The Hon. Jerome LaBarre

IN THE CIRCUIT COURT FOR THE STATE OF OREGON
COUNTY OF MULTNOMAH

JERROLD R. DARM, M.D., an individual, **Plaintiff,** **v.** **TIFFANY CRAIG, an individual,** **Defendant.**	**Case No. 1107-08823** **DEFENDANT'S MEMORANDUM IN SUPPORT OF SPECIAL MOTION TO STRIKE** **ORS 31.150, *et seq*.** **Hearing Date: September 15, 2011** **Time: 9:00 am** **30 minutes** **Recording requested**

TABLE OF CONTENTS

I. INTRODUCTION.. 1

A. STATUS AND PARTIES.. 1

B. PLAINTIFF'S CLAIM.. 3

C. SUMMARY OF ISSUES UNDER SPECIAL MOTION... 3

II. OTHER FACTS RELEVANT TO SPECIAL MOTION IN THE RECORD.. 5

III. OVERVIEW: OREGON'S SPECIAL MOTION TO STRIKE AND STATUTORY STAY OF DISCOVERY... 9

A. ANTI-SLAPP LAWS.. 9

B. PROCEDURE UNDER THE SPECIAL MOTION.. 11

IV. DEFENDANT SATISFIES THE "ARISING OUT OF" PRONG OF ORS 31.150(2).. 13

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A. THE INTERNET AND TWITTER ARE PLACES "OPEN TO THE PUBLIC OR A PUBLIC FORUM.". 13

B. CONSUMER COMMENTS ARE TOPICS OF PUBLIC INTEREST WITHIN ORS 31.150(2)(c) AND (d).. 15

V. DARM'S CLAIM SHOULD BE DISMISSED AS A MATTER OF LAW: THE STATEMENTS ARE SUBSTANTIALLY TRUE AND ANY OPINIONS ARE NON-ACTIONABLE UNDER THE OREGON AND FEDERAL GUARANTEES OF FREE SPEECH.. 19

A. ALL THE FACTS REFERENCED ARE TRUE.. 20

B. THE GIST AND STING OF THE BLOG ENTRY ARE TRUE.. 20

C. CONTEXT INCLUDES THE LINKED INFORMATION.. 22

D. ANY OPINIONS EXPRESSED IN THE TWEET AND/OR BLOG ARE PROTECTED SPEECH.. 26

E. SUMMARY: DEFENDANT'S STATEMENTS ARE NOT DEFAMATORY... 34

VI. DARM MUST COME FORWARD WITH SUBSTANTIAL EVIDENCE OF ALL THE ELEMENTS OF THE TORT OF DEFAMATION INCLUDING DEFENDANT'S MALICE AND HIS DAMAGES. 36

A. PLAINTIFF MUST SHOW MALICE.. 37

1. PLAINTIFF ALLEGES MALICE... 37

2. PLAINTIFF IS A LIMITED PURPOSE PUBLIC FIGURE AND MUST SHOW ACTUAL MALICE UNDER THE FIRST AMENDMENT.. 39

3. THE OREGON CONSTITUTIONAL PRIVILEGE OF FAIR COMMENT REQUIRES PLAINTIFF TO PRODUCE EVIDENCE OF ACTUAL MALICE.. 43

B. PLAINTIFF MUST SHOW ANY DAMAGES WERE CAUSED BY DEFENDANT AND NOT THE OTHER NEGATIVE COMMENTS ABOUT HIM ON THE WEB.. 45

VII. CONCLUSION.. 46

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TABLE OF AUTHORITIES

CASES

Agora, Inc. v. Axxess, Inc., 90 FSupp2d 697, (D Md 2000) 25

Bahr v. Ettiger, 88 Or App 419, 745 P2d 807 (1987) 22, 24

Bahr v. Statesman Journal, 51 Or App 177, 624 P2d 664 (1981), *rev den*, 291 Or 118, 631 P2d 341 (1981)] 21

Bank of Oregon v. Ind. News, Inc., 298 Or 434, 693 P2d 35 (1985) 33, 41, 44

Barrett v. Rosenthal, 40 Cal4th 33, 41 n. 4, 51 CalRptr3d 55, 146 P3d 510 (2006) 14

Beecher v. Montgomery Ward & Co., 267 Or 496, 517 P2d 667 (1973) 20

Beverly v. Trump, 182 F3d 183, 187-88 (3rd Cir 1999) 27

Binder v. Triangle Publications, Inc., 442 Pa 319, 275 A2d 53 (Pa 1971) 29

Collins v. Detroit Free Press, 245 Mich 27, 627 NW2d 5 (Ct App Mich 2001) 22

Commonwealth Energy Corp. v. Investor Data Exchange, Inc., 110 CalApp4th 26, 33, 1 CalRptr3d 390 (2003); 15

ComputerXpress, Inc. v. Jackson, 93 CalApp4th 993, 1006, 113 CalRptr2d 625 (2001) 14

Curtis Publishing Co. v. Butts, 388 US 130, 87 SCt 1975, 18 LEd2d 1094 (1967) 41

Flowers v. Carville, 310 F3d 1118, 1129 (9th Cir 2002). 32

Fodor v. Leeman, 179 OrApp 697, 41 P3d 446 (2002) 43

Fowler v. Donnelly, 225 Or 287, 358 P2d 485 (1960) 20

Franklin v. Dynamic Details, Inc., 116 CalApp4th 375, 379, 10 CalRptr3d 429 (2004) 25

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Freedlander v. Edens Broadcasting, Inc., 734 FSupp 221
(ED Va 1990) 22, 30

Gardner v. Martino, 2005 WL 3465349 (D Or 2005) 16

Gardner v. Martino, 563 F3d 981 (2009) 21, 31, 33, 40

Gertz v. Robert Welch, Inc., 418 US 323, 94 SCt 2997,
41 LEd2d 789 (1974) 20, 32, 40

Gilbert v. Sykes, 147 CalApp4th 13, 23, 53 CalRptr3d
752 (2007) 17

Global Telemedia Int'l, Inc. v. Doe 1, 132 FSupp2d
1261, 1270 (CD Cal 2001). 24

Greer v. Columbus Monthly Pub. Corp., 4 Ohio App3d
235, 448 NE2d 157 (1982) 40

Hartmann v. Boston Herald-Traveler Corp., 323 Mass 56,
80 NE2d (1948). Nor 29

Hickey v. Capital Cities/ABC, Inc., 792 FSupp 1195 (D
Or 1992) 22

Hickey v. Settlemier, 116 Or App 436, 841 P2d 675
(1992), aff'd in part and rev'd in part on other
grounds, 318 Or 196, 864 P2d 372 (1993) 22

Hustler Magazine v. Falwell, 485 US 46, 108 SCt 876,
99 LEd2d 41 (1988) 23

Jones v. General Motors Corp., 325 Or 404, 939 P2d 608
(1997) 14

Kronemyer v. Internet Movie Data Base, Inc., 150
CalApp4th 941, 950, 59 CalRptr3d 48, 55 (2007) 14

Kurdock, *Kurdock v. Electro Scientific Indus., Inc.*,
Mult. Co. No. 0406-05889, Order at pp. 1-2 (Oct 15,
2004) 16

Lasky v. American Broadcasting Cos., 631 FSupp 962
(SDNY 1986) 24

Levinsky's, Inc. v. Wal-Mart Stores, Inc. 127 F3d 122,

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128 (1st Cir 1997) 27

Masson v. New Yorker Magazine, Inc., 501 US 496, 111
SCt 2419 (1991) 21

McCullough v. Visiting Nurse Service of Southern
Maine, Inc., 1997 Me 55, 691 A2d 1201 (Me 1997) 22

McNabb v. Oregonian Publishing Co., 69 OrApp 136, 685 P2d 458, 297 Or 824, 687 P2d
797 (1984), cert den, 469 US 1216,105 SCt 1193, 84 LEd2d 339 (1985) 39

Milkovich v. Lorain Journal Co., 497 US 1, 110 SCt 2695,
111 LEd2d 1 (1990). 23, 29

Moldea v. New York Times Co., 22 F3d 310, 313 (1st Cir 1994). 28

New York Times Co. v. Sullivan, 376 US 254 (1964) 39

Nygard, Inc. v. Uusi-Kerttula, 159 CalApp4th 1027,
1042, 72 CalRptr3d 210 (2008) 16

Partington, *Partington v. Bugliosi*, 56 F3d 1147,
1152-53 (9th Cir 1995) 27, 31

Peck v. Coos Bay Times Pub Co. 122 Or 408, 259 P 307
(1927) 20, 44

Pegasus v. Reno Newspapers, Inc., 118 Nev 706, 57 P3d
82, (2002) 40

Phantom Touring v. Affiliated Publications, 953 F2d
724 (1st Cir 1992), *cert den*, 504 US 974, 112 SCt
2942, 119 LEd2d 567 (1992) 30

Reno v. American Civil Liberties Union, 521 US 844,
117 SCt 2329, 138 LEd2d 874 (1997) 13

Rivero v. American Federation of State, County and
Municipal Employees, AFL-CIO, 105 CalApp4th 913, 924,
130 CalRptr2d 81 (2003) 15

Ruble v. Kirkwood, 125 Or 316, 266 P 252 (1928) 45

Sellers v. Time, Inc., 299 FSupp 582 (ED Pa 1969),
aff'd, 423 F2d 887 (3d Cir 1970), *cert den*, 400 US
830, 91 SCt 61, 27 LEd2d 61 (1970) 30

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Skoog v. Clackamas County, 2004 WL 10249 (D OR 2004), aff'd in part and rev'd in part on other grounds,

Skoog v. County of Clackamas, 469 F3d 1221 (9th Cir 2006) 22

St. Amant v. Thompson, 390 US 727, 88 SCt 1323 (1968) 38, 39

State v. Wagner, 305 Or 115, 752 P2d 1136 (1988) 12

Staten v. Steel, 222 Or App 17, 191 P3d 778 (2008) 4, 11, 12

Staten v. Steel, *supra*, 227 Or App at 29 11

Twenty-Five E. 40th St. Rest. Corp. v. Forbes, Inc., 37 AD2d 546, 322 NYS2d 408 (1971) 40

United States v. Microsoft Corp., 84 FSupp2d 9 (D DC 1999) 6

Underwager v. Channel 9 Australia, 69 F3d 361, 367 (9th Cir 1995) 32

USA Technologies, Inc. v. Doe, 713 FSupp2d 901, 908-909 (ND Cal 2010) 23

Wheeler v. Green, 286 Or 99, 593 P2d 777 (1979) 3

White v. Fraternal Order of Police, 909 F2d 512 (DC Cir 1990) 24

Wilbanks v. Wolk, 121 CalApp4th 883, 895, 17 CalRptr3d 497 (2004) 14, 18

Wolston v. Reader's Digest Ass'n, 443 US 157 (1979) 40

STATUTES

ORS 31.150, *et seq*.. . . . . passim

ORS 677.320(6) 2

OTHER

Rodney A. Smolla, LAW OF DEFAMATION 38, 40, 41

Restatement (2d) Torts, § 558 20

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Restatement (2d) Torts, § 566, *comment a* 44

Restatement (2d) Torts, § 563, *Comment d* 23, 28, 37, 43, 44

LAW REVIEWS

Canan & Pring, *Strategic Lawsuits Against Public Participation*, 35 Soc Probs 506 (1988) 10

Canan & Pring, *Studying Strategic Lawsuits Against Public Participation: Mixing Quantitative and Qualitative Approaches*, 22 Law & Soc'y Rev 385 (1988) 9

David J. Loundy, *E-Law: Legal Issues Affecting Computer Information Systems and Systems Operator Liability*, 3 Alb LJ Sci&Tech 79, 82 (1993) 15

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I. INTRODUCTION.

A. STATUS AND PARTIES.

Plaintiff Jerrold Darm, M.D., has sued Defendant Craig for "defamation" based upon her truthful statements in a blog entry which included a hyperlink to his medical board disciplinary records in Oregon and California and her opinions based on the facts stipulated to in the public records. Defendant files a Special Motion to Strike Plaintiff's claim against her and to dismiss the Complaint under ORS 31.150, *et seq*. This Motion must be filed before any answer by Defendant. ORS 31.150(1). Discovery is stayed. ORS 31.152(2).[1] For convenience of reference, the Complaint which is moved against is attached as Appendix A.

Plaintiff Jerrold Darm, M.D., (hereinafter, "Darm" or "Plaintiff") is a well-known Portland doctor. Compl. ¶¶ 1-2. He advertises widely, as set out, *post*. In 2001 he stipulated to the Oregon Board of Medical Examiners ("OBME") that he engaged in "unprofessional and dishonorable conduct" by a sexualized encounter with a female patient who "could not pay for a cosmetic treatment" after arranging to meet with her after office hours. The stipulation includes the following:

> At the conclusion of the treatment, as she was reclined on her back, Licensee leaned over Patient A and made intimate physical contact with her by inappropriately giving her a kiss, a hug, and touching her. Licensee inferred that this physical contact would be his payment for the treatment.

In the Matter of Jerrold R. Darm, MD, Stipulated Order (OBME October, 16, 2001), ¶¶ 2.1, 3; Declaration of Tiffany Craig (hereinafter "Craig Decl.") Ex. A, at pp. 15-16. He was also admonished for causing a "third party" to offer settlement to Patient A after she

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1. ORS 31.152(2) provides "All discovery in the proceeding shall be stayed upon the filing of a special motion to strike under ORS 31.150."

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complained to the licensing board.[2] *Id*. Plaintiff was disciplined by medical licensing authorities in California and Washington relating to (1) this same intimate encounter and the inferred bartering of the intimate contact for treatment, and (2) causing another to later contact the complainant.

Defendant Tiffany Craig ("Craig" or "Defendant") has a publicly available blog [Compl. ¶ 6; Craig Decl., ¶ 4,] and in this forum she:

> (1) Accurately quotes from a 2009 OBME Order lifting license restrictions and conditions imposed upon Darm based upon the facts and circumstances to which he had stipulated in 2001;
>
> (2) Embeds and provides a hyperlink to the website maintained by the Medical Board of California which includes a "License Lookup System"[3]and readable, portable document format ("pdf") versions of the complete California license surrender stipulation, *In the Matter of Jerrold R. Darm, MD, Stipulated Surrender of License and Order* (CalMQMB[4] No. 16-2001-128803, January 28, 2003), the California investigator's report and *Accusation* (CalMQMB No. 16-2001-128803); the Oregon *Stipulated Order*, *supra*, and the Oregon *Complaint and Notice of Proposed Disciplinary Action* (OBME August 9, 2001), in their entirely; and,
>
> (3) briefly states her opinions based on the fully disclosed and undisputed facts contained in those records.

Defendant also posted a public "short message" on Twitter referring to the existence of original Oregon administrative Complaint. Compl. ¶ 4.

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2. Violating of ORS 677.320(6). OBME Orders prior to 2006 are public records and may be viewed or ordered from the Board, but are not presently scanned and available on the Oregon website, as are post-2006 orders. The Oregon *Stipulated Order* is an Exhibit to the California records and can be viewed online.

3. ww2.mbc.ca.gov.LicenseLookupSystem/Physician/Surgeon

4. Division of Medical Quality, Medical Board of California, Department of Consumer Affairs

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B. PLAINTIFF'S CLAIM.

The Complaint alleges that Craig's blog posting was "false, defamatory and malicious." Compl. ¶ 3. The Complaint alleges that the tweet is also "false, defamatory and malicious." Compl. ¶ 4. Plaintiff also alleges that the tweet links to the blog and its allegedly "false, defamatory and malicious statements." *Id.*

Darm seeks $1,000,000.00 damages for the alleged injury to his reputation, and seeks a prior restraint on Defendant's speech "to prevent * * * present and/or future defamation against plaintiff." Compl., Prayer. Contrary to "black letter" Oregon law, Plaintiff alleges he may seek "punitive damages." Compl. ¶ 12. This last is completely frivolous. Punitive damages for defamation are prohibited by Oregon Constitution, Art I, § 8.[5] The claim in the Complaint is based entirely upon the allegedly "Defamatory Statements" contained in the blog and tweet. Compl. ¶ 5.

C. SUMMARY OF ISSUES UNDER SPECIAL MOTION.

Defendant Craig moves to strike the claim against her under ORS 31.150, in particular under ORS 31.150(2)(c) and (d), as the Complaint shows on its face that the sole claim of defamation arises from and is based upon statements she made in the public forum of the internet [Compl. ¶¶ 6, 8] on issues of interest to (1) all consumers and potential consumers of cosmetic medical "spa" treatments, and (2) all members of the public who are interested in the publicly available disciplinary proceedings of licensed doctors in Oregon.

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5. In ***Wheeler v. Green***, 286 Or 99, 117-19, 593 P2d 777 (1979), the Oregon Supreme Court held that punitive damages cannot be imposed against any defamation defendant under any circumstances because of Oregon Constitution, Art I, § 8.

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Plaintiff's prominence in the promotion of medical spa procedures; his own admissions of intimate contact with a Patient A (kissing, hugging, touching[6] her) in the course of performing a cosmetic medical procedure; and his resulting discipline (in three states) are all topics of interest to significant numbers of the public.

Therefore, the burden now shifts to Darm to come forward to show "that there is a probability that the plaintiff will prevail on the claim by presenting substantial evidence to support a *prima facie* case." ORS 31.150(3). ***Staten v. Steel***, 222 Or App 17, 27, 191 P3d 778 (2008).

Plaintiff will not be able to meet this burden because the statements upon which his Complaint is based are substantially true. To the extent Craig states her opinion, that opinion is based on the undisputed facts disclosed in the hyperlinked documents of official proceedings of government agencies which include the stipulated facts agreed to by Darm and his attorney of record in this defamation suit. Defendant Craig's discussion and disclosure of disciplinary records are fully within the protections of the First

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6. The referenced "touching" seems to be independent of the physical contact of kissing and hugging. OAR 847-010-0073(3)(b) defines unprofessional conduct, including, "Sexual violation" at subsection I:

> Sexual violation: Licensee-patient sex, whether or not initiated by the patient, and engaging in any conduct with a patient that is sexual or may be reasonably interpreted as sexual, including but not limited to:
> * * *
> (vi) Kissing in a romantic or sexual manner;
> (vii) Touching breasts, genitals, or any sexualized body part for any purpose other than appropriate examination or treatment, or where the patient has refused or has withdrawn consent;
> * * *
> (ix) Offering to provide practice-related services, such as medications, in exchange for sexual favors.

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Amendment and Oregon Constitution, Art I, § 8, and the procedural protection of the Special Motion practice.

II. OTHER FACTS RELEVANT TO SPECIAL MOTION IN THE RECORD.

Darm aggressively advertises to the public about his business, Aesthetic Medicine. He publicizes that he "has pioneered his own trademark procedures * * *" and that "[h]e is internationally recognized and sought out by patients from all over the world." Declaration of Linda Williams (hereinafter "Williams Decl."), Exs. A, p. 8; AA, p. 8. He maintains a website for Aesthetic Medicine and has a number of videos posted there in which he prominently appears.[7] Williams Decl., Ex. B, p. 1: Craig Decl. Ex. B. He broadens the potential audience by maintaining a YouTube channel for these videos. *Id.* He appears as a personal spokesperson for Aesthetic Medicine and relies upon his experience and involvement in the clinc's operations as a positive marketing claim. He uses social media, including Twitter and Facebook. *Id.* He includes (favorable) testimonials from Aesthetic Medicine patients upon his website in print and video formats. Williams Decl., Ex. B. pp. 1-4; Craig Decl., Ex. B.

Darm also appears regularly on local shows on broadcast television stations, with appearances on *AMNorthwest* (ABC affiliate), *Studio Six* (CBS affiliate), and on *Northwest 32* (CW network affilate). *Id.* He does televised features on his weight loss treatments, body sculpting, liposuction procedures, and various laser treatments for skin conditions (rosacea, acne) and spider veins. Darm also uses print media and regularly

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7. Undersigned counsel appends hard copy of screen captures of internet pages and also provides urls for viewing. In addition to considering the hard copy educed as evidence, the existence of the web pages and contents are capable of determination. Defendant requests the Court take judicial notice of the existence of the web page materials proffered at Williams Decl., Exs. A-G and Craig Decl. Exs. A, B. ORE 201(2)(b).

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distributes flyers by various means [Williams Decl., Ex. A], including bulk mailing. *Id.*, Ex. AA, p. 8.

Defendant Tiffany Craig has a personal blog hosted by Blogger. Craig Decl., ¶ 2. She occasionally posts material on a variety of topics, news stories and information she finds entertaining or interesting. She shares (and receives comments) on matters as varied as her personal life, shoe collection (massive), her bike, trips to nature preserves, and an eclectic mix of things she believes are in the public interest, such as technical tips and information about internet technology and politics. *Id.*, ¶¶ 4-5. Her blog is interactive and allows anyone to respond to her statements and share comments or experiences. *Id.*, ¶¶ 3, 6. She maintains a Twitter account. *Id.* ¶ 2.

Plaintiff has cherry-picked Craig's blog entry in his Complaint. On or about June 29, 2011, she posted the following blog entry (which she key-entered herself), beneath a link to one of Darm's videos (the visual effect is clearly shown in Craig Decl., Ex. A, p. 1). She included a hyperlink (here indicated in double underline) to the website of the Medical Board of California.[8] *Id.* at pp. 2-21.

> Seen that around? Sure you have. If you watch television in Portland Dr Darm is ubiquitous. Especially on those local channels that show endless reruns of Two and a Half Men. He wants to fix you up good and spend thousands on cosmetic procedures that will get funneled straight into his Lake Oswego home.
>
> What he should have added with his Results May Vary disclaimer is Dr. Darm Handed Over His Medical License Due To Disciplinary Action.

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8. Most Web pages are in the form of "hypertext;" that is, they contain annotated references, or "hyperlinks," to other Web pages. Hyperlinks can be used as cross-references within a single document, between documents on the same site, or between documents on different sites.

United States v. Microsoft Corp., 84 FSupp2d 9, 13 (D DC 1999).

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Not quite the same ring as instant weight loss though, right?

Licensee has surrendered his or her license to resolve a disciplinary action. No practice is permitted.

Oh and why?

EFFECTIVE 10/18/01 RECEIVED A LETTER OF REPRIMAND FROM OREGON, REQUIRED TO HAVE A CHAPERONE WHEN EXAMINING FEMALE ADULTS, AND ADDITIONAL CONTINUING MEDICAL EDUCATION COURSES. EFFECTIVE 01/08/09 STIPULATED ORDER OF 10/18/01 IS TERMINATED.

That's right, he was censured by the state because he was examining female patients without a chaperone. If that's not bad enough? Apparently needed just a teensy bit more education about how to respect the boundaries of his patients.

Oh and California just decided that he shouldn't be licensed at all. If he tries to get licensed in California, he has to reapply.

And maybe you're thinking, "so what if he examined a female patient without a chaperone? How is that a big deal." You should really read the judgement which says:

> "Licensee examined Patient A on August 3, 2000 and September 21, 2000 to evaluate the treatment results. Patient A repeatedly expressed concern about some "spider" veins on her legs, but that she could not pay for additional treatment. Licensee informed Patient A that he would provide her with free treatment at his clinic closing time. On or about November 16, 2000 at about 9:30 PM, Licensee used a laser to treat Patient A's condition on her legs. At the conclusion of the treatment, as she was reclined on her back, Licensee leaned over Patient A and made intimate physical contact with her and inferred that would be his payment."

That's right, he tried to get a woman to sleep with him in exchange for cosmetic surgery.

I'm don't think Results May Vary is quite enough to warn people off being treated by Dr. Darm.

The statements by Craig reasonably rely upon facts that are both disclosed and substantially true. Darm was reprimanded and his Oregon medical license was conditioned for almost 8 years while he was on probation after a sexualized after-hours

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treatment encounter with a female patient. He was, *inter alia*, required to maintain a relationship with a mental health provider, complete Continuing Medical Education about patient boundaries, and have a chaperone present when examining or treating adult female patients.

The Oregon investigator reported in the initiating Complaint that Patient A told Darm that "she could not pay for" another cosmetic procedure, that Darm would provide "free treatment at his clinic after closing time," and after that procedure, as Complainant was lying on her back, "made intimate physical contact with her and inferred that that would be his payment." The Complaint further alleges that Darm "arranged for a third party" to contact the Complainant after he had learned of her Complaint. *In the Matter of Jerrold R. Darm, MD, Complaint and Notice of Proposed Disciplinary Action* (OBME August 9, 2001), ¶ 3.1-3.2, Craig Decl. Ex A, pp. 18-21.

Darm stipulated to **all** of those allegations of fact and stipulated to even greater details of the intimate encounter which took place with Patient A: that he "made intimate physical contact with her by inappropriately giving her a kiss, a hug, and touching her." *In the Matter of Jerrold R. Darm, MD, Stipulated Order* (OBME October, 16, 2001), ¶¶ 2.1, 3, Craig Decl., Ex A, pp. 13-14.

In 2003 he surrendered his license to practice in California as a result of that state's investigation of the Oregon discipline. *In the Matter of Jerrold R. Darm, MD, Stipulated Surrender of License and Order* (CalMQMB No. 16-2001-128803, January 28, 2003), *supra*; *In the Matter of Jerrold R. Darm, MD, Accusation* (CalMQMB No. 16-2001-128803), *supra*. Craig Decl., Ex. A, pp. 2-12.

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Darm was later disciplined by the Washington Department of Health, Medical Quality Assurance Board, after his Oregon discipline came to ithe Board's attention even though he had not disclosed it in applying for licensing. The *Statement of Charges* by the Washington Board alleges Plaintiff

> made intimate physical contact with a patient in exchange for medical treatment by giving her a kiss; a hug and touching her while reclined in the treatment chair.

Williams Decl., Ex. D, p. 1, ¶ 1.2. Darm was admonished for failing to disclose the Oregon conditions upon his license to the Washington regulator and he agreed to a stipulated order, reprimand (and $5000.00 fine), based upon, *inter alia*,

> [S]exualizing a treatment session with a patient. Respondent is further reprimanded for attempting to interfere with the investigation of the matter by the Oregon Board.

In the Matter of Jerrold R. Darm, MD, Stipulated Findings of Fact, Conclusions of Law and Agreed Order, ¶ 4.1, (WaMQAC No. 03-07-A-1049MD) (2004). Williams Decl., Ex. C, p. 3. His Washington license status is "expired." *Id.* at Ex. E.

III. OVERVIEW: OREGON'S SPECIAL MOTION TO STRIKE AND STATUTORY STAY OF DISCOVERY.

A. ANTI-SLAPP LAWS.

SLAPP is an acronym for "Strategic Litigation Against Public Participation." The term was coined by two University of Denver professors, Penelope Canan and George W. Pring. See Canan & Pring, *Studying Strategic Lawsuits Against Public Participation: Mixing Quantitative and Qualitative Approaches*, 22 LAW & SOC'Y REV 385 (1988); Canan & Pring, *Strategic Lawsuits Against Public Participation*, 35 SOC PROBS 506 (1988). As here, "[t]he favored causes of action in SLAPP suits are defamation, various

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business torts such as interference with prospective economic advantage, nuisance and intentional infliction of emotional distress." *Strategic Lawsuits Against Public Participation*, *supra*. 35 SOC PROBS at 512. States have sought to stem these kinds of abusive suits. Oregon's "anti-SLAPP" statute was enacted in 2001, closely tracking the California anti-SLAPP statute to protect defendants. ORS 31.150 provides:

> (1) A defendant may make a special motion to strike against a claim in a civil action described in subsection (2) of this section. The court shall grant the motion unless the plaintiff establishes in the manner provided by subsection (3) of this section that there is a probability that the plaintiff will prevail on the claim. The special motion to strike shall be treated as a motion to dismiss under ORCP 21.A but shall not be subject to ORCP 21.F. Upon granting the special motion to strike, the court shall enter a judgment of dismissal without prejudice. If the court denies a special motion to strike, the court shall enter a limited judgment denying the motion.
>
> (2) A special motion to strike may be made under this section against any claim in a civil action that arises out of:
>
> * * *.
>
> (c) Any oral statement made, or written statement or other document presented, in a place open to the public or a public forum in connection with an issue of public interest; or
>
> (d) Any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.
>
> (3) A defendant making a special motion to strike under the provisions of this section has the initial burden of making a prima facie showing that the claim against which the motion is made arises out of a statement, document or conduct described in subsection (2) of this section. If the defendant meets this burden, the burden shifts to the plaintiff in the action to establish that there is a probability that the plaintiff will prevail on the claim by presenting substantial evidence to support a prima facie case. If the plaintiff meets this burden, the court shall deny the motion.

The anti-SLAPP statutes were designed to protect speech and dispose of meritless lawsuits before a defendant is bankrupted by litigation expenses.

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> During their consideration of this statute [now ORS 31.150, *et seq*.], legislators explained that its purpose is to provide for the dismissal of claims against persons participating in public issues, when those claims would be privileged under case law, before the defendant is subject to substantial expenses in defending against them. Audio Recording, House Committee on Judiciary, HB 2460, Apr. 16, 2001, at 2:10.38 (comments of Rep. Shetterly and Rep. Ackerman).

Staten v. Steel, *supra*, 227 Or App at 29. In furtherance of this goal of protecting defendants, the statute stays all discovery pending decision on this Motion.

B. PROCEDURE UNDER THE SPECIAL MOTION.

ORS 31.150 requires the Court to engage in a two-pronged process when reviewing Defendant's Special Motion to Strike. In this case, the Court first decides whether Defendant Craig has met her threshold burden of showing that Darm's claim against her arises from one of the circumstances set out in the statute protecting expression (the "arising out of" prong).

If the Court finds such a showing has been made, the burden shifts to Darm to show "that there is a probability that the plaintiff will prevail on the claim by presenting substantial evidence to support a *prima facie* case." ORS 31.150(3). ***Staten v. Steel***, *supra*, 222 Or App at 27. This "substantial evidence" language was added to the California statute by the Oregon Legislature.[9] The departure from the source statute demonstrates that Oregon's version requires more than a "*prima facie* showing," but instead emphasizes the requirement of "substantial evidence."

The requirement that a plaintiff offer "substantial evidence" to establish a "probability" of prevailing strongly ties that "probability" to the strength of the evidence.

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9. Cal CCP § 425.16(b)(1) requires plaintiff to demonstrate only a "probability that the plaintiff will prevail on the claim."

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This requires more than some remote statistical "chance" of prevailing, but instead, the evidence must be "substantial" enough that plaintiff is more likely than not to prevail.[10] As the Court of Appeals has explained, the Plaintiffs here carry a "heav[y] burden" to defeat this Motion:

> If the moving party makes that showing, which it may be able to do based on the pleadings alone, the nonmoving party then has the burden of establishing a prima facie case that is sufficient to show that there is a probability that it will prevail. <u>That burden is potentially much heavier than merely establishing the existence of a disputed issue of fact. In deciding whether the plaintiff has met its burden, the trial court may need to weigh the evidence, something that it cannot do on a motion for summary judgment.</u>

Staten v. Steel, *supra*, 222 Or App at 31 (citations omitted). (Emphasis added).

In making the determinations under each prong, the Court is to be guided by the express intent of the Legislature stated in ORS 31.152(4). This Motion is meant to:

> provide a defendant with the right to not proceed to trial in cases in which the plaintiff does not meet the burden specified in ORS 31.150(3). This section and ORS 31.150 and 31.155 are to be liberally construed in favor of the exercise of the rights of expression described in ORS 31.150(2).

IV. DEFENDANT SATISFIES THE "ARISING OUT OF" PRONG OF ORS 31.150(2).

A. THE INTERNET AND TWITTER ARE PLACES "OPEN TO THE PUBLIC OR A PUBLIC FORUM."

As set out above, Darm alleges that the "defamatory statements" were made on the internet and Twitter. Compl. ¶¶ 3, 4, 6, and 8. The internet, Craig's blog, and publicly

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10. We first address the term "probability." It is true that in the mathematical or statistical sense the probability that something may exist may range from zero (impossible) to one (sure). In that sense anything that is possible has a probability of existing * * *. There is nothing to indicate that the people in passing this legislation meant to use the word in that sense. In its everyday usage sense, the word means the quality or state of being probable.

State v. Wagner, 305 Or 115, 150-151, 752 P2d 1136 (1988).

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searchable short message tweets are all open to the entire public for expression and are recognized public forums.

It is indisputable that the internet is a public forum for defamation purposes. The Internet

> provides relatively unlimited, low-cost capacity for communication of all kinds * * *. This dynamic, multifaceted category of communication includes not only traditional print and news services, but also audio, video, and still images, as well as interactive, real-time dialogue. Through the use of chat rooms, any person with a phone line can become a town crier with a voice that resonates farther than it could from any soapbox. Through the use of Web pages, mail exploders, and newsgroups, the same individual can become a pamphleteer.

Reno v. American Civil Liberties Union, 521 US 844, 870, 117 SCt 2329, 138 LEd2d 874 (1997).

In the statutory construction of ORS 31.150, this Court may look to California decisions for guidance, in particular, those of the California Supreme Court construing the version of the anti-SLAPP statute adopted by the Oregon Legislature almost verbatim in 2001.

> If the Oregon Legislature adopts a statute or rule from another jurisdiction's legislation, we assume that the Oregon legislature also intended to adopt the construction of the legislation that the highest court of the other jurisdiction had rendered before adoption of the legislation in Oregon.

Jones v. General Motors Corp., 325 Or 404, 408, 939 P2d 608 (1997).

The California Supreme Court has held that websites accessible to the public are "public forums" for the purposes of the anti-SLAPP statute. ***Barrett v. Rosenthal***, 40 Cal4th 33, 41 n. 4, 51 CalRptr3d 55, 146 P3d 510 (2006). Lower courts have followed this instruction.[11] Internet publication has been analogized to such historic and familiar

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11. Cases construing the term "public forum" as used in section 425.26 have noted that (continued...)

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public expressions as the "town crier," leafletting, and "a computerized version of the computerized equivalent to the bulletin boards commonly found in the workplace, schools and the like." Loundy, *E-Law: Legal Issues Affecting Computer Information Systems and Systems Operator Liability*, 3 ALB LJ SCI&TECH 79, 82 (1993).

The short message feature of Twitter also is a public forum. Declaration of Brian Rowe, ¶¶ 4-8. Anyone worldwide can use Twitter. A user can communicate with selected individuals directly ("direct massaging") [*Id.*, ¶ 4] or to the public audience in general through "short messages" which are 140 character statements, sent by text from phones, computers or many electronic devices. *Id.*, ¶¶ 5-7. These short messages are

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(...continued)

> the term "is traditionally defined as a place that is open to the public where information is freely exchanged." "Under its plain meaning, a public forum is not limited to a physical setting, but also includes other forms of public communication." ***ComputerXpress, Inc. v. Jackson***, 93 CalApp4th 993, 1006, 113 CalRptr2d 625 (2001). "Statements on [Plaintiff] SHAC USA's Web site are accessible to anyone who chooses to visit the site, and thus they hardly could be more public." ***Wilbanks v. Wolk***, 121 CalApp4th 883, 895, 17 CalRptr3d 497 (2004).

Kronemyer v. Internet Movie Data Base, Inc., 150 CalApp4th 941, 950, 59 CalRptr3d 48, 55 (2007). The court in ***ComputerXpress***, *supra*, 93 CalApp4th 993, 1007, held that disparaging remarks made on websites were made in a public forum when the evidence showed that the sites were accessible free of charge to any member of the public and persons who chose to do so could post their own opinions there.

> In a sense, the Web, as a whole, can be analogized to a public bulletin board. A public bulletin board does not lose its character as a public forum simply because each statement posted there expresses only the views of the person writing that statement. It is public because it posts statements that can be read by anyone who is interested, and because others who choose to do so, can post a message through the same medium that interested persons can read.

Wilbanks v. Wolk, *supra*, 121 CalApp4th at 897.

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completely public and anyone can search the messages for key words. *Id.*, ¶ 8. Users of Twitter are fully aware of this publicly searchable feature. *Id.*, ¶ 9.

B. CONSUMER COMMENTS ARE TOPICS OF PUBLIC INTEREST WITHIN ORS 31.150(2)(c) AND (d).

In construing the California template for what is now ORS 31.150, *et seq.*, California courts have noted that the phrase "statements made in connection with a public issue" focuses on whether (1) the subject of the statement or activity precipitating the claim was a person or entity in the public eye; (2) the statement or activity precipitating the claim involved conduct that could affect large numbers of people beyond the direct participants; and (3) the statement or activity precipitating the claim involved a topic of widespread public interest. ***Commonwealth Energy Corp. v. Investor Data Exchange, Inc***., 110 CalApp4th 26, 33, 1 CalRptr3d 390 (2003); ***Rivero v. American Federation of State, County and Municipal Employees, AFL-CIO***, 105 CalApp4th 913, 924, 130 CalRptr2d 81 (2003).

Here, Plaintiff affirmatively seeks to be "in the public eye" personally for his experience, the techniques using various laser technologies and the services his spa clinic offers. He chooses to advertise to the public about his business, maintain a website, appear regularly on television, and distribute his videos on YouTube. Williams Decl. Ex. A; Craig Decl. Ex. B.

The conduct of medical professionals is a matter of significant public interest. The medical licensing boards consider their actions so significant that they make orders public and easily accessible now on respective websites.

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"`[A]n issue of public interest' within the meaning of [analogous California law section] 425.16, subdivision (e)(3) is any issue in which the public is interested." ***Nygard, Inc. v. Uusi-Kerttula***, 159 CalApp4th 1027, 1042, 72 CalRptr3d 210 (2008). The phrase "public interest" is also applied and interpreted broadly under Oregon's anti-SLAPP statute. After a review of Oregon trial court opinions about the application of ORS 31.150, Magistrate Hubel concluded in ***Gardner v. Martino***, 2005 WL 3465349, *5 (D Or 2005) (hereinafter "***Gardner*** Magistrate's Findings") (Appendix B)r that:

> Given that these courts have applied Oregon's statute [ORS 30.150] to situations involving private companies, and in the case of *Kurdock*,[12] to internal employee or shareholder communications, and to newspaper and Internet publications regarding statements made in a classroom, I agree with defendants that these courts have generally given Oregon's "public issue" or "public interest" concept a broad interpretation.

The fact that the medical licensing boards of Oregon, California and Washington make Orders available for review to the public at their respective offices and on the internet speaks for itself about the public's interest in open government and interest in reviewing the licensing status of health care professionals. In this case, the topics of cosmetic medical procedures, professional conduct of a prominent proponent of such procedures, and official public determinations by medical professional licensing boards are all matters of interest to many members of the public. Any medical procedure involves cost, raises concerns for health and safety and requires an informed decision by the potential patients or consumers.

For example, a dissatisfied plastic surgery patient's website (www.mysurgery nightmare.com) created to relate her bad experience with well known surgeon (Sykes)

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12. *Kurdock v. Electro Scientific Indus., Inc.*, Mult. Co. No. 0406-05889, Order at pp. 1-2 (Oct 15, 2004).

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concerned a "matter of public interest" within the meaning of the California anti-SLAPP process. The Court found the website to be on a matter of public interest in several ways, both equally relevant here. The first finding of public interest was based on the prominence of the doctor and discussion of a medical outcome which contributed to public debate on the topic of the benefits and risks of procedures for cosmetic reasons.

> Sykes is a widely known plastic surgeon, practicing at a prestigious medical institution, who has written numerous articles on plastic surgery, appeared in local television shows on the subject and advertised in the Sacramento media market. Gilbert's Web site contributed toward the public debate about plastic surgery in at least two ways: First, assertions that a prominent and well-respected plastic surgeon produced "nightmare" results that necessitated extensive revision surgery contributes toward public discussion about the benefits and risks of plastic surgery in general, and particularly among persons contemplating plastic surgery as a means of looking younger or improving their appearance. And her assertions of "nightmare" results requiring extensive revision surgery contributed to discussion about benefits and risks of plastic surgery * * *.

Gilbert v. Sykes, 147 CalApp4th 13, 23, 53 CalRptr3d 752 (2007).[13] Secondly, the Court also noted that (as in this case) the so-called defamation appeared on a website that was interactive and included "a contact page where readers can share their own experiences" [*Id.*] increasing the ability of the public to contribute to the topics under discussion. Such interactivity is recognized as having legal significance in defamation law: it engages the public and also offers the same forum to the potential defamation plaintiff "to set the record straight," as discussed at greater length at p. 33, *post*, (in reference to ***Gardner v. Martino***, 563 F3d 981, 989 (2009), applying ORS 31.150).

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13. Defamation was raised as a counter-claim by Sykes in Gilbert's malpractice action against him, hence Gilbert was the party to raise the anti-SLAPP defense.

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In ***Wilbanks v. Wolk***, 121 CalApp4th 883, 17 CalRptr3d 497 (2004), the president of a brokerage and a brokerage firm which sold "viatical settlements"[14] sued a consumer "watchdog" for defamation and unfair business practices based on statements she published on her website:

> Be very careful when dealing with this broker. Wilbanks and Assoc. is under investigation by the CA dept. of insurance. The complaint originated with a California viator who won a judgment against Wilbanks. How many others have been injured but didn't have the strength to do anything about it?
>
> The company is under investigation. Stay tuned for details.
>
> Wilbanks and Associates provided incompetent advice.
>
> Wilbanks and Associates is unethical.

Id. at 890.

The appellate panel upheld the dismissal under the anti-SLAPP statute because:

> The statements made by Wolk were not simply a report of one broker's business practices, of interest only to that broker and to those who had been affected by those practices. Wolk's statements were a warning not to use plaintiffs' services. In the context of information ostensibly provided to aid consumers choosing among brokers, the statements, therefore, were directly connected to an issue of public concern.

Id. at 900. Craig's blog statements were also in the nature of information to aid those interested in choosing cosmetic procedures and a provider.

Gardner Magistrate's Findings, *supra*, should guide this Court in construing Oregon's anti-SLAPP law. There the business owners' claims included false light invasion of privacy, defamation, intentional interference with economic relations and intentional interference with prospective economic advantage. All the claims arose out of statements made by Martino, a syndicated radio talk show host, about Mt. Hood Polaris,

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14. These arrangements allow dying persons with life insurance policies to sell their policies to investors for a percentage of the death benefits. ***Wilbanks***, *supra*, 121 CalApp4th 883 at 889.

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owned and operated by the Plaintiffs. Defendant Martino had an on-air conversation with a caller (Feroglia) who described her negative experience dealing with plaintiffs about her purchase of a motorized water vehicle from them.

The magistrate (applying Oregon law) granted Defendants' anti-SLAPP Motion to Strike. ***Gardner*** is one in a long line of cases which consider most discussion, information, and opinions about consumer products and experiences to be of interest to significant numbers of people and to all potential consumers. Given the wide potential audience, such matters are connected to topic of "public interest" as set out in the ***Gardner*** opinion at *6.

> Given that the majority of the authority cited by the parties, and all of the authority I may properly consider, adopts a broad interpretation of "public issue" or "public interest," and notably, given the cases holding that issues of consumerism, including complaints about products and services, are issues of public interest, I conclude that the statements made here about plaintiffs and their alleged treatment of Feroglia and the quality of the product, are properly considered statements about a public issue or an issue of public concern within the meaning of Oregon's anti-SLAPP statute.

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V. DARM'S CLAIM SHOULD BE DISMISSED AS A MATTER OF LAW: THE STATEMENTS ARE SUBSTANTIALLY TRUE AND ANY OPINIONS ARE NON-ACTIONABLE UNDER THE OREGON AND FEDERAL GUARANTEES OF FREE SPEECH.

A. ALL THE FACTS REFERENCED ARE TRUE.

In this case no evidence that Darm provides in response to this motion can show any "probability" of prevailing on the merits because none of Craig's statements are actionable defamation as a matter of law. "A defamatory publication, in order to be actionable, must be false: RESTATEMENT (2D) TORTS, § 558; 33 AM JUR, *Libel & Slander*, § 110, page 113; 53 CJS *Libel and Slander* § 74, page 124." ***Fowler v. Donnelly***, 225 Or 287, 291, 358 P2d 485, 487-488 (1960). Truth is an absolute defense, regardless of how embarrassing the truth may be to the plaintiff.

Moreover, as a matter of federal Constitutional law, opinions are not actionable defamation; an opinion is not provably "false." ***Gertz v. Robert Welch, Inc.***, 418 US 323, 339-40, 94 SCt 2997, 41 LEd2d 789 (1974). As a matter of Oregon law, opinions are privileged as "fair comment." ***Peck v. Coos Bay Times Pub Co.*** 122 Or 408, 421-2, 259 P 307, 312 (1927).

Whether the complained-of words are (1) factual and true or (2) even capable of defamatory meaning or are instead non-actionable opinion are questions of law for the Court. ***Beecher v. Montgomery Ward & Co.***, 267 Or 496, 500, 517 P2d 667 (1973). This Court should hold that no statement by Craig is defamatory and that the blog entry is in whole substantially true and an expression of protected non-actionable opinion based on the very full statement of undisputed facts included in the hyperlink.

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B. THE GIST AND STING OF THE BLOG ENTRY ARE TRUE.

Most children hear Thumper say, "If you can't say something nice--don't say nothin' at all" in "Bambi." This is not a legally enforceable rule. The law cannot stop anyone from calling attention to and producing official government determinations and repeating true statements. Nor can it muzzle Craig through prior restraints from speaking about Darm, as Plaintiff here requests. Compl., ¶ 12.

A "don't say nothin'" rule would be contrary to Oregon and Federal Constitutional guarantees of free expression. The First Amendment and Oregon Constitution, Art I, s 8, allow for free-wheeling opinions, unflattering, crude, even vituperative language to flourish. The foundational freedom of expression allows one to report true facts and to state opinions, even opinions based on mistaken interpretations of facts or facts which themselves are unreliable, so long as the facts as known to the speaker are disclosed. ***Gardner v. Martino***, 563 F3d 981, 989 (2009). Of course, in this case, the underlying facts are true.

Truth is a complete defense to defamation [***Bahr v. Statesman Journal***, 51 Or App 177, 180, 624 P2d 664 (1981), *rev den*, 291 Or 118, 631 P2d 341 (1981)] and substantial accuracy is sufficient to establish truth in federal and Oregon courts. A court looking to see if a statement is true "overlooks minor inaccuracies and concentrates upon substantial truth." ***Masson v. New Yorker Magazine, Inc***., 501 US 496, 111 SCt 2419, 2433

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(1991).[15] In ***Haynes v. Alfred A Knopf, Inc.***, 8 F3d 1222, 1228-29 (7th Cir 1993), Judge Posner synthesized this rule:

> The rule of substantial truth is based on a recognition that falsehoods which do no incremental damage to the plaintiff's reputation do not injure the only interest that the law of defamation protects. Falsehoods that do not harm the plaintiff's reputation more than a full recital of the true facts about him would do are thus not actionable.

Oregon common law has always relied on "substantial truth" as sufficient to establish truth. ***Bahr v. Ettiger***, 88 Or App 419, 422, 745 P2d 807 (1987). A statement is true or substantially true if the "gist" or "sting" is true, even if the statement contains slight inaccuracies. ***Hickey v. Settlemier***, 116 Or App 436, 440, 841 P2d 675 (1992), aff'd in part and rev'd in part on other grounds, 318 Or 196, 864 P2d 372 (1993); ***Skoog v. Clackamas County***, 2004 WL 10249, *26, (D OR 2004), aff'd in part and rev'd in part on other grounds, ***Skoog v. County of Clackamas***, 469 F3d 1221 (9th Cir 2006). "Where there is no dispute of the underlying facts, the question of whether a statement is substantially accurate is one of law for the court. ***Ettiger***, 88 Or App at 422-23, 745 P2d 807." ***Hickey v. Capital Cities/ABC, Inc.***, 792 FSupp 1195, 1197, (D Or 1992).

In this case, the "sting" is true. A complaint alleging sexualized treatment was filed. Plaintiff agreed to stipulated facts. Three regulatory bodies took action arising from the incident. There are minor errors (referencing the underlying Oregon BME action as an "judgement" (*sic*) and not a "final order") but the facts are quite accurate.

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15. For example, in ***McCullough v. Visiting Nurse Service of Southern Maine, Inc***., 1997 Me 55, 691 A2d 1201, 1204 (Me 1997), a reference to "several" incidents rather than "two" incidents as the basis for termination was substantially true; in ***Collins v. Detroit Free Press***, 245 Mich 27, 627 NW2d 5, 7-10 (Ct App Mich 2001), a misstatement relating to the plaintiff's feeling about whites as "I hate the race" was nonactionable, as it was not substantially different from plaintiff's actual statement, "I don't like the race." See also, ***Freedlander v. Edens Broadcasting, Inc.***, 734 FSupp 221, 227 (ED Va 1990), discussed at pp. 30, *post.*

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C. CONTEXT INCLUDES THE LINKED INFORMATION.

Plaintiff has cherry-picked Craig's blog entry in his Complaint. This misapprehends the fundamental premise that consideration of the meaning of language by the Court requires context, not isolated words strung together. Virtually any defamation plaintiff could claim that only a word or short phrase constitute that fraction of a longer writing which makes their allegations actionable. However, all speech has to be viewed in context. RESTATEMENT (2D) TORTS, § 563, *Comment d*:

> In determining the meaning of a communication, words, whether written or spoken, are to be construed together with their context. Words which standing alone may reasonably be understood as defamatory may be so explained or qualified by their context as to make such an interpretation unreasonable.

The consideration of context is Constitutionally required because:

> This provides assurance that public debate will not suffer for lack of "imaginative expression" or the "rhetorical hyperbole" which has traditionally added much to the discourse of our Nation.

Milkovich v. Lorain Journal Co.*,* 497 US 1, 20, 110 SCt 2695, 2706, 111 LEd2d 1 (1990) (quoting ***Hustler Magazine v. Falwell***, 485 US 46, 53, 108 SCt 876, 99 LEd2d 41 (1988)). As but one example of reading "in context," the Ninth Circuit has held as a matter of law that a sports network's website posting of a photo and caption identifying plaintiff as a "pimp" could not be taken literally. ***Knievel v. ESPN***, 393 F3d 1068, 1078 (9th Cir 2005).[16]

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16. See for example, ***USA Technologies, Inc. v. Doe***, 713 FSupp2d 901, 908-909 (ND Cal 2010), looking at the entirely of a critical online comment asserting a corporate office was "lying" to manipulate stock.

> The statement that Jensen is a "known liar," is not defamatory when read in context with the next part of the post: because Jensen "assured investors that USAT would be profitable

(continued...)

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Thus in assessing the substantial truth of Craig's posting as a matter of law [***Ettiger***, 88 Or App at 422-23] this Court must review the entire blog entry itself because only by including the entirety of the hyperlinked reports can this Court take into account the combination of the additional facts through hyperlinking in the blog post which are substantially accurate.[17]

In this case the hyperlink additionally provides the complete factual bases for of any opinions. The link is "part" of the hypertext entered into the blog by Craig [Craig Decl. ¶¶ 3, 7] in a literal sense (she intended to place it there), and part of the overall presentation seen and experienced by the blog reader. Rowe Decl. at ¶ 9. The official documents are literally included in the blog and statements. In ***Agora, Inc. v. Axxess,***

16.(...continued)

in the same fiscal year," when it wasn't. Defendant's hyperbolic opinion of Jensen's inaccurate prediction is not defamatory. See, e.g., ***Global Telemedia Int'l, Inc. v. Doe 1***, 132 FSupp2d 1261, 1270 (CD Cal 2001) ("while [the statements] are not positive, the statement [that plaintiff lied] contains exaggerated speech and broad generalities, all indicia of opinion. Given the tone, a reasonable reader would not think the poster was stating facts about the company, but rather expressing displeasure with the way the company is run").

Also, here, Stokklerk did not opine that Jensen is a liar based on some other, undisclosed facts, but instead explained the basis for his opinion. Cf., *id*. at 1268 (where poster identified document supporting poster's view that plaintiff, "misrepresented" and "overstated" facts, statements were opinion).

17. In reviewing traditional media presentations to establish the context, it is axiomatic that integral parts of presentations be reviewed as a whole. See ***White v. Fraternal Order of Police***, 909 F2d 512, 526 (DC Cir 1990) (quoting ***Southern Air Transport, Inc. v. American Broadcasting Cos.***, 877 F2d 1010, 1015 (DC Cir 1989)) ("`[T]he television medium offers the publisher the opportunity, through visual presentation, to emphasize certain segments in ways that cannot be ascertained from a mere reading of the transcript.' [Thus], a court must examine the entire context of a publication."); ***Lasky v. American Broadcasting Cos.***, 631 FSupp 962, 970 (SDNY 1986) ("It is the entirety of the program, both audio and video, that must be considered in determining whether a television program is reasonably susceptible of a defamatory meaning.")

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Inc., 90 FSupp2d 697, (D Md 2000), the plaintiff alleged that an online investment guide's rating of its financial newsletter as "unpaid promoter" of stocks was defmatory. The court held this was not actionable defmation because the online guide clearly disclosed facts through hyperlinks which were the basis of the opinion that plaintiff was a stock "promoter":

> The factual basis for the statement that Taipaonline [is an] "unpaid promoter" is confirmable, as acknowledged by Agora, by activating the hyperlink adjacent to Taipaonline's name on The List and accessing Taipaonline's own website.

Id. at 705.

E-mails which link to websites containing the basis for the author's conclusions are "disclosed facts" which protect the opinions expressed in emails, however much any one else might disagree with the opinion and feel free to reject it.

> The statements in Axton's e-mails expressed Axton's opinions because they purported to apply copyright and contract law to facts to reach the conclusion Franklin and FCC were acting unlawfully. The e-mails disclosed the facts upon which the opinions were based by directing the reader to the FCC Web site and (via a Web link on the FCC Web site) to another company's Web site. The Web sites were provably true because their existence, content, and layout were not in dispute in any material way. A reader of the e-mails could view those Web sites and was free to accept or reject Axton's opinions based on his or her own independent evaluation.

Franklin v. Dynamic Details, Inc., 116 CalApp4th 375, 379, 10 CalRptr3d 429 (2004).

Given context it is undisputable that Darm stipulated that he kissed, hugged and "touched" Patient A and there was an inference that the sexualized encounter was intended to be in lieu of payment for the procedure; "someone" contacted the Complainant on Darm's behalf despite an administrative instruction to not do so; and that Darm agreed to surrender his California medical license based on the circumstances of the Oregon discipline, again stipulating to the facts in the *Accusation*. The underlying facts

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of the Oregon complaint had led to an Oregon order condtioning his license upon maintaining mental health counseling and requiring a chaperone to be present when seeing adult female patients.

The "sting" of it all is that Plaintiff had intimate contact with a patient and inferred that such contact was in exchange for a procedure and suffered discipline. This is embarrassing, but the sting is a result of Darm's conduct and the facts to which he stipulated--not from disclosure of documents already available to the public. It is the "full recital of the true facts about him" which harm Plaintiff's reputation, not any falsehoods. ***Haynes v. Alfred A Knopf, Inc.***, *supra*.

Plaintiff's later conduct of failing to apprise the Washington licensing board of the Oregon discipline when he applied for Washington licensure is strong circumstantial evidence that Plaintiff felt humiliation and embarrassment (and/or concern over potential customer reactions) from the conduct set forth in the Oregon stipulations. Since the Oregon license conditions were in effect at the time of his Washington application, it is unlikely that he simply "forgot" to notify the Washington Board. Candor is expected of license applicants, and he was admonished by the Washington Medical Quality Assurance Board for his omission. *In the Matter of Jerrold R. Darm, MD, Stipulated Findings of Fact, Conclusions of Law and Agreed Order*, ¶ 4.1, (WaMQAC No. 03-07-A-1049MD) (2004). Williams Decl., Ex. C, p. 3.

D. ANY OPINIONS EXPRESSED IN THE TWEET AND/OR BLOG ARE PROTECTED SPEECH.

There is no special rule of law for negative opinions. They are protected by the First Amendment. Courts recognize a distinction between actionable defamation and mere hyperbole, exaggeration, sarcasm, and insults. ***Beverly v. Trump***, 182 F3d 183,

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187-88 (3rd Cir 1999). "[S]tatements which are merely annoying or embarrassing or no more than rhetorical hyperbole or a vigorous epithet are not defamatory." *Id*.

> The First Amendment's shielding of figurative language reflects the reality that exaggeration and non-literal commentary have become an integral part of social discourse. For better or worse, our society has long since passed the stage at which the use of the word "bastard" would occasion an investigation into the target's lineage or the cry "you pig" would prompt a probe for a porcine pedigree. Hyperbole is very much the coin of the modern realm. In extending full constitutional protection to this category of speech, the ***Milkovich*** Court recognized the need to segregate casually used words, no matter how tastelessly couched, from fact-based accusations.

Levinsky's, Inc. v. Wal-Mart Stores, Inc. 127 F3d 122, 128 (1st Cir 1997). In fact, use of rhetorical devices such as sarcasm, irony, understatement or exaggeration are clear signals that the statement is indeed an opinion.[18]

Web postings enjoy all the protections of any other more traditional media. ***Wilbanks v. Work***, *supra*; ***Knievel v. ESPN***, *supra*. Internet commentary is now in its own way as familiar a genre as a restaurant or theater review. It is marked not only by spontaneity, but by informality in often exaggerated and hastily written exchange of opinions. Readers understand the atmosphere of overstatement expressed by web conventions such as ALL CAPS (a visual representation of emphasis similar to shouting) and colorful language and "take such railings with a grain of salt." ***Moldea v. New York Times Co.***, 22 F3d 310, 313 (1st Cir 1994). In that case an author sued the *New York Times* for libel and invasion of privacy arising a book review in which the reviewer said

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18. Three factors for determining whether an alleged defamatory statement includes a factual assertion: (1) whether the general tenor of the entire work negates the impression that the defendant was asserting an objective fact; (2) whether the defendant used figurative or hyperbolic language that negates that impression of objective facts; and (3) whether the statement in question is susceptible to being proved true or false.

Partington v. Bugliosi, 56 F3d 1147, 1153 (9th Cir 1995).

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the book was "sloppy journalism." The Court of Appeals upheld the summary dismissal because

> the statements at issue appeared in the context of a book review, a genre in which readers expect to find spirited critiques of literary works that they understand to be the reviewer's description and assessment of texts * * *.

22 F3d at 311. ***Moldea v. NYT***, *supra*, 22 F3d at 313.

Editorial opinion, such as characterizing the underlying complaint by Patient A as a "nasty Complaint" is protected expression. Statements of opinion cannot be defamatory because

> There is no such thing as a false idea. However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas.

Gertz v. Robert Welch, Inc., *supra*.[19] Fully disclosing the referenced admistrative complaint, which includes the description of sexualized contact and inference that the intimate encounter was "payment for the treatment" lets the reader agree or disagree with the characterization. "Nasty" usually means unpleasant, and has a more current colloquial meaning associated with sexual conduct, but either (and any) meaning of the word used to express a characterization is a protected opinion--not provably false--regardless of whether Plaintiff might choose some other word to summarize his patient's Complaint about his kissing, hugging and "touching" her.

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19. RESTATEMENT (2D) TORTS § 566, "Expression of Opinion," *Comment a*:

> A simple expression of opinion based on disclosed or assumed nondefamatory facts is not itself sufficient for an action of defamation, no matter how unjustified and unreasonable the opinion may be or how derogatory it is.

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Similarly, the statement of opinion at the conclusion of the blog entry, "That's right, he tried to get a woman to sleep with him in exchange for cosmetic surgery" is protected opinion based on disclosed facts.

> [A] statement of opinion relating to matters of public concern which does not contain a provably false factual connotation will receive full constitutional protection.

***Milkovich v. Lorain Journal Co.**, supra*, 497 US at 20. Craig's opinion is based on Darm's acknowledged conduct and the agreed facts that the sexual contact was inferred to be payment for the medical treatment. That conduct included kissing, hugging and some other "touching" distinct from the contact of kissing and hugging. Those circumstances suggest a further desired intimacy of a sexual nature. "Sleep with" does not have carry any connotation of a forcible or nonconsensual sexual act.

The presentation may annoy Plaintiff as it may be read in the "snarky" style of combining irony and cynicism, with a short conversational intensifier for introduction, but adopting a humorous or casual tone does not make Craig's opinion defamatory. "An action for defamation cannot be premised solely on defendant's style or utilization of vivid words in reporting a judicial proceeding." ***Binder v. Triangle Publications, Inc.***, 442 Pa 319, 327, 275 A2d 53, 58 (Pa 1971). "Fair comment may be severe and may include ridicule, sarcasm, and invective." ***Hartmann v. Boston Herald-Traveler Corp***., 323 Mass 56, 61, 80 NE2d (1948). Nor does a writing become defamatory and "lose privilege by reason of the alleged `flippant' and `smart alecky' style of writing which was utilized by Time to create reader interest." ***Sellers v. Time, Inc.***, 299 FSupp 582, 585, (ED Pa 1969), aff'd, 423 F2d 887 (3d Cir 1970), *cert den*, 400 US 830, 91 SCt 61, 27 LEd2d 61 (1970). "The sum effect of the format, tone and entire content" can "make it

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unmistakably clear the [Defendant] was expressing a point of view only" which is "immune from liability." ***Phantom Touring v. Affiliated Publications***, 953 F2d 724, 729 (1st Cir 1992), *cert den*, 504 US 974, 112 SCt 2942, 119 LEd2d 567 (1992).

For example, a tasteless song about a local businessman on a "Morning Zoo" radio show, sung to the tune of Chuck Berry's *Roll Over Beethoven* (somehow rhyming "live in lover" with the refrain of "roll over") was held not defamatory because the "characterization of [the] relationship, albeit flippant and somewhat unflattering, is not apparently far from the truth." ***Freedlander v. Edens Broadcasting, Inc.***, 734 FSupp 221, 227 (ED Va 1990). A newspaper had referred to Freedlander's female "roommate and companion" so the Morning Zoo jocks had "had reasonable grounds for such belief" in their "live in lover" lyrical statement. *Id.*

Whether the kissing, hugging and further "touching" of a supine woman in an empty office building at night could be a construed as an intended prelude to further intimacy with the woman is a matter of opinion. An opinion formed by Craig that the ultimate intention of the man doing that hugging, touching and kissing was to try to get the woman to "sleep with him" is not "provably false." It is not even far-fetched. "`[W]hen it is clear that the allegedly defamatory statement is "speculat[ion]" on the basis of the limited facts available,' it represents a non-actionable personal interpretation of the facts." ***Gardner v. Martino***, *supra*, 563 F3d at 988. (Internal citation omitted).

Even if Plaintiff now swears he sought no further intimacy with Patient A, anyone is still free to form a different opinion on the stated facts because opinions based on stated facts are not actionable defamation. The only First Amendment question is whether Craig "reasonably relied" on the facts as she understood them from the official record. In this

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case, Plaintiff cannot collaterally attack or repudiate his stipulated facts in his disciplinary proceedings. The rule that one can "reasonably rely" on stated facts is so clear that it means that opinions with stated factual bases are not defamation regardless of the ultimate truth or falsity of any such fact.

> We decline to apply a lesser standard than the "reasonable reliance" standard because it would be unreasonable to require a speaker to determine the actual truth or falsity of every fact the speaker relies on before stating his or her opinion. A lesser standard than the "reasonable reliance" standard, as proposed by Appellants, would chill speech and frustrate the purpose of the First Amendment.

Gardner v. Martino, *supra*, 563 F3d at 989. We will here quote at length from ***Gardner v. Martino*** as it summarizes the First Amendment and Oregon common law on both the legal points Defendant makes: statements of opinion are not actionable, and opinions do not require "investigation" of the stated bases so long as the predicate for the opinion is stated for anyone to evaluate.

> In ***Partington***,[20] we held that when a speaker outlines the factual basis for his conclusion, his statement is not defamatory and receives First Amendment protection. 56 F3d at 1152-62. In that case, the defendant's book, AND THE SEA WILL TELL, implied that the plaintiff represented his clients poorly in a murder trial. *Id.* at 1150-51. We held that the defendant's statements in the book were not defamatory because the book's general tenor made clear that the defendant's statements were from his personal viewpoint, and not assertions of an objective fact. *Id.* at 1153.
>
> In ***Underwager v. Channel 9 Australia***, 69 F3d 361, 367 (9th Cir 1995), we noted that the word "lying" is not always defamatory because the word applies to a "spectrum of untruths including `white lies,' `partial truths," `misinterpretation,' and `deception'" which may be statements of nonactionable opinion. The defendant in ***Underwager*** was sued for rebroadcasting a television show interview where the speaker said the plaintiff was "lying" about his credentials as an expert in the child psychology field. *Id*. However, the plaintiff failed to show that the challenged statement implied a verifiable

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20. ***Partington v. Bugliosi***, 56 F3d 1147, 1152-53 (9th Cir 1995), discussed at pp. x of Memorandum.

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assertion of perjury and therefore the statement was protected under the First Amendment. *Id.*

In ***Flowers v. Carville***, 310 F3d 1118, 1129 (9th Cir 2002), we refined the ***Partington*** rule to protect a speaker who reasonably relies on facts that may be false. In that case, Gennifer Flowers sued George Stephanopoulos and James Carville for defamation after they claimed she lied about her affair with President Bill Clinton and "doctored" recordings of intimate phone calls from Clinton that she secretly taped. *Id*. at 1122. Stephanopoulos and Carville argued that their statements were protected because they relied on news reports that the tapes were selectively edited. We explained that in the case of a public figure, "unless defendants knew the news reports were probably false or had some obvious reason to doubt their accuracy, their reliance is protected by the First Amendment. But if it turns out that defendants knew the news reports were wrong or acted with reckless indifference in the face of some clear warning sign then they weren't entitled to repeat them publicly and later claim that they were merely expressing nondefamatory opinions." *Id.* at 1129.

* * * In that case, ***Flowers*** was a public figure, *id*. at 1129-1131, but even assuming Appellants are private figures, Martino's reliance on Feroglia's [the disgruntled customer] factual statements would be protected unless he was negligent or unreasonable in doing so. See ***Gertz v. Robert Welch, Inc.***, 418 US 323, 345, 94 SCt 2997, 41 LEd2d 789 (1974) (holding that where a statement involves a private figure on a matter of public concern, a plaintiff must show that the false connotations were made with some level of fault); ***Bank of Oregon v. Ind. News, Inc.***, 298 Or 434, 693 P2d 35, 43 (1985) (holding that "plaintiffs must prove that the false and defamatory statements were made negligently, i.e., without due care to ascertain whether they were true."). Thus, the analysis does not turn on whether Feroglia's story was wrong as urged by Appellants but on whether Martino's reliance on those facts was reasonable.

Id. at 988-989.

Applying ORS 31.150, the Ninth Circuit held:

We conclude that the Appellants have not presented substantial evidence to support a *prima facie* case that Martino's reliance on Feroglia's story was unreasonable or negligent. The declarations submitted by the Appellants show that Feroglia's statements may have been false, but do not show that Martino was negligent or unreasonable in relying on Feroglia's story, given the nature of talk shows, such as his. At most the declarations show only that Martino's show did not contact Appellants before putting Feroglia's call on the air, but such prior investigation is not required in the context of a radio show that takes live calls on the air. Additionally, Appellants were given the opportunity to

> call in to the program and explain their version of events but chose not to do so.

Id. at 989.

Craig read pertinent documents which have all the indicia of authenticity and accuracy, available at urls for state government. She did not purport in her online comments to have any other hidden facts, to have been present or to have conducted an investigation. She reports on the contents of--and her reaction to--the official records. She never had a duty to "investigate" any documents signed by others (including the stipulations signed by Darm's present counsel, Mr. McDermott). It is not possible to say that Craig was "negligent" or recklessly disregarded some contrary indication. She may have been "mistaken" in some minor detail, but she cannot be "negligent" in reporting what she read and in providing the same materials to others.

Furthermore, Craig's blog is interactive and more open to response from the public than a radio talk show with a few phone lines and time limitations. ***Gardner v. Martino***, *supra*, 563 F3d at 989. Dr. Darm has an extensive web presence and could have responded in the same public forums. He was "given the opportunity to" weigh in" and explain [his] version of events but chose not to do so." *Id.* He filed this lawsuit instead, seeking $1,000,000 and alleging he might seek more in "punitive damages."

E. SUMMARY: DEFENDANT'S STATEMENTS ARE NOT DEFAMATORY.

The First Amendment and Oregon Constitutional law for the Court to apply in this case can be summarized:

> (1) statements and opinions expressed on the internet, publicly accessed websites, interactive platforms and Twitter enjoy free speech protections;

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(2) only statements which are provably false are actionable;

(3) full context is important in determining alleged "defamatory" meaning;

(4) a statement may have slight inaccuracies, but if substantially true, is protected speech;

(5)) opinions based on disclosed facts are protected;

(6) rhetorical devices, such as irony, hyperbole and figurative language are cues that statements are opinion; and,

With these guidelines, we ask the Court to hold that no part of Craig's commentary (identified in italics below) contains a "false" statement of fact and in context, the entire blog entry is protected expression.

Seen that around? Sure you have. If you watch television in Portland Dr Darm is ubiquitous. Especially on those local channels that show endless reruns of Two and a Half Men.[21] *He wants to fix you up good and spend thousands on cosmetic procedures that will get funneled straight into his Lake Oswego home.*

>Statements of nondefamatory opinions referencing one of many videos and advertisements by Plaintiff. The tone is obviously informal, perhaps irreverent in intentionally using non-standard English locutions and implicitly comments on the public interest in the demand for and expense of cosmetic procedures. The overall tone could be described as internet "snarky"--a comedic tone which combines some sarcasm and cynicism.

What he should have added with his Results May Vary disclaimer is Dr. Darm Handed Over His Medical License Due To Disciplinary Action.

Not quite the same ring as instant weight loss though, right?

>Rhetorical device of repeating a phrase from the video as an bridge. Some understatement for sarcastic effect. Not false or defamatory.

Licensee has surrendered his or her license to resolve a disciplinary action. No practice is permitted.

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21. *Channel 32 runs several "Two and Half Men" episodes every day of the week. Williams Decl., Ex. F.*

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>True and accurate quote from *In the Matter of Jerrold R. Darm, MD, Stipulated Surrender of License and Order* (CalMQMB No. 16-2001-128803, January 28, 2003).

Oh and why?

>A stylistic form of delivery to alert reader to following information characterized by a somewhat abrupt departure from the text.

EFFECTIVE 10/18/01 RECEIVED A LETTER OF REPRIMAND FROM OREGON, REQUIRED TO HAVE A CHAPERONE WHEN EXAMINING FEMALE ADULTS, AND ADDITIONAL CONTINUING MEDICAL EDUCATION COURSES. EFFECTIVE 01/08/09 STIPULATED ORDER OF 10/18/01 IS TERMINATED.

>True and accurate quote from Order terminating the 2001 conditions agreed to *In the Matter of Jerrold R. Darm, MD, Stipulated Order* (OBME October, 16, 2001).

That's right, he was censured by the state because he was examining female patients without a chaperone. If that's not bad enough? Apparently needed just a teensy bit more education about how to respect the boundaries of his patients.

>Commentary based on stated fact of license conditions and imposition of mandatory chaperones and continuing medical education classes, all protected opinion based on stated facts.

Oh and <u>California just decided that he shouldn't be licensed at all</u>. If he tries to get licensed in California, he has to reapply.

>True and accurate and based upon the documents which contain stipulated record facts.

And maybe you're thinking, "so what if he examined a female patient without a chaperone? How is that a big deal." You should really read the judgement which says:

> *"Licensee examined Patient A on August 3, 2000 and September 21, 2000 to evaluate the treatment results. Patient A repeatedly expressed concern about some "spider" veins on her legs, but that she could not pay for additional treatment. Licensee informed Patient A that he would provide her with free treatment at his clinic closing time. On or about November 16, 2000 at about 9:30 PM, Licensee used a laser to treat Patient A's condition on her legs. At the conclusion of the treatment, as she was reclined on her back, Licensee leaned over Patient A and made intimate physical contact with her and inferred that would be his payment."*

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>Minor error referencing the title of the document, but encouraging any and all to read the underlying materials in the hyperlink for themselves. The progression follows rhetorical device of "gradatio" by arranging the clause and sentences in order of increasing importance and emphasis.

That's right, he tried to get a woman to sleep with him in exchange for cosmetic surgery.

I'm don't think Results May Vary is quite enough to warn people off being treated by Dr. Darm.

>Commentary based on stated facts of license conditions, and underlying official records, protected opinion based on stated facts. Last sentence repeats the phrase "results may vary" after intervening text, and with altered meaning (antanaclasis).

VI. DARM MUST COME FORWARD WITH SUBSTANTIAL EVIDENCE OF ALL THE ELEMENTS OF THE TORT OF DEFAMATION INCLUDING DEFENDANT'S MALICE AND HIS DAMAGES.

Plaintiff Darm now has the burden of producing substantial evidence on each element of his claim for defamation as set out in RESTATEMENT (2D) TORTS, § 613.[22] Defendant has explained in the preceding sections of this Memorandum that Darm cannot show that the complained-of statements are defamatory since they are substantially true and contain protected opinion based on the referenced hyperlinked facts. No evidence can overcome this infirmity. RESTATEMENT (2D) TORTS, §§ 558, 613(1)(a). However, should

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22. (1) In an action for defamation the plaintiff has the burden of proving, when the issue is properly raised,
(a) the defamatory character of the communication,
(b) its publication by the defendant,
(c) its application to the plaintiff,
(d) the recipient's understanding of its defamatory meaning,
(e) the recipient's understanding of it as intended to be applied to the plaintiff,
(f) special harm resulting to the plaintiff from its publication,
(g) the defendant's negligence, reckless disregard or knowledge regarding the truth or falsity and the defamatory character of the communication, and
(h) the abuse of a conditional privilege.

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the Court consider evidence on any other element of Darm's claim, we offer the following discussion of Plaintiff's burdens on other elements of the tort.

A. PLAINTIFF MUST SHOW MALICE.

1. PLAINTIFF ALLEGES MALICE.

RESTATEMENT (2D) TORTS, § 613 states:

> (1) In an action for defamation the plaintiff has the burden of proving, when the issue is properly raised
>
> * * *
>
> (g) the defendant's negligence, reckless disregard or knowledge regarding the truth or falsity and the defamatory character of the communication * * *.

We have shown that in this case, it would not be possible to show even negligence on Craig's part. However, in his Complaint, Plaintiff has alleged and taken on the burden of proving "malice" as the level of fault. "Malice" has a particularized meaning in defamation law. To defeat the Special Motion, Darm must offer <u>substantial evidence</u> of "actual malice" as that phrase is used in the RESTATEMENT, the United States Supreme Court and Oregon Constitutional jurisprudence: that Defendant had reckless disregard for the truth or knowledge of the falsity of her statements. As ***Gardner v. Martino***, 563 F3d at 989 requires, he cannot even show that Craig was negligent in reporting or relying upon facts. He cannot show actual malice.

Reckless or intentional disregard for truth is a subjective standard, not some formulaic of pleading. ***St. Amant v. Thompson***, 390 US 727, 88 SCt 1323 (1968).[23] That

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23. Despite much evolution in federal defamation law this case remains the standard for malice.

(continued...)

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case grew out of statements made by St. Amant, a candidate for sheriff, accusing plaintiff Thompson of illegalities and corruption in the sheriff's office. St. Amant had no personal knowledge of Thompson but he relied solely on an affidavit from another and he did not investigate further. The U.S. Supreme Court reversed a defamation verdict because there was insufficient evidence of St. Amant's subjective reckless "disregard" for the truth or falsity of the affiant's statements.

> [R]eckless conduct is not measured by whether a reasonably prudent man would have published or would have investigated before publishing. There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication. Publishing with such doubts shows reckless disregard for truth or falsity and demonstrates actual malice.

St. Amant v. Thompson, 390 US at 731. This passage emphasizes that the actual malice standard is not an objective standard, but rather a subjective one in which the state of mind of the defendant is at issue. Malice does not mean subjective ill-will, but instead subjective disregard for the truth.

In Oregon the law is, of course, followed:

> [P]laintiffs' allegations in actions for libel that defendants "rel[ied] on statements made by a single source," or failed to verify statements received from an "adequate news source," or performed "slipshod investigation," have all been rejected as bases for inferring actual malice. In short, reckless conduct amounting to actual malice "is not measured by whether a reasonably prudent man would have published, or would have investigated before publishing." Rather, "`knowledge'" or "`reckless disregard'" is a subjective matter, a question of state of mind, quite distinct from any question of objective reasonableness or prudence.'

23.(...continued)

> By far the most important Supreme Court explication of the actual malice standard came in its 1968 decision in ***St. Amant v. Thompson***. To this date the ***St. Amant*** case remains the governing law in the area, and it is well worth parsing the opinion carefully.

Smolla, LAW OF DEFAMATION §3:40 (West database updated July 2011).

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McNabb v. Oregonian Publishing Co., 69 OrApp 136, 140-41, 685 P2d 458, rev den 297 Or 824, 687 P2d 797 (1984), cert den 469 US 1216, 105 SCt 1193, 84 LEd2d 339 (1985) (citations omitted; brackets in original).

Plaintiff's burden of proof regarding actual malice must go beyond the usual "preponderance of the evidence" standard in civil litigation and instead be made with "convincing clarity." ***New York Times Co. v. Sullivan***, 376 US 254, 285-86 (1964). Darm cannot offers any evidence that Defendant was unreasonable or acted with first Amendment "actual malice" in relying upon what she read in hyperlinking to the facts or in stating her opinions. ***Gardner v. Martino***, 563 F3d 981, 989 (2009). Given this burden at trial, Darm must now show substantial evidence that he has a probability of being able to meet that trial burden of clear and convincing evidence of malice on the part of Defendant Craig.

2. PLAINTIFF IS A LIMITED PURPOSE PUBLIC FIGURE AND MUST SHOW ACTUAL MALICE UNDER THE FIRST AMENDMENT.

Even if Plaintiff had not affirmatively undertaken the pleading burden of actual malice in his Complaint, in this case the evidentiary record shows Darm to be a "limited public figure" for any controversy concerning his medical expertise in providing cosmetic procedures. Such a plaintiff must show actual malice. Such figures must show the defamation defendant has shown reckless disregard for the truth or intentional knowledge of the falsity of statements by "clear and convincing evidence." ***Gertz v. Robert Welch, Inc.***, *supra*, 418 US at 342.

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A person or business which offers services and a place of public accommodation that seeks public patrons, is a public figure for the limited purpose of reviews or reporting on the proffered goods and services.[24]

A limited purpose public figure is an otherwise private person who becomes a public figure for a specific range of issues. ***Gertz v. Robert Welch, Inc.***, 418 US 323, 351 (1974). Plaintiffs who voluntarily seek publicity on a particular topic or aspect of their lives. ***Wolston v. Reader's Digest Ass'n***, 443 US 157 (1979). Persons who have "voluntarily injected" themselves or been "drawn into a particular public controversy" are deemed "limited public figures" for purposes of a defamation claim. ***Bank of Oregon v. Independent News, Inc.***, 298 Or 434, 442-43, 693 P2d 35, reh'g denied, 298 Or 819, *cert den*, 474 US 826 (1985).

Darm is such a "limited purpose" public figure who actively advertises his own role, credentials and experience in operating the spa, speaking on the topic of medical procedures related to aesthetics and the availability of those services to the public at large.[25] According to the commentators, virtually every lower court discussion of the public figure/private figure dichotomy since ***Wolston***

> has treated the voluntariness requirement as central to the determination, and it is probably the most firmly entrenched of all the factors courts consider.

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24. ***Pegasus v. Reno Newspapers, Inc.***, 118 Nev 706, 723, 57 P3d 82, (2002); ***Greer v. Columbus Monthly Pub. Corp.***, 4 Ohio App3d 235, 448 NE2d 157, 162 (1982); ***Twenty-Five E. 40th St. Rest. Corp. v. Forbes, Inc.***, 37 AD2d 546, 322 NYS2d 408, 409 (1971). See also Rodney A. Smolla, LAW OF DEFAMATION § 3.11 (1989).

25. See discussion of limited public figure in ***Curtis Publishing Co. v. Butts***, 388 US 130, 87 SCt 1975, 18 LEd2d 1094 (1967), and ***Associated Press v. Walker***, 388 US 130, 87 SCt 1975, 18 LEd2d 1094 (1967). The Court held that the privately employed athletic director and former coach of the University of Georgia football team (Butts) and a retired general who had actively participated in disturbances surrounding the admission of James Meredith to the University of Mississippi (Walker) were both public figures.

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> Voluntariness in fact appears to be almost the exclusive preoccupation in some decisions.

Smolla, LAW OF DEFAMATION §2:31 (West database updated May 2011).

> Plaintiffs sometimes advance the argument that they cannot properly be classified as public figures because they did not "voluntarily" invite media attention, even though they may have voluntarily engaged in the activity out of which the media attention arose. Based on a popular misconception surrounding the public figure issue, this is an altogether spurious defense. Of course many plaintiffs find media attention undesirable, particularly unflattering attention, and do not volunteer for it. However, * * * the plaintiff is not permitted to avoid the strictures of the actual malice standard by protesting, "I didn't want the attention." The proper question is not whether the plaintiff volunteered for the publicity but whether the plaintiff volunteered for an activity out of which publicity would foreseeably arise.

Id. § 2:32 (emphasis supplied).

Plaintiff voluntarily and aggressively advertises and disseminates patient "testimonials," in printed and video formats. Williams Decl., Ex B; Craig Decl., Ex. B. Here, it is entirely foreseeable that people will have opinions about the services he offers and advertises so widely. Since favorable patient comments are voluntarily interjected into the public discussion by Darm, surely the experience of Patient A is relevant as well. Plaintiff cannot avoid his role as a limited public figure by claiming he only wants flattering attention and not any kind of criticism or publicity for his disciplinary record.

In ***Gilbert v. Sykes**, supra*, 147 CalApp4th 13 at 25, the court concluded that the doctor claiming defamation was an "archetypical" limited purpose public figure precisely for the reasons that Plaintiff Darm is one. He avidly sought publicity, used local media and invited public scruitiny of his medical practice:

> Sykes stands out as an archetypical example of a "limited purpose" or "vortex" public figure. [] As we have explained, the relative merits of plastic surgery is a subject that has garnered national attention and is the focus of widespread public interest. Gilbert produced evidence showing that Sykes has thrust himself into that debate by appearing on local television shows as well as

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> writing numerous articles in medical journals and beauty magazines, touting the virtues of cosmetic and reconstructive surgery. Sykes has also testified as an expert witness on the subject and advertised his services in the local media.
>
> These facts provide compelling proof that Sykes undertook "'some voluntary act through which he seeks to influence the resolution of the public issues involved,'"and took "`affirmative actions'" to thrust himself into the "`forefront of [a] particular public controvers[y].'"
>
> * * *.
>
> A person becomes a limited public figure by injecting himself into the public debate about a topic that concerns a substantial number of people. Once he places himself in the spotlight on a topic of public interest, his private words and conduct relating to that topic become fair game.
>
> ***
>
> We conclude that Sykes was a vortex public figure who invited public attention and comments regarding his surgical practice. Thus, to prevail on a defamation claim, he was required to prove by clear and convincing evidence not only that Gilbert's claims were false, but that they were uttered with actual malice.

Id.

Therefore, Darm is a limited purpose public figure for First Amendment analysis and must present substantial evidence to show he can meet the clear and convincing evidence standard regarding whether Defendant acted with "reckless disregard" or intentionally. RESTATEMENT (2D) TORTS § 613(1)(g); ***New York Times Co. v. Sullivan***, *supra*. ***Fodor v. Leeman***, 179 OrApp 697, 41 P3d 446 (2002) (lecturer on land use a limited public figure who had to prove actual malice in defamation suit against a person who placed paid advertisements critical of lecturer's publications.)

3. THE OREGON CONSTITUTIONAL PRIVILEGE OF FAIR COMMENT REQUIRES PLAINTIFF TO PRODUCE EVIDENCE OF ACTUAL MALICE.

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Even if Darm were a private figure for the purposes of First Amendment analysis, the Oregon Constitution, Art I, § 8, does not depend upon the status of the plaintiff in defamation cases, but instead protects statements made in privileged situations. Reporting official government business and stating an opinion present the privileged occasion of "fair comment."[26] RESTATEMENT (2D) TORTS; *see* § 613(1)(h). Speech on "matters of public concern," and "fair comment" are privileged occasions under Oregon common law, and the defamation plaintiff has the burden of showing "abuse" of the privilege (that degree of fault which was traditionally termed "actual malice.") ***Peck v. Coos Bay Times Pub Co.*** 122 Or 408, 421-2, 259 P 307, 312 (1927).

The Oregon Supreme Court summarized the pre-***Gertz*** common law in ***Bank of Oregon v. Independent News, Inc***., 298 Or 434, 437, 693 P2d 35 (1985).

> Where the qualified privilege of "fair comment and criticism" was applicable, the defendants would not be liable if the publication was made in good faith and without malice. ***Peck v. Coos Bay Times Pub. Co.***, 122 Or 408, 259 P 307 (1927). ***Peck*** stated that statements published in defendant's newspaper "concerning plaintiff's political activities and his alleged affiliation with the Ku Klux Klan came within the doctrine of qualified privilege * * *." 122 Or at 422, 259 P 307. This holding was based primarily upon the fact that plaintiff had entered the political arena, though he was not a public official or candidate. This court stated that in such a situation defendants were not liable for statements that did not attack the character, morals, or lawfulness of plaintiff unless they published the statements with actual malice. 122 Or at 420-21, 259 P 307.

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26. If the expression of opinion was on a matter of public concern, it was a form of privileged criticism, customarily known by the name of fair comment. The privilege extended to an expression of opinion on a matter of public concern so long as it was the actual opinion of the critic and was not made solely for the purpose of causing harm to the person about whom the comment was made, regardless of whether the opinion was reasonable or not. According to the majority rule, the privilege of fair comment applied only to an expression of opinion and not to a false statement of fact, whether it was expressly stated or implied from an expression of opinion.

RESTATEMENT (2D) TORTS § 566, "Expression of Opinion," *Comment a*.

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Even if ***Gertz*** and ***Milkovich*** and ***Wolston*** did not control the requirement to prove "actual malice" in this case, under Oregon law of privileges, Plaintiff Darm must come forward with substantial evidence to show that Defendant was malicious and "abused" her privilege to comment about his disciplinary history.

As noted in the RESTATEMENT (2D) TORTS, § 566, *comment* a, at n25 *ante*, "[t]he privilege extended to an expression of opinion on a matter of public concern so long as it was the actual opinion of the critic and was not made solely for the purpose of causing harm to the person about whom the comment was made." Defendant Craig's statements have always been protected speech in Oregon and remain so, with even greater substantive Constitutional and procedural statutory protection. ORS 31.150, *et seq*.

B. PLAINTIFF MUST SHOW ANY DAMAGES WERE CAUSED BY DEFENDANT AND NOT THE OTHER NEGATIVE COMMENTS ABOUT HIM ON THE WEB.

In addition to providing substantial evidence that he has clear and convincing proof of Craig's reckless conduct or intentional disregard for the truth, Plaintiff must also provide substantial evidence of the probability that the damages he claims were a "result" of Craig's expression in June of 2011 and not the "result" of some other negative comments about him, including references in emails to the disciplinary record in Oregon as early as June of 2005. Williams Decl., Ex. G.

In some situations "per se libel" refers to that special category of false accusations for which damages will be presumed (false accusations of a crime of moral turpitude, for example). In Oregon, in order to be "per se" actionable and proceed without proof of damages, the statement must be defamatory (false) and must be so specific in the false accusation that only one meaning can be found. ***Ruble v. Kirkwood***, 125 Or 316, 320,

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266 P 252 (1928). "To be defamatory per se the letter should be capable of but one meaning." *Id.*

As shown, Defendant's has made no false statements about Darm. She referenced official records of his professional licensing discipline. She did not claim he had committed a specific crime, was unfit for his professional practice, question his stated competency or innovations in laser procedures, or claim he had any advers medical outcomes, but she did point to his factual admissions (through stipulations) of intimate contact with a patient and allow others to draw their own conclusions whether they would seek him out.

Darm must come forward with substantial evidence of damages.

VII. CONCLUSION.

Based on the foregoing discussion and the materials submitted by Defendant in the record of this case, Defendant's Special Motion to Strike should be granted as to the claim in the Plaintiff's Complaint and the Complaint should be dismissed. ORS 31.150, *et seq*.

Pursuant to ORS 31.152(3), Defendant will request her costs and reasonable attorney fees.

August 15, 2011

Respectfully Submitted,

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Attorney for Defendant
Tiffany Craig

CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing:

[ ] DEFENDANT'S MEMORANDUM IN SUPPORT OF MOTION TO STRIKE

[ ] DEFENDANT'S OF MOTION TO STRIKE

[ ] DECLARATION OF LINDA K. WILLIAMS

[ ] DECLARATION OF TIFFANY CRAIG

by depositing a true copy, first class postage prepaid, in a sealed envelope in the US Mail at Portland, Oregon, this date addressed to

Thomas E. McDermott
Jeffrey S. Young
Lindsay, Hart, Neil & Weigler, LLP
1300 SW Fifth Avenue, Ste 3400
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Dated: August 15, 2011

____
Linda K. Williams

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