UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

VERMONT ALLIANCE FOR ETHICAL HEALTHCARE, INC.; CHRISTIAN MEDICAL & DENTAL ASSOCIATIONS, INC.,

Plaintiffs,

v.

WILLIAM K. HOSER, in his official capacity as Chair of the Vermont Board of Medical Practice; MICHAEL A. DREW, M.D., ALLEN EVANS, FAISAL GILL, ROBERT G. HAYWARD, M.D., PATRICIA HUNTER, DAVID A. JENKINS, RICHARD CLATTENBURG, M.D., LEO LECOURS, SARAH McCLAIN, CHRISTINE PAYNE, M.D., JOSHUA A. PLAVIN, M.D., HARVEY S. REICH, M.D., GARY BRENT BURGEE, M.D., MARGA S. SPROUL, M.D., RICHARD BERNSTEIN, M.D., DAVID LIEBOW, D.P.M., in their official capacitates as Members of the Vermont Board of Medical Practice; JAMES C. CONDOS, in his official capacity as Secretary of State of Vermont; and COLIN R. BENJAMIN, in his official capacity as Director of the Office of Professional Regulation,

Defendants.

Case No. 5:16-cv-205

ORDER ON
DEFENDANT-INTERVENORS' MOTION TO STRIKE DOCKET ENTRY #57
(Doc. 61)

By order dated April 5, 2017, the court dismissed this claim for injunctive and declaratory relief on standing grounds. (Doc. 54.) The court's ruling rested on its determination that the complaint and other pleadings submitted in the case failed to demonstrate a credible threat of prosecution of Plaintiffs' members by Vermont's medical regulators. (*Id.* at 15–16.)

Because there was substantial overlap in the position of the plaintiffs and the State of Vermont, there was no showing of any likelihood of imminent harm.

In plain English, the plaintiffs and the State's representatives agreed in the course of this case that a physician could not ignore or fail to answer a patient's questions about physician assisted suicide. In the view of both sides, a physician whose religious or moral principles prevented him or her from counseling a dying patient on the measures permitted by Act 39, 18 V.S.A. § 5281 et seq., could meet the requirements of sound medical practice by alternatives such as directing the patient to a website or other sources of information. Since a professional discipline case raising these issues was neither pending nor likely, any ruling by the court on the merits of Plaintiffs' claims would have been impermissibly theoretical and speculative.

Following issuance of the court's order dismissing the case on standing grounds, the plaintiffs filed a copy of the "Consent Agreement and Stipulation" which sets out the terms of a settlement agreement between the parties (except for the intervenors). (Doc. 57.) The intervenors filed a notice of appeal. (Doc. 56.)[1] The appeal was subsequently dismissed voluntarily. (Doc. 60)

The consent agreement remains on the court's docket and is available for public inspection. By motion dated August 23, 2017, the intervenors seek to strike the consent agreement from the docket on the grounds that it does not represent a judicial determination and is a private agreement between the parties. (Doc. 61.) The plaintiffs object to the removal of the consent agreement. (Doc. 65.) The State does not object to the removal. (Doc. 64.) The court heard argument on the motion to strike at a hearing on November 20, 2017.

[1] The intervenors include an advocacy organization called Compassion & Choices which supports Act 39 as well as two individuals who qualify for the end of life measures permitted by the Act. One intervenor has died during the pendency of the case.

The court has inherent power "to manage its docket . . . with a view toward the efficient and expedient resolution of cases." *Dietz v. Bouldin*, 136 S. Ct. 1885, 1888–89 (2016). Assuming (without deciding) that—as Defendant-Intervenors assert—Fed. R. Civ. P. 60(b) is the proper procedural mechanism for invoking that power in this case, the court declines to strike the consent agreement from the docket.

The agreement does not represent the views of the court on the merits of the parties' dispute. The court did not reach the point of expressing a position on the merits. But the agreement does represent the position of Vermont's executive branch which is of great interest to Vermont medical professionals concerned about these issues as well as patients. The consent agreement is a purely private agreement—not a judicial ruling—and not subject to review on appeal. But it is far from inconsequential and maintaining it on the court's docket has value in informing the public of the terms of the settlement struck by the parties.

For these reasons, Defendant-Intervenors' Motion to Strike Docket Entry #57 (Doc. 61) is DENIED.

Dated at Rutland, in the District of Vermont, this 18 day of December, 2017.

Geoffrey W. Crawford, Judge
United States District Court