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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
AUG 26 2004
CLERK, U.S. DISTRICT COURT
By _____ Deputy

LAWRENCE R. POLINER, M.D., and
LAWRENCE R. POLINER, M.D., P.A.,

Plaintiffs,

v.

TEXAS HEALTH SYSTEMS, A TEXAS
NON-PROFIT CORPORATION d/b/a
PRESBYTERIAN HOSPITAL OF
DALLAS; JAMES KNOCHEL, M.D.;
CHARLES LEVIN, M.D.; and JOHN
HARPER, M.D.,

Defendants.

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CIVIL ACTION NO.
3-00-CV-1007-P

ORIGINAL

COURT'S CHARGE TO THE JURY

MEMBERS OF THE JURY:

Now that you have heard all of the evidence, it becomes my duty to give you the instructions of the Court concerning the law applicable to this case.

It is your duty as jurors to follow the law as I shall state it to you, and to apply that law to the facts as you find them from the evidence in the case. You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole. Neither are you to be concerned with the wisdom of any rule of rule stated by me.

Regardless of any opinion you may have as to what the law is or ought to be, it would be a violation of your sworn duty to base a verdict upon any view of the law other than that given in the instructions of the Court, just as it would also be a violation of your sworn duty, as judges of the facts, to base a verdict upon anything other than the evidence in the case.

In deciding the facts of this case, you must not be swayed by bias or prejudice or favor as to any party. A corporation and all other persons are equal before the law and must be treated as equals in a court of justice. Our system of law does not permit jurors to be governed by prejudice or sympathy or public opinion. Both the parties and the public expect that you will carefully and impartially consider all of the evidence in the case, follow the law as stated by the Court in these instructions, and reach a just verdict regardless of the consequences.

A corporation is responsible for the acts of its officers, agents, or employees that are done within the scope of their authority delegated to them by the corporation, or within the scope of their duties as employees of the corporation. An "employee" is a person in the service of another with the understanding, express or implied, that such other person has the right to direct the details of the work and not merely the result sought to be accomplished. A party is an "agent" of another party if the party acts with the other party's authority. Authority for another to act for a party must arise from the party's agreement that the other act on behalf and for the benefit of the party. If a party so authorizes another to perform an act, that other party is also authorized to do whatever else is proper, usual, and necessary to perform the act expressly authorized.

As stated earlier, it is your duty to determine the facts, and in so doing you must consider only the evidence I have admitted in the case. The term "evidence" includes the sworn testimony of the witnesses, the exhibits admitted in the record, and stipulated facts. Stipulated facts must be accepted as proven facts. Any evidence as to which an objection was sustained by the Court and any evidence ordered stricken by the Court, must be entirely disregarded.

Remember that any statements, objections or arguments made by the lawyers are not evidence in the case. The function of the lawyers is to point out those things that are most

significant or most helpful to their side of the case, and in so doing, to call your attention to certain facts or inferences that might otherwise escape your notice. In the final analysis, however, it is your own recollection and interpretation of the evidence that controls in the case. What the lawyers say is not binding upon you.

Generally speaking, there are two types of evidence which a jury may consider in properly finding the truth as to the facts in this case. One is "direct" evidence — such as testimony of an eyewitness. The other is "indirect" or "circumstantial" evidence — the proof of a chain of circumstances which points to the existence or nonexistence of certain facts. As a general rule, the law makes no distinction between direct and circumstantial evidence, but simply requires that the jury find the facts from a preponderance of all the evidence, both direct and circumstantial.

So, while you should consider only the evidence in the case, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified in the light of common experience. In other words, you may make deductions and reach conclusions which reason and common sense lead you to draw from the facts which have been established by the testimony and evidence in the case.

Now, I have said that you must consider all of the evidence. This does not mean, however, that you must accept all of the evidence as true or accurate. You are the sole judges of the credibility or "believability" of each witness and the weight to be given to his or her testimony. In weighing the testimony of a witness, you should consider his or her relationship to Plaintiff or to Defendant; his or her interest, if any, in the outcome of the case; his or her manner of testifying; his or her opportunity to observe or acquire knowledge concerning the facts about which he or she testified; his or her candor, fairness and intelligence; and the extent to which he

or she has been supported or contradicted by other credible evidence. You may, in short, accept or reject the testimony of any witness in whole or in part.

Also, the weight of the evidence is not necessarily determined by the number of witnesses testifying as to the existence or nonexistence of any fact. You may find that the testimony of a smaller number of witnesses as to any fact is more credible than the testimony of a larger number of witnesses to the contrary.

During the trial of this case, certain testimony has been read to you by way of depositions, consisting of sworn answers to questions asked of the witnesses in advance of trial. Such testimony is entitled to the same consideration and is to be judged as to credibility, and weighed, and otherwise considered by the jury in the same way, insofar as possible, as if the witness had been present and had given from the witness stand the same testimony as given in the deposition.

I will instruct you as to which party has the burden of proof on each essential element of its claim in the case. The party having the burden of proof on each issue of fact must prove that fact by a "preponderance of the evidence." A preponderance of the evidence means such evidence as, when considered and compared with that opposed to it, has more convincing force and produces in your minds a belief that what is sought to be proved is more likely true than not true. In other words, to establish a claim by a preponderance of the evidence merely means to prove that the claim is more likely so than not so.

In determining whether any fact in issue has been proved by a preponderance of the evidence, you the jury may consider the testimony of all the witnesses, regardless of who may have called them, and all the exhibits received in evidence, regardless of who may have introduced them. If the proof should fail to establish any essential element of Plaintiffs' claim by

a preponderance of the evidence, the jury should find for Defendants as to that claim. If the proof should fail to establish by a preponderance of the evidence any essential element of a defense raised by the Defendants, the jury should find for the Plaintiffs as to that defense.

A witness may be “impeached” or discredited by contradictory evidence, by a showing that he or she testified falsely concerning a material matter, or by evidence that at some other time he or she said or did something, or failed to say or do something, which is inconsistent with the witness’ present testimony.

If you believe that any witness has been so impeached, it is in your exclusive province to give the testimony of that witness such credibility or weight, if any, as you think it deserves.

In answering the questions which I will submit to you, answer “yes” or “no” unless otherwise instructed. A “yes” answer must be based on a preponderance of the evidence. If you do not find that a preponderance of the evidence supports a “yes” answer, then answer “no.”

You should not interpret the fact that I have given instructions about Plaintiffs’ damages as an indication in any way that I believe that Plaintiffs should, or should not, win this case.

After I have completed reading these instructions and reviewing the verdict form and jury questions with you, counsel will have the opportunity to make their closing arguments.

Your verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that all members of the jury agree to each question. You therefore may not enter into an agreement to be bound by a majority or any vote other than a unanimous one.

Remember at all times that you are not partisans. Rather, you are judges — judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

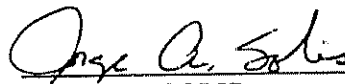
Upon retiring to the jury room, you should first select one juror to act as your presiding

officer who will preside over your deliberations and will be your spokesperson here in Court. A verdict form has been prepared for your convenience. Your presiding officer will sign in the space provided below after you have reached your verdict.

If, during your deliberations, you wish to communicate with the Court, you should do so only in writing by a note handed to the Deputy Marshal and signed by the presiding officer. During your deliberations, you will set your own work schedule, deciding for yourselves when and how frequently you wish to recess and for how long.

After you have reached your verdict, you will return these instructions together with your written answers to the questions that I will submit to you. Do not reveal your answers until such time as you are discharged, unless otherwise directed by me.

Date: August 26th, 2004.



JORGE A. SOLIS
UNITED STATES DISTRICT JUDGE

HEALTH CARE QUALITY IMPROVEMENT ACT ("HCQIA")

HCQIA was passed by Congress to improve the quality of medical care by encouraging physicians to identify and discipline physicians who are incompetent or who engage in unprofessional behavior. This process is referred to as peer review. As you are aware, this lawsuit arises from Plaintiffs' claim that the Defendants misused the peer review process when his privileges were suspended on May 14, 1998 and on May 29, 1998.

Plaintiffs claim that the Defendants' actions on or before May 14, 1998 and on May 29, 1998 were in reality a suspension of his privileges because he only signed the abeyance under the threat of immediate suspension of all of his privileges. Defendants claim that Dr. Poliner voluntarily agreed to accept the abeyance.

HCQIA provides that an immediate suspension or restriction of clinical privileges may be made, subject to subsequent notice and hearing or other adequate procedures, where the failure to take such an action may result in an imminent danger to the health of any individual. The Presbyterian Medical Staff Bylaws provide that when the acts of a practitioner through his lack of competence, or failure to care adequately for his patients constitutes a present danger to the health of his patients, all or any of the clinical privileges of a practitioner may be summarily suspended. Under the law, Defendants had the legal right to suspend or to threaten to suspend Dr. Poliner's privileges on May 14, 1998 and on May 29, 1998 if the failure to take such an action may have resulted in an imminent danger to the health of any individual or if Dr. Poliner constituted a present danger to the health of his patients. In determining whether the Defendants are entitled to the immunity afforded by the HCQIA, you must only consider the events and actions that occurred on or before May 14, 1998 and May 29, 1998.

QUESTION NO. 1

Plaintiff has the burden of proof on this question. Do you find by a preponderance of the evidence that the Defendants did not have a reasonable belief on or before May 14, 1998 or May 29, 1998 that Dr. Poliner posed an imminent danger to the health of any individual or that Dr. Poliner constituted a present danger to the health of his patients?

Answer "Yes, the Defendants did not have a reasonable belief" or "No, the Defendants did have a reasonable belief".

James Knochel, M.D.

May 14, 1998 ANSWER: yes

May 29, 1998 ANSWER: yes

Charles Levin, M.D.

May 14, 1998 ANSWER: yes

May 29, 1998 ANSWER: yes

John Harper, M.D.

May 14, 1998 ANSWER: yes

May 29, 1998 ANSWER: yes

Presbyterian Hospital

May 14, 1998 ANSWER: yes

May 29, 1998 ANSWER: yes

If you have answered "No" as to all Defendants in Question No. 1, proceed to the last page entitled Certificate, sign the verdict form, and do not answer any further questions. If you have answered "Yes" as to any Defendant in Question No. 1, proceed to the section entitled

Abeyance and answer Question No. 2.

ABEYANCE

The Medical Staff Bylaws provide that in order to constitute an abeyance, the action affecting Dr. Poliner's privileges must be agreed to by him. If you find by a preponderance of the evidence that Dr. Poliner's agreement to the May 14, 1998 letter or to the May 29, 1998 letter was caused by duress, if any, imposed by the Defendants, you may not find that Dr. Poliner agreed to the abeyance. Duress is the mental, physical, or economic coercion of another, causing that party to act contrary to his or her free will and interest.

QUESTION NO. 2

Do you find by a preponderance of the evidence that Dr. Poliner did not agree to the abeyance on May 14, 1998 or on May 29, 1998?

Answer "Yes, Dr. Poliner did not agree to the abeyance" or "No, Dr. Poliner did agree to the abeyance" as to May 14, 1998.

ANSWER: Yes

Answer "Answer "Yes, Dr. Poliner did not agree to the abeyance" or "No, Dr. Poliner did agree to the abeyance" as to May 29, 1998.

ANSWER: Yes

Proceed to the section entitled HCQIA Immunity and answer Question No. 3.

HCQIA IMMUNITY

The HCQIA provides that if a professional review action meets the standards set forth below, then the professional review body, any person acting as a member or staff to the body, any person under a contract or other formal agreement with the body, and any person who participates with or assists the body with respect to the action, shall not be liable in damages under any law of the United States or of any State with respect to the action. Specifically, a professional review action must be taken:

- (1) in the reasonable belief that the action was in the furtherance of quality health care,
- (2) after a reasonable effort to obtain the facts of the matter,
- (3) after adequate notice and hearing procedures are afforded to the physician involved or after such other procedures as are fair to the physician under the circumstances, and
- (4) in the reasonable belief that the action was warranted by the facts known after such reasonable effort to obtain facts and after meeting the requirement of paragraph (3).

A "professional review action" is an action or recommendation of a professional review body which is taken or made in the conduct of professional review activity, which is based on the competence or professional conduct of an individual physician (which conduct affects or could affect adversely the health or welfare of a patient or patients), and which affects (or may affect) adversely the clinical privileges, or membership in a professional society, of the physician. You are instructed that the actions of Defendants with respect to the suspension of Dr. Poliner's cardiac catheterization lab privileges on May 14, 1998 and May 29, 1998 were "professional review actions" pursuant to the provisions of federal law cited above.

A "professional review activity" is an activity of a health care entity with respect

to an individual physician –

- (a) to determine whether the physician may have clinical privileges with respect to, or membership in, the entity,
- (b) to determine the scope or conditions of such privileges or membership, or
- (c) to change or modify such privileges or membership.

A “professional review body” is a health care entity and the governing body or any committee of a health care entity which conducts professional review activity, and includes any committee of the medical staff of such an entity when assisting the governing body in a professional review activity.

To satisfy the first element, you must be satisfied that Defendants, with the information available to them at the time of the professional review action, would reasonably have concluded that their actions would restrict incompetent behavior or would protect patients.

In determining whether the Defendants made a reasonable effort to obtain the facts of the matter, you must consider the totality of the process leading up to the suspension of Dr. Poliner’s cardiac catheterization lab privileges on May 14, 1998 and on May 29, 1998.

QUESTION NO. 3

Do you find by a preponderance of the evidence that the suspension of Dr. Poliner's cardiac catheterization lab privileges on May 14, 1998 and on May 29, 1998 was not undertaken:

(1) in the reasonable belief that the action was in the furtherance of quality health care?

Answer "Yes, it was not undertaken" or "No, it was undertaken" as to each Defendant.

James Knochel, M.D.

May 14, 1998

ANSWER: Yes

May 29, 1998

ANSWER: Yes

Charles Levin, M.D.

May 14, 1998

ANSWER: Yes

May 29, 1998

ANSWER: Yes

John Harper, M.D.

May 14, 1998

ANSWER: Yes

May 29, 1998

ANSWER: Yes

Presbyterian Hospital

May 14, 1998

ANSWER: Yes

May 29, 1998

ANSWER: Yes

(2) after a reasonable effort to obtain the facts of the matter?

Answer "Yes, it was not undertaken" or "No, it was undertaken" as to each Defendant.

James Knochel, M.D.

May 14, 1998
May 29, 1998

ANSWER: yes
ANSWER: yes

Charles Levin, M.D.

May 14, 1998
May 29, 1998

ANSWER: yes
ANSWER: yes

John Harper, M.D.

May 14, 1998
May 29, 1998

ANSWER: yes
ANSWER: yes

Presbyterian Hospital

May 14, 1998
May 29, 1998

ANSWER: yes
ANSWER: yes

(3) after adequate notice and hearing procedures are afforded to the physician involved or after such other procedures as are fair to the physician under the circumstances?

Answer "Yes, it was not undertaken" or "No, it was undertaken" as to each Defendant.

James Knochel, M.D.

May 14, 1998
May 29, 1998

ANSWER: yes
ANSWER: yes

Charles Levin, M.D.

May 14, 1998
May 29, 1998

ANSWER: yes
ANSWER: yes

John Harper, M.D.

May 14, 1998

ANSWER: Yes

May 29, 1998

ANSWER: Yes

Presbyterian Hospital

May 14, 1998

ANSWER: Yes

May 29, 1998

ANSWER: Yes

(4) and in the reasonable belief that the action was warranted by the facts known after such reasonable effort to obtain facts and after meeting the requirement of paragraph (3)?

Answer "Yes, it was not undertaken" or "No, it was undertaken" as to each Defendant.

James Knochel, M.D.

May 14, 1998

ANSWER: Yes

May 29, 1998

ANSWER: Yes

Charles Levin, M.D.

May 14, 1998

ANSWER: Yes

May 29, 1998

ANSWER: Yes

John Harper, M.D.

May 14, 1998

ANSWER: Yes

May 29, 1998

ANSWER: Yes

Presbyterian Hospital

May 14, 1998

ANSWER: Yes

May 29, 1998

ANSWER: Yes

If you have answered "Yes, it was not undertaken" to any Defendant as to any part of Question No. 3, proceed to the section entitled Texas Peer Review Immunity Statutes and answer Question No. 4. If you have answered "No, it was undertaken" as to each Defendant as to all parts of Question No. 3, proceed to the last page entitled Certificate, sign the verdict form, and do not answer any further questions.

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TEXAS PEER REVIEW IMMUNITY STATUTES

In addition to the requirements of HCQIA, Texas law provides that a person, in good faith or without malice, who reports or furnishes information to a medical peer review committee, is immune from civil liability. Texas law further provides immunity from civil liability to a member of a medical peer review committee who takes an action within the scope of the functions of the committee, if that employee or agent acts without malice and in the reasonable belief that the action is warranted by the facts known to that person.

Malice is the making of a statement with knowledge that it is false, or with reckless disregard of whether it is false. Reckless disregard means that a statement is made with a high degree of awareness of probable falsity.

You are instructed that the actions of the Defendants in connection with May 14, 1998 and May 29, 1998 were actions taken in the course of medical peer review as provided by Texas state law described above.

QUESTION NO. 4

Do you find by a preponderance of the evidence that any of the following Defendants took an action within the scope of the functions of a medical peer review committee, with malice and not in the reasonable belief that the action was warranted by the facts known to that person?

Answer "Yes, Defendant acted with malice and not in the reasonable belief" or "No, Defendant acted without malice and in the reasonable belief" as to each Defendant.

James Knochel, M.D.

ANSWER: Yes

Presbyterian Hospital

ANSWER: Yes

Do you find by a preponderance of the evidence that any of the following Defendants, with malice and not in good faith, reported or furnished information to a medical peer review committee?

Answer "Yes, Defendant acted with malice and not in good faith" or "No, Defendant acted without malice and in good faith" as to each Defendant.

Charles Levin, M.D.

ANSWER: Yes

John Harper, M.D.

ANSWER: Yes

If you have answered "Yes" as to any Defendant listed in Question No. 4, proceed to the section entitled Release and answer Question No. 5. If you have answered "No" as

to all Defendants listed in Question No. 4, proceed to the last page entitled Certificate, sign the verdict form, and do not answer any further questions.

RELEASE

Defendants claim that Dr. Poliner released any claims he had against Defendants by virtue of the language in Dr. Poliner's Application for Appointment. Dr. Poliner's Application for Appointment signed on May 30, 1996 extends immunity to, releases, and holds harmless from any and all liability Presbyterian Hospital, its representatives, and its Medical Staff for summary suspensions made in good faith and without malice.

QUESTION NO. 5

Defendants have the burden of proof on this question. Do you find by a preponderance of the evidence that the Defendants' suspension of Dr. Poliner's cardiac catheterization privileges on or before May 14, 1998 and May 29, 1998 were made in good faith and without malice, and thus, effectively released Defendants from all claims asserted by Plaintiffs?

Answer "Yes" or "No".

May 14, 1998 ANSWER: No

May 29, 1998 ANSWER: No

If you have answered "Yes" to Question No. 5, proceed to the last page entitled Certificate, sign the verdict form, and do not answer any further questions. If you have answered "No" to Question No. 5, proceed to the section entitled Breach of Contract Damages and answer Question No. 6.

BREACH OF CONTRACT DAMAGES

Answer Question No. 6 only if you have answered "Yes" as to any Defendant in Questions No. 1 and 2.

QUESTION NO. 6

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Dr. Poliner for his damages, if any, that resulted from Presbyterian Hospital's failure to comply with its Bylaws?

In answering this question, you may only consider damages, if any, that resulted from the actions of Defendants occurring on or before May 14, 1998 and May 29, 1998. You may not, however, consider damages that stem from any action taken on or after June 12, 1998. Do not add any amount for interest on damages, if any.

Answer in dollars and cents for damages, if any.

loss of earnings Answer: 30,000,000.00

Proceed to the section entitled Defamation and answer Question No. 7.

DEFAMATION

Defamation is a defamatory statement orally communicated or published to a third person without legal excuse. Defamation is divided into two categories: libel and slander. Libel is the publication of a written statement without legal excuse, whereas slander is the publication of an oral statement without legal excuse.

In order to recover on his claim of defamation, Dr. Poliner must prove by a preponderance of the evidence that Defendants published a defamatory statement concerning Dr. Poliner. A defamatory statement is one in which the words tend to damage a person's reputation, exposing him or her to public hatred, contempt, ridicule, or financial injury, or deterring third persons from associating or dealing with him.

A statement is published if it is communicated orally, in writing, or in print to some third person capable of understanding their defamatory import and in such a way that the third person did so understand. A defamatory statement can be published by conduct. A statement is published by conduct when the communication is made and understood without words. To be actionable in defamation, a statement must contain an assertion of an objectively verifiable fact. Self-publication occurs when the plaintiff communicates a defamatory statement to a third party. An exception to the rule that the defendant must publish a statement exists when a reasonably prudent person would have expected that the plaintiff would communicate the defamatory statement to a third party.

QUESTION NO. 7

Do you find by a preponderance of the evidence that any of the following Defendants published a defamatory statement referring to Dr. Poliner in connection with the suspension of Dr. Poliner's cardiac catheterization privileges on or before May 14, 1998 or May 29, 1998?

Answer "Yes" or "No" as to each Defendant you answered "Yes" to in Question No. 4.

James Knochel, M.D.

ANSWER: yes

Charles Levin, M.D.

ANSWER: no

John Harper, M.D.

ANSWER: no

Presbyterian Hospital

ANSWER: yes

If you have answered "Yes" as to any Defendant in Question No. 7, proceed to answer Question No. 8. If you have answered "No" as to all Defendants in Question No. 7, proceed to the section entitled Business Disparagement and answer Question No. 12.

QUESTION NO. 8

Defendants have the burden of proof on this question. With respect to the defamatory statements found in Question No. 7, do you find by a preponderance of the evidence that all such defamatory statements were true?

Answer "Yes" or "No".

ANSWER: no

If you have answered "No" to Question No. 8, proceed to answer Question No. 9.
If you have answered "Yes" to Question No. 8, proceed to the section entitled Business Disparagement and answer Question No. 12.

DEFAMATION PER SE

Defamation *per se* consists of defamatory statements so obviously hurtful to the person aggrieved that they require no proof of their injurious character to make them actionable. To maintain a claim for defamation *per se*, the defamatory statement must involve the imputation of serious misconduct or impropriety (such as the commission of a crime), or that the statement must affect a person injuriously in his or her office, profession, or occupation.

QUESTION NO. 9

Do you find by a preponderance of the evidence that any of the following Defendants published a statement referring to Dr. Poliner that was defamatory *per se* in connection with the peer review action taken on or before May 14, 1998 or May 29, 1998?

Answer "Yes" or "No" as to each Defendant you answered "Yes" to in Question No. 4.

James Knochel, M.D.

ANSWER: yes

Charles Levin, M.D.

ANSWER: yes

John Harper, M.D.

ANSWER: yes

Presbyterian Hospital

ANSWER: yes

Regardless of whether you have answered "Yes" or "No" to Question No. 9,
proceed to answer Question No. 10.

QUALIFIED PRIVILEGE

As a defense to libel or slander, a qualified privilege extends to communications made in good faith on a subject in which the author has an interest or duty to another person having a corresponding interest or duty. The qualified privilege is lost, however, if the defamatory statement is in any degree actuated by malice. Malice is publication with the knowledge that the communication was false or with reckless disregard for whether it was false.

QUESTION NO. 10

Question No. 10(A) Defendant has the burden of proof on this question. With respect to each of the statements found by you in response to Question No. 7, do you find by the preponderance of the evidence that any of the Defendants had an interest or duty to another person having a corresponding interest or duty regarding the peer review action taken on May 14, 1998 or May 29, 1998?

Answer "Yes" or "No" as to each Defendant you answered "Yes" to in Question No. 4.

James Knochel, M.D.

ANSWER: no

Charles Levin, M.D.

ANSWER: no

John Harper, M.D.

ANSWER: No

Presbyterian Hospital

ANSWER: No

If you have answered "Yes" as to any Defendant in Question No. 10(A), proceed to answer Question No. 10 (B) with respect to such Defendant(s). If you have answered "No" as to all of the Defendants in Question No. 10(A), proceed answer Question No. 11.

Question No. 10(B) Plaintiff has the burden of proof on this question. With respect to the statements identified by you in Question 10(A), do you find by a preponderance of the evidence that Defendants made such statements with malice?

James Knochel, M.D.

ANSWER: _____

Charles Levin, M.D.

ANSWER: _____

John Harper, M.D.

ANSWER: _____

Presbyterian Hospital

ANSWER: _____

If you have answered "Yes" as to any Defendant in Question No. 10(B), proceed to answer Question No. 11 with respect to such Defendant(s). If you have answered "No" as to all of the Defendants in Question No. 10, proceed to the section entitled Business Disparagement and answer Question No. 12.

DEFAMATION DAMAGES

If you answered "Yes" to Question 9 as to any Defendant, then Dr. Poliner is presumed to have suffered general damages and you may estimate the amount of general damages without additional evidence. General damages may include injury to career and reputation and mental anguish. If you answered "No" to Question 9, then Dr. Poliner is not presumed to have suffered general damages, and you must assess what damages were proximately caused by such defamatory statements. In answering this question, you may only consider damages, if any, that resulted from the actions of Defendants occurring on or before May 14, 1998 and/or May 29, 1998. You may not, however, consider damages that stem from any action taken on or after June 12, 1998. Do not add any amount for interest on damages, if any.

"Proximate cause" means that cause which, in a natural and continuous sequence, produces an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using ordinary care would have foreseen that the event, or some similar event, might reasonably result therefrom. There may be more than one proximate cause of an event.

QUESTION NO. 11

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Dr. Poliner for his damages, if any, proximately caused by any such defamatory statements?

Consider the elements of damages listed below and none other. Consider each element separately and do not include damages for one element in any other element. Consider each Defendant separately and do not include damages as to one Defendant in assessing damages against any other Defendant.

Answer in dollars and cents as to each Defendant you answered "Yes" to in Question No. 4.

James Knochel, M.D.

loss of earnings

Answer: 10,526.55

injury to career and reputation

Answer: 20,000,000.00

mental anguish

Answer: 20,000,000.00

Charles Levin, M.D.

loss of earnings

Answer: 10526.55

injury to career and reputation

Answer: 5,000,000.00

mental anguish

Answer: 5,000,000.00

John Harper, M.D.

loss of earnings

Answer: 10,526.55

injury to career and reputation

Answer: 5,000,000.00

mental anguish

Answer: 5,000,000.00

Presbyterian Hospital

loss of earnings

Answer: 10,526.25

injury to career and reputation

Answer: 15,000,000.00

mental anguish

Answer: 15,000,000.00

Proceed to the section entitled Business Disparagement and answer Question No.

12.

BUSINESS DISPARAGEMENT

Whereas an action for defamation protects the personal reputation of an injured person, an action for business disparagement protects the economic interests of the injured party against lost earnings. To recover on a claim of business disparagement, Lawrence Poliner, M.D., P.A. must prove the following:

- (1) that a Defendant published a false, disparaging statement;
- (2) that the statement concerned the economic interests of Lawrence Poliner, M.D., P.A.; and
- (3) that the statement was made with knowledge of the falsity of the disparaging statement or with reckless disregard concerning its falsity, or with spite, ill will, and evil motive, or intending to interfere in the economic interests of the Lawrence Poliner, M.D., P.A.

A statement is disparaging if it is understood to cast doubt upon the quality of another's land, chattels or intangible things, or upon the existence or extent of his or her property in them, and the publisher intends the statement to cast the doubt, or the recipient's understanding of it as casting the doubt was reasonable.

Reckless disregard means that a statement is made with a high degree of awareness of probable falsity.

A statement is published if it is communicated orally, in writing, or in print to some third person capable of understanding their defamatory import and in such a way that the third person did so understand. A defamatory statement can be published by conduct. A statement is published by conduct when the communication is made and understood without words. To be actionable in defamation, a statement must contain an assertion of an objectively verifiable fact. Self-publication occurs when the plaintiff

communicates a defamatory statement to a third party. An exception to the rule that the defendant must publish a statement exists when a reasonably prudent person would have expected that the plaintiff would communicate the defamatory statement to a third party.

Plaintiffs must establish lost earnings that have been realized, and the communication must play a substantial part in inducing others not to deal with Lawrence Poliner, M.D., P.A. with the result that special damage, in the form of lost earnings, is established.

QUESTION NO. 12

Did any of the Defendants with malice publish a disparaging statement regarding Lawrence Poliner, M.D., P.A.'s economic interests in connection with the suspension of Dr. Poliner's cardiac catheterization privileges on or before May 14, 1998 or May 29, 1998 that were false?

Answer "Yes" or "No" as to each Defendant you answered "Yes" to in Question No. 4.

James Knochel, M.D.

ANSWER: yes

Charles Levin, M.D.

ANSWER: yes

John Harper, M.D.

ANSWER: yes

Presbyterian Hospital

ANSWER: yes

If you have answered "Yes" as to any Defendant in Question No. 12, proceed to answer Question No. 13. If you have answered "No" as to all the Defendants listed in Question No. 12, proceed to the section entitled Interference with Contractual Relations and answer Question No. 14.

BUSINESS DISPARAGEMENT DAMAGES

In answering this question, you may only consider damages, if any, that resulted from the actions of Defendants occurring on or before May 14, 1998 and May 29, 1998. You may not, however, consider damages that stem from any action taken on or after June 12, 1998. Do not add any amount for interest on damages, if any.

QUESTION NO. 13

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Lawrence Poliner, M.D., P.A. for its damages, if any, that resulted from any such disparaging statements caused by Defendants?

Consider the elements of damages listed below and none other. Consider each element separately and do not include damages for one element in any other element. Consider each Defendant separately and do not include damages as to one Defendant in assessing damages against any other Defendant. Answer in dollars and cents for damages as to each Defendant you answered "Yes" to in Question No. 4.

James Knochel, M.D.

loss of earnings

Answer: 1,000,000.00

Charles Levin, M.D.

loss of earnings

Answer: 1,000,000.00

John Harper, M.D.

loss of earnings

Answer: 1,000,000.00

Presbyterian Hospital

loss of earnings

Answer: 1,000,000.00

Proceed to the section entitled Interference with Contractual Relations and answer Question No. 14.

INTERFERENCE WITH CONTRACTUAL RELATIONS

To recover for tortious interference with an existing contract, Plaintiffs must prove: (1) the existence of a contract subject to interference, (2) the act of interference was willful and intentional, (3) such intentional act was a proximate cause of Plaintiffs' damage and (4) actual damage or loss occurred.

Any such contract does not have to be in writing.

If the interference was merely an incidental result of conduct the Defendant(s) was engaging in for another purpose, the interference may be considered unintentional.

"Proximate cause" means that cause which, in a natural and continuous sequence, produces an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using ordinary care would have foreseen that the event, or some similar event, might reasonably result therefrom. There may be more than one proximate cause of an event.

To recover for wrongful interference with prospective contracts, Plaintiffs must prove: (1) there was a reasonable probability that Plaintiffs would have entered into the contracts; (2) that Defendants intentionally prevented the contractual relations from occurring with the purpose of harming Plaintiffs; and (3) that Defendants conduct was independently tortious or wrongful.

Any such contract does not have to be in writing.

QUESTION NO. 14

As of May 14, 1998, did Plaintiffs have existing contracts with patients, health care plans, insurance companies, referral physicians, third party payors, hospitals other than Presbyterian Hospital, or medical institutions?

Answer "Yes" or "No".

ANSWER: No

If you have answered "Yes" to Question No. 14, proceed to the section entitled Intentional Infliction of Emotional Distress and answer Question No. 18. If you have answered "No" to Question No. 14, proceed to the section entitled Justification and answer Question No. 16.

QUESTION NO. 15

Do you find by a preponderance of the evidence that any of the Defendants intentionally interfered with Plaintiffs' existing and prospective contracts with patients, health care plans, insurance companies, referral physicians, third party payors, hospitals other than Presbyterian Hospital, or medical institutions?

Answer "Yes" or "No" as to each Defendant you answered "Yes" to in Question No. 4.

James Knochel, M.D.

Existing contracts ANSWER: Yes

Prospective contracts ANSWER: Yes

Charles Levin, M.D.

Existing contracts ANSWER: Yes

Prospective contracts ANSWER: Yes

John Harper, M.D.

Existing contracts ANSWER: Yes

Prospective contracts ANSWER: Yes

Presbyterian Hospital

Existing contracts ANSWER: Yes

Prospective contracts ANSWER: Yes

If you have answered "Yes" as to any Defendant in Question No. 15, proceed to answer Question No. 16. If you have answered "No" as to all Defendants in Question No. 15, proceed to the section entitled Intentional Infliction of Emotional Distress and

answer Question No. 18.

JUSTIFICATION DEFENSE

A party is justified in interfering with another's contract if it exercises its own legal rights or a good faith claim to a colorable legal right, even though that claim ultimately proves to be mistaken. Defendants have the burden to prove that the interference was justified.

QUESTION NO. 16

Defendant has the burden of proof on this question. Did any of the Defendants interfere because they had a good-faith belief that they had a right to do so?

Answer "Yes" or "No" as to each Defendant you answered "Yes" to in Question No. 4.

James Knochel, M.D.

ANSWER: No

Charles Levin, M.D.

ANSWER: No

John Harper, M.D.

ANSWER: No

Presbyterian Hospital

ANSWER: No

If you have answered "Yes" to Question No. 16, proceed to the section entitled Intentional Infliction of Emotional Distress and answer Question No. 18. If you have

answered "No" to Question No. 16, proceed to answer Question No. 17 only with respect to the Defendants to which you answered "No".

INTERFERENCE WITH CONTRACTUAL RELATIONS DAMAGES

Plaintiffs must show actual damage or loss was proximately caused by the alleged interference. "Proximate cause" means that cause which, in a natural and continuous sequence, produces an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using ordinary care would have foreseen that the event, or some similar event, might reasonably result therefrom. There may be more than one proximate cause of an event.

In answering this question, you may only consider damages, if any, proximately caused by the Defendants' interference occurring on or before May 14, 1998 and May 29, 1998. You may not, however, consider damages that stem from any action taken on or after June 12, 1998. Do not add any amount for interest on damages, if any.

QUESTION NO. 17

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Plaintiffs for their damages, if any, proximately caused by such interference?

Consider the elements of damages listed below and none other. Consider each element separately and do not include damages for one element in any other element. Consider each Defendant separately and do not include damages as to one Defendant in assessing damages against any other Defendant. Answer in dollars and cents for damages as to each Defendant you answered "Yes" to in Question No. 4.

James Knochel, M.D.

loss of earnings	Answer: <u>37,000.00</u>
injury to career and reputation	Answer: <u>20,000,000.00</u>
mental anguish	Answer: <u>20,000,000.00</u>

Charles Levin, M.D.

loss of earnings	Answer: <u>37,000.00</u>
injury to career and reputation	Answer: <u>5,000,000.00</u>
mental anguish	Answer: <u>5,000,000.00</u>

John Harper, M.D.

loss of earnings

Answer: 37,000.00

injury to career and reputation

Answer: 5,000,000.00

mental anguish

Answer: 5,000,000.00

Presbyterian Hospital

loss of earnings

Answer: 37,000.00

injury to career and reputation

Answer: 15,000,000.00

mental anguish

Answer: 15,000,000.00

Proceed to the section entitled Intentional Infliction of Emotional Distress and answer Question No. 18.

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

Intentional infliction of emotional distress occurs when a defendant acts intentionally or recklessly with extreme and outrageous conduct to cause the plaintiff emotional distress and the emotional distress suffered by the plaintiff was severe.

Conduct is intentional if the defendant desires to cause the consequences of his/its act or believes that the consequences are substantially certain to result from the act.

Conduct is reckless if the defendant knows or has reason to know of facts that create a high degree of risk of harm to another and deliberately proceeds to act in conscious disregard of or indifference to the risk.

“Extreme and outrageous conduct” occurs only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized society.

QUESTION NO. 18

Did any of the Defendants intentionally inflict severe emotional distress on Dr. Poliner?

Answer "Yes" or "No" as to each Defendant you answered "Yes" to in Question No. 4.

James Knochel, M.D.

ANSWER: Yes

Charles Levin, M.D.

ANSWER: Yes

John Harper, M.D.

ANSWER: Yes

Presbyterian Hospital

ANSWER: Yes

If you have answered "Yes" to Question No. 18, proceed to answer Question No. 19. If you have answered "No" to Question No. 18, proceed to the section entitled Exemplary Damages and answer Question No. 20.

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS DAMAGES

“Proximate cause” means that cause which, in a natural and continuous sequence, produces an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using ordinary care would have foreseen that the event, or some similar event, might reasonably result therefrom. There may be more than one proximate cause of an event.

In answering this question, you may only consider damages, if any, that resulted from the actions of Defendants occurring on or before May 14, 1998 and on May 29, 1998. You may not, however, consider damages that stem from any action taken on or after June 12, 1998. Do not add any amount for interest on damages, if any.

QUESTION NO. 19

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Dr. Poliner for his emotional distress, if any, proximately caused by Defendants?

Consider the elements of damages listed below and none other. Consider each element separately and do not include damages for one element in any other element. Consider each Defendant separately and do not include damages as to one Defendant in assessing damages against any other Defendant.

Answer in dollars and cents for damages as to each Defendant you answered

"Yes" to in Question No. 4.

James Knochel, M.D.

loss of earnings

Answer: 10,526.55

mental anguish

Answer: 20,000,000.00

Charles Levin, M.D.

loss of earnings

Answer: — 0 —

mental anguish

Answer: 1,000,000.00

John Harper, M.D.

loss of earnings

Answer: — 0 —

mental anguish

Answer: 1,000,000.00

Presbyterian Hospital

loss of earnings

Answer: 10,526.55

mental anguish

Answer: 20,000,000.00

Proceed to the section entitled Exemplary Damages and answer Question No. 20.

EXEMPLARY DAMAGES

“Exemplary damages” means an amount that you may in your discretion award as a penalty or by way of punishment.

For purposes of this question only, “malice” means:

- (a) a specific intent by any of the following to cause substantial injury to Dr. Poliner; or
- (b) an act or omission by any of the following,
 - (i) which, when viewed objectively from the standpoint of any of the following at the time of its occurrence, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and
 - (ii) of which any of the following had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of others.

QUESTION NO. 20

Do you find by clear and convincing evidence that the harm caused by any of the Defendants resulted from malice?

Clear and convincing evidence requires a greater degree of persuasion than the preponderance of the evidence standard; however, proof to an absolute certainty is not required.

Answer "Yes" or "No" as to each Defendant you answered "Yes" to in Question

No. 4.

James Knochel, M.D.

ANSWER: Yes

Charles Levin, M.D.

ANSWER: Yes

John Harper, M.D.

ANSWER: Yes

Presbyterian Hospital

ANSWER: Yes

If you have answered "Yes" as to any Defendant in Question 20, then answer Question No. 21. Otherwise, proceed to the last page entitled Certificate, sign the verdict form, and do not answer any further questions.

QUESTION NO. 21

In answering this question, you may only consider damages, if any, that resulted from the actions of Defendants occurring on or before May 14, 1998 and May 28, 1998. You may not, however, consider damages that stem from any action taken on or after June 12, 1998.

Factors to consider in awarding exemplary damages, if any, are –

- a. The nature of the wrong.
- b. The character of the conduct involved.
- c. The degree of culpability of each Defendant.
- d. The situation and sensibilities of the parties concerned.
- e. The extent to which such conduct offends a public sense of justice and propriety.
- f. The net worth of the Defendants.

Exemplary damages can be assessed against Presbyterian Hospital as a principal because of an agent by an agent, but only if:

- a. Presbyterian authorized the doing and the manner of the act; or
- b. the agent was unfit and Presbyterian was reckless in employing him; or
- c. the agent was employed in a managerial capacity and was acting in the scope of employment with Presbyterian Hospital; or
- d. Presbyterian Hospital or a manager of Presbyterian Hospital ratified or approved the act.

What sum of money, if any, if paid now in cash, should be assessed against any of the Defendants and awarded to Plaintiffs as exemplary damages, if any, for the conduct found in response to Question 20?

Consider each Defendant separately and do not include damages as to one Defendant in assessing damages against any other Defendant. Answer only as to the Defendants which you answered "Yes" to in Question 4.

James Knochel, M.D.	\$ <u>40,000,000.00</u>
Charles Levin, M.D.	\$ <u>10,000,000.00</u>
John Harper, M.D.	\$ <u>10,000,000.00</u>
Presbyterian Hospital	\$ <u>50,000,000.00</u>

CERTIFICATE

We, the jury, have answered the above and foregoing questions as herein indicated, and herewith return same into court as our verdict.

DATE: August 27, 2004

BY: James Lee Outzy

PRESIDING OFFICER OF THE JURY