

**REHEARING APPENDIX
TABLE OF CONTENTS**

Second Gag Order (March 21, 2024).....	Reh.App.1a
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Reh.App.1a

**SECOND GAG ORDER
(MARCH 21, 2024)**

DEPARTMENT OF HEALTH
LEGAL COUNSELING OFFICE

THE MEDICAL DISCIPLINE AND LICENSING
BOARD OF PUERTO RICO

THE MEDICAL DISCIPLINE AND LICENSING
BOARD OF PUERTO RICO,

Plaintiff,

v.

DR. SALLY PRIESTER LIC. NO. 16480,

Defendant.

IN RE: NON-PROFESSIONAL CONDUCT

QF-JLDM-2020-270

RESOLUTION 2024- 22

The Medical Discipline and Licensing Board of Puerto Rico, at a regular meeting held on January 18, 2024, with the quorum duly constituted, after the Examiner Official's recommendation has been evaluated in the case of Dr. Sally Priester, resolved,

unanimously, to render this Resolution on the basis of the following:

FINDINGS OF FACTS

1. The Medical Discipline and Licensing Board (JLDM, as per its acronym in Spanish) is vested by law with the power to regulate the practice of the medical profession in Puerto Rico.

2. As a part of its institutional duties, the JLDM has the ministerial duty to review and investigate the complaints and reports received from the state security agencies, health maintenance organizations, governmental agencies, insurance companies and any other entities that have information relevant to the practice of the medical profession and then to decide and take action in respect thereof as appropriate.

3. In turn, Section 33 (e), of Law No. 139 dated August 1st, 2008, grants authority to the Board to initiate investigations on any information concerning any acts involving non-professional conduct.

4. Also, Section 33 (e), of Law No. 139, *supra* provides that the Board may suspend, cancel or revoke a license prior to a hearing when the physician has been involved in an non-professional conduct. The definitions of nonprofessional conduct include the violation of rules and regulations adopted by the Board to regulate the practice of the medical profession.

5. Also, Section 26, subsection (g) provides that the Board may impose an administrative fine, that shall not exceed five thousand (\$5,000) dollars, in addition to any disciplinary action.

6. In this case in particular, the Board received a communication (complaint) from the College of Medical Surgeons of Puerto Rico, hereinafter referred to as “the College”, whereby it has submitted some alleged conducts and expressions referring to Dr. Sally Priester offered in public last November 29, 2020. The Board issued an order to initiate an informal investigation about those allegations and held some investigative hearings on February 17 and March 3, 2021, which were respectively attended by the College, by means of its Chairman, Dr. Victor Ramos and its legal representatives; and Dr. Sally Priester, both by herself and legally represented by her attorney, Humberto Cobo Estella, Esq. As can be concluded from the report submitted by the Board’s investigator attorney, the parties had ample opportunity to submit their allegations and documentary evidence and/or expert witness reports. Dr. Priester also filed additional motions requesting the dismissal of the complaint which is at its investigative stage. The evidence obtained during the hearings held and submitted by the parties indicate that Dr. Priester made some public statements that, according to her, are protected by her constitutional right to the freedom of speech and assembly, related to the pandemic, but in our opinion, they are strictly groundless from the scientific point of view, as they are neither a part of a constructive criticism, nor that those expressions may be pondered as of a greater interest than the efforts to protect public healthcare and security. The expressions attributed to Dr. Priester and that she sustains are protected by the Constitution were:

“To refer to the pandemic as the “plandemic”;
“how dare they launch a terror and impotence

campaign . . .”; “It is a lack of respect from us in the medical community and that doctors are lending themselves for this kind of things, let’s put an end to this sham . . .”

“I can’t understand why health centers like CDTs are closed and thus force patients to turn to just emergency rooms for receiving healthcare. It is incredible to know that they cannot communicate with primary care physicians. Don’t let them scare you any more because there will come the time when those 14 days of incubation do NOT exist and the Department of Health will have to explain, on trial, from where it has taken so much data that has not been scientifically proven worldwide.”

“We do not have to wait for any vaccine . . .”

“No child will get vaccinated . . .”

7. Said expressions made by Dr. Priester were spread by the mass media in Puerto Rico, even though she sustains that the press lacked the power to tell the truth to society. Dr. Priester held, based on the evidence produced, that her expressions were not only protected by the Constitution, and that she made them within a context which was unrelated to her professional performance, nor had they been made in the treatment of her patients or when providing any medical advice at a hospital. She also mentioned that she has received multiple acknowledgments for her humanitarian, civil, and social work, and besides she claimed to have published multiple papers concerned with medicine and science.

8. The Board ordered to conduct an investigative process which was carried out and as a result thereof it rendered Resolution and Order No. 2021-04, thereby ordaining the commencement of a formal complaint proceeding. It also issued a cease-and-desist order. Once the documents on file have been evaluated, the JLDM found that Dr. Sally Priester may have committed the following offenses:

Count 1

Violation of CANON 29: "A physician shall have the duty to promote, both with their example and word, such highest ethical standards of integrity of behavior and intellectual and professional honesty as to serve as an example for their workmates, their family, their profession and their people"; and they shall be entitled to receive respect for their dignity, personal integrity, physical intimacy and courteous treatment.

Count 2

Violation of CANON 31: "in their behavior, a physician shall abide by the ethical principles and controls incorporated in this code not only within the clinical setting but also within any such other context where they are to perform their medical profession. The undertaking of offices or the performance of duties in the public or private sector shall not release any physician from their duty to comply with the ethical principles that give shine to the medical profession."

Count 3

Violation of CANON 32: "By reason of the principle of civic solidarity, a physician shall have the duty to educate the population in line with the promotion of health and the prevention of diseases. They shall contribute to improve the quality of life of the Puerto Rican society as a whole, thus remaining attentive to the people's health conditions, and with their professional and civic performance, they shall collaborate with the improvement of public health."

Count 4

Violation of CANON 33: "A physician shall show respect for the civil and human rights of each one of the members of society, especially in relation to the preservation of life, physical and mental health."

Count 5

Violation of CANON 38: "A physician shall exert an ethical influence on society in order to promote those causes pursuing the common good, such as: the donation of organs and tissues for transplantation, the defense of actions taken to preserve ecological systems, the cleaning of waters, and other initiatives intended to protect human health and biodiversity."

9. Hence, under Resolution No. 2021-04 and subject to the powers granted by Law No. 139, supra, and its regulatory decree, the Board issued this complaint and administrative proceeding, thereby forewarning the defendant that she would be exposed to a penalty

of no more than \$ 5,000.00 and to be ordered to take some training courses on ethics and professional conduct for the number of credits to be determined by the Board as necessary and prudent, as well as any such other penalty as the Board may deem appropriate.

10. On May 11, 2023, by virtue of the Federal Declaration of the Honorable President of the United States of America signed a law to put an end to the national emergency of COVID-19 virus, the Joint Resolution of Chamber 7. Likewise, the Honorable Governor of Puerto Rico signed an Executive Order whereby he declared the official end of the State of Emergency for COVID-19 in Puerto Rico (Administrative Bulletin No. 2023-012). Dr. Carlos Mellado Lopez, MD, Secretary of Health of Puerto Rico, followed suit by means of the Administrative Order No. 571, whereby it repealed, among others, the Administrative Order No. 533 dated March 8, 2022, and with it all of the memorandums and Administrative Orders previously issued by any Secretary of Health insofar as their provisions are incompatible with the terms of the Administrative Order number 571.

11. After multiple conversations and administrative hearings, on November 14, 2023, we held an administrative hearing which was attended by the legal representatives of the Board: Madeline Torres Santiago, Esq. and Luis Hernandez Cardona, Esq. and the legal representative of the defendant, Jose R. Davila Acevedo, Esq. During this hearing, both parties requested the desist of this administrative case with prejudice on the grounds that the subject matter giving rise thereto is nowadays an academic one. The parties understand that, given the fact that the COVID-19 emergency has been terminated by the

federal and governmental authorities of Puerto Rico, it has become moot to uphold Resolution and Order No. 2021-04 issued against the defendant, wherefore it is now admissible and appropriate for the Board to set it aside, since it has become a moot case and without any reason to prevail in law.

12. The defendant has also requested, with no opposition from the Board's legal representatives, by filing a motion on September 27, 2023, which was repeated at the hearing held on November 14, 2023, that in order to prevent any kind of confusion and thus keep it clear what has been alleged in the administrative case record that the aforementioned healthcare professional was only to be known as "Dr. Sally Priester", thereby deleting any other name stated in the records of this administrative case file.

13. On December 27, 2023, the Board's legal representative, Luis Hernandez Cardona, Esq., filed a motion entitled "Motion requesting the desist with prejudice", wherein he alleged that, by virtue of the Order rendered by the Board against the defendant, the cease-and-desist order was issued for her to refrain from making any statements, communications, releases, publications, promotions, exchanges and/or endorsements by any mass media or in person, any messages without any legitimate scientific foundation against the sanitary efforts made by governmental or private authorities, both acknowledged and respected by the scientific and medical community to alert and protect society from the contagion and spreading of the SARS-COV-2 virus, the coronavirus pandemic and/or COVID-19, as well as any of its variants... and she is hereby forewarned that the Order shall remain in effect until otherwise decided by the Board. The

breach of the Order might lead to harsh economic and disciplinary penalties and/or including contempt of court, as per Section 28(g) of Law No. 139-2008, as amended. Notice of the aforementioned Resolution and Order was served on April 14, 2021 and the defendant has complied with the Order.

14. Hence, Luis Hernandez Cardona, Esq. has requested through his motion that the end for which Resolution No. 2021-04 has been issued, has become moot, for the COVID-19 emergency has come to an end and terminated by the federal and governmental authorities of Puerto Rico. As a result, there is no real controversy or case warranting to be adjudicated, and therefore it is hereby requested that these administrative proceedings should be dismissed, closed and placed on the archives with prejudice. *See ELA v. Aguayo*, 80 D.P.R. 552 (1958); *L.P.C. v Autoridad de Carreteras*, 2012 T.S.P.R. 74; *JG Builders Corp. v. 577 Headquarters Corp.*, 2012 T.S.P.R. 66; *Baez Diaz v. ELA*, 179 D.P.R. 605 (2010).

15. Given these circumstances, we understand that the case is now complete and ready to be settled.

CONCLUSIONS OF LAW

Our legal system has recognized the power of the State to regulate the practice of professions as a part of its power of reason of State, so much so with the major aim to protect public health and well-being. *Marcano v. Department of State*, 163 D.P.R. 778 (2005); *Perez v. Junta Dental*, 116 D.P.R. 218, 233 (1985). The requirements and conditions reasonably imposed for such purposes by the State in the exercise of its regulating power for the benefit of the society as a whole, do not take the effect of depriving citizens of

their professions, but to regulate the same by reason of the eminent public interest they are vested with. *Asociación de Doctores en Medicina al Cuidado de la Salud Visual, Inc. v. Morales*, 132 D.P.R. 567 (1993); *Infante v. Tribunal Examinador de Medicos*, 84 D.P.R. 308 (1961).

In *Torres Acosta v. Junta Examinadora de Ingenieros, Arquitectos y Agrimensores del Estado Libre Asociado de Puerto Rico*, 161 D.P.R. 696 (2004), the Supreme Court of Puerto Rico pointed out, among others:

In our legal system there is no absolute right to the practice of licensed professions or occupations. Said exercise is subject to the State's power of regulation (i.e. police power) for the purposes of protecting public health and well-being and thus prevent fraud and incompetence *San Miguel Lorenzana v. E.L.A.*, 134 D.P.R. 405, 413 (1993); *Col. Ing. Agrim. P.R. v. A.A.A.*, 131 D.P.R. 735, 763 (1992); see also *Rodriguez Casillas v. Colegio de Tecnicos y Mecanicos Automotrices*, 2019 TSPR 87, 201 DPR (2019); *Alonso v. Tribunal Examinador de Medicos*, 74 D.P.R. 158 (1952). The State has broad discretion as to the fixation of rules and procedures concerning the admission to the practice of licensed professions and occupations. *Asoc. Drs. Med. Cui. Salud v. Morales*, supra.

Law No. 139, dated August 1, 2008, of the Medical Discipline and Licensing Board of Puerto Rico, which regulates the medical profession within the highest ethical standards, states, in its articles of purposes, the following:

The society as a whole has an interest of highest hierarchy in the integrity of the medical profession. In order to watch over said social interest, the State is entitled to regulate the practice of the medical profession. One of the most important mechanisms to achieve this aim is the licensing process to practice the medical profession. The purpose of the licensing is the protection of the general public from possible damages and abuses that may expectedly arise from the practice of medicine by incompetent persons.

In turn, in *TEM v. Canas Rivas*, 154 D.P.R. 29 (2001), it has been repeated that the rule that governmental entities are the ones in charge of regulating healthcare professionals and performing the duty to make sure that they should have the necessary capacity and proficiency to practice their profession within the excellence parameters for which the State has granted broad powers.

In spite of the potential implications, both of ethical and legal nature, involved herein, we have to admit that Dr. Sally Priester has abode in full by the Resolution and Order of cease-and-desist notified on April 14, 2021. Likewise, on May 11, 2023, by virtue of the Federal Declaration, the Honorable President of the United States of America signed a law to put an end to the national emergency of COVID-19 virus, the Joint Resolution of Chamber 7. Likewise, the Honorable Governor of Puerto Rico signed an Executive Order whereby he declared the official end of the State of Emergency for COVID-19 in Puerto Rico (Administrative Bulletin No. 2023-012) and Honorable Dr. Carlos Mellado Lopez, MD, Secretary of Health of

Puerto Rico, followed suit by means of the administrative Order No. 571. Thus, there is no room for any doubt whatsoever that the purpose of Resolution and Order No. 2021-24 ceased to exist, thus rendering the issue a moot one and without any public *raison d'être* in view of the declaration that the pandemic at issue has come to an end. *See, for instance, ELA v. Aguayo*, 80 D.P.R. 552 (1958); *L.P.C. v Autoridad de Carreteras*, 2012 T.S.P.R. 74; *JG Builders Corp. v. 577 Headquarters Corp.*, 2012 T.S.P.R. 66; *Baez Diaz v. ELA*, 179 D.P.R. 605 (2010).

In spite of that, the Board understands and forewarns Dr. Sally Priester that there should be any national crisis or emergency similar to that caused by the COVID-19 pandemic in the future, she should abide by the safety measures that the organizations in charge of healthcare should then recommend and adopt for the benefit of the citizenship as a whole. Thus, the Board does hereby grant approval to the parties' petition, thus ordaining the dismissal, closure and archive of these administrative proceedings.

On the other hand and in order to maintain the clarity of the administrative proceedings conducted before the Board, it is hereby ordained that from today onwards the defendant should only be known by the name "Dr. Sally Priester" until otherwise requested by the defendant and/or ordained by the Board.

CONCLUSION

In harmony with both the findings of fact and the conclusions of law outlined above, the Medical Discipline and Licensing Board of Puerto Rico does hereby ordain the dismissal, closure and archive of this administrative proceeding.

The Board understands and forewarns Dr. Sally Priester that there should be any national crisis or emergency arising in the future from the COVID-19 pandemic, she should abide by the safety measures that the organizations in charge of healthcare should then recommend and adopt for the benefit of the citizenship as a whole.

On the other hand, it is hereby ordained that from today onwards the defendant should only be known by the name "Dr. Sally Priester" until otherwise requested by the defendant and/or ordained by the Board.

WARNINGS

The party adversely affected by this decision may, after having exhausted the administrative remedies before the Board, file a motion for judicial review of this decision with the Court of Appeals of Puerto Rico, within the period of thirty (30) days, starting from the placing in the archive of these court records of the copy of service of notice of this Resolution. Said motion for judicial review shall be served upon the Board and all of the parties involved in this case, within the time period established to request such proceeding.

The time period of thirty (30) days to appeal for judicial review may be interrupted by the timely submission of a motion for reconsideration to this Board, within the time period of twenty (20) days, starting from the date of archive on file of the copy of the service of notice of this Resolution. Should a motion for reconsideration be filed against this Resolution, the Board shall consider it within twenty (20) days after the filing thereof. If the Board should dismiss it outright, or fail to render a decision within the

Reh.App.14a

aforementioned period of twenty (20) days, the term of thirty (30) days to file a motion for judicial review shall begin to run again either as from the service of notice of said dismissal, or from the date of expiry of said twenty (20) days, as the case may be. If the Board should take a decision on such reconsideration, the term of thirty (30) days to file a motion for judicial review shall begin to run as from the date when a copy of the service of notice of the Board's resolution whereby the motion for reconsideration is finally settled was placed on the file archives. Such resolution shall be rendered and placed on the file archives within ninety (90) days following the filing of the motion for reconsideration. If the Board should admit the motion for reconsideration, but fails to take any action in relation to this motion within ninety (90) days after the filing thereof, it shall forfeit its jurisdiction over the issue and the term of thirty (30) days to file a motion for judicial review shall begin to run as from the expiry of said time period of ninety (90) days; unless the Board should, for just cause and within said period of ninety (90) days, extend the term to settle the case for a period that shall not exceed thirty (30) additional days.

Failure to take any action to request the reconsideration or judicial review of this decision within the time periods indicated above, shall result in the fact that this Resolution shall become final, enforceable and unappealable, after thirty (30) following the date of placing on the file archives of the copy of the service of notice of this Resolution.

Reh.App.15a

It has been so resolved by the Medical Discipline and Licensing Board of Puerto Rico, in the city of San Juan, Puerto Rico, at its regular meeting held on March 21, 2024.

DUE RECORD AND NOTICE OF THIS ORDER BE DULY TAKEN AND SERVED.

BY THE MEDICAL DISCIPLINE AND
LICENSING BOARD OF PUERTO RICO

/s/ Dr. Ramon Mendez
Sixth President

/s/ Dr. Jose Fuentes Inguanzo
Secretary

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