UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

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EMIL D. ANGHEL,               :
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          Plaintiff,          :
                              :
v.                            : Civil No.3:03CV00864(AWT)
                              :
SAINT FRANCIS HOSPITAL AND    :
MEDICAL CENTER,               :
                              :
          Defendant.          :
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RULING ON MOTION TO DISMISS

I. BACKGROUND

The pro se plaintiff filed an Amended Complaint (Doc. No. 22) on October 17, 2003, which alleges in five counts various statutory, common law, and constitutional causes of action against the defendant hospital as a result of treatment he received at the hospital on December 5, 2001. That afternoon and evening, the staff of the defendant's emergency room (the "E.R.") purportedly locked the plaintiff in bed restraints for seven hours and failed to provide the plaintiff with the necessary psychiatric treatment that he expected to receive. The defendant, St. Francis Hospital and Medical Center ("St. Francis"), has moved to dismiss the Amended Complaint on three grounds. For the reasons set forth below the court is granting

the defendant's motion to dismiss the Amended Complaint, but giving the pro se plaintiff an opportunity to file a motion for leave to file a second amended complaint after a status conference with the court.

II. LEGAL STANDARD

Dismissal of a complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief can be granted is not warranted "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957). The task of the court in ruling on a Rule 12(b)(6) motion "is merely to assess the legal feasibility of the complaint, not to assay the weight of the evidence which might be offered in support thereof." Ryder Energy Distribution Corp. v. Merrill Lynch Commodities Inc., 748 F.2d 774, 779 (2d Cir. 1984) (internal quotations omitted). The court is required to accept as true all factual allegations in the complaint and must draw all reasonable inferences in favor of the plaintiff. Hernandez v. Coughlin, 18 F.3d 133, 136 (2d Cir. 1994).

The court also notes that "[t]his standard is applied with even greater force where . . . the complaint is submitted pro

se."[1] Hernandez, 18 F.3d at 136. When considering the sufficiency of the allegations in a pro se complaint, the court applies "less stringent standards than [those applied to] formal pleadings drafted by lawyers." Haines v. Kerner, 404 U.S. 519, 520 (1972); see also Branham v. Meachum, 77 F.3d 626, 628-29 (2d Cir. 1996). Furthermore, the court should interpret the plaintiff's complaint "to raise the strongest arguments [it] suggest[s]." Burgos v. Hopkins, 14 F.3d 787, 790 (2d Cir. 1994).

III. DISCUSSION

Count One of the Amended Complaint alleges "unlawful restraint" pursuant to Conn. Gen. Stat. §§ 46a-151, 152 and 153, and § 17a-544. Generally, sections 46a-151 through 46a-153 govern the use of physical restraint, seclusion, and psychopharmacologic agents by certain health care institutions.

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[1]The court notes that the defendant argues at pages 2 to 3 of its reply memorandum (Doc. No.35) that the court should not apply the pro se liberal construction standard in this case because the Amended Complaint was, according to the plaintiff, drafted by an attorney. (See Pl.'s Opp. Mem. (Doc. No. 34) ¶¶ 4 & 15.) Presnick v. Bysiewicz, 297 F. Supp. 2d 431 (D. Conn. 2003), upon which the defendant relies, in contrast to the instant case involved a former attorney appearing pro se. Where, as here, the pro se plaintiff has never been an attorney, nor does he appear to be represented by one, the court does not think it appropriate to decline to give a liberal construction to the pro se plaintiff's Amended Complaint. In any case, as the court explains below, even with a liberal construction of the Amended Complaint, it must be dismissed.

See Conn. Gen. Stat. Ann. §§ 46a-150 to 46a-153 (West 2004 & Supp.). Assuming arguendo that these statutes provide the plaintiff with a right of action against this defendant,[2] the plaintiff has failed to set forth facts that could support a claim for violation of these statutes. For instance, the plaintiff has failed to allege any facts that could be proved to show either that the plaintiff is a "person at risk" under section 46a-150 or that the defendant is a "provider of care . . . of a person at risk" -- both of which must be the case in order for these statutes to apply. See Conn. Gen. Stat. Ann. §§ 46a-151 to 46a-153. Likewise, the Amended Complaint provides no factual allegation to support a claim under § 46a-151 that the defendants used "a life-threatening physical restraint" as defined by section 46a-150(4).

Similarly, Connecticut General Statutes section 17a-544 does not allow the plaintiff to state a claim under Count One. For substantially the reasons set forth at pages 12 to 13 of the defendant's memorandum in support (Doc. No. 29) of its motion to

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[2]Although the defendant does not challenge the plaintiff's ability to bring a private action under these statutes, the court notes that the instant statutes do not explicitly provide for a private cause of action. See generally Antinerella v. Rioux, 229 Conn. 479, 495-497 (1994) (discussing whether private cause of action exists where the statute is silent), overruled on other grounds by Miller v. Egan, 265 Conn. 301, 325 (2003); Napoletano v. CIGNA Healthcare of Conn. Inc., 238 Conn. 216, 249-253 (1996) (same); Ericksen v. Town of Rocky Hill, No. CV93-0529218 S, 1995 WL 681551, at *1-3 (Conn. Super. Ct. Nov. 3, 1995) (same).

dismiss, the court finds that this section does not apply to the E.R. or the Clinic. Likewise, the plaintiff's claims of "inhumane and indignified treatment" pursuant to Conn. Gen. Stat. section 17a-542 and "improper diagnosis and care" pursuant to Conn. Gen. Stat. section 17a-545 must fail, as these statutes are not applicable to the defendant in this case. See Conn. Gen. Stat. Ann. § 17a-540(a) ("'Facility' means any inpatient or outpatient hospital, clinic, or other facility for the diagnosis, observation or treatment of persons with psychiatric disabilities."); see also Wiseman v. Armstrong, 269 Conn. 802, 810 (2004) ("['Facility'] must be one for which the main purpose is diagnosis, observation or treatment [of persons with psychiatric disabilities].") (emphasis added). The Amended Complaint contains no factual allegations that would demonstrate that the E.R. is a "facility" as that term is defined in section 17a-540(a).

To the extent that Count One attempts to set forth a tort claim for false imprisonment (see Am. Compl. (Doc. No. 22) ¶ 39), the Amended Complaint does not set forth factual allegations that would support a claim for false imprisonment. While the Amended Complaint sufficiently alleges that the defendant restrained the plaintiff's liberty, it does not present factual allegations that would establish the second element of the tort, namely, "that he did not consent to the

restraint or acquiesce in it willingly." Berry v. Loiseau, 223 Conn. 786, 820 (1992) (internal citation and quotation marks omitted). The court notes that "[i]n general, the plaintiff bears the burden of proving that the defendant was not privileged to act as he did." Richard L. Newman & Jeffrey S. Wildstein, Tort Remedies in Connecticut § 12-5(f) at 173 (1996 & Supp. 2004) (hereinafter "Newman") (citing Beinhorn v. Saraceno, 23 Conn. App. 487, 491 (1990) ("[I]n order to prevail on her complaint, the plaintiff had the burden of proving that the arresting officer did not have probable cause to arrest her.")). Here, the plaintiff has failed to offer any factual allegations that would satisfy his burden of establishing (1) that the plaintiff did not consent or acquiesce to the restraint, or (2) that the defendant health care provider was not privileged in its restraint of the plaintiff.

Finally, paragraph 37 of Count One of the Amended Complaint alleges, without reference to any legal basis, that the defendant illegally discriminated against the plaintiff based on his national origin. The court notes that Section II. of Amended Complaint, entitled "Nature of the Case", alleges constitutional violations under 42 U.S.C. section 1983 and Title VII of the 1964 Civil Rights Act. Assuming that the plaintiff's claim of illegal discrimination is founded on these statutes, the court must dismiss it. Any Title VII claim must fail

because the plaintiff has alleged no facts that would prove that the plaintiff was an employee of the defendant, see 42 U.S.C.A. § 2000e, et seq. Any claim under section 1983 must likewise fail because the Amended Complaint includes no facts that could satisfy the requirement that the defendant have acted "under color of [state law]." 42 U.S.C.A. § 1983.

Count Two sets forth a claim for assault and battery pursuant to Conn. Gen. Stat. Titles 53 and 53a. Titles 53 and 53a deal with crimes; they provide no basis for a civil cause of action for assault or battery. Moreover, even if the court construes the plaintiff's claims as sounding in tort, they fail for reasons similar to the reasons which doom the plaintiff's false imprisonment claim. The Amended Complaint contains no factual allegations from which the court could draw a reasonable inference that the plaintiff had not permitted or consented to the defendant's treatment of him. See Newman, § 12-2(b)(2) (citing Schmeltz v. Tracy, 119 Conn. 492, 495-96 (1935) and § 12-2(b)(2) (Supp. 2004) (citing Godwin v. Danbury Eye Physicians & Surgeons, P.C., 254 Conn. 131, 136 (2000)); see also, Newman, § 12-2(b)(4) (plaintiff has burden of establishing lack of consent).

Count Three sets forth a claim for defamation pursuant to Conn. Gen. Stat. § 52-237. That section does not create a cause of action for defamation but merely provides limitations on

damages in actions for libel. The only factual allegations in the Amended Complaint that conceivably could provide a basis for claims of defamation or libel are (1) that the medical assistant lied by stating to the DSS investigator and other medical staff that the plaintiff had expressed his intention to harm the Commissioner of DSS, (see Am. Compl. (Doc. No. 22) ¶ 28), and (2) that the E.R. staff fabricated the secondary diagnosis of "suicidal ideation" on the plaintiff's discharge form. (See id. ¶ 30.) Assuming arguendo that the Amended Complaint states facts that demonstrate the defendant published false statements about the plaintiff, it is devoid of factual allegations that show either the requisite harm to the plaintiff's reputation or statements falling within a per se category of defamation or libel. See Newman, §§ 15-1 - 15-2.

Count Four sets forth a claim for intentional infliction of emotional distress. In order to prevail on a claim for intentional infliction of emotional distress, the plaintiff must prove: "(1) that the actor intended to inflict emotional distress or that he knew or should have known that emotional distress was the likely result of his conduct; (2) that the conduct was extreme and outrageous; (3) that the defendant's conduct was the cause of the plaintiff's distress; and (4) that the emotional distress sustained by the plaintiff was severe." Appleton v. Bd. of Educ. of Town of Stonington, 254 Conn. 205,

210 (2000) (citations and quotation marks omitted). Liability for intentional infliction of emotional distress requires "conduct exceeding all bounds usually tolerated by decent society, of a nature which is especially calculated to cause, and does cause, mental distress of a very serious kind." Muniz v. Kravis, 59 Conn. App. 704, 708 (2000) (internal citations and quotation marks omitted). Putting aside the question of whether the Amended Complaint alleges any conduct which constitutes extreme and outrageous conduct, and the question of whether the plaintiff's distress was severe, the court finds that there are no factual allegations which could support a claim that the defendant's conduct was intentional -- that is, that its conduct in restraining the plaintiff was "especially calculated to cause" emotional distress. Accordingly, this claim must be dismissed.

Count Five sets forth a claim for violation of constitutional rights, including (1) the plaintiff's right to freedom of speech under the First Amendment to the U.S. Constitution, when the defendant refused to allow the plaintiff to use the telephone except for one brief call that was permitted only after five hours of detention; (2) the plaintiff's right to liberty under the Fourth Amendment to the U.S. Constitution; (3) the plaintiff's right to freedom from cruel and unusual punishment under the Eighth Amendment to the

U.S. Constitution.; (4) the plaintiff's rights under the Ninth Amendment to the U.S. Constitution; (5) the plaintiff's right to freedom from discrimination based on national origin under the Fifteenth Amendment to the U.S. Constitution; and finally, (6) the plaintiff's right to "equal treatment" under Article IV of the U.S. Constitution.

The court must dismiss the plaintiff's First Amendment claim because the defendant is a private actor and the Amended Complaint alleges no facts that would show that the defendant is a state actor. See Loce v. Time Warner Entm't Advance/Newhouse P'ship, 191 F.3d 256, 266 (2d Cir. 1999) ("The First Amendment applies only to state actors."). For the same reason, the court must dismiss the plaintiff's Fourth Amendment claim, see Glass v. Mayas, 984 F.2d 55, 58 (2d Cir. 1993) (quoting Graham v. Connor, 490 U.S. 386, 398 n.10 (1989)); his Eighth Amendment claim, see Hudson v. Clark, 319 F. Supp. 2d 347, 351 (W.D.N.Y. 2004); and his Fifteenth Amendment claim[3], see Sorenson v. Newark Star Ledger, No. 04 Civ. 197(HB), 2002 WL 1725023, at *2 (S.D.N.Y. July 30, 2004). The court dismisses the plaintiff's Ninth Amendment claim because that Amendment is merely a rule of construction which does not protect individual constitutional rights. Rini v. Zwirn, 886 F. Supp. 270, 289 (E.D.N.Y. 1995).

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[3]Moreover, there are no facts from which the court could draw a reasonable inference that the defendant's conduct somehow denied or abridged the plaintiff's right to vote.

As for the final claim of the Fifth Count, which set forth a claim for violation of Article IV, the only conceivably applicable provision under that Article is privileges and immunities clause in section 2, clause 1.[4] The court must dismiss this claim because the U.S. Supreme Court has narrowly interpreted this clause "as a prohibition of local legislation that discriminates against non-residents", not as a source of individual constitutional rights. 2 Ronald D. Rotunda & John E. Nowak, Treatise on Constitutional Law: Substance and Procedure § 11.10 at 190 (3d ed. 1999 & Supp. 2005). The Amended Complaint contains no factual allegations implicating this clause.

While the court is dismissing each count of the Amended Complaint, the court agrees with the defendant that the gravamen of the Amended Complaint appears to sound in medical malpractice.[5] The plaintiff alleges that on December 5, 2001,

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[4]"The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." U.S. Const. art. IV, § 2, cl. 1.

[5]While the court is dismissing the Amended Complaint, it notes that, had the plaintiff sufficiently pleaded other causes of action arising out of the defendant's treatment of the plaintiff, those claims could be pursued in lieu of, or alternatively with, any claim of medical malpractice. See, e.g., Pascarelli v. Corning Clinical Laboratories, Inc., No. 325312, 1997 WL 155381, at *3 (Conn. Super. Ct. March 25, 1997) (sustaining sufficiency of claim against health care provider for ordinary negligence where no expert medical testimony and, therefore, no good faith certificate needed); Zabensky v. Lawrence & Memorial Hosp., No. 545872, 1999 WL 608673 (Conn. Super. Ct. Aug. 5, 1999) (where independent, legally sufficient claims of breach of contract, invasion of privacy, battery,

after making an appointment, the plaintiff presented himself to the defendant's Outpatient Clinic for medical treatment for anxiety and depression. Staff in the Outpatient Clinic failed to treat the plaintiff to his satisfaction, at which point the staff transferred him to the E.R., where he was restrained on a bed. He complains that the E.R. staff failed to provide him with proper psychiatric care by improperly restraining him for seven hours and by misdiagnosing him as having suicidal ideation. According to the Amended Complaint this improper medical care resulted in personal injury, including physical weakness and severe stomach pain and irritation, as well as mental and emotional distress.[6] Without deciding whether the allegations in the Amended Complaint can be construed to state sufficiently a medical malpractice claim, the court concludes, for substantially the reasons set forth at page 9 of the defendant's memorandum in support (Doc. No. 29), that the plaintiff's claims, if any, would be more properly brought as a

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intentional infliction of emotional distress, breach of fiduciary duty, and CUTPA violations were brought against health care provider, no need to file good faith certificate under section 52-190a where plaintiff did not also plead medical malpractice).

[6]The court notes that the plaintiff's argument that the Amended Complaint does not allege personal injury (see Pl.'s Opp. Mem. (Doc. No. 34) ¶ 9) and that, therefore, is outside the ken of section 52-190a's requirement of a good faith certificate, is without merit. See Kilduff v. Adams, Inc., 219 Conn. 314, 337 (1991) (plain meaning of "personal injury" includes emotional distress or mental anguish).

claim for medical malpractice.

"Whether the plaintiff's cause of action is one for malpractice depends upon the definition of that word and the allegations of the complaint." Barnes v. Schlein, 192 Conn. 732, 735 (1984) (citation omitted). "Malpractice is commonly defined as 'the failure of one rendering professional services to exercise that degree of skill and learning commonly applied under all the circumstances in the community by the average prudent reputable member of the profession with the result of injury, loss, or damage to the recipient of those service . . . .'" Id. (quoting Webster, Third New International Dictionary). "To prevail in a medical malpractice action, the plaintiff must prove (1) the requisite standard of care for treatment, (2) a deviation from that standard of care, and (3) a causal connection between the deviation and the claimed injury." Boone v. William W. Backus Hosp., 272 Conn. 551, 567 (2005) (internal quotation marks, punctuation and citation omitted).

To bring a claim for medical malpractice, a plaintiff also must provide the certificate of good faith required by Connecticut General Statutes section 52-190a.

IV. CONCLUSION

For the reasons set forth above and in deference to the plaintiff's pro se status, the plaintiff's Amended Complaint

(Doc. No. 22) is hereby DISMISSED, but the plaintiff will be given an opportunity to file a motion for leave to file a second amended complaint within 45 days after a status conference with the court. If the plaintiff fails to file a second amended complaint within 45 days after the status conference with the court, the court will dismiss this case.

A status conference in this case will be held April 11, 2005 at 9:30 a.m. in the South Courtroom of the Abraham A. Ribicoff Building, 450 Main Street, Hartford, Connecticut.

It is so ordered.

Dated at Hartford, Connecticut this 30th day of March, 2005, at Hartford, Connecticut.

/s/
Alvin W. Thompson
United States District Judge