

CAUSE NO. 2016-03350

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| TOMAS G. RIOS, M.D. | § | IN THE DISTRICT COURT OF |
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| | § | |
| VS. | § | HARRIS COUNTY, TEXAS |
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| CHI ST. LUKE'S HEALTH BAYLOR | § | |
| COLLEGE OF MEDICINE MEDICAL | § | |
| CENTER | § | 55 TH JUDICIAL DISTRICT |

**RESPONSE TO DR. RIOS' FIRST AMENDED PETITION AND REQUEST FOR
TEMPORARY RESTRAINING ORDER**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW CHI St. Luke's Health Baylor College of Medicine Medical Center (Defendant) and files this his response to Plaintiff's First Amended Petition and Request for Temporary Restraining Order and would respectfully show as follows:

I. General Denial

1. Defendant enters a general denial as permitted by the Texas Rules of Civil Procedure.

II. Response to Plaintiff's Request for Temporary Restraining Order

2. Defendant Rios contends that he is entitled to a Temporary Restraining Order because he claims that Defendant has "told Dr. Rios, that it will summarily suspend him if he involves himself in his own patients' care in the Intensive Care Unit, a clear violation of law." Some background is necessary. Defendant has in place a Rapid Response System (RRS) wherein certain parameters are identified on particular patients on the medical floors which indicate the patient may be deteriorating. As a result, a dedicated team of healthcare providers attends to the patient and in conjunction with physicians, may make the determination that the patient needs a higher level of care and is transferred to the Intensive Care Unit. Once in the Intensive Care Unit

the patient is under the primary management of the critical care team. Dr. Rios, as a hospitalist, is not a critical care provider and he is upset that when his patients are transferred to the Intensive Care Unit to receive a higher level of care, he is no longer the primary physician. As the court can well imagine, this hardly means the patient is receiving a lower level of care. However, Dr. Rios no longer bills for these patients, although there is nothing prohibiting him from consulting on all patient matters, but he is precluded from attempting to override the Rapid Response Team or the critical care orders. This is done solely for patient safety.

3. Dr. Rios' Request for Temporary Restraining Order is completely inappropriate in this situation. To seek a temporary restraining order, the Plaintiff must set forth a claim for actual and substantial, or a real, affirmative prospect of an actual or substantial injury. *Parkemindus SCRVS., Inc. v. Garton*, 619 S.W.2d 428, 430 (TEX.CIV.APP. – Amarillo 1981, no writ). An injunction should not issue when the evidence shows that at most, Plaintiff will suffer inconvenience. *Northcutt v. Warren*, 326 S.W.10, 10 (TEX.CIV.APP. – Texarkana 1959, ref. n.r.e.). Furthermore, an injunction will not issue to prevent merely speculative harm. See *Camarena v. Tex. Employment Comm'n*, 754 S.W.2d 149, 151 (Tex. 1988). Plaintiff Rios has shown no immediate harm to him or anyone else. He files this lawsuit in 2016 wherein he complained that he was retaliated against for questioning the Rapid Response System in place at St. Luke's. However, despite his claim of retaliation, Dr. Rios has never been suspended or had his privileges revoked in any fashion. Likewise, Plaintiff Rios is not being suspended or having his privileges unrealistically restricted in any case at present. In fact, he is still able to consult with all his patients with the only restriction being he may no longer attempt to override the Rapid Response Team or critical care orders. Consequently, Dr. Rios has failed to show the requirements necessary for a Temporary Restraining Order.

4. By his request for a Temporary Restraining Order, Dr. Rios is effectively asking this court to weigh in on the issue of patient safety and the procedures designed to maximize patient safety at Defendant's hospital. By granting Plaintiff's Request for a TRO in the fashion he has requested, this court could conceivably put patients at risk in the Defendant's hospital. That cannot be.

III. Conclusion

5. In sum, Plaintiff's Request for a TRO is completely inappropriate in a case like this. He has shown no possibility of irreparable, immediate harm. He has had a lawsuit pending now for several years in which he makes essentially the same claims. Consequently, he has a more than adequate remedy at law and has failed to meet the stringent requirements for injunctive relief. Consequently, his request for TRO should be denied.

WHEREFORE PREMISES CONSIDERED, Defendant, CHI St. Luke's Health Baylor College of Medicine Medical Center prays that Plaintiff's Request for Temporary Request for Restraining Order be denied and for such other and further relief to which it may show itself entitled.

Respectfully submitted,

SCOTT, CLAWATER & HOUSTON, L.L.P.

By: /s/ John P. Scott
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**ATTORNEYS FOR DEFENDANT,
CHI ST. LUKE'S HEALTH BAYLOR
COLLEGE OF MEDICINE MEDICAL CENTER**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been provided to all counsel of record in accordance with the applicable Texas Rules of Civil Procedure on this 9th day of July 2018.

/s/ John P. Scott
John P. Scott

Unofficial Copy Office of Chris Daniel District Clerk