20-P-47 Appeals Court

BHARANIDHARAN PADMANABHAN vs. CITY OF CAMBRIDGE & others.[1]

No. 20-P-47.

Norfolk. November 17, 2020. - March 22, 2021.

Present: Green, C.J., Shin, & Hand, JJ.

Anti-Discrimination Law, Termination of employment. Limitations, Statute of. Quasi-Judicial Tribunal. Board of Registration in Medicine. Judicial Immunity. Emotional

[1] Cambridge Public Health Commission (doing business as Cambridge Health Alliance), Cambridge Public Health Commission Physician Organization (CHAPO), Mary Cassesso, Ellen Semonoff, Moacir Barbosa, David Bor, Nancy Busnach, Louis DePasquale, Francis Duehay, Dennis Keefe, Lucian Leape, Carol Vandeusen Lukas, Isaac Machado, Steve Manos, Gerald McCue, Jane Metzger, Paula Paris, Joshua Posner, Maxwell Solet, Deborah Klein Walker, Allison Bayer, David Porell, Gerald Steinberg, Carol Hulka, Rachel Nardin, Somava Stout, Kathleen Harney, David Elvin, Jack Burke, Donald Kaplan, David Link, Anne Fabiny, Simon Ahtarides, Sam Doppelt, Elizabeth Gaufberg, Katherine Kosinski, Ronald Minter, David Osler, Gregory Ota, Assaad Sayah, Steven Schwaitzberg, Laura Sullivan, Charles Douglas Taylor, Randy Wertheimer, Priscilla Dasse, Robert Healy, Nancy Lian, Kathleen Murphy (Fache), The Greeley Company, Dr. John/Jane Doe, Gregory Lipshutz, Jonathan Strongin, Melissa Lai Becker, Executive Office of Health and Human Services, Judyann Bigby, Julian Harris, Christine Zavalas, James Paikos, Loretta Kish Cooke, Stephen Hoctor, Robert Bouton, Gerald Healy, Candace Lapidus Sloane, Marianne Felice, Lubin & Meyer PC, Robert Higgins, Centers For Medicare & Medicaid Services (Boston Regional Office), Raymond Hurd, William Kassler, Stanzler Levine LLC, and Liam Floyd.

Distress. Declaratory Relief. Practice, Civil, Dismissal, Complaint, Motion to amend.

Civil action commenced in the Superior Court Department on October 17, 2014.

Motions to dismiss were heard by Rosalind H. Miller, J., and a motion to file an amended complaint was also heard by her.

Bharanidharan Padmanabhan, pro se.
Rebecca A. Cobbs for the city of Cambridge & others.
Mark P. Sutliff, Assistant Attorney General, for Judyann Bigby & others.

GREEN, C.J. Following the death of one of his patients, the plaintiff, Dr. Bharanidharan Padmanabhan, was summarily suspended by his employer, defendant Cambridge Health Alliance (CHA). When further investigation led to the termination of his employment, Padmanabhan filed a sprawling fifty-six-page complaint asserting multiple claims against multiple defendants. After removal of the case to the United States District Court for the District of Massachusetts and remand to the Superior Court, a Superior Court judge dismissed Padmanabhan's amended

complaint on statute of limitations grounds.[2] Padmanabhan appeals from the judgment of dismissal.[3]

We conclude that, though many of Padmanabhan's claims were properly dismissed, three claims, based on separate injuries flowing from acts within the limitations period, survive.[4] We accordingly vacate a portion of the judgment.[5]

Background. We summarize the facts alleged in the amended complaint which, for purposes of our review of the defendants' motions to dismiss, we accept as true, construing all reasonable

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[2] In a footnote, the motion judge also suggested that the claims were subject to dismissal for failure to comply with Mass. R. Civ. P. 8 (a) (1), 365 Mass. 749 (1974). We are mindful that Padmanabhan is proceeding pro se and, to the extent that any of his claims survive our rulings herein, we believe they do not merit dismissal on rule 8 grounds. We also note that, pursuant to Rule 2.6 (A) of the Code of Judicial Conduct, judges are authorized to "make reasonable efforts, consistent with the law, to facilitate the ability of all litigants, including self-represented litigants, to be fairly heard." S.J.C. Rule 3:09, Canon 2, Rule 2.6 (A) (2016).

[3] The present case was among several attempts by Padmanabhan to raise his claims. See, e.g., Padmanabhan v. Cooke, 483 Mass. 1024 (2019); Padmanabhan v. Board of Registration in Med., 477 Mass. 1026 (2017); Padmanabhan v. Centers for Medicare & Medicaid Servs., 476 Mass. 1018 (2017). See also Padmanabhan vs. Hulka, U.S. Ct. App., No. 18-1301 (1st Cir. July 10, 2019); Padmanabhan v. Paikos, 280 F. Supp. 3d 248, 250 (D. Mass. 2017).

[4] A separate count, seeking declaratory judgments related to those claims, also survives.

[5] Though we affirm dismissal of the claims against certain administrative agency defendants, we do so on grounds different from those relied upon by the motion judge.

inferences from those facts in Padmanabhan's favor. See Iannacchino v. Ford Motor Co., 451 Mass. 623, 636 (2008).

Beginning in 2007, Padmanabhan worked as a neurologist at Whidden Memorial Hospital (Whidden), which is operated by CHA.[6] While there, from approximately 2008 through 2010, Padmanabhan voiced concerns regarding the radiology department, chief among them that radiologists appeared not to be reading some scans and instead issuing generic reports.

On November 4, 2010, the chief of medicine informed Padmanabhan of the death of one of his recently discharged patients. As the death appeared to have been caused by an overdose, the chief of medicine asked for details about Padmanabhan's treatment of his other chronic pain patients.

On November 9, 2010, CHA's medical executive committee summarily suspended Padmanabhan's medical privileges and recommended permanent termination of those privileges, on the stated ground of "[p]rescribing to a known addict." Padmanabhan was informed of this decision two days later, when he received a hand-delivered letter advising him of his summary suspension and the medical executive committee's recommendation that he be

[6] As of 2016, Whidden changed its name to CHA Everett Hospital.

terminated. He was then escorted out of the hospital.[7] As required by law, see G. L. c. 111, § 53B, CHA filed a report with the board of registration in medicine (board) advising it of the decision. On December 15, two board employees began an investigation of Padmanabhan.

Padmanabhan, meanwhile, retained counsel and challenged his suspension at a CHA fair hearing. The hearing resulted in a February 2011 report issued by the fair hearing committee that was, at least in part, favorable to Padmanabhan.[8] CHA nevertheless determined in March 2011 that Padmanabhan's suspension should remain in place pending further investigation.

To that end, CHA formed an investigative committee and retained an external organization, The Greeley Company, to provide an independent report. The resulting report was delivered in July of 2011. Shortly thereafter, the investigative committee released its own report, which was substantially similar to the fair hearing findings.

Frustrated by CHA's lack of conclusive action, in August of 2011, Padmanabhan unsuccessfully sought in the Superior Court an

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[7] In his amended complaint, Padmanabhan refers to the November 11, 2010, letter as a "termination letter."

[8] The report concluded that, though Padmanabhan's suspension was warranted, the medical executive committee's recommendation of immediate termination was "not supported by credible evidence."

injunction ordering CHA to issue a final determination as to his privileges. On September 6, 2011, Padmanabhan filed a complaint against CHA with the Massachusetts Commission Against Discrimination (MCAD).[9]

On October 28, 2011, CHA filed a second report with the board, as well as with the National Practitioners Data Bank (NPDB).[10] This report was notably different from the original November 9, 2010 report: the allegation of "[p]rescribing to a known addict" was absent and, furthermore, the report incorrectly stated that Padmanabhan had "voluntarily resigned" his position.

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[9] We note that Padmanabhan's amended complaint does not mention the MCAD complaint. Padmanabhan did not deny filing the MCAD complaint or argue that the judge could not consider it. In any event, to the extent the judge relied on materials attached to the amended complaint, or materials of which she could properly take judicial notice, she was not required to convert the motion to dismiss under Mass. R. Civ. P. 12 (b) (6), 365 Mass. 754 (1974), into one for summary judgment. See Mass. R. Civ. P. 56, 365 Mass. 824 (1974). See also Reliance Ins. Co. v. Boston, 71 Mass. App. Ct. 550, 555 (2008) ("while the allegations of the complaint generally control in evaluating a motion under rule 12 [b] [6], matters of public record . . . and exhibits attached to the complaint, also may be taken into account" [quotation and citation omitted]).

[10] Maintained by the United States Department of Health and Human Services, the NPDB "is a web-based repository of reports containing information on medical malpractice payments and certain adverse actions related to health care practitioners, providers, and suppliers," https://www.npdb.hrsa.gov /topNavigation/aboutUs.jsp [https://perma.cc/GK6M-YQRG].

On November 11, 2011, Padmanabhan received what claimed to be another termination letter from CHA, stating that notwithstanding his 2010 suspension of privileges and pay, his last day of employment had been October 28, 2011.

Throughout the following years, the board investigation continued. On January 29, 2013, Padmanabhan was the subject of a hearing before the board's complaint committee, which commissioned its own independent expert report on the matter. Ultimately, on May 28, 2014, the complaint committee issued a "Statement of Allegations" and commenced formal disciplinary proceedings against Padmanabhan. By complaint filed in the Superior Court on October 17, 2014, Padmanabhan commenced the present action.[11]

Discussion. 1. Statute of limitations. The parties do not dispute that a three-year statute of limitations applies to all of Padmanabhan's various claims.[12] As Padmanabhan's initial

[11] Originally filed in the Superior Court, the case was subsequently removed to the United States District Court for the District of Massachusetts. There, Padmanabhan was permitted to file an amended complaint, which is the operative complaint and the subject of our review. Ultimately, the three defendants providing a basis for Federal jurisdiction (Centers for Medicare & Medicaid Services [Boston Regional Office]), Raymond Hurd, and William Kassler) were dismissed, prompting remand to the Superior Court. See Padmanabhan vs. Centers for Medicare & Medicaid Servs., U.S. Dist. Ct., No. 1:15-cv-10499 (D. Mass. Oct. 6, 2015).

[12] The amended complaint raises Federal claims under 42 U.S.C. § 1983 for retaliation, abuse of power, defamation, and

complaint was filed on October 17, 2014, his claims must have accrued on or after October 17, 2011, to be viable.

Even reading all inferences in Padmanabhan's favor, much of the alleged harmful conduct occurred prior to the limitations period. This includes the crucial series of events leading up to and culminating in the suspension of his privileges on November 9, 2010. Nevertheless, Padmanabhan argues that any such pre-October 17, 2011 conduct is fair game because it was part of a "continuing violation" that lasted into the limitations period.

The Supreme Judicial Court has developed the continuing violation doctrine in recognition of the reality "that some claims of discrimination involve a series of related events that have to be viewed in their totality in order to assess adequately their discriminatory nature and impact."[13] Cuddyer v.

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deprivation of due process, alongside State law claims for defamation, abuse of process, intentional infliction of emotional distress, fraud, and a request for a declaratory judgment.

[13] In their brief, CHA and its associated defendants argue that the continuing violation doctrine is applicable only to discrimination cases brought under G. L. c. 151B, and not to any of the various claims brought by Padmanabhan in his amended complaint. As we conclude Padmanabhan cannot prove a continuing violation, we need not chart the precise boundaries of the doctrine. It nevertheless bears mention that "it is the nature of the unlawful conduct alleged by the plaintiff, independent of the precise formulation of his claim, that allows a plaintiff to invoke an exception to the limitations period for a continuing

Stop & Shop Supermkt. Co., 434 Mass. 521, 531 (2001). Because that totality may include events outside the limitations period, the doctrine allows a plaintiff to recover for untimely harmful conduct by proving that "(1) at least one discriminatory act occurred within the [applicable] limitations period; (2) the alleged timely discriminatory acts have a substantial relationship to the alleged untimely discriminatory acts . . . [and] (3) earlier violations outside the [applicable] limitations period did not trigger . . . [the plaintiff's] 'awareness and duty' to assert . . . [the plaintiff's] rights." Ocean Spray Cranberries, Inc. v. Massachusetts Comm'n Against Discrimination, 441 Mass. 632, 643 (2004).

Even assuming Padmanabhan can prove the first two elements, the third is fatal to any assertion of a continuing violation. On September 6, 2011, Padmanabhan filed a complaint with the MCAD, the substance of which largely tracks his allegations in the case at bar. There can be no question that the earlier alleged violations triggered an awareness and duty for Padmanabhan to assert his rights; he did precisely that by filing his complaint with the MCAD. As the motion judge correctly ruled, any conduct predating September 6, 2011, cannot constitute a continuing violation, and Padmanabhan's claims

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violation." Clifton v. Massachusetts Bay Transp. Auth., 445 Mass. 611, 617 (2005).

based on that conduct remain barred by the statute of limitations.[14]

Padmanabhan's failure to prove a continuing violation, however, does not bar him from recovering for harms that occurred within the three-year limitations period. The amended complaint, when read in the light most favorable to Padmanabhan, alleges wrongful conduct that occurred after October 17, 2011, most notably that CHA provided a false report to the board and the NPDB on October 28, 2011.[15] To the extent that Padmanabhan's claims are grounded in such conduct, they are not barred by the statute of limitations, and it was error to dismiss them on that ground.

2. Alternative grounds for dismissal. Having determined that at least some of Padmanabhan's claims were timely, we turn to the alternative grounds for dismissal advanced by the

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[14] Dismissal of individual defendants whose only allegedly tortious conduct predated September 6, 2011, was therefore proper. Those defendants are Allison Bayer, Melissa Lai Becker, David Bor, Dr. John/Jane Doe, Carol Hulka, Dennis Keefe, Nancy Lian, Gregory Lipshutz, Kathleen Murphy (Fache), Rachel Nardin, David Porell, Gerald Steinberg, Somava Stout, Jonathan Strongin, and The Greeley Company.

[15] The CHA defendants contend that they cannot be liable for this report because of so-called "peer review" immunity conferred by G. L. c. 111, § 203 (c), and 42 U.S.C. § 11111. Both protections, however, have prerequisites, and at this stage Padmanabhan has sufficiently alleged that they were not met. See G. L. c. 111, § 203 (c) (no immunity where party has not "acted in good faith"); 42 U.S.C. § 11112(a) (listing requisite procedural safeguards for immunity under 42 U.S.C. § 11111).

defendants. In doing so we observe that we may affirm the dismissal based on "any ground apparent on the record that supports the result reached in the lower court." Gabbidon v. King, 414 Mass. 685, 686 (1993). After careful consideration, we conclude that dismissal was proper as to (1) the board members and board staff defendants and claims related only to them, because they are entitled to quasi judicial absolute immunity for their acts taken in connection with the disciplinary proceedings against Padmanabhan; (2) certain other defendants, because the amended complaint contains insufficient allegations to support claims against them; (3) Padmanabhan's claim for intentional infliction of emotional distress, because it fails to state a claim upon which relief may be granted, and (4) Padmanabhan's request for a declaration that the Attorney General should not be allowed to represent certain defendants, because the dismissal of his claims against all such defendants renders the request moot. We discuss each in turn.

a. Quasi judicial immunity. "It is a principle lying at the foundation of our jurisprudence, too well settled to require discussion, that every judge, whether of a higher or lower court, is exempt from liability to an action for any judgment or decision rendered in the exercise of jurisdiction vested in him by law." Allard v. Estes, 292 Mass. 187, 189-190 (1935). Because a judge "should act upon his own free, [unbiased]

convictions, uninfluenced by any apprehension of consequences," this judicial absolute immunity "is essential to impartial decision-making and to engendering public trust in the judiciary." Matter of the Enforcement of a Subpoena, 463 Mass. 162, 171 (2012), quoting Pratt v. Gardner, 2 Cush. 63, 69 (1848).

The Supreme Judicial Court has not hesitated to extend this absolute immunity to officers who "are involved in an integral part of the judicial process." LaLonde v. Eissner, 405 Mass. 207, 211 (1989). For example, as early as 1884, the Supreme Judicial Court granted absolute immunity to arbitrators as "quasi judicial officer[s] . . . exercising judicial functions." Hoosac Tunnel Dock & Elevator Co. v. O'Brien, 137 Mass. 424, 426 (1884). This quasi judicial immunity has been "repeatedly confirmed and expanded," Matter of the Enforcement of a Subpoena, 463 Mass. at 171, and encompasses court clerks acting at a judge's direction, Temple v. Marlborough Div. of the Dist. Court Dep't, 395 Mass. 117, 133, (1985); court-appointed experts, LaLonde, supra at 211-212; public prosecutors discharging official duties, Chicopee Lions Club v. District Attorney for the Hampden Dist., 396 Mass. 244, 251-252 (1985); and government lawyers performing duties in civil actions, Dinsdale v. Commonwealth, 424 Mass. 176, 182-183 (1997). In each case the court concluded such immunity was necessary to

ensure the zealous and impartial execution of vital public functions.

In like manner, Federal courts have not shied away from extending quasi judicial immunity where appropriate, including to administrative actors. See Butz v. Economou, 438 U.S. 478, 512-513 (1978) (granting immunity to administrative agents performing adjudicatory and prosecutorial functions). Notably for our purposes, the United States Court of Appeals for the First Circuit has granted immunity to board members and staff performing adjudicatory and prosecutorial functions similar, if not identical, to those at issue in the case at bar. See Bettencourt v. Board of Registration in Med., 904 F.2d 772, 782-784 & n.13 (1st Cir. 1990). In Bettencourt, as here, the court considered a suit against board defendants filed by a physician subject to the board's disciplinary proceedings. To analyze whether the board defendants were entitled to quasi judicial absolute immunity, the court articulated a three-part test that was "designed to determine how closely analogous the adjudicatory experience of a Board member is to that of a judge." Id. at 783. The three inquiries were:

> "First, does a Board member, like a judge, perform a traditional 'adjudicatory' function, in that he decides facts, applies law, and otherwise resolves disputes on the merits (free from direct political influence)? Second, does a Board member, like a judge, decide cases sufficiently controversial that, in the absence of absolute immunity, he would be subject to numerous damages actions?

> Third, does a Board member, like a judge, adjudicate disputes against a backdrop of multiple safeguards designed to protect a physician's constitutional rights?"

Id. The court answered all three questions in the affirmative: the board members were functionally comparable to judges, risked litigation from aggrieved physicians, and adjudicated in an environment with significant procedural safeguards. See id. at 783-784. The members were therefore entitled to absolute immunity, as were board staff undertaking related prosecutorial functions, see id. at 784-785, or law clerk-type functions, see id. at 785.

We consider the reasoning of Bettencourt to be persuasive and adopt it. The extension of immunity to administrative agents associated with functionally judicial administrative proceedings is aligned with our traditional principles of judicial absolute immunity. See Matter of the Enforcement of a Subpoena, 463 Mass. at 171-172. "There is as much reason in [their] case for protecting and insuring [their] impartiality, independence, and freedom from undue influences, as in the case of a judge . . . ." Hoosac Tunnel Dock & Elevator Co., 137 Mass. at 426. We therefore adopt Bettencourt's three-part test and, applying it to the case at bar, conclude that the board

members and staff are entitled to quasi judicial absolute immunity from Padmanabhan's claims.[16]

First, during the course of disciplinary actions like Padmanabhan's, board members undoubtedly perform a traditional adjudicatory function: they make findings of fact, decide legal issues, issue written opinions, and determine appropriate sanctions. See G. L. c. 30A, § 11; 243 Code Mass. Regs. § 1.05 (2012). Second -- as evidenced by their multiyear, multisuit, multicourt experience in this case -- the board members' decisions are sufficiently controversial to make them a likely target for lawsuits by physicians who are subject to discipline. Third, the board disciplinary proceedings include a multitude of procedural safeguards for those who stand accused: they may be represented by counsel, give oral argument, present evidence, lodge objections, make motions, and obtain judicial review of the final decision. See G. L. c. 112, § 64; G. L. c. 30A, §§ 11 & 14; 801 Code Mass. Regs. § 1.01 (1998). In this setting the board members, being functionally comparable to judges, are entitled to the absolute immunity enjoyed by judges.

Having determined that the board members are entitled to immunity when acting as judicial analogues, it is plain that

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[16] In doing so, we come to the same conclusion as the First Circuit did regarding the same proceedings. See Padmanabhan vs. Hulka, U.S. Ct. App., No. 18-1301, slip op. at 1 (1st Cir. July 10, 2019).

immunity should also be extended to those acting as analogues of other traditionally immune officers. This includes board staff who serve in a prosecutorial role. In preparing for and acting as the board's -- and thus the Commonwealth's -- advocate at adversarial proceedings against individuals subject to discipline, board counsel function much as a prosecutor in a traditional court would. See G. L. c. 112, § 5. They are similarly integral to the adjudicatory process and similarly at risk of retaliatory lawsuits. We therefore believe that they should be shielded by the same quasi judicial absolute immunity enjoyed by traditional public prosecutors. See Chicopee Lions Club, 396 Mass. at 251-252 (1985) (quasi judicial immunity extends to any action by prosecutor in discharge of official duties, even if animated by mistake or malice).

Padmanabhan's amended complaint is not always precise as to the role certain defendants played in the board proceedings, but reading it as a whole, we are satisfied that the following board defendants are entitled to absolute immunity for the conduct alleged in the complaint: Gerald Healy, Marianne Felice, James Paikos, Loretta Kish Cooke, and Stephen Hoctor. Furthermore, the only allegations of timely conduct underpinning three of Padmanabhan's claims are directed at immune board members or staff. Those claims are count three (abuse of power under 42 U.S.C. § 1983), count five (deprivation of due process under 42

U.S.C. § 1983), and count six (abuse of process). We conclude that the motion judge did not err in dismissing those defendants and those claims.

b. Failure to state a claim against specific defendants. To survive a motion to dismiss for failure to state a claim pursuant to Mass R. Civ. P. 12 (b) (6), 365 Mass. 754 (1974), a complaint must contain "factual allegations plausibly suggesting (not merely consistent with) an entitlement to relief" (quotation and citation omitted). Iannacchino, 451 Mass. at 636. Such dismissal reflects the requirement that a complaint "must contain 'a short and plain statement of the claim showing that the pleader is entitled to relief,' Mass. R. Civ. P. 8 (a) (1), 365 Mass. 749 (1974), the purpose of which is 'to give fair notice of the claims . . . of the parties'" (citation omitted). Selectmen of Hanson v. Lindsay, 444 Mass. 502, 509 (2005).

A number of the defendants sued by Padmanabhan are mentioned only in the "Parties" section of the amended complaint; Padmanabhan makes no allegations at all as to their tortious conduct.[17] Certain other defendants are mentioned

[17] Those defendants are Simon Ahtarides, Moacir Barbosa, Judyann Bigby, Jack Burke, Nancy Busnach, Mary Cassesso, Priscilla Dasse, Louis DePasquale, Sam Doppelt, Francis Duehay, David Elvin, Anne Fabiny, Liam Floyd, Elizabeth Gaufberg, Kathleen Harney, Robert Healy, Robert Higgins, Donald Kaplan, Katherine Kosinski, David Link, Carol Vandeusen Lukas, Isaac Machado, Steve Manos, Gerald McCue, Jane Metzger, Ronald Minter, David Osler, Gregory Ota, Paula Paris, Joshua Posner, Assaad

elsewhere in the amended complaint, but in a manner unconnected to any legal claim made by Padmanabhan.[18]

Even giving Padmanabhan the benefit of all reasonable inferences, his failure to allege tortious (or any) conduct by these defendants means he cannot plausibly recover from them, and so much of the judgment as dismissed them from the case was proper. See Iannacchino, 451 Mass. at 636.

c. Intentional infliction of emotional distress. Count seven of the amended complaint alleges intentional infliction of emotional distress, based on the defendants' "making false allegations of wrongdoing" and "perverse[ly] us[ing] the litigation process." While such behavior may give rise to liability under other theories, the allegations of the complaint fail to establish that it was "so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community" (citation omitted). Roman v. Trustees of Tufts College, 461 Mass. 707, 718 (2012). See Polay v. McMahon, 468 Mass. 379, 385

Sayah, Steven Schwaitzberg, Ellen Semonoff, Maxwell Solet, Laura Sullivan, Charles Douglas Taylor, Deborah Klein Walker, Randy Wertheimer, Christine Zavalas, the city of Cambridge, and Cambridge Public Health Commission Physician Organization (CHAPO).

[18] Those defendants are Robert Bouton, Julian Harris, Candace Lapidus Sloane, Lucian Leape, the Executive Office of Health and Human Services, Lubin & Meyer PC, and Stanzler Levine LLC.

(2014) (tortious, malicious, or even criminal behavior not enough to support claim for intentional infliction of emotional distress). Furthermore, Padmanabhan has not made any nonconclusory allegations as to the requisite severe emotional distress he suffered. See id. at 387. Count seven therefore fails to state a claim for relief, see Iannacchino, 451 Mass. at 636, and was properly dismissed.

d. Declaratory judgment. Count one of the amended complaint seeks a judgment declaring that (1) the Attorney General should not be permitted to represent certain defendants in this case; (2) CHA is not entitled to peer review privilege; and (3) Padmanabhan was the victim of numerous violations of rights protected by 42 U.S.C. § 1983.[19] Padmanabhan's first request is rendered moot by the dismissal of all defendants represented by the Attorney General. Though his second and third requests largely mirror other claims already present in the action, they may survive to the extent the related claims survive.

e. Motion to amend. Finally, we consider the denial of Padmanabhan's motion to further amend his complaint. In denying

[19] Padmanabhan alleges that CHA and its agents are State actors or acting together with State actors. CHA does not argue that Padmanabhan's § 1983 claims deserve dismissal for failure to adequately allege acts taken under color of State law. We therefore do not address that issue.

the motion, the motion judge reasoned that, because all of Padmanabhan's claims were time barred, any proposed amendment would be futile. Though we have determined that at least some claims were timely, we conclude that the motion was properly denied. Even though motions to amend are to be liberally allowed, a motion must at least "adequately describe the contemplated amendment in order for [the] court to determine the merits of the motion" (citation omitted). Johnston v. Box, 453 Mass. 569, 582 (2009).[20] Padmanabhan argued in his memorandum in support of the motion to amend that the further amended complaint would add new defendants, but he did not identify them. Similarly, he contended that the defendants "ha[d] first-hand knowledge of the claims against them . . . as well as their specific actions that [would] be included," but he did not describe what claims and specific actions would be added. In sum, the description of the proposed amendment was insufficient to assess its objective or content, and we detect no abuse of discretion in denial of the motion.

Conclusion. Padmanabhan's amended complaint names some seventy-two defendants and contains eight causes of action. Based on our analysis above, the only surviving claims are those

[20] Padmanabhan did not file a proposed amended complaint with his motion, as would be "customary." Johnston, 453 Mass. at 582.

predicated on well-pleaded allegations of conduct by a nonimmune defendant within the limitations period. The sole allegation Padmanabhan makes satisfying those criteria is that CHA intentionally shared an incorrect report with the board and the NPDB on October 28, 2011. In our view, that allegation is sufficient to support count two (retaliation under 42 U.S.C. § 1983), count four (defamation under 42 U.S.C. § 1983 and State law), and the final specifically-pleaded instance of fraud in count eight of the amended complaint. So much of count one as seeks a declaratory judgment based on those claims also survives. Accordingly, so much of the judgment as dismisses those counts as to defendant CHA is vacated. In all other respects, the judgment is affirmed.

So ordered.