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6 Attorneys for Defendants
RICHARD WEIHER, Ph.D., CHRISTA PETERSON, Ph.D.,
7 and the STATE OF NEVADA

8 UNITED STATES DISTRICT COURT
9 DISTRICT OF NEVADA

11 RICHARD W. LEWIS, Ph.D.,
12 Plaintiff,

Case No. CV-N-99-386-DWH (RAM)

13 v.

**DEFENDANT
STATE OF NEVADA'S
MOTION TO DISMISS**

14 ELIZABETH RICHITT, Ph.D., et al.,
15 Defendants.

17 COMES NOW Defendant STATE OF NEVADA by and through counsel, FRANKIE SUE
18 DEL PAPA, Nevada Attorney General, and STEPHEN D. QUINN, Deputy Attorney General, and
19 respectfully move this court pursuant to Federal Rules of Civil Procedure 12(b), and Local Rule 7-2 for
20 dismissal of Plaintiff's Second Amended Complaint for failure to state a claim. This motion is based on
21 the attached Points and Authorities, all pleadings, documents, orders and papers on file with the court in

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1 this matter, and such other and further matter as shall properly be brought before the court in
2 consideration of the matter herein.

3 Dated this 30th day of April, 2001.

4 Respectfully submitted,

5 FRANKIE SUE DEL PAPA
6 Attorney General

7
8 By 
9 STEPHEN D. QUINN
10 Deputy Attorney General
11 Litigation Division

12 Attorneys for Defendant STATE OF NEVADA

13 **POINTS AND AUTHORITIES**

14 The following points and authorities are submitted in support of the State of Nevada's motion
15 for dismissal of Plaintiff's Second Amended Complaint.

16 **I.**

17 **STATEMENT OF THE CASE**

18 This action has a somewhat tortuous beginning involving the striking of Plaintiff's initial
19 Complaint in its entirety (Doc. #43), Plaintiff's Amended Complaint, Plaintiff's request to Defendants
20 to forbear from responding because of deficiencies, court intervention after substantial delay, and
21 finally Plaintiff's Second Amended Complaint filed on about October 23, 2000.

22 On January 10, 2001 the court denied (Doc. #83) Defendants' motion to strike portions of the
23 Second Amended Complaint (Doc. #77). A motion for an order to establish subject matter jurisdiction
24 is pending. Meanwhile, the discovery schedule is running. Doc. #100.

25 Plaintiff's Second Amended Complaint asserts only one claim for conspiracy to violate his civil
26 rights pursuant to § 1983. This motion seeks dismissal of Defendant State of Nevada on the grounds
27 that the State of Nevada is not a person for purposes of § 1983, Eleventh Amendment immunity bars
28 suit against the State in federal court, and the State has not waive its sovereign immunity as to
29 Plaintiff's claim.

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II.

STATEMENT OF FACTS

Plaintiff admits “[his] action seeks redress for the deprivation of [his] constitutional and civil rights.” *Second Amended Complaint*, ¶ 12. Plaintiff alleges a conspiracy beginning about July 1995 (*Second Amended Complaint*, ¶ 23), when Defendant Christa Peterson conspired with Ronda Moore, Defendant Richard Weiher and Defendants Mr. and Mrs. Duff (*Second Amended Complaint*, ¶ 22) to discredit Plaintiff (*Second Amended Complaint*, ¶ 28). To that end, Defendants devised a scheme to cause the Board of Psychological Examiners to discipline Plaintiff because he requested the State Department of Child and Family Services pay Western Counseling Services, a limited liability corporation of which Plaintiff is an owner, amounts due pursuant to a contract. *Second Amended Complaint*, ¶¶ 15, 16, 23, 28 through 30.

Defendants allegedly persuaded Mr. Duff to file a complaint with the Board that resulted in a disciplinary hearing in May 1995 followed by an adverse decision in July 1995. *Second Amended Complaint*, ¶ 36. In September 1995, allegedly because of the discipline, the State Department of Child and Family Services amended the contract with Western Counseling Service. *Second Amended Complaint*, ¶ 40. As a result, Western Counseling Service’s income declined and it went out of business. *Second Amended Complaint*, ¶ 40 and 41.

Plaintiff claims “Defendants conspired together to violate [his] due process and other civil rights.” *Second Amended Complaint*, § 52. Plaintiff alleges Defendants planned to seek out patients willing to contrive a complaint against Plaintiff, and to assist the Board and the complaining patients in obtaining a result adverse to Plaintiff Defendants could then publish and thereby force Western Counseling Service out of business (*Second Amended Complaint*, ¶ 53) in violation of § 1983, and the Fifth and Fourteenth Amendments. *Second Amended Complaint*, ¶ 10.

III.

STATEMENT OF ISSUES PRESENTED

- A. WHETHER THE STATE IS NOT A PERSON FOR PURPOSES OF § 1983
- B. WHETHER ELEVENTH AMENDMENT IMMUNITY BARS PLAINTIFF’S ACTION IN FEDERAL COURT

1 C. WHETHER PLAINTIFF’S CLAIM IS BARRED BY SOVEREIGN IMMUNITY

2 IV.

3 DISCUSSION

4 A. The State is not a person for purposes of § 1983

5 The State of Nevada is not a person subject to liability within the meaning of § 1983. *Will v.*
6 *Michigan*, 491 U.S. 58, 70-71 (1989). Accordingly, Plaintiff’s claim against the State of Nevada must
7 be dismissed.

8 B. Eleventh Amendment immunity bars suit in federal court

9 The State of Nevada has immunity from suit in federal court. *Edelman v. Jordan*, 451 U.S. 651,
10 663 (1974). Section 1983 does not supercede the Eleventh Amendment. *Will v. Michigan*, 491 U.S. at
11 66. Because the State of Nevada has immunity from suit, Plaintiff’s claim must be dismissed.

12 B. The State of Nevada has not waived its sovereign immunity

13 The State of Nevada has sovereign immunity, which it conditionally waives in order to permit
14 suit against it provided the “action [is] brought . . . against the State of Nevada . . . on relation of the
15 particular department, commission, board or other agency . . . whose actions are the basis for the suit.”
16 NRS 41.031(2). Plaintiff has not complied with NRS 41.031(2). Plaintiff’s action must be dismissed
17 because the State of Nevada has not waived its sovereign immunity as to actions brought against it in
18 this case.

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II.


CONCLUSION

Based on the foregoing, Defendants motion must be granted and Plaintiff's Second Amended Complaint should be dismissed as to Defendant State of Nevada.

Dated: this 30th day of April, 2001.

Respectfully submitted,

FRANKIE SUE DEL PAPA
Attorney General

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CERTIFICATE OF SERVICE

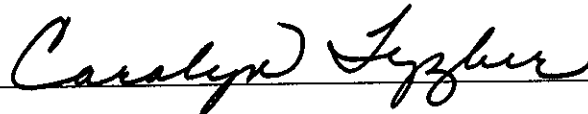
I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on this 1st day of May 2001, I served a copy of the foregoing **DEFENDANT STATE OF NEVADA'S MOTION TO DISMISS**, by mailing a true copy to the following:

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Defendants/Counterclaimants Appearing Pro Se



Handwritten signature of Carolyn J. Taylor in cursive script, positioned above a horizontal line.