; and *Erie's* constitutional doctrine. Together, these principles mandate — not merely encourage — certification under the circumstances present here.

I. FUNDAMENTAL STRUCTURAL PRINCIPLES OF FEDERALISM MANDATE CERTIFICATION UNDER THESE CIRCUMSTANCES.

A. Article III Limits Federal Judicial Authority to Applying State Law, Not Creating It.

1. Article III Extends Federal Judicial Power Only to Specified Cases.

Article III, Section 2 extends federal judicial power to cases "between Citizens of different States." U.S. Const. Art. III, § 2. This diversity jurisdiction exists to prevent state court bias against out-of-state litigants and not to authorize federal courts to make state law.

The Framers created a federal judiciary with limited and enumerated powers. As this Court explained in *Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938), "Congress has no power to declare substantive rules of common law applicable in a state whether they be local in their nature or 'general,' be they commercial law or a part of the law of torts."

If Congress lacks this power, federal courts — created by Congress under Article III — certainly lack it. Federal courts cannot possess powers that Congress itself does not have and may not confer. Federal courts in diversity cases must apply state law as the State's highest court would apply it, but they cannot make state law.

2. Federal Courts Exceed Article III When Prediction Becomes Guesswork.

Erie established that federal courts must apply state substantive law in diversity cases and must apply it as the State's highest court would. This created the

"prediction" model: Federal courts predict how state supreme courts would decide state law questions.

But this model assumes federal courts are making educated guesses about established state law principles, that haven't yet been applied to particular facts. Federal courts in that situation turn to analogous state court decisions, clear state statutory text, known state interpretive canons, or state constitutional traditions.

The model breaks down when: The statute is entirely novel; no state court has construed it; no analogous state decisions exist; the federal court admits uncertainty; and the interpretation will have precedential effect and constitutional import.

At that point, the federal court is not predicting — it is creating law. The district court's own words prove this: interpreting "in the absence of any Wyoming Supreme Court case," Pet.App. 27a, is not prediction; it is first-impression lawmaking.

Article III provides no authority for federal courts to create state law. *Hanna v. Plumer*, 380 U.S. 460, 471-72 (1965) (Neither "Congress nor the federal courts can" act without "a grant of federal authority contained in Article I or some other section of the Constitution"). The modern availability of certification procedures solves this problem. There no longer is a need for guesswork.

3. Federal Court Interpretation Constrains State Courts.

When the Tenth Circuit interprets a Wyoming statute, that interpretation becomes binding precedent in all federal courts in the circuit and persuasive authority for Wyoming state courts, as the established

interpretation other courts will cite. This constrains Wyoming's sovereign interpretive authority.

Wyoming's Supreme Court, when it eventually confronts this statute, will face the Tenth Circuit's interpretation as established law. If Wyoming interprets differently, it will appear to be "disagreeing with" federal courts rather than simply exercising its primary interpretive authority. This inverts the constitutional structure: State courts are supreme on state law questions; federal courts review for federal constitutional compliance, but do not establish what state law means in the first instance.

The decision below reversed the proper order and constrained Wyoming's sovereign authority to interpret its own laws.

4. The District Court's Admission Proves It Exceeded Article III Authority.

The district court's statement — interpreting "in the absence of any Wyoming Supreme Court case"—is an admission that it exceeded the bounds of prediction. Pet.App. 27a. When a court admits it lacks guidance, it admits it is guessing. Article III does not authorize federal courts to guess at state law.

This admission is fatal to the court's exercise of authority. By acknowledging it was interpreting "in the absence of" state guidance, the court admitted it was exceeding the "prediction" model. It was not applying established Wyoming legal principles — it was making first-impression interpretations that properly belong to the Wyoming Supreme Court.

5. Certification Is the Constitutional Solution.

When federal courts reach the boundary of their predictive authority — when they confront novel state law questions without state guidance — certification becomes constitutionally required, not merely prudent.

Certification respects Article III's limits as federal courts obtain authoritative state court interpretation to avoid federal creation of state law. This process preserves state sovereignty over state law while maintaining a proper federal-state judicial relationship.

Modern certification procedures eliminate any excuse for federal courts to exceed their Article III authority by "guessing" at state law.

B. The Rules of Decision Act Mandates Application of State Law, Not Federal Substitution.

1. The Statutory Text and Its Historical Context

The Rules of Decision Act provides:

> The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply.

28 U.S.C. § 1652 (the "Act").

The First Congress, many of whose members had been Framers, enacted this provision in 1789 as Section 34 of the First Judiciary Act. Its purpose was to ensure that federal courts sitting in diversity would

apply state law, and not create federal common law. *Erie*, 304 U.S. at 78.

Certification fulfills the Rules of Decision Act's original purpose of respecting state autonomy. For novel state law issues in diversity cases, this requires federal courts to certify questions to state supreme courts to resolve uncertainties before exercising jurisdiction, ensuring the controversy is properly adjudged under state law. "The laws of the several states" encompass authoritative state interpretations, which only state courts can provide for novel issues. Without mandatory certification, federal "*Erie*-guesses" (predictions of state law) risk misapplying state law, violating the original federal-state balance by allowing federal courts to effectively create state law.

2. Textualist Interpretation

The operative phrase is "shall be regarded as rules of decision." "Shall" is a mandatory word, as opposed to alternatives "may" (discretionary) or "should" (aspirational). *See* Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 114 (2012) ("when the word shall can be reasonably read as mandatory, it ought to be so read."). "Shall" creates "obligation impervious to judicial discretion." *Lexecon, Inc. v. Milberg Weiss*, 523 U.S. 26, 35. (1993).

The statute does not say state laws "may inform" federal decisions or "should be considered by" federal courts. It commands that state laws "shall be regarded as" the rules of decision — meaning federal courts must accept and apply state law as authoritative.

When federal courts cannot identify what the state law IS — because no state court has spoken — they cannot "regard" it as the rule of decision. Certification

is thus not merely prudent but statutorily required to fulfill the Act's command.

When federal courts "substitute their own best guess" for state law, they are not "regarding" state law as rules of decision. Rather, they are creating new rules of decision. They are treating federal judicial interpretation as authoritative and they are violating the statutory command.

The statute requires federal courts to apply state law, not to make it. *See Huff v. Shumate*, 360 F. Supp. 2d 1197, 1201 (D. Wyo. 2004) ("Choices between state law and federal judge-made law are governed by the Rules of Decision Act and cases construing it.").

3. Originalist Understanding: What the Framers Intended

The First Congress enacted Section 34 of the Judiciary Act with specific intent: to preserve state sovereignty over substantive law while allowing federal courts to exercise jurisdiction based on party citizenship.

The Framers feared that federal courts might become instruments of federal overreach, displacing state law. The Rules of Decision Act was designed to prevent this by ensuring federal courts would apply — not displace — state substantive law. The solution was to limit federal courts to applying state law in diversity cases, not making it.

The First Congress understood "rules of decision" to mean the substantive law that determines rights and obligations. The Act's text ("the laws of the several states") originally encompassed state statutes and judicial decisions as binding, reflecting a collective understanding of state sovereignty. For novel issues, "laws" imply authoritative state pronouncements, not

federal speculation. Mandatory certification ensures accurate ascertainment, preventing the Act from being rendered meaningless through erroneous federal interpretations, which would undermine the original federal compact.

The original understanding therefore supports mandatory certification: When the meaning of state law is uncertain, the Act requires federal courts to obtain authoritative state interpretations rather than substitute federal guesses. This preserves the federal-state balance the Constitution and the First Congress carefully established.

When federal courts interpret novel state statutes without seeking state court guidance, they act contrary to the original understanding of the Rules of Decision Act.

4. Traditionalist Analysis also Supports Certification.

Historically, federal courts showed great deference to state courts on questions of state law. Before modern certification procedures existed, federal courts would stay cases to allow state court interpretation, abstain under the Pullman doctrine, defer to any available state court guidance, and interpret narrowly to avoid constitutional issues. *See R.R. Comm'n of Tex. v. Pullman Co.,* 312 U.S. 496 (1941). This traditional practice supported mandatory deference to state courts on novel state law questions. The modern practice of routine federal "prediction" without certification departs from both this tradition and the original understanding of the Rules of Decision Act.

C. The *Erie* Doctrine Embodies Constitutional Principles That Compel State Court Interpretation First.

1. *Erie* Is Constitutional, Not Merely Statutory.

This Court has repeatedly emphasized that *Erie* rests on constitutional foundations, not merely on interpretation of the Rules of Decision Act. "Except in matters governed by the Federal Constitution or by acts of Congress, the law to be applied in any case is the law of the state... There is no federal general common law. Congress has no power to declare substantive rules of common law applicable in a state." *Erie,* 304 U.S. at 78; *see also Huddleston v. Dwyer,* 322 U.S. 232, 236 (1944).

The constitutional bases of *Erie* include:

Article III: The district court created an interpretation that may differ from what Wyoming's Supreme Court would adopt. It admitted uncertainty but interpreted anyway—exceeding the bounds of Article III's grant of judicial power. Neither "Congress nor the federal courts can" act without "a grant of federal authority contained in Article I or some other section of the Constitution; in such areas state law must govern because there can be no other law." *Hanna v. Plumer*, 380 U.S. at 471-72.

Tenth Amendment: Tort law is the paradigmatic reserved power of States. Federal interpretation of Wyoming's tort immunity statute invades this reserved sphere, particularly when the interpretation eliminates state-created causes of action.

Structural Federalism: The federal interpretation will constrain Wyoming courts going forward, disrupting the proper federal-state relationship where state courts are supreme on state law questions.

2. *Erie*'s "Twin Aims" Require Certification.

In *Hanna v. Plumer*, 380 U.S. at 468, this Court explained that *Erie* serves twin aims: (1) discouragement of forum-shopping, and (2) avoidance of inequitable administration of the laws. *See also Huff v. Shumate*, 360 F. Supp. 2d at 1201.

Both aims are violated here:

If parties know federal courts will interpret immunity statutes broadly, defendants will remove to federal court; plaintiffs will try to avoid removal. Jurisdiction becomes a strategic choice based on predicted interpretation rather than neutral principles.

Federal court plaintiffs get broad interpretation and early dismissal; state court plaintiffs (in future cases) might get narrow interpretation and jury trials. The statute means different things depending on which court system hears the case first. *Hanna v. Plumer*, 380 U.S. at 467 ("it would be unfair for the character of result of a litigation materially to differ because the suit had been brought in a federal court").

This is precisely what *Erie* prohibits. This geographic lottery — same statute, same facts, different outcome based solely on forum — violates the most basic requirement of equal justice.

3. Constitutional Avoidance Requires State Interpretation First.

The constitutional avoidance canon is not merely a prudential rule — it has structural foundations in separation of powers and federalism. Courts should not reach constitutional questions unnecessarily, particularly when interpreting state statutes.

The Rules of Decision Act constrains federal judicial power consistent with the Supremacy Clause and separation of powers, prohibiting federal courts from declaring substantive common law absent congressional authorization. *Erie* correctly interpreted this by requiring state law application in diversity cases.

But for novel issues lacking controlling state precedent, federal "predictions" risk unconstitutional lawmaking. Mandatory certification solves this problem by delegating interpretation to state courts, sourcing "rules of decision" from States without federal distortion, thereby upholding the Framers' vision of a limited federal judiciary.

This Court has recognized that state courts must interpret state statutes first. In *La. Power & Light Co. v. City of Thibodeaux,* the Court praised a district court for "directing utilization of the resources of Louisiana for a prompt ascertainment of meaning through the only tribunal whose interpretation could be controlling — the Supreme Court of Louisiana." 360 U.S. 25, 30 (1959). The judge was responding to a "statute [that] has never been interpreted, in respect to a situation like that before the judge," by the state courts. *Id*. ("Informed local courts may find meaning not discernible to the outsider."). *See Clay v. Sun Ins. Off. Ltd.*, 363 U.S. 207, 209-10 (1960) ("the constitutional

issue should have been reached only" after the "lower court should have first considered" state law).

The Wyoming Supreme Court could interpret W.S. § 35-4-114(d) to preserve constitutional rights by:

- Requiring nexus between COVID-19 and the specific injury;
- Construing "reasonably interfered" to require substantial pandemic-related causation;
- Applying the statute prospectively only;
- Limiting immunity to good-faith emergency decisions;
- Preserving remedies for non-emergency related negligence.

Each interpretation would avoid constitutional issues that the federal court's broad construction created.

By interpreting first, the federal court foreclosed these avoidance opportunities. If Wyoming's Supreme Court now interprets more narrowly, it will appear to be "evading" the federal constitutional ruling rather than simply giving its authoritative construction of Wyoming law. This inverts the proper sequence: State interpretation first, constitutional review second. *Erie's* structural principles require the second sequence, not the first.

4. Tenth Amendment Federalism Supports Mandatory Certification.

Tort law is the paradigmatic example of power reserved to States under the Tenth Amendment. Medical malpractice law, in particular, has always been a matter of state common law and state statutory modification.

When federal courts interpret state tort immunity statutes, they exercise power in area reserved to States. They constrain state courts' sovereign authority, and they risk imposing federal values on state policy choices. Federal court overreach will undermine State control over state tort systems.

This Tenth Amendment concern is particularly acute when the statute is novel and state courts haven't spoken yet on the law. *King v. Ord. of United Com. Travelers of Am.*, 333 U.S. 153, 158 (1948) ("The *Erie R. Co.* case left open, however, the more difficult question of the effect to be given to decisions by lower state courts on points never passed on by the highest state court.").

The interpretation through federal court guesswork eliminates state-created causes of action, as the federal interpretation will have precedential effect, and state sovereignty over tort law is directly implicated.

Mandatory certification respects Tenth Amendment federalism by ensuring state courts interpret state tort statutes first. This preserves state sovereignty over state law, limiting federal intrusion to constitutional review, not interpretation. *Erie*, 304 U.S. at 80 (protecting "rights which in our opinion are reserved by the Constitution to the several states.").

D. Discretionary Certification Cannot Reliably Maintain These Structural Requirements.

1. This Case Proves the Problem with Discretionary Certification.

The procedural history demonstrates why discretionary certification is insufficient. Experienced defense counsel — representing a major hospital — didn't

request certification to the Wyoming Supreme Court. Experienced plaintiff's counsel did not request certification.

A federal district judge with decades of litigation and judicial experience did not consider certification *sua sponte*. Three Tenth Circuit judges did not discuss certification.

As a result, a novel state statute is interpreted by a federal court based on an admitted "best guess," eliminating constitutional rights, creating circuit precedent binding six States — all without Wyoming courts ever being consulted.

If judicial discretion worked, someone in this chain would have recognized certification was appropriate. The universal failure proves mere discretion is inadequate.

2. Human Nature and Institutional Incentives Disfavor Certification.

Federal courts face incentives that discourage certification even when appropriate. Docket pressure discourages consideration if certification adds 6-12 months to a case. Judges can be evaluated partly on case disposition rates, with pressure to resolve cases quickly discounting certification as a judicial tool.

Federal judges are skilled jurists with confidence in their ability to interpret law, creating reluctance to admit uncertainty about state law — even when such uncertainty exists.

Parties might not request certification (neither did here), and judges would be reluctant to raise certification *sua sponte*. No systematic mechanism to ensure consideration is there when truly needed.

If the federal court "guesses wrong" about state law, no remedy is to hand. State courts cannot correct federal interpretation in a given case. Federal precedent stands even if any state court would have decided differently.

3. Discretion Produces Inconsistent Results Across Courts.

Different district judges can and will reach different conclusions about when certification is appropriate. Some judges certify frequently while others never certify, when there are no uniform standards. Results depend on which judge may be randomly assigned.

This produces forum shopping and inconsistent federal-state relations. Some state statutes might be interpreted by federal courts, others not. Arbitrary outcomes result. "Speculation by a federal court … is particularly gratuitous when state courts stand willing to address questions of state law on certification." *McKesson v. Doe*, 592 U.S. 1, 5-6 (2020), *cert. denied after remand*, 601 U.S. __, 144 S. Ct. 913 (2024).

4. Only Mandatory Certification Ensures Compliance.

When certification is mandatory under defined circumstances, judges must consider it systematically. Parties know to request it. Appellate courts can review judgments for failure to certify. Consistent practice across districts and circuits leaves structural principles reliably protected.

The circumstances requiring mandatory certification are identifiable: Novel state statute is at issue; no state court interpretation exists to guide the court; the issue is determinative of a federal case; a state certification

procedure is available; and an interpretation eliminates constitutional rights or raises constitutional issues.

When these factors are present, certification must be mandatory because discretion has proven unreliable and structural principles are too important to leave to discretion. Consistent application across the federal system is essential, because state sovereignty must be protected systematically.

5. The Court Should Establish A Clear Mandatory Rule.

This Court should hold: When federal courts in diversity confront novel state statutes that no state court has interpreted, and the interpretation will eliminate constitutional rights or raise constitutional issues, and certification procedures are available, certification is not discretionary but constitutionally and statutorily required.

Such a rule protects Article III limits on federal authority; enforces the Rules of Decision Act's mandate; implements *Erie's* constitutional principles; and respects state sovereignty.

II. THE QUESTION PRESENTED IS OF EXCEPTIONAL IMPORTANCE AND IMPLICATES MULTIPLE CIRCUITS WITH DIFFERING STATE LAWS.

The question presented warrants review for multiple independent reasons. It involves an important question of federal law not yet settled by this Court. It affects pending cases across multiple circuits. It will govern federal-state judicial relations in future emergencies. And it presents clean issues of constitutional structure and statutory interpretation that this

Court can decide without addressing substantive constitutional merits or fact-bound questions.

A. This Court Has Never Addressed Whether Certification Is Constitutionally or Statutorily Required.

1. This Court Has Encouraged Certification But Never Mandated It.

The Court has encouraged certification but has never defined when it becomes constitutionally or statutorily required rather than merely prudent. Lower courts universally treat certification as discretionary, creating the systemic failure this case exemplifies. Certification "does in the long run save time, energy, and resources and helps build cooperative federalism." *Lehman Brothers v. Schein*, 416 U.S. 386, 390-91 (1974).

"Warnings against premature adjudication of constitutional questions bear heightened attention when a federal court is asked to invalidate a State's law, for the federal tribunal risks friction-generating error when it endeavors to construe a novel state Act not yet reviewed by the State's highest court." A*rizonans for Off. Eng. v. Arizona*, 520 U.S. 43, 79 (1997):

"Taking advantage of certification made available by a State may greatly simplify an ultimate adjudication in federal court." *Id*. But this Court has never held that certification is required in any circumstances. Lower courts uniformly treat it as discretionary — and they pass over it.

2. The Question Has Become Critical.

"Certification procedure [] allows a federal court faced with a novel state-law question to put the question directly to the State's highest court, reducing

the delay, cutting the cost, and increasing the assurance of gaining an authoritative response." *Id*. at 76.

As of November 2025, 43 states now have certification procedures - it is no longer a novel mechanism. *See* Susan P. Graber, *Certification of Questions of Law to State Supreme Courts: A Survey of the Landscape*, 58 ABA Judges' J. 4-7 (Winter 2019); 520 U.S. at 76 ("Most States have adopted certification procedures.").

Complex state statutory schemes have proliferated (including emergency statutes), yet federal courts routinely interpret novel state statutes without certifying. Circuit precedents constrain state courts going forward, yet also pose a threat of diverging among twelve federal circuits. This Court should establish clear parameters defining when certification is required.

3. The Question Is Purely Legal.

The question involves no disputed facts: The Wyoming statute was novel. No Wyoming court had interpreted it. Certification was available. Wyoming R. App. P. 12.10. Interpretation eliminated constitutional rights to seek redress of injury, a chose in action property right. The federal court admitted uncertainty, interpreting "in absence of" guidance.

The only question presented is legal: Do Article III, the Rules of Decision Act, and *Erie* mandate certification under these circumstances?

This Court can answer that question without resolving factual disputes or addressing substantive constitutional merits of the case, who should win, or the adequacy of the evidence.

B. The Issue Affects Many Cases Arising Under Multiple State Emergency Statutes.

In addition to Wyoming, at least seven states enacted healthcare immunity statutes with similar interpretive questions: Kansas; Utah; Oklahoma; Iowa; North Carolina; Georgia; Louisiana. *See* Pet. App. 57a (listing statutory citations). These States span the nation in five federal circuits: The Fourth, Fifth, Eighth, Tenth and Eleventh Circuits. Each statute presents the same fundamental question: May federal courts interpret those novel state immunity provisions without state court guidance? Without this Court's guidance, circuit splits are inevitable as different circuits adopt different approaches to certification. Rights would then depend on geography rather than authoritative state law.

Federal courts in multiple circuits encompassing these States face interpreting these statutes without state court guidance unless they certify.

III. THIS CASE IS AN EXCELLENT VEHICLE FOR ADDRESSING THE QUESTION PRESENTED.

This case presents an ideal vehicle for this Court to establish the constitutional and statutory parameters for mandatory certification. The question is purely legal, involving no disputed facts. The procedural posture is clean, with final judgment and all issues properly presented. The record demonstrates precisely the problem requiring this Court's intervention. And the decision will have immediate practical impact on pending cases nationwide while establishing clear precedent for future emergencies.

A. The Question Presented Involves Pure Issues of Law and Constitutional Structure.

1. No Disputed Facts

Every material fact necessary to decide the question is undisputed. The only question is legal: Given these undisputed facts, did federal courts have authority to interpret without certifying?

2. Pure Constitutional and Statutory Interpretation

The question requires this Court to interpret:

(a) Article III, Section 2 - Does "judicial Power" in diversity cases include authority to make definitive state law interpretations?

(b) 28 U.S.C. § 1652 - Does "shall be regarded as rules of decision" mandate certification when state law is uncertain?

(c) *Erie* doctrine - Do *Erie*'s constitutional principles require certification?

These are questions of law the Court is uniquely positioned to answer: Interpreting constitutional text and structure; Construing federal statutes; Defining federal court authority; and Establishing limits on federal judicial power.

B. The Procedural Posture Is Clean and Final.

The case posture is a final judgment. The Tenth Circuit affirmed, and denied rehearing; no further proceedings await in lower courts. The certification is properly preserved, raised in the rehearing petition; structural issues can be raised at any time.

No procedural barriers encumber the case. No mootness, standing, or other procedural issues appear. There are no alternative grounds for decision. The courts' ruling rests solely on immunity interpretation; no other basis for affirmance was given. There is also jurisdictional certainty. Diversity jurisdiction was undisputed.

This Court can decide the legal question without remanding for fact-finding, addressing procedural complications, resolving ambiguities in record, or considering alternative holdings.

CONCLUSION

The decision below presents a fundamental question about the constitutional and statutory limits on federal judicial authority in diversity cases. When federal courts confront novel state statutes that no state court has interpreted, and when their interpretation will eliminate federal constitutional rights, Article III, the Rules of Decision Act, and the *Erie* doctrine mandate certification to state supreme courts—not substitution of federal courts' own admitted "best guess."

These are not claims of procedural error requiring preservation. They are structural constitutional and statutory questions about whether federal courts have authority to make definitive state law interpretations that constrain state courts and eliminate constitutional rights. Such limits on federal judicial power can be raised at any time and cannot be waived.

The question is of exceptional importance, affecting multiple pending cases and establishing precedent that will govern federal-state judicial relations for decades. It involves pure issues of law and constitutional structure that this Court can decide without addressing substantive merits or factual disputes.

The Court should grant certiorari, hold that federal courts must certify under these circumstances, vacate the judgment below, and remand for certification to the Wyoming Supreme Court.

Respectfully submitted,

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November 4, 2025

APPENDIX

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

[Filed: July 10, 2025]

No. 24-8032
(D.C. No. 2:23-CV-00181-KHR) (D. Wyo.)

WILLIAM LOGINOV,

Plaintiff-Appellant,

v.

SHERIDAN MEMORIAL HOSPITAL, a/k/a Memorial Hospital of Sheridan County; THE BOARD OF TRUSTEES OF SHERIDAN MEMORIAL HOSPITAL,

Defendants-Appellees.

ORDER AND JUDGMENT[*]

Before EID, KELLY, and CARSON, *Circuit Judges*.

This case arises out of Sheridan Memorial Hospital's medical treatment of William Loginov after his COVID-19 diagnosis in 2021. Two years after that diagnosis, Loginov sued the Hospital in the United States District Court for the District of Wyoming, claiming the Hospital's negligence caused him to develop osmotic demyelination syndrome. The district court granted summary judgment to the

[*] This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

Hospital, concluding the Hospital was immune from liability for Loginov's claim under Wyoming state law.

Loginov urges reversal on three grounds. First, he contends the district court erred when it ruled on the Hospital's motion without allowing him to complete discovery. Second, he claims the district court should not have considered a medical doctor's affidavit at the summary judgment stage. And third, he argues the district court erred in its interpretation of Wyoming state law when it granted the Hospital's motion for summary judgment.

All three arguments fail. Our caselaw makes clear that district courts may rule on a summary judgment motion before discovery has been completed where, as here, the nonmoving party did not submit an affidavit explaining how additional discovery would help him rebut the motion. Further, the district court did not abuse its discretion in considering the medical doctor's affidavit because the affidavit satisfies the requirements set forth in Federal Rule of Civil Procedure 56(c)(4). Finally, the Hospital is entitled to immunity under any reasonable interpretation of Wyoming state law. Accordingly, we affirm the district court's grant of summary judgment to the Hospital.

I.

Loginov was admitted to Sheridan Memorial Hospital three times in 2021: (1) September 24–29; (2) October 3–4; and (3) October 7–9. We detail each occasion in turn.

On September 24, Loginov presented to the Hospital's emergency department with symptoms of altered mental status, body aches, fatigue, and

slurred speech. After Loginov tested positive for COVID-19, the Hospital admitted him to the medical floor for treatment of related symptoms, including hyponatremia.[1] The Hospital placed Loginov on a sodium repletion treatment plan and discharged him on September 29.

Loginov returned to the Hospital on October 3, reporting concerns of worsening slowed speech. Hospital staff ordered an MRI of Loginov's brain, which was initially read as unrevealing. Staff attempted to contact (but was unable to reach) an out-of-hospital neurologist for verification, and again discharged Loginov on October 4. Soon after, an in-house radiologist reviewed the MRI and concluded there was evidence of demyelination[2] in Loginov's brain. The Hospital contacted Loginov and recommended he return for further testing, but Loginov declined.

On October 7, Loginov again presented to the Hospital with concerns of slurred speech and difficulty swallowing. Hospital staff attempted to treat Loginov's symptoms and ordered another MRI. But because there was no on-staff neurologist or MRI machine available, the Hospital attempted to transfer Loginov to one of the larger hospitals in Colorado, South Dakota, Nebraska, Montana, or other cities in Wyoming. The Hospital could not complete the transfer because each of the facilities it contacted was at maximum capacity with COVID-19-

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[1] Hyponatremia is a medical condition where sodium levels in the blood are abnormally low.

[2] Demyelination is a condition that causes damage to the myelin sheath, a protective covering that surrounds nerve fibers. Damage to the myelin sheath often causes neurological symptoms, such as trouble walking or seeing.

related admissions. As a result, the Hospital formally readmitted Loginov and began therapy to treat his symptoms until October 9, when he arranged a transfer to a facility in Billings, Montana.

Loginov sued the Hospital in 2023, claiming the care he received there—particularly his sodium repletion treatment—was performed negligently, causing him to develop osmotic demyelination syndrome ("ODS"). Specifically, he argued Hospital staff administered "excessive sodium at an excessive rate" while treating his hyponatremia, permanently damaging his brain. Aplt. App'x at 12.

During the initial pretrial conference, the district court set a nine-month period for discovery. Approximately one month later, the Hospital moved for summary judgment based on a Wyoming statute granting immunity to health care providers for COVID-19 liability claims. The Hospital supported its motion using an affidavit from its chief medical officer, Dr. Luke Goddard, which detailed Loginov's care based on the Hospital's records of his visits. Loginov opposed the motion, arguing (among other things) that Dr. Goddard's affidavit was generally "troubling," *id.* at 81, that the motion was premature because discovery was set to continue for another eight months, and that the Hospital's assertion of immunity was meritless. He also included an affidavit from Dr. Joshua Schwimmer discussing the causal connection between improper treatment of hyponatremia and the development of ODS.

The district court granted summary judgment to the Hospital, and Loginov timely appealed.

II.

Loginov urges reversal on three grounds. First, he contends the district court erred when it ruled on the Hospital's motion without allowing him to complete discovery. Second, he claims the district court should not have considered Dr. Goddard's affidavit at the summary judgment stage. And third, he argues Wyoming state law does not shield the Hospital from his negligence claims. We address and reject each argument in turn.

A.

Loginov first argues the district court erred in ruling on the Hospital's motion for summary judgment without allowing him to complete discovery. Because Loginov did not submit an affidavit explaining how additional discovery would help him rebut the Hospital's motion, we disagree.

We review a district court's refusal to allow additional discovery before ruling on a summary judgment motion for an abuse of discretion. *Cerveny v. Aventis, Inc.*, 855 F.3d 1091, 1110 (10th Cir. 2017). Under the abuse-of-discretion standard, "we defer to the district court's judgment so long as it falls within the realm of [the] rationally available choices." *Id.* (alteration in original) (quotation omitted).

The Federal Rules of Civil Procedure do not require district courts to wait until discovery is completed before granting summary judgment. *Adams v. C3 Pipeline Constr. Inc.*, 30 F.4th 943, 968 & n.9 (10th Cir. 2021). But Rule 56(d) provides nonmovants an opportunity to request additional discovery before the ruling:

> If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:
>
> (1) defer considering the motion or deny it;
>
> (2) allow time to obtain affidavits or declarations or to take discovery; or
>
> (3) issue any other appropriate order.

Fed. R. Civ. P. 56(d).

Generally, courts should refuse to grant summary judgment "where the nonmoving party has not had the opportunity to discover information that is essential to his opposition." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 n.5 (1986). "But relief under Rule 56(d) is not automatic." *Cerveny*, 855 F.3d at 1110. "A prerequisite to granting relief . . . is an affidavit furnished by the nonmovant." *Comm. for First Amend. v. Campbell*, 962 F.2d 1517, 1522 (10th Cir. 1992). The affidavit must "explain why facts precluding summary judgment cannot be presented." *Id.*

Here, Loginov did not submit an affidavit explaining how additional discovery would help him rebut the Hospital's motion. And though his summary judgment response "arguably contains [some of] the information required in Rule 56(d) . . . [,] we may not look beyond the affidavit in considering a Rule 56(d) request." *Cerveny*, 855 F.3d at 1110 (refusing to consider plaintiffs' arguments for additional discovery when those arguments were made only in their summary judgment response). Accordingly, we conclude the district court did not abuse its discretion

when it ruled on the Hospital's motion for summary judgment without requiring additional discovery.[3]

B.

Loginov next argues the district court should not have considered Dr. Goddard's affidavit at the summary judgment stage. Because the affidavit satisfies the requirements set forth in Federal Rule of Civil Procedure 56(c)(4), we disagree.

"We review a district court's evidentiary rulings at the summary judgment stage for abuse of discretion." *Argo v. Blue Cross & Blue Shield of Kan., Inc.*, 452 F.3d 1193, 1199 (10th Cir. 2006). Parties may rely on an affidavit or a declaration to support or oppose a motion for summary judgment, *see* Fed. R. Civ. P. 56(c)(1)(A), if that affidavit or declaration is "made on personal knowledge, set[s] out facts that would be admissible in evidence, and show[s] that the affiant or declarant is competent to testify on the matters stated," Fed. R. Civ. P. 56(c)(4).

Loginov does not include this standard in his brief. Nor does he cite a single case to support his claim

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[3] Relying on a single line from an out-of-circuit case, Loginov claims the above-cited rules do not apply here because there was "no discovery at all" in this case. Aplt. Br. at 13–14 (citing *CenTra, Inc. v. Estrin*, 538 F.3d 402, 420 (6th Cir. 2008) ("Typically, when the parties have no opportunity for discovery, denying the Rule 56[d] motion and ruling on a summary judgment motion is likely to be an abuse of discretion."). But he ignores the very next line of that case: "However, as a general matter we have upheld the denial of Rule 56[d] motions when the court deems as too vague *the affidavits submitted in support of the motion*." *Estrin*, 538 F.3d at 420 (emphasis added). Because Loginov did nothing beyond making arguments for discovery in his summary judgment response, his reliance on *Estrin* is misplaced.

that the district court should not have considered Dr. Goddard's affidavit at the summary judgment stage. But he does make two contentions that we interpret as challenging the "personal knowledge" and "admissibility of the evidence" elements of Rule 56(c)(4). As we explain, each contention contradicts the record and necessarily fails.

First, Loginov claims Dr. Goddard did not have "firsthand knowledge of the patient." Aplt. Br. at 10. But the affidavit makes clear that Dr. Goddard's statements were "based upon [his] review of [ ] Loginov's admissions to Sheridan Memorial Hospital on September 24–29, 2021, October 3–4, 2021, and October 7–9, 2021." Aplt. App'x at 50. And in this case, personal knowledge can be inferred based on Dr. Goddard's status at the chief medical officer of the Hospital and his review of the relevant records.[4] *See Colonial Pac. Leasing Corp. v. N & N Partners, LLC*, 981 F. Supp. 2d 1345, 1355 (N.D. Ga. 2013)

[4] In a single sentence, Loginov asserts that "[t]he actual chart [was] not offered in support of the Rule 56 motion." Aplt. Br. at 10. We note that some courts have refused to consider an affidavit at the summary judgment stage where, as here, the documents referenced in the affidavit are not also provided to the court. *See Sch. Dist. No. 1J, Multnomah Cnty. v. ACandS, Inc.*, 5 F.3d 1255, 1261–62 (9th Cir. 1993). But because Loginov does not develop this argument, we decline to address it. *See Defs. of Wildlife v. United States Forest Serv.*, 94 F.4th 1210, 1227 n.10 ("Perfunctory allegations of error that fail to frame and develop an issue are insufficient to invoke appellate review." (citation modified)); *MacArthur v. San Juan Cnty.*, 495 F.3d 1157, 1160 (10th Cir. 2007) (declining to address the merits of a party's claim where the opening brief cited only three cases); *id.* (explaining that "mere conclusory allegations with no citations to the record or any legal authority for support does not constitute adequate briefing" (quotation and internal quotation marks omitted)).

("Affiants can have personal knowledge for purposes of Rule 56(c)(4) based on their review of business records and files."); *Roberts v. Cessna Aircraft Co.*, 289 F. App'x 321, 324 (10th Cir. 2008) (unpublished) ("[T]he personal knowledge of the affiant . . . may be inferred from the context of the affidavit.").[5]

Second, Loginov argues the testimony set forth in the affidavit is merely Dr. Goddard's opinion because it "simply does not present 'facts.'" Aplt. Br. at 10. But in making this circular argument, Loginov does not cite any specific provisions of the affidavit aside from Paragraph 20, which the district court expressly disregarded.[6] Further, to the uncertain extent Loginov argues the evidence set forth in the affidavit would be inadmissible at trial, his claim fails. The facts contained in Dr. Goddard's affidavit are undoubtedly relevant, given their probative value into the nature and purposes of Loginov's admissions to the Hospital. And medical records—such as those relied on by Dr. Goddard—are routinely admitted as evidence under the business records exception to the rule against hearsay. *See* Fed. R. Evid. 803(6). Accordingly, the district court did not abuse its discretion when it concluded that Dr. Goddard's affidavit met the requirements set forth in Federal Rule of Civil Procedure 56(c)(4).

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[5] We cite unpublished, nonprecedential opinions for their persuasive value. *See* Fed. R. App. P. 32.1; 10th Cir. R. 32.1.

[6] Paragraph 20 reads, in relevant part: "The treatment [Loginov] received to correct the hyponatremia [on separate visits] is [ ] part of the same transaction or occurrence." Aplt. App'x at 53. The district court correctly set aside this statement as an improper legal conclusion when ruling on summary judgment.

C.

In his final argument for reversal, Loginov contends the district court erred in its interpretation of Wyoming state law. Specifically, he contends the statutory grant of immunity to health care providers for "COVID-19 liability claims" does not apply to the Hospital's actions. *See* Wyo. Stat. Ann. §§ 35-4-114(d), 1-1-141(a)(iii)(B). We disagree. Under any reasonable interpretation, Loginov's claims fall squarely under the statutory grant of immunity, and the Hospital is entitled to summary judgment.

We review de novo a district court's grant of summary judgment. *SEC v. GenAudio Inc.*, 32 F.4th 902, 920 (10th Cir. 2022). Summary judgment is appropriate if "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). In applying this standard, "we view the evidence and draw reasonable inferences therefrom in the light most favorable to the nonmoving party." *Wright v. Experian Info. Sols., Inc.*, 805 F.3d 1232, 1239 (10th Cir. 2015) (quotation omitted).

"When we are called upon to interpret state law, we 'must look to the rulings of the highest state court, and if no such rulings exist, must endeavor to predict how the high court would rule.'" *Finstuen v. Crutcher*, 496 F.3d 1139, 1148 (10th Cir. 2007) (quoting *Lovell v. State Farm Mut. Auto. Ins. Co.*, 466 F.3d 893, 899 (10th Cir. 2006)). Here, the parties have not identified—and we have not found—any cases in which Wyoming courts have resolved the interpretive questions raised here. Accordingly, we are left to interpret those statutes "according to state rules of statutory construction." *Ward v. Utah*, 398 F.3d 1239, 1248 (10th Cir. 2005).

Wyoming courts begin their interpretive analysis where most courts do: with the text of the statute. *See Redco Constr. v. Profile Props., LLC*, 271 P.3d 408, 415 (Wyo. 2012). This means applying "the language of the statute using its ordinary and obvious meaning." *Id.* at 416 (quotation omitted). Where "the language of the statute is not ambiguous, there is no room for further construction." *Id.* (quotation omitted). If the language is ambiguous, Wyoming courts "apply[] general principles of statutory construction" in an effort "to accurately reflect the intent of the legislature." *Id.* (quotation omitted).

With these maxims in mind, we turn to the interpretive questions here. Wyoming law provides:

> Any health care provider, person or entity shall be immune from liability for damages in an action involving a COVID-19 liability claim unless the person seeking damages proves that the health care provider, person or entity took actions that constitute gross negligence or willful or wanton misconduct.

Wyo. Stat. Ann. § 35-4-114(d). Loginov "did not allege in the Complaint, and does not allege now, 'gross negligence or willful or wanton misconduct.'" Aplt. Br. at 15. Thus, our sole task is to determine whether Loginov's lawsuit qualifies as "an action involving a COVID-19 liability claim." Wyo. Stat. Ann. § 35-4-114(d).

> Relevant here, a "COVID-19 liability claim" means a cause of action for:
>
> (B) Acts or omissions by a health care facility or provider in arranging for or providing health care services or medical care to the claimant that resulted in injury to or death

> of the claimant, or where the response to COVID-19 reasonably interfered with the arranging for or the providing of health care services or medical care for the claimant[.]

Id. § 1-1-141(a)(iii)(B).

By its plain text, the statute provides immunity against two types of claims. The first involves a health care provider's "acts or omissions . . . in arranging or providing health care services or medical care to the claimant that resulted in injury to or death of the claimant." *Id.* The second grants health care providers immunity for acts "where the response to COVID-19 reasonably interfered with the arranging for or the providing of health care services or medical care for the claimant." *Id.*

Because the first clause does not include the term "COVID-19," Loginov suggests we may construe it as granting immunity for nearly all claims against health care providers—including in cases unrelated to COVID-19. Reply Br. at 4–6. In his view, to limit the statutory grant of immunity to claims relating to COVID-19 would be to "rewrite [the] statute to make it make sense," thus exceeding the judiciary's role. Aplt. Br. at 22. And based on the "absurd" result this reading produces—granting immunity for all acts that do not constitute gross negligence or willful misconduct—Loginov contends that portion of the statute "cannot be judicially salvaged, and so must fail entirely." Reply Br. at 6.

We need not definitively resolve whether § 1-1-141(a)(iii)(B) requires a nexus between a plaintiff's claim and the treatment of COVID-19 because Loginov's claim fails under either interpretation. Under Loginov's broader reading, the statute prov-

ides blanket immunity against all "acts or omissions by a health care facility or provider in arranging for or providing health care services or medical care . . . that result[] in injury to or death of the claimant." Wyo. Stat. Ann. § 1-1-141(a)(iii)(B). Viewing the facts in the light most favorable to Loginov, the Hospital administered "far too much sodium, far too fast," causing permanent damage to Loginov's brain. Aplt. Br. at 8. This is an "act" (administering sodium) by a "health care facility" (the Hospital) in "providing health care services or medical care" (a sodium repletion treatment) that resulted in an "injury" (ODS) to the "claimant" (Loginov). Wyo. Stat. Ann. § 1-1-141(a)(iii)(B).

The scarcely applied absurdity exception does not save Loginov's claim. To begin, Loginov does not cite a single case where Wyoming state courts (or any other courts) have applied that exception in the manner he asks us to do so. *Compare* Reply Br. at 6 (arguing that, because a plain reading of the statute produces an "absurd" result, it "cannot be judicially salvaged, and so *must fail entirely*" (emphasis added)), *with HB Fam. Ltd. P'ship v. Teton Cnty. Bd. of Cnty. Comm'rs*, 468 P.3d 1081, 1096 (Wyo. 2020) ("[W]e strive to *avoid an interpretation* that produces an absurd result." (emphasis added)). Nor does he explain why granting blanket immunity to health care providers during the COVID-19 pandemic "would lead to an outcome so 'absurd' that [the legislature] clearly could not have intended such an outcome." *Resol. Tr. Corp. v. Westgate Partners, Ltd.*, 937 F.2d 526, 529 (10th Cir. 1991). Accordingly, we

do not find the absurdity exception applicable in this case.[7]

Loginov's argument fares no better if we read the statute as attaching immunity only where the claim bears a relation to the treatment of COVID-19. As Loginov concedes, he tested positive for COVID-19 at the time of his first admission to the Hospital. The Hospital began treating him for hyponatremia, a condition caused by COVID-19. *See* Aplt. App'x at 96 (Loginov's affiant acknowledging that hyponatremia "is caused by many illnesses, *including COVID-19*" (emphasis added)). The sodium repletion treatment was thus an act "by a health care facility or provider in arranging for or providing [COVID-19-related] health care services or medical care to the claimant that resulted in injury to [ ] the claimant." Wyo. Stat. Ann. § 1- 1-141(a)(iii)(B).

This logic applies equally to Loginov's subsequent admissions to the Hospital. Loginov claims he returned to the Hospital to treat his worsening slowed speech. But if that symptom were, as he contends, directly caused by the sodium repletion treatment, his readmissions (and subsequent additional treatments) were also caused by the Hospital's

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[7] Loginov's claim that the Wyoming legislature has previously made drafting errors does not help his cause. *See* Reply Br. at 7–8 (discussing the Wyoming legislature's "accidental repeal of the entire wrongful death law"). Imperfect legislation does not relieve a court of its constitutional duty to apply the law as it is written. "Indeed, so long as [the legislature] remains faithful to the Constitution, it is free to enact any number of foolish statutes." *Resol. Tr. Corp.*, 937 F.2d at 531. We decline Loginov's implicit two-part invitation to (1) take a position on the advisability of the statutes at issue (under either interpretation) and (2) substitute our judgment of proper public policy for that of the legislature.

treatment of his hyponatremia, which, as we have explained, is a symptom secondary to COVID-19. Accordingly, under any reasonable interpretation of Wyoming law, the Hospital has immunity against Loginov's claims.[8]

III.

For the foregoing reasons, we AFFIRM the district court's grant of summary judgment to the Hospital.

Entered for the Court

Allison H. Eid
Circuit Judge

[8] To the extent Loginov contends the Hospital was negligent in its failure to transfer him to another facility, the Hospital is entitled to immunity on that claim as well. The Hospital attempted to transfer Loginov to one of the larger hospitals in Colorado, South Dakota, Nebraska, Montana, or other cities in Wyoming. But the Hospital could not complete the transfer because each of the facilities it contacted was at maximum capacity with COVID-19-related admissions. This is a clear situation where "the response to COVID-19 reasonably interfered with the arranging for or the providing of health care services or medical care to the claimant." Wyo. Stat. Ann. § 1-1-141(a)(iii)(B).

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

[Filed: April 22, 2024]

Case No. 23-CV-181-KHR

WILLIAM LOGINOV,

Plaintiff,

vs.

SHERIDAN MEMORIAL HOSPITAL, a/k/a MEMORIAL HOSPITAL OF SHERIDAN COUNTY; and THE BOARD OF TRUSTEES OF SHERIDAN MEMORIAL HOSPITAL,

Defendants.

ORDER ON MOTION FOR SUMMARY JUDGMENT

This matter is before the Court on Defendants' Motion for Summary Judgment, filed by Sheridan Memorial Hospital and the Board of Trustees of Sheridan Memorial Hospital (hereinafter "Defendants"). [ECF No. 12]. The Court, having reviewed the filings, **GRANTS** Defendants' Motion for Summary Judgment.

BACKGROUND

The following facts are those that are undisputed and exist within the record at the Court's disposal. On September 29, 2023, Plaintiff William Loginov filed his Complaint against Defendants alleging four causes of action. [ECF No. 1]. The first three causes of action relate to Plaintiff's admissions to Sheridan Memorial Hospital, which he considers

distinct "transactions or occurrences." *Id.* at 1–2. These three "transactions or occurrences" were on: (1) September 24–29, 2021; (2) October 3–4, 2021; and (3) October 7–9, 2021, respectively. *Id.* at 5–9. Plaintiff's fourth cause of action alleges breach of contract. *Id.* at 9–10.[1]

On September 24, 2021, Plaintiff presented to Sheridan Memorial Hospital for evaluation of altered mental status, body aches, fatigue, and slurred speech. [ECF No. 12, at 5]. He tested positive for COVID-19 and was admitted to the medical floor for symptoms related to that diagnosis, including extremely low sodium levels (hyponatremia). *Id.*; [ECF No. 1, at 5]; [ECF No. 16-1, at 2]. His hyponatremia was corrected by undergoing sodium repletion treatment. [ECF No. 1, at 6]. On September 29, 2021, Plaintiff was discharged, but alleges that this sodium repletion treatment was an overcorrection of his hyponatremia, which caused Osmotic Demyelination Syndrome (ODS). *Id.* at 7; [ECF No. 16-1, at 2]. This is the first alleged "transaction or occurrence." [ECF No. 1, at 5–7].

On October 3, 2021, Plaintiff again presented to Sheridan Memorial Hospital with concerns of worsening slowed speech. *Id.* at 8; [ECF No. 12, at 5]. He was discharged on October 4, 2021, allegedly without Defendants addressing the ODS diagnosis, or potential thereof. [ECF No. 1, at 5–7]. This is the second alleged "transaction or occurrence." *Id.*

During the intervening period between his second and third admissions, Plaintiff was contacted regarding the reevaluation of his MRI results that showed

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[1] Plaintiff does not contest dismissal of his breach of contract claim. [ECF No. 16, at 12].

evidence of demyelination and was advised to return to the Emergency Department. [ECF No. 12, at 6]. Plaintiff declined the advice to return. *Id.*

Nonetheless, on October 7, 2021, Plaintiff presented once more to Sheridan Memorial Hospital with concerns of slurred speech and difficulty swallowing. *Id.* at 9; [ECF No. 12, at 6]. This visit concluded on October 8, 2021, whereby Defendants also allegedly failed to address Plaintiff's ODS diagnosis, or potential thereof. [ECF No. 1, at 9]. Defendants did continue trying to treat Plaintiff's COVID-19-related symptoms but, lacking an on-staff neurologist and available MRI machine, efforts were taken during this admission to transfer Plaintiff to a higher level of care in Colorado, South Dakota, Nebraska, Montana, and within Wyoming, at either Casper or Cheyenne, hoping such facilities were better equipped to deal with Plaintiff's maladies. [ECF No. 12, at 6–7]. These transfer efforts were delayed as such facilities were at full capacity due to COVID-19-related admissions. *Id.* Thus, Plaintiff was formally readmitted Sheridan Memorial Hospital to work on physical therapy and speech therapy for his symptoms, until he was accepted to the Billings Clinic on October 9, 2021. *Id.* at 7. This is the third alleged "transaction or occurrence." [ECF No. 1, at 8–9].

Plaintiff alleges that he suffers from ODS, which is characterized by the destruction of the myelin sheath caused "specifically and solely by the improper administration of certain substances to certain patients." *Id.* at 5–7. According to Plaintiff, his visits to Sheridan Memorial Hospital—particularly his sodium repletion treatment—resulted in his ODS diagnosis and thus caused by Defendants' negligence. *Id.* at 6–7.

RELEVANT LAW

Pursuant to Rule 56(c) of the Federal Rules of Civil Procedure, the court may grant summary judgment where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and the . . . moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c); *see Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 250 (1986); *Concrete Works, Inc. v. City & County of Denver,* 36 F.3d 1513, 1517 (10th Cir. 1994). The moving party bears the initial burden of showing an absence of evidence to support the nonmoving party's case. *Celotex Corp. v. Catrett,* 477 U.S. 317, 325 (1986). "Once the moving party meets this burden, the burden shifts to the nonmoving party to demonstrate a genuine issue for trial on a material matter." *Concrete Works, Inc.,* 36 F.3d at 1518 (citing *Celotex Corp.,* 477 U.S. at 325). The nonmoving party may not rest solely on the allegations in the pleadings but must instead designate "specific facts showing that there is a genuine issue for trial." *Celotex Corp.,* 477 U.S. at 324; *see* Fed. R. Civ. P. 56(e).

A genuine issue of fact does not exist, and summary judgment is appropriate, if the evidence is such that a reasonable jury could not return a verdict for the nonmoving party. *Anderson,* 477 U.S. at 248. If the nonmoving party's evidence is merely colorable, or is not significantly probative, summary judgment may be granted. *Id.* at 249. In essence, the inquiry is whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law. *Id.* at 251–52. The court may consider only admissible evidence when ruling on a summary

judgment motion. *See World of Sleep, Inc. v. La–Z–Boy Chair Co.,* 756 F.2d 1467, 1474 (10th Cir. 1985). Additionally, the court, when ruling on a motion for summary judgment, must construe the facts in the light most favorable to the nonmoving party. *Id.*

In diversity cases, federal courts should ascertain and apply the proper substantive law of the relevant state supplying the law, with the goal of insuring that the result obtained is the one that would have been obtained in state court. *Occusafe, Inc. v. EG&G Rocky Flats, Inc.,* 54 F.3d 618, 621 (10th Cir. 1995) (citing *Allen v. Minnstar, Inc.,* 8 F.3d 1470, 1476 (10th Cir. 1993)). In doing so, the court should rely "foremost on decisions of the" relevant state's supreme court, then alternatively turn to "other state court decisions, federal decisions, and the general weight and trend of authority." *Roberts v. Jackson Hole Mountain Resort Corp.*, 884 F.3d 967, 972 (10th Cir. 2018).

DISCUSSION

Defendants are entitled to summary judgment, as Wyoming law provides them immunity from Plaintiff's claims. The first three claims plainly fall under the definition of a "COVID-19 liability claim." *See* W.S. § 1-1-141(a)(iii)(B). Health care providers, such as Defendants, are immune from such claims. W.S. § 35-4-114(d). There is a carveout to such immunity for actions by health care providers that constitute "gross negligence" or "willful or wanton misconduct." *Id.* However, taken in the light most favorable to nonmovant, Plaintiff's allegations illustrate at best that Defendants' conduct rise to the level of "ordinary negligence" but fall short of either "gross negligence" or "willful or wanton misconduct." *Id.*; *World of Sleep*, 756 F.2d at 1474. As such, Defendants' conduct is

shielded by Wyoming law and summary judgment must be granted on that basis.

Despite Plaintiff's grievances, Defendants' Motion for Summary Judgment is proper. Defendants answered the Complaint, and the Court held an Initial Pretrial Conference setting forth the schedule for this case. [ECF No's 6, 10]. There is no requirement that a motion for summary judgment be filed on the deadline. Rather, a deadline is merely what *Merriam-Webster* states "a date or time before which something must be done." *Deadline*, MERRIAM-WEBSTER, https://www.merriamwebster.com/dictionary/deadline (last visited Apr. 16, 2024).

The Court is also confounded by counsel's confusion that legal arguments are only "proper matters for a Rule 12(b)(6) motion, but not a Rule 56 motion." [ECF No. 16, at 2]. A Rule 56 motion only prohibits a court from weighing facts or assessing the credibility of evidence. *Forth v. Laramie Cnty. Sch. Dist. No. 1*, 85 F.4th 1044, 1052 (10th Cir. 2023) ("We cannot weigh the evidence or make credibility determinations."). The Federal Rules of Civil Procedure state a court shall grant the motion if "the movant is entitled to judgment *as a matter of law*." Fed. R. Civ. P. 56(a) (emphasis added). While legal determinations are also proper in a Rule 12(b)(6) motion to dismiss, those determinations are to assess the initial validity of a claim and to help clarify the scope of discovery. A Rule 56 motion, by contrast, will clarify the legal sufficiency of a claim for trial, as it is a court's function to decide all questions of law. *See Jones v. United States*, 526 U.S. 227, 247 n.8 (1999) ("The principle that the jury were the judges of fact and the judges the deciders of law was stated as an established principle as early as 1628. . . .").

Defendants' Motion largely relies upon an affidavit from Dr. Luke Goddard. [ECF No. 12, at 4–7]. This affidavit is proper under Fed. R. Civ. P. 56(c)(4), and the information contained therein—to the extent it is admissible under the Federal Rules of Evidence—may be considered for summary judgment as non-expert testimony. *See City of Shawnee, Kan. v. Argonaut Ins. Co.*, 546 F. Supp. 2d 1163, 1177 (D. Kan. 2008) ("Though an affidavit which fails to meet any of the three requirements [of Rule 56(c)(4)] is subject to a motion to strike, the Court may also enforce the rule by disregarding portions of the affidavit it finds insufficient.") (internal citations omitted).

I. *Admissibility of Dr. Luke Goddard's Affidavit.*

Portions of Dr. Luke Goddard's Affidavit are admissible and its uncontested factual statements may be considered for the purposes of summary judgment, while the legal conclusions are disregarded. A motion for summary judgment may be supported by an affidavit or declaration, so long as either are "made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated." Fed. R. Civ. P. 56(c)(4). Personal knowledge of an affiant may be inferred from the context of the affidavit. *Roberts v. Cessna Aircraft Co.*, 269 F. App'x 321, 324 (10th Cir. 2008). Consideration of an affidavit's content hinges upon admissibility under the Federal Rules of Evidence. *Hansen v. PT Bank Negara Indonesia (Persero)*, 706 F.3d 1244, 1250 (10th Cir. 2013) (internal citations omitted). Where portions of an affidavit are inadmissible, courts routinely consider the affidavit while

disregarding the inadmissible portions. *See, e.g.*, *City of Shawnee, Kan.*, 546 F. Supp. 2d at 1177.

Defendants rely extensively upon the affidavit of Dr. Goddard in seeking summary judgment. *See* [ECF No. 13, at 2–4, 11, 16–18]. Plaintiff argues the affidavit is broadly impermissible under the *Daubert* rules for expert witnesses and substantively impermissible for, *inter alia*, lack of foundation, methodology, and use of improper legal and medical opinions. *See* [ECF No. 16, at 2–4]. In retort, Defendants reaffirm Dr. Goddard's credentials, refocus the affidavit away from *Daubert* issues by narrowing its purpose toward establishing that Plaintiff's visits stemmed from treatment received to correct hyponatremia, and thus reiterating its admissibility. *See* [ECF No. 21, at 1–3].

The Court largely agrees with Defendants, with the caveat that paragraph 20 of Dr. Goddard's affidavit be disregarded. [ECF No. 12, at 7] (paragraph 20). Dr. Goddard's affidavit begins with statements attesting to his credentials and affirming his positions at Sheridan Memorial Hospital, first as a full-time emergency physician, and subsequently as the hospital's Chief Medical Officer. *See* [ECF No. 12, at ¶¶ 2–6]. While Plaintiff responds that the affidavit "provides just enough background information to allow a court or jury to conclude that he is a licensed physician," in conjunction with Dr. Goddard's position as Chief Medical Officer and previously as a full-time emergency physician at the hospital, this statement is a tacit endorsement of Dr. Goddard's competency to testify on the matters stated. [ECF No. 16, at 2]; Fed. R. Civ. P. 56(c)(4). As such, the Court focuses on the personal knowledge and admissibility requirements under Rule 56(c)(4).

Dr. Goddard's personal knowledge is largely imputed through his role as Chief Medical Officer and his review of Plaintiff's medical records. Personal knowledge of an affiant may be inferred from the context of the affidavit. *Cessna Aircraft*, 269 F. App'x at 324. While some courts have refused to consider an affidavit if the documents referenced in the affidavit are not also provided (and thus running afoul of Rule 56(e)), others have reiterated in the Rule 56(e) context that "ordinarily, officers would have personal knowledge of the acts of their corporations." *Compare School Dist. No. 1J, Multnomah Cnty., Or. v. ACandS, Inc.*, 5 F.3d 1255, 1261–62 (9th Cir. 1993), *with In re Apex Exp. Corp.*, 190 F.3d 624, 635 (4th Cir. 1999) (quotation).

Nonetheless, personal knowledge can be inferred to Dr. Goddard from the context of his affidavit in reviewing Plaintiff's medical records. Although not provided to the Court, Plaintiff and his affiant refer to these records and Plaintiff does not dispute the contents of Dr. Goddard's affidavit, but rather Dr. Goddard's role as an affiant. *See* [ECF No. 16, at 2–4, 8]; *see generally* [ECF No. 16-1]. Thus, personal knowledge of Plaintiff's medical records, imputed from Dr. Goddard's role as Chief Medical Officer and upon review of the medical records retained by his organization, is established by the affidavit for Rule 56(c)(4) purposes. Other courts have held that affiants can have personal knowledge for purposes of summary judgment affidavits based on their review of business records and files. *See, e.g.*, *Colonial Pac. Leasing Corp. v. N & N Partners, LLC*, 981 F. Supp. 2d 1345, 1355 (N.D. Ga. 2013).

As for the admissibility requirement of Fed. R. Civ. P. 56(c)(4), most of Dr. Goddard's statements are

admissible under the Federal Rules of Evidence. Evidence is generally presumed admissible if it is relevant to the case and if it is not otherwise inadmissible. Fed. R. Evid. 402. The facts contained in Dr. Goddard's affidavit are undoubtedly relevant, given their probative value into the nature and purpose of Plaintiff's admissions. Fed. R. Evid. 401. Apart from the potential legal conclusion contained in paragraph 20, the facts asserted by Dr. Goddard are not barred by Rule 403. *See* [ECF No.12, at 7]; Fed. R. Evid. 403. The probative value of the information contained in paragraphs 5 through 19 is not substantially outweighed by any of the listed dangers in Rule 403, and thus remain to be presumed admissible. Fed. R. Evid. 403. As for paragraph 20, the Court will not examine it under Rule 403, because it can be disregarded on different bases and not necessary for this Court's determination.

As for the remainder of Dr. Goddard's attestations, either his contemporaneous role as an emergency physician or subsequently as Chief Medical Officer in reviewing Plaintiff's medical records suffices for the Federal Rules of Evidence. In addition to the above analysis, Dr. Goddard's statements from personal knowledge are admissible without indication that he did not actually perceive or observe the attested events. *See United States v. Sinclair*, 109 F.3d 1527, 1536 (10th Cir. 1997) ("Although Rule 602 provides that a witness's testimony must be based on personal knowledge, it 'does not require that the witness' knowledge be positive or rise to the level of absolute certainty. Evidence is inadmissible . . . only if in the proper exercise of the trial court's discretion it finds that the witness could not have actually perceived or observed that which he testifies to.'").

Prior to his role as Chief Medical Officer, Dr. Goddard was a "full-time emergency physician" at Sheridan Memorial Hospital during the period in which Plaintiff was admitted. *See* [ECF No. 12, at ¶¶ 5–6]. In Plaintiff's initial admission, Sarah Coulter consulted Dr. Goddard "as needed." *Id.* at ¶ 7. To the extent that Dr. Goddard was not contemporaneously apprised on Plaintiff's circumstances, this concern is mitigated through review of the medical records. Thus, paragraphs 1 through 19 are relevant and admissible.

These admissible attestations are generally uncontested and, except for those assertions disputed by Plaintiff, are incorporated and referred to by the Court as the undisputed facts for the purpose of summary judgment.

II. *Immunity from Civil Liability Pursuant to W.S. § 35-4-114(d).*

a. Whether Defendants Are Entitled to Presumption of Immunity.

In Wyoming, a "health care provider, person or entity" is "immune from liability for damages in an action involving a COVID-19 liability claim unless the person seeking damages proves that the health care provider, person or entity took actions that constitute gross negligence or willful or wanton misconduct." W.S. § 35-4-114(d). There are two relevant definitions of a "COVID-19 liability claim." The first defines such claims as a cause of action for "[t]he transmission, infection, exposure or potential exposure of COVID-19 to a claimant" in certain situations. W.S. § 1-1-141(a)(iii)(A)(I)–(II). The second definition, and more pertinent, of a "COVID-19 liability claim" includes:

> Acts or omissions by a health care facility or provider in arranging for or providing health care services or medical care to the claimant that resulted in injury to or death of the claimant, or where the response to COVID-19 reasonably interfered with the arranging for or the providing of health care services or medical care for the claimant. . .

W.S. § 1-1-141(a)(iii)(B).

Defendants argue the actions of Sheridan Memorial Hospital and its providers—as alleged by Plaintiff—are shielded from civil liability under W.S. § 35-4-114(d), because the alleged actions are directly attributable to the COVID-19 pandemic, constituting a "COVID-19 liability claim" under W.S. § 1-1-141(a)(iii)(B). [ECF No. 13, at 11–12]. They also argue that Plaintiff has "alleged only that Defendants were *ordinarily negligent*," and thus such conduct does not rise to the level of "gross negligence" or "willful or wanton misconduct" required to overcome statutory immunity. *Id.* at 7 (citing [ECF No. 1, at 7]) (emphasis in original). Defendants cite to caselaw from other jurisdictions addressing civil liability immunity in the context of COVID-19 claims in the absence of any Wyoming Supreme Court case analyzing the applicability of W.S. § 35-4-114(d). *Id.* at 8–12. Defendants also provide the affidavit of Dr. Luke Goddard. *See* [ECF No. 12, at 4–7].

Plaintiff responds that W.S. § 35-4-114(d) is wholly inapplicable, as the definition of "COVID-19 liability claims" under W.S. § 1-1-141 focuses on liability for someone catching COVID-19 rather than liability for conduct accompanying a COVID-19 diagnosis. [ECF No. 16, at 5–9]. This mistaken argument points only to various subsections of W.S. § 1-1-141 which

explicitly reference the act of catching COVID-19. *Id.* at 5–7. Thus, leading to the erroneous conclusion that his claims are fully distinct from those claims falling under statutory immunity, as they allege a course of conduct unrelated to COVID-19 infection. *Id.* at 9.

Defendants retort that Plaintiff's narrow interpretation of W.S. § 35-4-114(d) ignores the plain language of the statute. [ECF No. 21, at 3–5]. Through their interpretation, Defendants reiterate that Plaintiff fails to allege conduct beyond ordinary negligence which could overcome this statutory immunity. *Id.* at 5.

The Court agrees with Defendants' statutory interpretation and its application to this case. Plaintiff's claims plainly fall under W.S. § 1-1-141(a)(iii)(B)'s definition of a "COVID-19 liability claim." Defendants' actions were in response to Plaintiff's COVID-19 diagnosis. *See* W.S. § 1-1-141(a)(iii)(B); [ECF No. 16-1, at 2].

As alleged by Plaintiff, Defendants' treatment of his hyponatremia was done after and in response to his COVID-19 diagnosis. While COVID-19 and hyponatremia may be distinct from one another, clause B encompasses situations where acts or omissions on the treatment of COVID-19 and those "where the response to COVID-19 reasonably interfered with the arranging for or the providing of health care services or medical care for the claimant." W.S. § 1-1-141(a)(iii)(B). Plaintiff's preferred "COVID-19 liability claim" definition is merely one of three. *See* W.S. § 1-1-141(a)(iii)(B)–(C). The remaining two definitions are clearly distinct from "catching COVID-19." Section 1-1-141(a)(iii)(B) makes no reference to "catching" COVID-19 and is explicitly

directed toward one's *response* to COVID-19. W.S. § 1-1-141(a)(iii)(B). Section 1-1-141(a)(iii)(C), albeit irrelevant in this case, defines a "COVID-19 liability claim" as involving the "[m]anufacturing, labeling, donating or distributing" of personal protective equipment or sanitizer. W.S. § 1-1-141(a)(iii)(C). Reading W.S. § 1-1-141(a)(iii) as confining a "COVID-19 liability claim" to "catching" COVID-19 would render a clear and unambiguous statute as superfluous. *See Rodriguez v. Casey*, 50 P.3d 323, 325–27 (Wyo. 2002) (stating both that if a statute is clear and unambiguous, courts simply give effect to plain meaning and, if a court must interpret a statute, the statute must be construed so that no portion is rendered meaningless). All three definitions, by their own language, are functionally distinct. While Defendants' actions do *not* fall under the definition of either W.S. § 1-1-141(a)(iii)(A) or (C), they nonetheless fall under both definitions within W.S. § 1-1-141(a)(iii)(B).

It is undisputed that Plaintiff presented to the Emergency Department of Sheridan Memorial Hospital on September 24, 2021, for evaluation of altered mental status, body aches, fatigue, and slurred speech. [ECF No. 12, at 5]. He ultimately tested positive for COVID-19 and was admitted for "hyponatremia related to COVID-19." [ECF No. 1, at 5–7]; [ECF No. 16-1, at 2]. Defendants' treatment of the hyponatremia is assumed to be what led to Plaintiff's alleged development of ODS. Taking Plaintiff's allegations as true, ODS presents when "a patient has a relatively low sodium level such that it needs to be raised back up to the normal range for sodium, but the patient is given excessive sodium at an excessive rate" where the patient's brain cannot adequately adjust to the rising sodium level. [ECF No. 1, at 5–6]. Thus, it is Plaintiff's allegation that

"Defendant hospital and its staff applied large quantities of sodium to [Plaintiff], and did so at rates far beyond the safe rates for increasing sodium." *Id.* at 6. That allegation fits squarely within the immunity afforded by W.S. § 1-1-141(a)(iii)(B).

Defendants had diagnosed and were treating Plaintiff for COVID-19. Part of that treatment was replenishing Plaintiff's sodium levels. According to Plaintiff, Defendants replenished those levels too rapidly, causing ODS. Clearly, that is an act "by a health care facility or provider in arranging for or providing [COVID-19] health care services or medical care to the claimant that resulted in injury to [] the claimant." W.S. § 1-1- 141(a)(iii)(B). As Plaintiff's own affiant states, "[h]yponatremia, or low sodium in the blood, is a condition that is caused by many illnesses, *including COVID-19*," making it undisputed that hyponatremia can be a symptom of COVID-19.[2] [ECF No. 16-1, at 2] (emphasis added). Thus, the treatment of Plaintiff's hyponatremia and COVID-19 are one in the same because there is no factual issue distinguishing the two. Wyoming Statute § 1-1-141(a)(iii)(B) includes both the treatment of COVID-19 and situations where the "response to COVID-19 reasonably interfered with the arranging for or the providing of health care services or medical care for the claimant."

Plaintiff misses the mark and focuses on arguing that COVID-19 cannot cause ODS as it is a separate, unrelated disease. [ECF No. 16, at 7–8]; [ECF No. 16-1, at 2]. That argument completely ignores (and only supports) that it was the treatment of COVID-19

[2] The Court is not ruling on the admissibility of Plaintiff's affiant and is only accepting the statements in the affidavit *arguendo*.

symptoms that allegedly caused the ODS—the exact conduct W.S. § 1-1-141(a)(iii)(B) contemplates and shields from liability.

During Plaintiff's second visit, only four days after his first visit, he alleged Defendants failed to "recognize, treat, or otherwise address [Plaintiff's] ODS condition which [Defendants] had already caused, which was still present in the patient, and which was worsening." [ECF No. 1, at 8]. This allegation similarly falls under W.S. § 1-1- 141(a)(iii)(B). If his worsening slowed speech stemmed from the sodium repletion treatment, his readmission for symptoms was directly caused by a treatment for "symptoms related to COVID-19." [ECF No. 12, at 5]. Failure to rectify these symptoms is an "omission" related to providing medical care for COVID-19.[3] [ECF No. 1, at 8]. The same can be said of Plaintiff's third visit, alleging Defendants' negligence with similar language. [ECF No. 1, at 9].

Further, Plaintiff's "separate transaction or occurrence" argument is without merit. When it comes to the statute of limitations for medical malpractice claims, Wyoming applies the continuous treatment rule. *See Falkenburg v. Laramie Inv. Co.*, 2023 WY 78, ¶ 20, 533 P.3d 511, 517 (Wyo. 2023). Its application is justified in "medical malpractice cases because 'where the defendant physician has provided a continuing course of care for the same or related complaints, the cessation of treatment completes the

[3] It is worth noting that while Plaintiff alleges in the Complaint that his ODS condition was "already caused" and "still present" by the second admission, Plaintiff later equivocates on this by disputing whether the ODS harm was completed by the end of the first admission. *Compare* [ECF No. 1, at 8] *with* [ECF No. 16, at 10–11].

act which starts the running of the statutory period for filing suit." *Id.* (quoting *Nobles v. Mem'l Hosp. of Laramie Cnty.*, 2013 WY 66, ¶ 18, 301 P.3d 517, 522 (Wyo. 2013)). Plaintiff presented to the Emergency Department three times over the span of about two weeks, which is a shorter timespan in which the Supreme Court of Wyoming has applied the continuous treatment rule for several admissions to the same provider. [ECF No. 1, at 5–9]; *see also, e.g.*, *Echols v. Keeler*, 735 F.3d 730, 732 (Wyo. 1987) (applying the continuous treatment rule to three separate visits to the same chiropractor between September 11, 1981, and October 6, 1981—a span of 25 days). Slowed speech was a common factor for the second and third visits. *Id.* at 5–6. That, in conjunction with the proximity of each visit, represents the ongoing nature of Plaintiff's treatment, irrespective of the visits being technically separate. Additionally, there is not a distinct harm alleged for each visit. Rather, Plaintiff is alleging that Defendants' treatment caused ODS and they failed to recognize or treat it during subsequent visits. Thus, the damages element for each claim is identical as it all relates to ODS.

Considering Wyoming's adoption of the continuous treatment rule, as well as the policy behind it, and that there is no distinction in damages for each claim, the Court will not consider each visit a separate transaction or occurrence. *Nobles*, 2013 WY 66, ¶ 18, 301 P.3d at 522; *see also Reynolds v. Tice*, 595 P.2d 1318, 1324 (Wyo. 1979) ("Once compensated for loss under the incident, plaintiff cannot be compensated again for the same loss. To do so, would be to award double damages."); *Dorr v. Smith, Keller & Assocs.*, 2010 WY 120, ¶ 23, 238 P.3d 549, 554–55 (Wyo. 2010) ("Wyoming law does not favor double recoveries for

the same legal injury."); *Taylor v. State ex rel. Wyo. Workers' Safety & Comp. Div.*, 2003 WY 83, ¶ 11, 72 P.3d 799, 802 (Wyo. 2003) ("[T]he law does not allow one to receive double compensation for the same injury."). It is irrelevant that the billing for each visit considers them separately because it is common practice to continue treatment for the same issue on separate visits. The ongoing nature of treatment cannot be viewed to begin and end each time a person visits the doctor. *Nobles*, 2013 WY 66, ¶ 18, 301 P.3d at 522. There are check-ins, changes in treatment, reevaluations, etc., that create the total care of a patient for a single issue.[4]

Separately, Plaintiff's treatment during this admission was compounded by COVID-19, as efforts to transfer him to a facility with a higher level of care were delayed due to COVID-19-related admissions. [ECF No. 12, at 6–7]. This delay *also* falls under a "COVID-19 liability claim." W.S. § 1-1-141(a)(iii)(B) (constituting a "COVID-19 liability claim" when "the response to COVID-19 reasonably interfered with the arranging for or the providing of health care services or medical care for the claimant"). Thus, Plaintiff's claims for all three visits to Sheridan Memorial Hospital invariably fall within clause B's definition of a "COVID-19 liability claim." *See* W.S. § 1-1-141(a)(iii)(B).

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[4] This is not to say that if a patient went to to the hospital for influenza and received treatment for it, then retuned a few days later for a broken arm he or she sustained in a basketball game, that those two visits would constitute a single transaction or occurrence. The underlying issues in this hypothetical are readily distinguishable, involving issues of intervening or superseding cause. Here, by contrast, Plaintiff's claims and visits are all connected to his first visit and the treatment he received during that visit.

The question now turns to whether Defendants' acts and omissions plausibly rises to the level of either "gross negligence" or "willful or wanton misconduct" required to overcome statutory immunity, and to necessitate submission to the trier of fact. *Anderson* 477 U.S. at 252.

b. "Gross Negligence" and "Willful or Wanton Misconduct."

Questions of "negligence" are often left to the trier of fact. *Key v. Liquid Energy Corp.*, 906 F.2d 500, 505 (10th Cir. 1990) (noting that "[i]f there is competent evidence introduced, even though conflicting, the questions of negligence and proximate cause must be left to the jury") (internal citation omitted). A "judge must view the evidence through the prism of substantive evidentiary burden." *Anderson*, 477 U.S. at 254. Thus, the Court asks whether the evidence shows by a preponderance that Defendants' conduct was "grossly negligent" or "willful or wanton misconduct."

In Wyoming, "negligence" is defined as "a failure to act as a reasonable, prudent person in the same or similar circumstances." *See Coleman v. Strohman*, 821 P.2d 88, 89 (Wyo. 1991). The dividing line between "negligence" and "gross negligence" is a matter of "degree." *Danculovich v. Brown*, 593 P.2d 187, 193 (Wyo. 1979). "Gross negligence" is defined as an "indifference to a present legal duty and utter forgetfulness of legal obligations as far as other persons may be affected," or alternatively as the "heedless and palpable violation of legal duty respecting the rights of others." *Weaver v. Mitchell*, 715 P.2d 1361, 1370 (Wyo. 1986) (internal citation omitted).

Separately, "negligence" and "willful or wanton misconduct" are standards which "differ in kind." *Danculovich*, 593 P.2d at 193. "Willful or wanton misconduct" (otherwise called "willful misconduct") requires active intent, whereby "one must demonstrate that he acted with a state of mind that approaches intent to do harm." *Cramer v. Powder River Coal, LLC*, 204 P.3d 974, 979 (Wyo. 2009) (quoting *Bryant v. Hornbuckle*, 728 P.2d 1132, 1136 (Wyo. 1986)); *see also Danculovich*, 593 P.2d at 191 (stating that acts or omissions resulting from mere mistake, inexperience, excitement, confusion, thoughtlessness or simple inattention, are distinct from constituting willful or wanton misconduct).

Construed in the light most favorable to Plaintiff, the undisputed facts indicate that Defendants' conduct may constitute "ordinary negligence," but was neither "grossly negligent" nor "willful or wanton misconduct." *See Coleman*, 821 P.2d at 89. The alleged conduct mirrors Wyoming's definition of "negligence" as they are, at best, "failure[s] to act as a reasonable, prudent person in the same or similar circumstances." *Coleman*, 821 P.2d at 89; *see* [ECF No. 13, at 7] ("Plaintiff has, in his own words, alleged only that Defendants were *ordinarily negligent*." (emphasis original)).

These allegations fall short of constituting "gross negligence" as a matter of law by failing to describe conduct close to an indifference to a legal duty. *See Weaver*, 715 P.2d at 1370. "The existence of the physician-patient relationship establishes a duty, and the standard is fixed as that which is required of a reasonable person in the light of all the circumstances." *Roybal*, 778 P.2d at 111 (internal citation omitted); *see also Vassos v. Roussalis (Vassos II)*, 658

P.2d 1284, 1287 (Wyo. 1983). This duty requires a physician to "exercise the skill, diligence and knowledge, and must apply the means and methods, which would reasonably be exercised and applied under similar circumstances in his profession in good standing and in the same line of practice." *Vassos v. Roussalis (Vassos I)*, 625 P.2d 768, 772 (Wyo. 1981). A physician's duty is not differentiated from that owed by other classes of medical providers, such as nurses or physician assistants. *See McMackin v. Johnson Cnty. Healthcare Ctr.*, 73 P.3d 1094, 1098 (Wyo. 2003) (summarizing a medical malpractice claimant's burden *vis-à-vis* a "health care provider").

While it is not for the Court to determine whether "the evidence unmistakably favors one side or the other," it may determine "whether a fair-minded jury could return a verdict for the plaintiff on the evidence presented." *Anderson*, 477 U.S. at 252. "The mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient." *Id.* Thus, the Court asks "whether reasonable jurors could find by a preponderance of the evidence that the plaintiff is entitled to a verdict—'whether there is [evidence] upon which a jury can properly proceed to find a verdict for the party producing it, upon whom the *onus* of proof is imposed.'" *Id.* (quoting *Schuylkill & Dauphin Improvement Co. v. Munson*, 81 U.S. 442 (1871)). At the summary judgment stage, "it is generally the district court's exclusive job to determine which *facts* a jury could reasonably find from the evidence presented to it by the litigants." *Lewis v. Tripp*, 604 F.3d 1221, 1225 (10th Cir. 2010) (citing *Johnson v. Jones*, 515 U.S. 304, 313 (1995)) (emphasis original).

Here, the body of evidence does not rise past "ordinary negligence" and makes clear that no reasonable jury could find by a "preponderance of the evidence" that the alleged conduct rises to the level of "gross negligence." *Id.* There are no factual allegations supporting a finding of the indifference need for gross negligence. The relevant legal duty was created by the physician-patient relationship. *Weaver*, 715 P.2d at 1370. The "similar circumstances" in which a medical professional would operate during the COVID-19 pandemic would highly prioritize screening a patient for possible COVID-19 symptoms and focusing on managing risk associated to COVID-19. *Vassos I*, 625 P.2d at 772. Providers focused on Plaintiff's positive COVID-19 test and oriented their care towards treating the hyponatremia as a symptom of COVID-19. [ECF No. 12, at 5]. Sodium repletion, while creating an undesirable result, was well within the realm of appropriate actions to treat a COVID-19 patient with low sodium levels, especially during a global pandemic.

Defendants' acts and omissions, including and flowing from the sodium repletion treatment, do not rise to the level of "indifference" to the legal duty owed to Mr. Loginov. The "actual knowledge" Plaintiff alleges Defendants had of his risk for ODS is a red herring. As alleged, Plaintiff references his chart, which included a note stating "[g]iven his sodium is less than 105 mEq/L he has a high risk factor for ODS." [ECF No. 16, at 8]. That statement does not mean Plaintiff is uniquely situated to develop ODS from *any* treatment, which Plaintiff seemingly attempts to imply in his argument. Throughout the briefing, it is undisputed that ODS can develop—and it is Plaintiff's theory his *did* develop—through sodium repletion treatment when it is infused too

rapidly. [ECF No. 16-1, at 2]. Simply put, the note means treatment should be carefully administered—a healthcare provider's duty in any situation. Further, there is no allegation that the plan listed in Plaintiff's chart does not comport with that careful treatment. While the treatment could have been negligently administered, there is nothing here supporting that Defendants' actions rise to the standard of gross negligence.

Moreover, Defendants contacted Plaintiff to return to the Emergency Department when a radiologist reviewed his MRI—a request he refused,[5] scheduled Plaintiff to a neurologist at the earliest possible date and attempted to promptly transfer him to a higher level of care.[6] *See* [ECF No. 12, at ¶¶ 13–15, 17–19]. Thus, if Defendants were negligent in causing an ODS diagnosis during the first visit, this was at best ordinary negligence caused by Plaintiff's individual circumstances and the broader circumstances of the COVID-19 pandemic. If that negligence extended to subsequent visits, to the extent that Defendants recognized a potential harm through analyzing Plaintiff's MRI results between admissions, an indifference to their legal duty is not supported by any allegations and the record only shows Defendants' attempts to

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[5] Notably, during his second visit (which was prior to being contacted and advised to return to the Emergency Department), a healthcare provider recommended that Plaintiff follow-up with neurology, but the latter expressed his desire to go home and follow-up with neurology in an outpatient setting. [ECF No. 12, at 5–6].

[6] It is important to reiterate that attempts to transfer Plaintiff to facilities with higher levels of care was compounded by the fact that such facilities were at full capacity due to COVID-19-related admissions and thus were not accepting further patients at that time. [ECF No. 12, at 6–7].

contact and further treat Plaintiff, which was flatly refused. *See id.* at ¶ 14. Moreover, all efforts to promptly obtain specialized care, either through external appointments or transfer to higher care, were delayed or compounded by COVID-19.

Contextualizing the medical chart, it is the only piece of evidence relevant to a showing of gross negligence, rather than ordinary negligence. It has limited probative value because it only shows written notice in the chart of Plaintiff's potential risk for developing ODS through sodium repletion treatment if it was not done properly. It does not prohibit sodium repletion, indicate the prescribed treatment was not followed, nor that it was done improperly. Those conclusions are leaps and bounds away from what the record shows. The chart is nothing more than a mere "scintilla of evidence in support of [P]laintiff's position," which is "insufficient." *Anderson*, 477 U.S. at 252. Viewing the rest of the record, there is no other relevant evidence baring on the standard of gross negligence. A reasonable jury, relying upon this medical chart alone, could not "find by a preponderance of the evidence" that Defendants were grossly negligent and that "[P]laintiff is entitled to a verdict." *Id.*; *see also Tripp*, 604 F.3d at 1225.

Separately, the undisputed allegations fall short of constituting "willful or wanton misconduct" as Plaintiff fails to describe conduct approaching an intent to do harm. *Danculovich*, 593 P.2d at 193. "Willful or wanton misconduct" requires "an intent to do an act, or an intent to not do an act, in reckless disregard of the consequences, and under such circumstances and conditions that a reasonable man would know, or have reason to know, that such conduct would, in a high degree of probability, result in substantial harm

to another." *Id.* (citing *Mitchell v. Walters*, 100 P.2d 102, 106–07 (Wyo. 1940)).

Assuming the ODS diagnosis flowed from sodium repletion, there is no indication that such treatment was "willfully designed to accomplish [the] specific result" of inducing Plaintiff's ODS. *Danculovich*, 593 P.2d at 193. Thus, a reasonable jury could not return a verdict for Plaintiff based on "willful or wanton misconduct." *Anderson*, 477 U.S. at 248.

As such, Defendants are entitled to summary judgment. Fed. R. Civ. 56(c). There is no genuine dispute of material fact that the medical care provided (or not) was intertwined with COVID-19. *Anderson*, 477 U.S. at 248. All the first three claims fall under a "COVID-19 liability claim" as per W.S. § 1-1-141(a)(iii)(B) and Plaintiff has conceded on his fourth claim (breach of contract). [ECF No. 16, at 12]. Thus, Defendants are entitled to statutory immunity under W.S. § 35-4-114(d). Their actions fall short of constituting "gross negligence" or "willful or wanton misconduct" required to circumvent immunity. *See Anderson*, 477 U.S. at 251–52.

CONCLUSION

For the above reasons, IT IS HEREBY ORDERED that Defendants' Rule 56 Motion for Summary Judgment [ECF No. 12] is GRANTED.

IT IS FURTHER ORDERED that this matter is hereby DISMISSED WITH PREJUDICE.

Dated this 22nd day of April, 2024.

/s/ Kelly H. Rankin
Kelly H. Rankin
United States District Judge

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

No. 24-8032

WILLIAM LOGINOV,

Plaintiff-Appellant

v.

SHERIDAN MEMORIAL HOSPITAL, a/k/a Memorial Hospital of Sheridan County; THE BOARD OF TRUSTEES OF SHERIDAN MEMORIAL HOSPITAL,

Defendants-Appellees

ON APPEAL FROM THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING
2:23-CV-00181-KHR

PETITION FOR REHEARING AND
REHEARING EN BANC OF
APPELLANT WILLIAM LOGINOV

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STATEMENT OF ISSUES MERITING EN BANC CONSIDERATION

Pursuant to Federal Rule of Appellate Procedure 40(b)(2), William Loginov respectfully submits the following issues:

A. The Court's interpretation of the Wyoming statute conflicts with sister-state court decisions requiring a nexus between health care immunity and COVID-19 response, creating a national split that warrants certification to the Wyoming Supreme Court;

B. A sister-state's nearly identical statute explicitly requires COVID-19 connection, demonstrating that state legislatures intended limited, not blanket, immunity;

C. With multiple states facing identical statutory interpretation questions, certification for Wyoming Supreme Court guidance would provide regional precedent and prevent conflicting federal court interpretations.

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FACTUAL SUMMARY

A. LOGINOV'S MEDICAL TREATMENT AND DIAGNOSIS

In September 2021, William Loginov presented to Sheridan Memorial Hospital's emergency department with altered mental status, body aches, fatigue, and slurred speech. The Hospital admitted Loginov for treatment of multiple symptoms, including hyponatremia — abnormally low sodium levels in the blood.

The Hospital placed Loginov on a sodium repletion treatment plan for hyponatremia and discharged him. He next suffered osmotic demyelination syndrome (ODS), which results from many conditions besides COVID-19, including pneumonia, infections, and metabolic disorders, and commonly occurs from rapid correction of hyponatremia no matter the cause of the electrolyte imbalance.

B. THE CAUSATION DISPUTE

ODS has multiple causes. While COVID-19 can cause hyponatremia, it also results from pneumonia, other viral and bacterial infections, metabolic disorders, and other conditions. The record presents genuine disputes about what caused Loginov's hyponatremia.

The causal chain from treatment decisions to Loginov's ODS raises complex medical questions. The record contains disputed evidence whether ODS resulted from COVID-19-driven treatment decisions, or independent medical negligence as intervening cause unrelated to the pandemic response.

C. PROCEDURAL HISTORY

The Hospital moved for summary judgment based on Wyoming's COVID-19 immunity statute.

Wyoming's COVID-19 Immunity Statute: Ambiguous Scope

Wyoming law provides that health care providers "shall be immune from liability for damages in an action involving a COVID-19 liability claim" unless the plaintiff proves gross negligence or willful misconduct. Wyo. Stat. § 35-4-114(d). The case turns on the definition of "COVID-19 liability claim."

A "COVID-19 liability claim" includes:

> Acts or omissions by a health care facility or provider in arranging for or providing health care services or medical care to the claimant that resulted in injury to or death of the claimant, **or** where the response to COVID-19 reasonably interfered with the arranging for or the providing of health care services or medical care for the claimant.

Wyo. Stat. § 1-1-141(a)(iii)(B) (emphasis added).

The first clause contains no explicit reference to COVID-19 — ambiguous whether immunity applies to *all* healthcare negligence, or only to negligence in COVID-19 response. The second clause explicitly requires COVID-19 connection, suggesting the legislature intended limited rather than "blanket" immunity.

Hospital's "Evidence:" Dr. Goddard's Affidavit

The Hospital submitted an affidavit from its chief administrative officer, Dr. Luke Goddard. The affidavit summarized Loginov's care from Hospital medical

records. Dr. Goddard was not disclosed or qualified as an expert witness, yet he offered medical opinion about causation and treatment standards, beyond mere factual summary of records.

Dr. Goddard's affidavit opined about COVID-19, hyponatremia treatment, and ODS causation — expert medical testimony requiring proper foundation under Federal Rule of Evidence 702. The Hospital provided no foundation for Dr. Goddard's qualifications to render expert ODS medical opinions — beyond his administrative position as a custodian of business records.'[1]

Loginov Opposes the Hospital's Conclusory Assertions.

Loginov submitted Dr. Schwimmer's affidavit exploring the causal connection between improper treatment of hyponatremia and the affliction of ODS, highlighting material factual disputes about causation of that injury.

The district court read the immunity statute to bar the suit, and entered summary judgment for the Hospital. Loginov timely appealed to this Court.

Initial Appeal

The panel affirmed summary judgment, denying all of Loginov's claims.

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[1] Federal Rule of Civil Procedure 56(c)(4) requires "personal knowledge" for fact witnesses. Federal Rule of Evidence 702 requires expert witnesses to be qualified by "knowledge, skill, experience, training, or education." The district court's legal error in applying Rule 56(c)(4) standards to what was expert medical testimony demonstrates the need for more careful analysis of Wyoming's immunity statute, supporting either reversal or certification to the Wyoming Supreme Court.

Significantly, the panel found the negligence action falls squarely within the Wyoming immunity law. Op. 10. No Wyoming court precedent interprets this COVID-related statute. Op. 10. Accordingly, the panel made its best guess how the Wyoming Supreme Court might interpret that law. Op. 10.

Key analysis rests on whether only a COVID nexus triggers immunity, or other causation suggests gross negligence removing the suit from the immunity statute. Plaintiff-Appellant Loginov respectfully petitions the panel and the en banc Court for rehearing of his case, and specifically asks for certification of the issue to the Wyoming Supreme Court.

SUMMARY OF ARGUMENT

This case's importance extends beyond Wyoming. In this Circuit, Kansas, Oklahoma, and Utah have enacted substantially similar COVID-19 immunity statutes with comparable "acts or omissions in arranging for or providing healthcare services" language. The Court's interpretation will serve as persuasive precedent for similar statutory construction issues across multiple circuit states.

Other jurisdictions with similar statutes have nexus requirements. The Connecticut Supreme Court held that immunity "does not turn on whether the defendants' acts or omissions were negligent, but on whether their acts or omissions had a connection to health care services provided in support of Connecticut's COVID-19 response." *Mills v. Hartford Healthcare Corp.*, 298 A.3d 605, 615-16 (Conn. 2023). North Carolina courts deny blanket immunity to healthcare providers. *Land v Whitley*, 898 S.E.2d 17, 24 (N.C. Ct. App. 2024). Likewise, Illinois courts require that healthcare facilities were "engaged in the course of

rendering assistance to the State by providing health care services in response to the COVID-19 outbreak." J*ames v. Geneva Nursing & Rehab. Ctr.*, 236 N.E.3d 1111, 1115-16 (Ill. App. 2023).

The record presents genuine disputes about whether the Hospital's treatment of Loginov fell within any COVID-19 immunity provision:

- COVID-19 Treatment Connection: Whether Loginov's hyponatremia and sodium repletion treatment were "for COVID-19" or for other medical conditions.

- COVID-19 Response Interference: Whether the Hospital's inability to transfer Loginov constituted "response to COVID-19 reasonably interfered with É providing . . . medical care."

- Resource Allocation: Whether treatment decisions were driven by COVID-19 constraints or standard medical protocols.

Certification to the Wyoming Supreme Court is appropriate. The case involves complex factual questions about medical causation that require either certification for legal guidance, or reversal for factual development - but not blanket immunity.

ARGUMENT

I. THE COURT SHOULD CERTIFY THE STATUTORY INTERPRETATION QUESTION TO THE WYOMING SUPREME COURT.

A. Standard for Certification and Applicable Legal Framework

1. The Court Has Authority to Certify the Question.

The Court has inherent authority to certify novel state law questions to a State supreme court for proper determination of state law. Tenth Cir. R. 27.4. *See Pino v. United States*, 507 F.3d 1233 (10th Cir. 2007) (Gorsuch, Cir. J.) (same rule then numbered 27.1); *see also Sinclair Wyo. Refin. Co. v. Infrassure, Ltd.,* 815 F. App'x 248 (10th Cir. 2020); *Morris v. Giant Four Corners, Inc.*, 791 F. App'x 735 (10th Cir. 2019) (certifying tort issue of duty of care to third party); *Spurlock v. Townes,* 594 F. App'x 463 (10th Cir. 2014) (certifying tort issue of comparative fault).

The Wyoming Supreme Court accepts certified questions as set forth in the Wyoming Rules of Appellate Procedure. W.R.A.P. 11.01 ("a question of law which may be determinative É [and] there is no controlling precedent"). That court has readily done so on certification from this Court. *E.g., Bankers Standard Ins. Co. v. JTEC, Inc.*, 567 P.3d 1183 (Wyo. 2025); *Palm-Egle v. Briggs*, 545 P.3d 828 (Wyo. 2024).

With respect to Appellate Procedure Rule 40, the present certification request qualifies as an "issue of exceptional public importance" warranting review in rehearing petitions, as set forth below. Fed. R. App. P. 40; 10th Cir. R. 40. Although the Court prefers motions to certify from the parties, the Court "could *sua sponte* ask the Wyoming Supreme Court to resolve the unsettled and dispositive issue of state law." *Willis v. Bender*, 596 F.3d 1244, 1354 N.6 (10th Cir. 2010) (cleaned up).

Federal courts retain inherent authority to certify questions of unsettled state law when federalism and comity concerns warrant state court guidance, regardless of local rule timing preferences. The Court "may therefore be well advised to consider certifying such a question to the State's highest court." *Carney*

v. Adams, 592 U.S. 53, 67-68 (2020) (Sotomayor, J., concurring). While 10th Cir. R. 27.4(C) provides guidance for typical certification timing, this petition presents exceptional circumstances that support post-decision certification. The circuit-wide importance of Wyoming's statutory interpretation — affecting similar immunity statutes in Kansas, Oklahoma, and Utah — creates judicial economy concerns that transcend normal procedural timing.

Moreover, post-decision certification serves judicial economy by allowing the Wyoming Supreme Court to address the federal court's specific interpretive framework rather than abstract legal questions. This ensures authoritative state guidance on the precise legal issues that will govern future federal court decisions throughout the circuit.

2. Certification Is Appropriate.

Courts will certify questions of law to the State supreme court when (1) Novel questions of state law arise, lacking controlling precedent; (2) the issue is outcome determinative; (3) issues raise broad implications beyond immediate parties; and (4) policy considerations call for state court resolution. *Pino*, 507 F.3d at 1236; *Lehman Bros. v. Schein*, 416 U.S. 386, 391 (1974).

"Concerns about federalism and comity are at their zenith when a 'dispute presents novel issues of state law peculiarly calling for the exercise of judgment by the state courts.'" *Carney*, 592 U.S. at 67 (Sotomayor, J., concurring). Federalism concerns encourage certification of "novel or unsettled questions of state law" to "help build a cooperative judicial federalism." *Arizonans for Off. English v Arizona*, 520 U.S. 43, 77 (1977); *Carney*, 592 U.S. at 67.

Certification does not require "unique circumstances" or a large number of cases affected, before the Court will certify. *Pino*, 507 F.3d at 1236 n.1; *Arizonans*, 520 U.S. at 79.

3. The Supreme Court Endorses Certification.

The Supreme Court has endorsed certification as well and proper in the federal system, for over fifty years. *Lehman Bros. v. Schein*, 416 U.S. 386, 390 (1974) ("That path is open to this Court and to any court of appeals of the United States"). The doctrine of *Erie R. Co. v. Tompkins*[2] favors accurate state law interpretation over federal court guesswork. *Lehman Bros.*, 416 U.S. at 389; *see also Finstuen v. Crutcher,* 496 F.3d 1139, 1148 (10th Cir. 2007).

Certification promotes comity and judicial economy. "It does, of course, in the long run the save time, energy, and resources and helps build a cooperative federalism." 416 U.S. at 391.

B. This Case Presents an Ideal Certification Question.

1. Novel State Law Issue

As the panel opinion noted, there is no Wyoming Supreme Court precedent on the COVID-19 immunity statute's scope. Op.10. The opinion is the first federal interpretation of the law, yet it is speculative. No Wyoming court decisions on this immunity

[2] 304 U.S. 64 (1938)

statute have yet been written. Op.10. The issue is truly novel.[3]

2. Outcome Determinative

The Court's statutory interpretation completely disposes of this case. Op. 12. The complex factual questions about medical causation - including whether ODS resulted from COVID-19 treatment or independent medical decisions - demonstrate why this novel immunity statute requires careful Wyoming Supreme Court ruling rather than federal court guessing.

Decision of the immunity issue determines scope of healthcare immunity statewide. It can also prove persuasive in States both within and without this Circuit.

Loginov's case has not been the first nor will it be the last to face the issue. The ultimate decision will control pending and future cases.

Any issue of medical tort liability affects all Wyoming healthcare providers, as it impacts public health policy during emergency responses. In broader context, a court ruling on this measure also creates precedent for interpreting emergency legislation generally.

3. State Courts Should Resolve Broad Statewide Policy Considerations.

Balance between patient rights and healthcare provider protection is best addressed by the political branches of State governments.

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[3] In *Fonte v. Mem. Hosp.*, the defendant invoked the statute in a motion to dismiss. The court did not reach the immunity question. 2024 WL 2541625 (D. Wyo. Apr. 24, 2024).

Emergency powers and civil liability intersect within the exercise of State police powers. These areas are almost uniquely reserved to State decision and control. U.S. Const. Amend. X. Wyoming-specific healthcare delivery considerations for similar reasons should be decided by Wyoming courts.

4. Similar Statutes Nationwide Call for Authoritative Guidance.

Many States have enacted similar immunity statutes. In addition to Wyoming, similar statutes now exist in Georgia;[4] Kansas;[5] Oklahoma;[6] Utah;[7] Iowa[8]; Louisiana;[9] and North Carolina.[10]

This case presents exceptional importance beyond Wyoming's borders. The Tenth Circuit's interpretation will serve as persuasive precedent for similar COVID-19 immunity statutes in Kansas, Oklahoma, and Utah – all Tenth Circuit States with nearly identical statutory language.

The issue to be certified occurs in Tenth Circuit states with substantially similar COVID-19 immunity statutes:

- Kansas: The Kansas law grants immunity for healthcare provider 'acts, omissions, health-

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[4] Ga. Code. Ann. § 51-16-1.

[5] Kan. Stat. Ann. §§ 60-5503(a) (immunity for "direct response to "COVID-19), 60-5503(c)(2) ("shall not apply to healthcare services not related to COVID-19") and 60-5504.

[6] Okla. Stat. tit. 63, § 1-2401.

[7] Utah Code § 78B-4-517.

[8] Iowa Code § 686D.6.

[9] La. Stat. Ann.-R.S. § 29-771.

[10] N.C. Gen. Stat. § 90-21.133.

care decisions . . . as a direct response to' COVID-19 emergency.

- Oklahoma: Oklahoma law provides comparable immunity during COVID-19 response.
- Utah: The Utah Code establishes similar immunity framework.

Federal courts throughout the Tenth Circuit will look to this Court's interpretation when construing their own states' statutes.

With sister circuit states facing identical interpretation challenges, Wyoming Supreme Court guidance would provide authoritative precedent preventing conflicting federal court predictions about state legislative intent across the region. Because federal courts in Kansas, Oklahoma, and Utah will look to this Court's interpretation when construing their own States' statutes, incorrect interpretation implicates four states. Certification to the Wyoming Supreme Court provides careful, state-specific analysis that should guide the circuit, rather than federal courts' speculation.

Given that Kansas, Oklahoma, and Utah have enacted substantially similar COVID-19 immunity statutes, and that this Court's interpretation controls throughout the Tenth Circuit, certification ensures careful consideration of state policy choices rather than federal court surmising that may inappropriately influence sister-state interpretations.

C. The Court's Statutory Interpretation Creates Problematic Precedent.

The panel opinion recognized potential "absurd result" of blanket immunity. Op. 12. The Court admitted statutory language could grant "immunity

for nearly all claims." Op. 12. But the opinion failed to resolve fundamental ambiguity in the statute, in contravention of statutory canons.

1. The Opinion Avoided Application of Wyoming Canons. Ordinary Meaning Canon

Wyoming courts begin with "ordinary and obvious meaning" of statute language. *Bain v. City of Cheyenne*, — P.3d —, 2025 WL 1702619, at *3 (Wyo. June 18, 2025); *Wiese v. Riverton Mem. Hosp.,* LLC, 520 P.3d 1133, 1141 (Wyo. 2022); *Beitel v. State ex rel. Wyo. Workers' Comp. Div.*, 991 P.2d 1242, 1244 (Wyo. 1999).

In their ordinary meaning, "COVID-19 liability claim" suggests a COVID-19 nexus required for the immunity statute to reach a specific injury. *See Mills*, 296 A.3d at 630; *James*, 250 N.E.3d at 257. 'Words are to be understood in their ordinary, everyday meanings." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 69 (2012).

The Court's interpretation renders "COVID-19" modifier meaningless. This reading violates as well the Surplusage canon, *Bain*, 2025 WL 1702619 at *3 ("we must not give a statute a meaning that will nullify its operation"); *Reading Law* 174 ("every word and every provision is to be given effect.").

Constitutional Avoidance

Blanket immunity raises due process concerns in taking from Loginov a valid chose in action. Wyoming courts read laws to avoid constitutional problems. *Bain*, 2025 WL 1702619 at *4; *Cir. Ct. of Eighth Jud. Dist. v. Lee Newspapers*, 332 P.3d 523, 532 (Wyo. 2014) ("we will not interpret a statute to create an

unconstitutional result if it can be avoided"); *Reading Law* 247 (Constitutional Doubt Canon). *See also Jennings v Rodriguez,* 583 U.S. 281, 286 (2018).

Wyoming courts should "avoid an interpretation that produces an absurd result". *Leal v State ex rel DepÕt of Workforce Servs.,* 553 P.3d 1181, 1186 (Wyo. 2024) (certified Q). The Court failed to use absurdity doctrine despite acknowledging the possibility of absurd results, Op. 12.

Similarly, the Court failed to apply Wyoming's version of the Conjunctive/Disjunctive Canon. *Reading Law* 116. The use of "or" between clauses created a disjunctive list denoting separate conditions. *Amoco Prod. Co. v. Bd. of Comm'rs*, 876 P.2d 989, 993 (Wyo. 1994) ("the word 'or' usually is used in a disjunctive sense"); *Beitel*, 991 P.2d at 1247; *see also Moreno v. Zimmerman*, 2023 WL 4760343 at *6 (D. Wyo. July 26, 20230 (citing *Amoco*).

2. The Court Inappropriately Predicted Wyoming Policy.

The Court essentially legislated by choosing broader immunity interpretation, contrary to the intent of Wyoming law. The panel's goal was to find the Wyoming legislature's intent from unclear statutory text, *Bain*, 2025 WL 1702619 at *3; *Leal*, 553 P.3d at 1186; *Archer v. Mills*, 491 P.3d 260, 262 (Wyo. 2021).

Emergency legislation intended to address COVID-specific challenges was not intended to rewrite general healthcare malpractice reform. The title and the context of the law support a limited immunity scope. Anything beyond that finding would be a policy choice better made by Wyoming's highest court.

3. Sister-State Interpretations Support the Nexus Requirement.

Connecticut and Illinois have interpreted their emergency statutes and COVID executive orders deriving therefrom in particular to require direct nexus to COVID-19. *Mills,* 298 A.3d at 615; *James*, 236 N.E.3d at 1115.

Georgia courts have noted that their law uses explicit "or COVID-19" language showing legislative intent to limit immunity scope. Georgia's nearly identical statute explicitly requires COVID-19 nexus, using language "for COVID-19 or where the response to COVID-19 reasonably interfered" with healthcare services. *Resurgens, LLC v. Ervin,* 894 S.E.2d 408, 413 (Ga. Ct. App. 2023) (requiring nexus to "services related in some manner" to COVID emergency).

Kansas requires "direct response to" COVID-19 emergency.

North Carolina definitively ruled on this point: "it is evident that the Act is not intended to give a health care provider blanket immunity for every claim of civil liability arising during the COVID-19 pandemic." *Land v. Whitley*, 898 S.E.2d 17, 24 (N.C. Ct. App. 2024).

These sister-state formulations demonstrate that legislatures intended limited, COVID-related immunity rather than blanket healthcare immunity.

D. Proposed Certified Question

To address all of the foregoing concerns, Loginov respectfully suggests the following Question for certification to the Wyoming Supreme Court:

"Whether Wyoming Statutes § 35-4-114(d) and § 1-1-141(a)(iii)(B) grant healthcare providers immunity

from negligence claims for medical care unrelated to COVID-19 treatment, or whether statutory immunity requires a nexus between the alleged negligent acts and the provider's response to COVID-19?"

The following sub-questions also might aid in elaboration and clarification of the Wyoming Supreme Court's answer.

Supporting Sub-Questions:

- Does the first clause of § 1-1-141(a)(iii)(B) require COVID-19 nexus?

- How should courts apply constitutional avoidance to prevent over-broad immunity?

- What was the Wyoming legislature's intent regarding scope of emergency immunity?

E. Certification Serves All Parties and Judicial Economy.

Certification affords Loginov an opportunity for authoritative State court review of his claims.

Certification benefits the Hospital with certainty as to Wyoming's immunity scope for future cases.

The State of Wyoming gains authoritative interpretation of important emergency legislation and a guide for the future.

The Tenth Circuit and its federal courts avoid the burden of *Erie* guesswork on novel state law.

CONCLUSION

Given that Kansas, Oklahoma, and Utah have enacted similar COVID-19 immunity statutes, and that this Court's interpretation will influence federal court decisions throughout the Tenth Circuit, certification ensures that Wyoming's interpretation

reflects careful consideration of State policy choices rather than federal court speculation about legislative intent that may inappropriately influence sister-state interpretations.

The Court should grant rehearing and certify this question to the Wyoming Supreme Court, not only to ensure accurate interpretation of Wyoming law, but to provide authoritative guidance to federal court interpretation of substantially similar statutes in Kansas, Oklahoma, and Utah, all within this Circuit.

Proposed Formal Question for Certification:

"Whether Wyoming Statutes § 35-4-114(d) and § 1-1-141(a)(iii)(B), which grant healthcare providers immunity from 'COVID-19 liability claims,' require a nexus between the alleged negligent healthcare acts and the provider's response to COVID-19, or whether these statutes grant blanket immunity for all healthcare negligence regardless of any connection to COVID-19 treatment or response?"

July 22, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on July 22, 2025, the foregoing Brief was filed electronically using the Court's CM/ECF system, which will give notice of the filing to all counsel.

/s/ Theodore M. Cooperstein
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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 40(d)(3) because this brief contains 3,360 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f). This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Apple Pages in Century Schoolbook font size 14.

/s/ Theodore M. Cooperstein
Theodore M. Cooperstein

Attorney for Appellant
William Loginov

APPENDIX D

Wyoming Statutes Annotated
Title 35. Public Health and Safety
Chapter 4. Health Regulations Generally
Article 1. Communicable Diseases
Division 1. Generally
W.S.1977 § 35-4-114

Currentness

§ 35-4-114. Immunity from liability

(a) During a public health emergency as defined by W.S. 35-4-115(a)(i) and subject to subsection (d) of this section, any health care provider or other person, including a business entity, who in good faith follows the instructions of a state, city, town or county health officer or who acts in good faith in responding to the public health emergency is immune from any liability arising from complying with those instructions or acting in good faith. This immunity shall apply to health care providers who are retired, who have an inactive license or who are licensed in another state without a valid Wyoming license and while performing as a volunteer during a declared public health emergency as defined by W.S. 35-4-115(a)(i). This immunity shall not apply to acts or omissions constituting gross negligence or willful or wanton misconduct.

(b) The licensing boards for any health care provider holding a permit or license as a health care provider regulated under title 33 of the Wyoming statutes shall provide by rule and regulations for the temporary licensure of health care providers during a public health emergency as declared by the governor pursuant to W.S. 35-4-115(a)(i). If necessary during a declared public health emergency, the state health

officer may issue temporary practice licenses to health care providers who are retired, who have an inactive license or who are licensed in another state without a valid Wyoming license pending action on an application for issuance of a temporary license by the appropriate licensing board pursuant to this subsection.

(c) All temporary health care provider licenses issued by the state health officer under subsection (b) of this section shall terminate automatically upon declaration by the governor, pursuant to W.S. 35-4-115(a)(i), that the public health emergency has ended.

(d) Any health care provider, person or entity shall be immune from liability for damages in an action involving a COVID-19 liability claim unless the person seeking damages proves that the health care provider, person or entity took actions that constitutes gross negligence or willful or wanton misconduct. Nothing in this subsection shall be construed to limit any other immunity available under law, including the immunity provided in subsection (a) of this section. As used in this subsection, "COVID-19 liability claim" means as defined by W.S. 1-1-141(a)(iii).

(e) Any acts or omissions constituting the basis of a COVID-19 liability claim as defined by W.S. 1-1-141(a)(iii) shall be stated with particularity and shall be proven by clear and convincing evidence.

APPENDIX E

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

[Filed August 6, 2025]

No. 24-8032
(D.C. No. 2:23-CV-00181-KHR) (D. Wyo.)

WILLIAM LOGINOV,

Plaintiff-Appellant,

v.

SHERIDAN MEMORIAL HOSPITAL,
a/k/a Memorial Hospital of Sheridan County, et al.,

Defendants-Appellees.

ORDER

Before EID, KELLY, and CARSON, Circuit Judges.

Appellant's petition for rehearing is denied.

The petition for rehearing en banc was transmitted to all of the judges of the court who are in regular active service. As no member of the panel and no judge in regular active service on the court requested that the court be polled, that petition is also denied.

Entered for the Court

/s/ Christopher M. Wolpert
CHRISTOPHER M. WOLPERT, Clerk