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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM AIKEN COUNTY
COURT OF COMMON PLEAS

Judge Patrick C. Fant, III

Case No. 2021CP0201525

2024-000147

Dr. Joe Holt,

Appellant,

v.

RURAL HEALTH SERVICES, INC.,

Respondent.

RECORD ON APPEAL

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INDEX OF RECORD ON APPEAL

1. Report and Recommendation by the Honorable Magistrate Judge Shiva V. Hodges	1
2. Order by the Honorable Mary Geiger Lewis	48
3. Order Granting Summary Judgment by the Honroable Patrick C. Fant, III.....	64
4. Defendant's Memorandum in Support of Motion for Summary Judgment, with exhibits	79
5. Plaintiff's Memorandum in Opposition to Motion for Summary Judgement, with exhibits	240
6. Transcript of Motion for Summary Judgement Hearing	345

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Dr. Joe Holt,	)	C/A No.: 1:21-2802-MGL-SVH
	)	
Plaintiff,	)	
	)	
vs.	)	REPORT AND
	)	RECOMMENDATION AND
Rural Health Services, Inc.,	)	ORDER
	)	
Defendant.	)	
	)	

In this case, an employee sues his former employer, alleging that he was discriminated and retaliated against based on his disability and sex, resulting in his wrongful termination. The former employer seeks dismissal.

Dr. Joe Holt (“Plaintiff”) originally filed this case against Rural Health Services, Inc. (“Defendant”), in the Court of Common Pleas for Aiken County, South Carolina.¹ Defendant removed this case on August 30, 2021. Plaintiff asserts claims for disability discrimination, failure to accommodate, and retaliation in violation of the Americans with Disabilities Act, 42 U.S.C. § 12102, *et seq.*, as amended by the ADA Amendments Act of 2008, effective January 1, 2009, 42 U.S.C. §§ 12101, *et seq.* (“ADA”); claims for sex discrimination, sexual harassment, and retaliation in violation of Title VII of

¹ Defendant clarifies as follows: “This matter is styled Dr. Joe Holt. Plaintiff has a Ph.D (Doctor of Philosophy in Psychology) from a seminary, but he prefers that he be referred to as ‘Dr.’ Plaintiff was a pediatric therapist for Defendant . . . , Plaintiff is not a medical doctor.” [ECF No. 48-1 at 1 n.1 (emphasis removed)].

the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.* (“Title VII”); and the following claims brought pursuant to South Carolina state law: defamation, abuse of process, interference with contractual relationship, negligence, and conversion.

Pursuant to 28 U.S.C. § 636(b) and Local Civ. Rule 73.02(B)(2)(g) (D.S.C.), this case was referred to the undersigned for all pretrial proceedings. This matter comes before the court on Defendant’s motion for summary judgment. [ECF No. 48]. The motion has been fully briefed [ECF Nos. 52, 54] and is ripe for disposition. Also pending before the court is Plaintiff’s unopposed motion to seal. [ECF No. 51].

Having carefully considered the parties’ submissions and the record in this case, the undersigned grants in part Plaintiff’s motion to seal and recommends the district judge grant in full Defendant’s motion for summary judgment.

I. Factual and Procedural Background

Defendant is a private, nonprofit federally-qualified health center located in Aiken, South Carolina, that has served the citizens in Aiken and surrounding areas since 1971. [See ECF No. 48-1 at 2–3]. Defendant’s chief executive officer of rural health, Carolyn Emanuel-McClain (“Emanuel-McClain” or “McClain”) hired Plaintiff in September 2014 as a director in the behavioral health department, a position he held for approximately two

years. [ECF No. 48-2 at 105:19–25, 106:6–9]. Plaintiff’s responsibilities included developing programs, supervising staff, and seeing minor patients. *Id.* at 106:22–107:7.

On February 3, 2015, Plaintiff had a meeting with one of his supervisors, Dr. Tiffany Boyd (“Boyd”),² to discuss complaints she had received from patient care coordinator (“PCC”) Angela McCall about Plaintiff frequently being late, causing patients to complain. [ECF No. 48-7, *see also* ECF No. 48-2 at 107:10–11]. On October 15, 2015, Plaintiff was placed on a provider corrective action plan for failure “to complete tasks in order of their priority often resulting in very low priority work being accomplished, while high priority work remains incomplete.” [ECF No. 48-9]. This corrective action plan required Plaintiff to complete “[t]asks related to completion of patient notes . . . within 24–48 hours of the scheduled visit.” *Id.*

In 2016, Plaintiff was reassigned to work as a behavioral therapist for the pediatric unit. [ECF No. 48-2 at 106:10–13, 112:23–25].³ As a behavioral therapist, he was required to assess patients as requested by primary care providers, participate in the diagnosis process for behavioral health issues, and refer individuals for specialty treatment. [*See, e.g.*, ECF No. 48-11].

² Plaintiff identifies Boyd as a medical director. [ECF No. 52 at 2].

³ Plaintiff testified that just before he was reassigned to be a behavioral therapist, Defendant hired a new medical director “to run the department,” Dr. Amanda Salas (“Salas”). [*See* ECF No. 48-2 at 106:10–19].

At the same time he was reassigned, Plaintiff told Boyd that he was diagnosed with celiac. [ECF No. 48-2 at 124:9–20]. Plaintiff testified that Boyd’s “response to me was good, it could have been so much worse than that.” *Id.* Plaintiff testified that he sometimes has the urgent need to go to the restroom, but that he does not take any medications for celiac and that he controls his celiac with a gluten-free diet. *Id.* at 120:7–17, 137:10–20.

Plaintiff has submitted evidence concerning two incidents that occurred around this time in 2016. First, Plaintiff testified he asked Dr. Kenneth Jones (“Jones”), who Plaintiff identified as the supervisor over behavioral health, to examine him because abdominal acid was allegedly coming out of his rectum and causing him pain; Plaintiff alleges Jones examined him without lubrication. [ECF No. 48-2 at 69:1–22, *see also* ECF No. 52 at 2–4]. Plaintiff then yelled “Pull it out,” and he alleges that after the incident, Jones would say “Pull it out, Pull it out” as a joke. [ECF No. 48-2 at 69:20–70:6]. Although Plaintiff alleges that he felt uncomfortable around Jones, he also testified that the last incident during which Jones made him feel uncomfortable was in October or September 2017. *Id.* at 66:18–67:1.

Also in 2016, an incident occurred in which Plaintiff complained that there was a “ladies only” sign on a unisex restroom; however, after Plaintiff reported the sign, Defendant’s chief operating officer, Gigi Lewis, promptly had the sign removed. [ECF No. 48-2 at 138:5–19]. Plaintiff testified that he

could always use that restroom and that there were multiple restrooms available for him to use near his office. [ECF No. 48-5 (map of office and bathrooms); ECF No. 48-2 at 137:3–9, 139:19–21, 140:5–7, 143:10–22].

In April and May 2016, Plaintiff was provided the following review:

Chief Medical Officer

Review: Difficult to follow notes. Redundancy in multiple charges noted by peer. Treatment plan not clearly delineated.

Improvement deadline: Corrective Action Plan given at annual review. Minimal improvement in documentation.

Plan: Charting for behavioral health review course asap. Cut/paste will not continue.

[ECF No. 48-10].

On August 23, 2016, Plaintiff was provided a provider performance review form that included the following comments:

Charts reviewed . . . all having similar deficits Repeated statements, no documentation of actions performed to reduce issues, testing should be addressed in detail into A/P area. No referral to Psych for children not responding to you[] is noted.

[ECF No. 48-11 at 2]. On the same day, a behavior/performance enhancement plan was created, labelled as a final written warning, in which the following was included:

- Copy/paste of previous notes with redundancy must cease immediately
- Attendance to a medical note writing course was not completed
- No referral to psychiatry for non-responders were made . . .
- Inadequate feedback to physician/midlevel staff regarding next steps taken
- Leadership role should include adequate updates to LISW

- Attend mental health/medical note writing course approved by CMO
- Written report to CMO monthly on all Updates with LISW

Id. at 3.

On August 14, 2017, the then-director of nursing, Chairty Capers-Williams, emailed Boyd concerning issues with Plaintiff, including Plaintiff refusing to check-in patients using the standard method, dispersing candy to children when he had been informed not to, failing to address all patient symptoms and consult the applicable medical doctor, particularly regarding medication issues, and having ongoing issues with timeliness. [ECF No. 48-15].⁴

On September 7, 2017, nurse Leah Mitchell (“Mitchell”) emailed Boyd concerning ongoing charting concerns on charts Plaintiff completed. [ECF No. 48-12 (“I have no idea what is going on with my patients when they see Dr. Holt d/t his poor charting and communication.”)].

On September 22, 2017, Mitchell emailed Boyd and others in part as follows:

Hand washing continues to be a major issue on the pediatric floor with Dr. Holt. Just now, he used the employee bathroom on the

⁴ As Defendant argued, and Plaintiff has not disputed, Plaintiff’s “licensure does not permit him to prescribe or recommend medications to patients and Defendant did not allow him to prescribe or recommend any medications as he is not a medical doctor.” [ECF No. 48-1 at 3 (citing ECF No. 48-2 at 11:11–23 (Plaintiff testifying that he has a Doctor of Philosophy in Psychology from Southwestern Baptist Theological Seminary))].

pediatric unit (right next to the MA's desk). He flushed the toilet and immediately opened the door afterwards. He then told Katie "I peed all over the floor to make it feel at home." This is wildly inappropriate and I am very concerned that this continues to be a problem despite the numerous emails that I have sent to management, and the meetings that have addressed this major concern of hygiene and the prevention of disease spread. As I have said before, this is a huge health risk, not only to the pediatric staff, but more importantly, to our patients as well. We have newborn patients that come in contact with him, and it is only a matter of time before one of them gets sick from his blatant lack of hygiene.

He also continues to hand out candy to patients on the unit, despite us discussing this in our unit meeting, and him verbally agreeing not to do this. Both Chairty and LaToya have discussed this with him on numerous occasions. We ask him not to hand out candy for several reasons: 1. We promote a healthy lifestyle and encourage healthy food choices. So when Dr. Holt encounters them, he completely undermines our recommendations. 2. He does not know the patients' allergies and how the candy was prepared. This could be a major liability if a child was to have an allergic reaction to candy that he provided. 3. Because he obviously does not wash his hands after using the bathroom (which has been witnessed countless times by various staff members) he is transferring bacteria from his hands to the candy that he is handing out to our patients.

[ECF No. 48-18].

On the same day, Plaintiff was provided a behavior/performance enhancement plan labeled a final written warning that provided the following deficiencies and direction:

- 1) Inappropriate conduct on the unit with staff with verbal exchanges
 - 2) Hygiene violation of OSHA Regulation/Handwashing
- Cease the above behavior.

[ECF No. 48-17].

On March 15, 2018, Dr. Maya Fields (“Fields”) emailed Boyd concerning charting concerns of charts Plaintiff completed:

I went to view Dr. Holt’s notes on this patient so that I could follow her progress. Pt was seen by Dr. Holt yesterday, but the note was completely blank. I looked back at the 3 notes before yesterday, and those 3 notes were cut & paste - exactly the same. The notes even mentioned pt “doing well on the medication” when in fact she had not been taking the medication.

[ECF No. 48-13]. On the same day, Fields sent an additional email to Boyd concerning patient complaints about Plaintiff:

I have decided to keep better documentation of such encounters with parents regarding Behavioral Health, as they have been quite frequent. My concern remains the same: that many of our behavioral health patients are not receiving quality, focused care, and many of their behavioral health needs are not being met. This email is not meant to “bash” a provider. It is just difficult for me to knowingly witness poor practice and turn a blind eye to it.

[ECF No. 48-14].

On April 24, 2018, Plaintiff and Salas exchanged emails in which Salas indicated that Plaintiff’s practice of sometimes checking in patients out of the standard order was understandable and where Plaintiff responded in part as follows:

Thanks for the advocacy. It does feel like I have endured a Hostile Work environment. I have endured a lot of bathroom discrimination on the unit. As well as being told that if I give out “fruit snacks” is a fireable offense, even though there others who distribute candy (those who do it are African American and I am not)

[ECF No. 52-8].

Plaintiff has submitted a document labeled “hostile workplace complaint” he completed, dated August 20, 2018, detailing alleged offenses committed against him, including “endur[ing] slanderous comments by Drs. Boyd and Fields.” [ECF No. 52-7; *see also* ECF Nos. 52-6, 52-7]. In this document, Plaintiff discusses the “ladies only” sign incident, disputes concerning timing on seeing patients, and disputes concerning the dispersion of candy, among other concerns. *See id.*⁵

On December 23, 2019, Plaintiff send an email to director of human resources Stephanie Alford (“Alford”) entitled “[t]hanks for the feedback on how to deal with the Pediatric PCC”:

I do not wish to create conflict nor be petty. In future, I will say “thank you” and move on. Although, I am documenting these events since this is something that she does not do with any other provider. Based on her actions of singling out, I do feel that her pettiness is harassment. Although, I will defer to your guidance.

[ECF No. 52-5].⁶

⁵ Plaintiff has submitted a February 7, 2019 email from Salas to Boyd and others about Tijuana Carolina, nursing manager in Defendant’s pediatric unit, denying knowledge about Plaintiff’s whereabouts, entitled “employee not truthful and forthcoming.” [ECF No. 52-9, *see also* ECF No. 48-1 at 5].

⁶ Plaintiff has not clarified in briefing or otherwise who he was complaining about in this email. [*See* ECF No. 52].

On December 6, 2019, Plaintiff was provided a behavior/performance enhancement plan labeled a final written warning that provided the following deficiencies and direction:

On 11/21/19, Pt left a message inquiring about the over the counter medication magnesium Dr. Holt recommended for her child during the last SH session. I spoke with Dr. Holt on 11/21/19 to address the incident and Dr. Holt denied recommending the medication but recalls suggesting magnesium for anxiety during the session. On 11 /22/19, I contacted the mother about the event and mother indicated that Dr. Holt did recommend magnesium during the session and she was calling to clarify the dosage with provider.

Employee will practice[] within his scope of practice of behavioral health and refrain from suggesting or recommending supplements, vitamins and OTC to patient. Ensure communication with medical provider about the patient[']s medical concerns and document providers recommendation.

[ECF No. 48-16].

Plaintiff has submitted the following email that is not dated, referencing a January 31, 2020 event, ostensibly from him to Jones, stating in part as follows:

The hostile work place complain[t] still has not been dealt with. The conflicts have been over such issues as:

1. Does he wash his hands?

(Who is standing outside of the bathroom while I am doing my business?) I am the only staff member who carries around his neck and I uses hand] sanitizer daily. As well as washing this in the lavatory in the room across the hall from my office.

2. I cannot see patients between 12pm to 2pm

This constant topic is a Tijuana [Carolina] problem. I do it on rare exception when I have a full schedule and no where to add. If a patient/parent feel it is a crisis then I try to respond

In discussing this matter with another provider, they said “Now you know how us BLACKS feel all these years. Welcome to the club.” I can assure that there is a strong feeling of reverse racism in the building. It is sad but my clashes have been with some of the members of our Black leadership within the organization.

3. I cannot add anyone to my schedule without Tijuana’s permission.

It appears that Carlos can do this simple task upstairs in Adult medicine. The schedule will read “per Carlos.” It appears that it is not asking permission. So, why is one employee allow to insert that information on the schedule and another one is not?

Is it because he is black that he can add to his schedule? Or is it the lack of professionalism which exists in pediatrics? Because the persons who have been offering me resistance is black. (I believe that it is another form of harassment in the workplace).

4. Based on pediatric policy . . . I could not see a patient when they came late

5. I approach Dr. Soto several times daily. brief her on the outcome as well as provide copies of the CPT results to her personally at the conclusion of a session numerous times per day. We are both busy, but I made the effort. It is never done in return

6. In discussions with Princess, Stephanie Alford and Dr. Jones, all have indicated the pettiness of Tijuana’s emails and complaints. You and Princess has said that Tijuana breeds a unit which does not respect me as a Provider. So, you don’t expect that poison to spread without management intervention. I have been promised that intervention would occur and nothing happens, their divisive behavior continues and it is in front of patient.

When I originally filed the initial hostile workplace complaint against Drs. Boyd and Fields through Dr. Salas. I was told that Fields was to go to Clearwater site and I had nothing to worry about (by Ms. McClain). Well that has never changed, when Dr. Fields was moved to Clearwater. She was also promoted to Director of Pediatric services which expanded the harassment. It appears that it continued but by some of her staff at CCPC. The continued harassment and stalking by Tijuana only indicates that it has not ceased or changed.

In the past, I have gotten yelled at in the hallway in front of patients by staff. For example, one morning got yelled at by Taylor for coming in late one morning before 830 am. It was not patient related. She just felt that I should be there (even though I am salary employee and she is an hourly employee

Another example, I was harassed by Dr. Boyd on a continuous basis Examples: Went to Gigi Walker on several occasions (when she was HR) and she said that she would look in to it. Nothing happened and no one got back to me. During Dr. Boyd's time as Medical Director, I was assigned tasks and provided no leadership of what is the expected outcomes would be. If you were white you did not get along with her

[ECF No. 52-4 (references omitted)].

On March 16, 2020, Plaintiff received his annual review from Carlos Foster ("Foster"). [ECF No. 52-1]. Plaintiff was assessed as a "3" or as meeting expectations in 7 categories, as a "4" or exceeding expectations in two categories, and as a "2" or as marginal, in 2 categories, quality of work and organization and planning. *Id.* Comments on these sections and in general are as follow:

Compliance with chart closure policy needs improvement. Employee must close charts within 3 days. I am closely monitoring to ensure that this is corrected

As addressed previously, employee's office is subpar but he is making slow improvements in this area. Employees office should be kept tidy

Employee has made a lot of improvements this past year. The employee has had a strong therapy count each month for the past 12 months

- (1) Employee will have all charts closed within the 3day window per RHS policy
- (2) Employee will maintain a neat a tidy office
- (3) Employee will notify supervisor prior to later arrival or early departure.

Id.

On May 29, 2020, Plaintiff sent what appears to be an email to "RHS leadership" concerning a scheduling incident, including the following: "Manipulation of the schedule is a bad habit on our Pediatric unit where the parents are being scapegoated by the PCC and her staff's decisions." [ECF No. 51-4].

On June 15, 2020, Foster emailed Plaintiff, stating as follows:

Hello Joe, I have been reviewing some of your charts from the past week and I'm seeing in some of the charts you are copying and pasting in the HPI and associated symptoms. For example, in all the charts I have seen all the patients had no psych symptoms. Going forward if you are going to use the template be specific in identifying the client symptoms.

[ECF No. 48-14].

On June 29, 2020, at 8:19 a.m., Plaintiff contacted Aiken County Police, concerning an incident he witnessed in Defendant's parking lot, reporting as

follows, as recorded by the operator: “Blk truck flew thru parking lot and now they are sitting in the woods occupied by two people [unknown] description.” [ECF No. 52-19 at 1, *see also* ECF No. 52-21].

As testified by Plaintiff:

I called the police on a reckless driver in the parking lot . . . I did not know whose vehicle it was, so I could not how would you say, do that. So, yeah, so it was a dark truck with tinted windows. You couldn’t see in, I couldn’t tell who was there. And I just wasn’t—I felt like I was—it was an unsafe situation.

[ECF No. 48-2 at 221:5–13].⁷

The next day, in a letter dated June 30, 2020, signed by Alford, Plaintiff was informed that his employment had been terminated. [ECF No.

⁷ As provided by Defendant:

Defendant’s Counsel represents that to the extent Plaintiff alleges he called the police regarding a reckless driver in Rural Health’s parking lot on June 29, 2020, this allegation simply has no merit. Defendant’s Counsel has visited Rural Health’s parking lot on numerous occasions and due to the circular set up of the parking lot, it is nearly impossible for a driver to exceed 15 miles per hour and not hit another car or person in the lot. Recordings of the driving incident on June 29, 2020, which caused Holt to call the police and for which he believes he was terminated, are attached as Exs. T and U, and have been provided via CD-ROM to the Court.

[ECF No. 48-1 at 16 n.5]. Review of the video evidence provided by Defendant indicates a circular set up of the relevant parking lot. [See ECF No. 48-22].

52-2].⁸ Plaintiff testified concerning the termination of his employment as follows:

Q: Sir, why do you maintain that you were terminated?

A: Because I was.

Q: For what reason?

A: Well, I was told by a lower staff, not management but lower staff, that the word in the building was I was terminated because I called the police on Ms. Alford's kid

Q: Okay, thank you. Retaliation for Title VII, what—when did—so if you claim the Title VII event started in 2016, you were not terminated until, what, 2020?

A: Yeah.

Q: So four years passed?

A: I was terminated because of calling the police on Alford's kid And I would say ignoring the reports of Dr. Jones' advances.

[ECF No. 48-2 at 220:21–221:3, 257:21–258:13].

Defendant, in response to Plaintiff's Fed. R. Civ. P. 30(B)(6) discovery inquiries, provided the following about Plaintiff's termination:

6. Identification of what, if any, job requirements Joe Holt did not meet at the time of termination.

RESPONSE: Defendant terminated Plaintiff because of his performance issues, which included failing to provide patient care within the scope of his license, failing to follow Defendant's policies, and his repeated rude, unprofessional treatment of coworkers. Plaintiff also caused an incident when he called the police reporting two young African American men arriving to work. Plaintiff did this on the heels of the George Floyd incident

⁸ Defendant has also submitted a five-page document completed by Tijuana Carolina, detailing roughly 60 incidents concerning Plaintiff's problematic behavior, spanning from August 17, 2018, to October 22, 2019. [ECF No. 48-8].

and his behavior continued to be antithetical to the mission of Defendant as a community health center.

7. Identification of all reason(s) for termination of Joe Holt
 - a. Termination Notice—Def 239
 - i. Identify termination decisionmakers.
 - ii. Identify who Stephanie Alford conferred with before terminating Plaintiff.

RESPONSE: Defendant terminated Plaintiff because of performance issues, including failure to provide patient care within the scope of his license, failure to follow Defendant's policies, and his repeated rude, unprofessional treatment of coworkers, as well as those reasons identified in response to Topic 6 above. See Defendant's Responses to Plaintiff's Second Interrogatory Request No. 1. Carolyn Emanuel-McClain (Defendant's CEO) and Stephanie Alford (Defendant's Director of Human Resources) were involved in Plaintiff's termination. Ms. Emanuel-McClain advised Ms. Alford to terminate Plaintiff.

[ECF No. 52-29 at 3].

II. Discussion

A. Standard on Motion for Summary Judgment

The court shall grant summary judgment “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(a). The movant bears the initial burden of demonstrating that summary judgment is appropriate; if the movant carries its burden, then the burden shifts to the non-movant to set forth specific facts showing that there is a genuine issue for trial. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23 (1986). If a movant asserts that a fact cannot be disputed, it must support that assertion either by “citing to

particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials;” or “showing . . . that an adverse party cannot produce admissible evidence to support the fact.” Fed. R. Civ. P. 56(c)(1).

In considering a motion for summary judgment, the evidence of the non-moving party is to be believed and all justifiable inferences must be drawn in favor of the non-moving party. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). However, “[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.” *Id.* at 248.

B. Analysis

1. ADA Claims

As clarified in briefing, Plaintiff has brought three ADA claims against Defendant: wrongful termination or discrimination claim, failure to accommodate claim, and a retaliation claim.

a. ADA Wrongful Termination Claim

The ADA prohibits employers from “discriminat[ing] against a qualified individual on the basis of disability in regard to . . . the hiring, advancement,

or discharge of employees, . . . and other terms, conditions, and privileges of employment.” 42 U.S.C. § 12112(a). To establish a claim of disability discrimination under the ADA, a plaintiff must prove that (1) he has a disability, (2) he is a “qualified individual” for the employment in question, and (3) [his employer] discharged him (or took other adverse employment action) because of his disability. *Smith v. CSRA*, 12 F.4th 396, 412 (4th Cir. 2021) (citations omitted). The *McDonnell Douglas* burden-shifting framework applies to discrimination claims under the ADA. *Jacobs v. N.C. Admin. Office of the Courts*, 780 F.3d 562, 572 (4th Cir. 2015). Therefore, if a prima facie case of ADA discrimination is established, the burden shifts back to Defendant to produce evidence of a legitimate, nondiscriminatory reason for the alleged discrimination, and Plaintiff bears the burden of showing that reason is pretext. *See id.*

The ADA defines “disability” as “a physical or mental impairment that substantially limits one or more major life activities of such individual.” 42 U.S.C. § 12102(1)(A). Celiac disease might substantially limit a major life activity of an individual, but here Plaintiff has failed to submit evidence that his impairment does so. This case stands in contrast to those where the plaintiff has, for example:

submitted extensive evidence about the serious consequences to his health when he ingests gluten The evidence here . . . is that J.D. and his parents must remain vigilant because the

ingestion of even a small amount of gluten may have serious consequences for J.D.'s health.

J.D. by Doherty v. Colonial Williamsburg Found., 925 F.3d 663, 671 (4th Cir. 2019). Here, Plaintiff has declined to produce any medical information or other evidence in support of his argument that he has a disability as defined by the ADA, beyond his own testimony stating he was diagnosed with celiac, he is not on medication, he “manag[es] it by not eating gluten or avoiding gluten as much as possible,” and “when you have celiac, you have to dash to the bathroom.” [ECF No. 48-2 at 120:7–17, 137:10–11].

Additionally, even if the court were to assume Plaintiff had a disability as defined by the ADA and could otherwise make a prima facie showing, there is no indication in the record that Plaintiff was discharged, or otherwise discriminated against, because of his celiac disease or because of any other health concerns.

Defendant states that Plaintiff's employment was terminated because of “his multiple performance-related issues.” [*See, e.g.*, ECF No. 48-1 at 12, *see also* ECF No. 52-29 at 3]. Plaintiff fails to address Defendant's evidence concerning these issues, but, in rebuttal, offers only his latest March 16, 2020 annual review, where he was generally found to have met expectations, except in the categories of quality of work and organization and planning, and where Plaintiff was informed in part, and not for the first time, that

Compliance with chart closure policy needs improvement. Employee must close charts within 3 days. I am closely monitoring to ensure that this is corrected

[ECF No. 52-1]. Plaintiff additionally fails to address evidence of performance-related issues that followed this assessment specifically discussed, including Foster's June 15, 2020 email concerning ongoing charting concerns.

More importantly, Plaintiff has offered no evidence, including his own testimony, that he was terminated because of celiac disease or any other health-based reason. Instead, Plaintiff testified that he was terminated because on the day before his termination he called police officers concerning another employee's child allegedly driving recklessly in Defendant's parking lot, a reason Defendant admitted was a factor in Plaintiff's termination.

Accordingly, the undersigned recommends the district judge grant Defendant's motion for summary judgment as to Plaintiff's ADA wrongful termination or discrimination claim.

b. ADA Failure to Accommodate Claim

The ADA's prohibitions "include[] . . . not making reasonable accommodations." 42 U.S.C. § 12112(b)(5)(A). To establish a claim for a failure to accommodate, a plaintiff must show that (1) he suffers a disability; (2) his employer had notice of the disability; (3) with reasonable accommodations, he is otherwise qualified to perform the employment

position in question; and (4) his employer refuses to make such reasonable accommodations. *Wilson v. Dollar Gen. Corp.*, 717 F.3d 337, 345 (4th Cir. 2013) (citations omitted).

The plaintiff bears both (1) the burden of identifying an accommodation that would allow a qualified individual to perform the job, and (2) the ultimate burden of persuasion with respect to demonstrating that such an accommodation is reasonable. *Maffett v. City of Columbia*, C/A No. 3:19-0832-MGL, 2021 WL 4237189, at *7 (D.S.C. Sept. 17, 2021) (citing *Halperin v. Abacus Tech. Corp.*, 128 F.3d 191, 197 (4th Cir. 1997) (overruled on other grounds by *Baird v. Rose*, 192 F.3d 462 (4th Cir. 1999)). “A reasonable accommodation is one that is feasible or plausible.” *Id.* (citing *Reyazuddin v. Montgomery Cnty., Md.*, 789 F.3d 407, 414 (4th Cir. 2015)).

Here, Plaintiff has failed to carry his burden. As discussed above, Plaintiff has not submitted evidence indicating that he has an ADA-recognized disability. Additionally, Plaintiff has failed to establish that he asked for any reasonable accommodation that was denied.

Plaintiff argues otherwise as follows: “During his employment, Plaintiff needed accommodations in the form of medical care, bathroom availability changes, the availability of PPE, and accommodations to reduce the risk of exposure to COVID-19.” [ECF No. 52 at 23].

First, Plaintiff has failed to submit any evidence that Defendant denied him medical care, particularly where Plaintiff testified that he voluntarily stopped using Defendant's medical services because two doctors had a dispute over who would treat him. [ECF No. 48-2 at 114:22–115:7]. Second, Plaintiff testified that no one prevented him from entering or using any restroom, there were multiple restroom facilities available to him, and the distance between available restrooms was five to six yards. [ECF No. 48-5 (map of office and bathrooms); ECF No. 48-2 at 137:3–9, 139:19–21, 140:5–7, 143:10–22]. Plaintiff has failed to submit evidence that Defendant did not make bathrooms available to him.

As to Plaintiff's arguments concerning the availability of PPE during COVID and other accommodations related to COVID, Plaintiff has failed to submit evidence connecting the need for these accommodations with celiac. Instead, Plaintiff argues that he was at high risk for COVID because of his high blood pressure and diabetes. [ECF No. 48-2 at 165:5–7].⁹ However, the record does not indicate that Plaintiff notified Defendant that he needed accommodations for high blood pressure or diabetes. Additionally, neither Plaintiff's discrimination charge nor his complaint specifically mention that he suffered from these conditions, nor do they specifically allege that he

⁹ Plaintiff testified that Defendant provided him with sterilized surgical masks during the relevant time period. [ECF No. 48-2 at 165:25–166:2].

experienced any ADA discrimination because of these conditions. [ECF No. 1-1, ECF No. 52-12 (“I am disabled within the meaning of the ADA. I have celiac disease I have high-risk health concerns that I shared with RHS, wherein I requested accommodations during the pandemic I emphasized that I needed [PPE] because of my at-risk disability”)]].

Accordingly, the undersigned recommends the district judge grant Defendant’s motion for summary judgment as to Plaintiff’s ADA failure-to-accommodate claim.

c. ADA Retaliation Claim

As with Plaintiffs ADA discrimination claim, his claim for ADA retaliation also proceeds under the *McDonnell Douglas* burden-shifting framework. *See, e.g., Rhoads v. FDIC*, 257 F.3d 373, 391 (4th Cir. 2001). “The plaintiff always bears the ultimate burden of persuading the trier of fact that she was the victim of retaliation.” *Id.* at 392.

As to this claim, Plaintiff’s primary argument is that he engaged in protected activities at different times in his career, but argues that the only retaliatory response by Defendant to these alleged protected activities is as follows: “Defendant willfully retaliated against Plaintiff by denying accommodations, as described above, and terminating Plaintiff because of his protected activities under ADA.” [*See* ECF No. 52 at 31–33].

First, to the extent that Plaintiff is relying on temporal proximity between any complaints he may have made and his termination, or any other retaliatory act, “temporal proximity, without more, does not support a finding of pretext.” *Jones v. UnitedHealth Group, Inc.*, 19-1728, 2020 WL 2116496, at *2–3 (4th Cir. Apr. 21, 2020) (citing *Gibson v. Geithner*, 776 F.3d 536, 541 (8th Cir. 2015) (holding that, while proximity can establish a prima facie case of causation, it is insufficient to alone establish pretext)). Second, as discussed above, Plaintiff has failed to establish that he asked for and did not receive reasonable accommodations from Defendant or that his employment was terminated for any reason related to his disability, or his sex, as discussed more below.

For the reasons discussed above, the undersigned recommends the district judge grant Defendant’s motion for summary judgment as to Plaintiff’s ADA retaliation claim.

2. Title VII Claims

As clarified in his briefing, Plaintiff has brought three Title VII claims against Defendant: wrongful termination or discrimination claim, sexual harassment, and a retaliation claim.

a. Title VII Wrongful Termination Claim

Title VII prohibits employers from taking any personnel actions affecting employees “based on race, color, religion, sex, or national origin.” 42

U.S.C. § 2000e-2(a)(1). To establish a prima facie case, “a plaintiff must show that (1) she is a member of a protected class; (2) her employer took an adverse action against her; (3) she had been fulfilling her employer’s legitimate expectations at the time of the adverse action; and (4) the adverse action occurred under circumstances that raise a reasonable inference of unlawful discrimination” *Sempowich v. Tactile Sys. Tech., Inc.*, 19 F.4th 643, 649–50 (4th Cir. 2021) (citation omitted). As with Plaintiff’s ADA wrongful termination or discrimination claim above, absent direct evidence of discrimination, Plaintiff proceeds under the *McDonnell Douglas* burden-shifting framework. Once a plaintiff makes out a prima facie case, the burden shifts to the employer to put forth a nondiscriminatory explanation for its actions. *Id.* (citation omitted). If the employer does so, the burden then shifts back to the plaintiff to show that the employer’s explanation was “actually a pretext for discrimination.” *Id.* (citation omitted).

The parties dispute whether Plaintiff has established a prima facie case, particularly in that the only evidence Plaintiff has submitted in support of his position that he was meeting Defendant’s legitimate expectations is his latest annual evaluation [see ECF No. 52 at 28], and where Defendant has submitted extensive evidence of ongoing difficulties between Plaintiff and other employees, including multiple write-ups of Plaintiff for subpar and inappropriate behavior. However, the court need not resolve this issue. Even

if he is deemed to have established a prima facie case, Plaintiff fails to offer any evidence that Defendant's nondiscriminatory explanation for his termination was actually pretext for sex discrimination.

Plaintiff disagrees, arguing in full as follows:

Defendant asserts that Plaintiff suffered termination as a result of alleged performance deficiencies. Plaintiff has met his burden to proffer sufficient evidence of pretext to create a genuine issue of material fact. The same pretext arguments articulated above apply here. Both decisionmakers of the termination are female and were on notice of Plaintiff's complaints about Dr. Jones' harassment.

[ECF No. 52 at 28–29 (citing ECF No. 52-10, ECF No. 52-12)].

The evidence cited by Plaintiff does not support his argument that the relevant decision makers were aware of any complaints of harassment or that, even if they were, this knowledge evinces pretext. The first exhibit relied on by Plaintiff appears to be an undated text exchange between Plaintiff and another employee identified by Plaintiff in the title to the exhibit as Bruce Wright ("Wright"), with both Plaintiff and Wright complaining about Jones and how Emanuel-McClain did not take the complaints seriously. [ECF No. 52-10]. The second exhibit is Plaintiff's Charge of Discrimination stating that at some point in time he "reported my concerns with Dr. Jones' actions to the CEO." [ECF No. 52-12]. This evidence is insufficient to show what was said to Emanuel-McClain, or when, or that Alford had any relevant knowledge, particularly where Plaintiff testified the

last incident where Jones made him feel uncomfortable was in October or September 2017, over two and a half years before Plaintiff was terminated.

For the reasons stated above, including that Plaintiff also stated he was terminated because he called the police on another employee's child and Defendant's evidence of poor performance, the undersigned recommends the district judge grant Defendant's motion for summary judgment as to Plaintiff's Title VII wrongful termination or discrimination claim.

b. Title VII Sexual Harassment Claim

As held by the Fourth Circuit describing a Title VII hostile work environment claim based on protected characteristics, to establish such a claim, a plaintiff must show "she was subjected to (1) unwelcome conduct, (2) based on her race [or national origin] or sex, that was (3) severe or pervasive enough to make her work environment hostile or abusive and (4) imputable to [] her employer." *Laurent-Workman v. Wormuth*, 54 F.4th 201, 210 (4th Cir. 2022) (citing *Bazemore v. Best Buy*, 957 F.3d 195, 200 (4th Cir. 2020)).

Plaintiff argues in full as follows:

Plaintiff was subjected to unwelcome sexual harassment and treatment based on sex from Defendant's employee Dr. Kenneth Jones while working at Defendant. Defendant knew or should have known of the harassment and took no effective remedial action. Such unwanted sexual conduct created an intimidating and hostile work environment and was subjectively viewed by Plaintiff to be abusive. The harassment was a continuing act. The conduct was sufficiently severe or pervasive to alter the conditions of employment and create an abusive atmosphere.

Plaintiff's complaints about the discriminatory workplace environment were disregarded. Sufficient evidence is put forth for a reasonable jury to find that that harassment prohibited by Title VII occurred.

[ECF No. 52 at 29 (citing ECF No. 52-10, ECF No. 52-12)].

The undersigned disagrees. As stated above, Plaintiff has failed to submit evidence that Defendant knew or should have known about the alleged harassment. Additionally, Plaintiff has not cleared the "high bar" necessary to satisfy the severe or pervasive element of this inquiry:

[P]laintiffs must clear a high bar in order to satisfy the severe or pervasive test. Workplaces are not always harmonious locales, and even incidents that would objectively give rise to bruised or wounded feelings will not on that account satisfy the severe or pervasive standard. Some rolling with the punches is a fact of workplace life. Thus, complaints premised on nothing more than rude treatment by [coworkers], callous behavior by [one's] superiors, or a routine difference of opinion and personality conflict with [one's] supervisor, are not actionable under Title VII.

E.E.O.C. v. Sunbelt Rentals, Inc., 521 F.3d 306, 315–16 (4th Cir. 2008) (citations omitted)).

Accordingly, the undersigned recommends the district judge grant Defendant's motion for summary judgment as to Plaintiff's Title VII sexual harassment claim.

c. Title VII Retaliation Claim

To succeed on his Title VII retaliation claims, Plaintiff must show that "(1) he engaged in a protected activity; (2) the employer acted adversely

against him; and (3) there was a causal connection between the protected activity and the asserted adverse action.” *Strothers v. City of Laurel*, 895 F.3d 317, 327 (4th Cir. 2018) (quoting *Ziskie v. Mineta*, 547 F.3d 220, 229 (4th Cir. 2008)).

Plaintiff’s Title VII retaliation claim fails for the same reasons as already discussed by the court, where Plaintiff argues only that “Defendant willfully retaliated against Plaintiff and terminated Plaintiff on June 30, 2020 because of his protected activities under Title VII.” [ECF No. 52 at 30–31]. Accordingly, the undersigned recommends the district judge grant Defendant’s motion for summary judgment as to Plaintiff’s Title VII retaliation claim.

3. State-Law Claims

Plaintiff brings the following claims based on South Carolina law: defamation, abuse of process, interference with contractual relationship, negligence, and conversion.¹⁰

¹⁰ The undersigned addresses Plaintiff’s state-law claims, even after recommending dismissal of his federal-law claims, where Plaintiff’s state-law claims involve settled principles and are not novel or complex. *See Funderburk v. S.C. Elec. & Gas Co.*, 406 F. Supp. 3d 527, 534 n.6 (D.S.C. 2019) (retaining supplemental jurisdiction over state law claims that involved “settled principles” and were “not novel or complex”), *aff’d sub nom. Funderburk v. CSX Transportation, Inc.*, 834 F. App’x 807 (4th Cir. 2021); *Hall v. Greystar Mgmt. Servs., L.P.*, 179 F. Supp. 3d 534, 538 (D. Md. 2016) (retaining state law claims after dismissal of the federal claims in part because the state law claims involved the application of “straightforward . . .

a. Defamation

The tort of defamation allows a plaintiff to recover for injury to his reputation as the result of the defendant's communications to others of a false message about the plaintiff. *Holtzscheiter v. Thomson Newspapers, Inc.*, 506 S.E.2d 497, 501 (S.C. 1998). Under South Carolina law, to state a cause of action for defamation, a plaintiff must show the existence of some message that (1) is defamatory, (2) is published with actual or implied malice, (3) is false, (4) is published by the defendant, (5) concerned the plaintiff, and (6) resulted in legally presumed or in special damages. *Parker v. Evening Post Pub. Co.*, 452 S.E.2d 640, 644 (S.C. Ct. App. 1994). Malice and damages are presumed in the case where the defamation is actionable per se. *See Holtzscheiter*, 506 S.E.2d at 502; *see also id.* ("In other words, if the trial judge can legally presume, because of the nature of the statement, that the plaintiff's reputation was hurt as a consequence of its publication, then the libel is actionable per se. Essentially, all libel is actionable per se.") (citations omitted).¹¹

Plaintiff identifies two allegedly defamatory events. In the first, Plaintiff has submitted a brief video recording that purports to be of an

hornbook tort law" and an "uncomplicated fact pattern," as opposed to "questions of first impression of unsettled, policy-laden matters" better left to Maryland courts).

¹¹ Slander is a spoken defamation, while libel is a written defamation or one accomplished by actions or conduct.

unknown patient's mother stating, at some unknown time, she was told, by an unknown person at the front desk, that Plaintiff was racist. [See ECF No. 52 at 14 (citing ECF No. 51-5)]. In the video Plaintiff, not the unknown speaker, identifies the person who allegedly makes the comment as "Sheryl Lynn." See *id.* Plaintiff has submitted no further evidence as to this alleged employee. Second, Plaintiff has submitted what purports to be a Facebook chat exchange with Gabrielle Gaudette, who worked for Defendant in medical records at some point, and who stated she had heard "that u left bc u called the cops on mrs Alford son." [ECF No. 52-22].

As to the first alleged statement, even assuming that this statement is admissible in the form submitted by Plaintiff, the statement lacks the necessary specificity to state a claim for defamation. See, e.g., *Doe v. Cannon*, C/A No. 2:16-00530-RMG, 2017 WL 591121, at *1 (D.S.C. Feb. 14, 2017) ("Plaintiff has failed to state a claim against [Defendants] for defamation because her Complaint does not state with specificity the time, place, medium, and listener of the alleged defamatory statements."); *Colleton v. Charleston Water Sys.*, 225 F. Supp. 3d 362, 369 (D.S.C. 2016) ("Defendants cannot be expected to defend against an allegation that Mr. Clum defamed Plaintiff by making a statement heard by unknown persons at an unknown place at an unknown time."); *Wise v. INVISTA s.a.r.l.*, C/A No. 3:17-1354-MBS-TER, 2017 WL 9275298, at *3 (D.S.C. Aug. 31, 2017), report and

recommendation adopted, C/A No. 3:17-01354-MBS, 2018 WL 525475 (D.S.C. Jan. 23, 2018) (“Without more detailed allegations regarding who made the statements, to whom they were made, and the context in which they were made, Plaintiff has failed to state with plausibility a cause of action for defamation”).

Additionally, in this context, the alleged and apparently isolated statement may not be defamatory. As stated by the South Carolina Supreme Court:

Petitioners correctly contend that calling someone a racist can be defamatory depending on the context. In this regard, we reject any suggestion that calling someone a racist can never be defamatory. *See* 50 Am. Jur. 2d Libel and Slander § 200 (2017) (“Courts have readily held allegations of racism . . . to constitute libel per se, at least when founded on specific incidents.”); 3 Dan. B. Dobbs et al., *The Law of Torts* § 572 (2d ed. 2011) (“While ‘racist’ is sometimes said to be mere name-calling and not actionable in some contexts, the term can be actionable where it plainly imputes acts based on racial discrimination.” (footnote omitted)); *MacElree v. Phila. Newspapers, Inc.*, 544 Pa. 117, 674 A.2d 1050, 1055 (1996) (“Although accusations of racism have been held not to be actionable defamation, it cannot be said that every such accusation is not capable of defamatory meaning as a matter of law.”).

Garrard for R.C.G. v. Charleston Cnty. Sch. Dist., No. 2020-000605, 2023 WL 3731173, at *1 (S.C. May 31, 2023); *see also id.* at n.2 (“*La Liberte v. Reid*, 966 F.3d 79, 93 (2d Cir. 2020) ([The defendant] did not merely accuse [the plaintiff] of being ‘racist’ in some abstract sense. Rather, [the defendant’s social media post] could be understood as an accusation of concrete, wrongful

conduct, which can be proved to be either true or false. That makes it potentially defamatory.’ (cleaned up)); *Taylor v. Carmouche*, 214 F.3d 788, 793 (7th Cir. 2000) (holding a statement that a person is ‘a racist’ is defamatory and acknowledging that whether someone is racist or practices racial discrimination in the workplace is a mundane issue of fact that is litigated every day); *cf. Capps v. Watts*, 271 S.C. 276, 281–83, 246 S.E.2d 606, 609–10 (1978) (recognizing that mere name calling and words of abuse are generally not considered defamatory but holding such remarks may be capable of libelous construction by reason of extrinsic facts).”).

Turning to Plaintiff’s second statement, he alleges the Facebook exchange shows that “Defendant defamed Plaintiff to unprivileged staff and Plaintiff’s patients by accusing him of making a false police report.” [ECF No. 52 at 14]. However, the statement in question states that Plaintiff called the police on another employee’s child something Plaintiff has repeatedly admitted. Additionally, Plaintiff has repeatedly testified, as discussed above, this is why he was terminated. *See N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 274 (1964) (holding that truth is an absolute defense to a defamation claim).

Accordingly, the undersigned recommends the district judge grant Defendant’s motion for summary judgment as to Plaintiff’s defamation claim.

b. Abuse of Process

Under South Carolina law, “[t]he essential elements of abuse of process are: (1) an ulterior purpose; and (2) a willful act in the use of the process not proper in the regular conduct of the proceeding.” *Johnson v. Painter*, 307 S.E.2d 860, 860 (S.C. 1983); *see also Hainer v. Am. Med. Int’l, Inc.*, 492 S.E.2d 103, 107 (S.C. 1997) (“There is no liability where the defendant has done nothing more than carry out the process to its authorized conclusion, even though with bad intentions.”).

Plaintiff argues as follows:

Defendant’s representative(s) called the South Carolina Department of Social Services and made a false report against a family who decided to continue medical care services with Plaintiff rather than Defendant, by falsely alleging that the family was refusing to follow the doctor’s recommendation of getting counseling. (Ex. 39—Statement of CB). The parents were contacted by Child Protective Services as a result of this false claim. (*Id.*).

[ECF No. 52 at 16]. Plaintiff argues, but provides no supporting evidence, that Defendant or its representative did this “in retaliation for the family choosing to utilize Plaintiff’s counseling services” after Plaintiff was terminated. *Id.*

Plaintiff has provided insufficient evidence to support this claim. First, there is no evidence from which a reasonable jury could find Defendant acted with an ulterior purpose. As Plaintiff testified in his deposition, the only

evidence he has that an unknown person allegedly associated with Defendant called DSS is that the father and mother told him. [ECF No. 48-2 at 225:3–227:11]. Although Plaintiff argues in briefing otherwise, there is no evidence in the record, not even Plaintiff’s own testimony, that even if a representative of Defendant called DSS, such actions were to retaliate against Plaintiff.

Even if Plaintiff could demonstrate Defendant’s representative called DSS to retaliate against Plaintiff, as stated by the South Carolina Court of Appeals:

The essence of the tort of abuse of process centers on events occurring outside the process, and our courts have noted that “[t]he improper purpose usually takes the form of coercion to obtain a collateral advantage, not properly involved in the proceeding itself, such as the surrender of property or the payment of money, by the use of the process as a threat or club.” *Swicegood v. Lott*, 379 S.C. 346, 353, 665 S.E.2d 211, 214 (Ct. App. 2008) (quoting *Huggins v. Winn-Dixie Greenville, Inc.*, 249 S.C. 206, 209, 153 S.E.2d 693, 694 (1967)). “There is, in other words, a form of extortion, and it is what is done in the course of negotiation, rather than the issuance or any formal use of the process itself, which constitutes the tort.” *Id.* (quoting *Huggins*, 249 S.C. at 209, 153 S.E.2d at 694).

D.R. Horton, Inc. v. Westcott Land Co., LLC, 730 S.E.2d 340, 352 (S.C. Ct. App. 2012), cert. denied as to this issue, 764 S.E.2d 701 (S.C. 2014); *see also* *Cosby v. Legal Servs. Corp.*, C/A No. 6:05-131-GRA, 2006 WL 4781412, at *4 (D.S.C. May 11, 2006) (“There is no evidence that LSC sought to gain a collateral advantage from plaintiff, much less that the sole or paramount reason for LSC in conducting the investigation of the SCCEJ related to

obtaining some collateral objective from Ms. Cosby. Because the evidence cannot support a conclusion that the sole or paramount reason for conducting this investigation was to gain a collateral objective from Ms. Cosby, liability for abuse of process cannot exist.”), *aff’d sub nom. Cosby v. Legal Servs. Corp.*, 227 F. App’x 279 (4th Cir. 2007).

Here, too, there is no indication Defendant sought to gain any kind of collateral advantage over Plaintiff. Accordingly, the undersigned recommends the district judge grant Defendant’s motion for summary judgment as to Plaintiffs abuse-of-process claim.

c. Interference with Contractual Relationship

South Carolina recognizes a claim for intentional interference with contract, also known as tortious interference with contractual relations. A plaintiff must show (1) the existence of a contract; (2) the defendant’s knowledge of the contract’s existence; (3) the defendant’s intentional procurement of the breach of the contract; (4) the absence of justification; and (5) resulting damage. *Camp v. Springs Mortgage Corp.*, 426 S.E.2d 304, 305 (S.C. 1993).

Plaintiff appears to argue he can maintain a claim against Defendant because (1) he set up a business after his termination and has “existing and prospective contractual relationships with patients and their families,” (2) “Defendant has a responsibility to its patients and Plaintiff to truthfully

provide the patients who were treated by Plaintiff with the options available to them for ongoing care,” and (3) “Defendant has engaged in intentional conduct to prevent Plaintiff from receiving contract services from his former patients.” [ECF No. 52 at 17–18 (citing ECF Nos. 9–15)].

In support of this claim, Plaintiff has submitted letters from former patient’s parents,¹² with (1) one stating her payments from her insurance company were paid to Defendant when they should have gone to Plaintiff, (2) at some unknown time one was sexually harassed by the “front end secretary,” (3) one was informed by Jones that she “could not see Dr. Holt anymore that [she] had to see in house one of their psychologists . . . to be a patient there,” (4) “The RHS pediatric staff made negative, disparaging comments about Dr. Joe Holt ss a professional,” and (5) one family was informed they could not be seen by the practice without using their counselors, the same family that Plaintiff alleges Defendant called DSS on. *See id.*

At the least, Plaintiff has failed to identify the terms of the contract at issue that were allegedly breached, how those terms were breached, how

¹² The undersigned notes that some of these letters are inadmissible where the documents are neither notarized, nor signed under the penalty of perjury. *See* Fed. R. Civ. P. 56(c)(1)(A) (permitting either “affidavits” or “declarations”); 28 U.S.C. § 1746 (a litigant may rely on an “unsworn declaration, certificate, verification, or statement” if it is subscribed as true under penalty of perjury).

those terms were intentionally breached by Defendant, and the damage that occurred. *See e.g., Eldeco, Inc. v. Charleston Cty. Sch. Dist.*, 642 S.E.2d 726, 732 (S.C. 2007) (“An essential element to the cause of action for tortious interference with contractual relations requires the intentional procurement of the contract’s breach. Where there is no breach of the contract, there can be no recovery.”) (citations omitted)).¹³

Accordingly, the undersigned recommends the district judge grant Defendant’s motion for summary judgment as to this claim.

d. Negligence

To maintain an action for negligence, “a plaintiff must show: (1) the defendant owes a duty of care to the plaintiff; (2) the defendant breached that duty by a negligent act or omission; (3) the defendant’s breach was the actual and proximate cause of the plaintiff’s injury; and (4) the plaintiff suffered an injury or damages.” *Roddey v. Wal-Mart Stores E., LP*, 784 S.E.2d 670, 675 (S.C. 2016) (citation omitted).

Plaintiff argues that after he was terminated, BlueCross BlueShield sent checks to Defendant that should have been sent to Plaintiff and that

¹³ Likewise, Plaintiff cannot establish a claim for tortious interference with prospective contractual relations under South Carolina law where he has provided no evidence that Defendant intentionally interfered with his potential contractual relations for an improper purpose or by improper methods causing injury to him. *See, e.g., BCD LLC v. BMW Mfg. Co., LLC*, 360 F. App’x 428, 436 (4th Cir. 2010).

“Defendant retained money from services he provided, after termination, for an extended period of time,” although it appears that the funds have now been provided to Plaintiff. [ECF No. 52 at 19, ECF No. 48-2 at 36:10–44:20, 48:4–9, 59:5–9].¹⁴

Plaintiff has failed to cite, nor is the court aware, of a plaintiff who has maintained a claim for negligent retention of property under these circumstances, particularly where Plaintiff testified that it is common for payments to go to an institution six months to a year after an employee leaves an institution and starts providing services elsewhere [ECF No. 48-2 38:15–22], and where Plaintiff has provided no evidence that Defendant knew the monies were owed solely to him or the existence of any injury.

Accordingly, the undersigned recommends the district judge grant Defendant’s motion for summary judgment as to Plaintiff’s claim for negligence.

e. Conversion

Under South Carolina law, a plaintiff asserting the tort of conversion must show that the defendant, without authorization, assumed and exercised the right of ownership over goods or personal chattels belonging to another to

¹⁴ Plaintiff appears to argue that Defendant retained his money in violation of its own policy [ECF No. 52 at 10–11], but Plaintiff offers only the following policy from Defendant: “Payments received for patient accounts through the mail will be properly reported and safeguarded by deposit with 24 hours of receipts.” [ECF No. 52-27].

the exclusion of the plaintiff's rights. *Moore v. Weinberg*, 681 S.E.2d 875, 878 (S.C. 2009) (citing *SSI Med. Servs., Inc. v. Cox*, 392 S.E.2d 789, 792 (S.C. 1990)). The plaintiff must establish either title to or right to the possession of the personal property. *Moseley v. Oswald*, 656 S.E.2d 380, 382 (S.C. 2008) (citing *Crane v. Citicorp Nat'l Servs., Inc.*, 437 S.E.2d 50, 52 (S.C. 1993)). Money may be the subject of a conversion claim if the money is capable of being identified. *Moore*, 681 S.E.2d at 878. If the conversion of money is not secured illegally, tortiously, by fraud, or other wrongful conduct, a plaintiff must demonstrate that he made a demand for its return which was refused. *See City of Charleston, S.C. v. Hotels.com, LP*, 520 F. Supp. 2d 757, 772 (D.S.C. 2007); *Mackela v. Bentley*, 614 S.E.2d 648, 650 (S.C. Ct. App. 2005).

Plaintiff argues he “is aware of Defendant retaining at least \$2,800 owed to Plaintiff.” [ECF No. 52 at 20 (citing ECF No. 51-8)]. However, the documents Plaintiff cites in support do not appear to constitute a sum demonstrating \$2,800. *See id.* Additionally, Plaintiff has provided no evidence showing that Defendant refused a demand for the return of his funds to establish a conversion claim. Instead, Plaintiff testified that the occurrences of delayed payment were due to BlueCross BlueShield sending the money to Defendant instead of to him and that he is “having to talk” to BlueCross BlueShield to resolve the issue of those funds. [ECF No. 48-2 at 60:12–61:9].

Accordingly, the undersigned recommends the district judge grant Defendant's motion for summary judgment as to Plaintiff's claim for conversion.

4. Motion to Seal

Local Civ. Rule 5.03 (D.S.C) provides that a party seeking to file documents under seal shall "file and serve a 'Motion to Seal' accompanied by a memorandum" that must:

(1) identify, with specificity, the documents or portions thereof for which sealing is requested; (2) state the reasons why sealing is necessary; (3) explain (for each document or group of documents) why less drastic alternatives to sealing will not afford adequate protection; and (4) address the factors governing sealing of documents reflected in controlling case law.

The public's common law right to inspect judicial records and documents is not absolute and the district court may, in its discretion, seal documents if the public's right of access is outweighed by competing interests. *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 597–98 (1978). In deciding whether to exercise such discretion, the court may consider "whether the records are sought for improper purposes, such as promoting public scandals or unfairly gaining a business advantage; whether release would enhance the public's understanding of an important historical event; and whether the public has already had access to the information contained in the

records.” *In re Knight Pub. Co.*, 743 F.2d 231, 235 (4th Cir. 1984) (“*In re Knight* factors”).

By contrast, once documents that are produced in discovery are “made part of a dispositive motion, they [have] lost their status as being ‘raw fruits of discovery.’” *Va. Dep’t of State Police v. Wash. Post*, 386 F.3d 567, 576 (4th Cir. 2004) (citation omitted). The “more rigorous First Amendment standard [applies] to documents filed in connection with a summary judgment motion in a civil case.” *Id.* (citation omitted); *see also Hill Holiday Connors Cosmopulos, Inc. v. Greenfield*, C/A No. 6:08-03980-GRA, 2010 WL 890067, at *4 (D.S.C. Mar. 8, 2010) (denying motion to seal summary judgment memorandum and exhibits).

Under this First Amendment standard, the movant must demonstrate that the denial of access is necessitated by a compelling government interest or non-governmental interest that implicates similar “higher values.” *Press-Enter. Co. v. Super Ct. of Cal. For the Cnty. of Riverside*, 464 U.S. 501, 510 (1984). “The burden to overcome a First Amendment right of access rests on the party seeking to restrict access, and that party must present specific reasons in support of its position.” *Va. Dep’t of State Police*, 386 F.3d at 575. The court must determine that sealing would constitute a “narrowly tailored” solution designed “to serve that interest.” *Press-Enter. Co.*, 464 U.S. at 510.

Plaintiff has filed a motion to seal documents, arguing

Plaintiff provides confidential therapy services to pediatric patients. The documents and video Plaintiffs seeks to file under seal contain confidential information about third parties, including minors and the parents of minor patients of Plaintiff. Plaintiff makes this request that such Exhibits be filed and reviewed *in camera* for the protection of third parties' confidential information.

[ECF No. 51-1 at 2].¹⁵

Plaintiff provides the following list of documents he seeks to seal:

Exhibit 29 - 2020-5-29 Holt Report to RHS Leadership
Exhibit 30 - 2020-7-20 Interview with Patient's Mother
Exhibit 31 - Metadata of . . . Interview with Patient's Mother
Exhibit 32 - BCBS Check and Insurance Documents
Exhibit 33 - Documents Supporting Conversion - BCBS Records
Exhibit 34 - Statement of MFOG
Exhibit 35 - Statement of TR
Exhibit 36 - Statement of KS
Exhibit 37 - Statement of KB
Exhibit 38 - Statement of Father
Exhibit 39 - Statement of CB
Exhibit 40 - Texts re DSS Matter

The undersigned undertook an *in camera* review of the documents that Plaintiff seeks to seal and notes the names of minor patients and their family members, as well as other identifying information, appears in relevant documents. The undersigned also notes Plaintiff's efforts to narrowly-tailor

¹⁵ This court's electronic case filing policies and procedures 13.4.3 provides that "medical records, treatment records, or diagnoses . . . must be afforded maximum protection from public dissemination" and "[a] document containing this information shall be filed electronically in a redacted version **with all the protected information removed** or be presented for '*in camera*' review with a motion to seal." (emphasis in original).

his request to seal documents where he has filed separately on the public docket evidence not containing this type of sensitive information.

Notwithstanding, Plaintiff's motion to seal these documents is denied in part. Although "Courts have recognized that an interest in protecting the physical and psychological well-being of individuals related to the litigation, including family members and particularly minors, may justify restricting access," *United States v. Harris*, 890 F.3d 480, 492 (4th Cir. 2018) (citation omitted)), as also recognized by Plaintiff, the Fourth Circuit has directed that for a district court to seal court documents, the court must (1) provide public notice of the request to seal and allow interested parties a reasonable opportunity to object, (2) consider less drastic alternatives to sealing the documents, and (3) provide specific reasons and factual findings supporting its decision to seal the documents and for rejecting the alternatives. *See Ashcraft v. Conoco, Inc.*, 218 F.3d 288, 302 (4th Cir. 2000); *In re Knight Pub. Co.*, 743 F.2d 231, 235 (4th Cir. 1984).

Plaintiff has failed to meet the high standard required for sealing and has failed to rebut the presumption in favor of public access, having offered limited reason to seal all of the documents and no reason why the documents containing the confidential information of minors and the parents of minors could not be redacted, particularly in that most of the documents do not

discuss any type of treatment and instead concern scheduling and payment issues.

Plaintiff's motion is granted as to the following, where redaction is not an option or would be excessive given the amount redaction needed: Exhibit 29, but only as to the two scheduling attachments found at the end of the exhibit,¹⁶ Exhibit 30, Exhibit 31. As to the remaining exhibits, Plaintiff is directed to redact all names and other identifying information of patients and patients' family members and file the documents on the public docket, retaining the same exhibit titles as provided above for ease of reference.¹⁷

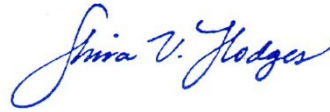
III. Conclusion and Recommendation

For the foregoing reasons, the undersigned denies in part Plaintiff's motions to seal [ECF No. 51] and recommends the district judge grant Defendant's motion for summary judgment. [ECF No. 48]. Plaintiff is directed to file on the public docket reacted versions, as discussed above, of the following documents, as found at ECF No. 51: Exhibit 29 (except the scheduling attachments as discussed above) and Exhibits 32–40.

¹⁶ Within Exhibit 29, Plaintiff refers to these two “attached . . . documents” as follows: Note the schedule on the 5/22 shows two appts schedule and not by me” and “schedule notes on who cancelled the appt.” These documents need not be filed on the public docket. However, the remainder of Exhibit 29 can be redacted and filed publicly.

¹⁷ To the extent necessary, Plaintiff is also directed to redact any sensitive financial information or identifiers about himself these documents may contain.

IT IS SO ORDERED AND RECOMMENDED.



June 21, 2023
Columbia, South Carolina

Shiva V. Hodges
United States Magistrate Judge

**The parties are directed to note the important information in the attached
“Notice of Right to File Objections to Report and Recommendation.”**

ELECTRONICALLY FILED - 2024 Aug 28 4:18 PM - AIKEN - COMMON PLEAS - CASE#2021CP0201525

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *see* Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk
United States District Court
901 Richland Street
Columbia, South Carolina 29201

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
AIKEN DIVISION

DR. JOE HOLT,

Plaintiff,

vs.

RURAL HEALTH SERVICES, INC.,
Defendant.

§
§
§
§
§
§

CIVIL ACTION 1:21-2802-MGL

**ORDER ADOPTING THE REPORT AND RECOMMENDATION
TO THE EXTENT IT DOES NOT CONTRADICT THIS ORDER,
GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT
AS TO PLAINTIFF'S FEDERAL CLAIMS,
DECLINING TO EXERCISE SUPPLEMENTAL JURISDICTION
OVER PLAINTIFF'S STATE CLAIMS,
AND REMANDING THOSE CLAIMS TO STATE COURT**

Plaintiff Dr. Joe Holt (Holt) filed this job discrimination action against his former employer, Rural Health Services, Inc. (RHS) in the Aiken County Court of Common Pleas. RHS subsequently removed the case to this Court.

Holt brings federal claims for disability discrimination, failure to accommodate, and retaliation in violation of the Americans with Disabilities Act, 42 U.S.C. § 12102, et seq., as amended by the ADA Amendments Act of 2008, effective January 1, 2009, 42 U.S.C. §§ 12101, et seq. (ADA); and claims for sex discrimination, sexual harassment, and retaliation in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq. (Title VII). He also brings state claims of defamation, abuse of process, interference with contractual relationship, negligence, and conversion.

The Court has jurisdiction over Holt's federal claims pursuant to 28 U.S.C. § 1131 and over his state claims under 28 U.S.C. § 1367.

The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting RHS's motion for summary judgment be granted. The Report was made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on June 21, 2023, Holt filed his objections on July 5, 2023, and RHS filed its reply on July 19, 2024. The Court has reviewed the objections, but holds them to be without merit. It will therefore enter judgment accordingly.

Holt presents nineteen objections to the Report. First, he contends the Magistrate Judge "err[ed] in making factual determinations about [his] intent when he made a call to Aiken's Department of Public Safety on June 29, 2020." Objections at 2 (emphasis omitted). Holt maintains his call was solely based on his safety concerns.

In RHS's reply, it states "[n]owhere in the [Report] does the Magistrate Judge provide any factual determinations about [Holt's] intent when calling the Aiken County Department of Public Safety." Reply at 6.

As per the Report,

On June 29, 2020, at 8:19 a.m., [Holt] contacted Aiken County Police, concerning an incident he witnessed in [RHS's] parking lot, reporting as follows, as recorded by the operator: "Blk truck flew thru parking lot and now they are sitting in the woods occupied by two people [unknown] description."

As testified by [Holt]: "I called the police on a reckless driver in the parking lot . . . I did not know whose vehicle it was, so I could not how would you say, do that. So, yeah, so it was a dark truck with tinted windows. You couldn't see in, I couldn't tell who was there. And I just wasn't—I felt like I was—it was an unsafe situation."

The next day, in a letter dated June 30, 2020, signed by [one of Holt's supervisors], [Holt] was informed . . . his employment had been terminated.

Report 13-14 (citations omitted).

The Court agrees with RHS: it is unable to find any indication the Magistrate Judge made a factual determination as to Holt's intent when he called Aiken's Department of Public Safety on June 29, 2020. Therefore, the Court will overrule this objection.

Second, Holt maintains the Magistrate Judge "err[ed] in making factual determinations about the consequences of [his] call to Aiken's Department of Public Safety on June 29, 2020." Objections at 4 (emphasis omitted).

Holt contends the Magistrate Judge "err[ed] by adopting [RHS's] arguments . . . [Holt] was racially motivated to complain about the African American driver of the vehicle and ignores . . . [Holt] told the Aiken Department of Public Safety dispatch on June 29, 2020, and consistently thereafter, . . . he did not know who was recklessly driving the vehicle . . . he was reporting for safety concerns." *Id.* at 5.

According to RHS, however, "nowhere in the [Report] does the Magistrate Judge adopt [RHS's] arguments . . . [Holt] was racially motivated to complain about the African American driver of the vehicle, and [RHS] never made any such accusation[.]" Reply at 6 (citation omitted) (internal quotation marks omitted) (alteration marks omitted)..

The Court has read and reread the Report and is unable to find any evidence the Magistrate Judge suggested Holt's call to law enforcement was race related. Thus, the Court will overrule this objection, too.

Third, Holt maintains the Magistrate Judge "erred by finding . . . [Holt] had to put forth evidence of a fact . . . not in dispute." Objections at 6. According to Holt, he "has celiac disease, and he was treated for celiac disease by [RHS's] own physicians. That [he] has celiac disease is an undisputed fact." *Id.*

RHS maintains, however, "the Magistrate Judge thoroughly assessed all of [Holt's] evidence in the light most favorable to him related to his celiac and found . . . he did not have a qualifying disability under the ADA." Reply at 7.

Holt is correct: "That [he] has celiac disease is an undisputed fact." Objections at 6. But, having celiac disease, without evidence of it being disabling, is an insufficient basis for a colorable ADA claim.

The ADA defines "disability" as "a physical or mental impairment that substantially limits one or more major life activities of such individual." 42 U.S.C. § 12102(1)(A). As the Magistrate Judge noted,

Celiac disease might substantially limit a major life activity of an individual, but . . . [h]ere, [Holt] has declined to produce any medical information or other evidence in support of his argument . . . he has a disability as defined by the ADA, beyond his own testimony stating he was diagnosed with celiac, he is not on medication, he manages it by not eating gluten or avoiding gluten as

much as possible, and when you have celiac, you have to dash to the bathroom.

Report at 18-19 (citation omitted) (internal quotation marks omitted) (alteration marks omitted).

As the Ninth Circuit has recognized,

[t]hough . . . eating is a major life activity, we do not . . . invite all those on a diet to bring claims of disability. Not every impediment to the copious and tasty diets our waistlines and hearts cannot endure is a substantial limitation of the major life activity of eating. We must carefully separate those who have simple dietary restrictions from those who are truly disabled.

Fraser v. Goodale, 342 F.3d 1032, 1041 (9th Cir. 2003).

Here, Holt's claim is merely of a dietary restriction. Thus, the Court will also overrule this objection.

Fourth, Holt "objects to the [Magistrate Judge's] finding that, 'even if the court were to assume [Holt] had a disability as defined by the ADA and could otherwise make a prima facie showing, there is no indication in the record . . . [Holt] was discharged, or otherwise discriminated against, because of his celiac disease or because of any other health concerns.'" Objections at 6 (quoting Report at 19). Holt points to several documents in the record he submits are evidence of his unlawful termination or discrimination.

RHS contends, however, that Holt "fails to provide any explanation as to how any proffered evidence supports an assertion . . . he was wrongfully terminate[.]" Reply at 8,

The Court has carefully reviewed those documents, but is unpersuaded they establish what Holt says they do. As the Magistrate Judge noted,

Holt has offered no evidence, including his own testimony, that he was terminated because of celiac disease or any other health-based reason. Instead, [he] testified . . . he was terminated because on the day before his termination he called police officers concerning another employee's child allegedly driving recklessly in [RHS's] parking lot, a reason [RHS] admitted was a factor in [Holt's] termination.

Report at 20. Thus, the Court will also overrule this objection.

Fifth, Holt "objects to the [Magistrate Judge's] performance findings." Objections at 7 (emphasis omitted). Specifically, Holt takes issue with the following statement from the Report: "[RHS] states . . . [Holt's] employment was terminated because of his multiple performance-related issues. [Holt] fails to address [RHS's] evidence concerning these issues, but, in rebuttal, offers only his latest March 16, 2020[,], annual review[.]" Report at 19 (citations omitted) (internal quotation marks omitted).

According to Holt, however, his "evidence . . . his performance review was meeting expectations is evidence showing there are materials facts in dispute." Objections at 7. In reply, RHS states, "the Magistrate Judge appropriately considered [his] March 16, 2020, annual review[.]" Reply at 8.

In the Report, the Magistrate Judge stated as follows:

[Holt] offers only his latest March 16, 2020 annual review, where he was generally found to have met expectations, except in the categories of quality of work and organization and planning, and where [Holt] was informed in part, and not for the first time, that "[c]ompliance with chart closure policy needs improvement. Employee must close charts within [three] days. [Supervisor stated she is] closely monitoring to ensure . . . this is corrected[.]" [Holt] additionally fails to address evidence of performance-related issues that followed this assessment specifically discussed, including [his Supervisor's] June 15, 2020[,], email concerning ongoing charting concerns.

Report at 19-20 (internal quotation marks omitted) (citations omitted).

This Court "does not sit as a kind of super-personnel department weighing the prudence of employment decisions made by firms charged with employment discrimination." *DeJarnette v.*

Corning Inc., 133 F.3d 293, 299 (4th Cir. 1998) (citation omitted) (internal quotation marks omitted). Nevertheless, this is not a close call. There is a plethora of evidence in the record to support RHS's decision to terminate Holt's employment. The Court is unable to agree there are any material facts as to this issue in dispute.

Consequently, the Court will overrule this objection, too.

In Holt's sixth objection, which is closely related to his fifth one, Holt asserts the Magistrate Judge "erred by finding . . . [Holt] failed to address [RHS's] performance related assertions." Objections at 7. He then lists from his response in opposition to RHS's motion for summary judgment what he says were his response to RHS's arguments and evidence concerning his performance issues.

Holt maintains he had a positive job performance evaluation on March 16, 2020, and "[n]o discipline was issued to [him] between March 16, 2020[,] when he received a meeting expectations performance review and his termination on June 30, 2020." *Id.* at 8.

RHS argues, however, Holt's "objection . . . ignores the fact . . . the same performance review he alleges proves . . . he was meeting expectations shows . . . he had several performance issues[.]" Reply at 9.

RHS is correct. Holt fails to address the Magistrate Judge's statement "he was generally found to have met expectations, except in the categories of quality of work and organization and planning, and . . . was informed in part, and not for the first time," [his charting practices needed to be improved]." Report 19-20.

He also neglects to mention the following June 15, 2020, email from his supervisor:

Hello Joe, I have been reviewing some of your charts from the past week and I'm seeing in some of the charts you are copying and pasting. . . . For example, in all the charts I have seen all the patients had no psych symptoms. Going forward if you are going to use the template be specific in identifying the client symptoms.

RHS's Motion for Summary Judgment, Exhibit M.

Accordingly, the Court will overrule this objection, as well.

Seventh, Holt claims “[t]he [the Magistrate Judge] erred by finding ‘[Holt] has failed to establish . . . he asked for any reasonable accommodation that was denied.’” Objections at 9 (quoting Report at 21). According to RHS, however, Holt’s “[t]he Magistrate Judge properly concluded . . . [Holt] failed to establish . . . he asked for and did not receive reasonable accommodations from [RHS] for his celiac.” Reply at 9.

Holt’s objections center around accommodations concerning COVID. But, as the Magistrate Judge stated, “concerning the availability of PPE during COVID and other accommodations related to COVID, [Holt] has failed to submit evidence connecting the need for these accommodations with celiac.” Report at 22.

Thus, the Court will overrule this objection, too.

Holt’s eighth objection is similar to his seventh one. In this objection, he states “[t]he Magistrate Judge] err[ed] by finding . . . [Holt] ‘failed to establish . . . he asked for and did not receive reasonable accommodations from [RHS] or that his employment was terminated for any reason related to his disability, or his sex[.]’” Objections at 10 (quoting Report at 24).

According to Holt, he “engaged in an ADA protected activity when he reported . . . he needed accommodations for his disability and the complaints about the denials of necessary PPE and accommodations for his disability during the COVID-19 pandemic. RHS “willfully retaliated against [him] by denying accommodations . . . and terminating [him] because of his protected activities under ADA.” *Id.*

RHS maintains, however, that “[t]he Magistrate Judge properly concluded . . . [Holt] failed to establish . . . he asked for and did not receive reasonable accommodations from [RHS] for his celiac or that his employment was terminated for any reason related to any alleged disability.” Reply at 9.

As the Court already observed, the Magistrate Judge ably noted, “[a]s to [Holt’s] arguments concerning the availability of PPE during COVID and other accommodations related to COVID, [he] has failed to submit evidence connecting the need for these accommodations with celiac.” Report at 22. “Instead,” as the Magistrate Judge stated, Holt “argues . . . he was at high risk for COVID because of his high blood pressure and diabetes. However, the record does not indicate . . . [Holt] notified [RHS] . . . he needed accommodations for high blood pressure or diabetes.” *Id.* (citation omitted).

In this objection, Holt also contends the Magistrate Judge “err[ed] by finding . . . [he] solely relies on temporal proximity between his complaints and termination to support his retaliation claim.” Objections at 10. But, as RHS correctly noted, however “[t]he Magistrate Judge never stated . . . [Holt] relied solely on temporal proximity, but determined . . . [he] was unable to solely rely on temporal proximity” to support a finding of pretext. Reply at 10

Consequently, for all these reasons, the Court will also overrule this objection.

Ninth, Holt says “[t]he [the Magistrate Judge] erred by recommending the dismissal of [his] Title VII wrongful termination claim.” Objections at 10 (emphasis omitted). According to Holt, “[i]n error, the [Magistrate Judge] found . . . ‘the evidence cited by [Holt] does not support his argument . . . the relevant decision makers were aware of any complaints of harassment or that, even if they were, this knowledge evinces pretext.’” *Id.* (quoting Report at 26). He then points to text messages between himself and another RHS employee in an attempt to show the decision makers were aware of his claims of harassment.

RHS replies, however, that “[t]he Magistrate Judge . . . appropriately determined . . . the evidence [Holt] cited does not support his argument that the relevant decision-makers were aware of any complaints of harassment or that, even if they were, this knowledge evinces pretext.” Reply at 10.

The Court has reviewed the text messages between Holt and another RHS employee and concludes they fail to demonstrate those who decided to terminate Holt were aware of his harassment allegations. As such, Holt is unable to demonstrate his Title VII wrongful termination claim should survive summary judgment inasmuch as he is unable to establish his termination was a violation of Title VII.

Thus, the Court will also overrule this objection.

In Holt's tenth objection, which is closely related to his ninth one, he alleges "[t]he Magistrate Judge] erred by finding . . . '[Holt] has failed to submit evidence . . . [RHS] knew or should have known about the alleged harassment.'" Objections at 11 (quoting Report at 28). Thus, according to Holt, his "evidence of sexual harassment is sufficient to deny summary judgment." *Id.* (emphasis omitted).

In RHS's reply, one of its arguments as to why the Court should overrule this objection is because Holt makes some new arguments here that he failed to offer to the Magistrate Judge. According to RHS, courts in this district have "routinely held that as a district court reviewing a Magistrate Judge's [Report], it need not consider the merits of new arguments raised for the first time in a plaintiff's objections to the [Report]." Reply at 12. RHS then cites to several courts that have held as such. *See, e.g., Addison v. CMH Homes, Inc.*, 47 F. Supp. 3d 404, 412 (D.S.C. 2014) ("The Court is also not obligated to consider new arguments raised by a party for the first time in objections to the Magistrate's Report."). But, the Court respectfully disagrees with those district courts on this matter.

The Federal Magistrate's Act (the Act) provides that a district court, when reviewing a Magistrate Judge's Report and Recommendation, "shall make a de novo determination of those portions of the [R]eport or specified proposed findings or recommendations to which objection is made[.]" 28 U.S.C. § 636(b)(1). And, as per controlling precedent from the Fourth Circuit, "as part of its obligation to determine de novo any issue to which proper objection is made, a district court

is required to consider all arguments directed to that issue, regardless of whether they were raised before the [Magistrate Judge].” *United States v. George*, 971 F.2d 1113, 1118 (4th Cir. 1992) (footnote omitted).

This is so because, “[b]y definition, de novo review entails consideration of an issue as if it had not been decided previously. It follows, therefore, that the party entitled to de novo review must be permitted to raise before the [C]ourt any argument as to that issue that it could have raised before the [Magistrate Judge].” *Id.*

Holt’s sexual harassment claim centers around his interaction with Dr. Kenneth Jones (Jones), who Holt stated was the supervisor over behavioral health at RHS. RHS maintains “the Magistrate Judge appropriately analyzed the evidence . . . [Holt] purports supports his sexual harassment claim and found . . . [Holt] failed to establish a claim for Title VII sexual harassment.” Reply at 12.

To state a prima facie case of sexual harassment here, Holt must show: (1) he was harassed because of his sex; (2) the harassment was unwelcome; (3) the harassment was sufficiently severe or pervasive to create an abusive working environment; and (4) some basis exists for imputing liability to the employer. *Hartsell v. Duplex Prods., Inc.*, 123 F.3d 766, 772 (4th Cir.1997).

As to the “severe or pervasive” requirement,

Our circuit has . . . recognized . . . plaintiffs must clear a high bar in order to satisfy the severe or pervasive test. Workplaces are not always harmonious locales, and even incidents that would objectively give rise to bruised or wounded feelings will not on that account satisfy the severe or pervasive standard. Some rolling with the punches is a fact of workplace life. Thus, complaints premised on nothing more than rude treatment by coworkers, callous behavior by one’s superiors, or a routine difference of opinion and personality conflict with one’s supervisor are not actionable under Title VII.

E.E.O.C. v. Sunbelt Rentals, Inc., 521 F.3d 306, 315–16 (4th Cir. 2008) (citations omitted) (internal quotation marks omitted) (alteration marks omitted).

According to Holt,

[he] was subjected to unwelcome sexual harassment and treatment based on sex from [RHS's] employee Dr. Kenneth Jones while working at [RHS]. [RHS] knew or should have known of the harassment and took no effective remedial action. Such unwanted sexual conduct created an intimidating and hostile work environment and was subjectively viewed by [Holt] to be abusive. The harassment was a continuing act. The conduct was sufficiently severe or pervasive to alter the conditions of employment and create an abusive atmosphere. [Holt's] complaints about the discriminatory workplace environment were disregarded. Sufficient evidence is put forth for a reasonable jury to find . . . that harassment prohibited by Title VII occurred.

Holt's Response to RHS's Motion for Summary Judgment at 29.

Suffice it to say, as the Court has stated above, Holt has failed to submit evidence RHS knew or should have known about the alleged harassment. In addition, he is unable to clear the "high bar" necessary to satisfy the severe or pervasive element to establish this claim.

As such, the Court will overrule this objection, too.

Eleventh, Holt "objects to this Court's exercise of supplemental jurisdiction if this Court were to adopt the [the Magistrate Judge]'s recommendations dismissing his federal law claims." Objections at 13 (emphasis omitted). According to Holt, "[i]f this Court were to dismiss [Holt's] four federal law claims, the appropriate action would be to remand the remaining state law claim back to state court – where it was originally filed." *Id.* at 14.

RHS, on the other hand, contends the Court should exercise supplemental jurisdiction over Holt's state claims. In one of its arguments in support of this position, it contends "[f]or the first time in [Holt's] objections, [he] raises a new argument that he objects to the Court's discretionary exercise of supplemental jurisdiction[.]" Reply at 17. As before, RHS maintains courts in this district have "routinely held . . . [they] need not and should not consider the merits of new arguments raised for the first time in a plaintiff's objections to the [Report]." Reply at 17. But, as the Court stated earlier, it disagrees with those courts.

Of Holt's claims, five are state law claims: defamation, abuse of process, interference with contractual relationship, negligence, and conversion. As per 28 U.S.C. § 1367(a), "the district courts shall have supplemental jurisdiction over all . . . claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution."

The Court can decline to exercise supplemental jurisdiction over a plaintiff's state law claims, however, once it "has dismissed all claims over which it has original jurisdiction." *Id.* And, the Court has "wide discretion" to do so. *Yashenko v. Harrah's NC Casino Co.*, 446 F.3d 541, 553 n.4 (4th Cir. 2006). "There are *no* situations wherein a federal court *must* retain jurisdiction over a state law claim, which would not by itself support jurisdiction." *Shanaghan v. Cahill*, 58 F.3d 106, 110 (4th Cir. 1995).

The Supreme Court has long held "[n]eedless decisions of state law should be avoided both as a matter of comity and to promote justice between the parties, by procuring for them a surer-footed reading of applicable law. Certainly, if the federal claims are dismissed before trial, even though not insubstantial in a jurisdictional sense, the state claims should be dismissed as well." *United Mine Workers of America v. Gibbs*, 383 U.S. 715, 726 (1966) (footnote omitted).

The Supreme Court, however, later made clear this statement fails to establish a mandatory rule to be applied, without any flexibility, in all cases. *See Carnegie-Mellon University v. Cohill*, 484 U.S. 343, 350 n.7 (1988) ("The statement simply recognizes that in the usual case in which all federal-law claims are eliminated before trial, the balance of factors to be considered under the [supplemental] jurisdiction doctrine—judicial economy, convenience, fairness, and comity—will point toward declining to exercise jurisdiction over the remaining state-law claims.").

The Court will briefly address each of those considerations. Concerning the judicial economy factor, discovery and briefing on Holt's state claims are complete. Only minor changes

to the parties's summary judgment submissions regarding the state claims will be required before filing them in state court.

Either this Court or the state court will be required to rule on RHS's motion for summary judgment as to Holt's five state claims; and if the decision is to deny summary judgment on any of those claims, the denying court will be required to try the case, if the parties are unable to settle. The Court assumes each court would take the same amount of time to complete these tasks. Thus, the Court is unable to say the judicial economy consideration factor weighs in favor of either its exercising or declining to exercise supplemental jurisdiction over Holt's state claims.

As to the convenience to the parties, "Holt . . . is a citizen and resident of Aiken County, South Carolina." Complaint ¶ 1. And, RHS "does business in Aiken County[.]" *Id.* ¶ 2. Thus, it appears the convenience consideration favors having Holt's state claims heard by the state court located in Aiken County.

In respect to the fairness question, it is totally fair to allow Holt to have his state claims considered in the court in which he filed them, the Aiken County Court of Common Pleas. RHS has failed to establish that forum is unfair to it. As such, the fairness factor also favors the Court declining to exercise supplemental jurisdiction over Holt's state claims.

Concerning the comity consideration, had this case had only state claims, RHS would have been unable to remove it to this Court. Supplemental jurisdiction allowed that, when those state claims were coupled with Holt's federal claims. But, those federal claims are now gone. All that remains is Holt's state claims.

The Court has reviewed RHS's motion for summary judgment as to Holt's state claims. After careful consideration,, the Court is of the opinion some of those claims might well survive summary judgment, thus requiring a trial on the merits, if the parties fail to settle the matter. The Court is of the firm opinion South Carolina has a strong interest in adjudicating those state claims in state court.

Further, the state appellate court can correct any error a state trial court makes in applying state law. But, it is unable to correct an error a federal district court or court of appeals might make in their consideration of a state law claim.

The Court also notes: absent from the record is any evidence or even suggestion there exists any underlying issues of federal policy favoring the Court exercising supplemental jurisdiction over Holt's state claims. Consequently, for all these reasons, the comity consideration also supports the Court declining to exercise supplemental jurisdiction over Holt's state law claims.

The Fourth Circuit has suggested the Court can consider additional factors when deciding whether to exercise supplemental jurisdiction. *Cahill*, 58 F.3d at 110 ("Among the factors that inform this discretionary determination are convenience and fairness to the parties, the existence of any underlying issues of federal policy, comity, and considerations of judicial economy.").

Thus, the Court has also given weight to Holt's choice of forum in deciding whether to exercise supplemental jurisdiction over Holt's state law claim. *See Voda v. Cordis Corp.*, 476 F.3d 887, 904 (Fed. Cir. 2007) (noting the plaintiff's choice of forum is a factor in considering the exercise of supplemental jurisdiction).

Holt filed this case in the Aiken County Court of Common Pleas, his obvious choice of forum for this lawsuit. He also requests the Court remand it there for consideration of his state law claims. Therefore, this consideration also weighs in favor of the Court refraining from exercising supplemental jurisdiction over his state law claims.

In sum, the Court is of the firm opinion it should decline to exercise supplemental jurisdiction over Holt's state law claims. In other words, the Court thinks a state court, not a federal one, should consider Holt's state claims. Thus, for all these reasons, the Court will sustain Holt's objection to the Court's exercising supplemental jurisdiction over his state law claims. As such, it will deem as moot Holt's objections concerning the merits of his state claims.

After a thorough review of the Report and the record in this case pursuant to the standard set forth above, the Court overrules Holt's objections concerning his federal claims, sustains his objection concerning supplemental jurisdiction, and deems as moot his objections concerning the merits of his state law claims. Further, it adopts the Report to the extent it does not contradict this Order, and incorporates it herein.

It is therefore the judgment of the Court RHS's motion for summary judgment as to Holt's federal claims is **GRANTED**. But, it will decline to exercise supplemental jurisdiction over Holt's state claims. Consequently, those claims are **REMANDED** to the Aiken County Court of Common Pleas for adjudication there.

IT IS SO ORDERED.

Signed this 1st day of February, 2024, in Columbia, South Carolina.

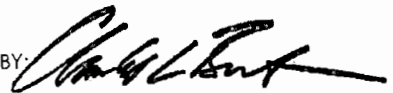
/s/ Mary Geiger Lewis

MARY GEIGER LEWIS

UNITED STATES DISTRICT JUDGE



A TRUE COPY
ATTEST: ROBIN L. BLUME, CLERK

BY: 
DEPUTY CLERK

IN THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	FOR THE SECOND JUDICIAL CIRCUIT
	)	
DR. JOE HOLT,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 2021CP0201525
	)	
RURAL HEALTH SERVICES, INC.,	)	
	)	
Defendant.	)	
	)	

ORDER GRANTING DEFENDANT’S MOTION FOR SUMMARY JUDGMENT

This matter came before the Court pursuant to Defendant’s, Rural Health Services, Inc., (“Defendant”) Motion for Summary Judgment. The Court heard oral arguments on the matter on September 4, 2024. For the reasons set forth herein, the Court grants Defendant’s motion in its entirety.

I. PROCEDURAL HISTORY

On July 20, 2021, Plaintiff filed a Complaint against his former employer, Defendant, in the Aiken County Court of Common Pleas. Defendant removed the action to the United States District Court for the District of South Carolina, Columbia Division under 28 U.S.C. § 1331 as four causes of action arose under federal law. Defendant filed a motion for summary judgment and memorandum of law in support in federal court. The District Court granted summary judgment as to Plaintiff’s federal causes of action, which included those under the Americans with Disabilities Act and Title VII of the Civil Rights Act of 1964, and the Court declined to exercise jurisdiction over Plaintiff’s state law claims, subsequently remanding them to the Court of Common Pleas. On July 30, 2024, Defendant filed a motion for summary judgment. On August 28, 2024, Defendant filed a memorandum in support of its motion for summary judgment. Plaintiff

filed his memorandum in opposition to the motion for summary judgment on August 30, 2024. The Court heard oral arguments on the matter on September 4, 2024. D. Randle Moody II, Esq. appeared on behalf of Defendant and Shannon Polvi, Esq. appeared on behalf of Plaintiff, Dr. Joe Holt ("Plaintiff"). This matter is now ripe for ruling.

II. FACTUAL BACKGROUND

Rural Health is a private, nonprofit Federally Qualified Health Center located in Aiken, South Carolina, that has served the citizens in Aiken and surrounding areas since 1971. Defendant employed Plaintiff as a Pediatric Behavioral Therapist from approximately September 2014 through June 2020. (Holt Dep. 106:10-13; 112:23-25.) For purposes of this Summary Judgment, Defendant's reason for termination is not particularly relevant. The Court notes that Defendant provided documentation showing that Plaintiff had performance issues throughout his employment with Defendant. (Def.'s Mem. in Supp. Of Summ. J. Mot. 4-6 citing Def's Exs. D, E, F, G, H, I, J, K, and L.) The Court also notes that Plaintiff provided his March 16, 2020, performance evaluation where Defendant assessed Plaintiff as meeting expectations in seven categories, as exceeding expectations in two categories, and marginal in two categories. (Pl.'s Mem. In Opp'n To Def.'s Mot. for Summ. J. Ex. 1). The two categories that Defendant assessed Plaintiff's performance as marginal were in his quality of work, organization, and planning. (*Id.*) Plaintiff also produced a Christmas card Defendant's CEO provided him around December 2019 where she said, "Dr. Holt thank you for joining our staff and building the Behavioral Health Program. You have done a wonderful job and I appreciate you[r] commitment and dedication to RHS and the patients we serve[.]" (Pl.'s Mem. In Opp'n To Def.'s Mot. for Summ. J. Ex. 2).

On June 29, 2020, Plaintiff contacted Aiken County Police to report a driver of a truck allegedly speeding in Defendant's parking lot. (Pl.'s Mem. In Opp'n To Def.'s Mot. for Summ. J.

Ex. 3, 4, 6, and 7). The following day, on June 30, 2020, Defendant notified Plaintiff that his employment had been terminated. Plaintiff does not dispute that his employment was terminated after he called the police regarding a driver in Defendant's parking lot on June 29, 2020. (Holt Dep. 220:18 – 221:15.)

Post Termination Actions

Plaintiff alleges that after his employment ended, Defendant defamed him by alleging that he filed a false police report, called him racist, and accused him of being incompetent at his job. (Pl.'s Mem. in Opp'n to Def.'s Mot. for Summ. J. at 8-9.) Plaintiff provided Facebook messages from a Rural Health employee, Gabrielle Gaudette, stating that she heard that "[he] left bc [sic] [he] called the cops on mrs Alford son[.]" (Ex. 8 - Facebook Messages with Gabrielle Gaudette). Both Defendant and Plaintiff admit that Plaintiff called the police for an alleged driving incident on June 29, 2020. (Def.'s Mem. in Supp. Of Mot. for Summ. J at 6.; Pl.'s Mem. in Opp'n to Def.'s Mot. for Summ. J. at 2-4.) Plaintiff also provided a recording of a patient's mother alleging that one of Defendant's representatives called him racist and made other statements. (*Id.*) However, Plaintiff, not the patient's mother, identified the alleged representative who allegedly made the statements. (*Id.*)

Plaintiff also alleges that Defendant did not pay the final wages Defendant owed him until after the South Carolina Department of Labor, Licensing and Regulation investigated the matter and issued a warning to Defendant for failing to provide written notice to their employees as required under S.C. Code Ann. § 41-10-30. (Pl.'s Mem. in Opp'n to Def.'s Mot. for Summ. J. at 4-5.) Plaintiff also alleges that Defendant received and retained money for services that Plaintiff performed in violation of Defendant's Financial Management Policy. (*Id.*) Plaintiff admitted, however, that Rural Health provided him with the \$504 check BlueCross BlueShield provided

Defendant in error. (Def.'s Mem. in Supp. Of Mot. for Summ. J. at 8 citing Holt Dep. at 38:2-23.) (*Id. citing Id.* at 44:2-20; 48:3-17.) Plaintiff admitted that after a provider leaves a medical center, it is common for the medical center to receive payments for services the provider rendered six months to a year later and that he has not had any issues since he provided BlueCross BlueShield with the proper address. (*Id. citing Id.* at 44:2-20; 48:3-17.) Plaintiff alleges that BlueCross BlueShield still owed him \$2,800, but he testified that it was an issue that he was "having to talk to" BlueCross BlueShield about. (*Id.* at 60:20-61:9.)

Plaintiff also alleges that Defendant has a responsibility to its patients and Plaintiff to truthfully provide the patients who were treated by Plaintiff with the options available for ongoing care and he claims Defendant did not provide that information. (*Id.*) Plaintiff alleges that "a doctor and/or another current RHS staff member," made a false report to the South Carolina Department of Social Services ("DSS") against a family who decided to continue receiving counseling services from Plaintiff. Plaintiff provided text messages where those parents allege that Defendant's unknown representative made a "false report to DSS against the family, by falsely alleging that the family was refusing to follow the doctor's recommendation of getting counseling." *Id.* at 6-7 *citing* (Ex. 22 - Statement of Father); (Ex. 23 - Statement of CB); (Ex. 24 - Texts re DSS Matter). Plaintiff has brought claims of defamation, abuse of process, interference with contractual relationship, conversion and negligence against Defendant after Defendant terminated Plaintiff's employment.

III. STANDARD OF REVIEW

Summary judgment shall be granted when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC. "When determining if any triable issues of fact exist, the evidence

and all reasonable inferences must be viewed in the light most favorable to the non-moving party.” *Bluestein v. Town of Sullivan's Island*, 429 S.C. 458, 462, 839 S.E.2d 879, 881 (2020) quoting *Turner v. Milliman*, 392 S.C. 116, 121–22, 708 S.E.2d 766, 769 (2011).

“Under Rule 56(c), the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact.” *Lanham v. Blue Cross & Blue Shield of S.C., Inc.*, 349 S.C. 356, 361, 563 S.E.2d 331, 333 (2002). “Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent’s case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings.” *Regions Bank v. Schmauch*, 354 S.C. 648, 660, 582 S.E.2d 432, 438 (S.C. Ct. App. 2003). “[T]he nonmoving party must come forward with specific facts showing there is a genuine issue for trial.” *Id.*

IV. APPLICATION

A. DEFAMATION

“The tort of defamation allows plaintiffs to recover for injuries to their reputation as the result of defendants’ communications to others of falsities regarding the plaintiffs.” *Cruce v. Berkeley Cnty. Sch. Dist.*, 435 S.C. 7, 18, 865 S.E.2d 391, 397 (S.C. Ct. App. 2021), reh’g denied (Dec. 2, 2021), cert. granted (Sept. 7, 2022) (citing *Boone v. Sunbelt Newspapers, Inc.*, 347 S.C. 571, 580, 556 S.E.2d 732, 737 (S.C. Ct. App. 2001)). Under South Carolina law, to state a cause of action for defamation, a plaintiff must show the existence of some message that (1) is defamatory, (2) is published with actual or implied malice, (3) is false, (4) is published by the defendant, (5) concerned the plaintiff, and (6) resulted in legally presumed or in special damages. *Parker v. Evening Post Pub. Co.*, 452 S.E.2d 640, 644 (S.C. Ct. App. 1994). Malice and damages are presumed in the case where the defamation is actionable per se. See *Holtzscheiter v. Thomson*

Newspapers, Inc., 506 S.E.2d 497, 502; *see also id.* (“In other words, if the trial judge can legally presume, because of the nature of the statement, that the plaintiff’s reputation was hurt as a consequence of its publication, then the libel is actionable per se. Essentially, all libel is actionable per se.”) (citations omitted).

Plaintiff alleges that “Defendant made false and defamatory statements about Plaintiff to parents of Plaintiff’s patents” and identifies two allegedly defamatory incidents. The first alleged defamatory statement that Plaintiff directs the Court to is provided in a brief video recording of a patient’s mother¹. In the video, the patient’s mother states that at some unknown time, she was told, by an unknown person at the front desk, that Plaintiff was racist. (Pl.’s Resp. in Opp’n to Def.’s Mot. for Summ. J. Ex. 12 - 2020-7-20 Interview with Patient's Mother); (Pl.’s Resp. in Opp’n to Def.’s Mot. for Summ. J. Ex. 13 - Metadata of 2020-7-20 Interview with Patient's Mother). In the video, Plaintiff, not the unknown speaker, identifies the person who allegedly makes the comment as “Sheryl Lynn.” *See id.* Plaintiff also alleged that “Defendant defamed Plaintiff in word and by falsely accusing him of incompetence in his profession and engaging in conduct that he did not, which is defamation *per se*.” (*Id.* at 10). Plaintiff has provided no evidence that the alleged employee made the alleged statement besides Plaintiff’s identification of the alleged employee in the recording.

As to the first alleged statement, even though this statement is inadmissible in the form submitted by Plaintiff, the statement lacks the necessary specificity to state a claim for defamation. *See Paradis v. Charleston Cty. Sch. Dist.*, 424 S.C. 603, 613-14, 819 S.E.2d 147, 153 (S.C. Ct. App. 2018), *abrogated on other grounds* (affirming the trial court’s order granting dismissal of plaintiff’s defamation claim because “she never indicate[d] who made defamatory statements

¹ The Court notes that Plaintiff has provided the identity of the patient and the patient’s parent in the sealed documents submitted to the Court.

about her, what they said, or to whom those statements were published.”); *McNeil v. S.C. Dep’t. of Corr.*, 404 S.C. 186, 195, 743 S.E.2d 843, 848 (S.C. Ct. App. 2013) (affirming the trial court’s order granting dismissal of plaintiff’s defamation claim because “she did not set forth with any specificity what the alleged false statements were” who made the alleged statements, and who they were made to); *Carson v. Emergency MD, LLC*, 2020 U.S. Dist. LEXIS 154559, at *5 (D.S.C. Aug. 25, 2020) (“Many courts applying South Carolina law have found that a lack of specificity in a plaintiff’s allegations regarding a defamation claim warrants dismissal.”); *Doe v. Cannon, C/A* No. 2:16-00530-RMG, 2017 WL 591121, at *1 (D.S.C. Feb. 14, 2017) (“Plaintiff has failed to state a claim against [Defendants] for defamation because her Complaint does not state with specificity the time, place, medium, and listener of the alleged defamatory statements.”).

Moreover, in this context, the alleged and apparently isolated statement may not be defamatory. As stated by the South Carolina Supreme Court:

Petitioners correctly contend that calling someone a racist can be defamatory depending on the context. In this regard, we reject any suggestion that calling someone a racist can never be defamatory. *See* 50 Am. Jur. 2d Libel and Slander § 200 (2017) (“Courts have readily held allegations of racism . . . to constitute libel per se, at least when founded on specific incidents.”); 3 Dan. B. Dobbs et al., *The Law of Torts* § 572 (2d ed. 2011) (“While ‘racist’ is sometimes said to be mere name-calling and not actionable in some contexts, the term can be actionable where it plainly imputes acts based on racial discrimination.” (footnote omitted)); *MacElree v. Phila. Newspapers, Inc.*, 544 Pa. 117, 674 A.2d 1050, 1055 (1996) (“Although accusations of racism have been held not to be actionable defamation, it cannot be said that every such accusation is not capable of defamatory meaning as a matter of law.”).

Garrard for R.C.G. v. Charleston Cty. Sch. Dist., No. 2020-000605, 2023 WL 3731173, at *1 (S.C. May 31, 2023); *see also id.* at n.2 (“*La Liberte v. Reid*, 966 F.3d 79, 93 (2d Cir. 2020) (“[The defendant] did not merely accuse [the plaintiff] of being ‘racist’ in some abstract sense. Rather, [the defendant’s social media post] could be understood as an accusation of concrete,

wrongful conduct, which can be proved to be either true or false. That makes it potentially defamatory.’ (cleaned up)).

The second alleged defamatory statement that Plaintiff directs the Court to is what purports to be a Facebook chat exchange with Gabrielle Gaudette, who worked for Defendant in medical records at some point, and who stated she had heard “that u left bc u called the cops on mrs Alford son.” (Pl.’s Resp. in Opp’n to Def.’s Mot. for Summ. J. Ex. 8 – Facebook Messages with Gabrielle Gaudette). Plaintiff alleges that the Facebook exchange shows that “Defendant defamed Plaintiff to unprivileged staff and Plaintiff’s patients by accusing him of making a false police report.” (Pl.’s Mem. In Opp’n to DEF’s Mot. Summ. J. at 8.) The statement states that Plaintiff called the police on another employee’s child, which Plaintiff has admitted. (Holt Dep. 220:18 – 221:15.) *See N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 274 (1964) (holding that truth is an absolute defense to a defamation claim). Thus, the Court finds that this statement is not defamatory. Moreover, the Court finds that neither of these statements are defamatory and grants summary judgment for Defendant on Plaintiff’s defamation claim.

B. ABUSE OF PROCESS

Under South Carolina law, “[t]he essential elements of abuse of process are: (1) an ulterior purpose; and (2) a willful act in the use of the process not proper in the regular conduct of the proceeding.” *Gregory v. Riley Pope & Laney, LLC*, No. 2015-000740, 2017 WL 4640146, at *2 (S.C. Ct. App. May 3, 2017) (quoting *Johnson v. Painter*, 279 S.C. 390, 391, 307 S.E.2d 860, 860 (S.C. 1983); *see also Hainer v. Am. Med. Int’l, Inc.*, 492 S.E.2d 103, 107 (S.C. 1997) (“There is no liability where the defendant has done nothing more than carry out the process to its authorized conclusion, even though with bad intentions.”)).

Plaintiff alleges that “Defendant’s representative(s) called the South Carolina Department of Social Services and made a false report against a family who decided to continue medical care services with Plaintiff rather than Defendant, by falsely alleging that the family was refusing to follow the doctor’s recommendation of getting counseling. (Ex. 23—Statement of CB).” (Pl’s Mem. Opp’n to DEF’s Mot. for Summ. J. at 10.) According to Plaintiff, “the parents were contacted by Child Protective Services as a result of this false claim.” (*Id.*) Plaintiff argues, but provides no supporting evidence, that Defendant or its representative did this “in retaliation for the family choosing to utilize Plaintiff’s counseling services” after Plaintiff was terminated. (*Id.*) In fact, Plaintiff has provided no evidence to support this claim at all.

There is no evidence from which a reasonable jury could find Defendant acted with an ulterior purpose. The only evidence Plaintiff has that an unknown person allegedly associated with Defendant called DSS is that the father and mother allegedly told him. (Holt Dep. at 225:3–227:11). Although Plaintiff alleges otherwise, there is no evidence in the record, not even Plaintiff’s own testimony, that even if a representative of Defendant called DSS, such actions were to retaliate against Plaintiff. Additionally, as Defendant correctly asserts, Plaintiff has failed to follow the appropriate procedure for bringing a claim for making a false DSS report. *See Barton v. Barton*, 2022 S.C. C.P. LEXIS 819 *4-5 (Jan. 11, 2022.) (stating that “[t]he plain language of § 63-7-430(B) clearly states that a plaintiff may have a civil cause of action (1) ‘if the family court determines pursuant to Section 63-7-2000 that a person has made a false report of suspected child abuse or neglect maliciously or in bad faith’ or (2) if a person has been found guilty of making a false report pursuant to Section 63-7-440.”)

Even if Plaintiff could demonstrate Defendant’s representative called DSS to retaliate against Plaintiff, the essence of the tort of abuse of process centers on events occurring outside the

process, and our courts have noted that “[t]he improper purpose usually takes the form of coercion to obtain a collateral advantage, not properly involved in the proceeding itself, such as the surrender of property or the payment of money, by the use of the process as a threat or club.” *Swicegood v. Lott*, 379 S.C. 346, 353, 665 S.E.2d 211, 214 (S.C. Ct. App. 2008) (quoting *Huggins v. Winn-Dixie Greenville, Inc.*, 249 S.C. 206, 209, 153 S.E.2d 693, 694 (1967)). “There is, in other words, a form of extortion, and it is what is done in the course of negotiation, rather than the issuance or any formal use of the process itself, which constitutes the tort.” *Id.* (quoting *Huggins*, 249 S.C. at 209, 153 S.E.2d at 694); *D.R. Horton, Inc. v. Westcott Land Co.* 730 S.E.2d 340, 352 (S.C. Ct. App. 2012), cert. denied as to this issue, 764 S.E.2d 701 (S.C. 2014). Plaintiff has provided no evidence that even if Defendant’s representatives called DSS on his patient’s parents, that Defendant acted with an ulterior motive. Moreover, the Court finds there is no evidence that Defendant sought to gain any kind of collateral advantage over Plaintiff. Thus, the Court grants Defendant’s motion for summary judgment as to Plaintiffs abuse of process claim.

C. INTERFERENCE WITH CONTRACTUAL RELATIONSHIP

South Carolina recognizes a claim for intentional interference with contract, also known as tortious interference with contractual relations. “The elements of a cause of action for tortious interference with contract are: (1) existence of a valid contract; (2) the wrongdoer’s knowledge thereof; (3) his intentional procurement of its breach; (4) the absence of justification; and (5) resulting damages.” *Dutch Fork Dev. Grp. II, LLC v. SEL Properties, LLC*, 406 S.C. 596, 604, 753 S.E.2d 840, 844 (S.C. 2012) (quoting *Camp v. Springs Mortgage Corp.*, 310 S.C. 514, 517, 426 S.E.2d 304, 305 (S.C. 1993)).

Plaintiff alleged that he “has existing and prospective contractual relationships with patients and their families to provide medical services, specifically pediatric behavioral therapy

services in Aiken, South Carolina through his clinic. (Pl.'s Mot. in Opp'n to DEF's Mot. for Summ. J at 10.) Plaintiff has provided no support of any contractual relationships. Instead, in support of this claim, Plaintiff has submitted letters from former patient's parents with (1) one stating her payments from her insurance company were paid to Defendant when they should have gone to Plaintiff, (2) at some unknown time one was sexually harassed by the "front end secretary," (3) one was informed by Jones that she "could not see Dr. Holt anymore that [she] had to see in house one of their psychologists . . . to be a patient there," (4) "The RHS pediatric staff made negative, disparaging comments about Dr. Joe Holt as a professional," and (5) one family was informed they could not be seen by the practice without using their counselors, the same family that Plaintiff alleges Defendant called DSS on. *See id.*

Plaintiff has also failed to identify the terms of the contract at issue that were allegedly breached, how those terms were breached, how those terms were intentionally breached by Defendant, and the damage that occurred. *See e.g., Eldeco, Inc. v. Charleston Cty. Sch. Dist.*, 642 S.E.2d 726, 732 (S.C. 2007) ("An essential element to the cause of action for tortious interference with contractual relations requires the intentional procurement of the contract's breach. Where there is no breach of the contract, there can be no recovery.") (citations omitted)). Instead, Plaintiff directs the Court to the Physicians' Patient Records Act, which does not establish any term of any alleged contract. Plaintiff has provided no evidence to satisfy a single element of a breach of contract claim, better yet all necessary elements. Thus, the Court grants Defendant's motion for summary judgment as to Plaintiff's tortious interference with contractual relationship claim.

D. NEGLIGENCE

"In a negligence action, a plaintiff must show that (1) the defendant owes a duty of care to the plaintiff, (2) the defendant breached the duty by a negligent act or omission, (3) the defendant's

breach was the actual and proximate cause of the plaintiff's injury, and (4) the plaintiff suffered an injury or damages." *Madison ex rel. Bryant v. Babcock Ctr., Inc.*, 371 S.C. 123, 135, 638 S.E.2d 650, 656 (S.C. 2006). "Duty is generally defined as 'the obligation to conform to a particular standard of conduct toward another.'" *Huggins v. Citibank, N.A.*, 355 S.C. 329, 333, 585 S.E.2d 275, 277 (S.C. 2003) (quoting *Hubbard v. Taylor*, 339 S.C. 582, 588, 529 S.E.2d 549, 552 (2000)). "[T]he court must determine, as a matter of law, whether the defendant owed a duty of care to the plaintiff." *Huggins*, 355 S.C. at 332, 585 S.E.2d at 276.

According to Plaintiff, his "negligence claim only arises and is brought for actions that occurred after Plaintiff was no longer employed by Defendant." (Pl.'s Mem. in Opp'n to DEF's Mot. for Summ J. at 13.) Plaintiff argues that after he was terminated, BlueCross BlueShield sent checks to Defendant that should have been sent to Plaintiff and that "Defendant retained money from services he provided, after termination, for an extended period of time," although it appears that the funds have now been provided to Plaintiff. (*Id.* at 13-14.) Plaintiff has failed to cite, nor is the court aware, of a plaintiff who has maintained a claim for negligent retention of property under these circumstances, particularly where Plaintiff testified that it is common for payments to go to an institution six months to a year after an employee leaves an institution and starts providing services elsewhere, and where Plaintiff has provided no evidence that Defendant knew the monies were owed solely to him or the existence of any injury. (Holt Dep. 38:15-22.) Thus, the Court grants Defendant's motion for summary judgment as to Plaintiff's claim for negligence.

E. CONVERSION

Conversion is the "unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the exclusion of the owner's rights." *Owens v. Andrews Bank & Tr. Co.*, 265 S.C. 490, 496-97, 220 S.E.2d 116, 119 (S.C. 1975) (citing *Ray v.*

Pilgrim Health & Life Ins. Co., 206 S.C. 344, 34 S.E.2d 218, 34 S.E.2d 218 (S.C. 1945). Under South Carolina law, a plaintiff asserting the tort of conversion must show that the defendant, without authorization, assumed and exercised the right of ownership over goods or personal chattels belonging to another to the exclusion of the plaintiff's rights. *Moore v. Weinberg*, 681 S.E.2d 875, 878 (S.C. 2009) (citing *SSI Med. Servs., Inc. v. Cox*, 392 S.E.2d 789, 792 (S.C. 1990)). The plaintiff must establish either title to or right to the possession of the personal property. *Moseley v. Oswald*, 656 S.E.2d 380, 382 (S.C. 2008) (citing *Crane v. Citicorp Nat'l Servs., Inc.*, 437 S.E.2d 50, 52 (S.C. 1993)). Money may be the subject of a conversion claim if the money is capable of being identified. *Moore*, 681 S.E.2d at 878. If the conversion of money is not secured illegally, tortiously, by fraud, or other wrongful conduct, a plaintiff must demonstrate that he made a demand for its return which was refused. *See Mackela v. Bentley*, 614 S.E.2d 648, 650 (S.C. Ct. App. 2005).

Plaintiff alleges that he "is aware of Defendant retaining at least \$2,800 owed to Plaintiff." (Pl.'s Mem. in Opp'n to DEF.'s Mot. for Summ. J. at 15 (citing Holt Dep. 60:12-61:6).) However, the documents Plaintiff cites in support do not appear to constitute a sum demonstrating \$2,800. (See Ex. 20 - Documents Supporting Conversion - BCBS Records; ECF 48-2, pp. 4-11.) Additionally, Plaintiff has provided no evidence that Defendant refused a demand for the return of his funds to establish a conversion claim. Instead, Plaintiff testified that the occurrences of delayed payment were due to BlueCross BlueShield sending the money to Defendant instead of to him and that he is "having to talk" to BlueCross BlueShield to resolve the issue of those funds. (Holt Dep. at 60:12-61:9.) Thus, the Court grants Defendant's motion for summary judgment as to Plaintiff's claim for conversion.

V. CONCLUSION

For these reasons, the undersigned grants Defendant's Motion for Summary Judgment.

IT IS SO ORDERED.



Aiken Common Pleas

Case Caption: Joe Holt VS Rural Health Services Inc

Case Number: 2021CP0201525

Type: Order/Other

So Ordered

Patrick C. Fant, III

Electronically signed on 2024-12-13 16:03:59 page 15 of 15

IN THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	FOR THE SECOND JUDICIAL CIRCUIT
	)	
DR. JOE HOLT,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 2021CP0201525
	)	
RURAL HEALTH SERVICES, INC.,	)	
	)	
Defendant.	)	
	)	

**MEMORANDUM IN SUPPORT OF DEFENDANT’S MOTION FOR
SUMMARY JUDGMENT**

Defendant Rural Health Services, Inc. (hereinafter “Rural Health” or “Defendant”), by and through its undersigned counsel, submits this Memorandum in Support of its Motion for Summary Judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. Defendant Rural Health respectfully submits that there are no triable issues of fact and requests that this Court grant its Motion for Summary Judgment in its entirety on all of Plaintiff’s claims as the record evidence fails to support any of the requisite elements of Plaintiff’s state law claims which are inadequately founded upon Plaintiff’s purely speculative factual allegations.

I. PROCEDURAL BACKGROUND

Plaintiff Dr. Joe Holt (hereinafter “Holt” or “Plaintiff”) initially brought this lawsuit in the Aiken County Court of Common Pleas on August 5, 2021, alleging the following nine causes of action: (1) disability discrimination in violation of the Americans with Disabilities Act, 42 U.S.C. § 12112, *et seq.* (“ADA”); (2) retaliation in violation of the ADA; (3) sex discrimination in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.* (“Title VII”); (4) retaliation in violation of Title VII; and several claims under South Carolina law: (5) defamation; (6) negligence; (7) conversion; (8) interference with contractual

relationships; and (9) abuse of process. (Pl.'s Compl.) On August 30, 2021, Defendant removed this case to the U.S. District Court for the District of South Carolina, Aiken Division, on the basis of federal question jurisdiction. The parties completed discovery pertaining to all claims, and on April 13, 2023, Defendant filed its Motion for Summary Judgment. On May 4, 2023, Holt filed his Response in Opposition to Defendant's Motion for Summary Judgment and Defendant filed its Reply on May 11, 2023. Subsequently, on June 21, 2023, the Honorable Shiva V. Hodges issued her Report and Recommendation to the District Court Judge recommending that summary judgment be granted in favor of Defendant on all causes of action, including Plaintiff's state law claims. On July 5, 2023, Holt filed Objections to the Report and Recommendation, and on July 19, 2023, Defendant filed a Reply to Plaintiff's Objections to the Report and Recommendation. On February 1, 2024, the Honorable Mary Geiger Lewis issued an order granting summary judgment for Defendant on all of Plaintiff's federal claims and declining to exercise supplemental jurisdiction over Plaintiff's state law claims, ultimately remanding Plaintiff's state law claims which are presently before the Court.

II. INTRODUCTION

The Honorable Judge Lewis remanded the following claims to state court: 1) defamation; (2) negligence; (3) conversion; (4) interference with contractual relationships; and (5) abuse of process. As discussed more fully below and as the Honorable Judge Hodges held, no genuine issue of material fact exists as to any of the pending claims, and the record evidence clearly establishes that Defendant is entitled to judgment as a matter of law on each of Plaintiff's state law claims. (Ex. A - Report & Recommendation, ECF No. 55 at 30-41.) Holt has failed to establish any basis for or provide evidence to substantiate any of his state law claims, and thus, all the claims are inadequately based purely upon his own speculation. Accordingly, Defendant

respectfully requests that the Court enter judgment in its favor and dismiss Holt's Complaint in its entirety with prejudice.

III. STATEMENT OF FACTS

Rural Health is a private, nonprofit Federally Qualified Health Center located in Aiken, South Carolina, that has served the citizens in Aiken and surrounding areas since 1971. Rural Health's Chief Executive Officer, Carolyn McClain, hired Holt in September 2014 as a Director in the Behavioral Health Department, a position that he held for approximately two years. (Holt Dep.¹ 105:19-25; 106:6-9.) As the Director of Behavioral Health, Holt's responsibilities included developing programs, supervising staff, and seeing minor patients. (*Id.* at 106:22-25-107:1-7.) In 2016, Holt was reassigned to work as a behavioral therapist for the Pediatric Unit. (*Id.* at 106:10-13; 112:23-25.) As a behavioral therapist, he was required to assess patients as requested by primary care providers, participate in the diagnosis process for behavioral health issues, and refer individuals for specialty treatment. Holt's position further required individualized record-keeping for each patient and strong professional skills to work with both patients and other care providers. It is important to note, Holt's licensure does not permit him to prescribe or recommend medications to patients and Rural Health did not allow him to prescribe or recommend any medications as he is not a medical doctor. (*Id.* at 11:11-23.) (Plaintiff has a Doctor of Philosophy in Psychology from Southwestern Baptist Theological Seminary). Throughout Holt's employment with Rural Health, he had several performance issues, including failing to complete critical job tasks, exceeding the scope of his practice, failing to maintain proper hygiene, and failing to arrive to work on time. The details of the events that led to Holt's termination, which occurred on June 29, 2020, are set forth below.

¹ Cited excerpts from the deposition of Plaintiff Dr. Joe Holt are attached as Exhibit B.

A. Holt Was Terminated in June 2020 Because of Significant Performance Issues, Including Failure to Complete Job Tasks, Exceeding the Scope of Practice, Failing to Maintain Proper Hygiene, and Excessive Attendance Issues and Tardiness.

Holt had excessive documented attendance and tardiness issues in violation of Rural Health's Attendance Policy during his employment. Rural Health has a policy prohibiting excessive tardiness, and employees can be disciplined up to termination for violations. (Ex. C - Attendance Policy.) ("Regular attendance and punctual arrival at the scheduled work site are essential functions of each employee's job at Rural Health Services. . . . Employees are expected to notify their immediate supervisor or the designated Human Resources Officer [] of any circumstances [] that may necessitate excessive absences or tardiness.") Holt consistently arrived 20 – 30 minutes late to patient appointments, aggravating both patients and providers scheduled to see a patient after Holt. Holt's excessive attendance issues and tardiness were documented and violated Rural Health's Attendance policy. (Ex. D - Dr. Stephanie Boyd and Holt's Feb. 3, 2015, Tardiness Discussion); (Ex. E – Tijuana Carolina Notes on Plaintiff's Behavior.)

Holt received several corrective action plans and complaints for failure to complete his job tasks. For instance, Holt received and signed a Corrective Action Plan on October 15, 2015, for failure to complete tasks in order of priority which often resulted in his failing to complete high-priority work. (Ex. F - Corrective Action Plan, October 15, 2015; Holt Dep. 190:13-20.) Holt also struggled to properly document patients' records throughout his employment with Rural Health, and he testified that he did not document patient charts in compliance with Rural Health's policy. (Holt Dep. 148:5-20.) On May 5, 2016, during Holt's April 2016 Peer Review, Dr. Stephanie Boyd noted that he continued to copy and paste notes from patients' charts to patients' charts since he had been placed on the corrective action plan on October 15, 2015. (Ex.

G - Holt's April 2016 Peer Review.) Subsequently, on August 23, 2016, Holt received another written warning for failing to properly complete patients' charts. (Ex. H - Holt's July 2016 Performance Review.) Thus, Holt had been disciplined consistently since 2015 for failure to correctly document his patients' treatment, and on June 15, 2020, he received another reprimand for copying and pasting documentation into his patients' charts. (Ex. I – Carlos Foster Email, June 15, 2020.)

In 2016, Holt complained that there was a "ladies only" sign on a unisex restroom; however, Rural Health's Chief Operating Officer, Gigi Lewis, promptly had the sign removed. (Holt Dep. 138:5-19.) Holt testified that he could always use that restroom and that there were multiple restrooms available for him to use, including a restroom that was even closer to his office than the restroom in dispute. (Ex. J – Rural Health Map - Holt Dep. Ex. 2; Holt Dep. 137:3-9; 139:19-21; 140:5-7; 143:10-22.)

During his employment, Holt also received write-ups for exceeding his scope of practice. Although, as mentioned, Holt's licensure does not permit him to prescribe or recommend medications to patients, he recommended medications to patients on multiple occasions during his employment. On August 14, 2017, Chairty Capers-Williams RN informed Dr. Boyd that Holt told a patient a certain kind of medication should be used instead of collaborating with a medical doctor. (Ex. K – Chairty Capers-Williams Note, Aug. 14, 2017.) On August 8, 2019, Ms. Tijuana Carolina documented that Holt was incorrectly informing patients that he could prescribe medications for them, and on October 1, 2019, Holt attempted to order medication for another patient. (Ex. E.) When Holt's supervisor confronted him about recommending the medication, he initially denied recommending the medication and then he admitted to suggesting magnesium for anxiety during the session, and he received a written warning for this incident.

(Ex. L – Holt Behavior/Performance Enhancement Plan, Dec. 6, 2019.)

Holt continued to have performance issues and Rural Health terminated him for these documented performance issues on June 29, 2020. Although Holt was terminated for ongoing performance issues, he alleges that his employment was terminated after he called the police regarding a driver in Rural Health's parking lot. (Holt Dep. 220:18-221:5.) Indeed, on June 29, 2020, Holt called the police on two young African American employees who were driving into the parking lot at a reasonable speed in order to get to work at Rural Health. *Id.* However, Holt was terminated for the recurring performance issues as discussed above and detailed below.

B. Holt Opened His Own Counseling Practice Following His Termination From Rural Health.

Following his termination from Rural Health, Holt testified during his deposition that he opened his own practice providing counseling services on July 1, 2020. (Holt Dep. 46:1-14.) According to Holt, after he left Rural Health, he notified Carlos Foster of his new practice location, but he never provided any written documentation of his location to Rural Health. (*Id.* at 264:1-21.) Holt alleges that approximately 30 patients told him that Rural Health did not tell them about his new location, but he failed to provide any names of the alleged patients who made these statements. (*Id.* at 264:12-24.) Although Holt testified that he would provide Rural Health with the names of the patients, Holt has failed to provide any information to identify these alleged patients. (*Id.* at 264:15-25.) According to Holt, when patients requested his location and Rural Health representatives told them that they did not know his location, it disrupted the patient's relationship and was "an interruption of the contractual agreement." (*Id.* at 263:13-23.) Holt testified that the therapy he provides is "a contractual relationship between the patient, the insurance company and the client." (*Id.* at 265:16.) However, when asked whether he had a written contract with patients, Holt testified during his deposition that the new patient form was a

contract, but eventually admitted that he was his patients' therapist of their own choosing, and the patients are actually patients of themselves that choose their providers. (*Id.* at 265:1-266:8.)

Sometime after Holt left Rural Health, Holt alleges that a patient's mother, Ms. Shalonda [no last name], told him that she stopped taking her child to Rural Health around 2016 or 2017 because Rural Health's staff was making disparaging statements about him behind his back. (*Id.* at 261:1-24.) Holt alleges that Ms. Shalonda [no last name] said that a Rural Health Medical Assistant told her that he was racist. (*Id.* at 259:6-13.) In the federal proceeding, Holt also provided a video under seal of an alleged patient's mother speaking to him that is virtually indecipherable. In said video, the patient's mother does not identify any alleged defamatory statements, what was said, who made the statements, or to whom the statements were made. Holt also alleges that a Rural Health employee, Gabrielle Gaudette told him that "the word in the building was [he] was terminated because he called the police on Ms. Alford's kid." (Holt Dep. 220:20-221:25.) Holt provided the Facebook messages between him and Ms. Gaudette that contained the conversation. Initially, Ms. Gaudette did not respond when Holt asked, "Did you hear bad things?" She eventually responded, "Just that you left bc u called the cops on mrs Alford son[.]" Although not clear what he was referring to, Holt also alleges that he "think[s] the treatment in front of patients. [he] think[s] the conduct of the staff in front of patients makes it a point where patients sit there and observe it and know it. That becomes defamatory." (Holt Dep. 260:15-261:6.) However, Holt testified that the only alleged defamatory treatment pertained to a female-only sign that was taped on a unisex bathroom for a brief amount of time. (*Id.* at 138:3-20.) Holt alleges that the sign was humiliating, and he was embarrassed "to be the only male that every patient comes up and sees [] the sign, you just kind of look at it because that is a unisex bathroom, it is not built to be a female bathroom, it was built to be a bathroom shared by all."

(*Id.* at 138:20-139:16.) Holt admitted that Gigi Lewis removed the sign as soon as he reported it, and no one prevented him from using the bathroom. (*Id.* at 138:3-140:8.)

On February 1, 2021, Blue Cross Blue Shield of South Carolina issued a \$504 check to Rural Health for services Holt provided. This check included Holt's name and Rural Health's address. Holt testified that the check was for services rendered to patients who were allegedly never patients of Rural Health. (*Id.* at 40:22-41:22.) Rural Health, unaware that the payment was for services Holt rendered after his termination, deposited the check. On May 28, 2021, Holt's counsel notified Rural Health's counsel that the check was for services Holt rendered after his employment with Rural Health had ended. According to Holt, BlueCross BlueShield continued to send payments for the services he rendered to Rural Health instead of him, but since discovering the issue, Holt has updated BlueCross BlueShield with the proper address to send payments for the services he rendered. (*Id.* at 47:7-17.) Holt also admitted that after a provider leaves a medical center, it is common for the medical center to receive payments for services the provider rendered six months to a year later. (*Id.* at 38:2-23.) As Holt admits, Rural Health has provided him with the \$504 check as of approximately February 2022. (*Id.* at 44:2-20; 48:3-17.) The only money that Holt alleges BlueCross BlueShield still owed him was \$2,800 and he testified that it was an issue that he was "having to talk to" BlueCross BlueShield about, and Holt further failed to provide any specifics around this amount. (*Id.* at 60:20-61:9.)

Additionally, at some point after Holt started his own practice, a patient's parent alleged that an unidentified Rural Health representative "called the South Carolina Department of Social Services and made a false report against a family who decided to continue medical care services with Plaintiff rather than" Rural Health. (Pl.'s Compl. ¶ 103.) Holt admitted that the only basis for asserting that Rural Health filed this report with DSS was that the allegedly reported family

told him Rural Health had done so. (Holt Dep. 225:3-18.) Holt alleges that Marilyn Harris at the Children's Place told him that the Children's Place was "acting on a report that came from DSS from a visit at Rural Health[,]" but admitted that he did not know the alleged Rural Health representative that called DSS. (*Id.* at 226:10-227:12.) Critically, Holt has provided no evidence regarding the unidentified Rural Health representative who reported the alleged complaint, and Rural Health denies that it had any involvement in any alleged report.

IV. LEGAL STANDARD

Summary judgment is appropriate when no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law. *See Kitchen Planners, LLC v. Friedman*, 2023 S.C. LEXIS 164, at *8 (S.C. Aug. 23, 2023) ("We now clarify that the "mere scintilla" standard does not apply under Rule 56(c). Rather, the proper standard is the "genuine issue of material fact" standard set forth in the text of the Rule."); *Town of Summerville v. City of North Charleston*, 378 S.C. 107, 109, 662 S.E.2d 40, 41 (2008) (The court shall grant summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law."). At the summary judgment stage, the moving party "has the initial burden of demonstrating the absence of a genuine issue of material fact." *Lanham v. Blue Cross & Blue Shield of S.C., Inc.*, 349 S.C. 356, 361, 563 S.E.2d 331, 333 (2002). "Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings . . . the nonmoving party must come forward with specific facts showing there is a genuine issue for trial." *Regions Bank v. Schmauch*, 354 S.C. 648, 660, 582 S.E.2d 432, 438 (Ct. App. 2003).

V. ARGUMENT

A. Holt's Defamation Claim is Unsupported by Record Evidence and Fails as a Matter of Law for Multiple Reasons.

Holt has not and cannot provide any evidence that any Rural Health representative defamed him with any necessary specificity to establish a *prima facie* case of defamation, and thus Rural Health is entitled to judgment as a matter of law on Holt's defamation claim. To establish a triable claim of defamation under South Carolina law, Holt must show that (1) a false and defamatory statement was made, (2) the unprivileged statement was published to a third party, (3) the company was at fault for its publication, and (4) either the statement was actionable irrespective of harm or the publication of the statement caused special harm. *Williams v. Lancaster Cnty. Sch. Dist.*, 369 S.C. 293, 302, 631 S.E.2d 286, 291-92 (2006). A statement is defamation *per se* when the statement is "defamatory on its face." *Erickson v. Jones St. Publr.*, LLC, 368 S.C. 444, 629 S.E.2d 653 (S.C. 2006). Defamation *per se* is different from a statement being actionable *per se*; a statement is actionable *per se* when "the defendant is presumed to have acted with common law malice and the plaintiff is presumed to have suffered general damages. *Id.* "The determination of whether or not a statement is actionable *per se* is a matter of law for the court to resolve." *Id.* Holt's defamation claim fails as a matter of law because he has not, and cannot, establish any of the requisite elements to bring either a defamation claim, or a defamation *per se* claim, under South Carolina law.

Holt has failed to provide any evidence that any Rural Health employee ever defamed him, and thus Rural Health cannot be held liable for either defamation or defamation *per se*. Holt alleges that Rural Health employees defamed him by "falsely accusing him of incompetence in his profession and engaging in conduct that he did not," and by "falsely impugning Plaintiff's professional capabilities and conveyed [sic] to the public that Plaintiff took

wrongful acts.” (Pl.’s Compl. at ¶¶ 72, 74.) Holt also alleges that Rural Health employees defamed him by “accusing him of making a false police report” on June 29, 2020. (Pl.’s Compl. at ¶¶ 36, 73.) While not raised in his Complaint, Holt alleged during his deposition that a Rural Health Medical Assistant told an unidentified patient’s parent that Holt is racist. (Holt Dep. 259:6-13.) Holt also testified that the way he was generally treated in front of patients was defamatory. (*Id.* at 261:15-262:4.) Each of these defamation allegations fail as a matter of law and summary judgment should be granted as Judge Hodges correctly found in her Report & Recommendation. (Ex. A - Report & Recommendation, ECF No. 55 at 30-33.)

1. Holt Has No Admissible Evidence to Support His Claim That Rural Health Employees Made Any Defamatory Remarks About Him.

The allegedly defamatory statements that Holt alleges Rural Health is liable for remain entirely unsupported by record evidence. Not only has Holt provided no record evidence in support of these statements, but he also has failed to even allege *who* made any allegedly defamatory statements, what was allegedly said, when such statements were made, or to whom the alleged statements were made. Thus, Holt has failed to establish the specificity required for bringing a defamation claim.

Under South Carolina law, an individual’s claims of defamation are appropriate for summary judgment and should be dismissed when the allegedly defamatory statements lack necessary specificity, as is the case here. *See Paradis v. Charleston Cty. Sch. Dist.*, 424 S.C. 603, 613-14, 819 S.E.2d 147, 153 (Ct. App. 2018), *abrogated on other ground* (affirming the trial court’s order granting dismissal of plaintiff’s defamation claim because “she never indicate[d] who made defamatory statements about her, what they said, or to whom those statements were published.”); *McNeil v. S.C. Dep’t. of Corr.*, 404 S.C. 186, 195, 743 S.E.2d 843, 848 (Ct. App. 2013) (affirming the trial court’s order granting dismissal of plaintiff’s defamation

claim because “she did not set forth with any specificity what the alleged false statements were” who made the alleged statements, and who they were made to); *Carson v. Emergency MD, LLC*, 2020 U.S. Dist. LEXIS 154559, at *5 (D.S.C. Aug. 25, 2020) (“Many courts applying South Carolina law have found that a lack of specificity in a plaintiff’s allegations regarding a defamation claim warrants dismissal.”).

The only alleged defamatory statement Holt testified that any Rural Health employee made was the vague statement that a Rural Health Medical Assistant allegedly told Ms. Shalonda [no last name], a patient’s parent, that Holt was racist. (Holt Dep. 259:6-13.) Thus, to the extent that this allegation may have more specificity than the other allegations in Holt’s Complaint, it still lacks the requisite specificity to survive summary judgment. Ms. Shalonda [no last name] is completely unidentifiable because Holt has only provided her first name and no additional identifying information, and Rural Health has not been able to identify any such individual. Further, Holt has provided no evidence in support of this vague, threadbare allegation. When asked at his deposition about any defamatory statements other than the alleged statement by the Medical Assistant, Holt stated that “sometimes it’s actions and how things are conducted around you that become defamatory.” (*Id.* at 262:8-10.) Holt also testified that a female-only sign was placed on a unisex restroom door, which Holt admitted no one stopped him from using and that the sign was taken down immediately after he brought it to Rural Health’s attention. (*Id.* at 138:21-139:21.) A sign on a unisex restroom door, while he may not like it, is not defamatory and fails to communicate a message to any patient and Holt has failed to prove otherwise.

Lastly, in the Complaint, Holt alleges that Rural Health employees “defamed Plaintiff to patients and their families [through] false statement known to Plaintiff occurred on June 29, 2020 and continued thereafter seemingly to the present [by saying] he should be ejected from his

job[.]” (Pl.’s Compl. ¶ 74-76.) The record evidence shows that Holt had severe performance issues and it remains undisputed that Rural Health terminated Holt for performance issues. (Pl.’s Compl. ¶ 39.) Although Rural Health denies that any of its representatives ever made any such statement, even if they did, such statements cannot be defamatory because they were the truth. To the extent Holt alleges that a video of an unidentified patient’s parent filed under seal provides evidence that Rural Health defamed him, this indecipherable video is insufficient to establish a *prima facie* claim for defamation because the patient’s parent fails to state who made any allegedly defamatory statements, what was allegedly said, or when such statements were made or to whom. Further, any comments made in the video, to the extent they are audible and decipherable, are inadmissible hearsay for which there is no exception as Holt is attempting to use any alleged statement to prove his allegations that a Rural Health representative allegedly defamed him. Fed. R. Civ. P. 801; *See Hall v. Fedor*, 349 S.C. 169, 176 (S.C. 2002) (stating “inadmissible evidence at trial [] is inadmissible to refute a motion for summary judgment.”). The use of this video to support any allegation here is additionally inappropriate as the woman depicted in the video has not been properly identified, let alone identified as a witness in this case, and Defendant has not had the opportunity to depose or consider deposing the woman in the video. Thus, the inaudible video provides no evidence of any alleged defamatory statement made by any of Rural Health’s representatives. Holt has simply provided barebones allegations with no specificity and such allegations do not provide any evidence that any Rural Health representative defamed him.

2. Holt Failed to Provide Evidence that Any Rural Health Employee Conveyed to Anyone that Plaintiff Filed a False Police Report.

Although Holt alleges in his Complaint that someone conveyed that he made an alleged false police report, he failed to testify that the accusation was made, who made the accusation,

who heard the accusation made, or where the accusation was made. (Pl.'s Compl. at ¶73.) At no point prior to or after Holt's termination did Rural Health accuse him of filing a false police report or making a false or defamatory statement that he was incompetent in his profession. Holt has failed to provide any record evidence for the Court to deem otherwise. The messages between Holt and Ms. Gaudette on Facebook do not substantiate Plaintiff's claims because they provide no evidence of who made any allegedly defamatory statements, what was allegedly said, or when such statements were made. In fact, when Holt asked Ms. Gaudette if they said anything "bad" about him, Ms. Gaudette said, "Just that you left bc u called the cops on mrs Alford son[.]" Ms. Gaudette never mentions any "false police report" as Holt alleges. As Judge Hodges correctly concluded in the Report & Recommendation, "the statement in question states that Plaintiff called the police on another employee's child something Plaintiff has repeatedly admitted. Additionally, Plaintiff has repeatedly testified, [], this is why he was terminated." (Ex. A - Report & Recommendation, ECF No. 55 at 33.) Indeed, Holt testified that he was terminated because he called the police on Ms. Alford's son. (Holt Dep. 220:21-222:13.) Further, Holt's claim that Rural Health allegedly falsely accused him of being incompetent in his profession and that "Plaintiff's personal and professional reputation has been damaged," are directly contradicted by Plaintiff's statement to Ms. Gaudette regarding his termination, "But that is okay... I will do fine." Therefore, Holt has provided no admissible evidence to support his claims that any Rural Health representative defamed him, and the Court should grant Rural Health's motion for summary judgment.

B. Holt's Negligence Claim is Unsupported by Record Evidence and Fails as a Matter of Law Because Rural Health Owed No Duty to Holt and Even if Rural Health Owed Holt a Duty, there is No Evidence that Rural Health Breached Any Alleged Duty.

To prevail on his negligence claim, Holt must show that Rural Health (1) owed him a duty of care, (2) breached this duty by a negligent act or omission, (3) proximately caused Holt an injury, and (4) Holt suffered an injury or damages. *Sabb v. S.C. State Univ.*, 567 S.E.2d 231, 237 (S.C. 2002). Holt has provided no evidence establishing that Rural Health owed him a duty, breached a duty, or proximately caused any alleged injury, and thus Rural Health is entitled to judgment as a matter of law on Holt's negligence claim.

1. Holt Has Failed to Demonstrate That Rural Health Owed Him a Duty of Care Sufficient to Maintain a Claim for Negligent Retention of Property Under the Circumstances at Issue.

As to the duty element of his claim, Holt alleges Rural Health owed a duty of care to him as his former employer and as an entity that allegedly improperly received money solely owed to him, and that Rural Health has a duty to only deposit money for services it provided. (Pl.'s Compl. ¶ 84-85.) An affirmative legal duty exists only if created by statute, contract, relationship, status, property interest, or some other special circumstance. *See Hendricks v. Clemson Univ.*, 353 S.C. 449, 456, 578 S.E.2d 711, 714 (S.C. 2003). Holt has provided no basis for the duties he alleges Rural Health owed him. As Judge Hodges correctly recognized, "Plaintiff has failed to cite, nor is the court aware, of a plaintiff who has maintained a claim for negligent retention of property under these circumstances, particularly where Plaintiff testified that it is common for payments to go to an institution six months to a year after an employee leaves an institution and starts providing services elsewhere." (Ex. A - Report & Recommendation, ECF No. 55 at 39.)

Holt alleges that Rural Health breached its duty of care "by retaining monies owed solely to Plaintiff," without indicating what sum of money Rural Health allegedly negligently retained. (Pl.'s Compl. at ¶ 85-86.) Holt testified that the funds Holt alleges Rural Health retained

included Rural Health's address along with Holt's name. (Holt Dep. 36:16-23.) The funds were sent to Rural Health by BlueCross BlueShield in the same manner that Rural Health receives all payments from insurance companies. Per Rural Health policy, "Payments received for patient accounts through the mail will be properly reported and safeguarded by deposit with[in] 24 hours of receipts." (Ex. M – Cash/Mail Receipts Policy.)

Holt even admitted that it is common for an institution to continue to receive payments six months to a year after an employee leaves an institution and starts providing services elsewhere. (Holt Dep. 38:15-22.) Holt has provided no evidence that Rural Health knew the funds were owed solely to him. Further, Holt testified that Rural Health actually provided him with the funds in dispute. (*Id.* at 48:4-9.) In fact, Holt testified that he received the check on February 20, 2022, over two and a half years ago. (*Id.* at 59:5-9.) Thus, in the face of no evidence to the contrary and in the light most favorable to Holt, the undisputed facts demonstrate that Rural Health deposited a check it received in the normal course of business, with Rural Health's address on it, during a period when it would be typical for Rural Health to continue receiving checks for services rendered by a provider during his employment at Rural Health.

2. Holt Has Failed to Demonstrate Any Injury Resulting From Any Alleged Negligent Act Taken by Rural Health.

Holt also failed to provide any evidence that Rural Health was the actual or proximate cause of any injury. While Holt makes the conclusory allegation that Rural Health's retention of money solely owed to him is the actual and proximate cause of his injury, he has produced no evidence of causation. (Pl.'s Compl. at ¶ 84-87.) Holt testified that the occurrences of delayed payment were because BlueCross BlueShield sent the money to Rural Health instead of to him and that he is "having to talk" to BlueCross BlueShield to resolve the issue of those funds. (Holt Dep. 60:20-61:9.) Further, Holt admitted that his new address may not have been updated in

BlueCross BlueShield's system regarding where to send payment. (Holt Dep. 37:14-20.) The Court should grant summary judgment on Holt's negligence claim because Holt has provided no evidence that Rural Health was the proximate or actual cause of him not receiving any money owed to him and all evidence establishes that BlueCross BlueShield, not Rural Health, was involved in the delay of any payments.

Holt has also failed to provide evidence that he suffered any injury or damage. The funds deposited by Rural Health have been paid to Holt, and thus he has not established the existence of an injury as Rural Health did not and could not have caused an injury that does not exist. During his deposition, Holt testified that there was one specific check in the amount of \$504 which was deposited by Rural Health. (Holt Dep. 47:20-25.) However, as soon as the issue was discovered, the \$504 check was returned to Holt, and he testified that he received the \$504 check over two years ago now. (*Id.* at 44:3-5; 44:13-20; 48:4-5.) Although Holt alleges that he has not received roughly \$2,800 from 19 other checks, his deposition testimony establishes that BlueCross BlueShield is responsible for any potential delay, not Rural Health. (*Id.* at 60:12-61:9.) Critically, Rural Health does not have possession of these checks, and Holt has provided no evidence demonstrating that it does. Thus, Holt has not suffered an injury that was caused by Rural Health and his negligence claim also fails on that element.

Finally, if it is determined that Rural Health was at all negligent in depositing the check containing Rural Health's address, Rural Health is a 501(c)(3) charitable organization. Pursuant to S.C. Code Ann. § 33-56-180, a plaintiff in a tort action against a charitable organization may only recover actual damages sustained, not to exceed the limitations on liability under S.C. Code Ann. § 15-78-120. S.C. Code Ann. § 15-78-120(b) provides that "[n]o award for damages under this chapter shall include punitive or exemplary damages or interest prior to judgment." Holt

may only recover the actual value of the checks retained by Rural Health and may not recover any interest that accrued during the time the checks were in Rural Health's possession. As mentioned, Holt admitted that Rural Health gave him the \$504 check that BlueCross BlueShield sent to him. (Holt Dep. 44:3-5; 44:13-20; 48:4-5.) Holt has failed to provide any evidence that Rural Health was negligent in retaining any money owed to him or that Rural Health is in possession of any money owed to him, and as such, the Court should grant summary judgment in Rural Health's favor on Holt's negligence claim.

C. Holt's Conversion Claim is Unsupported by Record Evidence and Fails as a Matter of Law for Multiple Reasons.

Holt cannot establish a conversion claim because all the evidence, including Holt's own testimony, establishes that Holt is in possession of the \$504 check at issue and Rural Health did not secure the check by any improper method. In South Carolina, conversion is the unauthorized assumption and exercise of the right of ownership over goods, including money when specifically identified, belonging to another to the exclusion of the owner's rights. *Moore v. Weinberg*, 383 S.C. 583, 589, 681 S.E.2d 875, 878 (2009). If the conversion of money is not secured illegally, tortiously, by fraud, or other wrongful conduct, a plaintiff must demonstrate that he made a demand for its return which was refused, which has not occurred here. *See City of Charleston v. Hotels.com, LP*, 520 F. Supp. 2d 757 (D.S.C. 2007); *Mackela v. Bentley*, 365 S.C. 44 (Ct. App. 2005).

As explained above, Rural Health returned the check at issue after it discovered that BlueCross BlueShield erroneously sent Rural Health a check that belonged to Holt. (*Id.* at 44:3-5; 44:13-20; 48:4-5.) There is no evidence that Rural Health obtained this money through any wrongful conduct. Holt admitted that he has been in possession of the funds for over two years at this point, which belies any possibility of a finding that Rural Health refused to return the

funds. (*Id.* at 59:5-9.) Although Holt testified that he is still allegedly missing \$2,800 in funds, Holt's testimony directly contradicts any suggestion that Rural Health caused any delay in him receiving the alleged \$2,800. (*Id.* at 60:12-61:6.) Holt has never provided evidence that Rural Health has possession of those checks, which it does not. Thus, without any evidence of Rural Health engaging in wrongful conduct to receive the check at issue, Holt must demonstrate that Rural Health refused a demand for the return of his funds, which he cannot prove because he is in possession of the single check that he alleges Rural Health received. (*Id.* at 36:9-24; 44:12-21.) Thus, Rural Health is entitled to judgment as a matter of law on Holt's conversion claim as Judge Hodges recommended. (Ex. A - Report & Recommendation, ECF No. 55 at 39-41.)

Finally, assuming *arguendo* that Rural Health converted Holt's funds, which it denies, he cannot recover any damages on this claim, and at a minimum, summary judgment should be granted on that basis. Pursuant to S.C. Code Ann. § 33-56-180, Holt may only recover the actual value of the check retained by Rural Health and not any interest that accrued during the time the checks were retained. Since Holt has already recovered the actual value of the check, he cannot recover any further damages, and thus the Court should grant summary judgment on his conversion claim. (*Id.* at 36:9-24; 44:12-21.)

D. Holt's Interference with Contractual Relationships Claim is Unsupported by Record Evidence and Fails as a Matter of Law for Multiple Reasons.

Holt fails to provide any evidence that he had any contractual relationship with the patients he provided services to while working at Rural Health, much less that Rural Health interfered with any alleged contractual relationship. To establish a cause of action for tortious interference with contractual relations, Holt must demonstrate (1) the existence of a valid and enforceable contract, (2) Rural Health's knowledge of the contract, (3) Rural Health's intentional procurement of breach of that contract, (4) absence of justification, and (5) resulting damages.

Eldeco, Inc. v. Charleston Cnty. Sch. Dist., 372 S.C. 470 (2007) (citing *Kinard v. Crosby*, 315 S.C. 237, 240, 433 S.E.2d 835, 837 (1993)).

South Carolina courts have found vague and conclusory claims, such as Holt's, to be insufficient to state a valid claim for tortious interference with contractual relationships when the plaintiff fails to indicate the terms of any contract, how the terms were breached, how a defendant intentionally procured the breach, how a defendant's actions are not justified, or that the defendant was a "stranger" to the contract. *See Rollins Ranches v. Watson*, 2021 U.S. Dist. LEXIS 61683 (D.S.C. 2021); *BCD LLC v. BMW Mfg. Co., LLC*, 360 Fed. Appx. 428, 435 (4th Cir. 2010) (applying South Carolina law); *PTA-FLA, Inc. v. ZTE Corp.*, 2015 U.S. Dist. LEXIS 195778, at *23-24 (D.S.C. July 27, 2015); *Callum v. CVS Health Corp.*, 137 F. Supp. 3d 817, 861 (D.S.C. 2015). Holt has provided no proof of a contractual relationship with any patients he provided care to while working at Rural Health. Holt also provided no evidence of the terms of any alleged contract, how the terms of any alleged contract were breached, how Rural Health supposedly procured that breach of any alleged contract, why that supposed procurement was not justified, or how Rural Health was not a party to any alleged contract. Thus, Rural Health is entitled to summary judgment on this claim as Judge Hodges correctly concluded. (Ex. A - Report & Recommendation, ECF No. 55 at 37-38.)

Holt vaguely alleges that Rural Health interfered with a contractual relationship between himself and the patients he treated while working at Rural Health. (Pl.'s Compl. ¶ 96-100.) To prevail on a claim for tortious interference with contractual relations, a plaintiff must first establish the existence of a valid contract. *Jackson v. Bi-Lo Stores, Inc.*, 313 S.C. 272, 437 S.E.2d 168, 171 (S.C. Ct. App. 1993). Holt has provided no evidence that any valid and enforceable contract existed. Holt alleges that the therapy he provides creates "a contractual

relationship between the patient, the insurance company and the client.” (Holt Dep. 265:1-6.) Holt also stated in his deposition that he had a written contract with patients in the form of a new patient application. (*Id.* at 265:5-10.) However, Holt contradicted himself when asked if the patients were also Rural Health’s patients, as he testified that the patients are “actually patients of themselves and they choose where to go,” belying any inference of an exclusive contract between him and any patient. (*Id.* at 265:6-13.) In fact, when questioned about such “contracts,” Holt admitted he did not have a contract with his patients:

Q: But you don't have a written contract with the patient that I'm your only therapist?

A: No, it's by their choosing.

(*Id.* at 266:4-6.)

Holt has not and cannot provide any evidence that the new patient form created a contract between himself and any patient. Moreover, even if a new patient application could be construed as a contract, new patient applications filled out to receive services at Rural Health facilities would identify Rural Health as a party to the contract. It is well established under South Carolina law that, actions for tortious interference do not protect a party to a contract from the actions of the other party. *Pope v. Barnwell Cnty. Sch. Dist. No. 19*, 2017 U.S. Dist. LEXIS 45358 (D.S.C. 2017) (citing *Threlkeld v. Christoph*, 280 S.C. 225, 312 S.E.2d 14, 15 (S.C. Ct. App. 1984)).

Even assuming Holt did have a valid and enforceable contract with his patients and Rural Health is not a party to that contract, which Rural Health denies, Holt has provided no evidence that Rural Health was aware of such a contract. Holt has also failed to demonstrate that Rural Health intentionally procured a breach of any alleged contract. Holt’s Complaint alleges that Rural Health has not provided patients with notification of their option to continue counseling with him after his separation from Rural Health. (Pl.’s Compl. ¶ 98.) Holt provides no evidence

that this lack of notification was intentional and testified during his deposition that he failed to provide Rural Health written documentation of the location of his new practice or its hours. (Holt Dep. 264:9-13.) It defies logic to argue that Rural Health's failure to notify patients of information that Rural Health was not itself in possession of could constitute an intentional act.

Holt's claim also fails because he has not and cannot establish that Rural Health lacked justification to procure any alleged breach. South Carolina courts have established that interference with a contract is justified when it is motivated by a legitimate business purpose, and competition constitutes such a legitimate purpose. *See Sea Island Food Grp., LLC v. Yaschik Dev. Co.*, 433 S.C. 278 (S.C. Ct. App. 2021) (citing *Gailliard v. Fleet Mortg. Corp.*, 880 F. Supp. 1085 (D.S.C. 1995)); *Waldrep Bros. Beauty Supply v. Wynn Beauty Supply*, 992 F.2d 59, 63 (4th Cir. 1993). Here, to the extent Holt attempts to construe Rural Health's failure to notify patients of his new practice as an intentional interference, Rural Health had a legitimate purpose in not doing so as Rural Health is a multi-practice FQHI that provides medical treatment to the whole patient in many disciplines without regard to race, religion, sex, disability, and other protected categories. Thus, summary judgment should be granted for Rural Health on Holt's interference with contractual relationships claim.

E. Holt's Abuse of Process Claim is Unsupported by Record Evidence and Fails as a Matter of Law for Multiple Reasons.

Holt has provided no record evidence to support his abuse of process claim. To prevail on a claim for abuse of process, Holt must demonstrate (1) an ulterior purpose, and (2) a willful act in the use of the process not proper in the conduct of the proceeding. *See Faile v. Lancaster Cnty.*, 2013 U.S. Dist. LEXIS 28384, at *13 (D.S.C. 2013) (citing *Argoe v. Three Rivers Behav. Ctr. & Psychiatric Solutions*, 388 S.C. 394, 697 S.E.2d 551, 556 (S.C. 2010)). South Carolina courts have found that the ulterior purpose "usually takes the form of coercion to obtain a

collateral advantage.” *Id.* at *14. Holt has failed to produce evidence in support of either element of this claim and thus Rural Health is entitled to judgment as a matter of law on Holt’s claim for abuse of process as Judge Hodges correctly concluded. (Ex. A - Report & Recommendation, ECF No. 55 at 34-36.)

The basis for Holt’s abuse of process claim is an allegation that some unidentified representative of Rural Health “called the South Carolina Department of Social Services and made a false report against a family who decided to continue medical care services with Plaintiff rather than” Rural Health. (Pl.’s Compl. ¶ 103.) The tort of abuse of process is meant to provide a remedy “for one damaged by another’s perversion of a legal procedure.” *Roddey v. NationsWaste, Inc.*, 2005 S.C. App. Unpub. LEXIS 591, at *7 (Ct. App. 2005) (citing *Food Lion v. United Food & Commercial Workers Int’l. Union*, 351 S.C. 65, 69, 567 S.E.2d 251, 253 (Ct. App. 2002), *cert. dismissed* (June 10, 2004)). An alleged report against someone other than Holt or his family could not possibly harm Holt, and thus he lacks standing to bring this claim.

Beyond his lack of standing or injury, Holt has failed to follow the appropriate procedure for filing a claim for a *false* DSS report. Employees of a medical profession “must report in accordance with this section when, in such person’s professional capacity, he has received information that gives him reason to believe that a child has been or may be abused or neglected as defined in Section 63-7-2[.]” S.C. Code Ann. § 63-7-390. It is presumed that whenever an employee of a medical profession makes a report that the report is made in good faith. *Barton v. Barton*, 2022 S.C. C.P. LEXIS 819 *2 (Jan. 11, 2022.) Under S.C. Code Ann. § 63-7-430(B), a plaintiff may file a civil action for a person making a false DSS report (1) “if the family court determines pursuant to Section 63-7-2000 that a person has made a false report of suspected child abuse or neglect maliciously or in bad faith” or (2) if a person has been found guilty of

making a false report pursuant to Section 63-7-440. Holt has failed to follow the proper procedure to establish either requirement to bring an abuse of process claim on allegations of a false DSS report, and as such he is unable able to maintain a claim for abuse of process.

Notwithstanding the prior argument, Holt has not and cannot provide evidence to support his abuse of process claim. During Holt's deposition, he admitted that his only basis for asserting that Rural Health filed this report with DSS was that the allegedly reported family told him Rural Health had done so. (Holt Dep. 225:3-18.) This is inadmissible hearsay. Fed. R. Evid. 801; *See Hall*, 349 S.C. 169, 176 (stating "inadmissible evidence at trial [] is inadmissible to refute a motion for summary judgment."). Moreover, Holt admitted that he does not know who made the alleged report. (Holt Dep. 226:22-227:5.) Plaintiff has provided no evidence that Rural Health filed any complaint with DSS nor that any Rural Health employee had a malicious intent to harm Plaintiff or a family that it had serviced. Thus, as Judge Hodges correctly found, "there is no indication Defendant sought to gain any kind of collateral advantage over Plaintiff." (Ex. A - Report & Recommendation, ECF No. 55 at 36.) Further, Holt has failed to present any evidence of an ulterior motive beyond his own opinion and speculation. Thus, his abuse of process claim fails, and summary judgment should be granted for Rural Health.

VI. CONCLUSION

This manufactured dispute is riddled with a lack of actionable factual allegations, and no genuine issue of material fact exists. The lack of actionable factual allegations combined with failed elements to support causes of action, stretches to cause Rural Health to defend weak allegations, includes statute of limitation issues, and is essentially a litany of subjective grievances lacking colorable legal claims, driven solely by Plaintiff's ego, desire to be seen as a victim, and spite. For these reasons, Defendant Rural Health respectfully submits that there are

no triable issues of fact and requests that this Court grant its Motion for Summary Judgment in its entirety on all claims.

Respectfully submitted,

s/ D. Randle Moody, II

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ATTORNEYS FOR DEFENDANT
RURAL HEALTH SERVICES, INC.

This 28th day of August, 2024.

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Dr. Joe Holt,	)	C/A No.: 1:21-2802-MGL-SVH
	)	
Plaintiff,	)	
	)	
vs.	)	REPORT AND
	)	RECOMMENDATION AND
Rural Health Services, Inc.,	)	ORDER
	)	
Defendant.	)	
	)	

In this case, an employee sues his former employer, alleging that he was discriminated and retaliated against based on his disability and sex, resulting in his wrongful termination. The former employer seeks dismissal.

Dr. Joe Holt (“Plaintiff”) originally filed this case against Rural Health Services, Inc. (“Defendant”), in the Court of Common Pleas for Aiken County, South Carolina.¹ Defendant removed this case on August 30, 2021. Plaintiff asserts claims for disability discrimination, failure to accommodate, and retaliation in violation of the Americans with Disabilities Act, 42 U.S.C. § 12102, *et seq.*, as amended by the ADA Amendments Act of 2008, effective January 1, 2009, 42 U.S.C. §§ 12101, *et seq.* (“ADA”); claims for sex discrimination, sexual harassment, and retaliation in violation of Title VII of

¹ Defendant clarifies as follows: “This matter is styled Dr. Joe Holt. Plaintiff has a Ph.D (Doctor of Philosophy in Psychology) from a seminary, but he prefers that he be referred to as ‘Dr.’ Plaintiff was a pediatric therapist for Defendant . . . , Plaintiff is not a medical doctor.” [ECF No. 48-1 at 1 n.1 (emphasis removed)].

the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.* (“Title VII”); and the following claims brought pursuant to South Carolina state law: defamation, abuse of process, interference with contractual relationship, negligence, and conversion.

Pursuant to 28 U.S.C. § 636(b) and Local Civ. Rule 73.02(B)(2)(g) (D.S.C.), this case was referred to the undersigned for all pretrial proceedings. This matter comes before the court on Defendant’s motion for summary judgment. [ECF No. 48]. The motion has been fully briefed [ECF Nos. 52, 54] and is ripe for disposition. Also pending before the court is Plaintiff’s unopposed motion to seal. [ECF No. 51].

Having carefully considered the parties’ submissions and the record in this case, the undersigned grants in part Plaintiff’s motion to seal and recommends the district judge grant in full Defendant’s motion for summary judgment.

I. Factual and Procedural Background

Defendant is a private, nonprofit federally-qualified health center located in Aiken, South Carolina, that has served the citizens in Aiken and surrounding areas since 1971. [*See* ECF No. 48-1 at 2–3]. Defendant’s chief executive officer of rural health, Carolyn Emanuel-McClain (“Emanuel-McClain” or “McClain”) hired Plaintiff in September 2014 as a director in the behavioral health department, a position he held for approximately two

years. [ECF No. 48-2 at 105:19–25, 106:6–9]. Plaintiff’s responsibilities included developing programs, supervising staff, and seeing minor patients. *Id.* at 106:22–107:7.

On February 3, 2015, Plaintiff had a meeting with one of his supervisors, Dr. Tiffany Boyd (“Boyd”),² to discuss complaints she had received from patient care coordinator (“PCC”) Angela McCall about Plaintiff frequently being late, causing patients to complain. [ECF No. 48-7, *see also* ECF No. 48-2 at 107:10–11]. On October 15, 2015, Plaintiff was placed on a provider corrective action plan for failure “to complete tasks in order of their priority often resulting in very low priority work being accomplished, while high priority work remains incomplete.” [ECF No. 48-9]. This corrective action plan required Plaintiff to complete “[t]asks related to completion of patient notes . . . within 24–48 hours of the scheduled visit.” *Id.*

In 2016, Plaintiff was reassigned to work as a behavioral therapist for the pediatric unit. [ECF No. 48-2 at 106:10–13, 112:23–25].³ As a behavioral therapist, he was required to assess patients as requested by primary care providers, participate in the diagnosis process for behavioral health issues, and refer individuals for specialty treatment. [*See, e.g.*, ECF No. 48-11].

² Plaintiff identifies Boyd as a medical director. [ECF No. 52 at 2].

³ Plaintiff testified that just before he was reassigned to be a behavioral therapist, Defendant hired a new medical director “to run the department,” Dr. Amanda Salas (“Salas”). [*See* ECF No. 48-2 at 106:10–19].

At the same time he was reassigned, Plaintiff told Boyd that he was diagnosed with celiac. [ECF No. 48-2 at 124:9–20]. Plaintiff testified that Boyd’s “response to me was good, it could have been so much worse than that.” *Id.* Plaintiff testified that he sometimes has the urgent need to go to the restroom, but that he does not take any medications for celiac and that he controls his celiac with a gluten-free diet. *Id.* at 120:7–17, 137:10–20.

Plaintiff has submitted evidence concerning two incidents that occurred around this time in 2016. First, Plaintiff testified he asked Dr. Kenneth Jones (“Jones”), who Plaintiff identified as the supervisor over behavioral health, to examine him because abdominal acid was allegedly coming out of his rectum and causing him pain; Plaintiff alleges Jones examined him without lubrication. [ECF No. 48-2 at 69:1–22, *see also* ECF No. 52 at 2–4]. Plaintiff then yelled “Pull it out,” and he alleges that after the incident, Jones would say “Pull it out, Pull it out” as a joke. [ECF No. 48-2 at 69:20–70:6]. Although Plaintiff alleges that he felt uncomfortable around Jones, he also testified that the last incident during which Jones made him feel uncomfortable was in October or September 2017. *Id.* at 66:18–67:1.

Also in 2016, an incident occurred in which Plaintiff complained that there was a “ladies only” sign on a unisex restroom; however, after Plaintiff reported the sign, Defendant’s chief operating officer, Gigi Lewis, promptly had the sign removed. [ECF No. 48-2 at 138:5–19]. Plaintiff testified that he

could always use that restroom and that there were multiple restrooms available for him to use near his office. [ECF No. 48-5 (map of office and bathrooms); ECF No. 48-2 at 137:3–9, 139:19–21, 140:5–7, 143:10–22].

In April and May 2016, Plaintiff was provided the following review:

Chief Medical Officer

Review: Difficult to follow notes. Redundancy in multiple charges noted by peer. Treatment plan not clearly delineated.

Improvement deadline: Corrective Action Plan given at annual review. Minimal improvement in documentation.

Plan: Charting for behavioral health review course asap. Cut/paste will not continue.

[ECF No. 48-10].

On August 23, 2016, Plaintiff was provided a provider performance review form that included the following comments:

Charts reviewed . . . all having similar deficits Repeated statements, no documentation of actions performed to reduce issues, testing should be addressed in detail into A/P area. No referral to Psych for children not responding to you[] is noted.

[ECF No. 48-11 at 2]. On the same day, a behavior/performance enhancement plan was created, labelled as a final written warning, in which the following was included:

- Copy/paste of previous notes with redundancy must cease immediately
- Attendance to a medical note writing course was not completed
- No referral to psychiatry for non-responders were made . . .
- Inadequate feedback to physician/midlevel staff regarding next steps taken
- Leadership role should include adequate updates to LISW

- Attend mental health/medical note writing course approved by CMO
- Written report to CMO monthly on all Updates with LISW

Id. at 3.

On August 14, 2017, the then-director of nursing, Chairty Capers-Williams, emailed Boyd concerning issues with Plaintiff, including Plaintiff refusing to check-in patients using the standard method, dispersing candy to children when he had been informed not to, failing to address all patient symptoms and consult the applicable medical doctor, particularly regarding medication issues, and having ongoing issues with timeliness. [ECF No. 48-15].⁴

On September 7, 2017, nurse Leah Mitchell (“Mitchell”) emailed Boyd concerning ongoing charting concerns on charts Plaintiff completed. [ECF No. 48-12 (“I have no idea what is going on with my patients when they see Dr. Holt d/t his poor charting and communication.”)].

On September 22, 2017, Mitchell emailed Boyd and others in part as follows:

Hand washing continues to be a major issue on the pediatric floor with Dr. Holt. Just now, he used the employee bathroom on the

⁴ As Defendant argued, and Plaintiff has not disputed, Plaintiff’s “licensure does not permit him to prescribe or recommend medications to patients and Defendant did not allow him to prescribe or recommend any medications as he is not a medical doctor.” [ECF No. 48-1 at 3 (citing ECF No. 48-2 at 11:11–23 (Plaintiff testifying that he has a Doctor of Philosophy in Psychology from Southwestern Baptist Theological Seminary))].

pediatric unit (right next to the MA's desk). He flushed the toilet and immediately opened the door afterwards. He then told Katie "I peed all over the floor to make it feel at home." This is wildly inappropriate and I am very concerned that this continues to be a problem despite the numerous emails that I have sent to management, and the meetings that have addressed this major concern of hygiene and the prevention of disease spread. As I have said before, this is a huge health risk, not only to the pediatric staff, but more importantly, to our patients as well. We have newborn patients that come in contact with him, and it is only a matter of time before one of them gets sick from his blatant lack of hygiene.

He also continues to hand out candy to patients on the unit, despite us discussing this in our unit meeting, and him verbally agreeing not to do this. Both Chairty and LaToya have discussed this with him on numerous occasions. We ask him not to hand out candy for several reasons: 1. We promote a healthy lifestyle and encourage healthy food choices. So when Dr. Holt encounters them, he completely undermines our recommendations. 2. He does not know the patients' allergies and how the candy was prepared. This could be a major liability if a child was to have an allergic reaction to candy that he provided. 3. Because he obviously does not wash his hands after using the bathroom (which has been witnessed countless times by various staff members) he is transferring bacteria from his hands to the candy that he is handing out to our patients.

[ECF No. 48-18].

On the same day, Plaintiff was provided a behavior/performance enhancement plan labeled a final written warning that provided the following deficiencies and direction:

- 1) Inappropriate conduct on the unit with staff with verbal exchanges
 - 2) Hygiene violation of OSHA Regulation/Handwashing
- Cease the above behavior.

[ECF No. 48-17].

On March 15, 2018, Dr. Maya Fields (“Fields”) emailed Boyd concerning charting concerns of charts Plaintiff completed:

I went to view Dr. Holt’s notes on this patient so that I could follow her progress. Pt was seen by Dr. Holt yesterday, but the note was completely blank. I looked back at the 3 notes before yesterday, and those 3 notes were cut & paste - exactly the same. The notes even mentioned pt “doing well on the medication” when in fact she had not been taking the medication.

[ECF No. 48-13]. On the same day, Fields sent an additional email to Boyd concerning patient complaints about Plaintiff:

I have decided to keep better documentation of such encounters with parents regarding Behavioral Health, as they have been quite frequent. My concern remains the same: that many of our behavioral health patients are not receiving quality, focused care, and many of their behavioral health needs are not being met. This email is not meant to “bash” a provider. It is just difficult for me to knowingly witness poor practice and turn a blind eye to it.

[ECF No. 48-14].

On April 24, 2018, Plaintiff and Salas exchanged emails in which Salas indicated that Plaintiff’s practice of sometimes checking in patients out of the standard order was understandable and where Plaintiff responded in part as follows:

Thanks for the advocacy. It does feel like I have endured a Hostile Work environment. I have endured a lot of bathroom discrimination on the unit. As well as being told that if I give out “fruit snacks” is a fireable offense, even though there others who distribute candy (those who do it are African American and I am not)

[ECF No. 52-8].

Plaintiff has submitted a document labeled “hostile workplace complaint” he completed, dated August 20, 2018, detailing alleged offenses committed against him, including “endur[ing] slanderous comments by Drs. Boyd and Fields.” [ECF No. 52-7; *see also* ECF Nos. 52-6, 52-7]. In this document, Plaintiff discusses the “ladies only” sign incident, disputes concerning timing on seeing patients, and disputes concerning the dispersion of candy, among other concerns. *See id.*⁵

On December 23, 2019, Plaintiff send an email to director of human resources Stephanie Alford (“Alford”) entitled “[t]hanks for the feedback on how to deal with the Pediatric PCC”:

I do not wish to create conflict nor be petty. In future, I will say “thank you” and move on. Although, I am documenting these events since this is something that she does not do with any other provider. Based on her actions of singling out, I do feel that her pettiness is harassment. Although, I will defer to your guidance.

[ECF No. 52-5].⁶

⁵ Plaintiff has submitted a February 7, 2019 email from Salas to Boyd and others about Tijuana Carolina, nursing manager in Defendant’s pediatric unit, denying knowledge about Plaintiff’s whereabouts, entitled “employee not truthful and forthcoming.” [ECF No. 52-9, *see also* ECF No. 48-1 at 5].

⁶ Plaintiff has not clarified in briefing or otherwise who he was complaining about in this email. [*See* ECF No. 52].

On December 6, 2019, Plaintiff was provided a behavior/performance enhancement plan labeled a final written warning that provided the following deficiencies and direction:

On 11/21/19, Pt left a message inquiring about the over the counter medication magnesium Dr. Holt recommended for her child during the last SH session. I spoke with Dr. Holt on 11/21/19 to address the incident and Dr. Holt denied recommending the medication but recalls suggesting magnesium for anxiety during the session. On 11 /22/19, I contacted the mother about the event and mother indicated that Dr. Holt did recommend magnesium during the session and she was calling to clarify the dosage with provider.

Employee will practice[] within his scope of practice of behavioral health and refrain from suggesting or recommending supplements, vitamins and OTC to patient. Ensure communication with medical provider about the patient[']s medical concerns and document providers recommendation.

[ECF No. 48-16].

Plaintiff has submitted the following email that is not dated, referencing a January 31, 2020 event, ostensibly from him to Jones, stating in part as follows:

The hostile work place complain[t] still has not been dealt with. The conflicts have been over such issues as:

1. Does he wash his hands?

(Who is standing outside of the bathroom while I am doing my business?) I am the only staff member who carries around his neck and I uses hand] sanitizer daily. As well as washing this in the lavatory in the room across the hall from my office.

2. I cannot see patients between 12pm to 2pm

This constant topic is a Tijuana [Carolina] problem. I do it on rare exception when I have a full schedule and no where to add. If a patient/parent feel it is a crisis then I try to respond

In discussing this matter with another provider, they said “Now you know how us BLACKS feel all these years. Welcome to the club.” I can assure that there is a strong feeling of reverse racism in the building. It is sad but my clashes have been with some of the members of our Black leadership within the organization.

3. I cannot add anyone to my schedule without Tijuana’s permission.

It appears that Carlos can do this simple task upstairs in Adult medicine. The schedule will read “per Carlos.” It appears that it is not asking permission. So, why is one employee allow to insert that information on the schedule and another one is not?

Is it because he is black that he can add to his schedule? Or is it the lack of professionalism which exists in pediatrics? Because the persons who have been offering me resistance is black. (I believe that it is another form of harassment in the workplace).

4. Based on pediatric policy . . . I could not see a patient when they came late

5. I approach Dr. Soto several times daily. brief her on the outcome as well as provide copies of the CPT results to her personally at the conclusion of a session numerous times per day. We are both busy, but I made the effort. It is never done in return

6. In discussions with Princess, Stephanie Alford and Dr. Jones, all have indicated the pettiness of Tijuana’s emails and complaints. You and Princess has said that Tijuana breeds a unit which does not respect me as a Provider. So, you don’t expect that poison to spread without management intervention. I have been promised that intervention would occur and nothing happens, their divisive behavior continues and it is in front of patient.

When I originally filed the initial hostile workplace complaint against Drs. Boyd and Fields through Dr. Salas. I was told that Fields was to go to Clearwater site and I had nothing to worry about (by Ms. McClain). Well that has never changed, when Dr. Fields was moved to Clearwater. She was also promoted to Director of Pediatric services which expanded the harassment. It appears that it continued but by some of her staff at CCPC. The continued harassment and stalking by Tijuana only indicates that it has not ceased or changed.

In the past, I have gotten yelled at in the hallway in front of patients by staff. For example, one morning got yelled at by Taylor for coming in late one morning before 830 am. It was not patient related. She just felt that I should be there (even though I am salary employee and she is an hourly employee

Another example, I was harassed by Dr. Boyd on a continuous basis Examples: Went to Gigi Walker on several occasions (when she was HR) and she said that she would look in to it. Nothing happened and no one got back to me. During Dr. Boyd's time as Medical Director, I was assigned tasks and provided no leadership of what is the expected outcomes would be. If you were white you did not get along with her

[ECF No. 52-4 (references omitted)].

On March 16, 2020, Plaintiff received his annual review from Carlos Foster ("Foster"). [ECF No. 52-1]. Plaintiff was assessed as a "3" or as meeting expectations in 7 categories, as a "4" or exceeding expectations in two categories, and as a "2" or as marginal, in 2 categories, quality of work and organization and planning. *Id.* Comments on these sections and in general are as follow:

Compliance with chart closure policy needs improvement. Employee must close charts within 3 days. I am closely monitoring to ensure that this is corrected

As addressed previously, employee's office is subpar but he is making slow improvements in this area. Employees office should be kept tidy

Employee has made a lot of improvements this past year. The employee has had a strong therapy count each month for the past 12 months

- (1) Employee will have all charts closed within the 3day window per RHS policy
- (2) Employee will maintain a neat a tidy office
- (3) Employee will notify supervisor prior to later arrival or early departure.

Id.

On May 29, 2020, Plaintiff sent what appears to be an email to "RHS leadership" concerning a scheduling incident, including the following: "Manipulation of the schedule is a bad habit on our Pediatric unit where the parents are being scapegoated by the PCC and her staff's decisions." [ECF No. 51-4].

On June 15, 2020, Foster emailed Plaintiff, stating as follows:

Hello Joe, I have been reviewing some of your charts from the past week and I'm seeing in some of the charts you are copying and pasting in the HPI and associated symptoms. For example, in all the charts I have seen all the patients had no psych symptoms. Going forward if you are going to use the template be specific in identifying the client symptoms.

[ECF No. 48-14].

On June 29, 2020, at 8:19 a.m., Plaintiff contacted Aiken County Police, concerning an incident he witnessed in Defendant's parking lot, reporting as

follows, as recorded by the operator: “Blk truck flew thru parking lot and now they are sitting in the woods occupied by two people [unknown] description.” [ECF No. 52-19 at 1, *see also* ECF No. 52-21].

As testified by Plaintiff:

I called the police on a reckless driver in the parking lot . . . I did not know whose vehicle it was, so I could not how would you say, do that. So, yeah, so it was a dark truck with tinted windows. You couldn’t see in, I couldn’t tell who was there. And I just wasn’t—I felt like I was—it was an unsafe situation.

[ECF No. 48-2 at 221:5–13].⁷

The next day, in a letter dated June 30, 2020, signed by Alford, Plaintiff was informed that his employment had been terminated. [ECF No.

⁷ As provided by Defendant:

Defendant’s Counsel represents that to the extent Plaintiff alleges he called the police regarding a reckless driver in Rural Health’s parking lot on June 29, 2020, this allegation simply has no merit. Defendant’s Counsel has visited Rural Health’s parking lot on numerous occasions and due to the circular set up of the parking lot, it is nearly impossible for a driver to exceed 15 miles per hour and not hit another car or person in the lot. Recordings of the driving incident on June 29, 2020, which caused Holt to call the police and for which he believes he was terminated, are attached as Exs. T and U, and have been provided via CD-ROM to the Court.

[ECF No. 48-1 at 16 n.5]. Review of the video evidence provided by Defendant indicates a circular set up of the relevant parking lot. [See ECF No. 48-22].

52-2].⁸ Plaintiff testified concerning the termination of his employment as follows:

Q: Sir, why do you maintain that you were terminated?

A: Because I was.

Q: For what reason?

A: Well, I was told by a lower staff, not management but lower staff, that the word in the building was I was terminated because I called the police on Ms. Alford's kid

Q: Okay, thank you. Retaliation for Title VII, what—when did—so if you claim the Title VII event started in 2016, you were not terminated until, what, 2020?

A: Yeah.

Q: So four years passed?

A: I was terminated because of calling the police on Alford's kid And I would say ignoring the reports of Dr. Jones' advances.

[ECF No. 48-2 at 220:21–221:3, 257:21–258:13].

Defendant, in response to Plaintiff's Fed. R. Civ. P. 30(B)(6) discovery inquiries, provided the following about Plaintiff's termination:

6. Identification of what, if any, job requirements Joe Holt did not meet at the time of termination.

RESPONSE: Defendant terminated Plaintiff because of his performance issues, which included failing to provide patient care within the scope of his license, failing to follow Defendant's policies, and his repeated rude, unprofessional treatment of coworkers. Plaintiff also caused an incident when he called the police reporting two young African American men arriving to work. Plaintiff did this on the heels of the George Floyd incident

⁸ Defendant has also submitted a five-page document completed by Tijuana Carolina, detailing roughly 60 incidents concerning Plaintiff's problematic behavior, spanning from August 17, 2018, to October 22, 2019. [ECF No. 48-8].

and his behavior continued to be antithetical to the mission of Defendant as a community health center.

7. Identification of all reason(s) for termination of Joe Holt
 - a. Termination Notice—Def 239
 - i. Identify termination decisionmakers.
 - ii. Identify who Stephanie Alford conferred with before terminating Plaintiff.

RESPONSE: Defendant terminated Plaintiff because of performance issues, including failure to provide patient care within the scope of his license, failure to follow Defendant's policies, and his repeated rude, unprofessional treatment of coworkers, as well as those reasons identified in response to Topic 6 above. See Defendant's Responses to Plaintiff's Second Interrogatory Request No. 1. Carolyn Emanuel-McClain (Defendant's CEO) and Stephanie Alford (Defendant's Director of Human Resources) were involved in Plaintiff's termination. Ms. Emanuel-McClain advised Ms. Alford to terminate Plaintiff.

[ECF No. 52-29 at 3].

II. Discussion

A. Standard on Motion for Summary Judgment

The court shall grant summary judgment “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(a). The movant bears the initial burden of demonstrating that summary judgment is appropriate; if the movant carries its burden, then the burden shifts to the non-movant to set forth specific facts showing that there is a genuine issue for trial. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23 (1986). If a movant asserts that a fact cannot be disputed, it must support that assertion either by “citing to

particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials;” or “showing . . . that an adverse party cannot produce admissible evidence to support the fact.” Fed. R. Civ. P. 56(c)(1).

In considering a motion for summary judgment, the evidence of the non-moving party is to be believed and all justifiable inferences must be drawn in favor of the non-moving party. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). However, “[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.” *Id.* at 248.

B. Analysis

1. ADA Claims

As clarified in briefing, Plaintiff has brought three ADA claims against Defendant: wrongful termination or discrimination claim, failure to accommodate claim, and a retaliation claim.

a. ADA Wrongful Termination Claim

The ADA prohibits employers from “discriminat[ing] against a qualified individual on the basis of disability in regard to . . . the hiring, advancement,

or discharge of employees, . . . and other terms, conditions, and privileges of employment.” 42 U.S.C. § 12112(a). To establish a claim of disability discrimination under the ADA, a plaintiff must prove that (1) he has a disability, (2) he is a “qualified individual” for the employment in question, and (3) [his employer] discharged him (or took other adverse employment action) because of his disability. *Smith v. CSRA*, 12 F.4th 396, 412 (4th Cir. 2021) (citations omitted). The *McDonnell Douglas* burden-shifting framework applies to discrimination claims under the ADA. *Jacobs v. N.C. Admin. Office of the Courts*, 780 F.3d 562, 572 (4th Cir. 2015). Therefore, if a prima facie case of ADA discrimination is established, the burden shifts back to Defendant to produce evidence of a legitimate, nondiscriminatory reason for the alleged discrimination, and Plaintiff bears the burden of showing that reason is pretext. *See id.*

The ADA defines “disability” as “a physical or mental impairment that substantially limits one or more major life activities of such individual.” 42 U.S.C. § 12102(1)(A). Celiac disease might substantially limit a major life activity of an individual, but here Plaintiff has failed to submit evidence that his impairment does so. This case stands in contrast to those where the plaintiff has, for example:

submitted extensive evidence about the serious consequences to his health when he ingests gluten The evidence here . . . is that J.D. and his parents must remain vigilant because the

ingestion of even a small amount of gluten may have serious consequences for J.D.'s health.

J.D. by Doherty v. Colonial Williamsburg Found., 925 F.3d 663, 671 (4th Cir. 2019). Here, Plaintiff has declined to produce any medical information or other evidence in support of his argument that he has a disability as defined by the ADA, beyond his own testimony stating he was diagnosed with celiac, he is not on medication, he “manag[es] it by not eating gluten or avoiding gluten as much as possible,” and “when you have celiac, you have to dash to the bathroom.” [ECF No. 48-2 at 120:7–17, 137:10–11].

Additionally, even if the court were to assume Plaintiff had a disability as defined by the ADA and could otherwise make a prima facie showing, there is no indication in the record that Plaintiff was discharged, or otherwise discriminated against, because of his celiac disease or because of any other health concerns.

Defendant states that Plaintiff's employment was terminated because of “his multiple performance-related issues.” [*See, e.g.*, ECF No. 48-1 at 12, *see also* ECF No. 52-29 at 3]. Plaintiff fails to address Defendant's evidence concerning these issues, but, in rebuttal, offers only his latest March 16, 2020 annual review, where he was generally found to have met expectations, except in the categories of quality of work and organization and planning, and where Plaintiff was informed in part, and not for the first time, that

Compliance with chart closure policy needs improvement. Employee must close charts within 3 days. I am closely monitoring to ensure that this is corrected

[ECF No. 52-1]. Plaintiff additionally fails to address evidence of performance-related issues that followed this assessment specifically discussed, including Foster's June 15, 2020 email concerning ongoing charting concerns.

More importantly, Plaintiff has offered no evidence, including his own testimony, that he was terminated because of celiac disease or any other health-based reason. Instead, Plaintiff testified that he was terminated because on the day before his termination he called police officers concerning another employee's child allegedly driving recklessly in Defendant's parking lot, a reason Defendant admitted was a factor in Plaintiff's termination.

Accordingly, the undersigned recommends the district judge grant Defendant's motion for summary judgment as to Plaintiff's ADA wrongful termination or discrimination claim.

b. ADA Failure to Accommodate Claim

The ADA's prohibitions "include[] . . . not making reasonable accommodations." 42 U.S.C. § 12112(b)(5)(A). To establish a claim for a failure to accommodate, a plaintiff must show that (1) he suffers a disability; (2) his employer had notice of the disability; (3) with reasonable accommodations, he is otherwise qualified to perform the employment

position in question; and (4) his employer refuses to make such reasonable accommodations. *Wilson v. Dollar Gen. Corp.*, 717 F.3d 337, 345 (4th Cir. 2013) (citations omitted).

The plaintiff bears both (1) the burden of identifying an accommodation that would allow a qualified individual to perform the job, and (2) the ultimate burden of persuasion with respect to demonstrating that such an accommodation is reasonable. *Maffett v. City of Columbia*, C/A No. 3:19-0832-MGL, 2021 WL 4237189, at *7 (D.S.C. Sept. 17, 2021) (citing *Halperin v. Abacus Tech. Corp.*, 128 F.3d 191, 197 (4th Cir. 1997) (overruled on other grounds by *Baird v. Rose*, 192 F.3d 462 (4th Cir. 1999)). “A reasonable accommodation is one that is feasible or plausible.” *Id.* (citing *Reyazuddin v. Montgomery Cnty., Md.*, 789 F.3d 407, 414 (4th Cir. 2015)).

Here, Plaintiff has failed to carry his burden. As discussed above, Plaintiff has not submitted evidence indicating that he has an ADA-recognized disability. Additionally, Plaintiff has failed to establish that he asked for any reasonable accommodation that was denied.

Plaintiff argues otherwise as follows: “During his employment, Plaintiff needed accommodations in the form of medical care, bathroom availability changes, the availability of PPE, and accommodations to reduce the risk of exposure to COVID-19.” [ECF No. 52 at 23].

First, Plaintiff has failed to submit any evidence that Defendant denied him medical care, particularly where Plaintiff testified that he voluntarily stopped using Defendant's medical services because two doctors had a dispute over who would treat him. [ECF No. 48-2 at 114:22–115:7]. Second, Plaintiff testified that no one prevented him from entering or using any restroom, there were multiple restroom facilities available to him, and the distance between available restrooms was five to six yards. [ECF No. 48-5 (map of office and bathrooms); ECF No. 48-2 at 137:3–9, 139:19–21, 140:5–7, 143:10–22]. Plaintiff has failed to submit evidence that Defendant did not make bathrooms available to him.

As to Plaintiff's arguments concerning the availability of PPE during COVID and other accommodations related to COVID, Plaintiff has failed to submit evidence connecting the need for these accommodations with celiac. Instead, Plaintiff argues that he was at high risk for COVID because of his high blood pressure and diabetes. [ECF No. 48-2 at 165:5–7].⁹ However, the record does not indicate that Plaintiff notified Defendant that he needed accommodations for high blood pressure or diabetes. Additionally, neither Plaintiff's discrimination charge nor his complaint specifically mention that he suffered from these conditions, nor do they specifically allege that he

⁹ Plaintiff testified that Defendant provided him with sterilized surgical masks during the relevant time period. [ECF No. 48-2 at 165:25–166:2].

experienced any ADA discrimination because of these conditions. [ECF No. 1-1, ECF No. 52-12 (“I am disabled within the meaning of the ADA. I have celiac disease I have high-risk health concerns that I shared with RHS, wherein I requested accommodations during the pandemic I emphasized that I needed [PPE] because of my at-risk disability”)]].

Accordingly, the undersigned recommends the district judge grant Defendant’s motion for summary judgment as to Plaintiff’s ADA failure-to-accommodate claim.

c. ADA Retaliation Claim

As with Plaintiffs ADA discrimination claim, his claim for ADA retaliation also proceeds under the *McDonnell Douglas* burden-shifting framework. *See, e.g., Rhoads v. FDIC*, 257 F.3d 373, 391 (4th Cir. 2001). “The plaintiff always bears the ultimate burden of persuading the trier of fact that she was the victim of retaliation.” *Id.* at 392.

As to this claim, Plaintiff’s primary argument is that he engaged in protected activities at different times in his career, but argues that the only retaliatory response by Defendant to these alleged protected activities is as follows: “Defendant willfully retaliated against Plaintiff by denying accommodations, as described above, and terminating Plaintiff because of his protected activities under ADA.” [*See* ECF No. 52 at 31–33].

First, to the extent that Plaintiff is relying on temporal proximity between any complaints he may have made and his termination, or any other retaliatory act, “temporal proximity, without more, does not support a finding of pretext.” *Jones v. UnitedHealth Group, Inc.*, 19-1728, 2020 WL 2116496, at *2–3 (4th Cir. Apr. 21, 2020) (citing *Gibson v. Geithner*, 776 F.3d 536, 541 (8th Cir. 2015) (holding that, while proximity can establish a prima facie case of causation, it is insufficient to alone establish pretext)). Second, as discussed above, Plaintiff has failed to establish that he asked for and did not receive reasonable accommodations from Defendant or that his employment was terminated for any reason related to his disability, or his sex, as discussed more below.

For the reasons discussed above, the undersigned recommends the district judge grant Defendant’s motion for summary judgment as to Plaintiff’s ADA retaliation claim.

2. Title VII Claims

As clarified in his briefing, Plaintiff has brought three Title VII claims against Defendant: wrongful termination or discrimination claim, sexual harassment, and a retaliation claim.

a. Title VII Wrongful Termination Claim

Title VII prohibits employers from taking any personnel actions affecting employees “based on race, color, religion, sex, or national origin.” 42

U.S.C. § 2000e-2(a)(1). To establish a prima facie case, “a plaintiff must show that (1) she is a member of a protected class; (2) her employer took an adverse action against her; (3) she had been fulfilling her employer’s legitimate expectations at the time of the adverse action; and (4) the adverse action occurred under circumstances that raise a reasonable inference of unlawful discrimination” *Sempowich v. Tactile Sys. Tech., Inc.*, 19 F.4th 643, 649–50 (4th Cir. 2021) (citation omitted). As with Plaintiff’s ADA wrongful termination or discrimination claim above, absent direct evidence of discrimination, Plaintiff proceeds under the *McDonnell Douglas* burden-shifting framework. Once a plaintiff makes out a prima facie case, the burden shifts to the employer to put forth a nondiscriminatory explanation for its actions. *Id.* (citation omitted). If the employer does so, the burden then shifts back to the plaintiff to show that the employer’s explanation was “actually a pretext for discrimination.” *Id.* (citation omitted).

The parties dispute whether Plaintiff has established a prima facie case, particularly in that the only evidence Plaintiff has submitted in support of his position that he was meeting Defendant’s legitimate expectations is his latest annual evaluation [see ECF No. 52 at 28], and where Defendant has submitted extensive evidence of ongoing difficulties between Plaintiff and other employees, including multiple write-ups of Plaintiff for subpar and inappropriate behavior. However, the court need not resolve this issue. Even

if he is deemed to have established a prima facie case, Plaintiff fails to offer any evidence that Defendant's nondiscriminatory explanation for his termination was actually pretext for sex discrimination.

Plaintiff disagrees, arguing in full as follows:

Defendant asserts that Plaintiff suffered termination as a result of alleged performance deficiencies. Plaintiff has met his burden to proffer sufficient evidence of pretext to create a genuine issue of material fact. The same pretext arguments articulated above apply here. Both decisionmakers of the termination are female and were on notice of Plaintiff's complaints about Dr. Jones' harassment.

[ECF No. 52 at 28–29 (citing ECF No. 52-10, ECF No. 52-12)].

The evidence cited by Plaintiff does not support his argument that the relevant decision makers were aware of any complaints of harassment or that, even if they were, this knowledge evinces pretext. The first exhibit relied on by Plaintiff appears to be an undated text exchange between Plaintiff and another employee identified by Plaintiff in the title to the exhibit as Bruce Wright ("Wright"), with both Plaintiff and Wright complaining about Jones and how Emanuel-McClain did not take the complaints seriously. [ECF No. 52-10]. The second exhibit is Plaintiff's Charge of Discrimination stating that at some point in time he "reported my concerns with Dr. Jones' actions to the CEO." [ECF No. 52-12]. This evidence is insufficient to show what was said to Emanuel-McClain, or when, or that Alford had any relevant knowledge, particularly where Plaintiff testified the

last incident where Jones made him feel uncomfortable was in October or September 2017, over two and a half years before Plaintiff was terminated.

For the reasons stated above, including that Plaintiff also stated he was terminated because he called the police on another employee's child and Defendant's evidence of poor performance, the undersigned recommends the district judge grant Defendant's motion for summary judgment as to Plaintiff's Title VII wrongful termination or discrimination claim.

b. Title VII Sexual Harassment Claim

As held by the Fourth Circuit describing a Title VII hostile work environment claim based on protected characteristics, to establish such a claim, a plaintiff must show "she was subjected to (1) unwelcome conduct, (2) based on her race [or national origin] or sex, that was (3) severe or pervasive enough to make her work environment hostile or abusive and (4) imputable to [] her employer." *Laurent-Workman v. Wormuth*, 54 F.4th 201, 210 (4th Cir. 2022) (citing *Bazemore v. Best Buy*, 957 F.3d 195, 200 (4th Cir. 2020)).

Plaintiff argues in full as follows:

Plaintiff was subjected to unwelcome sexual harassment and treatment based on sex from Defendant's employee Dr. Kenneth Jones while working at Defendant. Defendant knew or should have known of the harassment and took no effective remedial action. Such unwanted sexual conduct created an intimidating and hostile work environment and was subjectively viewed by Plaintiff to be abusive. The harassment was a continuing act. The conduct was sufficiently severe or pervasive to alter the conditions of employment and create an abusive atmosphere.

Plaintiff's complaints about the discriminatory workplace environment were disregarded. Sufficient evidence is put forth for a reasonable jury to find that that harassment prohibited by Title VII occurred.

[ECF No. 52 at 29 (citing ECF No. 52-10, ECF No. 52-12)].

The undersigned disagrees. As stated above, Plaintiff has failed to submit evidence that Defendant knew or should have known about the alleged harassment. Additionally, Plaintiff has not cleared the "high bar" necessary to satisfy the severe or pervasive element of this inquiry:

[P]laintiffs must clear a high bar in order to satisfy the severe or pervasive test. Workplaces are not always harmonious locales, and even incidents that would objectively give rise to bruised or wounded feelings will not on that account satisfy the severe or pervasive standard. Some rolling with the punches is a fact of workplace life. Thus, complaints premised on nothing more than rude treatment by [coworkers], callous behavior by [one's] superiors, or a routine difference of opinion and personality conflict with [one's] supervisor, are not actionable under Title VII.

E.E.O.C. v. Sunbelt Rentals, Inc., 521 F.3d 306, 315–16 (4th Cir. 2008) (citations omitted)).

Accordingly, the undersigned recommends the district judge grant Defendant's motion for summary judgment as to Plaintiff's Title VII sexual harassment claim.

c. Title VII Retaliation Claim

To succeed on his Title VII retaliation claims, Plaintiff must show that "(1) he engaged in a protected activity; (2) the employer acted adversely

against him; and (3) there was a causal connection between the protected activity and the asserted adverse action.” *Strothers v. City of Laurel*, 895 F.3d 317, 327 (4th Cir. 2018) (quoting *Ziskie v. Mineta*, 547 F.3d 220, 229 (4th Cir. 2008)).

Plaintiff’s Title VII retaliation claim fails for the same reasons as already discussed by the court, where Plaintiff argues only that “Defendant willfully retaliated against Plaintiff and terminated Plaintiff on June 30, 2020 because of his protected activities under Title VII.” [ECF No. 52 at 30–31]. Accordingly, the undersigned recommends the district judge grant Defendant’s motion for summary judgment as to Plaintiff’s Title VII retaliation claim.

3. State-Law Claims

Plaintiff brings the following claims based on South Carolina law: defamation, abuse of process, interference with contractual relationship, negligence, and conversion.¹⁰

¹⁰ The undersigned addresses Plaintiff’s state-law claims, even after recommending dismissal of his federal-law claims, where Plaintiff’s state-law claims involve settled principles and are not novel or complex. *See Funderburk v. S.C. Elec. & Gas Co.*, 406 F. Supp. 3d 527, 534 n.6 (D.S.C. 2019) (retaining supplemental jurisdiction over state law claims that involved “settled principles” and were “not novel or complex”), *aff’d sub nom. Funderburk v. CSX Transportation, Inc.*, 834 F. App’x 807 (4th Cir. 2021); *Hall v. Greystar Mgmt. Servs., L.P.*, 179 F. Supp. 3d 534, 538 (D. Md. 2016) (retaining state law claims after dismissal of the federal claims in part because the state law claims involved the application of “straightforward . . .

a. Defamation

The tort of defamation allows a plaintiff to recover for injury to his reputation as the result of the defendant's communications to others of a false message about the plaintiff. *Holtzscheiter v. Thomson Newspapers, Inc.*, 506 S.E.2d 497, 501 (S.C. 1998). Under South Carolina law, to state a cause of action for defamation, a plaintiff must show the existence of some message that (1) is defamatory, (2) is published with actual or implied malice, (3) is false, (4) is published by the defendant, (5) concerned the plaintiff, and (6) resulted in legally presumed or in special damages. *Parker v. Evening Post Pub. Co.*, 452 S.E.2d 640, 644 (S.C. Ct. App. 1994). Malice and damages are presumed in the case where the defamation is actionable per se. *See Holtzscheiter*, 506 S.E.2d at 502; *see also id.* ("In other words, if the trial judge can legally presume, because of the nature of the statement, that the plaintiff's reputation was hurt as a consequence of its publication, then the libel is actionable per se. Essentially, all libel is actionable per se.") (citations omitted).¹¹

Plaintiff identifies two allegedly defamatory events. In the first, Plaintiff has submitted a brief video recording that purports to be of an

hornbook tort law" and an "uncomplicated fact pattern," as opposed to "questions of first impression of unsettled, policy-laden matters" better left to Maryland courts).

¹¹ Slander is a spoken defamation, while libel is a written defamation or one accomplished by actions or conduct.

unknown patient's mother stating, at some unknown time, she was told, by an unknown person at the front desk, that Plaintiff was racist. [See ECF No. 52 at 14 (citing ECF No. 51-5)]. In the video Plaintiff, not the unknown speaker, identifies the person who allegedly makes the comment as "Sheryl Lynn." See *id.* Plaintiff has submitted no further evidence as to this alleged employee. Second, Plaintiff has submitted what purports to be a Facebook chat exchange with Gabrielle Gaudette, who worked for Defendant in medical records at some point, and who stated she had heard "that u left bc u called the cops on mrs Alford son." [ECF No. 52-22].

As to the first alleged statement, even assuming that this statement is admissible in the form submitted by Plaintiff, the statement lacks the necessary specificity to state a claim for defamation. See, e.g., *Doe v. Cannon*, C/A No. 2:16-00530-RMG, 2017 WL 591121, at *1 (D.S.C. Feb. 14, 2017) ("Plaintiff has failed to state a claim against [Defendants] for defamation because her Complaint does not state with specificity the time, place, medium, and listener of the alleged defamatory statements."); *Colleton v. Charleston Water Sys.*, 225 F. Supp. 3d 362, 369 (D.S.C. 2016) ("Defendants cannot be expected to defend against an allegation that Mr. Clum defamed Plaintiff by making a statement heard by unknown persons at an unknown place at an unknown time."); *Wise v. INVISTA s.a.r.l.*, C/A No. 3:17-1354-MBS-TER, 2017 WL 9275298, at *3 (D.S.C. Aug. 31, 2017), report and

recommendation adopted, C/A No. 3:17-01354-MBS, 2018 WL 525475 (D.S.C. Jan. 23, 2018) (“Without more detailed allegations regarding who made the statements, to whom they were made, and the context in which they were made, Plaintiff has failed to state with plausibility a cause of action for defamation”).

Additionally, in this context, the alleged and apparently isolated statement may not be defamatory. As stated by the South Carolina Supreme Court:

Petitioners correctly contend that calling someone a racist can be defamatory depending on the context. In this regard, we reject any suggestion that calling someone a racist can never be defamatory. *See* 50 Am. Jur. 2d Libel and Slander § 200 (2017) (“Courts have readily held allegations of racism . . . to constitute libel per se, at least when founded on specific incidents.”); 3 Dan. B. Dobbs et al., *The Law of Torts* § 572 (2d ed. 2011) (“While ‘racist’ is sometimes said to be mere name-calling and not actionable in some contexts, the term can be actionable where it plainly imputes acts based on racial discrimination.” (footnote omitted)); *MacElree v. Phila. Newspapers, Inc.*, 544 Pa. 117, 674 A.2d 1050, 1055 (1996) (“Although accusations of racism have been held not to be actionable defamation, it cannot be said that every such accusation is not capable of defamatory meaning as a matter of law.”).

Garrard for R.C.G. v. Charleston Cnty. Sch. Dist., No. 2020-000605, 2023 WL 3731173, at *1 (S.C. May 31, 2023); *see also id.* at n.2 (“*La Liberte v. Reid*, 966 F.3d 79, 93 (2d Cir. 2020) ([The defendant] did not merely accuse [the plaintiff] of being ‘racist’ in some abstract sense. Rather, [the defendant’s social media post] could be understood as an accusation of concrete, wrongful

conduct, which can be proved to be either true or false. That makes it potentially defamatory.’ (cleaned up)); *Taylor v. Carmouche*, 214 F.3d 788, 793 (7th Cir. 2000) (holding a statement that a person is ‘a racist’ is defamatory and acknowledging that whether someone is racist or practices racial discrimination in the workplace is a mundane issue of fact that is litigated every day); *cf. Capps v. Watts*, 271 S.C. 276, 281–83, 246 S.E.2d 606, 609–10 (1978) (recognizing that mere name calling and words of abuse are generally not considered defamatory but holding such remarks may be capable of libelous construction by reason of extrinsic facts).”).

Turning to Plaintiff’s second statement, he alleges the Facebook exchange shows that “Defendant defamed Plaintiff to unprivileged staff and Plaintiff’s patients by accusing him of making a false police report.” [ECF No. 52 at 14]. However, the statement in question states that Plaintiff called the police on another employee’s child something Plaintiff has repeatedly admitted. Additionally, Plaintiff has repeatedly testified, as discussed above, this is why he was terminated. *See N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 274 (1964) (holding that truth is an absolute defense to a defamation claim).

Accordingly, the undersigned recommends the district judge grant Defendant’s motion for summary judgment as to Plaintiff’s defamation claim.

b. Abuse of Process

Under South Carolina law, “[t]he essential elements of abuse of process are: (1) an ulterior purpose; and (2) a willful act in the use of the process not proper in the regular conduct of the proceeding.” *Johnson v. Painter*, 307 S.E.2d 860, 860 (S.C. 1983); *see also Hainer v. Am. Med. Int’l, Inc.*, 492 S.E.2d 103, 107 (S.C. 1997) (“There is no liability where the defendant has done nothing more than carry out the process to its authorized conclusion, even though with bad intentions.”).

Plaintiff argues as follows:

Defendant’s representative(s) called the South Carolina Department of Social Services and made a false report against a family who decided to continue medical care services with Plaintiff rather than Defendant, by falsely alleging that the family was refusing to follow the doctor’s recommendation of getting counseling. (Ex. 39—Statement of CB). The parents were contacted by Child Protective Services as a result of this false claim. (*Id.*).

[ECF No. 52 at 16]. Plaintiff argues, but provides no supporting evidence, that Defendant or its representative did this “in retaliation for the family choosing to utilize Plaintiff’s counseling services” after Plaintiff was terminated. *Id.*

Plaintiff has provided insufficient evidence to support this claim. First, there is no evidence from which a reasonable jury could find Defendant acted with an ulterior purpose. As Plaintiff testified in his deposition, the only

evidence he has that an unknown person allegedly associated with Defendant called DSS is that the father and mother told him. [ECF No. 48-2 at 225:3–227:11]. Although Plaintiff argues in briefing otherwise, there is no evidence in the record, not even Plaintiff’s own testimony, that even if a representative of Defendant called DSS, such actions were to retaliate against Plaintiff.

Even if Plaintiff could demonstrate Defendant’s representative called DSS to retaliate against Plaintiff, as stated by the South Carolina Court of Appeals:

The essence of the tort of abuse of process centers on events occurring outside the process, and our courts have noted that “[t]he improper purpose usually takes the form of coercion to obtain a collateral advantage, not properly involved in the proceeding itself, such as the surrender of property or the payment of money, by the use of the process as a threat or club.” *Swicegood v. Lott*, 379 S.C. 346, 353, 665 S.E.2d 211, 214 (Ct. App. 2008) (quoting *Huggins v. Winn-Dixie Greenville, Inc.*, 249 S.C. 206, 209, 153 S.E.2d 693, 694 (1967)). “There is, in other words, a form of extortion, and it is what is done in the course of negotiation, rather than the issuance or any formal use of the process itself, which constitutes the tort.” *Id.* (quoting *Huggins*, 249 S.C. at 209, 153 S.E.2d at 694).

D.R. Horton, Inc. v. Westcott Land Co., LLC, 730 S.E.2d 340, 352 (S.C. Ct. App. 2012), cert. denied as to this issue, 764 S.E.2d 701 (S.C. 2014); *see also* *Cosby v. Legal Servs. Corp.*, C/A No. 6:05-131-GRA, 2006 WL 4781412, at *4 (D.S.C. May 11, 2006) (“There is no evidence that LSC sought to gain a collateral advantage from plaintiff, much less that the sole or paramount reason for LSC in conducting the investigation of the SCCEJ related to

obtaining some collateral objective from Ms. Cosby. Because the evidence cannot support a conclusion that the sole or paramount reason for conducting this investigation was to gain a collateral objective from Ms. Cosby, liability for abuse of process cannot exist.”), *aff’d sub nom. Cosby v. Legal Servs. Corp.*, 227 F. App’x 279 (4th Cir. 2007).

Here, too, there is no indication Defendant sought to gain any kind of collateral advantage over Plaintiff. Accordingly, the undersigned recommends the district judge grant Defendant’s motion for summary judgment as to Plaintiffs abuse-of-process claim.

c. Interference with Contractual Relationship

South Carolina recognizes a claim for intentional interference with contract, also known as tortious interference with contractual relations. A plaintiff must show (1) the existence of a contract; (2) the defendant’s knowledge of the contract’s existence; (3) the defendant’s intentional procurement of the breach of the contract; (4) the absence of justification; and (5) resulting damage. *Camp v. Springs Mortgage Corp.*, 426 S.E.2d 304, 305 (S.C. 1993).

Plaintiff appears to argue he can maintain a claim against Defendant because (1) he set up a business after his termination and has “existing and prospective contractual relationships with patients and their families,” (2) “Defendant has a responsibility to its patients and Plaintiff to truthfully

provide the patients who were treated by Plaintiff with the options available to them for ongoing care,” and (3) “Defendant has engaged in intentional conduct to prevent Plaintiff from receiving contract services from his former patients.” [ECF No. 52 at 17–18 (citing ECF Nos. 9–15)].

In support of this claim, Plaintiff has submitted letters from former patient’s parents,¹² with (1) one stating her payments from her insurance company were paid to Defendant when they should have gone to Plaintiff, (2) at some unknown time one was sexually harassed by the “front end secretary,” (3) one was informed by Jones that she “could not see Dr. Holt anymore that [she] had to see in house one of their psychologists . . . to be a patient there,” (4) “The RHS pediatric staff made negative, disparaging comments about Dr. Joe Holt ss a professional,” and (5) one family was informed they could not be seen by the practice without using their counselors, the same family that Plaintiff alleges Defendant called DSS on. *See id.*

At the least, Plaintiff has failed to identify the terms of the contract at issue that were allegedly breached, how those terms were breached, how

¹² The undersigned notes that some of these letters are inadmissible where the documents are neither notarized, nor signed under the penalty of perjury. *See* Fed. R. Civ. P. 56(c)(1)(A) (permitting either “affidavits” or “declarations”); 28 U.S.C. § 1746 (a litigant may rely on an “unsworn declaration, certificate, verification, or statement” if it is subscribed as true under penalty of perjury).

those terms were intentionally breached by Defendant, and the damage that occurred. *See e.g., Eldeco, Inc. v. Charleston Cty. Sch. Dist.*, 642 S.E.2d 726, 732 (S.C. 2007) (“An essential element to the cause of action for tortious interference with contractual relations requires the intentional procurement of the contract’s breach. Where there is no breach of the contract, there can be no recovery.”) (citations omitted)).¹³

Accordingly, the undersigned recommends the district judge grant Defendant’s motion for summary judgment as to this claim.

d. Negligence

To maintain an action for negligence, “a plaintiff must show: (1) the defendant owes a duty of care to the plaintiff; (2) the defendant breached that duty by a negligent act or omission; (3) the defendant’s breach was the actual and proximate cause of the plaintiff’s injury; and (4) the plaintiff suffered an injury or damages.” *Roddey v. Wal-Mart Stores E., LP*, 784 S.E.2d 670, 675 (S.C. 2016) (citation omitted).

Plaintiff argues that after he was terminated, BlueCross BlueShield sent checks to Defendant that should have been sent to Plaintiff and that

¹³ Likewise, Plaintiff cannot establish a claim for tortious interference with prospective contractual relations under South Carolina law where he has provided no evidence that Defendant intentionally interfered with his potential contractual relations for an improper purpose or by improper methods causing injury to him. *See, e.g., BCD LLC v. BMW Mfg. Co., LLC*, 360 F. App’x 428, 436 (4th Cir. 2010).

“Defendant retained money from services he provided, after termination, for an extended period of time,” although it appears that the funds have now been provided to Plaintiff. [ECF No. 52 at 19, ECF No. 48-2 at 36:10–44:20, 48:4–9, 59:5–9].¹⁴

Plaintiff has failed to cite, nor is the court aware, of a plaintiff who has maintained a claim for negligent retention of property under these circumstances, particularly where Plaintiff testified that it is common for payments to go to an institution six months to a year after an employee leaves an institution and starts providing services elsewhere [ECF No. 48-2 38:15–22], and where Plaintiff has provided no evidence that Defendant knew the monies were owed solely to him or the existence of any injury.

Accordingly, the undersigned recommends the district judge grant Defendant’s motion for summary judgment as to Plaintiff’s claim for negligence.

e. Conversion

Under South Carolina law, a plaintiff asserting the tort of conversion must show that the defendant, without authorization, assumed and exercised the right of ownership over goods or personal chattels belonging to another to

¹⁴ Plaintiff appears to argue that Defendant retained his money in violation of its own policy [ECF No. 52 at 10–11], but Plaintiff offers only the following policy from Defendant: “Payments received for patient accounts through the mail will be properly reported and safeguarded by deposit with 24 hours of receipts.” [ECF No. 52-27].

the exclusion of the plaintiff's rights. *Moore v. Weinberg*, 681 S.E.2d 875, 878 (S.C. 2009) (citing *SSI Med. Servs., Inc. v. Cox*, 392 S.E.2d 789, 792 (S.C. 1990)). The plaintiff must establish either title to or right to the possession of the personal property. *Moseley v. Oswald*, 656 S.E.2d 380, 382 (S.C. 2008) (citing *Crane v. Citicorp Nat'l Servs., Inc.*, 437 S.E.2d 50, 52 (S.C. 1993)). Money may be the subject of a conversion claim if the money is capable of being identified. *Moore*, 681 S.E.2d at 878. If the conversion of money is not secured illegally, tortiously, by fraud, or other wrongful conduct, a plaintiff must demonstrate that he made a demand for its return which was refused. *See City of Charleston, S.C. v. Hotels.com, LP*, 520 F. Supp. 2d 757, 772 (D.S.C. 2007); *Mackela v. Bentley*, 614 S.E.2d 648, 650 (S.C. Ct. App. 2005).

Plaintiff argues he “is aware of Defendant retaining at least \$2,800 owed to Plaintiff.” [ECF No. 52 at 20 (citing ECF No. 51-8)]. However, the documents Plaintiff cites in support do not appear to constitute a sum demonstrating \$2,800. *See id.* Additionally, Plaintiff has provided no evidence showing that Defendant refused a demand for the return of his funds to establish a conversion claim. Instead, Plaintiff testified that the occurrences of delayed payment were due to BlueCross BlueShield sending the money to Defendant instead of to him and that he is “having to talk” to BlueCross BlueShield to resolve the issue of those funds. [ECF No. 48-2 at 60:12–61:9].

Accordingly, the undersigned recommends the district judge grant Defendant's motion for summary judgment as to Plaintiff's claim for conversion.

4. Motion to Seal

Local Civ. Rule 5.03 (D.S.C) provides that a party seeking to file documents under seal shall "file and serve a 'Motion to Seal' accompanied by a memorandum" that must:

(1) identify, with specificity, the documents or portions thereof for which sealing is requested; (2) state the reasons why sealing is necessary; (3) explain (for each document or group of documents) why less drastic alternatives to sealing will not afford adequate protection; and (4) address the factors governing sealing of documents reflected in controlling case law.

The public's common law right to inspect judicial records and documents is not absolute and the district court may, in its discretion, seal documents if the public's right of access is outweighed by competing interests. *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 597–98 (1978). In deciding whether to exercise such discretion, the court may consider "whether the records are sought for improper purposes, such as promoting public scandals or unfairly gaining a business advantage; whether release would enhance the public's understanding of an important historical event; and whether the public has already had access to the information contained in the

records.” *In re Knight Pub. Co.*, 743 F.2d 231, 235 (4th Cir. 1984) (“*In re Knight* factors”).

By contrast, once documents that are produced in discovery are “made part of a dispositive motion, they [have] lost their status as being ‘raw fruits of discovery.’” *Va. Dep’t of State Police v. Wash. Post*, 386 F.3d 567, 576 (4th Cir. 2004) (citation omitted). The “more rigorous First Amendment standard [applies] to documents filed in connection with a summary judgment motion in a civil case.” *Id.* (citation omitted); *see also Hill Holiday Connors Cosmopulos, Inc. v. Greenfield*, C/A No. 6:08-03980-GRA, 2010 WL 890067, at *4 (D.S.C. Mar. 8, 2010) (denying motion to seal summary judgment memorandum and exhibits).

Under this First Amendment standard, the movant must demonstrate that the denial of access is necessitated by a compelling government interest or non-governmental interest that implicates similar “higher values.” *Press-Enter. Co. v. Super Ct. of Cal. For the Cnty. of Riverside*, 464 U.S. 501, 510 (1984). “The burden to overcome a First Amendment right of access rests on the party seeking to restrict access, and that party must present specific reasons in support of its position.” *Va. Dep’t of State Police*, 386 F.3d at 575. The court must determine that sealing would constitute a “narrowly tailored” solution designed “to serve that interest.” *Press-Enter. Co.*, 464 U.S. at 510.

Plaintiff has filed a motion to seal documents, arguing

Plaintiff provides confidential therapy services to pediatric patients. The documents and video Plaintiffs seeks to file under seal contain confidential information about third parties, including minors and the parents of minor patients of Plaintiff. Plaintiff makes this request that such Exhibits be filed and reviewed *in camera* for the protection of third parties' confidential information.

[ECF No. 51-1 at 2].¹⁵

Plaintiff provides the following list of documents he seeks to seal:

Exhibit 29 - 2020-5-29 Holt Report to RHS Leadership
Exhibit 30 - 2020-7-20 Interview with Patient's Mother
Exhibit 31 - Metadata of . . . Interview with Patient's Mother
Exhibit 32 - BCBS Check and Insurance Documents
Exhibit 33 - Documents Supporting Conversion - BCBS Records
Exhibit 34 - Statement of MFOG
Exhibit 35 - Statement of TR
Exhibit 36 - Statement of KS
Exhibit 37 - Statement of KB
Exhibit 38 - Statement of Father
Exhibit 39 - Statement of CB
Exhibit 40 - Texts re DSS Matter

The undersigned undertook an *in camera* review of the documents that Plaintiff seeks to seal and notes the names of minor patients and their family members, as well as other identifying information, appears in relevant documents. The undersigned also notes Plaintiff's efforts to narrowly-tailor

¹⁵ This court's electronic case filing policies and procedures 13.4.3 provides that "medical records, treatment records, or diagnoses . . . must be afforded maximum protection from public dissemination" and "[a] document containing this information shall be filed electronically in a redacted version **with all the protected information removed** or be presented for '*in camera*' review with a motion to seal." (emphasis in original).

his request to seal documents where he has filed separately on the public docket evidence not containing this type of sensitive information.

Notwithstanding, Plaintiff's motion to seal these documents is denied in part. Although "Courts have recognized that an interest in protecting the physical and psychological well-being of individuals related to the litigation, including family members and particularly minors, may justify restricting access," *United States v. Harris*, 890 F.3d 480, 492 (4th Cir. 2018) (citation omitted)), as also recognized by Plaintiff, the Fourth Circuit has directed that for a district court to seal court documents, the court must (1) provide public notice of the request to seal and allow interested parties a reasonable opportunity to object, (2) consider less drastic alternatives to sealing the documents, and (3) provide specific reasons and factual findings supporting its decision to seal the documents and for rejecting the alternatives. *See Ashcraft v. Conoco, Inc.*, 218 F.3d 288, 302 (4th Cir. 2000); *In re Knight Pub. Co.*, 743 F.2d 231, 235 (4th Cir. 1984).

Plaintiff has failed to meet the high standard required for sealing and has failed to rebut the presumption in favor of public access, having offered limited reason to seal all of the documents and no reason why the documents containing the confidential information of minors and the parents of minors could not be redacted, particularly in that most of the documents do not

discuss any type of treatment and instead concern scheduling and payment issues.

Plaintiff's motion is granted as to the following, where redaction is not an option or would be excessive given the amount redaction needed: Exhibit 29, but only as to the two scheduling attachments found at the end of the exhibit,¹⁶ Exhibit 30, Exhibit 31. As to the remaining exhibits, Plaintiff is directed to redact all names and other identifying information of patients and patients' family members and file the documents on the public docket, retaining the same exhibit titles as provided above for ease of reference.¹⁷

III. Conclusion and Recommendation

For the foregoing reasons, the undersigned denies in part Plaintiff's motions to seal [ECF No. 51] and recommends the district judge grant Defendant's motion for summary judgment. [ECF No. 48]. Plaintiff is directed to file on the public docket reacted versions, as discussed above, of the following documents, as found at ECF No. 51: Exhibit 29 (except the scheduling attachments as discussed above) and Exhibits 32–40.

¹⁶ Within Exhibit 29, Plaintiff refers to these two “attached . . . documents” as follows: Note the schedule on the 5/22 shows two appts schedule and not by me” and “schedule notes on who cancelled the appt.” These documents need not be filed on the public docket. However, the remainder of Exhibit 29 can be redacted and filed publicly.

¹⁷ To the extent necessary, Plaintiff is also directed to redact any sensitive financial information or identifiers about himself these documents may contain.

IT IS SO ORDERED AND RECOMMENDED.



June 21, 2023
Columbia, South Carolina

Shiva V. Hodges
United States Magistrate Judge

**The parties are directed to note the important information in the attached
“Notice of Right to File Objections to Report and Recommendation.”**

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Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *see* Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk
United States District Court
901 Richland Street
Columbia, South Carolina 29201

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
AIKEN DIVISION
CASE NO: 1:21-cv-02802-MGL-SVH

Joe Holt,)
)
Plaintiff,)
)
v.)
)
Rural Health Services,)
Inc.,)
)
Defendant.)
_____)

DEPOSITION OF
EDGAR JOE HOLT, JR.

Wednesday, June 29, 2022
10:07 a.m. - 5:49 p.m.

The deposition of Edgar Joe Holt, Jr. was taken before Kimberly C. Young, a notary public in and for the State of South Carolina, commencing on June 29, 2022, at the law offices of Cromer Babb Porter & Hicks, 1418 Laurel Street, Columbia, South Carolina, pursuant to Notice of Deposition and/or agreement of counsel.

6/29/2022

EDGAR JOE HOLT, JR.

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1 up picking up enough hours to constitute all
2 these majors.

3 Q. Okay. So you did one dissertation for three
4 degrees?

5 A. Well, I did one dissertation and I have three
6 areas of concentration.

7 Q. All right. So break that down for me. So you
8 have three areas of concentration but you told me
9 you have three separate degrees. That's what I'm
10 trying to understand.

11 A. No. It's one PhD, but it has three components to
12 it; psych, social work --

13 Q. Oh, okay.

14 A. -- and education are there. So if you pulled the
15 coursework as what's required for the
16 concentration, you would see that I qualify for
17 all three.

18 Q. All right. So what does your degree actually say
19 printed on it?

20 A. Doctorate of Philosophy in Psych.

21 Q. Doctorate of Philosophy in Psych. And the
22 institution you obtained the PhD from?

23 A. Southwestern Baptist Theological Seminary.

24 Q. And is that the one in Dallas or the suburbs of
25 Dallas?

6/29/2022

EDGAR JOE HOLT, JR.

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1 Q. What does pretty much it mean; is that all?

2 A. That's all.

3 Q. That's all. There we go.

4 A. I'm sorry.

5 Q. All right. So Rural Health hostile work
6 environment is -- I've seen printouts that you
7 had files named hostile environment 2018. Is
8 that what you looked at?

9 A. Yes, sir.

10 Q. And you said conversion of funds; what is in that
11 file?

12 A. Checks that were made out to me that were
13 deposited into Rural Health's account.

14 Q. How many of them?

15 A. One.

16 Q. And what was the amount of the check?

17 A. \$504.

18 Q. Who was the payee?

19 A. Me.

20 Q. Okay. So the payee was you.

21 A. Yes.

22 Q. What was the address?

23 A. Apparently it was Rural Health.

24 Q. Yeah. And so, and who was the payor?

25 A. BlueCross BlueShield, if memory serves me.

6/29/2022

EDGAR JOE HOLT, JR.

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1 Q. All right. So when did you correct your address
2 and your provider information with BlueCross
3 BlueShield?

4 A. I'm not sure specifically of the dates.

5 Q. All right. Well, I mean, would BlueCross
6 BlueShield send you a check to an address that
7 you were not a provider at, unless you had
8 informed them of your new address?

9 A. They would send it to the address they know me
10 at.

11 Q. Okay. And the address they knew you at they sent
12 it to you, right?

13 A. Yes.

14 Q. Okay. So as of the date of that check, you had
15 not provided updated provider information to
16 BlueCross BlueShield. Can we agree about that?

17 MS. POLVI: Object to the form.

18 Q. You can answer.

19 A. I had notified them. I'm not sure it made the
20 system.

21 Q. Okay. And that's fair. All right. That's -- I
22 just want to be fair. So you don't know that
23 BlueCross BlueShield had made changes to their
24 system about where to send payment, right?

25 MS. POLVI: Object to the form.

6/29/2022

EDGAR JOE HOLT, JR.

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1 A. I don't know.

2 Q. Okay. And you know that it takes a while for
3 some payments to be made to providers; can we
4 agree about that?

5 A. Yes.

6 Q. I mean, I've represented medical practices for 25
7 years and professionals like yourself before the
8 medical board and elsewhere. It can take
9 sometimes years to get paid on some things,
10 right?

11 A. I haven't seen it that bad.

12 Q. Well, how bad have you seen it? What's the
13 longest period of time for a payable?

14 A. Six months to a year.

15 Q. Okay. Six months to a year. So when you leave
16 an institution or a provider and start somewhere
17 else, there's -- there's trailing payments that
18 come in to that like say Rural Health. Rural
19 Health would get payments that -- for services
20 that you rendered there for potentially a year or
21 more after you left, right?

22 A. Could.

23 Q. Yeah. I call those trailing payments. Do you
24 call them something else?

25 A. Trailing payments will do. But there were some

6/29/2022

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1 have never known that monies were being
2 misapplied.

3 Q. Okay. So have you received the check and the
4 credit for the services from the BlueCross?

5 A. Yes.

6 Q. Okay. So you've -- you've gotten the money,
7 right? And so an adjustment was made?

8 A. The adjustment was made based on me complaining.

9 Q. Well, that doesn't matter. You've got the money,
10 right?

11 MS. POLVI: Object to the form.

12 A. But I do think it matters.

13 Q. Well, you can think what you want to. You have
14 the money, right?

15 A. Yes.

16 Q. Okay. So Rural Health has not detained any of
17 your money; you have it, correct?

18 A. They detained it for a while.

19 Q. You have the money, right, sir?

20 A. I do now.

21 Q. Thank you. And you also filed a police report
22 with Aiken, didn't you?

23 A. Yes.

24 Q. Why?

25 A. Because my attorney wrote a letter to you to get

6/29/2022

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1 paid back as per BlueCross. Because BlueCross
2 sent out, in October of 2021, a stack I provided
3 to my attorney of EOBs instructing the client not
4 to pay this bill, that they paid the wrong
5 provider and they're retrieving the money. This
6 was a year afterwards.

7 Q. Okay.

8 A. So I had to push BlueCross BlueShield, I would
9 just say, to take care of that.

10 Q. That's fine. So both occurrences are BlueCross
11 BlueShield not sending the money to you?

12 A. Sending the money to Rural Health, yes.

13 Q. Okay. And so you've updated BlueCross BlueShield
14 of where you are as a provider?

15 A. Yes.

16 Q. And so these issues with BlueCross BlueShield not
17 properly inputting the notification of wherever
18 you were, there's two of them that you're
19 referring to?

20 A. I think there was 19 of them with Mr. Watts and
21 there was one with a check that actually covered
22 one, two, three, four patients. So there were
23 multiple dates of service on the four patients.
24 The 504 was multiple patients. The other with
25 Mr. Watts was 19 different EOBs I got where it

6/29/2022

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1 said that. Because they received -- sent to
2 mother, mother in turn printed them out, brought
3 them to me.

4 Q. Okay. So but the 504 you have? The \$504.00?

5 A. I do now.

6 Q. Okay. And when did you receive it?

7 A. I'm not sure. I'm just aware that I received it
8 because I marked it. I don't have the date on my
9 head right now.

10 Q. Well, do you have a guess?

11 A. Okay.

12 Q. I mean, you've sued Rural Health for alleged
13 conversion of \$504, so I think I need the date
14 from your, sir.

15 A. I'm gonna say February of 2022.

16 Q. Okay. So when do you allege that the conversion
17 occurred?

18 A. The date on the check was in 2021. Because my
19 first step in dealing with that was I went to my
20 attorney to say this is what went on.

21 MS. POLVI: Well, and don't interject anything of
22 discussions with counsel.

23 THE WITNESS: I'm not. I'm just notifying you, that's
24 all I'm saying.

25 MS. POLVI: Could we go on a quick comfort break,

6/29/2022

EDGAR JOE HOLT, JR.

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1 Q. But as far as money you say is yours, you don't
2 have any evidence that Rural Health has any of
3 that money, correct?

4 MS. POLVI: Object to the form.

5 A. I have no evidence to support that other than a
6 deposit check that shows their stamp on the back.

7 Q. And you admit that you have the money as of
8 February 20 of '22? Gotta answer.

9 A. Yes.

10 Q. Okay. Thank you.

11 A. I'm sorry. I'm sorry.

12 Q. And you don't have any knowledge as to what Rural
13 Health's system does as far as checks received
14 and whether they're deposited the same day as
15 receipt, do you?

16 A. I don't know their procedure.

17 Q. All right. And you don't know if EOB's accompany
18 every check on that same day when it's received,
19 do you?

20 A. I get mine that way, so no.

21 Q. Okay. All right. So but you don't know how
22 Rural Health does their accounting, do you?

23 A. No.

24 Q. And you don't know how many checks they receive
25 from BlueCross BlueShield in a normal week, do

6/29/2022

EDGAR JOE HOLT, JR.

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1 you?

2 A. No.

3 Q. Okay. And the only insurance company at issue in
4 this matter that you've alleged regarding this
5 504 check is BlueCross BlueShield, right?

6 A. That is correct.

7 Q. And the other issue regarding the Owen young man,
8 and I hate to use a minor's name on the record,
9 but I think you referred to it as Owen, you don't
10 have any evidence that Rural Health got any Owen
11 money, do you?

12 A. Yeah, they got 19 different claims that were
13 instructed by BlueCross BlueShield to not pay me
14 directly -- mama not to pay me directly because
15 they were going after it to collect. And that
16 was after I told BlueCross that I was going to
17 have to file a complaint with the insurance
18 commissioner because the matter wasn't getting
19 solved.

20 Q. But you've -- you -- that matter is resolved,
21 isn't it?

22 A. I still haven't seen the money.

23 Q. You don't have the money. How much money are you
24 talking about?

25 A. About \$2,800.

6/29/2022

EDGAR JOE HOLT, JR.

ELECTRONICALLY FILED - 2024 Aug 28 4:18 PM - AIKEN - COMMON PLEAS - CASE#2021CP0201525

1 Q. And that's an issue that you're working with
2 BlueCross BlueShield about?

3 A. I'm having to talk to them about it, yes.

4 Q. Okay. And that's BlueCross BlueShield?

5 MS. POLVI: Object to the form.

6 A. Yes.

7 Q. Thank you, sir. All right. Any other matters
8 that were in your conversion category?

9 A. No. No.

10 Q. Sir, I know you mentioned your sarcasm earlier.
11 Do you find it ironic that the federal government
12 and the state government audited you and you owed
13 them thousands upon thousands of dollars that you
14 had to pay over time and then you went and filed
15 a police report for a \$504 check that was -- that
16 was sent to Rural Health by BlueCross BlueShield?
17 Do you find any irony in your position?

18 MS. POLVI: Object to the form and that's badgering at
19 this point. I'm going to instruct my client not
20 to answer that question.

21 MR. MOODY: You're instructing him not to answer if he
22 finds any irony in the fact that he doesn't pay
23 taxes and he files a police report over a \$504
24 check?

25 MS. POLVI: Object to the form. I mean, you can ask

6/29/2022

EDGAR JOE HOLT, JR.

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1 nothing gets done at work. I had a family, I had
2 bills to pay, I had insurance for their medical
3 care that I needed to continue, so I just did my
4 best to stay away from the man as much as I
5 could. And then he sent -- he sent inappropriate
6 pictures to me that were sexually suggestive.

7 Q. You have those?

8 A. I can give you an example of one.

9 Q. Do you have them?

10 A. Oops, I'm sorry, I flipped that. That was after
11 his crunch. If you look at the top, it'll say
12 KJ, which is Ken Jones.

13 Q. Yes, sir. Okay.

14 A. So if you are dealing with a man who professes to
15 be gay and he grabs a male, not a female, and
16 then you get that, I just found that to be
17 disgusting.

18 Q. Okay.

19 A. I found it to be inappropriate. I felt violated.

20 Q. All right, sir. This -- the date of this, it
21 says -- I take it it's a screenshot?

22 A. It's a text he sent.

23 Q. Okay. Screenshot of a text. And the date of it
24 is October 12th of 2017 at 6:51 p.m., correct?

25 A. Yes.

6/29/2022

EDGAR JOE HOLT, JR.

ELECTRONICALLY FILED - 2024 Aug 28 4:18 PM - AIKEN - COMMON PLEAS - CASE#2021CP0201525

1 Q. And this -- this text was sent after you said he
2 allegedly grabbed you, right?

3 A. He grabbed me.

4 Q. All right. So when I'm looking at this, and
5 we'll -- since we're looking at it, Ms. Kim,
6 we'll mark it as 1.

7 (Defendant's Exhibit Number 1 was marked for
8 identification purposes.)

9 Q. This is -- you know, right now is the first time
10 I've seen this, sir. You hadn't produced this
11 previously. And it says, "New Amazon bookbag.
12 My sister-in-law just sent this to me, LOL." Is
13 that your --

14 A. No, that's his comment.

15 Q. Okay. The bubble to the right says "OMG."

16 A. Oh my God.

17 Q. That's you?

18 A. Yes.

19 Q. "OMG." And below that it says, "You ain't
20 right." Okay. What happened after that? Any
21 other comments?

22 A. No.

23 Q. Do you have any other text messages?

24 A. I didn't text much to him at that point. That
25 was initiated by him, not me.

6/29/2022

EDGAR JOE HOLT, JR.

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1 Q. Okay. So the other occurrence happened before
2 that text. So the other occurrence you just
3 testified to happened how much in time before
4 this text?

5 A. Probably a month.

6 Q. Okay. So around September of 2017 is the -- the
7 hug/nipple twist, whatever you described?

8 A. Yes.

9 Q. Okay. I'm sorry, I was trying to process as fast
10 as I could.

11 A. I understand. I --

12 Q. So --

13 A. Yeah.

14 Q. All right. So that was September of 2017 and
15 October of 2017. All right. And Lisa Lewis was
16 the HR director at that time?

17 A. That is correct.

18 Q. All right. And since that time of you reporting
19 to Lisa Lewis, did Dr. Jones touch you physically
20 to make you -- I can't remember the word you --

21 A. Uncomfortable.

22 Q. -- uncomfortable since October or September of
23 2017?

24 A. I made sure that that didn't happen.

25 Q. Okay. All right. So the answer is no?

6/29/2022

EDGAR JOE HOLT, JR.

ELECTRONICALLY FILED - 2024 Aug 28 4:18 PM - AIKEN - COMMON PLEAS - CASE#2021CP0201525

- 1 A. Yeah.
- 2 Q. Okay. Thank you, sir.
- 3 A. The only -- may I interject?
- 4 Q. Sure.
- 5 A. I don't know. I'm trying not to mess up the
- 6 procedure.
- 7 Q. No, sir. My -- what I've asked you to do is to
- 8 tell me the truth today.
- 9 A. Yes.
- 10 Q. Okay.
- 11 A. Yes.
- 12 Q. And the full truth.
- 13 A. Yes.
- 14 Q. So yes, you can add.
- 15 A. Okay. Prior to that I went through a period of
- 16 time while I was at Clyburn where I was being
- 17 treated by a group called locum tenens, are you
- 18 familiar -- you're familiar with that?
- 19 Q. I know what locums are, yes.
- 20 A. Okay. Locum tenens is a staffing thing for
- 21 Clyburn.
- 22 Q. Okay.
- 23 A. They use them a lot.
- 24 Q. Okay.
- 25 A. I went in with an upper respiratory condition,

6/29/2022

EDGAR JOE HOLT, JR.

ELECTRONICALLY FILED - 2024 Aug 28 4:18 PM - AIKEN - COMMON PLEAS - CASE#2021CP0201525

1 Jones. So I'm setting the stage. Dr. Jones, I
2 asked Dr. Jones one day, because I sit in my work
3 like this talking to clients, listening to kids,
4 and working with parents. I would sit. Well, I
5 couldn't sit because all of that was coming out
6 the back end, out the rectum. When it did that,
7 it burned. It's like abdominal acid, it comes
8 out, it burns. I asked him to check because I
9 was in a great amount of pain and yet I was
10 trying to do my job there at the clinic because I
11 needed the job. He did a rectal exam without
12 lubrication. Rubber glove, no lubrication. So
13 he stuck it in trying to check I guess for
14 hemorrhoids or what, but there was no
15 lubrication. And I know in talking to Dr.
16 Daniels and others in the -- at the campus, at
17 the clinic, that you're supposed to use
18 lubrication if you enter those points of entry.
19 There was no lubrication used. I screamed and
20 yelled, "Pull it out," because it was
21 excruciating pain. I was already in pain and his
22 actions just escalated the pain even further.
23 From that day until the day I left, it was a
24 humiliating joke that Jones did walking around
25 the building, unprompted by me, but he would

6/29/2022

EDGAR JOE HOLT, JR.

ELECTRONICALLY FILED - 2024 Aug 28 4:18 PM - AIKEN - COMMON PLEAS - CASE#2021CP0201525

1 holler out, "Pull it out, pull it out," and then
2 just start laughing as he walked away from me.
3 And it wasn't walking away from me like we were
4 in conversation. It was literally we could be
5 passing in the hall and he would just do that,
6 inappropriately humorous. I found it to be
7 tremendously humiliating because you say it in
8 front of patients. You don't know who knows and
9 doesn't know -- who doesn't know. And "pull it
10 out" means this guy just stuck a finger up my
11 butt and didn't put lubrication on it. The
12 ladies down in OB get better treatment than I did
13 by this Dr. Jones, the same guy who pinches my
14 nipples, presses against my back, and sends me
15 elephant scrotum as a book bag. So I just found
16 all of that to be totally inappropriate. And it
17 continued from Dr. Jones from day one till I
18 left. Well, not day one, but from that event of
19 the exam. And I found it to be totally
20 inappropriate and unprofessional on his part to
21 do it when he knows the procedures.

22 Q. And so the date of that exam, was that in 2016?

23 A. Yes.

24 Q. Do you recall what month in 2016?

25 A. I'll have to look up my medical records to get

6/29/2022

EDGAR JOE HOLT, JR.

ELECTRONICALLY FILED - 2024 Aug 28 4:18 PM - AIKEN - COMMON PLEAS - CASE#2021CP0201525

1 A. I made that report several times to Ms. Lewis
2 because the comment "pull it out" kept continuing
3 in the hallways. So it was -- it was like a
4 retraumatization of what went on. And it was
5 just a constant reminder of inappropriateness.

6 Q. Okay. And when is the last time you complained
7 to someone at Rural Health about the "pull it
8 out" comment?

9 A. Probably January of 2020. I gave up after then
10 because nothing was occurring. And that's when I
11 chose just to do as best I can to stay away.

12 Q. Who did you complain to in January of 2020?

13 A. Well, since at that point he was the medical
14 director, I had to go to -- I guess it would be
15 Ms. Alford, Stephanie Alford.

16 Q. I don't want you to guess. Do you recall
17 specifically making a complaint to someone?

18 A. A written complaint, no.

19 Q. Okay.

20 A. A discussion, yes.

21 Q. With whom?

22 A. Stephanie Alford, the current HR director at the
23 time.

24 Q. When was this?

25 A. This had to be January 2022 (sic).

6/29/2022

EDGAR JOE HOLT, JR.

ELECTRONICALLY FILED - 2024 Aug 28 4:18 PM - AIKEN - COMMON PLEAS - CASE#2021CP0201525

1 kind of were given walking papers for really no
2 reason other than change.

3 Q. Okay. Did they give you a severance package or
4 anything?

5 A. Yeah, you got a small severance package, but you
6 got a severance package.

7 Q. Okay. What does small severance package mean?

8 A. A couple of thousand.

9 Q. Okay. And during that whole period of time you
10 had your private practice on the side?

11 A. Very little of it, because you worked five and a
12 half, six days a week.

13 Q. Okay.

14 A. So you didn't have a lot of time for it. I mean,
15 you could do an assessment that comes in and then
16 refer it out or something, but not a lot.

17 Q. Okay. So you did your private practice for how
18 long from 2013?

19 A. 2013 until 2014, September, when I came aboard at
20 Rural Health.

21 Q. Okay. So that is your first employment with
22 Rural Health or any other affiliated entity?

23 A. Yes.

24 Q. Who hired you?

25 A. Ms. McClain.

6/29/2022

EDGAR JOE HOLT, JR.

ELECTRONICALLY FILED - 2024 Aug 28 4:18 PM - AIKEN - COMMON PLEAS - CASE#2021CP0201525

1 Q. How did you learn of Rural Health?

2 A. Her medical director reached out to me, wanted me
3 to come aboard and do some things for him.

4 Q. Who was the medical director that reached out?

5 A. Fred Worlax was his name.

6 Q. Okay. And what position were you hired for?

7 A. The director of behavioral health services.

8 Q. How long did you hold that position?

9 A. Two plus years.

10 Q. What position did you hold after that?

11 A. Behavioral therapist for the pediatric unit.

12 Q. Is that a reassignment, demotion, what is that?

13 A. I think it was a reassignment in my
14 interpretation of it based on what I was told by
15 Dr. Boyd. They had just hired a medical director
16 or not -- a psychiatrist and they wanted an MD to
17 run the department. Her name was Dr. Salas.

18 Q. Female?

19 A. Yes.

20 Q. Dr. Boyd male or female?

21 A. Female.

22 Q. What were your responsibilities as the director
23 of behavioral health at Rural Health?

24 A. Develop programs, supervise staff, as well as
25 having a -- my contract was supposed to have a

6/29/2022

EDGAR JOE HOLT, JR.

ELECTRONICALLY FILED - 2024 Aug 28 4:18 PM - AIKEN - COMMON PLEAS - CASE#2021CP0201525

1 four session per day. It was kind of like half
2 your day was supposed to be spent in clinical and
3 half your day was supposed to be spent in
4 administration. When I came aboard, Dr. Boyd
5 indicated to me that you will see ten patients a
6 day. So there really was no time to do any kind
7 of administrative responsibilities.

8 Q. So it was pretty much a clinical practice?

9 A. Pretty much.

10 Q. And Dr. Boyd was your supervisor?

11 A. Yes.

12 Q. Where did Dr. Worlax go?

13 A. He stepped away and went -- he was doing side
14 work with some of the home based health systems
15 in addition to his work there. I think Agape was
16 one of them that he did. I mean, Dr. Fischbach
17 had side business with several of the, I call
18 them doc in a box, these doc shop spots. So he
19 did that in addition to -- Fischbach also did
20 home based health where he was a medical director
21 for several groups. So Fischbach and Worlax did
22 the side business as well as what you and I call
23 the practice.

24 Q. Okay. So your position was a full-time position?

25 A. Yes.

6/29/2022

EDGAR JOE HOLT, JR.

ELECTRONICALLY FILED - 2024 Aug 28 4:18 PM - AIKEN - COMMON PLEAS - CASE#2021CP0201525

1 talk to your physician about this, that and the
2 other.

3 Q. Okay.

4 A. I feel -- I felt like my role was to help them
5 generate questions --

6 Q. Yes, sir.

7 A. -- to go back to the physician with.

8 Q. For the children that you saw, what would you say
9 the average -- what were the ages?

10 A. Oh, I see -- well, pediatrics would not prescribe
11 ADD meds until six years of age, so I might see a
12 four year old --

13 Q. Okay.

14 A. -- all the way up to 18 because that's the last
15 time peds saw them before they went to adult.

16 Q. Okay. So you were just in pediatrics?

17 A. When I first started there, I was it, I was
18 everything.

19 Q. Okay.

20 A. When they moved me to pediatrics, then I took a
21 spot on the floor, a small kind of cubbyhole kind
22 of office, and that's where I stayed.

23 Q. Okay. In what -- what time were you moved to
24 pediatrics?

25 A. I'd say 2016.

6/29/2022

EDGAR JOE HOLT, JR.

ELECTRONICALLY FILED - 2024 Aug 28 4:18 PM - AIKEN - COMMON PLEAS - CASE#2021CP0201525

1 adult therapist, I was your child therapist, I
2 was everything. So we would do that.

3 Q. So in regards to my question, did you get along
4 with colleagues in the building?

5 A. Yes.

6 Q. Did you have any people in the building that you
7 did not get along with?

8 A. Well, obviously, Dr. Jones would be one that I
9 stayed clear of as best I could. I think he
10 would tell you we got along. I would tell you I
11 avoided him as much as I could. Dr. Fischbach
12 and I got along. But Dr. Fischbach was a
13 challenge, so I kind of kept my distance from
14 him.

15 Q. Dr. Fischbach was a challenge or challenged? I
16 didn't --

17 A. Was a challenge.

18 Q. Why is he a challenge?

19 A. Just he has his opinions and they're very strong.

20 Q. What opinions are strong that caused you to keep
21 your distance?

22 A. When I was a patient of Dr. Fischbach's, I asked
23 for a more current treatment plan on diabetes. I
24 wear a monitor on me. And it just never
25 happened. And so I went to Dr. Jones and I

6/29/2022

EDGAR JOE HOLT, JR.

ELECTRONICALLY FILED - 2024 Aug 28 4:18 PM - AIKEN - COMMON PLEAS - CASE#2021CP0201525

1 noticed that if I go to Dr. Jones, then that
2 caused Dr. Fischbach and Dr. Jones to fight over
3 who got me as a patient. And so I asked could I
4 be just transferred off site. And I went to a
5 Dr. Vaughters, who gave me a more, can I use the
6 term more effective treatment plan. So I went
7 from six pills a day to one --

8 Q. Okay.

9 A. -- and to the monitor.

10 Q. Okay.

11 A. Which gives me control of my eating habits. I
12 kind of see where my blood sugars are at the time
13 I eat without sticking myself all the time. So I
14 preferred that, I liked that idea. It was -- it
15 was an unusual group of personalities there
16 because when you would have the pharmaceutical
17 reps come in and feed them and do their little
18 training exercises, I would notice that Dr.
19 Fischbach was never there for the training
20 exercises but you would see Dr. Jones there.
21 When I asked Dr. Jones can you take over
22 treatment of that piece, it came to a point where
23 I just decided can I have somebody off site, and
24 Jones agreed to that and said yeah. I tried to
25 use the staff on -- in the building because there

6/29/2022

EDGAR JOE HOLT, JR.

ELECTRONICALLY FILED - 2024 Aug 28 4:18 PM - AIKEN - COMMON PLEAS - CASE#2021CP0201525

1 A. She was the executive manager. So she kind of
2 functioned in a variety of roles.

3 Q. And what year was this?

4 A. Oh, this had to be -- I was in the middle of the
5 illness so that'd be 2015, 2016, that period of
6 time.

7 Q. And who gave you a diagnosis of celiac disease,
8 sir?

9 A. Dr. Tau and Dr. Yingling from Doctors Hospital.
10 They're part of the HCA group over in Augusta.

11 Q. Are you on medication for it?

12 A. Not at this point. It's basically a gluten free
13 diet.

14 Q. It's a don't eat gluten, right?

15 A. It started out not that way but it has gotten to
16 the point that I'm managing it by not eating
17 gluten or avoiding gluten as much as possible.

18 Q. Certainly. Do you have any issues with dairy?

19 A. Some. Not a lot but some.

20 Q. So it is a condition that's triggered by what you
21 eat?

22 A. It's a condition that started because of the
23 antibiotic stripping the digestive system. And
24 when it does that, then the acid hits directly on
25 your intestines and therefore there's no coating

6/29/2022

EDGAR JOE HOLT, JR.

ELECTRONICALLY FILED - 2024 Aug 28 4:18 PM - AIKEN - COMMON PLEAS - CASE#2021CP0201525

1 the antibiotics that --

2 A. Dr. Tau at -- well, that was the only thing
3 different. So Dr. Tau was the
4 gastroenterologist. He initially thought it was
5 cancer. And then when he went back in and looked
6 through the upper GI and the lower GI, he said,
7 no, this is celiac. He said you -- because I
8 asked him, I said, could it be Crohn's, could it
9 be this, that and the other. And I remember
10 going into a meeting with Dr. Boyd and she was
11 telling me, that's when I was told that you're
12 going to go to peds, no change in pay, we want
13 you to do the ten hours that I've wanted you to
14 do, and Dr. Salas is going to take over
15 leadership. And I told her then, I said I have
16 celiac and that's what the doctors have
17 concluded. And her response to me was good, it
18 could have been so much worse than that. And I
19 was like, well, it's still, how would you say, a
20 challenge to keep up with.

21 Q. Yeah, but you -- I think you would agree with me
22 that cancer would be much worse?

23 A. I'm not arguing that point at all.

24 Q. There we go. All right. So what year was that,
25 2015?

6/29/2022

EDGAR JOE HOLT, JR.

ELECTRONICALLY FILED - 2024 Aug 28 4:18 PM - AIKEN - COMMON PLEAS - CASE#2021CP0201525

1 about everything.

2 A. Okay.

3 Q. So what is the distance between restroom
4 facilities?

5 A. Twenty-five, 30 feet.

6 Q. Okay. Twenty-five or 30 feet. That's five
7 yards. You're familiar with football, right?

8 A. Uh-huh.

9 Q. That's five to six yards.

10 A. And when you have celiac, you have to dash to the
11 bathroom.

12 Q. Okay. So five to six yards --

13 A. There are times that it comes on you that you
14 don't know it's coming.

15 Q. Okay. And that's fine. So other than dashing to
16 the bathroom, what have you done to help with
17 your celiac condition? I mean, it's -- it's
18 based upon what you eat, right?

19 A. Major, yes. That and the pain medicine that you
20 use, the RectiCare.

21 Q. Okay. All right. So but as far as the use of
22 restroom facilities, there's, you know, five to
23 six yards between the restroom facilities. I
24 mean, there are people that wear garments to help
25 control. Did you ever wear garments to help

6/29/2022

EDGAR JOE HOLT, JR.

ELECTRONICALLY FILED - 2024 Aug 28 4:18 PM - AIKEN - COMMON PLEAS - CASE#2021CP0201525

1 control?

2 A. I did at times.

3 Q. Okay. All right. So --

4 A. When it was in its worst state I did.

5 Q. Certainly. I mean, but they're available at the
6 store, many people have, you know, buy garments
7 to help control that, so. And your dispute and
8 claim of discrimination is that the closest
9 bathroom the ladies put on it, it said "Ladies
10 Room." Is that your complaint?

11 A. My complaint is when you put that sign on without
12 discussing it with me, and they did not, and you
13 see the sign, and I go to Lisa Lewis and them
14 upstairs, management upstairs, and say this feels
15 discriminatory, Gigi looks at me and says,
16 "You're right, it is. I'll go down and tell them
17 to take it off." She goes down, the sign
18 disappears. Because it's humiliating, it's
19 embarrassing.

20 Q. What --

21 A. To -- to be the only male that every patient
22 comes up and sees and sees the sign, you just
23 kind of look at it because that is a unisex
24 bathroom, it is not built to be a female
25 bathroom, it was built to be a bathroom shared by

6/29/2022

EDGAR JOE HOLT, JR.

ELECTRONICALLY FILED - 2024 Aug 28 4:18 PM - AIKEN - COMMON PLEAS - CASE#2021CP0201525

1 all. And it's a bathroom that you don't have to
2 go with the patients into theirs. If they have
3 illnesses and stuff, you don't have to go into
4 theirs to use the bathroom. Whereas I ended up
5 having to go across the hall because it was
6 closer. And if I was in a rush, then I had to do
7 that. So it was -- for the celiac, there were
8 not a lot of accommodations made. It was almost
9 obstacles thrown in the way. And it was all
10 about them rather than us. And when Gigi went
11 downstairs and told them to take the sign off,
12 and they did, and I was told the sign would not
13 come back, and then a matter of a couple of days
14 later, the sign is back up with Dr. Fields'
15 signature on the bottom, "As per Dr. Fields."

16 Q. Okay. And did anybody prevent you from entering
17 the door?

18 A. If you enter the door, you create a conflict.

19 Q. No, sir. Did anybody prevent you from entering
20 the door? That's my question.

21 A. No.

22 Q. Thank you. So somebody put a sign up that said
23 "Ladies Room." Did you obey the sign?

24 A. For the most part. I had no choice if I wanted
25 to keep peace on the unit.

6/29/2022

EDGAR JOE HOLT, JR.

ELECTRONICALLY FILED - 2024 Aug 28 4:18 PM - AIKEN - COMMON PLEAS - CASE#2021CP0201525

1 Q. What -- you're drawing your own conclusion.

2 A. No, I'm just saying the conflicts dropped if --
3 the conflicts reduced if I did not go to that
4 bathroom.

5 Q. Fine, sir. But nobody prevented you from going
6 in the bathroom, right?

7 A. No.

8 MS. POLVI: Object to the form.

9 Q. Thank you. And it was a temporary piece of paper
10 that said "Ladies room," right?

11 A. Except it came up again and again. So therefore
12 it was a continuous act.

13 Q. Is it a piece of paper that somebody put up on
14 the door?

15 A. By Dr. Fields, the pediatric director.

16 Q. Okay. Is it a piece of paper that Dr. Fields the
17 pediatric director put on the door?

18 A. I would guess so --

19 Q. Okay.

20 A. -- since it has her name on it.

21 Q. The only reason I said that is because you told
22 me. So it's a piece of paper, right?

23 A. Yes.

24 Q. Did they put a permanent sign on the door that
25 said "Ladies Room"?

6/29/2022

EDGAR JOE HOLT, JR.

ELECTRONICALLY FILED - 2024 Aug 28 4:18 PM - AIKEN - COMMON PLEAS - CASE#2021CP0201525

1 that your office?

2 A. Yes.

3 Q. All right. Do you see the red arrow and the red
4 circle, is that the -- is that the bathroom you
5 said the ladies put the sign on --

6 A. Yes.

7 Q. -- with the red circle? Do you see the black
8 arrow? Isn't there a closer bathroom to your
9 office than --

10 A. But that's the public bathroom.

11 Q. Okay. But it's a closer bathroom, right?

12 A. It's the public bathroom. And I would use it as
13 well as use the one in the back of the building
14 because I -- when I go pick up a patient and have
15 to come out of my office, as you described --
16 well, I lost it. When I would have to go out of
17 my office, I would go down the hall, pass what
18 you and I call the kids bathroom, which is where
19 the kids would pee on the floor and the kids
20 would make the mess, and then would go down to
21 right there where you pick up the patient where
22 the circle bathroom is.

23 Q. Yeah.

24 A. Okay. Right there is where you pick up patients
25 and bring them back and bring them in.

6/29/2022

EDGAR JOE HOLT, JR.

ELECTRONICALLY FILED - 2024 Aug 28 4:18 PM - AIKEN - COMMON PLEAS - CASE#2021CP0201525

1 MS. POLVI: Object to the form.

2 A. I saw more patients than the entire department so
3 to get that done, my supervisor, Dr. Salas,
4 understood that.

5 Q. Would you agree with me that you had difficulty
6 completing patient charts in compliance with
7 Rural Health policy?

8 MS. POLVI: Object to the form.

9 A. I've answered it.

10 Q. You agree with me that you didn't complete the
11 charts?

12 A. I would run behind.

13 Q. Okay. So you agree that you did not complete the
14 charts in accordance with policy?

15 MS. POLVI: Object to the form.

16 A. Because they loaded up my schedule more so than
17 the other providers combined.

18 Q. That's fine. I mean, you've got an explanation.
19 But the answer to the question is yes?

20 A. Yes.

21 Q. Thank you. You had some charting issues with
22 inaccurate information in patients' charts,
23 didn't you, sir?

24 A. No, not that I'm aware of.

25 (Defendant's Exhibit Number 3 was marked for

6/29/2022

EDGAR JOE HOLT, JR.

ELECTRONICALLY FILED - 2024 Aug 28 4:18 PM - AIKEN - COMMON PLEAS - CASE#2021CP0201525

1 would be where they would see their COVID
2 patients initially, and then they brought them
3 into the building. And the dental staff would
4 come and manage the front desk. But they put the
5 positive patients across the hall from me. I
6 have high blood pressure, I have diabetes. Both
7 are high risk for COVID. Was I -- when Dr. Jones
8 would come in to do the assessment of patients
9 who were positive, he would come in in a gown, he
10 would have a hood, a mask, kind of one of those
11 plastic shields, as well as having an N95 or a 95
12 mask, N95 mask. We would ask for them. I asked
13 Ms. Williams, the director of nursing, when can
14 we get them. Had never got an answer. But you
15 put these patients across the hall from me. So
16 if you put -- so we go -- April, somebody brings
17 pizza to the building. And in the process,
18 ladies that brought the pizza -- it was one of
19 those do-gooder kind of activities, some nice
20 ladies were doing a nice thing for the medical
21 staff. We were there, we got pizza for lunch.
22 The lady made me a mask. It was -- it wasn't an
23 N95, but it was a mask with stethoscopes on it
24 and herats. It was kind of a cute, warm, fuzzy
25 mask. Because we didn't get them. What we got

6/29/2022

EDGAR JOE HOLT, JR.

ELECTRONICALLY FILED - 2024 Aug 28 4:18 PM - AIKEN - COMMON PLEAS - CASE#2021CP0201525

1 was the sterilized masks that you use in a
2 surgical center, which had no protection
3 qualities at all. And you hear that on TV, you
4 hear that everywhere. Those are great in a
5 sterilized room. They're not great in what you
6 and I call normal settings; they don't work. So
7 they decided to put the patients across the hall
8 from me. Well, if you're going to do that, then
9 I need the PPE stuff. Why? Because you're
10 putting myself at risk, a higher risk than you're
11 putting the other docs because the other docs are
12 around the hallway or in other parts of the
13 building, they don't get the active traffic of
14 COVID that Dr. Holt in his little hallway did.
15 Two, when it went on, I would ask when are they
16 coming in to clean the rooms once a patient,
17 COVID patient, left; when you gonna clean the
18 room, just like you would break down and
19 sterilize the room. That never occurred. In
20 fact, what Ms. Williams told me when I asked her
21 because I challenged it as it's not appropriate
22 because you wouldn't do that for a regular
23 patient without COVID, you would -- you would
24 wipe down the room. Well, they weren't wiping
25 down the rooms from COVID. And because of that

6/29/2022

EDGAR JOE HOLT, JR.

ELECTRONICALLY FILED - 2024 Aug 28 4:18 PM - AIKEN - COMMON PLEAS - CASE#2021CP0201525

1 little irritated with me because I didn't do what
2 she wanted done. I came up to her later to make
3 peace and said -- in her office area, I said,
4 give me an N95 and I'll trade you this mask for
5 an N95. Well, she had boxes of N95s in her
6 office that she had not distributed to the
7 patients. Her instructions to me were I'm gonna
8 give you one but do not tell anybody that these
9 N95s are here. Well, they're there and you've
10 got patients put at risk. You got letters coming
11 out saying, hey, we appreciate your commitment
12 and dedication. But the safety pieces of
13 equipment are not being distributed to the staff.
14 Then all of a sudden in May they start getting
15 distributed. So April we have the pizza deal, I
16 get the mask, I trade it, I take the unit and I
17 get an N95. And you're supposed to change those
18 N95s at least -- well, some places do every day.
19 Some places do once a week. But you need to swap
20 it out. I wasn't getting it. And I was the one
21 exposed to COVID more so than anybody else in the
22 building.

23 Q. Oh, you were exposed more so than anybody else in
24 the building? That's your statement?

25 A. Well, because they're across -- they're across

6/29/2022

EDGAR JOE HOLT, JR.

ELECTRONICALLY FILED - 2024 Aug 28 4:18 PM - AIKEN - COMMON PLEAS - CASE#2021CP0201525

1 (Defendant's Exhibit Number 8 was marked for
2 identification purposes.)

3 Q. Okay. Defendant's Exhibit 8, Employee
4 Performance Evaluation, which is Bates 35 and 36,
5 are you aware of that policy, sir?

6 A. No. This wasn't -- this wasn't in place when we
7 came aboard.

8 Q. Was it in place while you were employed?

9 A. It must have been added but it wasn't shared.

10 Q. Did you ever ask for it?

11 A. Didn't know to ask.

12 Q. Okay. So the answer is no?

13 A. Uh-huh.

14 Q. Thank you.

15 (Defendant's Exhibit Number 9 was marked for
16 identification purposes.)

17 A. Let me show you what is Number 9, Equal
18 Employment Opportunity. Are you familiar with
19 this policy, sir?

20 Q. Uh-huh. Yes. I'm sorry. I'm sorry.

21 (Defendant's Exhibit Number 10 was marked for
22 identification purposes.)

23 Q. Number 10, it's entitled Harassment-Free
24 Environment. Are you aware of this policy, sir?

25 A. I've seen it in a different format, but yes, I am

6/29/2022

EDGAR JOE HOLT, JR.

ELECTRONICALLY FILED - 2024 Aug 28 4:18 PM - AIKEN - COMMON PLEAS - CASE#2021CP0201525

1 aware of the policy.

2 Q. Fantastic. When you talk about the
3 harassment/conflicts with the ladies at the
4 front, were they in a supervisory role over you?

5 A. No.

6 Q. Were they at an equal level with you?

7 A. They think so, but no.

8 Q. Were they subordinate to you?

9 A. When you say subordinate, do you mean they
10 answered to me?

11 Q. Did they answer to you or are they -- you were a
12 licensed professional. Are they licensed
13 professionals?

14 A. No.

15 Q. Who did they report to?

16 A. The nurse manager or the PCC.

17 Q. Okay. So they reported to someone outside of
18 your department?

19 A. That is correct.

20 Q. Okay. From a hierarchy of providers in the
21 building, would you be at a higher level than
22 these individuals you identified as being
23 harassing?

24 A. I think I would be in a parallel universe, not a
25 higher order.

6/29/2022

EDGAR JOE HOLT, JR.

ELECTRONICALLY FILED - 2024 Aug 28 4:18 PM - AIKEN - COMMON PLEAS - CASE#2021CP0201525

1 A. No.

2 Q. Okay.

3 A. Not that I'm aware of.

4 (Defendant's Exhibit Number 24 was marked for
5 identification purposes.)

6 Q. All right, sir. I'm gonna show you what is dated
7 October 15, 2015. It's Exhibit 24. You see at
8 the top it says Rural Health Service Provider
9 Corrective Action Plan?

10 A. Uh-huh.

11 Q. You see that?

12 A. Yes, sir.

13 Q. It says, "Deficiency Statement: Employee fails
14 to complete tasks in order of their priority,
15 often resulting in very low priority work being
16 accomplished while high priority work remains
17 incomplete." Do you see that?

18 A. I see it.

19 Q. And you signed off on it, didn't you, sir?

20 A. Yes.

21 Q. Okay. So they put you on a corrective action
22 plan in October of 2015, right?

23 A. That was during the same time period that I was
24 seeing more patients than the entire department
25 and there was no way to get all the

6/29/2022

EDGAR JOE HOLT, JR.

ELECTRONICALLY FILED - 2024 Aug 28 4:18 PM - AIKEN - COMMON PLEAS - CASE#2021CP0201525

1 Q. According to your picture.

2 A. Well, that's according to the building and its
3 setup since the building was set up by them.

4 Q. Well, you took a picture on May 1st that showed
5 they had a social distancing sign, right?

6 A. I did that, yes.

7 Q. Okay. Thank you, sir.

8 (Defendant's Exhibit Number 43 was marked for
9 identification purposes.)

10 Q. This is 43. Sir, do you recall getting this
11 letter on June 30th?

12 A. Yes. Yes, I do.

13 Q. Did you return all the property in here?

14 A. Yes.

15 Q. And some of it was delayed, right?

16 A. Because some of it was at my house and I needed
17 to get it.

18 Q. Okay. You exercised the grievance procedure as a
19 result of your termination, correct?

20 A. Yes.

21 Q. Sir, why do you maintain that you were
22 terminated?

23 A. Because I was.

24 Q. For what reason?

25 A. Well, I was told by a lower staff, not management

6/29/2022

EDGAR JOE HOLT, JR.

ELECTRONICALLY FILED - 2024 Aug 28 4:18 PM - AIKEN - COMMON PLEAS - CASE#2021CP0201525

1 but lower staff, that the word in the building
2 was I was terminated because I called the police
3 on Ms. Alford's kid.

4 Q. Okay.

5 A. And I called the police on a reckless driver in
6 the parking lot.

7 Q. All right.

8 A. I did not know whose vehicle it was, so I could
9 not, how would you say, do that. So, yeah, so it
10 was a dark truck with tinted windows. You
11 couldn't see in, I couldn't tell who was there.
12 And I just wasn't -- I felt like I was -- it was
13 an unsafe situation.

14 (Defendant's Exhibit Number 44 was marked for
15 identification purposes.)

16 Q. All right. So Exhibit 44 is the grievance
17 procedure?

18 A. Yes, sir.

19 Q. So lower staff in the facility said that you were
20 terminated because you called the police on the
21 HR director's son?

22 A. That's what they said to me.

23 Q. Who is they?

24 A. Gabby Gaudette.

25 Q. Anybody else?

6/29/2022

EDGAR JOE HOLT, JR.

ELECTRONICALLY FILED - 2024 Aug 28 4:18 PM - AIKEN - COMMON PLEAS - CASE#2021CP0201525

1 A. That's the only one I asked. I didn't want to go
2 pursue around the building and ask more.

3 Q. I didn't ask you if you were pursuing around. I
4 just asked who told you that.

5 A. Gabby Gaudette told me.

6 Q. And nobody else. Anybody else tell you anything
7 different?

8 A. No.

9 Q. So the reason that you were terminated is Gabby
10 Gaudette said that you had called the police on
11 the HR director's son?

12 A. That's what I was told.

13 Q. Okay.

14 (Defendant's Exhibit Number 45 was marked for
15 identification purposes.)

16 Q. Show you what is Exhibit 45. Do you recall
17 putting this together?

18 A. I do.

19 Q. All right. And that's a step two grievance
20 procedure?

21 A. After I send it to Mr. Foster --

22 Q. Okay.

23 A. -- then it goes above.

24 Q. All right. I don't have anymore questions on
25 that.

6/29/2022

EDGAR JOE HOLT, JR.

ELECTRONICALLY FILED - 2024 Aug 28 4:18 PM - AIKEN - COMMON PLEAS - CASE#2021CP0201525

1 sir?

2 A. Yes.

3 Q. What is -- what is your evidence that someone at
4 RHS called DSS?

5 A. The father came to see me after meeting with Dr.
6 Soto. Indicated at 10:00 that morning he was
7 told by Dr. Soto that we do not want you to see
8 Dr. Holt, we want you to see our person. And dad
9 looked at him and the 12-year-old girl looked at
10 him, which the patient, and said, "I choose Dr.
11 Holt, I prefer Dr. Holt, I don't want to make a
12 change." At 2:00 that afternoon --

13 Q. Let me ask -- hold you -- were you present for
14 that discussion?

15 A. No. This is what father and mother relayed to
16 me.

17 Q. This is all based upon what somebody's told you?

18 A. What they said to me.

19 Q. Okay. Hearsay type stuff.

20 MS. POLVI: Object to the form.

21 A. When I checked it out with DSS, they said yes. I
22 talked to the people at Children's Place.

23 Q. I'm just saying you -- you're basing what you're
24 telling me based upon what you were told by the
25 father?

6/29/2022

EDGAR JOE HOLT, JR.

ELECTRONICALLY FILED - 2024 Aug 28 4:18 PM - AIKEN - COMMON PLEAS - CASE#2021CP0201525

1 A. What -- we've had several patients, we had
2 patients that would come --

3 Q. Don't -- don't jump to another patient. I'm
4 talking about this one.

5 A. This one, yes.

6 Q. Okay. It's all based upon what you were told by
7 someone else?

8 A. By the father and the mother.

9 Q. All right. Anything else about that?

10 MS. POLVI: Object to the form.

11 A. No.

12 Q. Okay. What evidence do you have that someone at
13 Rural Health called DSS, other than this
14 statement by the --

15 A. The people at Children's Place indicated that
16 that.

17 Q. Who?

18 A. Harris, Marilyn Harris.

19 Q. Told you what?

20 A. That they were acting on a report that came from
21 DSS from a visit at Rural Health.

22 Q. So who at Rural Health reported to DSS?

23 A. I don't know who would be there that would -- the
24 only person dad told me that was in the room with
25 him was the pediatrician. So logic would have it

6/29/2022

EDGAR JOE HOLT, JR.

ELECTRONICALLY FILED - 2024 Aug 28 4:18 PM - AIKEN - COMMON PLEAS - CASE#2021CP0201525

1 that the pediatrician would be the one to call
2 DSS unless she authorized somebody in her
3 building to call on their behalf.

4 Q. All right. So you don't know?

5 A. Don't know.

6 Q. Other than logic?

7 A. Other than Rural Health, somebody there.

8 Q. Okay. And you don't know who that may be, but
9 you've reached the conclusion that somebody at
10 Rural Health did it?

11 A. Well, that's what the father said.

12 Q. Okay.

13 A. And I was catching it from other patients when
14 they would ask where I was, and I only have six
15 miles between my current office and Rural Health,
16 that Rural Health comes back and says we don't
17 know where Dr. Holt is, we can't tell you where
18 he's at. So there is no continuity of care. And
19 if the patient chooses to follow with me, so let
20 it be that.

21 (Defendant's Exhibit Number 50 was marked for
22 identification purposes.)

23 Q. All right. I'm going to show you what's
24 Defendant's Exhibit 50. This is July 22nd, as
25 well, sir. Do you recall this letter?

6/29/2022

EDGAR JOE HOLT, JR.

ELECTRONICALLY FILED - 2024 Aug 28 4:18 PM - AIKEN - COMMON PLEAS - CASE#2021CP0201525

1 paragraph because we're running short on time and
2 I'm trying to stay within the time. And if I
3 can't, Ms. Polvi and I will have to talk about
4 what we'll do about that. I don't want to
5 prejudice myself and my client. You have alleged
6 that Rural Health engaged in disability
7 discrimination. We've talked about all that
8 today, right? That's the bathroom issue?

9 MS. POLVI: Object to the form.

10 A. Celiac issues.

11 Q. Yes, and those were 2016.

12 A. No, celiac is still there today.

13 Q. Well, certainly, but I mean it started --

14 A. I mean, you witness me having to go to the
15 bathroom as often as I have.

16 Q. That started in 2016, correct?

17 A. Based on the locum tenens.

18 Q. All right. And then the sex discrimination in
19 violation of Title VII, you -- we've talked about
20 that as well. That's the Dr. Jones' issues?

21 A. That's one of them.

22 Q. Okay. And those were back in 2017, right?

23 MS. POLVI: Object to the form.

24 A. Yeah.

25 Q. Okay. What's the other; the treatment by the

6/29/2022

EDGAR JOE HOLT, JR.

ELECTRONICALLY FILED - 2024 Aug 28 4:18 PM - AIKEN - COMMON PLEAS - CASE#2021CP0201525

1 ladies in the office?

2 A. I made some notes. May I -- I can't refer to
3 them?

4 Q. I mean you're gonna have to give them to me.

5 MS. POLVI: Just use the exhibit that we're referring
6 to.

7 THE WITNESS: Okay. All right. Thank you. Thanks
8 for redirecting me.

9 BY MR. MOODY:

10 Q. So you can't testify without having to read?

11 A. I'm sorry. It's been a while, sir.

12 Q. I mean, you experienced it, not me.

13 A. Yeah.

14 Q. It's your claim.

15 A. Yeah. Unwelcome sexual harassment by Jones.
16 Took no effective -- yeah.

17 Q. So you're just reading your complaint to me?

18 A. I'm just telling you that's -- that was --

19 Q. That's it?

20 A. That was it.

21 Q. Okay, thank you. Retaliation for Title VII, what
22 -- when did -- so if you claim the Title VII
23 event started in 2016, you were not terminated
24 until, what, 2020?

25 A. Yeah.

6/29/2022

EDGAR JOE HOLT, JR.

ELECTRONICALLY FILED - 2024 Aug 28 4:18 PM - AIKEN - COMMON PLEAS - CASE#2021CP0201525

1 Q. So four years passed?

2 MS. POLVI: Object to the form.

3 A. I was terminated because of calling the police on
4 Alford's kid.

5 Q. Okay.

6 A. And I didn't know it was Alford's kid at the
7 time.

8 Q. All right. So that applies for retaliation Title
9 VII, and retaliation ADA --

10 A. I would say --

11 Q. -- you being terminated for calling the police?

12 A. Yeah. And I would say ignoring the reports of
13 Dr. Jones' advances.

14 Q. Okay. And the defamation, what are you saying
15 that Rural Health did that was defamatory to you?

16 A. It's in the document, the parents complaints of
17 statements made by staff, MA staff.

18 Q. Okay.

19 A. Being falsely accused of incompetent in the
20 profession and engaging in conduct.

21 Q. Well, Dr. Holt, I don't need you to read the
22 claims --

23 A. I'm just saying these are --

24 Q. -- because I've got that.

25 A. Okay.

6/29/2022

EDGAR JOE HOLT, JR.

ELECTRONICALLY FILED - 2024 Aug 28 4:18 PM - AIKEN - COMMON PLEAS - CASE#2021CP0201525

1 Q. This is my chance to talk to you. What did Rural
2 Health say that you say is defamatory? It's not
3 on there. That's why I'm asking you the
4 question.

5 MS. POLVI: Object to the form.

6 A. When Ms. Peterson announces to a parent that I'm
7 racist and she does this behind my back, then I
8 find that defamatory. I work hard for a
9 reputation and for it to be destroyed by somebody
10 who's an MA, then I look at that and kind of go
11 she has no training. It's not like a peer
12 questioning me. It's somebody who just wants to
13 stir crap.

14 Q. Okay. So --

15 A. And when Ms. Alford was made aware of this, she
16 did nothing to correct it.

17 Q. To your knowledge.

18 A. I would have said when -- well, I'll put it this
19 way. When the sticker on the door came up and I
20 made Lisa aware that it returned to the door,
21 Gigi and them came down to me and talked to me.
22 In fact, they moved Dr. Fields down to the
23 Margaret J. Weston building, but they made her
24 director of pediatrics for the entire unit so
25 therefore she could continue her harassment, even

6/29/2022

EDGAR JOE HOLT, JR.

ELECTRONICALLY FILED - 2024 Aug 28 4:18 PM - AIKEN - COMMON PLEAS - CASE#2021CP0201525

1 defamatory.

2 Q. All right. Well, we get to do the law. I'm just
3 asking you what defamatory statements were made
4 and you said Ms. Peterson made this statement to
5 whom?

6 A. Shalonda. Ms. Shalonda. And as a mother of a
7 child by the name -- well, we won't bring up the
8 name.

9 Q. Ms. Shalonda?

10 A. Yeah.

11 Q. Is that her first or last name?

12 A. First name. I can't think of her last name.

13 Q. You don't know her last name. When was this
14 statement allegedly made?

15 A. She told me after I left Clyburn that she came to
16 my office in North Augusta and told me, she said
17 the reason I quit coming was because I was
18 listening to the staff there make those kinds of
19 disparaging remarks behind your back.

20 Q. And when did she stop coming?

21 A. I want to say she stopped coming somewhere around
22 2016, '17.

23 Q. Okay. All right.

24 A. Because I wondered what happened to her.

25 Q. Okay. So that's the defamatory statement

6/29/2022

EDGAR JOE HOLT, JR.

ELECTRONICALLY FILED - 2024 Aug 28 4:18 PM - AIKEN - COMMON PLEAS - CASE#2021CP0201525

1 allegedly made by Ms. Peterson; you don't have
2 any others?

3 MS. POLVI: Object to the form.

4 A. You have treatment issues that go on.

5 Q. Okay. All right.

6 A. Yeah.

7 Q. All right.

8 A. Sometimes it's not words, sometimes it's actions
9 and how things are conducted around you that
10 become defamatory.

11 Q. Thank you, sir. The negligence deals with the
12 check issue we talked about?

13 A. Yes.

14 Q. Okay. So we've all -- and the conversion is the
15 same claim, right?

16 MS. POLVI: Object to the form.

17 A. I don't think they have rights to the money that
18 I've earned.

19 Q. Right. I mean, both claims deal with the money
20 and you have the \$504 we talked about earlier.

21 A. I understand that. But it took a while to get it
22 during a period of time I wasn't getting paid.
23 So it's nice to say \$500. But that really does,
24 can I use the term demean my complaint when my
25 complaint is during the time I needed the funds

6/29/2022

EDGAR JOE HOLT, JR.

ELECTRONICALLY FILED - 2024 Aug 28 4:18 PM - AIKEN - COMMON PLEAS - CASE#2021CP0201525

1 Q. Did you provide Rural Health with an announcement
2 of where you are and the practice and location
3 and hours?

4 A. Yes.

5 Q. To whom did you provide that?

6 A. It went up to -- Carlos knew where I was.

7 Q. I'm asking --

8 A. Foster.

9 Q. -- if you provided a written document to Rural
10 Health saying this is where I am?

11 A. No, I picked -- I talked to Carlos and told him
12 this is where I'm moving to and this is what I'm
13 doing.

14 Q. All right. So how many patients?

15 A. I want to say I heard from 30 of them saying we
16 were told we couldn't find you. I have patients
17 today that tell me, Joe, I've been looking for
18 you for a while and we haven't been able to find
19 you.

20 Q. Okay. So do you have those names?

21 A. I can get them.

22 Q. Okay. Provide them to us, please, so that we
23 know.

24 A. Okay.

25 Q. So you claim that you have a contractual

6/29/2022

EDGAR JOE HOLT, JR.

ELECTRONICALLY FILED - 2024 Aug 28 4:18 PM - AIKEN - COMMON PLEAS - CASE#2021CP0201525

1 relationship with the patient?

2 A. Yeah, that's what therapy is. That's what
3 medical treatment is. It's a contractual
4 relationship between the patient, the insurance
5 company and the client.

6 Q. You have a written contract with patients?

7 A. Yeah, it's called patient -- new patient
8 application or new patient information, same
9 thing you fill out anywhere else.

10 Q. Certainly. Well, they were actually patients of
11 Rural Health, weren't they?

12 A. No, they're actually patients of themselves and
13 they choose who they go to.

14 Q. There you go. So you didn't have a contract?

15 MS. POLVI: Object to the form.

16 A. I did have a contract. I did have a --

17 Q. How so?

18 A. They had a contractual -- the patient had a
19 relationship with me.

20 Q. Okay.

21 A. By the actions of the clinic, they disrupted that
22 relationship.

23 Q. But it's not a contract.

24 MS. POLVI: Object to the form.

25 A. I'm not sure what you lawyers use for the word

6/29/2022

EDGAR JOE HOLT, JR.

ELECTRONICALLY FILED - 2024 Aug 28 4:18 PM - AIKEN - COMMON PLEAS - CASE#2021CP0201525

1 contract.

2 Q. Well, you used it. That's why I asked.

3 A. It's in here because my attorney filled out that.

4 Q. But you don't have a written contract with the
5 patient that I'm your only therapist?

6 A. No, it's by their choosing.

7 Q. Right. The patient gets to choose.

8 A. Yeah.

9 Q. Oh, certainly, okay. There we go. You have an
10 abuse of process claim. What are you -- is that
11 -- is that what you're using that a parent told
12 you? Is that the information on the hearsay?

13 MS. POLVI: Object to the form.

14 A. Let me read it. Yes.

15 Q. Okay. I mean, you're not maintaining that Rural
16 Health has an obligation legally to market for
17 you, are you?

18 A. Oh, heavens no.

19 Q. All right. Thank you. Would you agree with me
20 that taking a picture of a patient is a HIPAA
21 violation?

22 A. Not with the parent's signature.

23 Q. All right. What about the lady who had COVID
24 when he took her picture?

25 A. Took a knee.

6/29/2022

EDGAR JOE HOLT, JR.

ELECTRONICALLY FILED - 2024 Aug 28 4:18 PM - AIKEN - COMMON PLEAS - CASE#2021CP0201525

1 CERTIFICATE

2 Be it known that I, Kimberly C. Young, do hereby
3 certify that EDGAR JOE HOLT, JR. appeared before me and I
4 took the foregoing deposition at the time and place
5 aforesaid by means of stenomask with backup; that I was
6 then and there a notary public in and for the State of
7 South Carolina and that by virtue thereof, I was duly
8 authorized to administer an oath; and that the witness
9 was by me first duly sworn to testify to the truth, the
10 whole truth, and nothing but the truth.

11 I further certify that the foregoing transcript
12 represents a true, accurate, and complete transcript of
13 said deposition. This transcript may contain quoted
14 material; said material is transcribed as read or quoted
15 by the speaker.

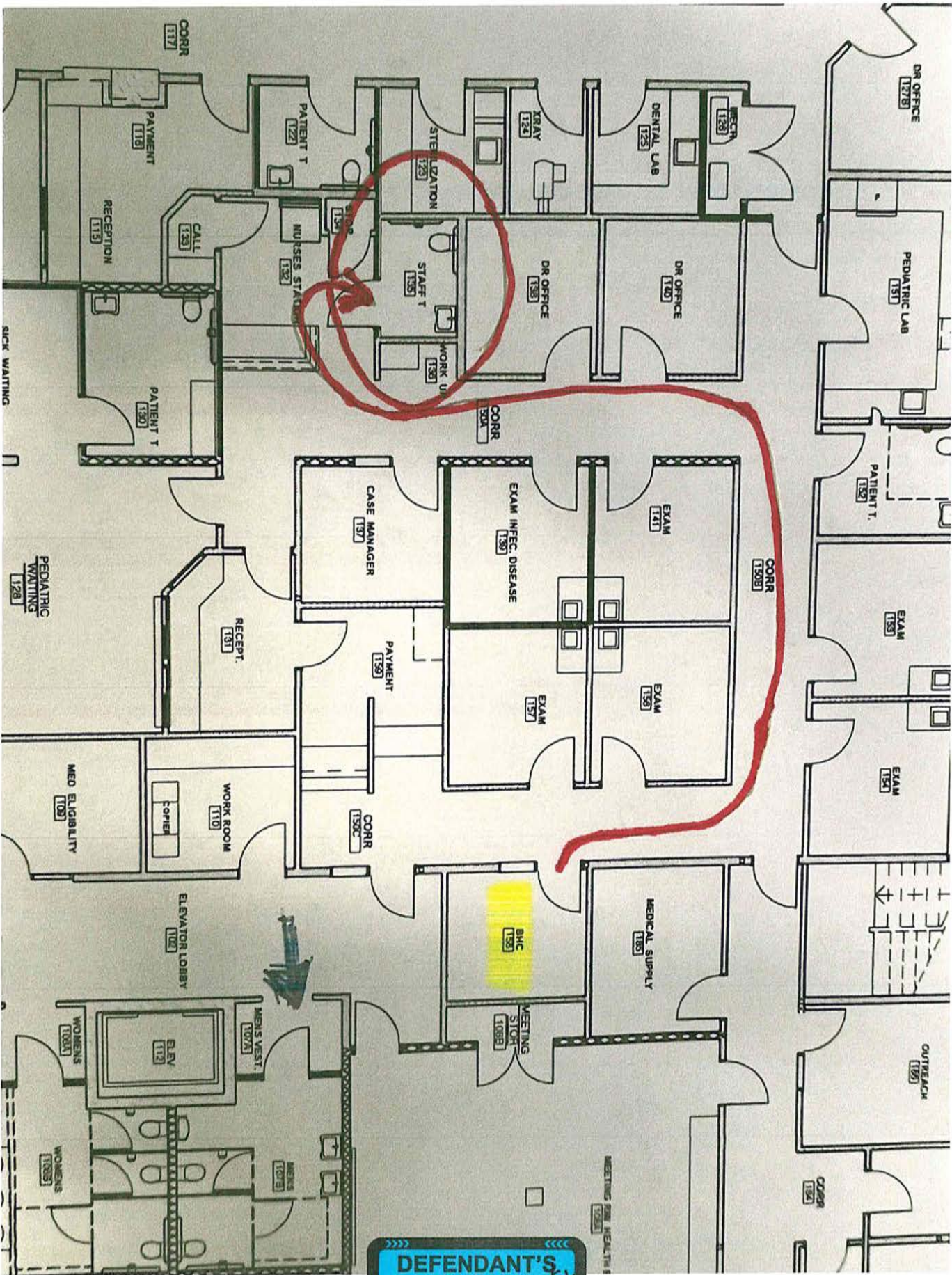
16 I further certify that pursuant to Federal Rule
17 30(f)(1), a review of this deposition was requested.
18 Should the signature of the witness not be affixed to the
19 deposition, the witness shall not have availed
20 himself/herself of the opportunity to sign.

21 I further certify that I am neither employed by
22 nor related to any of the parties in this matter nor
23 their counsel; nor do I have any interest, financial or
24 otherwise, in the outcome of this action.

25 Witness my hand and seal this 18th day of July,
2022.

26 S: /Kimberly C. Young/
27 Kimberly C. Young
28 Notary Public for South Carolina
29 My Commission Expires: 08/14/2030

ELECTRONICALLY FILED - 2024 Aug 28 4:18 PM - AIKEN - COMMON PLEAS - CASE#2021CP0201525



DEFENDANT'S EXHIBIT
2 6/29/22
Holt

EXHIBIT C

Attendance

RURAL HEALTH SERVICES

Regular attendance and punctual arrival at the scheduled work site are essential functions of each employee's job at Rural Health Services. Tardiness or absence may interfere with work processes and may necessitate reallocating work assignments.

Employees will be notified by their department manager or supervisor of the hours they are scheduled to work. The starting time is the time employees are expected to be at their duty station ready to work. Employees are expected to be present, prepared, and ready to work at their scheduled time. Employees are also expected to remain at work for their entire work schedule and any required overtime, except for break periods or when required to leave on authorized Company business. Late arrival, early departure, or other absences from scheduled hours disrupt workflow and patient service and must be avoided except in the case of unexpected illness, injury, or other emergencies.

An "occurrence" is an absence from one or more scheduled days of work or an absence of more than fifty percent (50%) of a shift. Four (4) occurrences within any rolling six (6)-month period will be considered excessive.

Supervisors reserve the right to request documentation of any illness, injury, or emergency resulting in an unscheduled absence, late arrival, or early departure.

Employees are expected to notify their immediate supervisor or the designated Human Resources Officer (if supervisor can't be reached) of any circumstances (e.g., chronic illness, ongoing personal emergency) that may necessitate excessive absences or tardiness. Any temporary accommodation for such circumstances requires the approval of the Chief Executive Officer.

Notification procedure:

All employees are expected to maintain up-to-date contact numbers for their direct supervisor and personnel file.

In addition, employees will follow the procedures below in the case of an unscheduled absence or anticipated late arrival:

1. Employees will contact their immediate supervisor as soon as possible and not later than their scheduled report time for work; and, provide the following information:

These policies and procedures do not, nor do any statements contained herein, constitute an express or implied contract of employment

DEF_000010⁰⁰⁰²⁰⁹

- a. The reason for the unscheduled absence or late arrival.
 - b. Anticipated return date or arrival time.
 - c. A list of meetings, deadlines, or work assignments that may be affected by the employee's unscheduled absence or late arrival, AND
2. Call Rural Health Services main number to provide notification of employee absence or expected late arrival as well as the following:
 - a. Employees may call before the office opens and leave a message with the answering service; employee will need to identify themselves and specify that they would like to leave a message for Human Resources.
 - b. The employee will confirm they notified their immediate supervisor or Department Head; and when the notification was made.
 - c. Advise of the expected return date or arrival time.

Unauthorized or excessive absences or tardiness will result in disciplinary action up to and including termination.

Employees who are absent from work for three consecutive days without giving proper notice to their supervisor will be considered as having voluntarily resigned.

These policies and procedures do not, nor do any statements contained herein, constitute an express or implied contract of employment

EXHIBIT D

Dr. Holt

Late Arrival (2/3/15)

Reported by PCC Angela McCall to me that provider is frequently late and patient's complain about late arrival. Arrival time 8:50 with patients schedule 8-8:30.

ACTION: I addressed Dr. Holt today in a sit down meeting at 12:30 (see email) regarding tardiness and need for punctuality.

EXHIBIT E

Peds Provider issues

- 8/17/18 pt # 94150 was taken to the back to be seen without anyone knowing. She was not on the schedule. She was told by the provider to put her on schedule after the fact. No vitals were done due to her leaving before staff new about her.
- 8/26/19 Use restroom and left fecal matter all over toilet and lid. Staff had to clean this behind him.
- 9/19/18 had to text him to inform he has a pt. (not in office) Adult med says he was up there.
- 9/24/18 pulled pt # 89057 back before staff could triage them. He was upset because he was behind. He was behind because he was out of his office for over 30 minutes and had pts waiting on him. He was upstairs. According to staff in Adult med.
- 9/26/18 Called pt # 93987 through the back door by his office. Staff was not informed to check him in or do vitals..... @ 8:18 am he was not here and pt was here and in room for 20-30 minutes. PCC had to text him to see where he was with no response.
- 10/1/18 on phone while pt was in the office
- 10/2/18 On phone while pt was in the office as well as shaving himself . Session had not started yet. Pt mother was complaining after visit
- 10/8/18 popped Pt # 115073 on the behind and pull pt ear several times as pt ambulated down hallway.
- 10/9/18 had to text him to inform he has a pt. Adult med says he was up there.
- 10/15/18 arrived at 833 am and already had 2 pt in the back ready to be seen.....informed MA that a pt was coming in a 1 pm and did not inform the PCC.....pt # 69354 was here for 6 minutes filling out paperwork and he was rushing the MA to pull them. Pt was in arrival and not fully checked in. It has been explained to the provider several times that when a chart says arrive, paperwork, financial matters are being handled. Most of the time he never lot at the Athena. One moment he said that he don't need a Huddled and then the next time he complain about not having one.
- 10/16/18 came in late a 826 am and sent an email that he will not be in at 2 pm due to court. No response from his supervisor concerning this. He came in my office x 2 and did not inform me of this. Informed by MA (KD) he told her the day before he may call out on 10/16/18.
- 10/17/18 had a lady in his office with the door close and this person was not on the schedule while he had two pts waiting to be seen. Late on this day as well.

- 12/12/18 stood in waiting room and spoke out loud on how a pt needed to see Jennifer to find out the cost to see Psy because he hears voice. This was in front of all the patients in the waiting room. Violated HIPPA
- 12/12/18 at front desk telling staff to add someone to his schedule. Does not look at schedule.
- 12/17/18 820 am still not here and pt has been in room for 20 minutes
- 12/20/18 837am pt has been here since 800 am. Provider here but nowhere to be found.
- 12/20/18 Giving information to pt on birth control. Told the pt to try Depakote meaning Depo shot.
- 12/21/18 had to text him to inform he has a pt. (not in office)
- 12/21/18 pt in room for 15 minutes while he walk around floor, lobby etc.. giving away candy. Parent was upset.
- 12/28/19 pt here at 8 am and has sat in room for 25 minutes and not seen. Provider in building but cannot find him. Had to text him again.
- 1/2/19 had to text him to inform he has a pt. (not in office) Adult med says he was up there.
- 1/3/19 went up stairs for an appt that no one knew about and he had people on the schedule. Pts were worked up and put in the room. Blew up on MA when he was found to inform pt in room waiting on him. He told Adult med PCC to call me after the fact of pt being checked in. He did not inform DON he had pts on the schedule. Providers on floor aware.
- 1/4/19 pt # 121661 and 121827 sibling on schedule for 11:30 and 2 pm. The 11:30 pt was worked up and put in the exam room to be seen. Siblings and father returned at 1:30 pm. Per father Dr Holt told them he had an a appt at 11:30 and he could not see them and to return at 1:30 pm. He would see them at the same time. Unaware that staff knew about the situation he went into the lobby and attempted to bring them in the side door of peds and did not tell staff to check 2 pm pt in.
- 1/9/19 at front desk telling staff to add someone to his schedule. Explained to him that his supervisor said no double booking as well as let him know he complained about it to her.
- 1/11 and 17 wanted to double book. Same conversation is had every time.
- 1/29/19 pt 97084 was left in the room. Noted pt and mom was in room by Krystal. Mom said she was waiting on Holt to come back. Child was having a emotional break down. Krystal found Holt to explain what was happening and he responded to her that he has already seen them and there was nothing else he could do. Provider and writer attempted to handle situation. Mom said that he was having problems being bullied at school and that she made Holt aware of it.

- 2/22/19 pt # 94041 MA informed while triaging this pt Holt came in the exam room shaving his face. He continued to do this while pt was in his office.
- 3/4/19 pt # 122323 mom called and said that Holt emailed her wanting to speak with her without the child. Unsure of what he wanted due to no documentation on previous visit concerning child. Did not know if the was personal. Mom did not want to make an appt. Inform mom that pt needed an appt and he could speak to her in another room so that it would not be in front of the child. Unsure of where he got her email from.
- 3/7/19 pt # 90156 wanted pt 90156 to be put on his schedule at 4 pm. Informed him that Dr Salas expressed on his behalf not to double book his schedule. He said he went to his supervisor and she gave permission to double book. I received no email or call as she said she would do for different situation. He went and pulled the patient back without being triaged
- 3/8/19 nowhere to be found and had to text him.
- Provider complain about his chart or lack there of.
- Pt# 105422 recently informed by mother of this pt that he called the school where she work and where this pt goes to school without her permission. She expressed that this call made her work environment very hostile. She expressed that he has violated the HIPAA law and something needs to be done. She expressed that she filed a grievance and she has not been contacted yet and she will follow up on this grievance every time she comes in here.
- 3/22/19 Pt # 121384 received a call from Arora stating this pt needed a f/u with BH but mother does not want her to see Dr Holt. Nurse expressed he was no help to her according to what the nurse expressed.
- 3/29/19 pt # 116540 and 116538 looking for Holt to confirm the next time he wanted them back. He left without confirming he was done with them.
- 4/1/19 pt # 99715 informed by pediatrician that she was told by Holt pt's CPT testing showed that he was doing well on his medication but pt has not been on meds since August 2017. He has been documenting pt is on meds for several visits.
- 4/2/19 pt # 123203 mother informed provider that Dr Holt told them that he was going to prescribe medication for depression and anxiety. Provider had to correct the mother and pt stating that he cannot prescribe and that's why the pt has to see her. This pt was told to f/u with him after being informed she was here for testing only and to f/u with Nicole.
- 4/4/19 pt # 93370 while asking pt if he still want to make his appt in the afternoon as normal. Dr. Holt said out loud "he can come in the morning, He's not in school, he dropped." This pt said "I don't like that. These people don't need to know my business. Patients were standing behind Dr Holt at that time being worked up. There were people in the waiting room who knew the patient.

- 5/13/19 pt # 121519 Parent called concerned about whether or not her child was going to get medication due to Dr Holt telling her husband on the last appt that she doesn't need medication. She just need in to be instructed. She expressed that she thought that should be something that a provider does versus him. She was under the impression that she was coming for the testing on the last visit but according to the mom there was no testing done just very little conversation. She did not take off today to come in fear of not being able to get the pt medication. Appt was moved to later this afternoon for them to make it here to be seen.
- 5/14/19 pt # 124057 sat in waiting room for 31 minute before he pulled her back. The patient after this pt came in early and was gone before this pt got here. He had no one else and he has two exam rooms to use for seeing pts.
- 5/14/19 pt# 88223 provider expressed that Dr Holt took a pt off of the provider schedule because he said that the child did not need medication anymore. Provider upset and child was brought back. Spoke with guardian who says child had been in trouble in school. See documentation from both Holt and provider for the visit on today.
- 5/21/2019 pt # 98044 sent pt down the hallway according to them the dinosaur room. The patient mom did not know where to go so they were sitting in the lab. Staff looking for Dr. Holt at the time and noted him in the lobby outside of Peds conversing with other people with patients in the back.
- 5/23/19 pt 120213 appt was at 10 am and there was not one here prior to this appt. He was not pulled back until 10:30 am which is the time this pt was scheduled to see the provider.
- 6/3/19 On today's schedule pt # 91375 and 87491 sat in the waiting room for 20 minutes before staff had to go inform Dr Holt that he had patients waiting on him.
- 6/11/19 pt # 93390 arrived on time for his appt and had to wait for 30 minutes before he was called back. He does not know who is on his schedule. We had to text him to inform him that he has patients. We do not have to do this for the other providers. His reason for being late for the pt was he was testing a pt for Dr. Salas
- 6/12/19 pt # 119314 sat for 20 minutes before staff had to look for Dr Holt for the only pt on his schedule for this afternoon. He runs to the front desk wanting her to call him or let her know every time he has a patient. He interrupts her in the mist of handling pts. He will not use Athena. My front desk has expressed that he makes her uncomfortable. We are constantly having to text him when he has pts.
- 6/13/19 Dr Holt pull his 11:00 pt (110719) back to be seen who was check in at 10:42 before getting his 10:30 pt (93627) back who was check in at 10:10. When went to tell him his 10:30 was still waiting and upset, he replied "Who is it, who did I just have, I've already seen J.J." I replied, no she is still out there. His reply "well I cannot see my screen when I'm in the room. What do you want me to do?"

- 7/26/19 provider was texted twice to inform his pt has been here for 20 minutes and still never came around to get pt. Staff had to go get provider to see pt. After second text pt had been here for approximately 55 minutes. With no one on his schedule from 2-4. The reply from provider was "I know but she is my 4 pm pt so I will take her early." Pt checked in at 3:02 PM. 1st text 3:21, 2nd text 3:39, staff went to get him at 3:49 He texted back 3:51 PM
- 7/31/19 pt # 113163 was checked out in Athena before pt was actually seen by provider. Pt was checked in at 8:46 am ad was checked out by provider At 9:01 am. Pt was still in back with the provider and not enough time for a visit.
- 8/7/19 pt # 90156 pt sat in waiting room for 44 minutes awaiting to be seen.
- 8/8/19 First, Dr Holt is telling pts that he can prescribe medications for them. This happened on yesterday with pt # 81807. Two of my staff members witnessed him doing so. Next, he starting to bring pts that are not on the schedule through the side door again. Two staff members witnessed that as well. Yesterday pt #94375 came and asked to speak to him. After staff established that she did not want an appt, approximately 10-15 minutes later the pt was seen leaving his office going back out the side door. This pt is 15 years old and no longer sees him anymore. She actually sees Green and Salas. Next, He still does not bring his pts back in a timely manner or order as I mention in the previous email. He continues to disrupt my front desk persons about whose on his schedule daily as if he chooses not to look at his own computer. He also so makes her uncomfortable by being in her personal space. She kindly make small body adjustments to remove himself from her space but he does not acknowledge that. I am unable to address these things with him due to being taken out of context.
- 8/29/19 pulled pt # 115455 back 40 minutes late. Which is the time of the Peds appt. He was not seeing any one at the time.
- 8/29/19 told pt # 104525 to come in at 1pm to be seen with her daughter. He was going to see this pt without an appt.
- 08/29/2019 pt # 96613 was not pulled back until 2:23 pm and the appt was at 2 pm
- 10/1/19 noted on pt #120213 noted that Dr Holt attempted to order medication for this pt on 9/24/19 or he copied and pasted from the 6/20/19 visit. Dr Salas was told verbally on 10//1/19.
- 10/8/19 provider continue to invade the space of the front desk staff.
- 10/16/19 pt # 74503 pt mother was upset due to this pt seeing Holt yesterday. He did not get a translator for them and they were unable to understand what was going on the whole visit. This could be a result of the front desk staff express to him to remove himself from her personal space and to allow her to work without unnecessary interruptions.
- 10/17/19 pt 74503 came in to see pediatrician today and mother expressed that the visit with Dr Holt was a problem because she or the child did not understand anything during the visit or the test he put him on. Also he documented on the wrong person in this chart. He was unable to get any of that information because this pt does not understand English very well.
- 10/22/19 pt # 124864 and 124865 decided that they did not want to see Holt anymore. They feel as if he does not help them. The sessions are about him.

EXHIBIT F

Rural Health Services, Inc.: Provider Corrective Action Plan

October 15, 2015

Dr. Joe Holt

Deficiency Statement: Employee fails to complete tasks in order of their priority often resulting in very low priority work being accomplished, while high priority work remains incomplete.

Duty 1

Assigned work is completed on time and in order of most important to least important tasks.

- **Priority:** High Priority. Failure to complete work in the appropriate time creates problems for students as well as faculty.
 - **Performance Standard:**
 - Priority 1 Tasks: Tasks related to completion of patient notes should be done within 24-48 hours of the scheduled visit.
 - Priority 2 Tasks: All extenuating patient issues should be given to the provider of record immediately.
 - Priority 3 Tasks: Completion of Procedural Guidances for Behavioral Health as discussed with the aid of the quality manager.
 - **Goals and Timetables:** Dr. Holt will be given until his next peer review to complete all action items above. This was delineated in his Annual Review and Peer Review from October 2015.
- Action Plans:** Dr. Holt will update the CMO if he is behind in the above tasks and needs any extra help.

_____/Employee Name	Title_____
_____/Employee Signature	Date_____
_____/Supervisor Signature/Title	Date_____

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EXHIBIT G

April 2016

PEER REVIEW OVERVIEW

Chart Review Overall: See Provider Performance Review Form

Chief Medical Officer

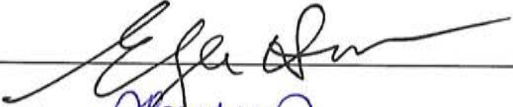
Review: Difficult to follow notes. Redundancy
in multiple charts noted by peer. Treatment plan
not clearly delineated.

Improvement Deadline:

Corrective Action Plan given at annual review.
minimal improvement in documentation.

Plan: Charting for Behavioral Health Review course ASAP
Cut/Paste will not continue.

Provider Name: E. J. Holt Date 5/5/2016

Signature: 

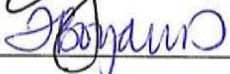
CMO Signature: 

EXHIBIT H



Rural Health Services, Inc.
1000 Clyburn Place
Aiken, SC 29801

July 2016

Provider Performance Review Form

Quarterly Chart Review

Quarter Reviewed CAP Random

Date of Review: _____

Reviewing Provider: _____

Provider Reviewed: Holt

PATIENT CHART NUMBER	38651		37348		35441		43468		35215	
GENERAL CHART INFORMATION	YES	NO	Yes	No	Yes	No	Yes	No	Yes	No
Patient information complete?										
General Consent complete?										
Medical history complete?										
Medical History update complete?										
Are allergies and medical conditions documented?										
Indicators discussed: caries risk, diabetes, smoking, etc.?										

CLINICAL EXAM DATA	YES	NO	Yes	No	Yes	No	Yes	No	Yes	No
Finding noted?										
Body system reviewed?										
History reviewed?										

PROBLEMS / DIAGNOSIS	YES	NO	Yes	No	Yes	No	Yes	No	Yes	No
Appropriate testing done?										
Diagnosis documented?										
Appropriate consultations made, if needed?		✓	✓			✓		✓		✓
Referrals made if needed?										
Findings documented on treatment plan?			no treatment plan written.							

TREATMENT PLAN	YES	NO	Yes	No	Yes	No	Yes	No	Yes	No
Does the treatment plan follow an appropriate sequence?		✓		✓		✓		✓		✓
Record is complete and appropriate for treatment rendered?		✓		✓		✓		✓		✓
Follow up appointment is indicated in the clinical record?	✓		✓		✓		✓		✓	

Comments: Charts reviewed & all having similar deficits.
Repeated statements, No documentation of actions performed to reduce
issues, Testing should be addressed in detail in to A/P area.
No referral to Psych for children not responding to you is noted.

Chief Medical Officer: Spoydmo

Signature: [Signature]

Date: 8/23/16 @ 10:00am

DEF_000251

BEHAVIOR/PERFORMANCE ENHANCEMENT PLAN

Employee Name: E. Joe Holt, Ph.D

Job Title: Director of Behavioral Health

Effective: 8/23/16 9/23/16
From To

Behavior Type

ACTION TAKEN: ☐ Written Warning ☒ Final Written Warning
☐ Recommended for Termination

Deficiency (Be specific. Attach sheets as needed.)

See Peer Review

Behavior/Performance Expected

- 1) Copy/paste of previous notes with redundancy must cease immediately
- 2) Attendance to a medical note writing course was not completed (see CAP document 5/2016)
- 3) No referral to psychiatry for non-responders were made (see Peer Review 8/2016)
- 4) Inadequate feedback to physician/midlevel staff regarding next steps taken
- 5) Leadership role should include adequate updates to LISW

Action Employee Will Take to Improve Deficiency

Target Date

- 1) Attend mental health/medical note writing course
Approved by CMO
- 2) Written report to CMO monthly on all Updates with
LISW

Immediately

Action(s) Supervisor Will Take to Help Improve Performance Deficiency (Include Remedial Training if Applicable)

Target Date

Outcomes: If employee does not meet above expectations by target date, or if there are further deficiencies, the results will be: (This is a required Field.)

Suspension
Further Reporting to the CEO

Employee Comments and/or Rebuttal

Performance Enhancement Plan Reviewed: (Signature and Date)

Employee Refused to Sign ()

Employee: _____

Date: _____

8/23/14

Supervisor/Manager: _____

Date: _____

8/23/16

1000AM

Chief Executive Officer: _____

Date: _____

8/24/14

EXHIBIT I

Coping notes

Carlos Foster <cfoster@ruralhs.org>

Mon 6/15/2020 9:46 AM

To: Joe Holt, Ph D <jholt@ruralhs.org>; Kenneth Jones <kjones@ruralhs.org>

Hello Joe, I have been reviewing some of your charts from the past week and I'm seeing in some of the charts you are copying and pasting in the HPI and associated symptoms. For example, in all the charts I have seen all the patients had no psych symptoms. Going forward if you are going to use the template be specific in identifying the client symptoms.

Carlos J. Foster, LISW-CP, MAC, CCTP

1000 Clyburn Place

Aiken, SC 29801

803-262-4286

EXHIBIT J

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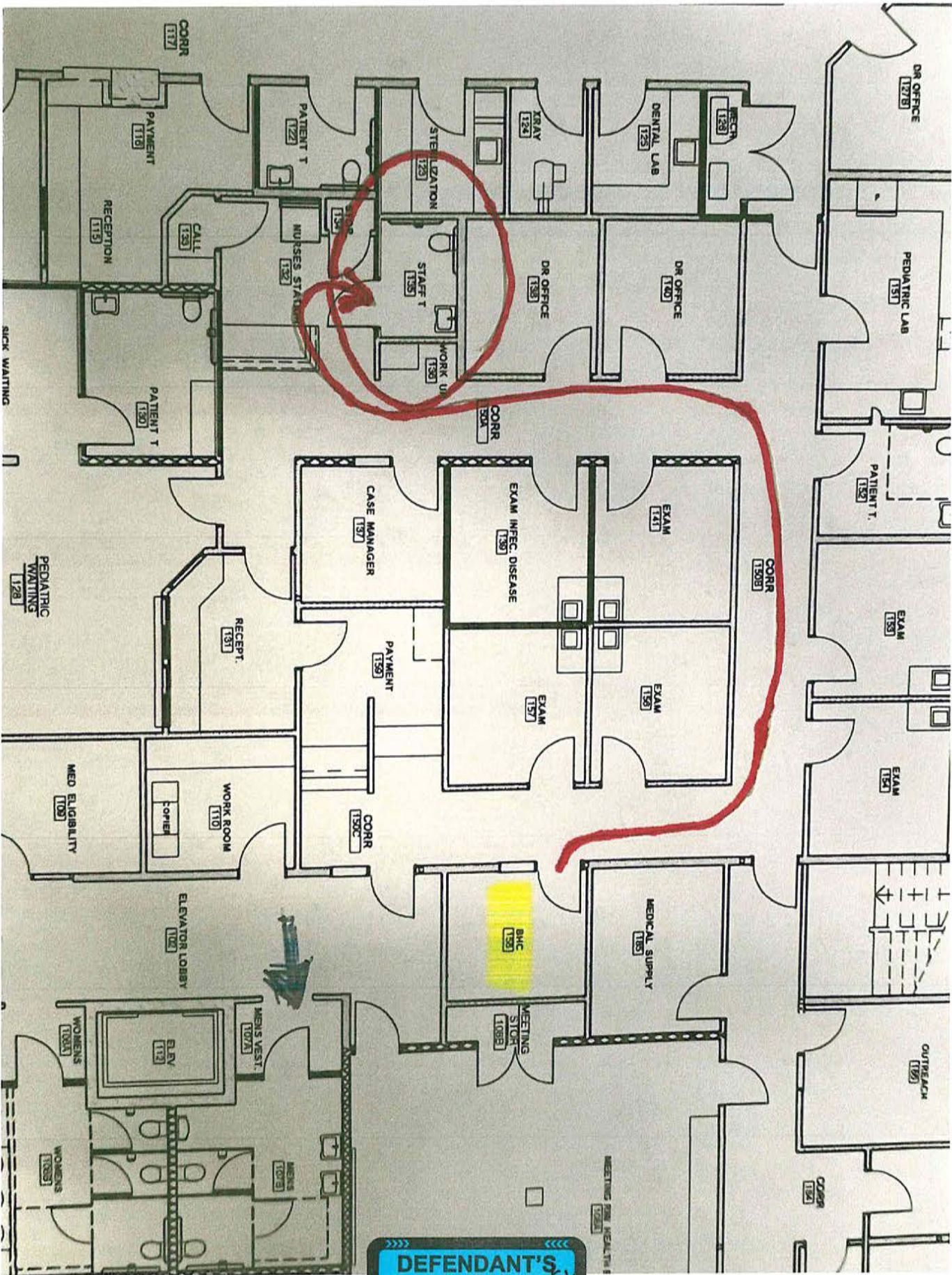


EXHIBIT K

8/14/2017

Hi Dr. Boyd. I wanted to bring to your attention the issues we are having on the Pediatric Unit concerning Dr. Holt. Below you will find instances that are occurring on a regular basis and causing the Unit to become unorganized and in an uproar at times. Its starting to impact our patient flow and possibly causing us to lose patients. Your assistance will be greatly appreciated.

- Dr. Holt refuses to use Athena to see when his patients have been checked in. PCC and Front desk staff have to call his personal phone or text him to alert him to a patient waiting. This has resulted in patients waiting for periods of time, staff has to look for provider. Dr. Holt will tell patients that the staff did not tell him that he had a patient waiting.
- Patient 104749- Patient appt was at 3pm. Patient brought back at 3:38pm. Dr. Holt was told he had a patient. Patient parent upset, Dr. Holt tells parent he did not know he had a patient.
- Continues to disperse candy to the kids after we decided that it was not healthy and to explore different options like stickers.
- Patient 104402-Dr. Holt informs patient that a certain type of medication should be used instead of collaborating with MD. Patient becomes upset with Dr. Fields when it is not done.
- Patient 71499-Patient wants to switch MD because Dr. Holt informed her that everyone was in agreement to continue appetite stimulant when patient was gaining weight when he had not spoken with provider. Md was not in agreement related to mixed results on CPT2.
- Patient 112794- Patient in for Well Child Visit. Provider noted family stressors with PHQ9 score of 17 along with difficulty in school. Dr. Holt did not address PHQ9, no intervention documented. When Provider addressed Dr. Holt, he confirmed he did not address it. Patient wants to see someone else now.
- Patient 90810- Patient's PHQ9 was a 19 with history of suicide ideations, referred for possible depression. Dr. Holt addressed Provider concerning CPT2 results and recommended trial medication. Did not address depression.
- Today- Patient 91350- Patient here on Dr. Fields schedule. Dr. Holt pulls patient back to his office without appt. PCC had to get patient from him for his scheduled apt with Provider.

These are some of the issues that are specific but not inclusive to all that has been going on. I have informed the PCC to keep documentation of specifics when they occur.

For your review,



Chairty Capers-Williams, RN

Director of Nursing

(W) 803-219-1924

CWilliams@ruralhs.org

EXHIBIT L

Rural Health Services, Inc.

BEHAVIOR/PERFORMANCE ENHANCEMENT PLAN

Job Title: Joe Holt

Effective:

From

To

Behavior Type

ACTION TAKEN: Written Warning ☒ Final Written Warning
Recommended for Termination

Deficiency (Be specific. Attach sheets as needed.)

Verbal Warning Given by _____; Date:

On 11/21/19, Pt left a message inquiring about the over the counter medication magnesium Dr. Holt recommended for her child during the last BH session. I spoke with Dr. Holt on 11/21/19 to address the incident and Dr. Holt denied recommending the medication but recalls suggesting magnesium for anxiety during the session. On 11/22/19, I contacted the mother about the event and mother indicated that Dr. Holt did recommend magnesium during the session and she was calling to clarify the dosage with provider.

Behavior/Performance Expected

You will perform duties and task as a behavioral health provider maintaining scope of practice within licensure and state laws

Action Employee Will Take to Improve Dificiency

Target Date

Employee will practices within his scope of prattice of behavioral health and refrain from suggesting or recommending supplements, vitamins and OTC to patient. Ensure communication with medical provider about the patients medical concerns and document providers recommendation

Action(s) Supervisor Will Take to Help Improve Performance Deficiency (Include Remedial Training if Applicable)**Target Date**

Supervisor will monitor employees chart; Provide 1:1 inservice of documentation

Outcomes: If employee does not meet above expectations by target date, or if there are further deficiencies, the results will be: (This is a required Field.)

If employee has any further deficiencies, the result will be further disciplinary action.

Employee Comments and/or Rebuttal*I understand***Performance Enhancement Plan Reviewed: (Signature and Date)**

Employee Refused to Sign ()

Employee: *[Signature]*Date: 12/6/19Supervisor/Manager: *[Signature]*Date: 12/6/19Human Resources: *[Signature]*Date: 12/6/19Chief Executive Officer: *[Signature]*Date: 12/11/19

EXHIBIT M



Rural Health Services, Inc.

Financial Management Policies and Procedures

September 2022



RURAL HEALTH SERVICES, INC

SUBJECT: Cash / Mail Receipts	PAGE: 1 of 1
MANUAL: Finance	REVIEW DATE: 09/22/2022
ORIGINAL POLICY DATE: 10/2010	REVISION DATE: 9/2012; 3/3/2016; 7/27/2017
IMPLEMENTATION DATE: 12/20/2010	IMPLEMENTATION DATE: 9/2012; 3/3/2016; 7/27/2017

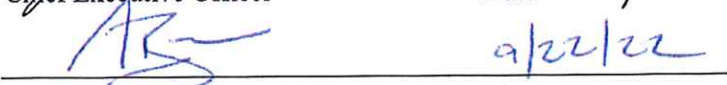
Policy:

Payments received for patient accounts through the mail will be properly reported and safeguarded by deposit with 24 hours of receipts.

Procedure:

1. Mail will be opened daily by Administrative Assistant, and check will be forwarded to Accounting Manager. Bank statements are to be opened and date stamped on the outside of the envelope and forwarded to CEO for review.
2. Checks will have the Rural Health Services, Inc.'s account number recorded on the check. A copy of each check will be maintained with the deposit.
3. A daily deposit will be prepared for mail receipts. Patient's payment will be balanced against the batch deposit.


 Chief Financial Officer Date 9-22-2022

 Chief Executive Officer Date 9/22/2022

 Chair, Finance Committee RHS Board Date 9/22/22

 Chair, RHS Board of Directors Date 09/22/2022

IN THE STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

DR. JOE HOLT,

Plaintiff,

v.

RURAL HEALTH SERVICES, INC.,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

C.A. No. 2021CP0201525

**PLAINTIFF’S MEMORANDUM IN
OPPOSITION TO DEFENDANT’S
MOTION FOR SUMMARY JUDGMENT**

Plaintiff Dr. Joe Holt (“Plaintiff”) respectfully asks this Court to deny the Motion for Summary Judgment filed by Defendant Rural Health Services, Inc. (“Defendant”).

PROCEDURAL HISTORY

On July 20, 2021, Plaintiff filed a Complaint against his former employer, Defendant. Defendant removed the action to the District Court of South Carolina Columbia Division under 28 U.S.C. § 1331 as four causes of action arose under federal law. Defendant filed a motion for summary judgment and memorandum of law in support in federal court. The District Court granted summary judgment as to Plaintiff’s ADA and Title VII causes of action, and the Court declined to exercise jurisdiction over Plaintiff’s state law claims, subsequently remanding them to the Court of Common Pleas. On July 8, 2024, this Court issued a trial roster for the week of August 5, 2024. Defendant filed a motion for continuance, with consent. On July 30, 2024, Defendant filed a motion for summary judgment. On August 28, 2024, Defendant filed a memorandum in support of its motion for summary judgment.

FACTS

Defendant employed Plaintiff as a Pediatric Behavioral Therapist. (Ex. 1 - 2020-3-16 Annual Evaluation). Plaintiff was meeting the expectations of his employer at the time he was terminated. (Ex. 1 - 2020-3-16 Annual Evaluation); (Ex. 2 - Christmas Card from CEO)(“Dr. Holt thank you for joining our staff and building the Behavioral Health Program. You have done a wonderful job and I appreciate you[r] commitment and dedication to RHS and the patients we serve...).

I. Termination Events

Plaintiff reported unsafe conditions in the workplace on June 29, 2020, the day before his termination. (Ex. 3 - 2020-6-30 Termination Notice); (Ex. 4 - Aiken Public Safety Subpoena Production). Plaintiff’s actions were in accord with Defendant’s Reporting Serious and Criminal Acts policy. (Ex. 5 - RHS Policy Excerpts). On June 29, 2020, Plaintiff arrived at work and began his workday around 8am. (Ex. 4 - Aiken Public Safety Subpoena Production). While Plaintiff was standing at the front door of the building, Plaintiff observed an unknown individual driving a truck very recklessly in the workplace parking lot. (Id.); (Ex. 6 - 2020-10-28 Whistleblower Complaint Interview Form, p. 1). (Ex. 7 - APS Subpoena Response - Dispatch Recording).¹ Plaintiff feared for the safety of himself and those around him because of the dangerous conduct of the reckless driver. (Id.). Plaintiff saw the truck driving at an excessive speed. (Id.). Plaintiff heard the tires squeal. (Id.). Plaintiff was alarmed to see that the truck was not slowing down when it was driving dangerously fast in the workplace parking lot. (Id.). The truck was driving so fast that the truck hit the curb without stopping. (Id.). Plaintiff observed the impact of the truck to the curb was so severe

¹ Produced for the Court’s consideration via link sent to the Court and Defendant’s Counsel.

that the truck bounced into the tree wooded area before it came to a stop. (Id.). Plaintiff did not see who was driving. (Id.).

Plaintiff was unsure of the physical or mental condition of the driver and the danger it placed toward himself and others in the workplace, so Plaintiff reported his safety concerns to the Aiken Department of Public Safety. (Ex. 6 - 2020-10-28 Whistleblower Complaint Interview Form, p. 1). It is important to note that Plaintiff is not aware of any management officials on the grounds at the same of this workplace safety incident. (Id.). For example, Plaintiff's supervisor was not at work; the Medical Director was not at work; the Nursing Director was not at work; and the Chief of Operations was not at work. (Id.).

Aiken Public Safety reported to the scene. (Id.); (Ex. 4 - Aiken Public Safety Subpoena Production); (Ex. 7 - APS Subpoena Response - Dispatch Recording). By that time, one management official, Charity Williams, the Director of Nursing, had arrived at the workplace. (Ex. 6 - 2020-10-28 Whistleblower Complaint Interview Form, p. 1). The immediate response was that Plaintiff should not have reported the workplace safety incident. (Id.). Plaintiff and Ms. Williams had about three to four different conversations in quick succession on the morning of June 29, 2019. (Id.). Plaintiff described the safety concern in the parking lot to Ms. Williams. (Id.).

Plaintiff specifically told Ms. Williams that he felt workplace safety was at risk. (Id., pp. 1-2). Plaintiff explained to Ms. Williams that he did not feel it was appropriate for him to go and check behind the wheel. (Id.). Plaintiff said he did not feel safe and that is why he called the Aiken Department of Public Safety. (Id.). Ms. Williams rebuked Plaintiff saying that it was wrong that he reported any concerns to the Aiken Department of Public Safety. (Id.). Plaintiff told her he felt in danger at the time. (Id.). Most of the management officials were not on site at this time so this

amplified Plaintiff's feelings that he was on his own and had to make the judgment call for workplace safety. (Id.).

Also on June 29, 2020, Plaintiff reported his concerns to Gail Diggs, Director of Outreach and Charles Emmanuel, the Director of Facilities Maintenance and the CEO's son. (Id., p. 2). Through the remainder of June 29, 2020, Plaintiff treated patients and performed his job duties. (Id.). No one else asked Plaintiff for further information about the workplace safety incident he reported on June 29, 2020. (Id.).

The HR Director, who is also the mother of the person driving the vehicle at issue on June 29, 2020, terminated Plaintiff's employment on June 30, 2020. (Ex. 2 - 2020-6-30 Termination Notice). Dr. Holt had the impression that his supervisor, Mr. Foster, who was present for the termination meeting was not in agreement with the termination. (Id.).

II. Post Termination Actions:

Defendant defamed Plaintiff to unprivileged staff and Plaintiff's patients by accusing him of making a false police report on June 29, 2020. (Ex. 6 - 2020-10-28 Whistleblower Complaint Interview Form); (Ex. 8 - Facebook Messages with Gabrielle Gaudette). To the contrary, Plaintiff had a good faith basis for filing the police report when he saw reckless driving in the parking lot that caused him to worry about safety. (Id.); (Ex. 4 - Aiken Public Safety Subpoena Production); (Ex. 7 - APS Subpoena Response - Dispatch Recording).

Defendant did not pay Plaintiff his final wages owed. (Ex. 9 - 2020-10-5 LLR Findings). Plaintiff filed a complaint for unpaid wages with the South Carolina Department of Labor, Licensing and Regulation ("LLR"), through its Office of Investigations and Enforcement. (Id.). LLR investigated the matter and issued a warning to Defendant for failing to provide written notice to their employees as required under S.C. Code Ann. § 41-10-30. (Id.). It was only after Defendant

was found in violation of S.C. Code Ann. § 41-10-30 by LLR that Defendant paid Plaintiff his final wages owed. (Id.).

After the termination, Plaintiff started his own clinic. (Ex. 6 - 2020-10-28 Whistleblower Complaint Interview Form, p. 6). Plaintiff has provided excellent services to the public through his own clinic. (Ex. 10 - Post-Termination Awards); (Ex. 11 - Statement of TR). Defendant has a responsibility to its patients and Plaintiff to truthfully provide the patients who were treated by Plaintiff with the options available to them for ongoing care and Defendant did not do so. (Ex. 12 - 2020-7-20 Interview with Patient's Mother);² (Ex. 13 - Metadata of 2020-7-20 Interview with Patient's Mother); (Ex. 14 - Statement of KS); (Ex. 15 - Statement of KB).

After termination, Plaintiff has provided medical services to patients. (Ex. 6 - 2020-10-28 Whistleblower Complaint Interview Form, p. 6). Plaintiff is the sole owner of the monies paid for such services. (Id.). Plaintiff diligently tried to ensure that all information was correct for bill payment. (Ex. 16 - 2020-8-31 Voicemail from Social Security Administration); (Ex. 17 - 2020-9-30 Email re WellCare of South Carolina Provider Status). Defendant maintains a Financial Management Policy. (Ex. 18 - Financial Management Policy). That policy has been in effect since October 2010. (Id.). It has been periodically revised. (Id.). The policy states, "Payments received for patient accounts through the mail will be properly reported and safeguarded by deposit with 24 hours of receipts." (Id.). Defendant received monies from third party(s) that were intended solely for payment to Plaintiff. (Ex. 19 - BCBS Check and Insurance Documents); (Ex. 20 - Documents Supporting Conversion - BCBS Records); (Ex. 21 - Statement of MFOG). Defendant retained those monies in contradiction to its own Financial Management Policy. (Id.); (Ex. 18 - Financial Management Policy).

² Produced for the Court's consideration via link sent to the Court and Defendant's Counsel.

In the morning on Friday July 24, 2020, a minor patient in the care of her father were seen by Dr. Soto, a pediatrician at RHS. (Ex. 22 - Statement of Father); (Ex. 23 - CB); (Ex. 24 - Texts re DSS Matter). Dr. Soto indicated that she wanted to treat the minor patient for depression. (Ex. 22 - Statement of Father). The doctor recommended counseling and the father informed the doctor that the patient was receiving regular counseling from Plaintiff. (Id.). The father states in his statement, “When I told her that my child isn’t depressed Soto told me that she couldn’t see her unless we use their councilors, and then at that point [minor child’s name] told Soto she wouldn’t talk to no one else but Holt.” (Id.).

The mother of the minor child received a phone call that same day, in the afternoon, from a staff member at RHS in regard to the child’s appointment at RHS that morning. (Ex. 23 - CB). Again, the representative of Defendant insisted that the family cease services with Plaintiff to have services solely from Defendant. (Id.). The minor’s mother reaffirmed that her daughter was still currently receiving counseling services from Plaintiff. (Id.). The mother stated, “the staff member told me if we didn’t use a councilor in house we would have to find [minor child’s name] another doctor to see. I told her I would find another pediatrician to see because my child will continue to see Dr. Holt and Soto couldn’t tell me who my child [minor child’s name] could or could not see in regards to a councilor.” (Id.).

Following that visit, Defendant’s employees, the doctor and/or another current RHS staff member, called the South Carolina Department of Social Services (“DSS”) and made a false report to DSS against the family, by falsely alleging that the family was refusing to follow the doctor’s recommendation of getting counseling. (Ex. 22 - Statement of Father); (Ex. 23 - Statement of CB); (Ex. 24 - Texts re DSS Matter). The evidence shows that the report from the RHS doctor and/or RHS staff to DSS was made against the parents for using Plaintiff’s counseling services. (Id.). On

July 25, 2020, the mother of the minor child contacted Plaintiff about these circumstances related to retaliating against the family for wanting to continue services with Plaintiff as the therapist to their daughter. (Ex. 24 - Texts re DSS Matter).

The parents were contacted by Child Protective Services; representative(s) of RHS had made false accusations of neglect against the parents. (Id.). The mother described that DSS's Child Protective Services employee "Mrs. Thomas then told me that DSS received a phone call regarding neglect on [minor child's name] not getting the counseling she needed. I told Mrs. Thomas that [minor child's name] was still currently seeing Dr. Hold and she had just went to an appointment that Thursday 7/23/2020 at Twin Willows with Holt at 9am. Between my husband [father's name] telling Soto that [minor child's name] will continue to see Holt and me telling her staff member at RHS that [minor child's name] will continue to see Holt as her councilor DSS got called for a false accusation against us to neglect when in reality [minor child's name] sees Holt every other week and has made an amazing difference in her behavior since we first started seeing Holt. So Soto called DSS or Soto made a staff member from RHS call DSS because she didn't like the fact that she was told we will find a difference doctor for [minor child's name] to see because [minor child's name] will continue to see Holt." (Id.).

STANDARD OF REVIEW

Summary judgment shall be granted when the evidence shows that no genuine issue exists as to any material fact and that the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCP. "When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party." *Bluestein v. Town of Sullivan's Island*, 429 S.C. 458, 462, 839 S.E.2d 879, 881 (2020) quoting *Turner v. Milliman*, 392 S.C. 116, 121–22, 708 S.E.2d 766, 769 (2011).

ARGUMENT

I. Defamation Claim

Plaintiff puts forth evidence supporting each element of a defamation claim in South Carolina. “The tort of defamation allows plaintiffs to recover for injuries to their reputation as the result of defendants’ communications to others of falsities regarding the plaintiffs.” *Cruce v. Berkeley Cnty. Sch. Dist.*, 435 S.C. 7, 18, 865 S.E.2d 391, 397 (S.C. Ct. App. 2021), reh'g denied (Dec. 2, 2021), cert. granted (Sept. 7, 2022)(citing *Boone v. Sunbelt Newspapers, Inc.*, 347 S.C. 571, 580, 556 S.E.2d 732, 737 (S.C. Ct. App. 2001). “Defamatory communications take two forms: libel and slander.” *Id.* (quoting *Swinton Creek Nursery v. Edisto Farm Credit, ACA*, 334 S.C. 469, 484, 514 S.E.2d 126, 133-34 (S.C. 1999). Slander, what is at issue here, is spoken defamation. *Id.*

To prove defamation, a plaintiff must show “(1) a false and defamatory statement was made; (2) the unprivileged publication was made to a third party; (3) the publisher was at fault; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication.” *Banks v. St. Matthew Baptist Church*, 406 S.C. 156, 161, 750 S.E.2d 605, 607 (S.C. 2013)(quoting *Erickson v. Jones St. Publishers, LLC*, 368 S.C. 444, 464, 629 S.E.2d 653, 664 (S.C. 2006). Defendant made false and defamatory statements about Plaintiff to parents of Plaintiff’s patients.³ (Ex. 12 - 2020-7-20 Interview with Patient's Mother); (Exhibit 13 - Metadata of 2020-7-20 Interview with Patient's Mother). Defendant defamed Plaintiff in word and by falsely accusing him of incompetence in his profession and engaging in conduct that he did not, which is defamation *per se*. (*Id.*). Defendant defamed Plaintiff to unprivileged staff and Plaintiff’s patients by accusing him of making a false police report. (See Ex. 8 - Facebook

³ For third party privacy related reasons (Plaintiff’s patients are minors and their therapy services are highly confidential), the names of these individuals are not included in the Memorandum but are available to the Court in the sealed exhibits filed contemporaneously with this Memorandum.

Messages with Gabrielle Gaudette). In South Carolina, pursuant to SC Code Section 16-17-722, is it unlawful for a person to knowingly file a false police report. Accordingly, to accuse Plaintiff of filing a false police report is to falsely accuse Plaintiff of engaging in a criminal action, which is defamation *per se*.

These false statements identified above occurred on June 29, 2020 and continued thereafter seemingly to the present. (Ex. 12 - 2020-7-20 Interview with Patient's Mother); (Ex. 8 - Facebook Messages with Gabrielle Gaudette). Such publications, accompanied by the defamatory statements of falsely saying that Plaintiff should be ejected from his job, and other defamatory and false statements impugn Plaintiff's capability to perform his profession. (Id.). Defendant is the source of these false and maliciously published accusations about Plaintiff, as affirmed by the patient's mother on July 20, 2020 and employee Gabrielle Gaudette on July 23, 2020. (Id.). The defamatory actions and words of Defendant have directly and indirectly promulgated to the public at large the false insinuation that Plaintiff is unfit for his profession, and that he committed unprofessional acts. (Id.). As a direct and proximate result of the aforesaid defamation, Plaintiff's personal and professional reputation has been damaged. (Id.).

II. Abuse of Process Claim

"The essential elements of abuse of process are: (1) an ulterior purpose; and (2) a willful act in the use of the process not proper in the regular conduct of the proceeding." *Gregory v. Riley Pope & Laney, LLC*, No. 2015-000740, 2017 WL 4640146, at *2 (S.C. Ct. App. May 3, 2017)(quoting *Johnson v. Painter*, 279 S.C. 390, 391, 307 S.E.2d 860, 860 (S.C. 1983). "[T]he tort of abuse of process contains neither an element of intent to harm, nor actual malice." *Swicegood v. Lott*, 379 S.C. 346, 352, 665 S.E.2d 211, 214 (S.C. Ct. App. 2008).

“The improper purpose element of an abuse of process claim usually takes the form of coercion to obtain a collateral advantage, not properly involved in the proceeding itself. Therefore, it is the use of the process to coerce or extort that is the abuse, and need not be accompanied by any ill will.” *Id.* The ‘willful act’ element of the abuse of process tort has been “interpreted to consist of three different components: 1) an act that is either willful or overt; 2) in the use of the process; 3) that is ultimately reprehensible because it is either (a) unauthorized or (b) aimed at an illegitimate collateral objective.” *Swicegood*, 379 S.C. at 353–54, 665 S.E.2d at 215 (citing *Food Lion, Inc. v. United Food & Commercial Workers Intern. Union*, 351 S.C. 65, 71, 567 S.E.2d 251, 254 (S.C. Ct. App. 2002)).

One or more representatives of Defendant, acting on behalf of Defendant, engaged in a willful act in the use of a legal process not proper in the regular conduct of the proceeding. Specifically, Defendant’s representative(s) called the South Carolina Department of Social Services and made a false report against a family who decided to continue medical care services with Plaintiff rather than Defendant, by falsely alleging that the family was refusing to follow the doctor’s recommendation of getting counseling. (Ex. 23 - Statement of CB). The parents were contacted by Child Protective Services as a result of this false claim. (*Id.*).

The ulterior purpose for abusing this complaint process to DSS was in retaliation for the family choosing to utilize Plaintiff’s counseling services. This complaint filed wrongfully with DSS was an abuse of process with a malicious intent to harm the family and Plaintiff for using Plaintiff’s medical care services after he was no longer affiliated with Defendant. Such harms are properly brought as an abuse of process claim. See *Gecy v. Somerset Point at Lady's Island Homeowners Ass'n, Inc.*, 426 S.C. 540, 554, 828 S.E.2d 73, 81 (S.C. Ct. App. 2019)(“We still agree, as this Court found in *Pond Place*, that “the proper action against a maliciously filed [notice

of] lis pendens is under abuse of process or malicious prosecution.” (citing *Pond Place Partners, Inc. v. Poole*, 351 S.C. 1, 16, 567 S.E.2d 881, 889 (S.C. Ct. App. 2002)). This action does not involve a lis pendens. But, for the purposes of this cause of action, the maliciously filed notice of lis pendens in *Gecy* is synonymous to Defendant’s maliciously filed complaint with DSS, as both are statutory doctrines. “In South Carolina, lis pendens is a statutory doctrine designed to inform prospective purchasers or encumbrancers that a particular piece of property is subject to litigation. *Gecy v. Somerset Point at Lady’s Island Homeowners Ass’n, Inc.*, 426 S.C. 540, 549, 828 S.E.2d 73, 78 (Ct. App. 2019)(citing S.C. Code Ann. § 15-11-10; *Shelley Constr. Co., v. Sea Garden Homes, Inc.*, 287 S.C. 24, 30, 336 S.E.2d 488, 491 (Ct. App. 1985)). Similarly here, the identification and reporting of child abuse and neglect is a statutory doctrine designed to protect the abused and neglected children in South Carolina. S.C. Code Ann. § 63-7-310. Defendant utilized the DSS complaint process as a weapon against Plaintiff’s client for preferring his services after termination.

III. Interference with Contractual Relationships Claim

“The elements of a cause of action for tortious interference with contract are: (1) existence of a valid contract; (2) the wrongdoer's knowledge thereof; (3) his intentional procurement of its breach; (4) the absence of justification; and (5) resulting damages.” *Dutch Fork Dev. Grp. II, LLC v. SEL Properties, LLC*, 406 S.C. 596, 604, 753 S.E.2d 840, 844 (S.C. 2012)(quoting *Camp v. Springs Mortgage Corp.*, 310 S.C. 514, 517, 426 S.E.2d 304, 305 (S.C. 1993)). “[I]ntent to injure is not an element of tortious interference.” *Broach v. Carter*, 399 S.C. 434, 442, 732 S.E.2d 185, 189 (S.C. Ct. App. 2012). The South Carolina Supreme Court held, “[n]one of the elements required for [tortious interference with a contract] ... include “intent to harm.” Although it is true that harm may result from an intentional inference with ... contractual relations, it is not necessary

that the interfering party intend such harm. Instead, it is only necessary that they intended to interfere with ... an existing contract....”. *Broach*, 399 S.C. at 442, 732 S.E.2d at 189 (quoting *Eldeco, Inc. v. Charleston County School District*, 372 S.C. 470, 481, 642 S.E.2d 726, 732 (S.C. 2007)).

After termination, Plaintiff built his own clinic, the Family Center of Aiken County. (Ex. 6 - 2020-10-28 Whistleblower Complaint Interview Form); (Ex. 10 - Post-Termination Awards). Plaintiff has existing and prospective contractual relationships with patients and their families to provide medical services, specifically pediatric behavioral therapy through the Family Center of Aiken County. (Ex. 21 - Statement of MFOG); (Ex. 11 - Statement of TR); (Ex. 14 - Statement of KS); Ex. 22 - Statement of Father); (Ex. 15 - Statement of KB); (Ex. 23 - Statement of CB). Defendant is on notice that Plaintiff continues to provide pediatric behavioral therapy services in Aiken, South Carolina through his clinic. (Ex. 6 - 2020-10-28 Whistleblower Complaint Interview Form); (Ex. 17 - 2020-9-30 Email re WellCare of South Carolina Provider Status).

Defendant has a responsibility to its patients and Plaintiff to truthfully provide the patients who were treated by Plaintiff with the options available to them for ongoing care. See Physicians' Patient Records Act, S.C. Code Ann. §§ 44–115–10 to –150. Defendant has not done so. Defendant actively provided false information to patients and their families to dissuade them from using Plaintiff’s services and Defendant engaged in intentional conduct to prevent Plaintiff from receiving contract services from his former patients, seen while Plaintiff was employed by Defendant. (Ex. 14 - Statement of KS); (Ex. 22 - Statement of Father); (Ex. 23 - Statement of CB); (Ex. 24 - Texts re DSS Matter).

“[A]n action for tortious interference protects the property rights of the parties to a contract against unlawful interference by third parties.” *Dutch Fork Dev. Grp. II*, 406 S.C. at 604, 753

S.E.2d at 844 (quoting *Threlkeld v. Christoph*, 280 S.C. 225, 227, 312 S.E.2d 14, 15 (S.C. Ct. App. 1984)). There is no justification for Defendant's actions to prevent Plaintiff's contractual business interests and in making a false report to DSS against the family after the family expressed an intent to continue counseling services with Plaintiff. (Ex. 14 - Statement of KS); (Ex. 22 - Statement of Father); (Ex. 23 - Statement of CB).

IV. Negligence Claim

Plaintiff's negligence claim only arises and is brought for actions that occurred after Plaintiff was no longer employed by Defendant. "[N]egligence is the failure to use due care," i.e., "that degree of care which a person of ordinary prudence and reason would exercise under the same circumstances." *Berberich v. Jack*, 392 S.C. 278, 287, 709 S.E.2d 607, 612 (S.C. 2011)(quoting *Hart v. Doe*, 261 S.C. 116, 122, 198 S.E.2d 526, 529 (S.C. 1973)). "In a negligence action, a plaintiff must show that (1) the defendant owes a duty of care to the plaintiff, (2) the defendant breached the duty by a negligent act or omission, (3) the defendant's breach was the actual and proximate cause of the plaintiff's injury, and (4) the plaintiff suffered an injury or damages." *Madison ex rel. Bryant v. Babcock Ctr., Inc.*, 371 S.C. 123, 135, 638 S.E.2d 650, 656 (S.C. 2006).

"Duty is generally defined as 'the obligation to conform to a particular standard of conduct toward another.'" *Huggins v. Citibank, N.A.*, 355 S.C. 329, 333, 585 S.E.2d 275, 277 (S.C. 2003) (quoting *Hubbard v. Taylor*, 339 S.C. 582, 588, 529 S.E.2d 549, 552 (2000)). "[T]he court must determine, as a matter of law, whether the defendant owed a duty of care to the plaintiff." *Huggins*, 355 S.C. at 332, 585 S.E.2d at 276. Defendant owes a duty of care to Plaintiff as Plaintiff's former employer and as an entity that improperly received monies solely owed to Plaintiff. (Ex. 20 - Documents Supporting Conversion - BCBS Records); (Ex. 21 - Statement of MFOG). Defendant

has a duty to only deposit monies for services that it provided and has no legal right to retain monies owed solely to Plaintiff. (Ex. 18 - Financial Management Policy). Defendant's policy required a 24-hour review of monies received. Plaintiff's evidence proves that Defendant retained money from services he provided, after termination, for an extended period of time. (Ex. 21 - Statement of MFOG); (Ex. 20 - Documents Supporting Conversion - BCBS Records); (Ex. 19 - BCBS Check and Insurance Documents); (ECF 48-2, pp. 4-11). Defendant was on notice of such errors and breached its duty of care owed to Plaintiff. (Id.). Defendant breached its duty of care by retaining monies solely owed to Plaintiff. (Id.).

V. Conversion Claim

Conversion has been defined in South Carolina as "an unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the exclusion of the owner's rights." *Owens v. Andrews Bank & Tr. Co.*, 265 S.C. 490, 496–97, 220 S.E.2d 116, 119 (S.C. 1975)(citing *Ray v. Pilgrim Health & Life Ins. Co.*, 206 S.C. 344, 34 S.E.2d 218, 34 S.E.2d 218 (S.C. 1945)). "Conversion may arise by some illegal use or misuse, or by illegal detention of another's chattel." *Owens*, 265 S.C. at 496–97, 220 S.E.2d at 119 (citing *Castell v. Stephenson Finance Co.*, 244 S.C. 45, 135 S.E.2d 311 (1964)). "Money may be the subject of conversion, when it is capable of being identified, and there may be conversion of determinate sums even though the specific coin and bills are not identified. *Owens*, 265 S.C. at 496–97, 220 S.E.2d at 119 (citing 89 C.J.S. Trover and Conversion s 23, p. 541 (1955)).

Here, Defendant engaged in unauthorized ownership over monies owed solely to Plaintiff. (Ex. 20 - Documents Supporting Conversion - BCBS Records); (ECF 48-2, pp. 4-11). Plaintiff has exclusive ownership rights to the financial proceeds from the medical services he has provided after Defendant terminated Plaintiff. (Id.). Defendant received monies from third party payors as payment for services provided solely by Plaintiff. (Id.). Defendant has no legal right to any of the

monies it has retained from services Plaintiff provided after June 30, 2020. (Id.). The sum at issue is finitely calculated. (Id.). Plaintiff is aware of Defendant retaining at least \$2,800 owed to Plaintiff. (Id.). Accordingly, summary judgment should be denied.

CONCLUSION

The record contains sufficient evidence to give rise to material fact issues preventing the disposition of Plaintiff's claims. Therefore, based on the above facts and law, Defendant's motion for summary judgment should be DENIED in its entirety. Plaintiff respectfully requests that the Court order this matter to proceed to trial on all claims.

Respectfully submitted,

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Attorney for Plaintiff

Columbia, SC
August 30, 2024

EXHIBIT 1

EMPLOYEE PERFORMANCE AND PLANNING REVIEW

Name: E Joe Holt, Ph D	Social Security No: 456 02 2695
Position Title: Pediatric Behavioral Therapist	Department: Behavioral Health
Date Assigned to Current Position: 9/2/2014	Date of Last Review:
Reviewing Manager: Carlos Foster, MSW	Date of Current Review: 2/7/2020

Type of Review: ☒ Annual ☐ Introductory ☐ Special ☐ Probationary

SECTION I: GENERAL PERFORMANCE MEASURES

The sub-headings for each group are suggested criteria to be evaluated and are not intended to be all inclusive and may be changed, deleted or added to as required. The comments area should be used for expansion, explanation, or description of strengths and/or problem areas in each sub-heading. Specific improvement actions, however, should be described in Section II. Select the appropriate term below to describe performance for each category and check of the appropriate rating number.

Consistently performs all duties in an exceptional manner; significantly exceeds expectations with exceptional quality, quantity, and timeliness of work; significantly exceeds all objectives, always achieves exceptional results well beyond those expected of the position. Note – usage of this category is highly limited.	EXCEPTIONAL 5
Consistently exceeds the normal expectations for the position; exceeds expected criteria for quality, quantity, and timeliness of work; consistently exceeds goals and objective; achieves results beyond those expected for the position.	EXCEEDS 4
Consistently performs all duties of the position in a fully capable manner; meets all expected criteria for quality, quantity, and timeliness of work, including meeting goals and objectives.	MEETS 3
Performs many duties in a capable manner; meets some goals and objectives, but requires improvement in quality, quantity, and timeliness of work to achieve overall satisfactory performance; may require more supervision than expected for assignment.	MARGINAL 2
Unacceptable performance suggesting lack of willingness and/or ability to perform the requirements of the position. Separation or reassignment is indicated unless performance improves significantly. Requires excessive supervision.	UNSATISFACTORY 1

DEF_000243

PERFORMANCE RESULTS**1. QUALITY OF WORK**

Accuracy, neatness, confidentiality. Completes assignments, processes, maintenance thoroughly. Works independently when necessary. Processes necessary paperwork with attention to detail.

Comments:

Employee Comments: Working on improving the charting and its timeliness

Supervisor Comments: Compliance with chart closure policy needs improvement. Employee must close charts within 3 days. I am closely monitoring to ensure that this is corrected.

Rating:

EE	ER
	5
	4
	3
2.5	2
	1

2. QUANTITY OF WORK

Completes assignments by or before deadline. Produces acceptable quantity of work. Works at a steady pace regardless of environmental pressures.

Comments:

Employee Comments: Working on improving in this area. Environmental pressure Does have an impact of the employee's performance.

Supervisor Comments: Very proactive in seeing patients. Employee meets the number of patients visits that are required for RHS. Employee also adjusts his lunch breaks to meet with patients.

Rating:

EE	ER
	5
	4
3	3
	2
	1

PERFORMANCE FACTORS**3. JOB KNOWLEDGE AND TECHNICAL APPLICATION**

Exhibits necessary job knowledge and technical skills. Keeps job knowledge and technical skills current.

Comments:

Employee Comments: Board certified in child and Family. Knowledgeable in school law and it's impact on the student. Coaching the parents on how to manage situations.

Supervisor Comments: The CPT testing is the primary intervention and you have to incorporate other skills as a behavioral health consultant

Rating:

EE	ER
	5
4	4
	3
	2
	1

4. ORGANIZATION AND PLANNING

Schedules time effectively. Prioritizes assignments to avoid crises. Keeps work area orderly. Initiates activities to stay busy and productive when necessary.

Comments:

Employee Comments:

Supervisor Comments: As addressed previously, employee's office is subpar but he is making slow improvements in this area. Employees office should be kept tidy

Rating:

EE	ER
	5
	4
3.5	3
	2
	1

5. DECISION MAKING AND PROBLEM SOLVING

Presents and weighs alternatives before making decisions. Consults others when appropriate. Anticipates and prevents problems. Generates alternative solutions and selects optimal solution.

Comments:**Rating:**

EE	ER
	5
	4
3	3
	2
	1

DEF_000244

Employee Comments: *I do consult other prior to making decisions. I do anticipate problems and seek solutions.*

Supervisor Comments: Great job on problem solving with staff

1

6. ADAPTABILITY

Shows flexibility in responding to change. Willingly takes on new responsibilities. Effectively handles pressure.

Comments:

Employee Comments: *The employee is flexible. I work to adapt to what ever I am told.*

Supervisor Comments: Employee is responsive to the departmental and organizational changes and is not as resistant as he has been in the past. I am working with the pediatric department to develop a stronger relationship with the BH dept.

Rating:

EE	ER
	5
x	4
	3
	2
	1

7. DEPENDABILITY

Punctuality, attendance, and attentiveness. Meets commitments, accepts accountability, and stays focused under pressure. Adheres to established guidelines and policies of Rural Health Services.

Comments:

Employee Comments: *Strong attendance pattern. Does not take a lot of time off which is evident by the number of PTO hours remaining.*

Supervisor Comments: Although employee maintains a good attendance record, there have been verbal warnings issued for leaving early without proper notification.

Rating:

EE	ER
	5
x	4
	3
	2
	1

8. INITIATIVE

Persistence and resourcefulness. Sees beyond immediate assignments and acts on opportunities and problem areas. Generates new ideas and practices self-development.

Comments:

Employee Comments: *The employee is always looking for ways to enhance services for the patients and their families. Coordinate pt's issues with the agencies involved.*

Supervisor Comments: Employee takes initiative to manage his patients outside of regular working hours and he works well with school system

Rating:

EE	ER
	5
4	4
	3
	2
	1

INTERPERSONAL SKILLS

9. COMMUNICATION

Presents ideas effectively and listens to others. Writes clear, concise documentation. Provides professional service to both patients and employees.

Comments:

Employee Comments: *The employee listens to others and tries to adapt.*

Supervisor Comments: Documentation has improved

Rating:

EE	ER
	5
	4
3	3
	2
	1

10. SUPERVISION

Accepts direction and supervision in a positive manner. Keeps supervisor advised of problems, ideas, and decisions when appropriate.

Comments:

Rating:

EE	ER
	5
	4
3	3
	2
	1

DEF 000245

Employee Comments: *The employee accepts direction and supervision in a positive manner.*

Supervisor Comments: very responsive during supervision

	2	
	1	

11. TEAMWORK

Works well with others. Demonstrates responsiveness to requests from others.
Provides assistance when needed. Helps resolve conflicts.

Comments:

Employee Comments: *The employee is responsive to the requests of others. He provides when needed without being asked as well as when asked.*

Supervisor Comments: Employee puts forth effort despite departmental limitations.

Rating:

EE	ER
	5
	4
	3
2.5	2
	1

SECTION II: GENERAL PERFORMANCE MEASURES SUMMARY AND SCORING

SUMMARY

Employee has made a lot of improvement this past year. The employee has had a strong therapy count each month for the past 12 months.

2. SPECIFIC IMPROVEMENT ACTIONS

- (1) Employee will have all charts closed within the 3day window per RHS policy
- (2) Employee will maintain a neat a tidy office
- (3) Employee will notify supervisor prior to later arrival or early departure.

3. GENERAL PERFORMANCE MEASURES SCORING

	Scale	EE	ER
Performance Results Points	10	5.5	6
Performance Factors Points	30	22.5	18
Interpersonal Skills Points	15	8.5	9
TOTAL POINTS	55	36.5	33
Total Points/11			

Overall Rating:

SECTION III: EMPLOYEE COMMENTS REGARDING GENERAL PERFORMANCE MEASURES

1. EMPLOYEE COMMENTS

DEF_000248

SECTION IV: APPROVAL SIGNATURES


Employee Signature

3/16/2020
Date


Supervisor Signature

3/16/20
Date


Human Resources Signature

3/16/2020
Date


Chief Executive Officer
Signature

Date
3/16/2020

Note: Employee comments taken from Self Evaluation completed by Employee on _____.
Scores in red are the scores assigned to employee during self-evaluation.
Scores in "(--)" are scores assigned by Supervisor.

EXHIBIT 2

Dr. Holt,
Thank you for
joining our staff
and building the behavioral
health program. You have
done a wonderful job
and I appreciate your
commitment and dedication
to RTH and the patients we
serve.

I wish you and your
family a happy and
Merry Christmas!
Carolyn

May the joys and traditions
you cherish the most
make this an especially
warm and beautiful season.

EXHIBIT 3



Clyburn Center for Primary Care
1000 Clyburn Place
Aiken SC 29801
(803) 380-7000 Phone
(803) 502-4248 Fax

Margaret J. Weston
Community Health Center
4645 Augusta Rd.
Beech Island SC 29842
(803) 593-9283 Phone
(803) 593-0607 Fax

Family Health Care
120 Darlington Drive
Aiken SC 29801
(803) 641-1404 Phone

June 30, 2020

Dear Dr. Holt,

This letter serves to inform you that your employment with Rural Health Services, Inc. is terminated effective immediately. Your services here at RHS are no longer needed. Please have all of your personal items removed from your office by 5 p.m. today, June 30, 2020.

Your final paycheck will be provided to you on July 9, 2020. Your health insurance benefits will continue through July 31, 2020. Your rights to continue coverage under COBRA will be provided to you by mail from our plan administrator. You can contact AFLAC at 1.800.992.3522 regarding your supplemental insurance options.

The following Rural Health Services, Inc. property must be returned immediately:

- Conners CPT3 Jump Drive
- Conners K-CPT 2 Manual
- Conners CPT 3 Manual
- Lenovo ThinkPad X1 Carbon Laptop (Serial No: PF-1FEJ9X)
- Charging Cable
- Wireless Mouse
- Key to CCPC Room 158

Should you have further questions, please contact me via email at salford@ruralhs.org.

Sincerely,

Stephanie A. Alford, Ed.S, SHRM-CP
Director of Human Resources

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J. Holt 00666

EXHIBIT 4

COMMUNICATIONS

Event Report

Event ID: 2020-06-03545

Call Ref #: 493

Date/Time Received: 06/29/20 08:19:52

Rpt #:

Prime 209

Services Involved

Call Source: PHONE

Unit: TRAVER, REESE EDWIN

LAW

Location: 1000 CLYBURN PL

(S) (N)AIKEN HS

X-ST: COLUMBIA AVE NE

Jur: CAD

Service: LAW

Agency: APS

St/Beat: N

District: ND

RA: 2

Business: CLYBURN CENTER FOR PRIMARY CAR

Phone: (803) 380-7000

GP: GPN

Nature: SUSPICIOUS VEHICLE

Alarm Lvl: 1 Priority: 5

Medical Priority:

Reclassified Nature:

Caller: HOLT, JOE

Alarm:

Addr: 1000 CLYBURN PL

Phone:

Alarm Type:

Vehicle #: MS258

St: SC

Report Only: No

Race:

Sex:

Age:

Call Taker: KEAGERTON

Console: DISPATCH05

Geo-Verified Addr.: Yes Nature Summary Code:

Disposition: 3

Close Comments:

Notes: BLK TRUCK FLEW THRU THE PARKING LOT AND NOW THEY ARE SITTING IN THE WOODS
OCCUPIED BY TWO PEOPLE UNK DESCRIPTION [06/29/20 08:20:56 KEAGERTON]

Times

Call Received: 06/29/20 08:19:52

Time From Call Received

Call Routed: 06/29/20 08:22:07

000:02:15

Unit Reaction: 000:01:50 (1st Dispatch to 1st Arrive)

Call Take Finished: 06/29/20 08:22:07

000:02:15

En-Route: 000:00:05 (1st Dispatch to 1st En-Route)

1st Dispatch: 06/29/20 08:23:15

000:03:23 (Time Held)

On-Scene: 000:12:35 (1st Arrive to Last Clear)

1st En-Route: 06/29/20 08:23:20

000:03:28

1st Arrive: 06/29/20 08:25:05

000:05:13 (Reaction Time)

Last Clear: 06/29/20 08:37:40

000:17:48

Radio Log

Unit	Empl ID	Type	Description	Time Stamp	Comments (may truncate in portrait)	Close Code	User
209	788	DXY	DispatchXY	06/29/20 08:23:15	1787505.38,632857.69		KCOYLE
209	788	D	Dispatched	06/29/20 08:23:15	Stat/Beat: W		KCOYLE
209	788	E	En-Route	06/29/20 08:23:20			KCOYLE
208	776	DXY	DispatchXY	06/29/20 08:23:58	1782670.25,631892.75		KCOYLE
208	776	D	Dispatched	06/29/20 08:23:58	Stat/Beat: N;493		KCOYLE
208	776	E	En-Route	06/29/20 08:23:58	Stat/Beat: N;493		KCOYLE
208	776	DXY	DispatchXY	06/29/20 08:25:05	1783489.63,633111.25		Unit:208
208	776	A	Arrived	06/29/20 08:25:05			Unit:208
209	788	DXY	DispatchXY	06/29/20 08:28:43	1782642.25,633886.00		Unit:209
209	788	A	Arrived	06/29/20 08:28:43			Unit:209

209	788	C	Cleared	06/29/20 08:37:40	3	KCOYLE
208	776	C	Cleared	06/29/20 08:37:40	AU	KCOYLE

Event Log

Unit	Empl ID	Type	Description	Time Stamp	Comments (may truncate in portrait)	Close Code	User
		TR	Time Received	06/29/20 08:19:52	By: PHONE		KEAGERTO
		ENT	Entered Street	06/29/20 08:19:58	1000 CLYBURN PL		KEAGERTO
		ENT	Entered Nature	06/29/20 08:20:04	SUSPICIOUS VEHICLE		KEAGERTO
		ENT	Entered Remarks	06/29/20 08:20:56			KEAGERTO
		ENT	Entered CallerName_C	06/29/20 08:21:00	HOLT, JOE		KEAGERTO
		FIN	Finished Call Taking	06/29/20 08:22:08			KEAGERTO
		REC	Unit Rec Btn Click	06/29/20 08:22:49	Unit recommend for SUSPICIOUS VEHI		KCOYLE
		REC	Unit Recommendation	06/29/20 08:23:15	Plan: LNOR Cat: 1PAT Lvl: 1		KCOYLE
		REC	Unit Recommendation	06/29/20 08:23:15	Recmnd:209 [PSO]		KCOYLE
		ENT	Entered VehicleID	06/29/20 08:28:46	[ID: 44659] MS258		KCOYLE
		ENT	Entered VehicleState	06/29/20 08:28:46	[ID: 44659] SC		KCOYLE
		ENT	Entered LicenseType	06/29/20 08:28:46	[ID: 44659] PC		KCOYLE

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Shannon Polvi

From: Shannon Polvi
Sent: Tuesday, May 3, 2022 10:53 AM
To: Jennifer Hayes
Subject: RE: Ref Subpoena for Joe Holt

Thank you Lieutenant Hayes, have a great day.

Shannon Polvi
CROMER BABB PORTER & HICKS, LLC

1418 Laurel St., Suite A (29201) | P.O. Box 11675 | Columbia, SC 29211
Phone 803.799.9530 | Fax 803.799.9533
shannon@cbphlaw.com
www.cbphlaw.com

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From: Jennifer Hayes <jhayes@cityofaikensc.gov>
Sent: Tuesday, May 3, 2022 10:47 AM
To: Shannon Polvi <Shannon@CBPHlaw.com>
Subject: RE: Ref Subpoena for Joe Holt

I apologize, I read the request incorrectly. We do have the call log where the report was taken in our CAD as well as the radio traffic related to the call. The phone line that the call came in on was not recorded at the time the call was made. This is all of the information we have in relation to the complaint that was made.

From: Shannon Polvi <Shannon@CBPHlaw.com>
Sent: Monday, May 2, 2022 11:43 AM

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To: Jennifer Hayes <jhayes@cityofaikensc.gov>; Elizabeth Malejko <Liz@cbphlaw.com>
Subject: [EXTERNAL EMAIL] - RE: Ref Subpoena for Joe Holt

Good morning Lieutenant Hayes,

Thank you for your response. If there is no formal report, I believe there would be the call log from the morning of June 29, 2020 and also possibly the recording of the APS dispatch call.

It was called into APS dispatch at around 8 am on June 29, 2020. I believe APS would have a recording of the call because when my client spoke to an officer in the past they said that they would release it upon request from a lawyer.

Thank you in advance for your follow up on the above.

Thanks,
Shannon Polvi

Shannon Polvi
CROMER BABB PORTER & HICKS, LLC

1418 Laurel St., Suite A (29201) | P.O. Box 11675 | Columbia, SC 29211
Phone 803.799.9530 | Fax 803.799.9533
shannon@cbphlaw.com
www.cbphlaw.com

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From: Jennifer Hayes <jhayes@cityofaikensc.gov>
Sent: Thursday, April 28, 2022 8:25 AM
To: Shannon Polvi <Shannon@CBPHlaw.com>; Elizabeth Malejko <Liz@cbphlaw.com>
Subject: Ref Subpoena for Joe Holt

In reference to the subpoena for information regarding an incident report from June 29, 2020 involving Joe Holt- we have no records matching that request.

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Lieutenant Jennifer Hayes

Records Manager- Aiken Department of Public Safety
City of Aiken, SC Government

834 Beaufort St NE, Aiken SC 29801
Office: 803-642-7668
Fax: 803-642-7681
Email: jhayes@cityofaikensc.gov
Web: <https://www.cityofaikensc.gov/>

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EXHIBIT 5



Annotate



Harassment-Free Environment

RURAL HEALTH SERVICES

Rural Health Services will not tolerate harassment to our employees, applicants, customers or vendors. The term "harassment" includes, but is not limited to slurs, jokes and other verbal, graphic or physical conduct relating to an individual's race, ethnicity, gender (including same-sex harassment), religion, national origin, citizenship, age or disability. Harassment also includes sexual advances, requests for sexual favors, offensive touching, and other verbal, written, graphic, physical conduct or electronic communications (e-mail) of a sexual nature involving either members of the opposite sex or the same sex.

Violation of this policy will subject an employee to disciplinary action, up to and including immediate termination.

If an employee feels this policy has been violated by anyone with whom the employee comes in contact on the job, regardless of whether it is a fellow employee, a supervisor, a Rural Health Services Board Member, or a member of the general public, the employee should report the violation to his or her supervisor, Department Head, the Human Resources Department or the Chief Executive Officer. The complaint will be kept as confidential as possible, consistent with its efficient investigation.

Rural Health Services will promptly and thoroughly investigate all complaints of harassment brought to its attention. Employees who report complaints are expected to participate in the investigation and may do so without fear of retaliation. Based on the results of the investigation, Rural Health Services will take prompt and appropriate corrective action.



Annotate



Nepotism

RURAL HEALTH SERVICES

The employment of relatives in the same area of an organization may cause serious conflicts and problems with favoritism and employee morale. In addition to claims of partiality in treatment at work, personal conflicts from outside the work environment can be carried into day-to-day working relationships. Members of an immediate family shall not be employed where one occupies a position

These policies and procedures do not, nor do any statements contained herein, constitute an express or implied contract of employment
Revised and approved by the board 10/21/2015

that has influence over another’s employment, promotion, supervision, salary administration and other related management or Human Resources administration.

The immediate family shall include parent, guardian, child, spouse, brother, sister, grandparent, grandchild, parent-in-law, sister-in-law, or brother-in-law. If violation of this policy is created by the marriage of two employees, or by the marriage of one employee to a close relative of another employee, one of the employees who has become related by marriage must give up his or her position. While the employee’s preferences regarding any move will be given consideration, Rural Health Services will make all final decisions regarding resolution of this situation. In such situations, efforts will be made to find other employment within Rural Health Services for the affected employee. This policy also applies to couples residing together regardless of kinship.

RHS prohibits the hiring of full-time, part-time, contractual and temporary employees and independent contractors who are relatives of a member of the Board of Directors.



Annotate



Reporting Serious and Criminal Acts

RURAL HEALTH SERVICES

It is the responsibility/obligation of each employee to immediately report to their supervisor and/or Chief Executive Officer all instances of irregular practices regarding but not limited to time, attendance, payroll, purchasing, personnel or other legal, business, or financial matters. Reporting will allow the Department Head to investigate incidents, and take necessary precautions to prevent recurrence. Employees will be protected under the "Whistleblowers" Act.

Having knowledge of illegal acts or irregular practices and failing to report immediately such actions to the Chief Executive Officer or other executive level management may result in your termination.

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These policies and procedures do not, nor do any statements contained herein, constitute an express or implied contract of employment
Revised and approved by the board 10/21/2015



EXHIBIT 6

Whistleblower Complainant Interview Form Case No. 2020-80

1. How were you discriminated against? Termination on June 30, 2020; reporting unsafe work conditions
2. Who was responsible for the discrimination? Rural Health Services, Inc.
3. Why do you believe you were discriminated against?

Dr. Holt engaged in protected activities under Section 11(c) of the Occupational Safety and Health Act of 1970 ("OSH Act"), 29 U.S.C. Section 660(c) and the South Carolina Occupational Health and Safety Act, Section 41-15-510. The federal and state OSHA statutes protect employees who complain to their employer and government entities about unsafe working conditions. The federal and state OSHA statutes prohibit employers from firing employees because they report unsafe working conditions.

Dr. Holt reported unsafe conditions in the workplace on June 29, 2020, the day before his termination. On June 29, 2020, Dr. Holt arrived at work and began his workday around 8am. While Dr. Holt was standing at the front door of the building, Dr. Holt observed a very unsafe series of events. An unknown individual was driving a Ford F150 truck very recklessly in the workplace parking lot. Dr. Holt feared for the safety of himself and those around him because of the dangerous conduct of the reckless driver. Dr. Holt saw the truck driving at an excessive speed. Dr. Holt heard the tires squeal. Dr. Holt was alarmed to see that the truck was not slowing down when it was driving dangerously fast in the workplace parking lot. The truck was driving so fast that the truck hit the curb without stopping. Dr. Holt observed the impact of the truck to the curb was so severe that the truck bounced into the tree wooded area before it came to a stop. Dr. Holt did not see who was driving. Dr. Holt was unsure of the physical or mental condition of the driver and the danger it placed toward himself and others in the workplace, so Dr. Holt reported his safety concerns to the Aiken Department of Public Safety.

It is important to note that Dr. Holt is not aware of any management officials on the grounds at the same of this workplace safety incident. For example, Dr. Holt's supervisor was not at work; the Medical Director was not at work; the Nursing Director was not at work; and the Chief of Operations was not at work.

Aiken Public Safety reported to the scene. By that time, one management official had arrived at the workplace. The immediate response was that Dr. Holt should not have reported the workplace safety incident. The first management official to arrive at work was Charity Williams, the Director of Nursing. Dr. Holt and Charity Williams had three to four different conversations in quick succession on the morning of June 29, 2019. Dr. Holt explained the above; he described the safety concern in the parking lot to Ms. Williams.

While Dr. Holt was working on charts, Ms. Williams came back to Dr. Holt's office. She left and then returned to speak with Dr. Holt multiple times before the arrival of Dr. Holt's first patient.

RHS had two trainings on active shooters and Dr. Holt's first instinct was to fear that such a situation could be occurring at that time based on the dangerous and erratic driving. Dr. Holt specifically told Ms. Williams that he felt workplace safety was at risk. Dr. Holt said that the drive could have been someone passed out at the wheel based on how erratic the driving was. Dr. Holt explained to Ms. Williams that he did not feel it was appropriate for him to go and check behind the wheel. Dr. Holt said he did not feel safe and that is why he called the Aiken Department of Public Safety. Ms. Williams rebuked Dr. Holt saying that it was wrong that he reported any concerns to the Aiken Department of Public Safety. Dr. Holt told her he felt in danger at the time. The CEO had given management permission to work offsite during the pandemic, so most of the management official were not on site. This amplified Dr. Holt's feelings that he was on his own and had to make the judgment call for workplace safety.

Dr. Holt also reported his concerns Gail Diggs, Director of Outreach. She is also a City Council member. She is the only person who directly asked Dr. Holt why he called the Aiken Public Safety. Dr. Holt explained his safety concerns and Ms. Diggs seemed to be empathetic to Dr. Holt's concerns. Dr. Holt reported that the high rate of speed and erratic behavior made him feel unsafe. Dr. Holt specifically told her that he just wanted to be safe and that is what motivated him to call because he had to make a judgment call based on what he was observing. Ms. Digg's response to Dr. Holt was, "Joe, it sounds like you did the right thing. Wanting us all to be safe."

Dr. Holt also discussed his safety report with Charles Emmanuel, the Director of Facilities Maintenance, who is also the CEO's son. After Dr. Holt explained what he observed, Mr. Emmanuel confirmed that he would have called the Aiken Department of Public Safety too.

Through the remainder of June 29, 2020, Dr. Holt treated patients and performed his job duties. No one else brought in Dr. Holt to ask him further information about the workplace safety incident he reported on June 29, 2020.

During one of the conversations with Ms. Williams she said that she was going to get with Carlos Foster, Dr. Holt's supervisor. Mr. Foster and Dr. Holt did not have any conversations with one another on June 29, 2019. Dr. Holt heard nothing from his supervisor until he accompanied the HR Director when she terminated Dr. Holt on June 30, 2020. Dr. Holt had the impression that Mr. Foster was not in agreement with Dr. Holt's firing.

Upon information and belief, the reckless driver remains employed by Rural Health Services, Inc.; whereas, Dr. Holt was terminated for his workplace safety protected activity. It was discovered that the reckless driver of the truck was the son of the Director of Human Resources and an intern employed by Rural Health Services, Inc. The Director of Human Resources wrongfully terminated Dr. Holt the next day, on June 30, 2020.

Dr. Holt has also engaged in other protected activities under OSHA during the pendency of the COVID-19 pandemic in 2020. Dr. Holt has high-risk health concerns that he has shared with his employer. Dr. Holt requested PPE accommodations during the COVID-19 pandemic. However, well into the pandemic crisis, Dr. Holt was being required to go to work and meet

directly with patients without Rural Health Services, Inc. providing any PPE with COVID-19 positive individuals on site and near to Dr. Holt.

Charity Williams is in charge of PPE purchases at RHS. Dr. Holt reported that Ms. Williams was failing to purchase PPE for the facility's staff during the pandemic, despite the fact that RHS is treating COVID-19 positive patients on-site. Also, Ms. Williams refused to give Dr. Holt PPE. All shipments coming to the facility go through Charity Williams and Dr. Holt repeatedly expressed concern about the lack of PPE and Ms. Williams decisions to not procure the necessary protection for staff being exposed to COVID-19 in the workplace. In addition to reporting these concerns to Ms. Williams herself, Dr. Holt also reported those concerns to the Medical Director and CEO.

It was only at about the 12-week point during the pandemic when RHS provided the staff with PPE. Dr. Holt repeatedly expressed these concerns. The CEO was the first one to give Dr. Holt an N95 mask because she wanted to trade a mask that Dr. Holt had for an N95 mask and when she did so, she told Dr. Holt to not to tell the other employees that she had a stockpile of the N95 masks.

This is particularly concerning because of the direct exposure of COVID-19 to Dr. Holt. RHS place the COVID-19 positive patients with high fevers in the exam room across the hall from Dr. Holt. It was a mutually shared room for medical services, including those medical services provided by Dr. Holt to children. Specifically, the computer used for testing the children is in that exam room that Dr. Holt regularly uses with his patients. That same exam room was being used as overflow from the mobile COVID-19 unit. Specifically, the mobile unit is located out in the RHS parking lot.

Dr. Holt asked that the room be disinfected for workplace safety and for the safety of the children who would be in that room that were not already COVID-19 positive. Dr. Holt asked Ms. Williams about additional cleaning services because RHS was leaving that room as is and RHS did not take any additional cleaning steps to reduce exposure to COVID-19. Ms. Williams response was to tell Dr. Holt that the room did not need additional cleaning.

It is also important to note that Dr. Holt expressed concern when Ms. Williams engaged in other unsafe activities, including when she brought her COVID-19 positive mother to the workplace. Dr. Holt expressed his concerns that Ms. Williams was endangering the staff and patients.

4. Did the person who was responsible for the discrimination know about your protected activity? (Employer Knowledge) Yes, described above.
5. When were you discriminated against? Termination date of June 30, 2020 and the preceding dates when Dr. Holt was subjected to unsafe work conditions that he opposed, as described above.

6. What day did you file your complaint? (Timeliness) The OSHA Whistleblower complaint was filed on July 21, 2020.
7. When did you complain? (Temporal Proximity) To Aiken Department of Public Safety and employer on June 29, 2020 and multiple dates in 2020 during the COVID-19 pandemic.
8. Who did you complain to? (Employer Knowledge) Aiken Department of Public Safety; CEO Carolyn Emanuel-McClain, Director of Human Resources Stephanie Alford, Medical Director Dr. Kenneth Jones, Supervisor over Behavioral Health Carlos Foster, Director of Nursing Charity Williams, Director of Outreach Gail Diggs, and the Director of Facilities Maintenance Charles Emmanuel.
9. How many times did you complain? Several as described above; the exact number is unknown.
10. What was the Employer's reaction when you complained? (Animus) Statements opposing Dr. Holt's complaints and termination.
11. What is the Employer's reason that the adverse action occurred? The first paragraph of termination letter dated June 30, 2020 states: "This letter serves to inform you that your employment with Rural Health Services, Inc. is terminated effective immediately. Your services here at RHS are no longer needed. Please have all of your personal items removed from your office by 5 p.m. today, June 30, 2020."
12. How can you defend against that? No reason was given for the immediate termination without progressive discipline or documented reason for termination because Dr. Holt was fired because of his protected activities, as described above.
13. Do you know of any other employee(s) being treated the same way for the same offense? (Disparate Treatment) No.
14. Did you ever refuse to do any work assignments? (Walk Through Analysis) No, Dr. Holt continued to perform his work duties with a good work ethic and attendance despite the unsafe work conditions and lack of support from management to remedy workplace safety concerns. Between Dr. Holt's OSHA protected activities and his termination, he was at work performing his normal duties.
15. What was your rate of pay? The biweekly rate of pay was normally \$3,461.54 per paycheck.
 - a. How many hours did you work a week? Full time
16. Are you a member of a union? No.
17. Are you represented by an attorney? Yes, Shannon Polvi at Cromer Babb Porter & Hicks, LLC. PO Box 11675 Columbia SC 29211. (803) 799-9530. Shannon@cbphlaw.com

18. Are you aware there is no confidentiality with this complaint? Yes.

19. What remedy are you seeking? Compensation for lost wages and benefits (back pay and front pay in lieu of reinstatement), attorney's fees and costs, compensatory damages to include compensation for physical and emotional damages, the reversal of the termination, punitive damages, and all other remedies available under the law.

20. Do you have any one I may speak with to support your version of events? Please list names and numbers. The primary witnesses with personal knowledge of Dr. Holt's protected activities are the leaders to whom Dr. Holt complained, identified in the Answer to question No. 8 above. Also, the Aiken Department of Public Safety can confirm Dr. Holt's protected activities on the date prior to his termination, June 29, 2020.

21. Do you have anything in writing related to what happened? Text messages, emails, Facebook messenger, logs, etc.? Yes, including the following exhibits produced herewith.

- a. Exhibit 1 evidences matters related to Dr. Holt's safety concerns. Charity Williams, the Nursing Director, brought her mom to the clinic. Without telling the staff what was going on, the Nursing Director brought her mom in through the front door of RHS. Her mother wandered around the front lobby and around other patients. Ms. Williams' mother was eventually brought back into the pediatric unit; she was brought to the Wonder Woman exam room. Then, she did not stay there and she again wandered around the hallways until she was redirected by Dr. Holt to please return back to the room because at the time Dr. Holt did not know whether she was positive or negative with regard to COVID-19. Then, Dr. Jones and Ms. Williams came back into the room to see Ms. Williams' mother. The next day, it was announced by the front desk that Ms. Williams' mother was positive for COVID-19. Dr. Holt and others at RHS were placed at risk by the Chief Medical Officers of RHS. No was told that they needed to be quarantined due to exposure, Dr. Holt was across the hall and interact with her while she was positive for COVID-19 and in response to his inquiry as to what to do, Dr. Holt was told that no one was allowed to take time off.
- b. Exhibit 2 evidences that amidst the pandemic PPE was not available or being worn.
- c. Exhibit 3 evidences that amidst the pandemic RHS did not comply with CDC standards, note the time stamps and no social distancing for a facility that had COVID-19 positive patients on site.
- d. Exhibit 4 evidences the lack of cleaning of the patient exam rooms.
- e. Exhibit 5 evidences that no hand sanitizer was available for months.

f. Exhibit 6 are the Management Guidelines of COVID-19 for Community Providers issued by Aiken Regional Medical Centers

g. Exhibit 7 is the termination notice issued to Dr. Holt.

22. How long were you employed by Respondent? From on or about September 1, 2014 until termination on June 30, 2020.

23. Did you file a complaint with (state or federal) OSHA or any other agency? Yes, this complaint was initially filed with federal OSHA and is intended to exhaust remedies under Section 11(c) of the Occupational Safety and Health Act of 1970 ("OSH Act"), 29 U.S.C. Section 660(c) and the South Carolina Occupational Health and Safety Act, Section 41-15-510.

Dr. Holt also filed Wage Complaint 2020-775 for failure to pay wages owed. The Department of Labor, Licensing and Regulation, through its Office of Investigations and Enforcement, has completed the investigation of Dr. Holt's complaint against RHS. A warning was issued to the employer for failing to provide written notice to their employees as required under S.C. Code Ann. § 41-10-30. A citation was issued for violations under the S.C. Payment Statute, S.C. Code Ann. § 41-10-40, for failing to pay all wages as required under the law. Specifically, the investigation revealed that an approximate amount of \$10,325.09 in wages were due to Dr. Holt.

Dr. Holt was also subjected to harassment and wrongful termination in violation of the ADA and Title VII and those claims are being filed with the U.S. Equal Employment Opportunity Commission.

24. Where have you worked since leaving this employment?

Dr. Holt is self employed and is providing counseling services at 1117 Georgia Ave., North Augusta, SC. 29801. Dr. Holt's website about the services he is providing is <https://ejholtphd.com/>.

25. What may we expect the Employer to tell us about you? Unknown. They provided no basis for termination to Dr. Holt so any newly provided adverse information about Dr. Holt would be new and is evidence of pretext because no such information was provided contemporaneous or before the termination decision on June 30, 2020.

26. Confirm Complainant's address. [REDACTED]

Please communicate through Complainant's legal counsel.

27. Confirm Complainant's telephone number. [REDACTED]

28. Confirm Complainant's email address. [REDACTED]

29. Confirm Respondent's address and contact person.

Stephanie Alford, Director of Human Resources
Rural Health Services, Inc.
1000 Clyburn Place
Aiken, SC 29081

D. Randle Moody, Esquire
Jackson Lewis P.C.
15 South Main Street
Suite 700
Greenville, SC 29601

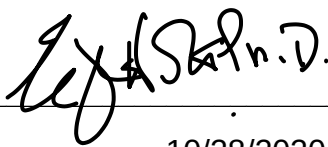
Sign:  _____
Date: 10/28/2020 _____

EXHIBIT 8



Chats



Q Search

< 15

**Gabrielle Gaudette**

Active now



ELECTRONICALLY FILED - 2024 Aug 30 3:42 PM - AIKEN - COMMON PLEAS - CASE#2021CP001525

6:51 PM



Hey!

I know you know that I am gone

How do I get a copy of my medical record.....

I will some of you guys, but I was tired of the BS

Will miss some of you guys, definitely you

Come n and fill out and roi...or send us a request from ur new office that way they dnt charge u lol



I heard! 😔 awe miss u 2

Ok...what is your fax number

Did you hear bad things?



But atleast how u can do what u want without the bureaucracy

I would like to fax directly to you for processing

803-641-4656

I will have the office fax tomorrow



I'm no longer n medical records...sims over medical records now...I'll tell him 2 keep an eye out

Oh ok



Just that u left bc u called the cops on mrs Alford son

Well he was driving out of control in a heavily tinted truck.....did not know who was driving

So it was a very suspicious activity

At 8 am with no management there to make a decision. I wanted things to be safe...Management does little to make us safe

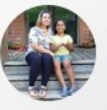
If he drove wrecklessly, then he should be held accountable..... Punishing me does not help them.



Aa



15



Gabrielle Gaudette
Active now



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Seen

Oh ok



Just that u left bc u called the cops on mrs Alford son

Well he was driving out of control in a heavily tinted truck.....did not know who was driving

So it was a very suspicious activity

At 8 am with no management there to make a decision. I wanted things to be safe...Management does little to make us safe

If he drove wrecklessly, then he should be held accountable..... Punishing me does not help them.

But that is okay..... i will do fine

Does Sim have an email and I can email a request?

8:02 PM

Was scared and thus I called the police about suspicious activity. Did not want anyone in the facility harmed since it was an unmarked truck with heavily tinted windows.

Take care. I hope. You stay in touch

8:34 PM

Just send it 2 mine I dnt think he checks his lol grodgers@ruralhs.org



I totally agree...they should do more 2 protect us

I am tired of the harassment and fear we live with under their leadership



Aa



EXHIBIT 9



110 Centerview Drive
Post Office Box 11329
Columbia, SC 29211-1329
Phone: (803) 896-4470
FAX: (803) 896-4656

South Carolina
Department of Labor, Licensing and Regulation

Division of Professional and Occupational Licensing
Office of Investigations and Enforcement



Henry D. McMaster
Governor

Emily H. Farr
Director

October 5, 2020

Dr. Edgar Joe Holt

[REDACTED]
[REDACTED]

Re: Rural Health Services
Case No.: 2020-775

Dear Dr. Holt:

The Department of Labor, Licensing and Regulation, through its Office of Investigations and Enforcement, has completed the investigation of your complaint against the above-referenced employer.

A warning was issued to the employer for failing to provide written notice to their employees as required under S.C. Code Ann. § 41-10-30.

A citation will be issued for violations under the S.C. Payment Statute, S.C. Code Ann. § 41-10-40, for failing to pay all wages to you and/or other employees as required under the law. Specifically, the investigation revealed that an approximate amount of \$10,325.09 in wages were due to you.

If you still have not received your wages, you may pursue legal action in court under S.C. Code Ann. § 41-10-80(C) of the S.C. Payment Statute. This section of the law allows for triple unpaid wages, court cost and reasonable attorney fees.

The Department has officially closed this file. If you have any questions, please feel free to contact me.

Sincerely,
Serrena Swartz
Investigator
(803) 896-4506
serrena.swartz@llr.sc.gov

J. Holt 00051

EXHIBIT 10

CONGRATULATIONS

THE AIKEN STANDARD AWARDS

JOE HOLT, PHD

The Family Center, Graniteville

VOTED 2021 AIKEN'S CHOICE TOP DOCS FINALIST
BEST BEHAVIORAL HEALTH FACILITY



Rhonda Overberg

PUBLISHER

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CONGRATULATIONS

THE AIKEN STANDARD AWARDS

E. JOE HOLT, PhD

The Family Center, Graniteville

VOTED 2021 AIKEN'S CHOICE TOP DOCS FINALIST

BEST THERAPIST OR

COUNSELOR



Phonda Ovelby

PUBLISHER

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EXHIBIT 11

Dear Dr. Holt,

I refuse to let my sons continue to see you as a doctor. As long as you working for the Clyburn Center in Aiken, South Carolina. Since you've been working for the Clyburn Center, I've been getting sexual harassed by front end secretary. Everytime the boys have an appointment, if the black guy was working, he would always say out of the way comments to me. "Told me I can come sit on his lap." That he had something to make me feel good. With my big ass! I looked at him and told him he was sexual harassing me. Who else have ~~you~~ done this too? He laughed, and told me that I liked it. I walked away. I told myself I wasn't coming back to Clyburn anymore. When [redacted] finished with ~~you~~ you. I promised I was going to tell someone. I did. My daughter [redacted] told me to tell you what was going on. Eventually I did. I felt it was too late. I should have been said something. Instead of telling you what was going on. I stopped seeing you. Please forgive me. When the boys grades started slipping. I knew I had made a very bad decision. When I called you and told you why I haven't been coming to see you. You said "you was back in North Augusta. I was elated! I started bringing the boys back. Their grades came back up. I give you all the credit. Great doctor! Thanks for opening you North Augusta office back up."



Genia B. Bennett
8/14/22

8.7.22

EXHIBIT 13



Add a Caption

Monday • Jul 20, 2020 • 1:58 PM

Adjust

IMG_3554

Apple iPhone 11 Pro Max

HEVC

No lens information

1080p • 1920 x 1080 • 356.8 MB

29.97 FPS

05:59



EXHIBIT 14

Tuesday, July 6, 2021

To whom it MAY Concern,

I [REDACTED] Was A Patient of DR. Jones.

My last Appointment with him was because of the fact that he told me that I could not see DR. Holt anymore that I had to see in house one of their Psychologist at Clyburn Center to continue to be A patient there.

So, I'm no longer A patient of the Clyburn Center because of DR. Jones Unprofessional mannerisms.

Thank You.

[REDACTED]

Signed in my presence, on this 6th day of July, 2021.

Jerry T. Nation

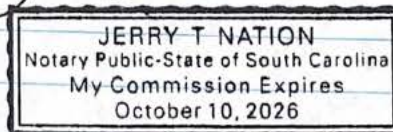


EXHIBIT 15

South Carolina

SC USA



DRIVER'S LICENSE



DL#:



UNDER 18 UNTIL
02/07/2019



DOB:

Issued:

Expires:



Governor

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
AIKEN DIVISION**

Dr. Joe Holt,

Plaintiff,

v.

Rural Health Services, Inc.,

Defendant.

C/A No.: 1:21-cv-02802-MLG-SVH

SWORN STATEMENT OF
[REDACTED]

I HEREBY SWEAR AND AFFIRM UNDER PENALTY OF PERJURY THAT THE FOLLOWING IS TRUE AND CORRECT TO THE BEST OF MY RECOLLECTION:

1. I, [REDACTED] I am a competent adult and can testify truthfully.
2. Being of sound mind and over the age of 18 years, I hereby testify under oath voluntarily of my own knowledge.
3. My mailing address is [REDACTED]
4. My contact phone number is [REDACTED]

Our time as patients at the Clyburn Center for Primary Care was from 2017 to July 2020. During our time utilizing the pediatric services of the center.

Dr. Joe Holt was negatively singled out by the pediatric staff from the beginning of our time of going to the Clyburn Center for Primary Care. Its nothing but Hispanics and African American staff. He was the only white male professional on the pediatric staff.

The RHS pediatric staff made negative, disparaging comments about Dr. Joe Holt as a professional to patients. My family was one of the patients of the center and the staff spoke negatively about Dr Holt.

I felt that their behaviour was unprofessional, uncalled for, slanderous, as well as being was out of line since we were not asking for that information.

FURTHER AFFIANT SAYETH NAUGHT.



SWORN to before me this _____

day of _____, 2021

Notary Public for South Carolina

My Commission Expires: _____

EXHIBIT 16



Transcription Beta

"Good afternoon to help this is Miss White call me back from Social Security ministration I was calling you in reference to your Medicare part B I've been trying to contact Miss Stephanie _____ in reference to the form um I've left two messages and she has not returned my call yet so I just want to know let you know that I was trying to reach out for her or to ___ rather um if you would give me a call back um at **877-616-2523** um I'll be out of the office all day Tuesday but I'll be back on Wednesday if you don't call me before I leave today..."

J. Holt 00042

Was this transcription **useful** or **not useful**?

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EXHIBIT 17

 Junk**Kerrie Copeland**

3:16 PM

To: Joe Holt, Holt, PhD >



Joel Holt / WellCare of South Carolina participation

Hi Dr. Holt,

Thank you for the telephone conversation today. As discussed, please send me the date you left the CIMS group, Clyburn Clinic. Your Provider ID 1173524 is still active under this group and we need to terminate it.

Please provide your NPI and the date you left their group.

Best Regards,

Kerrie Copeland

Contract Negotiator II, Provider Contracting
WellCare of South Carolina Health Plans, Inc.

200 Center Point Circle, Suite 180 | Columbia, South
Carolina 29210

Direct 803.561.4479 | Fax 866.354.8711

kerrie.copeland@wellcare.com | www.wellcare.com



Privacy Notice: This electronic mail



EXHIBIT 18



RURAL HEALTH SERVICES, INC

SUBJECT: Cash / Mail Receipts	PAGE: 1 of 1
MANUAL: Finance	REVIEW DATE: 09/22/2022
ORIGINAL POLICY DATE: 10/2010	REVISION DATE: 9/2012; 3/3/2016; 7/27/2017
IMPLEMENTATION DATE: 12/20/2010	IMPLEMENTATION DATE: 9/2012; 3/3/2016; 7/27/2017

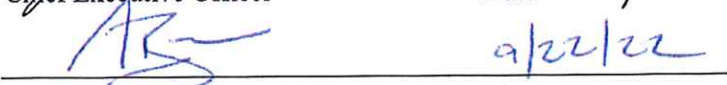
Policy:

Payments received for patient accounts through the mail will be properly reported and safeguarded by deposit with 24 hours of receipts.

Procedure:

1. Mail will be opened daily by Administrative Assistant, and check will be forwarded to Accounting Manager. Bank statements are to be opened and date stamped on the outside of the envelope and forwarded to CEO for review.
2. Checks will have the Rural Health Services, Inc.'s account number recorded on the check. A copy of each check will be maintained with the deposit.
3. A daily deposit will be prepared for mail receipts. Patient's payment will be balanced against the batch deposit.


 Chief Financial Officer Date 9-22-2022

 Chief Executive Officer Date 9/22/2022

 Chair, Finance Committee RHS Board Date 9/22/22

 Chair, RHS Board of Directors Date 09/22/2022

EXHIBIT 19

Document type : Disbursement Check

06/11/2021 11:31 AM

04115 THE BACKGROUND OF THIS CHECK IS BLUE.

Bank of America Customer Connection
Bank of America, N.A.
Atlanta, DeKalb County, Georgia

THE SC STATE EMPLOYEES HEALTH BENEFIT PLAN
A SELF-INSURED PLAN
Administered by Blue Cross Blue Shield of South Carolina
An Independent Licensee of the Blue Cross and Blue Shield Association.
COLUMBIA, S.C. 29219
(800) 288-2227

54-1278
811

No. 0003079881

DATE
02-01-21

SBC
1376642884

AMOUNT
*****504.00

FIVE HUNDRED FOUR DOLLARS AND ZERO CENTS

PAY TO THE ORDER OF
E JOE HOLT L PC

Blue Cross Blue Shield of South Carolina

VOID SIX MONTHS FROM DATE OF ISSUE 229256 004115 AS TREASURER

*FEDERAL RESERVE BOARD OF GOVERNORS REG. CC

Security Federal Bank
Aiken, SC

ENDORSE HERE

PAY TO THE ORDER OF
Security Federal Bank
Beech Island SC 29842

FOR DEPOSIT ONLY
RURAL HEALTH SERVICES INC.

DO NOT WRITE, STAMP OR SIGN OVER THIS LINE.
RESERVED FOR FINANCIAL INSTITUTION USE.

Tag	Amount	Note	Serial Number	Volume ID Customer Data	Item Date	ImgVolNo	Account Number
No	504.00	No	3079881	E JOE HOLT L	02/12/2021	1	

0000134

State Health Plan
PO Box 100605
Columbia, SC 29260



South Carolina

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June 11, 2021



Edgar Joe Holt, Ph.D., Lpc



000000
0001 of 0001

RE: Patient: [REDACTED]
ID #: ZCS98773842
Date(s) of Service: 11/18/2020
Claim Number(s): C1020K3120000
Patient Account #:

Dear Provider:

Thank you for providing services to our member.

Why we are writing:

This is in response to your recent inquiry.

We have attached the information you requested. We hope this information is helpful to you.

We appreciate the opportunity to serve you.

Sincerely,

State Group Operations
PF26

02/01/21 1376642884

CHECK NUMBER 0003079881
STATE BEHAVIORAL HEALTH PLAN

PATIENT INFORMATION

PHYSICIAN NUMBER OR EIN	DATE OF SERVICE			PROCEDURE						DAYS/ UNITS	CHARGE SUBMITTED	COVERED CHARGE	AMOUNT ALLOWED	PATIENT LIABILITY				PAYMENT	MESSAG				
				CODE		M	T	M	T					M	T	DEDUCTIBLE	COPAYMENT			COINSURANCE	OTHER		
	M	D	Y	OA	IR																		
ACCT# 11 1376642884	11	18	20			90837					1	ZCS98773842	150.00	NAME: [REDACTED] 77.00	0.00	14.00	12.60	CLAIM# C1020K31200-00	0.00	50.40	367		
ACCT# 11 1376642884	10	21	20			90837					1	ZCS98773842	150.00	NAME: [REDACTED] 77.00	0.00	14.00	12.60	CLAIM# C1020K31300-00	0.00	50.40	367		
ACCT# 11 1376642884	10	20	20			90837					1	ZCS98773842	150.00	NAME: [REDACTED] 77.00	0.00	14.00	12.60	CLAIM# C1020K31400-00	0.00	50.40	367		
ACCT# 11 1376642884	07	11	20			90837					1	ZCS98773842	150.00	NAME: [REDACTED] 77.00	0.00	14.00	12.60	CLAIM# C1020K31500-00	0.00	50.40	367		
ACCT# 11 1376642884	10	06	20			90837					1	ZCS98773842	150.00	NAME: [REDACTED] 77.00	0.00	14.00	12.60	CLAIM# C1020K31600-00	0.00	50.40	367		
ACCT# 12 1376642884	12	10	20			90837					1	ZCS10237521	150.00	NAME: [REDACTED] 77.00	0.00	14.00	12.60	CLAIM# C1020K31700-00	0.00	50.40	367		
ACCT# 12 1376642884	11	04	20			90837					1	ZCS10237521	150.00	NAME: [REDACTED] 77.00	0.00	14.00	12.60	CLAIM# C1020K31800-00	0.00	50.40	367		
ACCT# 12 1376642884	10	22	20			90837					1	ZCS10237521	150.00	NAME: [REDACTED] 77.00	0.00	14.00	12.60	CLAIM# C1020K31900-00	0.00	50.40	367		
ACCT# 12 1376642884	10	08	20			90837					1	ZCS10237521	150.00	NAME: [REDACTED] 77.00	0.00	14.00	12.60	CLAIM# C1020K32000-00	0.00	50.40	367		
ACCT# 12 1376642884	07	11	20			90837					1	ZCS10237521	150.00	NAME: [REDACTED] 77.00	0.00	14.00	12.60	CLAIM# C1020K32100-00	0.00	50.40	367		
367	AMOUNT EXCEEDS MAXIMUM ALLOWANCE																						

TOTAL

www.SouthCarolinaBlues.com

EXHIBIT 20

I-20 @ Alpine Road
Columbia, SC 29219



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at SouthCarolinaBlues.com

OCTOBER 31, 2021



466055 000017
0001 of 0001

Re: Patient: [REDACTED]
ID Number: ZCW062759493478
Date(s) of Service: November 19, 2020
Refund Number: P2130317333

Dear Subscriber:

The information below is a copy of a letter we sent to RURAL HEALTH SERVICES INC regarding a refund request:

Dear Provider:

We sent payment to you on February 01, 2021, in error for the patient listed above. We must request a refund of \$52.00 for the reasons stated below:

WE PAID THE WRONG PROVIDER FOR THESE SERVICES.

If we have not heard from you within 30 days, we will deduct this amount from future payments to you.

Again, this is a letter that we sent to your provider. We are not asking for a refund from you. If you have any questions, please call our Customer Service department at 800-868-2500.

Sincerely,

Major Group Refunds

0000016

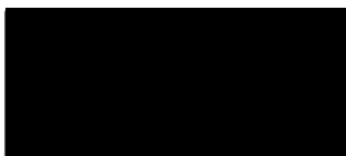
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Columbia, SC 29219

**South Carolina**

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OCTOBER 29, 2021



Re: Patient: [REDACTED]
ID Number: ZCW062759493478
Date(s) of Service: July 27, 2020
Refund Number: P2130116322

Dear Subscriber:

The information below is a copy of a letter we sent to RURAL HEALTH SERVICES INC regarding a refund request:

Dear Provider:

We sent payment to you on February 01, 2021, in error for the patient listed above. We must request a refund of \$52.00 for the reasons stated below:

WE PAID THE WRONG PROVIDER FOR THESE SERVICES.

If we have not heard from you within 30 days, we will deduct this amount from future payments to you.

Again, this is a letter that we sent to your provider. We are not asking for a refund from you. If you have any questions, please call our Customer Service department at 800-868-2500.

Sincerely,

Major Group Refunds

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464104 000016
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OCTOBER 31, 2021



466055 000015
0001 of 0001

Re: Patient: [REDACTED]
ID Number: ZCW062759493478
Date(s) of Service: December 10, 2020
Refund Number: P2130317331

Dear Subscriber:

The information below is a copy of a letter we sent to RURAL HEALTH SERVICES INC regarding a refund request:

Dear Provider:

We sent payment to you on February 01, 2021, in error for the patient listed above. We must request a refund of \$52.00 for the reasons stated below:

WE PAID THE WRONG PROVIDER FOR THESE SERVICES.

If we have not heard from you within 30 days, we will deduct this amount from future payments to you.

Again, this is a letter that we sent to your provider. We are not asking for a refund from you. If you have any questions, please call our Customer Service department at 800-868-2500.

Sincerely,

Major Group Refunds

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OCTOBER 31, 2021



466055 000019
0001 OF 0001

Re: Patient: [REDACTED]
ID Number: ZCW062759493478
Date(s) of Service: November 13, 2020
Refund Number: P2130317340

Dear Subscriber:

The information below is a copy of a letter we sent to RURAL HEALTH SERVICES INC regarding a refund request:

Dear Provider:

We sent payment to you on February 01, 2021, in error for the patient listed above. We must request a refund of \$52.00 for the reasons stated below:

WE PAID THE WRONG PROVIDER FOR THESE SERVICES.

If we have not heard from you within 30 days, we will deduct this amount from future payments to you.

Again, this is a letter that we sent to your provider. We are not asking for a refund from you. If you have any questions, please call our Customer Service department at 800-868-2500.

Sincerely,

Major Group Refunds

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OCTOBER 31, 2021



466055 000021
0001 of 0001



Re: Patient: [REDACTED]
ID Number: ZCW062759493478
Date(s) of Service: November 05, 2020
Refund Number: P2130317355

Dear Subscriber:

The information below is a copy of a letter we sent to RURAL HEALTH SERVICES INC regarding a refund request:

Dear Provider:

We sent payment to you on February 01, 2021, in error for the patient listed above. We must request a refund of \$52.00 for the reasons stated below:

WE PAID THE WRONG PROVIDER FOR THESE SERVICES.

If we have not heard from you within 30 days, we will deduct this amount from future payments to you.

Again, this is a letter that we sent to your provider. We are not asking for a refund from you. If you have any questions, please call our Customer Service department at 800-868-2500.

Sincerely,

Major Group Refunds

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OCTOBER 31, 2021



466055 000023
0001 of 0001

Re: Patient: [REDACTED]
ID Number: ZCW062759493478
Date(s) of Service: November 04, 2020
Refund Number: P2130317361

Dear Subscriber:

The information below is a copy of a letter we sent to RURAL HEALTH SERVICES INC regarding a refund request:

Dear Provider:

We sent payment to you on February 01, 2021, in error for the patient listed above. We must request a refund of \$52.00 for the reasons stated below:

WE PAID THE WRONG PROVIDER FOR THESE SERVICES.

If we have not heard from you within 30 days, we will deduct this amount from future payments to you.

Again, this is a letter that we sent to your provider. We are not asking for a refund from you. If you have any questions, please call our Customer Service department at 800-868-2500.

Sincerely,

Major Group Refunds

I-20 @ Alpine Road
Columbia, SC 29219



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OCTOBER 31, 2021



466055 000025
0001 OF 0001

Re: Patient: [REDACTED]
ID Number: ZCW062759493478
Date(s) of Service: October 29, 2020
Refund Number: P2130317363

Dear Subscriber:

The information below is a copy of a letter we sent to RURAL HEALTH SERVICES INC regarding a refund request:

Dear Provider:

We sent payment to you on February 01, 2021, in error for the patient listed above. We must request a refund of \$52.00 for the reasons stated below:

WE PAID THE WRONG PROVIDER FOR THESE SERVICES.

If we have not heard from you within 30 days, we will deduct this amount from future payments to you.

Again, this is a letter that we sent to your provider. We are not asking for a refund from you. If you have any questions, please call our Customer Service department at 800-868-2500.

Sincerely,

Major Group Refunds

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OCTOBER 31, 2021



466055 000027
0001 OF 0001

Re: Patient: [REDACTED]
ID Number: ZCWW062759493478
Date(s) of Service: October 22, 2020
Refund Number: P2130317370

Dear Subscriber:

The information below is a copy of a letter we sent to RURAL HEALTH SERVICES INC regarding a refund request:

Dear Provider:

We sent payment to you on February 01, 2021, in error for the patient listed above. We must request a refund of \$52.00 for the reasons stated below:

WE PAID THE WRONG PROVIDER FOR THESE SERVICES.

If we have not heard from you within 30 days, we will deduct this amount from future payments to you.

Again, this is a letter that we sent to your provider. We are not asking for a refund from you. If you have any questions, please call our Customer Service department at 800-868-2500.

Sincerely,

Major Group Refunds

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OCTOBER 31, 2021



466055 000029
0001 of 0001

Re: Patient: [REDACTED]
ID Number: ZCW062759493478
Date(s) of Service: October 20, 2020
Refund Number: P2130317374

Dear Subscriber:

The information below is a copy of a letter we sent to RURAL HEALTH SERVICES INC regarding a refund request:

Dear Provider:

We sent payment to you on February 01, 2021, in error for the patient listed above. We must request a refund of \$52.00 for the reasons stated below:

WE PAID THE WRONG PROVIDER FOR THESE SERVICES.

If we have not heard from you within 30 days, we will deduct this amount from future payments to you.

Again, this is a letter that we sent to your provider. We are not asking for a refund from you. If you have any questions, please call our Customer Service department at 800-868-2500.

Sincerely,

Major Group Refunds

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OCTOBER 31, 2021



466055 000031
0001 OF 0001

Re: Patient: [REDACTED]
ID Number: ZCW062759493478
Date(s) of Service: October 15, 2020
Refund Number: P2130317381

Dear Subscriber:

The information below is a copy of a letter we sent to RURAL HEALTH SERVICES INC regarding a refund request:

Dear Provider:

We sent payment to you on February 01, 2021, in error for the patient listed above. We must request a refund of \$52.00 for the reasons stated below:

WE PAID THE WRONG PROVIDER FOR THESE SERVICES.

If we have not heard from you within 30 days, we will deduct this amount from future payments to you.

Again, this is a letter that we sent to your provider. We are not asking for a refund from you. If you have any questions, please call our Customer Service department at 800-868-2500.

Sincerely,

Major Group Refunds

I-20 @ Alpine Road
Columbia, SC 29219



South Carolina

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OCTOBER 31, 2021



466055 000033
0001 of 0001

Re: Patient: [REDACTED]
ID Number: ZCW062759493478
Date(s) of Service: October 08, 2020
Refund Number: P2130317384

Dear Subscriber:

The information below is a copy of a letter we sent to RURAL HEALTH SERVICES INC regarding a refund request:

Dear Provider:

We sent payment to you on February 01, 2021, in error for the patient listed above. We must request a refund of \$52.00 for the reasons stated below:

WE PAID THE WRONG PROVIDER FOR THESE SERVICES.

If we have not heard from you within 30 days, we will deduct this amount from future payments to you.

Again, this is a letter that we sent to your provider. We are not asking for a refund from you. If you have any questions, please call our Customer Service department at 800-868-2500.

Sincerely,

Major Group Refunds

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Columbia, SC 29219



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OCTOBER 31, 2021



466055 000035
0001 OF 0001

Re: Patient: [REDACTED]
ID Number: ZCW062759493478
Date(s) of Service: September 03, 2020
Refund Number: P2130317391

Dear Subscriber:

The information below is a copy of a letter we sent to RURAL HEALTH SERVICES INC regarding a refund request:

Dear Provider:

We sent payment to you on February 01, 2021, in error for the patient listed above. We must request a refund of \$52.00 for the reasons stated below:

WE PAID THE WRONG PROVIDER FOR THESE SERVICES.

If we have not heard from you within 30 days, we will deduct this amount from future payments to you.

Again, this is a letter that we sent to your provider. We are not asking for a refund from you. If you have any questions, please call our Customer Service department at 800-868-2500.

Sincerely,

Major Group Refunds

I-20 @ Alpine Road
Columbia, SC 29219



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OCTOBER 31, 2021



46055 000037
0001 of 0001



Re: Patient: [REDACTED]
ID Number: ZCW062759493478
Date(s) of Service: September 10, 2020
Refund Number: P2130317395

Dear Subscriber:

The information below is a copy of a letter we sent to RURAL HEALTH SERVICES INC regarding a refund request:

Dear Provider:

We sent payment to you on February 01, 2021, in error for the patient listed above. We must request a refund of \$52.00 for the reasons stated below:

WE PAID THE WRONG PROVIDER FOR THESE SERVICES.

If we have not heard from you within 30 days, we will deduct this amount from future payments to you.

Again, this is a letter that we sent to your provider. We are not asking for a refund from you. If you have any questions, please call our Customer Service department at 800-868-2500.

Sincerely,

Major Group Refunds

ELECTRONICALLY FILED - 2024 Aug 30 3:42 PM - AIKEN - COMMON PLEAS - CASE#2021CP0201525

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OCTOBER 31, 2021



466055 000039
0001 OF 0001

Re: Patient [REDACTED]
ID Number: ZCW062759493478
Date(s) of Service: September 17, 2020
Refund Number: P2130317403

Dear Subscriber:

The information below is a copy of a letter we sent to RURAL HEALTH SERVICES INC regarding a refund request:

Dear Provider:

We sent payment to you on February 01, 2021, in error for the patient listed above. We must request a refund of \$52.00 for the reasons stated below:

WE PAID THE WRONG PROVIDER FOR THESE SERVICES.

If we have not heard from you within 30 days, we will deduct this amount from future payments to you.

Again, this is a letter that we sent to your provider. We are not asking for a refund from you. If you have any questions, please call our Customer Service department at 800-868-2500.

Sincerely,

Major Group Refunds

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OCTOBER 31, 2021



466055 000041
0001 of 0001

Re: Patient: [REDACTED]
ID Number: ZCW062759493478
Date(s) of Service: September 24, 2020
Refund Number: P2130317410

Dear Subscriber:

The information below is a copy of a letter we sent to RURAL HEALTH SERVICES INC regarding a refund request:

Dear Provider:

We sent payment to you on February 01, 2021, in error for the patient listed above. We must request a refund of \$52.00 for the reasons stated below:

WE PAID THE WRONG PROVIDER FOR THESE SERVICES.

If we have not heard from you within 30 days, we will deduct this amount from future payments to you.

Again, this is a letter that we sent to your provider. We are not asking for a refund from you. If you have any questions, please call our Customer Service department at 800-868-2500.

Sincerely,

Major Group Refunds

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OCTOBER 31, 2021



466055 000043
0001 OF 0001

Re: Patient: [REDACTED]
ID Number: ZCW062759493478
Date(s) of Service: October 06, 2020
Refund Number: P2130317414

Dear Subscriber:

The information below is a copy of a letter we sent to RURAL HEALTH SERVICES INC regarding a refund request:

Dear Provider:

We sent payment to you on February 01, 2021, in error for the patient listed above. We must request a refund of \$52.00 for the reasons stated below:

WE PAID THE WRONG PROVIDER FOR THESE SERVICES.

If we have not heard from you within 30 days, we will deduct this amount from future payments to you.

Again, this is a letter that we sent to your provider. We are not asking for a refund from you. If you have any questions, please call our Customer Service department at 800-868-2500.

Sincerely,

Major Group Refunds

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OCTOBER 31, 2021



466055 000045
0001 of 0001

Re: Patient: [REDACTED]
ID Number: ZCW062759493478
Date(s) of Service: August 14, 2020
Refund Number: P2130317422

Dear Subscriber:

The information below is a copy of a letter we sent to RURAL HEALTH SERVICES INC regarding a refund request:

Dear Provider:

We sent payment to you on February 01, 2021, in error for the patient listed above. We must request a refund of \$52.00 for the reasons stated below:

WE PAID THE WRONG PROVIDER FOR THESE SERVICES.

If we have not heard from you within 30 days, we will deduct this amount from future payments to you.

Again, this is a letter that we sent to your provider. We are not asking for a refund from you. If you have any questions, please call our Customer Service department at 800-868-2500.

Sincerely,

Major Group Refunds

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OCTOBER 31, 2021



466055 000047
0001 of 0001

Re: Patient: [REDACTED]
ID Number: ZCW062759493478
Date(s) of Service: September 23, 2020
Refund Number: P2130317425

Dear Subscriber:

The information below is a copy of a letter we sent to RURAL HEALTH SERVICES INC regarding a refund request:

Dear Provider:

We sent payment to you on February 01, 2021, in error for the patient listed above. We must request a refund of \$52.00 for the reasons stated below:

A POST-PAYMENT AUDIT DONE ON THIS CLAIM REVEALED
THAT OUR PAYMENT WAS INCORRECT.

If we have not heard from you within 30 days, we will deduct this amount from future payments to you.

Again, this is a letter that we sent to your provider. We are not asking for a refund from you. If you have any questions, please call our Customer Service department at 800-868-2500.

Sincerely,

Major Group Refunds

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Columbia, SC 29219



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OCTOBER 31, 2021



466055 000013
0001 OF 0001

Re: Patient: [REDACTED]
ID Number: ZCW062759493478
Date(s) of Service: December 17, 2020
Refund Number: P2130317330

Dear Subscriber:

The information below is a copy of a letter we sent to RURAL HEALTH SERVICES INC regarding a refund request:

Dear Provider:

We sent payment to you on February 01, 2021, in error for the patient listed above. We must request a refund of \$52.00 for the reasons stated below:

WE PAID THE WRONG PROVIDER FOR THESE SERVICES.

If we have not heard from you within 30 days, we will deduct this amount from future payments to you.

Again, this is a letter that we sent to your provider. We are not asking for a refund from you. If you have any questions, please call our Customer Service department at 800-868-2500.

Sincerely,

Major Group Refunds

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OCTOBER 30, 2021

ELECTRONICALLY FILED - 2024 Aug 30 3:42 PM - AIKEN - COMMON PLEAS - CASE#2021CP0201525

I-20 @ Alpine Road
Columbia, SC 29219



Re: Patient: [REDACTED]
ID Number: ZCW062759493478
Date(s) of Service: August 20, 2020
Refund Number: P2130216423

Dear Subscriber:

The information below is a copy of a letter we sent to RURAL HEALTH SERVICES INC regarding a refund request:

Dear Provider:

We sent payment to you on February 01, 2021, in error for the patient listed above. We must request a refund of \$52.00 for the reasons stated below:

WE PAID THE WRONG PROVIDER FOR THESE SERVICES.

If we have not heard from you within 30 days, we will deduct this amount from future payments to you.

Again, this is a letter that we sent to your provider. We are not asking for a refund from you. If you have any questions, please call our Customer Service department at 800-868-2500.

Sincerely,

Major Group Refunds

465748 000657
0001 of 0001



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 United States of America



MEDICAL CLAIMS for patient

continued

THIS IS NOT A BILL

Provider and Service Information		Charges and Insurance Payments			Breakdown of Member Responsibility				
Claim Number	Service Type	Provider Charges	Covered Expense	Your Plan Paid	Copay	Deductible	Coinsurance	Not Covered	Amount You May Owe or Have Paid
Provider Group	Date of Service(s) Provider Name								
C1015V8440000	OFFICE PSYCHIATRIC 12/10/2020 E JOE HOLT LPC In-Network	150.00	77.00	52.00	25.00	0.00	0.00	0.00	25.00
CLYBURN CENTER FOR PR									
Claim Total		150.00	77.00	52.00	25.00	0.00	0.00	0.00	25.00
C1015V8450000	OFFICE PSYCHIATRIC 12/17/2020 E JOE HOLT LPC In-Network	150.00	77.00	52.00	25.00	0.00	0.00	0.00	25.00
CLYBURN CENTER FOR PR									
Claim Total		150.00	77.00	52.00	25.00	0.00	0.00	0.00	25.00
Statement Period Total		3,300.00	1,694.00	1,144.00	550.00	0.00	0.00	0.00	550.00

0017554



242394 003866
 0004 of 0006

 MEDICAL CLAIMS for patient [REDACTED] continued THIS IS NOT A BILL

Provider and Service Information		Charges and Insurance Payments			Breakdown of Member Responsibility					
Claim Number	Service Type	Provider	Covered	Your Plan	Copay	Deductible	Coinsurance	Not Covered	Amount You	
Provider Group	Date of Service(s)	Charges	Expense	Paid					May Owe or	
	Provider Name								Have Paid	
C1015V8340000 CLYBURN CENTER FOR PR	Network									
	OFFICE PSYCHIATRIC	150.00	77.00	52.00	25.00	0.00	0.00	0.00	25.00	
	10/06/2020 E JOE HOLT LPC In-Network									
Claim Total		150.00	77.00	52.00	25.00	0.00	0.00	0.00	25.00	
C1015V8350000 CLYBURN CENTER FOR PR	Network									
	OFFICE PSYCHIATRIC	150.00	77.00	52.00	25.00	0.00	0.00	0.00	25.00	
	10/08/2020 E JOE HOLT LPC In-Network									
Claim Total		150.00	77.00	52.00	25.00	0.00	0.00	0.00	25.00	
C1015V8360000 CLYBURN CENTER FOR PR	Network									
	OFFICE PSYCHIATRIC	150.00	77.00	52.00	25.00	0.00	0.00	0.00	25.00	
	10/15/2020 E JOE HOLT LPC In-Network									
Claim Total		150.00	77.00	52.00	25.00	0.00	0.00	0.00	25.00	
C1015V8370000 CLYBURN CENTER FOR PR	Network									
	OFFICE PSYCHIATRIC	150.00	77.00	52.00	25.00	0.00	0.00	0.00	25.00	
	10/20/2020 E JOE HOLT LPC In-Network									
Claim Total		150.00	77.00	52.00	25.00	0.00	0.00	0.00	25.00	
C1015V8380000 CLYBURN CENTER FOR PR	Network									
	OFFICE PSYCHIATRIC	150.00	77.00	52.00	25.00	0.00	0.00	0.00	25.00	
	10/22/2020 E JOE HOLT LPC In-Network									
Claim Total		150.00	77.00	52.00	25.00	0.00	0.00	0.00	25.00	

continued on next page

0017553



242394 003866
0003 of 0006



South Carolina
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First Cross and the State Association



MEDICAL CLAIMS for patient [REDACTED]

THIS IS NOT A BILL

Provider and Service Information		Charges and Insurance Payments				Breakdown of Member Responsibility				
Claim Number Provider Group	Service Type Date of Service(s) Provider Name Network	Provider Charges	Covered Expense	Your Plan Paid	Copay	Deductible	Coinsurance	Not Covered	Amount You May Owe or Have Paid	
C1015V8240000 CLYBURN CENTER FOR PR	OFFICE PSYCHIATRIC 07/09/2020 E JOE HOLT LPC In-Network	150.00	77.00	52.00	25.00	0.00	0.00	0.00	25.00	
	Claim Total	150.00	77.00	52.00	25.00	0.00	0.00	0.00	25.00	
C1015V8250000 CLYBURN CENTER FOR PR	OFFICE PSYCHIATRIC 07/16/2020 E JOE HOLT LPC In-Network	150.00	77.00	52.00	25.00	0.00	0.00	0.00	25.00	
	Claim Total	150.00	77.00	52.00	25.00	0.00	0.00	0.00	25.00	
C1015V8260000 CLYBURN CENTER FOR PR	OFFICE PSYCHIATRIC 07/27/2020 E JOE HOLT LPC In-Network	150.00	77.00	52.00	25.00	0.00	0.00	0.00	25.00	
	Claim Total	150.00	77.00	52.00	25.00	0.00	0.00	0.00	25.00	
C1015V8270000 CLYBURN CENTER FOR PR	OFFICE PSYCHIATRIC 08/14/2020 E JOE HOLT LPC In-Network	150.00	77.00	52.00	25.00	0.00	0.00	0.00	25.00	
	Claim Total	150.00	77.00	52.00	25.00	0.00	0.00	0.00	25.00	
C1015V8280000 CLYBURN CENTER FOR PR	OFFICE PSYCHIATRIC 08/20/2020 E JOE HOLT LPC In-Network	150.00	77.00	52.00	25.00	0.00	0.00	0.00	25.00	
	Claim Total	150.00	77.00	52.00	25.00	0.00	0.00	0.00	25.00	

continued on next page

0017552

1-20 @ Alpine Road
Columbia, SC 29219

VVVVVV



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OCTOBER 26, 2021

ELECTRONICALLY FILED - 2024 Aug 30 3:42 PM - AIKEN - COMMON PLEAS - CASE#2021CP0201525

Re: Patient: [REDACTED]
ID Number: ZCW062759493478
Date(s) of Service: July 09, 2020
Refund Number: P2129617444

Dear Subscriber:

The information below is a copy of a letter we sent to RURAL HEALTH SERVICES INC regarding a refund request:

Dear Provider:

We sent payment to you on February 01, 2021, in error for the patient listed above. We must request a refund of \$52.00 for the reasons stated below:

WE PAID THE WRONG PROVIDER FOR THESE SERVICES.

If we have not heard from you within 30 days, we will deduct this amount from future payments to you.

Again, this is a letter that we sent to your provider. We are not asking for a refund from you. If you have any questions, please call our Customer Service department at 800-868-2500.

Sincerely,

Major Group Refunds

I-20 @ Alpine Road
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OCTOBER 26, 2021



460619 000067
0001 of 0001

Re: Patient: [REDACTED]
ID Number: ZCW062759493478
Date(s) of Service: July 16, 2020
Refund Number: P2129617451

Dear Subscriber:

The information below is a copy of a letter we sent to RURAL HEALTH SERVICES INC regarding a refund request:

Dear Provider:

We sent payment to you on February 01, 2021, in error for the patient listed above. We must request a refund of \$52.00 for the reasons stated below:

WE PAID THE WRONG PROVIDER FOR THESE SERVICES.

If we have not heard from you within 30 days, we will deduct this amount from future payments to you.

Again, this is a letter that we sent to your provider. We are not asking for a refund from you. If you have any questions, please call our Customer Service department at 800-868-2500.

Sincerely,

Major Group Refunds

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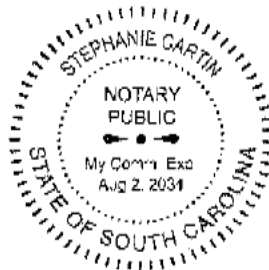
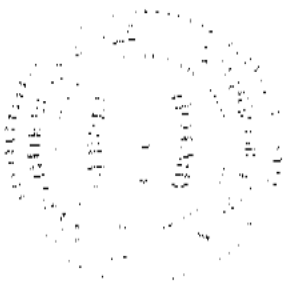
EXHIBIT 21

January 13, 2022

After Dr. Holt went back into private practice in July 2020, I received several statements from Blue Cross & Blue Shield. The statements contained payment information pertaining to my son [REDACTED] visits to Dr. Holt spanning several months. I informed Dr. Holt of the situation. The statements clearly found that Blue Cross & Blue Shield paid the Clyburn Center for these visits. Dr. Holt was no longer employed at the Clyburn Center during this period. I phoned member services to tell them there was an error in payment to the Clyburn Center. I do not know if any action was taken by Blue Cross & Blue Shield. I also provided copies of the statements to Dr. Holt for his records.

[REDACTED]

[REDACTED]



Sworn to before me this 13th day
of January, 2022.

Stephanie Gartin
Notary Public for South Carolina
My Commission expires 8-2-31

EXHIBIT 22

To whom it may concern:

I, [REDACTED], took my child [REDACTED] for an appointment at RHS to see Dr. Soto on Friday July 24, 2020. [REDACTED] appointment was for Soto to see her to get her medication prescriptions. While we were in the back with Soto, she me that I need to see one of their other councilors because Dr. Holt was no longer with them. Soto then tried to tell me she wanted to treat [REDACTED] for depression, while [REDACTED] still sees Holt regularly and he doesn't think [REDACTED] is depressed. When I told her that my child isn't depressed Soto told me that she couldn't see her unless we use their councilors, and then at that point [REDACTED] told Soto she wouldn't talk to no one else but Holt. So I told Soto we would find [REDACTED] a new doctor for her to see.

witness by Jerry Sanders

EXHIBIT 23

To whom it may concern:

I, [REDACTED], received a phone call Friday afternoon from a staff member at RHS in regards to [REDACTED] appointment that morning and Soto wanting to treat [REDACTED] for depression and for her to see one of their councilors in RHS. I told her that [REDACTED] was not depressed and [REDACTED] was still currently seeing Holt as her councilor and the staff member told me if we didn't use a councilor in house we would have to find [REDACTED] another doctor to see. I told her I would find her another pediatrician to see because my child will continue to see Dr. Holt and Soto couldn't tell me who my child [REDACTED] could or could not see in regards a councilor. Saturday evening I received a phone call from Mrs. Thomas from Children's Place in regards to an accusation for Neglect on [REDACTED] that was reported to DSS and they then turned it over to Children's Place to get looked into. I asked Mrs. Thomas what the accusation was and she told me that she couldn't answer that question and I told Mrs. Thomas that I wouldn't answer any questions she had until she told me what the accusation was. Mrs. Thomas then told me that DSS received a phone call regarding neglect on [REDACTED] not getting the counseling she needed. I told Mrs. Thomas that [REDACTED] was still currently seeing Dr. Holt and she had just went to an appointment that Thursday 7/23/2020 at Twin Willows with Holt at 9am. Between my husband [REDACTED] telling Soto that [REDACTED] would continue to see Holt and me telling her staff member at RHS that [REDACTED] will continue to see Holt as her councilor DSS got called for a false accusation against us to neglect when in reality [REDACTED] sees Holt every other week and has made an amazing difference in her behavior since we first started seeing Holt. So Soto called DSS or Soto made a staff member from RHS call DSS because she didn't like the fact that she was told we will find a different doctor for [REDACTED] to see because [REDACTED] will continue to see Holt.

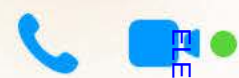
witnessed by Gary Sanders

EXHIBIT 24



[Redacted]

Active now



→ [Redacted] forwarded an image

Do this for me please?? Luv you!!

Recant to open, please read this..
Not joking.. God has seen you struggling with something. God says its over. A blessing is coming your way. If you believe in God send this message and please dont ignore it. You are being tested. GOD will fix two things (BIG) tonight in your favor. If you believe in God drop everything and pass it on. Tomorrow will be the best day of your life. Send this to 30 kind



JUL 25, 5:28 PM

Dss was called on me about me telling the Clyburn center I wasn't changing her counselor n that they couldn't tell me who my child could or couldn't see. Just got off the phone with children's place about this.

JUL 25, 5:47 PM



JUL 25, 6:06 PM

[Redacted]

Mrs Thomas's number

1 STATE OF SOUTH CAROLINA
2 IN THE COURT OF COMMON PLEAS
3 COUNTY OF AIKEN

4 Dr. Joe Holt,

5 Plaintiff,

6 vs.

Transcript of Record
2021-CP-02-01525

7 Rural Health Services, Inc.,

8 Defendant.

9
10
11 September 4, 2024
12 Aiken, South Carolina

13 B E F O R E:

14 The HONORABLE PATRICK C. FANT

15 A P P E A R A N C E S:

16 Lauren Polvi, Representing the plaintiff

17 D. Randle Moody, II, Representing the defendant
18
19
20
21

22 SHARON G. HARDOON, CSR
23 Official Circuit Court Reporter, III
24
25

1	INDEX		
2	Certificate of Reporter	Page	Line
3		37	1
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
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1 THE COURT: You-all go ahead, go ahead
2 and proceed. I call it and I may have to -- I
3 guess make the others wait a little bit. Let me
4 make sure that I call this properly.

5 Okay. This 2021-CP-02-1525, Joe Holt vs.
6 Rural Health Services, and we are here on Rural
7 Health Services's motion for summary judgment.

8 Mr. Moody.

9 MR. MOODY: Thank you, Judge. Randy
10 Moody, Jackson Lewis on behalf of Rural Health
11 Services. As Your Honor currently stated, this is
12 a motion for summary judgment on behalf of Rural
13 Health Services.

14 Judge, this is a unique case and one that
15 has been pending in the federal courts and all we
16 have here are State law claims from an original
17 lawsuit that Judge Lewis decided not to exercise
18 supplemental jurisdiction.

19 This case is unique, however, because we
20 do have a report and an recommendation written by
21 Judge Hodges on pages --

22 THE COURT: Is that the magistrate?

23 MR. MOODY: Yes, Your Honor. Magistrate
24 Hodges, on pages 29 through 40 of her report
25 recommendation dated June 21st of '23, we provided

1 that to the court as Exhibit A to our motion for
2 summary judgment and memorandum because the
3 analysis is on point and we maintain that this
4 Court can merely material adopt what Judge Hodges
5 did.

6 I would add that Judge Lewis, when she
7 considered the R&R, looked at the case, and based
8 upon the fact that this case was originally filed
9 in Aiken, Judge Lewis said in our order, "That
10 judicial economy, fairness, comity, and other
11 factors that she was allowed to consider, allowed
12 her not to exercise supplemental jurisdiction. So
13 she didn't make any statement as to the State law
14 claims other than saying, you know, the parties
15 can make adjustments to their summary judgment
16 filings and file in State court.

17 So we are, Judge, now that the matter has
18 been remanded. Just for a matter of the record,
19 Rural Health is a non-profit, federally qualified
20 Healthcare center. They do all kinds of
21 healthcare down the street, Judge.

22 Plaintiff, Joe Holt prefers to be called
23 a Dr. Holt. He is not a medical physician. He
24 has a theological degree, from Southwestern, I
25 believe. He was hired to be a director of

1 behavioral health at Rural Health in September of
2 2014. In 2016, he was transferred to the position
3 of behavioral therapist. His specific area of
4 providing services for Rural Health was within the
5 population of children patients.

6 And, Judge, just to give you an idea,
7 it's a Rural Health Center. We provide care to
8 people regardless of race, creed, religion, or
9 their ability to pay. In fact, many of our -- one
10 of our centers was named after representatives,
11 Clyburn, for the recognition of the commitment to
12 the community.

13 So having said that, we are a 501(c)(3).
14 We are a charity, so there are charitable immunity
15 issues at play here as well.

16 Judge, just to give some brief
17 background, this case had numerous American with
18 Disability Act claims, for wrongful term, failure
19 to accommodate retaliation, Title VII claims for
20 sexual harassment and retaliation. That is why
21 the case was moved to Federal court.

22 In this report recommendation that I
23 mentioned from Magistrate Judge Hodges, all those
24 federal claims were addressed, lengthy factual
25 discussion, which I'm not going to bore the Court

1 with because I know you and your clerk will pay
2 particular attention to Judge Hodges's finding,
3 and in all of those federal claims she recommended
4 summary judgment, Judge Lewis adopted those
5 recommendations.

6 THE COURT: Except for the State
7 claims.

8 MR. MOODY: Except for the State claims.

9 THE COURT: Defamation, negligence,
10 conversion, interference with contractual
11 relationships, and abuse of process?

12 MR. MOODY: Correct, Your Honor.

13 THE COURT: Those were the points.

14 MR. MOODY: Those are five State claims
15 before you.

16 THE COURT: Okay.

17 MR. MOODY: And having said that, we are
18 entitled to summary judgment on each one of those
19 claims. The plaintiff, as Judge Hodges
20 recognized, presents no genuine issue of material
21 fact, when you take the facts and apply the law
22 here. And, in fact, he relies on speculation.

23 Judge, what we have here is a termination
24 that occurred with Mr. Holt in June of 2020. He
25 has a lengthy history that Judge Hodges addresses,

1 and there was an event in which he reported and
2 called -- reported some activity in the parking
3 lot and the -- and called the police. Well, he
4 called the police on two young African American
5 employees.

6 THE COURT: Is this the car going through
7 parking lot?

8 MR. MOODY: The truck, yes. Explained it
9 was screaming through the parking lot basically
10 incapable of doing so. The truck would have
11 wrapped itself around a tree. It was a short
12 distance. These young African Americans were --
13 one going to professional school, one was a
14 Citadel grad. And the context of this report,
15 Judge, the timing is very, very offensive. It was
16 within a month of the George Floyd incident. And
17 it was just a very, very bad decision by Mr. Holt
18 at that time.

19 One of the young men that he reported
20 happened to be the HR director's son. The truck
21 that was driven, I believe, was the school
22 superintendent's. It was just -- it was a very,
23 very poor exercise of judgment. And, at that
24 time, Rural Health, we've had it. We don't need
25 it anymore. You're terminated.

1 So as to these five State law claims,
2 they're all hanger-on's to these main claims for
3 ADA in Title VII that the Federal court has
4 already dismissed. They all rely on speculation.

5 As to the defamation claim, Judge, you
6 know, there's four elements. I'm not going to
7 talk about each one of them, but you have to have
8 a false and defamatory statement made. We've
9 sought and discovery sought, what are you claiming
10 is defamatory? At one point he said, *Just the way*
11 *I was treated in front of patients was defamatory.*
12 Well, that doesn't state a cause of action.

13 But in drilling into this case, Judge
14 Hodges pointed to two things that he claims, and,
15 at some point, he claims that somebody at the
16 front desk told somebody that he was a racist. We
17 don't know what time this occurred. It's probably
18 time barred, but this lacks any kind of
19 specificity as to who, what, when, and to whom was
20 any statement made. For defamation, you have to
21 have specificity. The case law is very
22 declarative about that. We just don't have the
23 who, what, when, and to whom for any of this
24 alleged racist statement that someone's made, much
25 less that it was anyone in authority. So we just

1 don't know the who, what, where, and when.

2 Secondly, he made a statement that he got
3 fired because he did a false police report, but,
4 as Judge Hodges referenced, you know, he did
5 maintain in this case that he was terminated
6 because of the police report and he was terminated
7 for one of the reasons of calling -- you know,
8 reporting these two employees.

9 So there's -- it's established. And
10 Judge Hodges, I think, recognizes the *Sullivan*
11 case, that truth is a defense to any kind of
12 defamation claim.

13 So having that said, Judge, we just don't
14 have the specificity, or any kind of facts here
15 that meets the evidence to show that there's a
16 genuine issue of material fault as to anything
17 Rural Health did as to any of kind of claim of
18 defamation.

19 The second claim, the negligence claim.
20 And I think I can address these real briefly,
21 Judge.

22 THE COURT: Take your time. It's fine.
23 I want to hear from you-all too.

24 MR. MOODY: The negligence claim. The
25 negligence claim is based upon, the best we can

1 ascertain, and as Judge Hodges recognized in her
2 opinion, that Mr. Holt claims that after he was
3 let go, Rural Health received a payment in the
4 amount of \$504 for services he rendered at his
5 subsequent clinic and that we put it in our
6 accounting system.

7 The evidence in this case shows that once
8 we were alerted that it was for services that Holt
9 performed outside Rural Health, we returned the
10 payment to Blue Cross Blue Shield and then Blue
11 Cross Blue Shield got the payment to him.

12 What is treacherous here is that Mr. Holt
13 claims that we somehow owed him some kind of duty
14 to know which payments were ours and which
15 payments were not ours.

16 Judge, I know as a practicing lawyer, you
17 know how insurance payments work.

18 The evidence in this case shows that
19 Mr. Holt didn't notify Blue Cross Blue Shield of
20 his new address and where to send the current
21 payments. So we received provider payments
22 thinking they were ours for services he performed
23 with us, and, therefore, that's why we put them
24 in. When we were notified there was an issue --

25 THE COURT: The 504?

1 MR. MOODY: The 504.

2 THE COURT: Was repaid?

3 MR. MOODY: Yes.

4 So we didn't have a duty of care as to
5 him as that. We received a payment from Blue
6 Cross, put it in, and moved from there.

7 Judge Hodges states that, "Plaintiff has
8 failed to cite, nor is the Court aware, of a
9 plaintiff who has maintained a claim for neglect
10 retention of property under these circumstances,
11 particularly where plaintiff testified that it's
12 common for payments to go to an institution six
13 months to a year after an employee leaves an
14 institution and starts providing services
15 elsewhere."

16 So we got the payment. We're told she's
17 gone elsewhere. We kicked the payment back out.
18 We didn't maintain it. So we didn't have a duty
19 to him. He hadn't been injured. And even if
20 there was, we're a charity, so all this extra
21 damages stuff that he asked for should be
22 rejected. And that's why we're entitled to
23 summary judgment as to the negligence claim. No
24 duty, no injury to him at all.

25 The conversion claim, Judge, is kind of

1 derivative of that negligence claim. He claimed
2 that we had the unauthorized assumption that
3 exercised a right over property that was his.
4 Well, it was a \$504 payment from Blue Cross Blue
5 Shield. We sent it back. He possesses the money.
6 He admitted in his deposition he possesses the
7 money, and he's now had that money over
8 two-and-a-half years.

9 Judge Hodges stated, "Plaintiff testified
10 that the occurrences of delayed payment were due
11 to Blue Cross Blue Shield sending the money to
12 defendant instead of him and that he is having
13 to," quote, 'Having to talk', end quote, "To Blue
14 Cross Blue Shield to resolve the issue of those
15 funds."

16 So this is not wrongful conduct by Rural
17 Health. This is an insurance payment that was
18 sent to us because he didn't update his payment
19 information with the insurance company.

20 We took it in. Once we were told it
21 wasn't ours, we sent it right back. So that
22 conversion claim should also go away under summary
23 judgment.

24 The fourth cause of action that is a
25 State law claim is interference with contract,

1 Judge. He brings a claim on interference of
2 contract, and his basis is that somewhere he
3 alleges that Rural Health interfered with his
4 patients.

5 For interference of contract, tortious
6 interference, you have to have, number one, an
7 existence of a contract.

8 The defendant's knowledge is the second
9 element.

10 The third element is the defendant
11 intentionally procured the breach. No
12 justification of damages.

13 There's no existence of a contract here,
14 Judge. I asked him in his deposition, you know,
15 *Do you have a contract with your patients?* And he
16 said, *No.*

17 And he -- and, actually, we put it on
18 page 21 of our brief, on 266 of his testimony, he
19 admitted that it's a patient's choosing as to who
20 their provider is. There's not a contract. They
21 can choose who they go to see.

22 There is no evidence of terms of
23 contract. There's no evidence of any -- how the
24 contract was breached and there's no evidence of
25 any intentional procurement by Rural Health.

1 His beef is that, you know, Rural Health
2 didn't actively go tell patients that Joe Holt was
3 no longer there.

4 We are a rural healthcare system,
5 holistic. Where we have physicians that send
6 children to therapy. We didn't have a duty to
7 notify anyone of where Joe Holt was. He wants to
8 somehow put some kind of duty on us. It is the
9 choice of parents and children where they go get
10 their healthcare. And, in this case, it was our
11 responsibility for the care of the patients and
12 the children to ensure that their care was
13 continuous, and that's what we did.

14 There's no terms. There's no briefs.
15 There's no intentional procurement. There's
16 indication of justification since we're a
17 healthcare center, and we certainly were not a
18 stranger to any relationship because they were
19 Rural Health patients as he tries to claim as his.

20 Lastly, Judge, there is some kind of
21 abuse of process State law claim. The basis of
22 this is he says an unidentified person called DSS
23 and made a false report against the family who
24 decided to continue medical care through him.
25 This is an allegation, Judge, that is just blank

1 hearsay. He doesn't know who this person is, if
2 it even happened. And, as the Court has
3 recognized previously, Judge Hodges, he just has
4 no standing to bring this claim.

5 Abuse of process is where someone engages
6 in activities outside of the normal proceedings
7 with an ulterior purpose and conducts a willful
8 act in order to get an advantage in litigation.
9 That's -- that's just not case here.

10 Judge, what we have here are five
11 separate claims that were pieced together to tag
12 along with a Federal disability Title VII
13 termination suit. He lost in Federal court.
14 These are tagalongs. Fortunately for us, we had
15 Judge Hodges who reviewed this voluminous record
16 and wrote a 40-something-page opinion. Pages
17 29-40 deal with these State law claims, and she
18 rejecting all of them in a very scholarly fashion
19 with all the cases that she cites.

20 And because we do have the benefit of
21 Judge Hodges's work and her opinion, I'm going to
22 abbreviate my comments at that, and stand upon the
23 record that we've submitted to the Court. We had
24 a free-standing memorandum. But, again, I would
25 reiterate that Judge Hodges has written the

1 opinion that this Court can adopt in pages 29
2 through 40 of her report and recommendation.

3 THE COURT: Thank you, Counsel.

4 Miss Polvi.

5 MS. POLVI: May it please the Court?

6 Shannon Polvi on behalf of Dr. Joe Holt who is
7 here present with me today.

8 As you might expect, Your Honor, we
9 greatly differ on the interpretation of the facts
10 and the law that would apply to them.

11 This is not a termination case that's
12 before Your Honor, but I do need to briefly
13 address some of the termination events as it
14 relates to the ill will that underlies these five
15 causes of action that are pending for your
16 consideration.

17 My client was a pediatric behavioral
18 therapist. This is an individual who is a
19 professional who had been working with the
20 defendant for several years. He had been
21 performing his job adequately. As we see from the
22 last annual evaluation that he received just about
23 three months prior to his termination, he was
24 meeting expectations as assessed by the number
25 that he was assigned by his supervisor.

1 So leading to the events of June 29th of
2 2020, my client arrived at work in the morning,
3 and, again, noting his job, he works with
4 pediatric patients, and what he sees in the
5 morning is an erratically driving truck and he
6 cannot see who's driving. And what happens is, it
7 squeals tires going through the parking lot, jumps
8 the curb, and ends up in the tree line. That's
9 how erratic and dangerous this truck was driving
10 in a parking lot where children are being given
11 medical services. That's alarming to any
12 reasonable human being, and there was no
13 management on site at that time.

14 So in accordance with the defendant's own
15 policies, Dr. Holt decided he needed to act by
16 calling Aiken Public Safety. That's a reasonable
17 act. And what he did is, he called and reported
18 the same concerns the same way I described them to
19 you. One of the 24 exhibits that we have produced
20 to the Court in opposition to the defendant's
21 motion is the Aiken Public Safety dispatch
22 recording. And that corroborates what Dr. Holt
23 reported, that he did not know who was driving,
24 and he was alarmed about the unsafe environment
25 that it created in the parking lot. Again, in an

1 environment where children were going to be
2 walking.

3 So we see, Your Honor, in accordance with
4 their own policies, this -- there is a policy
5 specifically, Reporting Serious and Criminal Acts
6 policy. It's Exhibit 5, your Honor. And so Dr.
7 Holt called the police. He didn't act any
8 further. He acted in a reasonable fashion.

9 And so then, once management does arrive
10 onsite, they rebuke him. They say, you shouldn't have
11 called the police and engage in conversations,
12 particularly the director of nursing, in making -- you
13 know, an accusatory-type of manner. That's, again,
14 towards this ill will that is underlying the events on
15 June 29th of 2020.

16 So then the next day, Dr. Holt is
17 terminated by the director of HR who is one of the
18 parents of one of the drivers in that truck.
19 Dr. Holt didn't know any of that at the time.
20 What he simply did is report, reasonably so, in
21 accordance with the defendant's policies an unsafe
22 environment in the parking lot.

23 So, again, this is not a termination
24 case. But it's pivotal to understand what happens
25 the day before Dr. Holt is terminated, and it's an

1 environment where he had been given an annual
2 evaluation of meeting expectations.

3 So after reporting those safety concerns
4 which Dr. Holt has reported to OSHA and is still
5 pending before OSHA, and that's not before this
6 Court, but we see that the defendant didn't just
7 stop in terminating Dr. Holt, it did everything it
8 could to continue to harm him. And so we describe
9 in the fact section, Your Honor, the series of
10 events of the post-termination actions that
11 defendant, through its representative and
12 employees, engaged in harming Dr. Holt.

13 So we have -- I'm going to go through
14 each of those claims and the facts that relate
15 there to it. But before I go to that, there's one
16 additional, kind of, outside of the scope of
17 directly what you're deciding, Your Honor, but I
18 think it's important to note.

19 THE COURT: You're talking about Roman
20 Numeral number I that begins on page 2 of 3?

21 MS. POLVI: Yes. I just covered that.
22 And then the post-termination actions, I want to
23 note that Dr. Holt had remaining wages that were
24 not paid by the defendant. And that's not one of
25 the causes of action, but I do want to mention

1 those facts as important for you to consider. Is
2 that, ultimately LR determined that the defendant
3 had not appropriately paid Dr. Holt and issued a
4 warning. And only after that warning did the
5 defendant pay Dr. Holt his wages. So that claim
6 is not one that you have to consider, but it goes
7 towards the ill will which interlines each of
8 these claims.

9 So, Your Honor, let me jump to discussing
10 the defamation claim.

11 THE COURT: And take your time.

12 MS. POLVI: Thank you. I appreciate
13 that. I'm trying to keep in mind everyone's
14 schedule.

15 THE COURT: It's fine. I appreciate
16 you-all.

17 MS. POLVI: Thank you.

18 Well, in defamation, ultimately, we do
19 have the burden of showing evidence that there was
20 a publication that was false impugning Dr. Holt's
21 reputation and we produced evidence to that
22 effect, Your Honor. Specifically, I want to point
23 to two key exhibits. Exhibit Number 8, which is a
24 Facebook message dialogue between Dr. Holt and
25 Gabrielle Gaudette. And therein, she identifies

1 that Dr. Holt was being accused around the
2 workplace of -- and I'm paraphrasing -- of making
3 a false police report, that he was terminated
4 because of this police report. Well, that implies
5 that he has violated the defendant's policies and,
6 as I note in the memorandum on page 9, Your Honor,
7 that, *In South Carolina, Statute 16-17-722, it is*
8 *unlawful for a person to knowingly file a false*
9 *police report.* So that's defamation, per se.

10 When he is being accused of filing a false police
11 report when, indeed, he did not, and the Aiken
12 Public Safety records -- we produced the subpoena
13 records that we received and the dispatch
14 notice -- corroborate that Dr. Holt had a
15 reasonable and legitimate reason for calling
16 Public Safety. There was no false police report.

17 So to express that to people and use that
18 as a basis to terminate him is defamation, per se.

19 Secondly, Your Honor, is that we have
20 Exhibit 12, which my paralegal and myself, we've
21 coordinated to have -- we have three audio
22 recordings that have been sent to chambers because
23 it's not something we can file. And Exhibit 12 is
24 an interview where Dr. Holt was speaking with a
25 patient's mother. And the meta data, Exhibit 13,

1 reflects that that occurred on July 20th of 2020.
2 There in, Your Honor can hear the description of
3 what the patient's mother said and describing the
4 false information that, the defamatory information
5 being conveyed about Dr. Holt.

6 It threads that, after Dr. Holt departed,
7 defendant was still trying to prevent him from
8 providing behavioral pediatric services in this
9 Aiken community. Essentially, they didn't want
10 any patient that he was seeing to come and
11 continue his services. And, ultimately, that's
12 the decision a patient gets to make and the
13 patient's parents get to make.

14 So from a defamation standpoint, Your
15 Honor, through those exhibits that we have
16 presented and I just described, we've identified
17 dates when the defamation was occurring, that it
18 defamed him, per se, and the damages from there
19 can be cleared in the sense that he opened his own
20 practice and his harming his ability to find
21 economic employment after his termination by the
22 defendant.

23 With regard to the abuse of process
24 claim, the elements are very specific. An
25 ulterior purpose and a willful act in the use of a

1 process not proper in the regular conduct of the
2 proceeding.

3 So, Your Honor, that legal process at
4 issue here is that the defendant's representative
5 called the South Carolina Department of Social
6 Services and made a false report against a family
7 who decided to continue medical care services with
8 Dr. Holt, rather than with the providers dictated
9 by the defendant, by falsely alleging that the
10 family was refusing to follow doctor's
11 recommendation to continue getting counseling.

12 So, Your Honor, you don't have to rely on
13 Dr. Holt's statements. What you can look at is,
14 you have the statements of the family. For
15 example, Exhibit 23 is the statement. I've
16 abbreviated it as CB. But, Your Honor, at any
17 point you want to see the unredacted versions
18 where only the names have been redacted for
19 patient medical services, we can gladly provide
20 those to Your Honor, but, ultimately, you can see
21 that these parents were truly indicating that
22 after they had told the defendant, *We want to*
23 *continue counseling services for our child with*
24 *Dr. Holt*, then they accuse them are negligence to
25 DSS. That is a legal process that has caused

1 Dr. Holt and that family significant harm. Now,
2 that family is not a party here, but the harm that
3 they describe ultimately directly derives to
4 Dr. Holt's profession and his ability to provide
5 services for economic compensation for those
6 services.

7 And so that ulterior purpose was abusing
8 the DSS complaint process in retaliation for that
9 family choosing to continue behavioral counseling
10 services with Dr. Holt. That malicious intent can
11 be seen, even just looking at the statutory
12 doctrines that we have. For example, South
13 Carolina Code 63-7-310 is the statute where it is,
14 you know, identified and required reporting of
15 child abuse and neglect. It's a statutory process
16 to protect abused and neglected children.

17 Defendant used that process that's
18 intended to protect people to, instead of
19 actually, you know, addressing what needs to be,
20 by punishing this family for simply wanting to
21 continue counseling.

22 THE COURT: And you're saying the harm to
23 him is somehow it's going to impact his practice?
24 Am I hearing you correctly?

25 MS. POLVI: Definitely, Your Honor.

1 Thank you.

2 THE COURT: Okay. All right.

3 MS. POLVI: And so we see it from the
4 statements. You don't have to rely on Dr. Holt.
5 You can see it from the statements of the parents
6 and the documentation they provided as exhibits to
7 our memorandum.

8 And, again, I pointed to a case that I
9 think is helpful for the Court when considering
10 this abuse-of-process claim is the Gecy case,
11 G-e-c-y, and that's a 2019 case that went up to
12 the Court of Appeals. And it was considering a
13 case of lis pendens. But I thought it was
14 interesting, and I quote it here, Your Honor: "We
15 still agree, as this Court found in Pond Place,
16 that the proper action against a maliciously filed
17 notice of lis pendens is under abuse of process or
18 malicious prosecution."

19 Again, this isn't a lis pendens, but as I
20 described from the statutory aspect, it's
21 specifically identified as a statutory doctrine
22 about the child abuse and neglect. So we tie -- I
23 think the Court can apply the interpretations that
24 the Court of Appeals made in Gecy to how this
25 analysis should apply here.

1 Likewise, that, kind of, connects to this
2 interference with contractual relationships claim
3 where we have to show that there's a contract, the
4 wrongdoer's knowledge of it, intentional
5 procurement of the breach, absence of
6 justification and damages.

7 Well, here we have, that after Dr. Holt
8 was terminated, the defendant was on express
9 notice that Dr. Holt didn't move from Aiken. What
10 he did was, he opened up his own practice, the
11 Family Center of Aiken County, and he was
12 providing therapeutic behavioral health services.
13 The same type of counseling services that he had
14 provided when he worked for the defendant.

15 And it doesn't take far to see the leap
16 that that would be viewed as competition. That
17 they would be, essentially, taking -- you know,
18 Dr. Holt continued services with his own patients
19 that he had been with at RHS, but that would then
20 mean that they were not being provided the
21 services at the defendant's location.

22 And we see from the record and from the
23 statements, for example, Exhibit 14, Exhibit 22,
24 Exhibit 23, and Exhibit 24, we see that from those
25 exhibits that false information was being provided

1 to the patients and families to try to persuade
2 them from having services with Dr. Holt.

3 As to the contract, I'm going to go
4 through the rudimentary of, clearly medical care,
5 and it's providing services, is contractual in
6 nature, because, for example, when a patient
7 receives services and doesn't not pay the bill, a
8 medical care provider can seek in court to compel
9 the payment of those services that are
10 contractual in nature. When you provide a
11 medical service, it is required to pay the medical
12 provider the billed amount.

13 So we see that, ultimately, between all
14 of these different events, and we see from these
15 statements of the parents, that they're being told
16 by, for example, Dr. Soto identified with
17 specificity as a physician employed by the
18 defendant, as them telling these individuals they
19 should not get services from Dr. Holt. They need
20 to have a provider that they select.

21 So, again, it comes back around to
22 punishing someone who then ultimately chose to
23 stay with Dr. Holt's services, but then it also
24 shows the impact on his overall business. That,
25 as this is happening where providers are

1 dissuading patients from seeking care from Dr.
2 Holt is harming his business and his contractual
3 relationships with his patients that he had at RHS
4 previously and any new patients that he may garner
5 through his own Family Center of Aiken County.

6 Next, Your Honor, with regard to the
7 negligence claim, I think it's important to focus
8 in on the duty, because I think Mr. Moody
9 identifies saying that there was no duty. Well,
10 we differ greatly on that. The defendant has a
11 duty to its former employees for not getting paid
12 income that it did not receive.

13 And so it also has a duty, as to an
14 operating entity, that it only receives
15 compensation for services that were provided. And
16 we've shown, Your Honor, through, for example,
17 Exhibit 20, the documents that we received from
18 Blue Cross Blue Shield, that those documents
19 reflect that the defendant improperly retained
20 monies that were owed solely to Dr. Holt. And we
21 go back to also notice.

22 Think about, okay, well, what if the
23 billing account didn't understand? Well, we look
24 at the policies of RHS, that is Exhibit 18, your
25 Honor, Financial Management Policy, and there in

1 it identifies that the processing of payments and
2 the financial responsibilities that relate to it
3 is for a 24-hour time period.

4 Yet, we see from the record that it took
5 months and years for Dr. Holt to be paid money
6 that was owed to his practice, solely his
7 practice, for services provided after his
8 termination. The defendant was on express notice
9 that it itself took proactive action to end
10 Dr. Holt's employment and had the responsibility
11 within its own management, financial and
12 otherwise, to accurately only retain funds that
13 were owed to it for services provided, nothing
14 that Dr. Holt would have provided after his
15 termination. Again, we see this cycle of events
16 where Dr. Holt is continued to be harmed after his
17 termination.

18 As Mr. Moody, I think -- I may be
19 misquoting -- but essentially said, their add-on
20 claims, you know, they're not important claims.
21 They are important. The termination is not before
22 this Court. All of the things that I'm describing
23 to you are the post-termination events and they
24 can continue to harm Dr. Holt in his efforts to
25 continue medical care services here in this Aiken

1 community.

2 Just as Mr. Moody described how the
3 importance of his client's services are to the
4 community, Dr. Holt's is just as equally
5 important. He's providing pediatric counseling.
6 These are children who need services, and clearly
7 is a need for the community. His services are
8 just as important as the defendant's. And to harm
9 him, when he is a small business, is economically
10 harmful. This isn't just a small amount of money.
11 This is somebody who is opening their own
12 business, is trying to make efforts to be able to
13 "keep the lights on," so to speak. He doesn't
14 have the type of funding that the defendant would
15 as a 501(c)(3), so every penny counts.

16 And it doesn't matter if it was a dollar
17 or a \$1 million. The defendant retained money
18 that it shouldn't have retained, and it
19 negligently did so.

20 And, again, Your Honor, the separate
21 claim is for conversion, but it's for the same
22 type of, kind of, issue where the defendant
23 engaged in unauthorized ownership of monies that
24 were solely meant for Dr. Holt, as we can see is
25 proven --

1 THE COURT: And, Counsel, what other than
2 the 504? Wasn't it \$2500?

3 MS. POLVI: In the total amount that
4 Dr. Holt --

5 THE COURT: 2000?

6 MS. POLVI: -- noted was the \$2,800, and
7 we see those, kind of, through the multiple
8 records in the Blue Cross Blue Shield, Exhibit 20.

9 THE COURT: I thought I read it. I can't
10 remember which memo. But isn't that being
11 reconciled with Blue Cross Blue Shield?

12 MS. POLVI: Yes, Your Honor. But I think
13 that, you know, from these damages, Mr. Holt --
14 Dr. Holt, excuse me, would be entitled to actual
15 damages which can be economic and
16 non-economic. And the ultimate harm is that this
17 wasn't paid like a week after, a month after, like
18 these were extended periods of time where Dr. Holt
19 did not receive those funds and had to expend time
20 trying to receive funds that he had already earned
21 which meant, for every minute that Dr. Holt is
22 working on those matters, he's then not providing
23 services for economic payment for, like, a patient
24 care.

25 So, for example, if he's not in an

1 appointment with a patient and he's spending hours
2 doing this, he still has an economic harm that he
3 would be able to describe and testify about and
4 would show, at minimum, there are material facts
5 in dispute as to what the economic harm would be
6 for the conversion. Because, even if the payment
7 was ultimately made, it was for an extended period
8 of time and Dr. Holt can testify about the
9 extended time that that amounts to an economic
10 connection.

11 THE COURT: Okay.

12 MS. POLVI: Thank you, Your Honor. I
13 appreciate your time.

14 THE COURT: Thank you.

15 And are you finished?

16 MS. POLVI: Yes, Your Honor. Unless you
17 have any further questions for me.

18 THE COURT: No, I just figured that.

19 Anything in response, Counsel?

20 MR. MOODY: Yes, yes, Judge Fant. And,
21 as Judge Cane chastised me, Moody will not grind
22 the same corn. We needed a little humor here.

23 A couple points, Judge. The defamation
24 about this false police report, that's not what
25 the Facebook post says. Judge Hodges, on page

1 31st of her R&R states Gabrielle Gaudette, who
2 worked for defendant in medical records at some
3 point in a Facebook post and who stated she had
4 heard, quote, "That you left because you called
5 the cops on Mrs. Alford's son," period, end quote.
6 That whole false police report is a creation of
7 Mr. Holt and creative lawyering by Miss Polvi.

8 The Facebook says, "You left because you
9 called the cops on Miss Alford's son," Okay? So
10 they kind of expand on us behind what the Facebook
11 post says. But the evident is there and it's you
12 called the cops on the HR director's son.

13 The abuse of process, page 34 of the
14 report, you know, Miss Polvi argued this in
15 Federal court. Judge Hodges does a good job.
16 Same arguments we're getting here. In fact, Judge
17 Hodges quotes their arguments and she says, "There
18 is no supporting evidence that defendant or its
19 representative did anything in retaliation for the
20 family choosing to utilize plaintiff's counseling
21 services."

22 This whole issue about the abuse of
23 process, we are a healthcare center. If there is
24 a child in jeopardy, we have a legal obligation to
25 make a report. We don't know who made the report.

1 Nobody in leadership at Rural Health did, but a
2 report was made to DSS about a child potentially
3 being in danger.

4 Mr. Holt tries to weaponize that and say
5 it's about me. It's about the health and safety
6 of a child which is legally required for DSS
7 report. He can't take what we're legally required
8 to do to protect children and say it's about him.
9 So that's the abuse of process. That's dealt with
10 on page 34 by Judge Hodges.

11 And this whole intentional interference
12 with contract, Judge, it is a -- he's not a
13 doctor. He's a therapist. It's a therapy/patient
14 relationship. There is not a contract. In fact,
15 patients are allowed to see whatever therapist
16 they want to and they do. So you have to have a
17 contract. There's no contract.

18 This whole negligence thing, Judge,
19 you're right. It's about \$504. In his
20 deposition, many moons ago in Miss Polvi's office
21 he tried to claim this 2800. And there's
22 deposition testimony I think we filed those as
23 exhibits. He said, *Well, the 2800 is something*
24 *I'm working on with Blue Cross Blue Shield.* It's
25 a fundamental lack of business acumen by Mr. Holt

1 in running his own therapy practice and dealing
2 with insurance companies that we're dealing with
3 here.

4 He admits, you know, trailing payments
5 come in six months later.

6 This whole 504 issue, we have a policy,
7 money comes in, it gets in the bank, so it doesn't
8 sit around. That's the policy. They're trying to
9 use things that we do to be responsible against us
10 all to tweak them in his favor.

11 And the fact of the matter is, Judge,
12 there's no causes of action here that are viable.
13 They are hanger-on's to his termination case. The
14 only reason we're here is Judge Lewis says, Hey,
15 you know, it's more efficient for the State court
16 to address these State law claims. We have
17 Judge Hodges who has ground the corn and been
18 through this entire record and given us 11 pages
19 dismissing each one of these causes of action.

20 All they're doing is trying to get
21 something before a jury, and Lord knows what the
22 cause of action would look like there and what
23 that trial would look like. And that's why we
24 have Rule 56, to prevent these types of, you know,
25 hail Mary's from going to a jury.

1 Thank you, Judge.

2 THE COURT: Okay. Thank you, both. I
3 will review everything.

4 MS. POLVI: Thank you, Your Honor.

5 THE COURT: Next time, I'm not going to
6 allow you to argue before lunch.

7 MS. POLVI: Understood. I apologize.

8 THE COURT: Listen, this is my fault.

9 (End of hearing.)

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CERTIFICATE OF REPORTER

I, SHARON G. HARDOON, Official Circuit Court Reporter, III for the State of South Carolina at Large, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of Common Pleas for Aiken County, South Carolina.

I do further certify that I am neither kin, counsel, nor interest to any party hereto.

February 21, 2025



Sharon G. Hardoon, CSR
Official Circuit Court Reporter, III