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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JOHNNY DELASHAW, JR.,

Plaintiff,

v.

SEATTLE TIMES COMPANY, et  
al.,

Defendants.

CASE NO. C18-0537JLR

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

**I. INTRODUCTION**

Before the court is a portion of Defendant Charles Cobbs's second motion for summary judgment. (*See* Cobbs 2d MSJ (Dkt. ## 185 (redacted); 188 (sealed)).) Plaintiff Johnny Delashaw, Jr., opposes Dr. Cobbs's motion. (Cobbs 2d MSJ Resp. (Dkt. # 242).) At the direction of the court, the parties filed supplemental briefs to address the question of Dr. Cobbs's possible immunity from damages under the Healthcare Quality 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.*)

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<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

1 2016 Letter.” (*Id.*) After the parties filed their supplemental briefing, Dr. Cobbs moved  
2 to strike portions of Dr. Delashaw’s supplemental briefing. (Cobbs Surreply.)

### 3 III. ANALYSIS

4 The court first lays out the applicable legal standard before turning to Dr. Cobbs’s  
5 motion to strike and the parties’ substantive arguments.

#### 6 A. Legal Standard

7 Summary judgment is appropriate if the evidence viewed in the light most  
8 favorable to the non-moving party shows “that there is no genuine dispute as to any  
9 material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P.  
10 56(a); *see Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Beaver v. Tarsadia Hotels*,  
11 816 F.3d 1170, 1177 (9th Cir. 2016). A fact is “material” if it might affect the outcome  
12 of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A factual dispute  
13 is “‘genuine’ only if there is sufficient evidence for a reasonable fact finder to find for the  
14 non-moving party.” *Far Out Prods., Inc. v. Oskar*, 247 F.3d 986, 992 (9th Cir. 2001)  
15 (citing *Anderson*, 477 U.S. at 248-49).

16 The moving party bears the initial burden of showing there is no genuine dispute  
17 of material fact and that it is entitled to prevail as a matter of law. *Celotex*, 477 U.S. at  
18 323. If the moving party does not bear the ultimate burden of persuasion at trial, it can  
19 show the absence of such a dispute in two ways: (1) by producing evidence negating an  
20 essential element of the nonmoving party’s case, or (2) by showing that the nonmoving  
21 party lacks evidence of an essential element of its claim or defense. *Nissan Fire &*  
22 *Marine Ins. Co. v. Fritz Cos.*, 210 F.3d 1099, 1106 (9th Cir. 2000). If the moving party

1 meets its burden of production, the burden then shifts to the nonmoving party to identify  
2 specific facts from which a factfinder could reasonably find in the nonmoving party's  
3 favor. *Celotex*, 477 U.S. at 324; *Anderson*, 477 U.S. at 250.

4 **B. Motion to Strike**

5 Dr. Cobbs brings a motion to strike two portions of Dr. Delashaw's supplemental  
6 briefing. (Cobbs Surreply.) Specifically, Dr. Cobbs seeks to strike (1) any arguments  
7 addressing liability for republication; and (2) Dr. Delashaw's filing of a declaration that  
8 included one email from Dr. Cobbs. (Cobbs Surreply at 2-3 (moving to strike portions of  
9 Delashaw Suppl Br. and 11/30/20 Farmer Decl. (Dkt. # 291) ("MEC Email").) The court  
10 agrees that the first category of material is outside the scope of the court's requested  
11 supplemental briefing. Dr. Delashaw presents arguments about liability for republication  
12 of the November 2016 Letter. (Delashaw Suppl. Br. § 1.C at 5-6.) This is beyond the  
13 scope of the court's narrow directive to file supplemental briefing regarding HCQIA  
14 immunity (*see* 12/11/20 Am. Order at 23), and as such, the court will not consider it at  
15 this time.

16 The court will, however, consider the evidence included in the 11/30/20 Farmer  
17 Declaration, as it is relevant to the question at hand. When ordering the parties to provide  
18 additional briefing, the court instructed the parties to present arguments regarding  
19 "whether, and to what extent, the HCQIA provides immunity to liability stemming from  
20 Dr. Cobbs's statements in the November 2016 Letter." (*Id.* at 23.) Dr. Delashaw has  
21 done just that by bringing the court's attention to an email, authored by Dr. Cobbs, that  
22 provides evidence of Dr. Cobbs's intended audience when distributing the November

1 2016 Letter. (*See* 11/30/20 Farmer Decl. (Dkt. # 291).) This is in line with the court's  
2 request and goes directly to the potential applicability of the statute Dr. Cobbs seeks to  
3 invoke. (*See infra* § III.C.) Dr. Cobbs filed a motion for summary judgment raising the  
4 issue of HCQIA liability, as well as a reply and supplemental briefing addressing the  
5 same. (*See generally* Cobbs 2d MSJ; Cobbs 2d MSJ Reply; Cobbs Suppl. Br.) The court  
6 will not turn a blind eye to relevant evidence because Dr. Cobbs claims he has been  
7 ambushed despite having three opportunities to provide the court with his own evidence.  
8 The court also will not allow Dr. Cobbs a fourth opportunity to submit evidence.<sup>2</sup>

9 Thus, the court grants in part and denies in part Dr. Cobb's motion to strike. The  
10 court will not consider Dr. Delashaw's arguments regarding liability for republication at  
11 this time. The court will, however, consider the declaration that Dr. Delashaw submitted  
12 in support of his arguments in the supplemental briefing.

### 13 **C. Applicability of the HCQIA**

14 Dr. Cobbs contends that he enjoys immunity from damages for any statements  
15 made in the November 2016 Letter under the HCQIA and thus should be granted  
16 summary judgment on all claims. (Cobbs Suppl. Br. at 1.) The court finds that while  
17 some immunity from damages may exist, it is not absolute. The court first lays out the  
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19 <sup>2</sup> To the extent Dr. Cobbs's motion to strike is based on a lack of parity between the  
20 length of the arguments the parties were able to raise in their supplemental briefs, the court finds  
21 this argument to be unfounded. The court ordered the parties to submit six pages of additional  
22 briefing. (12/11/20 Am. Order at 23.) Dr. Delashaw provided six pages of double-spaced  
briefing, while Dr. Cobbs provided six pages of single-spaced briefing. (*Compare* Delashaw  
Suppl. Br., *with* Cobbs Suppl. Br.) The court sees no imbalance in considering Dr. Delashaw's  
three-page declaration under these circumstances.

1 relevant portions of the Act before analyzing what damages Dr. Cobbs may be immune  
2 from and how Dr. Delashaw may overcome this presumption of immunity.

3 1. Relevant Portions of the HCQIA

4 The applicability of the HCQIA turns on whether the recipients of Dr. Cobbs's  
5 Letter were members of a professional review body, as defined under the Act. The  
6 relevant portion of the HCQIA states that:

7 Notwithstanding any other provision of law, no person . . . providing  
8 information to a professional review body regarding the competence or  
9 professional conduct of a physician shall be held, by reason of having  
10 provided such information, to be liable in damages under any law of the  
11 United States or of any State . . . unless such information is false and the  
12 person providing it knew that such information was false.

13 42 U.S.C. § 11111(a)(2). The Act defines a “professional review body” as

14 . . . [A] health care entity and the governing body or any committee of a  
15 health care entity which conducts professional review activity, and includes  
16 any committee of the medical staff of such an entity when assisting the  
17 governing body in a professional review activity.

18 42 U.S.C. § 11151(11). The Act further defines a health care entity to include “a hospital  
19 that is licensed to provide health care services by the State in which it is located.” 42.

20 U.S.C. § 11151(4)(A).

21 At the outset, the court finds that the plain meaning of the Act demonstrates that  
22 Dr. Cobbs's assertion that the HCQIA entitles him to summary judgment on all claims is  
overbroad. The Act only provides immunity from liability for damages. 42 U.S.C.  
§ 11111(a)(2). Dr. Delashaw seeks both damages and equitable relief from Dr. Cobbs.

(Am. Compl. Prayer for Relief ¶ 2 (seeking an order “enjoining Dr. Cobbs from making

1 false statements about Dr. Delashaw”).) Thus, even if Dr. Cobbs is immune for all  
2 damages under the HCQIA, it would not dispose of all Dr. Delashaw’s claims.

3 2. Recipients of the November 2016 Letter

4 Turning to the question of damages, the court does not find that Dr. Cobbs is  
5 immune for all potential damages—only those tied to specific recipients of the Letter that  
6 constitute members of a professional review body. Dr. Delashaw argues that Dr. Cobbs  
7 cannot establish that all the recipients constitute a member of a “professional review  
8 body” as defined by the HCQIA.<sup>3</sup> (Cobbs MSJ Resp. at 10-12; Delashaw Suppl. Br. at  
9 1-4.) Dr. Cobbs argues that the HCQIA provides immunity because the Swedish  
10 recipients fall into two categories. First, the November 4, 2016, recipients of the  
11 November 2016 Letter: Mr. Armada, Ms. Altaras, and Mr. Hochman, are corporate  
12 officers of Swedish and thus “personify the ‘health care entity’ and its ‘governing body.’”  
13 (Cobbs Suppl. Br. at 3 (quoting 42 U.S.C. §§ 11151(4)(A), (11)).) Second, the  
14 November 17 recipients of the Letter—Dr. Hutchinson and other Swedish employees—  
15 constitute members of Swedish’s MEC, and thus are part of a “professional review  
16 body.” (*Id.*; Cobbs 2d MSJ Reply at 8 n.5 (asserting that all recipients of Letter on  
17 November 17 were MEC members).) The court addresses each group of recipients in  
18 turn.

19  
20 <sup>3</sup> Dr. Delashaw does not contest that the November 2016 Letter contains the type of  
21 “information” that is protected under the Act. (*See* Cobbs 2d MSJ Resp. at 9-12; *see generally*  
22 Delashaw Suppl. Br; *see also* *Bryan v. James E. Holmes Reg’l Med. Ctr.*, 33 F.3d 1318, 1324  
(11th Cir. 1994) (affirming grant of immunity under the HCQIA when a doctor who was  
“generally considered to be a skilled surgeon” was removed in part due to perception he was  
“volcanic-tempered perfectionist” and “difficult man to work with”)

1                   a. *Corporate Officers*

2                   Dr. Cobbs contends that, because one can only communicate with a corporate  
3 entity through its officers and directors, one can only “provid[e] information” to a “health  
4 care entity” as contemplated by the Act by providing information to the individuals who  
5 run that corporate entity. (Cobbs Suppl. Br. at 3.) While the court offers no opinion on  
6 Dr. Cobbs’s argument that this is only way to communicate with a health care entity  
7 under the HCQIA, it agrees that information provided to corporate officers should be  
8 viewed as information provided to a health care entity under the Act. *See Bryan* 33 F.3d  
9 at 1324, 1334 (11th Cir. 1994) (finding members of hospital board of directors to be  
10 included in HCQIA’s definition of health care entity); *Talwar v. Mercer Cty. Joint Twp.*  
11 *Cnty. Hosp.*, 520 F. Supp. 2d 894, 899 (N.D. Ohio 2007) (same). Dr. Delashaw does not  
12 appear to contest that Mr. Armada, Ms. Altaras, Dr. Hochman, and Dr. Pascualy were  
13 corporate officers with the ability to direct Swedish. (*See* Cobbs 1st MSJ Resp. (Dkt.  
14 # 140) at 14 (referring to Letter as being sent to “Swedish CEO Tony Armada,  
15 Providence CEO Rod Hochman, and CEO of Swedish Seattle June Altaras”); 7/27/20  
16 Pratt Decl., ¶ 25, Ex. 24 (submitting email to court that refers to Dr. Pascualy as Chief  
17 Executive of Swedish Medical Group).) A health care entity is defined to be a  
18 professional review body under the Act, and these four individuals were corporate  
19 officers with control over the health care entity of Swedish. Thus, when Dr. Cobbs  
20 shared the November 2016 Letter with these individuals, he was providing information to  
21 a professional review body as defined by the HCQIA.

22 //

1           ***b. MEC Members***

2           Dr. Delashaw does not dispute that MEC members are members of a professional  
3 review body under the HCQIA, but instead contends that Dr. Cobbs has only established  
4 that Dr. Hutchinson is a member of the MEC. (*See* Delashaw Suppl. Br. at 4.) In his  
5 reply brief, Dr. Cobbs argued that the 16 other individuals who received the email were  
6 members of Swedish’s MEC. (Cobbs 2d MSJ Reply at 8 (“***These were the MEC***  
7 ***members.***”) (emphasis and bolding in original); *but see id.* at 8 n.5 (“At least, these were  
8 the MEC members as communicated to [Dr.] Cobbs by Swedish’s CMO.”) (citing  
9 Pascualy Texts at 10-12).)

10           But Dr. Cobbs’s own evidence belies his representation. The text message  
11 exchange makes it clear that Dr. Cobbs did not believe this list of names comprised the  
12 MEC, but instead considered them to be members of the SMG Executive Council. (*See*  
13 Pascualy Texts at 10-12 (showing that Dr. Cobbs was awaiting the list of SMG executive  
14 counsel names when Dr. Pascualy responded with the list of names and emails that are  
15 cc’d on the Hutchinson Email).) This is bolstered by the fact that Dr. Cobbs emailed Dr.  
16 Gwinn Ryder 13 hours before he sent the Hutchinson Email that stated “[t]hese are  
17 MEC,” followed by a list of names, only two of which appear on the list Dr. Cobbs is  
18 now contending to be the MEC: Peggy Hutchinson and Michael Myint. (*Compare*  
19 11/30/20 Farmer Decl., Ex. 1 (“MEC Email”), *with* Hutchinson Email.) Thus, the court  
20 determines that Dr. Hutchinson and Michael Myint<sup>4</sup> were members of the MEC at the

21 \_\_\_\_\_  
22           <sup>4</sup> While Dr. Delashaw argues that Dr. Hutchinson is the only MEC member listed on the  
Hutchinson Email, he does not appear to dispute the accuracy of the list of MEC names that he

1 time of the Hutchinson email and constitute members of a professional review body  
2 under the HCQIA. Dr. Cobbs has made no arguments and submitted no evidence  
3 suggesting that the SMG executive council is a professional review body. (*See generally*  
4 Cobbs 2d MSJ; Cobbs 2d MSJ Reply; Cobbs Suppl. Br.) Thus, viewing the evidence in  
5 the light most favorable to Dr. Delashaw, Dr. Cobbs has failed to demonstrate that the  
6 remaining 15 recipients of the email were members of a professional review body. Dr.  
7 Cobbs has also failed to demonstrate that HCQIA immunity applies to any other  
8 recipients of the November 2016 Letter besides Mr. Armada, Ms. Alataras, Dr. Hochman,  
9 Dr. Pascualy, Dr. Hutchinson, and Mr. Myint.<sup>5</sup>

### 10 3. The Falsity Exception

11 The HCQIA does not provide immunity in all instances where information is  
12 provided to members of a professional review body. If the information is false and the  
13 provider knew it was false, there is no immunity even if the recipient is a member of a  
14 professional review body. 42 U.S.C. § 11111(a)(2). The court has previously determined  
15 that five out of seven categories of Dr. Cobbs's allegedly defamatory statements in the  
16 November 2016 Letter were not made with a reckless disregard for truth. (*See* 6/11/20

17  
18 \_\_\_\_\_  
19 submitted in support of his arguments. (*See generally* Delashaw Suppl. Br.; MEC Email.) Since  
Michael Myint appears on both lists (*see* MEC Email), the court determines there is no genuine  
dispute of material fact as to Michael Myint's position on the MEC.

20 <sup>5</sup> Dr. Cobbs argues in his supplemental brief that, while HCQIA immunity does not apply  
21 to Dr. Cobbs's sending of the Letter to Dr. Newell, Dr. Delashaw cannot establish all the  
elements of a defamation claim for that publication. (Cobbs Suppl. Br. at 3 n.5.) The court will  
22 not address this argument, raised in a footnote in supplemental briefing on the narrow issue of  
HCQIA immunity. (*Cf.* Cobbs Surreply (moving to strike arguments made in supplemental  
briefing because they did not squarely address HCQIA immunity).)

1 MSJ Order at 60-66.) Since knowledge of falsity is a higher standard than reckless  
2 disregard for truth, the court finds that Dr. Cobbs is immune from any damages stemming  
3 from those five categories of statements made to the professional review body members.  
4 The court determined that only Dr. Cobbs's statements regarding (1) SNI surgeons'  
5 unanimous opposition to Dr. Delashaw and (2) Dr. Delashaw causing mass personnel  
6 departures would survive summary judgment under a reckless disregard for truth  
7 standard. (*Id.*) Viewing the evidence in the light most favorable to Dr. Delashaw, the  
8 court determines there is a genuine dispute of material fact as to the falsity of these  
9 categories of statements and Dr. Cobbs's knowledge of their falsity. Thus, Dr. Cobbs  
10 will not enjoy immunity from these two categories of statements if Dr. Delashaw is able  
11 to demonstrate that they are false and that Dr. Cobbs knew they were false when he made  
12 them.

13 In summary, the court finds that six recipients of the November 2016 Letter  
14 constitute members of a professional review body under the HCQIA: corporate officers  
15 Mr. Armada, Ms. Alataras, Dr. Hochman, Dr. Pascualy; and MEC members Dr.  
16 Hutchinson and Mr. Myint. Thus, Dr. Cobbs can only be found liable for damages  
17 resulting from the publication of the Letter to these individuals if the statements he made  
18 to them were false and Dr. Cobbs knew they were false at the time of publication. Only  
19 two categories of allegedly defamatory statements—those regarding unanimous  
20 opposition to Dr. Delashaw and Dr. Delashaw causing mass departures—are potentially  
21 subject to this falsity exception to immunity. To the extent immunity exists, it applies to  
22 liability for damages caused by the protected statements in all claims against Dr. Cobbs,

1 not just the defamation claim. *See* 42 U.S.C. § 11111(a)(2) (providing immunity for  
2 liability “under any law of the United States or of any State”). However, the court finds  
3 that there is a genuine dispute of material fact as to the HCQIA’s applicability to the  
4 remaining recipients of the November 2016 Letter, and no immunity for statements made  
5 to these individuals exists at this time. Therefore, the portion of Dr. Cobbs’s second  
6 motion for summary judgment that remains after the court’s November 18, 2020 order is  
7 granted in part and denied in part.

#### 8 IV. CONCLUSION

9 For the foregoing reasons, the court GRANTS in part and DENIES in part both  
10 Dr. Cobbs’s motion to strike (Dkt. # 296) and the remaining portion of Dr. Cobbs’s  
11 second motion for summary judgment (Dkt. ## 185 (redacted); 188 (sealed)).

12 Dated this 7th day of January, 2021.

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15 JAMES L. ROBART  
16 United States District Judge  
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