

MIGUEL A. GOMEZ, III, M.D. and	§	IN THE DISTRICT COURT OF
MIGUEL A. GOMEZ, M.D., P.A.,	§	
	§	
<i>Plaintiffs,</i>	§	
	§	
V.	§	HARRIS COUNTY, TEXAS
	§	
MEMORIAL HERMANN HEALTH	§	
SYSTEM f/k/a MEMORIAL	§	
HERMANN HOSPITAL SYSTEM; and	§	
MEMORIAL HERMANN PHYSICIAN	§	
NETWORK	§	
	§	
<i>Defendants.</i>	§	333 rd JUDICIAL DISTRICT

PLAINTIFFS' FIFTH AMENDED ORIGINAL PETITION

Plaintiffs Miguel A. Gomez, III, M.D. and Miguel A. Gomez, M.D., P.A. (together, "Dr. Gomez") file this Fifth Amended Original Petition against Defendants Memorial Hermann Health System f/k/a Memorial Herman Hospital System ("Memorial Hermann"); and Memorial Hermann Physician Network ("MHMD") (together, "Defendants"), and would respectfully state:

DISCOVERY CONTROL PLAN

1.1 Dr. Gomez intends to conduct discovery under Level 2 of Texas Rule of Civil Procedure 190.

PARTIES

2.1 Miguel A. Gomez, III, M.D. ("Dr. Miguel Gomez) is a resident and citizen of Harris County, Texas.

2.2 Miguel A. Gomez, M.D., P.A. ("Dr. Gomez P.A.") is a professional association organized under the laws of the State of Texas.

2.3 Memorial Hermann Health System f/k/a Memorial Hermann Hospital System is a business entity organized under the laws of the State of Texas that controls and manages a number of hospitals, out-patient facilities, and other health care service centers throughout the Houston Metropolitan area, including Memorial Hermann Memorial City Medical Center. Memorial Hermann has appeared and answered herein.

2.4 MHMD a/k/a Memorial Hermann Physician Network is a business entity organized under the laws of the State of Texas, and has appeared and answered herein.

VENUE & JURISDICTION

3.1 Venue is proper in Harris County under Tex. Civ. Prac. & Rem. Code Section 15.002(a)(1), as all or a substantial part of the events or omissions giving rise to this legal action occurred in Harris County, Texas, and Defendants all reside in Harris County, Texas.

3.2 Dr. Gomez has incurred and sues for damages well in excess of \$125,000, and jurisdiction is proper in this Court.

RESPONDEAT SUPERIOR/VICARIOUS LIABILITY/CIVIL CONSPIRACY

3.3 At all relevant times, Keith Alexander, as a principal officer of Memorial Hermann, and other agents/employees of Memorial Hermann and MHMD working under his direction or in furtherance of unlawful and improper actions, was employed by and acting in furtherance of the business of Memorial Hermann and/MHMD. Memorial Hermann is liable for the improper acts and omissions of its principal officer,

Keith Alexander, as well as the other agents/employees of Memorial Hermann, under the legal doctrines of respondeat superior and vicarious liability. MHMD is also liable for the improper acts and omissions of its agents/employees of MHMD, under the legal doctrines of respondeat superior and vicarious liability.

3.4 Defendants Memorial Hermann (acting by and through its agents/employees/principal officers) and MHMD (acting by and through its agents/employees/principal officers)) and other third parties acted together to carry out the improper and illegal actions, constituting civil conspiracy in carrying out their wrongful activities.

CONDITIONS PRECEDENT & INAPPLICABILITY OF AFFIRMATIVE DEFENSES

4.1 All conditions precedent to Dr. Gomez' right to recover have been performed or have occurred.

4.2 To the extent necessary, Plaintiffs rely on and plead the discovery rule to any statute of limitations defense asserted by Defendants, including fraudulent concealment.

FACTUAL BACKGROUND

5.1 Since returning after advanced training to practice medicine in his hometown of Houston, Texas, Dr. Gomez worked hard to build a stellar reputation for quality patient care, technical excellence, and outstanding professionalism in cardiothoracic and general surgery in the West Houston and Katy community. Dr. Gomez cares about his patients, his fellow medical professionals, and his community, and his practice expanded over a number of years with continuing referrals from medical professionals

aware of his well-deserved reputation for outstanding patient care.

5.2 Dr. Gomez's skills and specialized abilities for patients requiring cardio-thoracic and general surgeries, from "basic" open heart surgery to advanced robotic-assisted surgical procedures, were actively promoted for many years by Memorial Hermann as part of its own marketing efforts in the West Houston and Katy medical community. In fact, Memorial Hermann heavily promoted Dr. Gomez and his pioneering of the robotic-assisted surgical procedures by investing in the million dollar DA VINCI machine and spending enormous amounts of advertising dollars promoting Dr. Gomez and the procedure.

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12 Q. How did that marketing you did for the
13 hospital help the hospital?

14 A. Majorly.

15 Q. How so?

16 A. Because, Number 1, he was listed as the
17 preferred robotic surgeon, and no one was doing it. I
18 don't even think -- I know he did the very first one in
19 the State of Texas.

See Deposition of Portia Willis, attached hereto as Exhibit A.

Dr. Gomez's practice was further enhanced by his pioneering implementation of "off the pump" surgery and robotic-assisted cardiothoracic procedures in the Houston medical community. "Off the pump surgery" eliminates the need for the use of a heart-lung machine by-pass during surgery and greatly enhanced patient care and outcomes. Robotic-assisted surgery, which typically eliminates the need to crack open the patient's sternum in favor of much smaller entry ports for the robotic surgical tools, likewise led to better outcomes and quicker recoveries for patients fortunate enough to come under

Dr. Gomez' care.

5.3 The recommendation of the referring physicians to the patient directly impacts the choice of the specific surgeon entrusted with patient care.

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18 Q. When you're talking about the business of
19 medicine, how important is this referral process from
20 doctors to a specialist like a surgeon?

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2 A physician -- if a hospital doesn't have
3 physicians, the hospital would be -- would fail.
4 You're going to have to have surgeons to keep a
5 hospital up and running. So, it's the same thing with
6 a -- with a doctor. They are going to have to have
7 referrals from physicians or they are going to fail.

9 Q. Reputation within the medical community, how
10 important is it to this business part of the referral
11 process?

12 A. You have to have reputation, or no one is
13 going to refer to you.

See Exhibit A.

The surgeon in turn determines, based upon the quality of the surgical and post-surgical equipment, staff, and facilities, the hospital in which the surgical care is delivered. The surgeon's decisions as to where to perform his or her surgeries directly impact the profitability of the hospitals in the specific community (in the West Houston and Katy community, the surgical market is primarily at Memorial Hermann Memorial City Medical Center and The Methodist West Houston Hospital). As a result, the ability to fairly compare the reputations of surgeons in a medical market community such as West Houston and Katy affects patient choice and the continued availability of the highest quality patient care. Improperly manipulating comparative information and

reputations of surgeons in a medical market such as West Houston and Katy creates an improper distortion of free and informed patient choice and options for medical care.

5.4 The appropriate way for any health care provider to attract patients in a competitive market is by actually providing and being known for providing the highest quality of care. The illegal and unjust way (putting patients and their free choice in the market in jeopardy) is to malign, spread untrue or misleading information, or otherwise smear the reputation of a highly qualified surgeon in the same medical community.

5.5 With new management and operational changes at Memorial City Memorial Hermann, including the arrival of Mr. Alexander as CEO, Dr. Gomez became increasingly concerned about a decline in the quality of patient care at the hospital. The decline in patient care arose from the understaffing of qualified nurses in the hospital's intensive care unit (ICU), general care units and the emergency room; the lack of consistent procedural safeguards for monitoring patients; and the failure to update critical equipment. Memorial Hermann also began deliberate efforts to restrict surgical care for the most critically ill patients, pushing for abandonment of "salvage" cases (for example, emergency surgery on patients in active cardiac arrest, able to be saved in some but not all circumstances by a qualified surgeon). What this meant to patients most in need of a surgeon with Dr. Gomez' unique qualifications was the elimination of patient choice and potentially life-saving procedures in favor of potentially higher statistical ranking for Memorial Hermann as calculated by U. S. News and World Report.

5.6 In response to Dr. Gomez repeatedly speaking out about these concerns, as well

as the likelihood Dr. Gomez would move his surgeries to The Methodist Hospital— West Houston as the staffing and equipment dysfunctions continued, Dr. Michael P. Macris and Mr. Alexander, and others, joined in a calculated and deliberate scheme to destroy Dr. Gomez’ reputation and ability to practice medicine in the West Houston and Katy community.

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14 Q. What did the arrival or impending arrival of
15 Methodist Katy West Houston mean for Memorial City?

16 MR. SWIFT: Object to form.

17 A. Oh, a big -- it was a big competitor and it is
18 a big competitor.

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6 Q. From the perspective of a hospital
7 administration staff, if a doctor chooses to do more
8 procedures at another hospital --

9 A. Uh-huh.

10 Q. -- how does it impact the hospital?

11 A. Huge.

22 Q. If you're concerned a special surgeon may
23 leave your hospital to do procedures elsewhere, is that
24 a problem?

25 A. Huge.

See Exhibit A.

Dr. Macris and others wanted to disadvantage a skilled competitor, and Memorial Hermann needed to avoid losing patients by working with Dr. Macris and others in capturing the patients that would have otherwise been treated by Dr. Gomez at another facility.

5.7 Quality patient care is the most important goal of any legitimate health care provider. Under both federal and state law, hospitals and their medical staff are required to follow strict standards for peer review evaluation and monitoring. These

peer review standards rely upon a consistent and well-developed process to ensure that favoritism, improper motives, and manipulation for unjust purposes play no role. Memorial Hermann had such a process in place at all relevant times, but Defendants acted to evade and avoid its safeguards while manipulating the rules for peer review and utilization review for their own wrongful purposes.

5.8 In order to discredit Dr. Gomez and crush his ability to practice medicine in the West Houston and Katy community, Memorial Hermann and others began compiling (and distorting) statistical data related to the mortality rates of Dr. Gomez's patients. The manipulated data, which was reported using neither the generally accepted methodologies for proper peer review comparison nor basic scientific principles, was intended to create the appearance that patients were more likely to die in Dr. Gomez's care as compared to other surgeons at Memorial Hermann. At bottom, the statistical information compiled and manipulated by Dr. Macris and Memorial Hermann was geared to demonstrating a falsehood: that Dr. Gomez was an incompetent physician underserving of his reputation and the trust his hard work had earned in the West Houston and Katy medical community.

5.9 Rather than comply with the medical peer review process and its safeguards against improper influence, Defendants attempted to evade these well-established protocols and the standing medical peer review committee at the hospital. Defendants then set up an emergency "meeting" and presented Dr. Gomez with the option of either immediately suspending his practice or agreeing to active interventional monitoring under Defendants' supervision. Both "options" would have effectively destroyed

Dr. Gomez' reputation in the medical community, severely curtailing patient choice, as well as the opportunity for these and future patients to benefit from Dr. Gomez' advanced abilities in cardiothoracic and surgical procedures.

5.10 At the time Dr. Gomez was presented with these "options" by Defendants, he was also told that he would not be able to review at any meaningful level the alleged data supporting the emergency action outside the usual peer review process (the data that ultimately proved to be improperly manipulated and without a basic medical and scientific grounding). Defendants also refused Dr. Gomez the opportunity to meet with or present any information to Defendants and those acting with Defendants, and instead insisted that Dr. Gomez' quality of care could not be evaluated by the established medical peer review committee.

5.11 Fortuitously, and despite Defendants' best efforts to continue the railroading of Dr. Gomez, the actual peer review committee at Memorial Hermann intervened to require Defendants to present their data, and other alleged reasons for attempting to block Dr. Gomez' continued practice at Memorial Hermann, to the peer review process. Notwithstanding Defendants' presentation of the manipulated patient data, the evaluation of the peer review committee exonerated Dr. Gomez. During the process, Defendants were provided with clear and convincing evidence that the manipulated data used to "compare" Dr. Gomez could not be relied upon for any legitimate purpose.

5.12 After completing its comprehensive evaluation, including comparison with patient care outcome statistics of other surgeons, the peer review committee's rejection of Defendants' anti-competitive and unlawful abuse of the peer review process should

have deterred Defendants from their continued misconduct. Unfortunately, Defendants elected to instead continue a whisper campaign of selective and improper dissemination of both the manipulated data and other misinformation within the medical community.

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3 Q. And then something changed at Memorial
4 Hermann?

5 A. Yes, sir.

6 Q. What happened?

7 A. Well, I was -- all I know is I was called into
8 my -- my boss's office.

16 But I was called into her office, and I
17 was told that I needed to slow down and not to have him
18 basically go out into the community anymore, that there
19 was a pause.

20 Q. When you say him go out in the community
21 because there was a pause, who are you talking about?

22 A. Dr. Gomez. Dr. Miguel Gomez.

23 Q. Reason?

24 A. I asked the reason and the reason was that --
25 I was not allowed to know the reason at that time, but

28

1 that there were questions going on in administration.

2 Q. When you say administration, who are the
3 people you are talking about?

4 A. CEO, CNO, COO, I assume, which it was -- it
5 was part of -- from what I finally got from it, and
6 this was from my boss, was that there were some issues
7 going on, and that had been presented to the -- I don't
8 know if it's the cardiology, and cardiovascular, or
9 cardiovascular section.

18 Q. What's your best recollection, Ms. Hanna, this
19 director for Memorial Hermann, two facilities, sharing
20 with you about Dr. Gomez in his practice, his ability
21 to do the job?

22 A. The only thing I think that was said to me
23 that there were issues about his -- trying to remember
24 exactly, and I -- and it was about like his surgery
25 abilities, or something like that. But then the rumors

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1 went flying all over the whole campus that he had
2 problems with his mortality rate. It was the big thing
3 that kept coming out everywhere. I mean everybody knew
4 it.

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25 Q. This face-to-face meeting with your director,

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1 first time you received an indication something
2 negative about Dr. Gomez's reputation?

3 A. Yes, sir.

4 Q. After that, was that the last time you heard
5 something negative from someone working at Memorial
6 Hermann about Dr. Gomez, his reputation?

7 A. No. It was -- like I said, it was rampant.

8 Q. When you say rampant --

9 A. All over the hospital. Everybody was talking
10 about that, you know, there were issues that -- that he
11 wasn't the surgeon that we thought he was. And I mean
12 it was just all in the hallways even, that they didn't
13 know -- it was even said one time by someone just that
14 I hardly even knew, that they didn't even know if he
15 would be practicing that much longer.

16 It was, you know, that -- basically, that he
17 wasn't who everybody thought he was. And he wasn't --
18 I don't know how to put it. Like a skilled surgeon is
19 what -- what we once thought, when I always thought he
20 was like the top, top, top. There was no one better
21 than them.

See Exhibit A.

The first indication Dr. Gomez received that Defendants' smear campaign had continued unabated was when the same type of manipulated and misleading data was presented by Dr. Macris on November 1, 2011 at a non-peer review meeting organized by MHMD in a publicly displayed "comparison", readily identifiable with Dr. Gomez and intended to be seen as such. The circumstances and details of this public defamation are set forth in greater detail in Paragraph 7.3 below, based on the

information available at this time.

5.13 Dr. Gomez attended a General Surgery meeting in approximately January or February 2012. At that meeting, a large number of the members of the West Houston medical community were present. During that meeting, Dr. Gomez vocalized his concerns of the decline of the practices and care being given to patients in the ER as directed by MHHS. In response to Dr. Gomez's statements of concern, Defendants' vice-principal Keith Alexander said "that if [Dr. Gomez] didn't like it, [Dr. Gomez] could take [his] practice down the street to Methodist West.

5.14 Mark Twain once noted that, "A lie can travel around the world before the truth can even finish putting on its pants." Defendants' illegal and anti-competitive acts unfairly cast Dr. Gomez' stellar reputation under a dark cloud. As could be anticipated, if not intended, Defendants' calculated wrongdoing also imposed substantial economic, emotional, and physical impacts upon Dr. Gomez. Facing continuing harassment and improper attempts to interfere with his practice at Memorial Hermann, Dr. Gomez resigned his privileges at Memorial Hermann in May 2012. However, the loss to the community, and Dr. Gomez, from Defendants' misconduct remains ongoing and unremedied.

5.15 In fact, the intent of Defendants' illegal behavior was to impact the referral market in an effort to steer consumers away from certain doctors and avoiding losing patients to Methodist West. Defendants conducted this anticompetitive pattern of behavior of improperly steering referring doctors away from Dr. Gomez and others who were willing to make decisions based upon the best interests of their patients, and

not just the business interests of Memorial Hermann. Consumers were then faced with essentially no choice but only left with the choice given by the referring doctors who were influenced by Defendants' unfair and false campaigns against doctors who were either vocalizing about MHHS' problems with patient care or leaving MHHS for Methodist West.

5.16 Specifically with regard to Dr. Gomez, the impact was on the referral market for cardio-thoracic surgeons specializing in "off the pump" and robotic-assisted cardiothoracic procedures in the West Houston medical community. At the time of the campaign against Dr. Gomez, there were only three surgeons at MHHS who could perform these services. The campaign against Dr. Gomez had a substantial effect on the referral market giving consumers little or no real market choice in the West Houston medical community in the market for doctors with Dr. Gomez' special abilities.

5.17 Other examples exist of Defendants' improper anticompetitive behavior:

"A specific example I recall of attempts to attack physicians that might be considering moving their practice to Methodist West occurred when Keith Alexander instructed me to carry out a "stealth" project concerning Dr. Edward Rensimer ("Dr. Rensimer"). I have known and worked with Dr. Rensimer for a number of years and I hold him in high regard as a physician. Dr. Rensimer is very vocal and unafraid to let his opinions be known if he felt something was unethical or not in the best interests of patient care, even if it meant going against administration. Dr. Rensimer was elected Chief of Staff at Memorial City. Because of Dr. Rensimer's outspokenness, the administration, specifically Keith Alexander, clearly expressed that he was not happy with the appointment.

After his election, Keith Alexander instructed me to report on Dr. Rensimer's rounding and notation practices. Specifically, I was instructed to monitor Dr. Rensimer's patient charts in order to check how often he was rounding on patients; to analyze his progress notes to check how often he was making courtesy visits to patients and to check if his documentation was valid. I was instructed to submit a report of any findings in excel format to Mr. Alexander. Additionally, I was expected to round on Dr. Rensimer's patients to confirm that he had in fact rounded on them as indicated by his documentation in the charts.

I felt that this was not my role as Patient Advocate, that my time was better spent on dealing with specific patients, and that Dr. Rensimer was unfairly being singled out due to the administration's dislike of Dr. Rensimer. Thus, I went to my superior and reported that I was uncomfortable with the project. I was told by my superior that if this is what Mr. Alexander wanted, that I should just do what I was instructed. Ultimately, Dr. Rensimer unexpectedly resigned his position as Chief of Staff and left Memorial City."

See Exhibit B, Affidavit of Francesca Sam-Sin.

"I learned firsthand of Memorial City's anticompetitive behavior before Town & Country broke ground in the mid-2000s. Town & Country was a physician-owned hospital. I was called by Memorial City administrators Dave Jones and Dan Wolterman. I met with them in my office and they told me that they were going to put a stop to the hospital. Their stated options included decredentialing investors, blocking the obtaining of insurance contracts, and threatening to undercut insurance contracts in an effort to squeeze Town & Country out of business. I had a phone conversation with a Blue Cross/Blue Shield representative and learned that Town & Country couldn't get insurance contracts because "it was all about steerage". This representative stated to me that they had favorable rates at Memorial City and agreeing to contract with Town & Country would hurt Blue Cross/Blue Shield's relationship with Memorial City."

See Exhibit C, Affidavit of Robert Vanzant, M.D.

“I was one of the busier surgeons on Memorial City’s campus and I brought in a great deal of business to Memorial City. This included surgeries, breast imaging, pathology services and radiation therapy. However, I routinely referred most of my patients to an oncologist whose office was not on campus. I also referred my patients for major imaging procedures such as CT scans and MRI’s to a different off-campus facility. Memorial City was not happy with my referring patients to nonaffiliated facilities and physicians, even though I felt they got better care than at Memorial City.

In 2009, I was called in to what turned out to be a two hour meeting with Memorial City CEO, Dave Jones, and Chief of Staff, Dr. Joel Abramowitz. Methodist West was in the process of opening up at the time this meeting took place. At this two hour long meeting, I was told that I would be committing political suicide and my practice could be in jeopardy if I did not refer my patients to the Memorial City affiliated medical oncologists, radiation oncologists and imaging. During this meeting, Mr. Jones and Dr. Abramowitz tried to slander the nonaffiliated oncologist to whom I referred my patients.

Shortly after the meeting took place, Dave Jones’ term as CEO ended and Keith Alexander became CEO. I had several conversations with Keith Alexander and Bobbie Carbone in which they indicated that they very much wanted me to stay on campus and offered me building space in prime location in the Memorial City Tower or one of Memorial City’s more expensive on-campus buildings. During this time, Memorial City made the decision to convert the building in which I and many other physicians had our office space to a purely dedicated administration building. In doing so, approximately 30 physicians would be pushed out of their office space. Keith Alexander made several visits to my office to offer a good deal on office space. Keith Alexander also asked me numerous times if I was moving to Methodist West. I avoided a direct answer. Even though I had never agreed to or indicated that I would move, Memorial City put my name on build out plans prior to any arrangements with me.

Physicians had many conversations about whether, and where, offices would be moved either on or off Memorial City’s campus. I ultimately left for Methodist West.

In one conversation, Bobbie Carbone tried to convince me that the future of medicine was that physicians would be employees of hospitals.

The 2009 meeting and these attitudes were the major contributing factors to my moving my office away from Memorial City.”

See Exhibit D, Affidavit of Jo Pollack, M.D.

5.18 Taken as a whole, the “informal peer review investigation” into Dr. Gomez, (later debunked by the official peer review committee), along with the November 2011 meeting in which false information about Dr. Gomez was openly displayed, the resulting “whisper” campaign and MHHS’ pattern of behavior toward doctors who questioned the quality of patient care and the “coming after you if you don’t play ball” attitude, perpetrated a system wide chilling effect on physicians.

CAUSES OF ACTION

FIRST COUNT – BUSINESS DISPARAGEMENT

6.1 Dr. Gomez re-alleges and incorporates each allegation contained in Paragraphs 1-5.18 of this Petition as if fully set forth herein.

6.2 Defendants published disparaging words about Dr. Gomez’ business and economic interests.

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1 Q. Are you saying, then, that Ms. Hanna told you
2 that there was -- there was a mortality issue regarding
3 Dr. Gomez? Did she specifically tell you that?

3 A. Yes.

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5 Q. And what I'd like for you to do is to identify
6 who said anything negative or disparaging to you about
7 Dr. Gomez in the hallway, or wherever, in the hospital?

8 A. I don't know how to even answer that --

9 Q. Okay.

10 A. -- because it was everywhere.

11 Q. Okay. So --

12 A. I can't pinpoint. It was even housecleaning

13 people.

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5 Q. I don't -- I am not interested in everybody.

6 I am interested in names. Who?

7 A. Names. I would assume the -- well, the ladies
8 that I talked to at CM. I am assuming Barbara Ellis
9 was there. Cheryl Greensage was there. Because it
10 became a topic of conversation.

11 Q. Okay. Are you telling me that those two
12 people conveyed to you something negative about
13 Dr. Gomez?

14 A. Yes. And Lana Baker, she was in charge of the
15 medical staff, like the entire medical staff. She is
16 the medical staff coordinator. Lana and I talked about
17 it at the time.

18 Q. And what did she say to you?

19 A. And -- she said that there's issues going
20 around here in administration that he had some surgical
21 problems

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13 Oh, you know what, I think it -- I think
14 one time you may find -- the physician liaisons. I
15 remember speaking to them, and it was Cindy Pena, or I
16 remember talking to them because she worked and did
17 everything with the doctors. It was either Cindy
18 Pena -- or that was one person, I can sit here and
19 think of, when it was -- when it was a conversation, or
20 -- and it may be Jenn Todd, too. There are two
21 physician liaisons.

22 Q. Okay.

23 A. And Marlen Angelloz, she was in charge of
24 cardiology at the time.

25 Q. And what did they say?

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1 A. We were talking, and it was basically about,
2 exactly about, that he was being -- he was in trouble,
4 and that his surgical abilities were in question

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6 7 Q. Someone working for Memorial City Hermann
7 8 Hospital --

8 9 A. Yes.

9 10 Q. -- told you that there was some kind of report
10 11 to cardiologists of what kind of information about

11 12 Dr. Gomez?
12 13 A. Well, it was -- it was a report, basically
13 14 given to him about, you know -- and mortality rates and
14 15 everything. I mean, this is what -- and that was also
15 16 after that, somebody had told me that, and then it
16 17 became like a big rumor.

See Exhibit A.

As set forth in Paragraph 7.3 below, and at other times to be further detailed upon necessary discovery, Defendants did and intended to harm Dr. Gomez' business interests.

6.3 Defendants published these disparaging words knowing they were false and with malice.

6.4 Defendants published these disparaging words without privilege.

6.5 Defendants published these disparaging words to medical doctors and staff at MHHS and MHMD; medical doctors and staff at other Houston-area medical providers; current, former, and prospective patients of Dr. Gomez; and the public at large.

SECOND COUNT – DEFAMATION

7.1 Plaintiffs re-allege and incorporate each allegation contained in Paragraphs 1-6.4 of this Petition as if fully set forth herein.

7.2 Both lies and half-truths presented in a misleading manner are equally false. Defendants' statements and misstatements, including alleged comparative data, were in proper context wholly false, libelous, and slanderous. Defendants knowingly, recklessly, and maliciously spread falsehoods about Dr. Gomez, and Defendants had no right, privilege, or justification to make the statements.

7.3 Specifically, at a Cardiovascular and Thoracic CPC Meeting arranged by MHMD on November 1, 2011, which is open and outside the peer review process, Dr. Macris, on behalf of MHMD, Memorial Hermann, displayed and communicated libelous statements and false data including, but not limited to, false data and statements regarding Dr. Gomez's practice and mortality rates of his patients, to an entire room filled with Dr. Gomez's professional colleagues, intending that it be thereafter widely disseminated. Among those colleagues believed to be present at the meeting where Dr. Macris disseminated the false data and statements were the following:

- Lee Colosimo, MD
- Anthony Estrera, MD
- Donald Gibson, MD
- Kouros Keyhani, MD
- Kamal Khalil, MD
- Javier Lafuente, MD
- Robert McKowen, MD
- Imran Mohiuddin, MD
- Jaime Roman-Pavajeau, MD
- Patti Peymann
- Ann Guercio
- Tim Bevelacqua
- Byron Auzenne

- Richard Alexander, MD
- Michael Shabot, MD

These people in attendance at the November 1, 2011, meeting had the false, libelous, and slanderous material directly communicated to them, with the full intent of Defendants that it be further shared to attempt to harm Dr. Gomez' practice.

7.4 Defendants published these defamatory statements to medical doctors and staff at MHHS and MHMD; medical doctors and staff at other Houston-area medical providers; current, former, and prospective patients of Dr. Gomez; and the public at large.

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13 Q. This campaign outside the medical staff
 14 process, was it a problem for Dr. Gomez's practice in
 15 the medical community?

16 MR. SWIFT: Objection to the form.

17 A. With other physicians? I think definitely.

18 Q. (BY MR. DOYLE) How can you tell us that?

19 A. Because from what I have been told, like lots
 20 of different -- even talking to -- hearing physicians
 21 talk at that time, and some of them wouldn't have been
 22 cardiologists and stuff like that. All the physicians
 23 were talking, and they knew that there was a problem
 24 with -- again, it's like I kept constantly hearing
 25 like, you know, operating on -- on things he shouldn't,

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1 or operating on sicker patients than he should, and
 2 operating on patients that are well, and mortality
 3 rates. I mean everything was going on. You kept
 4 hearing that everything was negative.

See Exhibit A.

7.5 As described above, the statements and representations were defaming to Dr. Gomez, both personally and in the conduct of his medical practice. Furthermore,

the statements and representations by Defendants were so egregious and obviously hurtful as to constitute libel and slander *per se*.

THIRD COUNT – TORTIOUS INTERFERENCE WITH PROSPECTIVE RELATIONS

8.1 Plaintiffs re-allege and incorporate each allegation contained in Paragraphs 1-7.3 of this Petition as if fully set forth herein.

8.2. Dr. Gomez had longstanding and continuous relationships with referring physicians in the West Houston and Katy medical community, and these relationships directly led to patient referrals for surgical procedures. Due to these longstanding and continuous relationships, there was a reasonable probability that Dr. Gomez would have been selected to perform surgical procedures for these patients. In addition, there is a reasonable probability that Dr. Gomez would have entered into various other business relationships with third persons or entities, but for Defendants' improper acts and omissions, as set forth herein.

8.3 Defendants intentionally interfered with the relationships between Defendants and these persons and entities. This interference impacted and caused economic loss in the past and future to Dr. Gomez.

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5 Q. The impact on the business part of medicine
6 for a specialist like Dr. Gomez, how clear was it to
7 you, if you start this kind of process of what you saw
8 with Dr. Gomez, it's going to impact his business?

9 MR. SWIFT: Objection, leading.

10 A. I think it --

11 MR. SWIFT: Objection to form. Sorry.

12 Q. (BY MR. DOYLE) Go ahead.

13 A. I think it can ruin a doctor's business.

14 Q. Why?
15 MR. SWIFT: Object to responsiveness of
16 the previous answer.

17 A. It's all reputation.

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20 Q. When you say implied, what do you mean?

21 A. The referral patterns changed in different
22 ways. Like, I mean, he used to be one of the Number 1
23 surgeons, and then he wasn't after that. It was like,
24 from what I understood through other people, and
25 through some of the doctors even that I work with, is

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1 that the Number 1 physician after that that was doing
2 surgery was Dr. Gibson.

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21 Q. Okay. So, my specific question is, was he
22 ever excluded from a seminar or symposium after you
23 spoke to Ms. Hanna on that occasion?

24 A. Yes.

See Exhibit A.

FOURTH COUNT – IMPROPER RESTRAINT OF TRADE

9.1 Plaintiffs re-allege and incorporate each allegation contained in Paragraphs 1-8.3 of this Petition as if fully set forth herein.

9.2 Section 15.21 of the Texas Business and Commerce Code, also known as the Texas Free Enterprise and Antitrust Act of 1983, recognizes as illegal improper attempts to abuse the peer review process, as well as conspiracies to limit patient choice by concerted illegal action such as engaged in by Defendants. Dr. Gomez therefore seeks relief for this anti-competitive solely under the laws established by the State of Texas for this anti-competitive misconduct affecting Texas' citizens residing in the West Houston and Katy communities.

9.3 In the West Houston and Katy communities, Dr. Gomez was in competition with Dr. Macris and Dr. Gibson, while Memorial Hermann was in competition with other surgical facilities, primarily including The Methodist Hospital West Houston. Defendants both derived illegal benefit, and patient choice was improperly limited in the West Houston and Katy community, by the concerted effort of Defendants to restrain competition in and monopolize surgical procedures in the West Houston and Katy communities.

9.4 In furtherance of the combination and conspiracy, and with the purpose and intent of excluding Dr. Gomez from the patient care market and destroying competition from Dr. Gomez (and resulting loss of patients at Memorial Hermann), Defendants not only attempted to curtail or limit Dr. Gomez' surgical procedures, but also defamed Dr. Gomez' skill and qualifications as a surgeon in the West Houston and Katy community. These acts were done with the specific intent to weaken or eliminate competition from Dr. Gomez, and because of the market dominance that would result had a dangerous probability of success.

9.5 Defendants' willful actions have also harmed and threatened the general public by interfering with the orderly practice of medicine in the community, by reducing the number of surgeons actively practicing in cardiothoracic and general surgery in the community, and by depriving patients of the highest quality of medical care they would have been able to receive but for Defendants' concerted actions against Defendants.

9.4 This concerted conduct was flagrant and willful, and was done for the specific

purpose of harming Dr. Gomez, illegally and improperly taking Dr. Gomez' practice, and diverting it to Dr. Macris and others practicing solely at Memorial Hermann.

9.5 The acts of Defendants constitute illegal monopolization, attempted monopolization, and/or conspiracy to monopolize under applicable Texas law.

RESULTING LEGAL DAMAGES

10.1 Dr. Gomez is entitled to the actual damages resulting from Defendants' violations of the law. These damages include the consequential damages to Dr. Gomez' economic welfare; the mental anguish and physical suffering resulting from Defendants' conduct and the continued impact on Dr. Gomez; lost business reputation; attorneys' fees as allowed by law; and the other actual damages permitted by law.

10.2 Dr. Gomez trusts the jury to evaluate the evidence—including documentation and expert and lay witness testimony—and to properly assess the damages sustained by Dr. Gomez. The law permits Defendants to demand that Plaintiff state the maximum amount of damages that Plaintiff will seek, and only in response to that demand, Plaintiff states that he expects to request the jury to award a maximum amount of \$15,000,000.00 in compensation for the damages asserted based on the most current available information. As additional information of the amount of the harm inflicted by Defendants becomes available, and as permitted by law, Dr. Gomez will amend this determination to as best possible provide a fair estimate for our juror's consideration.

10.3 Defendants are also liable for statutory additional trebling and exemplary


damages warranted by Defendants' malicious and egregious conduct.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Dr. Gomez respectfully requests judgment against Defendants for actual damages in excess of the minimum jurisdictional limits of this Court, pre- and post-judgment interest as allowed by law, costs of suit, and all other relief, at law or in equity, to which Plaintiffs may be justly entitled.

Respectfully submitted,

DOYLE LLP

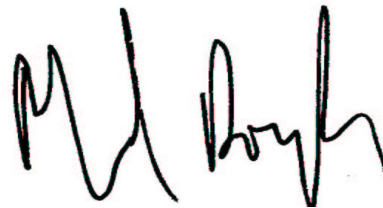


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JURY DEMAND

Dr. Gomez hereby confirms his previous demand for trial by jury, a right enshrined in the Constitution of the United States and the State of Texas and protected by the sacrifices of many.



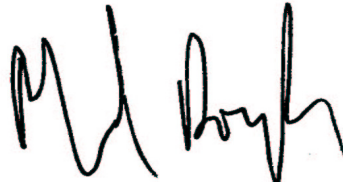
MICHAEL PATRICK DOYLE

CERTIFICATE OF SERVICE

I, the undersigned attorney, do hereby certify that a true and correct copy of the foregoing document was forwarded to the following counsel of record on this the 1st day of February, 2016, via hand delivery, overnight courier, U.S. Mail, certified mail, return receipt request, email, and/or facsimile, pursuant to the Texas Rules of Civil Procedure:

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