



Defendant Elder filed a response to the Government's motion (doc #363). Defendant argues that he has been allowed by both the DEA and the Texas Medical Board to practice medicine and prescribe controlled substances during the period he has been under investigation and indictment. Further, defendant argues that following his conviction, defendant appeared before the Texas Medical Board to answer allegations pending before the Board. Following a hearing, a panel found that the allegations against defendant were unsubstantiated and that there was no basis to discipline him based on the complaints under consideration. While defendant did not provide the Court with paperwork listing the allegations from which he has apparently been cleared by the Texas Medical Board, defendant states that the allegations were that (1) he was not spending enough time with patients or conducting a sufficiently thorough medical examination; (2) he was not adequately charting and maintaining records of patient visits; and (3) the prescribed treatment regimen was not therapeutically correct.

Despite defendant Elder's argument that he has been cleared by the Texas Medical Board of various allegations, these were not the allegations for which he was tried and convicted in the Western District of Missouri. Even though defendant Elder may have actual patients for whom he has provided adequate medical care, he has been found guilty of conspiring to distribute and dispense controlled substances and of aiding and abetting the unlawful distribution and dispensing of controlled substances. As set forth by defendant in his response, the Government's theory of prosecution against him was that he initially created bogus prescriptions for non-existent patients and later duplicated prescriptions of real patients and provided the prescriptions to defendant Solomon to be filled in Missouri. The conviction on these charges causes the Court to question the safety of the community if defendant is allowed to continue to prescribe controlled substances.

