

# Defamation: Patient Cannot Sue Over Nurse's Note In Chart About Malingering, Drug Seeking.

A patient sued an advanced practice registered nurse whom the patient was seeing for a medical condition for which the patient had filed a worker's compensation case.

The patient's defamation lawsuit objected to the nurse's notes in the patient's medical chart expressing the nurse's concern that the patient may have been malingering or seeking narcotics.

These statements, it was alleged, had caused other medical providers to refuse to see the patient.

### Court Finds No Basis For Defamation Lawsuit

The Supreme Court of Montana upheld the local county district court judge's decision to dismiss the patient's lawsuit.

The Court looked carefully at the legal definition of defamation. Defamation is the modern terminology which now embraces the older common law terms libel and slander.

Libel and slander are essentially the same thing. The only difference is that libel, for which the damages can be more substantial, pertains to statements in a written or pictorial medium, while slander pertains only to spoken communication.

The Court concluded that no libel or slander occurred here.

***Libel and slander are included within the legal definition of defamation.***

***Libel is false and unprivileged communication by writing, printing, picture, effigy or other fixed representation that exposes a person to hatred, contempt, ridicule or obloquy or causes a person to be shunned or avoided or has a tendency to injure a person in the person's occupation.***

***Slander is a false and unprivileged spoken communication that causes actual damage.***

***The nurse's statements were matters of opinion, not statements of fact.***

***The patient signed written consents for her medical chart to be shared with other medical providers, so the nurse's statements about her in the chart are privileged.***

SUPREME COURT OF MONTANA  
February 11, 2014

### Matters of Opinion Are Not Defamatory

To be defamatory, a written, pictorial or spoken communication must be false. Only a statement of fact can be false.

A matter of opinion cannot be true or false, so a statement of opinion, like the opinion that the patient was malingering or seeking narcotics, cannot be false, which is an essential element of a lawsuit for defamation which was missing in this case.

The Court went on to say that the nurse's statements of opinion were based on her own evaluations of the patient's medical condition, the patient's verbal statements and the patient's behavior that the nurse observed, but it was not those observations, matters of fact, that were the subject of the lawsuit, only the nurse's opinions, which could not be defamatory.

### Patient Signed Medical Releases

The nurse had seen to it that the patient signed individual medical releases before copies of her chart were turned over to about twenty other medical providers, some of whom then refused to treat her.

The fact the patient consented to release of information made the nurse's statements in her chart legally privileged, and that legal privilege negated another essential element of defamation, that the statement must be unprivileged.

The Court stopped short of making an award to the nurse from the patient on the basis that the patient was a vexatious litigant, but cautioned the patient she could be fined if she filed such a lawsuit again. **Chapman v. Maxwell, \_\_\_ P. 3d \_\_\_, 2014 WL 547890 (Mont., February 11, 2014).**

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