

	*	IN THE
Plaintiff	*	CIRCUIT COURT
v.	*	FOR
	*	WICOMICO COUNTY
Defendants	*	Case No.:
* * * * *	* * * * *	* * * * *

MOTION IN LIMINE

Defendants, by

A Professional Corporation, their attorneys, move

in limine for an order prohibiting the plaintiff from mentioning or cross-examining regarding any prior litigation that he may have been involved in and the fact they he may initially failed one of his board examinations before later passing the same, and says:

1. In this case, [redacted] alleges that [redacted] was negligent when, in the performance of a total abdominal hysterectomy, [redacted] iliac artery and vein were transected. See the Plaintiff's complaint.

2. [redacted] has never been involved in any other litigation involving a case of a transection of a patient's iliac artery and vein during the performance of an attempted total abdominal hysterectomy before this case. A copy of the relevant sections of [redacted] answers to interrogatories in this case are attached hereto as Exhibit A, see especially his Answer to Interrogatory Number 21.

3. As such, any other cases in which [redacted] has been named as a defendant are not relevant or material to the issues at stake in [redacted] case. This is particularly true in medical malpractice cases. Lai v. Sagle, 373 Md. 306, 818 A.2d 237 (2003).

4. Evidence, even if relevant, “may be excluded if the trial court . . . believes that [the] probative value [of the evidence] is substantially outweighed by the dangers of unfair prejudice.” Lai v. Sagle, 373 Md. at 319; Maryland Rule 5-403.

5. As stated in Lai v. Sagle, 373 Md. at 322 (emphases added):

The fact of prior litigation has little, if any, **relevance** to whether [the physician] violated the applicable standard of care in the immediate case. The admission of evidence of prior suits, instead of aiding the fact finder in its quest, tends to excite its prejudice and mislead it. [The Court of Appeals shares] the view of the dissent in the Court of Special Appeals when it observed: “I cannot conceive of a more damaging event, in a medical malpractice trial, than disclosure to the jury in opening arguments that the defendant doctor had previously been sued multiple times for malpractice.”

6. In order to be **relevant**, if at all, there must be some “showing of **substantial similarity**” between the underlying claim and the alleged prior bad act. Southern Mgmt. Corp. v. Mariner, 144 Md. App. 188, 196-197, 979 A.2d 110 (2002). If there is a showing of a substantial similarity, then the Court must proceed with the balancing test of Rule 5-403.

7. Additionally _____ and her counsel should not be permitted to inquire into whether or not _____ was able to pass a portion of his board certification examination on the first try. As stated in Dorsey v. Nold, 362 Md. 241, 250-251, 765 A.2d 79 (2001):

There could be many reasons why a physician failed all or part of a board certification examination; the fact of failure makes it neither more or less probable that the physician complied with or departed from the applicable standard of care in the diagnosis or treatment of a particular patient for a particular condition.

8. As such, _____ and her counsel should not be permitted to mention or inquire of _____ at trial as to any prior civil litigation that _____ has been involved in as a party that is not in any way substantially similar to the subject matter of this case involving a transection of a patient's iliac artery and vein during the performance of an attempted total

abdominal hysterectomy, as well as to any questions regarding the fact that _____ may not have passed a portion of his board certification examination on the first try.

WHEREFORE, _____ and _____ respectfully move in limine for an order:

A. Prohibiting _____ and her counsel from mentioning or inquiring of _____ at trial of any other litigation that he has been involved in, as well as the fact that he may not have passed a portion of his board certification examination on the first try; and

B. For such other and further relief as the nature of this cause may require.

Respectfully submitted,

Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of November, 2008, a copy of the foregoing Motion in Limine was mailed, first class, postage paid, to: Rodney M. Gaston, Esquire, Miller & Zois, LLC, Suite 1001, 7310 Ritchie Highway, Glen Burnie, MD 21061, *Attorneys for Plaintiff*
