DOCKET NO.: KNL-CV-22-6055894-S	:	**SUPERIOR COURT**
KRISTAN DITTMAN-GREEN	:	**JUDICIAL DISTRICT**
v.	:	**OF NORWICH/NEW LONDON**
YALE NEW HAVEN HEALTH	:	**AT NEW LONDON**
SERVICES CORP., ET AL.	:	**FEBRUARY 5, 2026**

MEMORANDUM OF DECISION RE: SHORELINE PULMONARY ASSOCIATES, LLC'S MOTION FOR SUMMARY JUDGMENT (#140.00)

The plaintiff, Kristan Dittman-Green, filed a twelve-count amended complaint against the defendants, Yale New Haven Health Services Corporation (YNHHS), Shoreline Pulmonary Associates, LLC (Shoreline), and Niall J. Duhig, M.D., alleging negligent infliction of emotional distress, breach of the duty of confidentiality, breach of fiduciary duty, and violations of the Connecticut Unfair Trade Practices Act, General Statutes § 42-110b et. seq. (CUTPA), arising out of the disclosure of the plaintiff's medical records by a nonparty individual Deborah Price. Shoreline and Duhig (collectively, Shoreline/Duhig) move together for summary judgment on all claims against them, arguing that there is no genuine issue of material fact that they did not owe a duty to the plaintiff and are not liable under any of the counts asserted against them.

I. FACTUAL BACKGROUND

On April 29, 2022, the plaintiff filed a twelve-count amended complaint alleging the following facts. See Docket Entry No. 103.00. The plaintiff was a patient of medical providers Judith Fabricant, a Licensed Marriage and Family Therapist, and Kajanan Kukan, a Doctor of Osteopathic Medicine, both of whom practiced within the Yale New Haven Health System. Am. Compl., ¶ 6. The plaintiff's medical treatment records relating to treatment provided by Fabricant

and/or Dr. Kukan were digitally maintained and/or kept by YNHHS and its officers, agents, servants, or employees. Am. Compl., ¶ 7.

Shoreline is a medical practice in New London that focuses on pulmonary disease and operates within the Yale New Haven Health System. Am. Compl., ¶¶ 3, 8. Dr. Duhig is the principal owner of Shoreline. Am. Compl., ¶ 4. The plaintiff has never been a patient of Shoreline or Dr. Duhig. Am. Compl., ¶ 9.

In 2019 and 2020, Shoreline employees had the ability to access patients' medical records that were kept and/or maintained by YNHHS, including the plaintiff's records relating to her treatment with Fabricant and Dr. Kukan. Am. Compl., ¶ 10. Shoreline employees had access to patients' medical records irrespective of whether such patients had ever been treated by or planned to be treated by Shoreline and/or Dr. Duhig. Am. Compl., ¶ 11.

Without permission or authorization from the plaintiff, and for no medical purpose, Price, an employee of one or all of the defendants, unlawfully and inappropriately accessed the plaintiff's medical records relating to her treatment with Fabricant and Dr. Kukan. Am. Compl., ¶¶ 12-14. Price, thereafter, publicized information contained in the plaintiff's medical records by causing another nonparty individual, Jamal Johnson,[1] to learn of some or all of their contents. Am. Compl., ¶ 15. After learning of the information contained in the plaintiff's medical records, Johnson called the plaintiff's telephone and left a threatening voicemail message. Am. Compl., ¶ 16.

On May 7, 2020, the plaintiff received a letter from Amy Dingus of the Yale New Haven Health System Office of Privacy and Corporate Compliance, notifying the plaintiff that an individual, presumably Price, inappropriately accessed the plaintiff's treatment records with

[1] Johnson was the plaintiff's ex-boyfriend.

respect to dates of service between November 20 and November 27, 2019, and February 1 and February 16, 2020. Am. Compl., ¶ 17. Prior to her receipt of this letter, the plaintiff was not aware of the fact that her treatment records had been inappropriately accessed by Price. Am. Compl., ¶ 18.

Additional facts will be discussed below as necessary.

II. PROCEDURAL HISTORY

In counts two and three, sounding in negligent infliction of emotional distress, the plaintiff alleges that Shoreline/Duhig by and through their agents, officers, servants, and/or employees, directly and proximately caused the plaintiff emotional distress severe enough that it resulted in illness or bodily harm by: (a) "Violating General Statutes § 52-146o by disclosing information gained by personal examination of the plaintiff to others, without the informed consent from the plaintiff"; (b) "Violating 45 C.F.R. § 164.508 (a) by disclosing protected health information without an appropriate authorization"; (c) "Violating 45 C.F.R. § 164.510 in failing to provide the plaintiff the opportunity to object to the disclosure of her protected health information to Ms. Price and to others Ms. Price disclosed information to"; (d) "Violating 45 C.F.R. § 164.530 (b) by failing to adequately train members of its workforce on policies and procedures with respect to protected health information as required by 45 C.F.R. subpart E"; (e) "Violating 45 C.F.R. § 164.530 (c) by failing to have in place appropriate administrative, technical, and physical safeguards to protect the privacy of the plaintiff's protected health information"; (f) "Violating 45 C.F.R. § [164.]530 (i) by failing to implement sufficient policies and procedures with respect to the protection of health information, including the plaintiff's, with due regard to the size and type of activities YNHH undertakes in that relate to protected health information"; (g) "Failing to enact and/or implement appropriate protocols, policies, and/or

procedures to ensure only appropriately authorized personnel were able to access the plaintiff's health information"; (h) "Giving or allowing Ms. Price to be given virtually unfettered access to the plaintiff's protected health information"; and (i) "Disclosing the plaintiff's protected health information or causing it to be disclosed to third-parties, including but not limited to, Jamal Johnson."

In counts five and six, the plaintiff alleges that Shoreline/Dulig are part of or affiliated with the Yale New Haven Health System with access to patients' electronic/digital medical records and a policy to protect patient privacy with regard to health information, agreed to keep the plaintiff's health information confidential, and breached their duty of confidentiality to the plaintiff for the same reasons as listed in counts two and three.

In counts eight and nine, the plaintiff alleges that Shoreline/Duhig, as part of the Yale New Haven Health System with access to patient records, owed the plaintiff a fiduciary duty to keep the contents of her medical records confidential and breached their fiduciary duty to the plaintiff by allowing the contents of her medical records to be disclosed to Ms. Price and Mr. Johnson.

In counts eleven and twelve, the plaintiff alleges that Shoreline/Duhig were engaged in trade or commerce in that they provided medical care to members of the general public in exchange for monetary payment; and Shoreline/Duhig themselves, or through the actions of their agents, employees, officers, members, and/or owners, engaged in unfair practices in the conduct of their trade and commerce under General Statutes § 42-110b by acting in a manner offensive to public policy for the same reasons as listed in counts two and three.

On February 1, 2024, Shoreline/Duhig filed a motion for summary judgment supported by a memorandum of law as to counts two, three, five, six, eight, nine, eleven, and twelve of the

plaintiff's amended complaint on the grounds that they did not owe a duty to the plaintiff and they were not responsible under any of the described counts. See Docket Entry No. 140.00. The plaintiff filed an objection to Shoreline/Duhig's motion, together with a memorandum in opposition and exhibits, countering that there are genuine issues of material fact with respect to Shoreline's liability for negligence, breach of its duty of confidentiality, breach of its fiduciary duty, and violation of CUTPA. See Docket Entry No. 164. The court heard oral argument on these motions on October 14, 2025.

III. DISCUSSION

a. Legal Standard

"Practice Book § 17-49 provides that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted 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. In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party." (Internal quotation marks omitted.) *Graham* v. *Commissioner of Transportation*, 330 Conn. 400, 414-15, 195 A.3d 664 (2018). "In ruling on a motion for summary judgment, the court's function is not to decide issues of material fact . . . but rather to determine whether any such issues exist." (Internal quotation marks omitted.) *RMS Residential Properties, LLC* v. *Miller*, 303 Conn. 224, 233, 32 A.3d 307 (2011). "[I]ssue-finding, rather than issue-determination, is the key to the procedure." (Internal quotation marks omitted.) *DiMiceli* v. *Cheshire*, 162 Conn. App. 216, 222, 131 A.3d 771 (2016).

"In seeking summary judgment, it is the movant who has the burden of showing the nonexistence of any issue of fact. The courts are in entire agreement that the moving party for summary judgment has the burden of showing the absence of any genuine issue as to all the

material facts, which, under applicable principles of substantive law, entitle[s] him to a judgment as a matter of law. The courts hold the movant to a strict standard. To satisfy his burden the movant must make a showing that it is quite clear what the truth is, and that excludes any real doubt as to the existence of any genuine issue of material fact. . . . As the burden of proof is on the movant, the evidence must be viewed in the light most favorable to the opponent. . . . When documents submitted in support of a motion for summary judgment fail to establish that there is no genuine issue of material fact, the nonmoving party has no obligation to submit documents establishing the existence of such an issue. . . . Once the moving party has met its burden, however, the opposing party must present evidence that demonstrates the existence of some disputed factual issue. . . . It is not enough, however, for the opposing party merely to assert the existence of such a disputed issue. Mere assertions of fact . . . are insufficient to establish the existence of a material fact and, therefore, cannot refute evidence properly presented to the court under Practice Book § 380 [now § 17-45]." (Internal quotation marks omitted.) *Fiano* v. *Old Saybrook Fire Co. No. 1, Inc.*, 332 Conn. 93, 101, 209 A.3d 629 (2019).

b. <u>Negligent Infliction of Emotional Distress (Counts Two and Three)</u>

"[I]n order to prevail on a claim of negligent infliction of emotional distress, the plaintiff must prove that the defendant should have realized that its conduct involved an unreasonable risk of causing emotional distress and that that distress, if it were caused, might result in illness or bodily harm. . . . The elements of a claim of negligent infliction of emotional distress are as follows: (1) the defendant's conduct created an unreasonable risk of causing the plaintiff emotional distress; (2) the plaintiff's distress was foreseeable; (3) the emotional distress was severe enough that it might result in illness or bodily harm; and (4) the defendant's conduct was the cause of the plaintiff's distress. . . . [T]he elements of negligent infliction of emotional

distress do not require proof of any particular level of intent. In fact, intent need not be proven at all to establish a claim of negligent infliction of emotional distress." (Citations omitted; internal quotation marks omitted.) *Geiger* v. *Carey*, Superior Court, judicial district of Litchfield, Docket No. CV-11-5007327-S (February 25, 2015, *Moore, J.*) (reprinted at 170 Conn. App. 459, 497-98, 154 A.3d 1093), aff'd 170 Conn. App. 459, 497-98, 154 A.3d 1093 (2017).

"This . . . test essentially requires that the fear or distress experienced by the plaintiffs be reasonable in light of the conduct of the defendants. If such [distress] were reasonable in light of the defendants' conduct, the defendants should have realized that their conduct created an unreasonable risk of causing distress, and they, therefore, properly would be held liable. Conversely, if the [distress] were unreasonable in light of the defendants' conduct, the defendants would not have recognized that their conduct could cause this distress and, therefore, they would not be liable." (Internal quotation marks omitted.) *Larobina* v. *McDonald*, 274 Conn. 394, 876 A.2d 522 (2005).

"The foreseeability requirement in a negligent infliction of emotional distress claim is more specific than the standard negligence requirement that an actor should have foreseen that his tortious conduct was likely to cause harm. . . . In order to state a claim for negligent infliction of emotional distress, the plaintiff must plead that the actor should have foreseen that her behavior would likely cause harm of a specific nature, i.e., emotional distress likely to lead to illness or bodily harm." (Citation omitted.) *Olson* v. *Bristol-Burlington Health District*, 87 Conn. App. 1, 5, 863 A.2d 748, cert. granted, 273 Conn. 914, 870 A.2d 1083 (2005).

Shoreline/Duhig argue that summary judgment should enter in their favor on counts two and three because there is no genuine issue of material fact that (1) Shoreline/Duhig acted reasonably in light of medical practice in the digital age; (2) the plaintiff's distress was not

foreseeable to Shoreline/Duhig because they had no knowledge of the plaintiff; (3) the emotional distress from Price's conduct was in no way connected to the plaintiff's claimed emotional distress; and (4) Shoreline/Duhig did not cause Price to look up and disseminate the plaintiff's medical records, nor did they cause Mr. Johnson to harass the plaintiff, and therefore Shoreline/Duhig's conduct did not cause the plaintiff's distress. In support of their position, the defendants rely on Ms. Price's deposition testimony in which she states that she received annual HIPAA training; she knew she was not supposed to access records of nonpatients; Ms. Price's position at Shoreline as a billing clerk required her to regularly access patient for legitimate purposes; she accessed the plaintiff's medical record from her office at Shoreline; she accessed the plaintiff's record to determine whether Ms. Price's ex-romantic partner was listed as next of kin on the plaintiff's contact sheet, which would have indicated to Ms. Price that he was romantically involved with the plaintiff; she knew accessing the plaintiff's medical record violated HIPAA and company policy; she was arrested and criminally charged in connection with accessing the plaintiff's medical record; and her access to patient records was revoked following her arrest.

Shoreline/Duhig also rely on (1) Dr. Duhig's affidavits in which he asserts that he did not direct Price to access the plaintiff's records and that he had no knowledge that Price was accessing the plaintiff's record at the time the violations occurred and (2) a copy of Price's signed acknowledgment that she understood the HIPAA regulations contained in Shoreline's employee handbook.

The evidence presented by Shoreline/Duhig establishes that Shoreline had policies and procedures in place, such as employee training, intended to prevent improper access and disclosure of protected health information of its patients. The evidence also establishes that Price

received years of HIPAA training prior to accessing the plaintiff's records and, despite knowledge that accessing the plaintiff's records was a violation of company policy and HIPAA, she chose to do so anyway for personal reasons unrelated to her employment and without Shoreline/Duhig's knowledge or direction.

In opposition to summary judgment, the plaintiff contends that genuine issues of material fact exist as to whether (1) the defendants' conduct violated privacy protections set forth by law,[2]

---

[2] As described in Section II, supra, the plaintiff alleges that Shoreline/Duhig caused her emotional distress by violating General Statutes § 52-146o and 45 C.F.R. §§ 164.508 (a), 164.510, 164.530 (b), 164.530 (c), and 164.530 (i). See Am. Compl., ¶ 19 (a)-(f). Several of these provisions are inapplicable to the present case for the following reasons.

Section 52-146o (a) provides in relevant part that "in any civil action or any proceeding preliminary thereto or in any probate, legislative or administrative proceeding, a physician or surgeon . . . or other licensed health care provider, shall not disclose (1) any communication made to him or her by, or any information obtained by him or her from, a patient or the conservator or guardian of a patient with respect to any actual or supposed physical or mental disease or disorder, or (2) any information obtained by personal examination of a patient, unless the patient or that patient's authorized representative explicitly consents to such disclosure." Section 52-146o is not applicable to the present case because the disclosure of the plaintiff's medical records did not occur during a civil, probate, legislative, or administrative proceeding. Price testified that she intentionally accessed the plaintiff's medical records from her office at Shoreline, despite knowing that it was a violation of company policy and HIPAA. Indeed, the plaintiff does not provide any evidence demonstrating that Shoreline/Duhig disclosed any communication or information related to the plaintiff's medical treatment.

Similarly, 45 C.F.R. § 164.508 (a) is inapplicable to the facts of the present case. Section 164.508 (a) (1) provides in relevant part that "a covered entity may not use or disclose protected health information without an authorization that is valid under this section." Section 164.508 is inapplicable to the present case because, again, there is no evidence demonstrating that Shoreline/Duhig disclosed protected health information without the consent of the plaintiff. Rather, Price intentionally accessed and disclosed the plaintiff's medical records without authorization from the plaintiff, Shoreline, or Duhig. Accordingly, § 164.508 (a) is inapplicable.

Similarly, 45 C.F.R. § 164.510 is inapplicable to the facts of the present case. Section 164.510 provides in relevant part that "[a] covered entity may use or disclose protected health information, provided that the individual is informed in advance of the use or disclosure and has the opportunity to agree to or prohibit or restrict the use or disclosure, in accordance with the applicable requirements of this section. The covered entity may orally inform the individual of and obtain the individual's oral agreement or objection to a use or disclosure permitted by this

which foreseeably created an unreasonable risk of emotional distress; (2) a reasonable person in the plaintiff's position would likely be severely distressed by the defendants' conduct, given the importance of medical confidentiality; and (3) the plaintiff experienced severe emotional distress. The plaintiff acknowledges that Price may have received some training but argues that genuine issues of material fact exist as to what kind of training Price received due to inadequate documentation and whether Shoreline/Duhig *adequately* trained members of its workforce on policies and procedures with respect to protected health information as required under 45 C.F.R. § 164.530 (b). The plaintiff further contends that questions of material fact exist as to whether Shoreline/Duhig had appropriate administrative, technical, and physical safeguards to protect the privacy of plaintiff's protected health information.

The evidence presented by the plaintiff in opposition to summary judgment includes the EpicCare Link Access Agreement between YNHHS and Shoreline, and Shoreline's request for EpicCare Link access for Price. Shoreline/Duhig had several responsibilities under the agreement related to measures to protect patient information and manage authorized users. One provision required each authorized user to sign a request form agreeing to be bound by the EpicCare terms and conditions of use, but the request form submitted by the plaintiff appears to be signed by Dr. Duhig rather than Price.

---

section." Section 164.510 (a) (2) further provides in relevant part that "[a] covered health care provider must inform an individual of the protected health information that it may include in a directory and the persons to whom it may disclose such information . . . and provide the individual with the opportunity to restrict or prohibit some or all of the uses or disclosures permitted by paragraph (a) (1) of this section." Section 164.510 is inapplicable to the present case because, again, there is no evidence demonstrating that Shoreline/Duhig disclosed the plaintiff's protected health information. Moreover, Shoreline/Duhig did not have an opportunity to inform the plaintiff in advance that Price intended to intentionally and unlawfully access the plaintiff's medical records for no medical purpose. Thus, § 164.510 is inapplicable.

45 C.F.R. §§ 164.530 (b), 164.530 (c), and 164.530 (i) will be addressed later in this decision.

The plaintiff's claims are in large part premised on alleged HIPAA violations. 45 C.F.R. § 164.530 (b) provides in relevant part: "(1) . . . A covered entity must train all members of its workforce on the policies and procedures with respect to protected health information required by this subpart and subpart D of this part, as necessary and appropriate for the members of the workforce to carry out their functions within the covered entity. (2) . . . (i) A covered entity must provide training that meets the requirements of paragraph (b) (1) of this section, as follows: (A) To each member of the covered entity's workforce by no later than the compliance date for the covered entity; (B) Thereafter, to each new member of the workforce within a reasonable period of time after the person joins the covered entity's workforce; and (C) To each member of the covered entity's workforce whose functions are affected by a material change in the policies or procedures required by this subpart or subpart D of this part, within a reasonable period of time after the material change becomes effective in accordance with paragraph (i) of this section. (ii) A covered entity must document that the training as described in paragraph (b) (2) (i) of this section has been provided, as required by paragraph (j) of this section." 45 CFR § 164.530 (j) provides in relevant part: "If an action, activity, or designation is required by this subpart to be documented, [a covered entity must] maintain a written or electronic record of such action, activity, or designation. . . ."

Title 45 of the Code of Federal Regulations, § 164.530 (c), provides in relevant part: "(1) . . . A covered entity must have in place appropriate administrative, technical, and physical safeguards to protect the privacy of protected health information. (2) (i) . . . A covered entity must reasonably safeguard protected health information from any intentional or unintentional use or disclosure that is in violation of the standards, implementation specifications or other requirements of this subpart. (ii) A covered entity must reasonably

safeguard protected health information to limit incidental uses or disclosures made pursuant to an otherwise permitted or required use or disclosure."

Title 45 of the Code of Federal Regulations, § 164.530 (i), provides in relevant part: "A covered entity must implement policies and procedures with respect to protected health information that are designed to comply with the standards, implementation specifications, or other requirements of this subpart and subpart D of this part. The policies and procedures must be reasonably designed, taking into account the size and the type of activities that relate to protected health information undertaken by a covered entity, to ensure such compliance."

Shoreline/Duhig argue that they have demonstrated the presence of adequate safeguards through Price's deposition testimony and Duhig's affidavit, which serve as uncontested proof that Price was properly trained and not acting as an agent of Shoreline/Duhig when she accessed the plaintiff's records; however, Shoreline/Duhig provide no evidence of safeguards beyond training, such as physical safeguards. Additionally, there are genuine issues of material fact surrounding Shoreline/Duhig's compliance with contractual obligations related to protecting patient health information. Thus, when viewed in the light most favorable to the plaintiff, Shoreline/Duhig have not met their burden of establishing the absence of any genuine issue of material fact as to whether adequate policies and/or safeguards were in place.

Additionally, there remains a genuine issue of material fact as to whether the plaintiff's emotional distress was a foreseeable consequence of Shoreline/Duhig's conduct. "[W]hether the injury is reasonably foreseeable ordinarily gives rise to a question of fact for the finder of fact, and this issue may be decided by the court only if no reasonable fact finder could conclude that the injury was within the foreseeable scope of the risk such that the defendant should have recognized the risk and taken precautions to prevent it. . . . In other words, foreseeability

becomes a conclusion of law only when the mind of a fair and reasonable [person] could reach only one conclusion; if there is room for reasonable disagreement the question is one to be determined by the trier as a matter of fact." (Citation omitted; internal quotation marks omitted.) *Ruiz* v. *Victory Properties, LLC*, 315 Conn. 320, 330, 107 A.3d 381 (2015).

In the present case, reasonable jurors could disagree as to whether it was foreseeable that Shoreline/Duhig, by allowing Price unfettered access to the protected health information of all patients within the YNHHS system, would cause the plaintiff emotional distress when Price unlawfully accessed and disclosed her protected health information. The intimate nature of protected health information makes emotional distress a natural and predictable consequence of unlawful disclosure, especially when the disclosure occurred outside any professional relationship with the patient.

Furthermore, a jury could reasonably conclude that Shoreline/Duhig should have foreseen the specific type of harm that occurred in the present case. By giving Price broad access to patient medical records, and bypassing certain safeguards such as requiring her to sign the EpicCare request form and agreeing to its terms, Shoreline/Duhig increased the likelihood that she would improperly view and disclose patient information. Thus, whether Shoreline/Duhig's policies made such access and disclosure reasonably foreseeable, and whether the plaintiff's emotional distress was a foreseeable consequence of those policies, are fact-intensive questions that cannot be resolved as a matter of law.

Accordingly, Shoreline/Duhig's motion for summary judgment as to counts two and three, negligent infliction of emotional distress, is denied.

c. Vicarious Liability

"In determining whether an employee has acted within the scope of employment, courts look to whether the employee's conduct: (1) occurs primarily within the employer's authorized time and space limits; (2) is of the type that the employee is employed to perform; and (3) is motivated, at least in part, by a purpose to serve the employer. . . . Ordinarily, it is a question of fact as to whether a willful tort of the servant has occurred within the scope of the servant's employment . . . [b]ut there are occasionally cases [in which] a servant's digression from [or adherence to] duty is so clear-cut that the disposition of the case becomes a matter of law. . . . Furthermore, [w]hile a servant may be acting within the scope of his employment when his conduct is negligent, disobedient and unfaithful . . . that does not end the inquiry. Rather, the vital inquiry in this type of case is whether the servant on the occasion in question was engaged in a disobedient or unfaithful conducting of the master's business, or was engaged in an abandonment of the master's business. . . . Unless [the employee] was actuated at least in part by a purpose to serve a principal, the principal is not liable." (Citation omitted; internal quotation marks omitted.) *2 National Place, LLC* v. *Reiner*, 152 Conn. App. 544, 558, 99 A.3d 1171, cert. denied, 314 Conn. 939, 102 A.3d 1112 (2014). "Simply accessing the records or performing the alleged acts during the time period of work does not create the presumption that the acts were in furtherance of [the defendant's] job responsibilities or were for purposes of serving her employer." *Doe* v. *Danbury Hospital*, Superior Court, judicial district of Danbury, Docket No. DBDCV195015760S (Jan. 12, 2021, *Brazzel-Massaro, J.*).

The defendants argue that they are not responsible to the plaintiff because they are not vicariously liable for Price's conduct because she had abandoned the purpose of her employment and was acting for her own personal benefit and curiosity. The plaintiff counters that the

defendants are responsible for Price's conduct because it occurred during work hours and through the EpicCare system, which was related to her employment and used in the course of her employment.

It is undisputed that Price accessed the plaintiff's protected health information from her office at Shoreline through the EpicCare system. Price's deposition testimony demonstrates that she willfully accessed the plaintiff's medical record for the nonwork-related purpose of viewing the plaintiff's emergency contact information to determine whether the plaintiff was romantically involved with someone with whom Price had recently been romantically involved. The plaintiff equates Price's ability to access the plaintiff's medical record during work hours and through a system related to her employment and provided by her employer with permission but has not provided any evidence to contradict Price's testimony regarding her motivation behind accessing the plaintiff's records or assertions that she was not directed by Shoreline/Duhig to do so. Although Price's ability to access patient information through the EpicCare system was a function of her employment, the undisputed evidence indicates that, on the occasion in question, she was not acting in furtherance of her job responsibilities or for the purpose of serving her employer.

Nevertheless, even if Shoreline/Duhig are not vicariously liable for Price's actions, that would not negate any general liability for their own negligent acts, if any.

d. <u>Breach of Confidentiality and Fiduciary Duty (Counts Five and Six)</u>

"[T]he determination of whether a duty exists between individuals is a question of law. . . . Only if a duty is found to exist does the trier of fact go on to determine whether the defendant has violated that duty." (Internal quotations marks omitted.) *Chioffi* v. *Martin*, 181 Conn. App. 111, 136, 186 A.3d 15 (2018). "The elements which must be proved to support a conclusion of

breach of fiduciary duty are: [1] [t]hat a fiduciary relationship existed which gave rise to . . . a duty of loyalty . . . an obligation . . . to act in the best interests of the plaintiff, and . . . an obligation . . . to act in good faith in any matter relating to the plaintiff; [2] [t]hat the defendant advanced his or her own interests to the detriment of the plaintiff; [3] [t]hat the plaintiff sustained damages; [and] [4] [t]hat the damages were proximately caused by the fiduciary's breach of his or her fiduciary duty." (Internal quotation marks omitted.) Id., 138.

In *Byrne* v. *Avery Center for Obstetrics & Gynecology, P.C.*, 327 Conn. 540, 175 A.3d 1 (2018), our Supreme Court recognized "the fiduciary nature of the physician-patient relationship" and held that "a duty of confidentiality arises from the physician-patient relationship and that unauthorized disclosure of confidential information obtained in the course of that relationship for the purpose of treatment gives rise to a cause of action sounding in tort against the health care provider, unless the disclosure is otherwise allowed by law." Id., 567-68.

Shoreline/Duhig argue that summary judgment should enter in their favor on counts five, six, eight, and nine because there is no genuine issue of material fact that they had no relationship with, and thus no duty to, the plaintiff. It is undisputed that the plaintiff is not nor has ever been a patient of Shoreline or Duhig. Am. Compl., ¶ 9. The plaintiff counters that healthcare institutions have a general duty to protect patient's confidential information.

In the present case, there is no fiduciary or physician-patient relationship between Shoreline/Duhig and the plaintiff. Accordingly, Shoreline/Duhig's motion for summary judgment as to counts five, six, eight, and nine, breach of the duty of confidentiality and fiduciary duty, is granted.

e. Violation of CUTPA (Counts Eleven and Twelve)

"[A]lthough physicians and other health care providers are subject to CUTPA, they may be liable only for unfair, unconscionable, or deceptive methods, acts, or practices in the conduct of the entrepreneurial, commercial, or business aspect of the practice of medicine. . . . The practice of medicine may give rise to a CUTPA claim only when the actions at issue are *chiefly* concerned with 'entrepreneurial' aspects of practice, such as the solicitation of business and billing practices, as opposed to claims directed at the 'competence of and strategy' employed by the . . . defendant." (Citation omitted; emphasis in original; internal quotation marks omitted.) *Janusauskas* v. *Fichman*, 264 Conn. 796, 808-809, 826 A.26 1066 (2003).

The defendants argue that the plaintiff's CUTPA claims fail as a matter of law because the court has already determined that the allegations in the present case do not amount to an actionable claim under CUTPA. Specifically, the defendants point to the court's (*Jacobs, J.*) February 14, 2023 memorandum of decision addressing YNHH's motion to strike, which states in relevant part: "The [CUTPA claim against YNHH], which implicates the competency of the defendant's recordkeeping system to protect patient confidentiality, is not one which chiefly concerns entrepreneurial aspects of the defendant's practice." See Docket Entry No. 119.50.

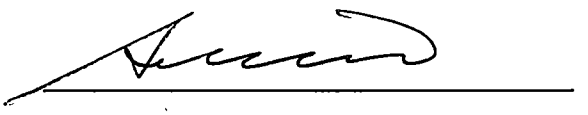
The CUTPA claims against Shoreline and Duhig are virtually identical to the CUTPA claim against YNHH, likewise do not concern any entrepreneurial aspect of the defendants' practice. Accordingly, the defendants' motion for summary judgment as to counts eleven and twelve for violation of CUTPA is granted.

IV. CONCLUSION

For the foregoing reasons, the defendants' motion for summary judgment is denied as to counts two and three, and granted as to counts five, six, eight, nine, eleven, and twelve.

SO ORDERED.

BY THE COURT,



CHADWICK, J.