

A board-certified vascular surgeon applied for privileges at a newly built hospital to expand his practice. The chief of vascular surgery at the hospital decided to sabotage the surgeon's application in order to maintain exclusive control over the vascular surgery department. The chief told the hospital's board members, who were responsible for reviewing the surgeon's application, that she had received disturbing data about his practice's unusually high patient-mortality rates. She then presented the board with data that she had fabricated. The board was disturbed by the fabricated data and therefore decided to reject the surgeon's application.

As a result of the board's decision to reject his application, the surgeon is unable to perform surgeries at the newly built hospital. The surgeon claims that his practice has suffered pecuniary losses in the form of lost revenue. He has sought the advice of his attorney regarding which action against the chief of vascular surgery is most likely to succeed.

What sort of action against the chief of vascular surgery should the attorney recommend?

- A. Intentional interference with an existing contract.
- B. Intentional misrepresentation of the mortality rates of the surgeon's practice.
- C. Slander of title regarding the ownership of the surgeon's practice.
- D. Trade libel for a false statement regarding the surgeon's practice.

Explanation:

Injurious falsehoods

Defamation False & derogatory statements that harm plaintiff's *personal reputation*

Slander of title False & derogatory statements that harm or call into question plaintiff's *ownership of real property*

Trade libel False & derogatory statements that harm plaintiff's *business or products*

Trade libel imposes tort liability for statements (oral or written) that injure a plaintiff's business or products. To recover for trade libel, the plaintiff must prove the following:

The defendant made a **false and derogatory statement** about the **quality of the plaintiff's business or products** (eg, the chief stated that the surgeon's practice had unusually high patient-mortality rates, which reflected poorly on the medical services provided by the surgeon).

The statement was made with **actual malice**, meaning that the defendant knew of or recklessly disregarded its falsity (eg, the chief fabricated the patient-mortality data).

The defendant **intentionally or negligently communicated** the statement to a third party, **knowing** that this **would likely cause** the plaintiff to suffer **pecuniary loss** (eg, the chief presented the data to the hospital's board members to sabotage the surgeon's application).

The plaintiff suffered **pecuniary loss** as a result (eg, the board rejected the surgeon's application, and the surgeon's practice lost revenue as a result).

Therefore, the surgeon's attorney should recommend an action for trade libel against the chief.

(Choice A) A defendant can be liable in tort for intentionally **interfering with an existing contract** between the plaintiff and a third party. But here, the surgeon and the hospital only had a prospective business relationship, not a valid contract.

(Choice B) **Intentional misrepresentation** requires proof that the defendant knowingly misrepresented a material fact with the intent to induce the plaintiff's reliance. But here, the chief's misrepresentation was intended to induce the board's (not the surgeon's) reliance, so the surgeon should not assert this claim against the chief.

(Choice C) Slander of title protects against false statements that harm or call into question the plaintiff's ownership of real property (not seen here).

Educational objective:

A defendant may be liable for trade libel if he/she makes a false and derogatory statement about the quality of the plaintiff's business or products with actual malice and communicates the statement to a third party knowing that it will likely cause (and does cause) the plaintiff to suffer pecuniary loss.

References

Restatement (Second) of Torts § 623A (Am. Law Inst. 1977) (injurious falsehoods).

Restatement (Second) of Torts § 626 (Am. Law Inst. 1977) (trade libel).

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