

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge John L. Kane

Case No.: 11-cv-02378-AP

ERMIN KRESO, M.D.,

Plaintiff

v.

ERIC SHINSEKI, Secretary, United States Department Of Veterans Affairs, and
UNITED STATES VETERANS' ADMINISTRATION,

Defendants.

JOINT CASE MANAGEMENT PLAN FOR REVIEW OF AGENCY ACTION

1. APPEARANCES OF COUNSEL

For Plaintiff:

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For Defendants:

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2. **STATEMENT OF LEGAL BASIS FOR SUBJECT MATTER JURISDICTION**

Plaintiff contends that this Court has subject matter jurisdiction over this action pursuant to 38 U.S.C. § 7462(f), and 28 U.S.C. § 1343. Defendants contend that the sole basis for jurisdiction over this action is 38 U.S.C. § 7462(f).

3. **DATES OF RELEVANT PLEADINGS**

A. **Date Complaint Was Filed:** September 9, 2011

B. **Date Complaint Was Served on U.S. Attorney's Office:** September 15, 2011

C. **Date Answer or Other Response Was Filed:** November 18, 2011

4. **STATEMENT(S) REGARDING WHETHER THIS CASES RAISES UNUSUAL CLAIMS OR DEFENSES**

PLAINTIFF: Plaintiff also has alleged due process violations which occurred prior to the Disciplinary Appeals Board hearing and retaliation by Defendants for whistleblowing. Plaintiff is also seeking a Temporary Restraining Order and Preliminary and Permanent Injunctive Relief to stop Defendants from reporting Plaintiff's termination from the Denver Veteran's Administration Medical Center to state licensing board(s), hospital credentialing committee(s), the National Practitioners Data Bank, and/or the Healthcare Integrity and Protection Data Bank. *See* Plaintiff Dr. Kreso's Response in Opposition to Defendants' Motion to Reassign Case to "AP" Docket, Doc. 10 at p. 5.

DEFENDANTS: Plaintiff's due process allegations are part of his claim seeking review under 38 U.S.C. § 7462(f), and not an independent claim. *See* Order Granting Motion to Reassign, Doc. 13 at 5. Plaintiff has not pleaded a claim under the Whistleblower Protection Act of 1989, 5 U.S.C. § 2302. Plaintiff did not raise a whistleblowing issue during the underlying administrative proceeding and did not exhaust the mandatory administrative remedies for a whistleblowing claim. As to Plaintiff's request for injunctive relief, the Department of Veterans

Affairs is required to report to the National Practitioner Data Bank and to the State Board of Medical Examiners actions that adversely affect the clinical privileges of a physician for a period longer than 30 days. *See* 38 C.F.R. § 46.4(a)(1); 45 C.F.R. Part 60, subpart B, § 60.11.

5. OTHER MATTERS

There are no other matters that the parties believe should be brought to the attention of the Court.

6. PROPOSED BRIEFING SCHEDULE

- A. Deadline for Filing Administrative Record:** February 29, 2012
- B. Deadline for Parties to Confer on Record Disputes:** March 30, 2012
- C. Deadline for Filing Motions to Complete and/or Supplement the Administrative Record:** April 30, 2012
- D. Plaintiff's Opening Brief Due:** May 30, 2012
- E. Defendants' Response Brief Due:** June 29, 2012
- F. Plaintiff's Reply Brief (if any) Due:** July 16, 2012

7. STATEMENTS REGARDING ORAL ARGUMENT

PLAINTIFF'S STATEMENT: Oral argument is requested to clarify outstanding issues, and at the Court's behest.

DEFENDANTS' STATEMENT: Defendants do not oppose Plaintiff's request for oral argument.

8. CONSENT TO EXERCISE OF JURISDICTION BY MAGISTRATE JUDGE

All parties have not consented to the exercise of jurisdiction of a United States Magistrate Judge.

9. OTHER MATTERS

The parties filing motions for extension of time or continuances must comply with D.C.COLO.LCivR 7.1 by submitting proof that a copy of the motion has been served upon the moving attorney's client, all attorneys of record, and all *pro se* parties.

10. AMENDMENTS TO JOINT CASE MANAGEMENT PLAN

The parties agree that the Joint Case Management Plan may be altered or amended only upon a showing of good cause.

DATED this 7 day of February, 2012.

BY THE COURT:



U.S. DISTRICT COURT JUDGE

APPROVED:

JOHN F. WALSH
UNITED STATES ATTORNEY

s/Rosemary Orsini

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