

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
DOCKET NO. SJC-2014-0434

BHARANIDHARAN PADMANABHAN

VS.

DIVISION OF ADMINISTRATIVE LAW APPEALS

MEMORANDUM OF DECISION AND ORDER

The plaintiff, Bharanidharan Padmanabhan, M.D., Ph.D, brings this complaint in the nature of certiorari under G. L. c. 249, § 4; he also requests relief pursuant to G. L. c. 211, § 3. The plaintiff seeks review of a decision of Magistrate Kenneth Bresler of the Division of Administrative Law Appeals ("DALA") that denied his motion to dismiss disciplinary proceedings that the Board of Registration in Medicine (board) has initiated against him and has referred to DALA for an adjudicatory hearing. He also seeks to stay any further action in the board's pending disciplinary proceedings until the court has ruled on his request for relief. DALA has filed a motion to dismiss the complaint. A hearing on that motion was held in December, 2014.

Background. The plaintiff is a physician who is licensed to practice medicine in Massachusetts. The plaintiff was terminated from his position at Cambridge Health Alliance in November, 2010. He claims that the termination was based on entirely false

charges that he harmed patients. Thereafter, the board initiated the pending disciplinary proceedings against him. The plaintiff takes the position that the board's proceedings are impermissibly based on these same false charges, and also that the board has engaged in significant procedural violations. He moved to dismiss the adjudicatory proceeding for these reasons. The DALA magistrate denied the motion, and the plaintiff filed the present action in this court, seeking review and reversal of the magistrate's decision and a substantive review of the board's improper actions in his case.

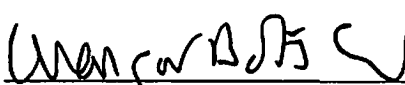
The plaintiff's action must be dismissed. The magistrate's denial of his motion to dismiss the board's pending disciplinary proceedings is an interlocutory order that is not subject to judicial review at this time. At the conclusion of the board's proceedings, if the plaintiff is aggrieved by the board's decision, he will be entitled to seek review in this court pursuant to G. L. c. 112, § 64. Certiorari review is only available for "proceedings [that] are not otherwise reviewable by motion or by appeal". G. L. c. 249, § 4. See Johnson v. Commonwealth, 463 Mass. 1006, 1007 (2012) ("One seeking review of trial court orders and actions cannot circumvent the ordinary trial and appellate process simply by filing a petition for certiorari"). See also Ullian v. Registrar of Motor Vehicles, 325 Mass. 197, 200 (1950) ("It is well settled that . . . certiorari will not issue where a petitioner, alleging to be aggrieved by an adverse decision of a public officer, fails to adopt the statutory method of an appeal to the appropriate board or where an administrative appeal is still pending"); Cumberland Farms, Inc. v. Planning Board of Bourne, 56 Mass. App. Ct. 605, 607–608 (2002) (certiorari review unavailable where

"administrative remedies terminating in judicial review are available and unexhausted"). See generally Hoffer v. Board of Registration in Medicine, 461 Mass. 451, 456 (2012).

Review also is not available under G. L. c. 211, § 3. This flows from the fact that the plaintiff does have an alternate remedy available to him under G. L. c. 112, § 64, at the conclusion of the board's proceedings. See MacDougall v. Com., 447 Mass. 505, 510 (2006), quoting from Soja v. T.P. Sampson Co., 373 Mass. 630, 631 (1977); Doe v. Sex Offender Registry Bd., 82 Mass. App. Ct. 38, 44 (2012). In addition, the authority of this court under G. L. c. 211, § 3, relates to courts, not to administrative agencies directly.

ORDER

The DALA motion to dismiss is allowed, and the plaintiff's motion to stay the proceedings before DALA is denied. The plaintiff's motion to stay the proceedings before DALA is also denied. A judgment dismissing the complaint is to enter.



Margot Botsford
Associate Justice

Dated: January 9, 2015

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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
SJ-2014-0434

No.DALA #RM-14-363

BHARANIDHARAN PADMANABHAN, MD PhD

v.

DIVISION OF ADMINISTRATIVE LAW APPEALS

JUDGMENT

This matter came before the Court, Botsford, J., on a complaint in the nature of certiorari pursuant to G. L. c. 249, §4 and relief pursuant to G. L. c. 211, § 3.

Upon consideration thereof, and in accordance with the Memorandum of Decision and Order dated January 9, 2015,

It is ORDERED and ADJUDGED that the complaint be, and the same hereby is, dismissed.

By the Court, (Botsford, J.)


Maura S. Doyle, Clerk

Entered: January 9, 2015