

An associate professor in the pediatrics department of a local medical school was denied tenure. He asked a national education lobbying organization to represent him in his efforts to have the tenure decision reversed. In response to a letter from the organization on the professor's behalf, the dean of the medical school wrote to the organization explaining truthfully that the professor had been denied tenure because of reports that he had abused two of his former patients. Several months later, after a thorough investigation, the allegations were proven false, and the professor was granted tenure. He had remained working at the medical school at full pay during the tenure decision review process and thus suffered no pecuniary harm.

In a suit for libel by the professor against the dean of the medical school, will the professor be likely to prevail?

- A. No, because the professor invited the libel.
- B. No, because the professor suffered no pecuniary loss.
- C. Yes, because the dean had a duty to investigate the rumor before repeating it.
- D. Yes, because the dean's defamatory statement was in the form of a writing.

### Explanation:

**Libel** is a defamatory statement that appears in **written or other physical form**. To prevail in a suit for libel, the plaintiff must prove all of the following:

The defendant knowingly made a false statement about the plaintiff *or* negligently failed to determine its falsity.

That type of statement would tend to harm the plaintiff's reputation.

The defendant intentionally or negligently communicated that statement to a third party (the key to a defamation claim).

However, consent (apparent, actual, or implied) is a **complete defense** to defamation. **Apparent consent** exists when the plaintiff's words or conduct were **reasonably understood** by the defendant as consent to the defamatory communication.

Here, the dean's written response to the organization may have been libelous since it contained false allegations that the professor had abused patients. But since the professor had authorized the organization to investigate his case, it was *reasonable* for the dean to understand that the professor had invited a response to the organization's inquiry (apparent consent). Therefore, the dean has a valid defense and the professor's claim will likely fail.

**(Choice B)** Although pecuniary loss is an element of slander (spoken defamation), it is not required for libel (written defamation) since harm is presumed. Therefore, the fact that the professor suffered no pecuniary loss would not defeat his libel claim.

**(Choice C)** Even if the dean had a duty to investigate the rumor before repeating it (and breached that duty by negligently failing to determine its falsity), the professor will not prevail because the dean has a valid defense to libel (apparent consent).

**(Choice D)** Although the dean's defamatory statement appeared in physical form (libel) as a written response to the organization's inquiry, the professor will not prevail because he gave the dean apparent consent to respond to that inquiry.

### Educational objective:

Apparent consent is a defense to defamation when the plaintiff's words or conduct were reasonably understood by the defendant to indicate consent to the defamatory communication.

### References

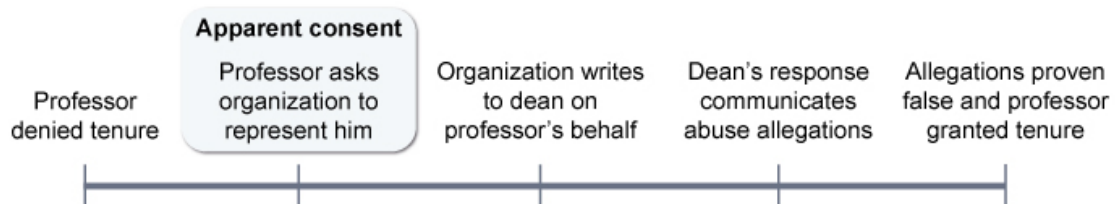
Restatement (Second) of Torts § 558 (Am. Law Inst. 1977) (elements of defamation).

Restatement (Second) of Torts § 568 (Am. Law Inst. 1977) (libel and slander distinguished).

Restatement (Second) of Torts § 583 (Am. Law Inst. 1977) (consent as a defense to defamation).

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