Vermont Superior Court
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Washington Unit

VERMONT SUPERIOR COURT
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CIVIL DIVISION
Case No. 24-CV-00870

Liam Gannon, MD v. Copley Hospital Inc.

ENTRY REGARDING MOTION

Title: Motion for Summary Judgment (Motion: 8)
Filer: William A. O'Rourke, III
Filed Date: February 27, 2026

The motion is GRANTED.

Plaintiff, Dr. Liam Gannon, claims that his at-will employment as an emergency department physician at Defendant Copley Hospital, Inc. was wrongfully terminated in retaliation for his complaints about the selection and implementation of a new electronic health records system (EHR) for the emergency department. He asserts that this retaliation violated Vermont's Healthcare Whistleblower Act, 21 V.S.A. §§ 507–509, and, alternatively, public policy. He also claims that he was terminated in retaliation for complaining about the emergency department director's allegedly unprofessional e-mail to him. This wrongful termination claim is framed as a breach of his employment agreement, under principles of promissory estoppel, and as a breach of the covenant of good faith and fair dealing. He claims intentional infliction of emotional distress (IIED) due to the manner of termination, and he seeks, among other relief, punitive damages. Copley has filed a Rule 56 motion for summary judgment addressing all claims.

I. *Procedural Standard*

Summary judgment shall be granted when the moving party shows that there is no genuine issue as to any material fact, "and the movant is entitled to a judgment as a matter of law." V.R.C.P. 56(a). Although the Court gives the nonmoving party "the benefit of all reasonable doubts and inferences in determining whether there is a genuine issue of material fact, the nonmovant bears the burden of submitting credible documentary evidence or affidavits

sufficient to rebut the evidence of the moving party." *Ziniti v. New England Cent. R.R., Inc*., 2019 VT 9, ¶ 14, 209 Vt. 433 (quotation omitted).

The parties' statements of fact are generally in agreement as to the basic events underlying Plaintiff's claims, but they reveal some disagreement as to certain nuances and inferences that may be reasonably drawn from the facts. None of these disagreements, however, constitute material disputes that would render the case inappropriate for summary judgment.

II. *Basic Facts*

Copley first employed Dr. Gannon as a full-time emergency department physician in 2008. In 2012, he became the emergency department director. His employment during all underlying events was subject to a July 1, 2018, employment agreement.

In 2020, Copley learned that the electronic health record system used in the emergency department would no longer be supported by the manufacturer and needed to be replaced. Copley eventually selected and installed (2021) a replacement system known as EDIS, at the time used in approximately 200 other hospitals.

Dr. Gannon vigorously opposed the EDIS system both before and after its selection and installation because he believed that it would present patient safety problems in the emergency department context. Other doctors and nurses in the emergency department generally shared the sentiment that EDIS was not a good fit for the emergency department. CEO Joe Woodin and Chief Medical Officer Dr. Don Dupuis were well aware of Dr. Gannon's and others' concerns about EDIS. Hospital administration nevertheless determined that EDIS was the right solution for Copley based on its needs and resources and EDIS's functionalities and compatibilities with other systems.

Once the system was installed, Dr. Gannon and others—with the administration's support—worked to develop processes and fixes to make sure that EDIS would perform as optimally as possible. See Gannon Depo. at 127 ("It's not my testimony that the Hospital was just, like, blowing off concerns. I think they . . . took our concerns and I think made honest effort to try to remedy the long list of concerns we had. . . . It's not my testimony that [those concerns] were being blown off by the Hospital."). Dr. Gannon believed, however, that any such improvements would not be sufficient to address the shortcomings he saw in the system.

During this time, interactions between Dr. Gannon and the administration were tense (at best). In that context, Dr. Gannon stepped down as emergency department director in 2023 while remaining a full-time emergency department physician.[1] Copley hired outside applicant Dr. Anne O'Connor as the new emergency department director. During the ensuing summer, Dr. Gannon complained to administrators that she was not completing her patient notes in a timely manner. His relationship with her was tense. In that context, on October 6, 2023, he received an e-mail from her (which is not in the record) that he considered "defamatory" and threatening.[2] In response, he filed a formal unprofessional conduct complaint with the administration. The Medical Staff Executive Committee thought the communication was unprofessional but did not warrant formal action. The complaint prompted the Committee to discuss ways to improve the working relationship between Dr. Gannon and Dr. O'Connor.

Thereafter, Mr. Woodin decided to terminate Dr. Gannon's employment pursuant to the no-cause provision of Dr. Gannon's employment agreement. At this time, Dr. Gannon was out of state supporting his son, who was experiencing an emergency health issue. He did not receive Mr. Woodin's phone call. Mr. Woodin then sent a brief, neutrally-worded notice of termination to him by e-mail.

Dr. Gannon believes that his employment was terminated because he made patient-safety complaints about the transition to the new EHR system and, more so, due to his complaint about Dr. O'Connor's e-mail.

Mr. Woodin's and Dr. Dupuis' views as to why Dr. Gannon was terminated are extensively documented in their deposition testimony and Dr. Dupuis' 8-page memorandum recommending termination, which recounts his view of the history of contentious interactions (long predating the EHR matter) in support of that recommendation. In summary, they believed that Dr. Gannon was persistently, inappropriately, and publicly caustic, defiant, and oppositional with the administration and could be a "bully" when he did not get his way. Among other things,

[1] The administration did not demote Dr. Gannon from the director position. He voluntarily stepped down, as he describes it, because his relationship with the administration was no longer serving Copley's best interests. He resists in briefing the characterization of this decision as voluntary. He appears to mean that he felt compelled to step down under the circumstances, not that he was involuntarily removed from the position.

[2] As far as the record goes, the e-mail was sent from her to him, not to anyone else. Defamation, in the legal sense, requires publication to third parties. See *Stone v. Town of Irasburg*, 2014 VT 43, ¶ 61, 196 Vt. 356 (2014).

in their view, this contributed to protracted low morale in the emergency department and poor relationships between the emergency department and other departments and the administration. They ultimately concluded that Dr. Gannon was unable or unwilling to improve his manner of interacting with others.

Dr. Gannon's competence in treating patients is not at issue in this case.[3]

III. *The Whistleblower Act and public policy*

Dr. Gannon claims that termination for complaining about the transition to EDIS violated Vermont's Healthcare Whistleblower Act, 21 V.S.A. §§ 507–509. Dr. Gannon further argues that, if it did not violate the Act, then it did violate public policy. The parties dispute whether he in fact was terminated because of those complaints, a matter the Court need not and does not resolve here.[4]

The parties have divergent understandings of what conduct the Act protects. "Our primary objective when construing a statute 'is to give effect to the intention of the Legislature.' In effectuating that intent, '[w]e examine the plain language of the statute, and if this language is clear and unambiguous, we enforce the statute according to its terms."' *Maple Run Unified Sch. Dist. v. Vermont Hum. Rts. Comm'n*, 2023 VT 63, ¶ 13, 218 Vt. 496 (citations omitted). To properly interpret a statute, the Court "will not excerpt a phrase and follow what purports to be its literal reading without considering the provision as a whole, and proper construction requires the examination of the whole and every part of the statute." *TD Banknorth, N.A. v. Dep't of Taxes*, 2008 VT 120, ¶ 15, 185 Vt. 45 (citation omitted); see also *Ran-Mar, Inc. v. Town of Berlin*, 2006 VT 117, ¶ 5, 181 Vt. 26 ("We construe all parts of the statutory scheme together, where possible, as a harmonious whole, and '[w]e will avoid a construction that would render the legislation ineffective or irrational."' (citations omitted)).

The Act provides, in relevant part:

[3] Nor is this case about the wisdom of terminating Dr. Gannon's employment, a hotly disputed issue about which the Court takes no side.

[4] The parties dispute whether the *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1993), burden-shifting framework applies to Dr. Gannon's whistleblower claim. Because the Court need not rule on causation, it also need not resolve this dispute.

> (b) No employer shall take retaliatory action against any employee because the employee does any of the following:
>
> > (1) Discloses or threatens to disclose to any person or entity any activity, policy, practice, procedure, action, or failure to act of the employer or agent of the employer that the employee reasonably believes is a violation of any law or that the employee reasonably believes constitutes improper quality of patient care.

21 V.S.A. § 507(b). The "violation of any law" prong of this provision does not apply in this case. "'Improper quality of patient care' means any practice, procedure, action, or failure to act of an employee or employer that violates any provisions of the Nurse Practice Act, codes of ethics, hospital policies, or any other established standards of care related to public or patient health or safety." 21 V.S.A. § 507(a)(4).

In Dr. Gannon's view, this provision broadly protects an employee's right to make statements, if reasonably believed, about anything that relates to or affects the quality of patient care. Copley argues that this statutory protection is narrower and does not apply in this case.

Turning to the plain language of the statute, the standard is composed of four elements. To be protected, the relevant speech must be a (a) disclosure or threat of disclosure that the employee (b) reasonably believes (c) constitutes (d) improper quality of patient care. That the first element requires the communication to be a *disclosure* strongly suggests that it must make something known that otherwise was unknown—at least to the recipient of that information. See Merriam-Webster Dictionary, disclose (online) ("to make known or public"; "to expose to view"). This is consistent with the general concept of whistleblowing. See whistleblower, Black's Law Dictionary (12th ed. 2024) ("An employee who reports employer wrongdoing to a governmental or law-enforcement agency."); see also *Potanas v. Department of Corrections*, 2024 VT 31, ¶ 22, 219 Vt. 303 ("We find persuasive decisions from other states holding that reporting on a known problem, or disagreeing about how to resolve a known problem, is not protected whistleblower activity."). It is also consistent with 21 V.S.A. § 507(c), which says, in relevant part, that the protection of § 507(b)(1) does not apply unless the employee first gives the employer notice of the issue and "the employer has had a reasonable opportunity to address the violation."

The disclosure must be one that the employee "reasonably believes constitutes" improper quality of patient care. These terms are framed in the present tense. The improper quality of patient care must exist as opposed to being a mere future possibility. This is not an overly literalistic interpretation of the statute; it is the plain meaning of the language used by the legislature, and it limits the reach of the statute. Compare this case with *Potanas*, 2024 VT 31, ¶ 15 ("The plain language of § 973(a)(1) does not encompass reports about the possibility of future waste.").

Lastly, the "improper quality of patient care" must violate "established standards of care related to public or patient health or safety." [5]

Applying this understanding of the statute to the facts of the present case, the Court finds that it involves no whistleblower activity within the contemplation of the statutory language. There is no relevant disclosure to anyone who did not know something at issue.[6] Dr. Gannon's belief that the EDIS system was problematic was shared by many of the emergency department doctors and nurses and amply expressed to the administration before it was selected for implementation. Their views about how the system might perform was well-known. Dr. Gannon vigorously disagreed with management's decision to employ the system, nevertheless. Disagreement with management's business decision about the new EDIS system was not whistleblower activity merely because the debate in some ways informed by Dr. Gannon's patient-safety concerns.

Dr. Gannon's views were about anticipated future problems with the system due to what he thought would be deficient system performance. As far as the record goes, after the system was in operation, everyone cooperated to improve it, at least as much as possible. Whether any feared harm to a patient in fact later materialized is not the point—no disclosure to anyone about any such harm is at issue in this case.

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[5] In other words, the language of the whistleblower statutes protects individuals seeking to shed sunlight on a current problem that violates a particular standard of care and for which the employer has notice and has not taken or attempted corrective action, despite its present harm. In this respect, the statute provides neither gadfly, nor ombudsman protection that would protect a health care worker from dissenting from an employer's decision because it delivered, in the person's opinion, a lower standard of care, or because it had the potential to create future harm.

[6] Dr. Gannon's argument that the administration did not know his specific views about specific safety issues potentially presented by specific features or defects with EDIS before he announced them does not advance his larger argument. The more salient point is that the administration was fully aware that emergency department doctors and nurses thought the new system would create problems, and it nevertheless was making the business judgment to go with that system.

Dr. Gannon also frames the relevant "improper quality of patient care" at the heart of his objections in a manner that falls outside the scope of the Act. The relevant "activity, policy, practice, procedure, action, or failure to act of the employer" at issue must be what "constitutes improper quality of patient care." Dr. Gannon is clear that he believes that the system (whether through poor handling of certain prescriptions, etc.) would cause result in treatment mistakes, and those treatment mistakes would violate relevant standards of care applicable to the providers involved. Although in his deposition he briefly said that there are some kind of standards for what an EHR must be able to do, or how it must do it, no such "established standards of care" are in the record, much less any evidence that EDIS would not comply with them. Nothing in the record demonstrates that the business decision at the heart of this claim, the selection and implementation of the EDIS system itself, itself is a violation of such a standard of care.

The Whistleblower Act simply does not apply to this case. Dr. Gannon disagreed with the administration's business decision to select the EDIS system, and he did not think that the system would perform as well as he thought such a system should. Framing his underlying motivations, to protect patient safety, as the central issue does not save the day. That is not whistleblower activity protected by the Act. Nothing in the Act reflects any legislative intent to empower employees to act on their disagreement with their employers' business decisions other than by revealing otherwise unknown unlawful activity or improper patient care. For these reasons, the Vermont Health Care Whistleblower Act does not apply to Dr. Gannon in this situation, and its protections are unavailable as a matter of law.

In the alternative, Dr. Gannon argues that even if his conduct was not protected by the Act, it should be protected by "public policy." Copley argues that the Act supersedes any more general public policy exception to the at-will doctrine, and this would not be an appropriate case for that exception in any event.

The Vermont Supreme Court has described the public policy exception as follows:

> An at-will employee may not be terminated for reasons that violate "a clear and compelling public policy." Whether an activity violates public policy is a question of law. This Court has recognized that "public policy in the employment context may be found in sources other than statutes and constitutions," such as professional ethical codes. However, "employees who invoke such codes . . . still bear the burden of demonstrating that such codes are

> clear and compelling in their mandates to employees who claim that their professional ethical obligations supersede those owed to their employers." An employee seeking to invoke the public-policy exception to at-will employment must demonstrate that her employer's conduct was "'cruel or shocking to the average [person's] conception of justice.'"

Boynton v. ClearChoiceMD, MSO, LLC, 2019 VT 49, ¶ 8, 210 Vt. 454 (citations omitted).

The Court declines in this case to hold that where legislation such as the Act addresses the general subject matter of an asserted public policy exception there can be no remaining room for a common law exception addressing matters beyond the statute's reach. Courts around the country have drawn far different conclusions on such matters. See STEPHEN P. PEPE AND SCOTT H. DUNHAM, AVOIDING & DEF. WRONGFUL DISCHARGE CL. § 1:5 ("This question of the exclusivity of statutory remedies to defeat common law public policy claims has divided state and federal courts across the country.") and cases annotated at n.13. There is no need to breach the fray in this case.

The issue is better resolved on the merits of Dr. Gannon's argument. Dr. Gannon identifies no "clear and compelling public policy" at work in this case. Rather, he leans heavily into his driving motivation, which was to protect patient safety. But the underlying issue was the administration's business decision about which EHR system to replace the phased out one with. No one directed Dr. Gannon to provide improper patient care, and Dr. Gannon never revealed any otherwise concealed or unknown improper patient care, much less any violating any specific professional code. And after EDIS was selected, everyone worked to ensure that it and the emergency department's process would result in proper patient care. Copley is not alleged ever to have covered anything up or to have refused to implement a solution where a problem was identified. Again, there is no clear and compelling policy interest in protecting an employee's right to vigorously and persistently oppose his employer's business decisions.

Regardless of whether one thinks the termination of Dr. Gannon's employment was wise or unwise, the decision to do so in the context of his at-will employment was not cruel or shocking to the average person's conception of justice.

Therefore, Copley's motion is granted as to these claims.

IV. *Breach of contract or the covenant of good faith and fair dealing and promissory estoppel*

Dr. Gannon argues that, to the extent his employment was terminated for complaining about Dr. O'Connor's e-mail, that violated a provision of his contract protecting his ability to lodge such complaints.[7] In the alternative, he argues that it violated the covenant of good faith and fair dealing or that Copley should be estopped from terminating him because he reasonably relied on Copley's promise not to when making such a complaint.

In this case, these three theories need not be analyzed separately. The law of Vermont on employment agreements "draws on aspects of both unilateral contract formation and promissory estoppel." *Taylor v. National Life Ins. Co*., 161 Vt. 457, 464 (1993); see also RESTATEMENT OF EMPLOYMENT LAW § 2.05 (explaining that traditional contract principles are a "conceptually awkward fit" in this context). Because Vermont law incorporates aspects of both and this area of the law has so developed, it is unhelpful to attempt to untangle unilateral contract principles from those of promissory estoppel.

Moreover, in the case of at-will employment contracts, the covenant of good faith and fair dealing generally does not apply.

> [I]mplying such a covenant [to an at-will employment contract] "would seem to subject each discharge to judicial incursions into the amorphous concept of bad faith." Therefore, we decline to recognize the implied covenant of good faith and fair dealing as means of recovery where the employment relationship is unmodified and at-will and the employee is challenging the dismissal based on a right to tenure.

Ross v. Times Mirror, Inc., 164 Vt. 13, 23 (1995); see also *Boynton v. ClearChoiceMD, MSO, LLC*, 2019 VT 49, ¶ 6, 210 Vt. 454; *Madden v. Omega Optical, Inc*., 165 Vt. 306, 313 (1996).

Here, the parties agree that, according to the terms of Dr. Gannon's written employment agreement, his employment is fundamentally at-will in nature; his employment could be terminated for no reason at all. There is a provision in the Medical Staff Bylaws that addresses the subject matter of internal complaints about unprofessional conduct. The principal question, whichever theory one uses to frame the issue, is the same: whether that Bylaws provision modifies the employment relationship, limiting Copley's ability to terminate Dr. Gannon's

[7] Again, the Court declines to address the question of causation, which the parties dispute.

employment and, if so, should it have operated to prevent Dr. Gannon's termination in the circumstances of this case.

In Vermont, "[i]t is the generally accepted [presumption] that an employment contract for an indefinite term is an 'at will' agreement, terminable at any time, for any reason or for none at all." *Sherman v. Rutland Hosp., Inc*., 146 Vt. 204, 207 (1985). Through their policies and practices, however, employers may limit their ability to terminate an employee's employment. This may be done by policies or practices directly addressing discipline or termination of employment. See, e.g., *Benoir v. Ethan Allen, Inc*., 147 Vt. 268, 271 (1986) ("In short, the handbook, by clear implication, foreclosed defendant's right to terminate without cause.").

Employer policies that modify at-will employment need not be written down—modifications may be proven by evidence of personnel practices. "A proffered procedure or practice may be enforceable, if it is clearly established and uniformly and consistently applied throughout the company. An employer's official statement does not have to be in writing in order to be enforceable." *Ross v. Times Mirror, Inc*., 164 Vt. 13, 20 (1995). The issue is not whether the policy or practice is written down, but whether it rises to the level of an enforceable modification of the at-will relationship.

The Vermont Supreme Court has described the sort of promise that is actionable in this context as follows: "A promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise." *Foote v. Simmonds Precision Products Co., Inc*., 158 Vt. 566, 573 (1992) (quoting RESTATEMENT (SECOND) OF CONTRACTS § 90(1)). Such a promise must be evinced by "policies which are definitive in form, communicated to the employees, and demonstrate an objective manifestation of the employer's intent to bind itself." *Ross v. Times Mirror, Inc*., 164 Vt. 13, 20 (1995). "General statements of policy" are insufficient. *Id*. "The critical inquiry is . . . whether the procedure amounted to an enforceable promise of specific treatment in a specific circumstance." *Trombley v. Southwestern Vermont Medical Center*, 169 Vt. 386, 394 (1999) (quoting *Ross*, 164 Vt. at 22); see also *Cate v. City of Burlington*, 2013 VT 64, ¶ 17, 194 Vt. 265 ("[A]n employer does not bind itself to act in a particular way if it merely expresses vague goals or values; it must include sufficiently definite terms to be bound by those policies.").

Dr. Gannon's at-will status is expressly stated in his employment agreement: "[T]his Agreement may be terminated without cause at any time by either party upon ninety (90) days written notice to the other party." Employment Agreement at 5 (termination without cause paragraph). The Agreement further provides: "This Agreement may be amended at any time by mutual agreement of the parties hereto, but any such amendment shall not be operative or valid, unless the same is reduced to writing and approved by the Physician and the Hospital." Employment Agreement at 12 (amendments paragraph). The Agreement also includes an integration clause: "This Agreement (including any Exhibits or Attachments) contains the entire agreement of the parties with respect to the matters addressed herein and supersedes all other agreements between the parties, whether oral or in writing, concerning such matters." Employment Agreement at 13 (entire agreement paragraph). The Bylaws, on which Dr. Gannon relies, are not an exhibit or attachment to the Employment Agreement.

The "Bylaws" are the Bylaws of the Medical Staff of Copley Hospital, Inc. The Bylaws are adopted *by* the medical staff and include this in the Preamble:

> WHEREAS, it is recognized that one of the aims and goals of the hospital's medical staff is to strive for quality medical care in the hospital; that the medical staff must work with, and is subject to, the ultimate authority of the hospital governing body; and that the cooperative efforts of the medical staff, the CEO, and the governing body are necessary to fulfill the hospital's obligations to its patients;
>
> NOW, THEREFORE, the members of the medical staff practicing in this hospital hereby adopt these bylaws as a mechanism to facilitate medical staff governance and the pursuit of medical staff aims and goals.

Article XVII is a "code of conduct" that touches on the subject matter of nonretaliation. This Article, in its entirety, is as follows:

> All members of the Medical Staff are expected to conduct themselves in a professional manner while carrying out their duties at the Hospital. Being professional does not merely mean doing one's job well. It also means treating others with dignity, respect and courtesy at all times, whether interacting with fellow workers, patients or visitors to the Hospital. To this end, all individuals associated with the Hospital are expected to comply with this Code of Conduct. Any member of the Medical Staff, regardless of position, who is found to have

violated this Code of Conduct will be subject to appropriate discipline, up to and including termination of Hospital privileges. The Hospital's Code of Conduct policy also applies to all Hospital employees, including non-members of the Medical Staff.

Members of the Medical Staff are expected to use their best judgment in determining whether any particular behavior is unprofessional. Of course, the determination as to whether any particular behavior constitutes a violation of the Hospital's Code of Conduct rests with the discretion of the Hospital. As guidance, listed below are examples of the types of unprofessional conduct that the Hospital will not tolerate on its premises:

i. Verbal attacks against another individual, including, but not limited to, shouting and/or the use of language which is insulting, condescending, demeaning, derogatory, rude or obscene.
ii. Intimidation of another individual, including, but not limited to, verbal and physical threats.
iii. Physical assaults against another individual, including, but not limited to, grabbing, pushing, shoving, hitting, slapping and kicking.
iv. Throwing, banging, smashing or kicking objects or Hospital property.
v. Sexual harassment (see Hospital's Sexual Harassment Policy).
vi. Harassment based on race, national origin, handicap, age, gender or sexual orientation (see Hospital's Equal Employment Opportunity Policy).

An individual who believes a member of the Medical Staff or a Hospital employee has engaged in unprofessional conduct should bring the complaint to the attention of his/her direct supervisor, the Chief or Chair of their Department or Service, the Director of Human Resources, any member of Senior Management, or the CEO. Upon receipt of a complaint, the Hospital will promptly investigate the allegation in a fair and expeditious manner. The investigation will be conducted in such a way as to maintain confidentiality to the extent practicable under the circumstances. The Hospital encourages individuals to bring their complaints forward. Retaliation against an individual who has made a complaint, and retaliation against individuals for cooperating with an investigation of a complaint will not be tolerated.

Dr. Gannon argues that the Employment Agreement makes reference to these Bylaws, and they are thus incorporated into the Agreement, and Article XVII should have prevented his retaliatory dismissal for complaining about Dr. O'Connor's unprofessional e-mail.

The Employment Agreement refers to the Bylaws in several places, most notably § 2(f) at 1–2, which provides:

> 2. Qualifications and Obligations of Physician. As of the Effective Date of this Agreement and during the term of this Agreement, Physician agrees as follows to:
>
> . . .
>
> f. Abide by the Bylaws, rules, regulations, policies and procedures of the Hospital and the Medical Staff, as amended from time to time, and the ethics of the medical profession and all federal, state and municipal laws regulating the practice of medicine and conduct himself/herself in a professional manner.

Copley argues that while the Employment Agreement required Dr. Gannon to follow the Bylaws (as well as other "rules, regulations, policies and procedures of the Hospital and the Medical Staff), it nowhere binds Copley to do the same. In its view, the integration clause resolves the matter: Bylaws Article XVII is not part of the employment contract and for that reason cannot modify the no-cause termination provision of the Employment Agreement. The Court declines to so rule as a matter of law in this case.

The Vermont Supreme Court has made clear, as a general matter, that "the presumption that employment for an indefinite term is an 'at-will' agreement is simply a general rule of contract construction." *Dillon v. Champion Jogbra, Inc*., 175 Vt. 1, 5 (2002). In this case, that presumption is confirmed in no uncertain terms by the express no-cause termination provision in the Employment Agreement. It is further enforced by the integration clause. On its face, the Employment Agreement is clear that Copley had the right to terminate Dr. Gannon's employment without cause, and that the parties had no agreements between them to the contrary, even though Dr. Gannon was expected in general to abide by the Bylaws, rules, regulations, policies and procedures of the Hospital and the Medical Staff. Employees seldom expect that they are not required to follow their employers' rules and policies.

The question then turns to whether, in light of the clarity of the Employment Agreement, Article XVII can reasonably be interpreted, in the circumstances of this case, to nevertheless limit Copley's contract right to terminate Dr. Gannon's employment. It cannot.

Article XVII is an admirable but general statement of policy. It expresses goals and values. It encourages employees to object to unprofessional conduct, and it says that employees should not be retaliated against for doing so. It does not promise what will happen in any specific case. The nonretaliation provision is not definitive in form and there is no clear procedure on which anyone could reasonably rely. Any procedural who, what, where, and when does not exist at all in Article XVII. It is silent as to what retaliation means, and it says nothing about termination. It simply does not include the sort of sufficiently definite terms that might objectively manifest the employer's intent to bind itself to not terminating one's employment, despite a clear and express no-cause termination provision in the Employment Agreement. It cannot reasonably be interpreted to override the manifestly clear no-cause termination provision of the Employment Agreement, and Dr. Gannon has come forward with no evidence or allegation of any such practice to that effect. This is insufficient to vary the clear terms of the Employment Agreement.

Therefore, Copley's motion is granted as to these employment contract claims.

V. *Intentional infliction of emotional distress*

Dr. Gannon argues that the manner of his termination caused him emotional distress rising to the level of the tort of intentional infliction of emotional distress (IIED). He cites as evidence: that his termination was wrongful (addressed above); that he had been a "beloved and committed" doctor at Copley for 20 years; that he was a pillar of the community; and that leading up to his dismissal he was told he was not a team player and a reimbursement request was inexplicably denied. Mostly importantly, Dr. Gannon points to the fact that Mr. Woodin notified him of his termination by e-mail when he was out of state tending to his hospitalized son. He also asserts that after he was terminated, he could not get a clear answer from the administration about his status vis-à-vis salary and benefits (and requirement or ability to work) during the 90-day notice period related to his no-cause termination. He also asserts in his affidavit: "I understand that Dr. O'Connor told the emergency department providers that I was fired for behavior that was 'beyond the pale' and that, if they all knew what I did, they would

agree with the decision. When staff requested examples of the allegedly inappropriate conduct, they were not given any."[8] Gannon Affidavit ¶ 24 (filed June 12, 2026).

IIED is described in the Restatement (Second) of Torts as follows: "One who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress." RESTATEMENT (SECOND) OF TORTS § 46(1); see *Sheltra v. Smith*, 136 Vt. 472, 475–76 (1978) (adopting Section 46 in Vermont).[9] The standard is high. "The conduct must be 'so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and . . . be regarded as atrocious, and utterly intolerable in a civilized community.'" *Denton v. Chittenden Bank*, 163 Vt. 62, 66 (1994) (quoting Restatement § 46 cmt. d). The result must be "extreme emotional distress." *Id*. A plaintiff cannot rely upon his perceptions of the defendant's motives to establish the tort—the test is objective. See *Fromson v. State*, 2004 VT 29, ¶¶ 15, 17, 176 Vt. 395; *Baldwin v. Upper Valley Servs, Inc*., 162 Vt. 51, 57 (1994).

The "mere termination of employment will not support a claim for intentional infliction of emotional distress." *Crump v. P & C Food Markets, Inc*., 154 Vt. 284, 296 (1990); *Baldwin v. Upper Valley Servs., Inc.*, 162 Vt. 51, 56 (1994). Similarly, conduct that often attends termination of employment, including "insult, indignities, and annoyances," do not rise to the level of extreme and outrageous conduct. *Denton v. Chittenden Bank*, 163 Vt. 62, 66-67 (1994). But, "if the manner of termination evinces circumstances of oppressive conduct and abuse of a position of authority vis-a-vis plaintiff it may provide grounds for the tort action." *Crump*, 154

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[8] If in fact such a statement was made, it was vague and may have accurately reflected Dr. O'Connor's subjective feelings about the circumstances. But the record is clear that even if such a statement was excessive and unnecessary under the circumstances, it was simply asserted vaguely and left at that. It is an example of an "insult," but not an extreme and outrageous event that was "atrocious, and utterly intolerable in a civilized community."

[9] In numerous cases, courts condense the element of extreme and outrageous conduct to simply outrageous conduct. The third Restatement clarifies that *extreme* and *outrageous* are separate issues.

> The adjectives "extreme" and "outrageous" are used together in a fashion that might suggest that each merely emphasizes the other, rather than serving a distinct role. However, some conduct that may be outrageous—for example, marital infidelity—is sufficiently common that it could not be characterized as extreme (although today it may also not be outrageous). Similarly, some extreme conduct—climbing Mt. Everest, for example—is not outrageous. Thus, this double limitation, "extreme and outrageous," requires both that the character of the conduct be outrageous and that the conduct be sufficiently unusual to be extreme.

RESTATEMENT (THIRD) OF TORTS: PHYS. & EMOT. HARM § 45 cmt. d.

Vt. 296. Lastly, a plaintiff may not bundle together separate acts to increase by multiplication the gravity of the assertedly tortious conduct. There must be at least one incident that "transcends the ignoble and vast realm of unpleasant and often stressful conduct in the workplace." *Fromson*, 2004 VT 29, ¶ 15, 176 Vt. at 400.

Dr. Gannon has pointed to nothing that is so outrageous in character and extreme in degree that could reasonably support liability for IIED. The Court already has determined that his termination was not wrongful in the legal sense. The record also is clear that, while someone else might have handled the situation differently, the timing of Mr. Woodin's neutrally worded e-mail of termination did not reflect abuse of authority, any design to cause distress, or a malicious attempt at taking advantage of Dr. Gannon's family circumstances. Mr. Woodin knew that Dr. Gannon was tending to his son's health condition out of state; he did not know more about the circumstances (and there is nearly nothing in the record detailing them).

On balance, Dr. Gannon has assembled some indignities and unpleasantries leading up to and surrounding his termination to argue that, in the aggregate, they form the basis for IIED. This is insufficient. There had to be something that was both extreme and outrageous, and there was not. It bears noting that Dr. Gannon's relationship with the administration had plainly broken down prior to his termination, and that he was aware that termination might be on the horizon. That is clear throughout his meeting with Mr. Woodin and Dr. Dupuis on October 26, 2024. That context informs the manner of his termination.

The circumstances of Dr. Gannon's employment leading up to termination, and his termination, were contentious and unpleasant, not tortious.[10]

Therefore, Copley's motion is granted as to this claim of IIED.

VI. *Punitive damages*

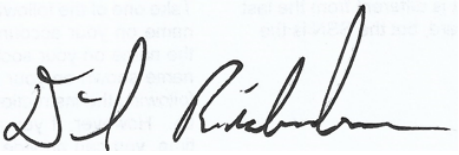
With no surviving underlying legal claims, punitive damages cannot be available in this case. See 1 PUNITIVE DAMAGES: LAW AND PRAC. 2d § 6:16 (2026 ed.) ("Punitive damages are not awarded as an independent theory of recovery.").

[10] The Court notes that, however distressing the relevant events were for Dr. Gannon, there is little in the record to document the sort of "extreme emotional distress" that can support an IIED claim.

ORDER

For the foregoing reasons, Copley's motion for summary judgment is **Granted**. The present matter is **Dismissed**. Copley shall file a proposed final judgment pursuant to V.R.C.P. 58 in the next 14 days.

Electronically signed on 9/8/2026 7:09 PM pursuant to V.R.E.F. 9(d)



Daniel Richardson
Superior Court Judge