

1
2
3
4
5
6
7
8
9
10
11
12
13
14

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF WASHINGTON

STATE OF OREGON, acting by and through
the OREGON MEDICAL BOARD,

Plaintiff,

v.

PAUL NORMAN THOMAS,

Defendant.

) Case No. 21CV30201

) **DEFENDANT’S ANSWER AND**
) **COUNTERCLAIMS**

) **ORS 21.135(2)(g)**

) **Not Subject to Mandatory Arbitration**

COMES NOW defendant Paul Norman Thomas (hereinafter “defendant”), and in answer
to plaintiff’s Complaint hereby admits, denies, and alleges as follows:

1.

Defendant admits that he is a physician licensed to practice medicine in Oregon and that
he practices pediatric medicine at Integrative Pediatrics Inc. Defendant admits that Integrative
Pediatrics Inc., is located in Washington County.

2.

Defendant admits that the Oregon Medical Board (“OMB”) is a health professional
regulatory board and agency of the State of Oregon.

3.

Defendant admits that the OMB initiated an investigation into his medical practice and
that on or about August 21, 2020, the OMB issued a Subpoena Duces Tecum (the “Subpoena”)

1 that directed defendant to produce records related to “Study 1,” which included, among other
2 things, the names and dates of birth of at least 1,259 patients. Defendant further admits that the
3 OMB ordered defendant not to inform these patients, or these patient’s parents, that the OMB is
4 demanding their private information.

5 4.

6 Defendant admits that he has not provided the names or dates of birth of these patients in
7 response to the Subpoena for records relating to “Study 1.”

8 5.

9 Except as admitted, defendant denies each and every allegation included within plaintiff’s
10 Complaint and the whole thereof. Defendant also reserves the right to amend his Answer upon
11 discovery of facts or circumstances contrary to the admissions and denials contained herein.

12 6.

13 **FIRST AFFIRMATIVE DEFENSE**

14 **(Failure to State a Claim)**

15 Plaintiff’s Complaint fails to state one or more causes of action or claims for relief
16 against defendant.

17 7.

18 **SECOND AFFIRMATIVE DEFENSE**

19 **(Constitutional Violation)**

20 The Subpoena is unreasonably overbroad and does not seek information relevant to the
21 OMB’s investigation and disciplinary proceedings against defendant, in violation of the Fourth
22 Amendment to the U.S. Constitution and Article I, § 9, of the Oregon Constitution.

23 ///

24 ///

25 ///

26 ///

1 8.

2 **THIRD AFFIRMATIVE DEFENSE**

3 **(Sufficient Compliance)**

4 Defendant has sufficiently complied with the Subpoena by producing information
5 relating to “Study 1,” and by repeatedly informing the OMB that defendant does not have any
6 records responsive to the Subpoena’s request for information related to “Study 2.”

7 9.

8 **FOURTH AFFIRMATIVE DEFENSE**

9 **(Prohibited Disclosure)**

10 Under *former* 45 C.F.R. § 46.101(b)(4), defendant is prohibited from providing the
11 patient names and dates of birth to the OMB pursuant to the Subpoena’s request for records
12 relating to “Study 1.”

13 10.

14 **FIFTH AFFIRMATIVE DEFENSE**

15 **(Reservation of Additional Affirmative Defenses)**

16 Defendant reserves the right to assert additional affirmative defenses following further
17 discovery and investigation.

18 **COUNTERCLAIMS**

19 For purposes of these counterclaims, and without admitting any allegations against
20 defendant, defendant incorporates the admissions, denials, and allegations above and further
21 alleges as follows:

22 11.

23 Starting in December 2018, the OMB began its nearly three-year campaign aimed at
24 damaging defendant’s medical career and reputation. On or about December 16, 2018, the OMB
25 sent a letter to defendant claiming that it was investigating a “complaint” about care he provided
26 to a child. The OMB did not identify who made the complaint or what prompted the

1 investigation. After receiving the above-mentioned letter, defendant searched his records and
2 determined that he had never treated this child and informed the OMB of this.

3 12.

4 Nonetheless, under the guise of legal authority, the OMB used this initial “complaint” to
5 harass and burden defendant and his medical practice by issuing numerous overly broad
6 demands for patient records, even though the investigation was purportedly about a child that
7 defendant had never even treated. Despite the unreasonable nature of the OMB’s records
8 requests, defendant complied in good faith and, in doing so, provided the OMB with a
9 voluminous amount of records that included hundreds of patient names. To defendant’s
10 knowledge, the OMB never initiated formal disciplinary proceedings against him in relation to
11 the child involved in the initial “complaint” it purportedly received.

12 13.

13 On or about July 23, 2020, the OMB sent a letter to defendant notifying him that the
14 OMB received another “complaint” alleging defendant engaged in unethical “human medical
15 research” when he reviewed some old paperwork in a study titled, “Can Integrative Medicine
16 approaches and a selective vaccination schedule impact the health and rates of autism in a
17 general pediatric population?” (“Study 1”). Again, the OMB did not reveal who made the
18 complaint or what prompted this investigation. In the letter, the OMB requested, among other
19 things:

- 20 a. Names and DOBs of the patients in your study of response to MMR who were
21 vaccinated after the age of three (n= approx. 161).
22 b. Names and DOBs of the patients in your later study (Appendix E in your book,) who
23 were vaccinated after the age of three (Group One, n= 1098).
24 c. List of names and DOBs of patients who received a single dose of MMR and had
25 subsequent titers drawn; include the titer results.

26 ///

1 14.

2 On or about August 12, 2020, defendant responded to the OMB's July 23, 2020, letter
3 noting that he did not engage in any unethical human research, and that the "complaint" the
4 Board allegedly received seemed to relate to Study 1, retrospective research he did with respect
5 to the prevalence of autism spectrum disorders that developed in his general pediatric practice.
6 Defendant had contacted the Western Institutional Review Board ("WIRB") requesting
7 authorization for an exempt review determination for the project. Study 1 was intended to be a
8 retrospective analysis of existing data with no contact being made with the subjects.

9 15.

10 On or about November 4, 2015, the WIRB notified defendant, by letter, that the request
11 for an exempt review determination had been granted and allowed. Defendant provided a copy
12 of this letter to the OMB, and noted that disclosing confidential patient information in response
13 to the OMB's request would cause him to violate the professional commitment and promise he
14 made to the WIRB on which it relied to grant the exemption to do the research he undertook.
15 Defendant declined to produce the names and dates of birth for the patients requested by the
16 OMB.

17 16.

18 On or about August 21, 2020, the OMB issued the Subpoena requesting the names and
19 dates of birth for the patients previously requested by the OMB, without citing a reason or basis
20 for the request. The OMB also requested records relating at another "study" the OMB alleged
21 defendant undertook titled, "An Approach to get MMR Immunity in a Population of Vaccine
22 Fearful Parents" ("Study 2").

23 17.

24 In response, defendant reiterated that he was prohibited from disclosing any information
25 from Study 1 that would in any way lead to the disclosure of patient identifying information.
26 However, in an attempt to comply with the Subpoena, defendant produced to the OMB a

1 computer disk with data from Study 1 that defendant was able to disclose without providing
2 personal identifying information. Defendant also responded, on multiple occasions, that he did
3 not draft or publish Study 2, meaning there were no records to produce in relation to Study 2.

4 18.

5 On or about December 4, 2020, the OMB issued an Order of Emergency Suspension that
6 suspended defendant’s medical license effective December 3, 2020, and ordered him to stop
7 practicing medicine as of that time. In its Order of Emergency Suspension, the OMB alleged
8 that it had evidence indicating that defendant’s conduct breached the standard of care and placed
9 the health and safety of many of his patients at serious risk of harm. The OMB alleged that the
10 acts and conduct supporting the Order of Emergency Suspension included:

11 “Licensee provided a spreadsheet to the Board containing deidentified data describing a
12 study of antibody responses to a single dose of MMR vaccines. Licensee obtained serum
13 antibody levels (“titers”) to measles, mumps, and rubella on 905 patients between
14 February 17, 2002, and July 23, 2015. Except for rare cases of suspected immune
15 deficiency, there is no clinical indication for assessment of antibody titers. The ordering
16 of unnecessary testing is a violation of ORS 677.190(1)(a) unprofessional or dishonorable
17 conduct, as defined in ORS 677.188(4)(c) willful and repeated ordering or performance
18 of unnecessary laboratory tests.”

19 19.

20 In its Order of Emergency Suspension, the OMB further alleged:

21 “In Licensee’s data sheet, 122 patients are identified as having had an inadequate
22 response to the mumps vaccine. Of these, 32 are identified as having received no
23 additional vaccination. Regardless of antibody titers, the standard of care requires a
24 second dose of the recommended MMR vaccination. Licensee failed to ensure these
25 patients were given the required second dose of MMR as soon as he obtained the test
26 results. Knowingly leaving these children inadequately protected against a preventable,

1 potentially debilitating illness constitutes 90 acts of gross and repeated negligence in
2 violation of ORS 677.190(13) and constitutes unprofessional or dishonorable conduct in
3 violation of ORS 677.190(1)(a), as defined in ORS 677.188(4)(a) any conduct or practice
4 which does or might constitute a danger to the health or safety of a patient or the public.”

5 20.

6 On April 22, 2021, the OMB issued a Notice of Proposed Disciplinary Action (“NPDA”)
7 proposing to impose the “maximum range” of potential sanctions identified in ORS 677.205(2),
8 including revocation of defendant’s medical license. Notably, the OMB’s NPDA did not reassert
9 claims described above in paragraphs 18 and 19. Instead, the OMB only alleged that defendant
10 violated ORS 677.190(17) by failing to provide the names and dates of birth of the patients
11 referenced in Study 1.

12 21.

13 Upon information and belief, the only evidence the OMB had to support its Order of
14 Emergency Suspension was the information defendant provided to the OMB regarding Study 1.
15 On June 3, 2021, the OMB and defendant entered into an Interim Stipulated Order in which
16 defendant agreed to a number of practice restrictions, including that he would not perform any
17 research involving patient care. In return, the OMB agreed to withdraw the Order of Emergency
18 Suspension for “reconsideration.”

19 **FIRST COUNTERCLAIM**

20 **(Declaratory & Injunctive Relief – Constitutional Violation)**

21 22.

22 The allegations in paragraphs 11 through 21 are incorporated herein by reference.

23 23.

24 Under the Fourth Amendment to the U.S. Constitution, and Article I, § 9, of the Oregon
25 Constitution, there are limitations on a state agency’s subpoena power. An agency’s discovery
26

1 request via administrative subpoena must be relevant to a lawful investigatory purpose and must
2 be no broader than the needs of the particular investigation.

3 24.

4 The Subpoena issued by the OMB is unconstitutionally and unreasonably over broad in
5 that the OMB has failed to allege why it needs the names and dates of birth of at least 1,259
6 children to conduct its investigation into defendant's conduct. Likewise, the OMB has failed to
7 allege how the names and dates of birth of these children are relevant to its investigation into
8 defendant. In issuing the Order of Emergency Suspension based upon the information defendant
9 provided regarding Study 1, the OMB warranted that it had sufficient evidence to emergently
10 suspend defendant's medical license, and initiate disciplinary proceedings against defendant, and
11 that it did not need the patient names and dates of birth requested in the Subpoena in its
12 investigation. Additionally, the OMB already issued the NPDA seeking to impose the harshest
13 sanctions available against defendant without the information sought in the Subpoena.

14 25.

15 The Subpoena is also unconstitutional because it was not issued as part of a lawful
16 investigation. Under the guise of legal authority, the OMB flooded defendant and his clinic with
17 numerous unreasonably broad and burdensome records requests and brought legally and
18 factually unsupported disciplinary actions that have ruined his medical career and professional
19 reputation before he has even had an opportunity to defend himself at a hearing. The OMB has
20 decided to make itself an arbiter of what is, and is not, worthy of publication when it comes to
21 medical science. But, that is not its role. It is an administrative licensing board; nothing more.
22 It is up to the medical community, with its specialties and subspecialties throughout the world, to
23 debate and accept or reject medical research and articles. It is not up to a handful of providers
24 sitting in Portland, Oregon, to decide whether research is or is not worthy of publication by
25 learned medical journals or to the world.

26 ///

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 16th day of August, 2021, I served the foregoing
3 **DEFENDANT’S ANSWER AND COUNTERCLAIMS TO PLAINTIFF’S COMPLAINT,**
4 on the following party at the following address:

5 Daniel J. Rice
6 Assistant Attorney General
7 Oregon Department of Justice
8 1162 Court Street NE
9 Salem, OR 97310
10 Email: daniel.rice@doj.state.or.us
11 *Of Attorneys for Plaintiff*

- 12 by **mailing** a true and correct copy thereof, certified by me as such, placed in a sealed
13 envelope addressed as set forth above, and deposited in the U.S. Post Office at Portland,
14 Oregon on said day with postage prepaid; **AND**
- 15 by causing a true and correct copy thereof to be **hand-delivered** in sealed envelopes to
16 said addresses on the date set forth above.
- 17 by **faxing** a true and correct copy thereof to the fax numbers shown for said addresses on
18 the date set forth above.
- 19 by sending a full, true and correct copy thereof via **overnight mail** in a sealed, prepaid
20 envelope, addressed to the attorneys as shown above on the date set forth above.
- 21 by serving said document via **electronic mail** using the court’s e-service system;
- 22 by serving said document via **email** to the email address set forth above.

23
24
25
26
/s/ Taylor B. Lewis
Taylor B. Lewis, OSB No. 164263