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Appellate Ruling Put Walgreens on Hook for Punitive Damages, Signaling Warning About Employers' Liability for Staff Action

"The takeaway is to be careful of what you ask for," said Angela de Cespedes, a partner at Saul Ewing Arnstein & Lehr.

By Michael A. Mora | July 16, 2021



(L-R) Third DCA Chief Judge Kevin Emas, Judge Eric Hendon, and Judge Bronwyn C. Miller. Courtesy photo/ALM

Walgreen Co. is in the hot seat.

Florida's Third District Court of Appeal ruled that a jury will decide whether Walgreens will pay punitive damages to Hashem Sultan, which could tack on more losses for the U.S. pharmacy store chain in this multiyear litigation following a nearly \$1.3 million jury award (<https://topverdict.com/lists/2020/florida/top-50-verdicts>) in March 2020.



Angela de Cespedes, partner and litigator at Saul Ewing Arnstein & Lehr in Miami. Courtesy photo

Miami attorneys David H. Pollack of the Pollack Law Firm and Dorothy Easley of Easley Appellate Practice, represented Sultan, a board-certified anesthesiologist and pain management specialist.

Sultan claimed that a pharmacist at Walgreens, Elisa Cobas-Hernandez, conducted an aggressive campaign to ruin his reputation, including blaming him for various criminal acts.

Walgreens' attorney, Elliot B. Kula, did not respond to a request for comment.

Angela de Cespedes, a partner at Saul Ewing Arnstein & Lehr in Miami who is not involved in the case, said Walgreens erred in asking the Miami-Dade Circuit Judge Barbara Areces to dismiss the punitive damages claim on summary judgment shortly before trial.

Ultimately, the jury delivered the nearly \$1.3 million verdict stating that the pharmacist, Cobas-Hernandez, defamed Sultan, and that Walgreens was vicariously liable.

'Be careful ... what you ask for'

De Cespedes added that while it is difficult to meet the burden of punitive damages in any case, the jury might be more willing to deliver punitive damages now.

"The takeaway is to be careful of what you ask for," de Cespedes said. "Sometimes when a decision is on the fence as to whether it is proper or not, lawyers need to do everything they can to make sure they are not leaving themselves open for this exact situation, which is a reversal on appeal."

Court documents showed the jury verdict also returned a finding that Walgreens' negligently trained and supervised Cobas-Hernandez to prevent her from making defamatory statements, such as she has "seen the kind of patients who go" to Sultan's office, that he prescribed antibiotics to cover up improper prescriptions and that the doctor lost his Medicaid contract because he does not urine test his patients.

But Kula unsuccessfully argued in a motion that Sultan's counsel failed to produce evidence that Walgreens had a duty to train the pharmacists from making defamatory statements that arose from enactments or regulations, were judicial interpretations of enactments or regulations, or other judicial precedent.

Kula also cast doubt that statements Cobas-Hernandez said to customers were defamatory, as the witnesses "all admitted that the statements either did not mention Plaintiff or did not say he was a bad doctor," according to court documents. And even if the pharmacist said the statements Sultan alleged, they were

true.

But the jury did not see eye-to-eye with Kula's argument, leading to the verdict in Sultan's favor. And now, following the Third DCA ruling, the litigation will head back to the Miami-Dade Circuit Court for a jury to determine punitive damages.

Read the Third DCA order:

Third District Court of Appeal

State of Florida

Opinion filed July 14, 2021.
Not final until disposition of timely filed motion for rehearing.

No. 3D20-0769
Lower Tribunal No. 13-34287

Hashem Sultan, M.D., et al.,
Appellants/Cross-Appellees,

vs.

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The Third DCA Judges Kevin Emas, Eric Hendon and Bronwyn C. Miller explained in the opinion that a business could face punitive damages if it is aware an employee demonstrates conduct in which they are motivated by ill-will.

"Further submissions of record supported the conclusion that Walgreens was aware of this course of conduct, as numerous clients raised the alarm, yet it failed to take any meaningful action," Miller wrote. "Under these circumstances, the question of punitive damages presented a question for the jury."

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