

Anti-SLAPP Protection Applies to Hospital's Negative Statements Regarding Staff Physician

In *Yang v. Tenet Healthcare Inc.* (May 8, 2020, E071693) __Cal.App.5th__ [2020 WL 2299450] the hospital successfully employed the anti-SLAPP statute to protect communications to the public by its physicians and employees, regarding a staff physician's lack of qualifications and competency. For example, the hospital warned community physicians against referring patients to the subject physician citing concerns for competency and suspected billing fraud. The physician sued the hospital and medical staff members for defamation as well as other claims. The trial court found in favor of the physician. On appeal taken by the hospital, the court found against the physician and in favor of the hospital. The hospital successfully argued both prongs of the anti-SLAPP test under *FilmOn.com Inc. v. DoubleVerify, Inc.* (2019) 7 Cal.5th 133, because 1) the hospital was entitled to exercise free speech about a matter of public interest — an incompetent and unethical physician; and 2) there was a functional relationship between the communication and protecting the public. Further, the physician could not establish a probability of prevailing on the merits because she filed her defamation suit after the statute of limitations expired.

Medical staffs are typically cautioned against communicating about peer review matters to both in-house practitioners and to the community. Under state and federal statutes, protections from personal liability are afforded to participants in peer review matters when those participants take part in the formal review process and act in good faith. This outcome, which appears to protect statements made internally and to the public under the anti-SLAPP umbrella, may chip away at the commonly held ban against making any statements, let alone negative statements, about a physician undergoing the peer review process. Although this outcome was ultimately beneficial to the hospital and other defendants named in the doctor's defamation suit, the future application of anti-SLAPP to such communications remains to be seen.

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