

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

The American Tradition Institute
Environmental Law Center
9033 Brook Ford Rd.
Burke, VA 22015

Plaintiffs,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, and
LISA P. JACKSON, ADMINISTRATOR
1200 Pennsylvania Ave., N.W.
Washington, DC 20460,

Defendants.

Civil Action No. _____

DECLARATION OF JOHN DALE DUNN

I, John Dale Dunn, under penalty of perjury and in accordance with 28 U.S.C. § 1746, declare as follows:

1. My name is John Dale Dunn MD JD and I am a 26 year resident of Brownwood, Texas, 66 years of age and in good health with no impairments to my ability to make this affidavit, and make this Declaration based upon my personal experience.

2. I am an emergency physician since 1974, board certified from 1985 until 2014, a family practitioner; board certified from 1976 to 1989 and still occasionally involved in family practice activities. I have been involved in patient safety and peer review consulting on matters of hospital care for many years, and previously I was a member of the Medical, Pharmacy, and Nursing School Faculties at Creighton University for a period of years in the 1970s.

3. I am an Attorney since 1979, admitted to the Bar by examination in Nebraska in 1979—now resigned, Louisiana in 1983—now inactive and Texas in 2000—inactive.

4. I have written and lectured on professional ethics, medical/legal affairs, patient safety and risk management, and health care quality and practice guidelines and provided consultation on professional peer review matters for more than 25 years for medical groups large and small. I was endorsed by the Texas Medical Association and the Texas Hospital Association as an outside medical peer reviewer.

5. I have been a scholar in environmental law and environmental human health matters for more than 20 years, first as an emergency physician with teaching and medical legal interests, then as a teacher of environmental law and science matters at Howard Payne University in Brownwood, TX, and also as a Public Health authority for the City and County of Brownwood and County of Brown for a period of ten years.

6. For the past almost ten years I have been a civilian contract faculty member for the Emergency Medicine Residency at Carl R Darnall Army Medical Center, Fort Hood, Texas, the busiest Emergency Department in the Department of Defense, and a very successful academic program, producing eight army emergency physicians every year and many Physicians Assistants and medics. My area of teaching expertise is general clinical practice and ethics and medical legal affairs, reflecting my background, education and interests.

7. I was an editor of a major Emergency Medicine Text published in 2000; participate in editing and writing for publications of the American College of Emergency Physicians. My areas of interest are quality assurance, medico/legal issues, patient safety and risk management subjects. I am a reviewer for the journals Annals of Emergency Medicine, and Military Medicine.

8. I was certified by the Insurance Commissioner of the State of Texas as a Risk Management Field Representative, with a specialty in hospitals. I was appointed by Governor Bush and again by Governor Perry to serve on the Technical Advisory Committee on provider quality to the Texas Healthcare Information Council. I served on more than one committee of my medical staff and in the Texas Medical Association on provider quality, professional conduct and patient safety/risk management/regulatory/licensure matters.

9. I was a member of and then consultant to the Texas Medical Association physician patient advocacy committee, which was responsible for assessing patient care disputes, insurance and regulatory problems, and affairs that resulted from physician conduct, medical staff peer review, insurance company payment or patient care standards disagreements or litigation that might impact members or the association. Many times the advocacy committee was the key committee representing the legal or licensure or professional conduct and privilege interests of association members in disputes with the Medical Board or a Hospital Medical Staff.

10. I was a consultant to the Texas Medical Association Hospital Medical Staff Section that was charged with monitoring Hospital Medical Staff governance and peer review as well as hospital professional and administrative matters.

11. I have served as an outside medical practice peer reviewer and outside quality of care consultant for Texas hospitals, usual small hospitals. I have served as a hearing officer and arbitrator in medical staff peer review matters, and quality of care consultant for hospitals in Texas since the early 1990s when I was endorsed as an outside medical peer reviewer by the Texas Medical Association, and the Texas Hospital Association.

12. For more than 10 years I have been actively involved in analyzing the human health effects research of the EPA. My work has resulted in writing and lecturing on human

health epidemiology and toxicology issues. I am a Policy Advisor to the American Council on Science and Health that is intensely involved in analyzing and evaluating public health research and policy making.

13. I have written about and lectured on evidentiary issues related to science and the importance of the Supreme Court's opinions and dicta in the case of *Daubert v Merrill Dow*, (1993) that set new standards for scientific evidence and testimony and caused the Federal Judicial Center to initiate educational programs for Judges on scientific evidentiary matters and publish a comprehensive review of scientific issues in three editions of the book Reference Manual on Scientific Evidence.

14. Many months ago I was asked to look at a case report in the federally sponsored journal Environmental Health Perspectives, that is published by the National Institutes of Health.

15. For more than ten years I have had an intense interest in air pollution human health effects epidemiology and policy making by the US Environmental Protection Agency (EPA) on the various criteria pollutants of interest and subject to regulation under the Clean Air Act.

16. The position of the US EPA in regards to the toxicity of small particles is well known to me and I have on more than one occasion written and lectured on the weak nature of the associations in research claimed by the EPA to prove that thousands of people die annually from the exposure to small particles.

17. I assumed that the EPA, even though I thought their research was weak and didn't prove up their case on deaths, was convinced and committed to the position that small particles kill people and kill them acutely, since much of the research was based on lag times from increases in pollution of hours or days.

18. I was shocked and outraged to read the case report, which described an obese woman with hypertension and pre-experiment evidence of cardiac irritability, was put in a chamber and exposed to small particles at levels far above what the EPA had published as safe. She developed a cardiac arrhythmia, which is a heart-beat problem and required hospitalization.

19. Upon request of my expert opinion, I concluded that this was an egregious violation of ethical norms—to expose a human subject to what was considered a toxic and lethal level of small particles.

20. I have carefully examined an investigation into the magnitude of procedural and ethical errors made by EPA in conducting the reported research. That investigation documented the widespread misconduct and perfidy not only by EPA but also by a major School of Medicine, the University of North Carolina and an ongoing research program that subjected many different at risk groups and a normal group with no risk profile to small particles well above the EPA claims of safe limits.

21. Consent forms used in these studies showed that not only was the research in violation of any acceptable ethical and moral norms, but the volunteers who were the subjects were not warned of the EPA position that small particles were lethal. So lethal that the EPA administrator claims in Congressional Testimony that more than 100,000 die annually in America from exposure to small particles.

22. I am at this point unable to excuse or explain the conduct of physicians who would conduct such experiments, not once but many times on many different subjects.

23. I have complained to the North Carolina Medical Board about the misconduct and have been reassured that an investigation will occur. I have written to the University of North Carolina Institutional Review Board and asked that they investigate and have received their

assurances that an investigation will be undertaken.

24. I am outraged and saddened to know that highly trained and expert physicians would be involved in scandalously unethical and immoral professional research, subjecting humans to toxic or lethal levels of small particles, if the EPA is to be believed in the public releases and testimony before congress.

25. I disagree with their conclusions about the lethality of small particles, and consider their epidemiology to be suspect and unreliable, however, EPA asserts that small particles are lethal and sponsor, fund and support human experiments that in history and in medical ethics studies have been condemned. There is no consent that will excuse or justify the experiments that are being conducted in North Carolina and a lab operated by the EPA and affiliated with the UNC School of Medicine.

26. There can be no further tolerance of this misconduct. As a licensed physician I cannot imagine the conduct that has been going on in North Carolina. It must be stopped. One patient, one subject is too many to expose. If the EPA wants to withdraw its claims of toxicity and lethality of small particles, then that must be done in an appropriate scientific manner, and can't be done on the fly to excuse these immoral experiments that harken back to historical scandals that were the product of immoral decision made by misguided and unethical physicians and government officials.

27. No individual should be exposed to what the EPA claims, and a broad component of their sponsored researchers claim, is a toxic exposure killing hundreds of thousands every year.

28. I have no confidence that the UNC Institutional Review Board or the Dean of the Medical School or the North Carolina Board of Medicine or the EPA officials who are aware of

this research will stop the unethical and immoral, unprofessional research. I also have no confidence that the North Carolina Medical Board will act judiciously and quickly to put a stop to this research. Government sponsored research cannot be immunized from proper action by an outraged court or citizen.

29. I therefore ask, plead, that the court order an immediate halt to these experiments, and put the issues up for proper consideration on a final disposition after the danger to innocent volunteers is avoided.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. This declaration was executed on the 20th day of September, 2012.



John Dale Dunn, MD, JD