

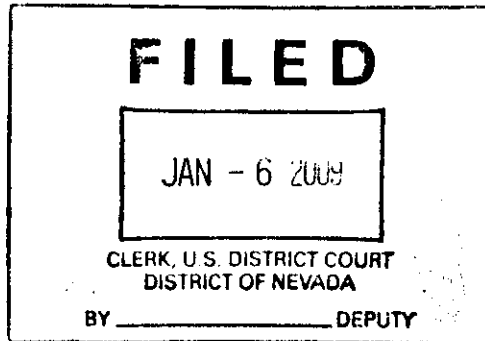
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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

RICHARD M. CHUDACOFF, M.D., )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
UNIVERSITY MEDICAL CENTER OF )  
SOUTHERN NEVADA, a political )  
subdivision of Clark County, )  
State of Nevada, COUNTY )  
COMMISSIONERS BRUCE L. WOODBURY, )  
TOM COLLINS, CHIP MAXFIELD, )  
LAWRENCE WEEKLY, CHRIS )  
GIUNCHIGLIANI, SUSAN BRAGER, )  
AND RORY REID, )  
KATHLEEN SILVER, an individual, )  
THE MEDICAL AND DENTAL STAFF OF )  
THE UNIVERSITY MEDICAL CENTER OF )  
SOUTHERN NEVADA, an independent )  
subdivision of University Medical )  
Center of Southern Nevada, JOHN )  
ELLERTON, M.D., an individual, )  
MARVIN J. BERNSTEIN, M.D., an )  
individual, DALE CARRISON, M.D., )  
an individual, DONALD ROBERTS, )  
M.D., an individual, DOE )  
Defendants 1 through X, inclusive; )  
and ROE Corporations, A through Z, )  
inclusive, )  
 )  
Defendants. )

2:08-CV-863-ECR-RJJ

PRELIMINARY INJUNCTION



On November 21, 2008, Plaintiff filed an Emergency Motion (#55) for Temporary Restraining Order ("P.'s EM for TRO"), which this Court denied (#56) on November 24, 2008, because the motion (#55)

1 did not comply with Fed. R. Civ. Pro. 65. We stated that the motion  
2 (#55) would be treated as a motion for preliminary injunction.

3 Plaintiff re-filed the motion (#57) with the appropriate  
4 documentation and affidavits on November 25, 2008, and this Court  
5 granted (#58) the TRO on November 26, 2008. The Court granted (##  
6 69, 78) extensions to the TRO on December 9, 2008, and December 22,  
7 2008, which kept the TRO in effect until Tuesday, January 6, 2008,  
8 at 5:00 p.m.

9 On December 15, 2008, Defendants filed an Opposition (#71)  
10 ("D.s' Opp.") to the motion (#55). Plaintiff had until December 23,  
11 2008, to file a Reply in support of the motion for preliminary  
12 injunction; no Reply was filed.

13 On January 5, 2009, the Court held a hearing, permitting the  
14 parties to present evidence and argument.

15 The motion for preliminary injunction (#55) is ripe. We  
16 granted the motion from the Bench on January 6, 2009. We based our  
17 ruling on the parties' briefs and their arguments at the hearing.  
18 This written order outlines briefly the reasons for granting the  
19 Preliminary Injunction.

20 **Preliminary Injunction Standard**

21 A party seeking a preliminary injunction must meet one of two  
22 tests: traditional or alternative. Stanley v. Univ. of S. Cal., 13  
23 F.3d 1313, 1319 (9th Cir. 1994). The traditional test requires a  
24 plaintiff to show the following: (1) it will probably prevail on the  
25 merits; (2) it will suffer irreparable injury if injunctive relief  
26 is not granted; (3) in balancing the equities, the defendant will

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1 not be harmed more than the plaintiff is helped by the injunction;  
2 and (4) granting the injunction is in the public interest. Id.

3 In the alternative, a court may issue a preliminary injunction  
4 if the plaintiff shows either (1) "a combination of probable success  
5 on the merits and the possibility of irreparable injury," or (2)  
6 "that serious questions are raised, and the balance of hardships  
7 tips sharply in his favor." Id. Although phrased as such, the  
8 alternative test is less an either/or formulation as it is a type of  
9 sliding scale. The two prongs represent "'extremes of a single  
10 continuum,' rather than two separate tests." Sun Microsystems,  
11 Inc. v. Microsoft Corp., 188 F.3d 1115, 1119 (9th Cir. 1999)  
12 (quoting Sega Enters. v. Accolade, Inc., 977 F.2d 1510, 1517 (9th  
13 Cir. 1992)). That is, the more the balance of hardships tips in  
14 favor of the plaintiff, the less probability of success must be  
15 demonstrated. Walczak v. EPL Prolong, Inc., 198 F.3d 725, 731 (9th  
16 Cir. 1999). Whichever test is applied, a preliminary injunction  
17 should only be granted if the movant does not have an adequate  
18 remedy at law. Stanley, 13 F.3d at 1320 (citing Beacon Theatres,  
19 Inc. v. Westover, 359 U.S. 500, 506-07 (1959)).

20 It appears that Defendants have suspended once, and are intent  
21 on suspending again, Plaintiff's privileges to practice medicine at  
22 the University Medical Center. Further, Defendants have reported,  
23 and are intent on reporting again, these actions to the National  
24 Practitioner Data Bank.

25 At the hearing, Plaintiff argued that he was not allowed a fair  
26 opportunity to be heard in front of the Medical Executive Committee  
27 before that Committee suspended his privileges based on allegations  
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1 that his application for medical privileges was false. While  
2 suspending a practitioner's privileges without such a hearing may be  
3 allowable in some circumstances - that is, with a "summary  
4 suspension," - here, the record shows that Plaintiff's suspension  
5 was not a summary suspension. Thus, it seems that Plaintiff should  
6 have been accorded notice and an opportunity to be heard prior to  
7 being suspended. In light of this finding, we conclude that serious  
8 questions exist as to the procedures that Defendants' utilized in  
9 effecting this suspension.

10 Moreover, Plaintiff will likely suffer irreparable injury if  
11 the suspension is reported to the National Practitioner Data Bank.  
12 Once reported, that bell cannot be un-rung. Defendants, however,  
13 face limited hardship, if any, if a preliminary injunction is  
14 granted. Defendants are only enjoined from reporting Plaintiff to  
15 the National Practitioner Data Bank with respect to his allegedly  
16 false application for hospital privileges.

17 Under the alternative test for preliminary injunction, the  
18 motion (#55) is well taken. Plaintiff has raised serious questions  
19 as to the merits of his claim, and the balance of hardship tips  
20 sharply in his favor.

21 **IT IS HEREBY ORDERED** that the motion (#55) for preliminary  
22 injunction is **GRANTED**, pending further order of the Court. No  
23 security need be posted under Fed. R. Civ. Pro. 65(c).

24 **IT IS FURTHER ORDERED** that Defendants and any and all other  
25 persons or entities in active concert with them are hereby enjoined  
26 and restrained from threatening to or actually filing a report with  
27 the National Practitioner Data Bank, as well as the Nevada Board of  
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1 Medical Examiners and any other hospitals or health care  
2 organizations regarding the suspension of Plaintiff's medical staff  
3 privileges as a result of certain allegations related to the  
4 accurateness of Plaintiff's application for medical staff  
5 privileges.

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7 DATED: January 6, 2009.

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9 UNITED STATES DISTRICT JUDGE

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