

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:

Clarence Butler Alston, III,

Debtor.

Clarence Butler Alston, III,

Plaintiff,

v.

State Board of Medical Examiners of South  
Carolina and Hartwell Z. Hildebrand, M.D.,

Defendants.

C/A No. 98-05250-W

Adv. Pro. No. 98-80001-W

**ORDER**

Chapter 7

**FILED**

O'clock & min. M

JAN 19 1999

BRENDA K. ARGOE, CLERK  
United States Bankruptcy Court  
Columbia, South Carolina (6)

**ENTERED**

JAN 19 1999

**J.G.S.**

THIS MATTER comes before the Court upon the Plaintiff's motion for the issuance of a preliminary injunction to enjoin the temporary suspension of the Plaintiff's medical license by the Defendant State Board of Medical Examiners of South Carolina as a violation of 11 U.S.C. § 524 and § 525. After consideration of all the evidence the Court will grant the Plaintiff's motion.

On February 6, 1995, the Debtor entered into an agreement with the Defendant State Board of Medical Examiners of South Carolina wherein the Debtor agreed to submit to periodic alcohol and/or drug screening analysis as a condition for his continued license to practice medicine. The alcohol and/or drug screening was to be performed by NCPS, Inc., the required and exclusive provider for such services for the State Board of Medical Examiners of South Carolina.

On June 19, 1998, the Debtor filed a Chapter 7 petition. On November 3, 1998, the

Debtor received a discharge of his debts including the debt owed to NCPS, Inc. for fees associated with previous alcohol and/or drug screening services. Evidently because of the discharge of indebtedness of these fees, the Debtor was terminated by NCPS, Inc. from further participation in its program. Upon being advised of the termination by NCPS, Inc., on November 20, 1998, the Defendant State Board of Medical Examiners of South Carolina issued the subject order of temporary suspension of the Debtor's medical license. Thereafter, the Debtor paid the discharged debt and his eligibility to participate in the alcohol and/or drug screening program was restored.

As it appears that the reason for the Order temporarily suspending the license of the Debtor by the State Board of Medical Examiners of South Carolina on November 20, 1999 was because he was not participating in the NCPS, Inc. alcohol and/or drug screening program, which was due to the Debtor's failure to pay the discharged fees, and as it now appears that the Debtor is being reinstated to the program and that the Debtor has agreed to submit to testing to confirm that he is presently alcohol and drug free and that his abilities are not impaired, injunctive relief appears appropriate.

Injunctive relief is an extraordinary remedy and is to be granted only if the moving party clearly establishes entitlement to the relief sought. Hughes Network v. Interdigital, 17 F.3d 691 (4th Cir. 1994) and Federal Leasing, Inc. v. Underwriters at Lloyd's, 650 F.2d 495 (4th Cir. 1981). The Fourth Circuit has recently reiterated the proper standard for granting a preliminary injunction:

In this circuit, determining whether a preliminary injunction should be granted requires the consideration of four factors. These factors are: 1) the likelihood of irreparable harm to the plaintiff if the

preliminary injunction is not granted; 2) the likelihood of harm to the defendant if the preliminary injunction is granted; 3) the likelihood that plaintiff will succeed on the merits; and 4) the public interest. Blackwelder Furniture Co. v. Seilig Manufacturing co., Inc., 550 F.2d at 195-96. These factors are not, however, all weighted equally. The "balance of hardships" reached by comparing the relevant harms to the plaintiff and defendant is the most important determination, dictating, for example, how strong a likelihood of success showing the plaintiff must make. See Rum Creek Coal Sales, Inc. v. Caperton, 926 F.2d 353, 359 (4th Cir.1991).

Hughes Network v. Interdigital, 17 F.3d at 693.

In balancing the hardships of this case and considering the totality of the circumstances, it appears that a preliminary injunction is warranted until a further ruling can be made by the Court in the adversary proceeding. Therefore, it is

**ORDERED**, that the Plaintiff's request for a preliminary injunction is granted and the Defendant State Board of Medical Examiners of South Carolina is prohibited from the continued temporary suspension of the Plaintiff's medical license based upon the Order of November 20, 1998 until the trial in the matter or until further Order of the Court.

**AND IT IS SO ORDERED!**

Columbia, South Carolina,  
1/19, 1999.

  
UNITED STATES BANKRUPTCY JUDGE

**CERTIFICATE OF MAILING**

The undersigned deputy clerk of the United States  
Bankruptcy Court for the District of South Carolina hereby certifies  
that a copy of the document on which this stamp appears  
was mailed on the date listed below to:

JAN 19 1999

~~DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE~~

JUDY G. SMITH

Deputy Clerk

*Osborne  
Eloff*