

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

SCHYLER Z. GRODMAN, M.D.,

Plaintiff,

v.

TEXAS TECH UNIVERSITY
HEALTH SCIENCES CENTER and
DR. SAMER ZAID-KAYLANI,

Defendants.

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CIVIL ACTION NO. 5:23-cv-00210-H

**DEFENDANT DR. SAMER ZAID KAYLANI'S MOTION TO DISMISS
PLAINTIFF'S AMENDED COMPLAINT**

TO THE HONORABLE JUDGE JAMES WESLEY HENDRIX:

Defendant Dr. Samer Zaid Kaylani (“Dr. Zaid Kaylani” or “Defendant”) files this motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). This court should dismiss Plaintiff’s claim against Dr. Zaid Kaylani because it is not cognizable.

BACKGROUND

Plaintiff Schyler Z. Grodman, M.D., (“Grodman” or “Plaintiff”) was a resident in the Pediatrics Residency Program at Texas Tech University Health Sciences Center (“TTUHSC”) from 2019 until his termination in January 2022. Dkt. 21, Plaintiff’s First Amended Complaint ¶ 19.

Dr. Zaid Kaylani is no longer employed by TTUHSC, but during Grodman’s residency, Dr. Zaid Kaylani was the director of TTUHC’s Pediatrics Residency

Program and Grodman's direct supervisor. *Id.* at ¶ 13 (acknowledging that Dr. Zaid Kaylani is the "former director" of the program); *id.* at Ex. L (describing Dr. Zaid Kaylani as Grodman's "direct supervisor"). Grodman brings a single Section 1983 procedural due process claim against Dr. Zaid Kaylani in his individual capacity, alleging that he was terminated without due process. *Id.* at ¶¶ 78-94; *id.* at ¶ 6 ("Defendant Kaylani is sued solely in his individual capacity.").

Grodman also brings a Section 1983 procedural due process claim against TTUHSC. *Id.* at ¶¶ 78-94. Finally, Grodman brings claims under the Rehabilitation Act against TTUHSC. *Id.* at ¶¶ 64-78.

ISSUES IN DISPUTE AND STANDARD OF REVIEW

Whether Grodman's sole claim against Dr. Zaid Kaylani should be dismissed for failure to state a claim upon which relief can be granted pursuant to Rule 12(b)(6). To avoid dismissal, a plaintiff must plead sufficient facts to "state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* "We do not accept as true conclusory allegations, unwarranted factual inferences, or legal conclusions." *Plotkin v. IP Axess Inc.*, 407 F.3d 690, 696 (5th Cir.2005); *see also Iqbal*, 556 U.S. at 679 ("While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations.").

ARGUMENT & AUTHORITIES

Grodman’s due process claim against Dr. Zaid Kaylani is not cognizable for two independent reasons. (1) Grodman cannot obtain any of the relief he seeks from Dr. Zaid Kaylani; and (2) Grodman’s claim is barred by qualified immunity.

Grodman cannot obtain any of the relief he seeks from Dr. Zaid Kaylani because he sues Dr. Zaid Kaylani in his individual capacity only, and Dr. Zaid Kaylani has no authority in his individual capacity to carry out any of the actions that Grodman asks Dr. Zaid Kaylani and TTUHSC to implement. Dkt. 21 at ¶ 6 (“Defendant Kaylani is sued solely in his individual capacity.”). Grodman seeks injunctive relief in the following forms: reinstatement, expungement of probation, further alterations of his records, and the release of his academic records. Dkt. 21 at ¶¶ 98-100; Dkt. 21 at p. 31 (“Prayer”). Grodman cannot obtain any of the equitable relief he seeks from Dr. Zaid Kaylani in his individual capacity, so Grodman’s sole claim against Dr. Zaid Kaylani is devoid of merit and should be dismissed out of hand. *See Scott v. Flowers*, 910 F.2d 201, 213 (5th Cir. 1990) (noting relief sought could only be obtained from defendants in official capacity); *see also Feit v. Ward*, 886 F.2d 848, 858 (7th Cir. 1989) (holding that a declaration directed at state policy could be obtained only from the defendants in their official capacities, not as private individuals). Furthermore, Dr. Zaid Kaylani is no longer employed by TTUHSC, so it would be futile for Grodman to amend his pleadings to sue Dr. Zaid Kaylani in his official capacity. Dkt. 21 at ¶ 13 (acknowledging that Dr. Zaid Kaylani is the “former director” of TTUHC’s Pediatrics Residency Program).

To the extent Grodman is seeking monetary damages by his reference to “[a]ny further relief to which he may be justly entitled,” Dkt. 21 at p. 31, qualified immunity would bar such relief. “Qualified immunity shields federal and state officials from money damages unless a plaintiff pleads facts showing (1) that the official violated a statutory or constitutional right, and (2) that the right was ‘clearly established’ at the time of the challenged conduct.” *Ashcroft v. al-Kidd*, 563 U.S. 731, 735 (2011) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). A defendant does not violate “a clearly established right unless the right’s contours were sufficiently definite that any reasonable official in the defendant’s shoes would have understood that he was violating it.” *Plumhoff v. Rickard*, 572 U.S. 765, 778–79 (2014). This means that **“existing precedent . . . placed the statutory or constitutional question’ confronted by the official ‘beyond debate.”** *Id.* at 779 (emphasis added) (quoting *al-Kidd*, 563 U.S. at 741). In other words, the plaintiff must “point to controlling authority—or a robust consensus of persuasive authority—that defines the contours of the right in question with a high degree of particularity.” *Morgan v. Swanson*, 659 F.3d 359, 371–72 (5th Cir. 2011) (en banc) (citations omitted); *see also White v. Pauly*, 137 S. Ct. 548, 552 (2017) (per curiam) (“clearly established law should not be defined at a high level of generality,” but instead “must be particularized to the facts of the case” (internal quotation marks omitted)). “[T]he unlawfulness of [the] alleged conduct” must be “readily apparent from relevant precedent in sufficiently similar situations.” *Atteberry v. Nocona Gen. Hosp.*, 430 F.3d 245, 257 (5th Cir. 2005). A court must “consider not only whether courts have recognized the existence of a particular

constitutional right, but also . . . whether that right has been defined with sufficient clarity to enable a reasonable official to assess the lawfulness of his conduct.” *McClendon v. City of Columbia*, 305 F.3d 314, 331 (5th Cir. 2002). It is Plaintiff’s “burden to point out the clearly established law.” *Clarkston v. White*, 943 F.3d 988, 993 (5th Cir. 2019).

There is no existing precedent involving similar facts that would suffice to show that Dr. Zaid Kaylani violated a clearly established right, and Plaintiff does not even attempt to cite such a case, precluding Plaintiff’s Section 1983 due process claim against Dr. Dr. Zaid Kaylani in his individual capacity.

The threshold requirement for any due process claim is the government’s deprivation of a liberty or property interest. *DePree v. Saunders*, 588 F.3d 282, 289 (5th Cir. 2009). The Supreme Court employs a two-step analysis to determine whether an individual’s procedural due process rights have been violated. *Meza v. Livingston*, 607 F.3d 392, 399 (5th Cir. 2010). The Court first examines “whether there exists a liberty or property interest which has been interfered with by the State;” then it “examines whether the procedures attendant upon that deprivation were constitutionally sufficient.” *Ky. Dep’t of Corr. v. Thompson*, 490 U.S. 454, 460 (1989).

To overcome Dr. Zaid Kaylani’s qualified immunity, Grodman would need to be able show that “the unlawfulness of [the] alleged conduct” was “readily apparent from relevant precedent in sufficiently similar situations.” *Atteberry*, 430 F.3d at 257. Here, that would require Grodman to (1) cite binding case law holding that medical

residents have a property or liberty interest in their continued enrollment in a residency program; and (2) cite binding case law holding that procedures akin to those Grodman received during his termination were constitutionally insufficient. Grodman can do neither.

Plaintiff alleges that he has a “constitutionally protected property [interest] in his position at TTUHSC as a Third-Year Resident in the Pediatrics Program” and that as a member of the residency program he “had a constitutionally protected valid entitlement to continued employment at the University.” Dkt. 21 ¶¶ 81, 83. But in the Fifth Circuit, there is no clearly established property or liberty interest in one’s continued enrollment in a medical residency. There is also no clearly established right to more process beyond what Grodman alleges he received. Therefore, Grodman’s claim against Dr. Zaid Kaylani is barred by qualified immunity.

The Fifth Circuit has never held that medical residents have a Constitutionally-protected property or liberty interest in their continued enrollment in a residency program. Instead, the Fifth Circuit has repeatedly emphasized that medical residents are students rather than traditional public employees, and “[c]ourts overwhelmingly agree that students, whether dismissed for academic or disciplinary reasons, are not entitled to as much procedural protection under the Fourteenth Amendment as employees who are terminated from their jobs.” *Davis v. Mann*, 882 F.2d 967, 973 (5th Cir. 1989) (affirming dismissal of procedural due process claim brought by dental resident terminated from residency program). “In the context of due process, medical residents are students rather than employees of the

hospital.” *Ekmark v. Matthews*, 524 Fed. Appx. 62, 63 (5th Cir. 2013). “[A] medical resident is not a traditional public employee for due process purposes.” *Shaboon v. Duncan*, 252 F.3d 722, 732 (5th Cir. 2001). This is because residencies are fundamentally academic in nature:

“The residency program is distinct from other types of employment in that the resident’s ‘work’ is what is academically supervised and evaluated. It is well-known that the primary purpose of a residency program is not employment or a stipend, but the academic training and the academic certification for successful completion of the program. The certificate, like the diploma, tells the world that the resident has successfully completed a course of training and is qualified to pursue further specialized training or to practice in specified areas.”

Mann, 882 F.2d at 974. Thus, the Fifth Circuit has repeatedly declined to hold that medical residents have a Constitutionally-protected property or liberty interest in their continued residency enrollment. Instead, the Fifth Circuit has repeatedly held that even if such an interest were to exist, terminated residents are not entitled to as much procedural protection as traditional employees. *Id.* at 973.

“The physicians and administrators directing residency programs are in the best position to determine which candidates are suited to progress through the program and have satisfactorily completed the requirements for certification. **Adverse academic actions against medical residents require only the minimum procedure of notice and not a hearing.**” *Ekmark*, 524 Fed. App’x at 64 (emphasis added) (citations omitted). “[D]ismissals for academic (as opposed to disciplinary) cause do not necessitate a hearing.” *Board of Curator of Univ. of Missouri v. Horowitz*, 435 U.S. 78, 87 (1978); *see also Shaboon*, 252 F.3d at 731

(medical resident not entitled to any type of hearing as a matter of law when dismissed on academic grounds); *Patel v. Midland Mem'l Hosp. & Med. Ctr.*, 298 F.3d 333, 339 (5th Cir. 2002) (because hospital committee had reasonable cause to believe that cardiologist's method posed a danger to patient safety, suspension of his clinical privileges without notice and an opportunity to be heard did not violate his procedural due process rights).

Here, Grodman alleges that he received probation letter on December 17, 2021, was suspended on December 23, 2021, and was recommended for dismissal on January 7, 2022; his recommendation for dismissal was reviewed by an Appeal Review Subcommittee at an appeal hearing in February 2022 that Plaintiff requested before any final determination was made by TTUHSC. Dkt. 21 ¶ 19, 55; Dkt. 21, Ex. J, K, M. Grodman was informed that his probation was due to concerns given his medical knowledge, patient care, and professionalism. Dkt. 21, Ex. J. When Grodman was suspended, he was informed that it was for having violated the terms of his probation and that his performance constituted a danger to patients. Dkt. 21, Ex. K. When he was recommended for dismissal, Grodman was informed that it was due to performance that presents a serious compromise to acceptable standards of patient care, unprofessional conduct towards his patients and colleagues, failure to progress to the expected level of competency as a third-year pediatric resident, and failure to follow the probation objectives outlined in his probation letter that jeopardized patient welfare. Dkt. 21, Ex. M. Grodman appealed the decision and was afforded a hearing. Dkt 21, ¶ 55.

Grodman's claim against Dr. Zaid Kaylani is barred by qualified immunity, because he lacked a clearly established constitutionally-protected interest in his continued residency enrollment, and even if such a right were to exist, he received *more* procedural protection than constitutionally required, in the form of ample notice and a hearing. Grodman's claim against Dr. Zaid Kaylani should therefore be dismissed for failure to state a claim.

PRAYER FOR RELIEF

For all the foregoing reasons, Dr. Samer Zaid Kaylani respectfully requests that this Court dismiss Plaintiff's claims against him and grant such further relief to which he may be entitled.

DATED: February 20, 2024 Respectfully submitted.

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CERTIFICATE OF FILING AND SERVICE

On February 20, 2024, the undersigned attorney filed the foregoing document with the Clerk of the Court for the Northern District of Texas and served a true and correct copy of the foregoing to all counsel of record in compliance with the Federal Rules of Civil Procedure.

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