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U.S. DISTRICT COURT
MIDDLE GEORGIA

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

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-84 (CDL)

DECLARATION OF KERRI A. HOCHGESANG

1. I, Kerri A. Hochgesang, am over twenty-one years of age, am competent to give this declaration, and do hereby declare the following statement to be true of my own knowledge and belief.

2. I am an associate attorney at the law firm of Smith, Gambrell & Russell , LLP in Atlanta, Georgia, and have held this position since February of 2007.

3. On July 30, 2007, I spoke on the telephone with "Jennifer" (phone number 706-542-6232) in the continuing education office of the College of Pharmacy at the University of Georgia. I inquired as to whether I could purchase course materials for the "Pharmacy Board Review" class offered by Flynn Warren at the University of Georgia on August 8, 2007 through August 10, 2007 at the College of Pharmacy prior to the start of this class. Jennifer indicated that I could purchase the materials for \$100.00, and that she would be able to sell them to me in her office at the College of Pharmacy.

4. On July 31, 2007, I personally went to Jennifer's office on the fourth floor of the College of Pharmacy at the University of Georgia in Athens, Georgia, and provided her with payment for the course materials. A true and correct copy of my payment receipt from the "UGA Pharmacy Cont ED, Pharmacy Building" for the course materials is attached as Exhibit A.

5. In return for my payment, I was provided with a packet of materials including documents. I dated and initialed each set of documents in blue ink, and a true and correct copy of the documents is attached as Exhibit B. The packet of materials also included two CD-ROM disks entitled "NAPLEX Review 2007" (Exhibit C-1) and "Law Review 2007" (Exhibit C-2), which I also dated and initialed in blue ink. True and correct duplicates of each of the CD-ROM disks are attached as Exhibits C-1 and C-2, respectively, and true and correct print-outs of the contents of each of the two CD-ROM disks are attached as Exhibits D-1 (NAPLEX Review 2007 Print-Out) and D-2 (Law Review Print-Out).

6. Attached as Exhibit E are true and correct screen shot print-outs from www.rxugace.com and www.rxugace.com/programs/details/191, showing details relevant to the August 8, 2007 Pharmacy Board Review Course.

7. Upon receiving the course materials attached as Exhibits B, C-1, C-2, (and the Print-Outs, D-1 and D-2), I perused them to identify relevant information. Notably, "Tab 1" of Exhibit B (entitled "What's on the Diskette?"), states, "Study guides *prepared by students* have been edited and comments or changes are often indicated." [Emphasis added]. Further, it states that "many of these files change *as I try to edit them* down to reduce *unnecessary duplication*." [Emphasis added]. Also, in the category "Info for NAPLEX," there is a description that reads, "*Material from students from prior years*." [Emphasis Added]. The author of the packet I purchased is indicated to be Flynn Warren at "Tab 2" of Exhibit B.

8. Also notably, “Tab 2” of Exhibit B also states that Flynn Warren retired from the University of Georgia College of Pharmacy on July 1, 2007. He plans on continuing his Board Reviews, which he predicts will increase in number. Flynn Warren maintains an e-mail address at the University of Georgia, fwarren@mail.rx.uga.edu, and will likely continue to maintain his University of Georgia office phone number.

9. Another document of particular interest was “Tab 3” of Exhibit D-1, entitled “Information for NAPLEX – May 2006 and Forward.” It is my understanding that numbered paragraph 4 is written by a student. The paragraph states that “Probably 80% of the questions came straight from the questions submitted by students and Flynn’s review test.”

10. Numbered paragraph 41 at “Tab 4” of Exhibit D-1 clearly conveys that a student is relaying an actual question from the NAPLEX exam, and Flynn Warren has read and commented on the question before reproducing it for distribution in the course materials:

Given a situation where a nurse is removing an IV line from an HIV positive patient and gets stuck with the needle. ***The test gives you a chart*** and you have to determine what her treatment should be. Essentially, just know that the exposure was through the skin and that she was exposed to blood (which is given in the question), look at the corresponding treatment beside this, and then ensure you select the correct option as your answer. SIMILAR QUESTION WITH MORE PATIENT INFO ... RN stuck herself with a needle while removing an IV line from a patient known to have HIV. Gives you a table on when to offer or not offer prophylaxis. She would be a candidate to offer prophylaxis, however she was already taking HIV medications - Not sure what to do or where they were going with this question. ***From Flynn – without seeing the table, I would say she WOULD NOT need prophylaxis is she is already responding well to therapy...*** [Emphasis added].

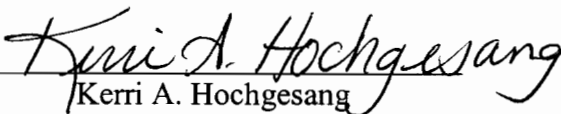
11. Numbered paragraph 804 at “Tab 5” of Exhibit D-1 stated, “I ***only*** studied the notes from Flynn’s review, and I felt very good about the exam when I left the testing site. The

main packets I studied were the questions from other students and the practice exam. The ques. from students really helped out!" [Sic]. [Emphasis added]. Similarly, numbered paragraph 1492 at "Tab 6" of Exhibit D-1 stated, "Biggest advice is to be able to do all of Flynn's calculations and really study "the essentials" b/c I had lots of questions *verbatim* from it. ***I only studied his review notebook and glanced through the APhA pharmacy review book and I made a 136!***" [Emphasis added].

12. As I reviewed the "Information for NAPLEX- May 2006 and Forward" document, I counted five instances where a student posted a portion of a question that they read from the NAPLEX, and Flynn Warren responded that he needed to see "the entire question" or all of the answer choices in order to properly respond with the answer.

13. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Date: 8/2/07


Kerri A. Hochgesang