IN THE SUPREME COURT OF IOWA

DAVID HARTSUCH, MD	)	
	)	
Appellant,	)	
	)	**AMENDED**
VS.	)	**RESPONSE TO**
	)	**APPELLEE**
	)	**BRIEF**
THE IOWA BOARD OF MEDICINE	)	**NO. 24-0226**
THE IOWA BOARD OF PHARMACY,	)	
	)	
Appellees.	)	

APPEAL FROM THE DISTRICT COURT OF SCOTT COUNTY, DISTRICT COURT CASE CVCV302062, THE HONORABLE HENRY W. LATHAM II (REJECTING PLAINTIFF'S BILL OF EXCEPTIONS AND DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGEMENT) AND THE HONORABLE MARK J. SMITH (ORDER GRANTING DEFENDANT'S MOTION TO RECONSIDER, ENLARGE, OR AMEND.), DISTRICT COURT JUDGES. PURSUANT TO SUPREME COURT ORDER OF BRUCE B ZAGER, SENIOR JUDGE, DATED JUNE 7, 2024, THE APPELLANT OFFERS THIS AMENDED BRIEF WHICH DOES NOT CONTAIN CONFIDENTIAL INFORMATION AND WHICH THE PUBLIC MAY HAVE ACCESS TO. THE APPELLANT ALSO REMOVED ANY PROPOSED EXHIBITS PURSUANT TO SUPREME COURT ORDER OF BRUCE B ZAGER DATED JUNE 20, 2024.

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Legal Standard of Disclosure

Pursuant to the Supreme Court order of Bruce B. Zager, Senior Judge, dated June 7, 2024, the Appellant offers this amended brief which does not contain confidential information and which the public may have access to. The term "confidential information" is a legal term that this Pro Se litigant may be unable to properly interpret. The Appellant offers this explanation of the legal standard of "confidential information" upon which he relies in determining "public" v. "confidential" information.

The general rule is given by Iowa Code §272C.6 4.a which says, "4. a. In order to assure a free flow of information for accomplishing the purposes of this section, and notwithstanding section 622.10, all complaint files, investigation files, … which relates to licensee discipline are privileged and confidential, …".

The Iowa Supreme Court already determined in *Calcaterra v. Iowa Board of Medicine* that the legislature has not vested the Board of Medicine with the authority to determine what investigational information is confidential. In *Calcaterra*, the Iowa Supreme Court said, "Here, we are dealing with the phrase 'privileged and confidential.' In *Doe v. Iowa Board of Medical*

Examiners, we decided the Board did not have interpretive discretion to determine what 'information is, and is not, confidential' under Iowa Code section 272C.6(4). 733 N.W.2d 705, 708 (Iowa 2007). We see no reason to come to a different conclusion today. No statutory language indicates the legislature intended to vest interpretive authority in the Board."[1] In *Calcaterra*, the Board of Medicine argued that the release of the licensees investigational information served a broader public purpose and that the Board of Medicine had the right to release confidential investigational information about Calcaterra. In the current case, where the investigational file documents incriminating and unconstitutional acts, the Board of Medicine is and has advocated for no discovery citing *Calcaterra* as their justification.[2]

However the Board of Medicine routinely shares confidential investigational information contrary to Iowa Code §272C.6 (4) a. In the current case, Kent Nevel, former director of the Board of Medicine, shared confidential investigational information with the press about 17 doctors who were investigated for "spreading misinformation about Covid";[3] The Board of Medicine Rule adopted rule 653 – 2.10 which routinely allows sharing of

[1] *Calcaterra v. Iowa Board of Medicine*, 965 N.W.2d 899 (Iowa 2021)
[2] See Appellee's brief dated May 3, 2024 p 9.
[3] See proposed exhibit 3 D0023 filed April 4, 2023.

investigative information without licensees' knowledge to a broad list of the private entities, including the American Medical Association, the Federation of State Medical Boards, the Iowa Medical Association, etc., which have no authority to receive such information and which have no legal duty to maintain this information in confidence;[4] On October 15, 2023, the capital dispatch publish confidential investigational information that appeared to have come from confidential court documents which was certainly not leaked by the Appellant.[5]

The Appellant believes that his case would be much easier to prove if he used the same careless disregard or outright contempt for the Iowa law and the decision of the Supreme Court in *Calcaterra.* But just as the legislature has not vested the boards with discretion to define what investigational information is considered confidential, neither have they vested this discretion in the Appellant. Consequently, the Appellant looks to the plain language of the law itself.

Iowa Code §272C.6 4.a. Offers a solitary exception to the confidentiality of investigational files. Criminal acts must be disclosed to the appropriate law

[4] See D0005 Plaintiff's pleadings Dec 20,2022 at par 29-30.

[5] Kauffman, Clark. "Court Order Sought Requiring Pharmacies to Fill Controversial COVID-19 Prescriptions." Iowa Capital Dispatch, October 16, 2023. https://iowacapitaldispatch.com/2023/10/16/court-order-sought-requiring-pharmacies-to-fill-controversial covid-19-prescriptions/.

enforcement officials. This section states, ”If the investigative information in the possession of a licensing board or its employees or agents indicates a crime has been committed, the information shall be reported to the proper law enforcement agency.”[6] Notice that the reporting is mandatory, is not dependent on who performed the criminal act, and it has a very low threshold for reporting in that the information only has to indicate rather than prove a criminal act. In reliance upon this section of Iowa code, the Appellant is disclosing to the court, in this document, only information which indicates that a crime has been committed. Notice that this section of code makes mandatory reporting required for anybody in possession of information indicating that a crime has been committed including the Appellee Boards, the court, the Appellee counsel, and the Appellant as well. Certainly, the public has a substantial interest in knowing that a crime was committed especially when a crime is committed by state actors who have no right to confidentiality.

The Appellant’s investigational file also contains information of the unconstitutional acts of the Iowa Board of medicine including Unconstitutional acts against third parties other than the Appellant. Such information in of itself may not be criminal but indicates a serious infraction

[6] Iowa Code §272C.6 (4) a.

of the Constitution, or other ultra virus acts. Such information will not be disclosed by the Appellant even though it may have some benefit to the Appellant's case. Such information is most appropriately reviewed by the Ombudsman's office.

On March 10, 2022, the Appellant executed an affidavit which implicated the director of the Board of Medicine in violation of Iowa Code §721.2 which states:[7]

"721.2 Nonfelonious misconduct in office. Any public officer or employee, or any person acting under color of such office or employment, who knowingly does any of the following, commits a serious misdemeanor:

…4. By color of the person's office and in excess of the authority conferred on the person by that office, requires any person to do anything or to refrain from doing any lawful thing,"

Federal law defines a similar offense in 18 U.S. Code § 242 , "Deprivation of rights under color of law. Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on

[7] See D0067 Proposed Exhibit #16 Affidavit of possible criminal conduct

account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section … shall be fined under this title or imprisoned not more than ten years, or both;…"

In the current case, both federal and state agents have not been authorized by either federal or state law to interfere with the right of people to be treated for COVID-19 nor the right of patients to communicate freely with their physicians. As a result, these actions violate both state and federal criminal law. Consequently, any such information must be reported to the Iowa State Attorney General or perhaps the FBI as well.

For example, Dr. Hartsuch's investigational file contained a letter from the FDA to the National Association of Boards of Pharmacy nearly identical to the letter from the FDA to the FSMB which demonstrated the involvement of the FDA in preventing the treatment of COVID-19. This letter stresses that Ivermectin has many side-effects, has no benefit in the treatment of COVID-19, has not been approved for the treatment of COVID-19, and that "Using ivermectin products in preventing or treating COVID-19 may pose risks to patient health or lead to delays in getting effective treatment of

COVID-19."[8] This letter in the Appellant's investigational file indicates that the FDA is using the Board of Pharmacy and the Board of Medicine to restrict the usage of the drug and prevent patients with COVID-19 from being treated with "off-label" drugs. This letter posits risks of Ivermectin which are not unique to COVID-19, a lack of scientific support for any benefit despite many studies to the contrary, and prevents patients from getting "effective treatment" for their disease of which there was none. In addition, this letter used true misinformation to prevent the treatment of COVID-19 since there were no FDA approved drugs for the treatment of COVID-19.

The FDA only has authority to regulate the marketing of a drug but not the usage. 21 U.S. Code § 396 states, "Practice of medicine. Nothing in this chapter shall be construed to limit or interfere with the authority of a health care practitioner to prescribe or administer any legally marketed device [includes drugs] to a patient for any condition or disease within a legitimate health care practitioner-patient relationship." In *Reagan v. Biscup* the court said, "In conformity with this legislative intent, courts addressing FDA-regulated drugs have determined that physicians are permitted to use federally approved drugs as they, in their medical judgment, see fit. This

[8] See D0053 proposed exhibit 11 dated Aug. 22, 2023.

professional latitude was recognized in *Weaver v. Reagen* (C.A.8, 1989), 886 F.2d 194, 198: …Contrary to defendants' assertions, FDA approved indications were not intended to limit or interfere with the practice of medicine nor to preclude physicians from using their best judgment in the interest of the patient. "[9] [10]

Clearly, the FDA has exceeded its authority to regulate the marketing of drugs and is trying to use the professional boards to prevent the treatment patients with COVID-19 and interfere with the practice of medicine. The investigative file clearly shows that the Appellee Boards are complicit with this criminal act and are ignoring the legislative intent that "off-label" drugs be used to treat COVID-19.[11] This is a clear violation of Iowa Code §721.2 and 18 U.S. Code § 242 and the appellant is making this information known to the court with the hope that they will make the appropriate criminal referral.

Just in case the reader of this document believes that this is just a victimless crime of no significance, the case fatality for COVID-19 in Iowa was approximately 37% higher in comparison to Nebraska which defended the

[9] *Klein v. Biscup* 109 Ohio App.3d 855 (1996)

[10] *Reagan v. Weaver* 886 F.2d 194 (8th Cir. 1989)

[11] Iowa Code §686D.6 1.b which grants tort protection for the use of "off-label" drugs to treat COVID-19.

right of physicians to treat patients with COVID-19. This corresponds to approximately 2,600 additional policy preventable deaths. Recently, the Appellant has received two affidavits of two persons with firsthand knowledge of persons who died because their prescriptions were not filled because they were used to treat or suspected of treating COVID-19. The first is the affidavit of Dr. Lee Merritt. In this affidavit, Dr. Merritt recounts that her patient with COVID-19 died after a Walgreens pharmacist refused to fill their prescription for ivermectin at Walgreens. The second is the affidavit of Patrick Troup whose wife contracted COVID-19 and died after a Walgreens pharmacist refused to fill her prescription for hydroxychloroquine. The Appellant holds that these patients might still be alive if the Appellee boards had sent out their "Revised Joint Statement" and that the Board of Pharmacy enforced Iowa Board of Pharmacy rule 657 – 8.11. With the death of these two persons the actions of board personnel and the FDA may constitute manslaughter.

In short, Board personnel should not be allowed to hide their criminal acts behind a statutory scheme which keeps all matters confidential. It should be apparent that the people have a right to know what the government does and so the government itself is not entitled to confidentiality as are private individuals.

Summary

The Appellees has given an excellent overview of administrative law but has failed to demonstrate that the legislature has in anyway vested the Appellees with the authority to censor licensee speech or prevent the treatment of any particular disease such as COVID-19. The Appellee boards are not physicians; the legislature has specifically delegated the authority to treat patients squarely in the hands of physicians. The legislature has expressed its intent that "off-label" drugs be used to treat COVID-19 by giving tort protection to physicians for using "off-label" drugs to treat COVID-19 in Iowa Code §686D.6 1.b.

The Appellees have stated that the Appellant has not exhausted all administrative remedies but has failed to say what remedies have not been exhausted. What remedy must the Appellant exhaust? The Appellees have intentionally interfered with the right of the Appellant and his patients to petition for the redress of grievances and therefore no additional remedy is available to the Appellant.

The Appellant's COVID-19 patients are still aggrieved by invidious discrimination perpetuated by the Appellees.[12] The Appellees through a host of final but unofficial actions have carried out an unofficial and criminal

[12] See D0052 affidavit of Don Reinhart.

policy of depriving COVID-19 patients of the right to receive early life-saving treatment for COVID-19 and the right to hear information about COVID-19 from otherwise qualified physicians including the Appellant. The Appellant has, therefore, met the prerequisites for judicial review listed in Iowa Code §17A.19.

The district court order, dated January 8, 2024, concerning the Appellant's motion for summary judgement is the final order of the court. The court's previous order dated December 6, 2023, upon which the Appellees determine tolling, was based upon a faulty premise that there were no other final actions by the Board of Medicine for adjudication. The Appellant filed the motion for summary judgement based upon the most important final action of the board. Rather than claiming that the issue was not a final action of the Board, the court ruled upon the motion.[13] If December 6, 2023 were the date of tolling, there would be no ability to appeal the January 8, 2024 ruling that the government edicts doctrine does not apply in this case and the Appellee boards are not required to inform licensees of the revised joint statement with the same effect as the sham original "joint statement". The Appellant's notice of appeal was timely filed.

Omission of Key Facts

[13] D0069 dated Jan. 8, 2024 court order by Henry Latham II pp. 4-6.

The Appellee's statement of fact opens by stating. "In January 2022, the Iowa Board of Medicine opened an investigation into David Hartsuch, M.D. after receiving a complaint against him. D0005, Pet. to Exp. at pp. 3 ¶ 20 (12/20/2022)." Once again, the counsel for the Appellees is withholding important information from the court, stating "Section 272C.6(4) of the Iowa Code circumscribes the Boards' ability to disclose investigative information outside of a 'final written decision and finding of fact' in a disciplinary proceeding."

The identity of the complainant, their motivation, and the timing of the investigation are key facts conveniently omitted by the Appellees' counsel's attempt to conceal the Appellee's flagrant violation of the Appellant and his patient's right to petition for redress of grievances and hide the implementation of their criminal policy of restricting the treatment of COVID-19. The investigational file indicates that the investigation against Dr. Hartsuch was started on or about November 11, 2021, by the Iowa Board of Pharmacy, because of the complaint of discrimination made by Dr. Hartsuch's patient against the pharmacist for refusing to fill his prescription. This complaint was a legitimate petition for the redress of grievances. No complaint was made against Dr. Hartsuch. However to conceal their crime, they initiated a complaint against Dr. Hartsuch to the Iowa Board of

Medicine. The investigational file of Dr. Hartsuch documents the complaint was made by email between Amanda Woltz, Administrative Assistant, Board of Pharmacy, and Anne Schlepphorst, Board of Medicine as follows:

"Hello Anne,

At the November 10, 2021 meeting the Board reviewed the attached investigative report in case 2021 0214.

A complaint was filed due to the pharmacy refusing to fill an ivermectin prescription. The Board closed the case with no further action; however, requested that the medical provider be referred to the Board of Medicine for review and possible investigation."

It is important to note that Board of Pharmacy chose to ignore a legitimate complaint against the pharmacist for discrimination without even speaking with Dr. Hartsuch's patient who filed the complaint nor with Dr. Hartsuch who wrote the prescription. It was the Board of Pharmacy which initiated the complaint against Dr. Hartsuch in response to Dr. Hartsuch's patient's legitimate petition for redress of grievances for the pharmacist's violation of Iowa Board of Pharmacy rule §657– 8.11 regarding discrimination.

The Board of Medicine then dutifully obliged the Board of Pharmacy in their request even without an available predicate for the investigation.

The record shows that the Board of Medicine commenced the investigation against Dr. Hartsuch on or about November 11, 2022; the investigational file does not contain any information which would substantiate that there was any deliberation by the Board of Medicine that an investigation should be started and it is possible that the entire investigation was done without the knowledge of the Board at all.

Dr. Hartsuch was not informed of the investigation for another 2 months when on January 19, 2022 he and other physicians received essentially a form letter informing them of "complaints" against them. This letter omitted the identity of the Board of Pharmacy as the complainant. It is possible that all the investigations of the other physicians were created by the Appellee Boards as well with no real complaint against any of the physicians.

The Appellant highlights these facts so that the Appellee counsel will not be allowed to mislead the court by omission of this key fact as they misled the District Court. In their April 28, 2023 answer to the Appellant's pleadings, the Counsel for the Appellees cleverly allowed the court to be misled by stating, "To the extent paragraph 20 alleges the identity of the complainant, the IBOM cannot respond because that information is confidential pursuant to Iowa Code §272C.6(4)." There was an implied assumption that the complaint against Dr. Hartsuch originated from the pharmacist in question.

This is not true. The court relied upon the misleading statements of Appellee's Counsel. The court stated in its April 4, 2023 order concerning The Board of Pharmacy's motion to dismiss, "The Board of Pharmacy argues it had no role in sending the warning letter which gave rise to the petition." and subsequently dismissed the Board of Pharmacy from its role in initiating the complaint against Dr. Hartsuch.[14]

The Iowa supreme court stated in *Doe v. IBOM* (2017), "When a complaint is filed, the complainant is alleging that the licensee engaged in conduct that 'threatens or denies citizens of this state a high standard of professional or occupational care.' See Iowa Code § 272C.1(4) (definition of licensee discipline). The board then investigates those allegations and, if substantiated, files formal charges."[15] Dr. Hartsuch exhibited no such conduct worthy of investigation, but the record clearly shows that the investigation against Dr. Hartsuch was initiated by the State itself and conducted by the State itself in order to prevent the legitimate petitioning for the redress of grievances by Dr. Hartsuch and his patient. Furthermore, this investigation was a criminal act of denying COVID-19 patients the ability to seek medical care and hear information concerning COVID-19 from licensed physicians.

[14] See D0029 court order of Joel W. Barrows dated April 4, 2023

[15] *Doe V. Iowa Board of Medicine*, 09 / 04-1535 (Iowa 2007}

Unfortunately, the Appellee boards have been very inconsistent with their application of Iowa Code §272C.6(4). For instance, the Board of Medicine has adopted Iowa Board of Medicine Rule 653 – 2.10 which allows release of investigational information to the AMA, the Federation of State medical boards and other private organizations in direct opposition to Iowa Code §272C.6(4), which says that no investigational information can be released; The director of the Board of Medicine announced that 17 physicians were "being investigated for "spreading misinformation about COVID-19" – presumably including the Appellant.[16] This announcement to the press, on December 17, 2022 was a release of confidential investigational information which violated Iowa Code §272C.6(4). This release by the director of the Board of Medicine could serve no public purpose but did serve an unconstitutional purpose of prior restraint against the First Amendment rights of physicians in Iowa.

While the Appellees have chosen to go into the facts of the case, the case itself remains unadjudicated except for the issue of whether the boards are required to inform licensees of the "Revised Joint Statement" in a meaningful way. However, there is no dispute of facts except which facts the court has a right to hear. The main question at hand, is whether the court has

[16] Exhibit D0023 Dated 4/4/2023

jurisdiction in this matter of the Appellees violations of first and 14th amendments.

Timeliness of Appeal

The final decision of the district court was on January 8, 2024 rejecting Appellant's motion for summary judgment. The court adjudicated the issue of whether the Appellee boards had a ministerial duty to inform licensees of the "Revised Joint Statement", particularly since the original statement was a sham unapproved statement sent out to licensees by email and signaled to pharmacists that it was within their jurisdiction not to fill prescriptions which they might suspect of treating COVID-19. The court decided that merely posting the "Revised Joint Statement" on the Boards' website was sufficient notification to licensees.The December 6, 2023 order, upon which the Appellees rely to calculate tolling, was based on a faulty premise that there were no other actions to consider and hence no jurisdiction for the District Court. However, in the motion for summary judgment dated January 8, 2024, the Appellant presented a final action for adjudication. Rather than determining that this was not a final action the court adjudicated the matter. January 8, 2024 is the correct date for calculating tolling. If tolling took place as of December 6, 2024, as the Appellees say, there would be no

ability for the Appellant to appeal the January 8, 2024 decision. The Appellant's notice of appeal is therefore timely.

Joinder

The Appellees complained that the Appellant has incorrectly joined them in a common action. However, the Appellees have taken joint action to prevent patients from being properly treated with early life-saving treatment. They allowed the sham joint statement to be emailed to all licensees to discourage the treatment of COVID-19. When they jointly adopted the "Revised Joint Statement" both refused to send it out to licensees. They have taken joint action as seen in the investigational file of Dr. Hartsuch to use un-predicated investigation as a tool to prevent prescribing and petitioning for the redress of grievances. The directors of both agencies report to Kelly Garcia, the Director of the Iowa Department of Health Human Services (HHS). Both agencies share a common office space and the ability to coordinate each other's activities. The evidence shows that in this case, they work together, and joinder is appropriate.

However, the Appellant has taken the issue of joinder and the objections of the Appellees to heart and has proposed an alternate routing and remedy below which should solve this problem by remanding the investigation of

Walgreens and its pharmacists back to the Board of Pharmacy with instructions.

Exhaustion of Remedies

The current case is a natural outflow of petitioning for the redress of grievances by the Appellant. While the Appellees claim that the Appellant has not exhausted all administrative remedies, but they have failed to say exactly what administrative remedies are yet available to the Appellant.

Starting in July 2020, the Appellant first petitioned all the boards involved with the original joint statement. These included the Iowa Board of Medicine, Iowa Board of Pharmacy, Iowa Board of nursing, Iowa Board of physician assistants, Iowa Board of dentistry. While this resulted in the "Revised Joint Statement", the joint boards did not give the "Revised Joint Statement" force and effect by conveying the statement to licensees in an effective or relevant fashion.

During this time, the Appellant made a FOIA request to the Iowa Board of Medicine to determine whether an analysis had been done regarding the use of hydroxychloroquine or Other "off-label" drugs to treat COVID-19. The

FOIA request remained unanswered. This information is also among the interrogatories which the Appellees refused to answer.[17]

Later, Dr. Hartsuch assisted his patient to petition the Iowa Board of Pharmacy to enforce the rule concerning discrimination in the delivery of pharmaceutical products and services. This petition was met with the investigation against Dr. Hartsuch which is partly what this case is about. Dr. Hartsuch was shocked when this investigation investigated him for using hydroxychloroquine which the "Revised Joint Statement" specifically stated would not result in an investigation.[18] On September 7, 2022, Iowa House member, Rep. Jon Jacobsen JD and Dr. Hartsuch met with the Director of Iowa's Health and Human services department, Kelly Garcia in order to discuss the procedures regarding investigations of physicians for "spreading misinformation about COVID-19" and "prescribing 'off-label' drugs to treat COVID-19" . Jon Jacobsen sent a letter to Kelly Garcia summarizing the meeting.[19] According to this letter, "Dr. Hartsuch did ask about whether the Board was given any training concerning the First Amendment rights of patients and physicians. Your [Kelly Garcia's] response was that legal questions concerning Free Speech were beyond the Board itself and were

[17] See D0026 and D0027 unanswered interrogatories filed April 4, 2023
[18] See D0005 filed December 20, 2022. "Revised Joint Statement"
[19] See D0022 filed April 4, 2023

within the duty of the courts." Within four weeks, the 11-month investigation came to a halt with the issuance of the warning letter.

Additionally, Dr. Hartsuch raised the issues in his answer to the questions raised by the Board in the investigation. In his response to the Iowa Board of Medicine's questions dated March 13, 2022, Dr. Hartsuch informed the board that they did not have jurisdiction over the issue of "off-label" prescribing. He said, "In *Weaver v. Reagan*, the court recognized the lack of an FDA drug indication was not intended to limit application of the drug for a given purpose by the physician. 'Contrary to defendants' assertions, FDA approved indications were not intended to limit or interfere with the practice of medicine nor to preclude physicians from using their best judgment in the interest of the patient.'"[20] Similarly, in addressing the free-speech issue Dr. Hartsuch said, "Number 1 [spreading this information about COVID-19] is not sufficiently defined to be actionable by the Board.[21] Despite these objections, the Board of Medicine for 8 months refused to drop the un-predicated investigation against Dr. Hartsuch.

The Appellant has reported this to the ombudsman's office and they are watching the status of this case intently but are taking no action at this time.

[20] *Reagan v. Weaver* 886 F.2d 194 (8th Cir. 1989)
[21] D0034 dated 5/16/2023 answers to Board of Medicine investigation questions at p.7

In 2017, the ombudsman's office put out a report concerning the lack of accountability of the state's licensing boards. This report has described a problem with accessing information from licensing boards.[22]

It should be clear to the court that any remaining administrative remedies would be ineffective or would result in even further harm that Dr. Hartsuch's professional reputation or self.

Revised Routing and Remedy

On Monday, May 20, 2024, Maggie Thorp, JD and James Thorp, MD alleged in America out loud news that as part of $1 billion in contract payments to Walgreens, the federal government induced or required Walgreens to not fill prescriptions for ivermectin.[23]

It appears that the original dispute between the Walgreens pharmacist and Dr. Hartsuch's patient may have originated from a federal initiative to prevent pharmacists from filling prescriptions for ivermectin. This is consistent with information in the Appellant's investigational file implicating the federal government to prevent the treatment of COVDI-19. This is also consistent with the observation of the Appellant that no

[22] Hirschman k, Acting Iowa Ombudsman, "A System Unaccountable: a special report on I was professional licensing boards", February 27, 2017 pp. 2-3.

[23] Thorpe, Maggie and Thorpe , Jim, "The Government Cartel paid billions to Walgreens and CVS not to fill Ivermectin – the question is why.", May 20, 2024. At https://www.americaoutloud.news/the-government-cartel-paid-billions-to-walgreens-and-cvs-not-to-fill-ivermectin-the-question-is-why/

Walgreens pharmacists would fill prescriptions for ivermectin. This is also consistent with the affidavits which document that the action of Walgreens pharmacy may have led to the deaths of victims by depriving patients of Ivermectin and Hydroxychloroquine. Briefly, Iowa Board of Pharmacy rule §657-8.11 specifically defines unethical behavior to include:

"8.11(2) … (1) Any activity that negates a patient's freedom of choice of pharmacy services.

8.11(3) Discrimination. A pharmacy, pharmacist, pharmacist-intern, technician, or pharmacy support person shall not discriminate between patients or groups of patients for reasons of …disease state when providing pharmaceutical services."

Walgreens has pharmacies licensed in the State of Iowa and are subject to the nondiscrimination policy of the Iowa Board of Pharmacy.

In light of this new information concerning the involvement of the US government in providing payments to Walgreens which may violate state policy and led to the deaths of Iowans. The Appellant requests that the issue of enforcement of the boards policy concerning nondiscrimination be remanded back to the Iowa Board of Pharmacy with assistance from the Iowa Attorney General and with instruction. The Appellant requests that the instruction include the following:

1) Neither the Iowa Board of Pharmacy nor the FDA is a physician and therefore does not have the right to decide how patients are to be treated, or to be treated at all.

2) The FDA has authority to regulate the marketing but not the usage of drugs. The term "off-label" is a designation concerning the FDA's marketing indications of a drug. Physicians are at liberty to prescribe drugs "off-label" as they see fit.[24] [25]

3) When the Iowa Board of Pharmacy chooses to not enforce its own policy of nondiscrimination against persons based upon disease or race they are involving the State of Iowa in invidious discrimination and violation of the 14th amendment. "Moving from anti-discrimination to neutral … effectively equates to encouraging private discrimination."[26]

4) When the Board of Pharmacy denies the enforcement of Iowa Board of Pharmacy rule §657 – 8.11 concerning discrimination to persons with COVID-19 they are acting in a discriminatory manner in violation of the 14th amendment.

5) That the Board of Pharmacy should inform all licensees of its policy of non-discrimination, that patients rely upon pharmacists to source

[24] See *Reagan v. Weaver* 886 F.2d 194 (8th Cir. 1989)
[25] *Klein v. Biscup* 109 Ohio App.3d 855 (1996)
[26] *Reitman v. Mulkey*, 387 U.S. 369 (1967)

prescription drugs, and that physicians are at liberty to prescribe drugs "off-label" as they see fit.

The Appellant believes that this course of action provides the best manner for his patients to have their prescriptions filled for "off-label" drugs to treat COVID-19. Furthermore, the Appellant requests that the court ask the Attorney General of Iowa assist the Board of Pharmacy with an investigation of Walgreens Corporation and the involvement of the federal government in restricting access to COVID-19 treatment. The Appellant asks that the court to make a proper criminal referral for the investigational information cites above

The Appellant believes that similar declaratory judgment directed at the Board of Medicine is sufficient to prevent recurrence of an investigation of "off-label" drug prescribing to treat COVID-19.

The Appellant is hopeful that the court warning the Appellee Boards of abuses by the boards in addressing the petitions for redress of grievances by Dr. Hartsuch and his patients, will be sufficient to stop any future abuses by the boards.

The Appellant requests that the court order the Appellees to answer the Appellant's interrogatories that the Appellant.

He also requests that the Supreme Court reverse the District Court decision dated January 8, 2024 since the court assumed excess deference of the Appellee Boards, failed to recognize the criminality of the original "Joint Statement", and ignores evidence that failure to inform licensees of the Board of Medicines rightful policy causes conflict that gave rise to the current controversy.[27]

This only leaves the restraint of free speech by the Board of Medicine which the Appellant requests should be retained by the Supreme Court itself. The district court has already ruled in this December 6, 2023 ruling that, 'Once the board decides the issue—including the free speech issue—then the Court may review the legality of the boards' decision."[28] The District Court does not believe that it has primary jurisdiction in this matter and has thus ruled. The Supreme Court has a unique expertise in matters involving the First Amendment and the Appellant believes that this is the best and most expedient way to adjudicate the matter and restore the free speech rights of doctors and patients. Furthermore, it is undisputed fact that the Board of Medicine has sought to enforce disciplinary action or at least investigation for "spreading misinformation about COVID-19" without a definition of what "misinformation" is. With the adjudication and disposition of these

[27] See D0066 and D0069.
[28] See D0063 District court order by Henry W Latham II Dated Dec. 6, 2023

issues this case will become complete. In the alternative, the Appellant requests that all issues be decided by summary judgment.

Conclusion

"The Board of Medicine is unqualified to practice medicine. The Board of Medicine has no knowledge of the patient, cannot write a prescription, or perform a history and physical exam. It is not subject to Malpractice suits, nor subject to professional regulation. Furthermore, the Board of Medicine may be composed of non-physician members whose main qualification for the job is likely political patronage rather than years of study and experience. By law, only physicians are qualified and licensed to treat disease, and prescribe medications. Similarly, pharmacists are not so trained and do not have the authority to undermine the jurisdiction of the physicians and the autonomy of patients."[29]

The facts of this case are just a microcosm of the Covid response on a national and international basis. The Appellant has had a single-minded pursuit in his petitioning to allow patients to receive early life-saving treatment for COVID-19. Unfortunately, the Appellee boards have exhibited criminal behavior and ignored the laws of the Iowa. The court should not assume that the actions of the boards are constitutional and lawful.

[29] Quoting the Appellant regarding jurisdiction, D0056 at Par.13. Dated 9/12/2023.

Admittedly, the Appellant is a physician not a lawyer or a judge. He only has a strong understanding of how to treat disease in humans rather than human institutions. However, he has persisted in his petitioning with steadfast hope that our republican form of government will ultimately right itself rather than succumb to cynicism and distrust. Fortunately, the legislature has created governmental organs and procedures to help right the ship. Judicial review is one of the processes by which our government will ultimately right itself. Criminal investigation by the Attorney General's office and investigation by the ombudsman's office is an appropriate solution to the corruption that exists which ultimately prevents patients from being treated properly and may have contributed to many extra deaths.

Request for Oral Arguments

The Appellant request oral arguments to settle some of the issues presented herein.

Respectfully Submitted:
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