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22ND JUDICIAL CIRCUIT
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STATE OF MISSOURI)
) SS
CITY OF ST. LOUIS)

MISSOURI CIRCUIT COURT
TWENTY-SECOND JUDICIAL CIRCUIT
(City of St. Louis)

REPRODUCTIVE HEALTH SERVICES OF PLANNED PARENTHOOD OF THE ST. LOUIS REGION,	)	No. 1922-CC02395
Petitioner,	)	Division No. 6
vs.	)	
MICHAEL L. PARSON, et al.,	)	
Respondents.	)	

ORDER

The Court has before it Petitioner Reproductive Health Services of Planned Parenthood of the St. Louis Region's Motion for Preliminary Injunction. The Court now rules as follows.

As a preliminary matter, Respondents have argued that this Court should not issue a preliminary injunction in this case, because the Administrative Hearing Commission ("AHC") is the appropriate tribunal to hear this dispute. Respondent is correct that the AHC, and not the Circuit Court, has exclusive jurisdiction and authority to rule on any decision that denies the renewal of Petitioner's license. Section 197.221 RSMo provides that a party aggrieved by an official action of the Department of Health and Senior Services ("DHSS") may seek review with the AHC pursuant to

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Section 621.045 RSMo. Further, Section 621.035 RSMo allows the AHC to issue a stay of an agency action during the pendency of that review. However, at the time Petitioner filed this action, there had been no official action of the DHSS which the AHC could review. Petitioner thus asserts a claim in Count I of its Petition under Section 536.050 RSMo, for a declaratory judgment challenging the validity of regulation 19 C.S.R. 30-30.050(2)(I). Section 536.050 specifically provides, "The power of the courts of this state to render declaratory judgments shall extend to declaratory judgments respecting the validity of rules, or of threatened applications thereof, and such suits may be maintained against agencies whether or not the plaintiff has first requested the agency to pass upon the question presented." Section 536.050 relieves Petitioner of the requirement that it exhaust administrative remedies only if the Court determines that one or more of the paragraphs in Section 536.050.2 apply. The Court finds that Section 536.050.2 (1) RSMo applies to the allegations herein because AHC has no power to declare a regulation invalid. Monroe Cty. Nursing Home Dist. V. Dep't of Social Services., Div. of Med. Servs., 884 S.W. 2d 291, 293 (Mo. App. E.D. 1994).

Trial courts are allowed broad discretion as to preliminary injunctive relief. Furniture Manufacturing Corp. v. Joseph, 900

S.W.2d 642, 648 (Mo.App. W.D. 1995). The Court, in weighing a motion for a preliminary injunction, should weigh the movant's probability of success on the merits, the threat of irreparable harm absent the injunction, the balance between such harm and the injury inflicted by the injunction on other interested parties, and the public interest. State ex rel. Director of Revenue v. Gabbert, 925 S.W.2d 838, 839 (Mo. banc 1996). Although the Court is not ruling on the merits, a plaintiff must make some showing of a probability of success on the merits before a preliminary injunction will be issued. Id.

Regarding the probability of success on the merits, Petitioner argues that 19 C.S.R. 30-30.050(2)(I), as applied to its current application for a renewal of its license, conflicts with the procedures set forth in Chapter 197 of RSMo because the Respondent has not made a decision or official action as required by Section 197.221 RSMo. Section 197.215.2 RSMo provides that "Upon receipt of an application for a license, or the renewal thereof, the department *shall* issue or renew the license if the applicant and program meet the requirements established under sections 197.200 to 197.240." (Emphasis added.) Section 197.220 begins, "The department of health and senior services may deny, suspend or revoke a license *in any case in which the*

department finds that there has been a substantial failure to comply with the requirements of sections 197.200 to 197.240…." (Emphasis added.) Read together, the statutes provide that DHSS must renew the license if the applicant meets the requirements of the chapter, and may deny the license if there is a substantial failure to comply with the same requirements.

Section 197.293 RSMo sets forth the standards for determining compliance with regulatory standards. There is no dispute that DHSS followed the procedures under Section 197.293 after its inspection of Petitioner's facility in March, and issued a Statement of Deficiencies to Petitioner. There is also no dispute that the parties have agreed upon a plan of correction as to the deficiencies noted in that statement.

Respondents maintain that nonetheless they are unable to find that Petitioner has complied with all applicable requirements, because there is an ongoing investigation. Respondents cite 19 C.S.R. 30-30.050(2)(I) as their authority for continuing the investigation. 19 C.S.R. 30-30.050(2)(I) states that "No license shall be issued or renewed by the department until the department has inspected the facility and determined that it is in compliance with all requirements of applicable regulations and statutes."

Petitioner asserts that in the manner it is being used by Respondents, the regulation conflicts with the procedure set forth in Section 197.293 RSMo. The well-established rule is that regulations may be promulgated only to the extent of and within the delegated authority of the statute involved. Carr v. Dir. of Revenue, 799 S.W.2d 124, 126 (Mo.App. W.D. 1990). When there is a direct conflict or inconsistency between a statute and a regulation, the statute which represents the true legislative intent must necessarily prevail. Id.

This Court rejects Petitioner's argument that this regulation, 19 C.S.R. 30-30.050(2)(I), on its face conflicts with the statutory scheme herein. The plain language in this regulation is consistent with the statutory scheme under Chapter 197 RSMo. However, to the extent that Respondents are relying upon 19 C.S.R. 30-30.050(2)(I) to indefinitely delay the decision or official action on Petitioner's application for renewal of its license, it appears that the regulation conflicts with the procedure identified in Chapter 197 for the licensing of abortion facilities. The Court believes that there is a likelihood that Petitioner will succeed on this claim.

The second factor in determining whether a preliminary injunction should issue is the threat of irreparable harm absent

the injunction. Petitioner has demonstrated that immediate injury will occur to its facility if Petitioner's license is allowed to expire.

The third factor to consider is the balance between such harm and the injury inflicted by the injunction on other interested parties. Because the injunction merely maintains the status quo, and is not a ruling on the merits, the Court cannot say that the harm to other interested parties would be greater if injunctive relief is granted.

Finally, the Court must weigh the public interest in granting a preliminary injunction. Here, the public interest is heightened by the level of scrutiny this case has received and by the strong opinions expressed on both sides of the abortion debate. But, as the Court stated on the record that issue is not before the Court. What is before the Court is the request for injunctive/declarative relief regarding the license renewal application filed by the Petitioner. The public interest under such a request includes a public interest in the enforcement of duly enacted laws and validly promulgated regulations and does not favor one party over the other in this case.

The Court, after weighing the relevant factors, some but not all of which favor Petitioner's request for relief, finds that

Petitioner is entitled to a preliminary injunction. The primary purpose of a preliminary injunction, like that of a temporary restraining order, is to preserve the status quo until the trial court adjudicates the merits of the claim for a permanent injunction. St. Louis County v. Village of Peerless Park, 726 S.W.2d 405, 410 (Mo.App. E.D. 1987). ***It is important to note that this Court does not issue advisory opinions and thus issues no opinion as to whether Petitioner's application to renew its license should be approved or denied. The authority to make that decision rests exclusively with the Department of Health and Senior Services.***

There is a dispute between the parties regarding whether DHSS *must* make such a decision, or whether it may simply allow Petitioner's license to lapse. Respondents argue that Petitioner can appeal the lapse of their license to the AHC pursuant to §197.221 RSMo, which provides that a person may seek a determination by the AHC following a "failure to renew a license." However, §197.221 provides in full:

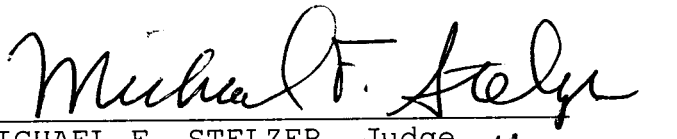
> *Any person aggrieved by an official action* of the department of health and senior services affecting the licensed status of a person under the provisions of sections 197.200 to 197.240, including the refusal to grant, the grant, the revocation, the suspension, or the failure to renew a license, may seek a determination thereon by the administrative hearing commission pursuant to the provisions of section 621.045 and it

> shall not be a condition to such determination that the person aggrieved seek a reconsideration, a rehearing, or exhaust any other procedure within the department of health and senior services.

(Emphasis added.) Plainly, DHSS must make an "official action" in order for Petitioner to be entitled to review. The Court does not believe that an "official action" can include non-action. In order to have a meaningful review at the AHC, there must be an official action- a decision- that can be reviewed. The Court finds that Petitioner is entitled to a decision from DHSS on its application for renewal of its license.

THEREFORE, it is Ordered and Decreed that Petitioner Reproductive Health Services of Planned Parenthood of the St. Louis Region's Motion for Preliminary Injunction is GRANTED. Petitioner's license shall not expire and shall remain in effect until further order of this Court. Further, Respondent Missouri Department of Health and Senior Services shall issue a decision on Petitioner's application for renewal of its license without undue delay but no later than Friday, June 21, 2019. This matter is set for a status conference on Friday, June 21, 2019 at 9:00 a.m.

SO ORDERED:



MICHAEL F. STELZER, Judge #4016

Dated: June 10, 2019