

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JAY J. SCHINDLER, M.D.,

Plaintiff,

v.

MARSHFIELD CLINIC,

Defendant.

ORDER

05-C-0705-C

A hearing on pretrial motions was held in this case on April 20, 2007, before U.S. District Judge Barbara B. Crabb. Plaintiffs appeared by William Hinnant, Michael Brohman, Michael Brown and Jeffrey Hynes. Donald Schott and Matthew Duchemin appeared on behalf of defendant.

Defendant's motion to limit plaintiff's economic damages was GRANTED. Should plaintiff prevail at trial, his damages will be limited to what he would have earned under his contract with defendant to expiration, plus expenses for securing new employment, minus his earnings in his new position. Wisconsin law is clear on this point. E.g., Wassenaar v. Panos, 111 Wis. 2d 518, 534, 331 N.W.2d 357, 365-66 (1983).

Defendant's motion to preclude expert testimony from plaintiff's witnesses on the

subjective intent or motives of members of the Professional Review Committee was GRANTED. The expert witnesses have no foundation on which to offer such testimony.

Defendant's motion to preclude expert testimony to the effect that defendant engaged in a sham peer review was GRANTED. However, the experts may testify to their opinions about the reasonableness of the hearing under HCQIA, whether the hearing was sufficient despite the fact that not every member was present for the entire hearing and whether it was deficient for lack of an outside physician, lack of any review of pertinent literature and failure to obtain a random sample of plaintiff's procedures.

Defendants' motion to preclude testimony regarding the accuracy of representations made by the Professional Review Committee was GRANTED; plaintiffs agree that their experts will not characterize the committee's statements and report as intentionally false, such as "Member X *lied*" or "Member Y *misrepresented the facts.*"

Defendant's motion to limit expert testimony to opinions expressed in their expert reports was GRANTED, with the exception that the experts may testify about matters and opinions they discussed at their depositions.

Plaintiff advised the court that he did not intend to introduce evidence on any matters that have been decided on motions before trial or on the adequacy of defendant's Professional Review Action Policy. Therefore, defendant's motion to preclude testimony on these topics was GRANTED.

The last motion discussed was plaintiff's motion to strike evidence and prospective testimony about any matters on which the members of the Professional Review Committee did not rely on when making their decision. In other words, plaintiff wants the jury to decide the adequacy of defendant's decision on the basis of the evidence before the Professional Review Committee and the Executive Committee at the time they made their decisions. This is a fair request and is GRANTED, with one exception: if plaintiff's experts criticize the Professional Review Committee for failing to obtain a random sample of plaintiff's procedures before making its decision, defendant may introduce evidence of eight additional problem cases that defendant did not discover until after the Professional Review Committee had made its decision. This evidence is relevant to rebut plaintiff's attempt to show that the four cases reviewed by the committee were the only ones in his tenure with defendant that raised any concerns. However, defendant may not introduce evidence gathered from a post-termination review of plaintiff's hemostasis practices.

The one remaining claim for trial is whether defendant breached its employment contract with plaintiff by terminating him without good cause.

Entered this 23d day of April, 2007.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge