IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

JOHN M. CAMAS, M.D.,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 97-245-JJF
	:	
DIANA DICKSON-WITMER, M.D., PRESIDENT, et al.,	:	
	:	
	:	
Defendants.	:	

John M. Camas, M.D., Bradford, Pennsylvania.
Pro Se Plaintiff.

Stuart B. Drowos, Esquire, Deputy Attorney General, DELAWARE DEPARTMENT OF JUSTICE, Wilmington, Delaware.
Attorney for Defendants.

MEMORANDUM OPINION

March 30, 2001
Wilmington, Delaware

FARNAN, District Judge.

Presently before the Court is Defendants' Motion for Summary Judgment. (D.I. 43). For the reasons stated below, the Court will grant the motion.

BACKGROUND

In 1984, Dr. John M. Camas ("Plaintiff") received a license to practice medicine and surgery in Delaware. (D.I. 1 at ¶ 8). From 1984 until 1991, Plaintiff lived and practiced medicine in Delaware. (D.I. 1 at ¶ 8). In 1991, Plaintiff moved to Pennsylvania. (D.I. 1 at ¶ 8). Ultimately, Plaintiff's license to practice medicine in Delaware became inactive on June 30, 1993. (D.I. 1 at ¶ 9). On March 2, 1994, Dr. E. Wayne Martz ("Dr. Martz"), the Executive Director of the Delaware Board of Medical Practice ("the Board"), filed a complaint against Plaintiff with the Board. (D.I. 1 at ¶ 9). The complaint charged Plaintiff with five counts of unprofessional conduct, as defined in 24 Del. C. § 1731. (D.I. 1 at ¶ 9).

Plaintiff appeared at an adversarial hearing before a three-member panel of the Board ("Hearing Panel") on December 14, 1994. (D.I. 1 at ¶ 10). After the hearing, the Hearing Panel issued a written opinion which summarized the evidence presented at the hearing and stated the Hearing Panel's findings of fact in a written opinion. The opinion concluded that three of the five counts of unprofessional conduct were substantiated by the evidence. (D.I. 42 at 9-10). In particular, the Hearing Panel concluded that Plaintiff acted with gross negligence when he (1) twice allowed a cast to be placed on a patient's leg under circumstances that "compromised the leg," (2) placed a drain in the peritoneal cavity of a patient which ultimately caused the patient to suffer a punctured bladder, and (3) failed to perform a necessary surgical procedure on a patient in a timely manner. (D.I. 42 at 9-10). Additionally, the Hearing Panel found that Plaintiff's failure to keep adequate and timely notes and records for the above patients amounted to professional incompetence. (D.I. 42 at 9-10). The Hearing Panel recommended that, although

revocation of Plaintiff's license to practice medicine for an indefinite period would be permissible under the circumstances, Plaintiff's license should merely be restricted for one year to the extent that Plaintiff could only treat patients under the direct supervision of another physician. (D.I. 42 at 10).

On April 4, 1995, the entire Board conducted a hearing to make conclusions of law and to impose appropriate disciplinary measures on Plaintiff. (D.I. 1 at ¶ 12). At the hearing, based on the factual findings made by the Hearing Panel,[1] the Board concluded that Plaintiff's conduct amounted to gross negligence and/or incompetence in violation of 24 Del. C. § 1731(b)(11), and accordingly revoked Plaintiff's license to practice medicine in Delaware subject to reinstatement following the completion of the one-year supervisory period recommended by the Hearing Panel. (D.I. 1 at ¶ 13-14). The Board disseminated information of Plaintiff's discipline to other states and to the National Practitioner Data Bank. (D.I. 1 at ¶ 19).

Plaintiff subsequently appealed the Board's decision to the Delaware Superior Court in Sussex County. (D.I. 1 at ¶ 15). The Board filed a motion to affirm its decision, which the Superior Court granted on November 21, 1995. Camas v. Delaware Bd. of Med. Practice, C.A. No. 95A-05-008 (Del. Super. Ct. Nov. 21, 1995).

On May 8, 1997, Plaintiff filed the instant Complaint against Dr. Martz and each member of the Board and the Hearing Panel[2] (collectively "Defendants") in their individual and official

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[1] The Board was required by law to adopt the Hearing Panel's findings of fact, and was precluded from receiving any evidence that was not presented to the Hearing Panel. 24 Del. C. § 1734(f).

[2] These individual Defendants include: Diana Dickson-Witmer, M.D.; Frederick K. Toy, M.D.; Yogesh Kansal; Stephanie Malleus, M.D.; Vincenta G. Marquez, M.D.; Ruth Horowitz, Ph.D.; Thomas C. Scott, D.O.; Catherine T. Hickey; Cecil C. Gordon, M.D.; William J. DiMondi, Esquire; Jorge Pereira-Ogan, M.D.; Susan Rogers, M.D.; Michael Mattern, M.D.; Robert Emrich; Janet Kramer, M.D.; Andrew J. Doorey, M.D.; and John Klocko, III, Esquire. (D.I. 1 at

capacities, alleging that they violated 42 U.S.C. § 1983 by depriving Plaintiff of his due process rights. (D.I. 1 at ¶ 20-59). In particular, Plaintiff alleges that some or all of Defendants deprived him of his due process rights by: (1) failing to give adequate notice of the charges against Plaintiff, (2) making an arbitrary decision, (3) not affording Plaintiff the opportunity to challenge the Hearing Panel's factual findings, (4) engaging in misconduct during the investigative and adjudicatory process, (5) failing to recuse themselves despite a conflict of interest or bias, and (6) ignoring a determination by Plaintiff's colleagues in a peer review that Plaintiff's conduct did not amount to gross negligence. (D.I. 1 at ¶ 21-55). Plaintiff requests that the Court: (1) declare unlawful and permanently enjoin the revocation of Plaintiff's license to practice medicine, and annul the findings and opinion of Defendants, (2) declare unlawful and permanently enjoin the implementation of certain statutory provisions governing the procedures of the Board that deprive physicians of due process during disciplinary proceedings, (3) award Plaintiff reasonable costs, expenses, and attorneys' fees pursuant to 42 U.S.C. § 1988, (4) order Defendants to advise all professional or governmental bodies which received notice of Plaintiff's suspension, or any other person requested by Plaintiff, that all factual findings adverse to Plaintiff have been expunged, and (5) award Plaintiff monetary damages. (D.I. 1 at 14-15).

On September 7, 1999, after a brief period of discovery, Defendants filed the instant motion for summary judgment asserting the defenses of: (1) Eleventh Amendment immunity, (2) sovereign immunity, (3) quasi-judicial immunity, (4) qualified immunity, (5) immunity pursuant to 10 Del. C. § 4001(3), (6) lack of subject matter jurisdiction under the Rooker-Feldman doctrine, and (7) res judicata and/or collateral estoppel. (D.I. 43). After numerous extensions of briefing deadlines, Plaintiff, who is not represented by counsel, filed a partial answering brief to

¶ 3). Defendant Horowitz was voluntarily dismissed as a Defendant on July 25, 1997. (D.I. 5).

Defendants' motion. (D.I. 60). Since Plaintiff has failed to file a completed brief after several more deadline extensions, the Court will resolve the motion on the papers received as of this date.

STANDARD OF REVIEW

Rule 56(c) of the Federal Rules of Civil Procedure provides that a party is entitled to summary judgment if a court determines from its examination of "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any," that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. FED. R. CIV. P. 56(c). In determining whether there is a triable dispute of material fact, a court must review all of the evidence and construe all inferences in the light most favorable to the non-moving party. Goodman v. Mead Johnson & Co., 534 F.2d 566, 573 (3d Cir. 1976). However, a court should not make credibility determinations or weigh the evidence. Reeves v. Sanderson Plumbing Prods., Inc., 120 S. Ct. 2097, 2110 (2000). Nevertheless, to defeat a motion for summary judgment, Rule 56(c) requires the non-moving party to:

> do more than simply show that there is some metaphysical doubt as to the material facts. . . . In the language of the Rule, the non-moving party must come forward with "specific facts showing that there is a genuine issue for trial." . . . Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is "no genuine issue for trial."

Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986). Thus, a mere scintilla of evidence in support of the non-moving party is insufficient for a court to deny the motion. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986).

DISCUSSION

1. Eleventh Amendment Immunity

Defendants contend that the Eleventh Amendment bars Plaintiff's Section 1983 claim. (D.I. 41 at 7). The Eleventh Amendment provides that "[t]he Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." Furthermore, the United States Supreme Court has stated that:

> Section 1983 provides a federal forum to remedy many deprivations of civil liberties, but it does not provide a federal forum for litigants who seek a remedy against a State for alleged deprivations of civil liberties. The Eleventh Amendment bars such suits unless the State has waived its immunity, or unless Congress has exercised its undoubted power under § 5 of the Fourteenth Amendment to override that immunity.

Will v. Michigan Dep't of State Police, 491 U.S. 58, 66 (1989)(citations omitted). In that regard, the Supreme Court has held that Congress did not intend to override a State's Eleventh Amendment immunity when it enacted Section 1983. Quern v. Jordan, 440 U.S. 332 (1979). In addition, Section 1983 only allows claims against "person[s]," which does not include claims seeking monetary relief from state officials who are sued in their official capacities. Will, 491 U.S. at 71. Therefore, State officials sued in their official capacities for monetary damages can assert Eleventh Amendment immunity, but State officials cannot assert such immunity when sued for monetary damages in their personal capacities. However, claims against State officials in their official capacities for prospective injunctive relief are permissible under Section 1983. Id. at 71 n.10.

Applying the above standards, insofar as Plaintiff seeks monetary damages from Defendants in their official capacities, such claim is barred by the Eleventh Amendment. However, insofar as Plaintiff seeks monetary damages from Defendants in their personal capacities, the Eleventh Amendment does not provide Defendants with immunity. Furthermore,

the Eleventh Amendment does not prevent Plaintiff from pursuing prospective injunctive or declaratory relief from Defendants in their official capacities.

2. Quasi-Judicial Immunity

Defendants also contend that, because Plaintiff is suing them for quasi-judicial conduct, the doctrine of quasi-judicial immunity bars the instant suit insofar as it seeks monetary relief from Defendants in their personal capacities.[3] (D.I. 41 at 12). Judicial or quasi-judicial immunity is an absolute bar to monetary liability for defendants who perform judicial functions and are sued in their personal capacities, even if the defendant acted with malice or in bad faith, unless (1) the conduct at issue was not a "judicial act," or (2) the conduct was taken in complete absence of jurisdiction. Mireles v. Waco, 502 U.S. 9, 11 (1991). The above two exceptions are quite narrow in scope and are not frequently invoked to deny judicial or quasi-judicial officers such immunity. See Stump v. Sparkman, 435 U.S. 349, 362 (1978)(describing the limited nature of the two exceptions to judicial immunity). Since there is no indication that either of the above exceptions apply in the instant case and because Plaintiff does not contend to the contrary, the Court will only address whether Defendants should be afforded the protections of quasi-judicial immunity in the first place.

Whether an administrative official is afforded the protection of quasi-judicial immunity for conduct during an adversarial hearing[4] depends on two factors: (1) whether or not the

[3] As opposed to Eleventh Amendment immunity, judicial or quasi-judicial immunity provides immunity from monetary liability for defendants sued in their personal capacities. 1B MARTIN A. SCHWARTZ & JOHN E. KIRKLIN, SECTION 1983 LITIGATION: CLAIMS AND DEFENSES 222 (3d ed. 1997). However, judicial immunity does not extend to claims seeking prospective relief, such as an injunction or a declaratory judgment. Pulliam v. Allen, 466 U.S. 522, 541 (1984).

[4] It is clear that the proceedings that resulted in Plaintiff's license being revoked were sufficiently adversarial for quasi-judicial immunity to apply. For instance, when conducting disciplinary proceedings, the Board is authorized to investigate charges of professional misconduct, to issue fines, revoke or suspend licenses, to issue subpoenas, and to compel the attendance of witnesses. 24 Del. C. § 1730.

adjudication "contained procedural safeguards that sufficiently resemble those afforded by judicial process," and (2) whether the hearing officer "is sufficiently independent and free of political influence." SCHWARTZ & KIRKLIN, supra, at 240 (citing Butz v. Economou, 438 U.S. 478, 512 (1978)). In applying this standard, courts have overwhelming held that members of medical or health boards involved in disciplinary proceedings were entitled to quasi-judicial immunity. Dunham v. Wadley, 195 F.3d 1007, 1010-11 (8th Cir. 1999)(veterinary medical examining board); O'Neal v. Mississippi Bd. of Nursing, 113 F.3d 62, 65-67 (5th Cir. 1997) (board of nursing); Wang v. New Hampshire Bd. of Registration in Med., 55 F.3d 698, 701 (1st Cir. 1995)(board of registration in medicine); Watts v. Burkhart, 978 F.2d 269, 275-78 (6th Cir. 1992)(en banc)(board of medical examiners); Duncan v. Mississippi Bd. of Nursing, 982 F. Supp. 425, 433-34 (S.D. Miss. 1997)(board of nursing); Alexander v. Margolis, 921 F. Supp. 482, 486-87 (W.D. Mich. 1995)(board of medicine); Howard v. Miller, 870 F. Supp. 340, 343-45 (N.D. Ga. 1994)(board of medical examiners); Kutilek v. Gannon, 76 F. Supp. 967, 971-72 (D. Kan. 1991)(board of healing arts). See also Stratford Nursing & Convalescent Ctr., Inc., 802 F. Supp. 1158, (D.N.J. 1991)(holding that the Director of the Division of Medical Assistance and Health Services had quasi-judicial immunity for incorrectly interpreting a regulation).

In the instant case, each member of the Board is appointed by the Governor for a two year term, and can only be removed by the Governor prior to the expiration of this two-year term "for cause for neglect of [his or her] duties" or for "unprofessional or dishonorable conduct." 24 Del. C. § 1710(e), (g). As a result, the Court concludes that Defendants are sufficiently free of political influence. See Alexander, 921 F. Supp. at 486-87 (holding that members of the state board of medicine, who were appointed by the governor to four year terms and only subject to removal by the governor for "gross neglect," corruption, or other similar misconduct, were

sufficiently free of political influence for purposes of quasi-judicial immunity). Second, the Court concludes that sufficient procedural safeguards exist. Plaintiff was afforded an initial hearing conducted by the Hearing Panel, a full Board Hearing, and judicial review in Delaware Superior Court. 24 Del C. § 1734, 1736. Plaintiff was afforded the opportunity to present evidence and to examine witnesses during the proceeding conducted by the Hearing Panel. (D.I. 42 at 4-8). At all of these proceedings, Plaintiff was afforded the opportunity to retain legal counsel. (D.I. 1 at ¶ 10; D.I. 42 at 13). As such, the Court concludes that the proceedings provided procedural safeguards that sufficiently resemble the judicial process to afford Defendants the protections of quasi-judicial immunity.

In his Complaint, Plaintiff contends that the procedures in the instant case were deficient in that he was not provided with adequate notice of the charges against him, the Hearing Panel's and the Board's decisions were arbitrary, the hearing before the Hearing Panel was not transcribed as required by law, the statutory framework prohibited Plaintiff from being able to challenge the Hearing Panel's factual findings, and certain members of the Hearing Panel and the Board engaged in misconduct. Plaintiff had the opportunity to present these arguments to the Superior Court.[5] Plaintiff either chose not to pursue these arguments on appeal or these arguments were rejected on appeal. Camas, slip op. at 7-12. Thus, the Court concludes that even if Defendants failed to comply with the statutory procedural requirements, Defendants are still protected by quasi-judicial immunity. See Duncan, 982 F. Supp. at 429, 432 (affording members of state board of nursing absolute quasi-judicial immunity from a Section 1983 claim for their imposing disciplinary sanctions on the plaintiff, even though the state court (1) twice

[5] See Part 3 below for a detailed discussion of Plaintiff's opportunity to raise these arguments on appeal.

reversed the board's decision, (2) criticized the board for not developing an adequate record for judicial review, and (3) admonished the board for not following the statutory procedures).[6]

In sum, the Court concludes that Defendants are absolutely immune from monetary liability in their personal capacities because they are afforded the protections of quasi-judicial immunity.[7]

[6] In addition to contending that Defendants failed to adhere to some of statutory procedural requirements, Plaintiff also contends that one of the statutory requirements is facially invalid. In particular, Plaintiff claims that he was denied a meaningful opportunity for judicial review of the Hearing Panel's decision because (1) the Board was required to adopt the Hearing Panel's findings of fact regardless of any alleged deficiencies and/or flaws in the process, and (2) the Superior Court did not have a transcript of the proceeding conducted by the Hearing Panel. The Court concludes that, even if the nature of this review denied Plaintiff due process, Defendants would nonetheless be entitled to qualified immunity for adhering to the statute as enacted by the legislature and as explained to them by legal counsel.

[7] To the extent that Dr. Martz's conduct differed from that of the other Defendants in that, as Executive Director of the Delaware Board of Medical Practice, he served in a prosecutorial function, the Court concludes that Dr. Martz is nonetheless immune to the same extent as the other Defendants under the doctrine of prosecutorial immunity. Butz, 438 U.S. at 515 (extending prosecutorial immunity to administrative officials that perform prosecutorial-type functions). Nevertheless, because Plaintiff's Complaint cannot fairly be characterized as asserting claims against Dr. Martz solely in his capacity as Executive Director, the Court concludes that this distinction is irrelevant.

3. Res Judicata and Collateral Estoppel

Defendants also contend that Plaintiff's claims must be dismissed due to the doctrines of res judicata and collateral estoppel. In particular, Defendants contend that Plaintiff's claims either should have been raised in the Superior Court (res judicata or claim preclusion) or that they have already been adjudicated by the Superior Court (collateral estoppel or issue preclusion), and therefore, are precluded from being litigated in the instant action. (D.I. 41 at 20).

Under the doctrine of res judicata, a final judgment by a court precludes the same parties "from relitigating issues [in a subsequent action] that were or could have been raised" in the first action. Kremer v. Chemical Constr. Corp., 456 U.S. 461, 466 n.6 (1982). Final judgments from a state court can have preclusive effect on Section 1983 claims brought in federal court. Migra v. Warren City Sch. Dist. Bd. of Educ., 465 U.S. 75, 82 (1984); Winward v. Brewington-Carr, C.A. No. 97-665-JJF, slip op. at 2-8 (D. Del. Nov. 16, 1998)(noting that the Delaware Superior Court has jurisdiction over Section 1983 claims). The determination of whether a final judgment in state court has preclusive effect on a subsequent Section 1983 claim brought in federal court is a question of state law. 28 U.S.C. § 1738; Migra, 465 U.S. at 81.

Under Delaware law, the doctrine of res judicata stands for the principle that "a party is foreclosed from bringing a second suit based on the same cause of action after a judgment has been entered in a prior suit involving the same parties." Betts v. Townsends, Inc., 765 A.2d 531, 534 (Del. 2000). This means that claims that should have been raised in an earlier action cannot be raised in a subsequent action. Fox v. Christina Square Ass'n, L.P., 1994 WL 146023, at *2

Also, since the Court has concluded that Defendants are immune from monetary liability in both their individual and official capacities, it is unnecessary to address Defendants' remaining immunity arguments that would shield them only from monetary liability.

n.3 (Del. Super. Ct. April 5, 1994). For res judicata to apply under Delaware law, five requirements must be met:

> (1) the court making the prior adjudication must have had jurisdiction; (2) the parties to the second action must be the same or be privy to those in the first action; (3) the cause of action must be the same in both cases or the second action must arise from the same transaction that formed the basis of the prior adjudication; (4) the issues in the prior action were decided adversely to the contentions of the plaintiff(s) in the pending case; and (5) the prior decree must be final.

Id. at 3 (citing Epstein v. Chatham Park, Inc., 153 A.2d 180, 184 (Del. 1959); Maldonado v. Flynn, 417 A.2d 378, 381 (Del. Ch. 1980)).

In the instant case, there is no dispute that the Superior Court had jurisdiction over Plaintiff's appeal from the Board's decision, that the same parties or their privies were involved in both actions, and that the issues in the Superior Court action were resolved adverse to Plaintiff. Also, because the time period for Plaintiff to appeal the Superior Court's decision to the Delaware Supreme Court has expired, the Superior Court's decision is "final." Epstein, 153 A.2d at 64-65; DEL. SUP. CT. R. 6(a)(i)(providing for 30 days to appeal a civil judgment from the Delaware Superior Court to the Delaware Supreme Court); Town of Bethany Beach v. Bethany Beach, Inc., 1994 WL 469194, at *6 (Del. Ch. Aug. 15, 1994)(implying that decision of the Superior Court, in upholding action of administrative board on appeal, is sufficiently "final" for res judicata to bar a subsequent action). See also Betts, 765 A.2d at 534 (holding that administrative agency's factual determination, even if never appealed to the Superior Court, can have a preclusive effect on subsequent litigation). Furthermore, it is clear that the Superior Court action and the instant action "arise from the same transaction," in that they both seek or sought to challenge the validity of the discipline imposed on Plaintiff by the Board. See Kossol v. Ashton Condo. Ass'n, Inc., 637 A.2d 827, 1994 WL 10861, at *2-3 (Del. 1994)(holding that

subsequent action for attorneys' fees was barred by res judicata when recovery of attorneys' fees was premised on successful earlier litigation); Cantor Fitzgerald, L.P. v. Chandler, 1998 WL 442440, at *5 (Del. Ch. July 20, 1998)(noting that the "modern view" of what constitutes the "same transaction" for purposes of res judicata is quite broad and easy to satisfy).

Despite the above conclusion, Plaintiff will not be barred from litigating the instant action if he can demonstrate that he did not have a "full and fair opportunity to be heard" on the disputed issues in the Superior Court. Kremer, 456 U.S. at 480-81. Plaintiff contends that he did not have the "opportunity" to litigate the Section 1983 claim before the Superior Court due to the limited nature of the Superior Court's appellate review of the Board's decision. (D.I. 60 at 17) (citing 29 Del. C. § 10142). The Court concludes that Plaintiff's contention lacks merit.[8]

Plaintiff alleges numerous due process violations in that Defendants did not comply with the procedural requirements set forth in the Delaware Code when they adjudicated the charges against him.[9] It is clear, however, that the Superior Court had jurisdiction to reverse the Board's action due to "legal error" during the administrative proceedings. Mooney v. Benson Mgmt.

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[8] Due to the Court's conclusion above regarding Defendants' immunity from monetary liability, the current analysis is only concerned with whether Plaintiff had the "opportunity" to challenge the Board's action and to obtain prospective relief. However, even if Plaintiff's claims for money damages had not been dismissed, they would have nonetheless been barred by res judicata even though Plaintiff could not have obtained money damages from the Superior Court in the event that the Superior Court reversed the Board's decision on appeal. See Gregory v. Chehi, 843 F.2d 111, 119 (3d Cir. 1988)(criticizing a district court decision which refused to apply res judicata to a section 1983 claim when the district court's refusal was solely based on the fact that the relief the plaintiff was seeking in the federal action was not obtainable in the earlier state action).

[9] Plaintiff's allegations include a failure to transcribe the hearing before the Hearing Panel in violation of 24 Del. C. § 1734(c), failure to provide adequate notice of the charges against Plaintiff in violation of 24 Del. C. § 1733(e), failure of biased members to recuse themselves from the proceedings in violation of 24 Del. C. § 1734(e)-(f), and imposing an "impossible condition" of punishment on Plaintiff. (D.I. 1).

Co., 466 A.2d 1209 (Del. 1983)(reversing administrative agency's decision, even though the facts were undisputed, because the agency applied an improper legal standard); Ford v. State Bd. of Educ., 1995 WL 411361, at *1 (Del. Super. Ct. June 9, 1995)(rejecting an appellant's claim that she was denied procedural due process at a hearing in front of the board of education), aff'd 676 A.2d 902 (Del. 1996). See also 29 Del. C. 10142 (providing for appellate review of decisions by an administrative agency or board). In fact, the Superior Court addressed one of Plaintiff's due process claims. Camas, slip op. at 8-11.[10] As a result, the Court concludes that Plaintiff did have a full and fair opportunity to raise his due process claims in Superior Court.

Plaintiff also contends that he was denied a full and fair opportunity to be heard because the factual determinations made by the Hearing Panel could not be challenged during the full Board hearing or in Superior Court. (D.I. 60 at 16-19). Insofar as Plaintiff challenges the constitutionality of the statute that requires the Board to adopt the Hearing Panel's factual determinations, the Court concludes that, as noted above, Plaintiff had the opportunity to raise the argument in Superior Court.[11] To the extent that Plaintiff contends the limited scope of the

[10] Insofar as some of Plaintiff's claims were actually litigated in Superior Court, these claims are precluded in the instant action under the doctrine of collateral estoppel or issue preclusion, as opposed to res judicata. See Winward, slip op. at 7.

[11] The Superior Court is expressly granted the authority to determine whether an administrative agency committed legal error. Mooney, 466 A.2d at 1213. In some states, the extent of judicial review of administrative agency decisions does not allow for facial challenges to the constitutionality of a statute; rather, an appellant can only claim that the agency's action was unconstitutional in the appellant's particular case. See, e.g., Hachamovitch v. DeBuono, 159 F.3d 687, 695 (2d Cir. 1998). However, in reviewing an appeal of an agency decision pursuant to 29 Del. C. § 10142, the Delaware Superior Court has decided facial challenges to the statutory procedures for administrative hearings. Joseph v. C.C. Oliphant Roofing Co., 711 A.2d 805, 807 (Del. Super. Ct. 1997)(deciding the issue, on appeal from a decision of the Industrial Accident Board, of whether 19 Del. C. § 2126 and 2127 violated Separation of Powers by granting the Industrial Accident Board the right to determine attorneys' and physicians' fees for work performed for, or in front of, the Accident Board). Therefore, the Court concludes that Plaintiff did have a full and fair opportunity to present all of his due process challenges to the Superior Court, including facial challenges of statutes to which Defendants adhered.

Superior Court's appellate review denied him a full and fair opportunity to be heard, the Court concludes that this contention is without merit. Courts have regularly held that judicial review of administrative agency action, even when such review is limited to whether "any evidence" exists in the record to support the agency's decision, is a sufficient opportunity to be heard for res judicata purposes. See, e.g., Gorin v. Osborne, 756 F.2d 834, 835 (11th Cir. 1985).

In the instant case, the Superior Court reviewed the Board's determination to see if the decision was supported by "substantial evidence" on the record. Camas, slip op. at 7; 29 Del. C. § 10142(d). The record before the Superior Court included a transcript of the Board's hearing and the written opinion of the Hearing Panel which contained a summary of the evidence presented and the Hearing Panel's factual findings. Based on this record and the standard of review, the Court concludes that the Superior Court's review of the Board's decision afforded Plaintiff a full and fair opportunity to challenge the factual determinations made by the Hearing Panel.[12] Therefore, the Court concludes that Plaintiff is precluded from litigating the instant Section 1983 action in this Court.

CONCLUSION

For the reasons discussed above, the Court concludes that Defendants are immune from monetary liability because of Eleventh Amendment and quasi-judicial immunity, and that Plaintiff is precluded from asserting his claims for prospective relief under the doctrines of res judicata and collateral estoppel. These conclusions render Plaintiff's claim for attorneys' fees

[12] To the extent that Plaintiff alleges that the lack of a transcript from the Hearing Panel prevents a full and fair opportunity to challenge the Hearing Panel's factual findings, the Court is not convinced that a transcript, as opposed to an opinion containing findings of fact, is required. Regardless, because Plaintiff had an opportunity to challenge the lack of a transcript in Superior Court but failed to do so, the Court concludes that Plaintiff had a full and fair opportunity to be heard on this issue.

under Section 1988 moot. As a result, the Court will grant Defendants' Motion for Summary Judgment on all counts.

An appropriate Order will be entered.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

JOHN M. CAMAS, M.D.,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 97-245-JJF
	:	
DIANA DICKSON-WITMER, M.D., PRESIDENT, et al.,	:	
	:	
	:	
Defendants.	:	

FINAL ORDER

At Wilmington this 30 day of March, 2001, for the reasons set forth in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that Defendants' Motion for Summary Judgment (D.I. 43) is **GRANTED**, and therefore, judgment is entered in favor of Defendants and against Plaintiff on all counts.

UNITED STATES DISTRICT JUDGE