

**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 REPLY TO THE
GOVERNMENT’S OBJECTIONS TO
HIS REQUEST FOR BOND MODIFICATION
AND CLARIFICATION WITH
SUGGESTIONS IN SUPPORT**

The United States has filed an answer to defendant’s request for bond modification and clarification. The government incorrectly argues that defendant is asking this court to order the Texas Medical Board to do something the board is opposed to or otherwise try and intrude into or override Texas State Law. This is simply not the case and the government apparently does not understand the nature of defendant’s request nor has the government researched Texas law.

The Texas Medical Practice Act provides:

Sec. 164.057. REQUIRED SUSPENSION OR
REVOCAION OF LICENSE FOR CERTAIN

OFFENSES. (a) The board shall suspend a physician's license on proof that the physician has been:

(1) initially convicted of:

(A) a felony;

(B) a misdemeanor under Chapter 22, Penal Code, other than a misdemeanor punishable by fine only;

(C) a misdemeanor on conviction of which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure;

(D) a misdemeanor under Section 25.07, Penal Code; or

(E) a misdemeanor under Section 25.071, Penal Code; or

(2) subject to an initial finding by the trier of fact of guilt of a felony under:

(A) Chapter 481 or 483, Health and Safety Code;

(B) Section 485.033, Health and Safety Code; or

(C) the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.).

(b) On final conviction for an offense described by Subsection (a), the board shall revoke the physician's license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 202, Sec. 33, eff. June 10, 2003.

The above law absolutely require suspension upon conviction of a Title 21 drug offense. Defendant does not dispute this. Defendant also understands, agrees and acknowledges that upon finality of his conviction that his license is revoked. The same law also provides, however that a suspended license under the above provisions may be “probated”:

Sec. 164.101. PROBATION. (a) The board on majority vote may probate an order canceling, revoking, or suspending a license or imposing any other method of discipline if the probationer conforms to each order, condition, and rule the board establishes as a term of probation.

(b) At the time probation is granted the board shall establish the term of the probationary period.

(c) If a license suspension is probated, the board may require the license holder to:

(1) report regularly to the board on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the board; or

(3) continue or review continuing professional education until the license holder attains a degree of skill satisfactory to the board in the areas that are the basis of the probation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 164.102. PERSONS INELIGIBLE FOR PROBATION. (a) The board may not grant probation to a physician who constitutes, through the practice of medicine, a continuing threat to the public welfare.

(b) Except on an express determination, based on substantial evidence, that granting probation is in the best interests of the public and of the person whose license has been suspended, revoked, or canceled, the board may not grant probation to a person whose license has been canceled, revoked, or suspended because of a felony conviction under:

(1) Chapter 481 or 483, Health and Safety Code;

(2) Section 485.033, Health and Safety Code; or

(3) the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Under Section 164.102(b) the TMB has to the power to “probate” Doctor Elder’s present suspension because of his conviction “. . . if the board determines that it is in the best interests of the public and of the person whose license has been suspended.” It was this provision that was the subject of discussion during the recent hearing before the TMB. The Board expressed concern that this Court had already tied their hands by the finding that Elder’s practice of medicine would constitute a

danger to the community and for them to “probate” his suspension in the face of such an order would work contrary to the intent of the federal court.

Doctor Elder is not asking this court to Order the TMB to grant him the right to practice. That is a matter entirely up to the discretion of the TMB and is clearly a question of state law. In denying the request for probation of the suspension the TMB board members orally expressed their concern that they not offend this court. Doctor Elder now merely requests a clarification order indicating that this court will defer to the TBM and Texas law and the court’s only restrictions on Doctor Elder, as a condition of probation, is that he not dispense controlled substances in accordance with the previous order, something which he is in full compliance with and does not wish to contest.

Doctor Elder has been offered a position at Genesis Assessments in Houston. The Supervising Doctor is: Jerome Carter, MD The Doctor he will be assisting directly is Celious Barner, MD. The nature of the practice will involve the review of medical records by Dr. Elder in his capacity as a rehabilitation expert to assist in a determination as to whether the patient is eligible to receive social security disability. There will be absolutely no work with controlled substances per the court order. This information and a contact number for Doctor Barner has been provided to Ms. Hodges with pretrial services.

Defendant is not asking this court to overrule any action by the TMB or even suggest to the TMB that they should take any particular course of action one way or the other. Defendant only seeks an order indicating that the Court has no objection to the Doctor working for Genesis should the board grant a renewed request for reconsideration and probation of the suspension.

WHEREFORE, defendant moves the court to grant his opening motion.

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 August 30, 2010.

/s/

JOHN R. OSGOOD