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17 October 2016

Mr Richard Ottley
Level 1, 20 Hunter Street
SYDNEY NSW 2000
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By email: rbo@swaab.com.au

Dear Practitioner

The Medical Weightloss Institute, Mr Geoff Jowett and Dr Jacqueline Forrester

1. We refer to your open letter dated 21 September 2016 addressed to Dr Ken Harvey (**open letter**).
2. We are instructed to respond to the open letter on Dr Harvey's behalf.
3. In that letter you state that you hold instructions from GTC Medical Pty Limited trading as The Medical Weightloss Institute (**MWI**).
4. You have subsequently informed us that you also hold instructions from Mr Geoff Jowett (**Jowett**) and Dr Jacqueline Forrester (**Forrester**).

Australian Compounding Pharmacy

5. In the open letter you also refer to an entity you have described as "Australian Compounding Pharmacy". We fail to understand why you have done so, if you do not hold instructions from this entity.
6. In any event, we will only address the matters raised in the open letter insofar as they can conceivably bear upon the interests of MWI, Jowett or Forrester.

Flaws in the concerns notice

7. We take it that you intend the open letter to function as a concerns notice, for the purposes of section 14 of the *Defamation Act 2005* (NSW) (**the Act**).
8. On that assumption, the notice is flawed, in that it fails to particularise the imputations of concern adequately. This is because:
 - a. what you describe as imputations 1, 4, 8 and 11 are not imputations at all, because they do not identify any act or condition said to be asserted of or attributed to any of your clients: see eg *Monte v Mirror Newspapers Ltd* [1979] 2 NSWLR 663 at 678;

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- b. what you describe as imputations 5 and 7 are not defamatory; and
- c. what you describe as imputation 6 does not concern any of your clients.

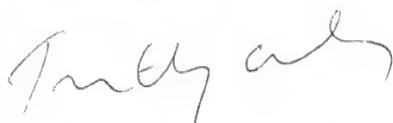
MWI appears to have no cause of action in defamation

9. By reference to material available on the website *LinkedIn*, it appears that MWI employed at least 10 employees at the times the articles were published. If this is so, MWI has no cause of action in defamation pursuant to section 9 of the Act.

Defences to allegations that Dr Harvey has defamed MWI, Jowett or Forrester

10. In any event, Dr Harvey published the articles referred to in the open letter in circumstances which, on our instructions, would attract the operation of complete defences such that none of MWI, Jowett or Forrester are entitled to compensation:
- a. All of the material Dr Harvey has published is true or substantially true (giving rise to the defence of justification at common law and of truth pursuant to section 25 of the Act).
 - b. A number of the statements made by Dr Harvey in the articles are expressions of Dr Harvey's honestly held opinions relating to matters of public interest based on proper material (giving rise to the defence of fair comment at common law and of honest opinion pursuant to section 31 of the Act). Examples include what you describe in the open letter as imputations 2, 3, 7, 9, 10, 11 and 12.
 - c. Qualified privilege attaches to the publication of the articles, because: (1) each recipient of the articles had an interest or apparent interest in receiving information on their subject matter (relevantly, the services provided by your clients); (2) the information was published to the recipients in the course of giving to them information on that subject; and (3) Dr Harvey's conduct in publishing the articles was reasonable in the circumstances (section 30 of the Act);
11. Further, we observe that MWI and Mr Jowett have been the subject of adverse media reports that have attracted much larger audiences than the articles your clients complain about in the open letter. Any loss your clients have suffered is inherently likely to have been caused by those reports, and not Dr Harvey's articles.
12. To the extent that the open letter refers to possible causes of action in injurious falsehood, it is, with respect, misconceived. On our instructions it is clear that Dr Harvey did not act maliciously in publishing the articles referred to in the open letter. Nor does Dr Harvey accept that the publication of the articles caused your clients to suffer any special damage.
13. We are instructed that Dr Ken Harvey will vigorously defend any proceeding commenced against him.

Yours faithfully



Tim Conboy
MAURICE BLACKBURN