

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

**IN THE SUPERIOR COURT FOR WASHINGTON STATE
ASOTIN COUNTY**

RICHARD J. EGGLESTON, M.D.

Plaintiff/Petitioner,

vs.

WASHINGTON MEDICAL COMMISSION,

Defendant/Respondent.

NO.

**VERIFIED COMPLAINT FOR
PRELIMINARY AND PERMANENT
INJUNCTIVE RELIEF AND FOR A
DECLARATORY JUDGMENT UNDER
RCW 7.24 .010, ET. SEQ AND RCW
34.05.534 (3) (a)- (c), BASED ON A
VIOLATION OF ARTICLE 1, SECTION
5 OF THE WASHINGTON
CONSTITUTION**

**AS THE HEARING ON DEFENDANT’S CHARGES AGAINST THE PLAINTIFF
IS SET TO COMMENCE ON MAY 24, 2023, RELIEF IN THE NATURE OF A
PRELIMINARY INJUNCTION PRIOR TO COMMENCEMENT OF THE HEARING
IS REQUESTED.**

COMES NOW Richard J. Eggleston, M.D. by his undersigned counsel and states as follows:

INTRODUCTION

By this case, Plaintiff, who is a retired but still licensed physician, seeks to stop the Washington Medical Commission (the “Commission”) from attempting to sanction him for the information and opinions he wrote in opinion pieces in a regional newspaper because the

1 Commission does not agree with the content and viewpoint expressed in Plaintiff's articles.
2 There has never been a case in Washington or any place else in the country which has allowed
3 a professional licensing board to do what the Commission is trying to do in its prosecution of
4 the Plaintiff.

5 Furthermore, every justice and judge in this United States who has addressed this issue
6 has stated that licensing agencies have no such power. The Commission grounds its
7 prosecution on the statutory pretext that the information and opinions Plaintiff wrote
8 constitutes "moral turpitude" or "dishonesty" or committing misrepresentations in the practice
9 of medicine. This is a dangerous abuse of power by the Commission, and it must be stopped.

10 **I. PARTIES, JURISDICTION, AND VENUE**

11 1.1 Plaintiff RICHARD J. EGGLESTON, M.D. is a retired ophthalmologist who
12 resides in Clarkston, Asotin County Washington. He is currently the subject of a Medical
13 Commission administrative proceeding which is set for hearing on May 24-26, 2023.

14 1.2 The Defendant WASHINGTON MEDICAL COMMISSION is the
15 Washington state government entity which is responsible for the licensure and discipline of
16 medical doctors. The hearing to sanction plaintiff for exercising his state Constitutional Free
17 Speech rights is currently scheduled to begin on May 24, 2023, titled In the Matter of the
18 License to Practice as a Physician and Surgeon of: Richard J. Eggleston License No.
19 MD.MD.00014109, No. M2022-204.

20 1.3 This action is brought under the Uniform Declaratory Judgment Act, RCW
21 Chapter 7.24 and primarily RCW 7.24.010 and 7. 24. 020.

1 1.4 In addition, notwithstanding the failure of the Plaintiff to exhaust
2 administrative remedies, this Court has jurisdiction to grant all the relief request herein under
3 RCW 34.05.534 (a), (b), and (c).

4 1.5 Venue is proper in this district under RCW 4.92.010 (1) as Plaintiff resides in
5 Clarkston, Asotin Country, Washington.¹

6 **II. FACTUAL BACKGROUND**

7 **A. The National Significance of this Case**

8 2.1 Defendant Washington Medical Commission is a member of the Federation of
9 State Medical Boards. (the “Federation”). On July 21, 2021, the Federation released the
10 following press release:

11 “Physicians who generate and spread COVID-19 vaccine misinformation or
12 disinformation are risking disciplinary action by state medical boards,
13 including the suspension or revocation of their medical license. Due to the
14 specialized knowledge and training, licensed physicians possess a high degree
15 of public trust and therefore have a powerful platform in society, whether they
16 recognize it or not. They also have an ethical and professional responsibility to
practice medicine in the best interests of their patients and must share
information that is factually, scientifically grounded and consensus driven for
the betterment of public health. Spreading inaccurate COVID-19 vaccine
information contradicts that responsibility, threatens to further erode public
trust in the medical profession and thus puts all patients at risk.”

17 2.2 The Federation’s press release was not accompanied by any kind of white
18 paper or legal analysis which opined that a medical board could constitutionally sanction a
19 licensee for speaking out in public on a matter of public importance, perhaps because for
20 seventy-five years, Justices of the Supreme Court and lower court judges, including in this
federal circuit, have stated that such action professional boards are unconstitutional.

21 ¹ Plaintiff would strongly oppose a change of venue motion in the interests of justice due to
22 the prejudicial delay which such motion would cause, given the very short time needed for a
23 decision on his Preliminary Injunction motion. If such motion is made, it is requested that it
24 be set on the same day of the hearing on the preliminary injunction motion.

1 2.3 On or about September 21 2021, the Commission voted to adopt a guidance
2 policy similar but broader than the Federation’s press release, suggesting that the Commission
3 could discipline physicians for public information beyond the Covid 19 vaccines. That policy
4 is still in effect as of the date of the filing of this action.

5 2.4 Beyond Washington, the reaction to the Federation’s press release has been
6 mixed, at best. At some point, at least fourteen states introduced legislation barring their state
7 medical boards from implementing the Federation’s press release.

8 2.5 California went the other way in two respects. In the 2022 legislative session,
9 AB 2098 was introduced which would have fully implemented the Federation’s press release,
10 *inter, alia*, making physician soapbox speech board disciplinable. However, before the first
11 hearing, the legislature was forced to limit the law to interactions between physicians and
12 patients, because of the widespread pushback resulting from the manifest unconstitutionality
13 of sanctioning physicians for their pure speech. With that limitation of the bill (to
14 communications between a physician and a patient for treatment or advice), AB 2098 was
15 signed into law in September 30, 2021, effective January 1, 2023 (Business and Professional
16 Code, Section 2270).²

17 2.6 On a parallel track, the Medical Board of California had initiated investigations
18 of at several physicians who had spoken out in public against the mandate, the vaccines or in

19 ² However, the California law is not currently in effect, at least as to physicians who are
20 members of a California physicians’ organization which obtained a federal court preliminary
21 injunction against the law *in Hoang v. Bonta*, and its related case *Hoeg v. Newsom*. Nos. 2:22-
22 cv-01980 WBS AC, 2:22-cv-02147 WBS AC. (Jan. 25, 2023, ED Ca.) Plaintiff’s pro hac
23 vice’s pending counsel is counsel of record on the *Hoang* case. The preliminary injunction
24 was based on Fifth and Fourteen Amendment vagueness of the definition of Covid
misinformation and its use of the phrase “contemporary scientific consensus.” The judge held
inter alia that given how frequently the medical establishment has changed its mind, the
scientific consensus terms was meaningless. However, a federal judge in another California
district denied the same relief in *McDonald v. Lawson*, which case is currently under appeal
by the losing plaintiffs. The State of California did not appeal the decision of the district court
which issued the injunction in the related *Hoeg* and *Hoang* cases, and as such, the federal
injunction is still in place.

1 favor of the use of off-label drugs like Ivermectin. Both investigations were eventually
2 dropped (one after a federal lawsuit was filed against the Medical Board of California,).

3 2.7 In addition, the Maine Medical Board initiated filed charges against a Maine
4 physician for speaking out in public against the vaccines and other aspects of the pandemic, as
5 well as for medical records violations and false prescribing based on her issuing Ivermectin
6 prescription practices. Although that case is still proceeding, the Maine Medical Board has
7 dropped the Covid information charges.

8 2.8 Upon information and belief, there is no pending medical board proceeding in
9 the United States (except for this case which is the subject of this interlocutory appeal, and
10 one of Dr. Eggleston's co-plaintiff in the federal case, whose case has apparently not yet been
11 set for hearing) that is based solely on the pure/soapbox speech of a health care professional.

12 **B. This Case**

13 2.9 Plaintiff has been a Washington licensed Ophthalmologist for 40 plus years.
14 He served two terms on the Commission. Ten years ago, Plaintiff gave up his ophthalmology
15 practice, stopped seeing patients and changed his licensure status to "retired active license",
16 pursuant to RCW 18.130.250. Currently and for the past ten years, Plaintiff neither treats nor
17 consults with any patients and does not have an office for the practice of medicine.

18 2.10 Starting in January 2021, Plaintiff started writing an opinion column in the
19 Lewiston Tribune, which has readership in Eastern Washington and Idaho. Plaintiff wrote
20 about a variety of subjects including the abortion, (he is against abortion) and the
21 government's response to the pandemic, including the mandates, the vaccines, the
22 conventional and off-label Covid treatments. He has also commented on the death rates from
23 Covid and his opinions thereon. He often cites government statistics and given his take or
24

1 opinions on the meaning of those statistics. His opinions are different from what is published
2 in the mainstream media.

3 2.11 In fact, it was the purpose and objective of the publisher of the paper for
4 Plaintiff to express his more conservative viewpoint to the paper's readership.

5 2.12 On occasion a physician would take issue with something Plaintiff said in his
6 opinion pieces, and if he or she offered a contrary view in writing, the paper would publish
7 that response, all in an effort to further the public discussion of these issues.

8 2.13 However, on September 5, 2021, an individual who read Plaintiff's opinion
9 pieces filed a complaint against him with the Commission, a litany of alleged violations
10 including "repeatedly recommending unapproved medications for treatment COVID in paid
11 editorials" and that Plaintiff was "pen[ned] deleterious lies and misinformation that can get
12 people killed if they listen to it."

13 2.14 The Commission commenced an investigation and asked Plaintiff to respond to
14 these allegations.

15 2.15 Plaintiff complied with the request to respond and further discussed some of
16 the ideas and opinions set out in his opinion articles.

17 2.16 On August 4, 2022, the Commission charged Plaintiff with professional
18 misconduct based on his opinion pieces published in the Lewiston Tribune, on the stated
19 grounds that his opinion pieces constitute a violation of RCW 18.130. 180 (1) as an act of
20 "moral turpitude, dishonesty, or corruption relating to the person's profession...." (13)
21 Misrepresentation or fraud in any aspect of the conduct of the business of profession." and
22 (18) "interference with an investigation or disciplinary proceeding by willful
23

1 misrepresentation of facts before the disciplinary authority or its authorized
2 representations....” The latter charge based on Plaintiff’s statements that he made in response
3 to the Commission’s request that he respond to the complaint.

4 2.17 Plaintiff filed an Answer to the Statement of Charges and moved to dismiss
5 the charges on the grounds that the Commission did not have the authority under the federal
6 or state constitution to prosecute him or any other licensee for the pure/soapbox speech
7 contained in published newspapers articles. At the prehearing conference, the Administrative
8 Law Judge stated that she was denying the motion, the explanation of which would be in her
9 forthcoming prehearing order. As of the date of the filing of this action, the prehearing order
10 has not been issued. However, based on the Attorney General’s argument in this and one
11 other case, it would appear that the ALJ will hold that she is without authority to issue a
12 constitutional ruling pursuant to WAC 246-11-480 (3)(c).

13 2.18 If so, this lawsuit is a permissible interlocutory appeal of that denial of the
14 motion to dismiss, permissible as an exception to the exhaustion requirement in RCW
15 34.05.534, per subsections (3) (a), (b), and (c), as otherwise permissible as a direct challenge
16 for injunctive and declaratory relief.

17 2.19 Plaintiff is one of three Washington physicians who have filed a federal
18 Section 1983 lawsuit challenging the constitutionality of the Commission’s Covid guidance
19 document in an action titled *Wilkinson v Rogers*, Case No. 1:23-cv-03035 pending in the
20 Eastern District of Washington. The plaintiffs moved for a TRO which was denied on three
21 grounds unrelated to this action, namely federal *Younger* abstention, lack of personal
22 jurisdiction over the defendants, and that the Commission’s guidance document could not be
23

1 constitutionally attacked because it was not binding, but just a public statement of the
2 Commission's current thinking.

3 2.20 This case does not challenge the constitutionality of the guidance document.
4 Rather, it challenges the state's statutory authority to investigate, prosecute or sanction
5 Plaintiff (or any licensee) for speaking out in public about a matter of public interest as a
6 violation of Plaintiff's (and all physicians') rights under Article 1 Section 5 of the Washington
7 Constitution as set forth below.

8 **C. The Need for the Court to Protect All Washington Physicians from the**
9 **Commission's Actions**

10 2.20 Although the impetus for the Commission's prosecution of Plaintiff may be its
11 Covid Misinformation policy statement, the actual charges are based on the legal theory that
12 the Commission has the statutory and Constitutional authority to sanction physicians for their
13 public speech based its authority to sanction conduct which manifests "moral turpitude,
14 dishonesty, or corruption relating to the person's profession...." (RCW 18.130. 180 (1)) or
15 Misrepresentation or fraud in any aspect of the conduct of the business of profession." (13).
16 This means the Commission posits itself as the final arbiter of truth for any licensed physician
17 speech, even if it is unrelated to the pandemic, and even if the speech is unrelated to medicine,
18 simply by characterizing the speech as evincing moral turpitude or dishonestly.

19 2.21 No state government agency can exercise such unfettered power of citizens it
20 regulates under Article 1 Section 5 of the Washington Constitution as set forth below.³

21 ³ This complaint does not raise a federal 42 U.S.C. Section 1983 claim and is not seeking
22 relief under the First Amendment, but only under Article 1, Section 5 of the Washington State
23 Constitution.

1 **III. CAUSE OF ACTION**

2 **THE COMMISSION’S ASSERTION OF JURISDICTION OVER PLAINTIFF OR**
3 **ANY PHYSICIAN’S PURE/SOAPBOX SPEECH VIOLATES THE FREE SPEECH**
4 **RIGHTS UNDER ARTICLE 1 SECTION 5 OF THE WASHINGTON**
5 **CONSTITUTION**

6 3.1 Plaintiff repeats and realleges the allegations set forth above.

7 3.2 Article 1 Section Five of the Washington Constitution entitled “FREEDOM
8 OF SPEECH” provides that “Every person may freely speak, write and publish on all subjects
9 being responsible for the abuse of that right.”

10 3.3 Washington jurisprudence establishes that the protection accorded by this
11 section is sometimes greater than the free speech rights granted under the First Amendment to
12 the U.S. Constitution. *State v. Reece*, 110 Wn.2d 766, 757 P.2d 947 (Wash. 1988) (“The
13 Washington Supreme Court has in the past and will continue in the future to accept its duty to
14 interpret its constitution to be more protective of individual rights than the federal
15 constitution. ‘We have often independently evaluated our state constitution and have
16 concluded that it should be applied to confer greater civil liberties than its federal counterpart
17 when the reasoning and evidence indicate such was intended and is necessary.’ (Italics ours.)
18 *Alderwood*, 96 Wash.2d at 238, 635 P.2d 108.” Washington courts consider six factors in
19 determining whether the protection under the Washington Constitution is greater than under
20 the First Amendment, but that factorial analysis is not necessary in this case because federal
21 First Amendment jurisprudence establishes the unconstitutionality of a professional board’s
22 attempt to discipline a licensee for public/soapbox speech

23 3.4 There has never been a case in Washington or U.S. jurisprudence which has
24 allowed a professional disciplinary board to sanction a licensee for speaking out in public or

1 publishing on matters of public concern. In fact, when discussion what is called “pure” or
2 “soapbox” every single judge in the United States has indicated that professional boards have
3 no power to discipline licensees for their pure/soapbox speech. ⁴

4 3.5 Because the Washington State constitutional protection is at least as broad or
5 powerful as the First Amendment protections accorded to citizens, since federal First

6 ⁴In his concurring opinion in *Lowe v. SEC*, 472 U.S. 181, 232, (1985) Justice White stated
7 that “*Where the personal nexus between professional and client does not exist, and the*
8 *speaker does not purport to be exercising judgment on behalf of any particular individual with*
9 *whose circumstances he is directly acquainted, government regulation ceases to function as*
10 *legitimate regulation of professional practice with only incidental impact on speech; it*
11 *becomes regulation of speaking or publishing as such, subject to the First Amendment’s*
12 *command that ‘Congress shall make no law... abridging the freedom of speech, or the press.’*’

11 Justice White’s view was largely a restatement of Justice Jackson’s concurring opinion in
12 *Thomas v. Collins*, 323 U.S. 516, 545-46 (1945). Although Justice Jackson recognized the
13 right of the state to regulate the practice of a profession (“pursuit of a calling”), he eloquently
14 stated:

15 “[I]t is not the right, of the state to protect the public against false doctrine. The very
16 purpose of the First Amendment is to foreclose public authority from assuming a
17 guardianship of the public mind through regulating the press, speech, and religion. In this
18 field every person must be his own watchman for truth, because the forefathers did not trust
19 any government to separate the true from the false for us. *West Virginia State Board of*
20 *Education v. Barnette*, 319 U.S. 624, 63 S. Ct. 1178, 87 L. Ed. 1628. Nor would I. Very
21 many are the interests which the state may protect against the practice of an occupation,
22 very few are those it may assume to protect against the practice of propogandizing by
23 speech or press. These are thereby left great range of freedom. * * *

24 This liberty was not protected because the forefathers expected its use would always be
agreeable to those in authority or that its exercise always would be wise, temperate, or
useful to society. As I read their intentions, this liberty was protected because they knew of
no other way by which free men could conduct representative democracy.”

Both Justices Jackson and White’s views were presented by the Ninth Circuit in *Pickup v.*
Brown, 740 F.3d 1208, 1227 (9th Cir. 2014) *abrogated on other grounds* by *Nat’l Inst. of*
Family & Life Advocates v. Becerra, 138 S. Ct. 2361, (2018).

1 Amendment jurisprudence prohibits the Commission from sanctioning or even prosecuting
2 physicians for their pure/soapbox speech, *a fortiori*, the Commission's conduct violates
3 Article 1 Section 5 of the Washington Constitution. (And that is the sole reason Plaintiff cites
4 and relies on First Amendment jurisprudence.)

5 3.6 Accordingly, Plaintiff seeks a declaration that the Commission's prosecution
6 of Plaintiff, (or any other physician), for his (their) public/soapbox speech) is a violation of
7 the Washington Constitution's free speech protections. Plaintiff further seeks a preliminary
8 and permanent injunction against the Defendant enjoining it and its employees and agents
9 from continuing its prosecution against Plaintiff based on his public/soapbox speech.

10 **IV. PRAYER FOR RELIEF**

11 Wherefore, Plaintiff prays for the following relief:

12 A. A preliminary injunction stopping the Defendant from proceeding on the hearing
13 against Plaintiff, which is currently scheduled to commence on May 24, 2023, the preliminary
14 injunction continuing until the final decision of this Court on the permanent injunction.

15 B. A declaration that the Commission does not have the state Constitutional authority to
16 sanction or prosecute Plaintiff or any physician for their public/soapbox speech in any forum
17 or manner of conveying such speech (including without limitation, newspapers, social media
18 or other means which use the internet or any public speaking forum).

19 C. A permanent injunction barring the prosecution of Plaintiff based on the existing
20 Statement of Charges, or any future charging instrument based solely on Plaintiff's
21 pure/soapbox speech.

22 D. Costs and attorneys' fees as permitted by law.

1 And such other and further relief as this Court deems just and proper.

2 DATED: May 8, 2023.



3
4 TODD S. RICHARDSON
5 Law Offices of Todd S Richardson, PLLC
6 WSBA 30237
7 604 Sixth Street
8 Clarkston, WA 99403
9 509/758-3397, phone
10 509/758-3399, fax
11 todd@myattorneytodd.com

12
13 RICHARD JAFFE, ESQ.
14 (Pro Hac Vice Pending)
15 428 J Street, 4th Floor
16 Sacramento, Ca. 95814
17 916-492-6038 (ph)
18 713-626-9420 (fax)
19 rickjaffeesquire@gmail.com

1 VERIFICATION

2 RICHARD J. EGGLESTON, being duly sworn, deposes and states as follows:

- 3 1. I am the Plaintiff in this case and have personal knowledge of the facts set forth
- 4 herein.
- 5 2. I submit this verification under penalties of perjury under the laws of the State of
- 6 Washington.
- 7 3. I have reviewed the complaint. The facts set forth therein relating to my writing
- 8 opinion articles, the Commission’s proceeding against me and the other lawsuit I am
- 9 participating in are true and correct, based on my personal knowledge and belief.

10 STATE OF WASHINGTON)
) ss
 11 County of Asotin)


12 THIS IS TO CERTIFY that RICHARD J. EGGLESTON, on the 8th day of May,
 13 2023, before me personally appeared known to be the individual described in and who
 14 executed the within and foregoing Verification, and acknowledged to me that she signed
 same as her free and voluntary act and deed for the uses and purposes therein stated.

15 WITNESS my hand and official seal the day and year in this certificate first above
 16 written.

17 
 Richard J. Eggleston, MD

18 SWORN TO AND SUBSCRIBED BEFORE ME this 8th day of May, 2023



22 
 Signature of Notary Public
 23 Nicole Hanchett
 Printed Name of Notary Public Notary
 Public in and for the State of Washington
 Residing at LAWISTON, ID 83501
 My commission expires: 03/02/2027