

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
09-CvS-

RASHID A. BUTTAR, D.O.,)
)
 Petitioner,)
)
 vs.)
)
 NORTH CAROLINA MEDICAL BOARD,)
)
 Respondent.)
 _____)

**PETITION FOR JUDICIAL
REVIEW AND
INJUNCTIVE RELIEF**

NOW COMES the Petitioner complaining of the Respondent, and alleges and says:

1. The Petitioner is a Doctor of Osteopathic Medicine who resides and practices in Mecklenburg County, North Carolina.

2. The Respondent is a Board created by N.C.G.S. § 90-2 to regulate the practice of medicine and surgery for the benefit and protection of the people of North Carolina.

3. This Court has jurisdiction over this matter pursuant to N.C.G.S. § 150B-43.

4. The Petitioner practices Integrative Medicine in Huntersville, North Carolina. He has been licensed to practice medicine and surgery by the North Carolina Medical Board since May 20, 1995. The Petitioner has never had a medical malpractice claim made against him in 18 years of practicing medicine and continues to hold an unrestricted license to practice medicine.

5. Petitioner was trained in general surgery and emergency medicine and has practiced over 10,000 hours of documented emergency medicine in the State of North Carolina and South Carolina. Petitioner is Board Certified in Clinical Metal Toxicology and Board Eligible in Emergency Medicine. Petitioner has also attained Fellowship status in 3 separate medical societies. Petitioner is a Fellow of the American Academy of Preventive Medicine, the American College for Advancement in Medicine and the American Association of Integrative Medicine.

6. Petitioner has patients that have come seeking medical treatment specifically from him, traveling from 33 different countries all over the world, as well as from all over the United States as a consequence of unique treatments and the results achieved by the Petitioner's Practice.

7. Petitioner has lectured in 17 different countries all over the world as well as all over the United States and is a commonly requested speaker and presenter at numerous medical

conferences, lecturing to as many as 2,500 doctors at a time, and has presented professional lectures in excess of 140 times in the last six years.

8. Petitioner served on the state level as President of the North Carolina Integrative Medical Society for 3 terms, from 2003 until 2008.

9. Petitioner currently serves on the national level as Chairman of the American Board of Clinical Metal Toxicology and has served in this capacity since 2006.

10. Petitioner has also served as Curriculum Chair, Treasurer and Vice Chairman of the American Board of Clinical Metal Toxicology previous to being elected Chairman in 2006. The Petitioner has also served in various capacities on various boards of different medical organizations over the last 10 years.

11. In December 2001, the Petitioner received an unannounced visit from an investigator of the North Carolina Medical Board who asked to randomly review medical charts maintained by the Petitioner. At that time, there was no outstanding complaint, and the investigator did not give a reason for the visit.

12. The North Carolina Medical Board investigator re-visited Petitioner's office in January 2002 to pick up the records, as requested.

13. In June 2002, the North Carolina Medical Board, again, visited the Petitioner's office unannounced to ask further questions regarding Petitioner's practice. Again, the Petitioner was assured that there were no outstanding complaints against him.

14. In September 2002, an investigator from the North Carolina Medical Board, again, visited the Petitioner's office unannounced to ask further questions. At this time, there were still no complaints against the Petitioner.

15. In January 2003, an investigator of the North Carolina Medical Board, again, visited the Petitioner's office unannounced and asked further questions. There were still no complaints that were being investigated on behalf of the Respondent against the Petitioner. The investigator asked the Petitioner to contact the NCMB because she was uncertain as to why she was being repetitively sent to the Petitioner's office. She also discussed setting up an appointment with the Petitioner for her own child to be seen.

16. In February 2003, the Petitioner was instrumental in forming the North Carolina Integrative Medical Society. The North Carolina Integrative Medical Society (NCIMS) was formed because integrative medical physicians in North Carolina were subject to unfair and discriminatory actions.

17. At the second meeting of that group, the Petitioner was voted President, and this group of physicians voted to begin an effort to lobby the North Carolina General Assembly for a change in the laws relating to the North Carolina Medical Board.

18. On April 21, 2003, a press conference was arranged by the North Carolina Integrative Medical Society at the State Capitol in Raleigh to announce its intentions with regard to the reform legislation. Petitioner spoke strongly against the Respondent's unfair and discriminatory actions against doctors practicing specific forms of natural medicine (such as metal toxicity, nutritional intervention, general detoxification, oxidative treatments, lifestyle changes, etc.) and the Respondent's obvious laxity in disciplining doctors that have recurrent issues of malpractice and/or the negligent practice of medicine causing documented medical harm to the public.

19. The North Carolina Medical Board and the North Carolina Medical Society attempted to dissuade Petitioner from providing testimony (scheduled as a result of the press conference) to the House Health Committee the following day. During the meeting, counsel for the North Carolina Medical Board, stated in public forum that the Board had a very tough time keeping up with complaints that needed to be investigated, citing that over 1,750 complaints arise each year and the Medical Board has to select the 350 worst claims on which to follow up and investigate.

20. When asked by North Carolina Integrative Medical Society lobbyist, Janis Ramquist, in light of the above statement, why the North Carolina Medical Board was investigating the Petitioner, Medical Board counsel Thomas Mansfield responded, "Dr. Buttar's case was an anomaly." Still no complaint or charge was made against the Petitioner, despite five visits by the Respondent and seventeen months of time having transpired.

21. On April 22, 2003, the Petitioner testified in front of the North Carolina House Health Committee in favor of Session Law 2003-366 (House Bill 886) which is entitled "An Act to Amend Certain Provisions of Article 1, Chapter 90 of the General Statutes Relating to the North Carolina Medical Board and the Practice of Medicine" and referred to the Respondent as a "rogue cop" violating Due Process for physicians and ignoring the law passed in 1993 by the North Carolina legislature.

22. After the Petitioner's testimony, the bill passed the House by a vote of 110 to 6. The bill was ratified and passed by the General Assembly on July 18, 2003, and signed into law by Governor Easley on August 1, 2003.

23. On May 7, 2003, approximately two weeks after the Petitioner testified in favor of Session Law 2003-366, the North Carolina Medical Board sent to the Petitioner a letter asking him to appear in a non-public informal inquiry before a committee of the Board on June 19, 2003, to discuss his "practice of medicine in general . . . involvement with Trans D-Tropin and V-SAB Labs, and his research studies." The letter warned the Petitioner that he was entitled to be accompanied by counsel and that he would be read a statement of his rights.

24. This same week, Petitioner was independently ranked among the Top 50 Doctors in the United States by Dr. Steven Sinatra from the University of Connecticut, School of Medicine, Philips Publishing and Healthy Directions, Inc.

25. Upon receipt of the request for an informal inquiry before the Board in 2003, the Petitioner made request to counsel to record the informal interview. This request was denied by the Executive Director of the Medical Board.

26. Thereafter Petitioner filed an action in Mecklenburg County Superior Court against the North Carolina Medical Board requesting a temporary restraining order and a mandatory injunction requiring the Board to allow Petitioner to have a court reporter present during the informal inquiry session.

27. After appearing before a Superior Court Judge, counsel to the Board and Petitioner reached a settlement agreement in which the Petitioner was permitted to record the informal inquiry before the Board.

28. The Board conducted the informal interview with the Petitioner on January 22, 2004. Following that inquiry, the Executive Director of the Medical Board wrote to the Petitioner to inform him that the Board would be taking no further action against him and stated in part:

In a world full of new approaches to health care, the Board is reassured that you, as one of its licensees, understand the importance of upholding the fundamental precepts of medicine establishing a therapeutic relationship with patients based on their best interests; bringing to them all of the available knowledge and information; providing full disclosure; and keeping complete and accurate records; and providing appropriate continuity of care.

29. In 2004, Petitioner was invited to give special testimony in front of the United States Congress. He testified on May 6, 2004, in front of the Congressional Subcommittee on Human Rights and Wellness in Washington, D.C., on the subject of children suffering from Autism and Autism Spectrum Disorder. The Petitioner gave testimony of the relationship between heavy metal toxicity and its causative effect in the developing mind of children, resulting in developmental delays and Autism.

30. Petitioner was accompanied by 10 children that were his patients he recovered using his treatment for this affliction, including his own son who remains the youngest formal witness ever to testify in front of the US Congress at the age of 5 (story in the New York Times Best Seller, "Evidence of Harm").

31. In 2005, Petitioner founded and became President of the Advanced Medical Education and Services, Physician Services (AMESPA). This organization provided fully accredited ACCME continuing medical education courses to physicians in fields of integrative and alternative medicine. Petitioner conducted four courses with independent auditors assigned from a local continuing medical education provider, Charlotte AHEC, and received the highest evaluation scores for the 2005 courses accredited through Charlotte AHEC.

32. In 2006, Petitioner was informed by the Director of Charlotte AHEC that she had been pressured about discontinuing the medical education accreditation for the courses taught through AMESPA. The Medical Director told Petitioner that "the powers that be" were putting a

lot of pressure on Charlotte AHEC to drop the accreditation for the Petitioner's courses because it was "legitimizing integrative medicine" and "they will NOT allow that to occur."

33. In 2005, Petitioner was notified by the staff of Congressman Istook of Oklahoma that he had been nominated for the National Institute of Health "Directors Innovative Pioneer Award" by Congressman Dan Burton of Indiana and Congresswoman Diane Watson of California for his internationally recognized work in treating children afflicted with developmental delays and the Autism Spectrum disorders.

34. In 2006, Petitioner was elected to serve on the Board of American Association for Health Freedom in Washington, D.C.

35. In 2006, Petitioner became the President for the Centers for Advanced Medicine Physician Associates (CAMPA).

36. In mid 2006, Petitioner received another visit from a North Carolina Medical Board Investigator. Petitioner was informed that there were four complaints against him from 2004 to 2006. Of the four complaining parties, Petitioner had never met any of them.

37. One of the four was a patient who was seen by Petitioner's Nurse Practitioner. That patient who was self referred for heavy metal toxicity was dismissed from the Practice because she attempted to reverse credit card charges she had made for her treatment. That patient then threatened Petitioner's Practice that she would complain to the NCMB if she did not get a refund for services that had already been rendered.

38. When patient was not refunded, she filed suit against the Petitioner, who counter sued to collect the outstanding balance of the bill from the patient. Petitioner was granted a default judgment because the patient failed to attend the trial of the case.

39. The other three complaints were from individuals who have never met the Petitioner, never visited the Petitioner's practice, and had not participated in the care of the patients they were complaining about. All the complaints involved terminally ill cancer patients. All 3 of the terminally ill patients sought the Petitioner out. All 3 of the terminally ill patients were NOT willing to accept their prognosis and each one wanted to pursue an "alternative" and "integrative" approach to their illness. All 3 of the cancer patients in question outlived their life expectancy with documented and witnessed improvement in their quality of life.

40. One complaint was from a family practice doctor that had previously treated one of the terminally ill cancer patients. That patient's family was not aware that the doctor was bringing the complaint against Petitioner. The second complaint was from a nephew of a patient who resided in California. The patient's husband and daughter who had participated directly in her care did not lodge any complaint. The third complaint was from the wife of a patient who was opposed to his seeking alternative treatment for his terminal cancer. The complaining party in that case had stopped payment on a check after the patient's death that the patient himself had written to Petitioner's Practice.

41. In November 20, 2007, approximately 17 months after the NCMB investigator had collected the charts of the above 4 cases, the North Carolina Medical Board issued a Notice of Charges and Allegations and Notice of Hearing against Petitioner. The charges alleged that the Petitioner had breached the standards of care in his treatment of four patients.

42. On April 23, 2008, the Hearing Panel of the Medical Board heard evidence regarding the charges. At the end of the hearing, the Panel found that the Petitioner had breached the standard of care and exploited the three cancer patients. The fourth patient did not testify at the hearing and no findings were made on the complaint. The Hearing Panel recommended that the Petitioner's license be suspended with the suspension being stayed provided that the Petitioner did not treat cancer patients or children (despite the fact that no children were in the complaints the Board was considering) and that he not use certain therapies on other patients.

43. Following the Hearing Panel's decision, it came to light that a member of the Medical Board's investigative staff had improper *ex parte* contact with a member of the Hearing Panel during a break in hearing proceedings. It was evident that the *ex parte* communication affected the Panel's deliberations. Notwithstanding the improper contact and with knowledge by counsel for the Medical Board, neither the members of the Board nor Petitioner's counsel were informed of the *ex parte* contact until 2 months after the hearing.

44. Once the *ex parte* communications came to light, counsel to the Petitioner filed a Motion to Declare a Mistrial with the Presiding Officer of the Hearing Panel on September 15, 2008. The Petitioner requested in the Motion that any re-trial of the Notice of Charges against Petitioner be heard by an Administrative Law Judge.

45. On January 30, 2009, the Presiding Officer of the Hearing Panel, Dr. Jannelle Rhyne, issued an Order granting Petitioner's Motion for a new hearing before a new panel of the Board. The Order effectively denied Petitioner's request to have the matter heard by an Administrative Law Judge.

46. The original Notice of Charges, along with the Recommendations of the Hearing panel were published on the Web Site of the North Carolina Medical Board and were available to all members of the North Carolina Medical Board as well as the general public. In addition, Petitioner has publicly and vehemently opposed the oppressive actions of a number of Medical Boards throughout the country, especially the North Carolina Medical Board, against doctors practicing integrative medicine.

47. Petitioner has publicly stated on multiple occasions that the North Carolina Medical Board is a.) "protecting the status quo, under the pretence of protecting the public", b.) "failed to protect the interest of the citizens of North Carolina by following their own agenda of achieving high Nader ratings and the Federation of States Medical Boards' (FSMB) agenda of eliminating holistic, alternative and integrative medicine as practiced by licensed medical doctors" and c.) "protecting the interests and market share of the NC Medical Society". All the above is demonstrated by present and past cases against integrative doctors whose only crime was helping their patients after conventional doctors failed to help. Petitioner has a well established reputation over the last 8 years of openly expressing this opinion and is well known

in the medical communities of North Carolina as well as a number of other states for his candid public opinions. Petitioner has furthermore served as an Expert Witness in no less than 3 Federal cases on this and other related issues.

48. Due to the long history of the Petitioner's encounters with the North Carolina Medical Board and the Board's demonstrated prejudice against practitioners of alternative and integrative medicine, Petitioner is unable to receive a fair and impartial hearing from any members of the Medical Board.

49. The Request for Relief in Petitioner's Motion to Declare a Mistrial specifically requested that the Presiding Officer of the Hearing Panel grant a new de novo hearing before an administrative law judge pursuant to N.C.G.S. § 150B-40(e).

50. Because the Order entered by the Presiding Officer of the Hearing Panel did not grant the release requested by the Petitioner this Court has jurisdiction to review and modify the ruling. If the Petitioner is forced to exhaust all administrative remedies, he will have to go through a second administrative hearing before the Panel of the North Carolina Board which has demonstrated prejudice against the Petitioners and the type of medicine practiced by the Petitioner.

51. The Petitioner should be relieved of the requirement of exhausting administrative remedies and has the right to petition directly to the General Court of Justice, Superior Court Division, for an injunction requiring the de novo hearing of the charges against the Petitioner to be conducted by an Administrative Law Judge.

FIRST CAUSE OF ACTION

52. The allegations of paragraphs 1 – 51 are incorporated herein by reference as if set forth fully.

53. The Respondent's refusal to grant Petitioner's Petition for an Administrative Law Judge to hear and decide the evidence at the de nova hearing of the Petitioner's Notice of Charges is an arbitrary and capricious abuse of discretion and should be overturned.

SECOND CAUSE OF ACTION

54. The allegations of paragraphs 1 – 53 are incorporated herein by reference as if set forth fully.

55. As a direct and proximate result of the ruling requiring Petitioner to submit to a second hearing before a new panel of the North Carolina Medical Board, the Petitioner will suffer immediate and irreparable injury if the de novo hearing is allowed to proceed without an impartial decision maker.

56. Pursuant to N.C.G.S. § 150B-48, the Petitioner is entitled to a stay preventing Respondent from issuing a new Notice of Charges and Notice of Hearing on those charges unless said hearing is to be conducted by an Administrative Law Judge.

WHEREFORE, the Petitioner respectfully prays the Court:

1. That the Order dated January 30, 2009 of Dr. Janelle Rhyne, Past President of the North Carolina Medical Board and Presiding Officer of the Hearing Panel that heard evidence on the Charges against Petitioner, be modified to state that the de novo hearing on any Notice of Charges issued by the Medical Board against the Petitioner be held before an Administrative Law Judge;

2. That this Court issue a stay preventing Respondent from issuing a new Notice of Charges and Notice of Hearing on those charges unless said hearing is to be conducted by an Administrative Law Judge;

3. That the costs of this action be taxed against the Respondent;

4. For such and other further relief as to the Court seems just and proper.

Respectfully submitted, this the 17th day of February, 2009.

H. Edward Knox

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Attorneys for Petitioner

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VERIFICATION

Rashid A. Buttar, being first duly sworn, deposes and says that he is the Petitioner in the above-entitled action; that he has read the foregoing **PETITION FOR JUDICIAL REVIEW AND INJUNCTIVE RELIEF**; knows the contents thereof; that the same is true of his knowledge except for the matters therein stated upon information and belief; and as to those matters, he believes the same to be true.

Rashid A. Buttar

Sworn to and subscribed before me
this ____ day of _____, 2009.

Notary Public

My Commission expires: _____

CERTIFICATE OF SERVICE

I, Lisa G. Godfrey, Attorney for Petitioner, certify that I have this day served a copy of the foregoing **PETITION FOR JUDICIAL REVIEW AND INJUNCTIVE RELIEF** on the following individual, a copy of same in the United States Mail, Certified Mail, postage prepaid, addressed as follows:

R. David Henderson
Executive Director
North Carolina Medical Board
P.O. Box 20007
Raleigh, NC 27619-0007

Marcus Jimison
Board Attorney
North Carolina Medical Board
Post Office Box 20007
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VIA U.S. MAIL AND E-MAIL Marcus.Jimison@NCMEDBOARD.ORG

This the 17th day of February, 2009.

Lisa G. Godfrey
Counsel for Petitioner