

FILED
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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

2002 JUN 14 A 10:14

DANIELLE MOLA

Plaintiff,

v.

WINN WHEELER, R.N., AMY LIEF,
MARTHA GROVER, MAUREEN PAUL, M.D.
PLANNED PARENTHOOD LEAGUE OF
MASSACHUSETTS, COLLEEN PINCH, N.P.,
J.B. DOE, M.D., JOSEPH M. SMITH
COMMUNITY HEALTH CENTER,

Defendants.

U.S. DISTRICT COURT
DISTRICT OF MASSACHUSETTS

02-11195 GAO

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DATE 6/14/02

Formerly
Case No. 01-5610E
Suffolk Superior Court
Massachusetts

NOTICE OF REMOVAL

To the Honorable Judges of the United States District Court
for the District of Massachusetts.

The United States of America for and on behalf of itself and
Colleen Pinch, N.P. and the Joseph M. Smith Community Health
Center, two of the above-named defendants, represents:

1. That the Joseph M. Smith Community Health Center and
Colleen Pinch, N.P. are defendants in a civil action now pending
in the Superior Court, Suffolk County, Commonwealth of
Massachusetts, in a case captioned:

Danielle Mola v. Winn Wheeler, R.N. et. al., CA No. 01-5610-E

No trial date has been set. Copies of pleadings served upon
the defendants are attached hereto as Exhibit A.

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2. The complaint alleges various claims against Colleen Pinch, N.P. (hereinafter "Pinch") and the Joseph M. Smith Community Health Center (hereinafter the "Center") for acts and omissions occurring on or about August 12, 1997 and diverse dates thereafter. At the time of certain incidents alleged in the complaint, Pinch was an employee of the Center, an entity receiving federal grant money from the United States Public Health Service pursuant to 42 U.S.C. §§ 254b, 254c, 256 or 256a. Pursuant to 42 U.S.C. § 233(h), the United States Department of Health and Human Services has deemed the Clinic and its employees including nurse practitioner Pinch, to be employees of the Federal government only for purposes of coverage under the Federal Tort Claims Act, 28 U.S.C. §§ 2671 et seq. effective for acts and omissions that occurred on or after October 5, 1998.

3. The Attorney General of the United States, by the United States Attorney for the District Massachusetts, has certified, pursuant to 42 U.S.C. § 233(c) and 28 U.S.C. § 2679(d) that the Clinic was an entity receiving federal grant money from the United States Public Health Service pursuant to 42 U.S.C. §§ 254b, 254c, 256 or 256a and that nurse practitioner Pinch was acting within the scope of her employment as an employee of the Clinic at the time certain treatment was rendered as alleged in the Plaintiff's complaint, and that pursuant to 42 U.S.C. § 233(g) Colleen Pinch, is deemed to be an employee of United

States for Federal Tort Claims Act purposes only, for any acts or omissions that occurred on or after October 5, 1998. (Copies of the Certification of Scope of Employment filed pursuant to 42 U.S.C. § 2679(d) are attached hereto as Exhibit B.)

4. Both 42 U.S.C. § 233(c) and 28 U.S.C. § 2679(d)(2) provide that upon certification by the Attorney General, any action or proceeding commenced in a state court shall be removed without bond anytime before trial by the Attorney General to the District Court of United States of the District and division embracing the place in which the action or proceeding is pending, and that the action or proceeding shall be deemed to be an action or proceeding against the United States under the provisions of Title 28 and all references thereto.

5. The above-captioned action is one which may be removed without bond to this court pursuant to 28 U.S.C. § 2679(d), for the reason that the plaintiff seeks judgment for damages allegedly resulting from actions or omissions performed by the defendants, the Clinic and nurse practitioner Pinch while she was acting within the scope of her employment as a nurse practitioner. Remedy by suit within the meaning of 28 U.S.C. § 2679(b) is, therefore, available to the plaintiff against the United States.

6. This petition for removal is predicated on the following federal defenses:

a. Defendant, nurse practitioner Pinch is entitled to enjoy individual immunity from suit under the Federal Tort Claims Act. 28 U.S.C. § 2671, *et seq.* (FTCA). Immunity is a federal defense which provides a basis for removal of this action from state court to this court pursuant to 28 U.S.C. § 1442(a)(1). Mesa v. California, 489 U.S. 121, 133(1989).

b. Because the actions complained of arose out of nurse practitioner Pinch's course of employment with the Clinic, she, as well as the Clinic, are entitled to have the United States of America substituted as the party defendant pursuant to the Federal Employee's Liability Reform and Tort Compensation Act of 1988 (Public Law 100-694).

7. Attached is a certification by the United States Attorney, Michael J. Sullivan, pursuant to 28 U.S.C. § 2679(d)(1)-(3) and 38 C.F.R. § 15.3, that said defendant Colleen Pinch, N.P. was acting within the scope of her employment at all relevant times as alleged in the plaintiff's complaint.

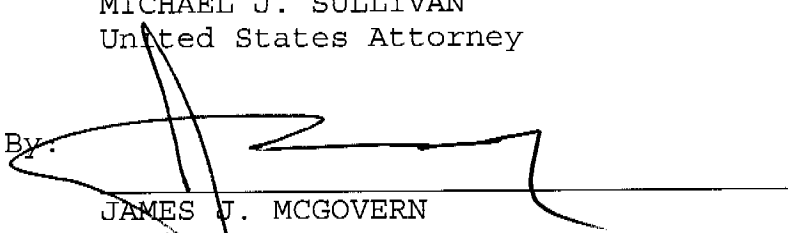
WHEREFORE, the United States of America, on behalf of the Joseph M. Smith Community Health Center and Colleen Pinch, N.P. removes the above-captioned action now pending in the Superior Court, Suffolk County, Commonwealth of Massachusetts, therefrom to this court and that to the extent damages were sought from

defendants, the Center and Colleen Pinch, N.P., prays that the action be deemed a tort action against the United States of America under the provisions of 28 U.S.C. § 1346 (b) and the Federal Employee's Liability Reform and Tort Compensation Act of 1988 (Public Law 100-694).

Respectfully submitted,

MICHAEL J. SULLIVAN
United States Attorney

By:



JAMES J. MCGOVERN
Assistant U.S. Attorney
J. Joseph Moakley U.S. Courthouse
1 Courthouse Way
Suite 9200
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CERTIFICATE OF SERVICE

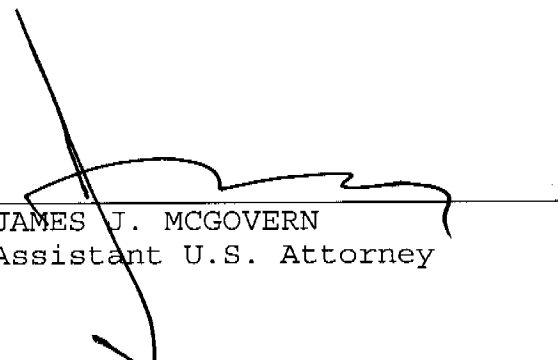
I, James J. McGovern, Assistant U.S. Attorney, hereby certify that I have, on June 14, 2002 delivered by mail a copy of the above to:

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