

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

**REPLY IN SUPPORT OF 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 reply to Plaintiff’s Response to Defendant’s Motion to Dismiss Plaintiff’s Amended Complaint. Dkt. 27 (“Grodman’s Response”).¹ Because nothing in Grodman’s Response shows a legally viable claim against Dr. Zaid Kaylani, this court should dismiss Grodman’s sole claim against him.

¹ Grodman's Response is incorrectly entitled "Plaintiff's Response to Defendant's Partial Motion to Dismiss Plaintiff's Amended Complaint." Dkt. 27 (emphasis added). Defendant Dr. Zaid Kaylani's motion to dismiss is not partial; it seeks complete dismissal of the only claim against Dr. Zaid Kaylani.

I. Grodman has failed to state a viable claim against Dr. Zaid Kaylani.

A. Grodman cannot obtain any of the relief he seeks from Dr. Zaid Kaylani.

Plaintiff Schyler Z. Grodman, M.D., (“Grodman” or “Plaintiff”) seeks only injunctive relief, and Dr. Samer Zaid Kaylani cannot provide any of the relief Grodman seeks. Grodman seeks only 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”). In Grodman’s Response, Grodman acknowledges that he only seeks injunctive relief. Dkt. 27 at 3. Furthermore, Grodman sues Dr. Zaid Kaylani “solely in his individual capacity.” Dkt. 21 ¶ 6.

Grodman does not dispute that Dr. Zaid Kaylani is no longer employed by Texas Tech University Health Sciences Center (“TTUHSC”). Dkt. 21 at ¶ 13 (acknowledging that Dr. Zaid Kaylani is the “former director” of the program); *see generally* Dkt. 27. Dr. Zaid Kaylani has no authority in his individual capacity (nor in any official capacity) to carry out any of the injunctive relief Grodman seeks: Dr. Zaid Kaylani has no authority to reinstate Grodman, no authority to expunge Grodman’s probation or alter any of his records held by TTUHSC, and no authority to release any of his academic records held by TTUHSC, including any evaluation that Dr. Zaid Kaylani wrote during the course of his employment as director of TTUHSC’s Pediatrics Residency Program, as any such academic records are in the exclusive custody and control of TTUHSC.

Because Dr. Zaid Kaylani has no authority to carry out any of the injunctive relief Grodman seeks, Grodman's sole claim against Dr. Zaid Kaylani should be dismissed for failure to state a claim. *See Scott v. Flowers*, 910 F.2d 201, 213 (5th Cir. 1990).

In his Response, Grodman makes two irrelevant arguments. He asserts that he sufficiently alleged Dr. Zaid Kaylani's individual involvement in the alleged constitutional deprivations. Dkt. 27 at 7-9. But Dr. Zaid Kaylani's alleged individual involvement does not change the fact that Grodman has not stated a viable claim against Dr. Zaid Kaylani because Dr. Zaid Kaylani cannot provide any of the relief Grodman seeks. Grodman's Response also asserts that sovereign immunity does not bar Grodman's claim against Dr. Zaid Kaylani. Dkt. 27 at 5-6. But in his Motion to Dismiss, Dr. Zaid Kaylani does not argue that sovereign immunity bars Grodman's claim. Dr. Zaid Kaylani's Motion to Dismiss only argues that Grodman's claim should be dismissed for two 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. Dkt. 23 at 3. Therefore, Grodman's discussions of individual involvement and sovereign immunity are irrelevant to Dr. Zaid Kaylani's Motion to Dismiss.

B. Grodman does not seek monetary damages.

Grodman does not seek any monetary damages. Instead, he only seeks injunctive relief. Dkt. 21 at ¶¶ 98-100; Dkt. 21 at p. 31 ("Prayer"). In Grodman's Response, Grodman acknowledges that he only seeks injunctive relief. Dkt. 27 at 3. Dr. Zaid Kaylani cannot provide any of the relief Grodman seeks, *see supra*.

Therefore, Grodman's sole claim against Dr. Zaid Kaylani can and should be dismissed without any additional analysis.

C. Monetary damages against Dr. Zaid Kaylani are barred by qualified immunity.

Even if Grodman were to amend his pleading to seek monetary damages against Dr. Zaid Kaylani, such an amendment would be futile, because Grodman's claim against Dr. Zaid Kaylani would be barred by qualified immunity.

In his Response, Grodman argues that he had a constitutionally protected interest in his continued enrollment in the TTUHSC residency program, and the process Grodman received was constitutionally insufficient. Dkt. 27 at 4. These unsupported assertions do not overcome Dr. Zaid Kaylani's qualified immunity. To overcome Dr. Zaid Kaylani's qualified immunity, Grodman would need 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. *See Atteberry v. Nocona Gen. Hosp.*, 430 F.3d 245, 257 (5th Cir. 2005). Grodman has done neither, so even if he were to amend his pleading to seek monetary damages against Dr. Zaid Kaylani, his claim against Dr. Zaid Kaylani would be barred by qualified immunity.

Grodman's Response does not cite a single case showing that Dr. Zaid Kaylani violated any "clearly established" right. *Ashcroft v. al-Kidd*, 563 U.S. 731, 735 (2011). Instead, Grodman's Response cites three cases, and admits that in all three cases,

the Courts did not hold that medical residents have a property or liberty interest in their continued enrollment in a residency program. Dkt. 27 at 6 (citing *Board of Curators of University of Missouri v. Horowitz*, 435 U.S. 78 (1978); *Shaboon v. Duncan*, 252 F.3d 722, 730 (5th Cir. 2001); *Davis v. Mann*, 882 F.2d 967, 973 (5th Cir. 1989)). Instead, the Courts held that even if such a protected interest were to exist, terminated residents are not entitled to as much procedural protection as traditional employees, and the process the residents received was not constitutionally deficient. *Horowitz*, 435 U.S. at 90; *Mann*, 882 F.2d at 974; *Shaboon*, 252 F.3d at 731.

Because there is no binding case law holding that medical residents have a property or liberty interest in their continued enrollment in a residency program, Grodman has not plausibly alleged that his termination from the residency program violated any “clearly established” right, so the analysis can stop there: his claim against Dr. Zaid Kaylani is barred by qualified immunity. *Al-Kidd*, 563 U.S. at 735.

Grodman has also not plausibly alleged that his termination from the residency program violated any “clearly established” right because Grodman has not been able to cite any binding case law holding that procedures akin to those Grodman received during his termination were constitutionally insufficient.

1. Qualified immunity bars a claim for monetary damages against Dr. Zaid Kaylani regardless of whether Grodman was dismissed for academic or disciplinary reasons.

In his Response, Grodman argues that he plausibly alleged his due process claim against Grodman because Grodman was dismissed for disciplinary rather than academic reasons. Grodman’s claim is nevertheless barred by qualified immunity for

at least two reasons. First, Grodman's Response cites portions of his live pleading that show Grodman was indeed terminated for academic reasons. Dkt. 27 at 7-8. Specifically, Grodman alleges that his probation letter "stated the major elements that Grodman needed to improve were test scores." Dkt 7 at 8 (citing Dkt. 21 at ¶ 37). Low test scores are plainly an academic concern. Grodman's Response further states that his live pleading alleges the termination decision was based in part on a "prior period of observation [which] was based solely on his disabilities and academic performance." Dkt 7 at 8 (emphasis added).

But even if Grodman had alleged that he was dismissed for disciplinary reasons, he has still not viably pled a due process claim that can overcome Dr. Zaid Kaylani's qualified immunity. As the Fifth Circuit stated in a similar case involving a medical student named Shaboon who sued over her termination from a medical residency program:

Nevertheless, Shaboon received sufficient procedural protection even if her dismissal was solely for disciplinary reasons. "All that *Goss* required [for disciplinary actions] was an 'informal give-and-take' between the student and the administrative body dismissing [her] that would, at least, give the student 'the opportunity to characterize [her] conduct and put it in what [she] deems the proper context.'" *Horowitz*, 435 U.S. at 85–86, 98 S.Ct. 953 (*quoting Goss*, 419 U.S. at 584, 95 S.Ct. 729).

Shaboon, 252 F.3d at 731. Here, Grodman alleges that he received such an informal give-and-take with TTUHSC and had the opportunity to characterize and contextualize his conduct: he received a probation letter on December 17, 2021, was suspended on December 23, 2021, was recommended for dismissal on January 7, 2022, and his recommendation for dismissal was reviewed by an Appeal Review

Subcommittee at an appeal hearing in February 2022 that Grodman requested before any final determination was made by TTUCHSC. Dkt 21, ¶¶ 19, 36-37, 55; Dkt. 21, Ex. J, K, M. To overcome Dr. Zaid Kaylani's qualified immunity, Grodman would need to show binding case law clearly establishing that the process Grodman received was constitutionally insufficient: he cannot as there is no such case. Grodman has also not shown any binding case law clearly establishing that Grodman's hearing was constitutionally insufficient because it was allegedly a "hearing in name only after already determining the outcome." Dkt. 27 at 9. The Fifth Circuit case law instead shows that Grodman received all the process he was due, if any. *Shaboon*, 252 F.3d at 731; *Horowitz*, 435 U.S. at 90; *Mann*, 882 F.2d at 974.

In short, even if Grodman were to amend his pleading to seek monetary damages against Dr. Zaid Kaylani, Grodman's claim against Dr. Zaid Kaylani would still be barred by qualified immunity because Grodman cannot show that TTUHSC violated any clearly established right.

CONCLUSION AND PRAYER

For all the foregoing reasons, Dr. Samer Zaid Kaylani respectfully requests that this Court dismiss Plaintiff's sole claim against him.

DATED: March 28, 2024

Respectfully submitted.

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CERTIFICATE OF FILING AND SERVICE

On March 28, 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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