No. 07-15470

IN THE

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOHN V. DOMMISSE,
Plaintiff—Appellant,

v.

JANET NAPOLITANO, In Her
Individual Capacity Only;
ET AL
Defendants—Appellees

Appeal from the United States District Court
For the District of Arizona
Tucson Division

OPENING BRIEF FOR APPELLANT

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I.

STATEMENT OF THE JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1291 since this is an appeal from the final judgment of a U.S. District Court, Docket Number CV 06-00368-TUC-DCB. The Notice of Appeal was timely filed in accordance with Rule 4 (a) of the Federal Rules of Appellate Procedure.

II.

STATEMENT OF THE ISSUES

1. Whether the District Court erred in deciding that Plaintiff's Complaint should be dismissed because it is barred by res judicata.
2. Whether the District Court erred in deciding that Plaintiff's Complaint should be dismissed for failure to state a claim.

III.

STATEMENT OF THE CASE

Appellant sued the Arizona Appellees, representatives of and consultants to the Arizona (Allopathic) Medical Board (the Board). And he sued the California Appellees, clinical and administrative officials with a Physician Assessment and Clinical Evaluation (PACE) Program at the Medical College of the University of California at San Diego that performs assessments and evaluations of physicians referred by state boards of medicine for this purpose. He sued all of (both sets of) the Appellees individually, not in their official capacities. The factual allegations supporting his claims derive from activities and conduct undertaken by Appellees

while they were acting as representatives of, and consultants to, the Board; and as clinical and administrative officials with UCSD's PACE program, under color of law. He alleges that the Appellees conspired to have him censured by the Board and to secure the Board's decision against him, in violation of his constitutional procedural due-process and equal-protection rights, as provided by the liberty clauses of the 5th and 14th Amendments to the Constitution of the United States of America. The liberty clauses refer specifically to the right and freedom to practice one's profession without unwarranted restrictions.

In the case of a physician subject to regulation by their state medical board, such rights include the right to peer review (i.e., review of his work by physicians who are either of the same specialty or practice area, or have substantial knowledge of his practice area). Fundamentally, he claimed that the Board representatives and both the Arizona and the California sets of consultants are unable to evaluate his medical practices as peer reviewers because they are practitioners and evaluators of different practice areas within allopathic medicine and not substantially knowledgeable about his practice area of nutritional medicine, a practice area allowed as a self-designated specialty by the Arizona Medical Board.

[As was pointed out in the District Court complaint, an exception to the general statement that none of the physician reviewers had substantial knowledge

of the current appellant's practice area, is the fact that one of the California appellees, Dr Joseph Scherger, although practicing family medicine, does have substantial knowledge in the current appellant's practice area - and gave him a rarely-precedented 90% passing grade in the most important part of the appellant's evaluation at UCSD, namely the oral interview of nutritional-medical practice-area knowledge and review of 5 randomly-selected patient charts from the appellant physician's nutritional-medical practice. He assured the current appellant that the final, total evaluation would not deviate much from the glowing preliminary report that he supplied to the appellant and the Board immediately prior to the Arizona Superior Court hearing of his case - but nevertheless reversed himself and acquiesced in the Final (mostly negative) Report of the PACE Program, after the Arizona Medical Board put pressure on the PACE Program officials to give at least equal weight to the parts of the evaluation that were from outside of appellant's practice area.]

Appellant further claimed that the Appellees encouraged witnesses, by dint of their being from outside of his practice area, to submit false accusations against him.

[There is no part of the entire 10-year record of the Board's accusations and actions against the appellant that has not relied on the false testimony of the Appellees (and the judicial downgrading of the actually qualified peer review by

the Appellant's own witnesses in the administrative court) to obtain all its convictions and negative publicity against, and grounds for harassment of, the Appellant.]

IV.

STATEMENT OF THE FACTS

Appellant is a physician licensed to practice allopathic medicine in Arizona since 1994. He was originally educated in conventional allopathic medicine and psychiatry, but, since 1977, he has developed an interest and expert practice in nutritional and metabolic medicine, a practice area for which there is not, as yet, a recognized training requirement or board certification examination available. On September 15, 2003, after an investigation and four days of administrative court hearings, the Board published Findings of Fact, Conclusions of Law and Order of Decree of Censure and Probation, which concluded that Plaintiff had committed unprofessional conduct. The Decree of Censure was a public sanction and included five years of probation with numerous conditions, such as: taking continuing medical education (CME) courses; having independent evaluation of his medical skills (through the UCSD PACE program, essentially, since none other was available within several hundreds of miles - this was not a voluntary choice by the Appellant, as claimed by the California Appellees in their US District Court pleadings, although appellant was forced to pay over $10,000 for this fraudulent

evaluation); and submitting to periodic Board reviews of his on-going medical records.

Plaintiff appealed the Decree of Censure to the Superior Court of Arizona, which on September 26, 2005, affirmed seven of the Board's ten findings and conditions of censure, with three caveats not relevant here. Plaintiff did not appeal the Superior Court ruling (for financial reasons and because he already had evidence of extreme bias against him by both the Arizona Court of Appeals and the Arizona Supreme Court, from secondary rulings made by them, denying his legitimate, state-law-mandated right to disqualify the first judge assigned to his case in the Arizona Superior Court), and on January 17, 2006, the Board issued the Amended Findings of Fact, Conclusions of Law and Order for Decree of Censure and Probation. Appellant also did not have the option to appeal the amended decree because, as stated by the Board in its Amended Final ruling, "Dr Dommisse has exhausted all avenues of appeal." Instead, he filed this (current) action on July 20, 2006.

V.

SUMMARY OF THE ARGUMENT

The individual capacity of a person is separate and distinct from that of the same person in their official capacity. The Appellant is not seeking money damages from any (Arizona or California) government's treasury. The State of

Arizona should not even be defending any of the Appellees. The legal issues are not the same. Therefore, (1) res judicata principles do not apply in this case.

And the claim that appellant (2) "failed to state a claim [in the District Court]" is false because sufficient factual and legal claims were made.

VI.

ARGUMENT

Standard of Review – This case must be reviewed de novo.

A major issue in this case is the district court's misreading and misunderstanding of the significance of the U.S. Supreme Court's ruling and teaching of Hafer v. Melo, 116 L. Ed. 2d 301 (1991). The district court in Hafer v. Melo, supra, apparently erred in the same way as this present district court by ruling that the complaints should be dismissed on the theory that the suits, although brought against state officials in their personal capacitates, were in substance actions against the state and therefore should be treated the same as if they were state officials only. The U.S. Supreme Court in Hafer v. Melo, supra, stated, "We rejected this view." What the U.S. Supreme Court is now saying involves a new interpretation of the legal meaning and status of suing state officials in their personal or individual capacity.

Before Hafer v. Melo, supra, even though an Appellant may have sued state officials in their personal or individual capacities, in substance those persons or

individuals sued would be considered to be sued in their official capacities, and consequently damages could be derived from the public treasury.

In other words, the legal form of the complaint would indicate that a state official was being sued personally or individually, but in substance or actuality, or in reality, that person was considered as being sued as a state official. Again, Hafer v. Melo, supra, changed this legal arrangement and understanding in that, if the complainant sues the state official personally and individually, in legal form and substance, he or she is only sued in the personal or individual capacity, not in an official capacity. The person sued personally or individually is actually and in reality or in substance a separate legal person apart from that same person in his/ her official capacity. Hafer v. Melo creates two separate legal persons - (a) the individual and (b) the state official - and suing one does not automatically include, or subsume, suing the other. See Hafer v. Melo, supra at 312, 313.

The district judge in this instant case must have decided that the Appellees in this instant case are still in substance being sued in their official capacity, thereby wrongly concluding that the Appellant is automatically seeking damages from the public treasury. This is totally in error. The captions on the original complaint clearly show that the Appellees are being sued in their individual capacities only, and the body of the complaint makes clear that compensation is being sought entirely from their personal resources and NOT from any state government

resources. Also, in the body of the complaint, the Appellant argues that, "The Defendants, acting under color of state law, used their office with the state agency to act in their individual capacity ... " This language follows the teaching examples used in Hafer v. Melo, supra. The Appellant is seeking actual and punitive damages from each defendant in his/ her individual capacity and even submitted a request that the defendants' real and personal property be subject to a Notice of Lis Pendens, prohibiting the sale or disposition thereof. This does not present a request for money damages from the State Treasury, as it is not.

> "Insofar as respondents (in this instant case, the Appellant) seek damages against Hafer personally ... " Hafer v. Melo, Supra, at 313.
>
> "We hold that state officials, sued in their individual capacities are 'persons' within the meaning of § 1983 ...", Hafer v. Melo, supra (emphasis added).

The District Judge in this case ruled in the legal context that every § 1983 lawsuit that was brought against a defendant state official was treated as a suit against the state. But, Hafer v. Melo, supra, which appellant repeatedly cited in his complaint pleadings, created a new and different defendant which is a separate legal person or individual, apart from the state official or the state itself. This new legal person or individual is the state official in his or her individual or personal capacity. Therefore, the reasoning as to why intervention of a federal court was not justified when the defendant is a state official or the state itself, simply does

not apply when the defendant is a private individual. There is no judicial interference with the state proceedings or federal statute when the defendant is sued in his/ her individual capacity.

If the Appellees, as in this instant case, are acting outside their official capacity, any overt acts would be bad faith and mere harassment against the Appellant, since there would otherwise be no jurisdiction or authority justifying any action on the part of the Appellees. Additionally, the overt wrongful acts or counts in the original complaint are all in the context of bad faith and harassment, outside of any state interests. The state cannot authorize its officers to violate federal law (due process and equal protection rights, such as those requiring peer review), thus such officers are stripped of their official or representative capacity or character. Duke Energy Trading and Marketing, L.L.C. v. Davis, 267 F. 3d 1042 (9th Cir. 2001). Federal law rights were violated by the Appellees in this instant case, leaving them open for a § 1983 lawsuit. The Federal Court must intervene because the state proceedings did not provide a meaningful opportunity to adjudicate constitutional claims. Middlesex Ethics Comm. v. Garden State Bar Assn., 457 U.S. 423 (1982). Under Ex Parte Young, 209 U.S. 123 (1908) and its progeny, a suit challenging the legality under federal law of a state official's action in enforcing state law is not a suit against the state, and hence is not subject to state or federal exhaustion requirements. Id. At 159-160. Duke Energy Trading and

Marketing v. Davis, supra. Therefore, the appellees stand as individuals-only before this court.

The Appellees must show that their alleged unconstitutional acts were within the outer perimeter of their authority and discretion. Butz v. Economou, 438 U.S. 478 at 483 and 484. The Appellees started their individual illegal and unconstitutional acts because they were unable to legally deal with the Appellant, by virtue of their not qualifying to be peer reviewers of the Appellant. Any defenses are definitely outside the jurisdiction and authority of the Appellees.

Where the record reveals no jurisdiction as to state officials, the U.S. Appeals Court is powerless to do anything but recognize the defect. Newman-Green, Inc. v. Alfonzo-Larrain R., 854 F. 2d 916 (7th Cir. 1988). The Appellees who acted outside their jurisdiction and authority became individuals who have no jurisdiction to defend themselves in their state official capacity or utilize the exhaustion requirements. The submission that all state officials are absolutely immune from their individual actions if they infringed the Appellant's constitutional rights, even if the violation was knowing and deliberate, is unsound and the court will consequently reject it. Butz v. Economou, supra at 485. A state official would lose his immunity and federal statute defenses from a § 1983 suit if he knew or reasonably should have known that the action he took within his sphere of official responsibility would violate the constitutional rights of the Appellant, or

if he took the action with the malicious intention to cause a deprivation of constitutional rights or other injury to the Appellant. Butz v. Economou, supra at 498. The Appellees in this instant case "knew" or reasonably "should have known", plus they took action with malicious intent. Additionally, judges were held to be immune from civil suit for malice or corruption in their action whilst exercising their judicial functions within the general scope of their jurisdiction. Butz v. Economou, supra, at 509 (emphasis added). The appellees in this instant case acted outside the general scope of their jurisdiction and did so as individuals. The U.S. Supreme Court case of Marbury v. Madison, 1 Cranch 137 (1803) leaves no doubt that the high position of a government official does not insulate his actions from judicial review for mandamus or injunction. Butz v. Economou, supra at 523. "Absolute immunity" (and a federal statute defense) is a form which, in truth, exists in name only. Butz v. Economou, supra at 527.

The Board does not have any jurisdiction or authority to address, decide or offer any relief or remedy for any wrongdoing alleged and proven in Appellant's 42 U.S.C. § 1983 civil rights lawsuit involving specific violations of federal civil rights, constitutional rights and statutes against the Appellees sued in their individual capacities only.

The short answer is that the Board's administrative proceeding does not have any jurisdiction or authority to even consider Appellant's 42 U.S.C. § 1983 legal

proceedings. The expanded answer is that the Board's due process hearing or appeal process involves only two (2) parties, the Appellant and the state agency officials. This does not include the state official in his/ her individual capacity. Secondly, the Board does not have the legal training or expertise to conduct or preside, and then make a final decision or order with findings of fact and conclusion of law, in this 42 U.S.C. § 1983 case involving persons sued in their individual capacity only. Thirdly, the Board has no adequate remedies for an Appellant in a 42 U.S.C. § 1983 case involving persons sued in their individual capacity only where they violated U.S. constitutional rights, etc.. The record is that the Board could not control the state officers in any individual capacity in this case. The Board has no jurisdiction, authority or control over those same persons in their individual capacity. Fourthly, the issues in the 42 U.S.C. 1983 suit go beyond the merits dealing with state officials. The Appellees were acting beyond their official capacity by using out-of-practice-area, non-peer intimidation, fraud, and deceit to thwart the Appellant.

Therefore, there are no procedures or remedies with a due process hearing or appeal for the Appellant within a Board agency. In addition, the Appellant's 42 U.S.C. § 1983 lawsuit against the Appellees, in their exclusive individual capacity, conforms to, and fits, the exception in the law.

There are situations in which it is not appropriate to require the use of state agency due process and review procedures. Hoeft v. Tucson Unified School District, 967 F. 2d 1298 (9th Cir. 1992). Hoeft, supra, outlines the situations where exhaustion of state agency procedures are not required.

It would be futile to use the state agency due process procedures and appeals.

The Board did not offer a forum concerning the type of grievances that the Appellant had in dealing with the unique nutritional-metabolic medical issues and the deceptive, illegal and retaliatory tactics to silence and create a chilling atmosphere against the Appellant. The Appellees would have had to be experts in nutritional-metabolic medicine to even evaluate the Appellant; and they would have needed to recognize, in the part of the PACE evaluation conducted by Dr Scherger (who does have such expertise), that his nutritional-metabolic evaluation should not have been allowed to be trumped by the parts that evaluated the current appellant's medical knowledge and skills outside of his practice area.

The Appellees will continue to attempt to ignore Hafer v. Melo, 502 U.S. 21, but cite a case that supports Hafer v. Melo, supra. The Appellees will try to use the case of Price v. Akaka, 928 F.2d 824 as if it works in their favor, but the opposite is true. The court in Price, supra, ruled that "Price has stated a claim and the

district court has jurisdiction to hear it." The Appellant followed nearly the same path as Price, giving this court jurisdiction to hear this instant case.

There is no basis for a ruling of res judicata in this case because the causes of action which were previously adjudicated on the merits by the Arizona Board and Arizona Superior Court, hereinafter referred to as "Board Action", were not presented in Plaintiff's Complaint (hereinafter referred to as "Complaint"), which is evident from the following facts:

1.) The Complaint was filed under Federal Law. The Board Action was prosecuted under Arizona State Law.

2.) The Complaint was filed as a civil action. The Board Action was filed as a quasi-criminal prosecution.

3.) The Complaint involved an individual who alleged violations of the U.S. Constitution by individuals. The Board Action alleged a violation of the Arizona Medical Practices Act, a state statute, by a publicly licensed medical practitioner.

4.) The Complaint involved parties in their private or individual capacities. The Board Action involved parties in their public or official capacities. Dr. Dommisse was prosecuted for his acts dealing with public patients. The Board and prosecutor were acting in their official state capacity.

5.) The Complaint involved non-Board members and non-prosecutors as parties or defendants. The Board Action involved only Board members and prosecutors as parties (Plaintiffs, mostly, but also defendants, in Arizona Superior Ct.

6.) The Complaint involved merits involving violations of constitutional rights of due process of law, equal protection under the law, etc. of an individual. The Board Action involved merits involving the alleged violations of the Arizona Medical Practices Act by a state licensed practitioner.

7.) The Complaint does not ask for or attempt to defend against the sanctions of the Board ordered for Dr. Dommisse. In the Board Action, Dr. Dommisse attempted to defend against the sanctions of the Board against him.

8.) The Complaint does not in any manner challenge the Board's Decree. In the Board Action, the Board's Decree was not challenged on U.S. Constitutional grounds.

Considering the above facts, the elements of the doctrine of res judicata are not the same as follows in the Complaint and do not apply to this case.

1.) Judgment on the merits in the prior suit – The judgment in the prior suit contained certain sanctions against Dr. Dommisse as a licensed practitioner dealing with public patients. Dr. Dommisse is not asking for a reversal of those sanctions in this instant action by the official persons who prosecuted him or made the final judgment.
2.) The same parties are not involved.
3.) The cause of action is not the same cause of action as the Board Action.
4.) This case is not the same party standing in the same capacity involving the same cause of action upon the same facts litigated.

The points that were litigated in the Board Action are not being argued in the Complaint.

Also, those points could not have been litigated in this instant case.

Considering the above facts, the elements of the doctrine of collateral estoppel are not the same and do not apply in this case:

1.) The Complaint does not re-litigate an issue identical to one previously litigated to a determination on merits in another action.
2.) The issues were not actually litigated in the previous proceeding.
3.) There was no opportunity, let alone a full and fair opportunity, to litigate the constitutional issues.
4.) Resolution of the Board Action issues bears no relationship to a decision in the Complaint action.
5.) There was no decision, let alone a valid and final decision, on the merits of constitutional rights being violated in the Board Action.
6.) There is not a common identity of the parties.

The Appellees try to make a big issue concerning, "those points which might have been litigated." (Emphases added.) But the Appellees' quoted this phrase completely out of context. In the Apellees' cited case, Hawkins v. State of Arizona, 183 Ariz. 100 (App. 1995), 900 P.2d 1236

(Ariz. App. Div. 2, 1995), there are certain claims and issues that might have been litigated in the first action, if they were not exempted from, or the exception to, the Doctrine of Res Judicata. One of these exceptions or exemptions is discrimination claims and issues. See Hawkins, supra at 1241. The Appellant, John V. Dommisse, in his Complaint alleged discrimination in Count 6 and the basis for the discrimination was further outlined in Counts 7, 8, 9, 10, 11, and 12.

The discrimination claim or issue needs to have "the appropriate agency with specialized knowledge and expertise in handling discrimination claims." Hawkins, supra at 1241. Also, "discrimination claims (are) not (to) be relegated to routine personnel board procedures and determinations." Hawkins, supra at 1241.

In the Board Action involving Appellant, the hearing officers' findings and conclusions did not address or resolve any discrimination claims, nor was the determination of any such claims essential to their decisions as to whether there was "cause". Hawkins, supra at 1241.

The "distinct" legal rights and remedies available under each statutory scheme are markedly different and cannot be dismissed by way of collateral estoppel or res judicata. Ferris v. Hawkins, 135 Ariz. 329, 660 P.2d 1256 (App. 1983); Allen v. McCurry, 449 U.S. 90; Hawkins, supra at 1241.

In this instant case, the Appellant had the necessity, and only option, to have a Federal District Court to review the claim of discrimination because the Honorable District Court has the legal specialized knowledge and expertise to decide discrimination issues. The Board in the Board Action case does not have legal specialized knowledge or expertise to decide discrimination claims or issues. It is the Board's associates and consultants who are alleged to have discriminated against Appellant in his individual capacity only. It is reasonable and logical to conclude that the Board would protect their own concerning the claim or issue of discrimination. Again, this case needs a third-party, isolated judicial forum as an absolute necessity to review the issue of discrimination.

There could not have been sufficient safeguards in the Board Action to presume a just, reasonable and lawful review concerning discrimination or the other exemptions or exceptions. State administrative remedies have been held to be inadequate because of bias, Gibson v. Berryhill, 411 U.S. 564. See Counts 1, 7, 12, and 14. The other exemptions or exceptions to applying the Doctrines of Res Judicata and Collateral Estoppel, that were claims or issues in this instant case, are as follows:

1.) The Appellees acted in bad faith or harassment. Middlesex Ethics Comm. V. Garden State Bar Assn., 457 U.S. 423 (1982); Huffman v. Pursue, Ltd., 420 U.S. 592 (1975). See Counts 1, 3, 8, 9, 12 and 14.

2.) State rules were flagrantly and patently unconstitutional. Middlesex Ethics Comm., supra. See Counts 3, 10, and 14.

3.) The jurisdiction of the administrative body is questioned. Gilbert v. Board of Medical Examiners of State of Ariz., 155 Ariz. 169, 745 P.2d 617 (Ariz. App., 1987) at 623. See Counts 4 and 14.

4.) There was extrinsic fraud in this case that deprived the Appellant, John V. Dommisse, of a reasonably fair hearing. Gilbert v. Board of Medical Examiners, supra at 623. See Counts 2, 5, 7, 10, 11 and 13.

The Appellant has at least six (6) claims or issues that would exempt or except his case from the application of the Doctrine of Res Judicata or Collateral Estoppel, hereinafter referred to as "Doctrines". Only one (1) of these claims or issues is needed for the exemption or exception to applying said "Doctrines". Therefore, the "Doctrines" cannot be used as a basis to dismiss this instant case.

The Rooker-Feldman doctrine involved a complaint against a State or an official of the State, a Court and a Judge of a Court. Its applicability is confined to cases of the kind from which the doctrine acquired its name, Mothershed v. Justices of the Supreme Court, 410 F.3d 606 (9th Cir., 2005). This case involves a complaint against individuals only, not the State or Federal officials of the State or the United States. The alleged overt wrongful acts were directed personally against the Appellant because there is no law authorizing the overt wrongful acts of the Appellees acting in their official capacity; therefore, they had to be acting in their individual capacity, which is outside the confinement of the Rooker-Feldman doctrine.

Also, in Mothershed, supra, the Title 42 U.S.C. § 1983 claim was only one of many other claims made by Mothershed. It is not clear that the Rooker-Feldman doctrine foreclosed all Title 42 U.S.C. § 1983 cases. In fact, we know that it did not because in the U.S. Supreme Court case of Hafer v. Melo, 502 U.S. 21 (1991), a State officer was sued in her personal and individual capacity only, and the plaintiff could maintain a § 1983 individual-capacity suit. Mothershed, supra, and other cases cited by Appellees, do not trump Hafer v. Melo, supra.

In addition, the Appellant in this case is not asking a Federal District Court to overturn an injurious state-court judgment and is not challenging the merits of the case in State Court, which makes the Rooker-Feldman doctrine inapplicable. Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. ____, 125 S.Ct. 1517 (2005). The Appellant in this case is only asking for damages from the individual Appellees, only for their personal wrongful acts against the Appellant, to be paid with individual funds, not state funds.

Failure to State a Claim

Suits against states or state officers in their official capacity in federal court may be barred by the Eleventh Amendment under Will v. Michigan Department of State Police, 491 U.S. 58 (1989). But in 1991, the U.S. Supreme Court in Hafer v. Melo, supra, ruled that Will v. Michigan Department of State Police, supra, does not apply to state officials sued in their personal or individual capacity and they

may be held personally liable for damages under § 1983, based upon actions taken in their official capacities. The claims considered in Will, supra, were official-capacity claims; thus, Will, supra, does not apply in this case. Hafer v. Melo, supra.

The Appellees in this case are not immune under the Eleventh Amendment. Hafer v. Melo, supra. In addition, the Appellant pled throughout the Complaint that his constitutional rights were violated, by his not being accorded true peer review. Due process and equal protection are constitutional rights that the Appellees violated.

There are no issues involving the Principles of Res Judicata or Collateral Estoppel. The state agency or court did not at any time consider the issue of whether the Appellant's civil or constitutional rights were ever violated by persons in their individual capacities only. There was no consideration given, and there were no rulings made, on the issues involved in this case by any agency or court at any time.

The District Court makes an issue of the Magistrate Judge's recommendation that the Complaint should be amended to include a claim of conspiracy to be able to state a claim. Be it known that the Complaint had stated a claim of conspiracy in Count 13, where the Complaint stated that, "The Defendants

conspired to deprive the Plaintiff of…" (emphasis added) and thus does not need amending to state a claim.

VII.

CONCLUSION

This lawsuit claims violation, by the Appellees, of the liberty clauses of the 5th and 14th Amendments of the Constitution as they apply to the Appellant in his practice of allopathic nutritional medicine. The lawsuit cannot be barred by the doctrines of "Res Judicata" or Collateral Estoppel and more than sufficient claims have been made, both factually and legally.

Respectfully Submitted this _____ day of May, 2007

_____
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CERTIFICATE OF SERVICE

IT IS HEREBY Certified that a copy of the foregoing Appellant's Opening Brief was delivered to the following persons listed below by First-Class Mail on the 18 day of May, 2007.

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CERTIFICATE OF COMPLIANCE

This brief complies with Fed. R. App. 32(a) (1) – (7) and is a principal brief of no more than thirty (30) pages. The word count is 5,211.

_____
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Single courtesy-copies of this Opening Brief are also being 1st-Class-Mailed to:

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