

The Cost of Voicing "Opinions" on the Internet

COURT ORDERS DC TO PAY \$25,000 IN DAMAGES

Editorial Staff

The internet is a marvel. It allows people everywhere to enter chat rooms, bulletin boards and list servers and "speak one's mind." While there is a certain feeling of anonymity and an "anything goes" atmosphere in the cyber realm, it is an environment where one comment on a single email can, for instance, be replicated and re-emailed to a few people or even millions of people around the world in seconds.

This revolutionary technology is taking free speech to a new level. Yes, you can say anything you want on the internet, but just as in any other context of communicating with our fellow terrestrials, you may pay the consequences for what you say.

What some people apparently are failing to comprehend is that presenting your opinions in a chat room, on a bulletin board or an email list is not like shooting the breeze with friends or new acquaintances at a party. Everything displayed on any aspect of the Web is documented, recorded and reproducible. It is the electronic equivalent of publishing, not talking. All of the liabilities of slander and defamation are in full force.

Todd Gastaldo, DC, just learned that lesson the hard way. Dr. Gastaldo made comments about Michael Schroeder, an attorney who worked for the California Chiropractic Association. Apparently assuming he was safe to say anything on the Web, Dr. Gastaldo made this comment on Chiro-List, a chiropractic email discussion list:

"...Mr. Schroeder bilked \$800,000 in DC licensing fees when he jumped from CCA to the Chiro. Licensing Board..."

Legally, slander of someone's trade or business carries with it damages that are assumed by the court. As an attorney, Mr. Schroeder knew Dr. Gastaldo's false comments were actionable. He demanded a retraction and public apology. When Dr. Gastaldo did not meet that demand, Mr. Schroeder filed a lawsuit in California, initially seeking \$500,000 in compensatory damages, and later requesting an additional \$500,000 in punitive damages.

Dr. Gastaldo, a resident of Oregon, asked the court to move the venue to Oregon "to make for the fairest trial possible." The venue question was interesting because of the global aspect of the internet. The judge reasoned that because the comments were made on a chiropractic discussion list, and at least twice as many chiropractors live in California than in any other state in the country, that California was the appropriate venue for the trial.

Not successful in getting the trial moved to Oregon, Dr. Gastaldo simply failed to respond to the lawsuit. This gave Mr. Schroeder a victory by default, although Mr. Schroeder still had to demonstrate to the court that he had suffered damages.

Perhaps the only good news for Dr. Gastaldo is the challenge the court faced in determining who and how many people read the comment, whether on the post or via email. On January 5, 2000, Mr. Schroeder was awarded \$25,000 in damages (that's almost \$1,400 per word of Dr. Gastaldo's defamatory comment), plus court costs of \$192.

Now begins the process of filing the judgment in Oregon in order to have the right to recover his damages. Once Mr. Schroeder does that, he can seek damages from Dr. Gastaldo's bank accounts, put liens on any real property (such as his home), and garnish his wages until the \$25,192 judgment is paid in full.

We don't image that this case is the first lawsuit against a DC spawned by comments made on the Web, but it should help remind doctors who post messages and sent emails that the liabilities are quite real. There are at least two ways to protect yourself. Discuss issues, not people. And if you want to talk about people, purchase a minimum of \$5 million of liability insurance specifically for the internet.

FEBRUARY 2000