

BASIS OF CLAIM

General Factual Assertions:

1. Adam DeRito enrolled in the United States Air Force Academy (“USAFA”) on or about June 28, 2006.
2. Adam DeRito completed all of his academic and training requirements to receive a cross-commission in the United States Marine Corps and was expected to graduate from USAFA on May 25, 2010.
3. Unfortunately, Adam DeRito was dis-enrolled from USAFA on June 25, 2010 on claims of misconduct.
4. Adam DeRito has continually denied the basis cited for his dis-enrollment from USAFA.
5. On April 10, 2015 Adam DeRito enlisted in the Colorado Army National Guard (“CANG”) and currently serves as a parachute rigger (92R) with the 5th Battalion - 19th Special Forces Group.
6. On or about April 6, 2017 Adam DeRito had met virtually every requirement to be promoted to warrant officer in the CANG so he could attend flight school with the Utah Army National Guard and become an Apache helicopter pilot. He only needed to pass a psychological evaluation.
7. However, Adam DeRito was informed that he had been diagnosed with a multitude of negative mental health conditions that would prevent him from being promoted.
8. Upon review of his medical records Adam DeRito learned that the adverse mental health conditions of (1) Personality Disorder, NOS with Narcissistic, Antisocial, Paranoid and Obsessive-Compulsive Personality Traits and (2) Impulse Control Disorder, NOS on June 20, 2011 by an Air Force psychologist named Major Kristen N. Henley-Price.
9. The diagnoses were entered into Adam DeRito’s military medical records while he was a civilian.
10. On January 8, 2019 the psychological advisor tendered a letter that indicated there was insufficient evidence to support the Personality and Impulse Control Disorder diagnoses as to Adam DeRito (Attachment 1). It has been recommended that the Personality and Impulse Control Disorder diagnoses be removed from Adam DeRito’s medical records. Action is still pending.
11. While the recommendation is welcome news because it took so long for USAFA to realize it’s mistake Adam DeRito is now too old to fly Apache helicopters.
12. Thus, Adam DeRito has not only lost out on a promotion and pay increase he has been forced to expend thousands of dollars on lawyers and is consistently depressed and anxious which is causing emotional trauma along with stress that manifests into physical pain and suffering that has greatly decreased his quality of life.

Legal Support for Adam DeRito’s Claim:

With the signing of the National Defense Authorization Act for 2020 government agencies such as USAFA can be sued for medical malpractice in regards to mental health diagnoses and treatment that results in injury. See also: *Washington v. Howard* No. CIV 14-481-RAW-SPS (E.D. Okla. Mar. 23, 2016); *Hill v. Smithkline Beecham Corp.* 393 F.3d 1111 (10th Cir. 2004). Mental health conditions such as a personality disorder is considered to be a severe

impairment that is traditionally diagnosed through individualized evaluations. See *Wilson v. Astrue* 602 F.3d1136, 1138, 1140 (10th Cir. 2010). In Colorado, "[t]o establish a prima facie case [for medical malpractice], the plaintiff must establish that the defendant failed to conform to the standard of care ordinarily possessed and exercised by members of the same school of medicine practiced by the defendant." *Deasy v. United States* 99 F.3d 354, 358 (10th Cir. 1996) citing: *Melville v. Southward*, 791 P.2d 383, 387 (Colo. 1990).

The aforementioned allegations by Adam DeRito more than substantiate a prima facie case for medical malpractice in regards to improper mental health diagnoses. By entering diagnoses Major Henley-Price establishes a doctor/patient relationship between her and Adam DeRito which means all of her actions as to Adam DeRito must conform to an ordinary standard of care. When Major Henley-Price entered in her diagnoses she did so without having an evidentiary basis as is pointed out by the Air Force's own psychological advisor in attachment 1. Clearly, a diagnosis needs to be based on evidence as is stated in Troy Todd's letter in which he further states that it is 'confusing' to see such diagnoses that are not accompanied by a record of psychological testing (attachment 2). Finally, there does not seem to be any rule or law that allows a military doctor to make a medical diagnosis of a civilian. Taken together, attachments 1 and 2 demonstrate that Maj. Henley-Price entered mental health diagnoses without evidence to support her position which does not conform to the ordinary standard of care for psychologists.

But for Major Henley-Price's failure to conform her behavior to the ordinary standard of care Adam DeRito would not have suffered a multitude of injuries over the last several years. Adam DeRito has lost the opportunity to receive more pay and a promotion and was forced to expend thousands of dollars on attorneys to get the improper diagnoses removed from his medical record. Moreover, Adam DeRito still seeks psychological counseling and experiences depression, anxiety, mental anguish and stress that manifests itself into physical pain which continues to reduce his overall quality of life. Currently, Adam DeRito values all of his injuries and economic losses at \$2,000,000.00.

Date:

Signed _____

Matthew J. Greife, JD, PhD.