24-13087

United States Court of Appeals

for the

Eleventh Circuit

COURTNEY MORGAN, M.D.

Plaintiff/Appellee,

– v. –

WALGREEN CO.,

Defendant/Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
CASE NO: 0:24-cv-61442-RS
(Hon. Rodney Smith)

BRIEF OF APPELLEE

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Courtney Morgan, M.D. v. Walgreen Co.
Case No. 24-13087

CERTIFICATE OF INTERESTED PERSONS
AND
CORPORATE DISCLOSURE STATEMENT

Plaintiff-Appellee, COURTNEY MORGAN, M.D., respectfully submits the following list, which includes the trial judge, and all attorneys, persons, associations of persons, firms, partnerships, or corporations that have an interest in the outcome of this review:

1. The Honorable Rodney Smith, *U.S. District Court Judge*

Plaintiff/Appellee

2. Courtney Morgan, M.D., *Plaintiff-Appellee*

Counsel for Plaintiff/Appellee

3. Anderson & Welch, LLC, *Attorneys for Plaintiff-Appellee*
4. Anderson, Esq., Kevin R., *Attorney for Plaintiff-Appellee*
5. Chaplin, Esq., Erica, *Attorney for Plaintiff-Appellee*
6. Schlafly, Esq., Andrew L., *Attorney for Plaintiff-Appellee*

Defendant/Appellant

7. Walgreens Co. (WAG), *Defendant-Appellant*

Counsel for Defendant/Appellant

8. *Akerman, LLP, *Attorneys for Defendant-Appellant*
9. Daniel, W. Aaron, Esq., *Attorney for Defendant-Appellant*
10. Kula & Associates, P.A., *Attorneys for Defendant-Appellant*
11. Kula, Esq., Elliot B., *Attorney for Defendant-Appellant*

12. *Malvin, Tamara S., Esq., *Attorney for Defendant-Appellant*
13. Quintairos Prieto Wood & Boyer, PA, *Attorneys for Defendant-Appellant*
14. Tarlow, Esq., David Michael, *Attorney for Defendant-Appellant*

Other Interested Parties

15. Florida Board of Medicine
16. Florida Board of Pharmacy
17. Florida Department of Health
18. Walgreens Boots Alliance (Defendant-Appellant's Parent Company)

* - *no longer involved in representation*

Pursuant to Federal Rule of Appellate Procedures 26.1 and Eleventh Circuit Rules 26.1-1 through 26.1-3, I hereby certify that there are no publicly traded corporations, stock, equities, debts or corporate disclosures for Plaintiff-Appellee, Courtney Morgan, M.D., who is an individual.

/s/ Andrew L. Schlafly
Andrew L. Schlafly, Esq.

/s/ Erica Chaplin
Erica Chaplin, Esq.

Counsel for Plaintiff-Appellee

STATEMENT REGARDING ORAL ARGUMENT

We respectfully request that oral argument be held in this appeal, as it would be helpful to clarify how Defendant-Appellant Walgreen Co. ("Walgreens") relies here on assertions not in the record and on arguments that it did not raise below, and to rebut false innuendo, lacking in any factual support, by Walgreens against Plaintiff-Appellee Courtney Morgan, M.D. ("Dr. Morgan").

For example, Walgreens argues against the preliminary injunction for the first time here on appeal by insisting that it is a mandatory injunction subjected to a heightened standard supposedly not satisfied below. In fact, the preliminary injunction allows individual Walgreens pharmacists to exercise their independent professional judgment, consistent with Florida law, as they generally do for all prescribing physicians other than Dr. Morgan, and thus is not a disfavored mandatory injunction; and, even if it were, that standard was satisfied.

Oral argument would be helpful to dispel any innuendo resulting from Walgreens' disparagement of Dr. Morgan, who is an exemplary physician in good standing with the Florida medical board while earnestly treating patients in genuine need for medication. Oral argument would provide clarity that the settlement agreement by Walgreens with the State of Florida, on which Walgreens relies so heavily in its brief, does not justify Walgreens' categorical exclusion of Dr. Morgan from the filling of any of his controlled-substance prescriptions.

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STATEMENT OF JURISDICTION

The district court had jurisdiction to hear the underlying case pursuant to 28 U.S.C. § 1332, and there is jurisdiction for this appeal in this Court under 28 U.S.C. § 1292(a)(1).

STATEMENT OF THE ISSUES

The issues presented are:[1]

1. Whether the district court abused its discretion by entering a preliminary injunction to protect patients' access to much-needed controlled substance medications prescribed by Dr. Morgan, thereby safeguarding the public interest, while preventing irreparable harm to Dr. Morgan's professional reputation and his ability to practice medicine as a licensed physician in good standing.

2. Whether the preliminary injunction is somehow impermissibly vague in ordering Appellant Walgreens to stop categorically refusing to fill the controlled-substance prescriptions written by Dr. Morgan, who is authorized by Florida to prescribe medication, while Walgreens' corporate officials are not.

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[1] Appellant Walgreens' Statement of the Issues includes an argumentative introductory paragraph that improperly contains contested factual assertions by Walgreens lacking any basis in the record. (Walgreens Br. 1) Walgreens' solitary citation to "DE:19-1:10" is not to any admissible evidence, but rather is to an exhibit from the internet attached by Dr. Morgan to his reply brief below, and does not support Walgreens' assertion. This violates 11th Cir. R. 28-1(i) ("[I]n all … sections of the brief[] every assertion regarding matter in the record shall be supported by a reference to the record.") Walgreens did not submit any evidence at the preliminary injunction hearing below.

3. Whether Walgreens may properly raise for the first time on appeal multiple new arguments, including *Younger* abstention doctrine (Walgreens Br. 18 n.1) and Walgreens' challenge to the preliminary injunction by recharacterizing it as a "mandatory injunction" (*id.* at 23-24), after Walgreens failed to make these same arguments below. (DE:16:1-14)

STATEMENT OF THE CASE

As the district court correctly found, "Dr. Morgan holds unrestricted medical and DEA prescribing licenses and operates a state-inspected pain management clinic that has consistently passed detailed inspections by the Florida Department of Health." (DE:25:8) Yet, without presenting any justification at the evidentiary hearing held below, Walgreens imposed a nationwide block against filling any prescriptions for controlled substances that are written by Dr. Morgan. (DE:10-1, 10-4, 25:2, 64:32, 64:38-39)[2] The district court properly enjoined this arbitrary exclusion of Dr. Morgan by Walgreens. (DE:25:10)

Appellant Walgreens seeks to reargue, and assert arguments for the first time, on appeal here to try to reverse this preliminary injunction. The substantive evidence in the record is only the testimony by Dr. Morgan's multiple witnesses, including

[2] The cited page numbers in the preliminary injunction hearing transcript (DE:64:__) are to the page numbers assigned by the court reporter. For example, the citation (DE:64:15:11-24) is to Tab 64, transcript page number 15, lines 11 through 24.

himself; Walgreens presented no witnesses and asked no questions of any witnesses at the hearing below. Appellant Walgreens, in essence, wants to relitigate this case on appeal after choosing to nearly default at the hearing below. Walgreens relies here on arguments it did not raise below, and on factual assertions never introduced into evidence below. Walgreens mostly relies on a general settlement agreement between it and the State of Florida, which does not mention Dr. Morgan or require a blanket exclusion of filling his controlled-substance prescriptions.

A. Course of Proceedings

Dr. Morgan filed a Verified Complaint against Walgreens in the Southern District of Florida on August 4, 2024, seeking injunctive relief and compensatory damages. (DE:1:1-28) He subsequently filed his First Amended Verified Complaint on August 8. (DE:4:1-30) Dr. Morgan asserts a claim for tortious interference with a business relationship, which details how Defendant Walgreens is interfering with Dr. Morgan's relationships with his patients. (DE:4:21-24) Dr. Morgan explained in his Amended Verified Complaint that:

> 69. Defendant deliberately, intentionally, and improperly interfered with the relationship between Dr. Morgan and his patients who fill his prescriptions at Walgreens and caused a breach of that relationship ***by refusing to honor his valid prescriptions issued for legitimate medical purposes.***
>
> 70. Defendant's actions of blocking all of Dr. Morgan's prescriptions for controlled substances is unjustified. The same prescriptions blocked when issued by Dr. Morgan, can be filled when issued by another provider for the same patients at the same Walgreens pharmacy locations. …

> 74. Defendant deliberately, intentionally, and improperly interfered with the relationship between Dr. Morgan and his prospective patients who choose to fill prescriptions at Walgreens by preventing the establishment and development of that relationship ***by refusing to honor his valid prescriptions issued for a legitimate medical purpose***.
>
> 75. Defendant's actions of blocking all of Dr. Morgan's prescriptions for controlled substances is unjustified. The same prescriptions blocked when issued by Dr. Morgan, can be filled when issued by another provider for the same patients at the same Walgreens pharmacy location. …
>
> 80. Dr. Morgan is unemployable for any position as a family medicine or primary care physician (*i.e., urgent care centers, community health centers, family medicine physician groups, etc*.) as a physician whose prescriptions for controlled substances will not be honored by Walgreens. Medical facilities will not accommodate the logistics necessary to redirect patients to another provider or another pharmacy.

(DE:4:21-23, emphasis added) Dr. Morgan sought injunctive relief to avert the irreparable harm. (DE:4:25-29)

Dr. Morgan filed an expedited motion for a TRO and preliminary injunction on August 13 to prevent Walgreens' scheduled block of Dr. Morgan's prescriptions from taking effect on August 16. (DE:10:1-21) On August 15, Judge Rodney Smith granted Dr. Morgan's motion for a TRO, for which both parties were present. Judge Smith also set the hearing for a preliminary injunction for August 22, with a briefing schedule for Walgreens to file in opposition, which it did on August 19 (DE:16:1-14).

Walgreens' entire factual submission consisted of only a terse three-page declaration by a corporate employee named Alexander Cosimano, without any

explanation of his training, experience, or even location. (DE:16-1:1-4) This declaration is devoted mostly to miscommunications between Walgreens and Dr. Morgan, along with a reference to a settlement agreement between Walgreens and the State of Florida which Walgreens never placed in the evidentiary record. (DE: 16-1:2-4) This declaration does not provide any reason for "Walgreens' decision to block [Dr. Morgan] as a prescriber at its pharmacies." (DE: 16-1:4) Dr. Morgan filed his reply on August 21, 2024. (DE:19:1-11)

A full preliminary injunction hearing was held below as scheduled on August 22, and its transcript is in the record. (DE:64:1-42) Judge Smith felt that the written submissions to the Court were not sufficient to grant a preliminary injunction, and thus he initially denied the motion prior to the introduction of any evidence at the hearing. (DE:64:4:12-25) Judge Smith based his initial finding on his view "that there's an adequate remedy at law that can be brought based on the plaintiff's allegations." (DE:64:4:19-21, also 64:4:23-25)

However, Dr. Morgan had witnesses to present at the hearing, consisting of himself and two patients, of whom Judge Smith was not initially aware. (DE:64:6:7-12) He then allowed Dr. Morgan's counsel to call and question each witness. (*Id.*)

The first witness was a wheelchair-bound patient of Dr. Morgan since March 2021, and Mr. Epstein testified that he was diagnosed with "C-6 quadriparesis." (DE:64:7) He has been in pain management for "ten years." (DE:64:7:14) He said:

> [Dr. Morgan's counsel:] … Have you been advised by the pharmacist at Walgreens that your medication for controlled substances, if written by Dr. Morgan – issued by Dr. Morgan, they would not fill it?
> …
> [Mr. Epstein:] A few months ago, I received a letter from Walgreens to that effect.
>
> Q. Okay. Does that concern you or upset you?
> A. It makes me very upset. I like Dr. Morgan and I don't see anything wrong with Walgreens filling my prescriptions. I would have a hard time if I didn't have Walgreens.
>
> Q. Okay. Would it be a burden for you to find another doctor and/or another pharmacy?
> **A.** Both.
> …
> I have a lot of trouble sleeping. I wake up in the middle of the night in pain, and I need a pain medication to go back to sleep, and I'm so used to the medication that I've been taking, that I can't really take anything over-the-counter or I can't really take any lower dosage.

(DE:64:8:10-24, 64:18:7-11) Although provided the opportunity by the Court, Walgreens' counsel, Ms. Malvin, did not ask any questions of Mr. Epstein. (DE:64:9:10-11)

The second witness was another patient of Dr. Morgan, Christopher Roberts, who has been in pain management "[s]ince around 2001, 2002." (DE:64:10:14) Mr. Roberts testified that:

> Q. … If Dr. Morgan was not able to prescribe controlled substances and you weren't able to get your medication at Walgreens if issued by him, how would that affect you?
> [Mr. Roberts:] Well, it would affect my ability to get up and work and live and pay my, you know, pay my bills; take care of, you know, the family that I have to take care of and work.

Q. You have kids?
A. Yes.

Q. Okay. It would affect your ability to take care of your family including your kids?
A. Yes, yes.

Q. How hard would it be for you to find another pharmacy or another physician that could treat your pain?
A. Probably almost impossible. …

(DE:64:12:4-17)

Mr. Roberts then testified further as follows:

Q. … So, for example, your primary care is not going to do pain management, they're going to tell you to find a pain management doctor?
A. Yes, that's correct.

Q. Thank you. What would happen if you didn't get your medication?
A. I couldn't move. I couldn't get up and do what I have to do every day. I don't know how else to explain it. I mean, of course, you know, I know that there's the issue that, oh, well, people are out seeking these drugs or whatever, but that's not the case with a lot of patients. And it seems like the legitimate patients are getting shafted because of, you know, some of these stores that did things in the past and they weren't doing their due diligences to verify prescriptions and such that they were filling.
…
I couldn't work. I couldn't get my daughter up for school. I couldn't take care of my dad that's in the nursing home. I couldn't do anything.

Q. Okay. So, it would be fair to say that you would experience uncontrollable pain?
A. Yes.

(DE:64:15:11-24, 64:16:2-7) Walgreens' counsel, Ms. Malvin, asked no questions of this witness. (DE:64:16:23)

Next Dr. Morgan testified:

> I have an unrestricted medical license, unrestricted DEA license. No blemishes on my record ever. They should be – by law, by law, they should be honoring my valid prescription because the Department of Health, they audit us once a year as a pain management clinic and even they said I have stellar reviews of therapeutic prescribing for legitimate reasons for all my patients. And that's the same department that oversees the pharmacy board and the pharmacy board also regulate pharmacies like Walgreens.

(DE:64:20:15-25) Dr. Morgan's comprehensive testimony further included the following:

> And then the other danger to this situation, they're not blocking pain medication. They're blocking all controlled medications as if all controlled medication is a narcotic or pain medicine.
>
> No. I have patients with seizures and those medicines are controlled. Patients with androgen deficiencies, like hormone and testosterone and all kinds of stuff that they need that for their situations. Those are controlled situations. Patients with chronic cough and COPD, those are controlled medications, nonnarcotics.
>
> Their purpose of doing an outright block of a controlled substance which the DEA tells me I'm allowed to do, to prescribe, and Department of Health knows I have an unrestricted DEA license, never blemished, for them to just ignore the law and rules and feel like they're practicing medicine and that would lead to another situation where God forbid, patients will die, go to the streets, do anything they can to try to get their medicine, especially since they're doing it to so many doctors at the same time in a small field.
>
> Shrinking – continuously shrinking this field. You know, you cannot do that. That's causing a disruption not only in the community, but in the state. A state that already have shortages of doctors.

(DE:64:22:8-25, 64:23:1-5) Dr. Morgan further testified that at least half of his patients use Walgreens to fill his prescriptions. (DE:64:24:1-2)

Dr. Morgan testified as to the severe medical withdrawal issues when prescriptions are not filled:

> [Dr. Morgan:] It's not like if I didn't get my diabetic pill for a week, but I'm eating a good enough diet that won't shoot my sugar up.
>
> No, these medications, even for a 24-hour period of not having them, they have to maybe go to the hospital because of withdrawal effects and all kind of side effects for not having the medicine.

(DE:64:30:4-10)

Dr. Morgan testified as to the reputational harm resultant from being excluded by Walgreens:

> Q. Do you feel that your other medical professional colleagues will also look at you a certain way if they –
> A. Of course. Everybody looks upon – when a doctor seems to quote, unquote "be in trouble," everybody look at us negatively, you know. Then they start gossip, rumors as if we're doing something wrong, you know. And how do you repair something like that?

(DE:64:25:4-11)

Dr. Morgan testified as to his perception that he was being excluded based in part on profiling and how he looks:

> And the profiling continues because I have a pharmacist who have looked me up on the Internet because of the way I look, you know? I'm not the clean cut short hair physician. They're not used to seeing a black doctor with dreads.

(DE:64:29:13-17)

Walgreens declined its opportunity to ask Dr. Morgan any questions. (DE:64:32:3) Walgreens' counsel was given the opportunity to make a closing

statement, but Walgreens' entire oral argument was merely a half-page of non-substantive statements. (DE:64:38:24 through 64:39:13)

After a recess, the Court then ruled as follows:

> The court finds that the testimony which was all presented was uncontested and uncontroverted, and it does establish all the elements to meet the preliminary injunction in terms of having irreparable harm that Dr. Morgan testified to as well and also the other elements.

(DE:64:40:1-5)

The Court issued its written Order Granting Motion for Preliminary Injunction on August 26, 2024. (DE:25:1-10) The Court found that "Dr. Morgan has clearly established all four perquisites and has met his burden for the issuance of a preliminary injunction" and thereby ordered "that Plaintiff's Motion for a Preliminary Injunction [DE 10] is **GRANTED.**" (DE:25:10, emphasis in original) Specifically, the Court found that:

(i) A likelihood of success on the merits, because "Walgreens' decision to block his prescriptions for controlled substances is likely to be unjustified and potentially unlawful" and if the patients "were prescribed the same medications by another physician, [Walgreens] would fill those prescriptions, even at the very location that refused to fill Dr. Morgan's prescriptions" (DE:25:7-8):

(ii) Irreparable harm, because "[t]he Court is persuaded by his testimony that his professional standing and reputation, employability, and the viability of his clinic are all at risk if the block remains in place" (DE:25:8-9);

(iii) Balance of equities in favor of Dr. Morgan, because "[t]he inability of Dr. Morgan's patients to access their essential medications poses a significant risk to their health and well-being. Furthermore, the

> continued blocking of Dr. Morgan's prescriptions could jeopardize the operation of his medical practice, despite his compliance with all applicable laws and regulations." (DE:25:9); and
>
> (iv) Public interest in favor of the preliminary injunction, for multiple reasons including that "the public interest is served by upholding the integrity of the medical profession and ensuring that licensed physicians can operate without unwarranted interference from corporate entities" (DE:25:9-10).

B. Statement of the Facts

The unrebutted facts are as set forth by the sworn testimony of Dr. Morgan and his witnesses at the preliminary injunction hearing, as summarized above. Walgreens' Settlement Agreement with Florida is not properly in evidence (and does not mention Dr. Morgan), and Walgreens' many factual assertions based on it are in violation of 11th Cir. R. 28-1(i). (Walgreens Br. 2-3)

As correctly summarized by the district court's written Order Granting Motion for Preliminary Injunction, based on sworn testimony at the preliminary injunction hearing and on the First Amended Verified Complaint (DE:4):

> Dr. Morgan is a Florida licensed physician. He is the sole physician who operates his licensed pain management clinic. When his practice was inspected by the Florida Department of Health ("FL DOH") on May 31, 2024, it was concluded that his medical records demonstrated: complete medical history and physical examination, documented reason for prescribing controlled substances for chronic pain, clear and individualized treatment plan developed, adjustment of drug therapy to the individual needs of each patient, and "complete medical justification for continued treatment with controlled substances." (DE 10-3.)
>
> On or about June 18, 2024, Dr. Morgan was notified by Walgreens that effective August 16, 2024, and for one full year thereafter, it will not fill

> prescriptions for controlled substances issued by him. (DE 10-1.) Dr. Morgan has over 100 patients who fill their medications at Walgreens. These patients also received notice that Walgreens would no longer fill the prescriptions for controlled substances issued by Dr. Morgan. (DE 10-4.) No explanation accompanied these notices as to the reason for the block. The block on Dr. Morgan's controlled substance prescriptions was not made by a local pharmacist, but by the corporate office. (DE 10-1; DE 10-4.) The letter also indicated that the patient's other prescribers would not be affected, and therefore patients could have their same medications filled if the prescriptions were issued by a different doctor.
>
> Plaintiff's suit against Walgreens alleges a claim for Tortious Interference with Business Relationship and seeks injunctive relief.

(DE:25:2)

Walgreens' corporate-wide block of Dr. Morgan's controlled-substance prescriptions is "not based on any legitimate concern over the safety or legality of the prescriptions but rather on an internal policy that does not take into account the specific circumstances of Dr. Morgan's practice," as demonstrated by the uncontested evidence presented at the preliminary injunction hearing. (DE:25:7-8) Walgreens never provided any explanation for its exclusion of Dr. Morgan: "the decision by Walgreens appears to be based on an internal determination for reasons yet to be disclosed." (DE:25:8)

C. Statement of the Standard of Review

The Court "review[s] for abuse of discretion a ruling on a motion for a preliminary injunction." *Vital Pharm., Inc. v. Alfieri*, 23 F.4th 1282, 1288 (11th Cir. 2022). "A district court abuses its discretion if it applies an incorrect legal standard,

follows improper procedures in making the determination, or makes findings of fact that are clearly erroneous. A district court may also abuse its discretion by applying the law in an unreasonable or incorrect manner." *Jysk Bed'N Linen v. Dutta-Roy*, 810 F.3d 767, 773-74 (11th Cir. 2015) (quoting *Klay v. United Healthgroup, Inc.*, 376 F.3d 1092, 1096 (11th Cir. 2004), quoting *Martin v. Automobili Lamborghini Exclusive, Inc.*, 307 F.3d 1332, 1336 (11th Cir. 2002), inner quotations and citations omitted).

An appellant, in this case Walgreens, may not assert for the first time on appeal arguments that it failed to make below. "Arguments raised for the first time on appeal are not properly before this Court." *Hurley v. Moore*, 233 F.3d 1295, 1297 (11th Cir. 2000) (citing *Walker v. Jones*, 10 F.3d 1569, 1572 (11th Cir. 1994)).

Finally, appellate arguments based on assertions from outside of the evidentiary record are not properly part of an appeal. *See, e.g.*, *United States v. Trader*, 981 F.3d 961, 969 (11th Cir. 2020) ("We do not consider that information because it is outside the record.") (citing FED. R. APP. P. 10).

SUMMARY OF THE ARGUMENT

Walgreens has provided no substantive evidence in the district court or here on appeal for categorically refusing to fill any controlled-substance prescription by Dr. Morgan, an African American physician in good standing with the medical board on whom many patients depend for care. (DE:64:20:15-25, 64:36:14)

Walgreens' entire evidentiary submission consists of a conclusory 3-page declaration of a corporate employee who fails to disclose his training, experience, or location, and who fails to explain any substantive reason for Walgreens' refusal to fill Dr. Morgan's prescriptions. (DE:16-1:2-4) Instead, Walgreens' declaration admits it made its decision prior to reviewing the response by Dr. Morgan. (*Id.* at 4 ¶13) Walgreens did not call any witnesses at the preliminary injunction below, and did not ask any questions of the witnesses who testified for Dr. Morgan, consisting of patients and Dr. Morgan himself. There is nothing in the record on which this Court could properly reverse the well-reasoned decision below, which Walgreens concedes is afforded a highly deferential abuse of discretion standard on appeal.

Walgreens, like every public corporation, does not properly practice medicine while its duty is to maximize profits for its shareholders. The district court held an evidentiary hearing and Walgreens essentially defaulted at it. Walgreens' request here to overturn the decision below is tantamount to demanding that Walgreens be allowed to exclude any physician at any time for any reason, which would be a blank

check for Walgreens to practice medicine in an arbitrary, unexplained manner while inflicting harm. No precedent supports Walgreens' position, and many precedents stand against it.

ARGUMENT

Walgreens seeks a ruling here to allow it to categorically exclude any physician for any undisclosed reason that it wants, and without any evidence. If accepted by this Court, then physicians' licenses to practice medicine would be dependent on the whim or discrimination or retaliatory motives of a corporation such as Walgreens. Fortunately, that is not the law, nor should it be.

I. Dr. Morgan Fully Satisfied All the Elements for a Preliminary Injunction.

A. The Governing Standard Concerning Preliminary Injunctions Requires Affirmance Here.

The standard for obtaining a preliminary injunction is well-established:

> A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.

Winter v. NRDC, Inc., 555 U.S. 7, 20 (2008). *See also Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir. 2000) (*en banc*). As demonstrated below, Dr. Morgan carried his burden on each of the foregoing elements.

B. Dr. Morgan's Injuries Constitute Irreparable Harm, and Are Not Speculative.

Walgreens denies that Dr. Morgan suffers irreparable harm from its refusal to fill his prescriptions and instead argues that the harm is merely speculative (Walgreens Br. 14-17), but it is obvious that a physician who treats pain cannot continue to practice medicine if his patients cannot have the prescriptions written by their physician filled by the pharmacy. Dr. Morgan testified himself at the evidentiary hearing below, as did two of his patients, and Walgreens did not question any of these witnesses.

Dr. Morgan's testimony, none of which Walgreens challenged below or on appeal here, included this:

> Q. Thank you. Just one last question with regards to your ability to prescribe controlled substances and have them filled at Walgreens. How do you think that would affect you getting a job as even an urgent care doctor?
>
> [Dr. Morgan:] That's the other thing. They did this thing nationwide. They speak as if they're doing it within the state boundaries. No, they put it in a central system that affects me nationwide in every aspect of the United States.
>
> And everybody will look at – they judge the doctor for the fact that, oh, well, they said we can't fill your scripts so you must have did something wrong.
>
> And the profiling continues because I have a pharmacist who have looked me up on the Internet because of the way I look, you know? I'm not the clean cut short hair physician. They're not used to seeing a black doctor with dreads.
>
> Sometimes I have to go to the pharmacist and drive there. I tell them because they're very feisty on the phone and they hang up the phone on us.

> I have to drive to the pharmacist to advocate for my patient and I drive there with a packet to do a pharmacy complaint, to let them know I'm serious.
>
> So that's what we're going through and we are a legitimate doctor doing legitimate things. They – they're causing irreparable damages to my reputation and everything else, but they're also doing it to the patients and these are life and death situations.

(DE:64:29:2 through 30:3)

Dr. Morgan's reputation has already been damaged since the Walgreens' pharmacists were told through its notice of block that his controlled substance prescriptions will no longer be filled, as demonstrated by their unprofessional, disrespectful, and antagonistic (or hostile) interactions with him on the telephone. Despite this, Walgreens argues that Dr. Morgan's injuries can be remedied as merely economic losses, and that "economic losses alone do not justify a preliminary injunction." *BellSouth Telecomms., Inc. v. MCImetro Access Transmission Servs.*, LLC, 425 F.3d 964, 970 (11th Cir. 2005) (quoted by Walgreens Br. 15) Walgreens omits a key part and quotes only a fragment, when the full sentence states: "Although economic losses alone do not justify a preliminary injunction, '***the loss of customers and goodwill is an irreparable injury***.'" *Id.* (quoting *Ferrero v. Associated Materials, Inc.*, 923 F.2d 1441, 1449 (11th Cir. 1991), emphasis added). Numerous precedents establish that the loss of customers constitutes irreparable harm. *See Pinnacle Agric. Distrib. v. Mayo Fertilizer, Inc.*, 2017 U.S. Dist. LEXIS 30978, 17 WL 889542, at *6 (S.D. Ga. Mar. 6, 2017) (finding irreparable harm to a plaintiff if

defendants were allowed to solicit business from its customers and vendors); *Amedisys Holding, LLC v. Interim Healthcare of Atlanta, Inc.*, 793 F. Supp. 2d 1302, 1313 (N.D. Ga. 2011) (finding irreparable harm to a plaintiff if a defendant were allowed to solicit patients from doctors and facilities listed in misappropriated referral logs); *Variable Annuity Life Ins. Co. v. Joiner*, 454 F. Supp. 2d 1297, 1304 (S.D. Ga. 2006) ("VALIC will suffer irreparable injury if the Joiners are allowed to continue use of VALIC's client identity and account information to solicit VALIC customers because VALIC will be deprived of the value of the trade secret and confidential information in which it has invested significant time and money.").

Reputational damages can also constitute irreparable harm due to the difficulty or impossibility of quantifying the injury in monetary terms. *See GlaxoSmithKline LLC v. Boehringer Ingelheim Pharms., Inc*., 484 F. Supp. 3d 207, 226 (E.D. Pa. 2020) ("Harm to reputation or goodwill can constitute irreparable injury," as required for a preliminary injunction, "because it is virtually impossible to quantify in terms of monetary damages."); *see also Yorktown Sys. Grp. Inc. v. Threat Tec LLC,* 108 F.4th 1287, 1296 (11th Cir. 2024).

Moreover, interference with one's professional career is not merely a matter of economic losses. "[G]rounds for irreparable injury include loss of control of reputation, ***loss of trade***, and loss of goodwill." *Ferrellgas Ptnrs., L.P. v. Barrow*, 143 F. App'x 180, 190 (11th Cir. 2005) (quoting *Pappan Enters., Inc. v. Hardee's*

Food Sys., Inc., 143 F.3d 800, 805 (3d Cir. 1998), emphasis added). Dr. Morgan has spent his career developing expertise and credentials to care for patients, and it plainly constitutes irreparable harm for Walgreens to take away his ability to fully care for patients.

Walgreens relies on a district court decision from the Middle District of Florida, which in turn relies on a Federal Circuit decision, for the point that a preliminary injunction should rely on evidence beyond "unverified allegations in the pleadings," and "vague or conclusory affidavits." *Palmer v. Braun*, 155 F. Supp. 2d 1327, 1331 (M.D. Fla. 2001) (a copyright infringement case that cited *Atari Games Corp. v. Nintendo of Am., Inc.*, 897 F.2d 1572, 1575 (Fed. Cir. 1990), a patent infringement case). But a full evidentiary hearing was held, and the issues of patient care in this case are hardly analogous to a copyright or patent infringement case.

In its Appellant brief, Walgreens is critical that Dr. Morgan "did not specify any patients" in his verified Amended Complaint. (Walgreens Br. 4) Yet, he did refer to ***mutual patients*** and ***prospective mutual patients*** in the Verified Complaint, and confidentiality prevents disclosing specific patient names in a public pleading:

> 49. Dr. Morgan currently treats over 100 patients who regularly fill their medications at Walgreens locations. Dr. Morgan also accepts new patients, in his discretion, who may choose to fill their medications at Walgreens often based on preference or insurance coverage. (DE:4:15)

Courts have found claims viable even without naming specific customers, provided there is enough detail to make the relationships identifiable. A description

of the clientele by their class or geographic location can suffice. In *E-Z Pack Mfg. v. RDK Truck Sales & Serv.*, alleging a business relationship with "several customers throughout the Southeastern United States" was sufficient to meet requirement of pleading "identifiable customers." *E-Z Pack*, No. 8:10-CV-1870-T-27AEP, 2011 U.S. Dist. LEXIS 97274, at *25-26 (Aug. 10, 2011), *adopted by* 2011 U.S. Dist. LEXIS 97268 (M.D. Fla. Aug. 30, 2011). An exhaustive description of each client is not required, and the plaintiff must merely plausibly allege the existence of those customers via some description. *Agostinacchio v. Heidelberg Eng'g, Inc.*, No. 0:18-CV-60935-UU, 2019 U.S. Dist. LEXIS 122319, at *34 (S.D. Fla. Feb. 5, 2019).

C. The Balance of the Harms Favors Dr. Morgan, Who Cannot Remain in Practice for His Patients If His Prescriptions Are Not Filled for Them and His Patients Would Be Impeded in Obtaining Medications They Need.

Walgreens devotes less than a page to arguing that the balance of harms favor it, without citing to anything in the record or any precedent in support of its position. (Walgreens Br. 17)

Walgreens asserts in a conclusory manner that its "actions to block Dr. Morgan's prescriptions were ***mandated*** by the Florida Attorney General's Office, and noncompliance would be a breach and could result in sanctions." (*Id.*, emphasis in original) Walgreens' assertion is implausible, and it has not provided any evidence in support of it. Dr. Morgan is not mentioned anywhere in the settlement agreement between Walgreens and Florida, and Walgreens never introduced it into evidence.

Moreover, Walgreens is incorrect as a matter of law in asserting that the injunction below "puts Walgreens in the impossible position of choosing between violating the Settlement Agreement or violating a federal injunction." (*Id.*) A federal injunction obviously takes priority over anything in a state-level agreement that may be to the contrary.

D. The Injunction Supports Florida's Public Interest by Enabling Legitimate Patients to Obtain Access to Pain Medications They Desperately Need.

As the district court correctly held:

> The Court recognizes that ensuring access to necessary medications is a matter of public concern, particularly for vulnerable populations like those served by Dr. Morgan. The testimonies presented underscore the potential public health crisis that could arise if patients are denied access to their pain management medications. Mr. Epstein, a quadriplegic, and Mr. Roberts, a long-term pain management patient, both testified that they would face severe, debilitating, and or life-threatening consequences if they are unable to obtain their prescribed medications. These include uncontrollable pain, withdrawal symptoms, and the potential inability to physically function or maintain employment. The emotional distress and potential physical deterioration described by these patients underscore the urgency of the situation.

(DE:25:9)

Walgreens does not address the above, but instead argues for the first time on appeal that *Younger* abstention should apply and that Dr. Morgan should have pursued state remedies instead. As explained in the Standard of Review above and in Point I.F, *infra*, this argument by Walgreens is improper here on appeal because it failed to assert it below.

Dr. Morgan recognized that the effect of Walgreens' corporate block on his prescriptions is to prohibit the individual Walgreens pharmacists from complying with state laws and regulations, by obstructing their ability to use their professional judgment with each patient on a case-by-case basis. (DE:4:11-12). However, Dr. Morgan does not base his claim on a violation by Walgreens of state law or regulations, so it misplaces its citations to Fla. Admin. Code R. 64B16-25.170; §§ 465.004, 465.005, 465.015, 465.0155, 465.016, Fla. Stat. (cited by Walgreens Br. 22) Walgreens remains accountable for the claim of tortious interference asserted by Dr. Morgan regardless of the Walgreens corporate office's existent or non-existent status as a licensee or relationship with the Florida State Board of Pharmacy.

"[T]here is no adequate alternative state forum where the … issues can be raised" by Dr. Morgan, and thus *Younger* abstention does not apply. *Hughes v. AG of Fla.*, 377 F.3d 1258, 1263 n.6 (11th Cir. 2004) (quoting *Younger*, 401 U.S. 37, 45, 53-54 (1971)).

In a footnote, Walgreens misplaces reliance on *Younger* abstention:

> The Supreme "Court has extended *Younger* [*v. Harris*, 401 U.S. 37 (1971)] abstention to particular state civil proceedings that are akin to criminal prosecutions, or that implicate a State's interest in enforcing the orders and judgments of its courts. *Sprint Communications, Inc. v. Jacobs*, 571 U.S. 69, 72–73 (2013) (internal citations omitted). The Attorney General's litigation against pharmacies, including Walgreens, and the resulting Settlement Agreement, is such a civil proceeding that triggers *Younger*.

(Walgreens Br. 18 n.1) But *Younger* abstention has no application here, and *Sprint Communications* is easily distinguishable.

In *Sprint Communs.*, the U.S. Supreme Court reversed application of *Younger* abstention, and emphasized that "even in the presence of parallel state proceedings, abstention from the exercise of federal jurisdiction is the exception, not the rule." *Sprint Communs.*, 571 U.S. at 81-82 (inner quotations and citations omitted). This Court has likewise held that:

> Federal courts have a virtually unflagging obligation to hear cases for which the courts have jurisdiction. Thus, non-abstention remains the rule. The *Younger* abstention doctrine is an extraordinary and narrow exception to that rule.

Dandar v. Church of Scientology Flag Serv. Org., 619 F. App'x 945, 947 (11th Cir. 2015) (quotations and citations omitted).

Dr. Morgan does not have any ability to assert his rights in whatever dealings Walgreens may have with Florida, which do not even mention Dr. Morgan. In no way has the State of Florida, by extracting a monetary settlement from Walgreens, ordered or authorized Walgreens to refuse to fill prescriptions by any physician it likes. As this Court has made clear, "the existence of the state court action was not a sufficient basis for the court's judgment dismissing the case in the federal court." *Strode Publishers, Inc. v. Holtz*, 665 F.2d 333, 336 (11th Cir. 1982). Walgreens' additional reliance on a district court decision in Tennessee is likewise misplaced. *See Caughorn v. Phillips*, 981 F. Supp. 1085, 1087 (E.D. Tenn. 1997) (quoted by

Walgreens Br. 18). *Caughorn* was a *pro se* case in which "the effect of granting the temporary restraining orders sought by the plaintiff would nonetheless be substantial interference by a federal court in [child support] proceedings in a State court," which the federal court declined to do. *Id.* Nothing remotely similar to that scenario exists here.

E. Dr. Morgan Established a Likelihood of Success on His Claim of Tortious Interference with Business Relationships.

Dr. Morgan established a likelihood of success on his claim of tortious interference by Walgreens with business relations, and Walgreens' argument against this is without merit. (Walgreens Br. 19-23)

As Walgreens explains, the applicable Florida case law concerning the elements of a tortious interference with a business relationship are:

> (1) the existence of a business relationship;
> (2) knowledge of the relationship on the part of the defendant;
> (3) an intentional and unjustified interference with the relationship by the defendant; and
> (4) damage to the plaintiff as a result of the breach of the relationship.

Duty Free Ams., Inc. v. Estee Lauder Cos., 797 F.3d 1248, 1279 (11th Cir. 2015) (citing *Ethan Allen, Inc. v. Georgetown Manor, Inc.*, 647 So. 2d 812, 814 (Fla. 1994), quoted by Walgreens Br. 19). In addition, "to establish the tort of tortious interference with a business relationship, the plaintiff must prove a business relationship with identifiable customers." *Ferguson Transp. v. N. Am. Van Lines, Inc.*, 687 So. 2d 821, 821 (Fla. 1996).

Two of Dr. Morgan's patients testified at the preliminary injunction hearing, as did Dr. Morgan himself about Walgreens' interference with his relationship with his patients. (DE:64:8, 64:11-12, 64:19-23) Yet Walgreens did not ask any questions of any of these witnesses. Walgreens has not challenged their testimony in the court below, or here on appeal. Walgreens provided no witness testimony or other evidence on this tortious interference issue of its own.

Indeed, Walgreens insists that Dr. Morgan's patients would have their prescriptions filled if the same prescriptions were written by virtually any other physician. This is a candid, straightforward admission by Walgreens that the purpose and effect of its policy is to interfere with prescriptions written by Dr. Morgan for his patients, which constitutes a direct interference by Walgreens with Dr. Morgan's relationship with his patients. (DE:10-4:1) As the patient Mr. Epstein testified:

> Q. Okay. Thank you. Have you been advised by the pharmacist at Walgreens that your medication for controlled substances, if written by Dr. Morgan -- issued by Dr. Morgan, they would not fill it?
> [Patient Mr. Epstein:] Not yet.
> Q. Okay. Did you receive a letter to that effect?
> A. A few months ago, I received a letter from Walgreens to that effect.
> Q. Okay. Does that concern you or upset you?
> A. It makes me very upset. I like Dr. Morgan and I don't see anything wrong with Walgreens filling my prescriptions. I would have a hard time if I didn't have Walgreens.
> Q. Okay. Would it be a burden for you to find another doctor and/or another pharmacy?
> A. Both.
> Q. Okay. If you were to -- do you have other health care

providers other than Dr. Morgan?
A. Yes.
Q. Okay. Have they ever prescribed for your pain?
A. In the past, yes.
Q. Okay. And the prescriptions are the same that Dr. Morgan issues for you as well?
A. They were similar.

(DE:64:8:10 through 64:9:7)

Dr. Morgan need not exhaust imaginary remedies with the pharmacy board as Walgreens argues here. Unlike the *Desai* decision on which Walgreens relies, Dr. Morgan does not have any access to another adjudicatory process. *See Desai v. Lawnwood Med. Ctr., Inc.*, 219 So. 3d 869, 871 (Fla. Dist. Ct. App. 2017) ("The Doctor was advised of his rights pursuant to the board's fair hearing procedures and declined to exercise those rights."). In contrast with *Desai*, the Florida Board of Pharmacy (Board) does not provide any venue for a physician to obtain a remedy for himself against a pharmacy. At most, by referring to a statute and regulation cited by Walgreens, Fla. Stat. § 465.015 and Fla. Admin. Code R. 64B16-25.170, perhaps Dr. Morgan could complain to the Florida Board of Pharmacy, but Walgreens as a corporate entity does not hold a Florida license issued by the Board. Thus there is no genuine opportunity for adequate relief, as Walgreens as a corporate entity would not be subject to Board sanctions. The California Board of Pharmacy concluded that it lacked authority to discipline CVS Pharmacy, Inc., because that corporate entity

is not licensed by the pharmacy board. *Bradley v. CVS,* Case No. 20STCV24147 (Sup.Ct. L.A. County), *Plaintiff's Brief in Support of Lifting Stay* at 3.

Moreover, pursuing this matter in an administrative arena would not provide relief quickly enough, in addition to being an exercise in futility. Exhaustion doctrine is subject to the district court's discretion and it properly declined to invoke it to deny relief to Dr. Morgan from his imminent irreparable harm. Exhaustion is not required where no genuine opportunity for timely, adequate relief exists or if irreparable injury will result if the complaining party is compelled to pursue administrative remedies. *See Panola Land Buyers Ass'n v. Shuman*, 762 F.2d 1550, 1556–57 (11th Cir. 1985) (citing many authorities). Courts do not require exhaustion when the administrative remedy would not provide relief commensurate with the claim or would unreasonably delay the action and thereby create a serious risk of irreparable injury. *See Walker v. Southern Railway,* 385 U.S. 196 (1966); *Haitian Refugee Center v. Nelson,* 872 F.2d 1555, 1561 (11th Cir.1989) ("Exhaustion is not required, however, where the administrative remedy will not provide relief commensurate with the claim."), *aff'd sub nom.*, *McNary v. Haitian Refugee Ctr.*, 498 U.S. 479 (1991). Moreover, "exhaustion is not a jurisdictional doctrine, but one subject to the discretion of the trial court." *Panola*, 762 F.2d at 1556–57.

Dr. Morgan's claims here are separate from the issue of whether Walgreens corporation is subject to the jurisdiction of the Florida Board of Pharmacy, and if so,

whether it has violated any law or rule, or whether its license to practice pharmacy should be sanctioned. Indeed, Dr. Morgan merely seeks that Walgreens cease corporate interference with the filling of his prescriptions so that licensed pharmacists may exercise their professional judgment in dispensing medication – just as they do for other licensed physicians – ensuring the patients receive medication for their chronic health conditions. The public needs Walgreens to stay in business, but to do so without discriminating against Dr. Morgan and his patients.

Finally, Walgreens grasps at "primary jurisdiction doctrine" to try to strip jurisdiction from the district court below over this matter. Walgreens insists that this doctrine "restrains the district court to defer to the Board of Pharmacy." (Walgreens Br. 22) "In invoking the doctrine, we stay further proceedings pending the outcome of an administrative ruling." *Sierra v. City of Hallandale Beach, Fla.*, 904 F.3d 1343, 1351 (11th Cir. 2018). But there is no administrative proceeding for the district court to defer to, and Walgreens does not cite to any such administrative venue that could timely grant Dr. Morgan the relief he seeks here.

The Eleventh Circuit limits abstention based on primary jurisdiction doctrine to where there are "two factors—expertise and uniformity—" neither of which exist here. *Id.* No state regulatory jurisdiction has the authority and the expertise to address the issues presented in this case, as the Board of Pharmacy is not empowered to regulate the practice of medicine and Dr. Morgan is in good standing with the Florida

Board of Medicine. (Fla. Stat. § 465.003 and DE:176-177) Dr. Morgan's claim is for tortious interference by Walgreens, rather than for violating the Florida Pharmacy Act or any of the Board's administrative rules that Walgreens cites in its argument. (Walgreens Br. 22)

As to uniformity, the practice of medicine requires individualized decisions about the different needs of individual patients. No two patients are exactly like, and thus should not be treated in an identical manner. Rate-setting cases, which are unlike the individualized practice of medicine, constitute a more typical application of primary jurisdiction doctrine. *See Sierra*, 904 F.3d at 1352 ("*Abilene Cotton*, in which the Supreme Court first explained the primary-jurisdiction doctrine, helps explain why uniformity takes on special significance in rate-setting cases.") (citing *Tex. & P. R. Co. v. Abilene Cotton Oil Co.*, 204 U.S. 426, 437 (1907)).

Walgreens relies entirely on a Florida Supreme Court decision for its argument for abstention based on primary jurisdiction doctrine, but that state court precedent does not dictate federal procedure and is unhelpful to Walgreens anyway. *See Flo-Sun, Inc. v. Kirk*, 783 So. 2d 1029, 1036–37 (Fla. 2001) (quoted by Walgreens Br. 22-23). There the Florida Supreme Court held in favor of deferring to a regulatory agency in a novel lawsuit based on nuisance against sugar cane farmers, alleging harm of the sort that a regulatory agency typically addresses. *Flo-Sun*, 783 So. 2d at 1032 (quoting the complaint). Here, there is no regulatory agency

from which Dr. Morgan can obtain individualized relief for the interference with his practice of medicine by Walgreens, and Walgreens does not cite any federal precedent in support of its argument for abstention on this basis.

There are no issues before the Court that require the special knowledge of a regulatory body or that otherwise exceed the Court's competence. The *State of Florida v. Walgreen* case, resulting in the massive opioid settlement agreement that Walgreens relies on so heavily in its brief, was considerably more complicated and was not directed to the administrative arena. *State of Florida, Office of the Attorney General Department of Legal Affairs v. Purdue Pharma, L.P. et al*., Case No. 2017-CA-001438 (Fla. Cir. Ct. Pasco County).

F. Walgreens Improperly Raises for the First Time on Appeal Its Argument against the Preliminary Injunction as a Mandatory Injunction with a Different Standard.

Walgreens asserts for the first time on appeal that the preliminary injunction is improper as a mandatory injunction. (Walgreens Br. 23-24) Walgreens did not assert this argument below and thus it should not be considered for the first time on appeal. *See Ramirez v. Secretary, U.S. Dep't of Transp.*, 686 F.3d 1239, 1249 (11th Cir. 2012) ("It is well-settled that we will generally refuse to consider arguments raised for the first time on appeal."); *Access Now, Inc. v. Southwest Airlines Co.*, 385 F.3d 1324, 1331 (11th Cir. 2004) ("[T]oo often our colleagues on the district courts complain that the appellate cases about which they read were not the cases argued

before them. We cannot allow Plaintiff to argue a different case from the case she presented to the district court.") (citation omitted).

The term "mandatory injunction" is mentioned only twice by Walgreens in its brief below in opposition to the preliminary injunction, and neither time does Walgreens argue, as it does here on appeal, against the injunction for Dr. Morgan based on a different standard for a mandatory injunction. First, Walgreens argued below that Dr. Morgan did not seek relief of a "mandatory injunction" quickly enough to justify his assertion of irreparable harm, thereby merely asserting a timeliness argument. (DE:16:9 n.5) Second, Walgreens distinguishes an authority as "not similar" to this case because the authority concerned a request for a "mandatory injunction for specific performance under a reinstated contract." (DE:19:7-8) Nowhere below did Walgreens argue against the requested preliminary injunction based on Walgreens' characterizing it as a mandatory injunction.

The preliminary injunction merely prohibits Walgreens from interfering with Dr. Morgan's prescriptions, as the ordinary course of business by a corporate pharmacy, such as Walgreens, is to permit their pharmacists to fill legitimate prescriptions written by physicians whose licenses are in good standing, as Dr. Morgan is. The district court prohibits Walgreens, as a national corporate entity, from altering the ordinary practices of local pharmacists with respect to Dr. Morgan. This is not a genuine mandatory injunction, which mandates that a party take a

particular action that it does not ordinarily take. Walgreens does ordinarily fill prescriptions, and ordinarily does so for licensed physicians. The true status quo here is for Walgreens to permit the filling of Dr. Morgan's prescriptions, as Walgreens does for other licensed physicians. Otherwise, irreparable harm would persist against Dr. Morgan and his patients throughout the course of this litigation such that Dr. Morgan could be wrongly driven out of his practice before the district court reaches the merits of his lawsuit.

Dr. Morgan made a "strong showing of necessity upon equitable grounds which are clearly apparent." *Fernandez v. Bal Harbour Vill.*, 49 F. Supp. 3d 1144, 1151 (S.D. Fla. 2014) (quoting *Fox v. City of W. Palm Beach*, 383 F.2d 189, 194 (5th Cir. 1967), inner quotations omitted). That district court decision, which relied on a half-century old Fifth Circuit opinion (pre-dating the Eleventh Circuit), forms the basis for Walgreens' argument. Yet in the *Fox* decision quoted, the Fifth Circuit reversed a denial of a request for mandatory injunction. *Fox*, 383 F.2d at 194.

Walgreens additionally relies on a magistrate's recommendation, not clearly marked as such by Walgreens. (Walgreens Br. 23, quoting *Delivery.com Franchising, LLC v. Moore*, 20-20766-CIV, 2020 U.S. Dist. LEXIS 108359, 2020 WL 3410347, at *9 (June 19, 2020) (Goodman, M.J.), *adopted by* 2020 U.S. Dist. LEXIS 141938 (S.D. Fla. July 14, 2020)). The request for injunction relief there was a non-starter because "[f]or all practical purposes, Delivery.com is asking for an

order of specific performance of the franchise agreement or a mandatory injunction requiring performance. But a personal services contract cannot be enforced by injunction or specific performance." 2020 U.S. Dist. LEXIS 108359, at *19 n.10 (inner quotations and citation omitted). Walgreens also misplaces reliance on a district court decision that was expressly applying the standard of New York law, which is inapplicable here. *See FHR TB, LLC v. TB Isle Resort, LP*, 865 F. Supp. 2d 1172, 1192 (S.D. Fla. 2011) (relying on New York state and federal cases).

II. The Preliminary Injunction Is Not Impermissibly Vague.

The district court ordered Walgreens to "remove its block and notice of block on Dr. Morgan's prescriptions for controlled substances immediately to ensure that all of his patients receive their prescribed medications without unwarranted opposition and unnecessary delay." (DE:25:10). There is nothing vague about this, and it easily passes muster against Walgreens' challenge. (Walgreens Br. 24-26) Indeed, Walgreens' argument about vagueness is in tension with its argument that this constitutes a mandatory injunction, which is typically very specific.

Walgreens quotes at length this Court's decision that reversed and remanded an injunction against Palm Beach Blood Bank, which was deemed to be too broad and vague in prohibiting a rival blood bank from soliciting donations:

> "Since an ordinary person in Palm Beach's position could not ascertain which members of the public might be off-limits for its recruitment efforts, this provision contravenes Rule 65(d). … Second, the injunction bars Palm Beach from "possessing, copying, or making unauthorized use of Plaintiff's

> lists *or any other documents that contain trade secrets that are the proprietary property of Plaintiff*."

Am. Red Cross v. Palm Beach Blood Bank, Inc., 143 F.3d 1407, 1411-12 (11th Cir. 1998) (emphasis in original).

In contrast, the injunction against Walgreens here is clear: stop blocking prescriptions by Dr. Morgan. There is no vagueness or ambiguity in it, and an ordinary person in Walgreens' position could easily ascertain that Walgreens may no longer categorically block Dr. Morgan's prescriptions for controlled substances or alarm its pharmacists through a notice of a block. This preliminary injunction against Walgreens satisfies the *Palm Beach Blood Bank* standard.

Walgreens relies on a general observation that "every order granting an injunction" should be specific, as stated by Fed. R. Civ. P. 65(d). The order below is specific to Dr. Morgan and well within the parameters of the standard that Walgreens itself quotes, to "give the restrained party fair notice of what conduct will risk contempt." *Hughey v. JMS Dev. Corp.*, 78 F.3d 1523, 1531 (11th Cir. 1996) (quoted by Walgreens Br. 26).

CONCLUSION

Plaintiff-Appellee Dr. Morgan respectfully requests that this Court fully affirm the decision below.

Dated: February 20, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Certificate of Compliance With Type-Volume Limitation, Typeface Requirements, and Type Style Requirements pursuant to Fed. R. App. P. 32(a):

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 8,448 words excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word in 14-point Times New Roman font.

Dated: February 20, 2025

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CERTIFICATE OF SERVICE

I hereby certify that, on this 20th day of February, 2025, I electronically filed the foregoing with the Clerk of the Court using the Court's CM/ECF system, which I understand thereby serves counsel of record for all the parties.

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