

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

JASON MILLER, M.D, and MARK)
PUCCIONI, M.D.)

CASE NO:

Plaintiffs)

v.)

COMPLAINT

CHILDREN'S HOSPITAL & MEDICAL)
CENTER, a Nebraska Non-Profit)
Corporation, RICHARD AZIZKHAN,)
M.D., PRESIDENT and CEO, of)
Children's Hospital & Medical Center and)
ADAM M. CONLEY, M.D.)

Defendants.)

COME NOW the Plaintiffs, Jason Miller, M.D. and Mark Puccioni, M.D., by and through their attorneys, state and allege as follows:

GENERAL ALLEGATIONS

1. Plaintiff, Mark Puccioni is a board certified pediatric neurosurgeon licensed to practice in the state of Nebraska. Dr. Puccioni has for over seventeen years, privileges to practice at several Omaha area hospitals including until recently Children's Hospital & Medical Center.
2. Plaintiff, Jason Miller is a board certified plastic surgeon and fellowship trained Craniofacial and pediatric plastic surgeon licensed to practice medicine in the state of Nebraska. Dr. Miller has for over ten years, privileges to practice at several Omaha area hospitals including until recently, Children's Hospital & Medical Center.
3. Defendant Children's Hospital & Medical Center ("Children's Hospital") is a Nebraska Non-Profit Corporation which owns and operates a hospital in Omaha, Nebraska.
4. Defendant Richard Azizkhan, M.D. is a physician, President and CEO working for Children's Hospital since moving to Omaha from Cincinnati Children's Hospital.

5. Defendant Adam Conley, M.D. is a physician and agent of Children's Hospital who currently conducts pediatric neurosurgery at its facility. Dr. Conley moved to Omaha after training in the Cincinnati area.

FACTUAL ALLEGATIONS

6. In 2017 Dr. Puccioni was encouraged to hire Dr. Adam Conley. This encouragement came from Dr. Azizkhan. Children's Hospital paid Dr. Conley \$50,000.00 to join Dr. Puccioni's practice.

7. Dr. Puccioni became increasingly concerned over Dr. Conley's skill and ability to properly practice pediatric neurosurgery. He began to doubt that Dr. Conley was competent. He expressed those concerns to the administration at Children's Hospital.

8. After expressing those concerns, Dr. Conley started rumors that Dr. Puccioni was abusing drugs. Children's Hospital by and through its administration including Dr. Azizkhan gave credence to these baseless charges. Despite passing drug tests, Children's insisted that Dr. Puccioni take a second drug test and then face a psychological evaluation. All this was done in retaliation for Dr. Puccioni's complaint over Dr. Conley's incompetence.

9. In the fall of 2018, Dr. Conley operated on a seven month old child at Children's Hospital. The child died on the operating table. Dr. Conley lost control of the bleeding caused by his incisions. At one point he reportedly poured a significant quantity of hydrogen peroxide directly into the cranial cavity in an effort to stop the bleeding. This is not an acceptable surgical practice.

10. Dr Puccioni, who in seventeen years of pediatric neurosurgery never lost a patient on the operating table, was horrified by the death of the child which he reasonably believed was caused

by the incompetence of the surgeon. Dr. Puccioni wrote a communication to the administration at Children's Hospital stating this opinion and suggesting that Dr. Conley was unfit to operate at the institution.

11. Dr. Jason Miller who for many years had operated alongside Dr. Puccioni on patients who required both of their specialties was similarly shocked by the actions of Dr. Conley and also wrote a communication questioning Dr. Conley's skills.

12. Within days of writing the letters both Dr. Puccioni and Dr. Miller's privileges to practice at Children's Hospital were suspended. Dr. Puccioni was wrongfully and intentionally claimed to be in violation of the hospital bylaws. Dr. Miller was wrongfully and intentionally accused of placing his patients at risk.

13. Dr. Miller's peers pursuant to the Bylaws of Children's Hospital reviewed his suspension and unanimously voted (seventeen to zero) to immediately reinstate his privileges.

14. Despite this vote Dr. Azizkhan and Children's Hospital refused to reinstate him and threatened that it would report his suspension to the State of Nebraska, thereby causing irreparable injury to his reputation and career unless he resigned his privileges. Under this intentional and wrongful threat Dr. Miller was forced to resign his privileges.

15. After Dr. Miller's resignation, Children's Hospital engaged in deceptive practices designed to misdirect, alienate and otherwise drive away his patients for its own profit.

16. Dr. Azizkhan and Dr. Conley knowingly, wrongfully, intentionally, and tortiously participated in the effort to destroy the practices and reputations of Dr. Miller and Dr. Puccioni. Children's Hospital ratified and endorsed these wrongful actions when the Board of Directors met and failed to correct the egregious wrongs done in its name and to its shame.

17. Children's Hospital has been engaged in a campaign to "own and control" the medical practices of physicians who provide services inside the hospital. Surgeons who by virtue of training, hard work, skill and compassion build a successful practice often have privileges at several institutions. Very successful surgeons, such as the Plaintiffs in this suit, will attract patients who during their treatment collectively spend many millions of dollars a year for hospital services. As a result physicians who are employed by, and whose practices are owned by Children's Hospital, offer a more profitable and predictable stream of revenue. This is true even if the captive physician is less skilled or devoted.

18. Children's Hospital used the wrongful suspension of the Plaintiffs to misdirect and mislead their patients into thinking that they had retired or moved away or were otherwise unavailable to treat them all in a tortious effort to own and control their practices.

FIRST CAUSE OF ACTION

Tortious Interference with a Business Relationship

19. Plaintiffs incorporate paragraphs 1 through 18 to the same extent as if fully set forth herein.

20. The Plaintiffs for a number of years have had a business relationship with the Defendant Children's Hospital and with their patients as practicing physicians and with the association of local hospital.

21. The Defendants and each of them were aware of the business relationships.

22. The Defendants intentionally interfered with the relationships which interference was the cause of harm and damages to the Plaintiffs.

WHEREFORE, the Plaintiffs pray for judgment against the Defendants for all damages;

general damages for pain and suffering, lost opportunities and damage to reputation, special damages to be determined at trial, costs of this action, and any further relief the Court deems just.

SECOND CAUSE OF ACTION

Deceptive Trade Practices

23. Plaintiffs incorporate paragraphs 1 through 22 to the same extent as if fully set forth herein.
24. The Defendants and each of them acting in the course of their office and members of the staff of Children's Hospital caused likelihood of confusion as to the availability of services of the Plaintiffs to their prospective and present patients.
25. The Defendants and each of them disparaged the services of the Plaintiffs to patients and to the public generally by false and malicious statements.

WHEREFORE, the Plaintiffs pray for judgment against the Defendants for all damages; general damages for pain and suffering, lost opportunities and damage to reputation, special damages to be determined at trial, costs of this action, attorney's fees, and any further relief the Court deems just.

THIRD CAUSE OF ACTION

Wrongful Termination

26. Plaintiffs incorporate paragraphs 1 through 25 to the same extent as if fully set forth herein.
27. The Plaintiffs' right to work at Children's Hospital was terminated as the result of the actions of the Defendants as set forth in the preceding allegations.
28. The termination was wrongful as the action of the Defendants was in retaliation for the

reporting of the nonprofessional actions of a fellow physician, which actions endangered the lives of the patients he was to treat.

29. The wrongful termination violated the public policy of the State of Nebraska.

WHEREFORE, the Plaintiffs pray for judgment against the Defendants for all damages; general damages for pain and suffering, lost opportunities and damage to reputation, special damages to be determined at trial, costs of this action, and any further relief the Court deems just.

FOURTH CAUSE OF ACTION

Intentional Infliction of Emotional Distress

30. Plaintiffs incorporate paragraphs 1 through 29 to the same extent as if fully set forth herein.

31. The Defendants and each of them engaged in the conduct intentionally designed to cause emotional distress to the Plaintiffs.

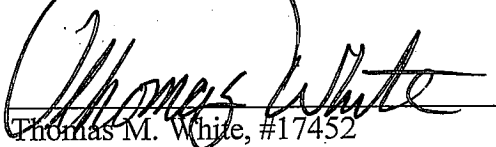
32. The conduct was so outrageous and so extreme in degree as to beyond all possible bounds of decency and is to be regarded as atrocious and utterly intolerable in a civilized society.

33. That the conduct caused emotional distress so severe that no reasonable person should be expected to bear it.

WHEREFORE, the Plaintiffs pray for judgment against the Defendants for all damages; general damages for pain and suffering, lost opportunities and damage to reputation, special damages to be determined at trial, costs of this action, and any further relief the Court deems just.

JASON MILLER, M.D. and
MARK PUCCIONI, M.D., Plaintiffs

BY:

A handwritten signature in cursive script, appearing to read "Thomas M. White", is written over a horizontal line.

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