IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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ARISTO VOJDANI and
IMMUNOSCIENCES LAB, INC.,

ORDER

Plaintiffs,

10-cv-37-bbc

v.

GOTTFRIED KELLERMANN, MIEKE KELLERMANN,
PHARMASAN LABS, INC. and NEUROSCIENCE, INC.,

Defendants.

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The parties have filed dueling motions for "clarification" of the ruling on plaintiffs' motion in limine to exclude evidence related to plaintiffs' "CLIA issues," a phrase the parties have been using as shorthand for plaintiffs' dispute with the California health department.

I granted the motion with the exceptions that "[d]efendants may introduce the fact of termination [of plaintiffs' license] and the fact that plaintiff's customers received letters from advising them of the termination." Dkt. #176, at 6.

I will clarify this ruling as follows. Defendants may introduce into evidence any letters that the California health department sent to plaintiffs' customers for the purpose of showing that the customer lists had diminished value. The letters notify plaintiffs' customers

that plaintiffs are being "sanctioned" because they are "out of compliance" with various regulations. Plaintiffs argue that the letters include negative information that was later resolved through a settlement, but that is irrelevant. The relevant fact is the effect the letters had on plaintiffs' customers and their desire to continue doing business with plaintiffs. If those customers received additional information later that would tend to "rehabilitate" plaintiffs, they are free to introduce that at trial as well.

In addition, the parties may establish through stipulation or otherwise that plaintiffs were not conducting testing services on their own at the time they began the business relationship with defendants. At this point, defendants have not shown the relevance of the reason that plaintiffs were not conducting tests, whether it was voluntary or coerced. Plaintiffs are correct that the letters from the health department predated the shutdown by more than a year; by themselves, they do not establish the reason for the shutdown, though they certainly hint very strongly at that possibility.

No other evidence will be permitted regarding plaintiffs' regulatory problems absent a showing that it is relevant and not unfairly prejudicial.

Other aspects of the parties' motions are more accurately described as requests for reconsideration rather than clarification, with new arguments not raised in the motions in limine or at the final pretrial conference. For example, plaintiffs advance a number of new arguments, none of which are developed, regarding the relevance of the health department's

letters. Because defendants have not had an opportunity to respond to these arguments, I cannot consider them at this time. If plaintiffs continue to believe that the letters are not relevant to plaintiffs' claims regarding the customer lists, they will have to present their arguments to the court and defendants at trial.

ORDER

The motions for clarification, dkt. ##189 and 191, are GRANTED.

Entered this 1st day of February, 2011.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge