

THE HONORABLE JOHN C. COUGHENOUR

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SHANTANU NERAVETLA, M.D.,

Plaintiff,

v.

VIRGINIA MASON MEDICAL
CENTER, et al.,

Defendants.

CASE NO. C13-1501-JCC

ORDER GRANTING MOTION FOR
SUMMARY JUDGMENT

This matter comes before the Court on Defendants’ motion for summary judgment. (Dkt. No. 54.) Having thoroughly considered the parties’ briefing and the relevant record, the Court finds oral argument unnecessary and hereby GRANTS the motion for the reasons explained herein.

I. BACKGROUND

The alleged facts in this matter have been discussed in the Court’s previous order granting in part Defendants’ first motion to dismiss. (See Dkt. No. 25.) The Court will not repeat them. In brief, Plaintiff claims that Defendants, Virginia Mason Medical Center (“VM”) and certain of its employees, wrongfully terminated him from his position as a first-year medical resident. Several of Plaintiff’s claims have been dismissed. (Dkt. Nos. 25, 35.) Defendants now move to dismiss Plaintiff’s remaining claims. (Dkt. No. 54.) Plaintiff withdraws his claims for failure to provide “reasonable accommodation” in violation of the Americans with Disabilities

1 ACT (“ADA,” 42 U.S.C. §13113(b)(5)), failure to “reasonably accommodate” in violation of the
2 Washington Law Against Discrimination (“WLAD,” Rev. Code of Wash. §49.60.010. *et seq.*),
3 and fraudulent inducement. (Dkt. No. 69 at 27.)

4 **II. DISCUSSION**

5 **A. Summary Judgment Standard**

6 Pursuant to Rule 56 of the Federal Rules of Civil Procedure, “[t]he court shall grant
7 summary judgment if the movant shows that there is no genuine dispute as to any material fact
8 and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). In making such
9 a determination, the Court must view the facts and justifiable inferences to be drawn there from
10 in the light most favorable to the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S.
11 242, 255 (1986). Once a motion for summary judgment is properly made and supported, the
12 opposing party “must come forward with ‘specific facts showing that there is a *genuine issue for*
13 *trial.*” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (quoting
14 Fed. R. Civ. P. 56(e)). Material facts are those that may affect the outcome of the case, and a
15 dispute about a material fact is genuine if there is sufficient evidence for a reasonable jury to
16 return a verdict for the non-moving party. *Anderson*, 477 U.S. at 248–49. Conclusory, non-
17 specific statements in affidavits are not sufficient, and “missing facts” will not be “presumed.”
18 *Lujan v. National Wildlife Federation*, 497 U.S. 871, 888–89 (1990). Ultimately, summary
19 judgment is appropriate against a party who “fails to make a showing sufficient to establish the
20 existence of an element essential to that party’s case, and on which that party will bear the
21 burden of proof at trial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986).

22 **B. Plaintiff’s Claims Against Individual Defendants**

23 Plaintiff concedes that he cannot “identify genuine disputes of material fact with respect
24 to the claims he asserts against the individual Defendants, Dr. Michael Glenn and Dr. Gary
25 Kaplan.” (Dkt. No. 69 at 27 n.8.) Summary judgment regarding these claims is therefore
26 warranted. As discussed below, the Court finds summary judgment warranted for each of

1 Plaintiff's remaining claims. This includes claims against individual Defendant Dr. L. Keith
2 Dipboye.

3 **C. Plaintiff's Claim of Improper Testing Under the ADA**

4 Plaintiff claims that Defendant VM violated the ADA's prohibition on improper "medical
5 testing" by referring him to the Washington Physicians Health Program ("WPHP"). Defendants
6 have argued that the referral "may not be deemed a referral for a 'medical test' because it did not
7 involve any medical tests, because no one at VM knew why plaintiff's performance was erratic,
8 and because some of the potential explanations [for plaintiff's performance] did not involve
9 diagnosable or treatable conditions." (Dkt. No. 70 at 9.) Plaintiff has failed to address this
10 argument in his opposition. Because the Court finds the argument persuasive, there is no need to
11 consider whether the referral was justified as a job-related "business necessity," expressly
12 allowed for under the ADA. 42 U.S.C. § 12112(d)(4)(A).

13 **D. Plaintiff's "Regarded As" and "Perceived As" Claims**

14 Plaintiff claims that Defendants improperly regarded him as disabled under the ADA and
15 the WLAD. In order to establish a prima facie case, he must demonstrate: (1) that he has, or is
16 regarded as having, a disability; (2) that he is otherwise qualified for the employment in
17 question; and (3) that he was excluded from the employment solely because of his disability. 42
18 U.S.C. § 12102(3); 29 C.F.R. § 1630.2(1); *see also* RCW 49.60.040 (7)(a)(iii).

19 Over the course of nearly seven months, Plaintiff received negative performance
20 evaluations from thirteen attending physicians and senior residents. Some of these evaluators
21 indicated that Plaintiff's performance posed a potential risk to patients' health and safety.
22 Plaintiff offers no admissible evidence to suggest that the nondiscriminatory reasons put forward
23 by VM to explain the referral to WPHP or the subsequent decision to terminate his residency are
24 pretextual. Consequently, no reasonable jury could find that Plaintiff was excluded from his
25 employment "solely" because of his disability. Because he cannot establish the third prong of the
26 prima facie case, there is no need to consider whether Plaintiff's claims meet the requirements

1 for the first and second prongs.

2 **E. Plaintiff's Claim for Interference with a Business Expectancy Interest**

3 Plaintiff claims that Defendants were aware that he had been conditionally accepted into
4 an ophthalmology residency program, and that they interfered with his business relationship by
5 terminating him from VM's Transitional Year Residency program ("TY program"). Plaintiff
6 must show: "(1) the existence of a valid contractual relationship or business expectancy; (2) the
7 defendant's knowledge of that relationship; (3) an intentional interference inducing or causing a
8 breach or termination of the relationship or expectancy; (4) the defendant's interference for an
9 improper purpose or by improper means; and (5) resulting damage. *Koch v. Mutual of Enumclaw*
10 *Ins. Co.*, 108 Wn. App. 500, 506, 31 P.3d 698 (2001).

11 The Court finds no evidence in the record indicating that Defendants intentionally
12 interfered with the ophthalmology residency program, or that they did so for an improper
13 purpose. Consequently, Plaintiff cannot meet the required elements of the claim.

14 **F. Plaintiff's Claims for Breach of Contract and Promissory Estoppel**

15 Plaintiff claims Defendants breached Section B(2)(a) of his Residency Appointment
16 Agreement by failing to provide a suitable education experience. Plaintiff has not identified any
17 way in which his residency program violated relevant accreditation standards. Nor has he
18 provided evidence that he suffered any contractual damages. There is, therefore, no genuine issue
19 of material fact regarding his claims for breach of contract and promissory estoppel.

20 **G. Plaintiff's Defamation Claim**

21 In order to prove defamation, Plaintiff must identify a false statement of fact, made
22 without privilege, and with the requisite level of fault. *See Mohr v. Grant*, 153 Wn.2d 812, 822,
23 108 P.3d 768 (2005); *Mark v. Seattle Times*, 96 Wn.2d 473, 486, 635 P.2d 1081 (1981). Plaintiff
24 has failed to offer evidence of any such statement, so the claim must fail.

25 **H. Plaintiff's Claim for Intentional Infliction of Emotional Distress**

26 To state a claim for intentional infliction of emotional distress, Plaintiff must allege

1 conduct “so outrageous in character, and so extreme in degree, as to go beyond all possible
2 bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized
3 community.” *Reid v. Pierce Cnty*, 136 Wn.2d 195, 202, 961 P.2d 333 (1998) (emphasis, citation,
4 and internal quotation marks omitted). The Court finds no evidence on the record that would
5 enable a reasonable jury to find that Defendants engaged in such conduct. There is, therefore, no
6 genuine issue of material fact as to this claim.

7 **I. Plaintiff’s Request for Injunctive Relief**

8 The Court finds no basis for equitable relief ordering VM to accept plaintiff back into its
9 residency program.

10 **J. Plaintiff’s Request to add Dr. Daniel O’Connell as a Party Defendant**

11 Plaintiff “renews his request to add Dr. Daniel O’Connell as a party defendant to a claim
12 of common-law conspiracy . . . previously denied by the Court.” (Dkt. No. 69 at 27 n.8; *see also*
13 Dkt. No. 45.) The Court declines the invitation to revisit this issue.

14 **III. CONCLUSION**

15 For the foregoing reasons, Defendants’ motion for summary judgment is GRANTED in
16 its entirety. All of Plaintiff’s remaining claims are hereby DISMISSED WITH PREJUDICE.

17 DATED this 27th day of February 2015.

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24 John C. Coughenour
UNITED STATES DISTRICT JUDGE