

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ATHENS DIVISION**

FILED
U.S. DISTRICT COURT
MIDDLE GEORGIA

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DEPUTY CLERK

THE NATIONAL ASSOCIATION)
OF BOARDS OF PHARMACY,)

Plaintiff,)

v.)

THE BOARD OF REGENTS OF THE)
UNIVERSITY SYSTEM OF GEORGIA)
and FLYNN WARREN, JR.,)

Defendants.)

FILED UNDER SEAL

CIVIL ACTION NO. 3-07-cv-84001

DECLARATION OF WALTER STEVEN PRAY

I, Walter Steven Pray, make the following Declaration in support of Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction in the above-styled matter.

1. I am of legal age, I am competent to give this Declaration, and I make this Declaration on the basis of my personal knowledge of the facts set forth herein.

2. I am currently the Bernhardt Professor of Nonprescription Products and Devices in the Department of Pharmaceutical Sciences at Southwestern Oklahoma State University in Weatherford, Oklahoma, where I have taught for more than 30 years. While teaching, I have also worked as a practicing pharmacist for more than thirty years in various positions at hospitals and pharmacies throughout Oklahoma. I am currently a contributing editor for the *U.S. Pharmacist*, a monthly journal that provides pharmacists in a variety of settings with up-to-date clinical articles relevant to contemporary pharmacy practice. I have authored hundreds of articles and several textbooks in the pharmacy field. (My full Curriculum Vitae is attached as "Exhibit A").

3. I earned my Bachelor of Science (Pharmacy) degree from Southwestern State College in 1972, and I performed my Residency in Pharmacy Administration at St. Anthony

Hospital in 1974-1975. I received my Master of Public Health degree in Health Administration in 1976 from Oklahoma University Health Sciences Center. In 1977, I received a Bachelors of Arts degree (Chemistry) from Southwestern Oklahoma State University. Finally, in 1983, I received my Doctor of Philosophy Degree in Pharmacy Practice/Clinical Pharmacy from Purdue University.

4. I am a member of the American Association of Colleges of Pharmacy. Past professional memberships include the American Pharmaceutical Association, Oklahoma Pharmaceutical Association, Oklahoma Society of Hospital Pharmacists, American Society of Hospital Pharmacists, American Public Health Association, Parenteral Drug Association, American Society of Consultant Pharmacists, and the National Association of Boards of Pharmacy/North American Pharmacist Licensing Examination (“NABPLEX” or “NAPLEX”) Review Committee.

5. I first became interested in standardized testing while pursuing my Doctorate degree at Purdue University, which I completed in August of 1983. While at Purdue, I completed a course in standardized examinations, and my dissertation involved creation of a standardized examination similar to NABPLEX (known today as NAPLEX) for Doctor of Pharmacy students. The publication describing my doctoral research was awarded the 1985 Rufus A. Lyman Award, given once yearly to an outstanding article published in the *American Journal of Pharmaceutical Education*.

6. Having a continued interest in standardized testing, I contacted the National Association of Boards of Pharmacy (NABP) on June 6, 1986 with a proposed project to assess cognitive levels of items in the NABPLEX item pool. As a result of this letter, NABP Executive Director Fred Mahaffey contacted me on July 15, 1986 and requested my permission to submit my name to NABP President Eugene Argo for possible appointment to a NABP committee. I consented, and the NABP appointed me to a position on the NABPLEX Review Committee (“NRC”).

7. I began work with the NRC in Chicago in June of 1987. My duties as an NRC member were multi-faceted, and they included, but were not limited to, the following:

- a. Create new test items, both stand-alone and scenario-based;
- b. Review items currently in the test pool for validity and submit substantive written comments;
- c. Review pre-test items and scored items with poor statistics to remedy deficiencies;
- d. Decide whether a minimally competent student should be expected to correctly answer each item in the pool;
- e. Examine items in the pool to determine whether they were assigned to the correct competency level;
- f. Participate in score-setting procedures;
- g. Review items submitted by other item writers to determine their suitability to become pre-test items;
- h. Determine whether items currently in the pool deserved to be withdrawn; and
- i. Assist in the transition to the computer-assisted version of the NAPLEX.

While a member of the NRC, I attended approximately 30 small-group and large-group meetings. I was an NRC member until January 31, 2003, when my final term expired.

8. Exam security for standardized examinations, particularly the NAPLEX, is critical. The knowledge base required to become a competent pharmacist is vast, taught via hundreds of hours of lectures, laboratories, and practical experiences. It is difficult, therefore, to determine whether a student has mastered the information necessary to become a minimally competent pharmacist. To my knowledge, there are two available methods of examination for minimal competence in pharmacy.

9. The first method requires that an examiner ask several questions about each and every topic of pharmaceutical information taught to the student, requiring the student to have global knowledge of each topic prior to licensure. Based upon my experience, this method of examination is patently impossible due to the enormous knowledge base required of pharmacists and the time such examination would take to perform. For this reason, all standardized pharmacy exams of which I am aware use the second method, measuring global mastery of the given knowledge base by using a discrete subset of items. Each item is meant to represent a larger group of possible items within a particular topic that could be asked. A correct answer to a specific item is interpreted to indicate that the student could have answered the larger group of items correctly. For example, correctly answering one item on the NAPLEX regarding use of antacids in pediatrics is used generally to assume mastery of a hypothesized larger group of potential items testing knowledge of antacid use in pediatric patients.

10. A potential weakness exists in this second method of examination. If potential examinees discover which items will be asked on the examination, they can learn only the answers to those items and appear to have mastered a larger group of items when they have not done so. As a result, correctly answering a question through prior knowledge of that question can mislead test administrators into rating a student minimally competent when he or she is not. For this reason, all standardized test items must be kept in the strictest confidence to protect the integrity of the examination results.

11. The NABP and members of the NRC took multiple steps to guard the integrity of NAPLEX. Steps I recall being taken to protect the integrity of the examination include, but are not limited to, the following:

- a. NABPLEX/NAPLEX meetings were held in highly secure areas of the NABP building or in secured areas of hotels;

- b. All testing materials were closely monitored at all times, and the NABP required that all materials be returned when committee members had finished with them. The NABP consistently accounted for all materials distributed to NRC members;
- c. Several times each year, the NABP mailed item booklets to NRC members for review and comment, prior to a meeting. Members were instructed to keep these materials highly secured at all times.
- d. I personally maintained my materials in a locked briefcase in my locked office, in a building that was locked each night. On certain occasions, I requested permission from the Dean's office to allow me to place items in the most highly secured area in the College of Pharmacy, a locked alcohol storage room located inside a locked stockroom. I often took materials to my home, to better control access to them;
- e. I shredded materials, at appropriate times, to prevent their misappropriation or dissemination;
- f. I never discussed with any individual that I had secure materials at any time when those materials were in my possession; and
- g. I never discussed NAPLEX items with any person outside of the NABP.

12. In January 31, 2003, my tenure on the NRC expired. At that time, I signed a confidentiality agreement which prohibited me from participating in any NABP/NAPLEX review activities for a period of five years from my expiration date. That period expired in the Spring of this year.

13. In 2007, my daughter-in-law, who is also a pharmacist, contacted a company known as Exam Master to explore the possibility of creating a NAPLEX preparation book for pharmaceutical students. She assisted Exam Master in developing an outline and practice examination questions. In June of 2007, she approached me to inquire as to whether I would use

my expertise in nonprescription products to create an outline for that topic and to develop practice examination questions. In subsequent discussions with Exam Master, the company engaged me on June 12, 2007 to fill a larger role, that of Products Editor. My duties in that role will encompass such activities as reviewing practice examination questions, outline materials, and remaining up-to-date on the most current NAPLEX testing guidelines and procedures.

14. In preparing for my new responsibilities with Exam Master, I began searching the market to discover what NAPLEX training tools were currently available for use by pharmacy students. Early in my search, I happened upon two websites that purport to offer support to students preparing to take NAPLEX.

15. One website, "forums.studentdoctor.net," offered clues to passing NAPLEX. This website also discussed an individual named "Flynn," who offered a review course and notes on passing the NAPLEX. Specifically, one correspondent on the website suggested that prospective examinees review the comments sent to "Flynn" by other students, and another provided his address at the University of Georgia.

16. I also began to read several hundred threads from the website "TestMagicForum." This forum appeared to list actual NAPLEX questions. Many of the threads provided detailed information regarding subject matters in which to concentrate efforts while studying for the exam from students who had just taken the NAPLEX, and several threads again referred to a "Dr. Flynn."

17. My review of these websites raised significant concerns. After five years, I can no longer independently recall specific NAPLEX questions from memory. When I read several posts on these websites, however, I recognized them to be actual questions from the NAPLEX. All are items on which the NRC labored for many years, closely examining the items' statistics when they were originally presented as pre-test items, approving them as scored items, editing them as necessary, and reviewing them for accuracy. To see them exposed on a website was disturbing.

18. I mentioned my concerns in confidence to a fellow faculty member, Dr. Virgil Van Dusen, a lawyer and pharmacist. He shared with me at that time that he had spoken to a mutual former student, Dr. Alan Spies of Samford University. Dr. Spies indicated to Dr. Van Dusen in the conversation that Samford University had recently hired a gentleman to visit and prepare students for the NAPLEX, and Dr. Spies had concerns regarding this individuals' sharing of what appeared to be actual questions during the course. Dr. Spies was also concerned about this individuals' assertions that students find these questions to be virtually identical to those they later see on NAPLEX. I personally contacted Dr. Spies on July 13, 2007 and confirmed that the visiting individual was Flynn Warren from the University of Georgia.

19. On July 17, 2007, Dr. Spies forwarded an e-mail to me that was originally sent by Mr. Warren to numerous students. The email lists hundreds of questions, apparently sent to Mr. Warren by recent examinees. It also appears to me that Mr. Warren occasionally comments on the items circulated in this email. (A copy of Mr. Warren's email which I obtained is attached as "Exhibit B").

20. It is my understanding that prior to taking an exam, NAPLEX examinees must sign a form stating that they will not share items on the exam with other individuals. From his email, Mr. Warren appears to appeal to examinees to violate this oath by requesting items from examinees. He then subsequently compiles items into handouts and a CD for dissemination at his continuing education seminars.

21. After learning about Mr. Warren and his illicit activities, I e-mailed Carmen Catizone, Executive Secretary of NABP, on July 17, 2007 to share the information I had collected. I spoke with Mr. Catizone on July 20, 2007, and thus began the NABP's investigation.

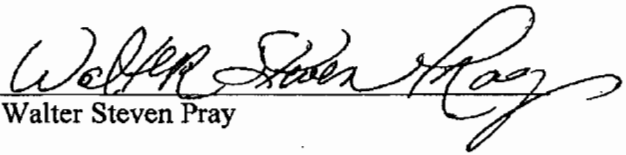
22. Activities such as those of Mr. Warren discussed herein are nothing short of devastating for the NAPLEX. Each item that is compromised through publication on these and

other websites, or through use in Mr. Warren's course materials, is no longer valid for measuring the competency of pharmacy graduates through use on the NAPLEX. Instead, these items must be discarded. When an item is discarded, it causes a significant loss to the NABP. The cost of generating, validating, and reviewing **a single item** on the exam is incalculable. Many experts, professionals, and support personnel from around the country are involved in these activities, all at significant cost to the NABP. As a result, the cost of replacing a single item on the NAPLEX could justifiably be estimated in the tens of thousands of dollars. A loss of hundreds or thousands of items, as it appears has occurred through the activities of Mr. Warren, will force NABP to endure a loss of millions of dollars and will necessitate a radical overhauling of the examination pool. If this is required, the nation's current pharmacy graduates cannot be licensed until a new, uncompromised NAPLEX can be created.

23. Further, each student who has in the past attended one of Mr. Warren's training courses, has been allowed to review his materials, or has read questions on these and other websites, is suspect in regard to their minimal competency to practice pharmacy. It is certainly possible that many students who would not have otherwise passed NAPLEX did so with the help of the illicit materials in question. Students without minimal competency who have nonetheless passed the NAPLEX pose a threat to public health across the country, as they have licenses to practice that are now in question and the NABP can no longer vouch for their minimal competency. The state boards rely upon the NABP and NAPLEX scores in licensing new pharmacists, and Mr. Warren's activities have significantly damaged the organization's viability and reputation.

24. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 2nd day of August, 2007.


Walter Steven Pray

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