

# **Exhibit B**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

<b>FAWZI KHALID ABDULLAH FAHAD AL ODAH,</b>	)	
<b>et al.,</b>	)	
	)	<b>Plaintiffs,</b>
	)	
<b>v.</b>	)	<b>No. CV 02-0828 (CKK)</b>
	)	
<b>UNITED STATES OF AMERICA, et al.,</b>	)	
	)	
	)	<b>Defendants.</b>
	)	

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**Declaration of Michael J. Scotti, Jr., M.D.**

I, Michael J. Scotti, Jr., hereby declare under penalty of perjury that the following is true and correct:

1. My name is Michael John Scotti, Jr. I am over 18 years of age and a citizen of the United States of America.
2. I am licensed as a physician and am board certified in internal medicine and family practice. I retired from the U.S. Army after thirty-one years of service at the rank of major general in 1995 and subsequently was employed by the American Medical Association as its senior vice president for professional services with responsibility for promulgating policy in the areas of ethics, medical education and clinical practice. As a military physician I had responsibility for the care of prisoners at the battalion, brigade, community and theater level.

3. I am submitting this declaration to inform the court about the appropriate and usual standards of care for a patient who is expressing a desire not to eat, the decision-making process involved in treating such an individual, and the appropriate and usual standards of care for a patient who is subject to feeding by enteral means. Specifically, this declaration addresses the necessity of involvement by a physician in whom the patient has trust and with whom the prisoner has a therapeutic relationship, as well as the necessity of involvement of family members, mental health providers, the usual peer review, and the need for access to the medical records of such individuals.

4. This declaration is based upon my education, training, and clinical experience.

5. I am informed that individuals of various nationalities are detained at Guantanamo Bay Naval Base, Cuba, in the custody and care of the United States. I am aware that for some time, several of these individuals have been refusing to eat food. I am aware that U.S. military command authorities have ordered that some of these detainees be force fed and that such detainees are receiving nutrition by "enteral feeding," that is, by means of a tube placed through the nose into the stomach through which formula or pureed food can be administered. In particular, I have been informed that two Kuwaiti detainees have been refusing to eat since August 4 and 8, 2005, have been or are currently hospitalized, and have been and are now receiving nutrition by enteral feeding.

6. When an individual refuses to eat, the treating physician faces a medical decision about whether to place the patient on some form of active feeding. The decision

to do so typically occurs when the patient has lost 10% of his body weight. At this point in time, the patient risks death by starvation if he is not placed on some type of active feeding. This situation occurs in medical practice in patients suffering from anorexia, oral malignancy as well as suicidal intent.

7. There are different means of providing active feeding. These means vary from non-invasive to highly invasive. Oral supplements or oral formula are at the non-invasive end of the spectrum. While this means of getting a patient back to a healthy weight and condition is medically preferred, a patient who is refusing to eat may also refuse oral supplements or oral nutrition. When facing this situation, the treating physician must proceed with caution and follow the appropriate standards of care for treating such a patient.

8. The appropriate standards of care for treating a patient who refuses to take nutrition orally are the following:

- (a) allowing the patient to consult with a doctor whom the patient trusts completely, with whom he has a therapeutic relationship, and who has the patient's best interests in mind;
- (b) the treating physician should have a complete knowledge of the patient's medical history;
- (c) the treating physician should have knowledge of the psychosocial background of the patient;
- (d) the treating physician should have available a mental health examination to determine the patient's state of mind and competency;
- (e) family members should be involved in the treatment plan;
- (f) the treating physician should consult with the family members, who would have current and complete information about the patient's medical (including psychological) condition;

- (g) the treating physician should seek out and undergo peer review; and
- (h) the treating physician should consult other health care professionals, such as mental health providers.

9. For an individual who expresses a desire not to eat or be placed on enteral feeding, the decision to place or not place the individual on artificial feeding is literally a life-or-death decision.

10. The involvement of the patient's family in the care of the patient who has decided not to eat is absolutely necessary because of the family's knowledge of the patient's previous experiences, his or her culture, and the attitudes relating to the field of psychiatry as well as the religious convictions of the patient. This is particularly true when the patient is a "high risk" patient. A major factor that may lead to a patient being high risk may include the existence of a lack of trust between the patient and the doctor.

11. In addition to family consultation and their involvement in the care of a patient who is refusing to eat, the treating physician should also utilize the advantages of consultation with a therapeutic team, members of which could reasonably include a psychiatrist, a dietician, a cleric and a physician with skills in metabolic abnormalities.

12. There is a significant mortality rate for individuals incarcerated who refuse to eat. The experience of the British physicians dealing with prisoners of the Irish Republican Army bears this out. In order to assess whether the management and standard of care of the patient is appropriate, it is necessary to have access to the patient's medical records. From a military perspective and based on my experience, I cannot see

how providing access to those medical records to the patient's family, the patient's legal representative and agents, and the court implicates or raises concerns of a security nature.



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Michael J. Scotti, Jr., M.D.

Dated: October 17, 2005

## **CURRICULUM VITAE**

### **Michael J. Scotti, Jr., M. D.**

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### **CERTIFICATION**

Board Certified: American Board of Internal Medicine 1972

Recert. 1980

American Board of Family Practice 1973

Recert. 1979, 1985, 1992, 1998

Certificate of Added Qualification: Geriatrics 1988

Requalified 1999

### **EDUCATION**

College: Fordham College, 1960, B.S.

Medical School: Georgetown University, 1965, M.D. (Cum Laude)

Internship: Walter Reed General Hospital, 1965-66, Rotating

Residency: Brooke Army Medical Center, 1968-71, Internal Medicine

### **STATES OF LICENSE**

Virginia, examination, 1965-

District of Columbia, endorsement, 1967-

Maryland, endorsement, 1995-

### **PROFESSIONAL EXPERIENCE**

1 May 01 - 30 Nov 03 American Medical Association, Senior Vice President, Professional Standards (Ethics, Public Health, Science & Medical Education)

4 Mar 96 - 30 Apr 01 American Medical Association, Vice President, Medical Education

1964-1995 Active Duty Medical Officer, United States Army (Retired, Major General 29 Feb 95)

1 Dec 94 - 28 Feb 95 Consultant, Office of The Surgeon General, Walter Reed Army Medical Center

8 Dec 90 - 28 Nov 94 Chief Surgeon, United States Army, Europe/Commander, 7th Medical Command

1 Aug 88 - 1 Nov 90 Director, Professional Services/Chief, Medical Corps Affairs, Office of The Surgeon General

27 Jul 86 - 31 Jul 88 Director, Quality Assurance, Office of The Surgeon General

14 Jul 83 - 30 Jun 86 Commander, U.S. Medical Department Activity & Baynes-Jones Army Community Hospital, Fort Polk, Louisiana

1 Jun 80 - 6 Aug 82 Chief, Graduate Medical Education, U.S. Army Medical Department

8 Aug 79 - 30 May 80 Consultant to The Surgeon General Ambulatory Care/Family Practice

30 Jun 76 - 13 Jul 79 Chief, Department of Family Practice and Director, Residency Program, Dwight David Eisenhower Army Medical Center Augusta, Georgia

29 Jun 73 - 27 Jun 76 Chief Internist, Director of Ambulatory Care, 2nd General Hospital, Germany

16 Jun 67 - 15 Jun 68 Battalion Surgeon, Medical Company Commander, Republic of Vietnam

#### **AWARDS/HONORS**

1959 Fordham College Fordham Club - Honor Society

1965 Georgetown University Edward B. Bunn Award

1965 Georgetown University Obstetrics and Gynecology Award

1967 196th Infantry Brigade Combat Medical Badge

1968 196th Infantry Brigade Bronze Star (Valor)

1975 American College of Physicians Fellowship

1976 Phi Delta Kappa Person of the Year Award in Education (European Area)

1976 American Academy of Family Physicians Fellowship

1978 U.S. Army, Surgeon General "A" Suffix (Professorial Status)

1988 Georgetown University Alpha Omega Alpha

1990 U.S. Army Legion of Merit ( 2nd Oak Leaf Cluster)

1992 Federal Republic of Germany Honor Cross, Gold

1993 Republic of Hungary Order of Saint Stephan

1994 U.S. Army Distinguished Service Medal

2004 Coalition of Health Professionals Nominal Award In Genetics

**PROFESSIONAL MEMBERSHIPS**

1965 American Medical Association Life Member

1969 American College of Physicians Fellow

1975 American Academy of Family Physicians Fellow

1979 Society of Medical Consultants of the Armed Forces Member

1988 Washington Academy of Medicine Member

1997 Institute of Medicine of Chicago Fellow

**ACADEMIC POSITIONS**

Aug 70 - May 71 Clinical Instructor, University of Texas School of Medicine (San Antonio), Medicine

Oct 72 - Jun 73 Clinical Instructor, Georgetown University School of Medicine, Medicine

Jul 76 - Jul 79 Director, Family Practice Residency, Dwight David Eisenhower Army Medical Center

Nov 76 - Jun 79 Associate Professor, Medical College of Georgia, Family Practice and Internal Medicine

Jun 80 - Aug 82 Designated Alternate, Board of Regents, National Library of Medicine

Jun 80 - Aug 82 Member, National Board of Medical Examiners

May 81 - Aug 82 DOD Representative, Accreditation Council for Graduate Medical Education

Sep 82 - Sep 90 Clinical Associate Professor, Uniformed Services University School of Medicine, Family Practice

Dec 83 - Jun 86 Clinical Associate Professor, Louisiana State University School of Medicine, Family Medicine

Oct 86 - Clinical Associate Professor, Georgetown University School of Medicine, Department of Community and Family Medicine

Sep 90 - Clinical Professor, Uniformed Services University School of Medicine, Family Practice

## **PUBLICATIONS**

1. Rodriguez, V., Gutterman, J., and Scotti, M.J., Jr., Remission Induction of Adult Acute Leukemia with Combination Chemotherapy, *Clin Phar Therapy* 12:963-71.
2. Scotti, M.J., Jr., and Baker, S., Army Technical Bulletin 290, Drug Abuse, Chap 2: Reorganization and Management of Acute Intoxication and Chap 3: Recognition and Management of Withdrawal Symptoms, Jan 73. Primary Author.
3. Scotti, M.J., Jr., Army Technical Bulletin 287, Pseudofolliculitis of the Beard, 15 Aug 73.
4. Scotti, M.J., Jr., Voluntary Urine Testing by Physicians. *JAMA* 257:, 1987.
5. Scotti, M.J., Jr., CT Scans Following Loss of Consciousness in Children (Letter). *Amer. Fam. Physician* 1993; 47:1570-1.
6. Scotti, M.J., Jr., Medical School Admission Criteria: The Needs of Patients Matter (Editorial). *JAMA* 1997; 278:1196-1197.
7. Scotti, M.J., Jr., The New Match (Editorial). *JAMA* 1997; 278:764.
8. Scotti, M.J., Jr., Genetics: Considerations in the Prevention of Breast Disease (Editorial). *BrDis* 1998; 3:233-234.
9. Scotti, M.J., Jr., The Interdisciplinary Generalist Curriculum Project. *Acad Med* 2001; 76 (Supp) S1-S2.

## **CIVIC ACTIVITIES**

Member, Board of Managers, National Congress of Parents and Teachers (1974-1979).

Consultant in Health, National PTA (1974-1979).

Member, Editorial Board, National Commission for Confidentiality of Health Records (1978-1980).

American Academy of Family Physicians, Member, Committee on Minority Health Affairs (1982-1984, Chairman 1985).

American Academy of Family Physicians, Speaker, Congress of Delegates (1990-1992).

Northern Virginia Alzheimers Association, Member, Board of Directors (1995-1997).

National Consortium for Health Professional Education in Genetics, Co-chair (1997- 2004)

The Army Distaff Foundation, Medical Advisor (2004-)

National Medical Veterans Society (1978-) President

Society of Medical Consultants to the Armed Forces (1979-) President-Elect