

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS

WORCESTER SUPERIOR COURT
NO. 03-0546

COMMONWEALTH

V

KELLY HOOSE

**MOTION TO EXCLUDE EXPERT TESTIMONY OF
CHRISTINE BARRON, M.D.**

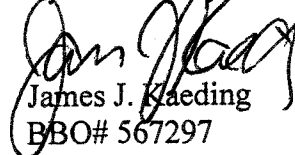
Now comes the Defendant, Kelly Hoose, to move this Honorable Court to exclude the testimony of the Commonwealth's expert, Christine E. Barron, M.D., on the grounds that her testimony is inherently unreliable.

Dr. Barron's methodology, in applying the so-called "Tanner Scale" to estimate chronological age of individuals depicted in computer downloaded images, does not meet the minimum standards for expert testimony as outlined by the U.S. Supreme Court in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) and adopted by Massachusetts in *Commonwealth v. Lanigan*, 419 Mass. 15, (1994).

Accordingly, Dr. Barron's testimony should be excluded.

An evidentiary hearing is requested on this motion.

Respectfully submitted,
Kelly Hoose,
By his attorney,



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PO Box 519
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November 1, 2004

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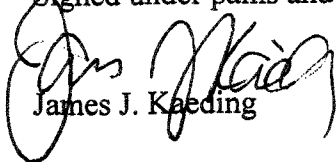
KELLY HOOSE

AFFIDAVIT OF COUNSEL

I, James J. Kaeding, hereby state the following:

1. I represent the Defendant, Kelly Hoose, in the above-captioned matter.
2. The defendant is charged with four counts of possession of child pornography, in violation of G.L. c. 272, section 29C.
3. According to discovery provided by the prosecution, the Commonwealth intends to offer the testimony of Dr. Christine Barron, who would testify to her opinion that individuals depicted in certain images are children under the age of eighteen.
4. Dr. Barron reached her opinion after looking at images printed from a computer hard drive, and by applying what is known as the "Tanner Scale" to the individuals depicted in the images.
5. A review of Dr. Barron's curriculum vitae reveals extensive experience and knowledge in the field of child abuse, but no experience, training, research or publication in the use of the "Tanner Scale", or specifically in the application of the "Tanner Scale" to visual images.

Signed under pains and penalties of perjury, this 1st day of November 2004.


James J. Kaeding