

FILED 3/7/19

AT 3:25 O'Clock P. M

CLERK OF DISTRICT COURT


Deputy

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI**

STANLEY TOELLE, M.D., an individual,)
)
 Plaintiff,)
 vs.)
)
 KOOTENAI HOSPITAL DISTRICT, a quasi-)
 municipal Idaho State corporation;)
 KOOTENAI MEDICAL CENTER, an Idaho)
 public hospital; KOOTENAI HEALTH)
 CLINIC, LLC, a limited-liability Idaho State)
 company; WALTER FAIRFAX, M.D., an)
 individual; TAYLOR REICHEL, M.C., an)
 individual; and DANIEL KLOCKO, an)
 individual,)
 Defendants.)

Case No. **CV 2017 7940**

**MEMORANDUM DECISION AND
ORDER DENYING PLAINTIFF'S
MOTION TO AMEND COMPLAINT
TO INCLUDE PUNITIVE DAMAGES
UNDER IDAHO CODE § 6-1604**

I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

This case comes before the Court on a Motion to Amend Complaint to Include Punitive Damages Claim Under I.C. § 6–1604, filed by Plaintiff Stanley Toelle (Dr. Toelle) on February 11, 2019. A hearing was held on the matter on February 26, 2019, and was thereafter taken under advisement by the Court. For the reasons discussed below, Dr. Toelle’s Motion to Amend Complaint to Include Punitive Damages is denied.

Until February 8, 2016, Dr. Toelle had been a practicing gastroenterologist in Coeur d’Alene for more than 25 years. Mem. Supporting Pl.’s Mot. to Amend Compl. to Include Claim for Punitive Damages Under I.C. § 6–1604 (Mem. Supporting Pl.’s Mot to Amend Compl.), 3. On January 1, 2013, Dr. Toelle entered into an employment agreement with Kootenai Health Clinic. *Id.* at 4. On February 4, 2016, Dr. Toelle was

arrested under a federal criminal indictment alleging that he engaged in money laundering, which was also connected to the illegal distribution of controlled substances.¹ *Id.* at 5.

On February 5, 2016, while Dr. Toelle was detained, Dr. Toelle directed his attorney, David Partovi (Partovi), to notify the Chief Medical Officer, Dr. Walter Fairfax (Dr. Fairfax), and the District's in-house counsel, Ronald Lahner (Lahner), of the charge and arrest, which Partovi did that very same day. *Id.* at 6. Partovi assured Dr. Fairfax and Lahner that Dr. Toelle was innocent of all charges alleged against him, and was not involved with either money laundering or the distribution of controlled substances. *Id.* Dr. Fairfax and Lahner did not communicate the details of this conversation to the Chief of Staff, Dr. Taylor Reichel (Dr. Reichel), the Credentialing Committee, the Executive Committee, or the Board of Trustees (Board). *Id.* On February 8, 2016, Dr. Toelle's new attorney, Nicholas Veith, emailed the Kootenai Hospital District (District) requesting a meeting be held to allow Dr. Toelle to explain the allegations against him and provide exculpatory information demonstrating his innocence. *Id.* Once again, the conversation was not communicated with Dr. Reichel, the Credentialing Committee, the Executive Committee, or the Board. *Id.* at 7. Instead, Dr. Toelle's request for a meeting was denied by Dr. Fairfax. *Id.* at 7, 9.

That same day, Dr. Fairfax and Dr. Reichel revoked Dr. Toelle's privileges without providing a hearing or prior notice, based on the fact that he had been indicted on federal criminal charges, and because he had failed to disclose the fact that he had

¹ The federal government has since dropped all money laundering charges against Dr. Toelle. Mem. Supporting Pl.'s Mot. to Amend Compl., 5. However, on April 11, 2017, Dr. Toelle pled guilty to two counts of submitting a false document to the IRS, a charge completely unrelated to the felony charges in the federal indictment. *Id.*

been indicted and arrested.² *Id.* On February 9, 2016, Dr. Toelle received a letter informing him that his employment had been terminated on February 8, 2016, because his privileges had been revoked. *Id.* at 8. Dr. Reichel presented the revocation of Dr. Toelle's privileges to the Credentialing Committee for consideration. *Id.* Based on Dr. Reichel's presentation, the Credentialing Committee upheld Dr. Fairfax's and Dr. Reichel's decision to revoke Dr. Toelle's privileges. *Id.* On February 18, 2016, a presentation on this issue was made to the Executive Committee, which subsequently upheld the decision of the Credentialing Committee. *Id.* On March 1, 2016, the Board upheld the decision of the Executive Committee. *Id.* at 9.

Dr. Toelle filed a complaint against defendants the District, Kootenai Medical Center, Kootenai Health Clinic, LLC (Kootenai Health), Dr. Fairfax, Dr. Reichel, and Daniel Klocko (collectively referred to as defendants), on October 20, 2017. Dr. Toelle filed his Motion to Amend Complaint to Include Claim for Punitive Damages Under I.C. § 6–1604 on February 11, 2019. In support of his motion, Dr. Toelle filed Memorandum Supporting Plaintiff's Motion to Amend Complaint to Include Claim for Punitive Damages and the Declaration of Michael J. Hines Supporting Motion to Amend Complaint to Include Claim for Punitive Damages. In response, on February 20, 2019, Defendants filed Defendants' Memorandum in Opposition to Plaintiff's Motion to Amend Complaint and Declaration of Thomas W. McLane in Support of Defendants' Memorandum in Opposition to Plaintiff's Motion to Amend Complaint. On February 25, 2019, Dr. Toelle filed Plaintiff's Reply Memorandum Supporting Plaintiff's Motion to

² It has been made clear by the evidence in the record that Dr. Toelle did, in fact, disclose that he had been indicted and arrested the day after it occurred. See Mem. Supporting Pl.'s Mot to Amend Compl., 6.

Amend Complaint to Include Claim for Punitive Damages and the Declaration of Kelly E. Konkright Re: Motion to Amend Complaint to Include Claim for Punitive Damages.

II. STANDARD OF REVIEW

“A court shall allow the motion to amend the pleadings if, after weighing the evidence presented, the court concludes that the moving party has established at such hearing a reasonable likelihood of proving facts at trial sufficient to support an award of punitive damages.” *Seiniger Law Office, P.A. v. N. Pac. Ins. Co.*, 145 Idaho 241, 249–50, 178 P.3d 606, 614–15 (2008) (citing I.C. § 6–1604). “Punitive damages are not favored in the law and should be awarded in only the most unusual and compelling circumstances.” *Id.* (citing *Manning v. Twin Falls Clinic & Hosp.*, 122 Idaho 47, 52, 830 P.2d 1185, 1190 (1992)). Idaho Code Section 6–1604(1) provides: “[i]n any action seeking recovery of punitive damages, the claimant must prove, by clear and convincing evidence, oppressive, fraudulent, malicious or outrageous conduct by the party against whom the claim for punitive damages is asserted.” I.C. § 6–1604.

“The issue of punitive damages ‘revolves around whether the plaintiff is able to establish the requisite intersection of two factors: a bad act and a bad state of mind.’” *Seiniger Law Office* at 250, 178 P.3d at 615 (quoting *Myers v. Workmen's Auto Ins. Co.*, 140 Idaho 495, 503, 95 P.3d 977, 985 (2004)) (internal quotations omitted); see also *Linscott v. Rainier Natl. Life Ins. Co.*, 100 Idaho 854, 858, 606 P.2d 958, 962 (1980). “The action required to support an award of punitive damages is that the defendant ‘acted in a manner that was an extreme deviation from reasonable standards of conduct, and that the act was performed by the defendant with an understanding of or disregard for its likely consequences.’” *Id.* (quoting *Myers* at 502, 95 P.3d at 984) (internal quotations omitted); see also *Cheney v. Palos Verdes Inv. Corp.*, 104 Idaho

897, 905, 665 P.2d 661, 669 (1983). “The mental state required to support an award of punitive damages is ‘an extremely harmful state of mind, whether that be termed malice, oppression, fraud or gross negligence; malice, oppression, wantonness; or simply deliberate or willful.’” *Id.* (quoting *Myers* at 502, 95 P.3d at 984) (internal quotations omitted).

III. ANALYSIS

Whether or not to allow Dr. Toelle to amend his complaint to add a claim for punitive damages is a matter of discretion for the Court. Pursuant to Idaho Code Section 6-1604, the Court will permit Dr. Toelle to amend his complaint to include a claim for punitive damages if, after weighing the evidence presented, he has established a reasonable likelihood of proving facts at trial sufficient to support an award of punitive damages. As stated above, defendants must have acted in a manner that was an extreme deviation from the reasonable standards of conduct; a mere deviation from the reasonable standards of conduct will not be enough to support an award of punitive damages. Additionally, the defendants must have acted with the requisite mental state – “an extremely harmful state of mind.”

Dr. Toelle asserts defendants not only violated his constitutional and contractual rights, “but they did so in extreme deviation from reasonable standards of conduct with both (1) a clear understanding that Dr. Toelle would lose his livelihood and (2) gross negligence, wantonness, deliberateness or willfulness.” Mem. Supporting Pl.’s Mot. to Amend Compl., 2. Dr. Toelle has put forth six claims that he asserts are supported by evidence in the record, and which show that defendants acted in a manner that was an extreme deviation from the reasonable standards of conduct. *Id.* The Court will address each claim in turn, and weigh the relevant evidence put forth by each party.

First, Dr. Toelle asserts that defendants denied him any ability to contest the termination of his privileges. *Id.* at 2. Dr. Toelle makes two separate arguments: (1) IDAPA provisions 16.03.14.200.01.d.vi and 16.03.14.250.05.d require the District's medical staff bylaws to include a mechanism for hearings and appeals of decisions regarding medical staff membership and privileges, and because the bylaws are devoid of any such mechanism, they are in violation of the IDAPA provisions; (2) defendants breached Dr. Toelle's employment agreement when they did not provide him with 20 days advance notice of his termination and the opportunity to cure. Pl.'s Reply Mem. Supporting Mot. to Amend Compl. to Include Claim for Punitive Damages Under I.C. § 1-1604 (Pl.'s Reply Mem. Supporting Mot. to Amend Compl.), 4-5. Addressing Dr. Toelle's first argument, defendants argue that the rights granted pursuant to the IDAPA provisions "relate to applications for medical staff membership and privileges that afford each applicant due process." Defs.' Mem. in Opp'n to Pl.'s Mot. to Amend Compl., 6. Defendants assert that Dr. Toelle was not an "applicant for privileges," thus the particular IDAPA provisions identified by Dr. Toelle do not apply. Regarding the 20-day notice and cure provision, defendants assert that where Section 5.4 of the employment agreement provides for a 20-day notice and cure provision, Section 5.8 does not. *Id.* Dr. Toelle was said to have breached Sections 2.8 and 5.8 of the agreement, not Section 5.4. *Id.* Therefore, Dr. Toelle was not entitled to the notice and cure provision contained in Section 5.4. *Id.* The Court will first discuss the IDAPA provisions identified by Dr. Toelle, followed by a discussion of Dr. Toelle's employment agreement.

IDAPA 16.03.14.200.01.d.vi addresses medical staff appointments and reappointments, and states, "[t]here shall be a formal appeal and hearing mechanism adopted by the governing body for medical staff applicants who are denied privileges, or whose privileges are reduced." Because Dr. Toelle had been an employee of the

hospital since 2013, he was considered a medical staff member, and not a medical staff applicant.³ IDAPA 16.03.14.250.05.d addresses medical staff bylaws, rules, and regulations, and states that they shall specify at least... “[a] mechanism for hearings and appeals of decisions regarding medical staff membership and privileges.” Based on this applicable IDAPA provision, the issue is whether the District’s bylaws, rules, and regulations include a mechanism for hearings and appeals of decisions regarding medical staff privileges. As stated above, Dr. Toelle asserts that the bylaws, in particular, do not contain a mechanism addressing this particular issue.

The District’s bylaws have not been submitted on the record by either party. However, the Credentialing Policy of Kootenai Health (Credentialing Policy), “a companion document to the Bylaws of the Medical Staff of Kootenai Health,” has been submitted to the Court. See Decl. of Thomas W. McLane in Supp. of Defs.’ Mem. in Opp’n to Pl.’s Mot. to Amend Compl., Attach. B, Attach. F. The Credentialing Policy does contain a mechanism for hearings and appeals of decisions regarding medical staff membership and privileges. *Id.* at Attach. F. While it is uncertain whether the District’s bylaws comply with IDAPA, the District does have rules and regulations in place that provide a mechanism for hearings and appeals of decisions regarding privileges. Therefore, the District is compliant with IDAPA 16.03.14.250.05.d.

Next, the Court will discuss Dr. Toelle’s allegation that defendants breached the employment agreement they had with him. The relevant portion of the letter sent to Dr. Toelle, dated February 8, 2016, reads as follows:

In light of the events of February 5, 2016, your arrest on a federal arrest warrant, pursuant to the Credentialing Policy (a companion document to the Bylaws of the Medical Staff of Kootenai Health), Section

³ Medical staff members are defined as, “[t]hose licensed physicians, dentists, podiatrists and other professionals granted the privilege to practice in the hospital by the governing authority of a hospital.” IDAPA 16.03.14.002.26.

3.F.2. (d), Automatic relinquishment based on criminal activity including any arrest including, but not limited to, those involving violations of law pertaining to controlled substances, your Medical Staff appointment and clinical privileges are automatically relinquished effective immediately.

Relinquishment will continue until the matter is resolved and a request for reinstatement of privileges has been acted upon by the Credentials and Executive Committees and approved by the Board.

Decl. of Thomas W. McLane in Supp. of Defs.' Mem. in Opp'n to Pl.'s Mot. to Amend Compl., Attach. B. The language in the letter makes clear that Dr. Toelle's privileges were automatically relinquished pursuant to Section 3.F.2.(d) of the Credentialing Policy. Defendants argue that because Dr. Toelle's privileges were relinquished pursuant to Section 3.F.2.(d) of the Credentialing Policy, Sections 2.8(c) and (d) of the employment agreement apply. Article II, Section 2.8 of the employment agreement is titled, "Consequences of Failure to Meet Qualifications," and the relevant portion states, in part:

[...] Clinic may immediately terminate the Agreement at any time, in the event of any of the following occurrences:

- (c) Physician's privileges at Clinic are restricted, suspended or terminated pursuant to the Medical Staff bylaws, rules, and/or regulations;
- (d) Physician's privileges at any hospital are restricted, suspended or terminated, if such action affects, limits, or restricts Physician's privileges at Clinic or Physician's legal ability to practice medicine in Idaho;

Id. at Attach. A. Therefore, because Dr. Toelle's privileges were relinquished pursuant to the Credentialing Policy, Dr. Toelle could be terminated immediately under Section 2.8 of the employment agreement.

As stated above, Dr. Toelle argues that he was entitled to the 20-day notice and cure provision contained in Article V, Section 5.4 of the employment agreement based on a material breach of Section 5.8. The relevant portion of Section 5.4, titled "Termination of Agreement Upon Material Breach," reads as follows:

In addition to the Clinic's entitlement to terminate the Agreement as set forth in Article II, by the conditions of Paragraph 5.2, or 5.3, this

Agreement may be terminated by either party in the event of a material breach by the other party at any time following the provision of written notice by one party to the other party specifying (i) the alleged material breach which resulted in termination, and (ii) providing twenty (20) days from the receipt of the notice to cure the breach. If the breach is not cured within twenty (20) days, this Agreement shall terminate and be of no further force or effect [...]. The following shall constitute material breach of this Agreement:

[...]

(c) Any other act or omission by either party constituting a breach of a material term or condition of this Agreement.

Id. The relevant portion of Section 5.8 of the employment agreement reads as follows:

It is acknowledged by Physician that maintenance of medical staff privileges is a required qualification in order for Physician to enter into this Agreement. It is further acknowledged by Physician and Clinic that Physician's Kootenai Medical Center privileges and medical staff membership are subject to the Kootenai Medical Center Medical Staff Bylaws and fair hearing policy and procedures. Physician's failure to maintain medical staff privileges shall constitute a breach of a material term or condition of this Agreement. Termination of this Agreement shall not require compliance with the procedures for the termination of medical staff privileges. [...]

Id. Section 5.8 makes clear that Dr. Toelle's failure to maintain privileges constitutes a breach of a material term or condition of the employment agreement. Therefore, because a breach of a material term or condition of the employment agreement occurred, part (c) of Section 5.4 could also apply to Dr. Toelle's situation. Therefore, if Dr. Toelle was terminated explicitly pursuant to Section 5.8, he would be entitled to the 20-day notice and cure provision of Section 5.4. Defendants state in their opposing memorandum that Dr. Toelle was terminated pursuant to Section 2.8 and Section 5.8. Defs.' Mem. in Opp'n to Pl.'s Mot. to Amend Compl., 7. Defendants may have deviated from a reasonable standard of conduct by not making clear to Dr. Toelle which provision of the employment agreement he was terminated under. However, even with that assumption, Dr. Toelle is required to prove by clear and convincing evidence that

defendants' conduct was malicious or outrageous, and was an extreme deviation from a reasonable standard of conduct. The Court finds that Dr. Toelle has not met that standard on this issue. Therefore, the Court finds that, after weighing the evidence presented on this issue, Dr. Toelle has not established a reasonable likelihood that proving facts at trial would be sufficient to support an award of punitive damages.

Defendants were correct on one issue (that Dr. Toelle had been indicted) but wrong on the other issue (that he failed to report to the defendants the fact of his indictment). Simply being wrong is not enough to allow amendment to add a claim for punitive damages. If punitive damages are to be allowed in every situation where a person or entity has been wrong or has made a mistake, then a claim for punitive damages must be allowed in every civil case that is filed. And even if punitive damages could be allowed just because the defendants were wrong on one issue, the defendants were correct on the other issue. Since the defendants were correct on that issue, the same result would have occurred...the defendants would have made the same decision they made regarding Dr. Toelle's privileges. This Court cannot allow amendment of the complaint to add punitive damages in that situation.

Second, Dr. Toelle asserts that Dr. Fairfax and Mr. Lahner concealed from key decision-makers the fact that Dr. Toelle immediately notified the District of the arrest and indictment. Mem. Supporting Pl.'s Mot. to Amend Compl., 2. The District then proceeded to terminate Dr. Toelle's staff privileges based, in part, on the false premise that he did not report his arrest or indictment to the District. *Id.* Defendants acknowledge that one of the two statements provided to Dr. Toelle in the letter dated February 8, 2016, was incorrect. See Defs.' Mem. in Opp'n to Pl.'s Mot. to Amend Compl., 7-9. In that letter, defendants provided that Dr. Toelle's clinical privileges were automatically relinquished "based on criminal activity including any arrest

including...those involving violations of law..." and his failure to disclose the investigation and arrest. *Id.* at 8–9.

As stated above, Dr. Toelle has submitted evidence showing that he did, in fact, disclose the investigation and arrest almost immediately. See Mem. Supporting Pl.'s Mot. to Amend Compl., 6. While defendants clearly deviated from a reasonable standard of conduct by including a false statement in the letter to Dr. Toelle, the deviation cannot be regarded as an extreme deviation. It has not been proven by clear and convincing evidence that defendants' conduct surrounding this particular issue was malicious or outrageous. Further, the other reason provided to Dr. Toelle as to why his privileges were automatically relinquished was accurate and in line with the Credentialing Policy (see below), as it was based on his arrest for felony money laundering. Therefore, the Court finds that, after weighing the evidence presented on this issue, Dr. Toelle has not established a reasonable likelihood that proving facts at trial on this issue would be sufficient to support an award of punitive damages.

Third, Dr. Toelle asserts that defendants only presented information to the decision-makers that portrayed Dr. Toelle in a negative light, and prevented Dr. Toelle from presenting any exculpatory information to those decision-makers. Mem. Supporting Pl.'s Mot. to Amend Compl., 2. Addressing the latter statement first, Dr. Toelle, through his attorney at the time, requested to meet with the District to explain the allegations against him, to explain the surrounding circumstances, and to provide exculpatory information demonstrating his innocence. *Id.* at 6. Defendants denied the request, and did not forward his request on to either the Chief of Staff or any member of the Credentialing Committee, Executive Committee, or the Board. *Id.* at 7. Defendants make clear that Dr. Toelle's privileges were automatically relinquished due to being named as a co-conspirator in a money laundering conspiracy in a federal criminal

indictment. Defs.' Mem. in Opp'n to Pl.'s Mot. to Amend Compl., 9. Defendants assert that there was no exculpatory information that existed with the pendency of the indictment. *Id.* Defendants state that because the indictment properly named Dr. Toelle as a co-conspirator in the money laundering conspiracy, there was no explanation that could have been provided that would have resulted in the reinstatement of his privileges. *Id.*

Dr. Toelle has not supplied the Court with evidence that indicates defendants were either required to present positive information about Dr. Toelle, in addition to the information surrounding his arrest. Dr. Toelle has also not provided the Court with evidence indicating that defendants were required to allow Dr. Toelle to present exculpatory information to the decision-makers. Therefore, after weighing the evidence presented on this issue, the Court finds that Dr. Toelle has not established a reasonable likelihood that proving facts at trial on this issue would be sufficient to support an award of punitive damages.

Fourth, Dr. Toelle asserts that defendants made a false statement to the media by stating that they put Dr. Toelle on "precautionary leave" – an action that is not provided for in the District's Medical Staff Bylaws. Mem. Supporting Pl.'s Mot. to Amend Compl., 3. Defendants admit that the terminology used by the Kootenai Health spokesperson was incorrect. Defs.' Mem. in Opp'n to Pl.'s Mot. to Amend Compl., 12. However, defendants argue that the use of incorrect terminology in the comment to the media does not rise to the level of conduct that would allow for an award of punitive damages. *Id.*

The Court agrees that the use of incorrect terminology in a once-sentence comment to the *Coeur d'Alene Press* after Dr. Toelle's initial arrest (which reads "Kootenai health spokesperson Kim Anderson identified Dr. Toelle as a

gastroenterologist and said the hospital has placed him on precautionary leave.”), without more, does not qualify as malicious or outrageous conduct. Defendants put forth that the arrest of Dr. Toelle for money laundering was a new experience for them. Thus, a spokesperson for the hospital mistakenly using incorrect terminology to describe Dr. Toelle’s situation, while unfortunate, is not an extreme deviation from a reasonable standard of care. Additionally, there is no evidence in the record indicating that the spokesperson acted with a “bad state of mind.”⁴ In conclusion, the Court finds that Dr. Toelle has not established a reasonable likelihood that proving facts at trial surrounding this incident would be sufficient to support an award of punitive damages.

Fifth, Dr. Toelle asserts that defendants, particularly Dr. Fairfax, “falsely told the Washington state medical licensing agency that Dr. Toelle’s staff privileges were terminated, in part, because he did not disclose the arrest and indictment.” Mem. Supporting Pl.’s Mot. to Amend Compl., 3. Dr. Toelle applied for a medical license from the State of Washington in 2017 in an attempt to mitigate his damages. Mem. Supporting Pl.’s Mot. to Amend Compl., 10. When the Washington medical licensing agency requested information from the District regarding Dr. Toelle, Dr. Fairfax responded by stating, in part, that Dr. Toelle’s privileges were terminated because he did not notify the District of the investigation. *Id.* at 11. Dr. Fairfax admitted that the statement was “patently false and gave the equally false impression that Dr. Toelle had tried to conceal the arrest and indictment.” *Id.* (citing Fairfax Dep., p. 214, l. 16 – p. 215, l. 9).

⁴ Additionally, though “precautionary leave” may not be provided for in the District’s bylaws, as asserted by Dr. Toelle, “precautionary suspension” is provided for in the Credentialing Policy, a companion document to the bylaws. Decl. of Thomas W. McLane in Supp. of Defs.’ Mem. in Opp’n to Pl.’s Mot. to Amend Compl., Attach. F. While Dr. Toelle was not placed on precautionary suspension, the Court notes that such an action does exist.

Defendants admit that the communication made to the Washington medical licensing agency contained erroneous information. Defs.' Mem. in Opp'n to Pl.'s Mot. to Amend Compl., 12. However, defendants assert that there is no evidence in the record indicating that the erroneous information provided to the Washington medical licensing agency had any bearing on its decision to deny Dr. Toelle a license to practice medicine. *Id.* Defendants provide that Dr. Toelle's application for a medical license was denied by Washington based on a 2015 action by the Idaho Board of Medicine and Dr. Toelle's 2017 criminal convictions relating to tax fraud, to which he plead guilty. Decl. of Thomas W. McLane in Supp. of Defs.' Mem. in Opp'n to Pl.'s Mot. to Amend Compl., Attach. J.

The Court agrees no evidence has been submitted indicating the Washington medical licensing agency based its denial of Dr. Toelle's application for a medical license on the erroneous information provided to them by defendants. That agency issued a 10-page Findings of Fact, Conclusions of Law, and Final Order, detailing its reasons for denying Dr. Toelle's application for a medical license. Decl. of Thomas W. McLane in Supp. of Defs.' Mem. in Opp'n to Pl.'s Mot. to Amend Compl., Attach. J. The decision points to Dr. Toelle's guilty plea to two counts of filing fraudulent documents as being "conclusive evidence of the commission of acts involving moral turpitude, dishonesty, or corruption." *Id.* at ¶ 2.5. The decision goes on to state:

The Applicant's convictions raises reasonable concerns that the Applicant may abuse the status of the profession to harm members of the public in Washington if given a license to practice here. Similarly, the convictions undoubtedly lower the standing of the physician and surgeon profession in the eyes of the public.

Id. at ¶ 2.7. The decision by the Washington medical licensing agency does not reference the erroneous statement made about Dr. Toelle, nor does it reference Dr. Toelle's federal indictment. Therefore, the Court agrees with defendants in that the

Washington medical licensing agency did not base the denial of Dr. Toelle's application on the false statement.

However, simply because the Washington medical licensing agency did not base its decision on the false statement does not minimize the fact that a false statement was communicated to the state agency in Washington. The issue is whether Dr. Toelle is able to establish that Dr. Fairfax acted in a manner that was an extreme deviation from reasonable standards of conduct, and that the act at issue was performed with an understanding of, or a disregard for, its likely consequences. An excerpt from Dr. Fairfax's deposition will shed light on this issue:

THE WITNESS: I, subsequently to this September 27th, had heard that Stan had applied for privileges in Washington, but as of this time I don't recall having seen this document. Now, you may prove me wrong, but I don't recall that.

Q. (BY MR. MAURER2) Exhibit 27 is dated September 27th and is signed by Lisa Goodwin, your administrative assistant –

A. Yep.

Q. -- regarding hospital privileges.

A. Uh-huh.

Q. Correct?

A. Yes.

Q. And Ms. Goodwin on the same day writes to the department, the Washington State Department of Health, "Dr. Toelle's privileges were considered to be relinquishment pursuant to policy due to his failure to disclose that he was under investigation." Did I read that correctly?

A. You did.

Q. And that is a complete lie.

A. That is a false –

Q. Right?

A. -- statement.

Q. Which is a lie. That is a complete lie.

A. Well –

Q. That is a complete lie.

A. The -- no. A false statement made by somebody who considers it to be true is not a lie.

Q. But you knew it wasn't true.

A. I knew it wasn't true.

Q. But you didn't correct it, did you?

A. I don't remember seeing this, but you've proved me wrong.

Decl. of Michael J. Hines Supporting Mot. to Amend Compl. to Include Claim for Punitive Damages Under I.C. § 6–1604 (Decl. of Michael J. Hines), Ex. B, Fairfax Dep., p. 214, l. 11 – p. 215, l. 19. Mr. Maurer goes on to inform Dr. Fairfax that Ms. Goodwin forwarded him the very message detailed above, and Dr. Fairfax himself responded to the message with, “And BTW, he is under stipulation by the Idaho Board of Medicine.” *Id.* at p. 215, l. 23 – p. 216, l. 1. This supports Dr. Toelle’s assertion that Dr. Fairfax could have corrected the statement, as he admittedly knew it was false. However, Dr. Fairfax goes on to say that he does not recall receiving Ms. Goodwin’s message, and does not recall sending his response. *Id.* at p. 216, ll. 5 – 17; *see also id.* at p. 216, l. 18 – p. 217, l. 12. Dr. Fairfax also states the following:

There are a number of documents that are transmitted between the medical staff office and various boards and hospitals and things like that. They’re done, administratively, through Lisa, and I am not aware of them. Neither is [Dr.] Reichel, who’s actually responsible for them. So, no, I – you may convince a jury that I should be looking at every piece of paper that comes out of that office, but I don’t, and neither does [Dr. Reichel] [...].

Id. at p. 217, ll. 13–21. While it is clear that Dr. Fairfax had the opportunity to correct the false statement about Dr. Toelle that was sent to the Washington medical licensing agency, it is less clear whether Dr. Fairfax acted maliciously or outrageously. Based on Dr. Fairfax’s deposition testimony, his action, or lack thereof, does not constitute an extreme deviation from reasonable standards of conduct. No other evidence in the record tends to show that Dr. Fairfax acted with malice in regard to the false statement. Therefore, the Court finds that, after weighing the evidence presented on this issue, Dr. Toelle has not established a reasonable likelihood that proving facts at trial surrounding this incident would be sufficient to support an award of punitive damages.

Lastly, Dr. Toelle asserts that, “Defendants gave due process protections to other similarly situated physicians who were arrested and convicted of serious crimes,

and did not terminate their staff privileges, thereby discriminating against Dr. Toelle.” Mem. Supporting Pl.’s Mot. to Amend Compl., 3. Specifically, Dr. Toelle asserts that the Credentialing Policy, by its terms, applies equally to misdemeanor and felony arrests, and does not provide that privileges are automatically relinquished upon an arrest for either a misdemeanor or felony charge. *Id.* at 10; Pl.’s Reply Mem. Supporting Mot. to Amend Compl., 11. However, Dr. Toelle’s privileges were automatically relinquished upon his felony arrest, while three other physicians who were arrested and charged with misdemeanor offenses did not have their privileges automatically relinquished. Pl.’s Reply Mem. Supporting Mot. to Amend Compl., 12. Defendants argue that Dr. Toelle’s federal criminal indictment for money laundering is far more serious than the crime of driving under the influence. Defs.’ Mem. in Opp’n to Pl.’s Mot. to Amend Compl., 11. Defendants further argue that Dr. Toelle’s conviction for misdemeanor tax fraud is also more serious than the crime of driving under the influence. *Id.* Defendants state Dr. Toelle “admitted that he filed a document with the [IRS] that contained false information[,] that he knew the information contained in the document was false[,] and in filing the false document, he acted in a willful manner.” *Id.*

The deposition of Dr. Fairfax indicates that Dr. Smith was arrested for resisting arrest and driving under the influence of alcohol, and that he spent time in jail. Decl. of Michael J. Hines, Ex. B, Fairfax Dep., p. 186, l. 12 – p. 187, l. 11. However, Dr. Fairfax and others exercised discretion in choosing not to invoke the automatic relinquishment of Dr. Smith’s privileges. *Id.* at p. 187, ll. 14–17. Additionally, Dr. Stackow was arrested for driving under the influence, yet remains a currently employed physician with privileges. *Id.* at p. 187, ll. 18–24. Similarly, Dr. Gilbert was arrested for driving under the influence, yet his privileges were not automatically relinquished. *Id.* at p. 189, ll. 2–

10. Dr. Fairfax explained that these three physicians were treated differently than Dr. Toelle because their crimes revolved around the abuse of alcohol. *Id.* at p. 190, l. 20 – p. 191, l. 10. Dr. Fairfax stated that the three physicians' charges of driving under the influence presented a medical issue along with a criminal issue, whereas Dr. Toelle's issue was purely a criminal issue. *Id.* Dr. Fairfax stated, "the sensitivity around – surrounding drug and alcohol abuse by an individual is that we have a conversation about that, and an evaluation of the individual, and remediation as [...] that process goes on." *Id.* at p. 190, l. 22 – p. 191, l. 1. Dr. Fairfax further stated, "[b]eing an alcoholic is a different issue and needs to be addressed in a fashion to remediate and to rehabilitate that individual." *Id.* at p. 191, ll. 8–10.

Below, an excerpt from Section 3.F.2 of the Credentialing Policy states that any action taken by a court or a government agency regarding criminal activity will result in automatic relinquishment or restriction of privileges, which will take effect immediately. Decl. of Thomas W. McLane in Supp. of Defs.' Mem. in Opp'n to Pl.'s Mot. to Amend Compl., Attach. F. Based on the plain language of the provision, it is reasonable to presume that some physicians charged with a crime (either a misdemeanor or felony) experience an immediate automatic relinquishment of privileges, while others experience an immediate restriction of privileges. The excerpt reads as follows:

3.F.2. Action by Government Agency or Insurer:

Any action taken by any licensing board, insurer, court or government agency regarding any of the matters set forth below must be promptly reported to Medical Staff Services and/or Chief of Staff. Automatic relinquishment or restriction shall take effect immediately and continue until the matter is resolved and a request for reinstatement of privileges has been acted upon by the Credentials and Executive Committees and approved by the Board.

(d) **Criminal Activity.** Any Arrest, indictment, conviction of any felony, or misdemeanor needs to be reported immediately to the Chief of Staff or Chief Medical Officer including, but not limited to, those involving violations of law pertaining to controlled

substances, alcohol, illegal drugs, Medicare, Medicaid, or insurance fraud or abuse, or a plea of guilty or *nolo contendere* to charges pertaining to the same. The information will be forwarded to the Chair of the Credentials Committee for review and discussion.

Id. (emphasis added). Based on the Credentialing Policy and deposition testimony provided by both parties, it is reasonable to believe that some physicians would have their privileges relinquished automatically, while others would have their privileges restricted. Simply because the physicians who were charged with alcohol-related misdemeanors did not have their privileges relinquished, does not mean that the relinquishment of Dr. Toelle's privileges based on felony money laundering was a breach of the above provision. It has not been shown by clear and convincing evidence that defendants discriminated against Dr. Toelle, or that they acted maliciously or outrageously. After weighing the evidence presented on this issue, the Court finds that Dr. Toelle has not established a reasonable likelihood that proving facts at trial surrounding this incident would be sufficient to support an award of punitive damages.

IV. CONCLUSION AND ORDER

In conclusion, punitive damages should only be awarded in the most unusual and compelling of circumstances. Those circumstances are not present here.

IT IS HEREBY ORDERED plaintiff's Motion to Amend Complaint to Include Claim for Punitive Damages Under I.C. § 6-1604 is DENIED.

Entered this 7th day of March, 2019.


John T. Mitchell, District Judge

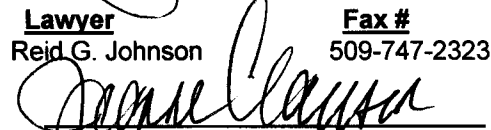
Certificate of Service

I certify that on the 7th day of March, 2019, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

Lawyer
Michael J. Hines
Thomas W. McLane

Fax #
509-747-2323
509-624-2528

Lawyer
Reid G. Johnson


Jeanne Clausen, Deputy Clerk

Fax #
509-747-2323