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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

RON POLI,	)	
	)	2:05-2015-GEB-KJM
Plaintiff,	)	
	)	
v.	)	ORDER*
	)	
MOUNTAIN VALLEYS HEALTH	)	
CENTERS, INC., RITE AID	)	
CORPORATION,	)	
	)	
Defendants.	)	
_____	)	

Defendant Thrifty Payless DBA Rite Aid Corporation ("Rite Aid"), moves to dismiss Plaintiff's causes of action for violation of public policy, negligence, and invasion of privacy under Federal Rule of Civil Procedure 12(b)(6). (Def.'s Mem. of P & A in Supp. of Mot. to Dismiss ("Def.'s Mem.") at 2.) Plaintiff opposes the motion.

BACKGROUND<sup>1</sup>

Plaintiff worked for Defendant Mountain Valleys Health Center ("Mountain Valleys") as a physician assistant and nurse

\* This motion was determined suitable for decision without oral argument. L.R. 78-230(h).

<sup>1</sup> The background section discusses the allegations in Plaintiff's First Amended Complaint, which must be accepted as true for the purposes of a motion to dismiss. (See supra page 3.)

1 practitioner from 2002 until November 2005. (First Am. Compl. ("FAC")  
2 ¶¶ 7, 19.) While employed by Defendant Mountain Valleys, Plaintiff  
3 and other physician assistants often received prescription  
4 recommendations from doctors, transmitted the prescription to a  
5 pharmacy, and had the prescription filled for personal use. (Id.  
6 ¶ 9.) On one occasion, Plaintiff told a doctor he was extremely  
7 depressed and he had taken his girlfriend's Xanax, an anti-depressant  
8 prescription drug, on several occasions. (Id. ¶ 7.) The doctor told  
9 Plaintiff his use of the drug was appropriate and gave his approval  
10 and recommendation. (Id.) Plaintiff called a pharmacy operated by  
11 Defendant Rite Aid and told the pharmacist that the doctor recommended  
12 his continued use of Xanax. (Id. ¶ 8.) The pharmacy provided  
13 Plaintiff with twenty (20) Xanax pills. (Id.)

14 On August 31, 2004, an officer of the Shasta County  
15 Sheriff's Department stopped Plaintiff while he was driving a car.  
16 (Id. ¶ 11.) The officer discovered prescription drugs inside the car.  
17 (Id.) The Sheriff's Department conducted an investigation into the  
18 origin of the prescription drugs, during which it contacted Defendant  
19 Mountain Valleys and requested Plaintiff's medical records. (Id. ¶  
20 12.) Defendant Mountain Valleys did not have any medical records on  
21 Plaintiff. (Id. ¶ 8.) Defendant Mountain Valleys subsequently called  
22 Defendant Rite Aid and obtained Plaintiff's prescription records.  
23 (Id. ¶ 14.)

24 On October 11, 2005, Plaintiff was placed on indefinite  
25 administrative leave pending an investigation into his alleged  
26 possession of a prescription drug without physician approval. (Id.  
27 ¶ 15.) On October 28, 2004, Plaintiff received a letter in which the  
28 administrative leave was reaffirmed and Plaintiff was informed he

1 could resume work only if he received a satisfactory evaluation from a  
2 licensed mental health professional and/or diversion program. (Id.)  
3 Plaintiff visited a mental health professional, but did not admit  
4 himself into a substance abuse program. (Id. ¶ 17.) On November 23,  
5 2004, Plaintiff received a letter notifying him that the Board of  
6 Directors had voted to terminate his employment. (Id. ¶ 19.)

7 Plaintiff has sued Defendant Rite Aid alleging that “[i]n  
8 wrongfully releasing Plaintiff’s medical information, Defendant [Rite  
9 Aid] violated public policy by failing to comply with 42 U.S.C. 1320,”  
10 the Health Insurance Portability and Accountability Act (“HIPAA”).  
11 (Id. ¶ 9.) In addition, Plaintiff alleges California state law claims  
12 against Defendant Rite Aid for negligence and invasion of privacy.  
13 (Id. ¶¶ 51-60.)

#### 14 DISCUSSION

15 When considering a motion to dismiss under Rule 12(b)(6),  
16 all material allegations in the complaint must be accepted as true and  
17 construed in the light most favorable to the plaintiff. Scheuer v.  
18 Rhodes, 416 U.S. 232, 236 (1974); Cahill v. Liberty Mut. Ins. Co., 80  
19 F.3d 336, 337-38 (9th Cir. 1996). In addition, the plaintiff is given  
20 the benefit of every reasonable inference that can be drawn from the  
21 allegations in his complaint. Retail Clerks Int’l Ass’n v.  
22 Shermahorn, 373 U.S. 746, 753 n.6 (1963). Accordingly, a motion to  
23 dismiss must be denied “unless it appears beyond doubt that the  
24 plaintiff can prove no set of facts in support of his claim which  
25 would entitle him to relief.” Conley v. Gibson, 355 U.S. 41, 45-46  
26 (1957).

27 Dismissal is appropriate under Rule 12(b)(6) if the  
28 plaintiff fails to state a claim upon which relief may be granted. A

1 plaintiff fails to state claim by either (1) failing to present a  
2 cognizable legal theory, or (2) failing to plead sufficient facts to  
3 support a cognizable legal theory. Robertson v. Dean Witter Reynolds,  
4 Inc., 749 F.2d 530, 533-34 (9th Cir. 1984). "If a complaint is  
5 dismissed for failure to state a claim, leave to amend should be  
6 granted unless the court determines that allegation of other facts  
7 consistent with the challenged pleading could not possibly cure the  
8 deficiency." Schreiber Distrib. Co. v. Serv-Well Furniture Co., 806  
9 F.2d 1393, 1401 (9th Cir. 1986).

10 A. Violation of Public Policy

11 Defendant Rite Aid argues Plaintiff's claim for violation of  
12 public policy seeks to "impermissibly enforce HIPAA" because "the  
13 authority to enforce HIPAA resides exclusively with . . . the  
14 Secretary of Health and Human Services." (Def.'s Reply at 4.)  
15 Plaintiff alleges he "has properly stated a cause of action against  
16 Rite Aid for violating public policy by improperly disclosing  
17 Plaintiff's personal medical information without his consent as  
18 required by [HIPAA]." (Pl.'s Opp'n 4.)

19 "HIPAA imposes requirements on the Department of Health and  
20 Human Services, health plans, and healthcare providers involved in the  
21 exchange of health information [in order] to protect the  
22 confidentiality of such information . . . ." Johnson v. Quander, 370  
23 F. Supp. 2d 79, 99 (D.D.C. 2005). In addition, HIPAA "provides for  
24 both civil and criminal penalties for individuals who improperly  
25 handle or disclose individually identifiable health information." Id.  
26 However, HIPAA "specifically indicates" that the Secretary of Health  
27 and Human Services "shall pursue the action against an alleged  
28 offender, not a private individual." Johnson, 370 F. Supp. 2d at 100;

1 Logan v. Dept. of Veterans Affairs, 357 F. Supp. 2d 149, 155 (D.D.C.  
2 2004). Accordingly, "HIPAA does not expressly provide for a private  
3 cause of action." O'Donnell v. Blue Cross Blue Shield of Wyoming, 173  
4 F. Supp. 2d 1176, 1178 (D. Wyo. 2001); Logan, 357 F. Supp. 2d at 155.

5 Furthermore, HIPAA does not impliedly provide for a private  
6 cause of action. O'Donnell, 173 F. Supp. 2d at 1179; Logan, 357 F.  
7 Supp. 2d at 155; Johnson, 370 F. Supp. 2d at 100. "In order to  
8 determine whether a private cause of action is implicit in a statute  
9 not expressly providing one, the critical inquiry is whether Congress  
10 intended to create a private cause of action." O'Donnell, 173 F.  
11 Supp. 2d at 1179. By delegating enforcement of HIPAA to Secretary of  
12 Health and Human Services, Congress evinced an intent to preclude  
13 enforcement by private individuals. See Alexander v. Sandoval, 532  
14 U.S. 275, 286-287 (2001) ("The express provision of one method of  
15 enforcing [a statute] suggests Congress intended to preclude others.")  
16 "Review of HIPAA's enforcement provisions reveals no congressional  
17 intent to create a private right or remedy." O'Donnell, 173 F. Supp.  
18 2d at 1179.

19 Therefore, Plaintiff cannot maintain a claim for violation  
20 of HIPAA because no express or implied private cause of action exists  
21 under the statute. Although Plaintiff seeks to circumvent this  
22 limitation by alleging a claim for "violation of public policy"  
23 premised on Defendant Rite Aid's failure to comply with HIPAA, to  
24 recognize such a claim would be tantamount to creating a cause of  
25 action where none exists. See Alexander, 532 U.S. at 286-287  
26 ("Raising up causes of action where a statute has not created them [is  
27 not] a proper function . . . for federal tribunals."). Therefore,  
28 Defendant Rite Aid's motion to dismiss Plaintiff's cause of action for

1 "violation of public policy" with prejudice is granted because  
2 Plaintiff has "fail[ed] to present a cognizable legal theory,"  
3 Robertson, 749 F.2d at 533-34, and "the allegation of other facts  
4 . . . could not possibly cure the deficiency," Schreiber, 806 F.2d at  
5 1401.

6 B. Negligence

7 Defendant Rite Aid also seeks dismissal of Plaintiff's  
8 negligence claim, arguing it did not have a duty to withhold  
9 Plaintiff's prescription records from Defendant Mountain Valleys.

10 (Def.'s Mem. 7.) Plaintiff contends Defendant Rite Aid "improperly  
11 seeks to argue the factual merits of the case" by "giving after the  
12 fact excuses why it disclosed Plaintiff's private information."

13 (Pl.'s Opp'n at 3.) Plaintiff asserts the motion to dismiss should be  
14 denied because he has properly alleged the existence of a duty as well  
15 as the other requisite elements of a negligence claim. (Id. at 7.)

16 To state a negligence claim, Plaintiff must allege "four  
17 elements: (1) duty, (2) breach, (3) causation, and (4) damages."  
18 Ileto v. Glock Inc., 349 F.3d 1191, 1203 (9th Cir. 2003). Plaintiff  
19 alleges "Defendants had a duty not to disclose medical information  
20 without adequate cause or a proper subpoena. Defendants breached this  
21 duty by disclosing Plaintiff's medical information to a third party  
22 without adequate cause or a proper subpoena. As a proximate result  
23 . . . Plaintiff has become mentally traumatized, distressed and  
24 aggravated." (FAC ¶¶ 51-54.) Therefore, Plaintiff has alleged each  
25 of the four elements of negligence. Although Defendant Rite Aid  
26 contends it does not owe Plaintiff a duty, on a motion to dismiss, all  
27 material allegations in the complaint must be accepted as true and  
28 construed in the light most favorable to the plaintiff. Scheuer, 416

1 U.S. at 236. Consequently, Defendant Rite Aid's motion to dismiss  
2 Plaintiff's negligence claim is denied.

3 C. Invasion of Privacy

4 Defendant Rite Aid argues Plaintiff's invasion of privacy  
5 claim should be dismissed because "Plaintiff did not have a reasonable  
6 expectation that his pharmacy records would remain private from  
7 Mountain Valleys . . . ." (Def.'s Mem. at 6.) Plaintiff contends  
8 Defendant Rite Aid "improperly seeks to argue the factual merits of  
9 the case" by "giving after the fact excuses why it disclosed  
10 Plaintiff's private information." (Pl.'s Opp'n at 3.) Plaintiff  
11 argues that the dismissal motion should be denied because he "has pled  
12 facts showing . . . [he] had a reasonable expectation of privacy in  
13 keeping confidential his personal medical information . . . ." (Id.  
14 at 8.)

15 To state an invasion of privacy claim, Plaintiff must allege  
16 (1) a legally protected privacy interest, 2) a reasonable expectation  
17 of privacy under the circumstances, and (3) conduct by Defendant Rite  
18 Aid amounting to a serious invasion of a protected privacy interest.  
19 Egan v. Schmock, 93 Fed. Supp. 2d 1090, 1094-95 (N.D. Cal 2000)  
20 (citing Hill v. National Collegiate Athletic Association, 7 Cal. 4th  
21 1, 39-40 (1994)). "A 'reasonable' expectation of privacy is an  
22 objective entitlement founded on broadly based and widely accepted  
23 community norms . . . . [and is] relative to the customs of the time  
24 and place, to the occupation of the plaintiff and to the habits of his  
25 neighbors and fellow citizens." Hill, 7 Cal. 4th at 37. Plaintiff  
26 alleges Defendant Rite Aid released his prescription records to his  
27 employer, Defendant Mountain Valleys, without his consent, adequate  
28 cause or proper subpoena. (FAC ¶ 56.) Giving Plaintiff "the benefit

1 of every reasonable inference that can be drawn from. . . [his]  
2 allegations," a reasonable person could have an expectation of privacy  
3 under the circumstances alleged by Plaintiff. Therefore, Defendant  
4 Rite Aid's motion to dismiss Plaintiff's invasion of privacy claim is  
5 denied because it does not appear "beyond a doubt" that Plaintiff can  
6 prove "no set of facts in support of his claim which would entitle him  
7 to relief." Conley, 355 U.S. at 45-46.

8 CONCLUSION

9 Plaintiff's claim against Defendant Rite Aid for violation  
10 of public policy is dismissed with prejudice. Defendant Rite Aid's  
11 motion to dismiss is otherwise denied.

12 IT IS SO ORDERED.

13 Dated: January 11, 2006

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15 /s/ Garland E. Burrell, Jr.  
16 GARLAND E. BURRELL, JR.  
17 United States District Judge  
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