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EMPLOYMENT LAW LETTER

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SLANDER

If you can't say something nice, don't say anything at all

When you're faced with a lawsuit filed by an employee, emotions often run high. However, it can be dangerous to allow those feelings and emotions to take over. It's important to be careful about what you say because the information and opinions you share could create additional liability.

Background

In 1993, Lawnwood Medical Center (the principal hospital in St. Lucie County) decided to seek state approval to perform cardiovascular surgery. When its application was turned down, the hospital approached Dr. Samuel Sadow, whose practice focuses on cardiovascular surgery, for assistance in the reapplication process.

In resubmitting its application, Lawnwood relied on Sadow's credentials, experience, and reputation for support. He provided the hospital with a written commitment to practice at its new facility, stating he was planning on relocating his practice there. He wrote letters and traveled to testify on Lawnwood's behalf. In return, the hospital made it clear that he would become a member of its staff at the new cardiovascular surgery facility, although it never promised him exclusive privileges.

In 1996, Lawnwood's application was approved. At the same time, the hospital had a change in leadership, and a new chief administrator, a Mr.

Cantrell, was appointed. The new facility was to open in 1999.

Lawnwood, as required by Florida law, had bylaws that provided for peer review of physicians. Under the bylaws, staff physicians had the right to elect, retain, and remove medical staff and recommend which doctors should be allowed to practice in which medical areas. Additionally, exclusive privileges could be granted to only four practice areas. Doctors receiving exclusive privileges are recommended by the medical executive committee to the hospital board of trustees for final approval. The committee's recommendations must be approved by the board unless the board can state a reason for its disapproval (*i.e.*, just cause).

In 1997, Sadow filed a formal application for nonexclusive surgical privileges in cardiovascular surgery. The medical executive committee approved his application, but the board of trustees refused to consider it, stating that the new facility was undeveloped. In truth, Cantrell and the corporate owners of the hospital (who appointed the board of trustees) had privately decided that exclusive cardiovascular surgery privileges would be given to a Dr. Downing. Sadow filed new applications in March and April 1998. He was then told by Cantrell that exclusive privileges would be granted to a single provider.

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In July 1998, Sadow again filed an application, and the board again refused to consider it. In fact, in an attempt to table his application, the board adopted a resolution barring future applications from current staff. Around the same time, Lawnwood had another leadership change, and a Mr. Pentz became the new CEO. The board of trustees granted Pentz sole authority to contract for exclusive cardiovascular privileges and negotiate with Downing to do so. When Lawnwood's new facility was completed in 1999, Sadow filed another application, which was again denied by the board.

In 2000, Sadow filed suit against Lawnwood for breach of contract. He alleged that contrary to its own bylaws, the hospital invalidly granted an outside surgeon exclusive cardiovascular privileges and used it to stop Sadow from performing the same type of surgery. He claimed that by giving one surgeon exclusive privileges, the hospital had invalidly barred him from practicing, which was a breach of contract.

How an opinion is expressed matters

In November 2001, while Sadow's breach-of-contract lawsuit was still pending, Lawnwood hired a new emergency room physician, a Dr. Pinon. The CEO approached Pinon and told him "that Dr. Sadow was a bad doctor, that he had been suing the hospital, that he was not a good person, and that he was not someone to whom he should refer patients." Later, two of the hospital's corporate officers gave Pinon a book of staff physicians. In it they marked the physicians, including Sadow, they considered "problem doctors." Pinon was also told that "Dr. Sadow is not a good doctor. He has had multiple lawsuits filed against him. He is a bad person. And quite frankly . . . I would not send my dog to him for surgery. . . . and if you care about your patients, you would do the same."

After learning of the statements, Sadow added a "slander per se" claim to his breach-of-contract lawsuit against Lawnwood. Slander is when a person or business makes a false and derogatory statement that harms an individual's reputation. Slander per se occurs when the untruth is an accusation of having committed a crime, having a loathsome disease, or being unable to perform one's occupation. The harm and malice are obvious and usually result in the victim receiving general and punitive damages.

A \$5 million comment

The case went to trial and a jury found Lawnwood liable to the tune of \$1,517,000 on the breach-of-contract claim. It also found the hospital guilty of making slanderous statements about Sadow with the intent to harm him. The result was \$5 million in punitive damages. Lawnwood challenged the \$6.5 million jury award as excessive, but the Florida Fourth District Court of Appeals upheld the award. *Lawnwood Medical Center Inc.*

v. Sadow, M.D. (Florida 4th District Court of Appeals, March 24, 2010).

Bottom line

When you're facing a lawsuit by a current or former employee, it's important to make sure that no one from your company speaks negatively about the individual. As this case illustrates, what could have been a \$1 million problem escalated into a \$6.5 million issue — all because Lawnwood officials spoke negatively about Sadow's competence as a doctor. Thus, when you're being sued by an employee, it's best to follow the old adage "If you can't say something nice, don't say anything at all." ♣

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