## R. 406

[retain or discard existing note(s)?]

**~~Burchett v. Com.~~**

~~Evidence that defendant smoked marijuana on a daily basis was not admissible as habit evidence to prove that he smoked marijuana on day of fatal collision.~~

~~Burchett v. Com.~~, ~~98 S.W.3d 492 (Ky. 2003)~~

~~The next most recent case regarding 406 is from 25 years ago, it is below.~~

**~~Litster v. Utah Valley Community College~~**

To establish mailing in accordance with office ~~mailing~~ custom, party must make threshold showing that document in question was actually prepared and placed in office outgoing mailbox~~, and subsequent showing pertaining to procedure~~ for removal ~~of documents from office outgoing mail box~~ into custody of United States Postal Service.~~:~~ W~~w~~hile habit evidence may be admissible to support mailing, threshold showing of document preparation must be made by direct evidence. Admissibility of evidence does not equate to sufficiency of evidence to prove what it is offered to prove.

*Litster v. Utah Valley Community ~~College~~*, 881 P.2d 933 (Utah Ct. App. 1994).

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**R. 407**

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If not, add the following case citations?:

*Johnson v. Gold's Gym*, 2009 UT App. 76, 206 P.3d 302 (2009): evidence of repairing isolated parts of the parking lot after plaintiff tripped and fell on broken asphalt is classic subsequent remedial measure inadmissible under Utah R. Evid. 407.

*Paget v. Dept. of Transportation*, 2013 UT App 161 (2013): UDOT's decision to construct median barrier after crash is subsequent remedial measure inadmissible under 407. *Aff'd on other grounds*, *Paget v. Dept. of Transportation*, 322 P.3d 1180 (Utah Ct. App. 2014).

## R. 409

~~UT 409:~~

Ver. A [CRH]: *Lawrence v. MountainStar Healthcare*, 2014 UT App 40, 320 P.3d 1037, interprets and applies this Rule. Lawrence was a medical malpractice case, in which the Court of Appeals held that Rule 409 and Utah Code section 78B-3-422 exclude offers of payment and expressions of apology and compassion, but not statements of fault. The Court further held that the doctor's statement that hospital staff "messed up" and there had been "a complication," while hospital administrators allegedly apologized and assured plaintiff and her family that the hospital would take care of "it," created an inference relevant to issues of causation and damages and were not inadmissible under Rule 409.

~~*Lawrence v. MountainStar Healthcare*. Sstatements such as "we will take care of it; you don't have to worry about it; you don't need to be concerned about treatment or whatever it takes to make her well" fall neatly within inadmissible evidence of offers to pay medical expenses under 409(a). and Aa doctor's statement of "I'm sorry" falls under 409(b)(1). However, this rule does not make inadmissible statements of fault or similar admissions. Doctor's statement that "we messed up" is not rendered inadmissible by this rule.~~

Ver. B [EBH]: *Lawrence v. MountainStar Healthcare*, 2014 UT App 40, 320 P.3d 1037: Statements such as "we will take care of it; you don't have to worry about it; you don't need to be concerned about treatment or whatever it takes to make her well" fall neatly within inadmissible evidence of offers to pay medical expenses under 409(a). A doctor's statement of "I'm sorry" falls under 409(b)(1). However, this rule does not make inadmissible statements of fault or similar admissions. Doctor's statement that "we messed up" is not rendered inadmissible by this rule. ~~I hope that does it, but let me know if you need anything further. Thanks for a great semester!~~

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