

**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.	)	

**MOTION REQUESTING THT THE COURT ISSUE A  
SUBPOENA PURSUANT TO RULE(17)(c) TO THE TEXAS  
MEDICAL BOARD DIRECTING PRODUCTION OF CERTAIN FILES  
THAT ARE RELEVENAT AND NECESSARY TO DEFENDANT  
ELDER’S DEFENSE WITH SUGGESTIONS IN SUPPORT**

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COMES NOW defendant Christopher Elder and moves the Court for an order approving the issuance and service of a Rule 17(c) pre-preproduction subpoena on the Custodian of Records, Texas Medical Board, 333 Guadalupe Tower No. 3, Suite 610, Austin, Texas 78701 (herein after TMB) directing the TMB to produce the investigate files on Doctor Peter Chukwuemeka Okose compiled during the course of an investigation into Doctor Okose’s medial practices as more fully detailed below. As grounds therefore, defendant states:

1. Defendant Elder is charged in a multi-count, multi-defendant indictment with various federal offenses related to the manner in which he is alleged to have issued certain prescriptions in connection with his medical practice in Houston, Texas. It is alleged that prescriptions were faxed from various phone numbers in Texas to a local pharmacy here in Missouri, that the pharmacy then shipped the filled prescriptions back to various addresses in Texas, that money was sent back to Missouri through a third party to be paid to the pharmacy owner, and that these actions were in violation of various federal statutes.
2. Defendant Elder will deny the allegations in the indictment at trial and will offer evidence to prove that he was not personally responsible for or a part of any criminal conspiracy or substantive criminal offenses.
3. Doctor Peter Okose operated two Medical Clinics located in Houston, Texas during periods relevant to the charges in this case. Prescriptions issued by Doctor Okose were filled by the pharmacy in Belton, Missouri upon receipt of facsimiles authorizing the issuance of same. Doctor Okose's office informed Missouri and federal authorities by way of letter and fax that Okose authorized said prescriptions and that they were legitimate. Doctor Okose's practices and procedures were similar to those which are alleged to have been criminal conduct in this indictment. On

May 4, 2006 Doctor Okose made a voluntary surrender of his DEA Controlled substance authorization to DEA Houston field office. He has not been indicted for any federal crimes.

4. Defendant Elder is generally aware of the content of the investigative file on Doctor Okose based on discovery provided to date by the United States, private investigation conducted on behalf of Doctor Elder by private investigators, and public records that are already available from the TMB.
5. The investigative files contain a substantial amount of investigative materials directly relevant to the preparation of Elder's defense which will be offered into evidence at the trial, that is: statements of witnesses directly involved in this case, the identify of whom defendant Elder is already aware of which contain important details necessary to the preparation of his defense that will be marked and possibly offered as exhibits; a statement or statements of Doctor Okose, himself, which provide details that corroborate defendant's trial defense as to how and under what circumstance prescriptions were filled by the Missouri pharmacy and shipped back to Texas which will be marked and offered as evidence, particularly in the event that Okose should at some point become an unavailable witness; records of prescriptions filled by the pharmacy here in Belton, acknowledged to have been written by Okose, essential to

defendant's preparation of his defense to show business practices of the Belton pharmacy and its owners and employees; fax telephone numbers and addresses of persons in Texas with direct knowledge of who received, signed for, and took possession of certain filled prescriptions which is information directly related to Elder's defense and essential to the preparation of his defense which will be marked and offered as likely exhibits; statistical data compilation as to amounts, types, and classifications of drugs prescribed by Okose which is relevant to establish what is or is not acceptable medical practices which are essential exhibits; and, submissions by Okose to the TMB of third party statements, documents, affidavits and records in which Okose asserted that his practices in dealing with the pharmacy here in Missouri were proper in all respects which is documentary evidence that will be offered as an essential component to a possible affirmative defense by defendant Elder and which will corroborate certain aspects of his defense to these charges.

6. Defendant is not seeking access to the file to simply assemble impeachment evidence or to obtain discovery. Defendant believes the file contains documents, statements, affidavits, and other materials that will be marked as evidence in this case and offered into evidence as part of the defense of

this case. Witness statements are potentially admissible under exceptions to the hearsay rule in the event of the unavailability of that witness.

7. Rule 17(c), Federal Rules of Criminal Procedure provides authority for the Court to approve a pre-production subpoena assuming the subpoena is not issued simply to obtain discovery. The propriety of a Rule 17(c) subpoena and under what circumstances it is appropriate has been thoroughly reviewed and discussed by this Court in *United States v. Cardarella*, 07-00007-02-CR-W-FJG and by another Judge of this Division in *United States v. Eye*, 05-00344-01-CR-W-ODS. In *Cardarella*, this Court found that the defendant's attorney improperly employed 17(c) to obtain certain telephone records from the local confinement facility and ruled that the evidence could not be used at trial. In *Eye*, a case indicted before *Cardarella*, but tried after it, it was the government itself that violated Rule 17(c) when it obtained tapes from the same confinement facility. Judge Larsen in his report and recommendation distinguished *Cardarella* and *Eye*, based on whether the moving party had been prejudiced and allowed the government to use the evidence at trial. Judge Smith adopted the R&R in all respects.
8. The order and R&R in the two aforesaid cases seem to clearly set out the parameters that a moving party is to be guided by in requesting such a

subpoena. Defendant believes that his motion and request adequately justify the issuance of such a subpoena in this case.

9. In summary, defendant believes that pre-production of the investigative file will produce relevant documents, statements, and records that will be marked and offered as potential exhibits in the defense of this case. The file is likely substantial in size and comparable in size to materials already produced in this case which number in the thousands of pages. The ability to share this information with the government and co-defendants prior to trial, mark the items as exhibits, and marshal the evidence prior to trial will save substantial time and avert the possibility of an 11<sup>th</sup> hour continuance request in the event the materials have to be later obtained with a duces tecum trial subpoena.

10. Defendant proposes therefore that the Court approve the issuance of a pre-production subpoena to the TMB which contains the following language which is, upon information and belief, acceptable to the TMB:

Provide all books, records, documents, and information contained in the public files and non-public investigate files pertaining to Doctor Peter Okose assembled and compiled in connection with the investigation of the Doctor because of alleged improper conduct by the Doctor.

WHEREFORE, defendant moves the Court to issue an Order approving this request and directing and authorizing the issuance of the aforesaid subpoena by the Clerk of

Court with directions that the Subpoena be served on the Custodian of Records,  
Texas Medial Board, 333 Guadalupe Tower No. 3, Suite 610, Austin, Texas 78701  
directing the pre-production of records in accordance with the duces tecum language  
suggested above or such other language as deemed acceptable and appropriate to this  
Court.

Respectfully submitted,

/s/

John R. Osgood  
Attorney at Law, #23896  
Commercial Fed Bnk- Suite 305  
740 NW Blue Parkway  
Lee's Summit, MO 64086

Office Phone: (816) 525-8200

Fax: 525-7580

#### 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 Wednesday, August  
20, 2008

/s/

JOHN R. OSGOOD

**Osgood Law Office**

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