

CAUSE No. D24081005CV

WALLACE DUNN  
*Plaintiff,*

v.  
MATTHEW CODAY and  
OIL & GAS WORKERS ASSOCIATION, INC.  
*Defendants.*

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IN THE DISTRICT COURT  
\_\_\_\_\_ TH JUDICIAL DISTRICT  
ECTOR COUNTY, TEXAS

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**PLAINTIFF’S ORIGINAL PETITION**

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**TO THE HONORABLE JUDGE OF SAID COURT:**

1. COMES NOW, **WALLACE DUNN** (“Dunn”) complaining of **MATTHEW CODAY**(“Coday”) and **OIL & GAS WORKERS ASSOCIATION, INC.** (“OGWA”) (together “Defendants”) and for cause of action respectfully shows the Court the following:

**I. RULE 190.4 DISCOVERY STATEMENT**

2. Pursuant to *Texas Rule of Civil Procedure* 190.4, Dunn gives notice that discovery is to be conducted under Level 3.

**II. PARTIES**

3. Plaintiff, **WALLACE DUNN** is an individual who resides in Ector County, Texas.

4. Defendant, **MATTHEW CODAY**(“CODAY”), is an individual who resides in Ector County, Texas. Defendant may be served by private process at his last known address: **2741 Faudree Road, Apt. 1306, Odessa, TX 79765, or wherever he may be found.**

5. Defendant, **OIL & GAS WORKERS ASSOCIATION, INC.** is a Texas corporation organized under the Laws of the State of Texas, registered to conduct business in the State of Texas with the Texas Secretary of State, and engaging in business in the State of Texas. It may be served with process by the clerk of the court by certified mail, return receipt requested by serving its

registered agent: **Matthew Coday 415 North Grant LL 50, Odessa, Texas, 79761, or wherever he may be found.**

### **III. VENUE**

6. According to *Texas Civil Practices and Remedies Code* § 15.002(a)(1), venue of this lawsuit is proper in Ector County, Texas, because it is where all or a substantial amount of the events occurred.

### **IV. RELIEF**

7. Plaintiff's counsel states that the damages sought are in an amount within the jurisdictional limits of this Court. As required by Rule 47(c) of the Texas Rules of Civil Procedure, Plaintiff's counsel states that Plaintiff seeks monetary relief of at least \$250,000 per defendant. The amount of monetary relief actually awarded, however, will ultimately be determined by a jury. Plaintiff also seeks prejudgment and post-judgment interest at the highest rate allowed by law.

### **V. FACTS**

#### **Dunn's History of Service to the Odessa Community**

8. Wallace Dunn is a U.S. Army veteran, business owner, community servant, and an elected Board Member of the Ector County Hospital District.

9. Dunn retired from the U.S. Army in 1997 after twenty years of service. Dunn had a TS/SCI clearance and served as an intelligence analyst. He also graduated from the Federal Law Enforcement Training Center. During his last eight years of Army service, Dunn was assigned to support the police department in Portland, Oregon, where Dunn was instrumental in helping to create a new drug task force called Regional Organized Crime Narcotics Task Force. He ran the intelligence unit for that task force, which prosecuted only Federal drug cases, and had a 100% conviction rate at the time of his retirement.

10. Dunn has lived in Odessa, Texas, for twenty years. He has a long history of community service including in the Odessa Downtown Lion's Club, the American Legion, the Texas Handgun Association, the Texas State Rifle Association, the Second Amendment Foundation, the Permian Basin International Oil Show, and the Energy Workforce and Technology Council. Dunn is certified by the Texas Department of Public Safety to teach the Texas License to Carry course and the Texas School Safety course. He has taught gun safety to thousands of students around the state of Texas, and he travels around the state to speak to groups about gun safety and gun rights.

11. Dunn has also been a member of the Texas Hospital Association and a Texas Healthcare Trustee for six years. He is a Certified Healthcare Trustee and is currently serving on a committee to oversee future planning and training for trustees.

12. The Ector County Hospital District Board ("Hospital Board") has oversight over Medical Center Health System ("MCHS"). MCHS is known locally as the Medical Center Hospital ("MCH"). It is the regional trauma center for seventeen counties of the Permian Basin, serving roughly 38,000 square miles.

13. Dunn was first elected to the Hospital Board in 2019. He won seventy percent of the vote, defeating the incumbent sitting Hospital Board president who had served on the Hospital Board for over thirty years. Dunn ran unopposed for, and was elected to, the Hospital Board again in 2024.

14. Dunn has worked in the oil and gas industry for twenty years. He has held various positions in the oilfield including frac hand, frac safety, truck driver, iron manager, iron salesman, and he is currently employed as a frac pump salesman.

15. Due to Dunn’s knowledge and commitment to the industry, Dunn had over 5,000 LinkedIn followers in 2020, the overwhelming majority of whom were affiliated with the oil and gas industry. Dunn also had a Facebook page with over 40,000 followers.

16. In short, Dunn has long been a highly respected and influential individual within Odessa, and particularly within the oil and gas community. Yet his reputation has been severely jeopardized by recklessly false and disparaging statements spread by Defendant, Matthew Coday and OGWA.

17. In contrast, Matt Coday is an admitted alcoholic, drug addict, and has had numerous criminal convictions for intoxication, writing bad checks, and theft.

**Dunn Joins OGWA’s Board and Learns OGWA is a Sham**

18. Upon information and belief, Coday founded OGWA in 2015.

19. In 2021, Coday approached Dunn about serving on the OGWA Board of Directors (“OGWA Board”). At this time, Coday told Dunn that OGWA was “stagnant,” and that Coday needed help “kicking it into gear,” or words to similar effect. Dunn agreed, as he believed that his service on the OGWA Board might help galvanize oil and gas workers to use their collective power to educate others and impact reforms that could help their industry thrive. He began serving on the OGWA Board in or around September 2021.

20. From his experience serving on other boards, Dunn knew board service came with various responsibilities to the organization, its members, and its stakeholders. Some of those responsibilities include properly appointing Board members; holding regular meetings of Board members; and adequately maintaining meeting minutes and financial records for the organization. Yet from his first day of membership on the OGWA Board, it became clear to Dunn that Coday failed to uphold these responsibilities in connection with his organization. For example, prior to

Dunn's appointment, Dunn was insistent that the OGWA general membership or the other OGWA Board members would need to approve Dunn's appointment, and he discussed with Coday that it was not sufficient for Coday to simply "name" Dunn as an OGWA Board member. Although Coday gave assurances this approval process would happen, he never followed through on this responsibility; instead, Coday unilaterally "appointed" Dunn as an OGWA Board member.

21. Promptly upon being asked to join the OGWA Board, Dunn requested access to information he would need to fully perform as an OGWA Board member, including copies of prior meeting minutes and financial records for the organization. From his prior experience, Dunn knew that organizations are legally required to maintain these types of documents, and that Dunn's fiduciary duties to OGWA required his ability to understand the organization's background. Yet despite several requests for this information, Coday never provided Dunn with any documentation.

22. During his membership on the OGWA Board, Dunn pressed Coday to hold regular board meetings. At Dunn's insistence, Coday scheduled an OGWA Board meeting on September 28, 2021. Although OGWA had five board members at the time of this meeting, only Coday and Dunn attended. A second OGWA Board meeting, also scheduled at Dunn's insistence, was planned for October 26, 2021. Only Coday, Dunn, and one other OGWA Board member showed up. Despite being present, the third board member did not participate; only Coday and Dunn engaged in discussion at the meeting.

23. During his membership on the OGWA Board, Dunn also searched for any written record of a structure or processes by which OGWA engaged in its work and found none. He approached Coday about the need to create accountability through a management structure and stressed how important it was for OGWA to have processes that governed how OGWA would perform tasks, including the endorsement of political candidates. Coday refused to implement this

advice or to create any processes that would reign in his power to act on behalf of OGWA, including in connection with political endorsements.

### **Coday's Malicious Campaign of Defamation Against Dunn**

24. After a few months, Coday began to bristle at Dunn's efforts to fulfill his fiduciary responsibilities to OGWA. In anger, Coday took to social media to publicly attack Dunn regarding Dunn's membership on the Hospital Board – even while Dunn was still member of the OGWA Board.

25. The timing, vitriol, and baseless nature of these social media attacks suggest that Coday's intention was to retaliate against Dunn for his perceived interference with OGWA.

26. Ultimately, Coday's conduct – including, but not limited to, his social media attacks on Dunn – led Dunn to resign from the OGWA Board. Coday interfered with Dunn's every attempt to perform even basic oversight of OGWA. Coday consistently failed to perform his fiduciary duties to OGWA and repeatedly made material decisions on behalf of the organization without OGWA Board approval or support, and Dunn could not abide by or condone this conduct. As Coday's actions prevented Dunn from fulfilling his fiduciary obligations to OGWA, Dunn did not feel that he could ethically continue in the role. What's more, Dunn lost confidence that OGWA was what Coday held it out to be. Indeed, Dunn came to suspect that Coday's refusal to provide him with a copy of OGWA's financial records was a coverup for unethical or illegal conduct, including Coday's use of donor and member dollars as his own personal slush fund.

27. On February 25, 2022, Dunn informed Coday that he was immediately resigning from the OGWA Board and stated his hopes that the organization would right itself and fulfill its mission. Dunn did not publicly air his concerns about OGWA, and merely posted a simple statement on social media that he would no longer be serving on its board.

28. On February 27, 2022, Coday once again took to social media to attack Dunn. This prompted Dunn to reach out to Coday by text. A true and accurate copy of a portion of these text communications between Dunn (in green) and Coday (in white) is reproduced below:

Feb 27, 2022 at 9:17 PM

Matt seriously. Are you drinking again?

How funny! I was texting you to tell you to back down. No, I'm not drinking again. Still sober since August 21, 2018. And I have an opportunity in that post to slam you publicly. I was texting you to ask you to back down. Every single thing I printed can be backed up with the over 2 hours of recorded phone conversations I had with Tom Slocum this week.

You want to slam me?

Kinda. A little bit of me wants to. There's a competitive side to me that wants to, plus your defending Dustin. And I haven't slammed you in the last 2 days.

I think you are exhibiting extremely poor judgement.

I feel sorry you think that way.

See ya

I think your resignation letter shows you're not exhibiting great judgment. A few of our mutual friends feel sorry for you because of your uncomfortable position in trying to defend the hospital. One of your friends I just recently met said that you know that hospital is "corrupt and fucked".

Some mentioned ethics charges. I don't think you deserve ethics charges.

29. In short, Coday expressed malice towards Dunn and made a thinly veiled threat to defame (“slam”) Dunn publicly and to pursue baseless “ethics charges” against him. Following this text exchange, Dunn ceased all contact with Coday and OGWA.

30. Unfortunately, shortly thereafter, Coday began to make good on his threats, including by falsely accusing Dunn of extreme misconduct in connection with Dunn’s position on the Ector County Hospital Board.

31. On August 30, 2022, Coday posted on the Odessa Accountability Project Facebook page that Dunn was “knowingly violating HIPAA laws by divulging confidential details about patients of the hospital.” In true fact, Dunn has never divulged confidential details about any hospital patient. What’s more, Dunn *could not have* done so because Hospital Board members do not have access to confidential patient information.

32. Not wishing to dignify Coday’s outlandish claims by responding to them, Dunn did



not engage with Coday's statements. Unfortunately, Coday's personal attacks continued.

33. On or around September 28, 2022, in response to a third party's Facebook post discussing Coday's admitted criminal record, Coday accused Dunn of being guilty of domestic violence. This is false: Dunn has never been convicted of domestic violence. Coday's comments were later removed.

34. On September 30, 2022, Matt Stringer of the news outlet *Odessa Headlines* published an article titled "Oil and Gas Workers Association President Under Fire for Sexist Comments and Organizational Allegations." The article detailed certain sexist comments Coday had made and noted that, in response to the story from two days earlier, "Coday randomly accused former OGWA board member Wallace Dunn of having a conviction for a 'domestic abuse-related charge.'" The article confirmed that "*Odessa Headlines* was unable to find any domestic abuse related convictions in Dunn's background" – which makes ample sense, because such convictions do not exist.

35. The September 30 article also quoted several current and former OGWA board members, including Dunn. Dunn told the reporter that Coday had failed to provide records of OGWA Board meetings or other organizational documents and had attacked Dunn on social media after Dunn started asking questions about the organization's finances. In response to questions from the reporter, Dunn stated the following:

"I realized fairly quickly the organization is a sham and pretty much just a paycheck for Matt Coday," Dunn wrote. "During the time I served, Matt Coday was unemployed and had no other source of income. I resigned after Matt Coday began attacking me on social media pages in reference to my position on the Ector County Hospital Board. He did this WHILE I was on his board of directors... When I first joined the board, I asked to review the minutes or records of previous board meetings."

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36. Another former board member, Mike Cummings, echoed Dunn’s concerns, telling the reporter:

*“Shortly after being appointed to the Board of Oil & Gas Workers Association I realized it to be more of a sham than a 501 (c)6, working to secure American energy jobs! It’s my belief that this organization is nothing more than a slush fund to support Matt Coday’s bad habits! It’s unfortunate as I believed at one time we could have turned this around & got it going in the right direction. It’s very unfortunate as I once believed in their mission but I have no faith in this Association going forward! Shortly after Mr. Wallace Dunn resigned his chair on the Board I decided it was time I did the same for all the same reasons. Wallace is well respected in the community & among his peers. I learned a long time ago if you wanted to know something about someone, go to their community to find the best & truth about someone. I couldn’t pay someone to say anything bad about Mr. Dunn. That told me all I needed to know!”*

Former OGWA Board Member Mike Cummings

37. Mark Merritt, one of the individuals listed as a current OGWA Board member at the time of the article, said he had never even *agreed* to be a member of the OGWA Board.

*“I didn’t consent to be on the board, I have never seen a copy of the by-laws, financials, never paid dues, and after declining to be on the board I just appeared on the board,”* Merritt said on a phone interview.

38. A few short weeks later, on October 22, 2022 – and unbeknownst to Dunn or MCHS until much later – Coday filed a complaint against Dunn with the federal Office of Civil Rights (the “OCR Complaint”). The content of this complaint remains unknown to Dunn to this day, as discussed below.

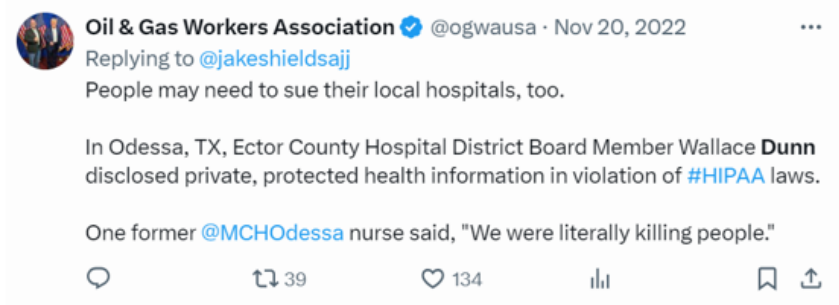
39. On November 4, 2022, Coday posted on his personal Facebook page that Dunn had “multiple violations of federal HIPAA laws,” had “disclos[ed] private identifying information about a patient and ma[de] derogatory remarks to people in the community about her and her

family” and that “[s]everal members of the Odessa community ha[d] filed official complaints against Wallace Dunn with the Office of Civil Rights.”

40. This is false. Dunn has never disclosed private information about any hospital patient. Dunn has never once been found to have violated HIPAA. And as of the date of this filing, the *only* complaint ever filed with the Office of Civil Rights against Dunn was the single complaint filed by Coday himself.

41. On November 18, 2022, Coday wrote an opinion piece in the *Odessa American* where he stated that Dunn had caused reputational damage to OGWA, and that he would be sending “cease and desist letters and demanding retractions and apologies” from Dunn and the other former OGWA Board members who spoke to the reporter. (Coday never sent Dunn or any of the other former OGWA Board members a cease-and-desist letter).

42. On November 20, 2022, the OGWA official Twitter account posted the following:



43. On November 22, 2022, Matt Coday repeated his false statements at a city council meeting, where he stated: “Wallace Dunn feels compelled to lie. Um it may be because he disclosed private identifying protected health information in violation of HIPAA laws. There is apparently a suit that may be brought forth against him and the hospital for that.”

44. In true fact, no lawsuit has *ever been initiated* against Dunn related to any alleged violation of HIPAA laws, and the only OCR complaint against Dunn was filed by Coday himself. Yet – nearly two years later – Coday continues to assert that some unidentified hospital patient

will be filing or has filed some unidentified lawsuit or complaint against Dunn, as discussed below.

45. In early December 2022, Coday again posted on social media about Dunn’s alleged HIPAA law violations, this time including an Office of Civil Rights case number and stating that it was a complaint against Dunn. Dunn immediately reported the case number to the hospital.

46. To date, and despite public records act requests by Dunn, the Office of Civil Rights has not provided the substance of Coday’s complaint to the hospital or Dunn – only a copy that is almost entirely redacted and shows Coday as the author of the complaint.

47. On December 22, 2022, Coday again took to Facebook to “slam” Dunn, alleging once again that “Wallace Dunn disclosed a Medical Center Hospital patient’s private information in violation of HIPAA laws” and that “[s]everal more [HIPAA] complaints [were] coming.”

48. On March 15, 2023, Coday called Dunn a “liar” and a “fraud” on Facebook. (In what appears to be a pattern of harassing behavior, Coday linked his attacks on Dunn with derogatory personal attacks on five other public and social leaders.)

49. On March 19, 2023, *Odessa Headlines* reported that it had requested financial records for OGWA and that Coday refused to provide the records and then lied about having provided them:

Despite Coday claiming he has consulted with an attorney and the Texas Attorney General on what must be disclosed, he has not turned over a detailed accounting. He has not claimed his organization is small enough to qualify for an exception, and if he did that would open a barrel of other questions regarding problematic claims his organization makes.

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50. The March 19, 2023, article also raised questions about OGWA’s alleged membership and whether OGWA was following IRS regulations for 501(c)(6) organizations.

51. On May 7, 2023, *Odessa Headlines* reported that, after seven months of stalling, Coday released a financial spreadsheet that showed Coday had lied to OGWA Board members

concerning revenue. The article also detailed erratic and concerning behavior from Coday, financial mismanagement, accounting irregularities, and suggested that Coday had violated Texas law regarding lobbying:

Every attempt by *Odessa Headlines* to obtain the non-profit financial records for OGWA over the past seven months has been met with a fit of rage by Coday who regularly lashed out in emails and online making a wide range of accusations that ended with no records being released. It was only after *Odessa Headlines* gave final notice that a criminal complaint could be filed that he finally produced an Excel spreadsheet, which has raised a host of new questions.

(Dunn was not quoted or interviewed for either the March 29 or May 7 *Odessa Headlines* articles.)

52. On August 18, 2023, the Office of Civil Rights sent a letter to Coday and MCH CEO, Russell Tippin, informing them that, in response to Coday’s OCR complaint, OCR had conducted “a thorough and detailed review” and was closing the complaint without further investigation. OCR never attempted to contact Dunn or interview Dunn about Coday’s complaint. OCR never filed any administrative charges or lodged any complaints against MCH or Dunn for alleged HIPAA violations by Dunn.

53. To date, Dunn has not been given a copy of the substance of Coday’s OCR Complaint. However, in response to Dunn’s public records act request, OCR confirmed that although Coday had listed Dunn, individually, as the subject of his OCR Complaint, OCR changed the name of the accused party from Dunn to MCH. (On information and belief, this is because HIPAA complaints against individuals are handled internally by a Covered Entity (like a hospital), not by OCR.)

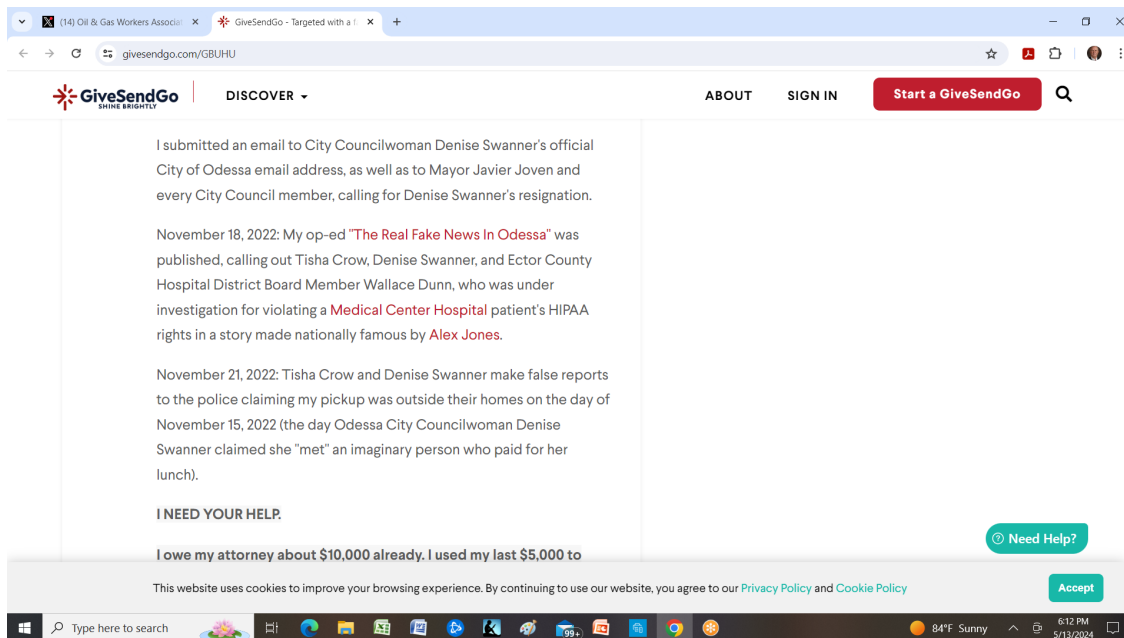
54. To repeat, given its significance to this lawsuit: **as of August 18, 2023, Coday knew that his OCR Complaint against Dunn had been closed. Coday knew that no**

**investigation was ongoing.** And Coday also knew that, as far as the OCR was concerned, Coday’s complaint was against the hospital, not Dunn.

### **Coday Continues to Defame Dunn in 2024**

55. Around January 2024, Coday created a page on the crowdfunding website “GiveSendGo,” seeking donations towards legal fees and claiming to be facing a criminal investigation for a “false report” to police in December 2023. In the following months, Coday continued to post updates requesting financial support for his legal fees. Several of these post updates repeated the knowing lies about Dunn.

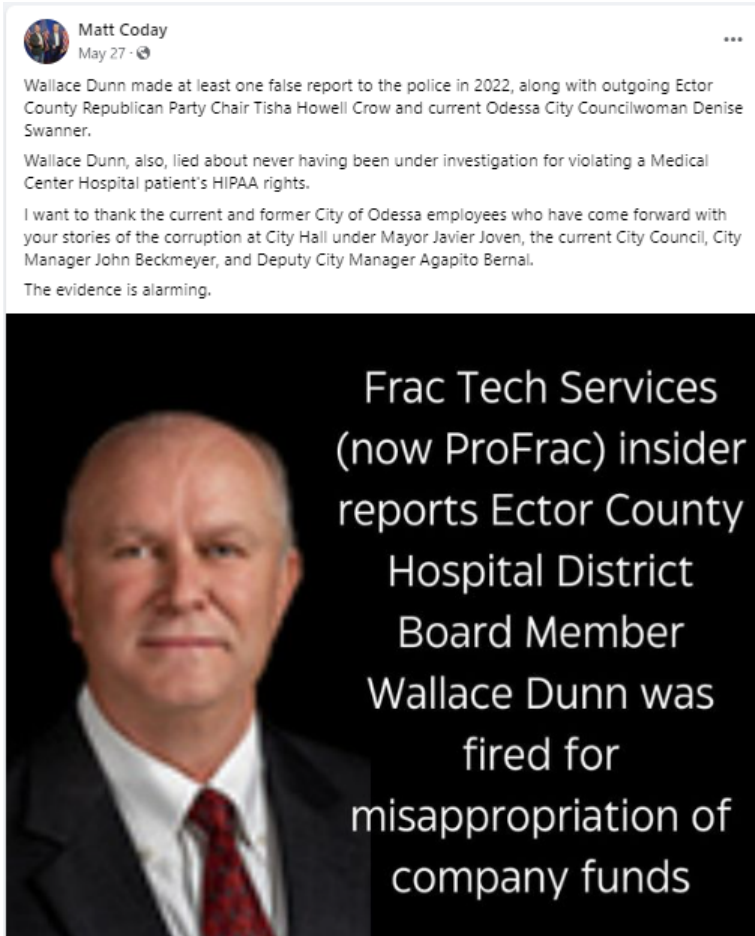
56. For example, on May 12, 2024, Coday posted an update stating that Dunn was “under investigation for violating a Medical Center Hospital patient’s HIPAA rights.” A true and correct copy of the portion of this post referencing Dunn is below:



57. This statement was false and misleading on several levels, and Coday knew this at the time of his post. First, Coday knew that Dunn had never been “under investigation” because the OCR considered Coday’s complaint to be against the hospital, not Dunn. (Indeed, OCR never even notified Dunn of Coday’s OCR Complaint). Second, Coday knew that the *only* complaint ever filed against Dunn was Coday’s own OCR Complaint, yet he intentionally led readers to believe that an unidentified third party “patient” had submitted a formal complaint, and that this complaint was taken seriously enough to be “under investigation.” Third, Coday knew that the OCR had *dismissed* the sole complaint against Dunn (his own) ten months earlier, without having taken any action whatsoever vis a vis Dunn, and that there had never been any determination that Dunn had “violated” anyone’s HIPAA rights.

58. In short, Coday carefully selected the material for his post and intentionally omitted key details, with the awareness that the omission would create a substantially false impression in the minds of his readers. Coday’s manipulative omissions were intended to lead readers to believe that a specific hospital patient(s) had complained about Dunn, and that Dunn had been investigated for, and found guilty of violating, federal HIPAA rights. None of this is true.

59. On May 27, 2024, Coday falsely stated on Facebook that Dunn “lied about never having been under investigation for violating a Medical Center Hospital patient’s HIPAA rights” and suggested “[t]he evidence is alarming”:



60. This is false: at no time has Dunn ever made any representations (much less denials) about being investigated for HIPAA violations, other than to inquire with hospital employees about the status of the OCR case number that Coday had posted about on social media. The accusation that Dunn had been investigated for HIPAA violations (he was not) and had “lied” to his constituents about that investigation (he did not) was false and incredibly damaging to Dunn.

61. On July 15, 2024, Coday, on behalf of OGWA and wearing an OGWA polo shirt, posted a video on Facebook in which Coday discussed a recent public appearance he made on behalf of OGWA. He stated that himself and OGWA were both under attack by Dunn. He stated that a “young lady” was going to sue Dunn and MCH for a HIPAA violation. Coday also stated

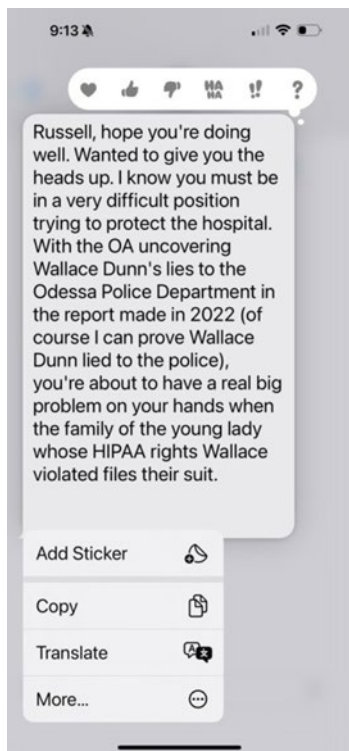


that the family of the young lady was “preparing to speak to an attorney,” and that Coday had “spoke to some attorneys who would like to represent the young lady and her family.”

62. In other words, Coday again falsely accused Dunn of committing a HIPAA violation. He also repeated a claim he had made nearly *two years* earlier (and which has yet to come true): that an unidentified woman intended to pursue HIPAA complaints against Dunn.

63. Shortly after posting this video, Coday removed it from Facebook. This indicates that Coday entertained serious doubts about the truth of the statements he made in the video – as he well should have been.

64. On July 16, 2024, Coday sent the following text message to MCH CEO, Russell Tippin, again claiming that Dunn had violated an unidentified “young lady’s” HIPAA rights:



65. Coday’s recent claims that Dunn violated HIPAA are as patently false as when he first made these claims in November 2022. Moreover, Coday knew from his experience with his own OCR Complaint that individuals may not pursue legal actions against other individuals under

HIPAA; the only entity that may take legal action for a HIPAA violation is the Office of Civil Rights.<sup>1</sup> In other words, Coday knew that there would be no forthcoming HIPAA “lawsuit” by any “young lady,” and he also knew that the sole OCR Complaint against Dunn (his own) had been closed nearly a year earlier and in no way supported the claim that Dunn “violated” HIPAA rights.

66. On August 23, 2024, Dunn, by way of counsel and pursuant to Texas Civil Practice and Remedies Code § 73.055, sent a written demand to Coday and OGWA to retract and correct their false statements accusing Dunn of having violated HIPAA laws, having been investigated for such misconduct, and having lied to his constituents. Around five minutes after this demand was emailed to Coday and OGWA, Coday responded on behalf of himself and OGWA as follows:

I will not be issuing a retraction. Wallace Dunn did violate a Medical Center Hospital patient’s HIPAA rights and disclosed confidential, identifying information. Furthermore, your client has a big problem on his hands. Wallace Dunn lied to the Odessa Police Department in a report made in November 2022. Get ready for court. 😏

Matt Coday  
President & Founder  
Oil & Gas Workers Association  
[mc@ogwaUSA.com](mailto:mc@ogwaUSA.com)  
432-250-4363 cell  
[ogwaUSA.com](http://ogwaUSA.com)

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## VI. COUNT I – DEFAMATION *PER SE*

67. Plaintiff incorporates by reference the prior paragraphs as if fully set forth herein.

68. Within the last one year, Coday published the following false and defamatory statements to third parties:

- “Dunn was under investigation for violating a Medical Center Hospital patient’s HIPAA rights” (May 12, 2024);

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<sup>1</sup>See, e.g., *Acara v. Banks*, 470 F.3d 569, 572 (5th Cir. 2006) (“We hold there is no private cause of action under HIPAA.”)

- Dunn “lied about never having been under investigation for violating a Medical Center Hospital patient’s HIPAA rights” (May 27, 2024); and

- Dunn violated HIPAA rights (July 16, 2024).

69. Within the last one year, Coday and OGWA together published the following false and defamatory statement to third parties:

- Dunn violated HIPAA rights (July 15, 2024).

70. The May 12, 2024, May 27, 2024, July 15, 2024, and July 16, 2024, statements (collectively, the “Statements”) are false. As discussed above, Dunn has never been under investigation for violating an MCH patient’s HIPAA rights – including in connection with Coday’s OCR Complaint. Dunn has never lied about being under investigation for violating an MCH patient’s HIPAA rights. Dunn has never been adjudicated or adjudged, by the Office of Civil Rights or by any other official body, to have violated HIPAA rights.

71. The Statements diminish Dunn’s reputation as a public servant and elected Hospital Board member. The Statements accuse Dunn of committing a crime, violating federal law, and violating the confidentiality of hospital patients, all of which is inconsistent with his profession, business and trade. The Statements have exposed Dunn to public hatred, contempt, ridicule, emotional distress, and financial injury, and impeach Dunn’s honesty, integrity, virtue, and reputation, especially in regard to his job on the Hospital Board. The Statements are harmful on their face and without any explanatory matter, such that general damages are presumed without a showing of actual damages.

72. Coday and OGWA published the Statements with actual malice. The Statements were made after Dunn resigned from OGWA’s Board and after Coday and OGWA expressed a desire to “slam” Dunn publicly, indicating a desire and willingness by Coday and OGWA to make

harmful accusations about Dunn regardless of the truth of the accusation. The Statements followed many other false and baseless accusations by Coday and OGWA about Dunn, including that he was a “liar,” a “fraud,” and convicted of domestic violence, among other false claims – none of which was true. Coday and OGWA’s statements were made with direct knowledge that Dunn had never been investigated for, much less found guilty of, violating any patient’s HIPAA rights, and with knowledge that the *only* OCR complaint ever lodged against Dunn was filed by Coday himself. Coday and OGWA represented that Dunn was “under investigation” after they knew that Coday’s OCR Complaint had been dismissed. Coday and OGWA carefully phrased their public accusation that Dunn violated HIPAA rights in a way that intentionally omitted key details, with the awareness that the omission would create a substantially false impression about Dunn in the minds of their readers. Coday and OGWA’s manipulative omissions were intended to lead readers to believe that a specific hospital patient(s) had complained about Dunn, and that Dunn had been investigated for, and found guilty of violating, federal HIPAA rights (none of which is true). On at least one occasion, Coday and OGWA removed their Statements from social media shortly after posting them, which suggests that Coday and OGWA entertained serious doubts about the truth of the statements. In short, Coday and OGWA knew their Statements were false, or acted with reckless disregard for the truth or falsity of the Statements when they were posted.

## **VII. DAMAGES**

73. As a result of Coday and OGWA’s false and defamatory claims, Dunn has suffered damage to his personal and professional reputational and mental anguish for which Dunn seeks damages within the jurisdictional limits of this Court. Further, exemplary damages are appropriate

because, as described above, Coday and OGWA acted with actual malice in making their defamatory statements about Dunn.

#### **VIII. JURY DEMAND**

74. Plaintiff demands a trial by jury.

#### **IX. RULE 47 STATEMENT**

75. Under *Texas Rule of Civil Procedure 47*, at this time, the total damages sought by Plaintiff are in excess of \$250,000.00 per defendant.

#### **X. REQUEST FOR DISCLOSURE**

76. Under Texas Rule of Civil Procedure 194, Plaintiff requests Defendants disclose within 30 days of service of this request, the information or material described in Rule 194.2 and amended Rule 195(2) regarding testifying experts.

#### **XI. PRAYER**

77. WHEREFORE PREMISES CONSIDERED, Plaintiff prays Defendants be cited to appear and answer and upon a final hearing, a Judgment be rendered for Plaintiff against Defendants, jointly and severally for actual damages and exemplary damages, all in an amount that exceeds **\$250,000.00 per defendant**, yet defers to an amount the jury deems reasonable under the circumstances; along with costs of court, prejudgment interest, post-judgment interest, and such other and further relief to which Plaintiff may be justly entitled.

Respectfully submitted,

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