

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

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MARISSA MILLER, a Minor, by and )  
through her mother and next )  
friend, MIRANDA MILLER, )  
 )  
Plaintiffs, )  
 )  
vs. ) No. 03-2701-MLV  
 )  
JOHN DACUS, M.D., )  
 )  
Defendant. )

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ORDER DENYING DEFENDANT'S MOTION TO STRIKE  
PLAINTIFFS' DESIGNATED RULE 26 EXPERTS  
AND  
ORDER DENYING DEFENDANT'S MOTION TO WAIVE THE CONTIGUOUS STATE RULE

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Before the court are two motions filed by the defendant, John Dacus, M.D.: (1) a May 3, 2004 motion to strike all of the plaintiff's designated Rule 26 experts for failure to comply with Rules 26(a)(2)(B); and (2) a May 4, 2004 motion to waive the contiguous state provision of Tennessee Code Annotated §29-26-115(b) so as to permit Dr. Joseph F. Pasternak of Illinois to testify as an expert in pediatric neurology.

With his motions, Dr. Dacus failed to file certificates of consultation with counsel for the opposing party as required by Local Rule 7.2(a)(1)(B). All non-dispositive motions must be accompanied by a certificate of counsel affirming that "after

consultation between the parties to the controversy, they are unable to reach an accord as to all issues or that all other parties are in agreement with the action requested by the motion." *Id.* Local Rule 7.2(a)(1)(B) further provides that failure to file the certificate "may be deemed good grounds for denying the motion." The disputes presented here in these motions are particularly suitable for resolution through the consultation process before seeking court-ordered relief.

Therefore, Dr. Dacus's motions to strike the plaintiff's experts and to waive the contiguous state rule are denied, without prejudice, for failure to file certificates of consultation as required Local Rule 7.2(a)(1)(B).

IT IS SO ORDERED this 10th day of May, 2004.

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DIANE K. VESCOVO  
UNITED STATES MAGISTRATE JUDGE