

**NOT DESIGNATED FOR PUBLICATION**

**JOSEPH G. PASTOREK, II,  
M.D.**

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**NO. 2004-CA-0762**

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**COURT OF APPEAL**

**VERSUS**

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**FOURTH CIRCUIT**

**LOUISIANA STATE BOARD  
OF MEDICAL EXAMINERS  
AND JOHN B. BOBEAR, M.D.**

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**STATE OF LOUISIANA**

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**APPEAL FROM  
CIVIL DISTRICT COURT, ORLEANS PARISH  
NO. 2003-17037, DIVISION "C-6"  
Honorable Roland L. Belsome, Judge**

\* \* \* \* \*

**Judge David S. Gorbaty**

\* \* \* \* \*

(Court composed of Judge Charles R. Jones, Judge Terri F. Love, Judge David S. Gorbaty)

Joseph G. Pastorek II, M.D.

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PLAINTIFF/APPELLANT, IN PROPER PERSON

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## **APPEAL DISMISSED**

This appeal arises out of the trial court's denial of the appellant's request for injunctive relief. For the reasons assigned below, we dismiss the appeal as untimely.

## **FACTS AND PROCEDURAL HISTORY**

On December 10, 2002, an administrative complaint was filed against appellant, Dr. Joseph G. Pastorek, II (Dr. Pastorek), with the Louisiana State Board of Medical Examiners (the Board). The Director of Investigations for the Board, Dr. John B. Bobear (Director), initiated the complaint. It was alleged, among other things, that Dr. Pastorek had been involved in a personal relationship with Dr. Annelle Blanchard and had assisted in or facilitated some of the practices that resulted in the Board's revocation of Dr. Blanchard's license.

On October 29, 2003, Dr. Pastorek noticed the deposition of the Director. In response, the Director filed a motion to quash, arguing that he would not be called as a witness in the case. It was further argued that the Director is not like a plaintiff in a civil action that brings forth a claim based upon facts of which he has personal knowledge. Instead, it was maintained that the Director is a nominal party asserting the public's claim, and while he

administers the prosecution of that claim, he generally has no first-hand knowledge of the facts supporting it, and is not in a position either to give evidence or be deposed. As explained, all that the Director knows about the case is what the investigators/attorneys have told him.

The Board granted the Director's Motion to Quash. Dr. Pastorek thereafter filed a Petition for Judicial Review and For Declaratory Judgment and Injunctive Relief with the Civil District Court for the Parish of Orleans. After a hearing was conducted in the matter, the trial court rendered a Judgment on February 13, 2004, denying Dr. Pastorek's request for a preliminary injunction.

Dr. Pastorek filed this suspensive appeal, pro se, assigning three errors. First, the trial court erred by failing to declare the Director a suitable subject for deposition. Second, the trial court erred in finding that the Director was like a District Attorney in a criminal matter and, therefore, not required to testify or give deposition testimony. Third, whether the Director has any first hand knowledge of any fact is immaterial under Louisiana law to his qualification to give deposition testimony.

### **JURISDICTIONAL ISSUE**

Although not raised by the parties, this Court notes a

jurisdictional issue regarding the timeliness of the appeal. More particularly, this is an appeal of a judgment denying Dr. Pastorek's request for a preliminary injunction. La. C.C.P. article 3612C states in pertinent part: "[A]n appeal from an order or judgment relating to a preliminary injunction must be taken, and any bond required must be furnished, *within fifteen days* from the date of the order or judgment." (Emphasis added.) In the present case, the Judgment denying the request for injunctive relief was signed on February 13, 2004. The Motion and Order for Suspensive Appeal was filed on March 10, 2004, in excess of fifteen days from the rendering of the Judgment. Given this nature of this case, the appeal is clearly untimely pursuant to article 3612. Accordingly, the appeal is dismissed.

### **CONCLUSION**

For the foregoing reasons, the appeal is dismissed as untimely.

**APPEAL DISMISSED**