

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. 23-0587E

JAMES A. CINTOLO, R.N.,)
Plaintiff,)
)
v.)
)
MASSACHUSETTS BOARD OF)
REGISTRATION IN NURSING, and)
MARGRET COOKE,)
Defendants.)

JOHN E. POWERS III
 ACTING CLERK MAGISTRATE
 2023 MAR 10 A 10:05
 SUFFOLK SUPERIOR COURT
 CIVIL CLERK'S OFFICE

COMPLAINT AND DEMAND FOR INJUNCTIVE RELIEF

INTRODUCTION

The Plaintiff, James Cintolo, R.N., brings this action under the Massachusetts Civil Rights Act, M.G.L. c. 12, §§ 11H and 11I; M.G.L. c. 231A; and 42 U.S.C. § 1983, to obtain injunctive and declaratory relief against the Board of Registration in Nursing and the Commissioner of that body to prevent undue and unlawful restraint on the exercise of his state and federal rights to free speech under Article XVI of the Massachusetts Declaration of Rights, as Amended by Article LXXVII and the First and Fourteenth Amendments of the United States Constitution, by threat of deprivation of his vested property interest in his license to practice nursing in the Commonwealth.

JURISDICTION AND VENUE

- Jurisdiction for violations of Nurse Cintolo's civil rights is conferred on this Court by M.G.L. c. 12, §§ 11H and 11I and the law of the Supreme Court of the United States governing jurisdiction of actions brought under 42 U.S.C. § 1983. *See Haywood v. Drown*, 556 U.S. 729, 731 (2009); *Patsy v. Board of Regents of Florida*, 457 U.S. 496, 506-07 (1982); *Maine v. Thiboutot*, 448 U.S. 1, 3 & n.1 (1980).

2. This Court has jurisdiction to hear the Plaintiff's claims for further declaratory relief pursuant to G.L. c. 231A, §§ 1-2.

3. Pursuant to c. 12, § 11H, venue properly lies in Suffolk County, the county in which the conduct complained of occurred and where the Defendants have their principal place of business.

PARTIES

4. The Plaintiff, James Cintolo, is a resident of 15 Louise Ave. in Methuen, MA 01844. He is empowered to bring this civil action for relief by M.G.L. c. 12, § 11I.

5. The Defendant, the Massachusetts Board of Registration in Nursing ("BORN") has a principal place of business at 250 Washington St., Boston, MA 02108.

6. The Defendant, Margret Cooke, is the Chair of the BORN with a principal place of business at 250 Washington St., Boston, MA 02108.

FACTS

7. The Plaintiff is a registered nurse licensed to practice his specialty in the Commonwealth of Massachusetts with a registration number of RN2331238.

8. The Plaintiff operates an account on the social media website Twitter under his own name with the designation @healthbyjames.

9. The Plaintiff uses his social media account to engage in discourse on a wide array of medical and medicine-adjacent subjects, including discussion of the long-term health effects of SARS-CoV-2 ("COVID-19"), vaccine efficacy, vaccine side effects, public health policy, and politics.

10. On January 23, 2023, an anonymous individual, filing under the pseudonym Lina Artemis, communicated a complaint to the BORIN which stated, in its entirety “I would like to report James Cintolo to your board, a registered nurse who is spreading massive medical misinformation on his Twitter account to a massive audience every single day.”
11. As a result of this unsigned, anonymous complaint, on February 6, 2023, Defendant BORN and Defendant Cooke, purporting to act under the color of the Code of Massachusetts Regulations, through their agent Katelyn Vaughn, opened a complaint and investigation against Plaintiff’s nursing license and demanded a written response. The notice of complaint asserts, without basis or citation to any authority, that Plaintiff violated the laws and regulations governing nursing practice by exercising his right to free speech online.
12. Due to fear created by the Defendants’ threats to his vested property interest in his nursing license, Plaintiff has ceased posting on Twitter. His silence has been coerced by the Defendants as a result of their threat and intimidation to subject him to unwarranted, unjustifiable disciplinary action and the specter of the deprivation of his property. This harm, the deprivation of his right to engage in free speech, is ongoing.

STATEMENT OF CLAIMS

COUNT I

**Declaratory Judgment Pursuant to M.G.L. c. 231A, § 1,
That the Investigation Constitutes an Unlawful Administrative Action**

13. The Plaintiff repeats and reaffirms Paragraphs 1 through 11 as if they were set forth fully herein.
14. The investigation at issue is predicated on a complaint that Nurse Cintolo has spread “medical misinformation” on Twitter.

15. The BORN has determined that a complaint which alleges the spreading of medical misinformation on Twitter constitutes an allegation that Nurse Cintolo has violated the laws and regulations governing nursing practice.
16. This interpretation of the complaint at issue is an actual controversy susceptible to challenge under c. 231A, §§ 1-2, as an independent administrative action. *See Villages Dev. Co. v. Sec'y of the Exec. Off. of Envi. Affairs*, 410 Mass. 100, (1991) (“[i]t is settled that such relief is available to challenge the legality of administrative action even though the action concerns neither adjudication nor rule making”) and cases cited.
17. There is no basis in any statute or the Code of Massachusetts Regulations, 244 CMR 3.00 *et seq.*, to support the interpretation by the BORN that an allegation of spreading medical misinformation rises to the level of an allegation of a violation of the laws and regulations governing nursing practice. This interpretation is arbitrary and capricious.
18. An actual controversy exists where the interpretation in question and resulting investigation prevents Nurse Cintolo from exercising his secured right to freedom of speech protected by Article XVI of the Massachusetts Declaration of Rights and the First and Fourteenth Amendments to the United States Constitution and his right to practice his lawful occupation protected by the Fourteenth Amendment to the United States Constitution and impairs his exercise of those same rights.
19. The Defendant BORN owes a duty to nurses, including Nurse Cintolo, as it is charged with the administration and interpretation of its regulations. 244 CMR 3.00 *et seq.*

20. Nurse Cintolo's right to freedom of speech protected by Article XVI of the Massachusetts Declaration of Rights and the First and Fourteenth Amendments to the United States Constitution and his right to practice his lawful occupation protected by the Fourteenth Amendment to the United States Constitution have been and will continue to be significantly affected by the interpretation that an allegation that spreading medical misinformation on Twitter constitutes a violation of the laws and regulations governing nursing practice.
21. As of the filing of this Complaint, there are no identifiable necessary parties to this claim pursuant to M.G.L. c. 231A, § 8.
22. There are no alternate administrative remedies which would permit Nurse Cintolo to challenge the BORN's determination that an allegation of spreading medical misinformation rises to the level of an allegation of a violation of the laws and regulations governing nursing practice sufficient to initiate and maintain an investigation, and this issue will evade judicial review if not addressed by this Court.
23. The harm inflicted by the BORN's investigation has caused Nurse Cintolo to incur legally cognizable injury by way of incurring expense in responding to a frivolous complaint and subjecting him to legal compulsion, restraint on his license, and threat of further disciplinary action, *see* 244 CMR 7.03 *et seq.*, impairing his right to practice his lawful profession, secured by the Fourteenth Amendment to the United States Constitution. He has incurred and will continue to incur considerable expense if the BORN was incorrect in its determination that an allegation of spreading medical misinformation on Twitter constitutes a violation of the laws and regulations governing nursing practice.

24. Accordingly, Nurse Cintolo has met the predicates to bring an action for declaratory relief, and he requests this Court make a finding that Nurse Cintolo has a secured right to exercise his freedom of speech and the BORN cannot, as a matter of law, determine that the exercise of this right on Twitter constitutes a violation of the laws and regulations governing nursing practice in the Commonwealth on which the agency can predicate an investigation into his license, thereby impairing his secured right to practice his lawful profession.

COUNT II
Violation of the Massachusetts Civil Rights Act,
M.G.L. c. 12, §§ 11H and 11I, against Margret R. Cooke

25. The Plaintiff repeats and reaffirms Paragraphs 1 through 11 as if they were set forth fully herein.

26. Defendant Cooke interfered or attempted to interfere with the Plaintiff's exercise or enjoyment of rights (i) secured by the Constitution and laws of the United States and (ii) secured by the Constitution and laws of the Commonwealth. These rights are secured by the First Amendment to the United States Constitution and Article XVI of the Massachusetts Declaration of Rights.

27. Defendant Cooke interfered or attempted to interfere with these rights through the use of threats, intimidation, and coercion.

28. As there is no basis to find that the BORN has any power to regulate or restrict the speech of the Nurses of the Commonwealth as part of its police power over the occupation of nursing, *see generally* 244 CMR 9.00 *et seq.* (Standards of Conduct), Defendant Cooke's use her office to deprive a nurse of his right to freely express his individual viewpoints constitutes interference by the Defendant as an individual acting in their own capacity to deprive and individual of a clearly established constitutional right of which any reasonable

person would be aware, depriving her of qualified immunity. *See Mitchell v. Forsyth*, 472 U.S. 511, 517 (1985); *Breault v. Chairman of the Bd. of Fire Commrs. of Springfield*, 401 Mass. 26, 31 (1987), *cert. denied sub nom. Forastiere v. Breault*, 485 U.S. 906 (1988).

29. Defendant Cooke caused significant harm to the Plaintiff.
30. The harm caused by Defendant Cooke is ongoing.
31. Defendant Cooke's actions therefore violated the Massachusetts Civil Rights Act, c. 12, §§ 11H, 11I.

COUNT II
Deprivation of Rights by a Person Acting Under the Color of Law,
42 U.S.C. § 1983, against Margret Cooke

32. The Plaintiff repeats and reaffirms Paragraphs 1 through 11 as if they were set forth fully herein.
33. Defendant Cooke, acting under color of the laws and regulations of the Commonwealth of Massachusetts, through threat of unlawful deprivation of property, deprived the Plaintiff of his right to exercise free speech secured by the First Amendment of the United States Constitution.
34. Defendant Cooke deprived Plaintiff of this right through the use of threats, intimidation, and coercion.
35. As there is no basis to find that the BORN has any power to regulate or restrict the speech of the Nurses of the Commonwealth as part of its police power over the occupation of nursing, *see generally* 244 CMR 9.00 *et seq.* (Standards of Conduct), Defendant Cooke's use her office to deprive a nurse of his right to freely express his individual viewpoints constitutes interference by the Defendant as an individual acting in their own capacity to deprive and individual of a clearly established constitutional right of which any reasonable

person would be aware, depriving her of qualified immunity. *See Jordan v. Carter*, 428 F.3d 67, 74-76 (1st Cir. 2005); *Wagner v. City of Holyoke*; 404 F.3d 504, 508-09 (1st Cir. 2005); *see also Eves v. LePage*, 927 F.3d 575, 583 (1st Cir. 2019) (*en banc*) (Thompson, J., concurring) (“officials lose their qualified immunity, ‘even in novel factual circumstances,’ if they committed a ‘clear’ constitutional violation”) (citations omitted).

36. Defendant Cooke caused significant harm to the Plaintiff.
37. The harm caused by Defendant Cooke is ongoing.
38. Defendant Cooke’s actions therefore subject her to liability under 42 U.S.C. § 1983.

PRAYER FOR RELIEF

1. Enter declaratory judgment pursuant to M.G.L. c. 231A, §§ 1-2 that:
 - a. BORN’s determination that an allegation of spreading medical misinformation on Twitter rises to the level of an allegation of a violation of the laws and regulations governing nursing practice sufficient to initiate and maintain an investigation exceeds the agency’s statutory and regulatory authority;
 - b. The determination that a complaint that a nurse is spreading medical misinformation on Twitter reflects a violation of the laws and regulations governing nursing in the Commonwealth is arbitrary and capricious because the conduct in question constitutes protected speech and does not provide a basis which would permit BORN to initiate an investigation pursuant to 244 CMR 7.02;
 - c. The investigation constitutes an administrative action which is in violation of the Constitution of the United States and the Constitution of the Commonwealth of Massachusetts;

- d. The investigation is enjoined must not continue; and
 - e. Nurse Cintolo is under no obligation to respond to the complaint and investigation.
2. Issue an order of notice on the Plaintiff's Application for Entry of a Preliminary Injunction and set this matter for hearing in the Suffolk County Superior Court.
 3. Issue a preliminary injunction prohibiting Defendant Cooke, her agent Katelyn Vaughn, and all others acting in concert with them or at their direction or encouragement from, directly or indirectly:
 - a. Threatening, intimidating, or coercing Nurse Cintolo or attempting to threaten, intimidate, or coerce him;
 - b. Pursuing any investigation into his nursing license predicated on complaints related to his exercise of free speech and expression, medical discourse, and political discourse;
 - c. Taking any action adverse to his nursing license or adverse to his property interest in his nursing license, including but not limited to the publishing of any complaint against his license;
 - d. Interfering with his right to free speech and expression;
 - e. Taking any retaliatory action against him for the filing of this Complaint;
 - f. Preventing or attempting to prevent him from seeking recourse under the security and protections of the United States Constitution, the laws of the United States, the Constitution of the Commonwealth, or the laws of the Commonwealth; and
 - g. Encouraging or causing any other person to engage in conduct prohibited by paragraphs (a)-(f) above, or assisting any person in engaging in such conduct.

4. Include in the preliminary injunction order the following statement pursuant to M.G.L. c. 12, § 11J: "VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE."
5. Issue a permanent injunction in accordance with the terms of the preliminary injunction.
6. Award civil penalties, compensatory damages, costs, and fees.
7. Grant such relief as the Court determines is just and proper.

Respectfully submitted by the Plaintiff,

James Cintolo, R.N.,
By His Attorneys,

/s/Sean E. Capplis
Sean E. Capplis, BBO #634740
Timothy Vaughan Malley, BBO #705603
CAPPLIS, CONNORS & CARROLL, PC
18 Tremont Street, Suite 330
Boston, MA 02108
T: 617-227-0722
F: 617-227-0772
scapplis@ccclaw.org
tmalley@ccclaw.org

DATE: March 8, 2023