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February 26, 2004

Mr. Herb Elish
Director
Carnegie Library of Pittsburgh
4400 Forbes Avenue
Pittsburgh, PA 15213

Dear Herb:

I enclose the decision and recommendation of the appellate panel in the matter of Dr. Berwick for presentation to the Board. If you have any questions, I will be pleased to respond. Best regards.

Sincerely,

John E. Murray, Jr.
Chancellor & Professor of Law

Enclosure

In re Evelyn S. Berwick, M. D.

Pursuant to the by-laws of Allegheny General Hospital, Dr. Evelyn S. Berwick sought appellate review of the termination of her clinical privileges and medical staff membership at Allegheny General Hospital. The appellate review panel consisted of three members of the Allegheny General Hospital Board of Directors: Basil Cox, Jack Isherwood and John Murray who chaired the panel. The members of the panel had received documentation of prior proceedings resulting in the decision to terminate Dr. Berwick's clinical privileges and medical staff membership.

The appellate hearing took place on Thursday, February 5, 2004, in the Board Room of Allegheny General Hospital. Dr. Berwick was represented by her husband and general business manager, Robert P. Hussey. Allegheny General Hospital was represented by Timothy B. Finnerty, counsel to the Hospital. The hearing began on schedule at 4 p.m. At the inception of the hearing, the panel invited Dr. Berwick and Mr. Hussey to present any matter which they deemed relevant or potentially relevant to this matter with no limitations of any kind. Throughout the hearing, the panel reemphasized its desire to hear any information, argument or comment concerning this entire matter including, without limitation, any matter relating to the substance or process in which this matter had been adjudicated.

The panel had received a copy of a letter dated January 8, 2004, addressed to Connie Cibrone, the Chief Executive Officer of Allegheny General Hospital, from Dr. Berwick and Mr. Hussey that set forth five (5) "reasons for an appellate review" of this matter. At the hearing, Mr. Hussey presented an additional seventeen (17) points that he and Dr. Berwick wished to discuss. These points were essentially replications or elaborations of the five points in the January 8, 2004 letter. Each of the total of twenty-two points was considered by the panel. As to each point, the panel ascertained that Dr. Berwick and Mr. Hussey had the opportunity to exhaust any comments or argument they chose to present. At the conclusion of the hearing, the panel, again, asked the parties if they had any other matter they wished to present. Mr. Hussey stated that he had only one final question, i.e., whether he and Dr. Berwick could be assured that each member of the panel would make an independent decision in this matter. Each member provided such assurance. The hearing concluded at approximately 6:30 p.m. The panel members remained to pursue their deliberations.

The hearing focused on the five essential reasons and elaborations thereof for the appellate review as set forth in the appellant's letter of January 8, 2004 to Ms. Cibrone:

- "(1) An unfair original 'hearing' based on an ill-conceived cataclysmically timed Ad Hoc committee meeting."

After a full consideration of the parties' statements concerning this point, the panel finds that Dr. Berwick had a complete, unfettered and fair opportunity to present any and all defenses to the charges resulting in the recommendation for her termination.

"(2) Discrimination, slander and defamation of character of Evelyn S. Berwick M. D."

The panel discovered a total absence of any discrimination, slander or defamation of Dr. Berwick in all of the proceedings prior to the appellate review. While it is clear that Dr. Berwick and Mr. Hussey disagreed with the findings that led to the termination, the appellant presented no evidence supporting her charge that the findings and statements related thereto were discriminatory, slanderous or defamatory in any way.

"(3) Indirect retribution against Dr. Berwick for testifying on behalf of her patients against Allegheny General Hospital."

This argument was premised exclusively on the appellant's unsupported assumption that her testimony in certain matters involving Allegheny General Hospital was the motive behind her termination. The appellant presented no evidence to support this allegation of retaliation notwithstanding the panel's efforts to discover any supporting evidence.

"(4) Direct financial competition of Allegheny General Hospital for Dr. Berwick's patients and associated revenue."

Here, the appellant alleged that Allegheny General physicians sought to convert Dr. Berwick's patients and the revenue from the treatment of such patients to themselves which constituted a motive for her termination. This allegation was devoid of any supporting evidence.

"(5) Improper procedural conduct on the part of counsel for Allegheny General Hospital at the original 'hearing' of Dr. Berwick (witness tampering)."

The "counsel" to whom this allegation refers was identified as Timothy B. Finnerty, Esq. who participated in the appellate hearing. Mr. Finnerty stated that he had requested a list of witnesses from Dr. Berwick's representative, Mr. Hussey, who supplied a list of nine names. Mr. Finnerty discovered that three of the listed witnesses were current employees of Allegheny General Hospital. Mr. Finnerty stated that he called each of the three individuals and assured them that they were free to testify as witnesses for Dr. Berwick. Mr. Hussey claimed that such an assurance was an implied threat of retaliation. Mr. Finnerty denied any such intention. Mr. Hussey also claimed that there were other witnesses (beyond the original nine) who would have testified until they learned of Mr. Finnerty's charge in the way of witnesses. The appellant presented no evidence supporting this charge in the way of statements from the listed witnesses or other potential witnesses. Moreover, the allegation is further eroded by the fact that, of the three witnesses called by Mr. Finnerty, two testified on behalf of Dr. Berwick.

Additional Allegation

While Mr. Hussey's additional seventeen points, again, were essentially replications and elaborations of the foregoing points, a separate allegation emanated from a discussion of these points. The appellant claimed that an Allegheny General physician had attempted to persuade one of Dr. Berwick's patients to bring an action against Dr. Berwick. The appellant's allegations concerning alleged actions of Allegheny General physicians throughout the hearing had not identified any specific physician by name. Neither Dr. Berwick nor Mr. Hussey were clear in identifying such physicians. Upon questioning by the panel, however, the appellant identified a physician who allegedly had attempted to persuade a patient of Dr. Berwick to bring charges against her. Subsequent to the appellate hearing, the panel pursued a direct inquiry of this named physician who emphatically denied any interaction with the named patient or any other action or even thought of persuading anyone to pursue a charge against Dr. Berwick.

Conclusion

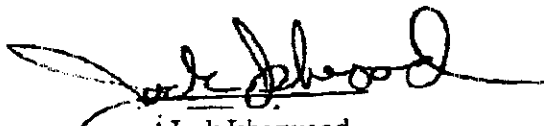
While the panel sympathizes with Dr. Berwick's desire to be reinstated, the panel finds that the record of the charges against Dr. Berwick were fully supported in the hearing that led to her termination. The appellant's unsupported allegations presented to the appellate panel amount to vague suspicions of bad faith motivations that led to her termination. The appellate panel was presented with no evidence corroborating any of these allegations. Indeed, the panel found even the alleged motivations to be implausible under the circumstances. In summary, the panel found no basis whatsoever for overturning the termination decision.

It is, therefore, the unanimous recommendation of the panel to the Allegheny General Hospital Board of Directors that the termination decision be affirmed.

Respectfully submitted,



Basil Cox



Jack Isherwood



John Murray