

**UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND**

JOSEPH CRUSSIAH,

Plaintiff,

v.

INOVA HEALTH SYSTEM,

Defendant.

Civil Action No. TDC-14-4017

MEMORANDUM ORDER

Pending before the Court is Plaintiff Joseph Crussiah's Motion for Leave to File a Second Amended Complaint. The Motion is fully briefed and ripe for disposition. No hearing is necessary to resolve the issues. *See* D. Md. Local R. 105.6. For the reasons set forth below, the Motion is DENIED.

BACKGROUND

On November 19, 2015, the Court dismissed Counts 1-7 and 10-13 of Crussiah's Amended Complaint. The Court allowed Crussiah to seek leave to amend his claims for fraud (Count 1) and civil conspiracy (Counts 10 and 11) to correct the deficiencies with those claims identified in the Court's Memorandum Opinion. On December 10, 2015, Crussiah filed a Motion for Second Amended Complaint, attaching clean and redlined versions of a proposed Second Amended Complaint. On December 28, 2015, Defendant Inova Health System ("Inova") filed a memorandum in opposition to Crussiah's Motion. On January 14, 2016, Crussiah submitted a reply memorandum.

Because the pending Motion was filed more than 21 days after service of Inova Health System's Motion to Dismiss, the Court will grant leave to amend "when justice so requires." Fed. R. Civ. P. 15(a)(2). "A motion to amend should be denied 'only when the amendment would be prejudicial to the opposing party, there has been bad faith on the part of the moving party, or the amendment would be futile.'" *HCMF Corp. v. Allen*, 238 F.3d 273, 276 (4th Cir. 2001) (quoting *Edwards v. City of Goldsboro*, 178 F.3d 231, 242 (4th Cir.1999)). Inova contends that allowing Crussiah's proposed amendments would be futile because the amended allegations of fraud and civil conspiracy still fail to state plausible claims for relief.

DISCUSSION

I. Fraud (Count 1)

Crussiah's First Amended Complaint alleged that Inova had engaged in fraud when Crussiah's physician, Dr. Sonalee Kulkarni, deleted records of an MRI that Crussiah received at Capital Imaging in Bethesda, Maryland. Crussiah claimed that a technician at Capital Imaging had botched the MRI and that Kulkarni was attempting to cover up that fact. The Court found that Crussiah failed to state a claim for fraud because the First Amended Complaint did not plead facts sufficient to show that he relied upon Kulkarni's statements or omissions.

Crussiah's proposed Second Amendment Complaint claims that Kulkarni attempted to cover up the failed MRI at the behest of her boss, Dr. John Cochran, who—for reasons unknown—was assisting Dr. Jeff Jacobson, the owner of Capital Imaging. Crussiah also claims that Kulkarni's cover up prevented him from pursuing a malpractice case related to the botched MRI. In addition, Crussiah alleges that, after the MRI, Kulkarni falsely diagnosed him with migraines and then prescribed him medication, which caused him harm.

Crussiah's proposed Second Amended Complaint does not cure the defect identified in the Court's Memorandum Opinion. Crussiah still does not plead facts sufficient to show that he relied upon Kulkarni's alleged false statements and omissions. Crussiah knew that the MRI had occurred, so Kulkarni's deletion of the MRI from his file did not deceive him. Crussiah also professes knowledge of the tortious and perhaps criminal conduct of Capital Imaging's MRI technician, and he does not adequately articulate how Kulkarni's actions deceived him to the point that he was prevented from seeking legal or medical redress. Crussiah's allegations regarding Kulkarni's allegedly false diagnosis for migraines also fall short of the heightened pleading standard for fraud under Federal Rule of Civil Procedure 9(b) because they do not indicate the benefit Kulkarni gained from this deception. *See Harrison v. Westinghouse Savannah River Co.*, 176 F.3d 776, 784 (4th Cir. 1999) (stating that Rule 9(b) requires a plaintiff alleging fraud to identify what the person making the misrepresentation obtained from it). Consequently, the Court finds that it would be futile to grant Crussiah leave to amend his claim for fraud.

II. Civil Conspiracy (Counts 10 & 11)

Crussiah's First Amended Complaint alleged that Inova engaged in civil conspiracy by convening a "death panel" regarding his treatment. The Court dismissed the claim because Crussiah failed to describe the unlawful activity of the "death panel."

Crussiah's proposed Second Amended Complaint does not add any material facts to the "death panel" allegation. Instead, it alleges new theories of civil conspiracy based on the alleged cover-up by Kulkarni and Cochran of the failed MRI. These proposed amendments go beyond the scope of the deficiencies identified in the Court's Memorandum Opinion. Even if the Court were to consider the amendments, it would deny them as futile. Because the unlawful conduct

that forms the basis for Crussiah's new civil conspiracy claim is the alleged fraud by Kulkarni and Cochran, which, for the reasons stated above, the Court dismisses as inadequately pleaded, Crussiah has also failed to state a plausible civil conspiracy claim. *See Hoffman v. Stamper*, 867 A.2d 276, 290 (Md. 2005) (stating that civil conspiracy is not a separate tort "capable of independently sustaining an award of damages in the absence of other tortious injury to the plaintiff") (internal quotation marks omitted).

CONCLUSION

For the reasons stated above, the Motion Leave to File a Second Amended Complaint, ECF No. 28, is DENIED. Inova is directed to file an Answer to the remaining allegations in the First Amended Complaint within 14 days of this Order.

Date: June 1, 2016


THEODORE D. CHUANG
United States District Judge