

# Iowa Supreme Court Rules on Defamation Claims in Board of Medicine Reports

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There were two cases this year at the Iowa Supreme Court which related to issues involving Iowa Board of Medicine claims. In one case it was a question of the hospital's ongoing responsibility to assess physician competence. The other recently filed case focuses on issues of defamation and wages.

A hospital filed a motion for summary judgment regarding a part of a doctor's lawsuit claiming defamation and wage payment issues. This motion was denied at the lower court level and an appeal went to the Iowa Supreme Court.

The court determined that the defamation claim failed because the statements made to the Iowa Board of Medicine were "nonactionable opinions." The wage claim also failed because the doctor "did not perform work for which he was not paid."

## Background

The core facts are that Dr. Andrew was a surgeon and contract hospital employee. His contract was terminated by the hospital for cause alleging issues with Dr. Andrew's prescribing practices, primarily with prescribing pain medication.

As part of this process, a consulting physician working with the hospital, Dr. Altman, made a report to the Iowa Board of Medicine involving Dr. Andrew's prescription practices. As noted by the court, "... it is Dr. Altman's answers that form the basis of Dr. Andrew's defamation claim."

The hospital also filed a report with the National Practitioner Data Bank (NPDB) based on the fact that the contract had been terminated for cause. In this instance, the court recognized that there is statutory immunity for reporting to the Iowa Board of Medicine under Iowa law, which provides immunity from liability so long as the report is not done with "malice." Under the NPDB, immunity is extended unless the reporting person or entity has "knowledge of the falsity of the information contained in the report."

## Defamation

While the lower court focused on the issues of this qualified immunity, the Iowa Supreme Court assessed the claim on whether the statements made were protected opinions pursuant to defamation law. The expression of an opinion is not generally actionable defamation.

Ultimately, the Iowa Supreme Court held that the statements made to the Iowa Board of Medicine were non-actionable opinions, utilizing a four-factor test set forth by the United States Supreme Court in *Milkovich*.

Essentially this four-part test looks to the issue of whether the statements are clear and "provably false," and if they

are objectively capable of proof. This analysis also requires that the court evaluates “the context in which the alleged defamatory statement occurs” as context can affect the nature of the opinion.

The court found that the qualifying language used in the Iowa Board of Medicine report places this in the non-provable category and within a context that is not defamatory. In assessing the context, the court noted that the complaint was made to the Iowa Board of Medicine, which serves an important public purpose and provides for qualified immunity from defamation claims. This gave greater weight to the defense’s position that this was not defamatory conduct.

## Wages

The second question addressed in this opinion is whether a complaint can be raised under Iowa Code Chapter 91A, which relates to the collection of wage payments in Iowa. In this instance, Dr. Andrew’s contract was terminated, and he was not paid out any wages after the date of termination. Dr. Andrew argued that if the contract was violated (i.e. the underlying breach of contract claim was supported), then he was owed wages and as such a claim under 91A could be brought.

Citing a case from 1985, the court again affirmed that 91A is not applicable for potential future wages but only for wages “which have been earned.” This is a critical distinction for 91A claims, as these claims provide for a series of penalties which includes the payment of the ex-employee attorney’s fees if they prevail in the claim.

Employers and defense counsel may see 91A claims added to other broader contract claims in an attempt to use this attorney fee provision. The court has been straightforward here: stating if the wages were not earned (no time was actually worked), then wage payment under this statute is not an issue.

## Big picture

It is hard to draw a simple, useful conclusion from this case. Clearly, over the last several years, defamation claims are on the rise and employers need to continue to be aware of these issues. If providing a mandatory report, as happened here, try not to make conclusions, leave that to the governing agency. As for wages, 91A continues to apply to wages earned for time worked and the court appears to have no interest in expanding the statutory language.

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