

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
HARRISONBURG DIVISION**

<p><b>CARL L. SANDLER,</b></p> <p style="padding-left: 40px;"><b>Plaintiff,</b></p> <p><b>v.</b></p> <p><b>WESTERN STATE HOSPITAL; JACK W. BARBER, Director; MARY CLARE SMITH, Medical Director; JOSEPH COSGROVE, Supervising Psychiatrist; and JOHN DOE,</b></p> <p style="padding-left: 40px;"><b>Defendants.</b></p>	<p>)</p>	<p><b>Civil Action No. 5:02CV00107</b></p> <p><b><u>MEMORANDUM OPINION</u></b></p> <p><b>By: Samuel G. Wilson, Chief United States District Judge</b></p>
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*Pro se* plaintiff Carl L. Sandler brings this personal injury action against Western State Hospital (“WSH”) and other named and unnamed defendants pursuant to 28 U.S.C. § 1332.<sup>1</sup> Sandler, a citizen of Maryland, seeks damages in the amount of \$16,000,000. This case is now before this court on defendants’ Motion to Dismiss. Although defendants style their motion as a Motion to Dismiss, or in the alternative, a Motion for Summary Judgment, defendants offer no affidavits or admissible evidence to support the motion. Even though numerous possible defenses exist for both WSH and the individual

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<sup>1</sup>In his complaint and brief responding to defendants’ motion, Sandler vaguely alludes to additional claims. First, to the extent Sandler attempts to incorporate various civil rights claims, this court finds those claims to be redundant. Since jurisdiction is founded on 28 U.S.C. § 1332, the court finds that any civil rights claims Sandler might attempt to assert are subsumed within his various tort claims. Second, Sandler moves to censure defendants for not providing sufficient material in discovery. Sandler, however, has made no motions to compel disclosure or has not sufficiently referenced the particular information he desires. Therefore, Sandler’s Motion to Censure is denied. Finally, Sandler responded to the defendants’ Motion to Dismiss with a motion titled “Plaintiff’s Motion for Summary Judgment.” In that response, however, Sandler appears to merely assert that the court should deny defendants’ motion. To the extent Sandler moves for summary judgment, Sandler provides no affidavits or supporting material. Therefore, this court denies Sandler’s motion.

defendants, such as state sovereign immunity and collateral estoppel, defendants do not provide sufficient supporting material to evaluate these possible defenses.<sup>2</sup> Therefore, this court is left with the sole option of deciding defendants' Motion to Dismiss under Federal Rule of Procedure 12(b)(6) based on Eleventh Amendment immunity. For the reasons stated, the court grants the Motion to Dismiss of WSH and the John Doe defendants, but denies the Motion to Dismiss of the other defendants, in so far as Sandler pursues claims against defendants in their individual capacity.

## I.

Sandler suffered multiple injuries in an automobile accident on October 30, 2000, on U.S. Intestate 81. He received initial medical treatment at a nearby emergency room, but left against medical advice. The following day, Sandler went to Rockingham Memorial Hospital complaining of chest pains, and on November 3, 2000, physicians transferred Sandler to the University of Virginia Hospital ("UVA") for further medical treatment. During treatment at UVA, Sandler expressed grandiose thoughts and, as a result, UVA administered a psychiatric exam. After he was medically cleared by the surgical unit, UVA transferred Sandler to the psychiatry unit, where he was diagnosed with bipolar affective disorder.

Despite repeated assurances by medical personnel at UVA that he no longer needed medical intervention, Sandler insisted that his injuries were more severe than diagnosed. Yet, he refused all medication, including pain medicines, and claimed that he only required rehabilitation services. Since

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<sup>2</sup>It should also be noted that defendants claim that Sandler fails to asserts sufficient facts to allow for a response. Defendants, however, do not move for a more definite statement or any other affirmative relief based on this claim. Therefore, the court declines to judge the merits of the defendants' accusations.

Sandler refused all medication and showed no signs of improvement, UVA physicians decided to transfer Sandler to WSH, where he could continue to receive psychiatric treatment. In accord with Virginia Code §§ 37.1-67.1 through 67.3, a civil commitment hearing was held before the General District Court of Charlottesville, Virginia, on November 15, 2002. In the hearing, the court ordered Sandler, who was represented by counsel, involuntarily admitted to WSH.

After WSH admitted Sandler, Dr. Joseph Cosgrove, the Supervising Psychiatrist at WSH, went before the General District Court for the City of Staunton on November 20, 2000, and sought authorization to treat Sandler. Pursuant to VA Code § 37.1-134.21, by clear and convincing evidence the court found Sandler, who was represented by counsel, unable to make an informed decision regarding his treatment. As a result, the court ordered WSH to treat Sandler with psychotherapy and mood stabilizing medication, and to administer all medically necessary examinations, tests, and services as deemed necessary by the treating physician.

While at WSH, Sandler continued to receive medical and psychological evaluations and treatments. During this period, however, Sandler denied his mental illness, made unsubstantiated claims about his physical condition, and refused medication. He expressed frustration about being at WSH, claiming he had “slipped through the cracks,” and he refused to participate in psychological questioning and counseling.

On December 12, 2000, WSH medical staff evaluated Sandler after he complained of chest pain. Since a cardiac monitor led to inconclusive results, WSH transferred Sandler to Augusta Medical Center for further cardiac evaluation. The next day, December 13, Augusta Medical Center medically cleared Sandler, after ruling out cardiac involvement, and authorized his return to WSH. Before WSH

could arrange transportation for Sandler, however, he left Augusta Medical Center without permission. Since Sandler left without permission, WSH followed its procedures and requested a criminal warrant for his return. On January 26, 2001, after learning that Sandler had left the Commonwealth of Virginia, WSH discharged Sandler.

## II.

In support of their Motion for Summary Judgment, defendants assert immunity under the Eleventh Amendment to the United States Constitution. The Eleventh Amendment limits suits against states in federal court. “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, in addition, “bars suits by private parties who seek to impose a liability that must be paid out of the state treasury; thus an ‘arm’ or ‘alter ego’ of the state is immune from money damages unless immunity is expressly waived.” Herber v. Burns, 577 F.Supp. 762, 763 (W.D.Va. 1984) (holding Western State Hospital immune from suit in federal court under the Eleventh Amendment because it is an “arm” of the Commonwealth of Virginia and state funds would be required to pay any judgment).

In this case, there is no indication that WSH has waived immunity. Therefore, WSH, as an “arm” of the Commonwealth of Virginia, is immune from suit in federal court. As a result, this court finds that the Eleventh Amendment bars Sandler’s claims against WSH.

In addition to barring Sandler’s suit against WSH, the Eleventh Amendment bars suits against the individual defendants acting in their official capacity. Eleventh Amendment immunity extends to state officials, who are sued for damages in their official capacity, since a judgement merely constitutes

a judgment against the state. See Buckhannon Bd. & Care Home v. W. Va. Dep't of Health & Human Res., 532 U.S. 598, 609 (2001 ) (citing Edelman v. Jordan 415 U.S. 651, 663 (1974)). Although a suit against the individual defendants in their official capacity is barred, the Eleventh Amendment does not extend to suits against the defendants in their individual capacity. See Landman v. Royster, 354 F.Supp. 1302, 1315 (E.D.Va. 1973).

In this case, Sandler is silent on whether he seeks judgment against the individual defendants in their official or individual capacity. To the extent he seeks judgment against the defendants in their official capacity, the court finds Sandler's actions barred by the Eleventh Amendment. Sandler, however, is proceeding *pro se* and *pro se* complaints, even if unskillfully pled, must be liberally construed. Vinnedge v. Gibbs, 550 F.2d 926, 928 (4th Cir. 1977).

Therefore, this court will construe Sandler's complaint as asserting claims against defendants in their individual capacity.

### III.

Sandler seeks relief against the following defendants in their individual capacity: Jack Barber, Director of WSH; Dr. Mary Clare Smith, Medical Director of WSH; Dr. Joseph Cosgrove, a WSH physician. Although summary judgment may be appropriate for this case, defendants have failed to submit any admissible evidence or affidavits. Therefore, finding that Sandler has stated various causes of action against defendants in their individual capacity and has based those claims on diversity jurisdiction, this court denies defendants' Motion to Dismiss.

Sandler also alleges personal injury actions against various unnamed defendants, referred to in Sandler's complaint as "John Doe (1, 2, 3, ...)." A plaintiff seeking relief in federal court, however,

“has the burden of alleging and proving the jurisdictional facts.” Sligh v. John Doe, 596 F.2d 1169, 1170 (4th Cir. 1979). For purposes of diversity jurisdiction, Sandler must establish the citizenship of the various John Doe defendants. In this case, though, Sandler fails to provide the court with any basis for determining the citizenship or identity of the John Does. Since 28 U.S.C. § 1332 requires complete diversity between plaintiffs and defendants, this court dismisses the John Doe defendants as defendants in this action.

#### IV.

For the reasons stated, the court finds that Sandler’s action against WSH and the individual defendants in their official capacity is barred by the Eleventh Amendment. Therefore, the court grants WSH’s Motion to Dismiss and grants defendants’ Motion to Dismiss to the extent Sandler bases his claims against defendants in their official capacity. The court, however, denies defendants’ Motion to Dismiss for claims against Barber, Smith, and Cosgrove in their individual capacity. The court also dismisses the John Doe defendants as parties to this action.

**ENTER:** This \_\_\_\_ day of November, 2003.

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Chief United States District Judge

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
HARRISONBURG DIVISION**

<b>CARL L. SANDLER,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	<b>Civil Action No. 5:02CV00107</b>
<b>v.</b>	)	
	)	<b><u>ORDER</u></b>
<b>WESTERN STATE HOSPITAL;</b>	)	
<b>JACK W. BARBER, Director; MARY</b>	)	
<b>CLARE SMITH, Medical Director;</b>	)	
<b>JOSEPH COSGROVE, Supervising</b>	)	
<b>Psychiatrist; and JOHN DOE,</b>	)	<b>By: Samuel G. Wilson,</b>
	)	<b>Chief United States District Judge</b>
<b>Defendants.</b>	)	

In accordance with the written Memorandum Opinion entered this day, it is hereby **ORDERED** and **ADJUDGED** that: (1) Western State Hospital's Motion to Dismiss is **GRANTED**; (2) the Motion to Dismiss of Defendants Jack Barber, Dr. Mary Clare Smith, and Dr. Joseph Cosgrove is **DENIED**; (3) the Motion to Dismiss the John Doe defendants is **GRANTED**; (4) Sandler's Motion to Censure is **DENIED**; and (5) Sandler's Motion for Summary Judgment is **DENIED**. Western State Hospital and the John Doe defendants are **DISMISSED** as defendants to this action.

The Clerk of the Court is directed to send certified copies of this Order and the accompanying Memorandum Opinion to the counsel of record for the plaintiff and the defendants.

**ENTER:** This \_\_\_\_\_ day of November, 2003.

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Chief United States District Judge