

NO. 07-6574-C

THE STATE OF TEXAS,
Plaintiff

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IN THE DISTRICT COURT

v.

NUECES COUNTY, TEXAS

MICHAEL MENDOZA d/b/a
THE HEALTH CONNECTION /
DR MICHAEL MENDOZA NMD,
Defendant

94 JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION AND APPLICATION FOR
TEMPORARY RESTRAINING ORDER AND INJUNCTION**

COMES NOW THE STATE OF TEXAS, hereinafter referred to as plaintiff, acting by and through Attorney General of Texas GREG ABBOTT, complaining of MICHAEL MENDOZA, hereinafter referred to as defendant, and for cause of action would respectfully show:

DISCOVERY CONTROL PLAN

1. The discovery in this case is intended to be conducted under Level 2 pursuant to TEX. R. CIV. P. 190.2(b)(3).

NATURE OF THIS SUIT

2. The Attorney General, acting within the scope of his official duties under the authority granted to him under the Constitution and the laws of the State of Texas, brings this lawsuit in the name of the State of Texas through his Consumer Protection and Public Health Division against defendant for violations the Texas Deceptive Trade Practices - Consumer Protection Act, TEX. BUS. & COM. CODE ANN. § 17.41, *et seq.* (hereinafter "DTPA"). The DTPA grants authority to the Attorney General to seek injunctive relief and civil penalties for violations of its provisions TEX. BUS. & COM CODE ANN. § 17.47.

DEFENDANT

3. Defendant MICHAEL MENDOZA is an individual doing business as THE HEALTH

FILED - JESSY TERREZ
CLERK OF COUNTY &
DISTRICT COURTS
NUECES COUNTY, TEXAS
2007 DEC 12 A 08 54
HOPPY

CONNECTION/DR.MICHAEL MENDOZA NMD, regularly conducts business in Nueces County, Texas, and may be served with process by serving him at his place of business at 4220 SPID, Ste. 205, Corpus Christi, Nueces County, Texas 78411, or his place of residence at 5409 E. Riverview, Robstown, Nueces County, Texas 78385.

JURISDICTION

4. This Court has jurisdiction over this action pursuant to § 17.47(b) of the DTPA.

VENUE

5. Venue of this suit lies in Nueces County, Texas, for the following reasons:
- a. Under TEX. CIV. PRAC. & REM. CODE ANN. § 15.002(a)(1), venue is proper because all or a substantial part of the events or omissions giving rise to the claim occurred in the county of suit; and
 - b. Under DTPA § 17.47(b), venue is proper because defendant has done business in the county of suit.

PUBLIC INTEREST

6. Plaintiff, STATE OF TEXAS, has reason to believe that defendant is engaging in, has engaged in, or is about to engage in, the unlawful acts or practices set forth below, that defendant has, by means of these unlawful acts and practices, caused damage to and/or acquired money or property from persons, and that defendant adversely affected the lawful conduct of trade and commerce, thereby directly or indirectly affecting the people of this State. Therefore, the Consumer Protection and Public Health Division of the Office of the Attorney General of the State of Texas believes and is of the opinion that these proceedings are in the public interest.

TRADE AND COMMERCE

7. Defendant has, at all times described below, engaged in conduct which constitutes "trade" and "commerce," as those terms are defined by § 17.45(6) of the DTPA.

ACTS OF AGENTS

8. Whenever in this petition it is alleged that defendant did any act, it is meant that defendant performed or participated in the act, or that the officers, agents or employees of defendant performed or participated in the act on behalf of and under the authority of defendant.

NOTICE BEFORE SUIT NOT GIVEN

9. There is good cause to believe that immediate and irreparable injury, loss, or damage would occur as a result of a delay in obtaining a temporary restraining order to enjoin defendant from continued violations of the DTPA. If defendant is not immediately restrained, he will continue to engage in the unauthorized practice of medicine and thereby cause immediate and irreparable injury, loss, or damage to persons who receive his services. As such, the Consumer Protection and Public Health Division filed this lawsuit without notice to defendant, as authorized by § 17.47(a) of the DTPA.

NATURE OF DEFENDANT'S OPERATIONS

10. Defendant holds himself out to the public as a medical doctor, naturopathic medical doctor, or by using the affixes "N.M.D."¹ Defendant also offers to render medical services to the public.

¹No such license is given to practice naturopathic medicine in Texas as the Naturopathy Act, Art. 4590d V.A.C.S. was declared unconstitutional. *Wilson v. State Board of Naturopathic Examiners*, 298 S.W.2d 946 (Tex. Civ. App.—Austin 1957, no writ), *cert. denied* 355 U.S. 870 (1957). Naturopathy Act repealed by Acts, 1961, 57th Leg., p. 263, ch. 138, § 1, eff. Aug. 28, 1961.

FACTUAL ALLEGATIONS

11. Defendant holds himself out to the public as a medical doctor, a naturopathic medical doctor, and/or N.M.D., and has solicited customers by representing that he has the skill or knowledge necessary to handle medical matters. Defendant conducts business in Nueces County, Texas, and uses the business name of "THE HEALTH CONNECTION/DR MICHAEL MENDOZA NMD."

12. Defendant advertises his business by disseminating a business card that reads, in pertinent part, as follows:

Weight Loss, Hormonic Balancing
Natural Detoxification
The Health Connection
Dr. Michael Mendoza, N.M.D.

A copy of defendant's business card is attached hereto as State's Exhibit 1 and incorporated herein for all purposes.

13. Defendant also advertises by posting a large sign in front of his place of business, located at 4220 SPID, Ste. 205, Corpus Christi, Nueces County, Texas, that reads as follow:

Natural Health
Michael Mendoza, N.M.D.
361-808-9800

14. Plaintiff alleges that defendant is engaged in, has engaged in, or is about to engage in activities that constitute the unauthorized practice of medicine by offering to treat a mental or physical disease or disorder or a physical deformity or injury by any system or method, or the attempting to effect cures of those conditions to those persons who purchase his medical services. Affidavit of Rozanne N. Lopez is attached hereto as State's Exhibit 2, and incorporated herein for all purposes.

15. Defendant solicits, charges, or receives compensation for performing the medical services described above, of at least \$125.00, from his customers.

16. Defendant is not presently or has ever been duly licensed by the State of Texas to engage in acts, practices and/or conduct which constitute the practice of medicine.

TEXAS MEDICAL PRACTICE ACT VIOLATION

17. By practicing naturopathic medicine, defendant must meet the requirements of learning, skill, and examination as set forth in the Texas Medical Practice Act, TEX. OCCUPATIONS CODE ANN. § 151.001, *et seq.* (herein referred to as "TMPA") for obtaining a license to practice medicine.² Defendant, as alleged above, was practicing medicine in the State of Texas without holding a license, in violation of the TMPA § 155.001.

DTPA VIOLATIONS

18. Defendant, as alleged above, has in the course of trade and commerce engaged in false, misleading and deceptive acts and practices declared unlawful in §§ 17.46(a) and (b) of the DTPA as follows:

a. By advertising, offering for sale, selling, or providing a service that constitutes the unauthorized practice of medicine, defendant is engaging in or has engaged in an act or practice that is false, misleading, or deceptive, in violation of §17.46(a) of the DTPA;

b. By holding himself out to the public as a medical doctor, or a "N.M.D.", when he is not licensed to practice medicine under the TMPA, defendant has caused confusion or misunderstanding as to the certification of his services in violation of § 17.46(b)(2) of the

²See *Stuart v. Wilson*, 211 F. Supp. 700 (N.D. Tex. 1962), *aff'd* 371 U.S. 576 (1963).

DTPA;

c. By agreeing to perform a service that constitutes the practice of medicine, defendant is representing, by implication, that he has the status of a licensed doctor authorized to practice medicine under the TMPA, which he does not, in violation of §17.46(b)(5) of the DTPA; and

d. By agreeing to perform a medical service, defendant is representing that his agreement with customers confers or involves an obligation which is prohibited by law, in violation of §17.46(b)(12) of the DTPA.

INJURY TO CONSUMERS

19. Defendant has, by means of the unlawful act(s) or practice(s) alleged, caused actual damages to identifiable persons who should be compensated for such damages, or in the alternative, acquired money or property from persons to whom such money or property should be restored.

20. Because defendant has engaged in the unlawful acts and practices described above, defendant has violated the law as alleged in this petition, or will continue to violate the law, and should be restrained by this Honorable Court.

APPLICATION FOR EX PARTE TRO

21. It is essential that the Court immediately and temporarily restrain defendant from continuing with the conduct described in this petition, namely the unauthorized practice of medicine, and the engaging in false, misleading and deceptive acts and practices. It is essential that the Court act immediately, prior to notice on defendant and a hearing on the matter, because defendant will continue to engage in the unauthorized practice of medicine and thereby cause immediate and irreparable injury, loss, or damage to persons who receive his medical services. Specifically,

defendant will continue to mislead, deceive, and solicit customers each day and will continue to give medical services when he is not licensed to practice medicine in the State of Texas.

PRAYER

22. WHEREFORE, plaintiff prays that defendant be cited according to law to appear and answer herein; that before notice and hearing a TEMPORARY RESTRAINING ORDER be issued; that after due notice and hearing a TEMPORARY INJUNCTION be issued; and upon final hearing a PERMANENT INJUNCTION be issued, restraining and enjoining defendant, his officers, agents, servants, employees and attorneys and any other person in active concert or participation with defendant from engaging, directly or indirectly, in the following acts or practices:

- a. Operating a business or conducting business as a medical doctor and/or naturopathic medical doctor at 4220 SPID, Ste. 205, Corpus Christi, Nueces County, Texas 78411, or any other location in the state of Texas;
- b. Diagnosing, treating, or offering to treat a mental or physical disease or disorder or a physical deformity or injury by any system or method, or the attempting to effect cures of those conditions to those persons who purchase his medical services, including but not limited to, naturopathic medicine, unless defendant is licensed to practice medicine under the TMPA;
- c. Holding himself out, by any means, to the public as a "medical doctor," and by any title or designation incorporating the words "medical doctor", "doctor", or an abbreviation thereof, unless defendant is licensed to practice medicine under the TMPA;
- d. Accepting or soliciting money or valuable consideration for performing medical service, unless defendant is licensed to practice medicine under the TMPA;

e. Holding himself out, by any means, to the public as a "naturopathic medical doctor," or "N.M.D." and by any title or designation incorporating the word "naturopathy" or an abbreviation thereof;

f. Concealing, withholding, destroying, mutilating, altering, falsifying, or removing from the jurisdiction of this Court any books, records, documents, invoices, receipts, or other written materials relating to the business of defendant currently or hereafter in defendant's possession, custody or control except in response to further orders or subpoenas in this cause; and

g. Representing, directly or by implication, that this Court, the Texas Medical Board, or the Office of the Attorney General has approved any good or service sold or offered for sale by defendant, or has approved any business practice of defendant.

23. Plaintiff, STATE OF TEXAS, further prays that this Court order defendant to post notice at 4220 SPID, Ste. 205, Corpus Christi, Nueces County, Texas 78411, and at any other place where he may conduct business, which notice shall be on the front-side of the front door, in bold-faced type of a minimum size of 32 points, in both English and Spanish, and shall state:

NOTICE

MICHAEL MENDOZA HAS BEEN SUED BY THE OFFICE OF THE TEXAS ATTORNEY GENERAL FOR ENGAGING IN THE UNAUTHORIZED PRACTICE OF MEDICINE.

THE DISTRICT COURT HAS ORDERED MICHAEL MENDOZA TO STOP CONDUCTING BUSINESS AS A MEDICAL DOCTOR. THIS OFFICE IS CLOSED UNTIL FURTHER ORDER OF THE COURT.

IF YOU HAVE ANY QUESTIONS, OR IF YOU BELIEVE YOU WERE A VICTIM, PLEASE CALL (956) 682-4547, EXT. 114.

ADVISO

MICHAEL MENDOZA HA SIDO DEMANDADO POR LA PROCURADURIA GENERAL DE TEXAS POR INVOLUCRARSE EN LA PRACTICA DE MEDICINA SIN AUTORIZACION.

LA CORTE DEL DISTRITO LE HA ORDENADO A MICHAEL MENDOZA DE DA ALTO A SU NEGOCIOS COMO DOCTOR MEDICO. SU OFICINA SE HA CERRADO HASTA QUE LA CORTE EMITA ORDENES NUEVAS.

SI USTED TIENE CUALQUIER PREGUNTA, O SI USTED PIENSA QUE HABER SIDO UNA VICTIMA, POR FAVOR LLAME AL (956) 682-4547, EXTENSION 114.

24. Plaintiff, STATE OF TEXAS, further prays that this Court grant leave to conduct telephone, oral, written, and other depositions of witnesses prior to any scheduled temporary injunction hearing and prior to defendant's answer date, with reasonable shortened notice to defendant and his attorney, if known.

25. In addition, plaintiff, STATE OF TEXAS, respectfully prays that this Court will:

- a. Adjudge against defendant civil penalties in favor of plaintiff, STATE OF TEXAS, in the amount of not more than \$20,000.00 per violation of the DTPA;
- b. Order defendant to restore all money or other property acquired by means of unlawful acts or practices, or in the alternative, to compensate identifiable persons for actual damages;
- c. Adjudge against defendant reasonable attorney's fees and court costs pursuant to TEX. GOV'T. CODE ANN. § 402.006;
- d. Adjudge against defendant pre-judgment and post-judgment interest at the highest lawful rate;
- e. Rescind all agreements entered into by and between defendant and consumers;

f. Appoint a receiver or sequester defendant's assets if defendant has been ordered by this Court to make restitution and defendant has failed to do so within three months after the order to make restitution has become final and nonappealable;

g. Adjudge that all fines, penalties or forfeitures payable to and for the benefit of the State are not dischargeable under bankruptcy pursuant to 11 U.S.C. §523(a)(7).

26. Further, plaintiff, STATE OF TEXAS, respectfully prays for all other relief to which plaintiff, STATE OF TEXAS, may be justly entitled.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

KENT C. SULLIVAN
First Assistant Attorney General

JEFF L. ROSE
Deputy First Assistant Attorney General

PAUL D. CARMONA
Chief, Consumer Protection and
Public Health Division

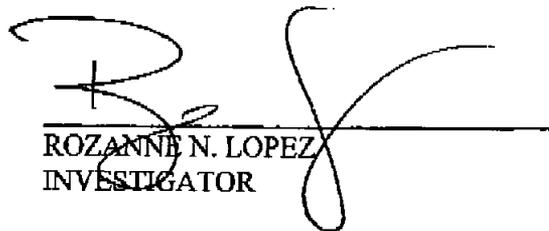


MICHAEL AGUIRRE
Assistant Attorney General
State Bar No. 24038593
Office of the Attorney General
Consumer Protection and
Public Health Division
3201 N. McCoil, Suite B
McAllen, Texas 78501
(956) 682-4547; Fax (956) 682-1957
Attorney for Plaintiff

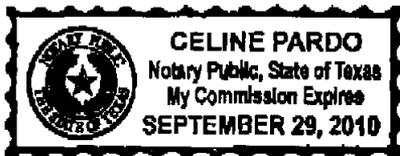
VERIFICATION

STATE OF TEXAS §
 §
COUNTY OF HIDALGO §

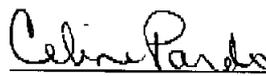
BEFORE ME, the undersigned authority, on this day personally appeared affiant Rozanne N. Lopez, who proved to me through current Texas Driver License to be the person whose name is subscribed to this Verification and who acknowledged to me that she executed the same, and after she was duly sworn, upon her oath, she deposed and said that the affiant is an investigator for the Office of Attorney General, and is authorized to make this affidavit, that the affiant has carefully read the factual allegations in the foregoing PLAINTIFF'S ORIGINAL PETITION AND APPLICATION FOR TEMPORARY RESTRAINING ORDER AND INJUNCTION, and has reason to believe that each and all said factual allegations are true and correct; and affiant signs this Verification, pursuant to Rule 682 of the TEXAS RULES OF CIVIL PROCEDURE.


ROZANNE N. LOPEZ
INVESTIGATOR

SUBSCRIBED AND SWORN TO before me on this the 11th day of December, 2007.



Notary without Bond


NOTARY PUBLIC IN AND FOR THE
STATE OF TEXAS

*Weight Loss, Hormone Balancing
Natural Detoxification*

*The Health Connection
Dr. Michael Mendoza, NMD*

*4220 SPPD, Ste. 205
Corpus Christi, TX 78411*

(361) 808-9800



AFFIDAVIT OF ROZANNE N. LOPEZ

STATE OF TEXAS §
 §
COUNTY OF HIDALGO §

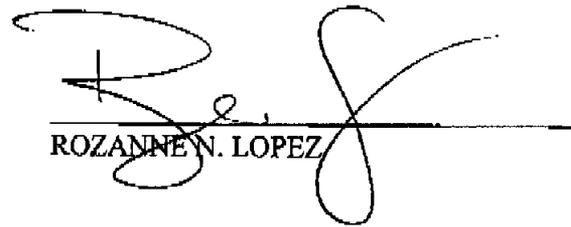
BEFORE ME, the undersigned authority, on this day personally appeared affiant ROZANNE N. LOPEZ, who proved to me through current Texas Driver License to be the person whose name is subscribed to this Affidavit and who acknowledged to me that she executed the same, and after she was duly sworn, upon her oath, she deposed and said:

1. “My name is Rozanne N. Lopez. I am capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct. I am employed as an investigator for the Texas Attorney General’s Consumer Protection and Public Health Division, McAllen Regional Office, and have been so employed at all times relevant to this affidavit. All statements made in this affidavit are made in my official capacity.”

2. “On October 25, 2007, I placed a telephone call to Michael Mendoza at his place of business - The Health Connection at 361-808-9800. When he got on the phone, he said, “Dr. Mendoza.” I told him my husband had gastric bypass surgery a few years ago, and he had many complications, with the primary one being that every time he went to the hospital, he was always told he was vitamin deficient. For myself, I told him that I was always having joint and muscle pain with headaches that would not go away. After hearing the symptoms I gave him for both my husband and myself, Mr. Mendoza immediately asked when we could go to Corpus Christi, Texas, where his business is located, so that he could address our symptoms and offer a treatment plan. He mentioned that part of what would need to be done is determine what blood types we had and provide a saliva and urine sample. He also said he would do a hair analysis to determine which metals were in our system, which ones were toxic and what the overload was so that we could move on this quickly.

**[STATE'S
EXHIBIT
2]**

He said when there is an accumulation of heavy metals in the frontal lobe of the brain, a person could have Alzheimers symptoms, and if they accumulate in the central nervous system, we'd be dealing with Parkinson's. I asked him how this would be treated, and he said with Chelation through a suppository as he no longer did it through IV therapy. During our conversation, Mr. Mendoza mentioned to me that he was a medical doctor and a family doctor. He also informed me that he charged \$125.00 for the initial consultation."


ROZANNE N. LOPEZ

SWORN TO and SUBSCRIBED before me by ROZANNE N. LOPEZ on this 11th day
of December, 2007.


Notary Public in and for the State of Texas

