

ORIGINAL

Fulton County Superior Court
FILEDTAW
Date: 8/14/2018 9:55 AM
Cathelene Robinson, Clerk

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

WINDELL C. DAVIS-BOUTTE, M.D.,

Plaintiff,

v.

GEORGIA COMPOSITE MEDICAL
BOARD,

Defendant.

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CIVIL ACTION
FILE NO. 2018CV306467

VERIFIED COMPLAINT FOR TEMPORARY RESTRAINING ORDER, OR IN THE
ALTERNATIVE, PRELIMINARY INJUNCTION

COMES NOW WINDELL DAVIS-BOUTTE, M.D. ("Dr. Davis-Boutte"), Plaintiff in the above-styled case, by and through her undersigned counsel of record, and pursuant to O.C.G.A. § 9-11-65 files this Verified Complaint for a Temporary Restraining Order ("TRO"), or in the alternative, Preliminary Injunction and respectfully shows the Court the following:

PARTIES, JURISDICTION AND VENUE

1.

Dr. Davis-Boutte seeks a preliminary injunction, asking this Court to strike and enjoin an Order of Summary Suspension (the "Board Order") of her medical license, entered by Defendant Georgia Composite Medical Board (the "Board") on June 7, 2018 because the Board did not have an adequate basis to take "emergency action" against her medical license and by taking this action, without first providing her with due process of law, that is notice and hearing, the Board has irrevocably and improperly harmed and continues to harm her medical license, her life, and her livelihood.

2.

Dr. Davis-Boutte is a Dermatologist licensed by the Georgia Composite Medical Board to practice medicine in the State of Georgia and holds License No. 039318.

3.

As a Board-Certified Dermatologist, Dr. Davis-Boutte has excellent credentials. She obtained her Medical Degree at the University of California School of Medicine, with residency training at the Emory University School of Medicine and Cedars Sinai Medical Center. She has been Board Certified in Dermatology since 1997.

4.

Dr. Davis-Boutte has been licensed to practice medicine in the State of Georgia, without incident, since 1994. Until the Board's summary suspension, Dr. Davis-Boutte has worked as a dermatologist and cosmetic surgeon in a private practice. She has no history of prior Board discipline.

5.

Defendant Georgia Composite Medical Board is an Agency within the meaning of the Administrative Procedures Act, O.C.G.A. § 50-13-1, *et seq.*, with its principal office being located at 2 Peachtree Street, N.W., 36th Floor, Atlanta, Georgia 30303, and is subject to the jurisdiction of this Court. The Board may be served with process in this action by and through its Executive Director, LaSharn Hughes, 2 Peachtree Street, N.W., 36th Floor, Atlanta, Georgia 30303.

6.

A copy of this Complaint for TRO, or in the alternative, Preliminary Injunction is also being served on the Attorney General, Mr. Christopher Carr, whose office is located at Office of the Attorney General, 40 Capitol Square, S.W., Atlanta, Ga 30334.

7.

This Court has jurisdiction over the subject matter of this Complaint pursuant to the Administrative Procedures Act, O.C.G.A. § 50-13-18 and § 50-13-19, and venue is proper in this Court.

FACTS

8.

Dr. Davis-Boutte hereby reasserts and re-alleges each and every allegation contained in Paragraphs 1 through 7 as though fully set forth verbatim herein.

9.

On June 7, 2018, the Board filed an Order of Summary Suspension, *In the Matter of: Windell Davis-Boutte, M.D., License No 039318, Before the Georgia Composite Medical Board, Docket No. 2018-0049.*¹ Plaintiff was given no notice or opportunity to be heard prior to the Summary Suspension of her license.

10.

The underlying events on which the Board based its recent action stem from four medical malpractice settlements entered into by Dr. Davis-Boutte in 2017 and 2018, and two pending

¹ A true and correct copy of the Board's Order of Summary Suspension is attached hereto as Exhibit "A."

malpractice complaints. There were no medical malpractice settlements entered against Dr. Davis-Boutte before 2017.

11.

The four medical malpractice settlement cases, referenced above, are cited as part of the bases for the Board action, along with two additional medical malpractice cases that remain pending. These six cases were all previously known to the Board at least ten months ago, if not two years ago.

12.

The remaining case underlying the Board action is cited as reason for the “emergency” suspension. On June 7, 2018, the Board alleged that Patient S.C. suffered complications following surgery and was in the hospital. However, the Board’s allegation contains no finding that Dr. Davis-Boutte’s care and treatment of Patient S.C. fell below the standard of care.

13.

The Due Process Clause of the Constitution of the State of Georgia expressly states that “[n]o person shall be deprived of life, liberty, or property except by due process of law.” U.S. Const. Amend. V and XIV; Ga. Const., Art. 1, Sec. 1, Para. 1.

14.

Due process protections apply to Dr. Davis-Boutte because she has a property interest in her license to practice medicine in the State of Georgia. A professional license, therefore, cannot be taken by the state without affording the licensee procedural due process as required by the Fifth and Fourteenth Amendments to the U.S. Constitution.

COUNT ONE

TRO OR IN THE ALTERNATIVE, PRELIMINARY INJUNCTION

15.

Dr. Davis-Boutte hereby reasserts and re-alleges each and every allegation contained in Paragraphs 1 through 14 as though fully set forth verbatim herein.

16.

Dr. Davis-Boutte has suffered and will continue to suffer irreparable injury if an injunction does not issue.

17.

Dr. Davis-Boutte has no other specific or adequate remedy at law or in equity.

18.

An injunction should issue to strike the Board's Order of Summary Suspension and enjoin further action to suspend her medical license.



WHEREFORE, Dr. Davis-Boutte prays that summons issue, that judgment be entered on behalf of Plaintiff and against Defendant, and that the following relief be granted:

- (a) That pursuant to Count I, an injunction be issued to strike and/or enjoin enforcement of the Board's Order of Summary Suspension which was entered in violation of the Due Process Clause of the Constitution of the State of Georgia, specifically Art. 1, Sec. 1, Para. 1 and enjoin further Board action to suspend her medical license without due process;

- (b) That she be granted her constitutional right to an administrative hearing in accordance with O.C.G.A. § 50-13-18;
- (c) That the costs of this action be levied against the Defendant; and
- (d) That Plaintiff be awarded such other and further relief as the Court deems just and proper.

RESPECTFULLY SUBMITTED this 14th day of June, 2018.


FRANCES E. CULLEN
Georgia Bar No. 200320

 
SUSAN J. LEVY *(by express permission)*
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