

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

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

**GOVERNMENT’S MOTION *IN LIMINE* TO EXCLUDE ANY EVIDENCE,  
REFERENCE, ARGUMENT, OR SUGGESTION THAT THIS MATTER WAS  
RESOLVED FAVORABLY FOR DEFENDANT CHRISTOPHER ELDER BY THE  
TEXAS MEDICAL BOARD**

The United States of America, by Beth Phillips, United States Attorney, and Assistant United States Attorneys, Rudolph R. Rhodes IV and James Curt Bohling, all for the Western District of Missouri, hereby files this motion in limine for an order to exclude at trial any evidence, reference, argument or suggestion that this matter was resolved favorably for defendant Christopher Elder by the Texas Medical Board.

**I. Procedural Background**

Defendant Christopher Elder is charged in a multi-count indictment with conspiring to distribute and possess with intent to distribute controlled substances. The Indictment alleges that defendant Elder wrote unlawful and invalid prescriptions for thousands of dosage units of Schedule III, IV and V controlled substances. Additionally, Counts Three through Six charge defendant Elder and co-defendant Troy Solomon with the illegitimate distribution of Schedule III and IV controlled substances and aiding and abetting, in violation of 21 U.S.C. § 841(a)(1) and 18 U.S.C. § 2. Counts Seven through Ten charge defendants Elder and Solomon with the

illegitimate distribution of Schedule III, IV and V controlled substances and aiding and abetting, in violation of 21 U.S.C. § 841(a)(1) and 18 U.S.C. § 2.

## **II. Argument**

Defendant Elder intends to testify that the Texas Medical Board has dismissed all complaints against him and determined that he has not committed any “violation of the Medical Practice Act” and that his Texas records are “appropriate and well documented.” made a finding involving patients in this case in his favor. He also intends to introduce evidence. *See* Defendant Elder Exhibit Nos. 23 & 55. Evidence related to such a claim is irrelevant to the elements of the offenses charged and, in any event, is inadmissible under Federal Rule of Evidence 403 because it would be confusing and misleading to the jury.

The evidence regarding the Texas Medical Board’s administrative proceedings are not relevant to this criminal case. First, all of the complaints against defendant Elder have not been dismissed. There is a pending administrative action awaiting ruling in this case. Second, the documents he seek to admit into evidence regarding complaints filed against him concern his practice at Little York Road, which was after he had ceased his employment at Westfield Medical Clinic and South Texas Wellness Center. Third, the Texas Medical Board in fact concluded that defendant Elder “fell below the standard of care in all cases for documentation of appropriate physical examination for these patients” and “did not meet the standard of care in the management of” one patient. *See* Defendant Elder Exhibit No. 23, at 11.

Even if the evidence was deemed to be marginally relevant, the evidence should be excluded under Rule 403. The Fifth Circuit dealt with a similar issue (parallel proceedings) in *United States v. Anderson*, 933 F.2d 1261 (5<sup>th</sup> Cir. 1991). In that case, the Fifth Circuit affirmed

a district court's refusal to allow defendants to introduce evidence of a parallel civil proceeding under Rule 403. It reasoned that such evidence was likely to confuse the jury and would consume undue time. *Id.* at 1276.

As in *Anderson*, a jury would likely be confused by the testimony and evidence that the Texas Medical Board dismissed the cases against him. Jurors might incorrectly believe that there is something improper about a criminal case regarding his conduct. They might also become confused between administrative and criminal proceedings.

### **III. Conclusion**

For the foregoing reasons, the government respectfully requests that the Court exclude any evidence, testimony, or argument suggesting that this case was resolved favorably for Defendant Elder by the Texas Medical Board. The government further requests that the Court instruct defense counsel that he is prohibited from discussing in his opening statement, introducing through cross-examination of the government's witnesses, or arguing in closing that a governing board resolved this matter.

Respectfully submitted,

Beth Phillips  
United States Attorney

By: */s/ Rudolph R. Rhodes IV*

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was delivered on June 20, 2010, to the CM-ECF system of the United States District Court for the Western District of Missouri for electronic delivery to all counsel of record.

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