

IN THE CIRCUIT COURT OF CLAY COUNTY, MISSOURI
DIVISION FOUR

HOWARD I. SCHWARTZ, M.D.,)
)
Plaintiff,)
)
v.) Case No. 11CY-CV13542
)
NORTH KANSAS CITY HOSPITAL, et al.,)
)
Defendants.)

ORDER AND JUDGMENT

Now on this 23rd day of January, 2012, comes Plaintiff in person and with counsel, and Defendants by representative and with counsel. Statements and arguments of counsel are received. Evidence has been presented and summation made by counsel for both parties.

Plaintiff is seeking Injunctive Relief in his first motion for Temporary Restraining Order and Preliminary Injunction filed December the 7th of 2011. The original motion for Temporary Restraining Order sought to enjoin the defendants from making, "...any report or submission to the National Practitioner's Database, or to the Missouri Board of Registration for the Healing Arts," and/or a Preliminary Injunction enjoining the defendants from making "...any report or submission to the National Practitioner's Database, or to the Missouri Board of Registration for the Healing Arts," pending final outcome of the pending lawsuit.

Plaintiff's original suggestions in support of the motion state, "...what plaintiff seeks with this motion is nothing more than a preservation of the status quo – that the court allow defendants to continue their administrative proceedings, but restrain them

from submitting any report to the Databank, or the Missouri Board.” Plaintiff, by suggestions filed January 20th of 2012, attempted to modify his prayer for relief in the original motion, by seeking an injunction prohibiting the Board of Trustees from, “...voting or acting on or otherwise affirming or making final” the revocation of Plaintiff’s privileges at defendant hospital. Plaintiff further orally moved at today’s hearing to modify his request to be in the form of an oral motion in compliance with the relief prayed for in his suggestions filed January 20th, 2012.

Defendants objected to plaintiff’s oral motion for modification, and also objected to plaintiff modifying the nature of the relief prayed for in his original motion, that is, from enjoining the Board from *making any reports to the National Practitioner’s Database*, or the Missouri Board of Registration for the Healing Arts, as opposed to the oral motion or the modified relief in his suggestions, that defendant Board be enjoined from “*voting on or taking action*” on a potential revocation of Plaintiff’s medical privileges.

Plaintiff complains that the potential revocation stems from four main issues cited by the defendant Board of Trustees, or its various committees or subcommittees, in a written notice to him. Plaintiff states he is entitled to quasi-contractual injunctive relief on the premise that defendant Board has not followed its bylaws as required by Missouri law.

In addition, plaintiff claims injunctive relief is necessary because the court is allowed to substitute its judgment for the administrative agency action in a “non-contested” case.

Further, plaintiff complains that the previous actions of the various committees and subcommittees of the defendant hospital were arbitrary, capricious, and an abuse of discretion. Plaintiff therefore claims a denial of due process.

This Court at this time finds that plaintiff's current position is not the same as the relief prayed for initially. It would be a different injunction and restraining order to restrain the defendant Board from *reporting a decision*, as required by Missouri law and federal law, as opposed to restraining defendant Board from *voting on the issue*.

Defendant's objection to the amended request for relief is granted and sustained. The remaining issue is whether the injunctive relief should be entered against the defendant on the relief prayed for originally. This Court is mindful that plaintiff must prove the standard elements required before injunctive relief may be granted. Plaintiff must also prove that the judicial review is both appropriate under the law, and, if so, that the defendant's Board's action and committee's actions, constitute an abuse of discretion and has effectively denied him due process.

Plaintiff has testified that he was able to present all of his evidence to the various hospital committees. He presented nothing new to this Court, except he disputes that a December 16th, 2010 meeting occurred with various members of the subcommittee. The documentary evidence seems to contradict Plaintiff's assertion. This Court finds that whether the December 16, 2010 meeting occurred or not is not material to the disposition of this case.

This Court does find;

(1) Plaintiff has been afforded due process, both by the defendant hospital, its committees, agents, officers, and employees; and by this Court.

(2) The decisions of the various peer review committees made reasonable efforts to determine facts, even though plaintiff disagrees with the conclusions that the various committees have drawn from those facts. The Court, even if allowed to substitute its judgment for the committees of the defendant, or for the defendant Board, would not reach a different conclusion based upon the evidence reasonably available at that time, or at the present time. Therefore, Plaintiff does not have a likely probability of succeeding on the merits of his underlying claim.

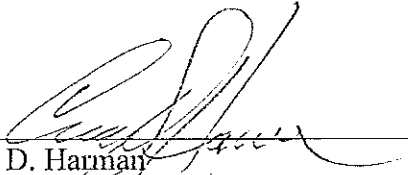
(3) Plaintiff's claim that he will suffer irreparable harm is outweighed by the public policy of concern for potential harm and patient safety and welfare. Plaintiff testified before this Court that he has been reported four previous times to the National Practitioner's Database, and that he is more concerned with a "possible" negative report, rather than a "probable" negative effect of a fifth report. If a practitioner is reported to the National Practitioner's Database, federal law allows for a reported party to list the report as "disputed." Hospitals are required by both Missouri and Federal law to make a formal report if a physician's staff privileges are revoked. There are sound public policy reasons for such mandated reports.

(4) Plaintiff has not produced sufficient credible evidence that he is entitled to injunctive relief, which, if granted, would restrain the defendant hospital from making reports that the hospital is mandated to make by federal law.

(5) Plaintiff's "amended" request, if granted, would amount to changing the status quo.

(6) Missouri Supreme Court Rule 92.01, et seq., are controlling and plaintiff has not met the requirements of the rule in order for him to prevail on his original prayer for relief.

The Motion and request of Plaintiff for Injunctive Relief is therefore denied.



Larry D. Harman
Circuit Judge, Division Four

CERTIFICATE OF MAILING

The undersigned certifies that a true and correct copy of the foregoing was served via

U.S. mail, postage prepaid, on February 1, 2012, to the following:

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