

**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 ANSWER TO THE  
GOVERNMENT’S MOTION TO MODIFY  
HIS CONDITIONS OF RELEASE WITH  
SUGGESTIONS IN SUPPORT**

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The United States seeks to prevent defendant from prescribing controlled substances while he is pending sentencing. Defendant was convicted on June 30, 2010 of the unlawful distribution and dispensing of controlled substances. The government, more specifically the DEA, now seeks to have this court do what it has heretofore failed to do itself administratively for over four years -- revoke his DEA license to dispense such medication -- on grounds that he is a threat to the community.

Defendant has been allowed by both DEA and the Texas Medical Board to practice medicine and prescribe controlled substances during the entire period he has been under investigation and indictment. Indeed, defendant applied for a renewal of his DEA license on August 4, 2009, and disclosed his status on the application. The DEA in Houston did not issue the physical license; however, defendant's counsel was informed verbally and by email that as long as his license application was pending, he could practice and dispense controlled substances until further notice that the application was being denied. It has never been denied. Defendant himself has also confirmed this by direct communication with the administrative arm of DEA.

Even more significant, after indictment defendant was investigated by the Texas Medical Board and was required to produce patient files by that board and required to respond to a complaint and appear before the Board. On Friday, July 23, 2010, defendant Elder appeared before the Texas Medical Board with undersigned counsel and local Austin, Texas counsel, to answer the allegations then pending before the board. Following a hearing before a three member panel which included a physician and an attorney, the Board panel reached findings that the allegations against Doctor Elder were unsubstantiated, that he was in compliance with Texas law and the Texas Medical Practice Act, and that there was no basis to discipline him based on any of the complaints then under consideration. The panel members

instructed counsel for the Texas Medical Board to prepare a notice of dismissal to be submitted to the full TMB Board for formal decision in their August session.<sup>1</sup>

The gist of the complaints against Doctor Elder that were under consideration was whether he was spending enough time with patients and conducting a thorough enough medical examination 2) whether he was adequately charting and maintaining records of patient visits, and 3) whether the prescribed treatment regime was therapeutically correct. The Board members determined he was in full compliance. No new complaints have been initiated against Doctor Elder since his conviction in Missouri.

The government's theory of prosecution in this case by the end of the trial was that Doctor Elder initially simply created bogus prescriptions for non-existent patients and then duplicated prescriptions of real patients and provided the latter to Mr. Solomon for transmission to Missouri. There was no suggestion during the trial that he was incapable of properly practicing medicine. The Belton pharmacy has been shut down and there is no evidence that Doctor Elder is doing anything illegal at this point or has any inclination to do so. He is a board certified pain management

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<sup>1</sup> The summary of allegations by TMB staff counsel was marked as defendant's exhibit 55 for the trial and disclosed to government counsel. An expert hired by TMB staff counsel filed an 11 page report with the board which concluded that Elder was lax in record keeping and patient examinations but that his therapeutic treatment was correct. This too was marked as defendant exhibit 23 and disclosed to the government. Points one and two of these findings were rejected by the 3 member board following the hearing as unsubstantiated by the evidence.

specialist and is presently engaged in the lawful practice of medicine which includes by necessity the prescribing of schedule III and IV controlled substances.

There is nothing of record to suggest that he is in any way harming the public or that he will do so in the immediate future pending sentencing.

WHEREFORE, defendant moves the Court to deny the government's motion for modification.

/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

Email: [jrosgood@earthlink.net](mailto:jrosgood@earthlink.net)

Web site: [www.juris99.com](http://www.juris99.com)

#### 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 Friday, July 30, 2010.

/s/

JOHN R. OSGOOD