

[Cite as *Doe v. State Med. Bd. of Ohio*, 2022-Ohio-1600.]

JANE DOE, M.D.

Plaintiff

v.

STATE MEDICAL BOARD OF OHIO

Defendant

Case No. 2022-00077JD

Judge Patrick E. Sheeran

JUDGMENT ENTRY

{¶1} Before the Court is plaintiff's February 8, 2022 motion for a preliminary injunction. Initially, the Court GRANTS plaintiff's February 25, 2022 motion to exceed page limitations. Previously, the Court granted plaintiff's motion for a temporary restraining order. Plaintiff seeks a preliminary injunction prohibiting defendant from "issuing a Notice of Opportunity for Hearing to Plaintiff and divulging the identity of plaintiff as it is protected under federal law." Both parties have filed briefs in support of their respective positions including affidavits and attachments. The court conducted an oral hearing on plaintiff's motion on February 28, 2022 and March 3, 2022. As evidence, in addition to the affidavits and exhibits the parties submitted, Attorney Tom McMahon testified at the hearing. Having reviewed the evidence and considered the arguments of the parties, the court DENIES plaintiff's motion for a preliminary injunction.

{¶2} Under Ohio law, a party requesting preliminary injunctive relief must show that: "(1) there is a substantial likelihood that the plaintiff will prevail on the merits, (2) the plaintiff will suffer irreparable injury if the injunction is not granted, (3) no third parties will be unjustifiably harmed if the injunction is granted, and (4) the public interest will be served by the injunction." *Escape Ents., Ltd. v. Gosh Ents., Inc.*, 10th Dist. Franklin Nos. 04AP-834 & 04AP-857, 2005-Ohio-2637, ¶ 22, quoting *Proctor & Gamble Co. v. Stoneham*, 140 Ohio App.3d 260, 267 (1st Dist.2000). Further, "the right to an injunction must be clear and the proof thereof clear and convincing, and the right established by the strength of plaintiffs' own case rather than by any weakness of that of his adversary."

Escape Ents. Ltd. at ¶ 22, quoting *White v. Long*, 12 Ohio App. 2d 136, 140, 231 N.E.2d 337 (12th Dist.1967). The court addresses each element below.

Plaintiff failed to establish a likelihood of success on the merits.

{¶3} Before discussing this element relative to plaintiff's request for a preliminary injunction, it is important to note the limits on this court's jurisdiction. In addition to seeking injunctive relief, plaintiff's complaint asserts claims for declaratory judgment and abuse of process. As stated in *Modern Office Methods, Inc. v. Ohio State Univ.*, 10th Dist. No. 11AP-1012, 2012-Ohio-3587, ¶ 10:

"The Court of Claims is a court of limited jurisdiction." *Windsor House, Inc. v. Ohio Dept. of Job and Family Servs.*, 10th Dist. No. 11AP-367, 2011-Ohio-6459, ¶ 15. The Court of Claims has exclusive jurisdiction over civil actions against the state for money damages sounding in law. R.C. 2743.02 and 2743.03; see also *Windsor House* at ¶ 15. "R.C. 2743.03(A)(2) provides that when a claim for a declaratory judgment, injunctive relief, or other equitable relief against the state arises out of the same circumstances giving rise to a civil action over which the Court of Claims otherwise would have jurisdiction, the Court of Claims has exclusive, original jurisdiction to hear and determine that claim." *Interim Healthcare of Columbus, Inc. v. Ohio Dept. of Admin. Servs.*, 10th Dist. No. 07AP-747, 2008-Ohio-2286, ¶ 13, citing *Friedman v. Johnson*, 18 Ohio St.3d 85, 87, 18 Ohio B. 122, 480 N.E.2d 82 (1985).

However, in the absence of a "proper claim for damages," this Court lacks subject-matter jurisdiction to hear claims for equitable relief. *Id.* at ¶ 11; 28.

{¶4} Thus, as it relates to the present motion, the Court finds that consideration of plaintiff's likelihood of success on her abuse of process claim must be considered first because, in the absence of this claim, the Court lacks subject-matter jurisdiction over the remainder of plaintiff's complaint. The elements of an abuse of process claim "are: (1) a

legal proceeding has been set in motion in proper form and with probable cause, (2) the proceeding has been perverted to attempt to accomplish an ulterior purpose for which it was not designed, and (3) direct damage has resulted from the wrongful use of process.” *Cantrell v. Deitz*, 10th Dist. No. 12AP-357, 2013-Ohio-1204, ¶ 15.

{¶5} In this case, the Court finds plaintiff has failed to demonstrate she is likely to succeed on her abuse of process claim because plaintiff failed to provide any evidence, let alone clear and convincing evidence, regarding the second element. In fact, notwithstanding plaintiff’s disagreement with the necessity and timing of the board’s actions, there is simply no evidence that defendant is attempting to “accomplish an ulterior purpose” in issuing its notice or in otherwise engaging in its statutory duty to regulate the practice of medicine in Ohio. On the contrary, Ms. Pokorny’s affidavit establishes that defendant initiated an investigation, as it is authorized to do, after receiving a letter from the Department of Veterans Affairs, regarding concerns with plaintiff’s professional conduct. Defendant has authority to regulate physicians licensed in Ohio and neither its decision to move forward as to plaintiff or its lack of explanation to plaintiff regarding its actions establish that it is attempting to accomplish an ulterior purpose. Lacking evidence on this element of her abuse of process claim, the court simply cannot find that she is likely to succeed on such a claim.

{¶6} The foregoing should not be taken to imply that plaintiff has met the first element of the claim of abuse of process. Because plaintiff’s argument for an abuse of process claim is completely lacking as to the second element, this Court need not address the arguments as to the first element.

{¶7} Further, as noted above, given this court’s limited jurisdiction, if plaintiff is unlikely to prevail on her abuse of process claim, she cannot prevail on her declaratory judgment claim, at least before this Court, because subject-matter jurisdiction is lacking and the claim would have to be dismissed. Thus, whether she can succeed on the merits of her declaratory judgment claim is not relevant in the absence of a viable claim for

damages. Moreover, the Court would note that, in *Krawcheck v. State Medical Board of Ohio*, Ct of Cl. No. 2019-01195, it previously rejected similar arguments to those asserted by plaintiff here. This Court has reviewed plaintiff's arguments against the *Krawcheck* decision, and does not find them to have merit. Had plaintiff not held a license to practice medicine in Ohio, and without that license proceeded to practice at a VA hospital, then the statute cited by plaintiff would apply, and defendant would have no authority over her. However, the fact of her Ohio license gives defendant the statutory authority to proceed.¹

{¶8} For these reasons, the court finds plaintiff has failed to demonstrate a likelihood of success on the merits.

Plaintiff failed to establish that she will suffer irreparable injury

{¶9} As stated in *Ohio Democratic Party v. LaRose*, 10th Dist. No. 20AP-421 and 20AP-428, irreparable harm requires an injury for which “there could be no plain, adequate, and complete remedy at law, and for which restitution in [money] would be impossible, difficult, or incomplete.” The Court first notes that, despite extensive discussion regarding the National Practitioners Data Bank (“NPDB”), reporting requirements to the NPDB, and consequences of reports made to the NPDB, the parties eventually conceded that neither the defendant nor plaintiff herself must report defendant's Notice to the NPDB. The reporting requirement would occur in the event that the defendant, after a hearing, makes a finding adverse to plaintiff. The Court therefore finds that while there can indeed be significant consequences from an adverse decision by defendant, both involving the NPDB and others, those consequences do not occur based on the mere filing of a Notice. Therefore, absent a finding of fault, the consequences relating to a report to the NPDB cannot equate to irreparable harm at this time.

¹ That plaintiff has asserted, through counsel, a willingness to sign an affidavit that she will not renew her recently expired Ohio license does not act to deprive defendant of jurisdiction over her.

{¶10} Moreover, plaintiff at most established that she might suffer possible harm in the absence of an injunction. Counsel suggested, as did Mr. McMahon during his testimony, that defendant's actions could open a Pandora's box for plaintiff. However, in the Court's view, the potential for harm does not equate to clear and convincing proof of *irreparable* harm sufficient to justify a preliminary injunction. Plaintiff failed to establish what specific harm would actually result from defendant's actions and also failed to establish that the potential harm she might face is unique or substantial. Finally, plaintiff also failed to establish how any potential harm could not be compensated by money damages. In this regard, the Court would again emphasize that plaintiff bears the burden to demonstrate irreparable harm. That the Court could speculate as to how plaintiff might be harmed and/or as to how such harm could not be compensated is irrelevant. Plaintiff did not provide clear and convincing proof on this element.

The court cannot find that any third parties would be unjustifiably harmed if it were to grant an injunction.

{¶11} Plaintiff established, for the purposes of the preliminary injunction hearing only, that she does not hold an active Ohio medical license, does not practice in Ohio, and has no intention of renewing her Ohio license. However, were the Court to grant the injunction plaintiff seeks, the ultimate effect it would have on third parties, in the court's view, is speculative. Again, plaintiff is required to provide clear and convincing proof that no third parties will be harmed. Given what has been presented to the Court, it simply cannot determine whether this is true. As such, the court finds that plaintiff failed to meet her burden on this element as well.

Granting plaintiff's injunction will not serve the public interest.

{¶12} Plaintiff has also failed to provide clear and convincing evidence that an injunction would serve the public interest. As indicated by the numerous cases cited by

defendant in the initial section of its brief, Court interference with administrative and statutory proceedings through injunctive relief is disfavored, if not outright prohibited in most cases. The Court also agrees, as defendant suggests, that a Court should show great caution in “granting injunctions, especially in cases affecting a public interest where the Court is asked to interfere with or suspend the operation of important works or control the action of another department of government.” *Danis Clarkco Landfill Co. v. Clark Cty. Solid Waste Mgt. Dist.*, 73 Ohio St.3d 590, 604, 653 N.E.2d 646 (1995); *Dandino v. Hoover*, 70 Ohio St.3d 506, 639 N.E.2d 767 (1994). Thus, as an initial matter, the Court finds that the public has a substantial interest in the functioning of its public administrative agencies and also has an interest in the regulation of medicine and physicians in the state of Ohio. Plaintiff asserted at the hearing that the injunction would allow her to continue to serve her community. However, plaintiff does not practice in Ohio and the Court fails to see how the citizens of Ohio would benefit from granting plaintiff’s injunction. In short, plaintiff failed to demonstrate how the injunction she seeks is beneficial to the public.

Conclusion

{¶13} For the reasons stated herein, the court finds plaintiff has failed to establish by clear and convincing evidence that she is entitled to a preliminary injunction. The court, therefore, DENIES plaintiff’s motion for a preliminary injunction.

PATRICK E. SHEERAN
Judge