Nelson Hardiman Client Prevails on Anti-SLAPP Motion to Strike Claims Based On Medical Staff Peer Review

Nelson Hardiman attorneys Zachary Rothenberg, Sarvnaz (Miriam) Mackin, and Sal Zimmitti obtained a complete dismissal of all claims against the firm's client, chief-of-staff of a local hospital, and were also awarded the costs and attorneys' fees incurred in the matter.

The case was filed by a physician against the local hospital, several of its executives, and the chief-of-staff, claiming that the physician had been the subject of a bad-faith, retaliatory peer review by the hospital's medical staff, after the physician had made complaints about the hospital's practices. According to the physician's complaint, the chief-of-staff's participation in the peer review process included "falsely accusing" the physician of having "an anger management problem" and requiring the physician "to be treated by a psychiatrist," and that these actions "amounted to a de facto suspension" of the physician from the hospital. The physician's complaint sought an undisclosed amount of damages against the chief-of-staff and other defendants for the business losses and reputational harm he claimed to have suffered.

The Nelson Hardiman attorneys challenged the claims against the chief-of-staff by filing an "Anti-SLAPP" Motion to Strike the complaint pursuant to Section 425.16 of the Code of Civil Procedure. A Strategic Lawsuit Against Public Participation ("SLAPP") lawsuit is one that implicates protected communications or conduct, for example under the First Amendment of the U.S. Constitution. Participation in the medical staff peer review process has been held in certain circumstances to constitute such protected communication. As such, Nelson Hardiman was authorized to file its "Anti-SLAPP" Motion to Strike the physician's complaint, based on the protections surrounding the peer review process.

"The anti-SLAPP process can be very powerful," according to Nelson Hardiman partner Zachary Rothenberg, "because it allows the defendant to challenge the claims right away, and to force the plaintiff to prove up his claims, with actual evidence, very early on in the case, and generally before the plaintiff has had the opportunity to conduct discovery."

Following extensive briefing, and lengthy oral argument, the Court decided in favor of Nelson Hardiman's client, finding that the Plaintiff failed to put forth sufficient admissible evidence to prove his claims against the chief-of-staff. The Court dismissed all claims against the chief-of-staff, and invited him to file an application to recover all of his costs and attorneys' fees incurred in bringing the anti-SLAPP motion.

"We are very pleased with the outcome," Rothenberg said. "Any time you can get a client dismissed from the case early, before the cost of litigation becomes too great, that's a big win. But with an anti-SLAPP motion, the win is even sweeter, because the anti-SLAPP statute provides that the prevailing defendant is entitled to recover his attorneys' fees and costs. So in a case like this, the client gets out of the case with very little, if any, out-of-pocket expense."

About Nelson Hardiman

Nelson Hardiman LLP is the premier healthcare and life sciences firm in Los Angeles, serving healthcare providers, investors, and organizations that need a hard-to-find level of quality advice on the most sensitive industry issues. The firm's litigation practice specializes in defending fraud and abuse and whistleblower actions, government investigations, reimbursement disputes, and other complex business disputes. Nelson Hardiman regularly serves as outside counsel for healthcare system clients and medical staff representation. Nelson Hardiman's transactional group handles healthcare organization acquisitions, sales, investment, and financings, and Nelson Hardiman's regulatory team advises on compliance with licensing, operational, and reimbursement issues across the full continuum of healthcare industry sectors, with expertise on Medicare and Medicaid requirements, privacy and data security, FDA, and many more matters. The firm has earned a singular position reputation nationally for its leadership in addressing issues in behavioral health. More information about the firm is available at **www.nelsonhardiman.com** or at 310.203.2800.

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