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Case Law on Series: Defamation

The "Case Law on Series" addresses different legal issues of interest to chiropractors. Each part of the series highlights recent, decisions from the Wisconsin State Courts that specifically involve chiropractors or aspects of chiropractic. On occasion, leading opinions from the Wisconsin Attorney General will be sited when those opinions are relevant to the legal issue. This issue in the series addresses a chiropractor's **ability to recover damages for character or business defamation**.

Relevant Case: Teff Chiropractic and Soderholm-Wilder Chiropractic Clinic, S.C. v. Unity Health Plans Insurance Corporation, 265 Wis. 2d 703, 666, N.W.2d 38 (CT. App. 2003).

Relevant Facts: Chiropractic offices entered into a contract with Unity to provide chiropractic services to its members. After the contract for services was in effect for a short period of time, Unity terminated the contract. The chiropractors filed an action seeking money damages for breach of the contract and defamation. At a hearing, the chiropractors presented evidence of statements made by Unity representatives to the doctor's patients which "challenged the professional integrity" of the doctors and "conveyed inaccurate information about why they would no longer be Unity providers…" Teff, 265 Wis. 2d 729. The Court inferred from the testimony of the doctors and their patients that such statements had harmed the reputations of the doctors even though the Court found that the doctor's reputations had not been substantially injured because the doctors continued to have successful practices. The Court ultimately awarded ten thousand dollars ($10,000) to each of the doctors as damages for the acts of defamation. Unity appealed the award of damages for defamation.

Legal Issues(s): (1) Can a Court award monetary damages for claims of defamation without accompanying evidence of actual financial or pecuniary injury?

(2) Can an award of damages be given when the doctor's patients continue to hold the doctor's in "high esteem"? Teff, 265 Wis. 2d 730.

Principle Rule of Law: [To Question 1] The Appellate Court determined that "slanderous statements that impugn one's business or profession belong to a category typically called "slander per say" and are actionable without proof of pecuniary loss". In citing to previous cases, the Court went on to note that "proof of the defamation itself is sufficient to establish the existence of some damages so that the [fact finder] may, without other evidence, estimate the amount of the damages." As such, the court determined that "the non-pecuniary injury that damages of defamation cases compensate for include impairment to reputation and standing in the community, personal humiliation, and mental anguish and suffering". Teff, 265 Wis. 2d 730-731.

[To Question 2] "The fact that some patients continue to have a favorable impression of the doctors, in spite of the defamatory statements, do not require the trial court to find that the doctors suffered no harm to their reputations because there was other evidence that supported a reasonable inference that the statements had harmed their reputations". In referencing to Wisconsin Jury Instruction – Civil 2516 in defamation, the Appellate Court further noted that the amount of damages cannot be proven with "mathematical calculations or certainty" Teff, 265 Wis. 2d 732.

Additional Ruling(s) or Commentary: The Court noted in a footnote that either slander (oral) or liable (written) accusations can form the basis for a defamation claim. The elements for such a defamation claim included: (1) the statement must be false, (2) must be communicated by speech, conduct, or writing, to a person other than the person defamed, and (3) the communication is unprivileged and intends to harms ones reputation so as to lower him or her in the estimation of the community or to deter third-persons from associating with him or her. (See Footnote 6 of Decision at Teff, 265 Wis. 2d 731.)

Other Considerations: As referenced above, certain forms of defamatory communication is regarded as "privileged" and can be made without facing potential liability. In Churchill v. WFA Econometrics Corporation, et al. 258 Wis. 2d 926, 655 N.W.2d 505 (Ct. App. 2002), the Court noted that for an absolute privilege to apply, the statements (1) must be made in a procedural context that is recognized as affording the

absolute privilege and (2) the statements must be relevant to the matter; after giving a liberal interpretation to relevance so that any doubt on the issue is resolved in favor of finding the statement to be privileged. Applying this standard, the Court of Appeals noted that the privilege generally applies to Attorneys, witnesses, and experts involved in judicial proceedings; such as a civil lawsuit, worker's compensation proceeding, or similar quasi-administrative proceeding. It should be noted that both the sendor(s) and the recipient(s) of any defamatory statements must be involved in and closely connected to the procedural context. See Ackerman v. Hatfield, 277 Wis. 2d 858, 698 N.W.2d. 396 (2004): In which the privileged connection was not found to exist) The argument of privileged communication can also be extended to peer review committees (See Rechsteiner v. Hazelden, et al, 313 Wis 2d. 542, 753 N.W.2d 496 (2008). Finally, keep in mind that another element of proof is required should the allegedly defamed party be regarded as a "public figure". In such cases, the injured party must not only prove that the statement was false, but show that the defamatory statement was published with "actual malice" (See in the matter of attorney's fees Grant E. Storms v. Action Wisconsin, Inc., et al., 303 Wis. 2d 744, 735 N.W.2d 192 (Ct. App. 2007.)