

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

JAMES L. RADTKE, JR.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 4:13 CV 213 ERW
	)	
REBECCA MARIE WINZEN, et al.,	)	
	)	
Defendants.	)	

**MOTION TO DISMISS**

Defendant American Psychiatric Association (“APA”) moves pursuant to Federal Rule of Civil Procedure 12(b)(1) and (6) to dismiss with prejudice Counts V, VI and VIII of the Amended Complaint, as asserted against APA, for the following reasons:

Because Radtke’s alleged chain of causation linking APA to his alleged injury is extremely speculative and fanciful, he lacks the requisite constitutional standing to bring claims against APA. Thus, all claims asserted against APA should be dismissed for lack of subject-matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1).

Plaintiff’s products liability and negligence claims (Counts VIII and VI) fail as a matter of law under general tort principles. Products liability is completely inapplicable to publications such as the *DSM*, and as to negligence, APA owes no legal duty to Plaintiff. Thus, these claims should be dismissed for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6).

Plaintiff’s products liability and negligence claims (Counts VIII and VI) also fail under the First Amendment, because the *DSM* is protected speech, and plaintiff cannot show a compelling interest in restricting it, or that his asserted tort remedies represent the least restrictive means of satisfying any compelling interest. Thus, these claims should be dismissed

for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6).

The conspiracy claim (Count V) fails a matter of law under Title 42 and the First Amendment because APA is not a state actor, there is no causal link, no true conspiracy can be alleged, and Plaintiff cannot allege class-based invidious discriminatory animus. Thus, these claims should be dismissed for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6).

A Memorandum of Law supporting this motion has been filed herewith.

Respectfully submitted,

THOMPSON COBURN LLP

By /s/ Mark Sableman

Mark Sableman, 36276MO

Anthony Blum, 60993MO

One US Bank Plaza

St. Louis, Missouri 63101

314-552-6000

FAX 314-552-7000

msableman@thompsoncoburn.com

[ablum@thompsoncoburn.com](mailto:ablum@thompsoncoburn.com)

*Attorneys for Defendant American Psychiatric  
Association*

**Certificate Of Service**

I hereby certify that on May 20, 2013, the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system upon the following:

S. Randolph Kretchmar  
1170 Michigan Avenue  
Wilmette, IL 60091  
srandolphk@gmail.com

James C. Thoele  
Brinker & Doyen, LLP  
34 N. Meramec Ave. 5<sup>th</sup> Floor  
Clayton, MO 63105  
jthoele@brinkerdoyen.com

Kenneth W. Bean  
Sandberg, Phoenix & von Gontard, P.C.  
600 Washington Ave. 15<sup>th</sup> Floor  
St. Louis, MO 63101-1313  
kbean@sandbergphoenix.com

Michael E. Hughes  
St. Louis County Counselor's Office  
41 S. Central Avenue  
Clayton, MO 63105  
mhughes2@stlouisco.com

I further certify that on May 20, 2013, a true and correct copy of the foregoing was served on Defendant Allen Frances, M.D., by mail to:

Dr. Allen Frances, M.D.  
1820 Avenida Del Mundo  
Coronado, CA 92118  
allenfrances@vzw.blackberry.net

/s/ Mark Sableman

Mark Sableman  
Attorney for American Psychiatric Association  
Thompson Coburn LLP  
One US Bank Plaza  
St. Louis, MO 63101  
(314) 552-6000