

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

AUG 01 2005

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**MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT**

JOSEPH MERCOLA, D.O.,)
)
 Plaintiff,)
)
 v.)
)
 DEPARTMENT OF FINANCIAL and)
 PROFESSIONAL REGULATION of the State)
 of Illinois; DANIEL E. BLUTHARDT in)
 his capacity as Acting Director of)
 Division of Professional Regulation)
 of the Illinois Department of)
 Financial and Professional)
 Regulation; and FERNANDO E. GRILLO)
 in his capacity as Secretary of the)
 Illinois Department of Financial)
 and Professional Regulation,)
)
 Defendants.)

05C 4400

JUDGE HOLDERMAN

MAGISTRATE JUDGE DENLOW

PETITION FOR TEMPORARY RESTRAINING ORDER AND INJUNCTION

NOW COMES JOSEPH MERCOLA, D.O., Plaintiff, by Augustine, Kern and Levens, Ltd., his attorneys, and moves this court for a temporary restraining order and temporary injunctive relief to enjoin and prevent the Illinois Department of Financial and Professional Regulation ("IDFPR") from proceeding with certain administrative proceedings pending the outcome of the lawsuit filed by Dr. Mercola in conjunction herewith, and as grounds therefor states as follows:

A. Parties and Relationships

1. Joseph M. Mercola, Plaintiff, is a U. S. citizen and doctor of osteopathic medicine with a valid license in good standing to practice medicine in all its branches in Illinois.
2. Through his teachings, methodology, and exchanges of ideas on his internet website, www.mercola.com, Dr. Mercola has become

an internationally known expert in the treatment of chronic degenerative illnesses naturally, and the dangers associated with drug-based medicines. His website is a forum for health care practitioners throughout the world to exchange ideas, opinions and information, to help them help their patients fight disease and illness through the body's own immune systems and functions, and to educate and encourage laypersons to take greater responsibility for their own health care by learning to live healthier lives.

3. IDFPR is an administrative agency in the executive branch of state government, responsible for licensing a variety of professions, including physicians pursuant to and in accordance with the Illinois Medical Practice Act, hereinafter referred to as the "MPA." 225 ILCS 60/1 *et seq.*
4. IDFPR is also responsible for enforcing state licensing laws for a variety of professions, including investigating physicians suspected of having violated the MPA, and conducting disciplinary proceedings against those physicians who are charged by IDFPR with violations of the MPA.
5. At all relevant times at issue herein, Daniel E. Bluthardt was, and continues to be the Acting Director of IDFPR's Division of Professional Regulation.
6. At all relevant times at issue herein, Fernando E. Grillo was, and continues to be, the secretary of IDFPR, as appointed by the governor.

7. Dr. Mercola has filed a verified complaint against all the aforesaid defendants simultaneously herewith, which, along with his affidavit, is incorporated by reference thereto and made a part hereof as though fully set forth herein.

B. Nature of Action

8. Dr. Mercola's aforesaid lawsuit seeks a declaratory judgment and injunctive relief, and arises out of IDFPR's pending and undetermined disciplinary action against him for operating a website on the Internet that contains articles, stories, and treatises authored by physicians, scientists, and learned professionals, including him, but which sometimes contains articles espousing unconventional views and alternative methods of practicing medicine.
9. In some articles, the authors, including but not limited to Dr. Mercola, discuss their treatments of patients' illnesses and their degree of success, but *nowhere* on Dr. Mercola's website does he give advice to patients, treat patients, prescribe medicines to patients, or take any action that could be considered under any stretch of imagination to engender or establish a doctor/patient relationship.
10. Dr. Mercola does not treat patients on this website and each page thereof contains a disclaimer which makes it clear that no medical advice or treatments are being offered or rendered and encourages readers to contact their individual health care professionals should they have questions based on anything they may have read on the website:

Disclaimer: The entire contents of this website are based upon the opinions of Dr. Mercola, unless otherwise noted. Individual articles are based upon the opinions of the respective author, who retains copyright as marked. The information on this website is not intended to replace a one-on-one relationship with a qualified health care professional and is not intended as medical advice. It is intended as a sharing of knowledge and information from the research and experience of Dr. Mercola and his community. Dr. Mercola encourages you to make your own health care decisions based upon your research and in partnership with a qualified health care professional.

11. IDFPR has nevertheless brought a disciplinary action against Dr. Mercola and has denied his motion to dismiss which was premised on a lack of jurisdiction to regulate the flow of information to non-patients on the Internet, selective prosecution, and deprivation of his constitutional right to freedom of speech, which issues are also raised in his federal lawsuit herein.
12. It is clear, based on IDFPR's hearing officer's rulings on Dr. Mercola's motion to dismiss and follow-up motion for reconsideration, that the outcome of the disciplinary matter will, by its very nature, adversely affect his constitutional rights and must not be allowed to proceed pending the outcome of this lawsuit.

C. Necessity of Stay and Temporary Restraining Order

13. Dr. Mercola is entitled to a stay of the Department's ruling. The courts have general equitable powers to protect the constitutional rights and personal liberties of individuals. Ardt v. Department of Professional Regulation, 218 Ill.App.3d 61 (1st Dist. 1991).

14. Dr. Mercola's right to practice medicine has been improperly and illegally inhibited without due process, and goes beyond and outside the authority granted to the Secretary, Acting Director, and IDFPR, for they are prosecuting a licensee's ideas expressed on an Internet website where there is no patient care involved and a disclaimer appears on every page, on the mistaken and illegal belief that the state may control a licensee's thoughts and freedom of expression merely because it granted him or her a medical license, when the fact is that a license is a valid property right which is afforded the protections the constitution guarantees for all.
15. Dr. Mercola has no adequate remedy at law to prevent Defendants from taking disciplinary action, including the possibility of a suspension of indefinite duration against his medical license and controlled substances registrations.
16. Dr. Mercola has no speedy remedy at law because his motion to the agency seeking dismissal for a violation of his constitutional rights fell on deaf ears, following which Defendants have demanded that the agency case proceed, which will cause him to incur substantial expenses, including attorneys' fees; distract him from his primary business and interest, which is the practice of medicine; and, inhibit his right and ability to speak freely with respect to his thoughts and ideas.
17. Dr. Mercola will suffer irreparable harm as a result of the agency proceedings because of the chilling effect on thoughts

and ideas, including the danger that he may decide to or be forced to halt the operation of his website.

18. Also, his reputation will be severely tarnished during the proceedings and exploited by his detractors throughout the hearing process, and from which he may not ever recover even if acquitted of the accusations.
19. Furthermore, Dr. Mercola's medical license could be revoked, suspended, or placed on probation, fined a substantial sum, or subjected to some combination thereof if the agency hearing is allowed to proceed. If he is found to have violated the MPA, federal law would require IDFPR to report the discipline to the National Practitioner Data Bank, possibly the Healthcare Integrity and Protection Data Bank, other states, and insurance carriers, regardless of his right to appeal. This would cause irreparable harm to his medical career, his professional reputation, his ability and option to be an expert witness in legal cases, and his ability to participate in managed care programs, regardless of the fact that any such discipline would have to be overturned on appeal to a court of competent jurisdiction.
20. Moreover, Dr. Mercola is a nationally recognized public speaker who will be irreparably harmed if required to either suffer the embarrassment of enduring disciplinary proceedings for expressing the very ideas and thoughts that have made him an international expert on a variety of subjects as aforesaid, or suffering the chilling effect of declining

invitations to speak, due either to fear of reprisal by Defendants, or embarrassment by detractors.

21. Nothing on the face of the Amended Complaint, a copy of which is attached to Dr. Mercola's Complaint as "Appendix 1," could lead this court to believe this case is anything but a clash of opinions concerning the "mainstream medical paradigm," and there is therefore a likelihood that Dr. Mercola will succeed on the merits of his claim that IDFPR is unlawfully attacking his opinions, while his practice of medicine and quality of care issues are not implicated.
22. The harm to Dr. Mercola by allowing IDFPR's prosecution to go forward clearly outweighs the harm to the public were a TRO and stay order to be granted herein. The balance of harm weighs in favor of Dr. Mercola, because IDFPR seeks to enforce an overly broad advertising provision against a website that exchanges ideas and information, and where the relatively few advertisements relate to topics which one may advertise or sell without first acquiring a medical license, simply because it contains opinions of which IDFPR disapproves, even though Dr. Mercola does not give advice, and it is within his constitutional right to have and espouse whatever opinions he chooses to have and espouse.
23. Furthermore, IDFPR has taken no action against Dr. Mercola for anything pertaining to his medical practice, and accuses his thoughts and ideas of being potentially harmful to the public, not anything related to his practice of medicine, and

not anything related directly or indirectly to patient care.

24. Attached hereto is a memorandum more fully discussing Dr. Mercola's position herein, which memorandum is incorporated by reference thereto as though fully set forth herein.

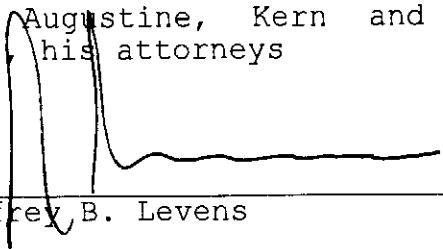
WHEREFORE, JOSEPH M. MERCOLA, D.O., Plaintiff, prays that this court:

- A. Grant him a stay, temporary injunctive relief and a temporary restraining order to prevent the administrative proceedings at IDFPR from going forward until this court has had an opportunity to review the issues of constitutional dimension implicated by said agency action;
- B. Temporarily enjoin IDFPR, its Secretary, its Acting Director of the Division of Professional Regulation, and all persons acting in concert with them, including but not limited to attorneys and investigators, to cease and refrain from conducting or engaging in:
- (1) All activities relating to the prosecution of Dr. Mercola related to IDFPR's Amended Complaint;
 - (2) Dissemination of such information, regarding him or the Amended Complaint, to the press, the public or any other person or entity; and,
 - (3) Disciplinary action revoking, suspending or in any way disciplining Dr. Mercola for any issue or matter related in any way to the underlying action herein, pending the outcome of these federal proceedings.

Respectfully submitted,

JOSEPH MERCOLA, D.O., Plaintiff,

BY: Augustine, Kern and Levens,
Ltd., his attorneys



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