

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI

ANTOINE ADEM, M.D.,)
)
 Plaintiff,)
)
 v.)
)
 DES PERES HOSPITAL, INC.,)
)
 Defendant.)

Case No. 15SL-CC03107

Division 18

FILED

FEB 25 2016

Joan M. ~~Garner~~
Circuit Clerk
~~St. Louis County~~

ORDER AND JUDGMENT

The Motion to Dismiss Plaintiff's Petition filed by Defendant Des Peres Hospital, Inc. (the "Hospital"), were called, heard and argued. The Court, being fully advised in the premises, enters the following order:

1. In his Petition for Temporary Restraining Order, Preliminary Injunction, Permanent Injunction, and Declaratory Judgment (the "Petition"), Dr. Adem seeks preliminary and permanent injunctive relief to compel the Hospital to comply with certain provisions of the Des Peres Hospital Medical Staff Bylaws and the Credentials and Hearing and Appellate Review Manual (the "Bylaws") that Dr. Adem claims were violated. The Hospital has moved to dismiss Dr. Adem's Petition for failure to state a claim upon which relief can be granted.

2. A motion to dismiss for failure to state a claim upon which relief can be granted tests the adequacy of Dr. Adem's petition. *Geiger v. Bowersox*, 974 S.W.2d 513, 515 (Mo. Ct. App. 1998). Missouri is a fact-pleading state, and a petition "demands a relatively rigorous level of factual detail." *Agnello v. Walker*, 306 S.W.3d 666, 678 (Mo. Ct. App. 2010) (quotation omitted). Where a petition contains only conclusions and fails to allege the ultimate facts or any allegations from which to infer those ultimate facts, the Petition should be dismissed. *See Sofka v. Thal*, 662 S.W.2d 502, 509 (Mo. 1984). Further, conclusory allegations of fact and legal

conclusions are not considered in determining whether Dr. Adem's Petition states a claim upon which relief can be granted. *Willamette Industries, Inc. v. Clean Water Commn. of State of Mo.*, 34 S.W.3d 197, 200 (Mo. Ct. App. 2000).

3. Under Missouri law, when ruling on a motion to dismiss, the Court assumes that all of the plaintiff's averments are true, and liberally grants to Dr. Adem all reasonable inferences therefrom. *Nazeri v. Missouri Valley College*, 860 S.W.2d 303 (Mo. banc 1993). Additionally, under Rule 55.12 of the Missouri Rules of Civil Procedure, "[a]n exhibit to a pleading is a part thereof for all purposes." Therefore, when considering a motion to dismiss for failure to state a claim, the court must also consider exhibits attached to the petition as part of the allegations. *Hendricks v. Curators of U. of Missouri*, 308 S.W.3d 740, 747 (Mo. Ct. App. 2010); *Armistead v. A.L.W. Group*, 155 S.W.3d 814, 816 (Mo. Ct. App. 2005).

4. Documents that a defendant attaches to a motion to dismiss are considered part of the pleadings if they are referred to in the plaintiff's complaint and are central to his claim. *Isselhardt v. Best Buy Warehousing Logistics, Inc.*, 2013 U.S. Dist. LEXIS 35948, *2 (E.D. Mo. Mar. 15, 2013) (citing *Venture Assocs. Corp. v. Zenith Data Sys. Corp.*, 987 F.2d 429, 431 (7th Cir.1993)).¹ See also *Kushner v. Beverly Enters., Inc.*, 317 F.3d 820, 831 (8th Cir. 2003) ("When deciding a motion to dismiss, a court may consider the complaint and documents whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the pleading.") (internal quotation marks omitted)). Here, the Bylaws and relevant portions of the peer review record, all of which are either referred to in Dr. Adem's Petition or central to his claims, or both, can be considered by the Court without going outside the pleadings.

¹ When "the Missouri and federal rules are essentially the same, federal precedents constitute persuasive, although not binding, authority." *Joel Bianco Kawasaki Plus v. Meramec Valley Bank*, 81 S.W.3d 528, 532-33 (Mo. banc 2002).

5. The Hospital argues that Dr. Adem's Petition fails to state a claim for the following reasons: (1) his request to enjoin the Hospital from reporting the revocation of his clinical privileges is preempted by federal law, *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 373 (2000) (stating conflict preemption principles); *Connelly v. Iolab Corp.*, 927 S.W.2d 848 (Mo. banc 1996) (stating conflict preemption principles); *Paul v. Jackson*, 910 S.W.2d 286 (Mo. Ct. App. 1995) (conflict preemption arises not from the express words of the federal statute or regulation itself, but rather from the fact that enforcement or application of the state law at issue would stand as an obstacle to the accomplishment and execution of the purposes and objectives of Congress). See *Diaz v. Provena Hosps.*, 817 N.E.2d 206, 212-13 (Ill. App. 2 Dist. 2004) (Health Care Quality Improvement Act of 1986 ("HCQIA") preempted entry of an order enjoining a hospital from making a report to the National Practitioner Data Bank; as such an injunction would impermissibly "impede[] the accomplishment of Congress's objectives under the HCQIA, which are "intended to protect patients, not doctors"); (2) his claim that the Hospital violated Section 11.6 of the Bylaws, because it allegedly failed to appoint a staff physician to the Medical Review Committee who has "practice experience, education or training the same or sufficiently similar to" Dr. Adem, implicates medical or clinical issues that the Court cannot resolve without violating Missouri's rule of non-review, see *Egan v. St. Anthony's Med. Ctr.*, 244 S.W.3d 169 (Mo. banc 2008) (*Egan I*); *Misischia v. St. John's Mercy Med. Ctr.*, 30 S.W.3d 848, 863 (Mo. Ct. App. 2000), that recognizes that courts should restrict their review of medical staff decisions to purely procedural matters on which they have expertise and avoid clinical or medical issues that are best left to hospitals and their medical staffs; and (3) he has not alleged facts sufficient to show that the Hospital failed to substantially comply with its Bylaws, see *Egan v. St. Anthony's Medical Center*, 291 S.W.3d 751 (Mo. Ct. App. 2009) ("*Egan II*"), in that, on

the allegations of his Petition, he cannot show a violation of an express provision of the Bylaws or, alternatively, assuming he could show a technical violation, he cannot show that those violations materially prejudiced him or otherwise undermine the result reached by the Hospital, given the exhaustive peer review process which afforded Dr. Adem with multiple opportunities to be heard by multiple peer review committees, only one of which was alleged to have one member that was allegedly inherently but not actually biased.²

6. The court finds the issue of preemption is one that the court need not address nor make a finding relating to as the court finds that the Plaintiff has failed to establish the Hospital did not substantially comply with the Bylaws and that the challenge to the appointment of Dr. Soudah to the MRC was not timely raised and therefore was waived pursuant to the terms of the Bylaws.

ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that Defendant's Motion to Dismiss for failure to state a claim is **GRANTED** and that Plaintiff's Petition is dismissed.

SO ORDERED:



HON. ELLEN H. RIBAUDO
CIRCUIT JUDGE, DIV. 18

DATED: February 25, 2016

² Dr. Adem also makes allegations regarding Yvonne Puig being appointed and temporarily serving as the hearing officer for the Medical Review Committee (MRC). The Court holds that because Dr. Adem fails to allege that Ms. Puig ultimately served as the Hearing Officer for the MRC hearing, or made any substantive rulings adverse to and that materially prejudiced him, but was instead replaced by a substitute hearing officer to whom Dr. Adem does not object, there is no viable claim under Missouri law to enjoin the Hospital to comply with the Bylaws' provision regarding the MRC hearing officer.