

**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’S REQUEST FOR FURTHER CLARIFICATION
OF HIS CONDITIONS OF RELEASE WITH
SUGGESTIONS IN SUPPORT**

The United States filed a motion to prevent defendant from prescribing controlled substances while he is pending sentencing (See doc# 362). Defendant was convicted on June 30, 2010, of the unlawful distribution and dispensing of controlled substances. Defendant filed an answer in which he argued that he posed no new threat and that it had previously been the implicit position of the District Court that his continued practice of medicine would not pose one simply because of the conviction (See doc# 363). Defendant’s arguments to the Magistrate were rejected.

On August 2, 2010 the court granted the government’s motion and ordered:

. . . Defendant Elder’s conditions of release are
modified to prohibit defendant Elder from ordering,

manufacturing, distributing, possessing, dispensing, administering and/or prescribing controlled substances, as well as engaging in any other controlled substance activities, either directly or indirectly (such as through another physician, nurse or physician's assistant).

See Doc# 364.

Upon conviction, the government, through AUSA Rhodes, asked the district court to detain the defendant on the spot. The request was denied summarily without reference back to the Magistrate Judge. Implicit in such denial was a finding under the relevant statute that he was neither a flight risk nor a threat to the community.¹ In accordance with the present order quoted above, defendant has duly tendered and surrendered his DEA certificate and acknowledged that he cannot dispense controlled substances or do any other act that would contravene the above order.

On August 20, 2010 defendant again appeared before the Texas Medical Board (TMB) and pursuant to the Texas Medical Practice Act, because of his conviction for a Title 21 offense covered by the act, defendant was advised during the hearing that he would be forthwith duly suspended from the practice of medicine pending final revocation upon finality of his conviction. The three-member panel verbally informed defendant that it had authority to probate his suspension pending finality of

¹ Normal practice in this district in the past where issues of release are of concern at a district court proceeding is for the district court to immediately remand the matter back to the Magistrate Judge for clarification of any factual issues relevant to continued release on bond. Apparently Judge Gaitan, having heard two weeks of trial testimony, did not feel this was necessary when he denied the motion to take defendant into custody.

his conviction but would decline to do so in light of the above quoted Order because the members were concerned that they would in some way contravene the intent of the federal court to prevent defendant from practicing medicine and leave the impression with the public that they were somehow at odds with the federal court in Missouri, or words to that effect.

One of the conditions of defendant's release on bail is to stay employed. Defendant has been offered a physician position that will absolutely not involve the writing of any controlled substance prescriptions or the performance of any other acts falling under the prohibition of the above order giving it its most liberal interpretation. Obviously, he can only accept this position if the TMB probates his suspension pending finality of his conviction.

Defendant is requesting that this court enter an Order further clarifying its concerns and provide in that Order that defendant may engage in the practice of medicine so long as he does not run afoul of the above quoted restrictions. Defendant suggests that this can be closely monitored by pretrial services either here or in Texas through direct contact with the supervising physicians and facility managers for whom Doctor Elder will do work. Finally such a modification order will allow Defendant to timely file a motion for reconsideration before the TMB asking for permission to practice under probated suspension while also meeting any stringent requirements that board might deem appropriate.

Defendant provided a draft copy of this motion to AUSA Rhodes to determine if the government would agree. Mr. Rhodes advised by email that he is opposed inasmuch as the TMB suspension order indicates suspension because of the federal conviction.

WHEREFORE, defendant moves the Court to enter an Order further explaining the restrictions on Doctor Elder and specify in that Order that it is permissible insofar as the Court is concerned for him to practice his profession under a probated suspension so long as there is absolute conformity with the DEA suspension provisions quoted above and he meets and conforms to all additional requirements and conditions that might be imposed by the Texas Medical Board.

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 Thursday, August 26, 2010.

/s/

JOHN R. OSGOOD