STATE OF SOUTH CAROLINA COUNTY OF SUMTER	)	IN THE COURT OF COMMON PLEAS IN THE THIRD JUDICIAL CIRCUIT
	)	Civil Action No. 2023-CP-43-00612
CRAIG FITZGERALD DAVIS, Plaintiff, v. CHARLES HERMAN WHITE, JR., MD AND PRISMA HEALTH MEDICAL GROUP – MIDLANDS, Defendants.	)	**ORDER**

This matter came before the Court on August 29, 2023, upon a motion to dismiss filed by Defendants Charles Herman White, Jr., MD ("Dr. White") and Prisma Health Medical Group – Midlands ("Prisma") (together, "Defendants") pursuant to Rules 12(b)(1) and 12(b)(6) of the South Carolina Rules of Civil Procedure seeking dismissal of the complaint filed by Plaintiff Craig Fitzgerald Davis ("Plaintiff" or "Davis"). Will Thomas of Parker Poe appeared on behalf of Prisma. Tina Cundari of Smith Robinson appeared on behalf of Prisma and Dr. White. Kathleen McDaniel of Burnette Shutt & McDaniel appeared on behalf of Plaintiff.

For the reasons set forth below, the Court grants the motion to dismiss.

FACTS

On April 21, 2023, Plaintiff filed this action alleging Dr. White accessed Plaintiff's confidential medical records on Prisma's electronic medical record system without Plaintiff's consent and, upon information and belief, disclosed that information to other Prisma officers and

employees with whom Plaintiff did not have a physician-patient relationship. Compl. ¶¶ 9, 11, 13. Plaintiff further alleges Dr. White said to Plaintiff, "I know everything about you." Compl. ¶ 12.

Plaintiff is a former employee of Prisma who was at all relevant times employed by Prisma as a Physician Practice Manager. Compl. ¶ 2. Plaintiff was also a patient of Prisma. Compl. ¶ 6. Dr. White is a pulmonologist at Prisma. Compl. ¶ 7. The complaint alleges Dr. White supervised Plaintiff. *Id.* The complaint further alleges no physician-patient relationship existed between Plaintiff and Dr. White. Compl. ¶ 8.

Based on these facts, the complaint alleges causes of action for (1) invasion of privacy – wrongful intrusion into private affairs, (2) invasion of privacy – wrongful publicizing of private affairs, (3) breach of confidence, (4) negligent training, (5) negligent retention, and (6) intentional infliction of emotional distress. Compl. pp. 4-7. Plaintiff alleges he has suffered "emotional distress, pain and suffering, embarrassment, humiliation, anxiety, loss of enjoyment of life, and loss of economic opportunity." Compl. ¶ 17.

On June 15, 2023, Defendants moved to dismiss the complaint on the grounds that the allegations against Prisma are barred by the exclusivity provision of the Workers' Compensation Act and the allegations against Dr. White and Prisma fail to state a claim for relief. On August 24, 2023, Defendants filed a memorandum of law in support of the motion. Plaintiff did not file an opposition memorandum. On August 29, 2023, the Court conducted a hearing. After considering the arguments of counsel and the relevant case law and legal authorities, the Court grants the motion.

STANDARD

A complaint may be dismissed for "failure to state facts sufficient to constitute a cause of action." Rule 12(b)(6), SCRCP. "In considering a motion to dismiss under Rule 12(b)(6), a court

must base its ruling solely on the allegations set forth in the complaint." *Carnival Corp. v. Historic Ansonborough Neighborhood Ass'n*, 407 S.C. 67, 74, 753 S.E.2d 846, 850 (2014). "If the facts alleged and the inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, dismissal under Rule 12(b)(6) is improper." *Id.* at 74, 753 S.E.2d at 850.

"Rule 12(b)(6) requires the plaintiff to allege facts." *Paradis v. Charleston Cnty. Sch. Dist.*, 424 S.C. 603, 614, 819 S.E.2d 147, 153 (Ct. App. 2018), *rev'd on other grounds*, 433 S.C. 562, 861 S.E.2d 774 (2021). "When a plaintiff states nothing more than legal conclusions, a claim must fail." *Id.* at 613, 819 S.E.2d at 153.

Further, a complaint may be dismissed for lack of subject matter jurisdiction. Rule 12(b)(1), SCRCP. Rule 12(b)(1) is the proper procedural vehicle for raising lack of subject matter jurisdiction based on the exclusivity provision of the Workers' Compensation Act. *Edens v. Bellini*, 359 S.C. 433, 597 S.E.2d 863 (Ct. App. 2004).

ANALYSIS

I. The South Carolina Workers' Compensation Act

As an initial matter, Defendants contend the causes of action brought against Prisma are barred by the South Carolina Workers' Compensation Act, S.C. Code Ann. § 42-1-540. Defendants argue that because Plaintiff has alleged a work-related injury, the Act provides the exclusive remedy. The Court agrees.

Our state supreme court has held that claims brought by one employee against another for harm arising in the workplace fall within the scope of the South Carolina Workers' Compensation Act. *Dickert v. Metro. Life Ins. Co.*, 311 S.C. 218, 220, 428 S.E.2d 700, 701 (1993). In *Dickert*, an employee sued her employer and a co-worker for, among other things, (1) negligence based

upon the employer's failure to exercise reasonable care in the selection, retention, and supervision of her co-employee; (2) assault and battery based upon the co-worker's actions towards the employee; (3) intentional infliction of emotional distress; and (4) invasion of privacy. The supreme court affirmed summary judgment in favor of the employer on the ground that the South Carolina Workers' Compensation Act provided the exclusive remedy. *Id.* at 220-222, 428 S.E.2d at 701-02. In so holding, the court noted that invasion of privacy claims alleging emotional harm are "of a personal nature, and therefore, encompassed by the Act." *Id.*

Likewise, in another case, the supreme court held that summary judgment in favor of the employer was "appropriate on the allegations of intentional infliction of emotional distress, assault and battery as these constitute personal injuries within the scope of the Act." *Loges v. Mack Trucks, Inc.*, 308 S.C. 134, 137, 417 S.E.2d 538, 540 (1992).

In the present case, the harm alleged is between two employees and is personal in nature. Plaintiff alleges Dr. White accessed Plaintiff's medical records without his consent and disclosed information about him to others at Prisma. Plaintiff alleges he has suffered emotional distress, pain and suffering, embarrassment, humiliation, and anxiety, among other things. Plaintiff alleges invasion of privacy and intentional infliction of emotional distress, both of which fall within the exclusive province of the Workers' Compensation Act. The harm alleged is not propriety in nature. It is personal, and therefore falls squarely within the Act.

Contrary to what Plaintiff's counsel argued at the hearing, a mental injury does not need to be accompanied by a physical injury to trigger coverage under the Act. *See Stokes. v. First Nat'l Bank*, 306 S.C. 46, 410 S.E.2d 248 (1991) (holding that an extreme prolonged increase in work hours combined with additional job responsibilities constitutes "unusual and extraordinary conditions of employment" resulting in a compensable injury); S.C. Code Ann. § 42-1-160

(requiring that employment conditions be "extraordinary and unusual in comparison to the normal conditions of the particular employment" for there to be a compensable injury). *See also McLain v. Pactiv Corp.*, 360 S.C. 480, 602 S.E.2d 87 (Ct. App. 2004) (recognizing that "intentional infliction of emotional distress constitutes a personal injury that falls within the scope of the act").

In the present case, Plaintiff has alleged Defendants' conduct was "extreme and outrageous" and that he suffered emotional distress "so severe that no reasonable person could be expected to endure it." Compl. ¶¶ 41, 43. The Court concludes that such injury falls within the scope of the Act.

Further, although the complaint repeatedly alleges that Dr. White was the alter ego of Prisma, the complaint fails to allege Dr. White was an owner or officer of Prisma. As explained in *Dickert*, "only dominant corporate owners and officers may constitute alter egos" of an employer. *Id.* at 221, 428 S.E.2d at 701. Because the complaint alleges only that Dr. White was a pulmonologist and not an owner or officer of Prisma, the Court concludes as a matter of law that Dr. White was not the alter ego of Prisma and therefore any alleged intentional conduct by Dr. White is not the conduct of Prisma and does not take the allegations outside of the province of the Workers' Compensation Act.

Finally, the cause of action for negligent retention also falls within the exclusive jurisdiction of the Workers' Compensation Commission. *Id.* at 218-19, 428 S.E.2d at 700-701; *see also Sabb v. S.C. State Univ.*, 350 S.C. 416, 421, 567 S.E.2d 231, 233 (2002) (holding the Commission has exclusive jurisdiction over claims for negligent supervision of an employee and negligent retention of an employee).

Although South Carolina state courts have not expressly addressed whether negligent training falls within the exclusive jurisdiction of the Commission, South Carolina federal courts

have determined that negligent training and negligent supervision claims are barred by the exclusivity provision of the Act. *Ray v. Bechtel Savannah River, Inc.*, No. 1:06-2946-HFF-JRM, 2007 WL 1960587, at *2 (D.S.C. July 2, 2007) (dismissing negligent training and supervision claims on the ground that they are barred by the exclusive remedy doctrine).

In summary, to the extent that the causes of action alleged against Prisma are for work-related injuries, those causes of action are within the exclusive jurisdiction of the Workers' Compensation Commission and are therefore dismissed.

II. Failure to state a claim

Even if the claims against Prisma were not barred by the exclusivity provision of the Workers' Compensation Act, the Court concludes that the complaint should be dismissed for failure to state a claim as to both Prisma and Dr. White.

a. Invasion of privacy – wrongful intrusion into private affairs

To state a claim for invasion of privacy – wrongful intrusion into private affairs, the plaintiff must plead and prove: (1) an intrusion; (2) into that which is private; (3) that is substantial and unreasonable enough to be legally cognizable; and (4) it must be intentional. *Snakenberg v. Hartford Cas. Ins. Co.*, 299 S.C. 164, 171-72, 383 S.E.2d 2, 6 (Ct. App. 1989). With respect to the third element, to constitute an invasion of privacy, the "defendant's conduct must be of a nature that would cause mental injury to a person of ordinary feelings and intelligence in the same circumstances." *Id.* "Whether the conduct in question meets this test, in the first instance, is a question of law for the court." *Id.* Further, the plaintiff must allege a "blatant and shocking disregard of his rights, and serious mental or physical injury or humiliation to himself resulting therefrom." *Rycroft v. Gaddy*, 281 S.C. 119, 124-25, 314 S.E.2d 39, 43 (Ct. App. 1984).

In the present case, the Court finds that the facts alleged do not establish a wrongful intrusion into private affairs. Plaintiff acknowledges that Dr. White is a pulmonologist and employee of Prisma, and that Plaintiff was a patient at the hospital and his medical records were maintained by Prisma in an electronic medical record system. The complaint fails to allege facts sufficient to establish that Dr. White intruded into Plaintiff's private affairs. *See Snakenberg*, 299 S.C. at 171, 383 S.E.2d at 6 (defining intrusion as "watching, spying, prying, besetting, overhearing, or other similar conduct").

Even if Dr. White viewed Plaintiff's medical records and did so without Plaintiff's consent, the complaint fails to allege facts allowing the Court to conclude as a matter of law that the alleged conduct would "cause mental injury to a person of ordinary feelings and intelligence in the same circumstances." *Snakenberg*, 299 S.C. at 171, 383 S.E.2d at 6; *see also Paradis*, 424 S.C. at 614, 819 S.E.2d at 153 ("Rule 12(b)(6) requires the plaintiff to allege facts."). Plaintiff fails to explain what medical information Dr. White allegedly accessed and to whom he disclosed it. The facts alleged do not support a claim that the purported disclosure constitutes a blatant and shocking disregard of Plaintiff's rights or could cause mental injury to a person of ordinary feelings and intelligence. Telling someone, "I know everything about you," is not enough.

Moreover, based on the facts alleged, the Court cannot conclude that there has been a "blatant and shocking disregard of [Plaintiff's] rights," which is a necessary element for stating a claim for relief. Further, Plaintiff has failed to plead "serious mental or physical injury or humiliation" resulting from the alleged conduct. *Id.*

Given these deficiencies, the Court concludes as a matter of law that the claim for invasion of privacy – wrongful intrusion into private affairs must be dismissed.

b. Invasion of privacy – wrongful publicizing of private affairs

To state a claim for invasion of privacy – wrongful publicizing of private affairs, the plaintiff must allege that his private affairs have been publicized. *McCormick v. England*, 328 S.C. 627, 640, 494 S.E.2d 431, 437-38 (Ct. App. 1997). Publicizing facts involves disclosure to the public, not just an individual or a small group. *Id.* at 641, 494 S.E.2d at 438; *see also Swinton Creek Nursery v. Edisto Farm Credit*, 334 S.C. 469, 478-80, 514 S.E.2d 126, 131-32 (1999) (finding the difference between publicity and publication "is one of a communication that reaches, or is sure to reach, the public").

For example, in one case the plaintiff asserted a cause of action against a hospital and physician for invasion of privacy. *Snavely v. AMISUB of S.C., Inc.*, 379 S.C. 386, 392-93, 665 S.E.2d 225 (Ct. App. 2008). The court of appeals held the plaintiff could not sustain a claim against the hospital for invasion of privacy because she could not prove the hospital "publicized her medical condition to the public at large." *Id.* at 397, 665 S.E.2d at 227.

In the present case, Plaintiff has merely alleged—upon information and belief—that Dr. White disclosed and publicized confidential medical information about Plaintiff to other Defendant Prisma officers and employees with whom Plaintiff did not have a physician-plaintiff relationship. Compl. ¶ 13. As a matter of law, the Court concludes that this allegation does not meet the standard for publicity. Disclosure of information to Prisma officers and employees does not constitute a disclosure to the public at large.

Accordingly, the Court concludes that this cause of action fails as a matter of law.

c. Breach of confidence

To state a claim for breach of confidence, a confidential relationship between the plaintiff and the defendant must exist. *See McCormick v. England*, 328 S.C. 627, 494 S.E.2d 431 (Ct. App.

1997). Accordingly, "an actionable tort for the breach of confidence lies for a physician's breach of the duty to maintain the confidences of his or her patient in the absence of compelling public interest or justification for the disclosure." *Id.* at 640, 494 S.E.2d at 437. The law recognizes that "[p]atients have the right to be candid in their disclosures of private information to their physicians without fearing this information will be disseminated throughout the community." *Id.* at 643-44, 494 S.E.2d at 439.

In *McCormick*, the family physician submitted a letter to the husband's attorney in a divorce proceeding outlining the wife's various medical issues, including that she suffered from major depression and alcoholism. *Id.* at 630, 494 S.E.2d at 432. The letter further stated that the couple's children had experienced school difficulties due to the family discord caused by the wife's drinking. *Id.* at 630-31, 494 S.E.2d at 432. The doctor told the husband's attorney that the wife was a danger to herself and to her family and should be hospitalized. *Id.* at 631, 494 S.E.2d at 432.

The facts alleged in the present case are nothing like the facts in *McCormick*. To begin, the complaint alleges that a physician-patient relationship did not exist between Plaintiff and Dr. White. Compl. ¶ 8. This fact alone is fatal to the claim for breach of confidence. Without a confidential relationship, a claim for breach of confidence fails as a matter of law.

Later, however, the complaint alleges that "[t]o the extent a physician-patient relationship existed," Dr. White "owed Plaintiff a duty of confidentiality." Compl. ¶ 28. But even if a physician-patient relationship existed between Plaintiff and Dr. White, the complaint fails to allege that Plaintiff confided in Dr. White or shared confidential information with him. Nor does the complaint allege that Dr. White disclosed any such confidential information to anyone outside of Prisma. The facts of this case are a far cry from the facts of *McCormick*, where the physician shared the patient's confidential medical information with the husband's divorce attorney. At

most, Dr. White shared information gleaned from records maintained on Prisma's electronic system with other Prisma personnel.

The Court concludes as a matter of law that the conduct alleged does not give rise to a claim for breach of confidence and therefore this cause of action is dismissed.

d. Negligent training

To state a claim for negligent training, a plaintiff must allege an "employer knew or should have known that its employment of a specific person created an undue risk of harm to the public . . . ." *James v. Kelly Trucking Co.*, 377 S.C. 628, 631, 661 S.E.2d 329, 330 (2008).

Here, the complaint is devoid of any allegations that Prisma knew or should have known that employing Dr. White created an undue risk of harm to the public. Indeed, the facts alleged do not support the conclusion that Prisma knew or should have known that employing Dr. White created "an undue risk of harm" to Plaintiff or to anyone else.

Accordingly, Plaintiff's claim for negligent training fails as a matter of law.

e. Negligent retention

Similarly, a claim for negligent retention requires (1) knowledge of the employer and (2) foreseeability of harm to third parties. *Doe v. ATC, Inc.*, 367 S.C. 199, 206, 624 S.E.2d 447, 450 (Ct. App. 2005). In *Doe*, the court opined that "[f]rom a practical standpoint, these elements are analyzed in terms of the number and nature of prior acts of wrongdoing by the employee, and the nexus or similarity between the prior acts and the ultimate harm caused." *Id.* A plaintiff must demonstrate that the employer knew the employee had some "propensity, proclivity, or course of conduct sufficient to put the employer on notice of possible danger to third parties." *Id.* at 206, 624 S.E.2d at 451. Further, a court "should dispose of a negligent retention claim on a dispositive

motion when no reasonable factfinder could find the risk foreseeable or the employer's conduct to have fallen below the acceptable standard." *Id.*

Here, Plaintiff's negligent retention claim is based upon Prisma's continued employment of Dr. White "*after* Plaintiff reported Defendant White's unlawful access and disclosure of Plaintiff's confidential medical information." Compl. ¶ 38 (emphasis added). However, Plaintiff's claim fails as a matter of law because Plaintiff fails to allege that Prisma possessed knowledge of purported, prior acts of wrongdoing by Dr. White that would have created foreseeable harm to third parties *before* the alleged harm occurred. *See Doe*, 367 S.C. at 206, 624 S.E.2d at 450-51; *Callum v. CVS Health Corp.*, 137 F. Supp. 3d 817, 860 (D.S.C. 2015) ("To state a claim for negligent retention, a plaintiff must allege the employer had knowledge of its employee's habit of prior wrongdoings, and despite the foreseeability of harm to third parties, the employer failed to terminate the offending employee before he caused the plaintiff harm.").

Because the complaint fails to allege facts to support the elements of this cause of action, the Court concludes that the claim fails as a matter of law.

f. Intentional infliction of emotional distress

Lastly, the Court concludes Plaintiff has failed to state a claim for intentional infliction of emotional distress.

"To state a claim for intentional infliction of emotional distress, a plaintiff must show (1) the defendant intentionally or recklessly inflicted severe emotional distress, or was certain or substantially certain that such distress would result from his conduct; (2) the conduct was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community; (3) the actions of defendant caused the plaintiff's emotional distress; and (4) the emotional distress suffered by the plaintiff was so severe

that no reasonable person could be expected to endure it." *Doe v. Oconee Mem'l Hosp.*, 437 S.C. 574, 585, 878 S.E.2d 920, 926 (Ct. App. 2022).

Whether a defendant's conduct is so extreme and outrageous "as to exceed all bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community" is a question of law for the court to decide. *Shupe v. Settle*, 315 S.C. 510, 517, 445 S.E.2d 651, 655-56 (Ct. App. 1994); *see also Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 358, 650 S.E.2d 68, 72 (2007) ("In order to prevent claims for intentional infliction of emotional distress from becoming a 'panacea for wounded feelings rather than reprehensible conduct,' the court plays a significant gatekeeping role . . . .").

In *Shipman v. Glenn*, the court considered the following evidence and determined as a matter of law that it was insufficient to sustain a claim for intentional infliction of emotional distress:

- school employee suffered from cerebral palsy;
- supervisor verbally abused and threatened employee with loss of her job because employee discussed with others her concerns that she was a victim of intentional discrimination through a reduction in school's workforce;
- supervisor ridiculed her speech impediment; and
- supervisor's conduct caused employee to become emotionally upset, distressed, and worried; caused her to be physically ill to the point where she had to leave work early; caused her to live in constant fear of the supervisor and what he might do to injure or harm her career; and adversely affected her personal life and her ability to function in her job.

314 S.C. 327, 443 S.E.2d 921 (Ct. App. 1994); *see also Manley v. Manley*, 291 S.C. 325, 353 S.E.2d 312 (1987) (determining that a good faith, involuntary committal of a mother to a state hospital was not outrageous).

Here, Plaintiff has failed to allege any facts to suggest that Defendants intended to inflict, or recklessly inflicted, severe emotional distress upon him. Plaintiff has failed to plead any facts to support the allegation that Defendants "exceed[ed] all bounds of decency" such that their actions

would be considered "utterly intolerable in a civilized community." Instead, Plaintiff merely alleges that his confidential medical records were accessed and Dr. White disclosed certain confidential information to others at Prisma. When compared to the conduct set forth in *Shipman* and *Manley*, the Court finds that the conduct alleged by Plaintiff cannot be deemed to be so extreme and outrageous as to exceed all bounds of decency such that it must be regarded as atrocious and utterly intolerable in a civilized community.

Further, Plaintiff has failed to plead any facts demonstrating that the emotional distress he has allegedly suffered was so severe that no reasonable person could be expected to endure it. Therefore, the Court dismisses this cause of action as a matter of law. *See James v. Pratt & Whitney*, 126 F. App'x 607, 614-615 (4th Cir. 2005) (outlining the elements to state a claim and summarizing South Carolina cases in which courts have declined to find outrageous conduct existed); *Johnson v. Dailey*, 318 S.C. 318, 323, 457 S.E.2d 613, 615 (1995) (providing that "the tort of intentional infliction of emotional distress requires conduct so extreme and outrageous it exceeds all possible bounds of decency, and is regarded as atrocious and utterly intolerable in a civilized society" and that the "determination is one of law for the court" that can be resolved on a Rule 12(b)(6) motion).

III. Motion to Amend

In response to Defendants' argument that the complaint failed to explain what confidential medical information was accessed and to whom it was disclosed, Plaintiff's counsel stated at the hearing that these details were not included in the complaint because counsel did not want to publicize the information. Counsel stated she would speak to her client about amending the complaint to more specifically allege what information Dr. White allegedly viewed and disclosed.

The Court concludes that any amendment would be futile. *See Skydive Myrtle Beach, Inc. v. Horry Cnty.*, 426 S.C. 175, 182, 826 S.E.2d 585, 589 (2019) ("[A] trial court may deny a motion to amend if the amendment would be clearly futile."). Although Plaintiff may not have wanted to disclose sensitive medical information in the complaint, nothing prevented him from setting forth allegations to support the requisite elements of the causes of action asserted, which he failed to do.

Moreover, as explained above, (1) the causes of action against Prisma are barred by the Workers' Compensation Act; (2) Plaintiff failed to plead "serious mental or physical injury or humiliation" resulting from the alleged conduct; (3) Plaintiff does not allege that Dr. White disclosed Plaintiff's medical information to anyone outside Prisma; (4) Plaintiff has failed to plead facts to support a claim for negligent training or negligent retention; and (5) the conduct alleged does not give rise to a claim for intentional infliction of emotional distress.

Accordingly, to the extent that Plaintiff's counsel sought leave to amend the complaint at the hearing, the Court exercises its discretion and denies the request.

CONCLUSION

Based upon the foregoing, the Court grants the motion to dismiss. Accordingly, this case is dismissed with prejudice.

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The Honorable George M. McFaddin, Jr.
Circuit Court Judge

September __, 2023
Sumter, South Carolina

Sumter Common Pleas

Case Caption: Craig Fitzgerald Davis VS Charles Herman White Jr Md , defendant, et al

Case Number: 2023CP4300612

Type: Order/Dismissal

So Ordered

S/George M. McFaddin, Jr., #2759