

Employment Law Case Update

[Court Dismisses Counts for Breach of Contract after Hospital Sued for Reporting Termination of Physician to National Practitioner's Data Bank as "Adverse Event"](#)

The Honorable Nora Barry Fischer, U.S. District Court for the Western District of Pennsylvania, recently issued an opinion further defining the line between "for cause" and "without cause" termination.

In *Langenberg v. Warren General Hospital*, 1:12-cv-00175, Matthew T. Langenberg, M.D., brought suit against Warren General Hospital after he was terminated without cause, pursuant to the provisions of his employment contract, and subsequently learned that the hospital reported the termination to the National Practitioners Data Bank as an "adverse event."

Dr. Langenberg, a vascular surgeon, had been recruited by the hospital, based in Warren, Pennsylvania, to help establish a vascular program, with promises allegedly made by the hospital that it would acquire a new Cardiac Catheterization Lab for Dr. Langenberg and create a strong vascular practice. In June 2011, Dr. Langenberg entered into an employment agreement with the hospital, which, among other things, permitted termination "without cause" by either party, with 90 days written notice (if the hospital exercised the right to terminate it could avoid the notice requirement by paying Dr. Langenberg 90 days of compensation, instead). After leaving his practice in Ohio, Dr. Langenberg started at Warren General Hospital in September 2011.

About three months later, Dr. Langenberg presented the hospital's Chief of Clinical Operations with a list of concerns expressing his opinion that hospital practices did not meet the standard of care, Dr. Langenberg also informed the Director of the Operating Room of concerns he had about supplies, medication errors and lack of employee professionalism. On January 25, he requested that the Chief of Clinical Operations address these issues. The following day, Dr. Langenberg received a letter terminating his employment with the hospital "on a non-cause basis."

The hospital then filed an Adverse Action Report with the National Practitioner Data Bank, stating that Dr. Langenberg had been terminated because, among other things, he "often lacked civility and was demeaning to hospital staff," which had a "disruptive and detrimental effect on the hospital's working environment." The reasons given for the filing of the Adverse Action Report were Dr. Langenberg's "failure to comply with corrective action plan," "abusive conduct toward staff" and "disruptive conduct." However, Dr. Langenberg had never been disciplined for any misconduct during his tenure at the hospital.

Dr. Langenberg sued the hospital and its CEO, John P. Papalia, FACHE, claiming breach of contract, defamation and interference with future business relationships. He alleged that he was unable to secure employment for nearly 11 months after his termination.

The hospital filed a Motion to Dismiss, which Judge Nora Barry Fischer granted, in part. The hospital's Medical Staff Bylaws contained language stating that the termination of a physician's clinical privileges would not be treated as an "adverse action," and Dr. Langenberg's employment contract incorporated that provision. He claimed that the hospital thus acted wrongfully by reporting his termination as an "adverse action" to the NPDB. Judge Fischer disagreed. She ruled that while the contract and bylaws might have used the same term "adverse action," they did not actually mention the NPDB, and that the hospital could not contractually alter an obligation it might have under federal law to report "adverse actions" to the Databank. Because Dr. Langenberg's legal rights arose from the employment contract he entered into with the Hospital, and not from the federal law creating and governing the Databank, he could not argue that the Hospital breached the contract by reporting him to the Databank.

The Court also granted defendants' motion to dismiss Dr. Langenberg's request for attorneys' fees, holding that he had not pled a viable basis for them. However, the Court refused defendants' motion to dismiss Dr. Langenberg's claims for defamation and intentional interference with existing and prospective relationships, noting that they were "potentially viable remedies for the misconduct alleged."

Commentary

Breach of contract claims arise from contracts, and not from federal or state law. In order to recover for breach of contract, a plaintiff must first prove that the contract was, indeed, breached. In this case, Dr. Langenberg was terminated by the hospital in a manner permitted under the contract. Since this termination was "non-cause," it did not constitute an "adverse action" under the Bylaws. But, the hospital's duty to report to the Databank could not be altered, waived, or otherwise bargained away through an arrangement between a hospital and physician, and thus, had no impact on the contractual relationship between Dr. Langenberg and Warren General Hospital. In the words of the Court, "the purpose of [the provision permitting termination without cause] is not to guarantee that no cause exists for termination of the contract but, rather, to ensure that each party has the ability to unilaterally terminate the contract without the need to state a cause. Such circumstances do not foreclose the possibility that the terminating party might have reasons for its decision to invoke [this provision]," and it also might still require a report if other provisions of law require it.

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