

IN THE IOWA DISTRICT COURT IN AND FOR SCOTT COUNTY

)	No. <u>07821 CVCV302062</u>
)	
DAVID HARTSUCH, MD)	PETITION FOR INJUNCTIVE RELIEF TO
Plaintiff,)	EXPUNGE RECORD, AND TO REQUIRE
)	DEFENDANTS TO ENFORCE
Vs.)	IOWA LAWS CONCERNING THE
)	PRACTICE OF MEDICINE AND
THE IOWA BOARD OF MEDICINE &)	PHARMACY
THE IOWA BOARD OF PHARMACY,)	
Defendants.)	

COMES NOW Plaintiff, David Hartsuch, M.D., *pro se* with his petition in equity for injunctive relief and in support thereof states to the court as follows:

1. That Plaintiff, David Hartsuch, M.D., is a practicing emergency medicine physician residing at 2127 Nicholas Court, Bettendorf Iowa, 52722 located within Scott County Iowa. He is a licensee of both The Iowa Board of Medicine and The Iowa Board of Pharmacy.
2. That Defendant, The Iowa Board of Medicine is an agency of The State of Iowa responsible for determining the qualification and fitness of physicians to practice medicine in The State of Iowa and has a duty to uphold the ethical practice of medicine. The Iowa Board of Medicine is domiciled in The State as is headquartered at 400 SW 8th St., Des Moines, IA 50309.
3. That Defendant, The Iowa Board of Pharmacy is an agency of The State of Iowa responsible for determining the qualifications and fitness of pharmacists to fill prescriptions in The State of Iowa and has a duty to ensure that pharmacists do not discriminate against patients based upon disease state. The Iowa Board of Pharmacy is domiciled in The State as is headquartered at 400 SW 8th St., Des Moines, IA 50309.
4. That both Defendants operate under Iowa Administrative Rule §17A.
5. That the Court has subject matter jurisdiction by Iowa Administrative Rules §17A.19 Plaintiff to appeal this Board action to the Iowa District Court.

6. That the Plaintiff has exhausted all administrative remedies, and The Board of Medicine has issued their decision and closed the Plaintiff's case file. (See attached "Warning" Letter)
7. That the Plaintiff is an aggrieved party with an actual judiciable controversy.
8. That the "Warning" letter is actually a penalty as described in paragraph 27 below.
9. That Defendant Boards have taken joint and separate actions to discourage Plaintiffs patients from receiving certain lawful prescription drugs in order to treat COVID-19, and tortiously interfered with the Plaintiff's right to treat, and his Patient's right to receive treatment for COVID-19.
10. That On March 26, 2020, The Defendant Boards issued a "Joint Statement" discouraging the prescribing of Hydroxychloroquine as well as Azithromycin (a common anti-biotic used to treat bacterial co-infection common with viral illness such as COVID-19).
11. That this "Joint Statement" was communicated to licensees via email. (See attached Original Joint Statement.)
12. That the Plaintiff successfully petitioned the Board of Medicine to amend their policy for the use of Hydroxychloroquine.
13. That on Sept. 11, 2020, the Defendant Boards issued a revised joint statement allowing physicians to prescribe Hydroxychloroquine without incurring disciplinary action by the Boards. (See attached Revised Joint Statement)
14. That, the Director of the Board of Medicine, then Kent Nebel, refused a request by the Plaintiff to inform all physicians by email of the new policy in the same manner as the original Joint Statement.
15. That this left most Iowa physicians and pharmacists unaware that it was permissible to use hydroxychloroquine, Azithromycin or other "off-label" drugs to treat COVID-19.

16. That The Iowa Board of Pharmacy worked to discourage pharmacists from filling prescriptions for these life-saving drugs. This was done without any assessment by the Board of the Safety or efficacy of these drugs.
17. That as a result, Iowa Pharmacists discriminated against patients with COVID-19 by refusing to fill lawful prescriptions for Hydroxychloroquine and Ivermectin to treat COVID-19.
18. That one of the Plaintiff's patients filed a complaint with The Iowa Board of Pharmacy against a licensed pharmacist who refused to fill a prescription for Ivermectin solely because the drug was used to treat COVID-19 in violation of The Iowa Board of Pharmacy rule §657 8.11 (3) for discriminating against patients based upon disease state. (See Patient Complaint.)
19. That shortly thereafter, The Iowa Board of Pharmacy informed the complainant that the Board of Pharmacy was not going to take any action.
20. That shortly thereafter, The Iowa Board of Medicine informed the Plaintiff that they initiated an investigation of a complaint received from the pharmacist. (See Investigation Letter.)
21. That in comparison to the Board of Pharmacy's very brief non-investigation of a legitimate violation of law, The Board of Medicine undertook a lengthy 9-month investigation against the Plaintiff.
22. That the Plaintiff denies the factual basis of the complaint and asserts that there was no available predicate for the investigation.
23. That the investigation was itself was Ultra Vires due to a lack of predicate contained within Iowa Law, and that it had a "chilling effect" on the rights of the Plaintiff and his patients to free speech and to petition for the redress of grievances.
24. That the Iowa Board closed Plaintiff's investigation file and issued a "Warning" Letter.

25. That this “Warning” is a per se violation of the right to free speech and legitimately places the Plaintiff in fear of communicating with any pharmacist at all.
26. That the Plaintiff also alleges that the Board has deprived him of the right to Procedural and Substantive Due Process by imposing a penalty without a contested hearing and based upon an *Ex Parte* hearing of the investigatory file.
27. That this “Warning” is an actual penalty due to certain disclosure requirements of the Board.
28. That the Board of Medicine has adopted disclosure policies and required the Plaintiff to disclose the “Warning” contrary to IAC 652—24.2(5) which states, “A letter of warning or education is an informal communication between the board and the licensee and is not formal disciplinary action or a public document.”
29. That Plaintiff alleges that the Board has established Board Rule 653 – 2.10 that allows for sharing disciplinary and investigative information including the “Warning” in question without the Plaintiff’s knowledge to a broad list of the private, including the American Medical Association, the Federation of State Medical Boards, the Iowa Medical Association, etc.,
30. That such disclosure is a violation of Iowa Code 652—24.2(5) and these outside organizations have no legal duty to maintain this information in confidence.
31. That disclosure to these organizations encumbers the Plaintiff’s professional life and might result in employment or other losses to Plaintiff.
32. That the disclosure requirements imposed by the Board make the “Warning” the professional equivalent of a scarlet letter to publicly embarrass the Plaintiff.
33. That The Board said that it “reserved the right to take this matter up again if necessary” without a real conclusion to the investigation

34. That the “Warning” letter did not address other charges which the Board of Medicine might want to pursue in the future.
35. That the status of these other items greatly impairs the Plaintiff’s ongoing free speech on subjects including treating COVID-19, giving informed consent about the COVID-19 vaccine, petitioning for redress of grievances, and sharing scientific and medical knowledge with other interest parties including patients.
36. That these Joint and separate actions of The Defendant Boards constitute an ongoing violation of the First Amendment and other rights of the Plaintiff and his patients.
37. That Plaintiff requests the court to expunge the “Warning” from his otherwise spotless record and seeks to have the entire complaint closed without prejudice so that he can resume the practice of medicine without a cloud of impropriety.
38. That Plaintiff requests the court to enjoin the Board from releasing the “Warning” to any outside parties including other government agencies in conformance to IAC 652—24.2(5).
39. That Plaintiff further asks the court to require the Defendant Boards to inform all licensees by email of the Boards’ Revised Joint statement dated September 11, 2020 revising their original “chilling” language against the use of Hydroxychloroquine.
40. That Plaintiff seeks an injunction to prevent The Iowa Board of Medicine from performing any investigations of himself and other licensees without a proper investigational predicate and to require the Defendants notify all investigation subjects of the grounds for disciplinary action listed in Iowa Code §148.6 or other Code which constitutes the basis for the investigation.
41. That Plaintiff seeks injunctive relief to require that The Iowa Board of Pharmacy to equally enforce the provisions of pharmacy rules Sec. 657 8.11(3) regarding non-discrimination on the

basis of disease state and to require that pharmacies fill prescriptions for hydroxychloroquine and ivermectin like all other prescription drugs.

42. That the actions of the Defendant Boards significantly transgressed Iowa Law and the Constitution, interfered with the proper medical treatment of his patients, and impaired the civil rights of Dr. Hartsuch and his Patients protected by the First Amendment including the right to petition for redress of grievances.

43. That granting of the requested remedies is consistent with Iowa Law and will mitigate the irreparable injury to the Plaintiff, his patients, and the public at-large.

WHEREFORE, Plaintiff, David Hartsuch, M.D. prays that this Honorable Court will expunge the Plaintiff's record and close his case without prejudice, enjoin the Boards from releasing information about this case including the "Warning", require that the Boards inform all licensees by email of the Boards' Revised Joint Statement dated Sept. 11, 2020, enjoin the Boards from engaging in investigations against the Plaintiff or other licensees without a proper investigational predicate, require that the Iowa Board of Pharmacy equally enforce the provisions of Iowa Pharmacy Board Rule Sec. 657 8.11(3) regarding discrimination based on disease state, and such further relief as this honorable Court deems just and equitable in the premises.

Respectfully Submitted:

_____/S/ David Hartsuch M.D. _____

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Complaint Form

Submitted On: Oct 11, 2021, 10:24AM CDT

Iowa Board of Pharmacy

Complainant's Name	First Name: [redacted] Last Name: [redacted]
Full Address	Street Address: [redacted] City: Cedar Rapids State: IA Zip: 52405
Email	[redacted]
Primary Phone Number	[redacted]
Alternate Phone Number	
Date of Incident	Month: 10 Day: 6 Year: 2021
Pharmacy Personnel Involved	[redacted]
Pharmacy Involved	[redacted]
Pharmacy's Address	[redacted]
What Best Describes the Issue?	Unethical Conduct
What happened (Be as specific as possible, including dates, names, etc.)	<p>On Wednesday 10/6/21, Test Iowa informed my wife [redacted] & I that we were both covid positive. That day we had a tele-med appointment with Dr. David Hartsuch of Bettendorf IA with an anticipated follow-up at his office in Davenport following an appropriate quarantine period (I grew up in the Quad cities and moved to Cedar Rapids a few years ago). He prescribed 3 drugs for both of us, including a regimen of ivermectin. He electronically sent the prescription to a local [redacted] pharmacy at [redacted]. The pharmacist is named [redacted] and her license number is [redacted]. When I went to the pharmacy a few hours later (after taking a nap), the employee who waited on me in the drive thru line said the pharmacist was refusing to fill our prescriptions for ivermectin because "it isn't an FDA approved dose". As I paid for the other drugs, I gave the employee the attached form and asked them to sign it confirming the reason they were refusing to fill the valid prescription from a licensed doctor. She took the form to the pharmacist and returned a few minutes later saying "we aren't required to sign anything and so the pharmacist refuses to sign this form". When I returned home, I noticed a had a voicemail from pharmacist [redacted] that had been left while I had been asleep. It read: "Hi this is [redacted] calling from [redacted] and we had received a prescription for you um that we are unable to fill um if you have any questions just give us a call we can kind of explain um what's going on our number is [319-] [redacted] thank you". I then called back and spoke to the pharmacist. She said the manufacturer doesn't recommend their medicine for covid, and so she won't fill it. I was going to ask if she could speak directly with my doctor, but pharmacist [redacted] hung up on me before I could say anything else. She did not call my doctor to clarify the prescription. I then contacted our doctor to see what options we had. He called the pharmacy but pharmacist [redacted] had left and he spoke with [redacted]. Dr Hartsuch communicated to me that she again repeated that she would not fill either prescription, and then abruptly hung up on him before he could have a full discussion with her. It is our understanding that it is unethical to discriminate based upon disease. Furthermore, pharmacists are required to answer questions about our care truthfully. Based on the above, we believe pharmacist [redacted] engaged in unethical practices by discriminating against patients with a diagnosis of COVID-19. She then failed to contact the physician with questions regarding the safety and/or efficacy of the prescription as is required by board rules. Instead she just refused to fill the prescription. When the doctor tried to reach out to her, the other pharmacist hung up on him before they could have a full discussion. Furthermore, the pharmacy refused to provide written documentation for the reason for the refusal. The result was that our treatment was substantially delayed. Our doctor said this drug was most effective the earlier it is taken. Not only did pharmacist [redacted] action potentially put both of our lives at risk of hospitalization/death, etc from covid,</p>

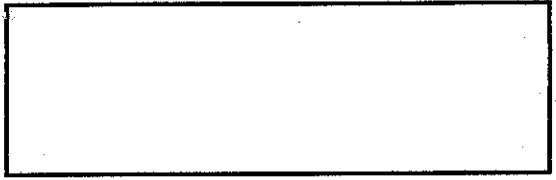
but it also added extreme additional stress at a time when it would have been more helpful to focus on following our doctor's orders/resting/healing. If you need further info, please feel free to contact me at [redacted] or [redacted]

Upload any documentation which supports your allegations

pharmacy complaint ivermectin 2021.10.docx
IMG_5431.jpg
[redacted] refusal to prescribe.pdf

Signature Data

First Name: [redacted]
Last Name: [redacted]
Email Address: [redacted]



Signed at: October 11, 2021 10:24am America/Chicago

Receipt

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