

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
6 LOUDON RD STE 502
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

