IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, CHANCERY DIVISION

DR. JOSEPH GIACCHINO	)
Plaintiff,	)
	)
v.	)
	)
ILLINOIS DEPARTMENT OF	)
FINANCIAL AND PROFESSIONAL	)
REGULATION, JAY STEWART,	)
JOHN LAGATTUTA, THE	)
MEDICAL DISCIPLINARY BOARD,	)
DONALD SEASOCK,	)
and SADZI OLIVA,	)
Defendants.	)

COMPLAINT

Dr. Joseph Giacchino, by and through his attorneys, R. Tamara de Silva and Jonathan Lubin, hereby Complain of the Illinois Department of Financial and Professional Regulation, Jay Stewart, The Medical Disciplinary Board, Donald Seasock, John Lagattuta, and Sadzi Oliva.

Parties

1. Dr. Joseph Giacchino, M.D., is a resident of Cook County, IL. His medical license number is 036-050366.

2. The Department of Financial and Professional Regulation is an administrative body organized under the laws of the State of Illinois, and operating as an enforcement arm of the State of Illinois. One of its divisions is the Division of Professional Regulation, which

oversees the prosecution of medical professionals, (collectively, the "Department"). According to the Department's standard procedure, before a revocation can be affected, a physician is tried before an Administrative Law Judge. If the ALJ recommends revocation, or otherwise enters a finding of a breach in the medical standard of care, the matter is then brought before the Medical Disciplinary Board. If the Medical Disciplinary Board adopts the ALJ's findings, the matter must be accepted by the Director of the Department in order for it to become final and appeal-able to this Court. The Chief of the Administrative Law Judges hearing cases involving Physicians' licenses for the relevant time was John Lagattuta. The Director of the Department at the time of the hearing was Donald Seasock. The individual Administrative Law Judge who heard evidence in this matter was Sadzi Oliva. The Director of the Department is currently Jay Stewart.

Jurisdiction

3. On April 22, 2010, a Complaint was filed against Dr. Joseph Giacchino in the Department of Financial and Professional Regulation. That Complaint alleged that Dr. Giacchino prescribed controlled substances, including Xanax and Vicodin, in a non-therapeutic manner, and that he had an inappropriate sexual relationship with a patient.

4. That Complaint accompanied a Petition for a Temporary Restraining Order, which was granted on the very same day that it was filed.

5. Since April 22, 2010, Dr. Giacchino has not been able to practice medicine in the State of Illinois.

6. Various "hearings" were held regarding the allegations in the Complaint.

7. On March10, 2011, the hearing officer recommended that Dr. Giacchino's medical license be revoked.

8. On April 6, 2011, the Medical Disciplinary Board of the Department ("Board") adopted the hearing officer's findings.

9. On June 15, 2011, the Director of the Department approved the findings of the Hearing Officer, and the Board.

Facts Common to All Counts

10. During 2005, and until the matter before the Department against Plaintiff began, Plaintiff Dr. Giacchino operated as a ringside doctor. That is, he would oversee boxing matches in order to ensure that no medical problems would occur at any boxing match, and that there would be a physician immediately present in case one was necessary.

11. During that time, the Department's new Director of Boxing, Ron Puccillo, would frequently attend boxing matches and would also sit ringside. He would frequently bring his friend, John Lagattuta. Puccillo and Lagattuta began to request erectile dysfunction drugs from Dr. Giacchino without compensation.

12. During this time, John Kass of the Chicago Tribune used his position in the Tribune to regularly drum up extraordinary media attention on Dr. Giacchino, calling for an immediate removal of his medical license principally because of Dr. Giacchino's much younger and "stunning Cuban" wife, expensive residence and the word of a convicted drug addict and untruthful witness, "G.K." Kass's repetitive *ad hominen* attacks largely based on the Dr.'s lifestyle and wholly unproven, locker room ranting, put the prosecution of Dr. Giacchino's case and the Department in the local media's spot-light

and drove attention to the case in the vein of a murder by tabloid media campaign.

12. The hard-driven media campaign for a presumption of guilt in this matter got stranger when Plaintiff was apprised of the Department's ruling on the day it was issued not because Plaintiff's counsel was told or he received a letter in the mail, but because very early on that same morning, a writer for John Kass called the Plaintiff's home asking for a comment.

13. On information and belief, the investigation of this matter began in March 2007, during which time John Lagattuta oversaw the investigation and prosecution of medical professionals, including physicians like Plaintiff.

14. In October or November of 2007, when John Lagattuta was still supervising medical prosecutions, Plaintiff Dr. Giacchino, Michael Favia (Plaintiff's then lawyer), John Lagattuta, and Ron Puccillo attended the same Justinian Society dinner. During the dinner, Lagattuta approached Dr. Giacchino to tell him that he, Dr. Giacchino, was currently under investigation, and that there were confidential DEA informants in his practice.

15. At that time, Lagattuta warned Dr. Giacchino that he wanted Giacchino to, "keep his mouth shut," because Lagattuta was running for Judge and did not want to be damaged by any bad press from the Dr. Giacchino defending his license.

16. Michael Favia and John Lagatutta were close friends and co-authored an article on medical malpractice.

17. Michael Favia was Chief of Prosecutions before Lagattuta assumed his position at the Department.

18. Dr. Giacchino fired Favia as his lawyer in large part because Favia had strongly advised him to heed Lagatutta's warning about not defending his medical license because everything "would be taken care of."

19. In 2009, Plaintiff became aware that there was an investigation that had been launched by the DEA into some of Plaintiff's practices. During that investigation, Ron Puccillo, who was employed as a Director of Boxing at the Department, and who was also close friend of John Lagattuta, told Plaintiff that he ought to purchase a firearm to defend himself from, among other things, drive-by shootings because of the sentiment of people in the Department.

20. Until 2009, Lagattuta continued to solicit erectile dysfunction drugs from Dr. Giacchino until abruptly stopping in 2009. This was despite the fact that Lagattuta; a.) had been involved in the division of the Department that was or would be assigned with investigating Dr. Giacchino and/or coordinating any investigations with the Drug Enforcement Agency, and b.) had been selected to be the chair of the Administrative Law Judges ("ALJs") who would ultimately be hearing any matters involving Dr. Giacchino before the Department.

21. Eventually, on April 22, 2010, the prosecution of the Plaintiff began in earnest with the granting of a petition to summarily suspend Plaintiff's license pending a complete hearing and decision before the Department. That hearing, including the initial petition for the temporary suspension of Dr. Giacchino's license, was heard before one of three ALJs who worked under John Lagattuta.

22. On information and belief, Lagattuta worked very closely with each of the ALJs, and became personally involved with their adjudication of their cases and was publicly

outspoken about being personally involved in all prosecutions.

23. On information and belief, when the prosecution of Plaintiff began in earnest, Plaintiff informed the Department through counsel of the conversation between him and Lagattuta in 2008. Plaintiff was concerned that he would not receive a fair trial given Lagattuta's involvement in the adjudication of matters before the Department, Lagattuta's warning to Plaintiff not to defend himself against the charges that would be brought against him, and Puccillo's warning to purchase a firearm to protect himself from drive-by shootings.

24. On information and belief, when Lagattuta heard that the Department had been informed of his warning, he was concerned about the effects that the revelation would have on his employment and career with the Department. Lagattuta expressed those concerns to counsel for Plaintiff.

25. Despite the fact that Lagattuta had a clear conflict of interest with Dr. Giacchino, in that he had asked Giacchino to forfeit his own defense of his medical license for the sake of Lagattuta's desire to become a Judge, and in that Giacchino's having reported this malfeasance threatened Lagattuta's job at the Department, Lagattuta nonetheless took no efforts to remove his influence from the proceedings against Dr. Giacchino.

26. For much of, if not most of the hearings, there was no member of the Medical Disciplinary Board present to witness the hearings, despite the fact that the regulations **require** such in order to protect the due process rights of litigants before the board.

27. Investigators and prosecuting lawyers, without any medical training whatsoever made decisions, interpreting whether or not Plaintiff's medical practice and expertise was following proper medical protocol.

28. To allow lawyers and investigators to determine what is proper medical protocol is outside the legislative intent of the Controlled Substances Act and it constitutes an excessive exercise of state power based on a misapplication of the Federal Law.

29. The most damning evidence against Dr. Giacchino was proffered by witnesses who had extensive criminal backgrounds that were concealed from Dr. Giacchino. On information and belief, many of the other witnesses have been under investigation or under pending indictment and had substantial motivations financially and otherwise to lie. It constitutes a violation of Plaintiff's due process rights that he was not informed of these matters prior to the Hearing so that he could question witnesses about their motives to fabricate, bias and their credibility.

30. ALJ Oliva, who presided over Plaintiff's hearing, allowed evidence to be brought against Plaintiff that was highly prejudicial, despite being inadmissible. Much of the Department's case rested on inadmissible evidence that was properly objected to.

31. The evidence that was brought by the Department's witnesses was not credible. Even leaving aside, the concealed criminal backgrounds and various motives of the witnesses, (included the main witness G.K., who by her own admission called the DEA after feeling jilted because the Plaintiff would not treat her anymore unless she first covered a bad check) the determinations of fact made by the Department were against the manifest weight of the evidence.

32. All leading medical associations of surgeons and physicians state that physicians who treat patients for chronic or acute pain and practice medicine in good faith and use reasonable medical judgment should not reasonably be held responsible for the willful and deceptive behavior of patients who successfully obtain opioids for non-medical

purposes (like in this case where all the witnesses admit to willfully lying). They urge that the DEA and other regulatory agencies inform physicians of the behavior of such patients when it is detected rather than wait and pay these addicts to try and "get" doctors who are in this specialty of medical practice.

33. The Department's ruling was not in conformance with the legislative intent of the Illinois Controlled Substances Act and their findings of law did not address the criteria for wrong-doing of a medical practitioner as enumerated in 720 ILCS 570/304 (a) (1)-(6).

34. The Department's ruling is not in conformance with medical standards or the state of scientific knowledge-**they are in opposition**. What is even more problematic is that the Department has issued a conclusory scientific opinion on what is proper medical protocol in the prescribing of controlled substances for pain management that draws on assumptions and facts no where supported and completely outside any of the evidence introduced at the hearing.

35. A fair rebuttal of the Department's ruling because it makes by assumption so many sweeping determinations of what is legitimately within the scope of medical practice (outside of the record of any evidence presented at the hearing) would necessitate that the Plaintiff be allowed to provide expert medical testimony from medical professionals, academics and organizations like the Association of American Physicians and Surgeons, the American Pain Institute, the American Society of Addiction Medicine, the American Academy of Pain Medicine, the American Pain Society *et. al.*

36. The Department has issued no standard for a violation of 720 ILCS 570/312 (h) and does not bother to explain either what the standard is, what conduct is prescribed or how the Plaintiff specifically violated it, in violation of the doctrine of void for vagueness-

therefore as in the Plaintiff's case, allowing arbitrary and discriminatory prosecution in abundant violation of Due Process.

37. The Department alleges a violation of the Controlled Substances Act (21 United States Code, Chapter 13) ("CSA") but does not state how or what part.

38. The Department alleges a violation of the CSA but fails to follow the legislatively mandated standards and criteria for finding a person guilty of violations of the CSA specifically at 21 USC §823 (f).

39. The Department has issued no standard for a violation of 225 ILCS 60/22 (A)(17) when it refers to the prescribing of any drug for "other than medically accepted therapeutic purpose." The Department avoids setting forth what conduct is prescribed under this statute and what is not, therefore violating the doctrine of void for vagueness- and as in the Plaintiff's case, allowing arbitrary and discriminatory prosecution in abundant violation of Due Process.

40. The administering of pain medications to successfully alleviate pain especially chronic pain due to things like botched surgeries, cancers and traumatic injury is a medically accepted and therapeutic purpose.

41. Class II Scheduled drugs are taken by over 30 million Americans who suffer from chronic pain and are able because of medical pain management to live without crippling pain and to even work and function.

42. Contrary to popular wisdom, most medical literature states that less than 1 percent of the users of pain drugs are addicts (usually within this less than 1 percent, many of them were prior addicts, who hid their previous drug use from their physicians).

43. The meaning of the term "standard of care" in pain management is understood in the medical practice to reflect the state of the art (consensus of opinion in medical community) and the science (peer-reviewed literature) of medicine. Hence the determination of which analgesic drug to prescribe, in what dosage, for how long to achieve pain management is never a determination that should be made by investigators and lawyers who have never practiced medicine in the specialty or sub-specialty of medicine at issue in this case anymore than surgery must be attempted by the public with a hammer.

44. The taking away of a medical license based on perjured testimony and shifting legal terms that are not defined or stated beforehand, as in this case (not to mention the many due process violations and judicial misconduct), constitutes a grave miscarriage of justice and a case in point for the reason that many medical schools now advise students not to go into the field of pain management at all.

45. The determinations of fact, even if believed, do not rise to a violation of the standard of care, and therefore do not merit a revocation of Plaintiff's license.

46. On April 21, 2011, Don Seasock, the Department's Director and Director during the hearings, sent a letter to Plaintiff on Department letterhead (Exhibit A) to the effect that the department had concluded its investigation into Plaintiff, and that Plaintiff would not have to endure further investigation or testimony. The letter indicated that Plaintiff was cleared of wrongdoing. It invoked a Complaint that was literally cut and pasted from the one at issue here. Therefore, the Department's subsequent ruling therefore must be set aside due to Res Judicata, and/or issue preclusion.

COUNT I
Complaint in Administrative Review

47. Plaintiff repeats and realleges paragraphs 1-46 as if stated here in full.

48. Each one of the Complaints against the Board's adjudication of this matter would independently require review of the Board's decision: Res Judicata, the simple lack of constitutional due process and equal protection, the lack of a member of the Medical Disciplinary Board, the admission of hearsay, irrelevant, and other objectionable evidence against Plaintiff, the incredible nature of the evidence against Plaintiff, and the lack of any demonstrable departure from the standard of care that would demand revocation of his license. For the reasons stated, Plaintiff seeks to have the decision rendered by the Department reviewed and overturned.

49. Wherefore, Plaintiff requests that the decision rendered by the Department be immediately overturned and set aside, and that Plaintiff's license to practice medicine, and to write prescriptions, be reinstated immediately, and any other relief that this Court deems just and equitable.

COUNT II
42 U.S.C. 1983

50. Plaintiff repeats and realleges paragraphs 1-49 as if stated here in full.

51. Plaintiff was denied the fundamental Constitutional protections of Due Process and Equal Protection under the law, in that he was not given the ability to cross examine witnesses who testified against him due the Department's failure to disclose certain

witnesses' criminal backgrounds and motives to fabricate, and in that witnesses' testimony was rife with inadmissible hearsay that the ALJ simply allowed; and in that John Lagattuta and the ALJ did not disclose the conflicts of interests that prevented them from offering Plaintiff a fair hearing, nor did they take steps to insulate themselves from this case and this litigant, with whom they were conflicted as a matter of law.

52. As a result of that denial, Plaintiff has now been deprived of a license to practice his chosen profession, and is totally unable to engage in his stock and trade. Defendant caused this deprivation knowingly, and without regard to Plaintiff's Constitutional rights, or to simple fair play.

53. The improper deprivation began on April 22, 2010, and continues. During this time, and for each day that this continues, Plaintiff suffers damages. To wit, Plaintiff has been prevented from engaging in a highly lucrative and publicly beneficial medical practice, without cause, and without a fair and proper hearing.

Count III
Due Process Claim Based on Illinois Controlled Substances Act as Void for Vagueness

54. Plaintiff realleges and repeats paragraphs 1-53 above as fully stated herein.

55. 720 ILCS 570/312 (h) which refers in pertinent part to "An order purporting to be a prescription issued by any individual, which is not the regular course of professional treatment…" is unconstitutional in that it violates the void for vagueness doctrine because it provides insufficient guidance and standards and, consequently, permits arbitrary and discriminatory application.

56. By not prescribing what specific conduct is prescribed by this law, it affords a medical practitioner in Illinois no fair notice of how to not violate this law and invites, as in this case, discriminatory or selective enforcement on unjustifiable bases and arbitrary classifications.

Count IV
Due Process Claim Based on 225 ILCS 60/22 (A)(17) as Void for Vagueness

57. Plaintiff reasserts and realleges paragraphs 1-56 as if fully rewritten herein.

58. 225 ILCS 60/22 (A)(17) which refers in pertinent part to the "prescribing, selling, administering, distributing and/or giving any drug classified as a controlled substance or narcotic for other than medically accepted therapeutic purpose" is unconstitutional in that it violates the void for vagueness doctrine because it provides insufficient guidance and standards and, consequently, permits arbitrary and discriminatory application.

59. By not prescribing what specific conduct is prescribed by this law, it affords a medical practitioner in Illinois no fair notice of how to not violate this law and invites, as in this case, discriminatory or selective enforcement on unjustifiable bases, tabloid journalists and other unconstitutional and arbitrary classifications.

WHEREFORE, Plaintiff hereby requests that this Honorable Court enter an Order finding Defendants liable for the conduct Complained of, and Requiring Defendants to:

a.) Reinstate Plaintiff's License to practice medicine in the State of Illinois;

b.) Either overturn the decision rendered by the Division of Professional Regulation in its entirety, or Order the Department of Professional to

conduct a fair and honest hearing;

c.) Pay Plaintiff reasonable attorneys fees associated with bringing this action; and

d.) Any other relief that this Court deems proper and equitable.

Respectfully submitted,

By: **/s/ R. Tamara de Silva** (Plaintiff's Lead Counsel)

R. Tamara de Silva
(Attorney #6244445)
Cook County Attorney # 44129
53 W. Jackson Blvd., Suite 618
Chicago, Illinois 60604
(312) 913-9999
July 12, 2011

By: **/s/Jonathan Lubin**
Jonathan Lubin
(Attorney #6297065)
39 S. LaSalle St., Suite 1400
Chicago, Illinois 60604
(312) 332-7374

EXHIBIT A

Illinois Department of Financial and Professional Regulation

Division of Professional Regulation

PAT QUINN
Governor

BRENT E. ADAMS
Secretary

DONALD W. SEASOCK
Acting Director

PERSONAL AND CONFIDENTIAL

April 21, 2011

Joseph L Giacchino MD
Melrose Park Clinic
1252 Winston Plz
Melrose Park, IL 60160-1507

Dear Dr. Giacchino:

RE: MR10314
PATIENT:

This is to inform you that pursuant to the provisions within the Ill. Medical Practice Act of 1987(Illinois Compiled Statutes 1992, ch. 225, Act 60, Section 1, et seq.,) the Medical Disciplinary Board has carefully reviewed the report and other materials submitted in the above-referenced matter. The Board has determined that there are not sufficient facts to warrant further investigation or action and has ordered this file closed.

Please be informed that the file concerning these allegations is confidential and will not be made available for public inspection.

Thank you for your cooperation in this matter.

Sincerely,

Donald W. Seasock
Acting Director
Division of Professional Regulation

DWS:

FC: cr5.995