

INDIANA COMMERCIAL COURT

STATE OF INDIANA)
) SS: IN THE MARION SUPERIOR COURT
COUNTY OF MARION) CAUSE NO. 49D01-2211-MI-038101

CAITLIN BERNARD, M.D., on her own behalf
and on behalf of her patients; AMY CALDWELL,)
M.D., on her own behalf and on behalf of her)
patients,)
)

Plaintiffs,)

v.)

TODD ROKITA, in his official capacity as)
Attorney General of the State of Indiana; SCOTT)
BARNHART, in his official capacity as Chief)
Counsel and Director of the Consumer Protection)
Division of the Office of the Attorney General of)
the State of Indiana,)

Defendants.)

PLAINTIFFS' SUPPLEMENTAL PROPOSED FINDINGS OF FACTS AND CONCLUSIONS OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

The Defendants' act of filing an Administrative Complaint yesterday with the Medical Licensing Board ("MLB") against Plaintiff Dr. Caitlin Bernard, about which they immediately issued a press release, *see* Ex. 1, demonstrates yet again that Defendants will not follow Indiana law unless they are ordered to do so by a court, and that Plaintiffs' Motion for Preliminary Injunction should be granted.

As directed by this Court, on November 23, 2022, Plaintiffs filed proposed Findings of Fact and Conclusions of Law ("Proposed Findings") related to their Motion for Preliminary Injunction. In those Proposed Findings, Plaintiffs proposed that Defendants be "enjoined from referring any of the consumer complaints against Dr. Bernard to the MLB, recommending that the

MLB otherwise pursue disciplinary action against Dr. Bernard, or prosecuting any [of] the complaints against Dr. Bernard before the MLB pursuant to Ind. Code Ann. § 25-1-7-7 or § 25-1-7-5(b)(1) (West).” Plfs.’ Proposed Findings of Fact and Conclusions of Law in Support of Plfs.’ Mot. for Preliminary Injunction (“Plfs.’ FOF/COL”) ¶ 251 (Nov. 23, 2022). This proposed finding followed from the conclusion, supported by the evidence in this matter, that “Dr. Bernard has not violated any Indiana statutes regulating physicians, and because Defendants’ statutorily prohibited public disclosures of and statements regarding the investigations have irrevocably compromised the fairness and integrity of the investigations against Dr. Bernard, the Defendants do not have statutory authority to refer any of the consumer complaints against Dr. Bernard to the Medical Licensing Board (“MLB”) for further proceedings, nor do Defendants have authority to recommend that the MLB take up proceedings against Dr. Bernard based on those complaints or arising out of the events underlying those complaints.” *Id.* ¶ 250.

In an apparent attempt to circumvent this Court’s authority and avoid its ruling on the pending Motion for Injunctive Relief – which the Court advised the parties it would issue this week – Defendants filed yesterday morning an “Administrative Complaint” against Dr. Bernard with the Medical Licensing Board referencing the “multiple consumer complaints” at issue in this proceeding. *See* Notice (Nov. 29, 2022). The Administrative Complaint also alleged violations of HIPAA and the state’s mandatory reporting law, premised on the Attorney General’s unsupported statutory interpretation, which are among the issues before this Court. *See, e.g.*, Plfs.’ FOF/COL ¶¶ 63–76, 105–109, 195–216, 217–226. Plaintiffs’ lawsuit challenges as *ultra vires* the Defendants’ investigation of these so-called consumer complaints, and their authority to refer those complaints to the MLB for further proceedings. Because Defendants never complied with the

statutory requirements for investigating consumer complaints, their filing of an Administrative Complaint that resulted from the investigation is itself unlawful and should be enjoined.

Therefore, Plaintiffs respectfully supplement their November 23, 2022 proposed Findings of Fact and Conclusions of Law as follows:

¶ 253. Defendants are enjoined from prosecuting the Administrative Complaint, Case Number 2022 MLB 0024, filed against Dr. Bernard on November 30, 2022 before the Medical Licensing Board of Indiana.

¶ 254. Defendants are ordered to withdraw the Administrative Complaint, Case Number 2022 MLB 0024, filed against Dr. Bernard on November 30, 2022 before the Medical Licensing Board of Indiana.

Dated: December 1, 2022

Respectfully submitted,

/s/ Kathleen A. DeLaney

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CERTIFICATE OF SERVICE

I certify that on December 1, 2022, I electronically filed the foregoing document using the Indiana E-Filing system and served the following counsel through IEFS.

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/s/ Kathleen A. DeLaney
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