

statutory rights.¹ Soon thereafter, defendants filed a motion to dismiss contending that plaintiffs' complaint failed to state any claims upon which relief could be granted. On March 13, 1997, the court granted defendants' motion to dismiss as to all but two theories of recovery in plaintiffs' original complaint. The only two counts remaining were count I (A), a § 1983-Procedural Due Process claim, and count IV, a claim for violation of the Pennsylvania Constitution and Pennsylvania's Administrative Agency Law.

The March 13th opinion dismissed plaintiffs' count III-Breach of Fiduciary and Statutory Duties/Abuse of Discretion/Negligence claim but allowed plaintiffs to file an amended pleading on that claim only. On May 9, 1997, after an in-chambers conference with the parties, the court accepted

1. Plaintiffs wide-ranging original complaint included the following counts:

- Count One-- Section 1983 Claims Against Respondents In Their Official Capacities: (A) License Suspension Without Procedural Due Process; (B) Violations of Substantive Due Process; (C) Violation of Fourteenth Amendment Equal Protection; (D) Enforcement of the Constitutional Guarantee of Republican Government U.S. Const. Art. 4, Sec. 4; (E) No Legal Authority Exists Warranting Creation of the Office of Inspector General Within the Executive Office of the Governor; (F) Conspiracy Under 42 U.S.C. §1985(3).
- Count Two-- Participation in the CAT Fund is Voluntary, Not Mandatory.
- Count Three-- Breach of Fiduciary and Statutory Duties/Abuse of Agency Discretion/ Negligence/Request for Injunctive, Declaratory and Mandamus Relief.
- Count Four-- Violations of Due Process Under Administrative Agency Law and Pennsylvania Constitution.

paragraphs 248-264 of plaintiffs' second amended complaint ("Second Amended Count II"), as an acceptable re-statement of plaintiffs' Breach of Fiduciary and Statutory Duties/Abuse of Discretion/Negligence claim and allowed defendants approximately two weeks to file a motion to dismiss that claim.² On May 12, 1997, defendants filed the current "supplemental motion" to dismiss count IV of the original complaint and count II of the second amended complaint on the basis of the Eleventh Amendment and Pennhurst.

II. Discussion

The Eleventh Amendment³ bars a suit against a state in federal court by either one of its own citizens or a citizen of another state. See Pennhurst State School & Hospital v. Halderman, 465 U.S. 89, 106 (1984). This prohibition extends to claims under both state and federal law. As stated by the Supreme Court: "The Amendment . . . is a specific constitutional bar against hearing even federal claims that otherwise would be within the jurisdiction of the federal courts. Id., 465 U.S. at 120. The "bar applies to pendent [state] claims as well." Id.

2. The court also accepted plaintiffs' withdrawal of their first amended complaint and dismissed defendants' motion to dismiss the first amended complaint as duplicative and moot.

3. 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.

As to federal claims, the amendment can be avoided by suing state officials, not the state, and seeking prospective injunctive or declaratory relief. See Ex parte Young, 209 U.S. 123, 146 (1908) (allowing a federal court to enjoin a state official for violating federal law); Edelman v. Jordan, 415 U.S. 651, 665 (1974) (when a plaintiff sues a state official alleging a violation of federal law, the federal court may award an injunction that governs the official's future conduct, but not one that awards retroactive monetary relief). However, when it comes to state law claims, the amendment cannot be avoided by suing state officials or seeking only prospective relief since the theories of Ex parte Young and Edelman v. Jordan are not applicable "in a suit against State officials on the basis of state law." Pennhurst, 465 U.S. at 106; Allegheny County Sanitary Authority v. E.P.A., 732 F. 2d 1167, 1173 (3d Cir. 1984). Accordingly, a federal court is without power to order state officials to conform their conduct to the requirements of state law. See Pennhurst, 465 U.S. at 106.⁴

4. "A federal court's grant of relief against state officials on the basis of state law, whether prospective or retroactive, does not vindicate the supreme authority of federal law. On the contrary, it is difficult to think of a greater intrusion on state sovereignty than when a federal court instructs state officials on how to conform their conduct to state law. Such a result conflicts directly with the principles of federalism that underlie the Eleventh Amendment. We conclude that Young and Edelman are inapplicable in a suit against state officials on the basis of state law." Pennhurst, 465 U.S. at 106. "[A] federal suit against state officials on the basis of state law contravenes the Eleventh Amendment when. . . the relief sought. . . has an impact directly on the State itself." Id., 465 U.S. at (continued...)

The relevance of these principles to plaintiffs' original count IV claim and plaintiffs' second amended count II claim is obvious. Notwithstanding plaintiffs' disingenuous assertion in their response to defendants' supplemental motion to dismiss that these claims have somehow been "federalized" into fourteenth amendment due process claims, it is crystal clear that counts IV and II as stated in the complaint are pure state law claims for violation of Pennsylvania's Constitution and Administrative Agency Law and breach of fiduciary and statutory duties, abuse of discretion and negligence. The court is, of course, bound to rule on a motion to dismiss on the basis of the complaint as written, not as transmogrified in an attorney's brief. Thus, under Pennhurst, the court is without jurisdiction to hear these claims and defendants' motion to dismiss them will be granted. See Pennhurst, 465 U.S. at 106, 116; see, e.g., Jones v. Connell, 833 F. 2d 503, 505 (3d Cir. 1987) (claim that state prison officials wrongfully classified prisoner under state Department of Corrections standards was a question of state law and therefore, under Pennhurst, federal court could not require state officials to reclassify prisoner under that law); Cuffeld v. Supreme Court of Pennsylvania, 936 F. Supp. 266, 273 (E.D. Pa. 1996) (claim that actions of state officials violated separation of powers doctrine embodied in the Constitution of the Commonwealth of Pennsylvania was barred under Pennhurst);

4. (...continued)
116.

Anheuser-Busch, Inc. v. Goodman, 724 F. Supp. 345, 346-347 (M.D. Pa. 1989) (claim that Pennsylvania Liquor Control Board acted beyond scope of regulatory authority conferred by Pennsylvania General Assembly was question of state law and therefore court did not have jurisdiction to grant request for injunction).

An appropriate order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

TIMOTHY HAYES, M.D., et al.,	:	CIVIL ACTION
	:	
Plaintiffs,	:	
v.	:	NO. 96-4941
	:	
JOHN REED, et al.,	:	
	:	
Defendants.	:	

ORDER

AND NOW, this day of July, 1997, upon consideration of defendants' "Supplemental Memorandum of Law in Support of Defendants' Motion to Dismiss Count IV of Plaintiffs' Initial Complaint and Count II of Plaintiffs' Second Amended Complaint," and plaintiffs' response thereto, it is HEREBY ORDERED that defendants' motion is GRANTED as follows:

- 1) Count IV of plaintiffs' original complaint is DISMISSED; and,
- 2) Count II (¶¶ 248-264) of plaintiffs' second amended complaint is DISMISSED.

William H. Yohn, Jr., Judge