



(Mot. In Limine Ex. I.) The Board placed Dr. X's licence on probation for a period of not less than five years, provided he met certain conditions monitoring his use of drugs and alcohol. Dr. X complied with all conditions and his licence was removed from probation in 1996. He continues to practice dentistry in Virginia.

The plaintiff has moved to prevent the defendant from cross-examining Dr. X regarding this period of probation and his history of drug and alcohol abuse. The parties have briefed the issue and presented oral argument, and the motion is ripe for decision.

## II

The plaintiff contends that the admission of testimony regarding Dr. X's probation and history of drug and alcohol abuse is not relevant to his testimony as an expert in the standard of care and causation in dentistry. Further, the plaintiff argues that the relevance of such information, if any, would be substantially outweighed by its prejudicial value, and should be excluded under Rule 403 of the Federal Rules of Evidence. Finally, the plaintiff contends that admission of such testimony would create undue delay, waste of time, and confusion of the issues at trial.

I find that this evidence should not be admitted because it is not relevant to the issues of standard of care and causation in dentistry nor to Dr. X's credibility as a

witness. Rule 402 of the Federal Rules of Evidence states, in pertinent part, “[e]vidence which is not relevant is not admissible.” Fed. R. Evid. 402. “Relevant evidence” is defined in Rule 401 as “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Fed. R. Evid. 401. The parties are agreed that evidence regarding Dr. X’s professional history is not specifically relevant to the question of the defendant’s alleged negligence.

The defendant contends, however, that the evidence would be relevant to the general issue of Dr. X’s “standing” as an expert witness. However, the basis for allowing expert opinion testimony is whether the witness is qualified by “knowledge, skill, experience, training, or education,” Fed. R. Evid. 702, and not by the witness’s general reputation or standing in the community. There is no showing that Dr. X’s ability to testify as an expert as to the standard of care and causation is affected by his drug and alcohol problems that occurred several years prior to the dentistry questions at issue in this case. Therefore, cross-examination of Dr. X as to his probation and substance abuse problems will not produce relevant evidence, and will not be permitted.

The defendant argues in her brief that the testimony should be admissible as a specific instance of conduct attacking the credibility of a witness under Rule 608(b).

Fed. R. Evid. 608(b). This rule provides that “[s]pecific instances of the conduct of a witness . . . may, . . . in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness.” *Id.* Nothing in Dr. X’s involvement in this case thus far has raised the issue of his character for truthfulness or untruthfulness.<sup>1</sup> Even if Dr. X’s credibility were at issue, the evidence to be offered is not “probative of truthfulness or untruthfulness” as required by the Rule. *Id.* The Fourth Circuit has recognized that Rule 608 only authorizes inquiry into instances of conduct relating to truthfulness or untruthfulness, “such as perjury, fraud, swindling, forgery, bribery, and embezzlement.” *United States v. Leake*, 642 F.2d 715, 718 (4th Cir. 1981). Dr. X’s prior drug and alcohol problems simply do not fit into the category of specific instances of conduct permitted under the rule. Therefore, the evidence cannot be admitted under Rule 608(b).

Even if the evidence were marginally relevant, I find that it would be unduly prejudicial and thus excludable under Rule 403 of the Federal Rules of Evidence. Substance abuse is likely to arouse strong feelings among jurors and distract them from the central task of deciding the issues of negligence and causation.

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<sup>1</sup> The court is advised by counsel that Dr. X made full disclosure of the probation period during discovery.

III

For the foregoing reasons, it is **ORDERED** that the plaintiff's motion in limine (Doc. No. 6) is granted.

ENTER: January 26, 2001

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United States District Judge