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STATE OF IOWA

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IOWA BOARD OF MEDICINE
MARK BOWDEN
EXECUTIVE DIRECTOR

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FOR IMMEDIATE RELEASE

Court upholds Board's immunity from lawsuits in federal court

SIOUX CITY, IA -- A federal judge has upheld the Iowa Board of Medicine's immunity from a lawsuit in federal court for monetary relief.

Linda R. Reade, chief judge of U.S. District Court in the Northern District of Iowa, in a ruling released March 5, dismissed the Board from a lawsuit by a Sioux City area physician who sued the Board over a professional competency complaint against him.

Judge Reade said the Board "has not waived or abrogated" its right of immunity, as provided by the Eleventh Amendment of the U.S. Constitution. This amendment affords a state (and its agencies) immunity from lawsuits unless the state waives the immunity or voluntarily submits itself to federal jurisdiction. The judge also said that public policy and judicial efficiency arguments to keep the Board in the lawsuit were without merit.

The ruling came on the state's motion to dismiss the Board from a lawsuit by Ralph Reeder, M.D., a neurosurgeon who practices in Dakota Dunes, S.D. Dr. Reeder initially sued Thomas Carroll, M.D., the Woodbury County medical examiner, for slander, libel and false light invasion of privacy. He later added the Board to the lawsuit, accusing Dr. Carroll and the Board of civil conspiracy to commit false light invasion of privacy.

Dr. Carroll, a pathologist, filed a complaint against Dr. Reeder in 2004. The Board investigated Dr. Reeder's surgery practices, and filed charges against him in February 2008, relying on an independent peer review of board-certified neurosurgeons. Later that year, the Board dismissed the charges, citing insufficient evidence.

Judge Reade's ruling does not affect the status of Dr. Carroll in the lawsuit.

The following is the ruling on the state's motion to dismiss the Board from the lawsuit.

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

RALPH REEDER, M.D., Plaintiff, vs. THOMAS CARROLL, M.D., and THE IOWA BOARD OF MEDICAL EXAMINERS, Defendants.	No. 09-CV-4013-LRR **ORDER**

I. INTRODUCTION

The matter before the court is the "Motion to Dismiss" ("Motion") (docket no. 20) filed by Defendant Iowa Board of Medical Examiners ("Board").

II. PROCEDURAL BACKGROUND

On February 15, 2009, Plaintiff Ralph Reeder, M.D., filed a three-count Complaint (docket no. 1). In the Complaint, Plaintiff asserted claims against Defendant Thomas Carroll, M.D., ("Dr. Carroll") for slander, libel and false light invasion of privacy. On April 6, 2009, Dr. Carroll filed an Answer (docket no. 10), in which he denied the substance of the Complaint and asserted various affirmative defenses.

On September 10, 2009, Plaintiff filed an Amended Complaint (docket no. 17). In the Amended Complaint, Plaintiff maintains his claims against Dr. Carroll for slander, libel and false light invasion of privacy. However, Plaintiff added a claim against Dr. Carroll and the Board for civil conspiracy to commit false light invasion of privacy. On September 23, 2009, Dr. Carroll filed an Answer (docket no. 19) to the Amended Complaint.

On October 14, 2009, the Board filed the Motion. On October 28, 2009, Plaintiff

filed a Resistance (docket no. 23). On November 4, 2009, the Board filed a Reply (docket no. 28).

On February 5, 2010, Judge Mark W. Bennett recused himself from the instant action. On February 9, 2010, the instant action was re-assigned to the undersigned.

III. SUBJECT MATTER JURISDICTION

There is complete diversity of citizenship among the parties. The amount in controversy exceeds $75,000. The court is satisfied that it has diversity subject matter jurisdiction over the instant action. *See* 28 U.S.C. § 1332(a)(1) ("The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between . . . citizens of different states[.]")

IV. ANALYSIS

The Board asks the court to dismiss it from the instant action. The Board argues that the court "lacks jurisdiction over Plaintiff's claims against the Board, because the Eleventh Amendment provides that the Board is immune from suit in federal court for monetary relief." Motion at 1. Plaintiff argues that the Board has waived its Eleventh Amendment immunity. Plaintiff also argues that the Board's immunity is overridden by public policy and judicial efficiency concerns.

A. Eleventh Amendment Immunity

The Eleventh Amendment provides: "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." U.S. Const. amend. XI. The Eleventh Amendment "has been interpreted to provide a state with immunity from suit in federal court by citizens of other states and by its own citizens." *Skelton v. Henry*, 390 F.3d 614, 617 (8th Cir. 2004) (citing *Hans v. Louisiana*, 134 U.S. 1, 10 (1890)). Therefore, "[t]he Eleventh Amendment bars a

citizen from bringing suit for monetary damages against a state in federal court." *Barnes v. Missouri*, 960 F.2d 63, 64 (8th Cir. 1992) (citing *Welch v. Texas Dep't of Highways & Public Transp.*, 483 U.S. 468, 472 (1987)).

"When a state is directly sued in federal court, it must be dismissed from litigation upon its assertion of Eleventh Amendment immunity unless one of two well-established exceptions exists." *Id.* (citing *Kroll v. Board of Trustees of Univ. of Ill.*, 934 F.2d 904, 907 (7th Cir. 1991)). "The first exception to Eleventh Amendment immunity is where Congress has statutorily abrogated such immunity 'by clear and unmistakable language.'" *Id.* (quoting *Welch*, 483 U.S. at 474). The second exception applies when a state waives its immunity to suit in federal court. *Id.* at 65.

B. Application

Plaintiff does not dispute that the Board is an agency of the State of Iowa and is generally entitled to Eleventh Amendment immunity. *See Thomas v. St. Louis Bd. of Police Comm'rs*, 447 F.3d 1082, 1084 (8th Cir. 2006) (stating that Eleventh Amendment immunity extends to state agencies that are an "arm" of the state); *Doe v. Nebraska*, 345 F.3d 593, 597 (8th Cir. 2003) (stating that "[t]he Eleventh Amendment provides states, and state agencies, with immunity"). Plaintiff contends that the Board waived its immunity by stating its intent to intervene in the instant action. Plaintiff also argues that public policy and judicial economy considerations outweigh the Board's Eleventh Amendment immunity. The court shall address each of these arguments, in turn.

1. Waiver

The test for determining "'whether a State has waived its immunity from federal-court jurisdiction is a stringent one.'" *Coll. Sav. Bank v. Fla. Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 675 (1999) (quoting *Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 241 (1985)). "A state may waive its immunity from suit in federal court by voluntarily submitting its rights for judicial determination." *Skelton*, 390 F.3d at 618

(citing *Lapides v. Bd. of Regents*, 535 U.S. 613, 618-19 (2002)). Generally, a state waives its Eleventh Amendment immunity "either if the State voluntarily invokes [federal court] jurisdiction, or else if the State makes a clear declaration that it intends to submit itself to [federal court] jurisdiction." *Coll. Sav. Bank*, 527 U.S. at 675-76 (citations and quotation marks omitted). For example, a state invokes the jurisdiction of the federal court, and thereby waives its immunity, if it files suit in federal court or removes a case to federal court. *Skelton*, 390 F.3d at 618. A state may also waive its Eleventh Amendment immunity when it intervenes in a federal lawsuit. *See Clark v. Barnard*, 108 U.S. 436, 447 (1883) (holding that state waived Eleventh Amendment immunity by intervening in federal action and asserting a claim). The court must "focus on whether the state's action in litigation clearly invokes the jurisdiction of the federal court, not on the intention of the state to waive immunity." *Skelton*, 390 F.3d at 618.

Plaintiff argues that the Board, through its representatives, has "publicly stated to [Plaintiff's] counsel and others that the [Board] intended to intervene" in the instant action. Resistance at 6-7. In support of this claim, Plaintiff points to a newspaper article in which a spokesman for the Iowa Attorney General's Office stated that it was "monitoring" the lawsuit and "might intervene in the case to try to protect the complaint process for the medical board and similar licensing boards." Resistance Ex. C (docket no. 23-2), at 2. Plaintiff argues the Board "affirmatively expressed its intent and willingness to subject itself to federal court jurisdiction for purposes of this lawsuit." Resistance at 7.

The Board has not waived its Eleventh Amendment immunity because it has not "clearly invoke[d] the jurisdiction of the federal court[.]" *Skelton*, 390 F.3d at 618. The Board did not intervene in the instant action and never attempted to do so. In *Lapides*, the Supreme Court held that a state waived Eleventh Amendment immunity when it removed an action to federal court. 535 U.S. at 624. The Supreme Court reasoned that "removal is a form of *voluntary invocation of a federal court's jurisdiction* sufficient to waive the

State's otherwise valid objection to litigation of a matter . . . in a federal forum." *Id.* (emphasis added). The Board here has done nothing to voluntarily invoke the jurisdiction of the federal courts. It is only a party to the instant action because Plaintiff filed the Amended Complaint naming the Board as a party. The statements made by a spokesman for the Iowa Attorney General's Office fall far short of a "clear declaration" that the Board intended to submit itself to the jurisdiction of the federal courts. "A state does not waive its immunity from federal suit . . . by stating its intention to sue or be sued[.]" *McKlintic v. 36th Judicial Circuit Court*, 508 F.3d 875, 877 (8th Cir. 2007) (per curiam) (citing *Coll. Sav. Bank*, 527 U.S. at 676). Accordingly, the court finds that the Board has not waived its Eleventh Amendment immunity by suggesting the possibility of intervention in the instant action.

2. Public interest

Plaintiff argues that the Board's entitlement to sovereign immunity is outweighed by the "public interest in having state agencies not abuse their authority to harass, defame, and portray individuals in a false light[.]" Resistance at 8. In short, he argues that the Board acted with malice and therefore should not be immune from suit.

The only authority Plaintiff cites in support of this argument is *Vander Linden v. Crews*, 205 N.W.2d 686, 691 (Iowa 1973). Plaintiff relies on *Vander Linden* for the proposition that "the doctrine of judicial immunity shall not be further extended to protect and shield nonjudicial officers from civil suits where actual malice is alleged." 205 N.W.2d at 691. *Vander Linden* involved a malicious prosecution claim against a state employee—not the state itself. *Id.* at 687. More importantly, *Vander Linden* did not involve sovereign immunity or the Iowa Tort Claims Act, Iowa Code Ch. 669.

In *Vander Linden*, the Iowa Supreme Court held that judicial immunity should not be "extended to protect and shield nonjudicial officers from civil suits where actual malice is alleged." 205 N.W.2d at 691. The Iowa Tort Claims Act "abrogated, in part, the

State's immunity from suits sounding in tort." *Drahaus v. State*, 584 N.W.2d 270, 272 (Iowa 1998). "The doctrine of sovereign immunity dictates that a tort claim against the state or an employee acting within the scope of his office or employment with the state must be brought, if at all, pursuant to [the Iowa Tort Claims Act]." *Dickerson v. Mertz*, 547 N.W.2d 208, 213 (Iowa 1996).

When *Vander Linden* was decided, tort claims against state employees were not subject to the Iowa Tort Claims Act. The Iowa Tort Claims Act "was amended effective July 1, 1975, to bring claims against state employees within its provisions. Before that date, a tort claim against a state employee was governed by the procedures which govern tort claims generally." *Jones v. Bowers*, 256 N.W.2d 233, 234 (Iowa 1977) (citation omitted). Accordingly, *Vander Linden* did not concern Iowa's sovereign immunity. Moreover, the State of Iowa has expressly *not* waived its sovereign immunity to a variety of tort actions which, by their very nature, involve malice. For example, the Iowa Tort Claims Act does not apply to "[a]ny claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights." Iowa Code § 669.14(4). Thus, the State retains sovereign immunity with respect to these claims. *See Trobaugh v. Sondag,* 668 N.W.2d 577, 584 (Iowa 2003) (observing that § 669.14(4) "describe[s] the categories of claims for which the State has not waived its sovereign immunity"). The State of Iowa has not made a "clear declaration" that it submits itself to federal jurisdiction merely because a claim against it was allegedly committed with malice. Accordingly, the court rejects Plaintiff's claim that the public's interest overrides the Board's sovereign immunity.

3. Judicial efficiency

Plaintiff asserts that "[p]rinciples of judicial efficiency and economy dictate that the claim against the [Board] should remain in this [c]ourt." Resistance at 12. Plaintiff

contends that the Board's "Eleventh Amendment argument should be rejected" because it would be a "waste of judicial resources" to separate his claim against the Board from those against Dr. Carroll. Plaintiff cites no legal authority in support of this argument. Neither the Supreme Court nor the Eighth Circuit Court of Appeals have recognized a judicial efficiency exception to Eleventh Amendment immunity. *See Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 123 (1984) (rejecting judicial economy argument in Eleventh Amendment context because "such considerations of policy cannot override the constitutional limitation on the authority of the federal judiciary to adjudicate suits against a State"). The court finds that the Board's Eleventh Amendment immunity is not overridden by judicial economy concerns.

C. Summary

The court finds that the Board has not waived or abrogated its Eleventh Amendment immunity. Plaintiff's public policy and judicial efficiency arguments are without merit. The Board is immune from suit in this court pursuant to the Eleventh Amendment. Accordingly, the court shall grant the Motion and dismiss the Board from the instant action.

V. CONCLUSION

In light of the foregoing, the Motion (docket no. 20) is **GRANTED**. The Board is **DISMISSED** from this action.

IT IS SO ORDERED.

DATED this 5th day of March, 2010.

LINDA R. READE
CHIEF JUDGE, U.S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA