IN THE COURT OF COMMON PLEAS OF LUCAS COUNTY, OHIO

State ex rel., Right to Life Action Coalition of Ohio, et al.,	*	Case No. CI-202101942
Plaintiffs,	*	Judge Lori L. Olender
-vs-	*	
Capital Care of Toledo, LLC, et al.	*	
	*	JUDGEMENT ENTRY AND OPINION
Defendants.	*	

This cause is before the Court on Defendant's Motion to Dismiss under Civ. R. 12(B)(6). The Plaintiff's Complaint was originally filed in Wood County, Ohio on March 3, 2021. Jurisdiction was found to be improper in Wood County and the case was transferred to Lucas County with a filing date of May 4, 2021. Defendant's current motion before the Court was filed that same day. Plaintiff's filed their Memorandum in Opposition to the Defendant's Motion Dismiss on May7, 2021. Defendant's filed a reply on May 14, 2021. After careful review of the parties' arguments, the pleadings, and applicable law, the Court finds the Defendant's motion well taken and grants the same.

I. Background

On March 3, 2021 Right to Life Action filed a complaint in the Court of Common Pleas of Wood County. Their action is against Capital Care of Toledo and Ms. Amelia Stower. The Plaintiff's complaint states the following in the first paragraph:

> This action is brought In the name of the State of Ohio pursuant to Ohio Revised Code RC 4731.341(B) and asks this Court to enjoin the Defendant's from engaging in the practice of law without a license, which is prohibited by RC 4734.41, and from the unauthorized practice of medicine as defined within RC 4731.34, RC 2919.11, and RC 2929.123.

The case began in front of Judge Reger in Wood County. A TRO was filed by the Plaintiff's in that Court. A hearing was set, but Defendants did not appear. At that time the Court was unable to tell if notice had been received. Further it was ascertained that the plaintiff's had not filed with the State Medical Board as mandated to do pursuant to R.C. 4734.341(B).

At that point Judge Reger recused himself because he knew too much about the parties and the case. The filing was then moved to the docket of Judge Molly Mack.

Defendants, then filed a motion on March 16th asking that venue be transferred to Lucas County and that Court Cost and fees for filing in wrong venue should also be assessed. Defendant's further asked for a dismissal of the action. In a decision dated April 23rd, Judge Mack ordered the case be transferred to Lucas County and that it was up to this County to determine if Plaintiff's should bear any costs. Judge Mack made no mention of the Motion to Dismiss in her decision.

On May 7, 2021 Plaintiffs filed an opposition to the Motion to Dismiss alleging under Civil Rule 12(B)(6) that the Plaintiff's had no standing to bring this suit. Defendant then responded with a reply brief on May 14th.

II. Law and Analysis

"'[A] motion to dismiss for failure to state a claim upon which relief can be granted [pursuant to Civ.R. 12(B)(6)] is procedural and tests the sufficiency of the complaint'".[1] The complaint is to be construed in a light most favorable to the plaintiff, and material allegations are taken as admitted.[2] "[I]n determining what causes of actions a plaintiff has alleged in a complaint, [the court is] required to look to the 'actual nature or subject matter pleaded in the complaint,' rather than 'labels' used to identify a particular cause of action".[3] To sustain a motion to dismiss it must appear beyond doubt from the complaint that no set of facts exists which may entitled the plaintiff to the relief requested.[4]

The Court is required to examine only the four corners of the complaint.[5] "Outside evidentiary materials may not be considered".[6] When a Civ.R. 12(B)(6) motion presents matters which are outside of the pleading, the motion shall be treated as a motion for summary judgment and disposed of as provided in Rule 56.[7] Provided however, that the court shall consider only such matters outside the pleadings as are specifically enumerated in Rule 56, and all parties shall be given reasonable opportunity to present all materials made pertinent to such a motion by Rule 56.[8]

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[1] *Blausey v. VanNess*, 6th Dist. Ottawa NO. OT-10-041, 2011-Ohio-4680 at ¶9, quoting *State ex re. Hanson v. Guernsey Cty. Bd. of Commrs.*, 65 Ohio St.3d 545, 605 N.E.2d 378 (1992).
[2] *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 192, 532 N.E.2d 753 (1988).
[3] *Blackburn v. Am. Dental Ctrs.*, 2011-Ohio-5971, at **25, quoting *Funk v. Rent-All Mart, Inc.*, 91 Ohio St.3d 78, 80, 2001-Ohio-270, 742 N.E.2d 127.
[4] *O'Brien v. Univ. Community Tenants Union*, 42 Ohio St.2d 242, 327 N.E.2d 753 (1975).
[5] *Haas v. Village of Stryker*, 6th Dist. Williams No. WM-12-004, 2013-Ohio-2476, at ¶24.
[6] *McCallister d/b/a Clark Bros. Garage v. Village of New London*, 6th Dist. Huron NO. H-01-024, 2001 Ohio App. LEXIS 4683 (Oct. 19, 2001)(citation omitted).
[7] *Smith v. Candiello*, 6th Dist. Lucas No. L-15-1125, 2016-Ohio-844, ¶7 (internal citations and quotation marks omitted).
[8] *Id.*

III. Standing

The Court first turns to the issue of standing in this case. There is no case law in the State of Ohio that deals with a complaint being brought by a private entity or person based on R.C. 4731.341. The statute does read in part as follows:

> (B) The attorney general, the prosecuting attorney of any county in which the offense was committed or the offender resides, the state medical board, or any other person having knowledge of a person who either directly or by complicity is in violation of division (A) of this section, may on or after January 1, 1969, in accord with provisions of the Revised Code governing injunctions, maintain an action in the name of the state to enjoin any person from engaging either directly or by complicity in the unlawful activity by applying for an injunction in the Franklin county court of common pleas or any other court of competent jurisdiction. Prior to application for such injunction, the secretary of the state medical board shall notify the person allegedly engaged either directly or by complicity in the unlawful activity by registered mail that the secretary has received information indicating that this person is so engaged. Said person shall answer the secretary within thirty days showing either that the person is properly licensed or certified for the stated activity or that the person is not in violation of Chapter 4723. or 4731. of the Revised Code. If the answer is not forthcoming within thirty days after notice by the secretary, the secretary shall request that the attorney general, the prosecuting attorney of the county in which the offense was committed or the offender resides, or the state medical board proceed as authorized in this section.

The statute can be confusing in the respect that it appears to give any person, having knowledge of a violation, standing to file a complaint. That being said Defendants correctly point to the latter part of the statute which only allows the attorney general, prosecuting attorney, or the state medical board to proceed.

In a case cited and interpreted by both parties, *State Medical Bd.* v. *Mt. Sinai Hospital*, does maintain that it is the attorney general, prosecuting attorney, or the state medical board that can proceed under the section.[9] The Court also states "The statute clearly contemplates that a thirty-day response period be provided to the offender after written notice is given before a complaint requesting injunctive relief is maintained. This notice and answer requirement

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[9] *State Med. Bd. v. Mt. Sinai Hosp.*, 8 Ohio App.3d 105, 107, 456 N.E.2d 577 (8th Dist.1983).

eliminates any unnecessary litigation by providing the alleged offender an opportunity to show that he is not in violation of R.C. Chapter 4731. If the board receives a satisfactory response, there will be no reason remaining to maintain an action."[10]

Mt. Sinai, while not directly on point, does give direction that R.C. 4371.134 is not intended for just anyone to file suit in a Court of Common Pleas. This Court could not locate any case law in Ohio where a private entity filed for an injunction under R.C. 4371.134. This Court finds that there is a good reason for a lack of direction in this area and that is that the section was not intended for the purpose of a private entity filing for an injunction under the above mentioned code section. The Court finds that a plain reading of the statute and the *Sinai* case dictate that the appropriate step would have been for the Plaintiffs to file a complaint with the State Medical Board.

Construing the factual allegations contained in the complaint in the light most favorable to the Plaintiff, the Plaintiff's complaint fails to state claim in which relief can be granted. Based on a plan reading of R.C. 4731 and the holding in *Mt. Sinai*, it is clear that the Plaintiff lacks standing to bring suit.

IV. Costs and Attorneys' Fees for Filing in Improper Venue

Pursuant to Civ. R. 3(D)(2), this Court will hold a hearing to determine appropriate costs and attorneys' fees incurred by the defense in relation to the original complaint being filed in the improper venue. This Court requests that the Defense produce evidence that relates to the costs and attorney's fees. Specifically, this Court asks the Defense to submit evidence as to the amount of attorney fees, the reasonableness of the hourly rate, and the reasonableness of the number of

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[10] *Id.*

hours spent working on this case in relation to the transfer of venue from Wood County to Lucas County.

JUDGMENT ENTRY

It is therefore **ORDERED, ADJUDGED, and DECREED** that Defendant's Motion to Dismiss is GRANTED. A hearing on costs and attorneys' fees will be set at a time convenient for the Court and the parties.

Lori L Olender

August 31, 2021

Judge Lori L. Olender

cc: Peter Pattakos
Eugene F. Canestraro
B. Jessie Hill