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5 UNITED STATES DISTRICT COURT  
6 NORTHERN DISTRICT OF CALIFORNIA  
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8 JEFFREY P. ROWE,

No. C 08-2317 SI (pr)

9 Plaintiff,

**ORDER OF DISMISSAL WITH  
LEAVE TO AMEND**

10 v.

11 DR. Z. AHMED; et al.,

12 Defendants.  
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14 Jeffrey P. Rowe, formerly incarcerated at the Correctional Treatment Facility, has filed  
15 a pro se civil rights action under 42 U.S.C. § 1983 that appears to concern allegedly inadequate  
16 processing of his inmate appeal and inadequate medical care at that facility.

17 His complaint is now before the court for review pursuant to 28 U.S.C. §1915A, which  
18 requires a federal court to engage in a preliminary screening of any case in which a prisoner  
19 seeks redress from a governmental entity or officer or employee of a governmental entity. See  
20 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and dismiss  
21 any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted,  
22 or seek monetary relief from a defendant who is immune from such relief. See id. at  
23 1915A(b)(1),(2). Pro se pleadings must be liberally construed. See Balistreri v. Pacifica Police  
24 Dep't, 901 F.2d 696, 699 (9th Cir. 1990).

25 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements: (1) that  
26 a right secured by the Constitution or laws of the United States was violated and (2) that the  
27 violation was committed by a person acting under the color of state law. See West v. Atkins,  
28 487 U.S. 42, 48 (1988).

1           The complaint fails to state a claim upon which relief may be granted. Leave to amend  
2 will be granted so that Rowe may attempt to cure the deficiencies in his complaint.

3           First, the complaint has no allegations against any of the defendants. In his amended  
4 complaint, Rowe must link each of the defendants to his claim by explaining what each  
5 defendant did or failed to do that caused a violation of his constitutional rights. See Leer v.  
6 Murphy, 844 F.2d 628, 634 (9th Cir. 1988). Liability under § 1983 arises only upon a showing  
7 of personal participation by the defendant. Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989).

8           Second, the complaint concerns medical care, but Rowe has provided too little  
9 information for the court to determine whether a claim for relief under § 1983 is stated.  
10 Deliberate indifference to a prisoner's serious medical needs violates the Eighth Amendment's  
11 proscription against cruel and unusual punishment. See Estelle v. Gamble, 429 U.S. 97, 102-04  
12 (1976). To claim that the response of prison officials to a prisoner's medical needs was  
13 constitutionally deficient, the prisoner must allege that (1) he had a serious medical need and (2)  
14 deliberate indifference to that need by prison officials. See McGuckin v. Smith, 974 F.2d 1050,  
15 1059-60 (9th Cir. 1992), overruled on other grounds, WMX Technologies, Inc. v. Miller, 104  
16 F.3d 1133, 1136 (9th Cir. 1997) (en banc). A prison official is deliberately indifferent if he  
17 knows that a prisoner faces a substantial risk of serious harm and disregards that risk by failing  
18 to take reasonable measures to abate it. See Farmer v. Brennan, 511 U.S. 825, 837, 844 (1994).  
19 Rowe must allege in his amended complaint what his medical needs were and what the  
20 defendants did or did not do with regard to them that amounted to deliberate indifference.

21           Third, the complaint alleges that there was a denial of due process in the appeal process,  
22 but generally the failure to grant an inmate's appeal in the prison administrative appeal system  
23 does not amount to a due process violation. There is no federal constitutional right to a prison  
24 administrative appeal or grievance system for California inmates. See Mann v. Adams, 855 F.2d  
25 639, 640 (9th Cir. 1988); Antonelli v. Sheahan, 81 F.3d 1422, 1430 (7th Cir. 1996). The denial  
26 of an inmate appeal is not so severe a change in condition as to implicate the Due Process Clause  
27 itself and the State of California has not created a protected interest in an administrative appeal  
28 system in its prison. California Code of Regulations, title 15 sections 1073 and 3084 grant

1 prisoners in the county jails and state prisons a purely procedural right: the right to have a prison  
2 appeal and set forth no substantive standards. A provision that merely provides procedural  
3 requirements, even if mandatory, cannot form the basis of a constitutionally cognizable liberty  
4 interest. See Smith v. Noonan, 992 F.2d 987, 989 (9th Cir. 1993); Antonelli, 81 F.3d at 1430  
5 (prison grievance procedure is procedural right that does not give rise to protected liberty interest  
6 requiring procedural protections of Due Process Clause); see also Ramirez v. Galaza, 334 F.3d  
7 850, 860 (9th Cir. 2003) (prisoner's claimed loss of a liberty interest in the processing of his  
8 appeals does not violate due process because prisoners lack a separate constitutional entitlement  
9 to a specific prison grievance system). Rowe had no federal constitutional right to a properly  
10 functioning appeal system. An incorrect decision on an administrative appeal or failure to  
11 process the appeal in a particular way therefore did not amount to a violation of his right to due  
12 process. The claims concerning the handling of the administrative appeals are dismissed for  
13 failure to state a claim upon which relief.

14 For the foregoing reasons, the complaint is dismissed with leave to amend. The amended  
15 complaint must be filed no later than **October 31, 2008**, and must include the caption and civil  
16 case number used in this order and the words AMENDED COMPLAINT on the first page.  
17 Plaintiff is cautioned that his amended complaint must be a complete statement of his claims and  
18 will supersede existing pleadings. See London v. Coopers & Lybrand, 644 F.2d 811, 814 (9th  
19 Cir. 1981) ("a plaintiff waives all causes of action alleged in the original complaint which are  
20 not alleged in the amended complaint.") Failure to file the amended complaint by the deadline  
21 will result in the dismissal of the action.

22 IT IS SO ORDERED.

23 Dated: September 29, 2008

  
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SUSAN ILLSTON  
United States District Judge