

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

THE NATIONAL ASSOCIATION OF
BOARDS OF PHARMACY,

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Plaintiff

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vs.

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CASE NO. 3:07-CV-84 (CDL)

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

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Defendants

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O R D E R

The Court held a hearing in the above captioned case on August 21, 2007. At the conclusion of that hearing, the Court made the following rulings and observations.

In light of Plaintiff's violation of the Court's previous ex parte seizure order, the Court finds that Plaintiff has created the false impression that the Court has made certain final factual and legal findings regarding Plaintiff's allegations in this case. The Court has made no such findings. There have been no final factual determinations by the Court and no findings of liability on behalf of any Defendant. Furthermore, the Court has made no findings that would question the quality of education provided by the University of Georgia College of Pharmacy; nor have any findings been made to question the competency of any licensed pharmacist who graduated from the University of Georgia College of Pharmacy's four year program, or

who attended the Board review course offered by the Postgraduate Continuing Education and Outreach Unit of the University of Georgia College of Pharmacy.

IT IS HEREBY ORDERED until further Order of the Court, the NABP is prohibited from making any disclosure or use of any information obtained solely as a result of or derived from the seizure except for the purposes of this case or internally for the purpose of ascertaining the integrity of the NAPLEX and/or MJPE. Thus, NABP may not use or disclose, except to the Court and the parties, the identity of any individual, entity or organization discovered solely as a result of or derived from the seizure, and may not take any action against any such individual, entity or organization as a result of information obtained by NABP solely during the course of or derived from the seizure.

The parties are directed not to destroy or spoil any potential evidence in this case. This includes any party causing material to be removed, erased or deleted from any internet site, bulletin board, chat room or similar site, which material mentions or refers to the NAPLEX or MJPE or comments on these examinations or any questions on these tests; provided, however, subject to the restriction in the immediate preceding paragraph on the use or disclosure of information obtained in the seizure, the NABP may send demand letters to and pursue claims against individuals and entities maintaining websites, bulletin boards, chat rooms or similar sites containing infringing

material or posting infringing material on any internet site, bulletin board, chat room or similar site, provided that the NABP must maintain an archival electronic copy (such as an ".mht" file) and a paper copy of such infringing material as of the date of such demand letter or its assertion of such claim.

Defendants have filed various motions to dismiss including a motion to dismiss for lack of subject matter jurisdiction. The Court must determine whether subject matter jurisdiction exists before proceeding with any other matters in this case. Therefore, the Court issued an oral ruling at the hearing establishing a limited scheduling order for the resolution of that motion. Since Plaintiff contends that resolution of Defendants' motion to dismiss for lack of subject matter jurisdiction requires the Court to consider matters beyond the face of the pleadings, the Court has provided the parties with a limited opportunity to conduct discovery related solely to the jurisdiction issue. Given the preliminary schedule established by the Court to address the threshold question of subject matter jurisdiction raised by Defendants, the Court has denied as moot Defendants' other pending motions to dismiss with the right to refile them depending upon the Court's ruling on the motion to dismiss for lack of subject matter jurisdiction. Therefore, the Court further rules that pursuant to Fed. R. Civ. P. 12(a)(4), any deadline by which the Defendants must file an answer to the Verified Complaint is hereby suspended until further Order of the Court.

SO ORDERED this 27th day of August, 2007.

S/Clay D. Land

CLAY D. LAND
UNITED STATES DISTRICT JUDGE