

BEFORE THE
NORTH CAROLINA MEDICAL BOARD

In re:)
)
Keith Emery Johnson, M.D.) RESPONDENT'S MOTIONS IN
) LIMINE
)
Respondent.)

COMES NOW Respondent, Keith Emery Johnson, M.D., (hereinafter "Dr. Johnson") and makes the following Motions in Limine to exclude certain evidence at the Hearing of this matter:

1. Motion to Exclude Admissibility of Videotape of WTVD News Report ("video")

The video aired on television prior to 2000 as an "expose" entitled "The Cancer Con" with a negative spin on Dr. Johnson's practice. The video was filmed, in part, by a disguised, undercover alleged cancer patient. In all likelihood, not all of the footage filmed is offered in the video nor available to the Board.

The contents of the video are irrelevant because it fails to make the existence of any fact of consequence to the determination of the action more or less probable than it would be without the evidence. N.C. R. Evid. 401.

In the event the evidence is relevant it should be excluded because its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the Board. N.C. R. Evid. 403.

2. Reference to Dr. Johnson's "Practice" and an "Experimental Instrument"

Dr. Johnson practices alternative/integrative medicine. The North Carolina Medical Board is prohibited by N.C. Gen. Stat. § 90-14(a)(6) from revoking Dr. Johnson's license because of his practice of a therapy that is experimental, non-

traditional, or that departs from acceptable and prevailing medical practices unless, by competent evidence, the Board can establish that the treatment has a safety risk greater than the prevailing treatment or that the treatment is generally not effective.

So that Dr. Johnson's practice does not become the focus of the hearing, Dr. Johnson requests that the details and substance of his practice (ie - chelation therapy, experimentation with Electro-Scaler, etc.) not be discussed and his practice be referred to only generically as his "Practice". To do otherwise would impermissibly permit evidence lacking any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence. N.C. R. Evid. 401. Furthermore, even if the evidence were admissible, its probative value would be substantially outweighed by the danger of unfair prejudice, confusing the issues, or misleading the Board, unduly delaying the hearing, and/or wasting time. N.C. R. Evid. 403.

Dr. Johnson has been experimenting with an Electro-Scalar instrument that is also "non-traditional". For the reasons discussed above, Dr. Johnson requests that the details and procedures associated with the experiment be referred to during the hearing only as the "Experimental Instrument" except that it may be necessary to establish during the hearing that the "Experimental Instrument" does not require the physical presence of test subject.

Furthermore, all references to the nature of Dr. Johnson's practice and Electro-Scaler should be removed, redacted, and/or stricken from the documents (including but not limited to Pleadings, attachments, and exhibits) to be reviewed by the Board prior to and/or during the Hearing.

3. Motion to Exclude Speculative and Irrelevant Opinions and/or Inferences

Any opinion and/or inference drawn as to (a) Dr. Johnson's intent during (alleged, when applicable) conferences with witnesses or (b) what Dr. Johnson might have done with information obtained from witnesses (or others) as a result of (alleged, when applicable) conferences between Johnson and witnesses should be excluded as they are so speculative as to be irrelevant, and opinions or inferences not rationally based on the perception of the witness nor helpful to a clear understanding of witness testimony or the determination of a fact in issue. N.C. R. Evid. 403, 701. Further, such testimony invades the fact finding province of the Board as such opinion is inherently misleading and unfairly prejudicial. N.C. R. Evid. 704.

4. Motion to Exclude Content of Alleged Telephone Conference Between Dr. Johnson and Mr. Hair

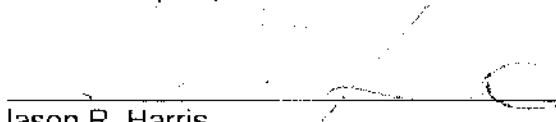
The content of any telephone conference between Dr. Johnson and Mr. Hair (the occurrence of which is denied) should be excluded because, even if relevant (which is denied), its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the Board, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. N.C. R. Evid. 403.

5. Motion to Voir Dire Board Members at Hearing

In order to ensure due process, the lack of actual bias, unfair and irrevocable prejudice and/or a pre-disposition to a particular conclusion by Board Members, Dr. Johnson requests that each Board Member in attendance at the Hearing be subject to voir dire on the record while not in the presence of the other Board Members. See Crump v. Board of Educ., 326 N.C. 603 (1990).

This, the 15th day of July 2003.

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CERTIFICATE OF SERVICE

I certify that the foregoing document was served on the following individual via Federal Express overnight delivery.

Marcus Jimison, Esquire
1201 Front Street, Suite 100
Raleigh, North Carolina 27609

This, the 15th day of June 2003.



Jason R. Harris