RAÚL R. LABRADOR
ATTORNEY GENERAL

JAMES E. M. CRAIG, ISB #6365
Chief, Civil Litigation and
Constitutional Defense

AARON M. GREEN, ISB #12397
KYLE D. GRIGSBY, ISB #10709
Deputy Attorneys General
Office of the Attorney General
P. O. Box 83720
Boise, ID 83720-0010
Telephone: (208) 334-2400
Facsimile: (208) 854-8073
james.craig@ag.idaho.gov
aaron.green@ag.idaho.gov
kyle.grigsby@ag.idaho.gov

Attorneys for Defendants Bonneville County Prosecuting Attorney

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

STACY SEYB, M.D.,

Plaintiff,

v.

MEMBERS OF THE IDAHO BOARD OF MEDICINE, in their official capacities; *et al.*,

Defendants.

Case No. 1:24-cv-00244-BLW

DEFENDANT RANDY NEAL, BONNEVILLE COUNTY PROSECUTING ATTORNEY'S MOTION TO DISMISS

Defendant Randy Neal, Bonneville County Prosecuting Attorney moves pursuant to Rule 12(b)(1) and (b)(6) to dismiss this action with prejudice for lack of subject matter jurisdiction and failure to state a claim. In support of this motion, Defendant files the attached memorandum of law.

DATED: July 16, 2024.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

By: /s/ *Aaron M. Green*
AARON M. GREEN
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 16, 2024, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system which sent a Notice of Electronic Filing to the following persons:

Kelly O'Neill
koneill@legalvoice.org

Wendy S. Heipt
wheipt@legalvoice.org

Jamila Johnson
jjohnson@lawyeringproject.org

Tanya Pellegrini
tpellegrini@lawyeringproject.org

Paige Suelzle
psuelzle@lawyeringproject.org

Stephanie Toti
stoti@lawyeringproject.org

Attorneys for Plaintiff

AND I FURTHER CERTIFY that on such date, the foregoing was served on the following non-CM/ECF registered participants in the manner indicated:

Via first class mail, postage prepaid and addressed as follows:

Shondi Lott
190 S. 4th E St.,
Mountain Home, ID 83647
slott@elmorecounty.org

Justin Oleson
P.O. Box 30
Challis, ID 83226
custerpa@gmail.com

Pro se Defendants

/s/ *Aaron M. Green*
AARON M. GREEN

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Attorneys for Defendant Bonneville County Prosecuting Attorney

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

STACY SEYB, M.D., *Plaintiff,* *v.* MEMBERS OF THE IDAHO BOARD OF MEDICINE, in their official capacities; *et al.*, *Defendants.*	Case No. 1:24-cv-00244-BLW **MEMORANDUM IN SUPPORT OF BONNEVILLE COUNTY PROSECUTING ATTORNEY'S MOTION TO DISMISS**

INTRODUCTION

Bonneville County Prosecuting Attorney Randy Neal ("Defendant Neal") fully joins in the motion to dismiss and arguments contained in the Memorandum in Support of Motion to Dismiss filed contemporaneously by the Individual Members of the Board of Medicine and the other prosecuting attorneys, but files this separate motion to dismiss and memorandum in support of the motion to dismiss to highlight a few points particularly relevant to Defendant Neal.

LEGAL STANDARD

This motion is brought pursuant to Federal Rule of Civil Procedure 12(b)(1) and (b)(6). A Rule 12(b)(1) jurisdictional attack may be "either facial or factual." *White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000) (citation omitted). "A 'facial' attack accepts the truth of the plaintiff's allegations but asserts that they 'are insufficient on their face to invoke federal jurisdiction.' The district court resolves a facial attack as it would a motion to dismiss under Rule 12(b)(6): Accepting the plaintiff's allegations as true and drawing all reasonable inferences in the plaintiff's favor, the court determines whether the allegations are sufficient as a legal matter to invoke the court's jurisdiction." *Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014) (citations omitted).

As for those issues brought under Rule 12(b)(6), the court must examine the complaint to determine whether the complaint states sufficiently detailed factual allegations to rise the entitlement to relief "above the speculative level," taking those allegations as true. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A "formulaic

recitation of the elements of a cause of action will not do" nor is it enough to plead "a legal conclusion couched as a factual allegation." *Id.* (citations omitted).

ARGUMENT

I. Defendant Neal is an Improper Defendant.

Plaintiff lacks standing to sue Defendant Neal because Plaintiff has failed to allege any information showing any connection to the alleged facts in the Complaint and Bonneville County. Standing is a threshold inquiry to invoke Article III jurisdiction. *City of Los Angeles v. Lyons*, 461 U.S. 95, 101 (1983). Standing requires an injury to plaintiff that is "fairly traceable to the challenged conduct of the defendant." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992) (cleaned up) (citation omitted). To satisfy this requirement, Plaintiff must allege how the named defendants will act to enforce the challenged laws against him, or how the "[g]overnment action or conduct has caused or will cause the injury they attribute to [the challenged laws]." *California v. Texas*, 593 U.S. 659, 670 (2021). Put another way, Plaintiff must draw a "line of causation between" the official sued and the claimed injury. *Dep't of Educ. v. Brown*, 600 U.S. 551, 567 (2023) (quoting *Allen v. Wright*, 468 U.S. 737, 755–56 (1984)).[1]

Further, Plaintiff must establish that his injury is redressable by the Court. The traceability and redressability "components for standing overlap and are two

[1] Thus, in addition to arguing lack of traceability and redressability, Defendant Neal asserts his immunity under the Eleventh Amendment alongside the other defendants. To fit under the *Ex parte Young* exception, the unlawful act to be restrained must be an act by the named defendant. *Los Angeles Cnty. Bar Ass'n v. Eu,* 979 F.2d 697, 704 (9th Cir. 1992).

facets of a single causation requirement. However, they are distinct in that traceability examines the connection between the alleged misconduct and injury, whereas redressability analyzes the connection between the alleged injury and requested relief. *Mecinas*, 30 F.4th at 899 (internal quotations and citations omitted). Redressability "is satisfied so long as the requested remedy would amount to a significant increase in the likelihood that the plaintiff would obtain relief that directly redresses the injury suffered." *Mecinas v. Hobbs*, 30 F.4th 890, 900 (9th Cir. 2022) (internal quotations omitted).

A. Plaintiff bears the burden of establishing every element of standing. *Lujan*, 504 U.S. at 561 (citation omitted). There are no allegations that Dr. Seyb or St. Luke's Health System has any connection to Bonneville County.

As the Bonneville County Prosecuting Attorney, Defendant Neal has very limited prosecutorial authority in that he has the duty and authority to prosecute crimes committed in only one of Idaho's 44 counties—Bonneville County.[2] *See* Idaho Code § 31-2604(1). Plaintiff fails to allege any connection between the facts in the Complaint and Bonneville County. Standing requires an injury-in-fact that is traceable to the conduct of a named party. To sue a prosecutor, Plaintiff must allege that there is a reasonable likelihood of enforcement of acts against him by the named prosecuting attorney. *See Eu*, 979 F.2d at 704. This is because "[r]emedies . . . ordinarily 'operate with respect to specific parties'" not on "legal rules in the abstract." *California*, 593 U.S. at 672 (quoting *Murphy v. Nat'l Collegiate Athletic Ass'n*, 584

[2] Defendant Neal notes that these same arguments are applicable to most of the other county prosecuting attorney defendants.

U.S. 453, 488–89 (2018) (Thomas, J., concurring)); *see also cf. Labrador v. Poe*, 144 S.Ct. 921, 927 (2024) (Mem.) (Gorsuch, J., concurring) and *id.* at 931 (Kavanaugh, J., concurring).

The Complaint alleges that Plaintiff is a doctor at St. Luke's in Boise, Dkt. 1 at ¶ 15, and Plaintiff only brings a lawsuit on that basis. *Id*. Boise is not in Bonneville County, and Defendant Neal has no authority to prosecute crimes committed in Boise, or any county other than Bonneville County. There are no allegations in the Complaint of any facts or conduct connecting Bonneville County to this lawsuit. As such, the Plaintiff cannot trace any alleged injury to conduct of Defendant Neal. Similarly, any order issued by this Court could not redress Plaintiff's alleged injuries as it relates to Defendant Neal. This is because Defendant Neal has no authority to prosecute crimes committed outside Bonneville County, and without any allegations connecting the facts to Bonneville County, an order from this Court would not redress Plaintiff's alleged injury.

B. Plaintiff has not pled an injury to himself.

The U.S. Supreme Court just last month made clear that for third-party standing, "the litigants themselves still must have suffered an injury in fact, thus giving them a sufficiently concrete interest in the outcome of the issue in dispute . . . . The third-party standing doctrine does not allow doctors to shoehorn themselves into Article III standing simply by showing that their patients have suffered injuries or may suffer future injuries." *Alliance*, 602 U.S. at 393 n.5. Because Plaintiff has not sufficiently alleged an injury to himself, he lacks standing to sue both on his own behalf and on behalf of his patients.

Plaintiff has failed to allege an injury in fact related to Defendant Neal because he has not alleged that Defendant Neal is likely to enforce the challenged statutes against him. *See Idaho Fed. of Tchrs. v. Labrador*, No. 1:23-cv-00353-DCN, 2024 WL 3276835 at *5 (D. Idaho July 2, 2024) (slip op.) (discussing *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 416 (2013) and *Thomas v. Anchorage Equal Rts. Comm'n*, 220 F.3d 1134, 1139 (9th Cir. 2000)). Indeed, there are no alleged facts to show that Defendant Neal even has the authority or jurisdiction to threaten to prosecute Plaintiff because there are no allegations to show any connection to Bonneville County. The Plaintiff "must allege a genuine, credible, specific threat of imminent prosecution by [a county prosecutor] to establish standing." *Idaho Fed.*, 2024 WL 3276835 at *5. Without a connection to Bonneville County, Defendant Neal lacks all jurisdiction to prosecute the Plaintiff, and therefore cannot issue a genuine, credible threat of imminent prosecution against Plaintiff.

Plaintiff's failure to plead a genuine, credible threat of imminent prosecution from Defendant Neal shows that he lacks standing, and the Court should dismiss the Complaint.

CONCLUSION

For the foregoing reasons, and for the reasons set forth in the Memorandum in Support of Motion to Dismiss filed contemporaneously by the Individual Members of the Board of Medicine and the other county prosecuting attorneys, this Court should dismiss the Complaint in its entirety. Defendant reserves the right to seek attorneys' fees under 42 U.S.C. § 1988 for actions "found to be unreasonable, frivolous, meritless,

or vexatious." *Legal Servs. of N. Cal., Inc. v. Arnett*, 114 F.3d 135, 141 (9th Cir. 1997) (cleaned up).

DATED: July 16, 2024.

STATE OF IDAHO
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Stephanie Toti
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