STATE OF MICHIGAN

COURT OF CLAIMS

KENT W. WILDERN,

Plaintiff,

v

Case No. 25-000061-MZ

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS,

Hon. Sima G. Patel

Defendant.
_____ /

OPINION AND ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY DISPOSITION

This declaratory action challenges a rule requiring implicit bias training for the majority of healthcare professionals licensed in Michigan promulgated by defendant, the Department of Licensing and Regulatory Affairs (LARA). LARA moves for summary disposition under MCR 2.116(C)(4), (8) and (10), arguing that (1) plaintiff, Kent W. Wildern, lacks standing to sue and no actual controversy exists, (2) plaintiff has no valid constitutional claim warranting declaratory relief, and (3) plaintiff is not entitled to a permanent injunction. The Court GRANTS the motion and DISMISSES plaintiff's complaint.

I. BACKGROUND

Plaintiff was a Michigan-licensed dentist for about 40 years before the COVID-19 pandemic. In July 2020, Governor Gretchen Whitmer issued Executive Directive (ED) 2020-7, which directed LARA to promulgate rules requiring healthcare professionals to undergo training

on implicit bias and its effect on access to healthcare services. ED 2020-7 cited racial disparity in the prevalence of COVID-19 cases as prompting the need for implicit bias training for healthcare workers. *Id*. Implicit bias was defined in the Executive Directive as "thoughts and feelings that, by definition, often exist outside of conscious awareness, and therefore are difficult to control." *Id*. The Governor directed LARA, in consultation with relevant boards and task forces, to establish new rules requiring all healthcare professionals (with the exception of veterinarians) to receive implicit bias training. LARA was required to consult with stakeholders involved in the licensed healthcare professions, the government, and the community, to obtain input on the standards. *Id*. The Executive Directive cited MCL 333.16148(1) and MCL 333.17060(b)[1] as the statutory authority allowing LARA to promulgate the rule. *Id*.

LARA promulgated the rule, which went into effect on June 1, 2021. Mich Admin Code, R 338.7004(1) and (2) (Rule 7004). Before doing so, LARA consulted with the relevant boards, task forces, and various other stakeholders. LARA submits documents showing that it convened a workgroup, which included representatives from 86 different groups, and met with the workgroup 17 times over the course of nearly eight weeks. LARA then provided a summary of the workgroup's findings and recommendations. Plaintiff does not dispute that these meetings occurred as LARA represents. LARA has also provided e-mail communications between its representatives and the Chair of the Board of Dentistry, Peter Chiaravalli, who indicated he did not believe he could make a meaningful contribution to the workgroup but expressed his full

[1] MCL 333.17060 relates to physician's assistant licenses and is not relevant to this matter.

support for the initiative. A public hearing was held on the proposed rule in March 2021, before the rule was promulgated in June 2021.

Under Rule 7004, the implicit bias training must "be related to reducing barriers and disparities in access to and delivery of healthcare services," cover one or more of a list of several topics, and include strategies to reduce disparity in healthcare access and delivery. Rule 7004(5). The training must also include "the administration of pre-and post-test implicit bias assessments." *Id*. As an individual who was already licensed as a dentist when LARA promulgated the rule, plaintiff was required to complete "a minimum of 1 hour of implicit bias training for each year of [his] license or registration cycle." Rule 7004(2). LARA represents that plaintiff's training requirement would total three hours. Finally, Rule 7004 allows LARA to audit the licensee or registrant, who is required to provide proof of completion of training. Rule 7004(6).

Plaintiff asserts that, sometime in 2021 (after the implicit bias training requirement became effective), he voluntarily decided to leave the practice of dentistry rather than undergo the training, which he considers "illegal and immoral."[2] He asserts that his decision was prompted by a conversation with an unidentified individual, who told him that "to keep his dentistry license going forward, he would have had to take implicit bias training." Plaintiff now seeks to renew his license so that he may practice dentistry "on a part-time contracting basis." However, he refuses to undergo the implicit bias training and alleges that he cannot reactivate his license otherwise.

[2] According to LARA, plaintiff's license was not subject to renewal until nearly three years after he voluntarily chose to leave the practice of dentistry in 2021, and therefore did not expire until 2024.

Plaintiff sued LARA in this Court, raising claims for ultra vires promulgation of a regulation (Count I), violation of the nondelegation doctrine (Count II), and violation of substantive due process under Const 1963, art 1, § 17 (Count III). Plaintiff requests a declaratory judgment ruling that Rule 7004 is not authorized by law and violates due process. He also requests a permanent injunction prohibiting enforcement of Rule 7004.

LARA moves at the outset of the case for summary disposition under MCR 2.116(C)(4), (8), and (10). LARA argues that this Court lacks jurisdiction to issue a declaratory judgment because plaintiff failed to assert an actual controversy, and plaintiff lacks standing because he has not attempted to renew his license. Additionally, LARA argues that plaintiff fails to state a claim on which relief can be granted in relation to his ultra vires claim because LARA's promulgation of Rule 7004 was a reasonable exercise of its authority under the Public Health Code, MCL 333.1101 *et seq*., and was promulgated in compliance with the Administrative Procedures Act (APA), MCL 24.201 *et seq*.

LARA further argues that plaintiff's nondelegation doctrine claim lacks merit because the Legislature delegated rulemaking authority to LARA, and Rule 7004 is otherwise consistent with the regulatory scheme. LARA also argues plaintiff's due-process claim lacks merit because the State has the power to enact laws to further public health, safety, welfare, and morals, and the implicit bias training in question is rationally related to that legitimate public purpose. Finally, LARA argues plaintiff is not entitled to an injunction because he voluntarily left the practice of dentistry three years before his license was due to expire and considering the likelihood of public harm if the rule cannot be enforced.

In response, plaintiff challenges the broad application of the implicit bias training on nearly all healthcare professionals, asserting that previous continuing education requirements were either imposed by the Legislature itself or imposed "through a profession-by-profession process with the integral involvement of professional boards, focusing on skills and competency." He argues that the concept of implicit bias training is controversial in nature and that the manner in which LARA promulgated the rule "destroyed the possibility of real public debate." He maintains that he has standing because he has suffered an individualized harm resulting from the implicit bias training requirement. He argues the dispute is not abstract or hypothetical in nature because he intends to renew his dentistry license immediately should Rule 7004 be declared unlawful. Alternatively, he requests leave to amend the complaint to identify several additional plaintiffs who have active dentistry licenses.

Plaintiff further argues that LARA exceeded its authority to decide professional training standards on a profession-by-profession basis, and therefore its conduct was ultra vires. Plaintiff maintains that LARA's authority is not so broad that the agency may promulgate a sweeping rule applying to all healthcare professionals and that LARA failed to comply with MCL 333.16148(1) because no vote of the professional boards was taken in advance of the promulgation of the rule. He argues that if MCL 333.16148(1) could be interpreted to permit Rule 7004, then the statute is an unconstitutional delegation of legislative authority. Plaintiff further argues that summary disposition on his substantive due-process claim is premature because there are several disputed factual issues about the effectiveness of the implicit bias training.

LARA replies that MCL 333.16148(1) grants the agency broad authority to promulgate rules setting professional education and training standards for purposes of licensure. The statute allows LARA to promulgate rules affecting several healthcare professionals and only requires that

the agency "consult" the relevant boards, which occurred here. The rule is rationally related to the purpose of the Public Health Code because its purpose is to train healthcare workers and reduce disparities in access and delivery of healthcare services. LARA argues that because even plaintiff concedes that the legal issues relating to the scope of the statute are fully developed, there is no basis for discovery. Because the briefing is adequate to address the issues raised in the motion, the Court dispenses with oral argument pursuant to LCR 2.119(E)(3).

II. STANDARD OF REVIEW

LARA moves for summary disposition under MCR 2.116(C)(4), (8), and (10). A motion under MCR 2.116(C)(4) examines whether the trial court has jurisdiction over the subject matter of the case. *True Care Physical Therapy, PLLC v Auto Club Group Ins Co*, 347 Mich App 168, 176; 14 NW3d 456 (2023). The court will examine "the affidavits, together with the pleadings, depositions, admissions, and documentary evidence" to determine whether they demonstrate a lack of subject-matter jurisdiction. *Id*.

A motion for summary disposition under MCR 2.116(C)(8) examines the legal sufficiency of the plaintiff's claims on the basis of the factual allegations raised in the complaint. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159; 934 NW2d 665 (2019). The court must accept the factual allegations in the complaint as true and will decide the motion on the pleadings alone. *Id*. at 160. The motion is granted if the claim is so clearly unenforceable as a matter of law that no factual development would justify recovery. *Id*. LARA argues that plaintiff has failed to state a claim upon which relief can be granted for each of the counts in his complaint. Alternatively, LARA requests summary disposition under MCR 2.116(C)(10). A motion for summary disposition filed under MCR 2.116(C)(10) examines the factual sufficiency of the plaintiff's claims

considering all submitted evidence in the light most favorable to the nonmovant. *Id.* A (C)(10) motion is granted when there is no genuine issue of material fact. *Id*.

Resolution of the issues also requires the Court to interpret the relevant provision of the Public Health Code. The Court therefore adopts the following principles of statutory interpretation:

> When interpreting a statute, the foremost rule of construction is to discern and give effect to the Legislature's intent. Because the language chosen is the most reliable indicator of that intent, [a court will] enforce clear and unambiguous statutory language as written, giving effect to every word, phrase, and clause. If the statutory provision at issue is clear and unambiguous, it must be enforced as written, and no judicial construction is permitted or required. [*Lockport Twp v Three Rivers*, 319 Mich App 516, 520; 902 NW2d 430 (2017) (cleaned up).]

III. ANALYSIS

A. JUSTICIABILITY

MCR 2.605 governs declaratory actions in civil cases and provides, in relevant part, "In a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted." MCR 2.605(A)(1). Regarding subject-matter jurisdiction, the court rule explains that "an action is considered within the jurisdiction of a court if the court would have jurisdiction of an action on the same claim or claims in which the plaintiff sought relief other than a declaratory judgment." MCR 2.605(A)(2).

MCR 2.605 encompasses the doctrines of standing, ripeness, and mootness and does not otherwise limit or expand the subject-matter jurisdiction of the courts. *Int'l Union, United Auto, Aerospace & Agricultural Implement Workers of America v Central Mich Univ Trustees*, 295 Mich App 486, 495; 815 NW2d 132 (2012) (*UAW*). An "actual controversy" exists for purposes of

MCR 2.605 when the plaintiff pleads and demonstrates "an adverse interest necessitating the sharpening of the issues raised." *Id.* (cleaned up). This requirement prevents the court from deciding hypothetical issues. *Id.*

A plaintiff must also have standing before the court can exercise jurisdiction over his or her claim. *Miller v Allstate Ins Co*, 481 Mich 601, 606; 751 NW2d 463 (2008). Standing generally refers to a party's right to invoke the power of the court initially to adjudicate his or her claimed injury in fact. *Saugatuck Dunes Coastal Alliance v Saugatuck Twp*, 509 Mich 561, 592; 983 NW2d 798 (2022). Thus, "[t]o be aggrieved, one must have some interest of a pecuniary nature in the outcome of the case, and not a mere possibility arising from some unknown and future contingency." *Id*. (cleaned up). As the Michigan Court of Appeals has explained, there are three elements to establish standing to sue:

> First, the plaintiff must have suffered an injury in fact—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court. Third, it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision. [*Ammex, Inc v Dep't of Treasury*, 272 Mich App 486, 492; 726 NW2d 755 (2006) (cleaned up).]

The Michigan Supreme Court has held that " '[w]henever a litigant meets the requirements of MCR 2.605, it is sufficient to establish standing to seek a declaratory judgment.' " *League of Women Voters of Mich v Secretary of State*, 506 Mich 561, 585-586; 957 NW2d 731 (2020) (citation omitted).

LARA challenges this Court's jurisdiction to issue a declaratory ruling on the basis that plaintiff has no legal right to sue. LARA explains that plaintiff has not yet applied to renew his

dental license, thus rendering his claims conjectural in nature. The Court disagrees. There is no dispute that plaintiff was previously licensed as a dentist in Michigan for 40 years and voluntarily allowed his license to lapse rather than taking the implicit bias training. There is no dispute that the implicit bias training is required for plaintiff to reinstate his license and that his application for licensure will be denied if he refuses to take the implicit bias training. Therefore, the dispute is not merely hypothetical in nature because the only way in which plaintiff's license will be renewed is if he completes the implicit bias training.

LARA further argues that plaintiff fails to establish a special right or injury that would be detrimentally affected in a way that differs from the general public, noting that plaintiff acknowledges in his complaint the broad application of the implicit bias training among healthcare professionals. However, only those seeking a professional healthcare license are required to undergo implicit bias training. Plaintiff is a healthcare professional seeking to reinstate his license to practice dentistry. His interests differ from the interests of the public at large. So resolution of this issue will serve to redress plaintiff's alleged injury, which is particularized and traceable to LARA's decision to promulgate Rule 7004.

This case is comparable with both *UAW* and *Associated Builders & Contractors of Mich v Dep't of Technology, Mgt, & Budget*, 350 Mich App 168; ___ NW3d ___ (2024) (*ABC*). Both cases support that plaintiff did not need to take the futile step of applying for a license before suing in this Court. In *UAW*, the Michigan Court of Appeals held that the plaintiff-union had standing to challenge a university policy regarding employees who ran for public office even though no university employee had attempted to become a political candidate since the policy was adopted. *UAW*, 295 Mich App at 496-497. The Court held that "it is appropriate for the Union to seek an adjudication of its members' rights and responsibilities before the candidacy policy causes actual

injury or ripens into a violation of the law by interfering with the employees' ability to engage in off-duty political activity." *Id.* at 497.

Similarly, in *ABC*, 350 Mich App at 178, which presented a challenge to a state prevailing-wage policy promulgated by the Department of Technology, Management, and Budget (DTMB), the plaintiff did not claim any of its members were actually denied a contract on the basis of the policy. As it related to standing, the Court of Appeals explained:

> ABC's injury is not hypothetical because its members will need to change their wage practices to meet DTMB's prevailing-wage policy. ABC seeks a determination that its members have a legal right to bid on, and be considered for, contracts on state projects without compliance with the prevailing-wage requirement. Further, ABC's alleged injury is more particularized than any injury to the general public because ABC's members are bidders on state contracts. Therefore, ABC has standing to sue for declaratory relief. [*Id.* at 178-179.]

Likewise, in this case, there is no dispute that plaintiff will need to engage in implicit bias training to meet LARA's licensing requirements. Considering the holdings in both *UAW* and *ABC*, the Court concludes that plaintiff need not take the futile step of applying for a license before he can request declaratory relief. Therefore, plaintiff has standing to sue under MCR 2.605.[3]

B. ULTRA VIRES ACTIVITY

Turning to the merits, plaintiff first asserts that LARA's promulgation of Rule 7004 was an ultra vires activity that fell outside of the agency's lawful statutory authority. The concept of ultra vires activity generally arises when a plaintiff is seeking tort damages for injuries arising from governmental action. See *Dextrom v Wexford Co*, 287 Mich App 406, 417; 789 NW2d 211

[3] The caselaw on standing in this context is comparable with the exception to the exhaustion of administrative remedies requirement that applies when exhaustion would be futile. See *L & L Wine & Liquor Corp v Liquor Control Comm*, 274 Mich App 354, 358; 733 NW2d 107 (2007).

(2010). In general, governmental agencies have broad tort immunity under MCL 691.1407(1), which provides that, with limited exceptions, "a governmental agency is immune from tort liability if the governmental agency is engaged in the exercise or discharge of a governmental function." A governmental function means "an activity that is expressly or impliedly mandated or authorized by constitution, statute, local charter or ordinance, or other law." MCL 691.1401(b). Governmental immunity does not extend to injuries arising out of ultra vires activity, which is "activity *not* expressly or impliedly mandated or authorized by law." *Dextrom*, 287 Mich App at 417 (cleaned up). "A determination of whether an activity was a governmental function must focus on the general activity and not the specific conduct involved at the time of the tort." *Herman v Detroit*, 261 Mich App 141, 144; 680 NW2d 71 (2004).

In this case, plaintiff is not seeking a tort remedy against LARA for injuries arising from a nongovernmental activity. Rather, plaintiff seeks a declaratory judgment that Rule 7004 was not authorized by statute. However, as the Michigan Supreme Court has explained: "[U]ltra vires activity is not activity that a governmental agency performs in an unauthorized manner. Instead, it is activity that the governmental agency lacks legal authority to perform in any manner." *Richardson v Jackson Co*, 432 Mich 377, 387; 443 NW2d 105 (1989). In this case, plaintiff does not assert that LARA lacked legal authority to promulgate rules in *any* manner. Rather, he asserts that the agency performed its rulemaking functions in a manner that exceeded the scope of its authority under the statute. He therefore fails to state a valid claim for relief on the basis that LARA engaged in ultra vires activities.

C. COMPLIANCE WITH ENABLING STATUTE

However, while Count I of plaintiff's complaint is styled as an issue of ultra vires governmental activity, the allegations within that claim reveal that the gravamen of the claim is

whether LARA lawfully promulgated Rule 7004 within its statutory authority. *Trowell v Providence Hosp & Med Ctr, Inc,* 502 Mich 509, 519; 918 NW2d 645 (2018) ("[W]e disregard the labels given to the claims and instead read the complaint as a whole, seeking the gravamen of the claims."). The Court will therefore address the merits of Count I of the complaint to the extent plaintiff is claiming that LARA unlawfully promulgated Rule 7004 in violation of its statutory authority.

The issue whether a rule was promulgated lawfully is governed by the following three-part test: "(1) whether the rule is within the matter covered by the enabling statute; (2) if so, whether it complies with the underlying legislative intent; and (3) if it meets the first two requirements, when [sic] it is neither arbitrary nor capricious."[4] *Ins Institute of Mich v Comm'r, Fin & Ins Servs, Dep't of Labor & Economic Growth*, 486 Mich 370, 385; 785 NW2d 67 (2010) (cleaned up). The agency's interpretation of its own enabling statute is entitled to respectful consideration by the court and should not be overruled without a cogent reason; however, the court's ultimate consideration is the plain language of the statute. *Id*. Thus, "[t]he agency's interpretation cannot conflict with the plain meaning of the statute." *Id*. (cleaned up).

MCL 333.16148(1) provides, in relevant part:

> Except as otherwise provided in this section or [MCL 333.17060], the department [LARA], in consultation with a board, may promulgate rules to establish standards for the education and training of individuals to be licensed or registered, or whose licenses or registrations are to be renewed, for the purposes of

[4] "A ruling is arbitrary and capricious when it lacks an adequate determining principle, when it reflects an absence of consideration or adjustment with reference to principles, circumstances, or significance, or when it is freakish or whimsical." *Wescott v Civil Serv Comm*, 298 Mich App 158, 162; 825 NW2d 674 (2012).

> determining whether graduates of a training program have the knowledge and skills requisite for practice of a health profession or use of a title.[5]

Plaintiff maintains that the statute provides LARA with authority "in conjunction with professional boards, to promulgate standards to ensure aspiring professionals coming out of training programs have the necessary competence to actually practice their professions," which plaintiff asserts cannot extend to imposing ideology-based training on healthcare professionals. Plaintiff argues that the language of the statute authorizing LARA to establish standards to determine whether "graduates of a training program" have "knowledge and skills" that are "requisite" to the "practice of a health profession or use of a title" signals that the legislative intent was for LARA to determine the adequacy of training programs—not to require continuing education for professionals with decades of practice (such as plaintiff). He also notes the statute provides that the standards must be "requisite for practice of a health profession," suggesting the standards must relate to core competencies in the healthcare setting.

However, the statute does not limit the development of "standards" to any specific topics. And the phrase "knowledge and skills" is not as limited as plaintiff argues. LARA's determination that implicit bias training is necessary as part of the "knowledge and skills" to practice in most health professions was within the broad discretion the Legislature granted the agency under the statute. Plaintiff further argues that LARA's statutory authority is limited to "graduates of a training program," suggesting that the authority to promulgate rules does not extend to experienced healthcare providers. However, MCL 333.16148(1) grants LARA authority to promulgate rules

[5] The remainder of this subsection relates to standards for identifying victims of human trafficking. The statute was amended in 2014 to expressly require LARA to establish rules for training standards for identifying the victims of human trafficking, as discussed later. MCL 333.16148(1), as amended by 2014 PA 343.

to establish standards for the education and training of individuals who are seeking renewal of their licenses, as well as those individuals seeking licensure for the first time.

Plaintiff next argues that the 2014 amendment to MCL 333.16148(1), directing LARA to regulate training standards for identifying victims of human trafficking, supports that LARA lacked the ability to regulate standards beyond "evaluating baseline professional competence" unless the Legislature expressly grants that authority in the statute. He further notes that LARA has not promulgated a broad training standard like Rule 7004 in the past. However, the fact that MCL 333.16148(1) requires LARA to promulgate rules necessary to train healthcare professionals on how to identify victims of human trafficking does not limit LARA's authority to establish other standards for healthcare professionals on social issues. If anything, the fact that the Legislature included human trafficking as a necessary element of a healthcare professional's training supports that the Legislature viewed training and education as extending to social issues.[6] And the fact that LARA has not promulgated a similar rule in the past does not establish whether the plain language of the statute permits the promulgation of a rule on implicit bias training.

Plaintiff next argues that LARA failed to consult with the healthcare boards[7] as required under MCL 333.16148(1). The statute requires that LARA promulgate rules "in consultation with

[6] Plaintiff suggests that if LARA had broad authority to create new training requirements, then this amendment, as well as another statute involving training standards for pain management, MCL 333.16204, would not have been necessary. The Court disagrees. The fact that the Legislature expressly required LARA to promulgate training standards on certain topics does not establish that LARA lacked authority to establish training and education standards on other topics. Rather, it signals that the Legislature's intent was to *mandate* training standards on these particular topics. Otherwise, the decision rests with the agency.

[7] The licensing boards have various duties outlined throughout the Public Health Code, which most prominently include the power to issue licenses. See generally MCL 333.16115 through MCL

a board." MCL 333.16148(1). Plaintiff argues that a board vote was necessary. He notes that LARA represents that it consulted various health boards but does not confirm that it consulted with each and every board affected by the rule. The statute does not define the term "consult." Therefore, the Court will consult dictionary definitions to the extent that they may provide insight on the plain and ordinary meaning of the term. See *Honigman Miller Schwartz & Cohn, LLP v Detroit*, 505 Mich 284, 305-306; 952 NW2d 358 (2020).

The term "consult" is defined as, in relevant part, "to have regard to," "to ask the advice or opinion of," "to refer to," or "to deliberate together[.]" *Merriam-Webster's Collegiate Dictionary* (11th ed). None of these definitions suggests that a vote of any board was required for LARA to consult with the boards. Instead, the dictionary definitions support that the meaning of the term consult in this context is to seek the opinions of the various boards or to collaborate with the boards, both of which were done in this case when LARA initiated a workgroup and contacted the chairs of the boards to participate in the workgroup.[8] Additionally, because the plain language of the statute does not require an affirmative vote by the boards, the agency's interpretation of its own enabling statute as to what constitutes "consultation" is entitled to some deference.

333.16146. The boards are also involved with disciplinary actions. See MCL 333.16216. Boards, along with task forces, also have rulemaking authority "to specify requirements for licenses, registrations, renewals, examinations, and required passing scores." MCL 333.16145(3).

[8] This conclusion is further supported by the fact that the Legislature expressly stated when the board must "vote" on certain decisions elsewhere within the relevant provisions of the Public Health Code pertaining to licensing. See, e.g., MCL 333.16138(1) ("Final action by the committee, a board, or a task force shall be taken only by affirmative vote of a majority of the members present at a meeting or for a hearing.").

Plaintiff argues that other subsections of MCL 333.16148(1) refer expressly to "voting," suggesting that the Legislature intended for the consultation to include an actual vote among the members of the boards. Starting with Subsection (2), this provision states:

> Except as otherwise provided in [MCL 333.17060] and subject to subsections (6) and (7), only a board may accredit training programs in hospitals, schools, colleges, universities, and institutions offering training programs meeting educational standards and may deny or withdraw accreditation of training programs for failure to meet established standards. The board shall give a hospital, school, college, university, or institution that has its program accreditation withdrawn an opportunity for a hearing. [MCL 333.16148(2).]

Subsection (2) does not apply in this context because this issue does not involve a training program in a hospital, school, college, university, or institution offering a training program. Subsections (3) and (4) are related and provided as follows:

> (3) The board shall take action or make a decision under subsection (1) or (2) relating to a specific health profession subfield only after consultation with the task force in the affected health profession subfield and with at least 1 of the affected health profession subfield board members present.
>
> (4) A member of a licensing board from the health profession subfield shall vote as an equal member in all matters except those issues designated in subsections (1) and (2) that are outside the health profession subfield. [MCL 333.16148(3)-(4).]

However, neither of these subsections apply in this situation because the rule in question does not relate to a specific health profession subfield, but rather, provides a general standard for all healthcare professionals.

Subsection (5) provides:

> A decision of a board on standards for the education and training of individuals or the accreditation of a training program under subsection (1) or (2) must be concurred in by a majority of the board members who are not health

> profession subfield licensees if the decision relates solely to licenses that are not health profession subfield licenses. [MCL 333.16148(5).][9]

This subsection also does not apply because this situation involves a requirement for all healthcare professionals, regardless of whether they held professional subfield licenses. Examined together, Subsections (2) through (5) outline which board members can vote on standards and what procedures may be followed if and when the boards decide to make decisions regarding professional standards. The statute does not require LARA to obtain a board vote for each and every rule it promulgates. Again, it only requires consultation.

There is no genuine issue of material fact on whether LARA consulted with the boards as required under the statute. Plaintiff does not challenge the accuracy of LARA's evidence showing that it conducted public hearings on the rule and conducted a workgroup, in which it met with stakeholders from 86 groups, including health boards. Nor does plaintiff refute the e-mails showing the Board of Dentistry Chairperson was invited to attend the workgroup and expressed support for the initiative despite his inability to participate. The Court concludes that LARA met the consultation requirement in the statute by conducting the workgroup before engaging in the rulemaking process.

Plaintiff suggests that LARA did not establish that it met with each affected professional board but fails to identify any boards that were willing to participate in the process but were not invited to do so. And MCL 333.16148(1) does not require that LARA meet with each board. In fact, the statute refers only to consultation with *a* board (as opposed to "all boards" or "each

[9] The final subsections, Subsections (6) and (7), relate to the nursing profession and are not relevant for purposes of this case. See MCL 333.16148(6) and (7).

board"). Plaintiff does not argue that LARA failed to comply with the APA's procedures for promulgating a rule. And as discussed later, the rule was rationally related to a legitimate governmental interest. Plaintiff provides no other basis for finding the rule arbitrary or capricious. Therefore, because the rule was enacted in line with the enabling statute and legislative intent, plaintiff's argument that the rule was unlawful lacks merit. See *Ins Institute*, 486 Mich at 385.

D. NONDELEGATION DOCTRINE

Alternatively, plaintiff argues that to the extent the statute authorized LARA to impose new training requirements applying generally to all healthcare professionals licensed in Michigan, then the statute was an unconstitutional delegation of legislative power to the agency.

The nondelegation doctrine arises from principles of separation of powers. *ABC*, 350 Mich App at 180. Under Const 1963, art 3, § 2, "[t]he powers of government are divided into three branches: legislative, executive and judicial. No person exercising powers of one branch shall exercise powers properly belonging to another branch except as expressly provided in this constitution." Const 1963, art 4, § 1 provides that, with limited exceptions that do not apply in this situation, "the legislative power of the State of Michigan is vested in a senate and a house of representatives."

The legislative power includes "the power to regulate public concerns, and to make law for the benefit and welfare of the state." *In re Certified Questions from the United States District Court, Western District of Michigan, Southern Division*, 506 Mich 332, 358; 958 NW2d 1 (2020) (cleaned up). So "[t]he nondelegation doctrine seeks to enforce our constitutional system of separate branches of government, which, as it pertains to the Legislature, means ensuring that the Legislature makes the law." *ABC*, 350 Mich App at 181. And "the Legislature cannot delegate to

the executive branch its legislative power to make laws, but the Legislature may delegate an administrative task to an executive agency if the Legislature provides 'sufficient standards' to guide the agency in implementing the law." *Id*. at 182 (citation omitted). When a statute grants power to an administrative agency, the statute should be construed strictly, and the authority the Legislature granted the agency must be plain from the language of the statute. *Id*. This doctrine requires more precision in the Legislature's delegation of authority when the issue involves a significant economic or political matter. *Id*. at 183.

In *ABC*, which again involved a DTMB-imposed prevailing-wage requirement, the Michigan Court of Appeals upheld the constitutionality of a statute that granted the DTMB broad discretion to "make all discretionary decisions concerning the solicitation, award, amendment, cancellation, and appeal of state contracts." *Id*. at 185 (cleaned up). The Court noted the issue was a close call, but the record did not support that the issue had a significant economic impact across the state. *Id*. at 187. The Court otherwise affirmed the Court of Claims ruling that the statute was constitutional, holding it was not a violation of the nondelegation doctrine:

> This delegation of full discretionary power grants broad power to DTMB so as to not impinge on the state's ability to enter into individual construction contracts in the course of business. And even with that wider discretionary authority, the Legislature gave DTMB sufficient standards in guiding DTMB as to what are acceptable bids by setting out criteria for the bids that it may accept from responsive and responsible best-value bidders. [*Id*. at 191.]

Likewise, in this case, while the delegation of authority to LARA could be construed as broad, it presents nowhere near as broad of authority as the statute at issue in *ABC*, which granted the DTMB "full discretionary power" to solicit and award state contracts. Plaintiff presents no argument that the situation in this case involves significant economic or political matters that would require more precision. To the contrary, the issues involved in this case do not impact the

public at large and instead only involve the limited issue of whether licensed healthcare professionals should be required to undergo a few hours of training on implicit bias before obtaining or renewing their license. The Legislature delegated power to LARA to develop standards and training requirements for licensed professionals in consultations with the boards, which is consistent with the overall purpose and scheme outlined in the Public Health Code.

As noted earlier, LARA met with various stakeholder groups over the course of eight weeks and provided detailed findings in advance of promulgating Rule 7004. The statute provided LARA with sufficient standards for developing the training and licensure standards, noting that the purpose of the standards is to determine whether individuals have knowledge and skills necessary to practice a health profession. The statute also constrains LARA's authority by requiring the agency to consult with the boards of healthcare professionals and comply with the APA. Under these circumstances, the statute was not an impermissible delegation of legislative power. LARA is entitled to summary disposition on Count II of the complaint.

E. DUE PROCESS

Plaintiff further alleges, in Count III, that Rule 7004 violated his constitutional right to substantive due process by encroaching on his right to earn a living. In this context, "when legislation is challenged on due-process and equal protection grounds because of its interference with economic or business activity, the challenger must establish either that no legitimate public purpose is served by the legislation or that there is no rational relationship between the provisions and a legitimate public purpose." *Murphy-DuBay v Dep't of Licensing & Regulatory Affairs*, 311 Mich App 539, 551; 876 NW2d 598 (2015). "Thus, there is a two-step inquiry: (1) whether there

is a legitimate public purpose and, if so, (2) whether there is a rational relationship between the legislation and the public purpose sought to be achieved." *Id.*[10]

A legitimate public purpose was served by the rule: to eliminate disparities and barriers in access to and delivery of healthcare services in Michigan. As for the rational relationship, the implicit bias training is required to include, among other things, "[i]nformation on implicit bias, equitable access to healthcare, serving a diverse population, diversity and inclusion initiatives, and cultural sensitivity"; "[s]trategies to remedy the negative impact of implicit bias by recognizing and understanding how it impacts perception, judgment, and actions that may result in inequitable decision making . . ."; "[t]he historical basis and present consequences of implicit biases based on an individual's characteristics"; and "[d]iscussion of current research on implicit bias in the access to and delivery of healthcare services." Rule 7004(5)(a). The implicit bias training is designed to target directly the inequities in healthcare access and delivery. Therefore, a rational and direct relationship exists between the stated goal and the implicit bias training.

Plaintiff maintains that discovery will demonstrate that the training does not achieve the goals it intends to serve or produces "counterproductive effects." Plaintiff does not produce any evidence at this stage to support that the implicit bias training is ineffective or counterproductive, suggesting instead that further discovery is warranted and that summary disposition is premature. However, plaintiff's argument relates to the efficacy of the implicit bias training and not whether the training itself is rationally related to a legitimate governmental purpose. The legal standard does not require the agency to establish that the rule is effective in terms of furthering the public

[10] Both parties acknowledge that the test from *Murphy-DuBay* applies in the context of a regulation.

purpose it sought to achieve. The only thing that is required is a rational relationship between the rule and the public purpose. Because there exists a rational relationship between the goal of reducing disparities in healthcare and the implicit bias training, "further discovery does not stand a reasonable chance of uncovering factual support" for plaintiff's position. *Peterson Novelties, Inc v Berkley*, 259 Mich App 1, 25; 672 NW2d 351 (2003). For these reasons, LARA is entitled to summary disposition on plaintiff's substantive due-process claim claims. Finally, because each of plaintiff's claims fails as a matter of law, he is not entitled to a permanent injunction. See *Janet Travis, Inc v Preka Holdings, LLC*, 306 Mich App 266, 274; 856 NW2d 206 (2014).

IV. CONCLUSION

IT IS ORDERED:

1. Defendant's motion for summary disposition is GRANTED.
2. Plaintiff's complaint is DISMISSED in full and with prejudice.
3. This is a final order resolving all issues in this matter.

Date: March 27, 2026

Sima G. Patel
Judge, Court of Claims