

BMJ invokes new Texan freedom of speech law to fight Wakefield libel case

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BMJ

The *BMJ* is invoking a new Texas law protecting freedom of speech in a bid to have thrown out the libel lawsuit brought against it by Andrew Wakefield, the researcher who sparked an international controversy over the measles, mumps, and rubella vaccine (MMR).

The journal, its editor in chief, Fiona Godlee, and the investigative journalist Brian Deer have filed a motion to have the case dismissed under the anti-SLAPP (Strategic Lawsuits against Public Participation) statute. The law, which is similar to statutes enacted in a number of US states, protects journalists and publishers from baseless libel claims by providing a procedure under which a case can be dismissed at the outset.

The libel action—brought in Texas, where Dr Wakefield lives, rather than in London—concerns an article in the *BMJ* in January 2011 written by Mr Deer, “How the case against the MMR vaccine was fixed” (2011;342:c5347, doi:10.1136/bmj.c5347), and a related editorial commentary by Dr Godlee, in which Dr Wakefield’s MMR research was called “an elaborate fraud.” The *BMJ*’s coverage relates to Dr Wakefield’s 1998 article published in the *Lancet*, which was retracted in February 2010 (1998;351:637-41, doi:10.1016/S0140-6736(97)11096-0).

Dr Wakefield alleges that the *BMJ* acted with “actual malice”—either knowing a statement was false or with reckless disregard of whether it was false or not—and that it accused him of carrying out fraudulent research.

The *BMJ* contends that Dr Wakefield is a public figure and would therefore have to prove actual malice to succeed in his defamation suit. But the motion points out that actual malice is “exceedingly difficult” to establish and says that declarations

by Mr Deer, Dr Godlee, other *BMJ* staff, and an external peer reviewer show that the articles were “painstakingly prepared and edited.”

To stop the case being dismissed, Dr Wakefield would have to show “clear and convincing evidence” of every element of his cause of action, which is acknowledged to be a high hurdle.

The motion says that Mr Deer’s *BMJ* article drew extensively from material already aired in reports by Mr Deer in the *Sunday Times* newspaper and in a television documentary on Channel 4. Dr Wakefield had launched two libel actions against Mr Deer over the newspaper and television reports but sought a stay in both cases, then voluntarily dismissed them.

Dr Wakefield is not entitled to re-litigate over findings by the General Medical Council, which found him guilty of serious professional misconduct, including “dishonesty” and “unethical conduct,” on substantially the same allegations and which struck him off the medical register in 2010, says the motion. His own counsel told the GMC that the reality of the allegations against him was “an accusation of fraud.” He lodged an appeal with the High Court in London but did not pursue it.

If the lawsuit is dismissed, the anti-SLAPP statute provides that the plaintiff must pay the defendants’ lawyers’ fees and other costs in defending it. Pointing out that Dr Wakefield has been raising money from supporters to fund the libel action, the *BMJ* is also asking the court in Texas to impose sanctions to deter him from bringing similar actions in the future.

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