

(a) § 1983 allegations

Although 42 U.S.C. § 1983 is relatively simple and straightforward in its language, ° [HN7] in order to sustain his claim plaintiff must allege: (1) that the defendants deprived him of some right secured by the Constitution or laws of the United States; and (2) **[**17]** that the defendants acted under color of state law. *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 90 S. Ct. 1598, 26 L. Ed. 2d 142 (1970); *Fadjo v. Coon*, 633 F.2d 1172 (5th Cir. 1981); *Menchaca v. Chrysler Credit Corp.*, 613 F.2d 507 (5th Cir. 1980). [HN8] Both of these elements of a § 1983 action must be alleged and proven before relief can be forthcoming. An inspection of the Amended Complaint reveals that plaintiff can prove no set of facts that will permit the relief he seeks since he has been deprived of no federal or constitutional right. Nor have all of the defendants acted under color of state law.

6. "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

[18] [*822]** The defendants' alleged willful and malicious exclusion of the plaintiff from the medical staff simply does not constitute a violation of a federal right. Plaintiff has cited the Court to no authority supporting the proposition that a podiatrist has a federal right to membership on a hospital staff. Nor has the Court independently found any authority to support plaintiff's civil rights claims. To the contrary, the Fifth Circuit recently held that a podiatrist's constitutional rights went untrammelled when he was denied staff membership at a public hospital. *Shaw v. Hospital Authority of Cobb County*, 614 F.2d 946 (5th Cir.), cert. denied, 449 U.S. 955, 101 S. Ct. 362, 66 L. Ed. 2d 220 (1980).⁷

7. Although this case arose as an action to remedy alleged due process and equal protection violations and was not brought pursuant to the civil rights laws, the Shaw court nonetheless found that Dr. Shaw suffered no violation of a federal right on facts nearly identical to those sub judice. The Court ruled that in the absence of a showing that the denial of staff privileges was not rationally based, or that it was precipitated by invidious racial discrimination, "it is not the province of this court to legislate the final resolution of a problem indigenous to the medical profession." *Id.* at 952.

There was also some indication given by plaintiff at his deposition that his cause of action really involved a due process and equal protection claim. See plaintiff's deposition at 52.

[19]** By adopting the memorandum decision of the district court, the Fifth Circuit found no constitutional defect in excluding Dr. Shaw from membership on a hospital medical staff by reason of his status as a podiatrist. The Court declined to interfere in an area that traditionally has been the province of the medical profession and not ordinarily subject to governmental regulation. In light of *Shaw*, the Court must reject plaintiff's invitation to find that he has been deprived of a federal right in this instance.

The Court agrees with the private hospital and physician defendants that they are not liable under § 1983 even if plaintiff had been deprived of some federal right. It is established that [HN9] private entities are subject to the Civil Rights laws only if their activities are significantly affected with state involvement:

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