

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 MOTION IN LIMINE  
TO PRECLUDE REFERENCE THAT THIS LAWSUIT PROVIDED NOTICE THAT  
DR. KING SHOULD HAVE CHANGED HER PRACTICE**

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Defendant Jennifer King Vassel (Dr. King), by her attorneys, Gutglass, Erickson, Bonville & Larson, S.C., respectfully submits the following motion in limine:

To preclude reference that this lawsuit, or any subsequent decisions issued in this case in this Court or the Seventh Circuit, provided notice that Dr. King should have changed her practice.

**ARGUMENT**

**THERE HAS NOT BEEN A FINAL ADJUDICATION IN THIS ACTION.**

While the plaintiff contends that Dr. King was placed on notice of alleged fraudulent transactions after decisions by the courts have been issued in this case, there has never been a final decision on the merits. First, the Seventh Circuit held open the question of whether any prescriptions constituted false claims. *United States v. King-Vassel*, 728 F.3d 707, 717 (7th Cir. 2013): “The district court may very well be correct that Watson requires an expert to explain some number of the prescriptions he charges constitute false claims. For instance, if N.B. was prescribed a specific drug to treat ‘anxiety,’ and there is support in one of the compendia for prescribing the drug to treat

‘depression,’ Watson would need to present expert testimony to prove that those two diagnoses are not co-extensive.”

In particular, the Seventh Circuit opened the possibility that this Court may review the issues presented in this case *on remand*. “While the district court remains free to apply its reasoning in a more specific manner on remand (because, of course, Watson did not name any experts by the court’s deadline), we think the summary judgment order as written was premature and overbroad.” *Id.* There has not been any final determination, as demonstrated by the Seventh Circuit’s invitation to this Court to revisit issues on remand.

Moreover, this Court’s order issued on November 5, 2013 explicitly states this. (Document 137, pp. 8-9)(the Seventh Circuit did not make any final pronouncements as to whether the prescriptions at issue were written for uses supported by one or more compendia). Of note, the plaintiff has never moved for a temporary restraining order, a permanent injunction, or any other type of order to prevent Dr. King from continuing to practice medicine in the manner that he believes violates the Medicaid reimbursement statutes.

In fact, what the plaintiff is requesting is that Dr. King provide a lower quality of care to her Medicaid patients than other patients; in light of being served the complaint, however, she testified that she does not treat her Medicaid patients any differently than any other patient. *Deposition of Dr. King* (Document 145-4, p. 40). She does what she thinks is in the best interest of her patients. *Id.*

Here, whether Medicaid fraud occurred is subject to dispute, and there has not been any final legal adjudication. In *United States ex rel. Yannacopoulos v. General Dynamics*, the Seventh Circuit repeated that mere differences in interpretation growing out of a disputed legal question do not give rise to False Claims Act liability. 652 F.3d 818, 836 (7th Cir.2011).

## CONCLUSION

Based on the foregoing arguments, defendant Jennifer King Vassel respectfully requests that the Court grant her motion.

Dated at Milwaukee, Wisconsin this 25th day of November, 2013.

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

s/ Bradley S. Foley

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