

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
ATHENS DIVISION

THE NATIONAL ASSOCIATION OF )  
BOARDS OF PHARMACY, )

Plaintiff, )

v. )

THE BOARD OF REGENTS OF THE )  
UNIVERSITY SYSTEM OF GEORGIA )  
and FLYNN WARREN, JR., )

Defendants. )  
\_\_\_\_\_ )

CIVIL ACTION NO. 3:07-CV-84 (CDL)

**FILED UNDER SEAL**

**SECOND DECLARATION OF CARMEN CATIZONE**

I, Carmen Catizone, make the following Declaration in response to the Court's Order to Show Cause of August 10, 2007 in the above-styled matter.

1. I am of legal age, I am competent to give this Declaration, and I make this Declaration on the basis of my personal knowledge of the facts set forth herein.

2. I continue to be the Executive Director/Secretary (referred to as Executive Director) of the National Association of Boards of Pharmacy ("NABP"), a position I have held since 1988. I previously submitted a Declaration in this action and affirm the facts set forth therein were true and correct when that Declaration was submitted and remain true and correct as of my execution hereof.

3. As more fully set forth herein, although I understood that this case had been filed under seal and that the Temporary Restraining Order and Seizure and Impoundment Order was obtained *ex parte* and also was under seal, I did not appreciate that the written announcement issued by NABP or my oral comments at the

NABP/AACP District 3 meeting were in violation of any Court Order, including but not limited to, those Orders issued on August 3, 2007. I did not realize that NABP was prohibited from releasing such information and wrongly assumed that the restriction on the release of information pertained only until the seizure was executed. I prepared and released the written announcement without the prior review of the announcement by legal counsel, which is normal operating procedure for such NABP actions. The failure to have the written announcement reviewed by legal counsel prior to release also occurred in part because of a set of unfortunate circumstances. The written announcement was not reviewed prior to release because NABP's in-house legal counsel was on vacation, NABP's trial counsel in Atlanta was on site at the University of Georgia with the U.S. Marshals, and NABP's outside legal counsel was away on a business trip and not available.

4. I and the NABP apologize to each Defendant and to the Court for issuing the written announcement and for making the oral comments, which I now understand were in contradiction to the Orders of the Court. It was not my intention to usurp or circumvent the authority of the Court in any manner whatsoever. Rather, my actions were the result of mistaken beliefs that resulted from failures or lack of communications resulting from the time pressures under which we were operating and the unfortunate unavailability of individuals at critical times. I and the NABP are greatly embarrassed by and deeply regret that we have acted inappropriately in any manner, and pledge to the Court and to Defendants that we will not do so again.

5. To more fully set forth what transpired leading up to the NABP's release of the written announcement and my oral comments at the NABP/AACP District 3 meeting, I provide the court the following additional information and history.

6. In January 2000, NABP hired Moira Gibbons as an accreditation and licensure manager, a position in which she oversaw the NABP's online pharmacy and other accreditation programs, as well as the NABP's pharmacists licensure transfer program. In May 2006, she assumed the position of the NABP's Legal Affairs Senior Manager, and in that position she reviews and drafts NABP contracts, monitors intellectual property registrations, communicates with NABP's outside counsel, and performs other day-to-day legal activities. Prior to joining NABP, Ms. Gibbons had served as a prosecuting attorney for the Department of Professional Regulation of the State of Illinois and primarily handled cases involving pharmacy licensees who violated professional practice regulations.

7. Prior to Ms. Gibbons becoming NABP's Legal Affairs Senior Manager, the legal affairs of NABP were primarily entrusted to Dale Atkinson of the firm of Atkinson & Atkinson, which is presently located in Evanston, Illinois. Since becoming NABP's Legal Affairs Senior Manager, Ms. Gibbons has worked with Mr. Atkinson on an as-needed basis to address specific legal matters of NABP.

8. In late July 2007, upon learning of the most recent activities of Flynn Warren, I requested that Ms. Gibbons consult with Mr. Atkinson and recommend a course of action necessary to prevent the dissemination of actual NAPLEX examination questions to candidates in advance of the NAPLEX exam and to otherwise protect the integrity of the NAPLEX exam. Ms. Gibbons and Mr. Atkinson contacted the firm of

Smith, Gambrell & Russell, LLP, in Atlanta, Georgia, with whom we had previously consulted in March 1995 on a prior similar matter also involving Mr. Warren, the University of Georgia School of Pharmacy, and the Board of Regents of the University System of Georgia (“Board of Regents”).

9. After conferring with Smith, Gambrell & Russell, Ms. Gibbons and Mr. Atkinson recommended that NABP institute legal action against Mr. Warren and the Board of Regents to accomplish the foregoing objectives. For those reasons stated in my first Declaration, NABP believed it necessary to file the action against Mr. Warren and the Board of Regents under seal and to obtain an *ex parte* temporary restraining and impoundment order before the beginning of the District 3 Conference jointly sponsored by the American Association of Colleges of Pharmacy (“ACCP”) and NABP in Orlando, Florida on August 4, 2007. I requested that Ms. Gibbons assume responsibility for achieving such results, working with Mr. Atkinson and Smith, Gambrell & Russell.

10. Ms. Gibbons proceeded as I requested and worked with Smith, Gambrell & Russell to prepare the materials necessary to seek an *ex parte* temporary restraining and impoundment order before the beginning of the NABP/ACCP District 3 Conference. I worked directly with Mr. Atkinson to prepare my first Declaration, and he consulted with Smith, Gambrell & Russell and Ms. Gibbons before we finalized the same. I also reviewed the Complaint and thereafter executed the Verification thereto and I also reviewed the Memorandum in Support of the Application for TRO and Motion for Preliminary Injunction. I relied on Ms. Gibbons, Mr. Atkinson, and Smith, Gambrell & Russell to prepare the remaining documents, specifically the proposed Temporary Restraining Order and Seizure and Impoundment Order. As the volume of documents

filed in this action demonstrates, the task was substantial and was accomplished in a very concentrated and short period of time.

11. After the issuance of the temporary restraining and impoundment order on August 3, 2007, I understand that our trial counsel, Rodgers Lunsford of Smith, Gambrell & Russell, spoke with Ms. Gibbons and Mr. Atkinson and informed them of the additional limitations inserted by the Court in the proposed temporary restraining and impoundment order.

12. On August 4, 2007, Ms. Gibbons left for a week's vacation and was inaccessible during such period by telephone or cell phone. Also on August 4, 2007, I traveled to Orlando, Florida, for the NABP/AACP District 3 Conference.

13. While attending the NABP/AACP District 3 meeting in Orlando, Florida I hand wrote an announcement for future release to the state boards of pharmacy and colleges and schools of pharmacy. The announcement outlined my understanding of the events that occurred on Monday, August 6 involving the University of Georgia College of Pharmacy and Flynn Warren.

14. I prepared the memorandum because of continuing concerns I had regarding the integrity of the NAPLEX and MPJE examinations and the further danger to the public from students receiving actual NAPLEX exam questions prior to the exam from Mr. Warren and his review program and materials. My concerns resulted from my belief that the activities of Mr. Warren and the University of Georgia could continue without interruption despite the issuance of the temporary restraining order by the Court and the impoundment under the supervision of the U.S. Marshals. I also believed that boards of pharmacy could be licensing individuals who had directly participated in

actions to compromise the NAPLEX exam and who had fraudulently and invalidly passed the examinations necessary to demonstrate minimum competence for licensure. Absent a valid assessment through uncompromised NAPLEX and MPJE examinations, individuals who should not have been licensed, and who could endanger the public health, would continue to gain licensure.

15. The activities that Mr. Warren and the University of Georgia engaged in dramatically impacted the security and integrity of the NAPLEX and MPJE examinations. Every day their activities continued resulted in further irreparable damage to the NAPLEX exam and the assessment of candidates seeking licensure as pharmacists. It was my intent to legitimately inform other colleges and schools of pharmacy that such activities should not occur and must be halted immediately.

16. Because of my continuing beliefs, concerns and misunderstanding of the effect of the Court's Orders of August 3, 2007, I caused the written announcement to be placed on our normal distribution list for release which included distribution to the executive officers of the state boards of pharmacy, to the administration of colleges and schools of pharmacy, to individual members of the state boards of pharmacy (if email addresses were available to us), to pharmacy organizations, to pharmacy trade journals (such as Drug Topics), and to limited other print media. The announcement was also placed on our website at [www.nabp.net](http://www.nabp.net), but was removed the next day.

17. I was also approached at the District 3 Conference by deans and faculty of various colleges of pharmacy and asked to comment on what was happening with the NAPLEX and MPJE examinations. The deans, faculty, and some other individuals in attendance at the meeting had previously learned of the seizure and impoundment at the

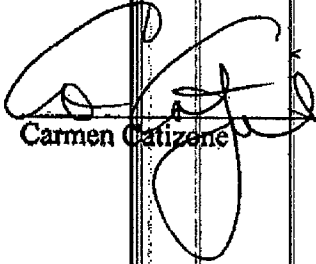
University of Georgia from two sources – faculty members at the University of Georgia, and the distribution of the written announcement to the colleges and schools of pharmacy. I did not interrupt the proceedings as reported by the University of Georgia but was asked by Dean Ken Roberts of the University of Kentucky and other faculty members of the colleges and schools in attendance to address the matter.

18. I spoke for approximately 5 minutes, summarized in general the information contained in the written announcement, and emphasized throughout that I could not discuss the specifics of the matter until we spoke further with our attorneys. I answered some of the questions posed to me about the matter and whether the NAPLEX or MPJE exams would continue to be administered. I mostly spoke about events that were generally known outside of the seizure of materials at the University of Georgia and were available from web sites and faculty members.

19. Since the information was released, I have received only one call from the press, a local paper in Athens, Georgia. I did not respond to the call. I am the only spokesperson and media contact for NABP as directed in the policies of the NABP maintained and implemented by the NABP Executive Committee. Further, I issued a directive to all NABP employees that the suit and impoundment were confidential, could not be discussed with any third party under any circumstance, and that any inquires must be directed to me. In the event that a media representative did make personal contact with me, I would have responded that NABP had no comment. I, and NABP, have not received any contacts or requests for information from the media or other individuals or organizations other than that of the Athens newspaper.

20. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 17 day of August, 2007.

  
Carmen Catizena