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APPENDIX A

IN THE SUPREME COURT OF IOWA

No. 23—1659
Iowa County No. LACV024796

ORDER

MARK IRLAND,
Plaintiff-Appellant,

vs.

MARENKO MEMORIAL HOSPITAL,
d/b/a COMPASS MEMORIAL
HEALTHCARE, MARENKO MEMORIAL
HOSPITAL BOARD OF TRUSTEES d/b/a
COMPASS MEMORIAL HEALTHCARE
BOARD OF TRUSTEES, BARRY G.
GOETTSCH, and NATASHA HAUSCHILT,
Defendants-Appellees.

After consideration by this court, en banc,
further review of the above-captioned case is denied.

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Mark Irland
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State of Iowa Courts

Case Number	Case Title
23-1659	Irland v. Marengo Memorial Hospital

So Ordered

/s/
Susan Larson Christens, Chief Justice

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APPENDIX B

IN THE COURT OF APPEALS OF IOWA

No. 23-1659

O R D E R

MARK IRLAND,
Plaintiff-Appellant,

vs.

MARENGO MEMORIAL HOSPITAL, d/b/a
COMPASS MEMORIAL HEALTHCARE,
MARENGO MEMORIAL HOSPITAL BOARD OF
TRUSTEES d/b/a COMPASS MEMORIAL
HEALTHCARE BOARD OF TRUSTEES, BARRY G.
GOETTSCH, and NATASHA HAUSCHILT,
Defendants-Appellees.

This matter comes before the court, Tabor, Greer, and Schumacher, JJ., upon the appellant's petition for rehearing. Upon consideration, the petition is denied.

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State of Iowa Courts

Case Number	Case Title
23-1659	Irland v. Marengo Memorial Hospital

So Ordered

/s/
Sharon Soorholtz Greer
Judge

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APPENDIX C

IN THE COURT OF APPEALS OF IOWA

No. 23-1659
Filed July 3, 2024

MARK IRLAND,
Plaintiff-Appellant,

vs.

MARENGO MEMORIAL HOSPITAL, d/b/a
COMPASS MEMORIAL HEALTHCARE,
MARENGO MEMORIAL HOSPITAL BOARD OF
TRUSTEES d/b/a COMPASS MEMORIAL
HEALTHCARE BOARD OF TRUSTEES, BARRY G.
GOETTSCH, and NATASHA HAUSCHILT,
Defendants-Appellees.

Appeal from the Iowa District Court for Iowa
County, Fae Hoover Grinde, Judge.

A plaintiff appeals the granting of summary
judgment and the award of damages to defendants.
AFFIRMED IN PART AND REVERSED IN PART.

Mark Irland, Grinnell, self-represented
appellant. Mary Funk, Logan J. Eliasen, and
Katherine D. Hamilton of Nyemaster Goode PC, Des
Moines, for appellee.

Considered by Tabor, P.J., and Greer and Schumacher,

JJ.

GREER, Judge.

After an adverse employment action resulting in termination of employment for Dr. Mark Irland, followed by the initiation of litigation over the decision, these parties entered into a binding settlement agreement. Although represented by counsel when he signed the settlement agreement, Dr. Irland has not come to terms with the legal boundaries of the agreement. Because Dr. Irland continued to push those boundaries by filing litigation over claims resolved, the district court dismissed his 2022 petition and ultimately awarded attorney fees to Marengo Memorial Hospital, its board of trustees, its chief executive officer Barry Goettsch, and its director of compliance and risk manager Natasha Hauschilt (collectively, the defendants).¹ On this appellate review, Dr. Irland challenges the district court's grant of summary judgment in favor of and award of damages to the defendants. While we conclude the grant of summary judgment was appropriate, we reverse the district court's award of fees.

The present action relates to a settlement agreement entered into between Dr. Irland and the

¹ Intertwined with the employment issue are other challenges asserted by Dr. Irland against the Iowa Board of Medicine related to his licensing. See *Irland v. Iowa Bd. of Med. (Irland I)*, 939 N.W.2d 85 (Iowa 2020); *Irland v. Iowa Bd. of Med. (Irland II)*, No. 21-0331, 2022 WL 610449 (Iowa Ct. App. Mar. 2, 2022).

defendants² in July 2020. Under the terms of the settlement agreement, Dr. Irland "agree[d], promise[d], and covenant[ed] that neither he, nor any person, organization or any other entity acting on his behalf [would] file, charge, claim, sue or cause or permit to be filed, charged or claimed, any action for damages or other relief (including injunctive, declaratory, monetary relief or other)" against the defendants. He also agreed not to do so for "any matter occurring in the past up to the date of [the settlement agreement] or involving any continuing effects of actions or practices which arose prior to the date of [the settlement agreement]." Further, he also confirmed that the settlement agreement applied to "all claims which have arisen and of which [he] knows or does not know, should have known, had reason to know or suspects to exist" and "contemplates the extinguishment of any such claim or claims." The defendants were then released from liability for "any continuing effects of actions or practices which arose prior to the date of [the] settlement agreement." It took legal action to enforce the mediated terms of the agreement. And after the district court found "[t]here was a clear meeting of the minds in this case

² The case that was settled comprised of claims of breach of a written contract for employment, breach of the duty of good faith and fair dealing, age discrimination in violation of the Iowa Civil Rights Act, termination in violation of public policy, defamation per se, and tortious interference with a prospective business advantage. Along with the defendants named above, Dr. Irland also settled with the Marengo Memorial Hospital Foundation, the Compass Memorial Healthcare Board of Directors, Iowa County, the Iowa County Board of Supervisors, Dr. Greg Neyman, and Dr. Ben Miller.

demonstrated by the confirmation emails immediately following mediation and counsel for [Dr. Irland's] email sent to the Court on July 30, 2020 cancelling upcoming hearings and informing the Court that the case had settled," Dr. Irland signed the written settlement agreement in February 2021.

Prior to entering into the settlement agreement, in August 2016, the defendants submitted a report to the National Practitioner Data Bank (NPDB)³ documenting their concerns about Dr. Irland's ability to practice medicine safely. The report noted inadequate medical record keeping/poor documentation and disruptive conduct as the basis for their concerns. In June 2021, Dr. Irland submitted a request to the NPDB to allow him to review the 2016 report; he also disputed the report's contents. The NPDB then asked that the defendants provide additional information including a timeline of events and investigation report. The defendants did so in June and August of that year, providing documents from its 2016 investigation.

In spite of the settlement agreement that prohibited further litigation, in November 2021, Dr. Irland brought five claims against the defendants in small claims court, seemingly based on this correspondence with the NPDB: (1) loss of opportunity

³ The NPDB "is a web-based repository of reports containing information on medical malpractice payments and certain adverse actions related to health care practitioners, providers, and suppliers." About Us, National Practitioner Data Bank, <https://www.npdb.hrsa.gov/topNavigation/aboutUs.jsp>.

and wages, (2) failure to perform, (3) acting in bad faith, (4) fraudulent misrepresentation, and (5) defamation with malice. Dr. Irland claimed that the 2016 report provided to the NPDB by the defendants violated the settlement agreement and the defendants should have retracted their 2016 report after the January 2021 enforcement of the settlement agreement. The small claims court granted the defendants' motion to dismiss for failure to state a claim upon which relief may be granted in December, concluding that

[i]n light of the previous settlement agreement between the parties which was judicially enforced, and the subsequent Order dismissing the matter with prejudice . . . the contents of [Dr. Irland's] Petition are not stated with sufficient specificity to give the Court the ability to determine whether these claims are new claims that exist independent and subsequent to the claims that have been adjudicated in the prior district court matter, or whether [Dr. Irland] is re-hashing stale claims that have been fully litigated, or could have been litigated previously.

The litigation did not end there. In August 2022, Dr. Irland brought nine claims against the defendants, again based on the 2016 NPDB report and, additionally, property damage that occurred in 2018: (1) breach of release of claims—written contract, (2) fraudulent misrepresentation, (3) fraudulent

inducement, (4) trespass with property damage,⁴ (5) defamation with actual malice, (6) breach of the duty of good faith and fair dealing—written contract, (7) negligence, (8) void non-disparagement contract clause, and (9) tortious interference. In response, the defendants raised two counterclaims: (1) breach of contract and (2) a request for declaratory judgment. In September, the defendants moved to dismiss Dr. Irland's claims or, in the alternative, for summary judgment. The court denied the motion in November, finding the record was not yet developed for a summary determination. In doing so, it determined that, "[w]hen the Petition, on its face, is construed in the light most favorable to [Dr. Irland], the Court concludes it cannot be said with certainty that there is no set of facts under which [he] may be entitled to recover against [the d]efendants." The defendants again moved for summary judgment in March 2023, supporting the motion with several documents including the 2016 NPDB report, court filings from the 2021 action, and the settlement agreement and motion to enforce the settlement agreement.

The court granted the defendants' summary judgment motion in June, finding "[e]ven when the facts are viewed in the light most favorable to [Dr. Irland], the Court concludes that [his] claims are barred by the terms of the release and settlement agreement." Regarding the NPDB report, the court determined that Dr. Irland "was aware of this

⁴ This claim related, it appears, to a vehicle crashing into a mailbox on Dr. Irland's property in July 2018.

information *before* the parties entered into their agreement, and thus he had the ability to fully contemplate the content of these letters before entering into the agreement" and "[b]ased on the clear and unambiguous terms of the parties' settlement agreement [Dr. Irland's] claims against [the defendants] are barred." Regarding the defendants' counterclaims, the court found that Dr. Irland "now has unsuccessfully sued and stated claims against [the d]efendants in this action, including disclosing confidential terms of the settlement agreement. This is a clear breach of the parties' settlement agreement, and [the d]efendants are entitled to damages on their breach of contract claim." Lastly, the court issued a declaratory judgment "that the parties' settlement agreement does not require [the d]efendants to retract or take any affirmative action with respect to the NPDB report; [Dr. Irland] has breached the parties' settlement agreement; and [the d]efendants have been damaged by [Dr. Irland's] breach and are entitled to be made whole."

In July, the defendants submitted an affidavit documenting attorney fees for work completed on the case through that month and attached hourly billing statements to the affidavit. The court ruled in September that the "[d]efendants are entitled to recover attorney fees in this action." Furthermore, it found the amount of attorney fees accrued reasonable given that Dr. Irland had "made numerous filings and claims repeatedly, and [the d]efendants had to address each of those filings and claims. The Court conclude[d] the expenditure of fees in this case was reasonable given the subject matter involved and the matters [the

d]efendants had to address." Lastly, it stated that it "has reviewed [the d]efendants' billing statements and does not find the time therein to be unnecessary or duplicative, and [the d]efendants' counsel and staff have billing rates that are in line with local custom." It awarded damages in the amount of \$65,623.50, which consisted entirely of attorney fees.

Dr. Irland appeals. He challenges the court's grant of summary judgment and requirement that he pay the defendants' attorney fees.

I. Summary Judgment.

Dr. Irland purports to raise several challenges to the district court's grant of summary judgment in favor of the defendants. "We review a district court's summary judgment ruling for correction of errors at law." *Breese v. City of Burlington*, 945 N.W.2d 12, 17 (Iowa 2020). Summary judgment is proper when the moving party establishes there is no genuine issue of material fact and they are entitled to judgment as a matter of law. *Deeds v. City of Marion*, 914 N.W.2d 330, 339 (Iowa 2018). "We [re]view the record in the light most favorable to the nonmoving party." *Id.* But our review is "limited to whether a genuine issue of material fact exists and whether the district court correctly applied the law." *Pillsbury Co., Inc. v. Wells Dairy, Inc.*, 752 N.W.2d 430, 434 (Iowa 2008).

Here, we find that Dr. Irland forfeited his challenges in the appeal. Outside of Dr. Irland's challenge to the judgment for attorney fees entered against him, he lists several "statement of arguments"

in his appellate brief originating from the summary judgment ruling. But as to each point, Dr. Irland goes no further than listing the topic of his specific dispute followed by some case citations and some general statements regarding the standard of review and preservation of error. Missing from the brief is any development of the issue, how the case law relates to the issue, or even what relief is requested. Dr. Irland both failed to clearly identify issues on appeal other than setting out headings. And, more importantly, he failed to make more than a perfunctory argument in support of any issue, making our review next to impossible. *See State v. Jackson*, 4 N.W.3d 298, 311 (Iowa 2024), as amended (May 21, 2024). One way to forfeit an issue on appeal is when the party fails to make more than a perfunctory argument in support of the issue. *See State v. Tyler*, 867 N.W.2d 136, 166 n.14 (Iowa 2015). Likewise, a party forfeits an issue on appeal when the party fails to cite any authority in support of the issue. *See Iowa R. App. P. 6.903(2)(a)(8)(3); Richardson v. Neppl*, 182 N.W.2d 384, 390 (Iowa 1970) ("A proposition neither assigned nor argued presents no question and need not be considered by us on review."). Dr. Irland did not detail how the cases he cited related to any argument he intended to present to us on appeal. We will not develop and make arguments for parties on appeal. *See Inghram v. Dairyland Mut. Ins. Co.*, 215 N.W.2d 239, 240 (Iowa 1974) ("To reach the merits of this case would require us to assume a partisan role and undertake the appellant's research and advocacy. This role is one we refuse to assume."). Thus, we affirm the district court's summary judgment ruling as to the dismissal of Dr. Irland's claims against these

defendants.

II. Damages/Attorney Fees.

Two of Dr. Irland's challenges relate to the judgment of attorney fees to the defendants, and we will address that issue. The district court found that Dr. Irland breached the terms of the settlement agreement by not keeping its terms confidential and by bringing subsequent lawsuits over the released claims. It determined the defendants were entitled to damages and asked for a "statement of fees." Ultimately it awarded defendants their attorney fees in the amount of \$65,623.50, plus interest and the costs of the action. While the district court characterized this award as one for damages for breach of contract, consisting solely of attorney fees, our long-standing rule is that "[g]enerally, a party has no claim for attorney fees as damages in the absence of a statutory or written contractual provision allowing such an award." *Williams v. Van Sickel*, 659 N.W.2d 572, 579 (Iowa 2003). If there is no statutory authority or a written contract provision allowing for attorney fees, these defendants must "find support for such an award under the common law." *Id.* Our review is de novo because the question of whether to grant common law attorney fees rests in the court's equitable powers. *UE Local 893/IUP v. State*, 997 N.W.2d 1, 15 (Iowa 2023).

"Iowa follows the American rule: 'the losing litigant does not normally pay the victor's attorney's fees.'" *Thornton v. Am. Interstate Ins. Co.*, 897 N.W.2d 445, 474 (Iowa 2017) (citation omitted). Here, we find no statute that allows recovery of attorney fees under

these circumstances, and the settlement agreement did not provide for an award of attorney fees should a party breach its terms. So, instead of treating the claim for attorney fees as a claim for damages, the district court should have considered if the defendants had support for this award under the common law or if the claim fits under certain exceptions developed in the case law—such as conduct rising to the level of culpability that would necessitate such an award. *See Hockenberg Equip. Co. v. Hockenberg's Equip. & Supply Co. of Des Moines, Inc.*, 510 N.W.2d 153, 158 (Iowa 1993) (disallowing attorney fees in a breach of settlement agreement where it could not be shown that defendants "engage[d] in oppressive or conniving behavior" with action that was "harsh, cruel or tyrannical"). To this point, courts have recognized a rare exception to the general rule when the behavior of the losing party is "extraordinarily culpable" rising to the level of "oppression or connivance to harass or injure another." *UE Local 893/IUP*, 997 N.W.2d at 15 (citation omitted).

So, on our de novo review, we consider Dr. Irland's behavior and recognize his repeated bringing of challenges that are not successful might constitute bad faith and support a sanction award. Here, the attorney fee award was not characterized as a sanction and, when applying the standard to support an common law attorney fee award of damages, the record does not show conduct that is "intentional and likely to be aggravated by cruel and tyrannical motives." *Williams*, 659 N.W.2d at 579 (quoting *Hockenberg*, 510 N.W.2d at 159). Thus, we reverse the judgment of the district court awarding the defendants attorney fee

damages.

AFFIRMED IN PART AND REVERSED IN PART.

State of Iowa Courts

Case Number	Case Title
23-1659	Irland v. Marengo Memorial Hospital

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APPENDIX D

IN THE SUPREME COURT OF IOWA

NO. 23—1659
Iowa County No. LACV024796

ORDER

MARK IRLAND,
Plaintiff-Appellant,

vs.

MARENGO MEMORIAL HOSPITAL, d/b/a
COMPASS MEMORIAL HEALTHCARE,
MARENGO MEMORIAL HOSPITAL BOARD OF
TRUSTEES d/b/a COMPASS MEMORIAL
HEALTHCARE BOARD OF TRUSTEES, BARRY G.
GOETTSCH, and NATASHA HAUSCHILT,
Defendants-Appellees.

This matter comes before the court upon appellant's motion to amend his proof brief and the appendix, to which appellees filed resistances and appellant filed replies, and appellees' motion for an extension of time to file a final brief, to which appellant filed a resistance. Also before the court on its own motion are appellant's appendix volumes and appellant's final brief and appellant's final reply brief.

The court finds appellant's motion for leave to file an amended proof brief should be denied.

Appellant filed a proof brief on December 18, 2023, and appellees' filed a proof brief on January 17, 2024. Appellees argue, and the court finds, the amended proof brief would add significant length to the brief as well new arguments, and granting the motion would require the court to allow appellees to file an amended proof brief. And to the extent appellant argues he should have the opportunity to amend his proof brief to add the arguments he e-mailed to counsel for the appellees on or about January 10, 2024, the motion must be denied because such arguments should have been included in his proof brief, and briefs—except in cases deemed confidential by rule or statute—cannot be confidential. Iowa R. App. P. 6.110(5).

The court finds appellant's motion to file an amended appendix should be denied. As of January 30, 2024, the date of the court's last order in this appeal, appellant was required to file an appendix pursuant to the rules of appellate procedure, meaning no motion to file an amended appendix was required. The court notes, however, appellant's motion should also be denied to the extent appellant seeks to add, replace, omit, or otherwise change the documents the parties listed in their designations of parts, which have not been stricken or amended. *See Iowa R. App. P. 6.905(1)(b), (c)* (requiring appellant to include documents designated by the parties in the appendix).

The court notes appellant's appendix volumes do not comply with rule of appellate procedure 6.905. Appellant has not filed appendix volumes that include (and only include) the documents identified by the parties in their designations of parts of the appendix

filed on December 18, 2023, and January 17, 2024, respectively. Iowa R. App. P. 6.905(1)(b), (c). In addition, it appears the confidential appendix includes documents that are not confidential, Iowa R. App. P. 6.905(14), for example, the appellees' answer filed on December 5, 2022, which was filed as a public document with the clerk of the district court. And while an appellant may file a separate appendix containing exhibits, documents placed in such an appendix should be documents treated as exhibits by the parties and the district court, Iowa R. App. P. 6.905(8), and should be identified by their exhibit numbers along with brief descriptions in the table of contents, Iowa R. App. P. 6.905(4)(c). Finally, appendix volumes should be properly paginated pursuant to rule 6.905(3)(c); the first volume of a non-confidential appendix should include a list of the relevant docket entries on a separate page immediately following the table of contents, Iowa R. App. P. 6.905(2)(b)(2), 6.905(5); and each volume of a non-confidential appendix should include the table of contents for each non-confidential volume, Iowa R. App. P. 6.905(4). This list of violations should not be considered all-inclusive.

Finally, appellees' motion for an extension of time to file a final brief should be granted because the appendix volumes should be stricken.

Upon consideration, the appellant's motion for leave to file an amended proof brief is denied. Appellant's first amended proof brief filed on February 6, 2024, and appellant's final briefs filed on February 18 and 19, 2024 are stricken. Appellant's motion to amend the appendix is denied. The three appendix

volumes filed on February 6, 2024 are stricken. Consequently, the appellant's final reply briefs filed on February 18 and 19, 2024, are stricken. The appellees' motion for an extension of time to file a final brief is granted.

The clerk shall maintain the amended confidential appendix filed on February 6, 2024 at security level 1. Within 14 days of the date of this order, appellant shall file an amended appendix or appendix volumes that comply in all respects With rule of appellate procedure 6.905. Within 14 days after appellant serves the amended appendix or appendix volumes, the parties shall file their final briefs and final reply brief.

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State of Iowa Courts

Case Number	Case Title
23-1659	Irland v. Marengo Memorial Hospital

So Ordered

/s/

David May, Justice

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APPENDIX E

IN THE IOWA DISTRICT COURT IN AND FOR IOWA COUNTY

**Mark Irland, M.D.,
Plaintiff/Counterclaim Defendant,**

vs. No. LACV024796

**Marengo Memorial Hospital d/b/a Compass
Memorial Healthcare, et al.,
Defendants/Counterclaim Plaintiffs.**

RULING

On this date, the above-captioned matter came before the undersigned for review pursuant to the terms of the Court's June 18, 2023 Ruling. Also pending at this time is Plaintiff/Counterclaim Defendant Mark Irland, M.D.'s (hereinafter Plaintiff) August 25, 2023 Motion for Reconsideration, Enlarge, or Amend and Motion to Unseal Documents for Motion for Reconsideration, Enlarge, or Amend Appendix. The Court finds a hearing on the pending matters is unnecessary. Having considered the file, relevant case law, and written arguments of the parties, the Court hereby enters the following ruling.

The Court's June 18, 2023 Ruling granted Defendants'/Counterclaim Plaintiffs' (hereinafter Defendants) Motion for Summary Judgment. The Court incorporates the content of the Ruling as if set

forth in full herein. The Court specifically directed Defendants to submit a statement of fees that constitute their damages. On July 18, 2023, Attorney Mary Funk filed an Affidavit in Support of Defendants'/Counter claimants' Motion for Award of Attorneys' Fees and Interest. The Affidavit is supported by Exhibits A and B, which consist of billing information (some redacted) for Defendants' defense against Plaintiff's claim, and for Defendants' prosecution of their own claim. Attorney Funk has sworn in her Affidavit that the total compensation sought by Defendants is \$64,091.05.

Plaintiff resists the award sought by Defendants, arguing that attorney fees are not recoverable; attorney fees may be awarded only to the prevailing party; the fee application is premature; the fees sought must be reasonable in relation to the results obtained; the number of hours for which Defendants seek compensation is unreasonable; and Defendants rely on the wrong hourly rates.

Defendants have filed a Reply that is supported by Exhibit C, which consists of billing information (now unredacted) for Defendants' defense against Plaintiff's claim, and for Defendants' prosecution of their own claim. Defendants argue that their fees are recoverable for Plaintiff's breach of the release and covenant not to sue, and Defendants are the prevailing parties in this action. Defendants further argue the attorney fees sought are reasonable.

Defendants' Counterclaims in this action are for breach of contract, and for a declaratory judgment

finding that (1) the agreement does not require Compass to take any affirmative action with respect to the report it filed with the National Practitioner Database (NPDB); (2) Plaintiff's actions in filing additional lawsuits after the execution of the agreement constitute a breach of contract; and (3) Defendants have been damaged by Plaintiff's breach of contract and are entitled to contractual and/or consequential damages.

The Iowa Supreme Court requires that damages for a breach of contract claim "have some nexus with the breach, i.e., the damages recoverable for a breach of contract are limited to losses actually suffered by reason of the breach and must relate to the nature and purpose of the contract." *Royal Indem. Co. v. Factory Mut. Ins. Co.*, 786 N.W.2d 839, 847 (Iowa 2010). "Contract principles apply to the interpretation of releases." *Widener v. Arco Oil and Gas Co Div. of Atlantic Richfield Co.*, 717 F.Supp. 1211, 1217 (N.D. Tex. 1989) (citing *Bartel Dental Books Co Inc v. Schultz*, 786 F.2d 486 (2nd Cir. 1986)). "The breach of a release may be grounds for an action for damages." *Id.* (citing *Anchor Motor Freight. Inc. v. International Brotherhood of Teamsters*, 700 F.2d 1067, 1071-72 (6th Cir. 1983)). "Because the purpose of entering into a release is to avoid litigation, the damages a releasor suffers when the release is breached are its costs and attorneys' fees incurred in defending against the wrongfully brought action." *Id.*

In this case, Defendants sought relief against Plaintiff for his alleged breach of the release entered into by the parties. The Court has found that

Defendants are entitled to summary judgment on their claims, and thus they are the prevailing parties in the action. The damages at issue are the costs and attorneys' fees Defendants incurred in defending against Plaintiff's wrongfully brought action. The damages sought by Defendants have a nexus to the breach, in that they are the losses actually suffered by Plaintiff's breach. Defendants are entitled to recover attorney fees in this action.

The Court turns to the issue of whether the fees sought by Defendants are reasonable. With respect to reaching a determination regarding the reasonableness of attorney fees, the Iowa Supreme Court has held:

"A reasonable attorney fee is initially calculated by multiplying the number of hours reasonably expended on the winning claims times a reasonable hourly rate." *Dutcher [v. Randall Foods*, 546 N.W.2d 889, 896 (Iowa 2009)]. This calculation, known as the lodestar amount, "is presumed to be the reasonable attorney fee envisioned by the relevant statutes." *Id.* at 897. The reasonableness of the hours expended and the hourly rate depends, of course, upon the facts of each case. *Hensley v. Eckerhart*, 461 U.S. 424, 429-30, 103 S.Ct. 1933, 1937, 76 L.Ed.2d 40, 48 (1983). "The district court is considered an expert in what constitutes a reasonable attorney fee" *GreatAmerica*

Leasing Corp. v. Cool Comfort Air Conditioning & Refrigeration, Inc., 691 N.W.2d 730, 733 (Iowa 2005).

Factors normally considered in determining reasonable attorney fees include:

"[T]he time necessarily spent, the nature and extent of the service, the amount involved, the difficulty of handling and importance of the issues, the responsibility assumed and results obtained, the standing and experience of the attorney in the profession, and the customary charges for similar service."

Schaffer v. Frank Moyer Constr., Inc., 628 N.W.2d 11, 24 (Iowa 2001) (quoting *Landals*, 454 N.W.2d at 897). "Reductions may be made, however, for such things as partial success, duplicative hours or hours not reasonably expended." *Sherman*, 314 F.Supp.2d at 881. "The district court must look at the whole picture and, using independent judgment with the benefit of hindsight, decide on a total fee appropriate for handling the complete case." *Landals*, 454 N.W.2d at 897.

There is no precise rule or formula for making these determinations. However, "[d]etailed findings of fact with regard to the factors considered must accompany

the attorney fee award." *Dutcher*, 546 N.W.2d at 897; see also *U.S. ex rel. Taxpayers Against Fraud v. Gen. Elec. Co.*, 41 F.3d 1032, 1048-49 (6th Cir.1994) (stating "district court should make findings of fact for the appellate record that will enable us to review the reasonableness of the [attorney fee] award").

Boyle v. Alum-Line, Inc., 773 N.W.2d 829, 832-33 (Iowa 2009).

In considering the factors necessary to reach a determination regarding the reasonableness of the attorney fee request in this case, the Court first reviews the time spent by Defendants' counsel on the claims stated in the case, as well as the nature and extent of services provided. The Court finds nothing unreasonable about the time spent by Defendants' counsel on this case. Defendants had to prove their own claim, which arose from Plaintiff's own breach of the release agreement. Plaintiff has made numerous filings and claims repeatedly, and Defendants had to address each of those filings and claims. The Court concludes the expenditure of fees in this case was reasonable given the subject matter involved and the matters Defendants had to address.

The Court next addresses the amount of fees involved. The Court does not find the fee amount to be unreasonable. Again, it was Plaintiff's own breach of the release agreement that led to the filing of the Counterclaims, and Defendants had to respond to

numerous and repeated filings and arguments made by Plaintiff.

The Court turns to consideration of the difficulty of handling and importance of the issues, as well as the responsibility assumed and results obtained. Defendants had to take seriously Plaintiff's filings and claims, as well as gather information to prove their own Counterclaims. The fee request is not unreasonable given the difficulty of issues presented, as well as Defendants' success on their own claims.

Finally, the Court considers the standing and experience of the attorney in the profession, as well as the customary charges for similar service. Defendants' counsel are regularly active litigators in Iowa, and have familiarity with the types of claims stated in this case. Defendants eliminated the need for a trial through the filing of their dispositive motion. In this particular case, Defendants' counsel had to expend time addressing Plaintiff's numerous and repeated filings, and Defendants still obtained a favorable judgment. The Court has reviewed Defendants' billing statements and does not find the time therein to be unnecessary or duplicative, and Defendants' counsel and staff have billing rates that are in line with local custom. The Court finds nothing unreasonable about Defendants utilizing legal associates and paralegals on some issues, in addition to work being performed by lead counsel for Defendants.

In sum, when the whole picture is viewed, and applying the Court's independent judgment with the benefit of hindsight, the fees sought by Defendants are

reasonable.

Finally, the Court addresses Plaintiff's August 25, 2023 Motion for Reconsideration, Enlarge, or Amend. This Motion seeks reconsideration, enlargement, or amendment of the Court's June 18, 2023 Ruling. The Motion was filed far beyond the time that a motion to reconsider may be filed pursuant to Iowa Rule of Civil Procedure 1.904. The Court finds the Motion should be denied as untimely. Because the Court denies the Motion as untimely, the Court finds the Motion to Unseal is moot.

RULING

IT IS THEREFORE ORDERED that the Court awards damages to Defendants in the amount of \$65,623.50. Interest shall award at the statutory rate of 7.30% from December 5, 2022. Court costs are assessed to Plaintiff Mark Irland, M.D.

IT IS FURTHER ORDERED that Plaintiff's August 25, 2023 Motion for Reconsideration, Enlarge, or Amend is DENIED. The August 25, 2023 Motion to Unseal is moot.

The matter now is deemed closed and finalized.

Clerk to notify.

State of Iowa Courts

Case Number	Case Title
LACV024796	Mark Irland v. Marengo Memorial

Hospital

Type:
Order for Judgment

So Ordered

/s/

Fae Hoover Grinde, District Court Judge,
Sixth Judicial District of Iowa

Electronically signed on 2023-09-12 15:00:56

APPENDIX F

IN THE SUPREME COURT OF IOWA

No. 23—1057
Iowa County No. LACV024796

ORDER

MARK IRLAND,
Plaintiff-Appellant,

vs.

MARENGO MEMORIAL HOSPITAL, d/b/a
COMPASS MEMORIAL HEALTHCARE,
MARENGO MEMORIAL HOSPITAL BOARD OF
TRUSTEES d/b/a COMPASS MEMORIAL
HEALTHCARE BOARD OF TRUSTEES, BARRY G.
GOETTSCH, and NATASHA HAUSCHILT,
Defendants-Appellees.

This matter comes before the court upon appellant's notice of appeal and application for interlocutory appeal. He seeks appellate review of the district court's June 18, 2023 order granting appellees' motion for summary judgment. Appellees filed a resistance, and appellant filed a reply. Also before the court is appellant's motion to temporarily unseal documents for a confidential appendix.

The court finds the district court's order was "not finally decisive of the case," *Valles v. Muetting*, 956

N.W.2d 479, 483 (Iowa 2021), because the court intended further proceedings to determine the amount of appellees' damages, and therefore was not a final order or judgment pursuant to Iowa Rule of Appellate Procedure 6.103(1). The court treats appellant's requests for appellate review as an application for interlocutory appeal, Iowa R. App. P. 6.104(1)(a).

Upon consideration, the application for interlocutory appeal is denied. The motion to temporarily unseal documents is denied as moot.

Copies to:

Mark Irland
423 11th Ave.
Grinnell, IA 50112-2610

Mary E. Funk
Katherine D. Hamilton
Nyemaster Law Firm
700 Walnut St., Suite 1600
Des Moines, IA 50309

State of Iowa Courts

Case Number	Case Title
23-1057	Mark Irland v. Marengo Memorial Hospital

So Ordered

/s/

32a

Thomas D. Waterman, Justice

Electronically signed on 2023-08-10 11:30:58

APPENDIX G

IN THE SUPREME COURT OF IOWA

No. 23—0757
Iowa County No. LACV024796

ORDER

MARK IRLAND,
Plaintiff-Appellant,

vs.

MARENGO MEMORIAL HOSPITAL, d/b/a
COMPASS MEMORIAL HEALTHCARE,
MARENGO MEMORIAL HOSPITAL BOARD OF
TRUSTEES d/b/a COMPASS MEMORIAL
HEALTHCARE BOARD OF TRUSTEES, BARRY G.
GOETTSCH, and NATASHA HAUSCHILT,
Defendants-Appellees.

This matter comes before the court, Waterman, Mansfield, and McDermott, JJ., upon appellant's motions for review of a single-justice order pursuant to Iowa Rule of Appellate Procedure 6.1002(5), and for clarification, both filed on June 21, 2023; appellant's amendment to his motion for review of a single-justice order filed on June 25, 2023; appellant's petition for review of this court's June 14, 2023 order, and its various attachments and other documents filed on July 2, 2023; and appellant's motions for a stay filed on July 6 and July 7, 2023. Appellees filed resistances to the

motions for review of a single-justice order, for clarification, and to stay. Appellant filed a reply to appellees' resistance to the motion for review of a single-justice order. Also before the court are the parties statements filed pursuant to the court's June 14, 2023 order regarding the security levels for certain documents.

Upon consideration, the June 14, 2023 order denying interlocutory review and seeking statements regarding the proper security levels for certain documents is confirmed as the order of this court. The motion for clarification is denied. The petition for "further review" of the June 14, 2023 is denied. The motions for stay are denied as moot.

The clerk of court is directed to maintain all of the following documents at security level 1: (1) the attachments labeled A3, A6, and A8 to the application for interlocutory appeal filed on May 8, 2023; (2) appellant's affidavit filed in district court in support of his application for a temporary injunction, filed on July 2, 2023; and (3) the settlement agreement, filed on July 2, 2023.

Copies to:

Mark Irland
423 11th Ave.
Grinnell, IA 50112-2610

Mary E. Funk
Katherine D. Hamilton
Nyemaster Law Firm

700 Walnut St., Suite 1600
Des Moines, IA 50309

State of Iowa Courts

Case Number	Case Title
LACV024796	Mark Irland v. Marengo Memorial Hospital

So Ordered

/s/
Matthew C. McDermott, Justice

Electronically signed on 2023-07-26 09:30:19

APPENDIX H

IN THE IOWA DISTRICT COURT IN AND FOR IOWA COUNTY

**Mark Irland, M.D.,
Plaintiff/Counterclaim Defendant,**

vs. No. LACV024796

**Marengo Memorial Hospital d/b/a
Compass Memorial Healthcare, et al.,
Defendants/Counterclaim Plaintiffs.**

RULING

On this date, the Motion for Summary Judgment filed by Defendants/Counterclaim Plaintiffs (hereinafter Defendants) came before the undersigned for review. The Court finds a hearing on the Motion is unnecessary. Having considered the file, relevant case law, and written arguments of the parties, the Court hereby enters the following ruling.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff, who is self-represented, filed a Petition at Law and Jury Demand on August 14, 2022, followed by the filing of a First Amendment Petition at Law and Jury Demand on August 20, 2022. The amended Petition filing appears to set forth the current statement of Plaintiffs claims in this action, and the

Court summarizes those claims as follows. In a separate action, there was a settlement agreement between the parties in Iowa County case LACV024130. A review of that court file indicates that in that case, Plaintiff brought claims against the same Defendants as are named in this case (and additionally, Greg Neyman, M.D. and Ben Miller, M.D.), alleging wrongful termination in violation of public policy, breach of a written contract for employment, defamation, and tortious interference with a prospective business relationship. The claims in LACV024130 stemmed from a dispute between the parties regarding standards of medical care provided to patients at Marengo Memorial Hospital d/b/a Compass Memorial Healthcare, following which the hospital revoked Plaintiff's clinical privileges and terminated his employment. *See Ruling on Motion to Enforce Settlement*, filed in LACV024130 on January 8, 2021, p. 1. The hospital also submitted a report to the National Practitioner Database, and Plaintiff claimed that report contained false statements regarding Plaintiff's ability to practice medicine. *Id.* In LACV024130, the parties engaged in mediation efforts prior to trial, and ultimately reached a settlement agreement that the Court enforced in the January 8, 2021 Ruling.

In the case at bar, Plaintiff has stated claims against Defendants for breach of release of claims written contract; fraudulent misrepresentation; fraudulent inducement; trespass; defamation with actual malice; breach of the duty of good faith and fair dealing—written contract; negligence; void non-disparagement contract clause; and tortious

interference with business expectancy. In support of his claims, Plaintiff alleges that, after the settlement agreement was enforced, Plaintiff substantially discharged his requirements pursuant to the agreement, but Defendants did not. Specifically, it appears Plaintiff contends that Defendants did not retract claims from the National Practitioner Database or the Iowa Board of Medicine. Plaintiff further alleges he has suffered damages due to Defendants' failure to comply with the terms of the settlement agreement.

Defendants filed an Answer on December 5, 2022, denying the allegations of the Petition that are adverse to them. Defendants also have set forth affirmative defenses to Plaintiff's claims, and have stated Counterclaims for breach of contract, and a declaratory action requesting the Court make findings that (1) the agreement does not require Compass to take any affirmative action with respect to the report it filed with the National Practitioner Database (hereinafter referred to as NPDB); (2) Plaintiff's actions in filing additional lawsuits after the execution of the agreement constitute a breach of contract; and (3) Defendants have been damaged by Plaintiff's breach of contract and are entitled to contractual and/or consequential damages.

Plaintiff has denied the allegations of the Counterclaims that are adverse to him.

A trial is scheduled to take place before the undersigned on October 10, 2023.

Defendants' pending Motion for Summary

Judgment is supported by the following documents:

1. November 25, 2015 termination letter
2. NPDB report
3. November 25, 2015 board meeting minutes re: revocation
4. July 29, 2016 letter reinstated MEC revocation
5. December 6, 2017 Petition from LACV024130
6. January 8, 2021 Ruling on Motion to Enforce Settlement
7. Settlement agreement and general release
8. March 31, 2021 Dismissal with Prejudice
9. November 8, 2021 Petition
10. December 21, 2021 Dismissal Without Prejudice
11. June 16, 2021 NPDB information request letter to Defendants
12. November 22, 2021 NPDB dispute resolution decision
13. July 14, 2016 appeal statement
14. Plaintiff's appeal brief

15. February 19, 2017 response of Plaintiff to NPDB report
16. Barry Goettsch affidavit

Based on the pleadings on file and the above-described documents, Defendants have set forth a statement of 66 facts that they claim are material, undisputed, and that support entry of summary judgment in their favor and against Plaintiff. The Court incorporates this statement of facts as if set forth in full herein. For their legal argument, Defendants contend that Plaintiff's claims are barred because he released and settled his claims of defamation, fraudulent misrepresentation, fraudulent inducement, trespass, breach of the duty of good faith and fair dealing, negligence, and tortious interference. Defendants also contend Plaintiff's claims fail on the merits because he cannot prove the elements necessary for each claim. As to their Counterclaims, Defendants argue that they are entitled to summary judgment on the Counterclaims because Plaintiff breached the settlement agreement, and Defendants are entitled to the declaratory relief they seek.

Plaintiff has resisted the Motion, and in support of his Resistance, Plaintiff has offered the following documents:

1. LACV024130 dismissal filing
2. Settlement agreement
3. NPDB 2018 Guidebook

4. LACV024130 dismissal

Plaintiff also has offered his response to Defendants' statement of undisputed facts, which includes Plaintiff's description of facts that he claims are disputed and preclude entry of summary judgment in favor of Defendants. The Court incorporates Plaintiff's response as if set forth in full herein. For his legal argument, Plaintiff contends that his claims in this action are based on disputes that could not have been adjudicated in the prior case, including that Defendants fail to establish any criteria against voiding the NPDB, Iowa Board of Medicine, and Marengo Memorial Hospital internal physician status. Plaintiff also contends that Defendants are not entitled to immunity. Plaintiff argues that Defendants have liability for each claim stated by Plaintiff, and an earlier Ruling from this Court that denied Defendants' Motion to Dismiss establishes that there are fact issues that preclude summary judgment in this action.

Defendants reply that Plaintiff has failed to refute the undisputed facts by any admissible evidence. Defendants argue that Plaintiff has failed to offer any legal argument to defeat the Motion, including as to each claim at issue therein. Defendants further argue they are entitled to summary judgment on the Counterclaims.

CONCLUSIONS OF LAW

"Summary judgment is appropriate if there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law."

Kolarik v. Cory Intern. Corp, 721 N.W.2d 159, 162 (Iowa 2006) (citing *Iowa Rule of Civil Procedure* 1.981(3)). Further considerations when reviewing a motion for summary judgment are summarized as follows:

A factual issue is material only if the dispute is over facts that might affect the outcome of the suit. The burden is on the party moving for summary judgment to prove the facts are undisputed. In ruling on a summary judgment motion, the court must look at the facts in a light most favorable to the party resisting the motion. The court must also consider on behalf of the nonmoving party every legitimate inference that can be reasonably deduced from the record.

Id. (citing *Estate of Harris v. Papa John's Pizza*, 679 N.W.2d 673, 677 (Iowa 2004) (quoting *Phillips v. Covenant Clinic*, 625 N.W.2d 714-717-18 (Iowa 2001))).

"To obtain a grant of summary judgment on some issue in an action, the moving party must affirmatively establish the existence of undisputed facts entitling that party to a particular result under controlling law." *McVey v. National Organization Service, Inc.*, 719 N.W.2d 801, 802 (Iowa 2006). "To affirmatively establish uncontested facts that are legally controlling as to the outcome of the case, the moving party may rely on admissions in the pleadings ... affidavits, depositions, answers to interrogatories by the nonmoving party, and admissions on file." *Id.*

"Except as it may carry with it express stipulations concerning the anticipated summary judgment ruling, a statement of uncontroverted facts by the moving party made in compliance with rule 1.981(8) does not constitute a part of the record from which the absence of genuine issues of material fact may be determined." *Id.* at 803. "The statement required by rule 1.981(8) is intended to be a mere summary of the moving party's factual allegations that must rise or fall on the actual contents of the pleadings, depositions, answers to interrogatories, and admissions on file together with any affidavits." *Id.* "If those matters do not reveal the absence of genuine factual issues, the motion for summary judgment must be denied." *Id.*

"When two legitimate, conflicting inferences are present at the time of ruling upon the summary judgment motion, the court should rule in favor of the nonmoving party." *Eggiman v. Self-Insured Services Co.*, 718 N.W.2d 754, 763 (Iowa 2006) (citing *Daboll v. Hoden*, 222 N.W.2d 727, 733 (Iowa 1974) ("If reasonable minds could draw different inferences and reach different conclusions from the facts, even though undisputed, the issue must be reserved for trial.").

"However, to successfully resist a motion for summary judgment, the resisting party must set forth specific evidentiary facts showing the existence of a genuine issue of material fact." *Matter of Estate of Henrich*, 389 N.W.2d 78, 80 (Iowa App. 1986). "[The resisting party] cannot rest on the mere allegations or denials of the pleadings." *Id.* The Iowa Supreme Court has "long emphasized

The resistance must set forth facts which constitute competent evidence showing a *prima facie* claim. By requiring the resister to go beyond generalities, the basic purpose of summary judgment is achieved: to weed out '[p]aper cases and defenses' in order 'to make way for litigation which does have something to it."

Slaughter v. Des Moines University College of Osteopathic Medicine, 925 N.W.2d 793, 808 (Iowa 2019) (citing *Thompson v. City of Des Moines*, 564 N.W.2d 839, 841 (Iowa 1997)).

Summary judgment is not a dress rehearsal or practice run; "it is the put up or shut up moment in a lawsuit, when a [nonmoving] party must show what evidence it has that would convince a trier of fact to accept its version of events."

Id. (citing *Hammel v. Eau Galle Cheese Factory*, 407 F.3d 852, 859 (7th Cir. 2005)).

"A release is a contract, and its validity is governed by the usual rules relating to contract." *Terry v. Dorothy*, 950 N.W.2d 246, 250 (Iowa 2020) (citing *Stetzel v. Dickenson*, 174 N.W.2d 438, 439 (Iowa 1970)). "The intent of the parties controls, and unless the contract is ambiguous, intent is determined by the plain language of the contract." *Id.* "The intent of the parties must be determined from what they did; and if the instrument is clearly one thing or the other, a covenant not to sue, or a full release, there is no room

for construction." *Verne R. Houghton Ins. Agency, Inc. v. Orr Drywall Co.*, 470 N.W.2d 39, 42 (Iowa 1991).

Plaintiff's release of his claims against Defendants includes the following language:

3. Release. In consideration of the payments by Defendants to Plaintiff ... Plaintiff hereby irrevocably and unconditionally releases, remises and forever discharges Defendants ... from any and all actions, causes of actions, suits, debts, charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, and expenses ... of any nature whatsoever, in law or in equity, which he ever had, now has, or he ... hereafter may have, particularly, against each of any of the [Defendants], from the beginning of time to the date of this Agreement, but without limitation of the foregoing general terms, by reason of any claims against Defendants arising from or related to his employment relationship with Defendants or the termination thereof, including any claims arising from any alleged violation by Defendants of any federal, state, or local statutes, ordinances, or common laws ... This release in no way should be construed as a release of any claims that [Plaintiff] may have against the Board of Medicine nor as a waiver of any due process rights

[Plaintiff] has with regard to any proceedings involving the Board of Medicine.

See Defendants' Appendix, p. 036, para. 3. The parties also agreed that Plaintiff would release all claims "of which [Plaintiff] knows or does not know, should have known, had reason to know, or suspects to exist," including "any continuing effects of actions or practices which arose prior to the date" of the agreement. *Id.* p. 037-38, paras. 4, 9.

Even when the facts are viewed in the light most favorable to Plaintiff, the Court concludes that Plaintiff's claims are barred by the terms of the release and settlement agreement. With respect to the claims for defamation, fraudulent misrepresentation, and fraudulent inducement, Plaintiff contends that there are contradictory statements in the information that Defendants sent to the NPDB and in a letter signed by Defendant Goettsch. However, the undisputed facts show that Plaintiff was aware of this information *before* the parties entered into their agreement, and thus he had the ability to fully contemplate the content of these letters before entering into the agreement. Plaintiff's knowledge of these documents arises from the 2017 litigation, and it is clear to the Court that the intent of the parties, in entering into the settlement agreement, was for Plaintiff to release all claims against Defendants, including those based in any way on these documents. With respect to the claims for negligence, tortious interference, and breach of the duty of good faith and fair dealing, the same conclusion can be reached, because Plaintiff has based

these claims on other alleged deficiencies in Defendants' report to the NPDB, including a failure to consider expert testimony. As to the breach of the duty of good faith and fair dealing claim, the hearing panel's decision and the report to the NPDB were all made prior to the parties entering into their settlement agreement. Finally, with respect to the trespass claim, this claim also was released by the agreement. To the extent that Plaintiff now is arguing that the agreement should be found void as against public policy, the validity of the agreement already has been found by another court. *See January 8, 2021 Ruling on Motion to Enforce Settlement.* The Court finds no basis to disturb that finding this far down the road from the execution of the settlement agreement. Based on the clear and unambiguous terms of the parties' settlement agreement, Plaintiff's claims against Defendants are barred.

Even if the claims are considered on their merits and in the light most favorable to Plaintiff, the Court concludes they still would fail as a matter of law. The Court first addresses Plaintiff's breach of contract and breach of the duty of good faith and fair dealing claims.

To prove a breach of contract claim, the complaining party must prove the following elements: (1) the existence of a contract; (2) the terms and conditions of the contract; (3) the plaintiff has performed all the terms and conditions required under the contract; and (4) the defendant's breach of the contract in some particular way; and (5) that plaintiff has suffered damages as a result of defendant's breach.

Sutton v. Iowa Trenchless L.C., 808 N.W.2d 744, 753 (Iowa Ct. App. 2011). "An implied covenant of good faith and fair dealing is inherent in all contracts." *Alta Vista Properties, LLC v. Mauer Vision Ctr., PC*, 855 N.W.2d 722, 730 (Iowa 2014). "The underlying principle is that there is an implied covenant that neither party will do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract." *Id.* "This implied covenant 'does not give rise to new substantive terms that do not otherwise exist in the contract.'" *Albaugh v. The Reserve*, 930 N.W.2d 676, 686 (Iowa 2019) (citing *Alta Vista*, 855 N.W.2d at 731).

Applying the elements necessary to prove a breach of contract claim, the Court finds that there was a contract between the parties that has clear terms and conditions—the settlement agreement. The Court finds no evidence that would support a conclusion that Defendants in any way breached the contract. Plaintiff has complained that Defendants failed to redact certain information they sent to the NPDB, and by submitting further information to the NPDB. The United States Code requires reporting of certain professional review actions taken by health care entities. *See 42 U.S.C. § 11133*. This section provides:

(a) Reporting by health care entities

(1) On physicians

Each health care entity which--

(A) takes a professional review action that adversely affects the clinical privileges of a physician for a period longer than 30 days;

(B) accepts the surrender of clinical privileges of a physician--

(i) while the physician is under an investigation by the entity relating to possible incompetence or improper professional conduct, or

(ii) in return for not conducting such an investigation or proceeding; or

(C) in the case of such an entity which is a professional society, takes a professional review action which adversely affects the membership of a physician in the society,

shall report to the Board of Medical Examiners, in accordance with section 11134(a) of this title, the information described in paragraph (3).

(2) Permissive reporting on other licensed health care practitioners

A health care entity may report to the Board of Medical Examiners, in accordance with section 11134(a) of this title, the information described in paragraph (3) in the case of a licensed health care practitioner who is not a physician, if the entity would be required to report such information under paragraph (1) with respect to

the practitioner if the practitioner were a physician.

(3) Information to be reported

The information to be reported under this subsection is--

- (A) the name of the physician or practitioner involved,
- (B) a description of the acts or omissions or other reasons for the action or, if known, for the surrender, and
- (C) such other information respecting the circumstances of the action or surrender as the Secretary deems appropriate.

(b) Reporting by Board of Medical Examiners

Each Board of Medical Examiners shall report, in accordance with section 11134 of this title, the information reported to it under subsection (a) and known instances of a health care entity's failure to report information under subsection (a)(1).

(c) Sanctions

(1) Health care entities

A health care entity that fails substantially to

meet the requirement of subsection (a)(1) shall lose the protections of section 11111(a)(1) of this title if the Secretary publishes the name of the entity under section 11111(b) of this title.

(2) Board of Medical Examiners

If, after notice of noncompliance and providing an opportunity to correct noncompliance, the Secretary determines that a Board of Medical Examiners has failed to report information in accordance with subsection (b), the Secretary shall designate another qualified entity for the reporting of information under subsection (b).

(d) References to Board of Medical Examiners

Any reference in this subchapter to a Board of Medical Examiners includes, in the case of a Board in a State that fails to meet the reporting requirements of section 11132(a) of this title or subsection (b), a reference to such other qualified entity as the Secretary designates.

Id.

Defendants also have submitted proof that the NPDB notified them that they must provide a response regarding Plaintiff. *See Defendants' Appendix*, p. 053. Defendants had a duty under law to make the report and provide information to the NPDB. The terms of the parties' settlement agreement did not place any affirmative duty on Defendants to take any action with

respect to the NPDB, such that Defendants now could be viewed as breaching such a term; rather, Defendants acted in accordance with the law with respect to the information they provided to the NPDB, and there are no facts that would show any requirement of Defendants to revoke the report provided to the NPDB. As the Court previously has found, the settlement agreement released claims against Defendants for any "continuing effects of actions or practices which arose prior to the date of this Settlement Agreement." The reporting information provided by Defendants to the NPDB was well before the execution of the settlement agreement. There is no genuine issue of material fact on the question of whether Defendants breached the parties' contract, and Defendants are entitled to summary judgment on this claim.

With respect to the breach of the implied covenant of good faith and fair dealing claim, the Court finds no specific evidentiary fact showing the existence of a genuine issue of material fact on the question of whether Defendants are liable for any such breach. The implied covenant does not give rise to any new terms of agreement between the parties, and the Court already has found that Defendants' actions were within the legal obligations imposed on them by the United States Code. Defendants are entitled to summary judgment on this claim.

The Court next considers Plaintiff's defamation claim. "The law of defamation is composed of the twin torts of libel and slander." *Barreca v. Nickolas*, 683 N.W.2d 111, 116 (Iowa 2004). "To establish a prima

facie case in any defamat[ion] action, a plaintiff must show the defendant (1) published a statement that was (2) defamatory (3) of and concerning the plaintiff." *Bierman v. Weier*, 826 N.W.2d 436, 464 (Iowa 2013). "Whether a statement is capable of a defamatory meaning is a question for the court." *Bauer v. Brinkman*, 958 N.W.2d 194, 198 (Iowa 2021). A qualified privilege to a defamation claim may be lost "if the speaker abuses the privilege by speaking with actual malice. . . ." *Koster v. Harvest Bible Chapel-Quad Cities*, 959 N.W.2d 680, 692 (Iowa 2021). The Iowa Supreme Court has applied a two-year statute of limitations to a defamation claim. *Kiner v. Reliance Ins. Co.*, 463 N.W.2d 9, 13 (Iowa 1990).

Even when the facts are viewed in the light most favorable to Plaintiff, the Court finds no genuine issue of material fact that precludes entry of summary judgment on the defamation claim. There is no genuine issue of material fact on the question of whether Plaintiff's credentials were revoked, and the Court already has found that the report was made by Defendants in compliance with federal law. The issue in this case is not whether the revocation of Plaintiff's privileges was appropriate; the issue is whether Defendants' report to the NPDB was defamatory. There is no specific evidentiary fact that creates a genuine issue of material fact on the question of whether Defendants acted with malice in reporting the matter to the NPDB; there simply is no evidence to support any finding of malice on the part of Defendants. And finally, even if there were fact issues on the defamation claim, the NPDB report was from 2016, and Plaintiff did not file this action until 2022.

Any claim, therefore, would be barred by the two-year statute of limitations. Defendants are entitled to summary judgment on this claim.

The Court turns to consideration of Plaintiff's fraudulent misrepresentation and fraudulent inducement claims. To establish a claim for fraudulent misrepresentation, Plaintiff has the burden of proving each of the following elements: (1) representation, (2) falsity, (3) materiality, (4) scienter, (5) intent to deceive, (6) reliance, and (7) resulting injury and damages. *Van Sickle Const. Co. v. Wachovia Commercial Mortg. Inc.*, 783 N.W.2d 684, 687 (Iowa 2010). The Iowa Supreme Court has applied these same elements to claims for fraudulent inducement. *Hyler v. Garner*, 548 N.W.2d 864, 870-71 (Iowa 1996).

Even when the facts are viewed in the light most favorable to Plaintiff, the Court finds there are no fact issues when it comes to Plaintiffs claims for fraudulent misrepresentation and fraudulent inducement. First, Plaintiff has not shown that any representation was made to him by Defendants; rather, Plaintiff complains about the information Defendants submitted to the NPDB. Second, the Court finds no evidence of falsity on the part of Defendants. Plaintiff has complained about there being contradictory statements from Defendants in information provided to the NPDB, but, as Defendants point out, the Medical Executive Committee recommended revocation of Plaintiffs privileges, while the Medical Care Evaluation Committee did not. These were differing findings and references thereto in the relevant documentation does not constitute a falsity.

Third, there is no showing of materiality, since the privileges were revoked, and Defendants were merely complying with federal law in reporting the revocation to the NPDB. Fourth, there is no evidence in the record to show that there was any intent to deceive on the part of Defendants, and the Court agrees with Defendants that Plaintiff could not rely on statements made to the NPDB to support a fraudulent representation or fraudulent inducement claim. There being no evidence to support any element of these claims, the Court finds Defendants' Motion should be granted as to these claims.

Next, the Court considers Defendants' argument that Plaintiff's trespass claim fails. "A trespasser is one who is not rightfully upon the property of another, but enters it without consent, either express or implied, of the owner or occupier." *Iowa State Highway Commission v. Hipp*, 147 N.W.2d 195, 199 (Iowa 1966).

Even when the facts are viewed in the light most favorable to Plaintiff, the Court finds no specific evidentiary fact showing a genuine issue of material fact on the question of whether any action by Defendants could constitute a trespass against Plaintiff. It appears that the basis for Plaintiff's claims is that a former employee of Defendants was driving a vehicle that hit Plaintiff's mailbox. Plaintiff does not show any action by Defendants that would constitute trespass, however. To the extent that Plaintiff is trying to state a negligent retention claim, "an injured party must show the employee's underlying tort or wrongful act caused a compensable injury, in addition to proving the negligent hiring, supervision, or retention by the

employer was a cause of those injuries." *Kiesau v. Bantz*, 686 N.W.2d 164, 172 (Iowa 2004) (overruled on other grounds by *Alcala v. Marriott Int'l Inc.*, 880 N.W.2d 699, 708 n. 3 (Iowa 2016)). There is no evidence in the record showing that the former employee even was an employee of Defendants at the time of the mailbox incident, and Defendants have confirmed that he was not an employee at that time. Defendants' Motion should be granted as to the trespass claim.

The Court turns to Defendants' argument that Plaintiff's negligence claim fails. "An actionable negligence claim requires 'the existence of a duty to conform to a standard of conduct to protect others, a failure to conform to that standard, proximate cause, and damages.'" *McCormick v. Nikkel & Assocs.. Inc.*, 819 N.W.2d 368, 371 (Iowa 2012) (citing *Thompson v. Kaczinski*, 774 N.W.2d 829, 834 (Iowa 2009)). Plaintiff has alleged that Defendants were negligent in not obtaining a certificate of merit affidavit prior to submitting the NPDB report, pursuant to Iowa Code § 147.140. This section provides:

1. a. In any action for personal injury or wrongful death against a health care provider based upon the alleged negligence in the practice of that profession or occupation or in patient care, which includes a cause of action for which expert testimony is necessary to establish a prima facie case, the plaintiff shall, prior to the commencement of discovery in the case and within sixty days of the defendant's answer, serve upon the defendant a certificate

of merit affidavit signed by an expert witness with respect to the issue of standard of care and an alleged breach of the standard of care. The expert witness must meet the qualifying standards of section 147.139.

b. A certificate of merit affidavit must be signed by the expert witness and certify the purpose for calling the expert witness by providing under the oath of the expert witness all of the following:

(1) The expert witness's statement of familiarity with the applicable standard of care.

(2) The expert witness's statement that the standard of care was breached by the health care provider named in the petition.

c. A plaintiff shall serve a separate certificate of merit affidavit on each defendant named in the petition.

2. An expert witness's certificate of merit affidavit does not preclude additional discovery and supplementation of the expert witness's opinions in accordance with the rules of civil procedure.

3. The parties shall comply with the requirements of section 668.11 and all other applicable law governing certification and disclosure of expert witnesses.

4. The parties by agreement or the court for good cause shown and in response to a motion filed prior to the expiration of the time limits specified in subsection 1 may provide for extensions of the time limits. Good cause shall include but not be limited to the inability to timely obtain the plaintiffs medical records from health care providers when requested prior to filing the petition.

5. If the plaintiff is acting pro se, the plaintiff shall have the expert witness sign the certificate of merit affidavit or answers to interrogatories referred to in this section and the plaintiff shall be bound by those provisions as if represented by an attorney.

6. Failure to substantially comply with subsection 1 shall result, upon motion, in dismissal With prejudice of each cause of action as to which expert witness testimony is necessary to establish a prima facie case.

7. For purposes of this section, "health care provider" means the same as defined in section 147.136A.

Iowa Code § 147.140 (2023).

Even when the facts are viewed in the light most favorable to Plaintiff, the Court finds no basis upon which Plaintiff's negligence claim can proceed. First, § 147.140 does not appear to ever have been applied to submission of a NPDB report, and the Court

agrees with Defendants that the statute applies to causes of action involving personal injury or wrongful death, and not to the type of action Plaintiff has stated against Defendants. Second, any claim would be time-barred by Iowa Code § 614.1, which sets a limitations period of two years for tort claims based on injuries to person or reputation. The report was made in 2016, and this action was not filed until 2022. Defendants' Motion should be granted as to this claim.

The Court next considers Defendants' argument that Plaintiffs illegal non-disparagement clause claim fails. Plaintiff has claimed that the non-disparagement clause included in the parties' agreement is illegal. The Court has found no Iowa law that supports a conclusion that including a non-disparagement clause in a contract is illegal. Defendants' Motion should be granted as to this claim.

Next, the Court considers whether Plaintiff's tortious interference claim fails. The elements of the tort of tortious interference with prospective contractual relationships are that there existed a prospective contractual or business relationship; the defendant knew of the prospective relationship; the defendant intentionally and improperly interfered with the relationship; the defendant's interference caused the relationship to fail to materialize; and the plaintiff suffered damages. *Blumenthal Inv. Trusts v. City of West Des Moines*, 636 N.W.2d 255, 269 (Iowa 2001). The Iowa Supreme Court has applied a five-year limitations period to tortious interference claims. *Iowa Coal Min. Co., Inc. v. Monroe County*, 555 N.W.2d 418, 437 (Iowa 1996).

Even when the facts are viewed in the light most favorable to Plaintiff, the Court concludes that there are no genuine issues of material fact on the tortious interference claim. Plaintiff again bases this claim on his assertion that Defendants improperly submitted the report to the NPDB, and that Defendants did not properly consider other medical opinions in reaching their decisions with regard to Plaintiff. The Court already found that the NPDB report was submitted in accordance with federal law. Further, to the extent that Plaintiff claims there are business relationships he could not successfully enter into because of Defendants' actions, those claims would have arisen in 2016, and this action was not filed until 2022. Any tortious interference claim stated by Plaintiff is untimely. Defendants' Motion should be granted as to this claim.

The Court turns to consideration of Defendants' Counterclaims. First, Defendants argue that Plaintiff breached the settlement agreement. The Court sets forth the breach of contract conclusions of law set forth above.

Even when the facts are viewed in the light most favorable to Plaintiff, the Court finds there are no genuine issues of material fact that preclude entry of summary judgment in favor of Defendants on the breach of contract Counterclaim. The clear and unambiguous language of the parties' settlement agreement released Defendants from all claims; Plaintiff agreed to keep the terms and amount of the settlement confidential; and Plaintiff agreed not to sue Defendants and to extinguish all claims, known and

unknown. Plaintiff now has unsuccessfully sued and stated claims against Defendants in this action, including disclosing confidential terms of the settlement agreement. This is a clear breach of the parties' settlement agreement, and Defendants are entitled to damages on their breach of contract claim. Defendants are directed to submit a statement of fees that constitute their damages, within 30 days of the date of this Ruling. Plaintiff will have 14 days to reply. The matter then will be resubmitted to the Court for entry of further orders regarding the damages to be awarded to Defendants as a result of Plaintiff's breach.

Finally, Defendants argue that a declaratory judgment is warranted. Iowa Rule of Civil Procedure 1.1101 provides:

Courts of record within their respective jurisdictions shall declare rights, status, and other legal relations whether or not further relief is or could be claimed. It shall be no objection that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form or effect, and such declarations shall have the force and effect of a final decree. The existence of another remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The enumeration in rules 1.1 102, 1.1103, and 1.1104, does not limit or restrict the exercise of this general power.

I.R.Civ.P. 1.1101. "The court may refuse to render a declaratory judgment or decree where it would not, if rendered, terminate the uncertainty or controversy giving rise to the proceeding." *I.R.Civ.P. 1.1105.*

"The purpose of a declaratory judgment is to determine rights in advance." *Bormann v. Board of Sup'rs in and for Kossuth County*, 584 N.W.2d 309, 312 (Iowa 1998). "The essential difference between such an action and the usual action is that no actual Wrong need have been committed or loss incurred to sustain declaratory judgment relief." *Id.* at 312-13. "But there must be no uncertainty that the loss will occur or that the right asserted will be invaded." *Id.* "As with a writ of certiorari, the fact that the plaintiff has another adequate remedy does not preclude declaratory judgment relief where it is appropriate." *Id.*

"[D]eclaratory judgment is an action in which a court declares the rights, duties, status, or other legal relationships of the parties." *Dubuque Policeman's Protective Ass'n v. City of Dubuque*, 553 N.W.2d 603, 606 (Iowa 1996). "Declaratory judgments are res judicata and binding on the parties." *Id.* "The distinctive characteristic of a declaratory judgment is that the declaration stands by itself, that is, no executory process follows as of course. In other words such a judgment does not involve executory or coercive relief." *Id.* (citing 22A *Am.Jur.2d Declaratory Judgments* § 1, at 670 (1988)).

"The burden of proof in a declaratory judgment action is the same as in an ordinary action at law or

equity." *Owens v. Brownlie*, 610 N.W.2d 860, 866 (Iowa 2000). "The plaintiff bringing the action has the burden of proof, even if a negative declaration is sought." *Id.*

Even when the facts are viewed in the light most favorable to Plaintiff, the Court concludes that Defendants are entitled to declaratory relief as a result of Plaintiff's pursuit of claims against them in this action. Given the continued litigation that has occurred involving matters that already have been disposed of or are precluded by the terms of the parties' own settlement agreement, the Court finds it necessary to resolve any uncertainty that might exist going forward. Therefore, the Court declares that the parties' settlement agreement does not require Defendants to retract or take any affirmative action with respect to the NPDB report; Plaintiff has breached the parties' settlement agreement; and Defendants have been damaged by Plaintiff's breach and are entitled to be made whole.

Defendants' Motion should be granted in its entirety.

RULING

IT IS THEREFORE ORDERED that Defendants' Motion for Summary Judgment is GRANTED. Plaintiff's claims against Defendants are dismissed as a matter of law. The trial scheduled for October 10, 2023 shall be removed from the Courts schedule. Defendants are directed to submit a statement of fees that constitute their damages, within

30 days of the date of this Ruling. Plaintiff will have 14 days to reply. The matter then will be resubmitted to the Court for entry of further orders regarding the damages to be awarded to Defendants as a result of Plaintiff's breach. Any outstanding court costs are assessed to Plaintiff.

Clerk to notify.

State of Iowa Courts

Case Number LACV024796 **Case Title** IRLAND V. MARENGO MEMORIAL HOSPITAL

Type:
OTHER ORDER

So Ordered

/s/

Fae Hoover Grinde, District Court Judge,
Sixth Judicial District of Iowa

Electronically signed on 2023-06-18 12:52:06

APPENDIX I

IN THE IOWA DISTRICT COURT IN AND FOR IOWA COUNTY

**Mark Irland, M.D.,
Plaintiff,**

vs.

No. LACV024796

**Marengo Memorial Hospital d/b/a
Compass Memorial Healthcare, et al.,
Defendants.**

RULING

On this date, Plaintiff's March 17, 2023 Motion for Preliminary Injunction came before the undersigned for review. The Court finds a hearing on the Motion is unnecessary. Having considered the file, relevant case law, and written arguments of the parties, the Court hereby enters the following ruling.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff, who is self-represented, filed a Petition at Law and Jury Demand on August 14, 2022, followed by the filing of a First Amendment Petition at Law and Jury Demand on August 20, 2022. The amended Petition filing appears to set forth the current statement of Plaintiff's claims in this action, and the Court summarizes those claims as follows. It appears

that, in a separate action, there was a settlement agreement of some sort between the parties in Iowa County case LACV024130. A review of that could file indicates that in that case, Plaintiff brought claims against the same Defendants as are named in this case (and additionally, Greg Neyman, M.D. and Ben Miller, M.D.), alleging wrongful termination in violation of public policy, breach of a written contract for employment, defamation, and tortious interference with a prospective business relationship. The claims in LACV024130 stemmed from a dispute between the parties regarding standards of medical care provided to patients at the Marengo Memorial Hospital d/b/a Compass Memorial Healthcare, following which the hospital revoked Plaintiff's clinical privileges and terminated his employment. *See Ruling on Motion to Enforce Settlement*, filed in LACV024130 on January 8, 2021, p. 1. The hospital also submitted a report to the National Practitioner Database, and Plaintiff claimed that report contained false statements regarding Plaintiff's ability to practice medicine. *Id.* In LACV024130, the parties engaged in mediation efforts prior to trial, and ultimately reached a settlement agreement that the Court enforced in the January 8, 2021 Ruling.

In the case at bar, Plaintiff has stated claims against Defendants for breach of release of claims—written contract; fraudulent misrepresentation; fraudulent inducement; trespass; defamation with actual malice; breach of the duty of good faith and fair dealing—written contract; negligence; void non-disparagement contract clause; and tortious interference with business expectancy. In

support of his claims, Plaintiff alleges that, after the settlement agreement was enforced, Plaintiff substantially discharged his requirements pursuant to the agreement, but Defendants did not. Specifically, it appears Plaintiff contends that Defendants did not retract claims from the National Practitioner Database or the Iowa Board of Medicine. Plaintiff further alleges he has suffered damages due to Defendants' failure to comply with the terms of the settlement agreement.

Following the denial of their Motion to Dismiss, Defendants filed an Answer on December 5, 2022, denying the allegations of the Petition that are adverse to them, and setting forth affirmative defenses to Plaintiff's claims. Defendants also have stated Counterclaims against Plaintiff for breach of contract regarding the settlement agreement, and for a declaratory judgment regarding the parties' rights and responsibilities under the settlement agreement.

Plaintiff has filed a response to the Counterclaim, disputing and denying the relief requested by Defendants.

A jury trial is scheduled to take place before the undersigned on October 10, 2023.

The pending Motion for Preliminary Injunction was filed on March 17, 2023. Plaintiff argues that he is entitled to preliminary and permanent injunctive relief against Defendants, and seeks a preliminary injunction that grants the following relief: Defendants should be required to void any and all reports to the National Practitioner Database (NPDB) and "HIPDB";

Defendants should be required to rescind the revocation of clinical privileges statement to the Iowa Board of Medicine; Defendants should place the requested declaration in Plaintiff's permanent personnel file at Compass Memorial Healthcare; and that Plaintiff should be entitled to consequential, lost wages, emotional distress, mental anguish, compensatory, and punitive damages.

Defendants have resisted the Motion, arguing the relief requested therein is not permitted under Iowa Rule of Civil Procedure 1.1502 because Plaintiff has not properly submitted a signed affidavit, and because Plaintiff is requesting the Court require Defendants to affirmatively act, as opposed to Defendants restraining from committing or continuing an act. Defendants further argue that Plaintiff has failed to meet his burden of proof for injunctive relief, in that he has provided no evidence or information regarding alleged reports by Defendants; he has not shown an invasion or threatened invasion of a right; he will not be irreparably harmed without a preliminary injunction; and he has an adequate legal remedy available to him. Defendants claim that when the hardships are balanced, they would be significantly injured if the Court orders them to violate federal law and void the NPDB report, and the public would be harmed by such an action. Finally, Defendant argues there is no legal or factual basis for Plaintiff's request to place a declaration in his personnel file.

Plaintiff filed a response on April 2, 2023, noting he re-filed a signed affidavit on March 30, 2023. Plaintiff goes on to argue that he has established

adequate proof for an injunction to be entered, although he has marked much of his filing as "Confidential." Therefore, the Court does not discuss the entirety of his responsive filing, but incorporates the written response (which the Court has reviewed in its entirety) as if set forth in full herein.

CONCLUSIONS OF LAW

Iowa Rule of Civil Procedure 1.1502 allows temporary injunctions "under any of the following circumstances:

1.1502(1) When the petition, supported by affidavit, shows the plaintiff is entitled to relief which includes restraining the commission or continuance of some act which would greatly or irreparably injure the plaintiff.

1.1502(2) Where, during the litigation, it appears that a party is doing, procuring or suffering to be done, or threatens or is about to do, an act violating the other party's rights respecting the subject of the action and tending to make the judgment ineffectual.

1.1502(3) In any case especially authorized by statute."

I.R.Civ.P. 1.1502. "A petition seeking a temporary injunction shall state, or the attorney shall certify thereon, whether a petition for the same relief, or part

thereof, has been previously presented to and refused by any court or justice, and if so, by whom and when." *I.R.Civ.P. 1.1504.*

"A temporary injunction is a preventive remedy to maintain the status quo of the parties prior to the final judgment and to protect the subject of the litigation." *Lewis Investments Inc v. City of Iowa City*, 703 N.W.2d 180, 184 (Iowa 2005) (citing *Kleman v. Charles City Police Dep't*, 373 N.W.2d 90, 95 (Iowa 1985)). "The issuance or refusal of temporary injunction rests largely in the sound discretion of the trial court, dependent upon the circumstances of the particular case." *Id.* (citing *Kent Prods. v. Hoegh*, 245 Iowa 205, 211, 61 N.W.2d 711, 714 (1953)). "One requirement for the issuance of a temporary injunction is a showing of the likelihood or probability of success on the merits of the underlying claim." *Id.*

The Iowa Supreme Court has "often noted that '[a]n injunction is an extraordinary remedy which should be granted with caution and only when clearly required to avoid irreparable damage.'" *Sear v. Clayton County Zoning Board of Adjustment*, 590 N.W.2d 512, 515 (Iowa 1999). "The party seeking the injunction must establish: (1) an invasion or threatened invasion of a right; (2) that substantial injury or damages will result unless the request for an injunction is granted; and (3) that there is no adequate legal remedy available." *Id.* "When considering the appropriateness of an injunction 'the court should carefully weigh the relative hardship which would be suffered by the enjoined party upon awarding injunctive relief'" *Id.* Another factor to be considered is the public interest in

granting injunctive relief *Mid-America Real Estate Co. v. Iowa Realty Co., Inc.*, 406 F.3d 969, 972 (8th Cir. 2005). A party is not entitled to injunctive relief when it has an adequate remedy at law. *Lewis*, 703 N.W.2d at 185.

The Court will accept Plaintiff's March 30, 2023 affidavit as a signed affidavit that complies with Rule 1.1502(1), and thus finds that Defendants' resistance as to this specific issue fails. Further, because the Court finds that Plaintiff's Motion could be construed as seeking relief restraining the continuance of some act by Defendants, it is a properly stated Motion under Rule 1.1502. Defendants' resistance on grounds that Plaintiff is seeking a requirement for Defendants to affirmatively act, rather than be restrained from acting, also fails.

Turning to the merits of the Motion, the Court first finds that, when it comes to the likelihood or probability of success on the merits of Plaintiff's claims, there is, at this stage of litigation, evidence presented both by Plaintiff and Defendants that provides a basis for concluding that either side could be successful on the merits when the claims are presented at trial. The questions related to Plaintiff's claims involve factual evidence that could be viewed favorably to Defendants. The first factor does not weigh in favor of Plaintiff, because there is not a clear likelihood or probability of success on the merits of his claims at this stage of litigation.

With respect to Plaintiff's claimed invasion or threatened invasion of his rights, the Court finds that

this factor also does not weigh in favor of Plaintiff, because, as Defendants argue, there is a federal requirement for Defendants to report revocations of physician's privileges. Plaintiff also will not be irreparably injured by the ongoing action in the absence of a preliminary injunction. As Defendants point out, several years have passed since the dispute first arose between the parties, and the Court finds no urgency to Plaintiff's claims that would justify injunctive relief. Plaintiff also has not provided sufficient evidence of any irreparable injury he has suffered. Plaintiff has an adequate legal remedy for his claimed injuries, which is evidenced by the claims he has stated in this action. These factors do not weigh in favor of Plaintiff.

In weighing the relative hardship to be suffered by the parties, this factor also does not weigh in favor of Plaintiff, because Defendants would be required to violate federal law in voiding the report, and there could be harm to the public if the report is not available for consideration before a patient would choose a doctor.

Finally, the Court finds no basis for any declaration to be placed in Plaintiff's personnel file, when there is evidence to be weighed regarding his claims in this case, and when that evidence does not conclusively (at this stage of litigation) favor Plaintiff.

Having weighed the factors necessary to consider in determining whether to order preliminary and permanent injunctive relief at this time, the Court concludes that Plaintiff's Motion should be denied.

RULING

IT IS THEREFORE ORDERED that Plaintiff's Motion for Preliminary Injunction is DENIED.

The Court is aware of the pending Motion for Summary Judgment, and the parties are informed that the Court will rule on that Motion without oral argument, with a written ruling to be issued as soon as practicable.

Clerk to notify.

State of Iowa Courts

Case Number	Case Title
LACV024796	MARK IRLAND, M.D. V MARENGO MEMORIAL HOSPITAL

Type:
OTHER ORDER

So Ordered

/s/

Fae Hoover Grinde, District Court Judge,
Sixth Judicial District of Iowa

Electronically signed on 2023-04-19 05:54:21

APPENDIX J

IN THE SUPREME COURT OF IOWA

No. 22-2039
Iowa County No. LACV024796

ORDER

MARK IRLAND,
Plaintiff-Appellant,

vs.

**MARENKO MEMORIAL HOSPITAL BOARD OF
TRUSTEES, BARRY G. GOETTSCH, NATASHA
HAUSCHILD, and MARENKO MEMORIAL
HOSPITAL,**
Defendants-Appellees.

This matter comes before the court, Waterman, McDonald, and Oxley, JJ., on appellant's request for three-justice review of an order denying his application for interlocutory appeal. Upon consideration, the court confirms the January 11th order denying interlocutory review as the order of the court.

Copies to:

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Mark Irland
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State of Iowa Courts

Case Number **Case Title**
23-1659 Irland v. Marengo Memorial Hospital

So Ordered

/s/
Thomas D. Waterman, Justice

Electronically signed on 2023-01-25 16:42:20

APPENDIX K

**IN THE IOWA DISTRICT COURT
FOR IOWA COUNTY**

MARK IRLAND
Plaintiff

VS 06481 SCSC013778

COMPASS MEMORIAL HEALTHCARE F/K/A
MARENKO MEMORIAL HOSPITAL
NATASHA SUE HAUSCHILT
BARRY GENE GOETTSCH
COMPASS MEMORIAL HEALTHCARE BOARD
OF TRUSTEES
Defendant

ORDER

ON PENDING MOTIONS AND ORDER OF DISMISSAL

Plaintiff filed a small claim action against Defendants alleging lost wages and "losses of opportunity" due to "statements made by defendant." Plaintiff also seeks damages for defamation, fraudulent misrepresentation, "failure to perform," and "acting in bad faith."

In light the previous settlement agreement between the parties which was judicially enforced, and the subsequent Order dismissing the matter with prejudice in case number LACV024130 in the Iowa

District Court for Iowa County, the contents of Plaintiff's Petition are not stated with sufficient specificity to give the Court the ability to determine whether these claims are new claims that exist independent and subsequent to the claims that have been adjudicated in the prior district court matter, or whether Plaintiff is re-hashing stale claims that have been fully litigated, or could have been litigated previously. (See Defendants' Brief, and Defendants' Exhibits A - C).

As the pleadings currently stand, Plaintiff has failed to state a claim upon which any relief may be granted. For all the reasons set forth in the Defendants' Motion to Dismiss and Brief, Plaintiff's claim is dismissed without prejudice pursuant to I.R.Civ.P. 1.421(1)(f).

Plaintiff also seeks injunctive relief, which is beyond the jurisdiction of the small claims court, and Plaintiff's Motion for Leave Requesting injunctive Relief is denied.

If you need assistance to participate in court due to a disability, call the disability coordinator at (319) 398-3920 or information at <https://www.iowacourts.gov/for-the-public/ada/>. Persons who are hearing or speech impaired may call Relay Iowa TTY (1-800-735-2942). Disability coordinators cannot provide legal advice.

State of Iowa Courts

Case Number SCSC013778 **Case Title** MARK IRLAND VS COMPASS MEMORIAL HEALTHCARE

Type:
DISMISSED W/O PREJUDICE

So Ordered

/s/
Kevin D. Ahrenholz,
Sixth Judicial District of Iowa

Electronically signed on 2021-12-21 15:02:37