

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
MIDLAND-ODESSA DIVISION

MEDICAL CENTER PHARMACY et al.,)	
)	
Plaintiffs,)	
)	Civil Action No. 04-cv-130
v.)	
)	
GONZALES, et al.,)	
)	
Defendants.)	
)	

**DEFENDANTS' OPPOSITION TO AMICUS CURIAE MOTION OF
THE ASSOCIATION OF AMERICAN PHYSICIANS & SURGEONS, INC.**

On April 7, 2006, the Association of American Physicians & Surgeons, Inc., (the Association) moved this Court for leave to submit an amicus curiae brief in support of plaintiffs' pending motion for summary judgment. For the reasons set forth below, defendants oppose the Association's motion.¹

In accordance with the Court's scheduling order of February 24, 2006, plaintiffs and defendants submitted their motions for summary judgment on March 31, 2006. Though the plaintiffs had requested, and defendants had agreed, that the parties be allowed 40 days to respond to each other's summary judgment motions, the Court limited that response period to 20 days "in order to maintain the current trial setting of June 5, 2006." Order at 1 (Docket Entry 79). Thus, the parties' summary judgment responses are due no later than April 20, 2006, and replies (if requested by the parties and allowed by the Court) will be due 10 days thereafter on

¹ If previous experience in this case foretells the future, defendants anticipate that other persons and entities may, like the Association, seek to participate as amici. For the same reasons that defendants oppose the Association's motion, we likewise oppose any such other amicus motions as may be submitted.

April 30, 2006. Id. That will leave the Court just over a month to resolve the summary judgment motions prior to the present trial setting.

The Court is plainly desirous that this case be resolve promptly, either through summary judgment or trial. To the extent that the Association injects into this case issues not directly raised by the parties, allowing the participation of the Association as amicus at this late date may unduly distract the parties (or at least defendants) and the Court from achieving that prompt resolution. If, however, as appears from the Association's motion, the Association's brief will merely reiterate or reinforce arguments made by plaintiffs, that brief will be redundant and serve no useful purpose.

Though the Association has not provided its proposed brief to defendants, its motion does set forth three issues that the Association wishes to argue. First, the Association intends to argue against the federal government's regulating the practice of medicine insofar as doctors rely on compounded drugs to treat their patients. Of course, as defendants' summary judgment motion makes clear, the federal government, through the Food and Drug Administration (FDA), intends no interference with traditional drug compounding by pharmacies, i.e., the preparation of a drug on the order of a physician for a particular patient. So the Association's first proposed argument is irrelevant to this case.

Second, the Association intends to argue that compounded drugs are not "new drugs" subject to the jurisdiction of FDA. That, of course, is the principal contention at the heart of plaintiffs' case; and plaintiffs have demonstrated no lack of ability or diligence in asserting that contention. The addition of the Association's voice on this issue is, therefore, unnecessary.

Third, the Association proposes to discuss the intent of Congress with respect to pharmacy compounding of drugs. That issue, however, has been fully explicated in the parties' summary judgment motions and the various decisions in the Western States litigation cited and discussed by the parties. Again, the proposed argument of the Association in this regard will add nothing but additional pages for the Court to read.

Defendants submit that the parties to this case have fully briefed the Court on all questions necessary to the resolution of their summary judgment motions. No amicus participation is necessary, and none should be allowed.

Respectfully Submitted,

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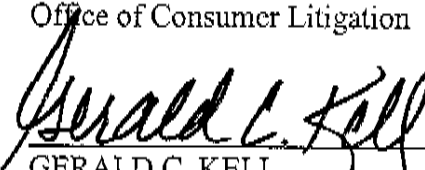
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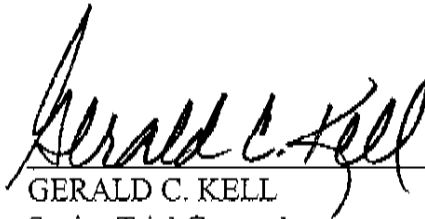

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CERTIFICATE OF SERVICE

I certify that on April 10, 2006, I served Defendants' Opposition to Amicus Curiae Motion of the Association of American Physicians & Surgeons, Inc., by Federal Express overnight delivery to:

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