THE USE OF THE MEDICAL DIAGNOSIS OR TREATMENT EXCEPTION TO HEARSAY IN DOMESTIC VIOLENCE CASES: THE ADMISSIBILITY OF TESTIMONY FROM MEDICAL PROVIDERS ABOUT STATEMENTS REGARDING THE IDENTITY OF AN ALLEGED PERPETRATOR UNDER NEBRASKA RULE OF EVIDENCE 803(3)

I. INTRODUCTION

Domestic violence perpetrators have acquired the reputation of using bullying tactics and extortion to instill fear in their victims, ensuring victims refuse to testify out of fear for their safety. The Nebraska Legislature has expressed concern regarding the help that domestic violence victims receive through Nebraska’s criminal justice system. When a victim refuses to testify, the State is faced with a dilemma in proving the defendant committed the alleged crime, and therefore the State is unable to provide the protections the legislature has expressed is an issue for statewide concern. However, the State may still be able to prove a defendant is guilty even though a victim refuses to testify, thus affording the desired protections to domestic

1. See Davis v. Washington, 547 U.S. 813, 833 (2006) (“[Domestic violence crimes are] notoriously susceptible to intimidation or coercion of the victim to ensure that she does not testify at trial.”); see also Neb. Rev. Stat. § 29-4301 (Reissue 2016) (“The Legislature finds that because of the fear and stigma that often results from crimes of . . . domestic violence, and because of the risk of retaliatory violence by the perpetrator, many victims hesitate to seek help even when it is available at no cost to them.”).


[Victims may fail to receive needed vital care and counseling and thus lack the support, resources, and information necessary to recover from the crime, to report the crime, to assist in the prosecution of the crime, to participate effectively in the justice system, to achieve legal protections, and to prevent future sexual assaults and domestic violence. This is a matter of statewide concern, and the prevention of violence is for the protection of the health, safety, and welfare of the public.]

Id.

3. See Oldman v. State, 998 P.2d 957, 960 (Wyo. 2000) (explaining the victim of domestic violence failed to appear at trial and the State proffered the identity of the defendant through testimony from medical providers over the defendant’s hearsay objections); see also Neb. Rev. Stat. § 29-4301 (explaining the use of the criminal justice system to eradicate domestic violence “is a matter of statewide concern”). Cf. State v. Smith, 876 N.W.2d 180, 194 (Iowa 2016) (Waterman, J., dissenting) (citations omitted) (“The rate of recantation among domestic violence victims has been estimated between eighty and ninety percent.”).
violence victims.\textsuperscript{4} The medical diagnosis or treatment exception to hearsay has become a tool utilized in court that allows the identity of an alleged perpetrator into evidence in domestic violence cases.\textsuperscript{5}

This Note will first state background information regarding the Nebraska Rules of Evidence governing hearsay.\textsuperscript{6} This Note will then provide facts and background to Nebraska Supreme Court cases that used the medical diagnosis or treatment exception as a tool to admit the identity of a child sexual abuse perpetrator into evidence.\textsuperscript{7} Next, this Note will detail cases where parties used the medical diagnosis or treatment exception to admit the identity of perpetrators of domestic violence into evidence.\textsuperscript{8} Then, this Note will provide cases where courts held the opposite and determined the identity of perpetrators in domestic violence cases were not admissible under the exception.\textsuperscript{9} Finally, this Note will argue why the medical diagnosis or treatment exception has logical support to admit the identity of perpetrators in domestic violence cases and will urge the Nebraska Supreme Court to adopt this reasoning.\textsuperscript{10}

II. BACKGROUND

A. THE MEDICAL DIAGNOSIS OR TREATMENT EXCEPTION TO THE HEARSAY RULE OF EVIDENCE IN NEBRASKA

1. The Nebraska Hearsay Rules

Nebraska Revised Statute section 27-801 ("Rule 801") defines hearsay as a statement made by someone other than a declarant during his or her testimony at a trial or hearing that is offered in evidence to prove the truthfulness of the matter alleged.\textsuperscript{11}

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\item \textsuperscript{4} See Oldman, 998 P.2d at 960 (noting the prosecution utilized the medical diagnosis or treatment exception after the victim of domestic violence failed to appear as a witness at trial, admitting the identity of the defendant as the assailant into evidence).
\item \textsuperscript{5} Id. See, e.g., Perry v. State, 956 N.E.2d 41 (Ind. Ct. App. 2011) (opining that the medical diagnosis or treatment exception could be used to admit testimony about the identity of the perpetrator in a domestic violence case).
\item \textsuperscript{6} See infra notes 11-15 and accompanying text.
\item \textsuperscript{7} See infra notes 16-71 and accompanying text.
\item \textsuperscript{8} See infra notes 72-146 and accompanying text.
\item \textsuperscript{9} See infra notes 147-180 and accompanying text.
\item \textsuperscript{10} See infra notes 181-237 and accompanying text.
\item \textsuperscript{11} Neb. Rev. Stat. § 27-801(1)-(3) (Reissue 2016). The statute provides:
(1) A statement is (a) an oral or written assertion or (b) nonverbal conduct of a person, if it is intended by him as an assertion; (2) A declarant is a person who makes a statement; (3) Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.
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Revised Statute section 27-802 ("Rule 802") provides the general rule that statements constituting hearsay are inadmissible.\footnote{12. See id. § 27-802 (Reissue 2016) ("Hearsay is not admissible except as provided by these rules, by other rules adopted by the statutes of the State of Nebraska, or by the discovery rules of the Supreme Court.").}

However, Nebraska Revised Statute section 27-803 denotes several exceptions where hearsay testimony would be otherwise excluded as stated in Rule 802.\footnote{13. See id. § 27-803 (declaring statements constituting an exception to the hearsay rule "[a]re not excluded . . . even though the declarant is available as a witness").} More specifically, Nebraska Revised Statute section 27-803(3) ("Rule 803(3)") provides an exception to the hearsay rule that allows statements to be admitted into evidence when the statements are for the purpose of medical diagnosis or treatment.\footnote{14. See id. § 27-803(3) ("[S]tatements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment . . . .").} Although the declarant may be available to testify, the rules allow testimony from third parties regarding a declarant’s statement so long as the statement was reasonably pertinent for medical treatment or diagnosis.\footnote{15. Id.}

2. State v. Vaught: The Nebraska Supreme Court Held Testimony from a Medical Provider Regarding Identity Is Admissible Under Rule 803(3) in a Child Sexual Abuse Case

In \textit{State v. Vaught},\footnote{16. 682 N.W.2d 284 (Neb. 2004).} the Nebraska Supreme Court concluded the identity of a perpetrator in a child sexual abuse case was admissible under Rule 803(3), the medical diagnosis or treatment exception, because the statements regarding identity were the type delineated by Rule 803(3).\footnote{17. See \textit{State v. Vaught}, 682 N.W.2d 284, 293 (Neb. 2004) (concluding the doctor’s "testimony regarding the victim’s identification of [the defendant] as the perpetrator was admissible under § 27-803(3)").} In \textit{Vaught}, the State charged Darrel J. Vaught with first degree sexual assault of a child.\footnote{18. \textit{Vaught}, 682 N.W.2d at 286.} Testimony during a bench trial in the Douglas County District Court showed Vaught digitally penetrated a four-year-old female’s vagina.\footnote{19. Id. “[T]he victim said that ‘her Uncle DJ put his finger in her pee-pee.’” Id. Dr. Cathy Hudson “testified that the injury was consistent with digital penetration.” Id.} After staying at her grandparents’ house, where Vaught resided, the victim’s stepmother observed discoloration and inflammation of the victim’s genital area.\footnote{20. Id.} Those events led to a conversation with the victim about what oc-
curred during the stay, and she indicated Vaught caused the injury. \(^{21}\) After arriving at the emergency room, Dr. Larry Lamberty performed an examination of the victim's genital area. \(^{22}\) Dr. Lamberty testified that he had identified himself as a doctor to the victim and was going to administer a medical examination. \(^{23}\) Furthermore, Dr. Lamberty testified he believed the victim understood that he was a doctor, and was aware she was in a hospital. \(^{24}\)

Vaught objected to Dr. Lamberty's testimony regarding the victim's statements on hearsay grounds. \(^{25}\) The trial court overruled Vaught's objections and allowed Dr. Lamberty to proceed with his testimony. \(^{26}\) Dr. Lamberty testified that during his examination he asked the victim about her injuries, and she replied that Vaught digitally penetrated her vagina. \(^{27}\) A subsequent examination by another doctor corroborated the victim's allegation of digital penetration. \(^{28}\)

The court found Vaught guilty of first degree sexual assault of a child and sentenced him to six to ten years in prison. \(^{29}\) Vaught appealed to the Nebraska Court of Appeals, and the court subsequently affirmed his conviction. \(^{30}\) In doing so, the court reasoned that the Nebraska Supreme Court had previously ruled on facts similar to Vaught that statements made to medical professionals by a child sexual assault victim were admissible under Rule 803(3). \(^{31}\) Furthermore, the court acknowledged that Dr. Lamberty's testimony indicated that identity is important in treating a patient's overall mental health. \(^{32}\) Moreover, Dr. Lamberty testified that knowing the identity of the of-

\(^{21}\) See id. ("[T]he victim's father's wife had a conversation with the victim about what had happened, which conversation prompted the victim's father's wife to ask the victim's father who 'DJ' was.").  
\(^{22}\) Id.  
\(^{23}\) Id.  
\(^{24}\) See id. ("[Dr. Lamberty] testified that he saw the victim in one of the examination rooms, that he introduced himself as a doctor, and that he had no concerns that the victim was unable to understand where she was or who he was.").  
\(^{25}\) Id.  
\(^{26}\) Id.  
\(^{27}\) Id. ("[Dr. Lamberty] testified that the victim said that 'her Uncle DJ put his finger in her pee-pee.'"").  
\(^{28}\) Id. "Dr. Cathy Hudson testified that she saw the victim a few days later for a more thorough examination . . . [and] . . . that the injury was consistent with digital penetration."  
\(^{29}\) Id. at 286.  
\(^{30}\) Id. at 287.  
\(^{31}\) Id. at 288. "In rejecting Vaught's hearsay argument, the Court of Appeals notes that the Nebraska Supreme Court has previously found statements similar to the statement admitted in this case and made under somewhat similar circumstances to be admissible under § 27-803(3)."  
\(^{32}\) Id. at 287. "Dr. Lamberty further testified that it is important for him, in assessing the patient's condition and determining treatment, to know who the perpetrator was . . . for purposes of treating the patient's mental well-being."
fender is important to ensure the patient’s safety and to avoid entrusting the patient to a potential perpetrator.\textsuperscript{33}

On appeal to the Nebraska Supreme Court, the court reviewed the court of appeals’ affirmance of the trial court’s ruling that admitted Dr. Lamberty’s testimony regarding Vaught’s identity under Rule 803(3).\textsuperscript{34} The Nebraska Supreme Court affirmed the court of appeals’ ruling and concluded that Dr. Lamberty’s testimony identifying Vaught as the perpetrator was admissible under Rule 803(3).\textsuperscript{35} The court began its analysis with a premise promulgated by the United States Court of Appeals for the Eighth Circuit that the medical diagnosis or treatment exception is founded on the notion that a person has a selfish motive when disclosing information to a medical professional in order to receive the correct treatment for injuries sustained.\textsuperscript{36} Because this reasoning focused on the victim’s state of mind, the court expressly declined to adopt the Eighth Circuit’s rule, but noted this rationale helped guide the decision in Vaught.\textsuperscript{37}

The court reasoned that for testimony to be admissible under Rule 803(3), a party must show three things: (1) the statement was reasonably pertinent to medical diagnosis or treatment; (2) the doctor

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  \item Dr. Lamberty testified that it is important for a medical professional in the situation he was in to obtain a thorough history regarding the causation and nature of the injury. Dr. Lamberty further testified that it is important for him, in assessing the patient’s condition and determining treatment, to know who the perpetrator was... so that he does not release a patient into the care of a perpetrator...

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\textsuperscript{33} Id. The court explained:

\textsuperscript{34} Id. The court stated the appellant’s argument on appeal: “Vaught asserts that the Court of Appeals erred in concluding that the district court did not err in admitting Dr. Lamberty’s testimony...” Id.

\textsuperscript{35} See id. at 288 (concluding Dr. Lamberty’s testimony regarding what the victim relayed to him was admissible under Rule 803(3)). The Nebraska Supreme Court noted that “[w]here the Nebraska Evidence Rules commit the evidentiary question at issue to the discretion of the trial court, the admissibility of evidence is reviewed for an abuse of discretion.” Id. at 287.

\textsuperscript{36} Id. The court noted “the Eighth Circuit stated that the hearsay exception for statements made for purposes of medical treatment ‘is bottomed upon the premise that a patient’s “selfish motive”... in receiving the proper treatment guarantees the trustworthiness of the statements made to her physician.’” Id. (quoting Olesen v. Class, 164 F.3d 1096, 1098 (8th Cir. 1999)).

\textsuperscript{37} See Vaught, 682 N.W.2d at 289 (rejecting the rule promulgated by the Eighth Circuit that focused on the victim’s state of mind, but noting the reasoning helped shape the decision reached in Vaught). The court stated that:

Focusing on the victim’s state of mind, the Eighth Circuit held that such statements were admissible only when the prosecution is able to demonstrate that the victim’s motive in making the statement was consistent with the purpose of promoting treatment—that is, “where the physician makes clear to the victim that the inquiry into the identity of the abuser is important to diagnosis and treatment, and the victim manifests such an understanding.”

Id. at 288-89 (quoting Olesen, 164 F.3d at 1098).
reasonably relied upon the statement while make a medical diagnosis or treatment; and (3) the purpose of the statement was to provide assistance to a medical professional for the diagnosis or treatment of the patient. The court also noted that Rule 803(3) allows for circumstantial evidence to reasonably infer a declarant’s state of mind at the time of the statement.

The court deemed the evidence sufficient for the trial court to admit Dr. Lamberty’s testimony regarding the victim’s statement made about the perpetrator’s identity under Rule 803(3). The court stressed the importance that Dr. Lamberty testified that the victim understood he was performing a medical examination and the questions asked were to promote medical treatment, which fulfilled the requirement that the statement provide assistance to a medical provider for treatment. Because of those factors, the court reasoned that the victim was motivated to make the statements in order to gain medical treatment.

The court further inferred from Dr. Lamberty’s testimony that he reasonably relied upon the statements proffered by the victim in order to administer medical treatment. Moreover, the statement was reasonably pertinent to the victim’s medical treatment because the identity of the perpetrator was a consideration for the safety and mental health of the victim. Finally, the court repeated that Dr. Lamberty’s

38. See id. at 289 (“In order for testimony to be admissible under § 27-803(3), it is necessary to establish that the statement at issue falls within the exception, bearing in mind the purposes noted by the [Eighth Circuit].”). In further explaining the rule, the court provided:

[J]The evidence must satisfactorily demonstrate that the circumstances under which the statement was made were such that the declarant’s purpose in making the statement was to assist in the provision of medical diagnosis or treatment, that the declarant’s statement was reasonably pertinent to such diagnosis or treatment and, further, that a doctor would reasonably rely on such statement.

Id.

39. See id. (noting that direct evidence is not required to prove the declarant’s state of mind for purposes of Rule 803(3)).

40. Id. at 289-90.

41. See id. at 289 (stating Dr. Lamberty’s testimony was sufficient to show the victim’s purpose in the making the statement was to provide information for medical treatment, inferred from Dr. Lamberty’s testimony that the victim understood she was in a hospital and speaking to a doctor).

42. See id. (“[T]he circumstances were such that the [four]-year-old victim clearly understood that a medical examination was being performed, that the purpose of the doctor’s questions was to assist in medical diagnosis and treatment and, thus, that the victim’s statements were motivated by seeking treatment.”).

43. See id. (“Dr. Lamberty testified that he had no concerns that the victim did not understand the nature of the examination, and his testimony indicates his state of mind was such that he reasonably relied on the victim’s statement.”).

44. See id. (“Dr. Lamberty also testified that there were valid medical treatment purposes for learning the identity of the perpetrator and that such purposes were pertinent to diagnosis and treatment.”).
testimony was adequate to deduce the victim's state of mind when offering the statement to Dr. Lamberty.\textsuperscript{45} Therefore, the statement identifying Vaught as the perpetrator met all of the requirements to satisfy admission under Rule 803(3).\textsuperscript{46} Based on the foregoing reasons, the Nebraska Supreme Court affirmed the court of appeals' ruling that Dr. Lamberty's testimony regarding Vaught's identity was admissible under Rule 803(3).\textsuperscript{47}

3. State v. Vigil: The Nebraska Supreme Court Determines a Medical Provider's Testimony About the Identity of a Perpetrator of a Child Sexual Assault Is Admissible Under Rule 803(3)

In State v. Vigil,\textsuperscript{48} the Nebraska Supreme Court affirmed that under Rule 803(3), a child sexual assault victim's statements made during a forensic interview were admissible when the statements' purpose helped a medical professional recommend a treatment plan.\textsuperscript{49} The State of Nebraska indicted Jorge Vigil on two counts of first degree child sexual assault for incidents involving his stepdaughter.\textsuperscript{50} D.S., the victim, stated Vigil forced her to perform oral sex on him on multiple occasions until D.S. informed her mother of the abuse.\textsuperscript{51}

When D.S.'s mother reported the abuse to the sheriff's office, Kelli Lowe at Northeast Nebraska Child Advocacy Center ("CAC") subsequently administered a forensic interview to D.S.\textsuperscript{52} Lowe explained the purpose of the forensic interview is to compile information from a victim so the victim only has to endure sharing the information one time.\textsuperscript{53} Lowe further explained if a treating physician does not observe the interview, she summarizes and briefs the interview to the physician, who then determines the appropriate course for a victim's aftercare.\textsuperscript{54}

\textsuperscript{45} Id. at 287.
\textsuperscript{46} See id. at 289-90 (concluding "[s]uch testimony by Dr. Lamberty was sufficient to infer the victim's state of mind in making the statement," and the trial court properly admitted the testimony regarding the identity of Vaught under Rule 803(3)).
\textsuperscript{47} Id. at 293.
\textsuperscript{48} State v. Vigil, 810 N.W.2d 687 (Neb. 2012).
\textsuperscript{49} State v. Vigil, 810 N.W.2d 687, 698 (Neb. 2012). The Nebraska Supreme Court determined that "[t]he trial court did not err in finding that the elements of the medical purpose exception found in Rule 803(3) were met." Id.
\textsuperscript{50} Id. 810 N.W.2d at 691.
\textsuperscript{51} Id. “D.S. had told her mother that Vigil had repeatedly forced her to perform oral sex on him over the course of the previous 2 years.” Id.
\textsuperscript{52} Id. at 692. In her job capacity as a forensic interviewer, Lowe’s duties included performing a forensic interview with patients to inquire into suspected abuse or injuries. Id. at 693.
\textsuperscript{53} See id. ("Lowe testified that the purpose of the interviews was not to aid and assist law enforcement. Her job is 'simply . . . to gather the information for all, for everyone involved so that the child only has to go through it one time.'").
\textsuperscript{54} Id. The court described the interviewer's role as follows:
Before Lowe interviewed D.S. at the CAC, an investigator from the Madison County Sheriff’s Office informed D.S.’s mother the purpose of a forensic interview was to ensure victims received appropriate medical attention. The investigator disclosed that after the interview, a doctor or nurse would perform a medical examination. At trial, D.S.’s mother testified she explained to D.S. the process of the interview and medical examination. Moreover, D.S.’s mother testified she was concerned with her daughter’s wellbeing and mental health.

At the start of the interview, Lowe explained her role to D.S. and then began asking general questions regarding the alleged abuse. D.S. detailed that over a period of two years, Vigil forced D.S. to observe pornography and engage in oral sex approximately ten to twenty times. Lowe’s information gathering ultimately helped detail a treatment plan by D.S.’s treating physician. The doctor discharged D.S. with instructions to obtain therapy and a physical examination.

A jury convicted Vigil of two counts of sexual abuse of a child, with a sentence of twenty to thirty years per count to run consecutively. Vigil appealed directly to the Nebraska Supreme Court, alleging the trial court erred in overruling his motion in limine to prohibit Lowe’s interview of D.S. from being introduced into evidence.
at trial.\textsuperscript{64} Moreover, Vigil asserted the forensic interview did not satisfy the admissibility requirements under Rule 803(3) because the interview’s primary purpose was a law enforcement investigation and not medical treatment.\textsuperscript{65}

In Vigil, the Nebraska Supreme Court determined that a statement may be admissible despite having a dual purpose of prosecution and medical treatment.\textsuperscript{66} In order to be admissible under Rule 803(3), the proponent must demonstrate that the statement made was reasonably pertinent to medical treatment and the statement was made for the purpose of providing medical treatment.\textsuperscript{67} If the two requirements are met, the court declared that the primary investigatory purpose in eliciting the statement does not preclude admission under Rule 803(3) if the statement is also made in contemplation of medical treatment.\textsuperscript{68} Despite having a dual purpose, the court concluded that

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  \item \textsuperscript{64} Id.
  \item \textsuperscript{65} Id. at 691. The court summarized Vigil’s argument: “Jorge Vigil . . . argues that because some time had passed since the sexual assaults and the victim did not see the physician that day, the primary purpose of the interview was for law enforcement purposes and it should not fall under [R]ule 803(3).” Id. The Nebraska Supreme Court also explained “we will review for clear error the factual findings underpinning a trial court’s hearsay ruling and review de novo the court’s ultimate determination whether the court admitted evidence over a hearsay objection or excluded evidence on hearsay grounds.” Id.
  \item \textsuperscript{66} See id. at 695-97 (reasoning that a statement can have the dual purpose of medical treatment and investigatory purposes, and be admitted under Rule 808(3), as long as the statement meets the requirements of assisting in medical treatment and being reasonably pertinent to medical treatment). The court stated that “courts agree that the purpose of the statement need not be solely for the purpose of medical diagnosis or treatment in order to fall under Rule 803(3).” Id. at 695. See also Ohio v. Clark, 135 S. Ct. 2173, 2180 (2015) (citation omitted) ("[A] statement cannot fall within the Confrontation Clause unless its primary purpose was testimonial. Where no such primary purpose exists, the admissibility of a statement is the concern of state and federal rules of evidence, not the Confrontation Clause.").
  \item \textsuperscript{67} See Vigil, 810 N.W.2d at 696-97 (explaining the requirements for a statement to be admitted under Rule 803(3)) are the statements show that the person making the statements did so in order to assist in treatment and the statement was reasonably pertinent to medical treatment). The Nebraska Supreme Court explained: [S]taticements gathered strictly for investigatory purposes do not fall under [R]ule 803(3). Statements having a dual purpose are admissible under [R]ule 803(3) only if the proponent of the statements demonstrates that (1) the declarant’s purpose in making the statements was to assist in the provision of medical diagnosis or treatment and (2) the statements were of a nature reasonably pertinent to medical diagnosis or treatment by a medical professional.
  \item \textsuperscript{68} See id. (declaring that a statement is admissible under Rule 803(3) despite having dual purposes of investigation and medical treatment). The Nebraska Supreme Court reasoned that statements regarding identity in relation to the medical treatment of a child sexual abuse victim are reasonably pertinent because:
Lowe's recorded interview of D.S. identifying Vigil as the abuser was correctly admitted because the statements satisfied both requirements of Rule 803(3). Therefore, the statement affected the treatment of D.S.'s psychological and physical health, and the trial court properly admitted the statements. Thus, the court affirmed the trial court's ruling that Lowe's testimony regarding Vigil's identity was admissible under Rule 803(3).

B. DOMESTIC VIOLENCE CASES: INSTANCES WHERE COURTS CONSIDERED ADMITTING THE IDENTITY OF AN ALLEGED PERPETRATOR UNDER THE MEDICAL DIAGNOSIS OR TREATMENT EXCEPTION

1. United States v. Joe: The Tenth Circuit's Seminal Decision to Extend the use of the Medical Diagnosis or Treatment Exception to Encompass Statements Relating to Identity in a Domestic Sexual Assault Case

In United States v. Joe, the United States Court of Appeals for the Tenth Circuit concluded a medical provider's testimony regarding the identity of the victim's alleged rapist was admissible under the Federal Rule of Evidence 803(4) ("Federal Rule 803(4)"). In Joe, a jury convicted Melvin Joe of one count of first degree murder and one while statements relating to fault are generally not admissible under [R]ule 803(3), when a child is sexually abused, and especially when the child has a familial relationship with the child's abuser, the identity of the perpetrator is reasonably pertinent to diagnosis and treatment, because the victim cannot be effectively treated if sent right back into the abuser's clutches.

Id. at 698 (footnote omitted).

69. Id. at 697-98. The Nebraska Supreme Court further detailed why identity was reasonably pertinent:

[T]here were concerns about D.S.' psychological health. Details of the abuse are relevant to psychological implications regardless of whether any physical injury occurred . . . . The frequency and nature of the sexual contacts with Vigil were part of D.S.' medical history. Lowe indicated that information was necessary for determining medical or psychological diagnosis, and for a recommended treatment and safety plan.

Id.

70. Id. at 698.

71. Id.

72. 8 F.3d 1488 (10th Cir. 1993).

73. United States v. Joe, 8 F.3d 1488, 1495 (10th Cir. 1993). See also Fed. R. Evid. 803(4) (detailing the requirements for a statement to be admitted under the medical diagnosis or treatment exception to hearsay). Federal Rule 803(4) provides:

The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness: . . . . A statement that: (A) is made for—and is reasonably pertinent to—medical diagnosis or treatment; and (B) describes medical history; past or present symptoms or sensations; their inception; or their general cause.

count of second degree murder. At trial, Dr. Brett Smoker testified to statements made by the victim eight days prior to the victim’s murder. Dr. Smoker’s testimony indicated the victim relayed to him that Joe was the individual that perpetrated the rape. Joe objected to Dr. Smoker’s testimony on hearsay grounds, but the trial court ultimately overruled the objections. The United States District Court for the District of New Mexico ruled the victim’s statements regarding the identity of her assailant as Joe were admissible under the then existing mental, emotional, or physical conditions exception to hearsay.

Joe subsequently appealed to the Tenth Circuit after his convictions. On appeal, the Tenth Circuit stated there were no grounds to admit the victim’s statements under that exception, but noted a court may rely on alternative grounds to admit the statements that were not promulgated in the trial court. The Tenth Circuit relied upon Federal Rule 803(4) to conclude Dr. Smoker’s testimony regarding Joe’s identity was admissible.

The Tenth Circuit began its reasoning by stating Federal Rule 803(4), the medical diagnosis or treatment exception, is founded on the notion that a patient possesses a selfish motive and therefore will impart accurate information to a doctor in order to receive the proper treatment.

803(3) (stating the medical diagnosis or treatment exception to hearsay). The Nebraska Rule of Evidence for the medical diagnosis or treatment exception provides:

[T]he following are not excluded by the hearsay rule, even though the declarant is available as a witness: . . . Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment . . . .

§ 27-803(3).

74. Joe, 8 F.3d at 1500-01.
75. Id. at 1491.
76. See id. (“Dr. Smoker, an Indian Health Service family physician, testified that, eight days before Ms. Joe was killed, he treated her for an alleged rape and that she had identified her assailant as the defendant, Mr. Joe.”)
77. Id. at 1491-92. “The trial court admitted Dr. Smoker’s testimony over defense counsel’s timely objection . . . . The court . . . ruled that the [victim’s statements about Joe’s identity] were admissible under the hearsay exception contained in FED. R. EVID. 803(3), rather than the Rule 803(4) exception proffered by the government.”
78. Id.
79. Id. at 1492.
80. Id. at 1493.
81. Id. at 1495. “Thus, we conclude that Dr. Smoker’s testimony regarding Ms. Joe’s rape statement, which identified Mr. Joe as her assailant, is admissible under FED. R. EVID. 803(4).”
82. See id. at 1493-94 (citations omitted) (“The [Federal Rule 803(4)] exception to the hearsay rule is founded on a theory of reliability that emanates from the patient’s own selfish motive—her understanding ‘that the effectiveness of the treatment received will depend upon the accuracy of the information provided to the physician.’”).
The Supreme Court endorsed the notion that statements provided in the course of medical treatment possess substantial guarantees of the statement’s overall trustworthiness. After establishing the foundational argument for the exception, the court explained this notion usually only extends to statements regarding causation and not statements about fault.

Despite the premise that identity is generally not admissible under Federal Rule 803(4), the Tenth Circuit highlighted that in cases of child sexual abuse by a family member, identity of the abuser is reasonably pertinent and therefore admissible under the rule. The Tenth Circuit explained identity in these types of cases is reasonably pertinent because the treating physician must provide care for the victim’s psychological and emotional injuries, which are often dependent upon the identity of the abuser. To further justify this reasoning, the Tenth Circuit articulated the importance of a treating physician to know the identity of the abuser because the physician is under a statutory duty to prevent a child from being released back in the custody of an abuser.

Thus, the Tenth Circuit extended the logic used to admit identity of the perpetrator in a child sexual abuse case to encompass cases where domestic sexual assault of an adult occurred. The court expounded identity is reasonably pertinent in virtually all cases of domestic sexual assaults because of the psychological and emotional injuries that stem directly from the victim’s abuser. Furthermore,

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83. See id. at 1494 (citing White v. Illinois, 502 U.S. 346, 355 (1992)) (“The [United States] Supreme Court has noted ‘statements made in the course of receiving medical care . . . are made in contexts that provide substantial guarantees of their trustworthiness.’”).

84. See id. (“While this guaranty of trustworthiness extends to statements of causation, it does not ordinarily extend to statements regarding fault.”).

85. See id. (commenting that the United States Courts of Appeal for the Fourth, Eighth, and Ninth Circuits held statements to a doctor regarding identity, when made by a victim of domestic child sexual abuse, may be reasonably pertinent and thus admissible under Federal Rule 803(4)).

86. See id. (citing United States v. Renville, 779 F.2d 430, 437 (8th Cir. 1985)) (“Statements revealing the identity of the child abuser are ‘reasonably pertinent’ to treatment because the physician must be attentive to treating the child’s emotional and psychological injuries, the exact nature and extent of which often depend on the identity of the abuser.”).

87. Id.

88. See id. (“The identity of the abuser is reasonably pertinent to treatment in virtually every domestic sexual assault case, even those not involving children.”).

89. Id. at 1494-95. The Tenth Circuit explained:

All victims of domestic sexual abuse suffer emotional and psychological injuries, the exact nature and extent of which depend on the identity of the abuser. The physician generally must know who the abuser was in order to render proper treatment because the physician’s treatment will necessarily differ when the abuser is a member of the victim’s family or household.

Id.
the court stated that the identity of the perpetrator is reasonably pertinent because a doctor may recommend a specialized treatment plan or provide a recommendation to the victim to remove herself from the abusive environment. The Tenth Circuit concluded Dr. Smoker's testimony was adequate to determine Joe's identity was reasonably pertinent for purposes of Federal Rule 803(4) and the trial court properly admitted Dr. Smoker's testimony.

2. Oldman v. State: Under the Medical Diagnosis or Treatment Exception, the Supreme Court of Wyoming Held Testimony from a Medical Provider Regarding the Identity of a Domestic Violence Perpetrator Was Admissible

In Oldman v. State, the Supreme Court of Wyoming held that testimony from an emergency room physician regarding statements about identity that were made by a victim of domestic violence were admissible under the medical diagnosis or treatment exception. In Oldman, the pregnant victim received medical attention from an emergency room physician for bruised eyes, bruising on her face, and numerous human bite marks on different portions of her body. During the examination, the victim voluntarily offered the explanation that her husband inflicted her wounds without the physician inquiring.

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90. Id. at 1495. The Tenth Circuit further expounded:

In the domestic sexual abuse case, for example, the treating physician may recommend special therapy or counseling and instruct the victim to remove herself from the dangerous environment by leaving the home and seeking shelter elsewhere. In short, the domestic sexual abuser's identity is admissible under [the medical diagnosis or treatment exceptions] where the abuser has such an intimate relationship with the victim that the abuser's identity becomes 'reasonably pertinent' to the victim's proper treatment.

Id.

91. See id. (concluding Dr. Smoker's testimony regarding Joe's identity was reasonably pertinent to the medical diagnosis or treatment exception because Dr. Smoker recommended a specific treatment plan based on the fact Joe was the abuser, and therefore the statements were admissible under Federal Rule 803(4)). The Tenth Circuit reasoned the doctor's testimony was sufficient to determine the identity of the assailant and was reasonably pertinent because:

Dr. Smoker testified that the identity of the sexual assailant was important for his recommendation regarding Ms. Joe's after-care, including appropriate counseling. Moreover, after discovering her assailant's identity, Dr. Smoker specifically recommended that Ms. Joe seek protection, offering her the number of the Navajo Police Department and referring her to the women's shelter . . . .

Id.

92. 998 P.2d 957 (Wyo. 2000).
94. Oldman, 998 P.2d at 959 (“The attending physician, who saw the victim in the emergency room, noted a black and blue eye; facial bruising; and a 'significant number of human bite marks' on her back, arm, thigh, hands, and feet.”).
95. See id. (“Although, the physician did not ask, the victim told him that her husband had beaten her and bitten her.”). Additionally, the court noted that “[t]he victim
The State charged Steven Oldman with aggravated assault upon a woman whom he knew to be pregnant, and a jury subsequently convicted Oldman of the charge. During trial, Oldman objected to the physician’s testimony on hearsay grounds. The trial court overruled Oldman’s objection and cited Wyoming Rule of Evidence 803(4) (“Wyoming Rule 803(4)”), the medical diagnosis or treatment exception, as support for the court’s ruling. Oldman appealed his conviction and sentence to the Supreme Court of Wyoming, which affirmed Oldman’s conviction.

The court noted under the language of Wyoming Rule 803(4), in order for a statement to be admissible, the statement’s purpose must be for the promotion of medical diagnosis or treatment and describe a person’s medical status, while also being reasonably pertinent to treatment or diagnosis. Moreover, the court acknowledged statements that attribute fault are generally excluded under Wyoming Rule 803(4) because the statements are perceived to be irrelevant to medical diagnosis or treatment. However, the court stated it recognized Wyoming Rule 803(4) applied to statements attributing fault

and Oldman had lived together off and on for some ten to twelve years. They had four children together, and although never formally married, they held themselves out as husband and wife.” Id.

96. Id. at 960.
97. Id. The Wyoming Rules of Evidence state the medical diagnosis or treatment exception:

The following are not excluded by the hearsay rule, even though the declarant is available as a witness: . . . Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.

WYO. R. EVID. 803(4). See also NEB. REV. STAT. § 27-803(3) (providing for purposes of the medical diagnosis or treatment exception, a statement must be made for purposes of medical diagnosis or treatment, describe medical symptoms, and be reasonably pertinent to diagnosis or treatment).

98. Oldman, 998 P.2d at 960.
99. Id. “Oldman objected to the testimony of the attending physician as hearsay, but the trial court overruled the objection, invoking W.R.E. 803(4).” Id.
100. Id. at 961. The Wyoming Supreme Court stated:

Pursuant to W.R.E. 803(4), “[s]tatements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment” can be received in evidence.

Id.

101. Id. “Statements that have the effect of attributing fault or causation generally are not admissible in evidence under W.R.E. 803(4) because they are not relevant to diagnosis or treatment.” Id.
when the statement is viewed as being necessary for diagnosis or treatment.\textsuperscript{102}

Furthermore, the court outlined a two prong test in order to evaluate the admissibility of a statement under Wyoming Rule 803(4).\textsuperscript{103} First, a declarant’s purpose in making the statement must be congruous with the promotion of medical diagnosis or treatment.\textsuperscript{104} Second, the content of the declarant’s statement must be reasonably relied upon by a treating physician in the course of medical treatment of diagnosis.\textsuperscript{105} While detailing this test, the court noted identity is seldom germane to the promotion of medical diagnosis or treatment, but in cases of child abuse, the court recognized statements about identity could be for the promotion of treatment or diagnosis.\textsuperscript{106} Furthermore, the court explained the reason the identity of the perpetrator could be used to promote medical treatment is because the emotional and psychological injuries that stems from child abuse crimes must be treated by a physician.\textsuperscript{107}

Moreover, the court justified the holding in \textit{Oldman} by discussing precedent where the court extended Wyoming Rule 803(4) to encompass statements about identity in a domestic sexual abuse case.\textsuperscript{108} Then, the court cited to \textit{United States v. Joe}\textsuperscript{109} and declared there is no logical justification for not extending Wyoming Rule 803(4) to include statements about identity when the victim is a victim of domestic physical abuse.\textsuperscript{110} The court stated sexual abuse is simply a subcategory of physical abuse, and, therefore, extending Wyoming

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\item \textsuperscript{102} See id. (recognizing statements attributing fault are admissible under Wyoming Rule 803(4) if “the statement is perceived as necessary for diagnosis or treatment”).
\item \textsuperscript{103} \textit{Id.} at 961-62.
\item \textsuperscript{104} See id. at 961 (citation omitted) (stating for purposes of the medical diagnosis or treatment exception, “[t]he first prong of the . . . test demands that ‘the declarant’s motive in making the statement must be consistent with the purposes of promoting treatment [or diagnosis]’”).
\item \textsuperscript{105} See id. at 962 (citation omitted) (“[T]he second prong [of] the . . . test requires that ‘the content of the statements must be such as is reasonably relied on by a physician in treatment of diagnosis.’”).
\item \textsuperscript{106} See id. at 961-62 (citations omitted) (“Identity rarely is germane to the promotion of treatment or diagnosis, but we, as well as other courts, have recognized that such statements can be relevant to treatment in instances of child abuse.”).
\item \textsuperscript{107} See id. at 962 (citation omitted) (“The rationale for relevance in such instances is that ‘the physician must be attentive to treating the emotional and psychological injuries which accompany this crime.’”).
\item \textsuperscript{108} See id. (discussing a case where the court extended Wyoming Rule 803(4) to encompass statements attributing fault made by a victim of domestic sexual abuse).
\item \textsuperscript{109} 8 F.3d 1448 (10th Cir. 1993).
\item \textsuperscript{110} See \textit{Oldman}, 988 P.2d at 962 (citing United States v. Joe, 8 F.3d 1488, 1494-95 (10th Cir. 1993)) (quoting the Tenth Circuit’s reasoning for extending Federal Rule 803(4) from child abuse victims to victims of domestic sexual assault). The court stated “[t]here is no logical reason for not applying [the rationale of admitting identity under the medical diagnosis or treatment exception used in domestic sexual abuse cases] to
Rule 803(4) to cover statements made by a victim of domestic violence was a logical extension of previous case law.\footnote{See id. (declaring “sexual abuse is simply a particular kind of physical abuse,” and holding the victim’s statements about Oldman’s identity to the physician was congruent with the promotion of medical diagnosis and treatment).} The court held the statements made by the victim to the emergency room physician were admissible under Wyoming Rule 803(4) because the statements satisfied both prongs of the test.\footnote{Id.} Under the first prong, the court held the statement possessed the requisite purpose of being for the promotion of medical diagnosis and treatment.\footnote{See id. (“We hold that the victim’s statements to the emergency room physician were consistent with the purpose of promoting diagnosis and treatment.”).} Second, the court highlighted the importance of identify in the case in order for the treating physician to administer the appropriate treatment.\footnote{Id. (“In most cases, to treat or diagnose a physician would have no need to know who was responsible for the injury . . . ; [i]n a case such as this, however, the identity of the assailant is highly relevant in order for the physician to prescribe an appropriate course of treatment.”).} Moreover, the court provided two justifications for holding the identity satisfied the second prong.\footnote{Id. (holding a domestic violence victim’s statements were reasonably relied upon by the physician because, “[f]irst, the victim’s injuries included numerous human bites; it was important for the emergency room physician to know the source of the bites in order to treat the victim properly for any infectious condition related to the assailant”).} First, because of the numerous human bite marks the victims sustained, identity became important in order for the physician to be able to treat infectious conditions that resulted directly from the person who inflicted the bite marks.\footnote{See id. (reasoning the identity of assailant could be used to protect the victim’s safety by preventing the assailant’s entry into the hospital; treat the victims psychological and physical injuries; and used to treat the victim’s abuse instead of just the physical injuries sustained from this occasion).} Second, the court reasoned knowing the identity of the perpetrator was essential to the treating physician in order to protect the victim’s safety and treat the abuse as the underlying cause in conjunction with the physical injuries the victim sustained.\footnote{Id. (reasoning the identity of assailant could be used to protect the victim’s safety by preventing the assailant’s entry into the hospital; treat the victims psychological and physical injuries; and used to treat the victim’s abuse instead of just the physical injuries sustained from this occasion).} Therefore, the non-sexual, traumatic abuse within a family or household, since sexual abuse is simply a particular kind of physical abuse.” Id.
court held the trial court correctly admitted the emergency room physician’s testimony under Wyoming Rule 803(4).118

3. Perry v. State: The Indiana Court of Appeals Concluded that Identity Is Admissible Under the Medical Diagnosis or Treatment Exception in a Domestic Violence Case

In Perry v. State,119 the Indiana Court of Appeals concluded a nurse’s testimony regarding the identity of an assailant in a strangulation and sexual abuse case was admissible under the medical treatment or diagnosis exception to hearsay because the perpetrator’s identity was reasonably pertinent to a nurse’s treatment of the victim’s physical injuries, possible treatment for HIV or any sexually transmitted diseases, and the victim’s aftercare.120 Following an assault, N.D. was admitted to a hospital where sexual assault nurse examiner Natalie Calow performed an evaluation.121 The evaluation consisted of assessing N.D.’s overall appearance, including her mental state, followed by questions regarding the perpetrator.122 Calow testified the perpetrator’s identity is important because the identity shapes her treatment plan for the patient.123 During the exam, N.D. indicated her ex-boyfriend, Dennis Perry, strangled and sexually assaulted her.124 Calow documented her findings and the victim’s statement in a report.125

Although N.D. refused to testify at trial, Calow attested to N.D.’s statements regarding Perry’s identity.126 The Marion Superior Court admitted Calow’s report over Perry’s hearsay objection.127 The jury

118. Id.
120. See Perry v. State, 956 N.E.2d 41, 46, 50 (Ind. Ct. App. 2011) (reasoning because the identity of the perpetrator was reasonably pertinent to the nurse’s treatment of the victim, the nurse’s testimony was properly admitted under the medical diagnosis or treatment exception).
121. Perry, 956 N.E.2d at 45-46.
122. Id. at 46.
123. Id. Nurse Calow testified she takes: any medical history . . . if [a patient] knows the assailant’s medical history too it’s important. That guides me, the treatment plan that I’m going to do. Where I need to look for injuries. I get the history of the assault too with the social work[er] present. We both do. Then after I get all the history . . . I set up my room ‘cause there’s certain swabs we take, certain pictures we take depending on what she tells me. And the social work[er] stays, makes sure she does some counseling with the patient.
124. Id.
125. See id. (“Nurse Calow completed a medical report which documented N.D.’s treatment, relayed N.D.’s account of the incident in question, and identified Perry as the suspected perpetrator.”).
126. Id.
127. Id.
subsequently found Perry guilty of strangulation but deadlocked on the sexual assault charges.128 Perry appealed, alleging the trial court erred in allowing Calow’s testimony and medical report under the medical diagnosis or treatment exception.129

The court of appeals considered whether the trial court erred in admitting Calow’s narration in the medical record that indicated Dennis Perry strangled N.D. and N.D. experienced pain from this strangulation.130 After Calow’s narrative about the incident between Perry and N.D., the medical record indicated Calow recommended aftercare that included sexually transmitted disease testing, pregnancy testing, and medications.131 During Calow’s testimony at trial, the State proffered the medical report as evidence and Perry objected to the record as hearsay.132 The trial court admitted the record after redacting portions, but Perry’s identity remained in the report.133

The court of appeals first indicated that Indiana Rule of Evidence 803(4) (“Indiana Rule 803(4)”) provides the medical diagnosis or treatment exception to hearsay.134 The court noted the idea behind Indi-

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128. See id. (explaining that the jury deadlocked on Class B felony rape and Class C felony criminal confinement and convicted on strangulation, possession of cocaine, and criminal mischief).

129. Id. at 46-47. The Indiana Court of Appeals noted:
   Perry raises several issues, only three of which [the court of appeals] find[s] necessary to address: (I) whether the trial court erred by admitting Nurse Calow’s examination record, (II) whether the court erred by admitting evidence of Perry’s prior arrests for domestic violence involving N.D., and (III) whether the evidence is sufficient to sustain Perry’s convictions such that retrial would not offend double jeopardy.

130. Id. at 47.

131. Id. at 48. Nurse Calow detailed:
   The report’s aftercare information indicated that N.D. had been tested for ‘legal evidence,’ pregnancy, and HIV, and that she was given medication to reduce the risk of contracting . . . other sexually transmitted diseases. It recommended that she follow up in various intervals for a general health examination and additional testing.

132. Id.

133. See id. (noting the trial court overruled Perry’s objection to the hearsay but redacted the irrelevant portion and kept Perry’s identity in the record).

134. See id. at 49 (explaining Indiana Rule 803(4) governs the admissibility of statements under the medical diagnosis or treatment exception). The court stated:
   [Indiana] Rule 803(4) provides for the admissibility of statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.

Id. Moreover, the court noted “courts may exercise their discretion in admitting medical diagnosis statements which relay the identity of the perpetrator.” Id. See also Neb. Rev. Stat. § 27-803(3) (providing statements that are reasonably pertinent, describe medical history, and are made for the purpose of medical diagnosis or treatment are admissible under the medical diagnosis or treatment exception).
ana Rule 803(4) is that a patient will be truthful when providing information because of his or her’s self-interested motive to receive the proper medical treatment.135 Furthermore, the court set forth a two-pronged evaluation of the admissibility of a statement under Indiana Rule 803(4) and noted a trial court has discretion in admitting statements regarding identity under Indiana Rule 803(4).136 First, a party must demonstrate a patient’s motive in making the statement was to relay truthful information so proper medical attention could be provided.137 Second, a party must demonstrate an expert in the medical field would reasonably rely upon the statement in order to administer proper treatment or diagnosis.138

Next, the court explained that generally identity is not admissible under the medical diagnosis or treatment exception because identity is not reasonably pertinent for medical purposes.139 However, the court also opined that exceptions to the rule exist in the form of child abuse cases, sexual assaults, and domestic violence cases, but the admissibility was left to the discretion of the trial court.140

135. See Perry, 956 N.E.2d at 49 (“The rationale underlying the exception is that a declarant’s self-interest in seeking treatment reduces the likelihood that she will fabricate information that she provides to those who treat her.”); see also Oldman v. State, 998 P.2d 957, 961 (Wyo. 2000) (citation omitted) (“[T]he exception finds its basis in ‘the likelihood that the patient believes that the effectiveness of the treatment depends on the accuracy of the information provided to the doctor.’”).

136. Perry, 956 N.E.2d at 49.

137. See id. (stating for purposes of the medical diagnosis and treatment exception, “courts evaluate . . . whether the declarant’s motive was to provide truthful information to promote diagnosis and treatment”).

138. See id. (“[T]he second prong is whether the content of the statement is such that an expert in the field would reasonably rely upon it in rendering diagnosis or treatment.”).

139. See id. (“Statements attributing fault or establishing a perpetrator’s identity are typically inadmissible under the medical diagnosis exception, as identification of the person responsible for the declarant’s condition or injury is often irrelevant to diagnosis and treatment.”); see also State v. Koederitz, 166 So. 3d 981, 984 (La. 2015) (“Louisiana subscribes to the general rule that [the medical diagnosis or treatment] hearsay exception . . . ordinarily does not encompass statements ascribing fault in the case of the injuries treated.”); State v. Robinson, 718 N.W.2d 400, 404 (Minn. 2006) (explaining that statements attributing fault of how or who inflicted the injury are not generally admissible for purposes of the medical diagnosis or treatment exception).

140. See Perry, 956 N.E.2d at 49 (“In cases involving child abuse, sexual assault, and/or domestic violence, courts may exercise their discretion in admitting medical diagnosis statements which relay the identity of the perpetrator.”); see also Koederitz, 166 So. 3d at 985 (explaining “[t]he [medical diagnosis and treatment] hearsay exception . . . has . . . received particular application in cases of child sexual abuse, including statements of fault” because of an expressed desire by the state legislature to protect child sexual abuse victims); Moore v. City of Leeds, 1 So. 3d 145, 150 (Ala. Crim. App. 2008) (extending the application of the medical diagnosis or treatment exception, which encompasses identity, to domestic violence cases); Nev. Rev. Stat. § 28-902 (Reissue 2016) (stating medical providers are required to report to law enforcement when they treat a patient that possibly sustained injuries from the commission of a crime).
The court concluded Calow’s statements regarding the identity of Perry and the ensuing assault were admissible under Indiana Rule 803(4). The court reasoned the statements made by N.D. to Calow were pertinent to medical treatment because the statements formed the basis of the treatment plan created by Calow. The court emphasized the importance of identity in facilitating sexually transmitted disease testing and psychological counseling for domestic violence. Moreover, N.D.’s statements that Perry grabbed and strangled her were pertinent to treatment as well. Thus, the court concluded Calow’s statements about the information N.D. provided were admissible under Indiana Rule 803(4).

4. State v. Smith: The Iowa Supreme Court Noted the Legitimacy of the Medical Diagnosis or Treatment Exception to Find Identity Admissible in Domestic Violence Cases, but Found the Facts Did Not Support the Legal Reasoning

In State v. Smith, the Iowa Supreme Court ruled the State failed to lay proper foundation for purposes of the medical diagnosis or treatment exception for a statement regarding the identity of an alleged perpetrator during a domestic violence trial. In Smith, M.D. told police her child’s father, Trent Smith, hit and kicked her in the

141. Perry, 956 N.E.2d at 50. See also Koederitz, 166 So. 3d at 986 (“These statements are non-hearsay as a matter [under the medical diagnosis and treatment exception] and are therefore admissible as substantive evidence because they were made for purposes of diagnosis and treatment, essential components under current medical practice in cases of domestic violence.”); Oldman, 998 P.2d at 962 (holding testimony from a doctor regarding the identity of a domestic violence perpetrator was properly admitted by the trial court under the medical diagnosis or treatment exception).
142. See Perry, 956 N.W.2d at 50 (noting that trial courts have discretion to determine what statements are pertinent to medical treatment or diagnosis).
143. See id. (“[N.D.’s] identification of her assailant was pertinent to potential treatment for HIV or other sexually transmitted diseases, relevant to any psychological counseling for domestic abuse, and significant to medical personnel in deciding how to discharge their patient.”); see also City of Leeds, 1 So. 3d at 150 (stating a victim of domestic violence provided her doctor with information that her husband broke her nose was pertinent to medical treatment, and therefore was admissible under the medical diagnosis or treatment exception).
144. See Perry, 956 N.E.2d at 50 (determining N.D.’s statements regarding the strangulation were reasonably pertinent because it helped the doctor treat her physical injuries).
145. Id. See, e.g., City of Leeds, 1 So. 3d at 150 (holding that a domestic violence victim’s statements about the identity of the assailant were admissible under the medical diagnosis or treatment exception because the statements were used by the doctor to treat the victim’s “overall medical condition”).
146. 876 N.W.2d 180 (Iowa 2016).
147. See State v. Smith, 876 N.W.2d 180, 182 (Iowa 2016) (concluding “there was insufficient foundation to admit the statements under [the medical diagnosis or treatment exception]”).
head, causing her to lose consciousness.\textsuperscript{148} After M.D. arrived at the hospital for treatment, M.D. reported to the nurse her child’s father assaulted her.\textsuperscript{149} M.D. further described her injuries to the treating nurse and doctor, who subsequently elected to only treat M.D.’s physical injuries and not M.D.’s mental or emotional traumas.\textsuperscript{150} Following M.D.’s release from patient care, M.D. refused to sign a statement written by a police officer based on the officer’s documentation of the incident.\textsuperscript{151}

At a pretrial hearing, the State notified the court that M.D. planned to recant the story of how M.D. obtained her injuries.\textsuperscript{152} The State intended to use the statements M.D. gave to the police and treating physicians in order to prove Smith was the perpetrator.\textsuperscript{153} The State further indicated it intended to use Iowa Rule of Evidence 5.803(4) (“Iowa Rule 803(4)”), the medical diagnosis or treatment exception, in order to admit Smith’s identity into evidence.\textsuperscript{154} Moreover, the State expected to introduce the statements through M.D.’s treating doctor and nurse.\textsuperscript{155} The trial court allowed Smith’s identity into

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148. \textit{Smith}, 876 N.W.2d at 182-83. The Iowa Supreme Court detailed the underlying facts of the case:

[S]he had been upstairs and after hearing a sound was “hit” by something when going downstairs in the dark to investigate. She also said she lost consciousness after she was kicked in the head. She told the officers she believed the assailant had entered her residence through a locked door. M.D. eventually identified her assailant as “Trent Daniel,” whom dispatch officers later identified as Trent Smith.

\textit{Id.}

149. \textit{See id.} at 183 (“The doctor found M.D. to be ‘in a moderate amount of distress’ and ‘extremely shaken up.’ The nurse asked M.D. to explain what had happened to her. M.D. responded that she was ‘assaulted by her baby’s daddy around midnight.’”).

150. \textit{See id.} (“She [M.D.] told the nurse that she had been kicked in the head and right arm, and she felt that her front teeth were loose.”). The court explained how the testimony by the doctor was insufficient to make a finding that identity is reasonably pertinent:

The doctor did not make any domestic abuse diagnosis or render any treatment for emotional or psychological injuries based on the identity of the perpetrator. The identity of the assailant or the effects of domestic abuse were not mentioned as a part of any treatment or diagnosis. The treatment consisted of radiology testing and other medical care to those areas of the body that had sustained physical injury. The diagnosis by the doctor pertained solely to the physical injuries sustained by M.D.

\textit{Id.}

151. \textit{Id.}

152. \textit{Id.}

153. \textit{Id.}

154. \textit{Id. See Iowa R. Evid. 5.803(4)} (“Statement made for medical diagnosis or treatment is a statement that: (A) Is made for—and is reasonably pertinent to—medical diagnosis or treatment; and (B) Describes medical history, past or present symptoms or sensations, or the inception or general cause of symptoms or sensations.”).

155. \textit{Smith}, 876 N.W.2d at 183.
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evidence under Iowa Rule 803(4), and the jury later found Smith guilty of two charges of domestic abuse.156

During the trial, M.D.’s treating physicians testified about the statements M.D. made regarding the identity of the perpetrator.157 However, there was no testimony regarding how the identity of M.D.’s attacker was relevant to M.D.’s medical diagnosis or treatment.158 Smith appealed to the Iowa Court of Appeals, which affirmed his conviction; subsequently, the Iowa Supreme Court granted review to decide whether the trial court erred by allowing the testimony under Iowa Rule 803(4).159

First, the Iowa Supreme Court noted that the medical diagnosis or treatment exception is premised on the idea that a patient is motivated to tell the truth to receive the proper treatment for the injuries sustained.160 This, in turn, mitigates the concern that hearsay should be excluded from evidence because it is unreliable.161 Therefore, the rationale for the medical diagnosis or treatment exception undermines the concerns raised by admitting hearsay into evidence.162

Next, the court elaborated that in order for a statement to qualify under Iowa Rule 803(4), two showings must be made: why the identification of an alleged perpetrator is relevant and the effect identity has on the medical diagnosis or treatment.163 The court declared that both prongs must be reasonably pertinent to medical diagnosis or

156. See id. (stating the trial court overruled Smith’s objection that M.D.’s statements were not for medical treatment, allowing the State to present the testimony regarding Smith’s identity under Iowa Rule 803(4)).
157. See id. at 184 (“The officers and medical providers recalled the statements M.D. made to them the night of the incident that identified Smith as her assailant.”).
158. Id.
159. See id. (noting the Iowa Court of Appeals affirmed Smith’s conviction because it found M.D.’s statements made to the medical professionals were for medical diagnosis or treatment). The court provided “[t]he statements at issue in this case—third-party accounts of identification statements made by M.D.—are hearsay. The question is whether they are admissible under an exception to the rule against hearsay.” Id. at 185.
160. See id. (“The rationale for the exception is that statements made by a patient to a doctor for purposes of medical diagnosis or treatment are ‘likely to be reliable because the patient has a selfish motive to be truthful.’”); see also State v. Robinson, 718 N.W.2d 400, 404 (Minn. 2006) (“The rationale behind [the medical diagnosis or treatment exception] is ‘the patient’s belief that accuracy is essential to effective treatment.’”).
161. See Smith, 876 N.W. 2d at 185 (declaring hearsay is excluded because of unreliability; however, under Iowa Rule 803(4), the motive for a patient to be truthful “exists because the effectiveness of the medical treatment rests on the accuracy of the information imparted to the doctor,” therefore curing unreliability).
162. See id. (“[T]he circumstances of statements made for diagnosis and treatment provide ‘special guarantees of credibility’ and justify the exception to the rule against hearsay.”).
163. See id. at 189 (opining in order for statements to be admitted under Iowa Rule 803(4), the proponent must “establish[] why the identity of the assailant is important in a domestic abuse case, as opposed to stranger assault, and what effect that identity has on diagnosis or treatment”).
treatment. Furthermore, the court stressed that the nexus between identity and medical treatment must be reasonable.

With this general framework, the court went on to consider whether identity in this case was reasonably pertinent to medical treatment and diagnosis. The court noted the skepticism surrounding the notion that identity was reasonably pertinent to the medical diagnosis or treatment of M.D. Furthermore, because identity is sometimes understood to be irrelevant for medical treatment, statements regarding identity necessarily lack the characteristics that would justify admittance under Iowa Rule 803(4).

The court rejected the State’s argument favoring a categorical approach to admitting identity in child abuse cases. The court stressed that each case must be considered on a case-by-case basis because proper foundation must be shown first to admit identity.

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164. See id. (citing 7 LAURIE KRATKY DORÉ, IOWA PRACTICE SERIES: EVIDENCE § 5.803.4, at 952 (2012)) (“Yet as to both requirements, the statement must also be ‘reasonably pertinent to diagnosis or treatment.’”).

165. See id. at 190 (“The medical diagnosis or treatment exception . . . requires that the connection between the statement and the treatment be ‘reasonable.’”).

166. Id.

167. See id. (“[T]here was no evidence to suggest M.D. believed the identity of the perpetrator was reasonably pertinent to her treatment or diagnosis.”); see also Robinson, 718 N.W.2d at 405 (explaining the court was not equipped to make the determination about whether the identity of the perpetrator is reasonably pertinent to medical diagnosis and treatment). The Minnesota Supreme Court explained:

[We are not as familiar with the medical issues concerning domestic violence. This court is] not able to determine, by judicial notice or general knowledge, whether the notion that the identification of the perpetrator of domestic violence is reasonably pertinent to medical diagnosis and treatment is generally accepted in the medical profession. To this extent, the medical exception to the hearsay rules depends, in the first instance, on the views of the medical profession, not on the views of the courts.

Id.

168. See Smith, 876 N.W.2d at 190 (explaining M.D.’s statements regarding Smith’s identity lacked the characteristics required for Iowa Rule 803(4) because the record failed to show how the identity of Smith was reasonably pertinent to M.D.’s treatment). The court understood that:

The general circumstances presented at trial do not suggest a motivation by M.D. to be untruthful in her identification of Smith as her assailant to the emergency room nurse and doctor. Her statements of identity were not prompted by any cues asking for the identity of the perpetrator, and she only conveyed Smith’s identity as part of the description of how she was injured. Yet the exception does not seek to use the absence of a motive to be untruthful, but it requires evidence of a specific motivation to be truthful derived from its rationale.

Id.

169. See id. at 188 (rejecting the State’s argument that “statements of identity by victims of domestic abuse should be categorically admissible because such statements are now commonly admitted in cases of child abuse”).

170. See id. (holding statements admitted under Iowa Rule 803(4) must be evaluated pursuant to the two-prong test); see also Robinson, 718 N.W.2d at 405 (clarifying that in cases of child abuse, courts should evaluate each case to determine if statements
Moreover, the court noted that the circumstances surrounding the statement at the time it was made are central to determining whether admittance is proper under Iowa Rule 803(4).\textsuperscript{171}

While acknowledging the issues surrounding domestic violence cases, the court ultimately concluded the trial court erred in admitting M.D.’s physician’s testimony regarding Smith’s identity.\textsuperscript{172} The court reasoned the State proffered insufficient evidence to support a conclusion that M.D.’s statement was reasonably pertinent under Iowa Rule 803(4).\textsuperscript{173} Furthermore, the court highlighted that the doctor’s testimony did not show Smith’s identity was involved in M.D.’s treatment.\textsuperscript{174} Finally, the court limited its holding that identity was not properly admitted on the facts of Smith, but stated the conclusion did not exclude future cases from allowing identity of domestic violence perpetrators into evidence under Iowa Rule 803(4).\textsuperscript{175}

\begin{footnotesize}
\textsuperscript{171} Smith, 876 N.W.2d at 190.
\textsuperscript{172} Id.
\textsuperscript{173} Id. The court explained the insufficiency by stating:
There was no evidence the nurse or doctor told M.D. the identity of the perpetrator was important to the treatment or diagnosis of her injuries. There was not evidence the nurse or doctor used the identity of the perpetrator to treat or diagnosis M.D.’s injuries. In fact, there was nothing from the circumstances at the hospital to reasonably indicate M.D.’s treatment or diagnosis would have been different if she had not mentioned the identity of her perpetrator in describing how she was injured.
\textsuperscript{174} Smith, 876 N.W.2d at 190.
\textsuperscript{175} Id. The Iowa Supreme Court detailed the holding of the case:
[The] conclusion does not mean the identity of a perpetrator of domestic abuse can never be admitted into evidence under [Iowa Rule 803(4)]. It only means that the State must introduce evidence to establish the necessary foundation regarding both the declarant’s motive in making the statement and the pertinence of the identification in diagnosis or treatment.
\textsuperscript{176} See also Robinson, 718 N.W.2d at 407 (explaining the holding in the case does not bar the possibility that there are facts sufficient enough to find identity is reasonably pertinent in a domestic violence case). The Minnesota Supreme Court elucidated:
We do not foreclose the possibility that we might in the future adopt a properly limited categorical rule of admissibility under the medical exception to hearsay for statements of identification by victims of domestic violence . . . . And we do not suggest that accusations by victims of domestic abuse are unreliable. We only hold that where, as here, there is an insufficient evidentiary foundation to establish that the identity of the person who caused an injury was reasonably pertinent to the medical diagnosis or treatment of that injury, the statement of identity is not admissible under [the medical diagnosis or treatment exception].
\textsuperscript{176} (footnote omitted).
\end{footnotesize}
The dissenting opinion in Smith emphasized that M.D.’s statements regarding Smith’s identity came as a reply to standard protocol questions. The dissent reiterated the two-prong test the majority utilized and concluded M.D.'s statements were, in fact, reasonably pertinent to medical treatment. The dissenting opinion argued the standard questions the nurse asked M.D. did aid in M.D.’s medical treatment. Furthermore, under Iowa Rule 803(4), statements made do not need to be used for actual treatment. Instead, the circumstances and context in which the statement was made is the driving consideration for admittance under Iowa Rule 803(4).

III. ANALYSIS

Testimony from medical providers about the identity of the alleged perpetrator in domestic violence cases should be admitted under the medical diagnosis or treatment exception to hearsay in Nebraska courts. If testimony from a medical provider demonstrates that a statement made by a victim of domestic violence is given with purpose of providing assistance to the medical provider for the victim's treat-
ment, the statement is reasonably pertinent to medical treatment, and a physician would reasonably rely upon the statement, then it should be admissible under Rule 803(3). Statements regarding perpetrator identity by domestic violence victims can be utilized in providing medical treatment for purposes of safety, prophylactic treatment, and psychological treatment, therefore possessing the requisite elements of Rule 803(3).

First, this Analysis will show that admitting the testimony from medical providers regarding the identity of the alleged domestic violence perpetrator is permissible under the medical diagnosis or treatment exception to hearsay because statements regarding identity can possess the requisite purposes for admissibility under Rule 803(3). Next, this Analysis will argue that the Nebraska Supreme Court should adopt the framework utilized by other jurisdictions in order to evaluate the admissibility of medical providers' testimony on a case-by-case basis. Subsequently, this Analysis will address a possible objection that identity is normally not perceived as being pertinent to medical treatment because statements ascribing fault are generally not admissible under Rule 803(3). Lastly, this Analysis will rebut that possible objection and demonstrate how other courts have deemed the identity of the alleged perpetrator to be reasonably pertinent to the medical treatment of a victim of domestic abuse, including how identity is used to treat the emotional, psychological, and physical well-being of the victim and other policy reasons.

182. Compare State v. Vaught, 682 N.W.2d 284, 289 (Neb. 2004) (denoting in order for statements to be admissible under Rule 803(3), "the declarant’s purpose in making the statement was to assist in the provision of medical diagnosis or treatment, that the declarant’s statement was reasonably pertinent to such diagnosis or treatment and, further, that a doctor would reasonably rely on such statement"), with State v. Vigil, 810 N.W.2d 687, 694 (Neb. 2012) (explaining in order to be admissible under Rule 803(3), the statement must be of a nature that "assist[es] in the provision of medical diagnosis or treatment," and the statement was "reasonably pertinent to medical diagnosis or treatment by a medical professional").

183. Compare Oldman, 998 P.2d at 962 (explaining safety, treating a possible infectious disease from human bite marks, and treating the underlying abuse as well as the physical injuries made the identity of the domestic violence perpetrator reasonably pertinent), with Perry, N.W.2d at 50 ("N.D.’s identification of her assailant was pertinent to potential treatment for HIV or other sexually transmitted diseases, relevant to any psychological counseling for domestic abuse, and significant to medical personnel in deciding how to discharge their patient.").

184. See infra notes 188-206 and accompanying text.

185. See infra notes 207-212 and accompanying text.

186. See infra notes 213-221 and accompanying text.

187. See infra notes 222-237 and accompanying text.
HEARSAY IN DOMESTIC VIOLENCE CASES

A. Testimony from Medical Providers About the Identity of the Alleged Perpetrator in Domestic Violence Cases Should be Admissible Pursuant to Nebraska’s Medical Diagnosis or Treatment Exception to Hearsay

1. Foundation for the Medical Diagnosis or Treatment Exception

Rule 802 provides the general rule that hearsay is not admissible into evidence. However, Rule 803 affords exceptions to the general hearsay rule. Specifically, Rule 803(3) provides an exception to the hearsay rule for statements that are reasonably pertinent to and made for the purpose of medical diagnosis or treatment. Moreover, Rule 803(3) is premised upon the belief that an individual making statements to a medical provider about his or her condition is doing so in a truthful manner in order to receive the correct treatment.

In order for testimony to be admissible under Rule 803(3), the proponent of that testimony must lay the proper foundation. First, there must be a demonstration that the declarant’s motive in making the statements was to help facilitate the medical diagnosis or treat-
ment provided. Second, the statements made must be reasonably pertinent to the promotion of a medical diagnosis or treatment by a medical provider. Thus, if the party who is seeking to introduce testimony under Rule 803(3) establishes these two prerequisites, then the testimony from medical providers is admissible under Rule 803(3).

2. Relevancy of Identity for Purposes of the Medical Diagnosis or Treatment Exception

Rule 803(3) states that so long as the statements made are reasonably pertinent for medical diagnosis or treatment, the statements describe pain, previous medical history, symptoms, sensations, or the general origin or character of the cause, the statement should not be excluded as hearsay. Courts in Nebraska are ordinary in the fact that statements attributing fault of an injury are generally not admissible under Rule 803(3) and allows trial courts to have discretion in admitting statements regarding identity. However, other courts have carved out an exception to this general rule by allowing the iden-

193. Compare id. (acknowledging it must be demonstrated that the purpose of making the statement was to aid in the assistance of a medical diagnosis or treatment), with Smith, 876 N.W.2d at 185 (clarifying the requirement that the purpose of a declarant’s statement must be analogous with the purpose of promoting medical treatment).

194. Compare Vigil, 810 N.W.2d at 694 (explaining for purposes of Rule 803(3), a statement must be reasonably pertinent to medical treatment or diagnosis), with Smith, 876 N.W.2d at 185 (requiring the statement to be reasonably relied upon by a doctor for medical diagnosis or treatment, as well as reasonably pertinent).

195. See Vigil, 810 N.W.2d at 696-97 (explaining that statements are admissible under Rule 803(3) “only if the proponent of the statements demonstrates that (1) the declarant’s purpose in making the statements was to assist in the provision of medical diagnosis or treatment and (2) the statements were of a nature reasonably pertinent to medical diagnosis or treatment by a medical professional”).

196. See NEB. REV. STAT. § 27-803(3) (specifying “statements made for purposes of medical diagnosis or treatment and describing medical history, or past of present symptoms, pain, or sensation, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment” will be admitted under Rule 803(3)).

197. Compare Vigil, 810 N.W.2d at 698 (noting generally that statements made for purposes of ascribing fault are not admissible under Rule 803(3)), with State v. Koedertiz, 166 So. 3d 981, 984 (La. 2015) (expressing the general rule in Louisiana that statements regarding the fault of injuries are not encompassed by the medical diagnosis or treatment exception), State v. Robinson, 718 N.W.2d 400, 404 (Minn. 2006) (remarking that statements attributing fault, including identity, generally are not admissible under the medical diagnosis or treatment exception), Oldman, 998 P.2d at 961 (explaining statements regarding fault or causation are generally not admissible because the relevancy of those statements is questionable for purposes of medical treatment or diagnosis), and State v. Vaught, 682 N.W.2d 284, 287 (Neb. 2004) (stating when the Nebraska Rules of Evidence are at issue, the Nebraska Supreme Court reviews the trial court’s discretion under an abuse of discretion standard), with Perry v. State, 956 N.W.2d 41, 49 (Ind. Ct. App. 2011) (noting courts can exercise their discretion when admitting statements stemming from medical diagnosis, which convey the identity of the alleged perpetrator).
tity of an alleged perpetrator in cases where child sexual abuse is alleged.\textsuperscript{198} In prior cases involving child sexual abuse, the identity of the perpetrator is reasonably pertinent to medical treatment when a party successfully demonstrates that the identity assisted in effective physical and mental treatment, as well as ensuring a child’s safety.\textsuperscript{199}

The extension of the reasoning and logic behind admitting statements regarding identity under the medical diagnosis or treatment exception from victims of child sexual abuse to cases of domestic sexual abuse is logical.\textsuperscript{200} The identity of an abuser is reasonably pertinent to medical treatment because the extent and character of the emotional and psychological injuries suffered by victims of domestic sexual abuse are dependent upon the identity of the abuser.\textsuperscript{201} Using this reasoning, courts have extended the foundational premise that identity is reasonably pertinent to the treatment of domestic sexual abuse victims to encompass instances where the victim was a victim of domestic violence.\textsuperscript{202} Some courts have declined to admit the identity

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\item \textsuperscript{198} Compare Vigil, 810 N.W.2d at 698 (clarifying identity is relevant and reasonably pertinent for treatment of child sexual abuse victims because there is a concern for a child’s safety if a familial relationship involved), with Koederitz, 166 So. 3d at 985 (differentiating the exception for child sexual abuse to the general rule that identity is excluded under the medical diagnosis or treatment exception), Robinson, 718 N.W.2d at 404-05 (mentioning statements from child sexual abuse victims regarding identity are usually admissible under the medical diagnosis or treatment exception, but denying a categorical rule of that nature), and Oldman, 998 P.2d at 961 (asserting that identity is relevant for child sexual abuse and domestic sexual abuse victims under the medical diagnosis or treatment exception).
\item \textsuperscript{199} Compare Vigil, 810 N.W.2d at 698 (indicating identity of an abuser in a child sexual abuse case is reasonably pertinent to treatment because treatment would not be successful if the victim is returned to the abuser’s custody), with Koederitz, 166 So. 3d at 985 (explaining the Louisiana legislature’s interest in allowing the identity of an abuser to come in under the medical diagnosis or treatment exception in order to protect victims of child sexual abuse), Smith, 876 N.W.2d at 186 (clarifying identity is relevant in treating child abuse victims because of the possibility of recurring abuse and treatment by doctors for physical, emotional, and psychological abuse), and Oldman, 998 P.2d at 961 (quoting United States v. Renville, 779 F.2d 430, 437 (8th Cir. 1985)) (describing that identification of an abuser in a child abuse case is relevant to the treatment of emotional and psychological injuries resulting from the crime).
\item \textsuperscript{200} See United States v. Joe, 8 F.3d 1488, 1494 (10th Cir. 1993) (“The identity of the abuser is reasonably pertinent to treatment in virtually every domestic sexual assault case, even those not involving children.”).
\item \textsuperscript{201} See id. (“All victims of domestic sexual abuse suffer emotional and psychological injuries, the exact nature and extent of which depend on the identity of the abuser.”).
\item \textsuperscript{202} See Oldman, 998 P.2d at 962 (declaring, after a quote from Joe, 8 F.3d at 1494-95, that “there is no logical reason for not applying [the rationale for domestic sexual abuse cases] to non-sexual, traumatic abuse within a family or household, since sexual abuse is simply a particular kind of physical abuse”); see also Perry, 956 N.W.2d at 50 (indicating statements about the identity of the alleged perpetrator made by the victim of domestic abuse to a nurse were admissible because the identity was pertinent for treatment of physical injuries, psychological counseling, and decisions regarding the discharge of the patient); Koederitz, 166 So. 3d at 986 (citing Joe, 8 F.3d at 1493-95)
of an alleged perpetrator in domestic violence cases, not because of the rationale used, but because the facts of the case did not demonstrate that identity was reasonably pertinent to medical treatment.203

3. Courts in Nebraska Should Allow Testimony About the Identity of an Alleged Perpetrator in Domestic Violence Cases Under Rule 803(3)

If a proponent can demonstrate that a statement made to a medical provider is reasonably pertinent to medical treatment and the statement’s purpose was to facilitate treatment, then the statement is admissible for purposes of Rule 803(3).204 Moreover, a statement from a victim of domestic violence to a medical provider concerning the identity of the alleged perpetrator can be reasonably pertinent to medical treatment and also for the promotion of medical treatment.205 Therefore, if a proponent makes these showings, the testimony from a

(Extending the logic to encompass statements of fault by domestic violence victims); Moore v. City of Leeds, 1 So. 3d 145,150 (Ala. Crim. App. 2008) (citing Joe, 8 F.3d at 1493-95) (holding that a victim’s statements to a doctor in a domestic violence case about the identity of the person who caused her injuries was admissible under the medical diagnosis or treatment exception because the identity was used for the treatment of the overall medical condition).

203. See Robinson, 718 N.W.2d at 407 (holding there was an insufficient factual basis to find that the identity of an alleged perpetrator in a domestic violence case was reasonably pertinent to medical treatment, but noting that the court does not exclude the possibility of adopting a rule concerning the admissibility of identity under the medical diagnosis or treatment exception in domestic violence cases); see also Smith, 876 N.W.2d at 190 (articulating that while the State laid insufficient foundation to show that the identity of the assailant was reasonably pertinent to the medical treatment of a domestic violence victim, the court does not conclude that the identity will never be reasonably pertinent in future cases for purposes of the medical diagnosis or treatment exception); State v. Beeder, 707 N.W.2d 790, 797 (Neb. 2006), disapproved on other grounds by State v. McCullouch, 742 N.W.2d 727, 733 (Neb. 2007) (concluding a medical provider’s testimony about the identity of a domestic abuser is inadmissible hearsay because the State failed to prove the identity is reasonably pertinent to medical treatment for purposes of Rule 803(3)).

204. Compare Vigil, 810 N.W.2d at 695-97 (declaring admissibility of statements under Rule 803(3) is determined by deciding whether the person making the statement had the purpose of assisting in medical treatment and the statement was reasonably pertinent to medical treatment), with Perry, 956 N.W.2d at 49 (“In determining the admissibility of hearsay under [the medical diagnosis or treatment exception], courts evaluate (1) whether the declarant’s motive was to provide truthful information to promote diagnosis and treatment and (2) whether the content of the statement is such that an expert in the field would reasonably rely on it in rendering diagnosis or treatment.”).

205. Compare Oldman, 998 P.2d at 962 (reasoning statements from a victim about the identity of the perpetrator were admissible under the medical diagnosis or treatment exception because it was important to know who inflicted the victim’s bite marks in order to treat for infectious disease, as well as care for the safety of the victim during her recovery), with Perry, 956 N.W.2d at 50 (concluding identity of the assailant was admissible under the medical diagnosis or treatment exception because it was pertinent to the treatment of the victim for possible sexually transmitted diseases, psychological counseling, and the victim’s safety after discharge).
medical provider about the identity of an alleged perpetrator of domestic violence should be admissible under Rule 803(3). 206

B. THE NEBRASKA SUPREME COURT SHOULD RULE THAT THE IDENTITY OF AN ALLEGED PERPETRATOR IN DOMESTIC VIOLENCE CASES IS ADMISSIBLE UNDER RULE 803(3)

The Nebraska Supreme Court should extend the already existing case law and logic surrounding the admissibility of identity in child abuse cases and allow medical providers to testify regarding the identity of an alleged perpetrator in domestic violence cases. 207 Like other states, Nebraska provides a hearsay exception for medical diagnosis and treatment under Rule 803(3). 208 Moreover, Nebraska precedent, instructively in child abuse cases, dictates if a proponent can show the declarant made the statement in contemplation of providing assistance to a medical provider, and the statement is reasonably pertinent to medical treatment, then the statement is admissible under Rule 803(3). 209

Furthermore, the Nebraska Supreme Court has previously ruled the identity of the perpetrator in child sexual assault cases was admis-

206. Compare Oldman, 998 P.2d at 962 (reasoning a statement from a victim about the identity of the perpetrator in a domestic violence case was relevant and properly admitted under the medical diagnosis and treatment exception), with Perry, 956 N.W.2d at 50 (concluding the victim’s statements made to the nurse about the identity of a perpetrator in a domestic violence case was admissible under the medical diagnosis or treatment exception), City of Leeds, 1 So. 3d at 150 (holding statements from a victim to a doctor concerning the identity of the perpetrator were admissible under the medical diagnosis or treatment exception), and Koederitz, 166 So. 3d at 986 (recognizing hospital records that denote the identity of the perpetrator in a domestic violence case were admissible under the medical diagnosis or treatment exception).

207. Compare State v. Vaught, 682 N.W.2d 284, 293 (Neb. 2004) (concluding that a doctor’s testimony regarding the child sexual abuse victim’s identification of the perpetrator was admissible under Rule 803(3)), with Oldman v. State, 998 P.2d 957, 962 (Wyo. 2000) (declaring there is no reason to exclude the identity of an assailant in domestic abuse cases since identity is allowed under the medical diagnosis or treatment exception for cases involving domestic sexual abuse), and Moore v. City of Leeds, 1 So. 3d 145, 150 (Ala. Crim. App. 2008) (recognizing the rationale used for admitting identity under the medical diagnosis or treatment exception in domestic sexual assault cases is applicable to domestic violence cases as well).

208. Neb. Rev. Stat. § 27-803(3). See also, e.g., Iowa R. Evid. 5.803(4) (denoting the medical diagnosis or treatment exception to hearsay).

209. See State v. Vigil, 810 N.W.2d 687, 696-97 (Neb. 2012) (stating the two requisites for a statement to admitted under Rule 803(3) are that the statement must have provided assistance to medical diagnosis or treatment, and the statement must be reasonably pertinent to a medical provider for treatment or diagnosis); see also Vaught, 682 N.W.2d at 289 (explaining that for purposes of Rule 803(3), “the evidence must satisfactorily demonstrate that the circumstances under which the statement was made were such that the declarant’s purpose in making the statement was to assist in the provision of medical diagnosis or treatment, that the declarant’s statement was reasonably pertinent to such diagnosis or treatment and, further, that a doctor would reasonably rely on such statement”).
sible under Rule 803(3). The Nebraska Supreme Court determined the statements regarding the identity of the perpetrators were reasonably pertinent and assisted doctors in rendering the appropriate treatment. Thus, because the Nebraska Supreme Court has set forth the foundation for the admissibility of statements by medical providers about the identity of an alleged perpetrator in child sexual abuse cases under Rule 803(3), the court should extend this logic to allow statements about identity in domestic violence cases.

C. POSSIBLE OBJECTION THAT STATEMENTS MADE TO A MEDICAL PROVIDER ABOUT THE IDENTITY OF AN ALLEGED PERPETRATOR ARE NOT REASONABLY PERTINENT TO MEDICAL DIAGNOSIS OR TREATMENT OF DOMESTIC VIOLENCE VICTIMS

Some courts have struggled with determining whether a statement is reasonably pertinent for purposes of the medical diagnosis or treatment exception when the statement identified an alleged perpetrator in domestic violence cases. The exception is premised upon the notion that the hearsay is reliable due to the selfish motive a pa-

210. See Vigil, 810 N.W.2d at 698 (determining the identity of the perpetrator was correctly admitted under Rule 803(3) in a child sexual abuse case); see also Vaught, 682 N.W.2d at 289 (concluding a statement from a child sexual abuse victim to her medical provider about the perpetrator's identity was properly admitted under Rule 803(3)).

211. See Vigil, 810 N.W.2d at 697-98 (reasoning the identity of the perpetrator was relevant to the medical treatment of the victim because the doctor needed to know who caused the injuries in order to provide proper psychological treatment, prophylactic treatment for sexually transmitted diseases, and care for the safety of the victim); see also Vaught, 682 N.W.2d at 289 (“[The doctor’s] testimony indicate[d] his state of mind was such that he reasonably relied on the victim’s statement. [The doctor] also testified that there were valid medical treatment purposes for learning the identity of the perpetrator and that such purposes were pertinent to diagnosis and treatment.”).

212. Compare Vigil, 810 N.W.2d at 696-97 (declaring statements are admissible under Rule 803(3) if the statement had the purpose of providing assistance to the medical provider during treatment and it was reasonably pertinent), with Oldman, 998 P.2d at 692 (reasoning there is a logical extension from admitting the identity of the perpetrator under the medical treatment or diagnosis exception in domestic sexual assault cases to the identity of perpetrators in domestic abuse cases), City of Leeds, 1 So. 3d at 150 (holding the identity of the perpetrator in a domestic violence case was admissible under the medical treatment or diagnosis exception because, like a sexual assault victim, a domestic violence victim also needed treatment for her overall medical condition), and Perry v. State, 956 N.W.2d 41, 50 (Ind. Ct. App. 2011) (concluding “the material statements [the victim] made to [the nurse] . . . were admissible pursuant to [the medical diagnosis or treatment exception]”).

213. State v. Smith, 876 N.W.2d 180, 186 (Iowa 2016). The court explained that identity of the perpetrator who inflicted the injury “can be vexing for judges and lawyers. Normally, the identity of the perpetrator of physical injuries is not understood to be necessary information for effective medical treatment.” Smith, 876 N.W.2d at 186. See also State v. Robinson, 718 N.W.2d 400, 405 (Minn. 2006) (acknowledging the court is “not able to determine by judicial notice or general knowledge whether the notion that the identification of the perpetrator of domestic violence is reasonably pertinent to medical diagnosis and treatment is generally accepted in the medical profession”).
tient has to impart accurate information to a medical professional in order to receive proper treatment.214 Despite this presumption, there is a hesitation to rule that identity is reasonably pertinent to treatment because identity is not generally relevant to treatment of physical injuries.215 Normally, identity is not thought to be necessary in the medical profession in order to provide effective medical treatment.216

As a general rule, statements that attribute fault or causation are not admissible for purposes of the medical diagnosis or treatment exception.217 The reasoning behind this general rule is statements of that nature are not relevant for purposes of medical diagnosis or treatment.218 Furthermore, whether the medical profession generally accepts identity as pertinent to medical treatment is not a question for a court to decide, but rather an issue within the medical profession.219

214. Compare State v. Vigil, 810 N.W.2d 687, 694 (Neb. 2012) (specifying Rule 803(3) is premised on the idea that a patient obtaining medical treatment will be truthful in order to receive proper treatment), with Robinson, 718 N.W.2d at 404 (articulating the notion behind the medical diagnosis or treatment exception is the belief a person is relaying accurate information to the treating physician so proper medical treatment is rendered).

215. See Smith, 876 N.W.2d at 186 (quoting United States v. Joe, 8 F.3d 1488, 1494 (10th Cir. 1993)) (recognizing that “the identity of the perpetrator of physical injuries is not understood to be necessary information for effective medical treatment”); see also Robinson, 718 N.W.2d at 404 (“In contrast to the general notion that statements explaining the cause of an injury are admissible under the medical diagnosis exception, statements attributing fault, including statements identifying the accused perpetrator, are ordinarily not admissible.”).

216. See Smith, 876 N.W.2d at 186 (stating identity of a perpetrator is not generally understood to be necessary information in order to provide a victim with medical treatment); see also Robinson, 718 N.W.2d at 406 (detailing how the court is unable to determine identity of a perpetrator in a domestic violence case is reasonably pertinent for medical diagnosis and treatment when the issue depends upon the “views of the medical profession, not on the views of the court”).

217. Compare Robinson, 718 N.W.2d at 404 (“Under the medical diagnosis exception, statements attributing fault, including statements identifying the accused perpetrator, are ordinarily not admissible.”), with State v. Oldman, 998 P.2d 957, 961 (Wyo. 2000) (“Statement that have the effect of attributing fault or causation generally are not admissible in evidence under [the medical diagnosis or treatment exception] . . . .”).

218. Compare Smith, 876 N.W.2d at 186 (citation omitted) (“Normally, the identity of the perpetrator of physical injuries is not understood to be necessary information for effective medical treatment.”), with Oldman, 998 P.2d at 961 (noting generally under the medical diagnosis or treatment exception, statements attributing fault or causation are not relevant to medical diagnosis or treatment).

219. See Robinson, 718 N.W.2d at 406 (explaining how the views of the court for purposes of medical diagnosis or treatment exception is dependent upon the “views of the medical profession”). Cf. Smith, 876 N.W.2d at 187 (explaining how testimony by medical professional detailing how the identity of the perpetrator is pertinent to the victim’s treatment is needed in order to establish the proper foundation for the medical diagnosis or treatment exception in a child abuse case). The Iowa Supreme Court rejected a categorical rule for admitting identity and explained:

While it is common for statements of identity made by victims of child abuse to be admitted under [Iowa Rule 803(4)], the statements are not admitted simply
Without testimony indicating otherwise, speculation as to whether the medical field generally accepts identity as relevant to the treatment of a victim as a whole is what a court is left with, and therefore a court is hesitant to deviate from the general rule that identity of an alleged perpetrator is not reasonably pertinent. Thus, some courts have refused to rule that the identity of an alleged perpetrator in a domestic violence case is reasonably pertinent to medical treatment of victims.

D. STATEMENTS CONCERNING THE IDENTITY OF THE ALLEGED PERPETRATOR ARE REASONABLY PERTINENT TO THE MEDICAL DIAGNOSIS OR TREATMENT OF DOMESTIC VIOLENCE VICTIMS

Declining to allow testimony regarding the identity of a perpetrator in a domestic violence case is incorrect when a court determines identity is not reasonably pertinent to receiving medical treatment. A proponent must demonstrate a statement regarding identity is reasonably pertinent to the receipt of medical treatment in order to be because they fall within a category of statements made to doctors or medical personnel by victims of abuse. Instead, these statements are admitted only when there is evidence that the statements of identity were made by a child-abuse victim for purposes of diagnosis or treatment by a doctor or medical provider and the identity was pertinent to the diagnosis or treatment . . . . The value of that information is established by the foundational testimony of the doctors and medical providers in each case, and that testimony explains the pertinence of the perpetrator's identity to the diagnosis and treatment of the victim in the unique circumstances of each case.

Id.

220. See Robinson, 718 N.W.2d at 406 (noting that the court is only left with speculation as to whether the medical profession has evolved to acknowledge treating a victim of domestic violence includes the treating of the whole person). The Minnesota Supreme court elaborated:

We can speculate that the medical profession may have evolved to recognize the importance of treating the whole person of a victim of domestic violence, including the emotional and psychological effects of past violence and the potential of future violence. But we can do no more than speculate. The record before us contains no medical expert testimony on the scope of the customary treatment of a victim of domestic violence or whether the identity of the domestic abuser is reasonably pertinent to that treatment.

Id.

221. Compare id. ("We are not able to determine, by judicial notice or general knowledge, whether the notion that the identification of the perpetrator of domestic violence is reasonably pertinent to medical diagnosis and treatment is generally accepted in the medical profession.") with Smith, 876 N.W.2d at 189 (emphasizing there was insufficient evidence to find the identity of a perpetrator was reasonably pertinent to the treatment of a domestic violence victim), and State v. Beeder, 707 N.W.2d 790, 797 (Neb. 2006), disapproved on other grounds by State v. McCullough, 742 N.W.2d 727, 733 (Neb. 2007) ("[T]he State provided no reason why the defendant's identity would be reasonably pertinent to [the victim's] diagnosis and treatment . . . . ").

222. See State v. Smith, 876 N.W.2d 180, 194 (Iowa 2016) (Waterman, J., dissenting) (arguing there should be a categorical rule for the admission of identity in domestic violence cases under the medical diagnosis or treatment exception because identity is reasonably pertinent).
admissible under Rule 803(3).\footnote{223. \textit{See} State v. Vigil, 810 N.W.2d 687, 696-97 (Neb. 2012) (defining the second prong of admissibility under Rule 803(3) as “the statements were of a nature reasonably pertinent to medical diagnosis or treatment by a medical professional”); \textit{see also} Smith, 876 N.W.2d at 194 (Waterman, J., dissenting) (“[The medical diagnosis or treatment exception] does not condition admissibility on a showing that the patient’s statements given for medical treatment and diagnosis were actually used for treatment . . . . The context in which the identification is made is what matters, not what the treating physician and nurse did with that information.”).}

The Nebraska Supreme Court insisted the purpose behind a declarant’s statement may be reasonably deduced from the circumstances surrounding the statement.\footnote{224. \textit{See} Vigil, 810 N.W.2d at 697 (quoting State v. Vaught, 682 N.W.2d 284, 289 (Neb. 2004)) (“The appropriate state of mind of the declarant may be reasonably inferred from the surrounding circumstances.”).}

Regardless of the declarant’s age, the presumption that a declarant provided truthful information for treatment remains.\footnote{225. \textit{See} Vaught, 682 N.W.2d at 289 (noting “[Rule 803(3)] does not make any exception or qualifications based on the age of the declarant”).}

Thus, if a medical provider can provide testimony to support the inference that the declarant’s purpose in stating the identity of the assailant was to assist in medical treatment and the statement was reasonably pertinent to treatment, then the statement is admissible under Rule 803(3).\footnote{226. \textit{See} State v. Beeder, 707 N.W.2d 790, 797 (Neb. 2006), \textit{disapproved on other grounds by} State v. McCullouch, 742 N.W.2d 727, 733 (Neb. 2007) (explaining testimony regarding the identity of a perpetrator should be excluded as hearsay unless the State showed that the statement was reasonably pertinent to medical treatment). \textit{Cf.} Vaught, 682 N.W.2d at 289-90 (opining that a doctor’s testimony about the identity of a perpetrator in a child abuse case “was sufficient for the district court to conclude that the victim’s statement was of the type described in § 27-803(3) and therefore admissible under that statute”).}

The Nebraska Legislature has codified its legislative findings that victims of domestic violence are reluctant to seek out help because of the stigma and fear that attach due to the nature of the crime.\footnote{227. \textit{See} Neb. Rev. Stat. § 29-4301 (“The Legislature finds that because of the fear and stigma that often results from crimes of . . . domestic violence . . . many victims hesitate to seek help even when it is available at no cost to them.”).}

The Nebraska Legislature also expressed in its finding a direct correlation between the victim’s reluctance to seek help due to the retaliatory violence offenders engage in, and victims receiving the help they need.\footnote{228. \textit{See} id. (“[B]ecause of the risk of retaliatory violence by the perpetrator, many victims hesitate to seek help . . . .”).}

Victims of domestic violence are failing to receive necessary care and counseling, which results in the lack of support, information, and resources that are vital to the victim’s recovery from the abuse.\footnote{229. \textit{See} id. (“[V]ictims may fail to receive needed vital care and counseling and thus lack the support, resources, and information necessary to recover from the crime . . . .”).} Furthermore, because victims of domestic violence are reluctant to seek help, they are failing to report incidents, assist with the prosecution of
the crime, participate meaningfully in the criminal justice system, acquire legal protections, and stop future crimes of domestic violence.\footnote{230. See id. ("[V]ictims may fail . . . to report the crime, to assist in the prosecution of the crime, to participate effectively in the justice system, to achieve legal protections, and to prevent future . . . domestic violence.".).} As a result of these findings, the Legislature has expressly stated the lack of help victims are receiving is matter of concern for the State of Nebraska.\footnote{231. See id. ("This is a matter of statewide concern, and the prevention of violence is for the protection of the health, safety, and welfare of the public.").}

The Nebraska Legislature enacted a mandatory reporting statute that requires medical professionals to notify law enforcement when a patient appears to have received their injuries from the commission of a crime.\footnote{232. See NEB. REV. STAT. § 28-902 ("Every person engaged in the practice of medicine and surgery, or who is in charge of any emergency room or first-aid station in this state, shall report every case, in which he is consulted for treatment or treats a wound or injury of violence which appears to have been received in connection with the commission of a criminal offense . . . .").} The Nebraska Legislature has expressed its clear intent to protect victims of violence through the use of the criminal justice system.\footnote{233. Compare id. § 29-4301 (finding protection of domestic violence victims through the use of the criminal justice system, as well as providing support and resources, is a matter of concern for the State of Nebraska), with § 28-902 (requiring medical professionals to report to law enforcement when a patient appears to have sustained injuries in connection with the commission of a crime).} Thus, the Nebraska Supreme Court should comport with the Legislature’s intent to protect victims of domestic violence and extend the existing case law surrounding Rule 803(3) to allow medical providers to testify to a victim’s statement regarding his or her abuser.\footnote{234. Compare id. § 29-4301 (declaring the Nebraska Legislature’s finding that ensuring victims of domestic violence are receiving the proper care, which includes the utilization of the criminal justice system), and § 28-902 (mandating medical professionals to report when a patient received their injuries in connection with the commission of a crime), with State v. Koederitz, 166 So. 3d 981, 985 (La. 2015) (stating "[t]he [medical diagnosis and treatment] hearsay exception . . . has . . . received particular application in cases of child sexual abuse, including statements of fault" because of an expressed desire by the state legislature to protect child sexual abuse victims), and United States v. Joe, 8 F.3d 1488, 1494 (10th Cir. 1993) (providing justification for ruling identity was reasonably pertinent, in part, because "physicians often have an obligation under state law to prevent an abused child from being returned to an abusive environment"). Cf. Vaught, 682 N.W.2d at 293 (concluding a doctor’s testimony regarding a statement about identity made to him by a child sexual abuse victim was admissible under Rule 803(3)); Koederitz, 166 So. 3d at 985 (extending the rationale under the medical diagnosis or treatment exception for admitting statements regarding identity from child sexual abuse victims to include similar statements made by victims of domestic violence).} The modern understanding of domestic violence victims is evolving to include the understanding that victims need treatment of the whole person, including emotional and psychological injuries.\footnote{235. See Oldman v. State, 998 P.2d 957, 962 (Wyo. 2000) ("The identity of the assailant in this case was relevant . . . to treat the abuse as an underlying cause, rather than simply the injuries that were inflicted on this occasion."); see also Moore v. City of...}
identity of the person that commits domestic violence is relevant and reasonably pertinent because victims receive different treatment for abuse in familial relationships, as opposed to an attack by a stranger, safety concerns, and reoccurring abuse. If the medical provider can provide testimony that the identity of the assailant pertained to a victim's treatment, then a court should find the statement about identity of an alleged perpetrator is reasonably pertinent to medical treatment.

IV. CONCLUSION

Courts have correctly admitted the identity of domestic violence perpetrators under the medical diagnosis or treatment exception to hearsay. If the proponent can demonstrate that a victim’s statement regarding the perpetrator's identity is reasonably pertinent to medical treatment, and establishes the proper foundation required for the medical diagnosis or treatment exception, then the statement should be admitted. Moreover, in Nebraska, a declarant’s state of mind may be inferred from the testimony of medical professionals. Medical professionals are able to testify in order to establish the foundational requirements under Rule 803(3), as well as if the statements regarding identity were reasonably pertinent. Thus, in Nebraska, domestic violence victim’s statements can be reasonably pertinent and for the purpose of medical treatment, and testimony by medical professionals regarding the identity of the perpetrator should be admitted under the medical diagnosis or treatment exception.

Leeds, 1 So. 3d 145, 150 (Ala. Crim. App. 2008) (holding the identity of the assailant in a domestic violence case was admissible under the medical diagnosis or treatment exception for purposes of rendering aid to the victim’s overall medical condition); Perry v. State, 956 N.W.2d 41, 50 (Ind. Ct. App. 2011) (reasoning that identity of the perpetrator was admissible because it was reasonably pertinent to the victim’s psychological counseling and treatment of a potential sexually transmitted disease).

236. See Oldman, 998 P.2d at 962 (emphasizing that identity of the assailant was relevant to treating human bite marks, safety of the victim at the hospital, and treatment of the underlying issues of repeated abuse); see also Perry, 956 N.W.2d at 50 (explaining that identity of the perpetrator was admissible because the treating nurse used the information to create discharge and treatment plans).

237. See Perry, 956 N.W.2d at 50 (indicating testimony from the treating nurse about the identity of a domestic violence perpetrator was reasonably pertinent because of the treatment and ongoing care the nurse provided to the victim). Cf. Vaught, 682 N.W.2d at 289-90 (stating that the doctor’s testimony about the identity of the perpetrator was relevant to the medical treatment of the child abuse victim and therefore, admissible under Rule 803(3)).

238. See supra notes 72-146 and accompanying text.

239. See supra notes 188-206 and accompanying text.

240. See supra notes 207-212 and accompanying text.

241. See supra notes 222-237 and accompanying text.

242. See supra notes 188-237 and accompanying text.
Domestic violence victims are subjected to repeated abuses and traumas that are physical as well as psychological. Victims are afraid of their abusers and refuse to testify either for safety concerns or reliance upon the false promises made by their abusers to stop the abuse. The medical diagnosis or treatment exception provides an alternative to victims that find themselves in these endless cycles of abuse and provides an escape from the abuse that is within the confines of the law. Allowing a medical provider to testify to the identity of an abuser gives victims power to say that they were not the reason a defendant was put into jail. Instead, a third party that is not connected to the defendant can act as a scapegoat for the victim and better ensure the victim’s future safety. Allowing prosecutors to properly utilize this exception provides an alternative to providing justice without requiring victims to relive their abuse in front of their abuser and a courtroom.

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