

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

National University of Health Sciences,
Plaintiff,
v.
Council on Chiropractic Education
Incorporated,
Defendant.

No. CV-18-01560-PHX-NVW
ORDER

Before the Court are Plaintiff’s Emergency Ex Parte Motion for Temporary Restraining Order (Lodged at Doc. 4) and Emergency Ex Parte Motion to File Action Under Seal (Doc. 1).

Plaintiff, a non-profit professional chiropractic school, sues Defendant, a national accrediting agency recognized by the Secretary of Education. On May 21, 2018, Plaintiff received notice from Defendant that Defendant was going to place Plaintiff’s accreditation on Probation. Defendant will publish its decision sometime this evening of May 23, 2018. Plaintiff alleges numerous defects in Defendant’s process and decision.

Plaintiff electronically filed this action and other papers beginning at 1:23 p.m. The rules require Plaintiff to deliver to the court for the judge’s use paper copies of the filings. Plaintiff has not done so. Plaintiff’s Emergency Ex Parte Motion for Temporary Restraining Order has several deficiencies and will be denied.

1. There is no basis for decision without notice to Defendant and opportunity

1 to be heard. Plaintiff's attorney did not certify "in writing any efforts made to give notice
2 and the reasons why it should not be required." Fed. R. Civ. P. 65(b)(1)(B).

3 There is no showing of "immediate and irreparable injury, loss, or damage [that]
4 will result to the movant before the adverse party can be heard in opposition." Fed. R.
5 Civ. P. 65(b)(1)(A). The injury described is not immediate. Rather, it is injury that
6 would result from loss of accreditation, if and after it occurs, not from Probation.

7 Plaintiff could have given Defendant and their counsel actual notice of this
8 intended temporary restraining order promptly upon deciding to file this action and seek
9 the restraining order. The failure to do so is unexplained and therefore unexcused.

10 The embarrassment of public awareness that adverse action has been taken
11 requiring relief does not distinguish this case from many others.

12 2. The lodged proposed temporary restraining order does not meet the
13 requirements of Rule 65(b)(2). That Rule requires that the temporary restraining order
14 "describe the injury and state why it is irreparable" and "state why the order was issued
15 without notice." The proposed order says, "This finding is based on the facts set forth in
16 NUHS's Emergency Ex Parte Motion for Temporary Restraining Order and
17 Memorandum in Support." Incorporation by reference does not satisfy Rule 65(b)(2) or
18 65(d)(1). The form of order says nothing about "why the order was issued without
19 notice."

20 3. The Emergency Ex Parte Motion to File Action Under Seal (Doc. 1) does
21 not demonstrate the high showing necessary to litigate a case out of public scrutiny.
22 Plaintiff does not even discuss the standard for sealing. The Motion is in effect a request
23 to litigate this entire case under seal. There is more than the usual public interest in
24 transparency in this case than most.

25 Moreover, no effort is made to show why sealing should be ordered without
26 Defendant having an opportunity to be heard in opposition. Again, Plaintiff does not
27 even discuss why sealing should be ordered ex parte.

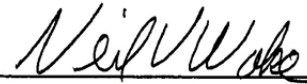
28 4. The rules empower the Court to give prompt litigation and resolution. A

1 preliminary injunction can be consolidated with final trial on the merits. Fed. R. Civ. P.
2 65(a)(2). This case could be resolved before the feared harm becomes serious, even
3 assuming Defendant's actions are unlawful.

4 IT IS THEREFORE ORDERED that Plaintiff's Emergency Ex Parte Motion for
5 Temporary Restraining Order (Lodged at Doc. 4) is denied.

6 IT IS FURTHER ORDERED that Plaintiff's Emergency Ex Parte Motion to File
7 Action Under Seal (Doc. 1) is denied. The Clerk shall file this case in open court.

8 Date: May 23, 2018.

9
10 

11 _____
12 Neil V. Wake
13 Senior United States District Judge
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28