

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

GARY EDWARDS,

Respondent

v.

LAWRENCE M. GERSTEIN, CHARLES KLINGINSMITH,
LARRY LOVEJOY, LEE RICHARDSON, MARY HOLYOKE,
AND CHARLOTTE HILL.

Appellants

DOCKET NUMBER WD73434

DATE: January 31, 2012

Appeal From:

Circuit Court of Cole County, MO
The Honorable Patricia S. Joyce, Judge

Appellate Judges:

Division One
Alok Ahuja, P.J., James Edward Welsh, and Cynthia L. Martin, JJ.

Attorneys:

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Co-Counsel for Appellants

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**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

**GARY EDWARDS, Respondent, v. LAWRENCE M. GERSTEIN,
CHARLES KLINGINSMITH, LARRY LOVEJOY, LEE RICHARDSON,
MARY HOLYOKE, AND CHARLOTTE HILL, Appellants.**

WD73434

Cole County

Before Division One Judges: Ahuja, P.J., Welsh, and Martin, JJ.

Members of the Board of Chiropractic Examiners, Lawrence M. Gerstein, Charles Klinginsmith, Larry Lovejoy, Lee Richardson, Mary Holyoke, and Charlotte Hill, appeal from the circuit court's judgment awarding Dr. Gary Edwards \$6,284,759 on his claim for gross negligence. In the suit, Dr. Edwards claimed that the Board members failed to conduct a thorough and impartial investigation before filing a formal complaint against Dr. Edwards's chiropractic license, that the Board members were grossly negligent, and that such gross negligence directly caused or directly contributed to cause damage to Dr. Edwards.

On appeal, the Board members assert six points of error. First, they assert that the circuit court erred in denying their motion for judgment notwithstanding the verdict because, as a matter of law, they did not owe a duty to Dr. Edwards to conduct a thorough and impartial investigation before filing a complaint against Dr. Edwards's chiropractic license. Second, they contend that the circuit court erred in giving Instruction No. 6, the verdict director, because the definition of "gross negligence" in the instruction misdirected and misled the jury and was a roving commission. Third, the Board members claim that the circuit court erred in excluding evidence that the Administrative Hearing Commission (AHC) found that Dr. Edwards had violated the conduct requirements for chiropractors in section 331.060, RSMo 2000, and that cause existed for the Board to discipline Dr. Edwards's chiropractic license because such evidence was relevant to counter testimony from Dr. Edwards that made reference to the complaint at the AHC. Fourth, they assert that the circuit court erred in excluding evidence that the AHC found that Dr. Edwards had violated the conduct requirements for chiropractors in section 331.060 and that cause existed for the Board to discipline his license because the evidence was relevant to show that Dr. Edwards's damages were caused by the publication of the AHC's findings and not the investigation conducted by the Board. Fifth, they contend that the circuit court erred in repeatedly allowing testimony by the Board members that they had a duty to conduct a fair and impartial investigation because whether such a duty existed was a question of law and not a question of fact for the jury. Finally, the Board members claim that the circuit court erred in admitting evidence of Dr. Edwards's attorneys fees as damages because recovery of such damages was barred by the doctrine of sovereign immunity and because Dr. Edwards's sole remedy for recovery of his attorneys' fees was provided by section 536.087, RSMo 2000.

AFFIRMED

Division One Holds:

(1) The circuit court did not err in denying the Board members' motion for judgment notwithstanding the verdict. The conducting of investigations of complaints was an official duty of the Board, for which Board members could be liable to the licensee if the Board members committed gross negligence in the performance of the investigation.

(2) The Board members failed to preserve their claim that the circuit court erred in giving Instruction No. 6, the verdict director. The Board members failed to meet their burden under Rule 70.03 to register a specific objection to the verdict director's definition of gross negligence.

(3) Because the Board members stipulated that the Administrative Hearing Commission's findings would not be put into evidence, the circuit court did not err in excluding evidence that the Administrative Hearing Commission (AHC) found that Dr. Edwards had violated the conduct requirements for chiropractors in section 331.060 and that cause existed for the Board to discipline his license.

(4) The circuit court did not abuse its discretion in allowing the Board members' to testify about their job duties concerning investigating complaints. Whether or not the Board members had a duty to conduct a fair and impartial investigation was a question of law, but the Board members could testify about their job duties and the foreseeable consequences of their failures to perform their job duties.

(5) The circuit court did not err in admitting evidence of Dr. Edwards's attorneys' fees as damages. Dr. Edwards's attorneys' fees were consequential damages resulting from the Board members' alleged gross negligence which caused Dr. Edwards to be involved in litigation and incur attorneys' fees. Edwards's attorneys' fees were the natural and proximate result of the Board's gross negligence and would be recoverable under section 331.100, RSMo.

Opinion by James Edward Welsh, Judge

January 31, 2012

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