

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

GABRIEL G. ATAMIAN,	:	
	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	No. 01-CV-610
	:	
ALBERT H. MASLAND, acting commissioner,	:	
KEITH E. BASHORE, prosecuting attorney, and	:	
'JOHN DOE', a/k/a 'investigating dentist,' of the	:	
Bureau of Professional and Occupational Affairs,	:	
	:	
Defendants.	:	

MEMORANDUM

BUCKWALTER, J.

July 6, 2001

Presently before this Court is a motion to dismiss on behalf of Defendants Albert H. Masland (“Masland”) and Keith E. Bashore (“Bashore”) (collectively “Defendants”). The Court grants Defendants’ motion in its entirety.

I. BACKGROUND

Gabriel G. Atamian (“Plaintiff”) is a pro se plaintiff¹ who brings before this court a variety of claims surrounding an operation that he alleges was performed on him unnecessarily. Plaintiff filed a complaint with the Bureau of Professional and Occupational Affairs (“BPOA”) complaining that the conduct of the oral surgeon, Dr. Assadzadeh, was improper. BPOA assigned an investigating attorney to review Plaintiff’s claim. However, Plaintiff requested that BPOA replace this investigator, an individual of Jewish descent, with a non-Jewish one. Plaintiff

¹ Plaintiff represents himself as possessing a Juris Doctorate. Therefore, the Court will hold his submissions to the same standard as those of a licensed attorney even though he is pro se.

explained that Jewish physicians have conspired against him and have harassed him throughout several states, including Arizona, Maryland, Massachusetts and Pennsylvania. The conspiracy allegedly began in New York when Plaintiff was in medical school and was perpetuated when “plaintiff’s beloved mother was murdered by a jewish [sic] physician....” See Compl. ¶ 23(b). Plaintiff stated that “Until today, the jewish [sic] conspiracy is alive and still continues harassing plaintiff.” Id.

In accordance with Plaintiff’s concerns, BPOA placed a non-Jewish attorney in charge of reviewing Plaintiff’s complaint. Upon evaluating the complaint and the evidence Plaintiff had submitted, BPOA decided not to bring charges against Dr. Assadzadeh. Plaintiff is convinced that this conclusion only could have resulted from an improper investigation, and therefore, he contends that Defendants’ investigation must have been defective and Defendants were contributing to the Jewish conspiracy. Plaintiff filed a complaint in this court alleging various constitutional and statutory claims charging Defendants with inadequately reviewing his complaint and with contributing to a conspiracy.

II. LEGAL STANDARD

For a motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure, the Court looks first at the language of the rule which provides that, in response to a pleading, a defense of "failure to state a claim upon which relief can be granted" may be raised by motion. Fed. R. Civ. P. 12(b)(6). In considering a motion to dismiss, the court must only consider those facts alleged in the complaint. See ALA v. CCAIR, Inc., 29 F.3d 855, 859 (3d Cir. 1994). Also, the court must take all well pleaded facts in the complaint as true and view them in the light most favorable to the plaintiff. See Jenkins v. McKeithen, 395 U.S. 411, 421

(1969). The pleader must provide sufficient information to outline the elements of the claim, or to permit inferences to be drawn that these elements exist. Kost v. Kozakiewicz, 1 F.3d 176, 183 (3d. Cir. 1993). A complaint should be dismissed if "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." Hishon v. King & Spalding, 467 U.S. 69, 73 (1984).

III. DISCUSSION

Plaintiff brings claims against Defendants in two counts. The first count is for violation of Due Process and Equal Protection under 42 U.S.C. § 1983 on the grounds that Defendant did not grant Plaintiff a hearing before the Board of Dental Examiners. The second count is a civil rights claim brought under 42 U.S.C. § 1985(3) and 42 U.S.C. § 1986 alleging conspiracy and “neglect to prevent conspiratorial wrong” that resulted in violation Plaintiff’s due process and equal protection rights as guaranteed by the Fourteenth Amendment. Plaintiff seeks injunctive relief in the form of a court order directing Defendants to provide Plaintiff with a hearing before the Board of Dental Examiners as well as compensatory damages.

A. State Law Claims

To the degree that Plaintiff asserts claims against Defendants for common law conspiracy or other grounds under the laws of the Commonwealth of Pennsylvania, these claims must fail as they are barred by the doctrine of sovereign immunity. Employees and officials of the Commonwealth, acting in the scope of their duties, are protected by sovereign immunity unless the situation falls into one of nine instances where the Commonwealth has specifically waived its immunity. See 1 Pa. C.S. § 2310. Plaintiff’s claims are not covered by any of these situations, and therefore, as Plaintiff concedes, the state law claims are dismissed.

B. Count I: Violation of Due Process and Equal Protection Rights

Plaintiff alleges that Defendants violated his due process rights because they did not provide him with an informal hearing or an oral examination when evaluating the complaint he filed with their state agency. However, Plaintiff does not identify which constitutionally protected interests, life, liberty or property, were affected by Defendants' decision. As § 1983 is not a source of substantive rights and a due process claim requires a deprivation of one of the aforementioned interests, Plaintiff's failure to state which rights Defendant allegedly violated makes his complaint deficient. See Graham v. O'Connor, 490 U.S. 386, 393-94 (1989). Moreover, in this context, a "proper" investigation by the BPOA, which Plaintiff believes involves hearings or examinations, is not a protected interest by the Fourteenth Amendment. See Hunter v. Securities Exchange Commission, 879 F. Supp. 494 (E.D. Pa. 1995) (finding no due process claim even where an investigation was conducted unnecessarily or in bad faith); Pierce v. Delta County Dep't of Social Serv., 119 F. Supp. 2d 1139, 1152-54 (D. Col. 2000) (holding that county agency did not violate due process where it failed to properly investigate a state complaint). Accordingly, Plaintiff lacks grounds on which to base his claim and Defendants' motion to dismiss this count is granted.²

C. Conspiracy Claims

Plaintiff asserts that Defendants interfered with his civil rights by denying him a hearing with the Board of Dental Examiners and thereby contributing to the Jewish conspiracy. See Comp. ¶ 25. However, these allegations are not sufficient to establish a claim for conspiracy

² Although it is possible that Plaintiff's claims are barred by the Eleventh Amendment or can be dismissed on other grounds, the Court will not address these arguments because Plaintiff fails to allege claims on which relief could be granted.

under either 42 U.S.C. § 1985(3) or 42 U.S.C. § 1986. To establish a claim under these statutes, Plaintiff's complaint must contain "factual allegations that the defendants plotted, planned, or conspired together to carry out the chain of events." Safeguard Mut. Ins. Co. v. Miller, 477 F. Supp. 299, 304 (E.D. Pa. 1979) (quoting Ammlung v. City of Chester, 494 F.2d 811, 814 (3d Cir. 1974). Additionally, "mere conclusory allegations that a conspiracy existed will not survive a motion to dismiss." Rogers v. Mount Union Borough, 816 F. Supp. 308, 314 (M.D. Pa. 1993).

Plaintiff outlines a chronology of events which he concludes are part of an overarching conspiracy. While he offers no facts suggesting that these events are anything more than unfortunate coincidence, his allegations of Defendants' involvement are even more tenuous. The Court construes the crux of Plaintiff's claims to be that Defendants contributed to the Jewish conspiracy by denying Plaintiff a hearing with the Board of Dental Examiners. Even assuming *arguendo* that a broader conspiracy existed, Plaintiff fails to allege any facts indicating that Defendants plotted or planned with the conspirators to achieve a particular end. Without showing some agreement, both of Plaintiff's claims must fail. Accordingly, Plaintiff's claims for conspiracy under these statutes cannot survive the motion to dismiss and Defendants' motion is granted.

IV. CONCLUSION

For the reasons stated above, Defendants' motion is GRANTED in its entirety and Plaintiffs claims against these defendants are dismissed. This case is closed.

