

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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UNITED STATES OF AMERICA,  
and THE STATE OF WISCONSIN,  
ex rel. DR. TOBY TYLER WATSON,

Plaintiffs,

v.

Case No. 11-CV-236

JENNIFER KING VASSEL,

Defendant.

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**DEFENDANT JENNIFER KING VASSEL'S BRIEF IN RESPONSE TO  
PLAINTIFF'S MOTION TO RESET TWO DISCOVERY DEADLINES**

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Defendant Jennifer King Vassel (Dr. King), by her attorneys, Gutglass, Erickson, Bonville & Larson, S.C., respectfully submits the following brief in response to the plaintiff's motion to reset two discovery deadlines. (Document 101). In sum, Dr. King agrees that the scheduling order should be amended, but disagrees as to when certain deadlines should occur. Dr. King requests the following deadlines be amended: the defense deadline to name experts and provide reports should be October 31, 2013; the discovery deadline should be January 27, 2014<sup>1</sup>; and the deadline to file dispositive motions should be moved to January 23, 2014 (which was not addressed in the plaintiff's motion).

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<sup>1</sup>This assumes that the current December 9, 2013 trial date is adjourned. Under separate cover, but filed the same day, Dr. King is requesting an adjournment of the trial date.

## ARGUMENT

### **THE SCHEDULING ORDER SHOULD BE REVISED TO REFLECT ADDITIONAL DISCOVERY REQUIRED SINCE THE REMAND OF THIS CASE FROM THE COURT OF APPEALS.**

Dr. King agrees with the plaintiff that the scheduling order should be amended. As the Court did not address expert witness, dispositive motion, and discovery deadlines in its September 11, 2013 scheduling order, it is assumed that the scheduling order is in force. (Document 24). In his motion to reset two discovery deadlines, the plaintiff assumed this as well. (Document 101, p. 1.) As the plaintiff notes in his motion, this case was resolved before Dr. King was required to name any expert witnesses.<sup>2</sup> Given that the Seventh Circuit remanded this case on August 28, 2013, the defense requests time to name an expert in light of the Seventh Circuit's opinion and the complex issues (Medicaid reimbursement and off-label use of prescription medication, among other issues) presented in this case. Dr. King requests that the deadline to name experts for the defense be amended to October 31, 2013.

Dr. King requests that the discovery deadline be amended as well, to January 27, 2014. This would be consistent with the time difference between the original defense deadline to name experts and the original discovery deadline, which was 88 days. *See* (Document 24, p. 2). The discovery that needs to occur, includes, but is not limited to, deposing the mother of N.B. and the plaintiff's attorney has stated that he would like to

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<sup>2</sup>Dr. King previously filed a motion to stay the Court's scheduling order pending resolution of the summary judgment motion (*i.e.*, to name expert witnesses). (Document 32). Because the Court granted Dr. King's motion for summary judgment, that motion was denied as moot. (Document 59, p. 4, n. 2.).

depose Dr. King. Moreover, once a defense expert(s) is named, more than likely the plaintiff will want to depose that person(s). This proposed amendment permits discovery to occur in a timely manner, while allowing the parties to discover information required to prosecute or defend this case.

Dr. King also requests that the dispositive motion filing deadline be amended to January 23, 2014. This is requested to provide additional time to name witnesses and conduct discovery, before filing a dispositive motion, if any.

### **CONCLUSION**

Based on the foregoing arguments, defendant Jennifer King Vassel respectfully requests that the Court revise the scheduling order deadlines as noted above.

Dated at Milwaukee, Wisconsin this 17th day of September, 2013.

**GUTGLASS, ERICKSON, BONVILLE &  
LARSON, S.C.**

s/ Bradley S. Foley

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