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**MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY**

THOMAS C. WEINER, M.D.,

Plaintiffs,

v.

ST. PETER’S HEALTH, a Montana
Domestic Nonprofit Corporation, d/b/a
Peter’s Hospital, WADE JOHNSON,
JAMES TARVER, M.D., KERRY
HALE, M.D., SHELLY HARKINS,
M.D., TODD WAMPLER, M.D.,
RANDY SASICH, M.D., and JOHN
DOES 1-5,

Defendants,

Cause No. ADV-2020-1988

**ADDENDUM – ST. PETER’S
HEALTH MOTION FOR
SUMMARY JUDGMENT RE:
DEFAMATION**

On August 31, 2023, the Court issued its Order on the parties’ motions
for summary judgment. Inadvertently, the Order did not include a thorough

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1 analysis and discussion of Plaintiff Thomas C. Weiner’s (Weiner) claim for
2 defamation, which is set forth herein.

3 **Defamation**

4 While Weiner makes many vague allegations of a widespread
5 defamatory campaign to destroy his professional reputation, his amended
6 complaint alleges two specific instances of defamation by SPH Defendants.
7 First, he alleges SPH, Johnson, Harkins, and Wampler breached peer review
8 confidentiality and made knowingly false statements to CTC during a meeting on
9 November 17, 2020. Weiner alleges by reading the CTC staff the November 17,
10 2020 Notice of Summary Suspension, SPH Defendants shared confidential
11 medical information and materials from the peer review process. To the extent
12 Weiner’s claim relates to sharing confidential medical information, he is not the
13 appropriate plaintiff to bring such a claim. Any claim related to violation of
14 prohibitions on disclosing confidential health care information belongs to the
15 patient to whom the information relates.

16 As to Weiner’s claims SPH Defendants violated peer review
17 confidentiality, this claim would be limited to arguing a violation of the SPH
18 Bylaws. Nothing in HCQIA or Montana’s peer review confidentiality statutes
19 provides protection for the physician under review. *See, Noland v. Schure*,
20 2006 Mont. Dist. LEXIS 752, *8-9 (Mont. Dist. Ct. August 28, 2006) (“[T] he
21 confidentiality of peer review proceedings and records under Montana statute is
22 limited, and the privilege in peer review proceedings and records provided for
23 therein belongs to the committee and its members, as opposed to a licensee under
24 review or investigation”).

25 /////

1 Finally, at the time of the CTC staff meeting, investigation of
2 Weiner’s practice was ongoing. Throughout his briefing, Weiner states SPH
3 Defendants’ investigation was objectively unreasonable because they did not
4 speak with other SPH physicians and nurses. Yet, when they did speak to the
5 CTC staff to encourage the staff to bring forward any concerns they may observe
6 when taking over treatment of Weiner’s former patients, Weiner alleges SPH
7 Defendants were engaged in a witch hunt for the purpose of discovering more
8 information to use against him.

9 Second, Weiner alleges Johnson’s December 7, 2020 letter to the
10 Helena Independent Record and Weiner’s former patients constitutes libel.
11 “Libel is a false and unprivileged publication by writing, printing, picture, effigy,
12 or other fixed representation that exposes any person to hatred, contempt,
13 ridicule, or obloquy or causes a person to be shunned or avoided or that has a
14 tendency to injure a person in the person's occupation.” Mont. Code Ann.
15 § 27-1-802. Statements which are true may not be defamatory as a matter of law.
16 “While we have previously held that the truth or falsity of the publication ‘is a
17 determination for the jury alone to make,’ we have consistently stated that if the
18 evidence is ‘so overwhelming that any other conclusion would be unreasonable,’
19 it is within the court's discretion to make the proper finding.” *Lee v. Traxler*,
20 2016 MT 292, ¶ 22, 385 Mont. 354, 360, 384 P.3d 82, 87 (quoting *Hale v. City of*
21 *Billings*, 1999 MT 213, ¶¶ 17-18, 295 Mont. 495, 986 P.2d 413).

22 In the present matter, the Court has identified four statements in
23 Johnson’s letter to the Helena Independent Record which could be defamatory if
24 false. Johnson singled out four instances regarding Weiner’s practice which led
25 to his suspension and termination, including:

1 . . . harm that was caused to patients by receiving treatments,
2 including chemotherapy, that were not clinically indicated or
3 necessary; failure to meet state and federal laws associated with the
4 prescribing of narcotics; failure to refer patients to other specialists
5 for appropriate treatments; failure to meet requirements associated
6 with clinical documentation.

6 Each claim is capable of bearing a defamatory meaning but is only defamatory if
7 false. In this case, the Court finds the evidence overwhelmingly demonstrates the
8 truth of Johnson’s statements. The Court will examine each claim in relation to
9 the record evidence.

10 Johnson stated Weiner had caused harm to patients by providing
11 “treatments, including chemotherapy, that were not clinically indicated or
12 necessary.” This statement is supported by the results of external reviews by
13 both the University of Utah and the Greeley Company. Further, Weiner had an
14 opportunity to defend himself against this accusation during the administrative
15 fair hearing before a hearing panel composed of disinterested physicians.¹ The
16 hearing panel concluded Weiner treated Patient 1 with chemotherapy for eleven
17 years based on an insufficient initial diagnosis and in spite of additional biopsies
18 which showed no evidence of cancer. Moreover, the hearing panel concluded
19 Weiner treated another patient with rituximab for twelve years after the patient
20 achieved remission. The standard of care for rituximab is to administer the drug
21 for no more than two to three years beyond remission. Although Johnson did not
22 have the benefit of the hearing panel’s conclusion at the time he published the
23 letter, the relevant consideration is the truth of the matter asserted. Multiple

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25 ¹ While the physicians on the hearing panel were members of SPH’s medical staff, none of
them were in economic competition with Weiner nor did they participate in the consideration
of the matter at any previous level.

1 independent physicians with specialized knowledge have confirmed the basis for
2 Johnson’s statement. As such, the Court concludes the evidence overwhelming
3 supports its truth.

4 Johnson stated Weiner “fail[ed] to meet state and federal laws
5 associated with the prescribing of narcotics.” According to the minutes from the
6 CC’s November 30, 2020 meeting, Weiner admitted he did not require any of his
7 patients receiving narcotic medication to sign a controlled substance contract.
8 Further, he did not require his patients to submit to urine toxicology screening.
9 The Greeley review identified many cases in which Weiner failed to follow
10 guidelines when prescribing opioids for chronic pain: Weiner did not screen
11 patients for addiction; he did not adequately monitor the morphine equivalent
12 dosages; he failed to order periodic urine drug screening; and he did not conduct
13 pharmacy monitoring or attempt to reduce opioid dosing.

14 In one case, the Greeley review found Weiner doubled a patient’s
15 opioid dose without documentation. Four days later, the patient experienced
16 respiratory failure and became unresponsive. By the end of the month the patient
17 had been discharged to hospice and died. The Greeley review concluded the
18 significant increase in the patient’s opioid dose likely caused the respiratory
19 failure leading to the patient’s death. Again, the hearing panel considered each of
20 these cases after Weiner had an opportunity to present evidence in his defense.
21 The hearing panel found the evidence overwhelming supported the decision to
22 suspend and ultimately revoke Weiner’s privileges based on his failure to follow
23 accepted standards of practice as to opioid prescribing for chronic pain
24 management. The hearing panel found consistent issues with excessive doses of
25 opioids, lack of patient monitoring for potential abuse, and lack of appropriate

1 precautions to avoid overdose. Accordingly, the Court concludes this evidence
2 supports the substantial truth of Johnson’s statement.

3 Johnson stated Weiner “fail[ed] to refer patients to other specialists
4 for appropriate treatments.” This statement corresponds to the above analysis
5 regarding Weiner’s prescriptions for pain management cases. The evidence
6 demonstrates Weiner regularly prescribed high doses of opioids for non-cancer
7 related pain management. Weiner failed to refer difficult cases, such as those
8 involving patients with a known history of addiction or patients on multiple
9 medications, to a pain specialist. During Weiner’s fair hearing, his own expert
10 testified he would have referred at least two of the relevant cases to a pain
11 specialist. The Court concludes Johnson’s statement is true.

12 Johnson stated Weiner “fail[ed] to meet requirements associated
13 with clinical documentation.” The Court concludes there is no dispute regarding
14 the truth of this claim. Referring again to the minutes of the November 30, 2020
15 meeting, Weiner admitted his patient volume prevented him from adequately
16 documenting patient encounters and it would be difficult for someone coming in
17 to follow what was occurring regarding his patients’ care. Thus, by Weiner’s
18 own acknowledgment, this claim is true.

19 While Weiner might conceivably produce an expert at trial to
20 question the truth of each statement, the Court finds the evidence on the record
21 sufficient. Even if the Court accepted Weiner’s speculative claims imputing
22 improper motives to Johnson, the Court cannot conceive of any reason to
23 question the impartiality of the anonymous external reviewers. This conclusion
24 is further supported by the in-depth findings from the hearing panel which also
25 considered testimony from Weiner’s witnesses. Because the statements in

1 question require medical conclusions, it is logical to rely on the findings of
2 physicians with specialized knowledge rather than a jury. As such, the Court
3 finds each of Johnson’s alleged libelous statements to be true and therefore not
4 defamatory as a matter of law.

5
6 /s/ Mike Menahan
7 MIKE MENAHAN
8 District Court Judge

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MM/sm/ADV-2020-1988 Addendum – St. Peter’s Health Motion for Summary Judgment Re: Defamation

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Electronically Signed By:
Hon. Judge Mike Menahan
Fri, Sep 08 2023 10:49:45 AM