

**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.)
_____)

CIVIL ACTION NO.: 3:07-CV-84 (CDL)

FILED UNDER SEAL

SECOND 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. I offered a previous declaration in the above-referenced matter in support of the National Association of Boards of Pharmacy’s Motion for Temporary Restraining Order, detailing the circumstances surrounding my purchase and subsequent review of Defendant Flynn Warren’s NAPLEX review materials from the University of Georgia. I understand that materials were seized from Warren’s computers on Monday, August 6, 2007. Because of my familiarity with Warren’s materials that I previously purchased from the University of Georgia, I reviewed the materials seized from Warren’s computers in order to identify similar content. I’ve included a summary of representative relevant documents for the Court’s review below.

4. Attached as Exhibit A is a true and correct copy of an electronic receipt found on Defendant Warren's computer for electronic shredding software, purchased just before the seizure took place. Also included in Exhibit A is a description of the software from the U3 Software Central web site. From the materials, I understand that the purpose of this software is to completely purge files from a computer so that they cannot be recovered forensically.

5. Attached as Exhibit B is a true and correct copy of e-mails in which Warren indicates that he is compiling updates to actual NAPLEX exam questions and will distribute them to students on his e-mail distribution list in late June 2007.

6. Attached as Exhibit C are true and correct copies of representative e-mails exhibiting a portion of Warren's NAPLEX exam question student e-mail distribution list. As can be seen from these examples, students from all over the country were added to this list by providing Warren with their e-mail address, as Warren requested.

7. Attached as Exhibit D are true and correct copies of e-mails from students, showing that they were given elective course credit at the University of Georgia School of Pharmacy for compiling actual NAPLEX exam questions submitted to Warren into a master document for distribution to pharmacy licensure candidates.

8. Attached as Exhibit E is an e-mail from Flynn Warren, detailing how he is to be compensated by "sponsors" for his review course, and detailing how copies of the actual NAPLEX test questions are to be made and distributed by such sponsors.

9. Attached as Exhibit F is a 1994 e-mail from Flynn Warren in which he explains that his NAPLEX review course is taken by more than 400 individuals each year, and by virtually every pharmacy student in Georgia. He indicates that students that take his class have

greater than a 95% passage rate, and of those who fail whom he personally tutors have a subsequent 100% passage rate.

10. Attached as Exhibit G is an e-mail from a student expressing that about 60% to 70% of the questions she encountered on the NAPLEX exam were from Warren's review. She also transmits to Warren all of the questions she remembered from the NAPLEX exam.

11. Attached as Exhibit H are representative e-mails from students to Warren in which they send him actual NAPLEX examination questions.

12. Attached as Exhibit I is an offer to Defendant Warren from Exam Master Online of a job authoring online questions for pharmacy and medical students to prepare them for medical boards and licensure exams.

13. Attached as Exhibit J is an e-mail from Flynn Warren to a student in which he forwards NAPLEX examination questions.

14. In addition to reviewing information obtained in the seizure and impoundment, I also monitored web postings relating to this matter. Attached as Exhibit K is a true and correct printout from the site www.naplexreview.com on August 16, 2007. On this site, either Warren himself or a recipient of Warren's "materials" posted what appear to be more than 1,500 actual NAPLEX examination questions which are accessible to anyone.

15. Attached as Exhibit L is a true and correct printout from <http://forums.studentdoctor.net> under a heading "Naplex & MPJE Changing"? In this blog thread, students speculate about the seizure, and one member reveals, in excruciating "legal" detail, the facts relating to the seizure and NABP's prior settlement agreement with Defendants Warren and UGA. I understand that the 1995 settlement agreement, although not confidential, is not generally known. This poster is not identified, but joined the blog only in August of 2007.

Further, there is a post from “dgroulx” stating, “What Dr. Flynn passed on to his class, in addition to the general study information, was questions that students sent to him that they saw on the NAPLEX and his response to those questions. This is illegal.”

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

Date: 8/16/2007

Kerri A. Hochgesang
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