

**UNPUBLISHED**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
BIG STONE GAP DIVISION**

<b>BAHMAN PAYMAN, M.D.,</b>	)	
	)	
Plaintiff,	)	Case No. 2:03CV00048
	)	
v.	)	<b>OPINION</b>
	)	
<b>PAUL BISHOP, ET AL.,</b>	)	By: James P. Jones
	)	United States District Judge
Defendants.	)	

*Bahman Payman, M.D., Pro Se; James N.L. Humphreys, Hunter, Smith & Davis, LLP, Kingsport, Tennessee, for Defendants.*

For the reasons set forth, I will remand this removed action to the state court for lack of federal question jurisdiction.

**I**

The plaintiff, a physician, was refused staff privileges in 2000 by Lonesome Pine Hospital, a private hospital located in Big Stone Gap, Virginia, and part of the Wellmont Health System. Represented by counsel, he filed suit against Wellmont in the Circuit Court of Wise County, Virginia, claiming that the failure to grant him staff privileges was “discriminatory, illegal, improper, irrational, arbitrary, capricious and unlawful.” The action was removed to this court on the basis of diversity of

citizenship, the plaintiff being a resident of Virginia and Wellmont being a Tennessee corporation. Thereafter the court dismissed the action for failure to state a claim. *See Payman v. Wellmont Health Sys.*, No. 2:00CV00197 (Dec. 17, 2001) (Williams, J.). No appeal was taken from that judgment.

Payman then filed a pro se action in the Circuit Court of Wise County over the denial of privileges, but named as defendants not Wellmont Health System, but four individuals associated with Lonesome Pine Hospital, all residents of Virginia. He claimed that these defendants had been “negligent” in the handling of his application and “made misrepresentation [sic] concerning his application which they knew or by reasonable inquiry should have known were improper allegations.” On April 17, 2002, Payman took a voluntary nonsuit and his case was dismissed without prejudice by the state court.

On October 15, 2002, Payman refiled the case in the same state court, again pro se, and it is this third suit that is now before me. Payman names the same individual defendants and his suit contains similar allegations as before, except that this time he has added the claim that he is a native of Iran and that the defendants denied his staff privileges “on account of his national origin.” He also contends for the first time that the defendants “conspired with others to injure plaintiff in the carrying on of his

profession . . . and illegally failed to process his application for privileges.” As in the earlier suits, Payman seeks compensatory damages in the amount of \$500,000.

The defendants removed the case to this court on the ground of federal question jurisdiction and filed a motion to dismiss, a motion for summary judgment, and a motion for sanctions. In turn, the plaintiff filed a letter motion which I have treated as a motion to remand the case to state court. All of the motions have been responded to and are ripe for consideration by the court. I will dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not significantly aid the decisional process.

## II

The initial and dispositive question is that of jurisdiction. Regardless of whether objected to or not, the court has the obligation to determine its subject matter jurisdiction sua sponte. *See Ins. Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 (1982). The defendants claim that jurisdiction exists in this court and that removal was thus proper on the ground that the claim by the plaintiff that he was discriminated against because of his national origin is based on

a violation of federal law, namely Title VII of the Civil Rights Act of 1964, 42 U.S.C.A. §§ 2000e to 2000e-17 (West 1994 & Supp. 2002) (“Title VII”).

A defendant may remove a civil action brought in state court if the case could have originally been brought in a federal district court. *See* 28 U.S.C.A. § 1441(a) (West 1994). The federal district courts have original jurisdiction of “all civil actions arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C.A. § 1331 (West 1994). Jurisdiction is established based on the allegations of the plaintiff’s suit filed in state court. *See Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987). Federal courts are presumptively without jurisdiction over civil matters and the burden of establishing the contrary rests upon the party seeking jurisdiction. *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). Removal jurisdiction is strictly construed; in doubtful cases, the action must be remanded. *See Mulcahey v. Columbia Organic Chems. Co.*, 29 F.3d 148, 151 (4th Cir. 1994).

The “arising under” requirement of federal question jurisdiction includes both cases in which federal law created the cause of action and those which require resolution of a substantial question of federal law, even if state law created the cause of action. *See Merrell Dow Pharms. Inc. v. Thompson*, 478 U.S. 804, 808 (1986).

The plaintiff makes no mention of Title VII in his suit. Moreover, he has stated no claim under Title VII because the defendants were not his employers nor can they

be held liable for interfering with his doctor-patient relationships, since Payman's patients are not his employers. *See Bender v. Suburban Hosp., Inc.*, 159 F.3d 186, 190 (4th Cir. 1998) (holding that doctor's "relationship with her patients cannot possibly amount to an employer-employee relationship" under Title VII). Viewing the suit papers as a whole, the proper interpretation is that the plaintiff's allegation concerning discrimination is simply supporting evidence for Payman's claims of conspiracy and defamation, showing the basis for any alleged malice by the defendants. Conspiracy and defamation are state causes of action and do not rely on any resolution of federal law.<sup>1</sup>

In his motion to remand, Payman asserts that he "structured" the present pleadings "to stay in state court." A plaintiff is the master of his complaint and as such "may avoid federal jurisdiction by exclusive reliance on state law." *Caterpillar*, 482 U.S. at 392. An exception to this rule is that the plaintiff may not attempt to disguise a claim that is preempted by federal law. *See Pendergraph*, 104 F. Supp. 2d

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<sup>1</sup> Virginia has also created a cause of action for discrimination based on national origin, although it applies only to employers that employ more than five but less than fifteen persons. *See Va. Code Ann. § 2.2-2639(B)* (Michie Supp. 2002). Where there is a state-created cause of action for discrimination, a defendant may not remove on the ground that the plaintiff's case could have been brought under Title VII, since Title VII is not preemptive. *See Pendergraph v. Crown Honda-Volvo, LLC*, 104 F. Supp. 2d 586, 589-90 (M.D.N.C. 1999) (remanding action for racial harassment and race-based disparate treatment).

at 588. As noted above, however, there is no preemptive federal law involved in this case.

The plaintiff's case at bottom concerns the failure to grant him hospital privileges—at most, a state law question.<sup>2</sup> The allegations concerning national origin discrimination are merely collateral to this claim and as such do not support removal jurisdiction. *See* 14B Charles Alan Wright, et al., *Federal Practice & Procedure* § 3722, at 421-23 (3d ed. 1998).

### III

For these reasons, I find that there is no removal jurisdiction in this case and I will remand the action to state court. Because of the court's lack of subject matter

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<sup>2</sup> That is not to say that Payman can prove a claim under state law. In addition to the res judicata and statute of limitations defenses raised by the defendants, Virginia courts are very reluctant to interfere with a hospital's determination of staff privileges. *See Med. Ctr. Hosps. v. Terzis*, 367 S.E.2d 728, 730 (Va. 1988) (holding that Va. Code Ann. § 32.1-134.1 does not create a right to judicial review of hospital's restriction of physician staff privileges); *Khoury v. Cmty. Mem'l Hosp., Inc.*, 123 S.E.2d 533, 539 (Va. 1962) (same as to refusal to grant staff privileges).

jurisdiction, I will not rule on the other pending motions.<sup>3</sup> A separate judgment consistent with this opinion is being entered herewith.

DATED: April 30, 2003

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United States District Judge

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<sup>3</sup> The defendants have filed a motion for sanctions under Federal Rule of Civil Procedure 11 against the plaintiff for advocating his claims to this court. While this court has power to impose sanctions for conduct occurring here even when it has no jurisdiction of the underlying case, *see Willy v. Coastal Corp.*, 503 U.S. 131, 135-36 (1992), Virginia law has a provision similar to Rule 11, *see* Va. Code Ann. § 8.01-271.1 (Michie 2000), and I will exercise my discretion to allow the state court to consider the plaintiff's conduct and whether sanctions are appropriate. I have previously sanctioned the plaintiff for his litigation conduct. *See Payman v. Mirza*, No. 2:02CV00023, 2003 WL 751010, at \*2 (W.D. Va. Mar. 3, 2003).