

May 8, 2013

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By email to idelariva@delarivalaw.com
and fax to (210) 224-2204

Re: William Coppola—Jen B dispute
Response to May 1 threat letter

Dear Isabel:

I'm responding on behalf of Jen B, whom I represent. I regret having to write to you over what is simply a misunderstanding. I regret even more that the misunderstanding isn't one of communication, but one of knowledge: Dr. Coppola misunderstands Jen B's God-given, legally recognized, Constitutionally protected, statutorily enforceable liberty to inform others of her experiences with and opinion of Dr. Coppola. Jen B's comments aren't legally actionable. Dr. Coppola's conduct, on the other hand, is. Should Dr. Coppola not retract his threats and agree not to renew them, he will discover how far afield of Texas law his attempt to bully Jen B has run—and how expensive that bullying can be.

The dispute.

In case you have forgotten: Jen B took her daughter to Northeast Children's on January 2. Dr. Coppola did not treat her, or her daughter, well. He recommended extensive dental work, implied that not getting the work would result in major infection and dental disfiguration, and stated that Jen B's regular dentist wasn't qualified to evaluate her daughter's dental needs. Jen B returned home, obtained opinions from other dentists (none of which were that her daughter needed work as extensive or expensive as Dr. Coppola had recommended), and posted [this review on Yelp](#):

I would never recommend this place to anyone. It is nice and clean. But the people are very pushy. I feel like they are doing more dental work than required. I

went with a referral from a general dentist and they only spoke down to me about him, my child and came up with about 7 other teeth that had “issues” etc. They are seriously just out there for the money. Funny how when I went to a different dentist for another opinion they sided with MY dentist!!! DO NOT GO HERE.

Dr. Coppola claims that the statement that he is “just out there for the money” is false. Your letter also implies that the statements about young Miss B’s later dental treatment are false. Dr. Coppola also claims to have been told by the Guadalupe County District Attorney that Jen B is criminally liable for “felony ... internet business defamation and libel” but has declined your advice to attempt to prosecute her.

Errors in your “investigation.”

Your “initial investigation” has led you to facts that are wrong. Your letter stated that the “investigation” led you to the substance and timing of young Miss B’s post-Coppola dental diagnosis and work. Northeast Children’s doesn’t need information about services young Miss B received from other dentists to secure whatever payment it might still be owed, and I assume that you and he aren’t violating HIPAA and its regulations by getting access to young Miss B’s medical records without her consent. This leads me to suspect that your “investigation” involved (1) conversations with an insurer that called to ask after possible double-billing after seeing claims from both Dr. Coppola and the dentist whom Jen B trusted to the dental work and (2) a search on Yelp, and possibly other review websites, for other reviews of dentists that Jen B left. This isn’t the diligence required before one begins slinging accusations of libel.

Interlude: A professional courtesy.

You wrote that you recommended that Dr. Coppola try to get Jen B indicted and that he declined that advice. You included that statement a paragraph after making settlement demands regarding a civil dispute and immediately after stating that Jen B’s not acceding to those demands would cause you to “recommend to [Dr. Coppola] that he pursue legal action against” her.

Even if it weren't **demand**ed of us as professionals, I generally give people the benefit of the doubt. Thus, rather than believe that you decided solely on your own to tell Jen B that he had declined your advice, I choose to **believe that Dr. Coppola chose to waive the lawyer-client privilege** that would otherwise cover both that advice and the decision he based on it. I also choose to believe that your juxtaposition of potential criminal charges with a settlement demand and a threat of "legal action" is the result of clumsy drafting and not a **threat to present criminal charges to try to gain an advantage in a civil matter**.

I trust that your further work in this matter will justify my choice.

The standards for defamation.

A statement isn't defamatory unless it's false, and a statement that is "substantially true" isn't false. Nor is does "substantial truth" depends on how many nits Dr. Coppola thinks he can pick from Jen B's statement. A court evaluating whether Dr. Coppola is "just in in for the money" or the any of Jen B's other statements in the review will look to the "gist" of the statement in its complete context and whether a fully truthful statement would have been less damaging to an average reader than what Jen B actually said. See **McIlvain v. Jacobs**, 794 S.W.2d 14, 15–16 (Tex. 1990). This is the test whether Dr. Coppola is a public figure or not. See **Garcia v. Allen**, 28 S.W.3d 587, 593–94 (Tex. App. – Corpus Christi 2000, pet. denied) (applying test to non-public figure). It applies in business-disparagement cases like the one Dr. Coppola is threatening. See, e.g., **Delta Air Lines, Inc. v. Norris**, 949 S.W.2d 422, 426 (Tex. App. – Waco 1997, writ denied).

Similarly, "[a]ll assertions of opinion are protected by the **first amendment of the United States Constitution** and article I, section 8 of the **Texas Constitution**." **Carr v. Brasher**, 776 S.W.2d 567, 570 (Tex. 1989). Hyperbole isn't defamation, either; according to the Supreme Court, rhetorical hyperbole "add[s] much to the discourse of our Nation." **Milkovich v. Lorain Journal Co.**, 497 U.S. 1, 20 (1990); see also **New Times, Inc. v. Isaacks**, 146 S.W.3d 144, 167 (Tex. 2004). The **San Antonio Court of Appeals**, whose rulings bind the courts in both Bexar and Guadalupe Counties, has bluntly held that "rhetorical hyperbole and opinion are not actionable under Texas law." **ABC, Inc. v. Gill**, 6 S.W.3d 19, 32 (Tex. App. – San Antonio 1999, pet. denied).

The review isn't defamatory.

Nothing in Jen B's review is defamatory under these standards—certainly not the two things that Dr. Coppola has identified.

Protected opinion: The review, in its parts and in its whole, is protected opinion. That is clear from the language Jen B used. She “feel[s]” that Dr. Coppola is doing too much work. Different people will have different perceptions of whether they are “speaking down to” someone about another professional or the person's child. That one dentist “sided” with a family dentist's recommendations rather than Coppola's recommendations depends on a person's comparison of the three recommendations.

Jen B didn't express “opinions” that would lead a reasonable person to think that an untrue fact was true—as would have been the case, for instance, had she posted, “I feel it's inappropriate for Dr. Coppola to keep all of that Hungarian erotica in the waiting room.” Nor did she post false statements of fact, as would have been the case had she written something like, “While I was there, Dr. Coppola waggled his wiggler at the wide women who walked west weirdly.” Her statements are classic expressions of opinion with which Dr. Coppola may disagree, but which he cannot suppress.

Protected hyperbole and rhetoric: That Dr. Coppola is “just in it for the money” is hyperbolic rhetoric. A reasonable person wouldn't believe that a person who has established a four-site dental practice that employs several other dentists—and who has been putting his fingers into children's unwashed, unflossed mouths for 30 years—does so because his sole pursuit is the accumulation of hordes of **Federal Reserve notes or the things that he can obtain in exchange for them.**

Similarly, had Jen B written, “I'll bet that every kid leaves Dr. Coppola's office with bleeding gums,” no reasonable person would think that every child left the office with bleeding gums. Had she written, “If Dr. Coppola's grasp of dentistry is anything like his grasp of the First Amendment, it's no wonder that all of his patients need dentures,” no reasonable person would think that every child who goes to Northeast Children's Dentistry needs false teeth. Exaggerating for effect has a long, protected tradition in the United States; statements much more offensive than an accusation of greed are, as a matter of law, not defamatory. See, e.g., *Greenbelt Coop. Publg. Assn. v. Bresler*, 398 U.S. 6, 13–14 (1970) (plaintiff's behavior was “blackmail”); *Wood v. Del Giorno*, 974 So. 2d 95, 97 (La. App. 2007) (plaintiff was “complete fraud” and

“out-and-out lying”); *Yeagle v. Collegiate Times*, 497 S.E.2d 136, 137 (Va. 1998) (plaintiff was a “butt-licker”). Jen B’s statement that Dr. Coppola is “just in it for the money” are protected.

Substantially correct statements of fact: Let’s leave aside that the facts you gathered in your “initial investigation” are wrong. Even so, Jen B isn’t held to NASA standards of exactitude in relaying facts. She doesn’t have to spell out that she “went to a different dentist for another opinion” by contacting the dentist by the telephone rather than dragging herself and her children from dental practice to dental practice. She’s not required to detail the particulars of her family dentist’s diagnosis, the better-than-Coppola dentist’s diagnosis, Dr. Coppola’s diagnosis, or how those particulars differed. The “gist” of her statement was that Dr. Coppola recommended “more dental work than required” because doing so would bring him more money. That is a classically protected statement of opinion. Even if Dr. Coppola wrongly considers that to be a statement of fact, Jen B’s statements that (1) Dr. Coppola identified additional teeth for additional work at additional expense and (2) a later dentist agreed with the family dentist that those teeth didn’t need work show that statement to be substantially correct.

The problems that Dr. Coppola’s threat have caused for himself.

Dr. Coppola has no claim for business disparagement or defamation. Nor, despite what your artfully crafted language about conversations with the district attorney begged Jen B to infer, is there any basis to charge her with a crime. (Indeed, Texas repealed its criminal libel statute 50 years ago. *Acts 1973, 63rd Legislature, Chapter 399, Section 3.*) But letters from lawyers are scary things; had she not been able to hire me, Jen B might not have known that she faces no true consequences from Dr. Coppola’s threat other than a waste of her time. I trust that after you share this letter with Dr. Coppola, he will realize that, too.

Through his threat, and any possible follow-up he might pursue, however, Dr. Coppola has created some problems for himself. First, the lawsuit he threatens would violate the Texas Citizens Participation Act, our version of an anti-SLAPP law. *Tex. Civ. Prac. & Rem. Code ch. 27.* Jen B’s review is a communication; she made it as part of her exercise of her liberty of free speech; and it is about a matter of public concern, the dental services that Dr. Coppola and Northeast Children’s are furnishing in the marketplace. The theoretical lawsuit would, unquestionably, be based on Jen B’s posting of the

review—her exercise of her freedom to speak. Jen B would get an [expedited hearing and ruling](#) on her request to dismiss Dr. Coppola’s theoretical lawsuit. And once that theoretical case is dismissed, Jen B would be [entitled to recover her legal fees](#)—which are, I assure you, despite the eye-popping effect they sometimes generate, reasonable.

Too, Dr. Coppola now knows that there is no legal basis for his threats. Any lawsuit he files could be only for harassment, to impose costs upon Jen B, or to punish her for exercising her liberties, all of which are improper bases. He would, that is, be using the lawsuit as a form of extortion—using it to achieve an ulterior end that a defamation claim isn’t meant to achieve. The same would go for any criminal case that Dr. Coppola might connive the district attorney into bringing. This would make Dr. Coppola liable for malicious prosecution, the damages for which would be whatever other legal fees Jen B hadn’t recovered in getting Dr. Coppola’s claims dismissed. See [James v. Brown](#), 637 S.W.2d 914, 918 (Tex. 1982) (elements); [Digby v. Texas Bank](#), 943 S.W.2d 914, 925–26 (Tex. App. – El Paso 1997, writ denied).

Jen B, however, doesn’t have to wait for Dr. Coppola to do anything. Dr. Coppola’s threats have brought into question Jen B’s rights and legal relations between her and Dr. Coppola, and Jen B is entitled to have the question of those rights and relations settled through a declaratory judgment. [Tex. Civ. Prac. & Rem. Code ch. 37](#). Because she’s entitled to such a declaration, she can seek it without waiting to see if Dr. Coppola acts on his threat. And because she’s entitled to that declaration on a claim that would entitle her to fees, she’ll also be entitled to recover the fees she incurs seeking that declaration. [Tex. Civ. Prac. & Rem. Code § 37.009](#).

Perhaps most crippling for Dr. Coppola, who purports to be jealous of his reputation, is the fact that he hired someone to write that threat letter at all. Before he did so, someone—perhaps while you were conducting your “investigation”—should have asked him if he has ever heard of [Barbra Streisand’s beach house](#). Someone even could have told him of the results that arise when someone runs the names [Charles Carreon](#), [Suburban Express](#), [Bharat Aggarwal](#), or [Thedala Magee](#) through a search engine. Jen B’s [Yelp review](#), needless to say, still exists—as does Jen B’s ability to digitize Dr. Coppola’s threat letter. Jen B posted [her Yelp review](#) to inform people that she thought Dr. Coppola pushy and concerned about money; one can only imagine her growing excitement at being able to bolster that opinion with a bullying letter that demands money.

A proposal.

Jen B's review is actionable based on precisely none of the legal grounds raised in your threat letter. Dr. Coppola, on the other hand, has exposed himself to significant risk of liability for whatever damages his threat letter has caused, and whatever damages any lawsuit would cause, to Jen B—liability that would include my fees. Had Jen B intended to inflict upon Dr. Coppola the same anxiety or dread or worry that he hoped to inflict with his threat letter, this would instead be a letter enclosing a courtesy copy of a declaratory-judgment petition and an anti-SLAPP motion. This is not such a letter. Instead, she offers a proposal:

Dr. Coppola will (1) stipulate that he won't pursue, or assist or encourage others in any way to pursue, claims arising from [Jen B's review](#) and (2) will send to Jen B a handwritten—in his own handwriting—apology letter. In exchange, Jen B won't pursue claims against Dr. Coppola arising out of his threat letter.

In closing.

When one reads your description of Dr. Coppola, he seems a swell fellow: Thousands upon thousands helped, military discounts, the works. On closer examination, it appears to be not swellness, but an ego that has swollen. Few people hire someone to write a threat that boasts that [adding up their years of practice, their continuing-education credits, and the number of groups they've joined](#) results in a big number. Few people hire someone to write a threat letter boasting that they have three times been asked to [buy advertising in Texas Monthly supplements](#). Heck, I've been [asked to do so three times, too](#)—I suppose that you can tell Dr. Coppola that Jen B's attorney is as super a lawyer as he is a dentist—and I know no one who “covets” such a selection.

Dr. Coppola's avowed belief in the freedom of speech is undermined by his attempt to intimidate Jen B into keeping her opinions to herself. His “staunch support” of the military is belied by his hiring a lawyer to try to intimidate an Air Force officer and his wife into yielding that freedom—a freedom for which Major B and his fellow servicemembers have volunteered to fight and die—through threats of criminal and civil proceedings. That is not the behavior of a man who is “in no way attempting to curtail [Jen B's] rights;” as that backpedaling phrase shows, Dr. Coppola knows full well that the entire point of his threat letter is curtailment of Jen B's freedom to speak.

Dr. Coppola's behavior isn't that of a man with an "impeccable record" or an "excellent reputation." It is the behavior of a prideful and hubristic man. It is, as you perhaps revealed in the first paragraph of your threat letter, the behavior of a covetous man—a man of envy and jealousy who lashes out at anyone who threatens his hoard.

It is the behavior of a thug. Thugs are not to be rewarded, and Jen B does not surrender to this one.

Please contact me by May 22 with your response to Jen B's proposal.

Yours,

Leif A. Olson