

**IN THE
CIRCUIT COURT OF ST. LOUIS, MISSOURI
22nd JUDICIAL CIRCUIT**

REPRODUCTIVE HEALTH SERVICES OF)
PLANNED PARENTHOOD OF THE ST. LOUIS)
REGION,)

Plaintiff,)

v.)

RANDALL WILLIAMS, M.D., in)
Official capacity as Director of the)
Missouri Department of Health and Senior)
Services, et al.,)

Defendants.)

Case No. 1922-CC02395
Division 6

**DEFENDANTS’ MOTION TO RECONSIDER OR AMEND THE COURT’S ORDER
GRANTING A PRELIMINARY INJUNCTION AND NOTICE OF COMPLIANCE**

Defendants Governor Mike Parson, Dr. Randall Williams, and the Department of Health and Senior Services (collectively, “the State”) respectfully request that this Court reconsider, amend, and/or withdraw its Order of June 10, 2019, granting a preliminary injunction. In the event that the Court declines to reconsider its order, however, the State respectfully provides notice to the Court that it has initiated the progressive-discipline procedures of § 197.293, RSMo, on an accelerated timeline, to ensure that the State will be able to reach a decision on the renewal application by deadline of June 21, 2019, provided in the Court’s Order.

A. The Court Should Reconsider, Amend, and/or Withdraw its Order Granting a Preliminary Injunction.

The State respectfully requests that this Court reconsider, amend, and/or withdraw its Order of June 10, 2019, granting a preliminary injunction. In addition to the reasons already stated in the State’s prior briefing, which is incorporated by reference, the State respectfully submits that the order granting a preliminary injunction should be withdrawn for at least three reasons:

First, the Court’s order correctly notes that the purpose of a preliminary injunction is to preserve the status quo. *See* Order at 6, 7. But the Court’s order does not merely maintain the status quo by preventing the lapse of RHS’s license. In addition, the order imposes an obligation on the Department to take affirmative steps to change the status quo. *See* Order at 8. By directing the Department to change the status quo, the order exceeds the permissible scope of a preliminary injunction. *See, e.g., Salau v. Deaton*, 433 S.W.3d 449, 453 (Mo. App. W.D. 2014) (internal quotation omitted); *St. Louis County v. Village of Peerless Park*, 726 S.W.2d 405, 410 (Mo. App. E.D. 1987); *State ex inf. McKittrick v. Am. Ins. Co.*, 173 S.W.2d 51, 52 (Mo. banc 1943).

Second, ordering the Department to change the status quo is unnecessary. The Court’s order rests on the conclusion that “DHSS must make an ‘official action’ in order for Petitioner to be entitled to review” before the Administrative Hearing Commission. Order, at 8. But the Department has conceded that its failure to renew the license before it expired on May 31, 2019, constituted a “failure to renew a license” that is immediately reviewable by the Administrative Hearing Commission under § 197.221. *See* § 197.221, RSMo (“Any person aggrieved by an official action of the department of health and senior services affecting the licensed status of a person under the provisions of sections 197.200 to 197.240, including . . . the failure to renew a license, may seek a determination thereon by the administrative hearing commission . . .”). Accordingly, additional action by the Department is not necessary to ripen the dispute for administrative review.

Third, the Court lacks jurisdiction to enter a preliminary injunction. The Court’s order correctly holds that “the AHC, and not the Circuit Court, has exclusive jurisdiction and authority to rule on any decision that denies the renewal of Petitioner’s license.” Order, at 1. The Court concludes that it has jurisdiction over Plaintiff’s Count I under § 536.050.2(1), because that count

challenges the statutory validity of a regulation, and the AHC lacks authority to invalidate regulations. *Id.* at 2. But Plaintiff elected to combine Count I with other counts that unquestionably require exhaustion before the AHC, so exhaustion of administrative remedies should be required as to all claims before the Court assumes jurisdiction over any claim in the case. *See, e.g., Farm Bureau Town and Country Ins. Co. of Missouri v. Angoff*, 909 S.W.2d 348, 353 (Mo. 1995); *State ex rel. Riverside Joint Venture v. Missouri Gaming Comm'n*, 969 S.W.2d 218, 222 (Mo. 1998); *Foremost Ins. Co. v. Pub. Serv. Comm'n of Missouri*, 985 S.W.2d 793, 795 (Mo. App. W.D. 1998).

For these reasons, as well as those stated in the State's prior briefing, the Court should reconsider, amend, and/or withdraw its order granting a preliminary injunction.

B. In the Event that the Court Declines to Reconsider its Order, the Department Is Taking Immediate Steps to Comply with the June 21, 2019 Deadline.

For the reasons stated above, Defendants respectfully request that this Court reconsider, amend, and/or withdraw its June 10, 2019 Order granting a preliminary injunction. In the event that the Court declines to do so, however, the Department is taking steps in good faith to ensure its ability to comply with the Court's Order on an accelerated basis. It is undisputed that the Department has a pending investigation addressing troubling instances of patient care at the RHS facility. Five physicians—including three fully qualified physicians who continue to maintain an affiliation with RHS and perform abortions at RHS's facility—have refused to cooperate in the investigation. This ongoing lack of cooperation has obstructed the Department's ability to complete its factual investigation. Moreover, the progress of this litigation and the statements of RHS's counsel in open court have made clear that (1) there is no reasonable prospect that any of the five physicians will cooperate in the foreseeable future; and (2) RHS has taken, and will take, no affirmative steps to encourage, induce, or pressure its physicians to cooperate.

In the ordinary course, when an investigation is completed, the Department pursues the progressive-discipline process set forth in § 197.293 before finalizing its decision regarding a facility's license. *See* § 197.293, RSMo. The Court's Order contemplates that the Department will pursue such a process, *see* Order, at 4-5, and RHS's counsel stated in open court that RHS would "welcome" the opportunity to participate in that process. Accordingly, in the interest of being able to finalize the process before the June 21, 2019 deadline imposed by the Court, the Department has initiated the process today, by issuing the attached Statement of Deficiencies to RHS. *See* Statement of Deficiencies (attached as Exhibit A). As discussed in open court, because neither RHS nor its physicians have cooperated in the Department's investigation, the Department is forced to conclude that neither RHS nor its physicians have any satisfactory explanation for the potential deficiencies identified in the investigation, and the attached Statement of Deficiencies reflects this inference. The Department has requested that RHS respond to this Statement of Deficiencies with a Plan of Correction on an accelerated timeline—by close of business on Tuesday, June 18, 2019—to allow time for the process to proceed to a conclusion by the Court's deadline of June 21, 2019.

CONCLUSION

For the reasons stated, Defendants request that this Court reconsider, amend, and/or withdraw its Order of June 10, 2019, granting a preliminary injunction.

Dated: June 13, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on June 13, 2019, the foregoing was filed electronically through the Court's electronic filing system to be served electronically on all counsel of record.

/s/ D. John Sauer