





STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF FLORENCE )  
 )  
 Larry D. Outler, Fed. No. 71590-083, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 James Yarnal, Mark Barnard, and )  
 Ramesh A. Bharadwaj, )  
 )  
 Defendants. )  
 )

IN THE COURT OF COMMON PLEAS  
 TWELFTH JUDICIAL CIRCUIT  
 C/A NO.: 2014-CP-21-1923

FILED  
 2015 MAY 26 PM 12:56  
 CONNIE REEVE-OLIVER  
 CLERK OF COURT & S.S.  
 FLORENCE COUNTY, S.C.


**ORDER**

THIS MATTER comes before me on Notice of Motion and Motion to Dismiss pursuant to Rules 12(b)(1) and 12(b)(6), *South Carolina Rules of Civil Procedure*, entered by James Yarnal, M.D., Mark Barnard, M.D., and Ramesh A. Bharadwaj, M.D.

This matter was called for hearing on Monday, April 6, 2015, with due notice to the Plaintiff, Larry D. Outler, and the Defendant physicians, through counsel. J. Boone Aiken, III, of the law firm of AIKEN BRIDGES, of the Florence County Bar was present representing all Defendants. Mr. Outler participated in the hearing via telephone conference which had been arranged through the Florence County Clerk of Court's office.

The *pro se* Plaintiff, Larry D. Outler, filed a Motion to File Suit in Civil Court with accompanying "Discussion of Facts," Summons and Complaint on July 11, 2014.

On August 29, 2014, the Defendants through counsel entered a Notice of Motion and Motion to Dismiss.

CERTIFIED: A TRUE COPY  
  
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 FLORENCE COUNTY, S.C.

On September 9, 2014, the Plaintiff filed a Motion to Petition for an Extension of Time in which to file a response and on October 27, 2014, the Plaintiff filed a Motion in Response to Defendants' Motion to Dismiss.

The position of the Defendants is, first, the Plaintiff seems to be alleging an action for medical malpractice and as such the Plaintiff has failed to comply with the pre-litigation requirements for a medical malpractice action. *South Carolina Code. Ann.* § 15-36-100 and §15-79-125 require the Plaintiff to file a Notice of Intent to File Suit as a prerequisite to filing the action, along with an affidavit of an expert witness who meets certain statutory requirements. The Defendants argued for a dismissal pursuant to Rule 12(b)(1), lack of jurisdiction over the person, and Rule 12(b)(6), *SCRPC*, for failure to state facts sufficient to constitute a cause of action. The Plaintiff failed to file a Notice of Intent to File Suit and an expert affidavit as required by the referenced statutes.

Second, in addition to apparently presenting a case of alleged medical malpractice, the Plaintiff has further attempted to state a cause of action against the Defendant physicians, alleging that the Defendant physicians intentionally disclosed protected and confidential medical information concerning a medical condition suffered by Plaintiff to person(s) not authorized by law to receive such information. The Defendant physicians have specifically denied any and all such allegations and have also argued that subject matter jurisdiction is lacking with this Court as the Health Insurance Portability and Accountability Act ("HIPAA") does not contain any express language conferring any rights upon a specific class of individuals if privacy regulations are violated.

The Health Insurance Portability and Accountability Act of 1996, Pub.L. No. 104-191, 110 Stat. 1936 (1996) codified primarily in Titles 18, 26 and 42 of the United States Code, serves as the basis for the development of privacy regulations and generally provides for confidentiality of medical records. As set forth in Alexander v. Sandoval, 532 U.S. 275, 286, 121 S.Ct. 1511, 149 L.Ed.2d 517 (2001), "private rights of action to enforce federal law must be created by Congress." The Fifth Circuit Court of Appeals stated in Banks v. Dallas Hous. Auth., 271 F.3d 605, 608 (5<sup>th</sup> Cir. 2001), "HIPAA has no express provision creating a private cause of action and therefore we must determine if such is implied within the statute," and this Court concluded that there is no private cause of action under HIPAA.

Every district court that has considered whether Congress intended for private enforcement of HIPAA has concluded that the statute does not support a private right of action, Agee v. United States, 72 Fed.Cl. 284 (2006); Walker v. Gerald, No. 05-6649, 2006 WL1997635 (E.D.La. June 27, 2006); Poli v. Mountain Valleys Health Ctrs., Inc., No. 2:05-2015-GEB-KJM, 2006 WL 83378 (E.D.Cal. Jan.11, 2006); Cassidy v. Nicolo, No. 03-CV-6603-CJS, 2005 WL 3334523 (W.D.N.Y. Dec. 7, 2005); Johnson v. Quander, 370 F.Supp.2d 79 (D.D.C. 2005); Univ. of Colo. Hosp., 340 F.Supp.2d 1142 (D.Colo.2004); \*572 O'Donnell v. Blue Cross Blue Shield of Wyo., 173 F.Supp.2d 1176 (D.Wyo.2001); Means v. Ind. Life & Accident Ins. Co., 963 F.Supp. 1131 (M.D.Ala. 1997); Wright v. Combined Ins. Co. of Am., 959 F.Supp. 356 (N.D. Miss. 1997).

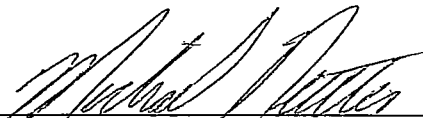
While HIPAA does provide both civil and criminal penalties for improper disclosures of medical information, the enforcement of the statute belongs to the

Secretary of Health and Human Services, Alexander v. Sandoval, 532 U.S. 275, 286, 121 S.Ct. 1511, 149 L.Ed.2d 517 (2001).

In response to the arguments of the Defendant physicians, Mr. Outler was allowed to read his entire ten-page Motion in response to Defendants' Notice of Motion and Motion to Dismiss.

After having carefully considered this matter, the Court concludes that the Motion to Dismiss entered by the Defendant physicians should be granted. Because HIPAA does not give rise to a private cause of action, no subject matter jurisdiction exists with regard to this case. Further, this matter must be dismissed as the *pro se* Plaintiff failed to follow the pre-litigation requirements for a medical malpractice action as set forth in *S.C. Code Ann.* § 15-36-100 and §15-79-125.

**IT IS THEREFORE ORDERED that Defendants' Motion to Dismiss is granted.**

  
Michael G. Nettles, Chief Administrative  
Judge of the Twelfth Judicial Circuit

Date: 5-19-, 2015

Florence, South Carolina

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CLERK RECEPTION  
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