THE STATE OF NEW HAMPSHIRE

Merrimack County Superior Court

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NOTICE OF DECISION

BENJAMIN T KING ESQ
DOUGLAS LEONARD & GARVEY P C
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CONCORD NH 03301

05-E-0478 Terry Bennett, M.D. vs. New Hampshire Board of Medicine

Enclosed please find a copy of the Court's Order dated 6/30/2006 relative to:

Court Order

07/05/2006

William McGraw
Clerk of Court

cc: Elyse S. Alkalay, Esq.

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS. SUPERIOR COURT

Terry M. Bennett, M.D.

v.

New Hampshire Board of Medicine

No. 05-E-478

ORDER

The petitioner, Terry M. Bennett, M.D., originally brought this action challenging the manner in which the New Hampshire Board of Medicine ("Board") had been investigating and adjudicating complaints against him. The petitioner now moves for an injunction barring the Board from taking any further action relative to the complaints against him. The Board objects. The Court held a hearing on the motion on May 11, 2006. Considering the parties' arguments and the relevant law, the Court finds and rules as follows.

I. Factual Background

In August 2005, the Board issued a Notice of Hearing informing the petitioner that it intended to hold an adjudicatory hearing in order to determine whether the petitioner had made various unprofessional comments to patients and whether those comments constituted a breach of professional ethics. The Board's decision to hold a hearing was in response to two complaints, one by a patient identified as Patient A, and the other by a patient identified as Patient S. According to the Patient A complaint, in June 2004, the petitioner spoke harshly to Patient A regarding her weight. According to the Notice of Hearing, the petitioner is alleged to have said "You need to lose weight.

Let's face it if your husband were to die tomorrow who would want you. Well, men might want you but not the types that you want to want you. Might even be a black guy." Motion for Injunctive Relief, Ex. A, Notice of Hearing, ¶ 6.E. The Patient S complaint alleges that in 2001, the petitioner suggested to Patient S that rather than live with her extensive brain injuries, she should purchase a gun and commit suicide to end her suffering. See Motion for Injunctive Relief, Ex. B. The petitioner denies making the comments alleged in the Patient S complaint. The Board has since added a third complaint from a patient identified as Patient D, in which the petitioner is accused of speaking harshly to Patient D in 2003 regarding her son's hepatitis condition.

The petitioner now moves, under Thompson v. N.H. Board of Med., 143 N.H. 107 (1998), to enjoin the Board from taking any further action against him as a result of the above complaints. The petitioner contends that the Board may not pursue the Patient A and Patient D complaints because to do so would violate his rights to free speech and due process under the Federal and State Constitutions and because the regulations under which the Board is operating are unconstitutionally vague. He further contends that the Patient S complaint is barred by the doctrines of *res judicata* and collateral estoppel. He does not, however, contend that the prosecution of the Patient S complaint would violate his free speech and due process rights.

II. Court Intervention

The Board contends that Thompson does not apply and that therefore, the petitioner may not circumvent the Board and the standard avenues for appeal by petitioning this Court for an injunction. In Thompson, the New Hampshire Supreme Court determined that "the superior court may grant injunctive relief where: (1) a

potential due process violation or prejudice has occurred; (2) an important collateral issue completely separate from the merits of the action can be resolved; and (3) failure to review would result in serious and immediate harm." 143 N.H. at 109-110. But, "[p]arties cannot circumvent the statutory appeal process under the guise of a petition for injunctive relief concerning issues directly related to the merits of the underlying proceeding, such as evidentiary rulings, and collateral issues that lack immediate irreparable impact." Id. at 110. "The superior court may, however, intervene prior to entry of final judgment in exceptional circumstances where . . . a party raises a due process violation that fundamentally impedes the fairness of an underlying proceeding resulting in immediate and irreparable harm to that party." Id. In such an instance "the complainant has the burden of persuading the superior court that exceptional circumstances justify a departure from the basic policy of postponing review until after the entry of a final judgment." Id. (quotations, brackets and ellipsis omitted).

Applying the considerations set out in Thompson, the Court finds that it is appropriate in this instance to depart from the basic policy of postponing review until after the entry of final judgment by the Board. As stated above, the superior court may intervene in exceptional circumstances where a party raises a violation that fundamentally impedes the fairness of an underlying proceeding resulting in immediate and irreparable harm to that party. Here, the petitioner alleges that the Board is acting unconstitutionally by denying him the right to free speech and that it is attempting to sanction him under unconstitutionally vague regulations. Also, he has alleged that the Board is attempting to sanction him for another complaint, the prosecution of which is procedurally barred. Such concerns are sufficient to demonstrate that the underlying

proceeding may not be sufficiently fair so as to protect the petitioner's rights. Further, permitting the underlying proceeding to proceed to final judgment might result in immediate and irreparable harm to the petitioner in that he could lose his license to practice medicine as a result of an unfair abridgment of his rights. Accordingly, the Court finds that a potential due process violation or prejudice has occurred.

Secondly, the Court finds that the petitioner has raised important collateral issues completely separate from the merits of the underlying matter. Regarding the Patient A and Patient D complaints, the petitioner contends that regulating his speech in the manner proposed by the Board would violate his rights to free speech and due process. Whether the Board has the authority to prosecute the petitioner for his comments is separate from the issue of whether his comments amounted to a breach of professional ethics. As to the Patient S complaint, the petitioner contends that the Board lacks the authority to hear the matter because it is barred from doing so by *res judicata* and collateral estoppel. A determination regarding the jurisdiction of the Board over a given matter is distinct from the issue of the petitioner's alleged breach of ethics.

As to the final Thompson factor, the Court finds that if it does not review the matter, the petitioner is at risk of losing his license to practice medicine when the Board finally hears the matter. Such a depravation presents the risk of a serious and immediate harm to the petitioner. Therefore, the Court finds that the petitioner has met his burden in regard to the considerations raised in Thompson. Thus, the Court may intervene in this instance and grant an injunction should one be warranted.

III. Injunction

"The issuance of injunctions, either temporary or permanent, has long been considered an extraordinary remedy. An injunction should not issue unless there is an immediate danger of irreparable harm to the party seeking injunctive relief, and there is no adequate remedy at law." Murphy v. McQuade Realty, Inc., 122 N.H. 314, 316 (1982). To obtain an injunction, a plaintiff must show: 1) a present threat of irreparable harm; 2) that there is no adequate, alternative remedy at law; 3) a likelihood of success on the merits by a balance of the probabilities; and 4) that the public interest would not be adversely affected if the court grants the injunction. See Thompson, 143 N.H. at 108 and UniFirst Corp. v. City of Nashua, 130 N.H. 11, 14-15 (1987).

A. Irreparable Harm

As stated, the petitioner is at risk of losing his license to practice medicine. The Supreme Court noted in Thompson that "the board has the power to suspend or revoke a doctor's license." 143 N.H. at 111. Further, "[s]uch suspension or revocation remains in effect during the appeal period and may have severe repercussions on the doctor's livelihood." Id. Therefore, "a physician . . . most likely would be unable to recover lost income and a decreased patient base during the appeal period." Id. Because suspending or revoking his license may present severe repercussions to the petitioner's livelihood, the Court finds that the petitioner faces the present threat of an irreparable harm.

B. Adequate, Alternative Remedy

The Board contends, as it did in Thompson, that the statutory appeals process is sufficient to grant the petitioner an adequate, alternative remedy at law. This Court, like the Court in Thompson, does not agree that such a remedy is sufficient. Under RSA

329:14, VIII, no sanction of the Board is to be stayed during the pendency of an appeal. The petitioner is 67 years old. If his license to practice medicine is suspended, it will remain suspended at least until any appeal is heard and decided. Even assuming he is ultimately successful, the practical effect of the sanction will be to prevent the petitioner from practicing medicine for the rest of his professional life. In such an instance the availability of a statutory appeal cannot be said to be an adequate alternative remedy.

C. Likelihood of Success on the Merits

i. Patient A and Patient D

Preliminarily, the Court notes that no party has made clear the substance of the Patient D complaint. Although generally the substance of the speech is relevant to determining whether First Amendment protection is available, the nature of the Court's determination, *infra*, makes knowledge of the substance unnecessary.

As noted, the petitioner contends that under the First Amendment to the United States Constitution and Part I, Article 22 of the New Hampshire Constitution, he is free to speak, even if his speech is offensive to some people. He further argues that his speech is not entitled to any less protection simply because he is a member of a licensed profession. Also, he contends that the Board has, in effect, imposed a content-based speech restriction, which is not narrowly drawn as required by the constitution. Finally, he contends that the Board's regulations are too vague to comply with constitutional requirements. Therefore, according to the petitioner, because the grounds on which the Board is proceeding are unconstitutional, he is likely to prevail on the merits.

The Board counters that those persons who work in licensed professions do so subject to the regulation of their respective licensing boards. Therefore, the petitioner

does not have the same rights to free speech as those outside the licensed profession and his speech within the confines of his role as a licensee may be regulated. The Board also contends that RSA 329:17, VI(d) and Med 501.02, the regulations upon which it relies in bringing the underlying action, are content neutral regulations that are part of an overall statutory scheme of investigation and enforcement of medical licensees. Since the alleged comments took place within the physician-patient relationship, the Board may investigate and regulate them through the content neutral enforcement mechanisms regarding medical licensees. Finally, the Board contends that the petitioner has not met his burden to demonstrate that the regulations he is alleged to have violated are unconstitutionally vague. Therefore, the Board is acting within the constitution, its jurisdiction and its responsibilities and will likely prevail.

It is well established that "[t]he right to speak freely, whether in a street or elsewhere, is of primary importance." State v. Chaplinsky, 91 N.H. 310, 315 (1941). "The fundamental basis of the constitutional rule is the necessity for full and free discussion of all subjects which affect ways of life, including religious, social and governmental questions." Id. However, "[i]n maintaining the guaranty of free speech, the authority of the State to enact laws to promote health, safety, morals and the general welfare is 'necessarily admitted.'" Id. at 317. "The limits of this reserved authority must be determined with appropriate regard to the particular subject of its exercise." Id. (quotations omitted). "And the power of the State stops short of interference with what are deemed to be certain indispensable requirements of the liberty assured." Id. (quotations and ellipses omitted). "The right of speech, therefore, is not absolute, but relative, and must be exercised in subordination to the general comfort and convenience,

and in consonance with peace and good order; but it must not, in the guise of regulation, be abridged or denied." Id. at 318 (quotations omitted).

Regarding the argument that those within regulated professions are subject to different levels of scrutiny relative to their speech, the Court does not agree. The Court agrees with the Board's general contentions that being given the opportunity to practice a licensed profession carries with it certain responsibilities and that the adequate fulfillment of those responsibilities is something to be regulated. However, the Court does not agree that the decision by a person to subject him or herself to the regulation of a licensed profession necessarily limits his or her right to speak freely and, in fact, the Board points to no law in New Hampshire that so holds.

Instead, the Board relies on the decision of the Supreme Judicial Court of Massachusetts in Weinberg v. Board of Registration in Medicine, 824 N.E.2d 38 (Mass. 2005) for the proposition that the right of a physician to labor in the profession must yield to the right of the government to protect public health and that therefore, those who work in such professions do not possess the same rights to speak and act as those outside the profession. The Court finds Weinberg distinguishable from this case. The physician in Weinberg conceded that his sexual relationship with a patient could justify a finding that he had violated his code of medical ethics. Id. at 44. Moreover, the Weinberg court noted that there was evidence that the relationship between the patient and physician had resulted in harm to the patient's admittedly fragile mental state. Id. at 41, 45. Here, the petitioner has neither admitted that his acts violated applicable medical standards, nor is there any evidence that he gave inappropriate medical care or that his comments led to any adverse health impacts. Thus here, unlike Weinberg, the Board is not investigating

and regulating the petitioner as one who has provided inadequate or inappropriate medical care. Accordingly, the Court does not find Weinberg applicable to this case and declines the invitation to employ its reasoning.

Having determined that there is no *per se* limitation on the speech rights of those in licensed professions, the Court turns to the petitioner's other arguments. The petitioner contends that the Board seeks to impose an impermissible content-based restriction on his speech. According to the petitioner, because the regulations under which he is being prosecuted are content-based, they must be narrowly drawn. Because the regulations are not drawn with sufficient specificity they cannot survive a First Amendment challenge. The Board counters that the regulations are content neutral and are part of an overall scheme of examination and investigation of medical licensees.

According to the Notice of Hearing, the purpose of the Board's investigation is to determine whether the petitioner violated RSA 329:17, VI(d), Med 501.02(h) and/or the American Medical Association's ("AMA") Principles of Medical Ethics, Principle I. Motion for Injunctive Relief, Ex. A, Order of Notice, ¶¶ 7A-7C. RSA 329:17, VI (Supp. 2005) states, in relevant part:

> The board, after hearing, may take disciplinary action against any person licensed by it upon finding that the person:
> (d) Has engaged in dishonest or unprofessional conduct or has been grossly or repeatedly negligent in practicing medicine or in performing activities ancillary to the practice of medicine or any particular aspect or specialty thereof, or has intentionally injured a patient while practicing medicine or performing such ancillary activities.

N.H. Admin. R. Med 501.02(h) states:

> A licensee shall adhere to the Principles of Medical Ethics - Current Opinions With Annotations (2004-2005) as adopted by the American Medical Association.

Principle I of the AMA's Principles of Medical Ethics states:

> A physician shall be dedicated to providing competent medical care, with compassion and respect for human dignity and rights.

Motion for Injunctive Relief, Ex. H, Principles of Medical Ethics, Principle I.

The petitioner contends that N.H. Admin R. Med 501.02(h) and by extension, the AMA's Principle I are insufficiently narrow to survive First Amendment scrutiny. The petitioner also argues that no statute or regulation of the Board defines the types of speech that may constitute a violation and therefore, prosecuting the petitioner under the statute cited is unconstitutional.

The Court finds that the regulations relied upon by the Board are not sufficiently specific so as to comport with the requirements of the First Amendment. Without question the Board has instituted proceedings against the petitioner as a result of the content of his speech. Thus, the regulations under which the petitioner is charged are content based for they are concerned with what was said and not merely with when or where. See e.g. In re Petition of Brooks, 140 N.H. 813, 819 (1996) ("We think it obvious . . . that the rule was triggered by the content of the expression in question. The rule suppressed speech based on the perceived beneficial effects of confidentiality, and a determination of what speech was subject to the rule could not be made without reference to the content of the speech.")

"[P]art I, article 22 (Supp. 1985) of the State Constitution, like the first amendment to the Federal Constitution, 'means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content.'" Opinion of the Justices, 128 N.H. 46, 50 (1986) (quoting Police Dept. of Chicago v. Mosley, 408 U.S. 92, 95 (1972)). To that end, "[t]he United States Supreme Court has stated that

'content-based regulations are presumptively invalid . . .'" Brooks, 140 N.H. at 819 (1996) (quoting R.A.V. v. St. Paul, 505 U.S. 377, 382 (1992)). "A content-based prohibition . . . 'must be subjected to the most exacting scrutiny.'" Id. (quoting Boos v. Barry, 485 U.S. 312, 320 (1988)). "To survive such scrutiny, the prohibition must serve a compelling State interest and be narrowly tailored to accomplish that interest, or else the targeted speech must fall into one of a few narrowly-defined categories of expression not meriting full protection . . .". Id. at 819-820 (citations omitted). "If the State has the power to regulate some speech, that power 'must be so exercised as not, in attaining a permissible end, unduly to infringe the protected freedom.'" Id. at 820 (quoting Cantwell v. Connecticut, 310 U.S. 296, 304 (1940)).

Here, the regulations under which the petitioner has been charged are not drawn with the narrow specificity required by the State and Federal Constitutions. The AMA's Principle I states only in general terms that physicians should treat patients with dignity and respect, but does not define the circumstances under which a physician will be found to have violated that principle. While it would be unreasonable to expect the AMA, or any other body, to define each and every utterance that might create liability, the cited principle provides little guidance as to what speech falls within its ambit. Further, whether a person is treated with dignity and respect are, at least initially, subjective determinations left to the sensitivities of the listener. Such a remarkably subjective standard is certainly not the narrow type of regulation that could comply with constitutional requirements. This failing is not cured by reference to RSA 329:17, VI(d) because to those regulated it is equally unclear what speech will create liability for "unprofessional conduct" and what speech will not.

As to the petitioner's final argument that the regulations under which he has been charged are unconstitutionally vague, the petitioner contends that the regulations do not provide sufficient warning of what conduct is regulated, and that the regulations authorize arbitrary enforcement. The Board counters that the petitioner has failed to meet his burden to demonstrate that the regulations are impermissibly vague.

"'A statute can be impermissibly vague for either of two independent reasons. First, if it fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits. Second, if it authorizes or even encourages arbitrary and discriminatory enforcement.'" State v. Porelle, 149 N.H. 420, 423 (2003) (quoting Hill v. Colorado, 530 U.S. 703, 732 (2000)). "'Due process requires that a statute proscribing conduct not be so vague as to fail to give a person of ordinary intelligence a reasonable opportunity to know what is prohibited.'" Webster v. Town of Candia, 146 N.H. 430, 434 (2001) (quoting In re Justin D., 144 N.H. 450, 453 (1999)). "The necessary specificity need not be contained in the statute itself, but rather, the statute in question may be read in the context of related statutes, prior decisions, or generally accepted usage." Id. (quotations citation and ellipsis omitted). "The party challenging the statute as void for vagueness bears a heavy burden of proof in view of the strong presumption of a statute's constitutionality." Id. (quotations and citation omitted).

For the reasons stated previously, the Court finds that the regulations under which the petitioner is charged are impermissibly vague because they do not provide a reasonable opportunity to understand what conduct is prohibited. The statute, rule and principle relied upon by the Board give only general descriptions of what is expected of physicians. They do not define, with any manner of specificity, what conduct constitutes

unprofessional conduct nor what it means to treat, or fail to treat, persons with "human dignity and rights." Furthermore, during the Court's May 11, 2006 hearing on this matter, the petitioner presented to the Court a portion of the website maintained by the Board which provides information to consumers about their rights when dealing with physicians. According to the website "[c]omplaints regarding high fees, rudeness or 'poor bedside manner' do not ordinarily violate one of the above provisions unless they also involve dishonesty or exploitation or gross negligence on the part of the physician." New Hampshire State Board of Medicine, Frequently Asked Questions <http://www.state.nh.us/medicine/cifaq.html>. Thus, to the degree the Board has defined unprofessional conduct, it has specifically stated that rude behavior is generally not actionable unless accompanied by other acts, which the petitioner is not alleged to have done. Accordingly, the Court finds the regulations impermissibly vague as they do not provide the petitioner, or any other licensee, a reasonable opportunity to determine what conduct is prohibited. Because the Court finds the regulations impermissibly vague on the ground articulated, it need not reach the petitioner's alternative argument.

For the reasons stated, because the Court finds that the regulations under which the petitioner has been charged are not narrowly drawn so as to comply with the requirements of the State or Federal Constitutions and are impermissibly vague, the Court finds that the petitioner is likely to succeed on the merits of his claim that his comments to Patient A and Patient D are protected by the State and Federal Constitutions.

ii. Patient S

The petitioner argues that he is likely to succeed on the complaint brought by Patient S because prosecution of that claim is barred by the doctrines of *res judicata* and

collateral estoppel. The petitioner argues that when the Division of Elderly and Adult Services ("DEAS") investigated this same complaint in 2002 and determined it to be unfounded, it rendered a decision on the merits that binds the Board because DEAS and the Board are both affiliated with the same administrative agency. The Board argues that neither doctrine applies to this matter and, therefore, the petitioner is not likely to succeed.

> The doctrine of res judicata precludes the litigation in a later case of matters actually litigated, and matters that could have been litigated, in an earlier action between the same parties for the same cause of action. . . . Collateral estoppel precludes the relitigation by a party in a later action of any matter actually litigated in a prior action in which he or someone in privity with him was a party.

In re Alfred P., 126 N.H. 628, 629 (1985).

> The doctrine of collateral estoppel bars a party to a prior action, or a person in privity with such a party, from relitigating any issue or fact actually litigated and determined in the prior action.
> In order for the doctrine of collateral estoppel to apply in a particular proceeding, the following conditions must be satisfied:
> the issue subject to estoppel must be identical in each action, the first action must have resolved the issue finally on the merits, and the party to be estopped must have appeared in the first action, or have been in privity with someone who did so. Further, the party to be estopped must have had a full and fair opportunity to litigate the issue, and the finding must have been essential to the first judgment.

Tsiatsios v. Tsiatsios, 144 N.H. 438, 441 (1999) (quotations and citations omitted). "'Under res judicata, a final judgment by a court of competent jurisdiction is conclusive upon the parties in a subsequent litigation involving the same cause of action.'" Goffin v. Tofte, 146 N.H. 415, 417 (2001) (quoting West Gate Village Assoc. v. Dubois, 145 N.H. 293, 296 (2000)). "[A] 'cause of action' [i]s 'all theories on which relief could be claimed on the basis of the factual transaction in question.'" Id. (quoting Eastern Marine Const. Corp. v. First Southern Leasing, 129 N.H. 270, 275 (1987)). "Three conditions must be

met for res judicata to apply: (1) the parties must be the same or in privity with one another; (2) the same cause of action must be before the court in both instances; and (3) a final judgment on the merits must have been rendered on the first action." Osman v. Gagnon, 152 N.H. 359, 362 (2005).

Regarding collateral estoppel, the Court finds that its application does not bar the institution of proceedings regarding the Patient S complaint because DEAS and the Board are not in privity. "'The relationship between party and non-party implied by a finding of privity in the estoppel context has been described as one of virtual representation, and substantial identity.'" Cook v. Sullivan, 149 N.H. 774, 779 (2003) (quoting Daigle v. City of Portsmouth, 129 N.H. 561, 571 (1987)). "These phrases imply not a formal, but a functional, relationship, in which, at a minimum, the interests of the non-party were in fact represented and protected in the prior litigation." Id. "Thus, privity is found to exist, for example, when a person controls or substantially participates in controlling the presentation or if a non-party authorizes a party in litigation to represent his or her interests." Id.

The petitioner contends that the Board and DEAS are in privity because they are both affiliated with the Department of Health and Human Services ("DHHS"). The Board counters that it and DEAS are not in privity because the Board is only "administratively attached" to the DHHS which makes the Board ostensibly independent. Also, the Board points out that DEAS had no authority to investigate violations of RSA chapter 329. Therefore, its interests could not have been represented or protected by DEAS.

As stated by the Court in Cook, in order to have privity, at a minimum, the interests of the non-party must have been, in fact, represented and protected in the prior

litigation. The Board's interest in investigating possible violations of RSA chapter 329 was neither represented nor protected in the prior litigation. Therefore, the Court finds that the Board was not in privity with DEAS such that the doctrine of collateral estoppel precludes the current action. Furthermore, as privity is also required for the application of *res judicata*, the Court finds that *res judicata* does not act as a bar to the proceeding.

Despite the Court's ruling that the prosecution of the Patient S complaint is not barred by the application of the doctrines of *res judicata* and collateral estoppel, the Court finds that the petitioner is, nonetheless, likely to prevail on the merits. While the petitioner does not argue that the prosecution of the Patient S complaint is barred for the same reasons as the prosecutions of the Patient A and Patient D complaints, the Court finds those arguments relevant to the Patient S complaint. The Board's Notice of Hearing states that the petitioner is being prosecuted under the same statute, rule and principle for the Patient A and Patient S complaints. Because the Court has found that the statute, rule and principle relied on by the Board are constitutionally insufficient to support the prosecution of the Patient A complaint, they are equally insufficient to support the prosecution of the Patient S complaint. Accordingly, the Court finds that the petitioner is likely to prevail on the merits of the Patient S complaint.

D. Public Interest

The Court's final consideration regarding the granting of an injunction is whether the public interest would be adversely affected if an injunction were granted. The Court finds that it would not. It is within the public interest to foster open and frank discussions between physicians and patients. Permitting the Board to sanction an individual for his or her comments to a patient in the confines of the medical office on issues relating to a

patient's health will not serve to protect that interest. To be clear, the Court does not condone the petitioner's comments nor does the Court believe such comments were needed to provide appropriate medical diagnosis or treatment. Moreover, the Court does not feel that similar comments by any medical professional are necessary for the provision of adequate medical care. However, while the Court does not in any way condone the type of comments made by the petitioner, it is nonetheless important, as a general matter, to ensure that physicians and patients are free to discuss matters relating to health without fear of government reprisal, even if such discussions may sometimes be harsh, rude or offensive to the listener.

IV. Conclusion

For the reasons stated, the Court finds that the petitioner has demonstrated all elements required to obtain an injunction and the Board should be enjoined from pursuing the complaints from all patients. Thus, the petitioner's motion for an injunction is **GRANTED** and the Board is hereby enjoined from prosecuting the petitioner as a result of the above complaints.

So ordered.

6/30/06
Date

Edward J. Fitzgerald, III
Presiding Justice