IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOHN DOE,	:	**CIVIL ACTION**
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
NATIONAL BOARD	:	
OF MEDICAL EXAMINERS,	:	
	:	
Defendant.	:	**NO. 99-4532**

M E M O R A N D U M

Reed, S.J. **August 14, 2001**

Plaintiff, John Doe, filed a complaint against the National Board of Medical Examiners (the "NMBE") under Subsections III and V of the Americans with Disabilities Act, 42 U.S.C. §§ 12101-12213, seeking declaratory and injunctive relief. The parties consented to the reference of this case to U.S. Magistrate Judge M. Faith Angell for all proceedings and the entry of a final judgment.[1] Presently before this Court is the motion of defendant NMBE to vacate the consent order of reference to Judge Angell (Document No. 53), pursuant to 28 U.S.C. § 636(c)(6) and Federal Rule of Civil Procedure 73(b).[2] Upon consideration of the motion to vacate, and the response and reply thereto, the motion will be denied.

I. BACKGROUND

Defendant NMBE offers and administers the United States Medical Licensing

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[1] See Consent Order Pursuant to 28 U.S.C. § 636 (c) and Rule 73 of the Federal Rules of Civil Procedure (Document No. 19).

[2] The motion also requested a stay of Judge Angell's April 4, 2001, order relating to discovery issues. The docket reflects that these issues have been resolved and thus the motion for a stay is no longer before this Court.

Examination (the "USMLE"), which is taken by graduating physicians seeking a license to practice medicine. Medical residency programs also use USMLE scores in evaluating candidates for admission. At the examinee's request, NMBE will send a USMLE score transcript to third parties designated by the examinee, including residency and internship programs, as well as state licensing authorities. At the time this complaint was filed, plaintiff was a fourth-year medical student. Plaintiff suffers from multiple sclerosis; he requested and was granted by the NMBE special accommodations for taking the USMLE. In 1998 and 1999, Plaintiff took the sections of the USMBE that are at issue here, with the special accommodations. Because one of these accommodations was the provision of extra time for this timed exam, and because defendant's consultants concluded that extra time may affect the validity of the resulting score, defendant "flagged" plaintiff's scores to signal that special accommodations had been given. Plaintiff claims that these notations may hurt his chances for admission to the residency programs of his choice, because his scores may be viewed as less valid compared to other candidates and, generally, the fact that he is disabled would become known.

On September 10, 1999, plaintiff filed this suit, seeking declaratory and injunctive relief to prevent defendant from flagging his USMLE scores. The case was referred by me to Magistrate Judge M. Faith Angell for purposes of pretrial management and the resolution of plaintiff's motion for a preliminary injunction. While the motion for a preliminary injunction was pending, the parties agreed to have Judge Angell preside over the final resolution of the case. On October 22, 1999, with the consent of both parties, this Court entered an order referring the case to Judge Angell to conduct all proceedings and order the entry of final judgment, in accordance with 28 U.S.C. § 636(c) and Federal Rule of Civil Procedure 73(b) (Document No.

53) (Defendant's Mem. Ex. A).[3]

After hearing testimony and receiving documentary evidence, Judge Angell granted plaintiff's motion for preliminary injunction on November 1, 1999. Defendant appealed the judgment, and, on December 9, 1999, the Court of Appeals for the Third Circuit vacated the order granting the injunction. In doing so, the court of appeals determined that in order show a likelihood that he would to prevail on the merits of his claim, plaintiff needed to prove either that his scores are comparable to those of non-accommodated examinees in terms of predicting his future success, in which case there would be no reason to flag his scores, or that his flagged scores would be ignored by the programs to which they are reported. See Doe v. National Board of Medical Examiners, 199 F.3d 146, 149, 156-157 (3d Cir. 1999).

The case then proceeded before Judge Angell toward a trial on the merits. Plaintiff's discovery centered on defendant's documentation relating to its practice of "flagging," and defendant's discovery was focused on the effect of the flagged scores on the residency programs to which plaintiff applied and the program to which he was subsequently admitted. On March 7, 1999, Judge Angell held a hearing to determine whether plaintiff's expert witness could justify the discovery plaintiff was seeking. For his part, plaintiff had raised concerns that defendant's third-party discovery would reveal his identity and disability to his current and future medical colleagues, and stated that he would withdraw his complaint and dismiss this action before facing that prospect. As a result, on April 4, 2001, Judge Angell ordered that discovery should proceed in stages. First, plaintiff would conduct discovery, and plaintiff's expert would review any discovered materials. If the expert would conclude, on that basis, that plaintiff's scores were

[3] See note 1, supra.

comparable to those of others, and plaintiff would thus have evidence of the type needed for the case to go forward, defendant's discovery would ensue. It is in connection with these post-preliminary-injunction proceedings that defendant now brings this motion to me to vacate the order of reference to Judge Angell. Specifically, defendant points to the following conduct:

> (1) irregularities favoring Doe;
> (2) comments the Court made at the 'Daubert-type' hearing [March 7, 2001] that reflect the use of an incorrect standard in evaluating Doe's expert testimony at that hearing;
> (3) consideration of a press release provided by plaintiff's counsel pertaining to the settlement of a case in another jurisdiction not involving the NMBE; and
> (4) the April 4, 2001 Order that allows only Doe to take any discovery indefinitely and summarily overrules NMBE's discovery objections without affording it a right to be heard and without a pending motion to compel.

(Defendant's Mem. at 9.)

II. ANALYSIS

Once a case has been referred to a magistrate judge, that judge may be removed from the case by means of a motion to vacate the reference, under 28 U.S.C. § 636(c)(6), or a motion for recusal, for apparent partiality, bias, or prejudice, under 28 U.S.C. § 455. See Clay v. Brown, Hopkins & Stambaugh, 892 F. Supp. 11, 13 (D.D.C. 1995); S. Agric. Co. v. Dittmer, 568 F. Supp. 645, 646 (W.D. Ark. 1983); MacNeil v. Americold, 735 F. Supp. 32, 34 (D. Mass. 1990). Although this motion to remove Judge Angell is couched in terms of a motion to vacate the reference, it is clear to this Court that it is actually an attempt to have Judge Angell recused, which is properly considered not under § 636(c)(6), but under § 455. While straining to avoid the words "bias," "prejudice," and "partiality," and pointing to the judicial actions of Judge Angell, defendant uses these actions to bring Judge Angell's impartiality into question.

Defendant does this by, before criticizing Judge Angell's rulings, asking this Court to view them in light of observations she made "early in this case," in her opinion granting the preliminary injunction. Defendant quotes some of Judge Angell's words, without providing context, bolds them for emphasis, and calls them "gratuitous" and "pejorative" in expressing her "view of the NMBE." (Defendant's Mem. at 10.) Defendant goes on to declare that "the Court's decisions are being affected by events outside the litigation" (id. at 11), a very serious charge indeed. Defendant concludes by mentioning Judge Angell's "one-sidedness" (id. at 16). Partiality on the part of a judge should certainly be brought before the court, but "[t]he more appropriate procedure for challenging the impartiality of a judge is through a motion for recusal pursuant to 28 U.S.C. § 455." Clay, 892 F. Supp. at 13. Therefore, especially in view of the fact that defendant's motion is insufficient under § 636(c)(6), for reasons I will discuss below, I will begin by treating the motion as a motion for recusal.[4]

A. Motion for Recusal under 28 U.S.C. § 455

A motion for the recusal of Judge Angell addressed to this Court is invalid. This is because "[o]nce a matter has been referred to a magistrate under his dispositive jurisdiction, he effectively becomes the district judge for that case. Removal of a magistrate from a case should then be governed by the same rules as a district judge where recusal becomes an issue." S. Agric. Co., 568 F. Supp. at 646 (citing 28 U.S.C. § 455). Section 455 provides that "[a]ny justice, judge, or magistrate of the United States shall disqualify *himself* in any proceeding in which his

[4] This Court is not necessarily of the opinion that a § 636(c)(6) motion must be preceded by a § 455 motion in every instance. However, in a case like this one, where the § 636(c)(6) motion carries an underlying allegation of bias, the proper procedure would be to bring a motion to recuse before the magistrate judge. If the motion is denied by the magistrate judge, a § 636(c)(6) motion before the referring district judge may then be appropriate.

impartiality might reasonably be questioned," 28 U.S.C. § 455(a) (emphasis added), and "[h]e shall also disqualify *himself* in the following circumstances: . . . (1) Where he has a personal bias or prejudice concerning a party . . . ." 28 U.S.C. § 455(b) (emphasis added); see In re Drexel Burnham Lambert, Inc., 861 F.2d 1307, 1312-14 (2d Cir. 1988) ("The judge presiding over a case is in the best position to appreciate the implications of those matters alleged in a recusal motion."); Clay, 892 F. Supp. at 13 (requiring that a motion for recusal first be presented to the judge whose impartiality is at issue); MacNeil, 735 F. Supp. at 36 ("Requiring allegations of bias to be presented to the magistrate through a motion for recusal, rather than to [the district] court through a motion to vacate reference, is consistent with the manifested intention of Congress.").

It makes sense that the judge must be the one to disqualify him or herself, because the recusal statute "contemplates a personal, or extra-judicial, bias against a litigant." United States v. Outler, 659 F.2d 1306, 1312 (5th Cir. 1981); see Liteky v. United States, 510 U.S. 540, 544-556 114 S. Ct. 1147, 1152-1158, 127 L. Ed. 2d 474, 484-492 (1994) (applying the "extrajudicial source" doctrine to 28 U.S.C. § 455(a)); Liberty Lobby, Inc. v. Dow Jones Co., 838 F.2d 1287, 1301 (D.C. Cir. 1988) ("Recusal is a highly personal decision. . . ."). Thus, a magistrate judge cannot be removed by another judge using a recusal standard.

Defendant has here brought allegations of bias and impartiality against Judge Angell without first affording her the opportunity to respond. Fundamental principles of due process require that a judge accused of bias be given an opportunity to respond. See Clay, 892 F. Supp. at 13. Perhaps unwilling to undergo the rigors and the uncertain fate of a § 455 motion before Judge Angell, defendant has instead come before this Court with a § 636(c)(6) motion to vacate the reference. Because defendant is dissatisfied with the magistrate judge's rulings and has

presented no factual basis for any allegation of extra-judicial bias, defendant is improperly attempting to use § 636(c)(6) to overrule the magistrate judge. See Clay, 892 F. Supp. at 14. I find the analysis of the Clay court persuasive, adopt its conclusions, and will not "sanction the use of 28 U.S.C. § 636(c)(6) as a back-door method of raising the functional equivalent of a 28 U.S.C. § 455 motion." See Clay, 892 F. Supp. at 13.

B. Motion to Vacate Reference under 28 U.S.C. § 636(c)(6)

Even if defendant's § 636(c)(6) motion to vacate reference were properly before this Court, it would not prevail. Section 636(c)(1) provides that "[u]pon the consent of the parties, a full-time United States magistrate . . . may conduct any or all proceedings in a jury or non-jury civil matter and order the entry of judgment in the case, when specially designated to exercise such jurisdiction by the district court of the courts he serves." 28 U.S.C. § 636(c)(1); see Fed. R. Civ. P. 73(a), (b) (2001). Afterwards, "[t]he court may, for good cause shown on its own motion, or under extraordinary circumstances shown by any party, vacate a reference of a civil matter to a magistrate under this subsection." 28 U.S.C. § 636(c)(6); see Fed. R. Civ. P. 73(b). Thus, it is clear that "[t]he Court may vacate its reference to a magistrate judge on motion of a party only under 'extraordinary circumstances,'" while "[t]he Court may *sua sponte* vacate its reference only for good cause." Frank v. County of Hudson, 962 F. Supp. 41, 44 (D.N.J. 1997); see Leab v. The Cincinnati Ins. Co., Civ. A. No. 95-5690, 1997 U.S. Dist. LEXIS 18761, at *6-7 (E.D. Pa. Nov. 19, 1997); Cooley v. Foti, 1988 U.S. Dist. LEXIS 1131, at *16-20 (E.D. La. Feb. 5, 1988).

As in Leab, 1997 U.S. Dist. LEXIS 18761, at *4-6, the moving party here is proceeding under the second clause of § 636(c)(6), alleging "extraordinary circumstances," which is defined as circumstances which are "exceptional to a very large extent: most unusual." Id. at *4 (citing

Webster's Third New Intl. Dictionary (unabridged) (1986)). Accordingly, prior adverse rulings, even a drastic reduction of an award, are not extraordinary circumstances. See Leab, 1997 U.S. Dist. LEXIS 18761, at *4-5 (citing Lorenz v. Valley Forge Ins. Co., 815 F.2d 1095, 1097 (7th Cir. 1987) (finding no "extraordinary circumstance" where magistrate permitted plaintiffs to amend their complaint to request $10,000,000 in punitive damages where original complaint sought $150,000)) (five-and-a-half million dollar verdict reduced to .6% of its value not enough to be extraordinary); see also Frank, 962 F. Supp. at 44 (magistrate allotted three weeks for trial instead of six weeks requested by movant's counsel for his "witness intensive" case); MacNeil, 735 F. Supp. at 37. Perceived friction between the party and the magistrate judge, even coupled with adverse rulings, is not extraordinary, but is, in fact, quite ordinary and normal. See Leab, 1997 U.S. Dist. LEXIS 18761, at *5.

Using this standard, I now turn to defendant's four stated allegations concerning Judge Angell's conduct. First, defendant accuses Judge Angell of "irregularities favoring Doe." (Defendant's Mem. at 9.) Inasmuch as these "irregularities" are not specified in defendant's memorandum, I will take this to be a global, introductory statement, and I will move on.

Next, defendant asks this Court to consider "comments" that Judge Angell made at the "Daubert-type" hearing on March 7, 2001, "that reflect the use of an incorrect standard in evaluating Doe's expert testimony at that hearing." (Id.) True, Judge Angell announced a "rational basis" standard, while the standard under Daubert is "a preponderance of proof." Daubert v. Merrell Dow Pharm., Inc., 509 U.S. 579, 592, 113 S. Ct. 2786, 2796, 125 L. Ed. 2d 469, 482 (1993). However, Judge Angell was referring to the standard for allowing discovery, in this case, of documents that plaintiff's expert might need in formulating a theory, while the

Supreme Court in Daubert was discussing the admissibility of the expert's theory, as the final product of discovery. See id. The preliminary stage at which the March 7, 2001, hearing was held, prior to any expert discovery, made it clear that it was not intended as a true "Daubert" hearing. A "Daubert" hearing takes place only when there is a "theory," "technique," or "a proposed submission" by the expert, supported by "principles." See id. at 593-595.[5] By contrast, Judge Angell's order of the March 7, 2001, hearing stated that it would deal with the witness's "*anticipated* theory/theories" and "the type of *discovery* she needs in order to develop her expert opinion." (Order of Jan. 18, 2001 (See Defendant's Mem. at 7; Ex. J)) (emphasis added.) It was thus clear to all parties that plaintiff's expert had no theory at that point, and was likewise clear that the purpose of the March 7, 2001, hearing was not to probe the expert's theories, but to determine the course of discovery. Parties' correspondence with the Judge Angell between the time of the order and the hearing makes it doubly clear that, although Judge Angell had referred to the hearing as a "Daubert hearing," both sides understood the situation, and there was no prejudice to defendant. (See Defendant's Mem. at 7-8; Ex. K, L.)

Third, it was quite reasonable for Judge Angell to consider the settlement of Mark Breimhorst, Intl. Dyslexia Assn. and Californians for Disability Rights, U.S. Dist. Ct., N.D. Cal., Dkt. No. C993387WHO, in relation to this case, not as legal precedent, but as a rational basis for allowing discovery. The settlement of that case, in which several testing services agreed to cease

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[5] "[A] key question to be answered" under Daubert, "in determining whether a *theory or technique* is scientific knowledge that will assist the trier of fact[,] will be whether it can be (and has been) tested. Daubert, 509 U.S. at 593 (emphasis added). Among others, "[a]nother pertinent consideration is whether the *theory or technique* has been subjected to peer review and publication." Id. (emphasis added). The "overarching subject" of the inquiry envisioned in Daubert "is the scientific validity–and thus the evidentiary relevance and reliability–of the *principles that underlie a proposed submission*." Id. at 594-595 (emphasis added).

the practice of "flagging," at least raises the question as to whether defendant here has adequate documentation to justify its own practice of flagging. Any documentation that defendant may have relating to the issue, whether it would tend to support or undercut the practice, is being sought by plaintiff, and is rationally ripe for discovery.

Finally, defendant complains about Judge Angell's April 4, 2001, order "that allows only Doe to take any discovery indefinitely and summarily overrules NMBE's discovery objections without affording it a right to be heard and without a pending motion to compel." (Defendant's Mem. at 9.) Staged discovery, with plaintiff going first, then defendant, is sanctioned by the Federal Rules of Civil Procedure,[6] and makes sense under the circumstances. The disclosure of plaintiff's identity through defendant's discovery would prove unnecessary if plaintiff's discovery proved fruitless, and, moreover, would bring about the very circumstance plaintiff seeks to avoid by bringing the lawsuit.

As discussed above, defendant's accusations of judicial bias must be treated as a motion to recuse, to be addressed to Judge Angell, and thus cannot be addressed by this Court. All that remains is defendant's dissatisfaction with Judge Angell's rulings not in its favor, or at least their "accumulation." (See Defendant's Mem. at 9.) However, "[p]rior adverse rulings, in themselves, cannot form the basis for disqualification" under the "extraordinary circumstances" standard of § 636(c)(6). MacNeil, 735 F. Supp. at 37; see Leab, 1997 U.S. Dist. LEXIS 18761,

[6] See Fed. R. Civ. P. 26(d) ("Unless the court upon motion, for the convenience of the parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence, . . . ").

at *4-5; Frank, 962 F. Supp. at 44.[7] I therefore conclude that defendant has failed to demonstrate the "extraordinary circumstances" required to justify an order vacating a reference to the magistrate judge under § 636(c)(6).

Furthermore, in looking at the totality of the circumstances of this case, this Court observes that some of Judge Angell's rulings were actually in favor of defendant (See e.g. Order of Apr. 5, 2000 (Defendant's Mem. at 5; Ex. C); Order of June 1, 2000 (Defendant's Mem. at 6; Ex. E)), which belies defendant's accusation of the court's one-sidedness. Generally, "questions concerning the scope of discovery are among those matters which should be almost exclusively committed to the sound discretion of the [trial] court." Great W. Life Assurance Co. v. Levithan, 152 F.R.D. 494, 496 (E.D. Pa. 1994) (citing Wisniewski v. Johns-Manville Corp., 812 F.2d 81, 90 (3d Cir. 1987)). From its vantage point, this Court finds that not only was the magistrate judge's conduct not extraordinary, but it amounts to a reasonable course of case management.

The court in Leab concluded that courts should, as a matter of policy, be cautious in granting a motion to vacate reference to a magistrate judge:

> More than a mere reversal, the removal of a judge from a case because of the way the judge had been handling the case comes as something of a slap in the face. It could, at least subliminally, have a cooling effect on the magistrate judge's decisional independence. One of the virtues of the federal judiciary is its

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[7] In this connection, both parties cite Cooley, 1988 U.S. Dist. LEXIS 1131, at *7-16 (citing Carter v. Sea Land Services, Inc. 816 F.2d 1018 (5th Cir. 1987) (one factor court should consider in § 636(c)(6) motion to vacate is "the possibility of bias or prejudice on the part of the magistrate")), in which the court applied a recusal standard to find "extraordinary circumstances" to remove a magistrate judge. For reasons stated above, in section II(A) of this memorandum, this Court does not find that analysis persuasive. See MacNeil, 735 F. Supp. at 35 (rejecting Carter and Cooley). Also, unlike here, the allegations in Cooley were of personal, or extrajudicial, not judicial, bias. See Cooley, 1988 U.S. Dist. LEXIS 1131, at *11, 16. This Court is aware, however, that a precise legal standard for the "extraordinary circumstances" of § 636(c)(6) remains elusive.

> independence. Unpopular rulings go with the territory in this line of work. Absent the extraordinary, if error be committed, the remedy is not evicting the magistrate judge from the case, but the taking of an appeal.

Leab, 1997 U.S. Dist. LEXIS 18761, at *6; see also Frank, 962 F. Supp. at *44 (to vacate a reference on the ground of a "substantive determination" would unfairly permit a party to shop for an accommodating judge); S. Agric. Co., 568 F. Supp. at 646 (magistrate very familiar with the factual and legal issues of the case; if vacated, resulting delay would impair efficient administration of justice); see generally Wharton-Thomas v. United States, 721 F.2d 922, 924-930 (3d Cir. 1983) (finding that 28 U.S.C. § 636(c) did not violate U.S. Const. art. III because district judges had the power to vacate magistrates' orders and parties had a right of appeal); see 28 U.S.C. § 636(c)(3) ("[A]n aggrieved party may appeal directly to the appropriate United States court of appeals from the judgment of the magistrate . . . ."); Fed. R. Civ. P. 73(c) ("[A]ppeal from a judgment entered upon direction of a magistrate judge . . . will lie to the court of appeals as it would from a judgment of the district court."); Parties' Notice, Consent & Order of Ref. to Mag. J. (Document No. 19, Oct. 21, 1999) (Defendant's Mem. Ex. A) ("An appeal from a judgment entered by a magistrate judge shall be taken directly to the United States Court of Appeals . . . .").

Failing to show "extraordinary circumstances" under which to remove the magistrate judge, defendant alternatively suggests that the same relief be granted by the Court on its own motion, under the "good cause" standard of § 636(c)(6). Defendant cites Leab, 1997 U.S. Dist. LEXIS 18761, at *3, for this proposition. This Court, however, is not inclined to make any such motion. Prior rulings, even if they would consistently be in favor of one party over the other, do not constitute "good cause," any more than they constitute "extraordinary circumstances." See

Frank, 962 F. Supp. at 44 (prior adverse rulings do not satisfy "even the lesser 'good cause' standard"). The "good cause" intended by the statute is not dissatisfaction with the decisions of the magistrate, but may, in fact, be unrelated, "extrajudicial" matters. Thus, in Leab, Judge Gawthrop chose to take back his case because of a "desire to do [his] own work," the case having been assigned to the magistrate only because he was away attending a judicial seminar at the time. Leab, 1997 U.S. Dist. LEXIS 18761, at *7. This Court will thus not vacate the reference to the magistrate judge on its own motion.

Finally, this Court takes note of developments in this case subsequent to defendant's filing of the instant motion. Judge Angell granted defendent's motion for reconsideration and stay of the April 4, 2001, order that allowed plaintiff's discovery to go forward, and held a hearing on May 14, 2001, permitting defendant the opportunity to be heard on its objections to plaintiff's request for production of documents and things. The hearing resulted in a confidentiality agreement between the parties, which apparently resolved defendant's objections. Thus, defendant's objections to the adverse rulings that inspired the instant motion appear to have been addressed by Judge Angell. Still, for some unexplained reason, defendant has not withdrawn this motion, leaving this Court no choice but to rule on it.

III. CONCLUSION

In sum, defendant NMBE has failed to satisfy its burden in demonstrating that the consent order of reference to Magistrate Judge Angell should be vacated under 28 U.S.C. § 636(c)(6). The magistrate judge's rulings do not come close to rising to the level of the "extraordinary circumstances" required under the statute. Defendant has the right to seek review of Judge Angell's rulings by the Third Circuit Court of Appeals, and this would be the proper way to

challenge decisions that it considers improper. Defendant instead seeks to have Judge Angell removed by attacking her overall handling of the case. This smacks of a motion for recusal, and this Court will not allow it. This Court simply lacks jurisdiction to hear allegations that would lead to the recusal of another judge.

Once a matter has been referred to a magistrate judge, he or she effectively becomes the district judge for that case. See S. Agric. Co., 568 F. Supp. at 646. In finding the magistrate system under § 636(c) constitutional, the Third Circuit Court of Appeals noted that where the parties had agreed to the reference, the judgment is binding as if the case had been heard before the district court, because the "[p]ractice of referring pending actions is coeval[8] with the organization of our judicial system." Wharton-Thomas, 721 F.2d at 928 (citing Heckers v. Fowler, 69 U.S. (2 Wall.) 123, 128, 17 L. Ed. 759, 760 (1864)).[9] The Federal Magistrates Act, 28 U.S.C. § 636, "is designed to relieve the district courts of certain subordinate duties that often distract the courts from more important matters." Peretz v. United States, 501 U.S. 923, 934, 111 S. Ct. 2661, 2668, 115 L. Ed. 2d 808, 820 (1991). It thus "permit[s] the courts, with the litigants' consent, to 'continue innovative experimentations' in the use of magistrates to improve the efficient administration of the courts' dockets." Id. (quoting Virgin Islands v. Williams, 892 F.2d 305, 311 (3d Cir. 1989)). The reference of cases to magistrate judges for final disposition thus serves a valid, valuable, and constitutional purpose, and a motion to vacate such a reference

[8] "Coeval" is defined as "of the same or equal age or antiquity." Webster's Third New Intl. Dictionary (unabridged) (1986).

[9] For a general discussion of the Federal Magistrate Act of 1979 and the constitutional concerns related thereto, see J. Anthony Downs, The Boundaries of Article III: Delegation of Final Decisionmaking Authority to Magistrates," 52 U. CHI. L. REV. 1032 (1985).

should not be made lightly.

The reference of this case to Judge Angell, to "conduct any and all proceedings in the case, including the trial, order the entry of a final judgment, and conduct all post-judgment proceedings," was ordered only upon the voluntary consent of both parties. Defendant consented to the order of reference and has utterly failed to provide this Court with a valid reason to vacate that reference. Defendant has embarked on a voyage in a ship commanded by a captain of its own choosing. The vessel will stay the course to its port of destination. The motion will be denied.

An appropriate order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOHN DOE	:	**CIVIL ACTION**
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
NATIONAL BOARD	:	
OF MEDICAL EXAMINERS	:	
	:	
Defendant.	:	**NO. 99-4532**

O R D E R

Reed, S.J.

AND NOW, this 14th day of August, 2001, upon consideration of the motion of defendant National Board of Medical Examiners (the "NMBE") to vacate the order of reference to Magistrate Judge Angell (Document No. 53), pursuant to 28 U.S.C. § 636(c)(6) and Federal Rule of Civil Procedure 73(b), and the response and reply thereto, and having concluded for the reasons set forth in the foregoing memorandum, that this Court has no power to consider a request to recuse the magistrate judge and that the NMBE has not demonstrated the "extraordinary circumstances" required to justify an order vacating a reference under § 636(c), it is hereby **ORDERED** that the motion of the NMBE is **DENIED**.

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LOWELL A. REED, JR., S.J.