

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Case Type: OTHER CIVIL

David Feinwachs,

Plaintiff,

COMPLAINT

vs.

Minnesota Council of Health Plans,

Defendant.

Court File No.

The Plaintiff, David Feinwachs, for his cause of action against the Defendant herein, states and alleges as follows:

1. The Plaintiff, David Feinwachs, is a resident of the City of St. Paul, County of Ramsey, and State of Minnesota.

2. The Defendant, Minnesota Council of Health Plans (MCHP), is a trade association of licensed nonprofit Health Maintenance Organizations (HMOs). The MCHP member HMOs include Blue Cross Blue Shield/Blue Plus of Minnesota, Health Partners, Medica, Metropolitan Health Plan, PreferredOne, Sanford Health Plan and UCare. The MCHP is the lobbying arm of the HMOs at the Minnesota legislature.

3. At all times material herein, Julie Brunner has been both the executive director and the registered lobbyist for the MCHP.

4. Feinwachs, with a Masters Degree in Hospital and Health Care Administration, a Masters Degree in Medical Sociology, a Juris Doctor (emphasis on health care) and a Doctorate in Health Care Management, has devoted his professional career to the health care industry. That career began nearly 30 years ago on April 1, 1981, when he was hired by the Minnesota Hospital Association (MHA). Within two years he became vice president of planning and regulation and general counsel for the MHA.

5. Located in St. Paul, the MHA is a non-profit association that represents 148 hospitals in Minnesota. Its vision is to be the most "...trusted and respected leader in health-care policy and advocacy...." Among its values is "quality health care for all Minnesotans," "trust and integrity," "knowledge-based solutions," and "organizational accountability." One of MHA's highest priorities is "...to develop cost reduction strategies to slow the rate of growth of health care spending."

6. As general counsel for the MHA, Feinwachs provided legal advice to the MHA and its subsidiaries, managed all litigation, worked with MHA member hospitals and their attorneys on health law, regulatory compliance issues and general business issues, and directed all of MHA's state government relations and legislative strategy that included, as a registered lobbyist, lobbying at both the state and federal levels.

7. Feinwachs's work performance while employed with the MHA was exceptional, and each of his pay raises reflected that performance. As a registered lobbyist, he was one of the most highly respected and knowledgeable lobbyists on health care issues in Minnesota. His credibility among legislators and his peers was beyond reproach. Although he was involved in every significant issue before the MHA over the last 30 years, his most notable achievements

included passage of the Hospital Adverse Event Reporting Law, establishing a universal agreement with the Minnesota Attorney General to end egregious collection practices, providing discounted care to the uninsured, and after 16 years of unsuccessful efforts, Feinwachs finally established administrative uniformity of medical billing requiring insurance companies to use a single universal system for the submission and payment of claims.

8. At all times material herein, Lawrence J. Massa has been President and CEO of MHA.

9. In keeping with MHA's priority to develop cost reduction strategies, MHA's 2010 work plan focused on a strategy for transparency and accountability in Minnesota's Pre-Paid Medical Assistance Program (PMAP). Under PMAP, which began in 1983, the State pays Health Maintenance Organizations (HMOs) such as Medica, Health Partners and Blue Cross Blue Shield of Minnesota to administer and pay for medical services to health care providers under Medicaid, known in Minnesota as Medical Assistance. Before 1983 the State administered Medical Assistance by paying Fees For Services (FFS) directly to hospitals, doctors and other healthcare providers. The rationale for the change was that the HMOs would save the State money.

10. In the current biennium, however, the State has paid approximately three billion dollars to the HMOs to run PMAP. Even though it is public money, there is no disclosure, auditing or regulation of the HMOs to determine how much of the taxpayer Medical Assistance money is actually paid by the HMOs to providers such as hospitals for medical care, how much the HMOs use for administrative expenses, and how much is used to bolster HMO profits or to subsidize their private insurance business. Because of this void the MHA has an

interest in transparency and accounting by the HMOs to ensure that MHA's member hospitals receive fair reimbursement for their healthcare services to Medical Assistance patients.

11. To obtain transparency and accountability in the HMO administered PMAP, Massa authorized Feinwachs to take the lead on this issue. Feinwachs introduced and testified on behalf of the Abeler Amendment in the Minnesota House of Representatives early in the 2010 legislative session. The Abeler Amendment would have required the HMOs to establish GAAP (Generally Accepted Accounting Principles), medical loss ratios and submit to audits in the administration of PMAP. After significant HMO protests, the Abeler Amendment was withdrawn by Representative Abeler.

12. Brunner, however, recognized the threat to the HMOs with Feinwachs' attempts to force accountability and transparency on the HMOs' use of public Medical Assistance money. After the Abler Amendment hearing Brunner met with Massa and told him to prohibit Feinwachs from testifying at the legislature about transparency and accountability issues related to the HMOs' administration of the PMAP. She made it clear to Massa that as long as Feinwachs was not the public face on this issue she could kill it. Massa acquiesced and prohibited Feinwachs from testifying on the issue, but told him he could continue working on the issue in any other way he chose.

13. Although Feinwachs was prohibited from testifying on the issue at the legislature because of the insistence from Brunner, he continued to introduce bills, albeit unsuccessfully, that incorporated the Abeler Amendment concept of transparency and accountability of the HMOs in administering PMAP, and he continued to sit in on hearings where the issue arose until the legislative session ended on May 31, 2010. Brunner

complained to Massa about Feinwach's presence in the hearings, saying he paced in the back of the hearing room "like an expectant father."

14. During the 2010 legislative session and continuing into the summer, Feinwachs was directed by Massa to meet regularly with the Minnesota Provider Coalition (MPC) on behalf of the MHA. The MPC is a coalition of health care providers that includes doctors, podiatrists, chiropractors, dentists, physical therapists, and ophthalmologists. Like the hospitals, each of these professional groups have a vested interest in knowing whether PMAP funds are used to enhance the profitability of the HMOs at the expense of Medical Assistance reimbursement rates paid to the healthcare providers.

15. On July 20, 2010, with the full knowledge and encouragement of Massa, Feinwachs produced a video for the Minnesota Provider Coalition (MPC). The salient points of the video are as follows:

- Every two years the State of Minnesota pays approximately three billion dollars to the HMOs for all public health programs, including Minnesota's PMAP;
- The public money paid to the HMOs, however, essentially goes into a "black box" because no one knows how much of the money is used by the HMOs for administrative expenses, for medical care paid to providers, or how much is used by the HMOs to subsidize their private insurance business or to bolster their profits;
- The HMOs' use of the public PMAP money is unaudited, unregulated and not subject to GAAP (Generally Accepted Accounting Principles);
- Even though it is public money, the HMOs refuse to disclose how the taxpayer PMAP money is actually spent, claiming such information is "proprietary" or a "trade secret."

- The HMOs increased their PMAP program profits, not including investment income, from \$80.8 million in 2008 to \$119.5 million in 2009. On average they collected \$70 more in premiums from the state per member per month than they paid out in medical expenses. Yet they reported losses on handling GMAC and Minnesota Care, which are not based on Medical Assistance or federal monies. At the end of 2009, Minnesota HMOs had combined capital of \$1.3 billion, and maintained surpluses that on average are 2.5 the required minimum.
- In the midst of Minnesota's current financial crises, accountability and transparency of the HMO administered PMAP is critical to recognize savings from more efficient operation of the program.

16. On August 18, 2010, Massa had a meeting with Brunner at which time Brunner complained bitterly to Massa about Feinwach's involvement in what she perceived as anti-HMO activities and strategies. Following this meeting and despite MHA's approval of Feinwach's involvement with the MPC that included producing the July 20, 2010 video for that organization, Massa, once again at the insistence of Brunner, decided that the MHA would disengage from the MPC and ordered Feinwachs to end his work on behalf of the MHA with the MPC. Feinwachs complied with the order.

17. Feinwachs continued, however, to pursue the transparency and accountability issue of the HMOs through other avenues with the full knowledge of Massa since that issue was still the priority in MHA's 2010 work plan. Using materials prepared in MHA offices by MHA support staff, Feinwachs produced a second video on September 2, 2010. The second video was essentially the same as the first video, except that this new video incorporated the August 2010 federal General Accounting Office (GAO) report that confirmed Feinwach's contention that standards for oversight of the HMOs in their use of funds for programs such as PMAP are nonexistent.

18. Six days later, on September 8, 2010, a meeting was set up between Massa, Brunner and Feinwachs in Massa's office. Massa told Feinwachs that the purpose of the meeting was to admonish him for "bad mouthing the HMOs." At the outset of the meeting Brunner said, "If we go down, we're taking you with us." She complained bitterly that she believed Feinwachs was "bad mouthing her to legislators." Feinwachs explained to her that he was not "bad mouthing her." Rather, he told her he had simply shown various legislators the August 2010 GAO report that confirmed his position. Brunner warned Feinwachs by saying, "I will do whatever it takes to protect our members."

19. Feinwachs then requested and was granted by Massa vacation time for the week of September 13-17, 2010. During that week he continued on his own time to work on the HMO transparency and accountability issue. When he returned he fully briefed Massa on his activities. Massa thanked Feinwachs for using vacation time so that Feinwachs's activities could not be linked to Massa or the MHA.

20. On October 14, 2010, Mark Eustis, the president and CEO of Fairview Health Systems, sent an email to Massa that stated, "I just got off a call with Pat Geraghty who is very concerned about a video that Feinwachs has produced for distribution to the members of the Legislature. Not sure what it is or how MHA is supporting, but we better hold off on any further work until we have the opportunity to understand the issue and the potential damage that could be done to our relationships with the payers." Pat Geraghty is the president and CEO of Blue Cross Blue Shield of Minnesota.

21. The HMOs--Blue Cross Blue Shield, Health Partners and Medica among the largest--are some of the richest corporations in Minnesota. They have the exclusive, unaudited

and unregulated control of the three billion dollars paid to them by the Sate every two years for all public health programs, including the public PMAP money. Because of this the “potential damage” to the hospitals’ relationship with the HMOs that Eustis referred to in his email to Massa is that the HMOs can and will delay the processing of the hospitals’ claims for medical services, reduce the reimbursement paid to the hospitals for medical care provided to patients or, conversely, enter into secret financial arrangements with the largest hospitals such as Fairview and Allina to use them to pressure the MHA to “hold off” from pursuing the accountability and transparency issue of the HMO administered PMAP.

22. Following the Eustis email, Massa informed Feinwachs that Brunner was “really mad about the second video” and she was concerned that legislators and others had seen it. Massa told Feinwachs that he may have to put Feinwachs on administrative leave. On October 20, 2010 Massa did exactly that. He wrote Feinwachs a letter placing him on unpaid administrative leave because, according to Massa, Feinwachs had been “insubordinate” for continuing to work “with the ‘provider coalition’ including the making of a video regarding a number of topics related to PMAP including a recent report from the General Accounting Office regarding certification of Medicaid rates and the process of determining actuarial soundness.”

23. On October 26, 2010, Massa sent an email to Feinwachs saying, “I am working on a document to outline prohibited activities if you are to remain employed by MHA for your review.”

24. Massa never did outline activities that Feinwachs would be prohibited from engaging in. Instead, on November 9, 2010, Massa met with Feinwachs at a Dunn Brothers

Coffee Shop and terminated his employment with MHA. After nearly 30 years of exemplary work for the MHA, suddenly Massa now found it necessary to meet with Feinwachs outside of work to terminate him. Massa told Feinwachs at the coffee shop that he had met with the MHA Board and the Board told Massa it was concerned for Massa's personal safety because Feinwachs owns so many guns and is a "gun nut." But Massa never actually met with the MHA Board before Feinwachs was terminated.

25. The MCHP intentionally orchestrated Feinwach's termination of employment with the MHA in an attempt to stop him from obtaining legislatively mandated transparency and accountability of the HMOs' administration of Minnesota's Pre-Paid Medical Assistance Program.

26. Following Feinwach's termination, the MCHP launched a campaign to discredit Feinwachs that began with Massa's accusation that Feinwachs is a "gun nut." Then at a Republican fundraiser on December 1, 2010, Kathryn Kmit, the director of policy and government affairs for the MCHP, told people that Feinwachs is a "gun nut because he owns so many guns," and that the "MCHP fears for its safety" because he will "come in and start shooting."

27. On December 22, 2010, Brunner, along with Nancy Feldman and Ghita Worchster of UCare, one of the HMOs, held a private meeting with Minnesota State Senator John Marty. During that meeting Brunner told Senator Marty that "Feinwachs makes things up" and that he, Senator Marty, "had been used" by Feinwachs.

28. When Feinwachs was terminated his base salary was \$170,000. His annual bonus ranged from \$10,000 to \$12,000. He had full health, disability and dental insurance

coverage and a 401K Pension Plan. His total annual compensation package was approximately \$200,000. Each year Feinwachs contributed sixty-six percent of his base salary to a 457(f) Deferred Compensation Plan. Because Feinwachs thoroughly enjoyed the work he did with the MHA and because he wanted to maximize his Social Security benefits, he fully intended on working to age 70 with the MHA. He is currently 59 years old.

COUNT ONE
INTENTIONAL INTERFERENCE WITH A BUSINESS RELATIONSHIP

29. Plaintiff Feinwachs re-alleges paragraphs 1 through 28 of this Complaint and incorporates the same herein as if here set forth in their entirety.

30. Defendant Minnesota Council of Health Plans intentionally interfered with Plaintiff Feinwach's employment relationship with the Minnesota Hospital Association by willfully and wantonly forcing his termination of employment in an attempt to stop him from obtaining legislatively mandated transparency and accountability of the HMOs' administration of Minnesota's Pre-Paid Medical Assistance Program. Defendant's conduct constitutes a deliberate disregard for the rights of Plaintiff Feinwachs.

31. As a direct and proximate result of the illegal conduct on the part of the Defendant, Plaintiff Feinwachs will incur a loss of salary and benefits over the next ten years in an amount presently estimated to be close to three million dollars.

COUNT TWO
DEFAMATION

32. Plaintiff Feinwachs re-alleges paragraphs 1 through 32 of this Complaint and incorporates the same herein as if here set forth in their entirety.

33. Following Feinwachs's termination, the MCHP launched a campaign to discredit Feinwachs that began with Massa's accusation that Feinwachs is a "gun nut." That same theme was pursued at a Republican fundraiser on December 1, 2010, when Kathryn Kmit, the director of policy and government affairs for the MCHP, told people at the fundraiser that Feinwachs is a "gun nut because he owns so many guns," and because of that the "MCHP fears for its safety" because he will "come in and start shooting."

34. Then on December 22, 2010, Brunner, along with Nancy Feldman and Ghita Worchster of UCare, one of the HMOs, held a private meeting with Minnesota State Senator John Marty. During that meeting Brunner told Senator Marty that "Feinwachs makes things up" and that he, Senator Marty, "had been used" by Feinwachs.

35. When Kmit and Brunner made these statements they were acting within the scope of their employment with the MCHP.

36. The statements made by Kmit and Brunner are false. The statements impugn Feinwachs's professional reputation, character and integrity that he so carefully and successfully developed over nearly 30 years working with the MHA. The statements constitute defamation and defamation per se.

37. As a direct and proximate result of the foregoing, Plaintiff Feinwach's reputation and the regard in which he is held in the community have diminished, and he has suffered damages, including but not limited to loss of income and mental anguish and emotional distress.

WHEREFORE, Plaintiff David Feinwachs prays that he may have and recover damages against the Defendant as follows:

1. For his general and special damages in an amount in excess of \$50,000;
2. For punitive damages pursuant to Minn. Stat. §549.191 upon a motion to amend the pleadings to claim punitive damages; and
3. For such other and further relief as the Court deems just and equitable.

Dated: January 3, 2010.

LAW OFFICES OF
SIVERTSON AND BARRETTE, P.A.

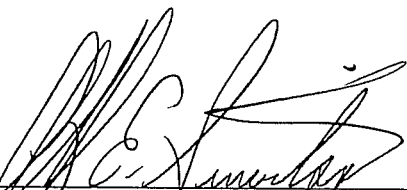
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IT IS HEREBY ACKNOWLEDGED that the allegations of this Complaint are well-grounded in fact and are warranted by existing law or good faith argument for its extension, modification reversal. David Feinwachs, as a Plaintiff in this action, brings this Complaint in good faith and not for any improper purposes. The Plaintiff acknowledges that costs, disbursements and reasonable attorney and witness fees may be awarded to Defendants pursuant to Minn. Stat. §549.21 and the Rules of Civil Procedure.

Dated: January 3, 2010.

LAW OFFICES OF
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