

1  
2  
3  
4  
5  
6  
7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 JOHNNY DELASHAW, JR.,

11 Plaintiff,

12 v.

13 SEATTLE TIMES COMPANY, et  
14 al.,

15 Defendants.

CASE NO. C18-0537JLR

ORDER GRANTING IN PART  
AND DENYING IN PART  
DEFENDANT CHARLES  
COBBS'S SECOND MOTION  
FOR SUMMARY JUDGMENT

16 **I. INTRODUCTION**

17 Before the court is a portion of Defendant Charles Cobbs's second motion for  
18 summary judgment. (*See* Cobbs 2d MSJ (Dkt. ## 185 (redacted); 188 (sealed)).)  
19 Plaintiff Johnny Delashaw, Jr., opposes Dr. Cobbs's motion. (Cobbs 2d MSJ Resp. (Dkt.  
20 # 242).) At the direction of the court, the parties filed supplemental briefs to address the  
21 question of Dr. Cobbs's possible immunity from damages under the Healthcare Quality  
22 Improvement Act ("HCQIA" or "the Act"), 42 U.S.C. § 11111(a). (*See* Cobbs Suppl. Br.

1 (Dkt. # 289); Delashaw Suppl. Br. (Dkt. # 290).) Dr. Cobbs subsequently filed a motion  
2 to strike portions of Dr. Delashaw’s supplemental brief. (Cobbs Surreply (Dkt. # 296).)  
3 The court has considered the motions, the parties’ submissions in support of and in  
4 opposition to the motions, and the applicable law. Being fully advised,<sup>1</sup> the court  
5 GRANTS in part and DENIES in part Dr. Cobbs’s motion to strike. It further GRANTS  
6 in part and DENIES in part the remaining portion of Dr. Cobbs’s second summary  
7 judgment motion.

## 8 II. BACKGROUND

9 The court has discussed the procedural and factual backgrounds of this case in  
10 detail in its prior orders on motions for summary judgment. (*See* 6/11/20 MSJ Order  
11 (Dkt. ## 160 (sealed); 207 (redacted)) at 2-28; 12/11/20 Am. Order (Dkt. ## 298 (sealed);  
12 300 (redacted)) at 2-9.) Therefore, the court only discusses the facts most relevant to the  
13 instant motion below.

### 14 A. Factual Background and Claims Against Dr. Cobbs

15 Dr. Delashaw is a neurosurgeon who took a position at Swedish Medical Center  
16 (“Swedish”) in 2013 and remained employed at Swedish’s Cherry Hill campus in Seattle,  
17 Washington (hereinafter, “Cherry Hill” or “Swedish-Cherry Hill”) until 2017. (3/2/20  
18 Delashaw Decl. (Dkt. # 126) ¶ 2.) In early 2015, he was promoted to Chairman of  
19 Neurosurgery and Spine at the Swedish Neuroscience Institute (“SNI”). (*Id.*)

20  
21 \_\_\_\_\_  
22 <sup>1</sup> Neither party requests oral argument (*see* Cobbs 2d MSJ at 1; Cobbs 2d MSJ Resp. at 1;  
Cobbs Suppl. Br. at 1; Delashaw Suppl. Br. at 1), and the court finds oral argument unnecessary  
to its disposition of the motion, *see* Local Rules W.D. Wash. LCR 7(b)(4).

1 On December 20, 2016, Swedish CEO Anthony Armada informed Dr. Delashaw  
2 that Swedish had “documented repeated and numerous complaints about your  
3 leadership,” and despite Swedish’s efforts to counsel and support Dr. Delashaw, Swedish  
4 “continue[s] to hear the concerns and the concerns are growing.” (*See* 2/6/20 Goldman  
5 Decl. (Dkt. # 108) ¶ 5, Ex. 3 at JDEL\_027310.) Mr. Armada notified Dr. Delashaw that  
6 Swedish could no longer keep him as Chair of Neurosurgery and would instead move  
7 him into an administrative role as “Chair Emeritus of Neurosurgery at SNI.” (*See id.*) In  
8 this new position, Dr. Delashaw would continue to focus on his clinical practice, lead  
9 SNI’s philanthropic efforts, and help recruit neurosurgeons to Swedish. (*See id.*)  
10 However, effective immediately, Swedish planned to transition the management of the  
11 neurosurgery practice at SNI to an interim Chair of Neurosurgery. (*See id.*)

12 The instant motion is centered around a letter (the “Letter”) that Dr. Cobbs  
13 originally sent on November 4, 2016, to Mr. Armada, Rod Hochman, and June Alataras  
14 regarding Dr. Delashaw via email. (*See* 3/16/20 Pratt Decl. (Dkt. # 141) ¶ 19, Ex. 21  
15 (“November 2016 Letter”); Am. Compl. (Dkt. # 25-1) ¶¶ 73-78.) Over the next few  
16 weeks after sending the letter, Dr. Cobbs distributed it to several other individuals. On  
17 November 5, 2016, Dr. Cobbs sent a copy of the November 2016 Letter to his fellow SNI  
18 surgeons Drs. Ryder Gwinn, Stephen Monteith, and Akshal Patel, as well as to a man  
19 named Michael Vatis, who does not appear to work at Swedish. (*See* 3/16/20 Pratt Decl.  
20 ¶¶ 20, 33, Exs. 22, 39.) On November 7, 2016, Dr. Cobbs also emailed the Letter to Dr.  
21 David Newell, who did not work at Swedish at that time. (*See id.* ¶ 33, Ex. 39.) On  
22 November 8, 2016, he sent the Letter to Swedish Medical Group’s (“SMG”) CEO, Dr.

1 | Ralph Pascualy. (7/27/20 Pratt Decl. (Dkt. # 243) ¶ 26, Ex. 25.) On November 17,  
2 | 2016, Dr. Cobbs emailed the November 2016 Letter to Dr. Peggy Hutchinson (the  
3 | “Hutchinson Email”) and cc’d a group of individuals that he allegedly believed were part  
4 | of Swedish’s Medical Executive Committee (“MEC”). (See 3/16/20 Pratt Decl. ¶ 22, Ex.  
5 | 24 (“Hutchinson Email”); 7/27/20 Pratt Decl. ¶ 23, Ex. 22 (“Pascualy Texts”) at 10-12  
6 | (text message conversation between Dr. Cobbs and Dr. Pascualy discussing plan to send  
7 | Letter to MEC); (Cobbs 2d MSJ Reply (Dkt. ## 247 (redacted); 250 (sealed)).)

8 |         The November 2016 Letter outlined several concerns allegedly raised by  
9 | physicians, nurses, and staff about Dr. Delashaw that fell into the following categories:  
10 | (i) a pattern of intimidation, harassment, and retaliation; (ii) discouraging the reporting of  
11 | errors; (iii) discouraging staff from asking questions; (iv) contributing to the loss of  
12 | experienced personnel; (v) jeopardizing patient safety with disruptive behavior; and (vi)  
13 | interfering with other physicians’ referrals and practices. (See 2/27/20 Baer Decl. (Dkt.  
14 | # 117) ¶ 3, Ex. 26.) Although Dr. Cobbs was the only signatory to the November 2016  
15 | Letter, he received input from multiple Swedish surgeons on its content. (See *id.* ¶ 3,  
16 | Exs. 27-33.) Dr. Cobbs testified that he omitted the names of the other surgeons from his  
17 | Letter because he believed that those surgeons were afraid of retaliation from Dr.  
18 | Delashaw. (See *id.* ¶ 3, Ex. 25 (“Cobbs Dep.”) at 192:19-193:5.) Dr. Delashaw alleges  
19 | that Dr. Cobbs’s statements resulted in “extreme reputational harm and loss of  
20 | employment opportunities.” (Am. Compl. ¶ 196.)

21 |         Dr. Delashaw also brings claims of civil conspiracy and tortious interference with  
22 | a business expectancy against Dr. Cobbs. (*Id.* ¶¶ 197-208.) Dr. Delashaw’s civil

1 conspiracy claims arise out of Dr. Cobbs allegedly working with Dr. Marc Mayberg and  
2 others to harm Dr. Delashaw's career and reputation. (*Id.* ¶ 205.) While Dr. Delashaw is  
3 not entirely clear on what conduct was a part of this alleged conspiracy and how it was  
4 unlawful, his claim encompasses some allegedly defamatory statements made in the  
5 November 2016 Letter. (*See id.* ¶ 206 (claiming that Dr. Cobbs and his conspirators  
6 “[d]evis[ed] false complaints to pressure SNI management into taking action against Dr.  
7 Delashaw and falsely representing to management that complaints were ‘unanimous’  
8 views of SNI’s faculty”).) Dr. Delashaw’s tortious interference claim alleges that Dr.  
9 Cobbs interfered with Dr. Delashaw’s business relationship with Swedish “through  
10 improper means, including defamation and Dr. Cobbs’s violation of his obligations to  
11 Swedish.” (*Id.* ¶¶ 198-201.)

## 12 **B. Procedural History**

13 On November 18, 2020, the court granted in part and denied in part Dr. Cobbs’s  
14 second motion for summary judgment. (*See* 11/18/20 Order (Dkt. # 285 (sealed));  
15 12/11/20 Am. Order.) In his second motion for summary judgment, Dr. Cobbs argued  
16 that he was immune under the HCQIA from damages for any defamatory statements  
17 made in the November 2016 Letter. (Cobbs 2d MSJ at 16-19.) The court found that both  
18 Dr. Cobbs’s arguments regarding HCQIA immunity (*id.*) and Dr. Delashaw’s response  
19 (Cobbs 2d MSJ Resp. at 9-12) were lacking and ordered the parties to file supplemental  
20 briefs. (*See* 12/11/20 Am. Order at 23.) Specifically, the court ordered the parties to file  
21 supplemental briefing “on the question of whether, and to what extent, the HCQIA  
22 provides immunity to liability stemming from Dr. Cobbs’s statements in the November

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.