

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI**

UNITED STATES OF AMERICA)	
)	
Plaintiff,)	
)	
v.)	No. 08-00026-04-CR-W-FJG
)	
CHRISTOPHER L. ELDER,)	
)	
Defendant.)	

DEFENDANT ELDER’S PROPOSED VOIR DIRE QUESTIONS

Come now the Defendant Elder and submits the following requested questions to be asked of the jury on voir dire examination:

Requested Introductory statement and instructions to the panel:

1. Introduction of all counsel in the case.
2. After hearing this and after seeing the attorneys, is there anyone who believes they know any of these individuals?
3. Introduction of Defendants in the case.
4. Is there anyone who believes they know or are familiar with any defendant in the case? [If so, inquire into specifics of the relationship, how long it has existed, whether professional, business or personal and whether or not such relationship will affect the juror's ability to serve.]

5. Both the United States and the defendants in this case are looking for jurors who will not let anything in their background color their thinking in judging the facts of this case.

6. There are no right or wrong answers in voir dire.

7. The only incorrect answer a panel member can give is no response when a panel member thinks he or she has or does have a response. Therefore, if you think you may have a response to any question asked, please raise your hand and respond accordingly.

8. Is there anyone who, for whatever reason, will have difficulty keeping an open mind until the close of the case after they have heard all the evidence and both sides have fully presented their evidence?

9. I will ask you some questions about not only your own experiences, but also the experiences of immediate family members and those “those close to you.”

10. When I speak of “those very close to you”, you must make a decision on your own who that phrase applies to. For example, some of you might have a brother or sister that you have not seen for 20 years but you have a next door neighbor that is like a brother or sister to you now. In that situation, your neighbor may be someone very close to you while your brother or sister may not be. So, when you are asked about immediate family members and “those very close to you,” you must decide who it is that affects your feelings and your judgment. It is those persons who you are being asked about when I say immediate family members or “those close to you.”

11. There will be testimony in this case about medical doctors, pharmacists, and the dispensing of controlled substances by doctors and pharmacies and how such

substances are available as legitimate prescription medication; how such medications can potentially be abused by patients who “doctor shop”; and testimony about a physician and pharmacist’s duties with respect to prescribing and dispensing such medications. Does the mere fact that this case involves a prosecution under the federal drug laws alleging that such prescriptions were illegally dispensed and abused give any member of the panel reason to believe that they could not fairly judge the evidence because of some prior experience or involvement by that juror, a close family member, or someone very close to them with doctors, pharmacists or drugs in general?

12. Does anyone here have a close family member or someone very close to them who has been investigated or prosecuted for any drug offense of any kind whatsoever?

13. Has any juror or any juror's immediate family member or someone very close to them been involved in drug rehabilitation as a patient?

14. Has any juror or any juror's immediate family member been involved in drug rehabilitation as a counselor or in any other professional role or capacity?

15. Has any member of the panel or a member of their immediate family ever made a claim against a physician, hospital, pharmacy or other medical professional because of alleged malpractice or other injury or harm caused by the person against whom the claim was made?

16. Has any member of the panel ever had a claim filed against them or an immediate family member for non-payment of fees by a hospital, doctor, or other medical facility or collection agency representing such interests?

17. Has any member of the panel ever had an experience in dealing with medical professionals, doctors, nurses, hospital staff, pharmacists, or others in a health related field that that would cause them to distrust such individuals and tend not to believe things such persons might say or represent to them?

18. Is any member of the panel or an immediate family currently under the care of a physician for any illness or injury that has as a part of the treatment regime the use of strong pain medications that are opiate based such as but not limited to oxycontin and other such medications.

19. Has any member of the panel ever purchased prescription medication off the internet or by mail order for themselves or an immediate family member?

21. Has any member of the panel or an immediate family member ever used a service such as 1-800 petmeds to purchase medications for a pet?

22. Does any member of the panel regularly watch the popular television show “Doctor House” and believe that they have seen at least a minimum of 5 episodes over the past three years?

23. Does any member of the panel regularly view the popular television show “Law and Order” and believe that they have seen at least a minimum of 10 episodes over the past three years?

24. Has any member of the panel or an immediate family member ever been involved in a dispute with someone else over any matter whatsoever where the validity of a signature or other hand writing was called into question?

25. Does any member of the panel or an immediate family member hold religious beliefs that the use of physicians, medical treatment, and prescribed medications are contrary to such religious beliefs?

26. Does any member of the panel have strong feelings about the adequacy of health care in this county, health insurance issues, and physicians and hospitals in general that would affect their ability to be fair and impartial when deciding a case involving a physician and a pharmacist?

27. Does any member of the panel believe that doctors, hospitals, and pharmacies unfairly overcharge for the services they provide and the cost of medications?

28. Does any member of the panel live on a street where occupants of a nearby dwelling were investigated for, accused or, or suspected of running a drug house?

29. Does any member of the panel run, manage or edit what is commonly known as a “blog” on the internet or other any other web site where individuals can post information on various topics of interest? [If the answer is yes, does it include routine discussion of health care issues, pending issues of health care legislation, and other health related topics?]

30. Does any member of the panel post messages on a “blog” or bulletin board web site at least one or more times a week on topics of public interest?

31. Does any member of the panel or an immediate family member have a subscription to any medical journals or other health care related journals or magazines?

32. Does any member of the panel manage, maintain or service a business web site as part of their job or their own business that is involved in internet sales and advertisement?

33. Does anyone on the panel or their immediate family or someone close to them have any experience working in a healthcare field? If so, ask necessary follow-up questions.

34. Does anyone on the panel or an immediate family member or someone very close to you have any training in a healthcare field? If so, ask necessary follow-up questions.

35. Does anyone on the panel or an immediate family member or someone close to you have any experience in the legal field or profession? Lawyer? Paralegal? Legal Assistant? If so, ask necessary follow-up questions.

36. Is there anyone who thinks or believes that if doctors do their job correctly that mistakes, accidents, or misdiagnosis will never happen? If so, ask necessary follow-up questions.

37. Is there anyone who thinks or believes that doctors and health care professionals should be perfect or should have all of the answers? If so, ask necessary follow-up questions.

38. Please ask each juror to state the following information:

a. your name and age; where born and raised; marital status; number and age of children at home;

b. your present address; length of time at this address, and if less than one year, last prior address;

c. your present occupation and the name and address of your employer; duties performed, length of employment;

d. your employment for the past five years;

e. if retired, your former occupation; how long you have been retired; and your employment for the five years preceding retirement;

f. if you are married, please give employment of your spouse for the past five years; and

g. your educational background, including any degrees received.

39. Having heard answers of your fellow jurors to some of the prior questions do you, of your own knowledge, know anything at all about the facts of this case?

40. Similarly, do you remember having read or heard anything at all about this case? [Explore exposure out of the hearing of the other jurors]

41. Similarly, does anyone now believe they know any of the persons who may be called as witnesses in this case? [Read witness lists of parties,]

42. Does anyone know any of the attorneys for any of the defendants personally or have your or any members of your immediate family been involved in any kind of litigation where one of these attorneys was involved in some way? [Explore affirmative responses].

43. Does anyone know the currently appointed United States Attorney in Kansas City, or any member of his staff, whether involved in this case or not.

44. Has any member of the panel or an immediate family member or someone close to you ever been a regular customer of the Medicine Shoppe in Belton, Missouri?

45. Is any member of the panel acquainted with Lynn Rostie, owner of the Medicine Shoppe in Belton, Missouri or know anyone who has ever worked there or purchased medication there on a regular basis?

46. Has any member of the jury panel previously served on a grand jury or a criminal trial jury? [If so, for those who have served on a grand jury, please determine for what court. For those who have served as trial jurors in criminal cases, please determine the charge against the defendant on each occasion, the location of the court, and the verdict rendered.]

47. Has any member of the jury panel ever been arrested for committing a criminal offense, other than a minor traffic charge? [Please develop details for any affirmative responses, such as the nature of the charge upon which the arrest was based and date of arrest.]

48. Does any member of the jury panel have any close relative or friend or someone close to them who has been arrested and charged with the commission of a criminal offense other than a minor traffic charge? [Please develop details for any affirmative responses.]

49. Has any member of the jury panel, or one of your close relatives or friends, or someone close to you ever appeared as a witness in a criminal case?

[For affirmative responses, please determine the nature of the case, the person's connection to the case, and whether that person was satisfied with the ultimate disposition of that case.]

50. Has any member of the jury panel, or one of your close relatives or friends, or someone close to you, ever been employed by the U.S. Government, including service in the Armed Forces? [For affirmative responses, please determine the dates of employment, the agency of employment, and the nature of the duties performed.]

51. Has any member of the jury panel, or any close relative or close friend, ever been the victim of a crime? [If so, please determine the nature of the crime, whether there was a subsequent prosecution of the offense, and the result of that prosecution.]

52. Is there any member of the panel who because of the nature of the case believes that you could not be fair and impartial to both the Government and the defendant in evaluating the evidence? [If so, please develop the details.]

53. If you are selected as a juror in this case, you will be required to make a solemn oath that you will try this case and render a verdict based on the evidence and according to the instructions of the court. Is there any member of the panel who could not take this oath?

54. Is there any member of the panel who knows of any reason whatsoever why he or she could not sit as a juror in this case with absolute impartiality to both sides, either because of some bias or prejudice personally as to the defendant or the Government?

55. The law does not permit jurors to be governed by sympathy, prejudice, or public opinion. Both the accused and the public expect that jurors will carefully and impartially consider all the evidence in the case, follow the law as stated by the court, and reach a just verdict regardless of the consequences. Is there any member of the panel who could not follow this instruction?

56. Has any member of the panel or your immediate family ever been involved in any controversy or case which involved law enforcement officers or other Government agents?

57. Does anyone know any other person on the jury panel?

58. The burden of proof is on the United States Government and the government must prove all the elements of the offense and the Defendant does not have to prove anything. If the Government fails to prove all the elements of the crime charged in this case beyond a reasonable doubt, you must acquit the defendant. Assuming the government fails to establish one or more of the elements of the crime, is there any reason you would hesitate to return a verdict of not guilty as you are required to do by law?

59. If you were the United States Attorney charged with the responsibility for prosecuting this case, or if you were the defendant on trial here today charged with the same offense, or his counsel, do you know of any reason why you would not be content to have your case tried by someone in your frame of mind?

60. Does any member of the jury panel know of any reason, whether asked or not, why he could not sit as a juror in a fair and unbiased manner in this trial? Does any member of the jury panel know of any reason why he or she should not be selected to sit as a juror in this trial?

61. Does anyone suffer from any hearing impairment that makes it difficult for you to understand normal conversation?

62. Can you think of any other matter which you should call to the Court's attention which may have some bearing on your qualifications as a juror, or which may prevent your rendering a fair and impartial verdict based solely upon the evidence and the court's instructions as to the law?

Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

I certify that a copy of this pleading has been caused to be served on the Assistant United States Attorney for Western District of Missouri and other ECF listed counsel

through use of the Electronic Court Document Filing System on Saturday, June 27, 2009.

/s/

JOHN R. OSGOOD