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No. 19-2347

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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DEBORAH S. HUNT, Clerk

VERNON PROCTOR, Plaintiff-Appellant, v. KAREN KRZANOWSKI; DESMOND MITCHELL, Defendants-Appellees.	)	ON APPEAL FROM THE UNITED STATES COURT FOR THE WESTERN DISTRICT OF MICHIGAN

BEFORE: GIBBONS, GRIFFIN, and THAPAR, Circuit Judges.

JULIA SMITH GIBBONS, Circuit Judge. Michigan citizens can apply for a license to possess and use medical marihuana. That application must include a certification from a physician that the patient has a debilitating medical condition. Vernon Proctor, a Michigan physician, frequently issued these certifications to patients. But in 2016, a dispute between Proctor and Michigan's Department of Licensing and Regulatory Affairs ("LARA" or the "Department") over LARA's means of verifying physician certifications led LARA to temporarily reject all applications bearing Proctor's certification. Proctor now brings 42 U.S.C. § 1983 claims against two LARA employees, Karen Krzanowski and Desmond Mitchell, alleging their blanket rejections of applications accompanied by his certification violated his Fourteenth Amendment due process rights. Krzanowski and Mitchell claim qualified immunity.

Proctor contends that he has a constitutionally protected interest in helping others procure a substance banned by federal law. But that right—doubtful, at best—is far from clearly established. Accordingly, we affirm the district court's decision dismissing Proctor's complaint.

I.

In 2008, Michigan voters passed a ballot initiative legalizing medical marihuana. Mich. Comp. Laws § 333.26422. LARA is responsible for granting or denying Michigan residents a registry identification card ("registry card") entitling them to medical marihuana. *See id.* § 333.26423(m). A patient seeking a registry card must submit a written certification from a physician, with whom the patient has a bona fide physician-patient relationship, averring both that the patient suffers from a debilitating medical condition and that, based on an in-person assessment and review of the patient's medical records, the physician believes that use of medical marihuana will treat or alleviate the patient's symptoms. *Id.* §§ 333.26426(a)(1), 333.26423(q). For purposes of the act, a physician is "an individual licensed as a physician" under Michigan law. *Id.* § 333.26423(i); *see also id.* § 333.17001(1)(f).

LARA must verify the information in the application and approve or deny the application within fifteen days. *Id.* § 333.26426(c). Department rules permit LARA employees to verify physician certifications by phone, email, or mail. Mich. Admin. Code r. 333.109(d). LARA may deny an application if the application is incomplete, contains information that cannot be verified, or includes falsified information. Mich. Comp. Laws § 333.26426(c). Department rules further specify that the Department "shall deny an application" if "any information provided by the . . . physician was falsified, fraudulent, incomplete, or cannot be verified." Mich. Admin. Code r. 333.113(4)(c).

In February 2016, Krzanowski became the manager of LARA's Medical Marihuana Section. Shortly thereafter, LARA employees began calling Proctor's office to verify patient certifications, providing only the patient's name and date of birth. Proctor asked that LARA employees instead put their requests in writing. But Mitchell, another LARA employee, refused Proctor's request. Proctor also requested that LARA employees provide the date Proctor issued the certification, as LARA employees had occasionally done before. But LARA employees told Proctor that they were barred from providing him the date of the certification.

In June 2016, Proctor learned from patients as well as colleagues at another clinic that LARA would not accept applications accompanied by his certifications. Proctor called Krzanowski who confirmed that LARA would no longer be accepting applications accompanied by certifications from Proctor, allegedly because Proctor was not complying with LARA's verification process. When Proctor explained that he needed LARA to provide him the date of the certification to verify the certification, Krzanowski told him LARA could not provide that information.

In 2019, Proctor filed suit alleging that Krzanowski and Mitchell had violated his Fourteenth Amendment Due Process rights by "restricting [his medical] license without prior notice" or "post-deprivation process." DE 1, Compl., Page ID 6–8. Krzanowski and Mitchell moved to dismiss the complaint, arguing both that Proctor had failed to allege a constitutionally protected interest and that they were entitled to qualified immunity. The district court granted Krzanowski's and Mitchell's motion to dismiss, agreeing that Proctor had alleged no clearly established constitutionally protected property or liberty interest.[1] Proctor timely appealed.

[1] In response to Krzanowski's and Mitchell's motion to dismiss, Proctor moved to amend his complaint. The district court denied Proctor's motion to amend as futile, noting that it offered almost no new information and that the new information it did offer only further supported allegations from the first complaint the district court accepted as true

II.

Proctor's complaint alleges that Krzanowski and Mitchell issued a blanket rejection of applications accompanied by his certifications, regardless of whether they could verify the certification, without providing Proctor notice or a post-deprivation hearing. Proctor argues that, because the blanket rejection of his certifications infringed his liberty interest in practicing medicine and his property interest in his medical license, the lack of notice or post-deprivation hearing violates his Fourteenth Amendment due process rights. Krzanowski and Mitchell respond that they violated no clearly established constitutionally protected liberty or property interest of Proctor's. We agree.

An individual defendant in a 42 U.S.C. § 1983 suit is immune from liability for civil damages where her "conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Waeschle v. Dragovic*, 576 F.3d 539, 543 (6th Cir. 2009) (quoting *Pearson v. Callahan*, 555 U.S. 223, 231 (2009)). To overcome this immunity, Proctor must show both that Krzanowski and Mitchell (1) violated a constitutional right and (2) that the right violated was clearly established. *Hearring v. Sliwowski*, 712 F.3d 275, 279 (6th Cir. 2013).

We have "discretion to decide the order in which to engage these two prongs." *Tolan v. Cotton*, 572 U.S. 650, 656 (2014). Because determining whether a constitutional violation has occurred "is an uncomfortable exercise where . . . the answer . . . may depend on a kaleidoscope of facts not yet fully developed," it is often appropriate to begin with the "clearly established" prong at the pleading stage. *Pearson*, 555 U.S. at 239 (first omission in original) (citation omitted). Similarly, when briefing on a constitutional question is inadequate, skipping to the clearly

when deciding the motion to dismiss. Proctor does not argue on appeal that the district court erred in denying his motion to amend.

established prong is advisable. *Id.* We think that guidance is applicable here and proceed directly to the clearly established prong.

A right is clearly established when it is "sufficiently clear that a reasonable official would understand that his or her conduct violates that right," *Waeschle*, 576 F.3d at 544 (quoting *Durham v. Nu'Man*, 97 F.3d 862, 866 (6th Cir. 1996)), "in light of the specific context of the case," *Binay v. Bettendorf*, 601 F.3d 640, 651 (6th Cir. 2010) (quoting *Scott v. Harris*, 550 U.S. 372, 377 (2007)). And while Proctor need not find a case directly on point, his asserted right must be defined "not as a broad general proposition" but rather as a "particularized" principle. *Reichle v. Howards*, 566 U.S. 658, 665 (2012) (first quoting *Brosseau v. Haugen*, 543 U.S. 194, 198 (2004) (per curiam), then quoting *Anderson v. Creighton*, 483 U.S. 635, 640 (1987)). We look to decisions of this court, the United States Supreme Court, and the Michigan Supreme Court to determine whether Proctor's right was clearly established. *Waeschle*, 576 F.3d at 544.

To prevail on his procedural due process claim, Proctor must show that "(1) he had a life, liberty, or property interest protected by the Due Process Clause; (2) he was deprived of this protected interest; and (3) the state did not afford him adequate procedural rights prior to depriving him of the property interest." *EJS Props., LLC v. City of Toledo*, 698 F.3d 845, 855 (6th Cir. 2012) (quoting *Women's Med. Prof'l Corp. v. Baird*, 438 F.3d 595, 611 (6th Cir. 2006)). Thus, at the outset, Proctor must point to a clearly established property or liberty interest infringed by Krzanowski and Mitchell. *See Experimental Holdings, Inc. v. Farris*, 503 F.3d 514, 519 (6th Cir. 2007).

First, Proctor argues that Krzanowski and Mitchell infringed his constitutionally protected liberty interest to follow a chosen profession by issuing a blanket rejection of his certifications. The state infringes an individual's liberty interest when it "distinctly alter[s] or extinguishe[s]" a

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