IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA

LAMAR BOTHAM, Plaintiff, v. BRIGHTSIDE HOSPITAL, INC., BRIDGET SIGNET, R.N., JOHN DOE PERSONS 1-5, AND JOHN DOE COMPANIES 1-5, Defendant.	CIVIL ACTION FILE NO. 12AB345678

PLAINTIFF'S RESPONSE TO DEFENDANTS BRIGHTSIDE HOSPITAL INC. AND BRIDGET SIGNET, RN'S SURREPLY BRIEF IN SUPPORT OF THEIR MOTIONS FOR SUMMARY JUDGMENT AND TO EXCLUDE TESTIMONY AND OPINIONS OF PLAINTIFF'S EXPERT WITNESS

COMES NOW Plaintiff Lamar Wayne Botham and hereby files this response to Defendants Surreply Brief in Support of Their Motions for Summary Judgment to Exclude Testimony and Opinions of Plaintiff's Treating Physician and shows this Court the following:

I. INTRODUCTION

Mr. Botham is not required to offer expert testimony because he asserts a claim of ordinary negligence of the type that can be properly presented to an ordinary juror for a causation determination. Additionally, Dr. Reacher's testimony as Mr. Botham's treating physician is admissible to offer proof of causation of Mr. Botham's injuries. Finally, in a medical negligence action, different experts can opine about different elements of the case – specifically, a treating physician's testimony can be considered alongside other testimony assist the jury in finding a causal connection. All of the above assertions are well-established law. Defendants have cherry-picked out-of-context lines from cases that are unequivocally

contrary to their position in an attempt to convince this Court that the law is on their side when it is not.

II. ARGUMENT AND CITATION TO AUTHORITY

A. Plaintiff's claim of an acute injury caused by the ordinary negligence of a non-medical professional does not require expert testimony to establish causation.

Defendants devote a lot of their time to discussing the causation requirement in a medical malpractice case. As this court is aware, Mr. Botham is not bringing a medical malpractice case – Mr. Botham's case is that of ordinary negligence. Defendant acknowledges that this is an ordinary negligence case and that expert testimony is not needed for causation in ordinary negligence cases. Defendant then proceeds to argue that, even though this is an ordinary negligence case, expert testimony should still be required because this case requires a jury to determine "specialized medical questions." Defendants' Surreply at 6. Defendant goes on to "support" their argument with a slew of cases that not only fail to support their argument but are patently and categorically contrary to their argument.

In the cases that Defendants cite, Georgia courts and federal district courts have routinely and unanimously found that expert testimony is not necessary in ordinary negligence cases in which (1) the injury was acute; (2) there was temporal proximity between the incident and the injury; and (3) the causal connection between the incident and the injury would be obvious to laypersons.

1. Mr. Botham's injury was acute, not cumulative.

Defendants rely on *Shiver v. Ga and Fla Railnet, Inc.* (652 S.E.2d 819) to support their argument that Dr. Reacher's testimony is inadmissible because he failed to "rule out all other possible causes" of Mr. Botham's injury through a differential diagnosis. (Defendants' Surreply Brief in Support of their Motions for Summary Judgment and to Exclude Testimony and Opinions of Plaintiff's Expert Witness, hereinafter "Defendants' Surreply" at 12). *Shiver*

is a case brought under the Federal Employer's Liability Act ("FELA") in which an employee sued his employer railroad for respiratory ailments that he sustained due to long-term occupational exposure to dangerous fumes and dust. The *Shiver* court began its analysis by noting the *FELA- specific rule* for showing causation in a chemical exposure case:

> *In a FELA case* involving allegations of *injury due to chemical exposure*, the plaintiff must show specific causation through expert testimony. […]. The trial court correctly identified two methods by which the plaintiff *in a chemical exposure* case may show specific causation in a manner that satisfies the *Daubert* standard (1) "dose/response relationship" or "threshold phenomenon"; and (2) "differential diagnosis."

Shiver v. Ga. & Fla. Railnet, Inc., 652 S.E.2d 819, 820 (2007) (emphasis added).

The court held that the treating physician in *Shiver* did not satisfy the requirements for a "reliable differential diagnosis" because he was unaware of Shiver's previous chemical exposure while working for another railroad and Shiver's treatment by other physicians, including treatment for lung problems. Id. The court excluded the treating physician's testimony because it did not satisfy the requirements for a reliable differential diagnosis, which would include considering "all relevant potential causes of the symptoms. Id. at 821 (2007).

Shiver stands in direct contrast to the instant case. First, the rule demanding a differential diagnosis to show specific causation has only been applied "in FELA case[s] involving allegations of injury due to chemical exposure […]." Id. This is not a FELA case. Mr. Botham is not suing his employer, nor is he asserting an injury caused by long-term chemical exposure. Therefore, the very specific rule that the *Shiver* court asserts is clearly inapplicable to the instant controversy.

Second, *Shiver*, like other cases of its ilk, involved *long-term cumulative injury* that did not have a temporal relationship with a specific incident. "Cumulative trauma disorder refers not to one specific injury, but to numerous disorders caused by the performance of repetitive work over a long period of time." Myers v. Ill. Cent. R.R. Co., 629 F.3d 639, 643

(7th Cir. 2010) (internal citation and punctuation omitted). In the case of a cumulative injury, a differential etiology is essential to prove a connection between the cumulative effects of long-term trauma and the specific incident at the center of the suit. In *Myers v. III. Cent. R.R. Co.* (629 F.3d 639), a long-time railroad employee sued the employer railroad company claiming that the cumulative trauma resulting from the physically demanding work was caused by the employer's negligence. The district court excluded reports offered by Myer's treating physicians because none of them "could point to a specific injury or moment" that brought on his injuries." Id. at 643. Instead, Myers claimed that his injuries were the product of years of working for the Railroad. Id. The court held that in cases like *Myers* that involved cumulative trauma, "courts follow the general principle that a layman could not discern the specific cause and thus they have required expert testimony about causation." Myers v. Ill. Cent. R.R. Co., 629 F.3d 639, 643 (7th Cir. 2010).

Mr. Botham suffered an acute injury, not a cumulative injury. Mr. Botham fell out of his wheelchair onto the floor, hitting his elbow on the way down. In *Myers*, the court contrasted the kind of cumulative injury that required an expert's opinion on causation with the kind that did not. "Expert testimony is unnecessary in cases where a layperson can understand what caused the injury. So, for example, when a plaintiff suffers from a broken leg or a gash when hit by a vehicle, he doesn't need to produce expert testimony. Myers v. Ill. Cent. R.R. Co., 629 F.3d 639, 643 (7th Cir. 2010) (internal citations omitted). Also, had Defendants Sherpardized *Shiver*, they would have found *Clements v. Norfolk Southern Ry. Co.* (2013 U.S. Dist. LEXIS 31169) in which the District Court for the Middle District of Georgia addressed another FELA case where the Plaintiff was injured on the job when he fell off a tire. The *Clements* court held that because "Plaintiff *was able to point to a specific incident* that injured him," i.e., falling from a tire, he was not required to offer specific expert

medical causation testimony at trial. Clements v. Norfolk S. Ry. Co., 2013 U.S. Dist. LEXIS 31169, at *6 (M.D. Ga. Mar. 7, 2013) (emphasis added).

2. *Temporal proximity is enough to establish causation in the context of an acute injury.*

In their brief, Defendants write that ***"[a]pplying Georgia law***, the Eleventh Circuit has affirmed that relying solely on a temporal relationship is not a reliable method." Defendants' Surreply at 11(emphasis added). Defendants support that statement by relying on *Cooper v. Marten Transport, Ltd.* This statement is a blatant and shameless mischaracterization of the holding in *Cooper*. Contrary to Defendants' invention, what the *Cooper* court *actually* held was that reliance on a temporal relationship ***did not meet the federal*** *Daubert* standard for determining expert reliability. Id. at 10. In fact, the *Cooper* court reversed the lower court's grant of defendant's motion for summary judgment on the basis that expert testimony *was not required* in the case because *a temporal relationship was sufficient to determine causation*.

The *Cooper* court devotes a significant portion of its opinion to discussing the differences between causation requirements under state and federal law and finds that "**Georgia law allows the factfinder to draw a causal inference based on temporal proximity between an accident and an injury**." Id. at 968 (11th Cir. 2013). Further, expert testimony is unnecessary to prove causation when such a causal inference can be drawn based on temporal proximity. See Hutcheson v. Daniels, 224 Ga. App. 560, 481 S.E.2d 567, 569 (Ga. Ct. App. 1997) ("[A] lay jury could conclude from common knowledge that a causal connection existed [between a car accident and the plaintiff's injuries] in light of the short lapse between Daniels' accident and his onset of symptoms and receipt of medical treatment."); Jordan v. Smoot, 191 Ga. App. 74, 380 S.E.2d 714, 714-15 (Ga. Ct. App. 1989); cf. Cowart, 697 S.E.2d at 791 ("A lay jury may reasonably infer a causal link between a sharp blow to the head of a patient whose condition appeared to be improving and his death

from bleeding in his head a few hours later."). Cooper v. Marten Transp., LTD., 539 F. App'x 963, 968 (11th Cir. 2013).[1]

The incident that precipitated Mr. Botham's injury was a fall from a wheelchair. After the fall, Mr. Botham immediately began to experience symptoms. The injury that Mr. Botham suffered was acute – whether or not it aggravated pre-existing conditions – and the temporal proximity between the accident and the injury is clear. **Under Georgia law**, the temporal proximity between Mr. Botham's accident makes it unnecessary for him to offer expert testimony to prove causation.

3. *The causal connection between Mr. Botham's fall and his injuries does not involve specialized medical questions.*

Defendants rely on *Cowart v. Widener* (287 Ga. 622) to support their argument that "[e]ven in ordinary negligence claims that involve the jury determining *specialized medical questions* which are beyond the common knowledge and experience of the jury and require the assistance of expert knowledge to resolve, the Supreme Court of Georgia has held that Plaintiff is required to come forward with expert evidence of causation." Defendants Surreply at 6-7 (emphasis added). Plaintiff struggles to imagine a case less relevant to the instant one.

The facts of *Cowart* are grisly, sad, and singular. In *Cowart,* the defendant truck driver and his wife took in the truck driver's brother-in-law (the wife's brother) to live with them. At the time, the brother was "unemployed, had no money, and had been living out of his car." Cowart v. Widener, 697 S.E.2d 779, 782 (2010). The brother was also very sick – he "suffered from a number of health problems, including severe erosive esophagitis caused by gastric acid coming into contact with the esophagus. As a result, [he] experienced oozing of

[1] As will be discussed in greater detail below, the *Cooper* court also held that whether the plaintiffs suffered new or aggravated back problems after the collision was not a specialized medical question that required expert testimony, but was "the type of question a lay jury could decide based on common knowledge."

blood in his throat and a narrowing of the esophageal wall, and it was not unusual for him to cough up small amounts of blood." Id. The defendant truck driver was scheduled to go to Ohio, and his brother-in-law requested to come along. At some point during the trip, the brother-in-law began to cough, said that his "throat was closing in on him" and went to the sleeper compartment to lie down and recover. Id. Three hours later, the truck driver began to smell a foul odor. He went to the sleeper car and discovered that his brother-in-law had died. A coroner concluded that the decedent's death was caused by internal bleeding.

The plaintiffs, the decedent's two adult children, filed a wrongful death suit against the truck driver, his company, and his insurance carrier. "The complaint alleged that [the defendant] negligently or intentionally deprived [decedent] of necessary medical attention, thereby causing his death." Id. at 783. The plaintiffs did not offer expert testimony concerning causation. Instead, they argued that "a jury confronted with undisputed evidence of internal bleeding and [decedent's] subsequent death could draw the reasonable inference that it was the long period of unchecked bleeding that caused [decedent's] death." Id. at 786.

In upholding the lower court's grant for summary judgment, the *Cowart* court first pointed to a flaw in the plaintiffs' argument: the plaintiffs did not allege that the defendant caused the decedent's bleeding, but rather, that the defendant "*failed to secure medical assistance in time* to stop the internal bleeding from killing [the decedent]." Id. (emphasis added). Then the court went on to explain how this issue – the connection between the defendant's failure to render medical aid, the time lapse, and the decedent's death – involved a specialized medical question and was therefore beyond the reasoning of a layperson.

In discussing the need for expert testimony, the *Cowart* court distinguished the term "medical question" from "specialized medical question." The court noted that the term "medical question" had been "used to describe situations where the existence of a causal link between the defendant's conduct and the plaintiff's injury cannot be determined from

common knowledge and experience and instead requires the assistance of experts with specialized medical knowledge." Id. at 784. The court went on to reason that "medical question" was inadequate to describe the kinds of causation questions that require expert knowledge.

> In common parlance, a 'medical' question is any question "of or connected with the practice or study of medicine." Webster's Collegiate New World Dictionary 496 (2d ed. 1987). In this sense, almost all deaths could be said to involve 'medical questions' relating to causation. How many people could describe with precision how a gunshot wound to the head actually causes the death of a human being? But it does not require expert testimony for a lay jury to determine that a gunshot wound to the head of an otherwise healthy person who died shortly thereafter was the proximate cause of her death.

Id.

> Thus, in deciding whether the plaintiff is required to come forward with expert testimony to withstand a defense motion for summary judgment, the critical question is not whether the causation element involves a 'medical question' in the generic sense of the term. Rather, it is whether, in order to decide that the defendant's conduct proximately caused the plaintiff's injury, a lay jury would have to know the answers to one or more 'medical questions' that, as the case law has defined that term, can be answered accurately only by witnesses with specialized expert knowledge. To make the term more clearly reflect its use in deciding cases, we will now refer to 'specialized medical questions.' [S]uch expert evidence is not required in the mine run of simple negligence cases, but it is required in some negligence cases.

Id. at 786. The *Cowart* court emphasized the fact that there was nothing about the decedent's behavior that would have alerted the defendant that he should seek emergency medical care – it was common for the decedent to cough up blood, and at no point did the decedent seem alarmed about his physical condition. The court used the following example to distinguish between cases in which a causation determination requires specialized medical knowledge and those that can be determined by a layperson:

> When a person is profusely bleeding *externally*, a jury may be able to infer a causal link between a failure to secure medical assistance for the individual by one who has a duty to render aid and the individual's death

> shortly thereafter. That is a medical question about causation that lay jurors are qualified by experience and common sense to answer. The same would be true of someone who has been shot and suffered more than a "flesh wound," who is unresponsive after being knocked unconscious, who is visibly unable to breathe, or who is clutching his chest in pain while suffering a possible heart attack. These are all external signs that an average person would understand to signify that a person is in deep physical distress requiring prompt medical assistance.
>
> But the same often cannot be said of internal bleeding, no matter how profuse, unless that condition is revealed externally or has an observed traumatic cause, and there is no evidence of either in this case.

Id. at 787-88. The *Cowart* court held that "[a] jury could not find a causal relationship between [defendant's] failure to render aid at the time the undisputed evidence shows that he first observed [the decedent] in real distress […] and [decedent's] death from internal bleeding […]." Cowart v. Widener, 287 Ga. 622, 632, 697 S.E.2d 779, 788 (2010).

Cowart could not be more different from the case at hand. In *Cowart*, there is no direct or obvious connection between the defendant's lack of action and the decedent's injury. The decedent in *Cowart* had not fallen off a tire, been hit by a car, or fallen out of a wheelchair. The connection between the defendant's lack of action and the decedent's death required the resolution of several medical questions, including, at what point during prolonged internal bleeding is someone at risk of death? Again, the decedent in *Cowart* had been coughing up blood for weeks. This is not a question that ordinary laypeople possess the knowledge to answer. This is the kind of causation issue that necessitates opinion from expert witnesses to resolve.

The incident at issue in the instant case is exactly the kind of causation question that is meant to be decided by a factfinder, and does not require expert testimony. Mr. Botham fell out of a wheelchair and injured himSignet on his way down. Defendant attempts to argue that in this case causation would be a "specialized medical question" because Mr. Botham had pre-existing conditions. Defendants Surreply at 7. Specifically, Defendant's argue that expert

testimony is necessary in this case "because the jury here would be required to […] parse whether [Mr. Botham's] asserted injuries were in fact caused by the alleged fall or by some other alternative cause, given his pre-existing injuries […]." Defendants Surreply at 7. This is simply incorrect. In *Cooper v. Marten Transp., LTD*, another case on which Defendants rely heavily, the court rejected the defendant's argument that because plaintiffs suffered from pre-existing conditions, it couldn't be shown that the collision at issue caused their injuries. "Furthermore, while Appellees presented evidence that [plaintiffs'] injuries may have been the result of pre-existing conditions or [a previous collision], such evidence created a dispute of material fact that the district court was not authorized to resolve at the summary judgment stage." Cooper 539 F. App'x at 968. The court held that "[w]hether the Coopers suffered new or aggravated back problems shortly after a low-speed collision with a tractor trailer is the type of question a lay jury could decide based on common knowledge." Id.

A well-established principle of tort law is that "tortfeasors take their victims as they find them." Cowart, 287 Ga. at 627. "If the person a tortfeasor negligently cuts happens to be a hemophiliac who bleeds to death where most others would have survived, the tortfeasor remains responsible for that wrongful death." Id. In the instant case, Mr. Botham suffered from some health issues before he fell from his wheelchair, but that does not preclude him from bringing suit against Defendants on the basis of the aggravation of those pre-existing injuries, nor does it prevent him from developing new and distinct injuries as a direct result of the specific injury for which Defendants are at fault.

B. As a treating physician whose opinion was formed from facts observed during the course of treating Plaintiff, Dr. Reacher is not subject to *Daubert*.

Dr. Reacher is not subject to *Daubert* because his causation opinion was formed from facts learned or observed during the course of his treatment with Plaintiff. A witness whose opinions were acquired solely through examination and treatment of a patient is not an expert witness pursuant to O.C.G.A. § 9-11-26(b)(4)(A)(I).

> O.C.G.A. § 9–11–26(b)(4)(A)(i) requires a party to identify during discoveryeach expert who will appear at trial, provide a summary on which the expert is expected to testify, and state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. ***However, this court has held that the requirements of this code section apply only to experts whose knowledge of the facts and opinions held were acquired or developedin anticipation of litigation or for trial, and not to an expert witness who is in fact an actor or observer of the subject matter of the suit.***

Austin v. Kaufman, 203 Ga. App. 704, 709 (1992) (emphasis added), citing Candler General Hosp. v. Joiner, 180 Ga. App. 455(2) (1986).

O.C.G.A. § 9–11–26(b)(4)(A)(i) specifically applies to treating physicians and is simply a codification of a well-established law both in the state of Georgia and in the federal districts on which Georgia courts rely for precedent in their application of Rule 702. Federal Courts have repeatedly and routinely held that treating physicians are not experts under *Daubert. "*It is within the normal range of duties for a health care provider to develop opinions regarding causation and prognosis during the ordinary course of an examination." Bruce v. Classic Carrier, Inc., 2013 WL 11903482, at *2 (N.D. Ga. 2013), quoting Fielden v. CSX Transp., Inc., 482 F.3d 886, 870 (6th Cir. 2007). "With Plaintiff having chosen not to serve an expert report, [the treating physician's] testimony must be limited to his treatment of Plaintiff, but as a treating physician, he is free to apply his training and experience to facts learned from the Plaintiff and he may draw a conclusion as to … the primary cause of the condition that necessitated the surgery." *Id*. at *2. ("No expert report or summary of testimony is required for Dr. Stein to testify as a *fact* witness under Federal Rule of Evidence 701. Because Puglisi timely disclosed Dr. Stein as his treating physician, *i.e.*, a fact witness, Dr. Stein may testify as to facts acquired *and* opinions formed during his "personal consultation" with Puglisi."). Piepes v. NAI Entm't Holdings LLC, No. 17-CV-505-SJB, 2019 U.S. Dist. LEXIS 165668, at *3 n.1 (E.D.N.Y. Sep. 26, 2019)

Further, treating physicians may offer opinions regarding causation if that opinion was formed during the course of their treatment. "[T]reating physicians testifying about opinions reached during treatment are fact witnesses, not expert witnesses. (Jan. 29 Order at 2); *Puglisi*, 2013 U.S. Dist. LEXIS 111972, 2013 WL 4046263, at *6 (E.D.N.Y. Aug. 8, 2013). "Treating physicians may be treated as fact witnesses not required to provide an expert report or summary of testimony prior to trial because they are a species of percipient witness not specially hired to provide expert testimony; rather, they are hired to treat the patient and may testify to and opine on what they saw and did without the necessity of the proponent of the testimony furnishing a written expert report." Piepes v. NAI Entm't Holdings LLC, No. 17-CV-505-SJB, 2019 U.S. Dist. LEXIS 165668, at *2 (E.D.N.Y. Sep. 26, 2019); "When a treating physician testifies regarding opinions formed and based upon observations made during the course of treatment, the treating physician need not produce a Rule 26(a)(2)(B) report." Harrell v. Carnival Corp., No. 19-22667-CIV-MARTINEZ/AOR, 2021 U.S. Dist. LEXIS 260044, at *4 (S.D. Fla. Sep. 23, 2021); "[A] treating physician may testify as a lay witness about his or her diagnosis of the individual, issues of causation, and the individual's prognosis as long as those opinions are based on his or her personal observations during the course of treatment of the individual rather than as part of litigation preparation, and as long as those opinions were necessary for his or her treatment of the individual." Schutz v. Oliveras, No. 8:19-cv-1763-TPB-JSS, 2021 U.S. Dist. LEXIS 263243, at *6 (M.D. Fla. May 7, 2021); "Treating physicians commonly consider the cause of any medical condition presented in a patient, the diagnosis, the prognosis, and the extent of disability, if any caused by the condition or injury." Ford v. NCL Bahamas Ltd., No. 17-CV-24404-MORE, 2019 U.S. Dist. LEXIS 146444, at *18 (S.D. Fla. June 4, 2019).

The line between who is a medical expert and who is a treating doctor is drawn when a treating doctor expresses an opinion that is not related to their treatment. *Wilson v. Taser Int'l,*

Inc., 303 Fed. Appx. at 712. A treating physician's testimony becomes expert testimony when the treating physician expresses an opinion on causation where the determination of the cause of the injury did not aid in the treatment of the patient. Id. at 713. In *Wilson*, Plaintiff was tased during a training exercise and experienced immense, lasting back pain. Id. at 709-710. Plaintiff was later diagnosed with two compression fractures of his thoracic spine. Id. at 710. Plaintiff offered the expert testimony of his treating doctor, Dr. Edward Meier, who specializes in family practice and occupational medicine. Id. at 710. Dr. Meier provided the expert opinion that Wilson's lumbar fractures were caused by the tase gun manufactured by TASER. Id. The court found that since what caused Wilson's fractures was not part of Dr. Meier's treatment, he was an expert witness subject to *Daubert*. Id. at 712-713.

Here, Dr. Reacher is a treating physician and not subject to *Daubert*. Contrary to Dr. Meier in *Wilson*, every opinion that Dr. Reacher formed relating to causation was directly related to his treatment of Mr. Botham. (Deposition of Dr. Reacher, hereinafter "Reacher Depo." at 43:8-10). The defendants improperly focus on what they consider to be an improper differential diagnosis, but that argument is irrelevant. "While differential diagnosis is a standard and often reliable scientific technique used to identify the cause of a medical problem, the failure of a treating physician to engage in this specific methodology in formulating causation opinions does not render the treating physician's opinions automatically inadmissible." Mikulec v. Mercedes-Benz United States, No. 05-CV-6069, 2009 U.S. Dist. LEXIS 147367, at *11 (W.D.N.Y. Sep. 29, 2009).

> Courts do not require that all potential causes of an ailment be ruled out before treating physicians can furnish causation opinions based on their care and treatment of their patients. Rather, to the extent that ... physicians do not fully consider and rule out all possible causes, such deficiencies generally go to the weight of the evidence, not admissibility, and weighing the evidence is a function for the jury.

Id. (internal citations and punctuation omitted).

Courts have routinely held that "treating physicians have routinely been permitted to testify to determinations that they made in the course of providing treatment regarding the cause of an injury and its severity." Id. (internal citations and punctuation omitted). It was not necessary for Dr. Reacher to review Mr. Botham's complete medical history or the depositions of this case to make causation determinations to assist in his diagnosis and treatment of Mr. Botham's injury. Also, it was proper for Dr. Reacher to consider the temporal relationship between Mr. Botham's fall and his injuries in determining causation. See Bonner v. ISP Techs., Inc., 259 F.3d 924, 931 (8th Cir. 2001) ("Under some circumstances, a strong temporal connection is powerful evidence of causation.") (citation omitted).

C. *A fact-finder can properly consider Dr. Reacher's testimony in addition with other evidence to make a causation finding in this case*.

Finally, Defendants incorrectly assert that Plaintiff is relying solely on Dr. Reacher's testimony to prove causation in this case. Defendants are incorrect. As Plaintiff stated in his initial response to Plaintiff's Motion for Summary Judgment, both Nurse Phil Hargreaves and Nurse Debra Luther will also provide expert opinions concerning breaches in the standard of care by Defendant Nurse Signet as well as hospital personnel. The Georgia Court of Appeals has held that "[c]ausation may be established by linking the testimony of several different experts." Knight v. Roberts, 730 S.E.2d 78, 86 (2012).

Contrary to Defendants' inaccurate contention, Dr. Reacher *did in fact conduct a differential diagnosis.* To determine his differential diagnosis, Dr. Reacher considered Mr. Botham's chief complaint, his medical history, his current medical condition, his family history, social history (e.g., social habits like drinking and smoking), as well as his living and working environment. Dr. Reacher also performed a physical exam and gathered data through blood tests, urinalysis, x-rays, MRIs, and CT scans. (Reacher Depo. at 20:23-21:24). Based on Mr. Botham's reporting of his pain, in addition to the MRI which showed tearing of

his cartilage and a physical examination that was consistent with someone who had torn cartilage in their hip, Dr. Reacher concluded that the fall from his wheelchair had aggravated Mr. Botham's previous injuries resulting in increased pain. (Reacher Depo. at 36:25-37:22). This testimony is properly admitted along with the expert testimony from Nurses Hargreaves and Luther to determine causation.

CONCLUSION

As a treating physician, Dr. Reacher is not subject to *Daubert*. In the alternative, if Dr. Reacher were tendered as a non-retained expert witness subject to *Daubert*, it was not error for him to not review some of Plaintiff's external records because the temporal connection between the accident and Plaintiff's injury removed the necessity for a differential diagnosis. Moreover, per Georgia law, Defendant's arguments about Dr. Reacher's not having reviewed some of Plaintiff's records goes to the weight of Dr. Reacher's testimony, not its admissibility. All matters of credibility are for the jury to decide. Therefore, Defendant's Motion must be DENIED.