

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

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.

**DEFENDANT JENNIFER KING VASSEL'S MOTION IN LIMINE
TO PERMIT EVIDENCE THAT OTHER PHYSICIANS
THAT TREATED N.B. PRIOR TO DR. KING**

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

To permit evidence that other physicians treated N.B. prior to Dr. King with Risperdal, the only medication the plaintiff is now pursuing that N.B. received, as that history was an essential part of Dr. King's prescription of Risperdal to N.B.¹ The names of the physicians need not be disclosed, but the fact that other health care providers treated N.B. before Dr. King first treated him in November 2004 is significant in establishing that N.B. presented with a mental health history that included being prescribed medication, and accordingly reasonable psychiatrists would not discontinue the medication, given the same diagnosis.

While Dr. King is aware of the Court's proscriptio to not permit reference to other treatment

¹The plaintiff has indicated within the last few days the claim is narrowed to Risperdal and Geodon. Dr. King never prescribed N.B. Geodon and the plaintiff has raised this for the first time in the case approximately 20 days ago.

that N.B. may have received outside of his treatment with Dr. King, this motion is presented to permit reference to any physician that provided treatment to the plaintiff *prior* to Dr. King providing care to N.B. *See* (Document 137, p. 2).

ARGUMENT

MS. MEYER TESTIFIED THAT N.B. RECEIVED TREATMENT FOR HIS MENTAL HEALTH PROBLEMS PRIOR TO DR. KING.

The significance of permitting the introduction into evidence the care and treatment of N.B. prior to Dr. King's care and treatment began is to establish that Dr. King was treating N.B., and prescribing medication, as a reasonable psychiatrist would do, *i.e.*, continuing the medications that were currently being prescribed for N.B., given the same diagnosis. Ms. Meyer, the mother of N.B., testified that N.B. was diagnosed by a physician in Manitowoc with ADHD [Attention Deficit Hyperactivity Disorder] and PDD [Pervasive Developmental Disorder], when he was three years old. *Deposition of Ms. Meyer* (Document 148-5, p. 36). According to Ms. Meyer, those diagnoses never changed through the period of time that Dr. King treated the plaintiff. *Id.*, p. 37. Dr. King diagnosed N.B. with Asperger syndrome, which Ms. Meyer acknowledged was basically the same as PDD. *Id.*

Dr. King testified that her decision to prescribe is based significantly on a patient's history, which includes current and past medications, the response to those medications, and the like.

I would consider the symptoms that they present with. I would consider their medical history. I would consider whether or not they had tried and failed any other medications. I would consider the severity of their symptoms and weigh the risks versus benefits just like I do with all my patients.

Deposition of Dr. King (Document 145-4, p. 76)(responding to a question about whether to prescribe Risperdal to a child). Dr. King noted that "a lot of patients come to me with a history. [. . .] But lots of times they've seen five other doctors. They've been in a hospital. They have a history. So they

might have been on medication before that worked well for them. They come to me on a list of medications.” *Id.*, p. 91.

Accordingly Dr. King must be permitted to reference the previous diagnosis of N.B. to demonstrate that she was presented a patient with a history that reasonable psychiatrists would not discontinue the medication, given the same diagnosis.

CONCLUSION

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

Dated at Milwaukee, Wisconsin this 26th day of November, 2013.

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

s/ Bradley S. Foley

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