

# MASSACHUSETTS Lawyers Weekly

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## Hospital leader vindicated in long-running defamation, retaliation suit brought by nurses

By KRIS OLSEN

It took more than a decade and two trips to the Supreme Judicial Court, but the former president of Carney Hospital and its owner finally have a measure of vindication.

On Dec. 18, a Suffolk Superior Court jury rendered a defense verdict in *Blanchard, et al. v. Steward Carney Hospital, Inc., et al.*, a case brought by nine Carney Hospital nurses who were fired as part of a house cleaning by the then-brand-new hospital president, Bill Walczak.

Walczak took the drastic action amid revelations that four patients in the hospital's adolescent psychiatric unit had suffered sexual or physical abuse within a three-week span in April 2011.

The nurses had no direct involvement in the abuse but in Walczak's estimation were part of a "broken" culture in the unit. In all, Walczak terminated 31 employees, including the nine nurses.

In their suit, the nurses alleged that the defendants had improperly retaliated against them for blowing the whistle on under-

staffing and other issues in the adolescent psychiatric unit. They also claimed that Walczak had defamed them in a hospital-wide email and in speaking with *The Boston Globe*.

But on both fronts, the jury did not agree.

The verdict "clarified that the desire to create a new culture in a workplace is a legitimate reason to take action," says Robert G. Young, who represented the defendants with his Bowditch & Dewey colleagues Timothy P. Van Dyck and Ashley M. Barnes.

"I think we put on pretty compelling evidence that there was this workplace culture that was just broken, and the president's decision to start over in that unit was a good one and was something that was just necessary," Young says.

Steward's deputy general counsel, Eugene J. "Jay" Sullivan, notes there are too few adolescent psych units to meet the need, calling it "one of the most awful parts of the American health care system."

Former Attorney General L. Scott Harshbarger investigated and confirmed that Steward needed to make sweeping changes in the unit it inherited, Sullivan says.

For his trouble, Harshbarger got sued by the same nine plaintiffs, though the claims against him were dismissed early in the case as a strategic lawsuit against public participation in violation of G.L.c. 231, §59H.

Walczak and Steward's attempts to achieve a similar result through the state's anti-SLAPP statute led to those two trips to the SJC. In *Blanchard I* in May 2017, the court established an "augmented" framework for applying the statute, which it then applied in *Blanchard II* in Sep-



Robert G. Young



Eugene "Jay" Sullivan

tember 2019 to determine the case should proceed.

With respect to their retaliation claims, the nurses had, in fact, complained about staffing, which Young notes is an issue not just at Carney Hospital or its adolescent psych unit but throughout the health care system, to the point that the Massachusetts Nurses Association has created pre-printed triplicate forms to allow nurses to lodge such complaints. One copy goes to the hospital administration, one to the union, and one for the nurse to keep, Young says.

But the defense demonstrated to the jury's satisfaction that there was no connection between those complaints and the four incidents that had led to the crisis in the adolescent psych ward.

"I think the jury was able to see that the two really had nothing to do with one another," Young says.

As for the defamation claim, the jury was persuaded that the statements were not defamatory, either because they were statements of opinion or, in the case of the internal email, privileged.

"[Walczak's] got this very serious crisis going on in the adolescent psych unit, so that is a legitimate business purpose to announce to the workplace, 'This is how things are going to happen going forward — we're all going to be held to this highest possible

standard,'" Young says. "That's something that the law creates a privilege around."

The plaintiffs' Newton attorneys, Dahlia C. Rudavsky and Ellen J. Messing, have filed a motion for a new trial, arguing that the jury's verdict was against the great weight of the evidence and that the court had made "legally erroneous and prejudicial rulings as to the admissibility of pretext evidence."

The plaintiffs also have issues with both the interim and final jury instructions.

Of the defamation claim, Rudavsky and Messing write, "In sum, the overwhelming evidence at trial was that Mr. Walczak made statements in writing about the Nurses, that those statements falsely implicated them in patient abuse and were as a matter of law defamatory, that the statements were so understood by dozens of people, and that the Nurses each suffered significant emotional distress and reputational damage as a result."

The alleged "prejudicial rulings" undercut the nurses' ability to prove retaliation, Rudavsky and Messing add.

The parties are also still fighting over whether the plaintiffs should be responsible for the defendants' statutory costs pursuant to G.L.c. 261, §1. Judge Catherine Ham did not award the defendants those costs, but in a motion for clarifica-

tion, the defendants argue that the award of certain taxable costs "is required as a matter of course."

In their response, the plaintiffs argue that it was "entirely appropriate for the Court to deny any costs to Steward."

But for now, Young is heartened to have achieved this result for Walczak, "a Dorchester guy, through and through." Walczak founded the Codman Square Health Center and the K-12 charter school Codman Academy in Dorchester.

"He's a builder of things, he's been involved in innumerable community projects in Dorchester, and he came to Carney for the very purpose of reconnecting it to the Dorchester community," Young says. "It's hard to square his biography and his background and his actions with [the plaintiffs'] theory of the case."

Sullivan is also pleased that Walczak has been vindicated.

"He spent his entire adult life basically doing nothing other than community advocacy in Dorchester, and when Stewart bought the hospitals from the Archdiocese, they convinced Bill to come over to Carney," Sullivan says. "The only reason he did it is because he thought he could create better health care opportunities for people in the community, and his reward was getting hit with this lawsuit."