

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

CENTRAL RABBINICAL CONGRESS OF:
THE USA & CANADA, *et al.*, :

Plaintiffs, :

vs. :

NEW YORK CITY DEPARTMENT OF
HEALTH & MENTAL HYGIENE, *et al.*, :

Defendants. :

Case No. 12-Civ.-7590

Judge Naomi Reice Buchwald

AFFIDAVIT OF ALAN WERZBERGER, M.D.

1. I am a board certified pediatrician practicing in Kiryas Joel, New York. I graduated from the Faculty of Medicine, University of Toronto, in 1981. I completed my pediatric residency at the Hospital for Sick Children in Toronto, Canada, in 1985. I am an assistant clinical professor of pediatrics at New York University, and an assistant attending at Columbia Presbyterian Center.

Meeting with Dr. Richard Whitley

2. I was one of the members of the Orthodox community who traveled to Alabama in March 2006 to meet with Dr. Richard Whitley, an expert on neonatal herpes who is one of the defendants' expert witnesses in this case. We met with Dr. Whitley in an open and good-faith attempt to learn more about the disease and the plausibility of the theory then being aggressively pursued by the New York City Department of Health and Mental Hygiene regarding its transmission via direct oral suction as part of circumcision. Our meeting was helpful, and the tone was warm and friendly.

3. For whatever reason, Dr. Whitley in his affidavit in this case now claims that a letter I sent to him summarizing the meeting contained "gross mischaracterizations of everything [he had] discussed" with our delegation. (Whitley Aff., ¶ 11.) He alleges that I "willfully misinterpreted what [he] said in order to serve [my] purposes." (*Id.*) Dr. Whitley says that he had not previously reviewed the letter, which is why he had not earlier rebutted these mischaracterizations. (*Id.*)

4. In fact, Dr. Whitley responded to my letter by email, the day after I sent it. He responded to each of my points summarizing his statements during the meeting, and in large part agreed with my characterizations of what he had said (including those that he now says were gross mischaracterizations). As to some of the points, he offered subtle clarifications. His response, which speaks for itself, is attached as Exhibit 1.

Observations from Medical Practice

5. The community I serve is an underserved area composed of 30,000 Hasidic Jews. It is the most rapidly growing community in New York State. From the onset of my practice in 1985, I have been very active in preventing disease within the community. I was the author of a landmark article published in the *New England Journal of Medicine* in August of 1992, showing the efficacy of a vaccine against hepatitis A. This resulted in the eradication of hepatitis in the community five years before the vaccine was licensed, preventing 5,000 cases. In 1987, I participated in the successful efforts to eliminate Shigella during an outbreak that subsequently became the largest recorded outbreak of this disease in the United States. During the nationwide outbreak of measles in 1990, I was involved in curtailing the outbreak by administering over 4,000 doses of MMR during the single month of June of that year.

6. Notably, my practice consists of a population wherein which every single male child born over the past 27 1/2 years has had circumcision performed using direct orogenital suction. Over 10,000 male children have been born over this time, and yet only one case of neonatal herpes has occurred. In this singular case, the *mohel* was shown to be HSV-1 negative (twice), definitively proving that the disease was not transmitted from the *mohel*. My substantial clinical experience therefore demonstrates that in this population, during this time period, there were no cases of neonatal herpes occurring due to orogenital suction.

I declare under penalty of perjury under the laws of the State of New York that the foregoing is true and correct to the best of my knowledge.

Executed this 29th day of November, 2012, at Monsey, New York.

Alan Werzberger
Alan Werzberger, M.D.

STATE OF NEW YORK
COUNTY OF _____

Subscribed and affirmed before me this 29th day of November, 2012.

Robert A. Simins
Notary Public
My commission expires on: March 21 '14.

ROBERT A. SIMINS
NOTARY PUBLIC, State of New York
No. 24-4926606
Qualified in Kings County
Commission Expires March 21 '14