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Gary Fitzsimmons
District Clerk
Dallas District

No._____

STATE OF TEXAS,	§	**IN THE DISTRICT COURT OF**
Plaintiff,	§	
	§	
v.	§	
	§	
ESTHER MEDICAL INSTITUTE INC.	§	**DALLAS COUNTY, TEXAS**
d/b/a ESTHER MEDICAL TUTORIAL	§	
& NURSING REVIEW CENTER	§	
and ESTHER OLERU and TOBECHI	§	
OLERU, Individually,	§	
Defendants.	§	**_____ JUDICIAL DISTRICT**

PLAINTIFF'S ORIGINAL PETITION
FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES
AND FOR TEMPORARY RESTRAINING ORDER

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES the STATE OF TEXAS ("STATE"), Plaintiff, acting by and through its Attorney General GREG ABBOTT and at the request of the TEXAS WORKFORCE COMMISSION ("TWC"), files this Original Petition against, ESTHER MEDICAL INSTITUTE INC. ("EMII") d/b/a ESTHER MEDICAL TUTORIAL & NURSING REVIEW CENTER and ESTHER OLERU and TOBECHI OLERU, Individually, Defendants, and for cause of action, would respectfully show the Court as follows:

I. PARTY PLAINTIFF

1.1 This suit is brought in the name of the STATE OF TEXAS by and through its Attorney General, Greg Abbott, and under the authority of the Constitution, statutes, and laws of the State of Texas.

1.2 This suit is also brought at the request of the Texas Workforce Commission

("TWC"), as authorized by chapter 132 of the Texas Education Code.

II. PARTY DEFENDANTS

2.1 Defendant ESTHER MEDICAL INSTITUTE INC., is a Texas corporation which does business as "ESTHER MEDICAL TUTORIAL & NURSING REVIEW CENTER" and is located at 811 South Central Expressway #200, Richardson, Dallas County, Texas 75080. **Defendant ESTHER MEDICAL INSTITUTE INC. may be served with process by serving its Registered Agent for Service, Boniface C. Azide, at the registered office address of Entity Division 11410 Audelia Rd., Dallas, Dallas County, Texas 75243.**

2.2 Defendant ESTHER OLERU, Individually, as Director of Defendant ESTHER MEDICAL INSTITUTE INC., d/b/a ESTHER MEDICAL TUTORIAL & NURSING REVIEW CENTER, is a principal and "owner" as defined by Section 132.001(2) of the Texas Education Code. **Defendant Esther Oleru, Individually, may be served with process at her place of business, 811 South Central Expressway #200, Richardson, Dallas County, Texas 75080 or her residence at 3904 Dumas Drive McKinney, Collin County, Texas 75070.**

2.3 Defendant TOBECHI OLERU, Individually, as Director of Defendant ESTHER MEDICAL INSTITUTE INC., d/b/a ESTHER MEDICAL TUTORIAL & NURSING REVIEW CENTER, is a principal and "owner" as defined by Section 132.001(2) fo the Texas Education Code. **Defendant Tobechi Oleru, Individually, may be served with process at his place of business, 811 South Central Expressway #200, Richardson, Dallas County, Texas 75080 or his residence at 3904 Dumas Drive McKinney, Collin County, Texas 75070.**

III. DISCOVERY CONTROL PLAN

3.1 Discovery in this suit is intended to be conducted under Discovery Level 2 pursuant

as required under Section 132.151 of the Texas Education Code.

6.2 The State is seeking a temporary restraining order along with a temporary injunction and a permanent injunction to enjoin Defendants from operating their career school, ESTHER MEDICAL TUTORIAL & NURSING REVIEW CENTER, from soliciting and accepting students, maintaining courses of study made available through online training, providing classroom instruction, and collecting tuition for its career school programs. The State is also seeking to enjoin the Defendants from the future operation of this or any other career school program in the State of Texas without approval from the Texas Workforce Commission.

6.3 A Temporary Restraining Order is necessary in this case because, in response to a received complaint, an on-site visit conducted by the TWC determined the facility was operating a career school in violation of the Texas Education Code. The TWC held a hearing, and Esther Oleru appeared on behalf of the school. The hearing officer issued a Cease and Desist Order under Section 132.303 of the Texas Education Code. In spite of that order, TWC continued to receive complaints that Defendants have continued to operate a career school. On May 27, 2008 TWC called the school and found that it continues to operate. This led to a referral to the Texas Attorney General's office.

6.4 By reason of the institution and operation of the unlawful practices set forth herein, Defendants have and will cause irreparable injury, loss and damage to the State of Texas and its citizens, and will also cause adverse effects to legitimate business enterprise which conducts its trade and commerce in a lawful manner in this State. Therefore, the Attorney General of the State of Texas believes and is of the opinion that these proceedings are in the public interest.

VII. ACTS OF AGENTS

7.1 Whenever in this petition it is alleged that Defendants did any act or thing, it is meant

that Defendants performed or participated in such act or thing or that such act was performed by the officers, agents, or employees of Defendants, and in each instance, the officers, agents, or employees of Defendants that were then authorized to and did in fact act on behalf of Defendants or otherwise acted under the guidance and direction of the Defendants.

7.2 Defendants Esther Oleru and Tobechi Oleru operate Esther Medical Inc. as its Directors. As such Defendants Esther Oleru and Tobechi Oleru are controlling persons and have the responsibility for the overall management and oversight of the company, including compliance with all state statutes regulating career schools and trade and commerce practices. They also have the responsibility of supervising the employees of the corporation. As a result, Defendants Esther Oleru and Tobechi Oleru direct and have personal knowledge of the day-to-day activities of the company.[1]

VIII. TRADE AND COMMERCE

8.1 Defendants are engaged in "trade" and "commerce" as defined by Section 17.45(6) of the DTPA as they operate a nursing career school business for training licensed vocational nurses and/or registered nurses in the State of Texas. TEX. BUS. & COM. CODE ANN. § 17.45(6).

IX. PARTICULAR APPLICABLE LAW

9.1 The Deceptive Trade Practices Act provides that false, misleading, or deceptive acts or practices in the conduct of any trade or commerce are unlawful and subject to action by the

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1. Texas law is well settled that corporate agents may be held personally responsible and individually liable for wrongful acts. It is not necessary to pierce the corporate veil in order to impose personal liablity. *Leyendecker v. Wechter*, 683 S.W.2d 369 (Tex. 1984). Liability of such a corporate officer is based on his own actions not his status as an agent. It is not necessary for such an employee to act knowingly or intentionally in order to be personally liable. *Miller v. Keyser*, 90 S.W.3d 712 (Tex. 2002). DTPA § 17.46(c)(1) authorizes Texas courts to be guided, to the extent possible, by the interpretations given by the Federal Trade Commission and federal courts to the Federal Trade Commission Act. [15 U.S.C.A. § 45(a)(1)]. Many federal courts have held principals or controlling persons of corporations individually liable. *See FTC v. Amy Travel*, 875 F.2d 564 (7th Cir. 1988) and *FTC v. Publishing Clearing House*, 104 F.3d 1168 (9th Cir. 1997).

to TEX. R. CIV. P. 190.1 and 190.3.

IV. AUTHORITY

4.1 Plaintiff, the Attorney General of Texas, has authority to bring this action under Section 132.304 of the Texas Education Code.

4.2 This action is also brought by the Attorney General through his Consumer Protection Division under the authority granted by Section 17.47 of the Texas Deceptive Trade Practices-Consumer Protection Act ("DTPA").

4.3 All conditions precedent to Plaintiff's claim for relief have been performed or have occurred. The Consumer Protection Division informed Defendant in general of the alleged unlawful conduct described below at least seven days before filing suit, as may be required by section 17.47 of the DTPA.

V. VENUE

5.1 Venue is proper in Dallas County pursuant to TEX. CIV. PRAC. & REM. CODE § 15.002(a)(1) and (3) because the defendants' principal place of business is located in Dallas County and because all or a substantial part of events or omissions giving rise to this claim occurred in Dallas County.

5.2 Venue is proper in Dallas county pursuant to Section 17.56 of the DTPA because the transactions in question took place in Dallas County.

VI. PURPOSE OF SUIT

6.1 The purpose of this suit is to obtain a temporary restraining order, temporary and permanent injunctions, and to collect civil penalties from Defendants because Defendants have operated a career school without a certificate of approval from the Texas Workforce Commission

Consumer Protection Division. TEX. BUS. & COM. CODE ANN. §17.46(a). False, misleading, or deceptive acts or practices are further defined, in part, to include:

(2) causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services;

(3) causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another;

(5) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have;

(24) failing to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed.

TEX. BUS. & COM. CODE ANN. §17.46(b).

9.2 The Texas Education Code defines a "career school" as a business:

(A) that offers or maintains a course or courses of instruction or study; or

(B) at which place of business such a course of instruction or study are available through classroom instruction or by distance education, or both, to a person for the purpose of training or preparing the person for a field of endeavor in a business, trade, technical, or industrial occupation, or for avocational or personal improvement.

TEX. EDUC. CODE § 132.001(1).

9.3 Section 132.021 of the Texas Education Code grants oversight authority of career schools to the Texas Workforce Commission and the responsibility to "enforce minimum standards for approval of career schools and colleges . . . [.]"

9.4 Section 132.051(a) of the Texas Education Code provides: "A career school or college may not maintain, advertise, solicit for, or conduct any program of instruction in this state until the career school or college receives a certificate of approval from the commission."

9.5 After notice and hearing, the Texas Workforce Commission may issue a cease and desist order against a person operating a career school without a certificate of approval. TEX. EDUC. CODE § 132.303.

9.6 If the Texas Workforce Commission has reason to believe that the cease and desist order has been violated, they may refer the matter for enforcement to the Consumer Protection Division of the Attorney General's Office. TEX. EDUC. CODE § 132.304.

9.7 Section 132.155 of the Texas Education Code establishes a civil penalty of up to $1,000 a day for operation of a career school without a certificate.

9.8 Section 17.47(c)(1) of the of the Business and Commerce Code establishes a civil penalty of up to $20,000 a day for deceptive trade practices.

9.8 The State is exempt from filing a bond. TEX. CIV. PRAC. & REM. CODE § 6.001.

X. FACTUAL ALLEGATIONS AND VIOLATIONS

10.1 Esther Medical Institute Inc. ("EMII") operates a career school with teaching courses for training as a licensed vocation nurse or a registered nurse. Students are told that they will participate in clinicals and prepare to sit for board exams. EMII represents to students that they are

affiliated with another school in Atlanta.

10.2 Students are confused as to the certification or legitimacy of the EMII programs. When students asked about the where the clinicals would take place they were told they would be at Castle Manor, a nursing home, in Garland, Texas. Students contacted Castle Manor and were told Castle Manor was not expecting students and had no affiliation with Defendants.

10.3 On June 19, 2007, an anonymous caller notified the TWC that Esther Medical Institute, Inc. was operating without proper state authority and that the school offered nursing courses. On June 20, 2007, L. Earl Woolbright of the TWC conducted an on-site visit and concluded that the facility was operating a career school.

10.4 The TWC notified the school that it was required to obtain a certificate of approval from the state prior to operating. Esther Medical Institute, Inc. then applied on June 28, 2007 and September 6, 2007, for a certificate of approval but failed to provide the required documents on both occasions. The TWC notified EMII on August 2, 2007, and November 12, 2007, respectively that those application packets were insufficient, but EMII failed to remedy those applications.

10.5 On February 29, 2008, the TWC held a hearing which was attended by Esther Oleru. EMII was found to be offering courses of instruction and study for the purpose of training of licensed vocational nurses or registered nurses. EMII was charging $10,000 for its registered nursing program and $7,500 for its licensed vocational nurse training program. EMII was soliciting and accepting students for these programs. In March of 2008, it had 56 students in the LVN program and 24 students in the RN program. These programs had not been approved by the Texas Board of Nursing. The school graded students and planned on issuing credits for the courses taught. The TWC found that EMII was operating a career school without a certificate of approval.

10.6 EMII appealed the decision and requested oral argument. The appeal and oral argument was set for May 27, 2008, but neither Defendants nor any representation appeared. The TWC affirmed the Cease and Desist Order on May 29, 2008.

10.7 As noted above, since the issuance of the Cease and Desist Order, the TWC has received calls from potential students stating that EMII is continuing to accept entrance applications and tuition for its medical and nursing programs. This was confirmed on May 27, 2008 by a TWC telephone call to the school.

10.8 In support of this petition, the State relies upon and adopts by reference for all purposes the attached exhibits as follows:

A. Exhibit A is a true copy of the Findings and Decisions of the Texas Workforce Commission upon review of the Cease and Desist Order dated May 29, 2008 followed by a true copy of the decision issued by the Texas Workforce Commission hearing officer issuing a Cease and Desist Order addressed to Esther Oleru on March 5, 2008.

C. Exhibit B is an affidavit (pursuant to Tex. Rules of Civil Procedure 680 and 682) of L. Earl Woolbright setting forth specific facts, based upon personal knowledge, that EMII operated a career school without a certificate of approval, in violation of the Texas Education Code.

XI. VIOLATIONS OF THE DTPA

11.3 Based on the conduct alleged above, Defendants have directly and indirectly engaged in false, misleading, and deceptive acts and practices declared unlawful by §17.46(a) and (b) of the DTPA, including, but not limited to:

A. Causing confusion as to the approval or certification of the nursing programs in violation of § 17.46(b)(2) of the DTPA;

B. Causing confusion as to affiliation, connection, or association with other schools and clinical programs in violation of § 17.46(b)(3) of the DTPA;

C. Representing that the course work at the school could be used to prepare the students for nursing board exams in violation of § 17.46(b)(5) of the DTPA;

D. Failing to disclose that the school's programs were not approved by the Texas Board of Nursing in violation of § 17.46(b)(24) of the DTPA;

E. Failing to disclose that the school was not approved by the Texas Workforce Commission as a career school in violation of § 17.46(b)(24) of the DTPA; and

F. Failing to disclose that the school had been issued a Cease and Desist Order by the Texas Workforce Commission in violation of § 17.46(b)(24) of the DTPA;

XII. VIOLATIONS OF THE TEXAS EDUCATION CODE

12.1 Defendants have operated a career school without a certificate of approval from the Texas Workforce Commission in violation of Section 132.051(a) of the Texas Education Code.

12.2 Defendants have operated a career school in violation of the Texas Workforce Commission Cease and Desist Order issued on March 5, 2008 issued under Section 132.303 of the Texas Education Code.

XIII. REQUEST FOR TEMPORARY RESTRAINING ORDER

13.1 The State's application for a temporary restraining order is authorized by Section 17.47 of the Texas Deceptive Trade Practices Act.

13.2 Pursuant to § 17.47 of the Texas Deceptive Trade Practices Act, the State requests

that the Court grant a temporary restraining order, temporary injunction, and permanent injunction enjoining Defendants, their officers, agents, servants, and employees from operating their career school, ESTHER MEDICAL TUTORIAL & NURSING REVIEW CENTER, as well as enjoining the Defendants from future operation of this or any other career school in the State of Texas.[2] Exhibit C, attached hereto and incorporated herein, is an affidavit in support of this request for injunctive relief.

XIV. PRAYER

For these reasons, the State respectfully requests the following injunctive relief, and that it recover judgment against the Defendants jointly and severally and:

14.1 That a temporary restraining order be issued against Defendants ESTHER MEDICAL INSTITUTE INC. ("EMII") d/b/a ESTHER MEDICAL TUTORIAL & NURSING REVIEW CENTER and ESTHER OLERU and TOBECHI OLERU, Individually, restraining Defendants, their officers, agents, servants, and employees from:

A. Operating as a career school or college without a certificate of approval issued by the TWC;

B. Maintaining, advertising, soliciting for, or conducting any classes in this state without a certificate of approval or a notice of exemption from the TWC;

C. Operating a career school without registering all representatives of Defendant with

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2. The State has statutory authority to seek and the Court has statutory authority to issue temporary restraining orders as well as other injunctive relief warranted by the facts. DTPA § 17.47. The Texas Supreme Court has stated that the State does not need to prove immediate and irreparable injury when seeking injunctive relief pursuant to an authorized statute. *State v. Texas Pet Foods,* 591 S.W.2d 800,805 (Tex. 1979). Moreover, the Court does not have to balance the equities when the State litigates in the public's interest and seeks injunctive relief that is prescribed by statute. *Id.* at 805. Injunctive relief may be granted to the State upon a showing of only a violation of a statute. *Gulf Holding Corp. V. Brazoria County,* 497 S.W.2d 614 at 619 (Tex. Civ. App.- -Houston [14th] 1973, writ ref'd n.r.e.).

the TWC;

D. Collecting tuition from students for programs which are not approved by the TWC;

E. Soliciting students for any nursing classes, training, workshops, or career development with misrepresentations and/or misleading statements; and

F. Transferring, spending, hypothecating, concealing, encumbering or removing from the jurisdiction of this Court any money, stocks, bonds, assets, notes, equipment, funds, accounts receivable, policies of insurance, trust agreements, student records, student transcripts, student applications, employee records, or any other property, real, personal or mixed, wherever situated, belonging to or owned by, in possession of, or claimed by Defendants, insofar as such property relates to, arises out of or is derived from the business operation of the Defendants school, ESTHER MEDICAL TUTORIAL & NURSING REVIEW CENTER.

14.2. That, after notice and hearing, a temporary injunction and, after final hearing a permanent injunction be issued against Defendants ESTHER MEDICAL INSTITUTE INC. ("EMII") d/b/a ESTHER MEDICAL TUTORIAL & NURSING REVIEW CENTER and ESTHER OLERU and TOBECHI OLERU, Individually, and their officers, agents, servants, employees, and attorneys, and all persons in active concert or participation with the Defendants who receive actual notice of the order, enjoining them from the following:

A. Operating a career school or college without a certificate of approval issued by the TWC;

B. Maintaining, advertising, soliciting for, or conducting any classes in this state without a certificate of approval or a notice of exemption from the TWC;

C. Operating a career school without registering all representatives of Defendant with

the TWC;

D. Collecting tuition from students for programs which are not approved by the TWC;

E. Soliciting students for any nursing classes, training, workshops, or career development with misrepresentations and/or misleading statements.

14.3 That civil penalties to be awarded of not more than $20,000 per day for each violation of the DTPA, and not more than $1,000 per day for each violation of the Texas Education Code, plus investigation costs and attorney's fees, restitution to consumers, costs of court and for such other and further relief to which Plaintiff is justly entitled.

Respectfully submitted,

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LIST OF ATTACHED EXHIBITS:

EXHIBIT A Copy of the Findings and Decisions of the Texas Workforce Commission upon review of the Cease and Desist Order dated May 29, 2008 and a copy of the decision by the Texas Workforce Commission hearing officer issuing a Cease and Desist Order addressed to Esther Oleru on March 5, 2008.

EXHIBIT B Affidavit (pursuant to Tex. Rules of Civil Procedure 680 and 682) of L. Earl Woolbright.