



Montreal

Cite this as: *BMJ* 2023;382:p1991<http://dx.doi.org/10.1136/bmj.p1991>

Published: 30 August 2023

Covid-19: US doctors sue regulator for charging them with spreading misinformation in pandemic

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Four doctors threatened with disciplinary action by Washington state's medical regulator over spreading misinformation about covid-19 have asked a court to strip the Washington Medical Commission of the power to punish doctors who offer unapproved treatments for the virus or who promote misinformation liable to discourage vaccination.

Three of the doctors have been charged by the commission with prescribing ivermectin to patients with covid-19 without documenting an adequate rationale, as well as making false statements about coronavirus vaccines liable to discourage vaccination. The fourth is a paediatrician, Renata Moon, who claims in the suit that she relinquished her state medical licence under duress after her employer, Washington State University, warned her that she would be reported to the commission for her public comments against vaccinating children to prevent covid-19.

Supported in their suit by the conservative group the Silent Majority Foundation, the doctors have asked a state superior court to strike down their cases, restore Moon's licence, and issue "a stay of all Washington Medical Commission proceedings . . . involving allegations or charges for the prescription of ivermectin for the treatment of covid-19 or for the dissemination of 'misinformation' or 'disinformation' related to the treatment of covid-19."¹

The four doctors allege that the commission did not follow its own standard procedures in drafting its covid policy. They also argue that the policy infringes their constitutional right to free speech.

Trump country

Three of the doctors come from eastern Washington state, one of the most conservative areas in the United States. Polling shows that Republican voters have dramatically less trust in the Food and Drug Administration and the Centers for Disease Control and Prevention than Democrats,² and they have died of covid at higher rates since vaccines became available.³

Ivermectin—a drug never proved to benefit patients with covid-19 but recommended by the former president Donald Trump—was in high demand in the region at the pandemic's height, and the veterinary version, which is dangerous to humans, was in wide use.

Michael Kwame Turner, a graduate of Harvard Medical School who worked at the Mayo Clinic before settling in Richland, Washington, is accused by the commission of not meeting standards of care when he prescribed ivermectin to five patients, most of whom requested it through an online form.

Turner prescribed ivermectin to a 74 year old man over the telephone without discussing other treatments, even though the man had just tested positive for covid-19 and should have been offered monoclonal antibodies, according to guidelines. Six days later the man went to hospital, his condition having worsened, but he could not be treated with remdesivir because his liver enzymes were elevated—a known side effect of ivermectin—and he died 10 days later.

Richard Wilkinson, a doctor in Yakima, has already been found by the commission to have made false statements on his website. He compared the push for covid vaccination to the murder of Jewish people in Hitler's Germany and wrote that patients should not trust the FDA or the county and state health departments.

He was also found to have provided negligent care to seven covid patients in 2021. In one case a 65 year old man brought to hospital by ambulance left against medical advice when doctors refused him ivermectin. The patient went to the Wilkinson Wellness Clinic, where he was given a prescription for the drug. Several days later he returned to hospital seeking treatment, telling doctors that he was unvaccinated on Wilkinson's advice. He died of covid-19 at the hospital.

Wilkinson prescribed human ivermectin to a 91 year old man with a fever who had been taking ivermectin paste meant for horses. A week later the patient went to hospital by ambulance, but he was past the window for remdesivir, and his family refused treatment with baricitinib. He also died. Wilkinson was fined \$15 000 (£11 870; €13 800), and his licence was put on probation for five years, during which he may not prescribe ivermectin. He must also undergo a clinical competency assessment, the commission ruled.

The other doctor, Ryan Cole, is a pathologist who lives in neighbouring Idaho but has a Washington medical licence. He is accused of prescribing ivermectin to four patients after communicating through instant message chats without taking an adequate history, performing an examination, or obtaining informed consent. Cole is also charged over public statements he made, including the claim that an Idaho surgeon died from the covid vaccine, when in fact the surgeon died of a heart attack six months after his shot.

Cole called the coronavirus vaccine "a fake vaccine . . . the clot shot, needle rape," at a video presentation with Idaho's Republican lieutenant governor, Janice McGeachin, that received over a million views. McGeachin later wrote in a newsletter that people

“may be significantly worse off health-wise if they get vaccinated.” She then appeared in a video holding a Bible and a gun, asking viewers to sign a statement saying that “any [public health] order issued in the future will be ignored.”

In 2021 the Republican commissioners of Ada County, over-ruling the lone Democrat commissioner, appointed Cole as sole physician member of the regional health board, issuing a statement that welcomed his “outsider” perspective.

Cole has been reported to the Idaho Medical Board by the Idaho Medical Association and by the College of American Pathologists, which revoked his fellowship. But no proceedings have been launched and, like most state boards, Idaho’s does not reveal ongoing investigations. Medical board members are generally appointed by state governors and often reflect their political bent.

Regulators in retreat

The doctors’ lawsuit is the latest front in a growing battle that pits physicians who dispute the scientific evidence on covid against the gatekeepers of professional standards.

It is a battle that regulators have been losing. Missouri, North Dakota, and Tennessee have passed laws that shield doctors from disciplinary action for prescribing ivermectin, and a similar bill awaits passage in Florida. Republican attorneys general in Indiana, Kansas, Nebraska, Oklahoma, and South Carolina have issued opinions warning state medical boards against pursuing such cases.

California passed a law last year empowering the state medical board to pursue doctors who spread covid misinformation, but it was put on hold by a federal judge in January while a legal challenge plays out.

The Federation of State Medical Boards criticised its members’ pandemic performance in a 2022 report, noting that the growth of misinformation on social media “has not been accompanied by any increase in accountability for those who disseminate the misinformation and disinformation.”⁴

A review by the *Washington Post* that drew responses from 36 state medical boards identified 480 complaints involving covid misinformation, but only five doctors have lost their licences as a result, and all had other findings against them involving deficient treatment of patients.⁵ Medical boards are reluctant to interfere with doctors’ right to prescribe off label, so they typically pursue ivermectin prescribers only if they fail to keep proper records documenting their reasons.

The Washington Medical Commission did not respond to a request for comment.

1 Superior Court of the State of Washington in and for Benton and Franklin Counties. Turner et al v Washington Medical Commission. Filed 12 Jul 2023. <https://www.documentcloud.org/documents/23890884-turner-et-al-v-washington-medical-commission>

2 Kirzinger A, Presiado M, Valdes I, et al. The covid-19 pandemic: insights from three years of KFF polling. Kaiser Family Foundation. 7 Mar 2023. <https://www.kff.org/coronavirus-covid-19/polling-finding/the-covid-19-pandemic-insights-from-three-years-of-kff-polling/>

3 Wallace J, Goldsmith-Pinkham P, Schwartz JL. Excess death rates for Republican and Democratic registered voters in Florida and Ohio during the Covid-19 pandemic. *JAMA Intern Med* 2023 Jul 24. <https://jamanetwork.com/journals/jamainternalmedicine/fullarticle/2807617>

4 Federation of State Medical Boards. Professional expectations regarding medical misinformation and disinformation. Apr 2022. <https://www.fsmb.org/siteassets/advocacy/policies/ethics-committee-report-misinformation-april-2022-final.pdf>

5 Sun LH, Weber L, Godfrey H. Doctors who put lives at risk with covid misinformation rarely punished. *Washington Post* 2023 Jul 26. <https://www.washingtonpost.com/health/2023/07/26/covid-misinformation-doctor-discipline/>

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