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November 20, 2014

Maura S. Doyle, Clerk
Supreme Judicial Court for Suffolk County
John Adams Courthouse
One Pemberton Square, Suite 1300
Boston, MA 02108-1707

Re: Bharanidharan Padmanabhan v. Division of Administrative Law Appeals,
Supreme Judicial Court for Suffolk County, No. SJ-2014-0434

Dear Clerk Doyle:

Enclosed for filing in the above referenced case, please find the Defendant's Motion to Dismiss Plaintiff's Petition for Certiorari Review.

Thank you for your assistance in this matter.

Very truly yours,

A handwritten signature in cursive script that reads "Amy Spector".

Amy Spector
Assistant Attorney General
(617) 963-2076

cc: Bharanidharan Padmanabhan, Pro Se

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY

NO. SJ-2014-0434

BHARANIDHARAN PADMANABHAN,

Plaintiff,

v.

DIVISION OF ADMINISTRATIVE LAW
APPEALS,

Defendant.

DEFENDANT'S MOTION TO DISMISS
PLAINTIFF'S PETITION FOR CERTIORARI REVIEW

Defendant Division of Administrative Law Appeals (“DALA”) respectfully submits this motion to dismiss the petition filed by plaintiff Bharanidharan Padmanabhan (“Dr. Padmanabham”), who appears here pro se. In his petition, Dr. Padmanabhan seeks review, under the certiorari statute, G.L. c. 249, § 4, of a DALA magistrate’s interlocutory order denying Dr. Padmanabhan’s motion to dismiss disciplinary proceedings that were initiated against him by the Board of Registration in Medicine and that remain pending at DALA. Dr. Padmanabhan seeks reversal of the magistrate’s order denying his motion to dismiss and a stay of the DALA proceedings.

The Court should deny Dr. Padmanabhan’s request for relief and dismiss his premature petition for failure to state a claim upon which relief may be based, because certiorari review is unavailable where, as here, an alternative remedy exists, namely, an action for judicial review under G.L. c. 30A, § 14, and G.L. c. 112, § 64, following completion of the hearing process at DALA and a final decision by the Board of Registration in Medicine.

PROCEDURAL AND FACTUAL BACKGROUND

The procedural and factual background relevant to this motion, as set forth in the petition, is as follows.

In November 2010, Dr. Padmanabhan, who is licensed to practice medicine in Massachusetts, was terminated from his employment at Cambridge Health Alliance. See Complaint in the Nature of Petition for a Writ of Certiorari and to Invoke the General Superintendence of the Court (“Petition”) ¶¶ 1, 4. Dr. Padmanabhan contends that he was terminated based on “false charges” that he had harmed patients, allegedly in retaliation for his action in reporting patient neglect and insurance fraud by other staff at Cambridge Health Alliance. Petition ¶¶ 3-4. The Board then initiated disciplinary proceedings against him, based on the same “false charges” of patient harm made against him at Cambridge Health Alliance. Petition ¶¶ 1, 9.¹

The Board referred the matter to DALA for an adjudicatory hearing. Petition ¶ 14. Viewing the Board’s disciplinary charges as a “corrupt proxy action on behalf of . . . CHA [Cambridge Health Alliance], Dr. Padmanabhan, acting pro se, filed a motion at DALA seeking dismissal of the Board’s disciplinary proceedings against him. Petition ¶¶ 12, 16. He asserted that the Board had committed “numerous violations of procedure” and that the Board, lacking any “independent claim of it’s [sic] own,” had “simply warmed over already-disproved allegations handed to it by CHA,” with the result that the Board’s charges against him did not

¹ Dr. Padmanabhan contends that Dr. Rachel Nardin, Chief of Neurology at Cambridge Health Alliance, “retaliated” against him and used “false charges” to have him terminated. Petition ¶ 4. He claims that the Board has pursued disciplinary proceedings against him based on those “false charges,” despite the fact that “ZERO patient complaints” have actually been made against him; and he further asserts that “FORTY Massachusetts patients” have complained to the Board about Dr. Nardin but that she remains “untouchable” and that the Board has “carried out” her “wishes” by pursuing the charges against him. Petition ¶ 11; Petition, Prayer for Relief ¶ 3.

“state a claim.” Petition ¶ 16. He also sought dismissal of the disciplinary charges on the basis that the expert whose report “forms the basis of [the Board’s] false charges” against Dr. Padmanabhan “indicated his unwillingness to testify” at the DALA hearing. Petition ¶¶ 15, 18. The DALA magistrate denied Dr. Padmanabhan’s motion to dismiss, see Petition ¶ 17, and scheduled an adjudicatory hearing in the matter in January 2015.

Dr. Padmanabhan filed his petition in this Court on October 20, 2014, seeking reversal of the DALA magistrate’s order denying his motion to dismiss the disciplinary proceedings. Petition, Prayer for Relief ¶ 1. He alleges that the Board violated his due process rights by pursuing a “false prosecution” against him, by causing “deliberate delays” in the pursuit of the disciplinary charges, and by “prosecutorial misconduct” of the Board’s complaint counsel. Petition, Prayer for Relief ¶¶ 2-3. In a separate motion, Dr. Padmanabhan requested that the Court stay the DALA proceedings. See Motion for Stay of Proceedings in the Division of Administrative Law Appeals.

ARGUMENT

The petition should be dismissed for failure to state a claim, because certiorari review is unavailable where, as here, an alternative remedy exists, namely, through the adjudicatory hearing process at DALA (which Dr. Padmanabhan has not yet exhausted), followed by review of the DALA magistrate’s recommended decision and entry of a final decision by the Board of Registration in Medicine, and then followed by an action for judicial review under G.L. c. 30A, § 14, and G.L. c. 112, § 64, in the event that Dr. Padmanabhan is aggrieved by the Board’s final decision.

“The certiorari statute provides an avenue for aggrieved parties to ‘correct errors in [quasi judicial administrative] proceedings . . . which . . . are not otherwise reviewable by motions or

by appeal.” Hoffer v. Board of Registration in Medicine, 461 Mass. 451, 456 (2012) (quoting G.L. c. 249, § 4). “To survive a motion to dismiss, a plaintiff relying on the certiorari statute must sufficiently allege ‘(1) a judicial or quasi judicial proceeding, (2) from which there is no other reasonably adequate remedy, and (3) a substantial injury or injustice arising from the proceeding under review.’” Hoffer, id. (quoting Indeck v. Clients’ Sec. Bd., 450 Mass. 379, 385 (2008)). Given this legal standard, “[c]ertiorari cannot be requested where administrative remedies terminating in judicial review are available and unexhausted.” Cumberland Farms, Inc. v. Planning Board of Bourne, 56 Mass. App. Ct. 605, 608 (2002) (internal citation omitted). Here, the prerequisites for certiorari review are not satisfied, because Dr. Padmanabhan has another adequate remedy, namely, the adjudicatory proceeding at DALA and the Board of Registration in Medicine, and – if he is aggrieved by the Board’s final decision – through subsequent judicial review of that decision under G.L. c. 30A, § 14, and G.L. c. 112, § 64.

In particular, insofar as Dr. Padmanabhan claims that the Board violated his procedural rights in its pursuit of disciplinary charges against him, and that those charges lack merit, he may present such claims during the adjudicatory proceedings at DALA, which are pending. Similarly, if DALA issues a recommended decision that is adverse to him, he may raise his claims to the Board of Registration in Medicine in connection with its review of the DALA magistrate’s recommended decision. Finally, he may seek judicial review of the Board’s final decision under G.L. c. 30A, § 14, and G.L. c. 112, § 64. In any such action under G.L. c. 30A, § 14, and G.L. c. 112, § 64, he will have the opportunity to re-assert unsuccessful claims presented to DALA and the Board, as well as to assert claims relating to the conduct of the adjudicatory proceeding before DALA and the Board, including, for example, by challenging

procedural aspects of the hearings or the sufficiency of evidence presented there.² See G.L. c. 30A, § 14(7) (court may set aside agency decision if it is in violation of constitutional provisions, based on an error of law, made upon unlawful procedure, unsupported by substantial evidence, or arbitrary or capricious, an abuse of discretion, or otherwise not in accordance with law).

Relief under the certiorari statute accordingly is not appropriate, since Dr. Padmanabhan has yet to exhaust his administrative remedies at DALA and before the Board, and he may seek review of an adverse decision by DALA and the Board in an action for judicial review under G.L. c. 30A, § 14, and G.L. c. 112, § 64. See, e.g., Cumberland Farms, 56 Mass. App. Ct. at 608; Town of Southbridge v. Litchfield, 47 Mass. App. Ct. 920 (1999) (rescript) (relief in nature of certiorari was not available where town, which challenged Public Employee Retirement Administration's approval of accidental disability benefits for police officer, had failed to exhaust its administrative remedies through an appeal to the Contributory Review Appeal Board); contrast Ballarin, Inc. v. Licensing Bd. of Boston, 49 Mass. App. Ct. 506, 510-11 and n. 5 (2000) (in absence of another statutory review provision, certiorari was appropriate avenue for review of decision of local licensing authority, where plaintiff applicant "had exhausted its administrative remedies"); Hoffer, 461 Mass. at 454-57 (certiorari review was available where "no other reasonably available remedy" existed, including in particular where judicial review under G.L. c. 30A, § 14, was unavailable because the challenged agency action did not arise in an "adjudicatory proceeding" under chapter 30A).

The Court accordingly should dismiss the petition.

² For example, with respect to Dr. Padmanabhan's claim that he must be provided with an opportunity to cross-examine the expert whose report allegedly formed the basis for the Board's disciplinary charges against him, see Petition ¶ 15, discussed supra, he is free to present such a claim in the DALA proceeding and in a subsequent action seeking judicial review of a final Board decision.

Respectfully submitted,

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Dated: November 20, 2014

CERTIFICATE OF SERVICE

I hereby certify that I served the above motion on the parties this 20th day of November, 2014, by sending a copy of the motion by first class mail, postage pre-paid, to Bharanidharan Padmanabhan, Pro Se, 300 Gardner Road #6A, Brookline, MA 02445.



Amy Spector
Assistant Attorney General