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LAW & DISORDER —

Dentist who used copyright to silence her patients is on the run

Dr. Makhnevich threatened patients who wrote bad Yelp reviews with lawsuits.

JOE MULLIN - 7/28/2013, 6:00 PM



Dentists can be scary even when they don't threaten their patients over online reviews.

A lawsuit regarding a dentist and her ticked-off patient was meant to be a test of a controversial copyright contract created by a company called Medical Justice. Just a day after the lawsuit was filed, though, Medical Justice **backed down**, saying it was “retiring” that contract.

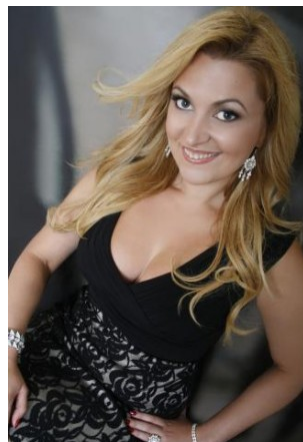
Now, more than a year after the lawsuit was filed, the case against Dr. Stacy Makhnevich seems to have turned into a case about a fugitive dentist. Makhnevich is nowhere to be found, won’t defend the lawsuit, and her lawyers have asked to withdraw from the case.

No-criticism contract promised additional “privacy”

In 2010, Robert Lee was experiencing serious dental pain. He went to see Dr. Stacy Makhnevich, the “Classical Singer Dentist of New York,” in part because she was a preferred provider for his dental insurance company. Before Makhnevich treated him, she asked him to sign a contract titled “Mutual Agreement to Maintain Privacy.”

The contract worked like this: in return for closing “loopholes” in HIPAA privacy law, Lee promised to refrain from publishing any “commentary” of

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Makhnevich, online or elsewhere. The contract specified that Lee should “not denigrate, defame, disparage, or cast aspersions upon the Dentist.”

And the kicker: if he did write such reviews, the copyright would be assigned to the dentist. She’d own it.

This “I own your criticism” contract would soon be put to the test, because Lee was an extremely unhappy customer. “Avoid at all cost!” he wrote in a one-star Yelp [review](#). “Scamming their customers! Overcharged me by about \$4000 for what should have been only a couple-hundred dollar procedure.”

The forms Makhnevich was using, provided to her by a company called [Medical Justice](#), were already the subject of considerable controversy. Two tech-savvy law professors, Eric Goldman of Santa Clara University and Jason Schultz of UC Berkeley, launched a [website](#) to fight the contracts, which garnered considerable [press](#). Former Ars Technica writer Tim Lee chronicled his own [experience](#) with a Philadelphia dentist who was using the contract.

The “Mutual Agreement” was essentially a work-around to try to stifle patient reviews. Doctors, or any other business, who believe that an online review is, say, defamatory, can go ahead and sue a reviewer—but they don’t have an easy way to get the review down. Review sites like Yelp are protected by Section 230 of the Communications Decency Act, which

immunizes the platforms hosting such user-generated content, as long as they don't edit it heavily. Review sites in the US don't typically remove posts when a business claims defamation.

Copyright, however, is a different story. Section 230 doesn't cover intellectual property laws, and Yelp has to react quickly to claims that a user has violated copyright law.

Users of the Medical Justice form were counting on that, and it worked. In September 2011, staff members of Dr. Makhnevich sent DMCA takedown notices to Yelp and DoctorBase. That was followed up with invoices sent to Robert Lee, saying he owed \$100 per day for copyright infringement. Accompanying letters threatened to pursue "all legal actions" against him.

Makhnevich disappears: The Streisand Effect "gone bonkers"

Lee got in touch with attorney Paul Levy at Public Citizen, who has a history of taking on Internet free-speech issues, and was looking for a way to challenge the Medical Justice contract. In November 2011, Public Citizen filed a **lawsuit** seeking class action status, arguing that Lee's reviews were fair use and non-defamatory. The lawsuit also alleged that Makhnevich's "don't criticize me" contracts were violations of New York business laws and dental ethics rules.

Levy envisioned a courtroom showdown with Medical Justice—but the case hasn't panned out that way. Medical Justice hasn't defended the contract. And in the last few months, Makhnevich seems to have disappeared entirely. Her own lawyers can't get in touch with her. On Tuesday, US District Judge Paul Crotty held a conference about whether the lawyers should be allowed to withdraw from the case. (They'll be allowed to, with a few conditions.)

"Defendant Makhnevich has closed its business in New York, has closed its offices, and has not made herself available to respond to this matter," wrote Makhnevich's lawyers on June 25. At that time, they hadn't communicated with Makhnevich in three months, and that communication had been through her assistant.

"We brought this lawsuit to make sure she stopped and to point out to other dentists that they couldn't do this," said Levy in an interview with Ars. "We thought Medical Justice would step in to defend her. Instead, they walked away from it and left her holding the bag. And now she's left her lawyers holding the bag."

Levy is seeking to get Lee back the money he was overcharged and to have notice sent to Makhnevich's other patients that the contracts they signed don't prevent them from writing reviews. He's also seeking to get legal fees paid for; it cost \$3,000 to serve Makhnevich, he noted.

It isn't clear whether Makhnevich is

practicing dentistry or not, but the disappearing act she pulled in this case would suggest she isn't.

"It's quite possible that the consequence of her having this contract is that she had to give up her dental practice," said Levy. "It's the **Streisand effect** gone bonkers."

Unless she shows up soon, the case is likely to end in a default judgment. At that point Levy would attempt to collect payment from her insurance company, or any other source. "She may have some assets," said Levy. "Dental equipment is not cheap."

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