**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A17-0355**

Dr. Jonathan Peterson,
Appellant,

vs.

Ruth Martinez, in her Official Capacity, et al.,
Respondents,

The Professional Renewal Center,
Respondent.

**Filed December 18, 2017**
**Affirmed**
**Peterson, Judge**

Ramsey County District Court
File No. 62-CV-16-3165

Cindy Lavorato, Lavorato Law Office, Norfolk, Virginia (for appellant)

Lori Swanson, Attorney General, Karen D. Olson, Deputy Attorney General, Lucas Clayton, Nicholas Lienesch, Assistant Attorneys General, St. Paul, Minnesota (for respondents Ruth Martinez and Minnesota Board of Medical Practice)

John B. Casserly, Mark W. Hardy, Geraghty, O'Loughlin & Kenney, P.A., St. Paul, Minnesota (for respondent The Professional Renewal Center)

Erick G. Kaardal, Mohrman, Kaardal & Erickson, P.A., Minneapolis, Minnesota (for amicus curiae Association of American Physicians & Surgeons)

Considered and decided by Smith, Tracy M., Presiding Judge; Peterson, Judge; and Halbrooks, Judge.

## U N P U B L I S H E D  O P I N I O N

**PETERSON**, Judge

Appellant doctor argues that the district court (1) improperly granted summary judgment on his claims that respondent medical board and other respondents violated his rights under the Minnesota Government Data Practices Act (MGDPA) and (2) abused its discretion by denying his motions to amend his complaint and to compel production of documents. We affirm.

## FACTS

After receiving complaints in November 2011 about appellant Dr. Jonathan Peterson's conduct, respondent Minnesota Board of Medical Practice (the board) reached a stipulation with Peterson and issued an order on January 11, 2014. Among other terms, the order provided that Peterson consented to a reprimand and agreed to take approved courses on professional boundaries and medical-records management within a year and to write a paper about what he learned from the courses.

After receiving a complaint on April 11, 2014, alleging that Peterson continued to engage in prohibited conduct, the board began an investigation to determine whether Peterson violated the 2014 order. On January 23, 2015, the complaint review committee of the board sent Peterson a letter asking him to "attend a conference with the Committee" about his alleged failure to comply with the terms of the 2014 order. The allegations included that Peterson failed to complete the professional-boundaries course, continued to engage in prohibited conduct, and failed to cooperate with the investigation. The letter

included notice that the committee was seeking data that could be protected under the MGDPA, Minn. Stat. §§ 13.01-.90 (2016).

Peterson informed the board that he was not able to find a professional-boundaries course and that he could not complete a course "for personal, financial, and professional reasons." Peterson asked to meet with the complaint review committee, and the committee invited Peterson to appear before it; Peterson twice canceled meetings with the committee, he failed to comply with the committee's request that he confirm his attendance at a third scheduled meeting with the committee, and he failed to attend that meeting on April 8, 2015. The board issued an order on April 20, 2015, stating that it had probable cause to believe that Peterson was "unable to practice medicine with reasonable skill and safety to patients," as required under Minn. Stat. § 147.091, subd. 1(1), and ordering Peterson to "submit to a comprehensive mental and physical evaluation."

The board held a hearing on May 9, 2015, for disciplinary action based on Peterson's noncompliance with the 2014 order. Following the hearing, the board rescinded the 2014 order and issued an order that indefinitely suspended Peterson's license to practice medicine and surgery in Minnesota.[1]

Respondent The Professional Renewal Center (PRC) conducted the evaluation required under the board's April 20, 2015 order. The State of Minnesota, acting on behalf of the board, had entered into a "master contract" with PRC under which PRC served as a medical consultant to evaluate matters involving Minnesota board licensees. The contract

[1] Peterson petitioned for reinstatement of his license without conditions or restrictions on April 19, 2016, but withdrew the petition a month later.

provides that, among other things, PRC will "[c]onduct a comprehensive, multidisciplinary evaluation, or a comprehensive practice skills assessment" and "[r]eview patient medical records and charts, and additional documentation as deemed necessary." The agreement includes the following provision regarding data:

> [PRC] and State must comply with the [MGDPA] . . . as it applies to all data provided by the State under any work order contract, and as it applies to all data created, collected, received, stored, used, maintained or disseminated by [PRC] under the work order contract. The Civil remedies of Minnesota Statute § 13.08 apply to the release of the data referred to in this clause by either [PRC] or the State.
>
> If [PRC] receives a request to release the data referred to in this Clause, [PRC] must immediately notify the State. The State will give [PRC] instructions concerning the release of the data to the requesting party before the data is released.

The contract also provides that "Minnesota law, without regard to its choice-of-law provisions, governs this master contract and all work order contracts."

PRC conducted Peterson's evaluation in Kansas from August 9 through August 14, 2015. Before participating in the evaluation, Peterson signed a participation agreement, which stated: "I understand that I do not have the right to review or receive collateral data gathered during my participation in the Program." Peterson also consented to and authorized the release of confidential data to PRC for the evaluation.[2]

Following the evaluation, PRC issued a 26-page "Assessment Discharge Summary" in September 2015, which was sent to the board and Peterson. Relying on the assessment

[2] The participation agreement provides that the agreement "shall be construed and enforced in accordance with the laws of the State of Kansas."

report, the committee concluded that Peterson should not engage in the clinical practice of medicine until he followed recommendations. The committee notified Peterson that it would hold a conference to discuss his ability to practice medicine. The conference was held on February 11, 2016.

In late 2015, Peterson began requesting data from the board and from PRC, and eventually he specifically cited the MGDPA in his requests. On December 4, 2015, Peterson's attorney sent a letter to respondent Ruth Martinez, the executive director of the board, which claimed that there were inconsistencies in PRC's assessment report and requested data that supported the report. Martinez responded on behalf of the board in a December 16, 2015 letter, which stated, generally, that the board did not have any data that PRC had relied on in preparing the assessment report, other than the 13 documents that the board had provided to PRC when initiating the evaluation; Martinez attached those documents to the letter.

Martinez also sent an email to PRC that informed PRC that Peterson was "requesting data underlying the [assessment] report" and authorized "the legal release [to Peterson] of supplemental data in PRC's possession." Martinez contacted Erica Herrman at PRC to inquire about the release of records and was told that PRC was "very limited" in the records it could release because of "confidentiality standards." According to Herrman, "State of Kansas laws [prohibit] releasing raw test data to anyone other than a licensed psychologist."

After further exchanges between Peterson and the board, the board informed Peterson that the MGDPA "does not require [the board] to obtain the data you seek from

the PRC" and suggested that Peterson could obtain "the requested raw data" through PRC by signing a PRC authorization. The board also informed Peterson that it would not object to the release of such data, as long as the board received copies of the data, and that it would execute a release for this purpose if requested.

On April 11, 2016, PRC purportedly received by email a letter from Peterson's attorney that was dated March 21, 2016. The letter referred to previous requests for "underlying data" pertaining to Peterson's assessment report and broadly requested test results or "raw data" that supported PRC's conclusions, names of individuals who collected data, communications between the board and PRC, and notes and drafts of reports preceding the final assessment report. PRC responded that the April 11 email was the first correspondence it had received from Peterson, PRC could not "comment on behavior obtained from collateral sources beyond what is summarized in the report," "Peterson waived his right to receive or review collateral data," and PRC generally refused to elaborate on confidential information. PRC also characterized the assessment report as "a compilation of information gathered by individual clinicians" and stated that "[a]ny handwritten notes by therapists are not maintained by PRC."

In a complaint filed in May 2016, Peterson initiated an action alleging violations of the MGDPA by the board, the complaint review committee of the board, and Martinez, individually and in her official capacity, (collectively, board-related respondents), and by PRC. The board-related respondents and PRC moved for summary judgment. Two weeks later, Peterson moved to amend his complaint and to compel production of documents.

On August 19, 2016, Martinez sent PRC a letter stating that "[u]pon further analysis and review . . . it is the position of the [board] that the data requested by Dr. Peterson and his counsel from [PRC] is classified as CONFIDENTIAL under the [MGDPA]" because it involves "active investigative data relating to the investigation of complaints against [a] licensee" under Minn. Stat. § 13.41, subd. 4.

Following a hearing, the district court granted summary judgment to all respondents and dismissed Peterson's action. The district court denied Peterson's motions to amend and to compel production of documents. This appeal followed.[3]

**D E C I S I O N**

> [An appellate court] review[s] a district court's decision to grant summary judgment de novo to determine whether any genuine issue of material fact exists and whether the district court correctly applied the law. Summary judgment is appropriate when the evidence, viewed in the light most favorable to the nonmoving party, establishes that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law.

*Citizens State Bank Norwood Young Am. v. Brown*, 849 N.W.2d 55, 61-62 (Minn. 2014) (citations omitted); *see* Minn. R. Civ. P. 56.03. "No genuine issue of material fact exists when the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party." *Frieler v. Carlson Mktg. Grp., Inc.*, 751 N.W.2d 558, 564 (Minn. 2008) (quotations omitted). An appellate court's de novo review of a district court's grant of summary judgment includes de novo review of the district court's interpretation of the

[3] The Association of American Physicians & Surgeons submitted an amicus curiae brief.

MGDPA. *Scheffler v. City of Anoka*, 890 N.W.2d 437, 443 (Minn. App. 2017), *review denied* (Minn. Apr. 6, 2017).

The MGDPA "regulates the collection, creation, storage, maintenance, dissemination, and access to government data in government entities." Minn. Stat. § 13.01, subd. 3. The MGDPA's purpose "is to reconcile the rights of data subjects to protect personal information from indiscriminate disclosure with the right of the public to know what the government is doing. The [MGDPA] also attempts to balance these competing rights within a context of effective government operation." *KSTP-TV v. Ramsey County*, 806 N.W.2d 785, 788 (Minn. 2011) (quotation omitted). The MGDPA defines government data as "all data collected, created, received, maintained or disseminated by any government entity." Minn. Stat. § 13.02, subd. 7. "'Government entity' means a state agency, statewide system, or political subdivision." Minn. Stat. § 13.02, subd. 7a.

> [G]overnment data falls into one of two main categories based on the type of information included in the data: (1) data on individuals, or "government data in which any individual is or can be identified as the subject of that data," Minn. Stat. § 13.02, subd. 5, and (2) data not on individuals, which is all other government data, Minn. Stat. § 13.02, subd. 4. The MGDPA classifies data from each of these two categories into different levels of access. The levels of access for data on individuals are "public," "private," and "confidential . . . ."

*KSTP-TV*, 806 N.W.2d at 789 (footnotes omitted). The MGDPA provides for a variety of civil remedies for violations of the act, including injunctive relief and actions for damages and to compel compliance, and permits an award of costs and attorney fees under certain circumstances. Minn. Stat. § 13.08, subds. 1-4. If a government entity contracts with a

private person to perform any of the entity's functions, the MGDPA applies to the private person as if it were a government entity. Minn. Stat. § 13.05, subd. 11(a).

The Minnesota Medical Practice Act, Minn. Stat. §§ 147.001-.37 (2016), establishes the duties of the board with regard to medical licensing and disciplinary actions involving regulated persons and provides that "all communications or information received by or disclosed to the board relating to any person or matter subject to its regulatory jurisdiction are confidential and privileged and any disciplinary hearing shall be closed to the public," subject to specific exceptions. Minn. Stat. § 147.01, subd. 4. One exception provides that "[u]pon application of a party in a proceeding before the board under section 147.091, the board shall produce and permit the inspection and copying, by or on behalf of the moving party, of any designated documents or papers relevant to the proceedings." *Id*., subd. 4(a). Under an exception that applies to "disciplinary measures of any kind," "the name and business address of the licensee, the nature of the misconduct, and the action taken by the board are public data," and "[i]f disciplinary action is taken by settlement agreement, the entire agreement is public data." *Id*., subd. 4(b). The board may order a regulated person "to submit to a mental or physical examination," and "[i]nformation obtained [from medical records] is classified as private under sections 13.01 to 13.87." Minn. Stat. § 147.091, subd. 6(a), (b).

**I.**

In granting summary judgment to the board-related respondents, the district court characterized Peterson's argument as a claim that the board-related respondents "violated the MGDPA by failing to provide the data requested by [Peterson] and by sending PRC a

copy of the 2014 [o]rder." The district court ruled that these arguments failed because the board-related respondents did not violate the MGDPA by taking either action. The court ruled that the 2014 disciplinary order was public under Minn. Stat. § 147.01, subd. 4(b), and therefore could be disclosed to PRC, and that the MGDPA did not require the board to obtain data from PRC.

Peterson argues that the district court erred by failing to consider that the data he requested were private data that he was entitled to receive from the board under Minn. Stat. § 13.04, subd. 3. But, "[t]o defeat a summary judgment motion, the nonmoving party must do more than rest on averments or denials of the adverse party's pleadings." *Citizens State Bank*, 849 N.W.2d at 61-62. The nonmoving party must "provide the court with specific indications that there is a genuine issue of fact." *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988). Although, arguably, some of the data created during Peterson's PRC evaluations are private data, Peterson offered no evidence that the board-related respondents possessed any data created or maintained by PRC, and he cites no authority that requires those respondents to obtain data from PRC. Consequently, his argument fails.[4]

The district court relied on *WDSI, Inc. v. County of Steele*, 672 N.W.2d 617 (Minn. App. 2003), to "confirm[] that the government entities are not obligated under the MGDPA to obtain additional data from PRC and provide it to [Peterson]." In *WDSI*, this court ruled that the district court erred by concluding that a county had a duty under the MGDPA to

[4] For this reason, the district court also properly granted summary judgment on Peterson's claim that the board-related respondents willfully violated the MGDPA.

produce data held solely by a private entity with whom the county had contracted to provide services for the construction of a county detention center. 672 N.W.2d at 621-22. This court ruled that "[i]f a private [entity] fails to comply with the MGDPA, the remedy is against the private [entity]." *Id*. at 621. Peterson argues that *WDSI* applies only to public data and not private data, but the decision does not distinguish between types of data and expressly applies to all "governmental data." *Id*. The district court therefore did not err by relying on *WDSI*.

Peterson argues that, under the state's official-records statute, the board-related respondents had a statutory duty to maintain and produce any data held by PRC. Under the records act, all officers and agencies of public authorities or political entities in Minnesota "shall make and preserve all records necessary to a full and accurate knowledge of their official activities." Minn. Stat. § 15.17, subd. 1 (2016). The supreme court has interpreted the records act to mean that "all that need be kept of record is information pertaining to an official decision, and not information relating to the process by which such a decision was reached." *Kottschade v. Lundberg*, 280 Minn. 501, 505, 160 N.W.2d 135, 138 (1968). The board-related respondents' alleged conduct did not violate this statute. The board retained the assessment report, which was the information it relied on in going forward with Peterson's disciplinary case, and the order that stated its decision. The assessment report and the order were given to Peterson.

Peterson also argues that the board's action of rescinding the 2014 order, which was based on a stipulation, "changed the classification of the unproven complaints against Dr. Peterson contained in that stipulation." Peterson argues that sharing this order with PRC

violated the MGDPA. We disagree. The MGDPA and the Medical Practice Act each provide that board decisions are public data. *See* Minn. Stat. § 13.41, subd. 5 ("If the licensee and the licensing agency agree to resolve a complaint without a hearing, the agreement and the specific reasons for the agreement are public data."); Minn. Stat. § 147.01, subd. 4(b) ("If the board takes corrective action or imposes disciplinary measures of any kind . . . the name and business address of the licensee, the nature of the misconduct, and the action taken by the board are public data. If disciplinary action is taken by settlement agreement, the entire agreement is public data."). When the board rescinded the 2014 order, it did so only because of new allegations that Peterson had violated the order, not because the order was incorrect or defective. Under these circumstances, rescinding the 2014 order did not alter the public nature of the order, and neither statute requires a change in the classification of the public data in the order.

**II.**

Peterson argues that the district court erred by dismissing his MGDPA claims against PRC. The district court ruled that Peterson's participation agreement with PRC "unequivocally provides that [Peterson] waives his right to information from PRC other than the final report and that [Peterson] actually agrees to indemnify and hold harmless PRC from any and all claims." The district court upheld the validity of the waiver and rejected Peterson's claim that he felt coerced to sign the participation agreement "or otherwise did not voluntarily sign the waiver agreement." Because we conclude that the data were not available to Peterson under the relevant provision of the MGDPA, we will not address whether Peterson's waiver was valid. *See Doe 76C v. Archdiocese of St. Paul*

*& Minneapolis*, 817 N.W.2d 150, 163 (Minn. 2012) (when considering grant of summary judgment, appellate court need not adopt reasoning of district court and may affirm "summary judgment if it can be sustained on any grounds").

The MGDPA applies to any "licensing agency," which includes any board that is given statutory authority to issue a professional license. Minn. Stat. § 13.41, subd. 1. The board is a licensing agency. PRC entered into a contract with the board to perform part of the board's licensing function. Consequently, when PRC created, collected, received, stored, used, or maintained data on Peterson, PRC was subject to the requirements of the MGDPA as if it were the board. Minn. Stat. § 13.05, subd. 11(a).

Under the MGDPA, "active investigative data relating to the investigation of complaints against any licensee" that are "collected, created or maintained by any licensing agency are classified as confidential, pursuant to section 13.02, subdivision 3." Minn. Stat. § 13.41, subd. 4. "'Confidential data on individuals' are data made not public by statute or federal law applicable to the data and *are inaccessible to the individual subject of those data*." Minn. Stat. § 13.02, subd. 3 (emphasis added). "'Data on individuals' means all government data in which any individual is or can be identified as the subject of that data . . . ." Minn. Stat. § 13.02, subd. 5.

When Peterson requested that PRC release all data created or maintained by PRC as part of its evaluation of him, a complaint had been filed against Peterson, and he was under active investigation by the board and by PRC under its contract with the board. Under these circumstances, the data Peterson requested from PRC were confidential under

Minn. Stat. § 13.41, subd. 4, and the data were inaccessible to Peterson because he was the "subject of those data" under Minn. Stat. § 13.02, subd. 3.

**III.**

"A party may amend a pleading by leave of court, and amendments should be freely granted, except where to do so would result in prejudice to the other party." *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993); *see* Minn. R. Civ. P. 15.01. "[I]t is not an abuse of discretion to refuse an amendment that would not survive summary judgment." *Scheffler*, 890 N.W.2d at 447. An appellate court "review[s] a district court's denial of a motion to amend a complaint for an abuse of discretion." *Johnson v. Paynesville Farmers Union Coop. Oil Co.*, 817 N.W.2d 693, 714 (Minn. 2012). "Generally, the decision to permit or deny amendments to pleadings is within the discretion of the district court and will not be reversed absent a clear abuse of discretion." *Johns v. Harborage I, Ltd.*, 664 N.W.2d 291, 295 (Minn. 2003).

Peterson moved to amend his complaint to add various claims, and the district court denied his motion. On appeal, Peterson challenges the district court's rulings regarding several of his claims.

*Constitutional claims*

1. Peterson argues that the district court erred in concluding that this court has exclusive jurisdiction to consider his claim under 42 U.S.C. § 1983 for wages he has lost as a result of his license revocation. "[A]bsent express statutory language vesting judicial review of an agency action in the district court, the court of appeals has exclusive jurisdiction over writs of certiorari." *Heideman v. Metro. Airports Comm'n*, 555 N.W.2d

322, 323 (Minn. App. 1996). The supreme court has also stated that "[d]istrict courts do not have subject-matter jurisdiction over claims that must be resolved in a certiorari appeal." *Zweber v. Credit River Twp.*, 882 N.W.2d 605, 609 (Minn. 2016). But, in *Zweber*, the supreme court explained further that an aggrieved party may bring a claim in district court arising out of a "quasi-judicial decision so long as adjudication of the claim does not require an inquiry into the validity of the decision." *Id.* at 611.

Peterson argues that the district court has jurisdiction over his claim for lost income because he "is not asking the district court to reverse the Board's decision to revoke his license, which would raise the validity of the Board's decision; rather, he is seeking damages for lost income as a result of the Board's action." Peterson's claim for lost income, however, rests on the premise that he has lost income because he does not have the medical license that he needs to work and a lack of due process in the board's procedures led to the board's decision to revoke his license. Consequently, adjudicating his claim for lost income requires an inquiry into the validity of the board's decision, and the district court did not err in concluding that it lacked subject-matter jurisdiction.

2. Peterson argues that the board can order a physician to submit to a physical or mental examination only after the full board makes a "probable cause finding" that the physician is unable to safely practice medicine and issues an order to investigate the probable cause finding. He contends that Martinez and the complaint review committee, instead of the full board, made the probable cause finding before he was ordered to submit to an examination, and, as a result, the order for a mental-health evaluation violated his due-process rights. Peterson argues that because his proposed amendment to assert this

due-process claim "does not challenge the substance of the order for examination but rather the utter lack of required process that preceded it, [he] was not required to challenge it" by certiorari.

"In any due process case, we use a two-step analysis. The first inquiry is whether a protected liberty or property interest is implicated. The second inquiry requires a weighing of the particular interests involved in order to determine what process is due." *Humanensky v. Minn. Bd. of Med. Exam'rs*, 525 N.W.2d 559, 566 (Minn. App. 1994) (citations omitted), *review denied* (Minn. Feb. 14, 1995). In *Humanensky*, a psychiatrist sued the board of medical examiners to enjoin the board's order to submit to a mental and physical examination. *Id*. at 562. This court held that because the examination had an investigatory purpose and Humanensky's license to practice medicine was not immediately at stake in the investigatory proceeding, Humanensky's protected interest was not implicated, and because the board's probable-cause determination was subject to review before and after any disciplinary action, Humanensky was not denied due process of law. *Id.* at 566-67.

Peterson's medical license was suspended because he failed to comply with the board's 2014 order. The board has not taken any disciplinary action related to the order that Peterson submit to an examination or to PRC's evaluation of Peterson. Peterson's protected interest in his medical license has not been implicated by the order for a mental and physical evaluation, and he does not have a due-process claim. The district court did not abuse its discretion in denying Peterson's motion to amend.

3. Peterson argues that the district court erred in denying his motion to amend to assert a claim under 42 U.S.C. § 1983 that the order for a mental and physical evaluation

was issued in retaliation for a letter he wrote that criticized the board and its agents, which violated his First Amendment rights. Peterson contends that this claim is ripe "because the harms—suspension of his license and dissemination of orders asserting that there was probable cause to believe that [Peterson] could not safely practice medicine—have taken place." But, like Peterson's claim for lost income, the district court lacked jurisdiction because adjudicating this claim requires an inquiry into the validity of the board's decisions to suspend Peterson's license and to investigate the April 11, 2014 complaint that alleged that Peterson continued to engage in prohibited conduct; the claim is that each of these decisions is invalid because each decision was based on retaliation, rather than a proper motive.

4. Peterson sought to amend his complaint to assert a claim under 42 U.S.C. § 1983 that respondents had a custom and pattern of practice of violating his free-speech rights and his due-process rights. The district court stated: "The court has reviewed [Peterson's] arguments supporting the amended complaint and finds them less than compelling. To the contrary, they seem to largely be repackaging and re-labeling the factual and legal assertions in the initial complaint." Peterson argues that the district court's lack of analysis of his custom and pattern-of-practice claim constitutes an abuse of discretion that should be reversed.

Peterson, however, does not explain why his motion to add this claim should have been granted. And, although a more thorough analysis by the district court was warranted, we will not reverse the denial of the motion to add a claim for a custom and pattern of

practice of violating Peterson's First Amendment and due-process rights when we have concluded that Peterson's individual claims for violating these rights are not meritorious.

*MGDPA claim*

Peterson sought to amend his complaint to bring an action under Minn. Stat. § 13.39, subd. 2a, to obtain the confidential and protected nonpublic data that he has been requesting since December 2015. That statute provides:

> During the time when a civil legal action is determined to be pending under subdivision 1, any person may bring an action in the district court in the county where the data are maintained to obtain disclosure of *data classified as confidential or protected nonpublic under subdivision 2*. The court may order that all or part of the data be released to the public or to the person bringing the action. In making the determination whether data shall be disclosed, the court shall consider whether the benefit to the person bringing the action or to the public outweighs any harm to the public, the government entity, or any person identified in the data. The data in dispute shall be examined by the court in camera.

Minn. Stat. § 13.39, subd. 2a (emphasis added).

The subdivision 2 referred to in the language emphasized above states:

> Except as provided in paragraph (b),[5] *data collected by a government entity as part of an active investigation undertaken for the purpose of the commencement or defense of a pending civil legal action,* or which are retained in anticipation of a pending civil legal action, are classified as protected nonpublic data pursuant to section 13.02, subdivision 13, in the case of data not on individuals and confidential pursuant to section 13.02, subdivision 3, in the case of data on individuals.

[5] Paragraph (b) states: "A complainant has access to a statement provided by the complainant to a government entity under paragraph (a)." Minn. Stat. § 13.39, subd. 2(b).

Minn. Stat. § 13.39, subd. 2(a) (emphasis added).

Thus, an action under Minn. Stat. § 13.39, subd. 2a, allows a person to obtain through court order "data collected by a government entity as part of an active investigation undertaken for the purpose of the commencement or defense of a pending civil legal action." But, as we determined above in section II, the data collected by the board and PRC are "active investigative data relating to the investigation of complaints against any licensee" that are classified as confidential under Minn. Stat. § 13.41, subd. 4; they are not "data classified as confidential or protected nonpublic under [Minn. Stat. § 13.39,] subdivision 2." Consequently, Peterson's claim under Minn. Stat. § 13.39, subd. 2a, would not survive summary judgment, and the district court did not abuse its discretion in denying Peterson's motion to amend to assert the claim.

*Equitable estoppel*

Peterson sought to amend his complaint to assert an equitable-estoppel claim based on representations made in a letter from the board to Peterson's counsel. The proposed amended complaint refers to exhibit 6, which is a letter from the board to Peterson's counsel, and quotes the letter as stating that the board could "take no further action against [Peterson's] license, based on the allegations underlying the original stipulation" and that "[t]he Board cannot use any information gathered during the investigation leading up to the 2014 Order in any subsequent proceedings since he has not had an opportunity to contest that information." But the exhibit 6 that appears in the record does not include the language quoted in the proposed amended complaint. Thus, Peterson has failed to demonstrate error in the district court's conclusion that "[t]here is no basis to support the

claim of equitable estoppel under Minnesota law." *See White v. Minn. Dep't of Nat. Res.*, 567 N.W.2d 724, 734 (Minn. App. 1997) (error is never presumed on appeal, and the burden of showing error rests upon the one who relies upon it), *review denied* (Minn. Oct. 31, 1997). We will not scour the record in search of the quotation that purportedly supports Peterson's proposed amendment.

*Defamation*

Peterson sought to amend his complaint to assert a defamation claim because "publication of the April and July 2015 Orders for mental health and physical examinations implied a falsehood–i.e. that [Peterson] was not able to practice medicine with reasonable skill and safety to patients," which was untrue and defamatory. Peterson argues that the district court did not address this proposed claim in any way. But the district court specifically referred to the defamation claim in its memorandum and determined that "Minn. Stat. § 147.121, subd. 2, provides immunity for Board members, employees and consultants from civil claims relating to their duties under the Minnesota Medical Practices Act."

Minn. Stat. § 147.121, subd. 2(a), states:

> Members of the board, persons employed by the board, consultants retained by the board for the purpose of investigation of violations, the preparation of charges and management of board orders on behalf of the board are immune from civil liability and criminal prosecution for any actions, transactions, or publications in the execution of, or relating to, their duties under sections 147.01 to 147.22.

It is apparent that the district court determined that a defamation action is a civil claim to which this immunity applies. Peterson argues that the district court erred by

concluding that Minn. Stat. § 147.121, subd. 2(a), provides immunity for board members, employees and consultants because "Minn. Stat. § 13.08 subd. 1 contains a specific provision overriding the limited immunity granted under Minn. Stat. § 147.121 subd. 2." But Minn. Stat. § 13.08, subd. 1, states that "[t]he state is deemed to have waived any immunity to a cause of action brought under this chapter." Peterson's defamation action is not a cause of action brought under chapter 13. Therefore, Minn. Stat. § 13.08, subd. 1, does not override the immunity provided by Minn. Stat. § 147.121, subd. 2(a).

**IV.**

A district court is given "wide authority to issue discovery orders," and its decision on such matters will be reversed only for an abuse of discretion. *Shetka v. Kueppers, Kueppers, Von Feldt & Salmen*, 454 N.W.2d 916, 921 (Minn. 1990). Peterson argues that the district court abused its discretion by denying his motion to compel production of documents and answers to interrogatories under Minn. R. Civ. P. 37.01(b)(2) without first conducting the analysis required under Minn. Stat. § 13.03, subd. 6. That statute provides:

> If a government entity opposes discovery of government data or release of data pursuant to court order on the grounds that the data are classified as not public, the party that seeks access to the data may bring before the appropriate presiding judicial officer, arbitrator, or administrative law judge an action to compel discovery or an action in the nature of an action to compel discovery.
>
> The presiding officer shall first decide whether the data are discoverable or releasable pursuant to the rules of evidence and of criminal, civil, or administrative procedure appropriate to the action.
>
> If the data are discoverable the presiding officer shall decide whether the benefit to the party seeking access to the data outweighs any harm to the confidentiality interests of the entity maintaining the data, or of any person who has provided

> the data or who is the subject of the data, or to the privacy interest of an individual identified in the data.

Minn. Stat. § 13.03, subd. 6.

Peterson argues that the district court "did not determine whether the data requested as part of discovery was relevant, and the court did not review the data in camera before issuing the order denying discovery." The district court, however, expressly denied Peterson's motion because all of his claims were dismissed. "It is fundamental that the only objective of the pretrial discovery rules is to allow a party to obtain all of the facts relative to a claim or defense." *Garrity v. Kemper Motor Sales*, 280 Minn. 202, 207, 159 N.W.2d 103, 107 (1968). When the district court dismissed Peterson's claims and denied his motion to amend to assert new claims, there were no longer any facts to obtain relative to any claim. Although the district court did not state that Peterson's requested discovery was not relevant, it is apparent that the court denied Peterson's discovery motion because there was no longer any claim to which it could be relevant.

**Affirmed**.