Circuit Court for Montgomery County
Case No. 483870V

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND**

No. 375

September Term, 2022

STEVEN S. BEHRAM, M.D.

v.

ADVENTIST HEALTH CARE, INC.

Berger,
Zic,
Moylan, Charles
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zic, J.

Filed: June 15, 2023

* This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

** At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

Disputes over medical peer review proceedings, clinical privileges, and staff membership led to a settlement agreement (the "Settlement Agreement") between obstetrician Steven S. Behram, M.D., appellant, and Adventist HealthCare, Inc., doing business as Shady Grove Medical Center ("SGMC"), appellee. Dr. Behram claims that SGMC thereafter made knowingly false reports about him, to the National Practitioner Data Bank ("NPDB"), which then published such professionally disparaging information to his employer and others with whom he had prospective business relations, and to the Maryland Board of Physicians ("MBP"), which licenses him to practice medicine. In addition, Dr. Behram alleges that before settling, SGMC violated its own bylaws governing the suspension of Dr. Behram's clinical privileges and made defamatory statements to the National Physician Health Program ("NPHP"), which provides evaluation and treatment services to physicians experiencing "issues that may potentially impact their ability to practice medicine."

In his Third Amended Complaint, Dr. Behram asserted claims for breach of the Settlement Agreement (Count One), defamation (Count Three), and breach of SGMC's bylaws (Count Four).[1] The Circuit Court for Montgomery County granted SGMC's motion for summary judgment on all three counts and alternatively granted SGMC's motion to dismiss the defamation and breach of bylaws counts.

[1] When Dr. Behram amended his Second Amended Complaint to delete his Count Two claim for "injurious falsehood," he revised but did not renumber the three remaining counts.

In this timely appeal, Dr. Behram challenges the resulting judgment, raising questions that we consolidate and restate as follows:[2]

I. Did the motions court err in granting summary judgment on Count One of the Third Amended Complaint for breach of the Settlement Agreement?

II. Did the motions court err in granting summary judgment on Count Three for defamation, or in alternatively dismissing that count for failure to state a claim upon which relief can be granted?

III. Did the motions court err in granting summary judgment on Count Four for breach of SGMC's bylaws governing suspension of clinical privileges, or in alternatively dismissing that count for failure to state a claim upon which relief can be granted?

We conclude that the motions court erred in granting judgment on two of Dr. Behram's three counts. On his claim for breach of the Settlement Agreement, the court

[2] In his brief, Dr. Behram presents the following questions:

1. Whether the Settlement Agreement, that prescribed *what* was to be reported to the National Practitioner Data Bank, but did not specify how it was to be reported, could be breached by [SGMC's] selection of reporting codes antithetical to what it promised to report in the Settlement Agreement.

2. Whether a complaint for defamation, that alleges that [Dr. Behram] was harmed by [SGMC's] statements, and shows that they were defamatory *per se*, states a claim on which relief can be granted.

3. Whether a complaint for breach of contract, that identifies and attaches a copy of the contract between the parties, and describes the facts and circumstances of its breach and the damages suffered as a result, states a claim on which relief can be granted.

4. Whether a Settlement Agreement, that expressly releases claims related to three specific events, clearly and unambiguously releases claims related to other, unspecified events, such that other evidence that the parties did not intend to release claims related to the other events cannot be considered.

erred in ruling as a matter of law that when submitting post-settlement reports to the NPDB and MBP, SGMC had no duty to refrain from using reporting codes describing its suspension of Dr. Behram's clinical privileges and his resignation of those privileges following reinstatement, in disparaging language that materially differed from the negotiated language set forth in the Settlement Agreement. On Dr. Behram's defamation claim, we conclude that because SGMC's post-settlement reports to the NPDB and the MBP were defamatory per se, the motions court erred in granting judgment on the ground that Dr. Behram failed to adequately plead and proffer proof that he suffered injury. But we also hold that the court did not err in determining that he released any claim he had based on SGMC's pre-settlement statements to the MPHP or SGMC's violations of its SGMC bylaws. Consequently, we will vacate the judgment and remand for further proceedings on the disputed issues in Count One for breach of the Settlement Agreement and Count Three for defamation.

BACKGROUND

Because we are reviewing the grant of motions for summary judgment and dismissal, we summarize the pleadings and proffered evidence in the light most favorable to Dr. Behram, as the party opposing judgment. *See Gambrill v. Bd. of Educ. of Dorchester Cnty.*, 481 Md. 274, 297 (2022); *Davis v. Frostburg Facility Operations, LLC*, 457 Md. 275, 284 (2018).

According to Dr. Behram, "[t]his case arises from the weaponization of the peer review process by those in control of the OBGYN Department at . . . [SGMC] – not to protect patient health and safety, but to rid themselves of a competitor and a critic." In

SGMC's view, however, Dr. Behram's claims are without merit and otherwise barred because they "relate to a fully integrated Confidential Agreement, Release and Waiver . . . intended to finally resolve all issues related to the suspensions of Dr. Behram's SGMC medical staff privileges and resulting peer review investigations in 2019 and 2020." After reviewing the parties' history, claims, pleadings, and arguments, we will examine the challenged rulings and rationale.

Dr. Behram's Background

According to his Third Amended Complaint, Dr. Behram is board-certified in obstetrics and gynecology, practicing with his wife in serving "high-risk OBGYN patients in Rockville and surrounding areas." Among his qualifications are numerous teaching positions, chairing an OBGYN peer review committee at Montgomery General Hospital, and serving on the board and as "Regional Specialty Medical Director for Privia Medical Group (Privia), a multi-specialty group comprised of more than 1,400 healthcare providers."

Dr. Behram avers that he began his career "as an associate in the practice of Judith Gurdian, M.D.[,]" but left the following year to form his own practice, after a dispute over their business relationship. He alleges that Dr. Gurdian thereafter "acted out of personal pique and animus toward [him] and has leveraged her leadership position at SGMC to interfere with [his] medical practice with the intent to harm his reputation both at the Hospital and in the community at large." According to Dr. Behram, Dr. Gurdian and her employer, Capital Women's Care, LLC ("CWC"), are "in direct competition

with" him and his employer, Privia, so that she personally and professionally benefits from disparaging him.

Disputes Over Medical Peer Review and Clinical Privileges

Dr. Behram alleges that Dr. Gurdian's "animus" became consequential when she "used her position in CWC and its dominance of the OBGYN Department at SGMC to obtain positions of authority at SGMC, which she could leverage to harass and injure" him. "Beginning in the Fall of 2011, [Dr. Behram] began to receive meritless administrative challenges to the quality of his care." "On information and belief," he alleges that efforts by Dr. Gurdian and "other physicians acting under her malign influence resulted in approximately [10] of [Dr. Behram's] cases being submitted to the OBGYN Peer Review process at SGMC that Dr. Gurdian and CWC controlled."

During peer review proceedings allegedly "controlled by physicians with competing business interests and of different specialties unfamiliar with the standard of care[,]" Dr. Behram contends that SGMC "ignor[ed] or blam[ed]" him "for the problematic conduct of other physicians or hospital staff for whom CWC and/or SGMC would be vicariously liable[,]" and otherwise subjected his

> cases to a deeply flawed process lacking in fundamental due process, in which conflicted reviewers who should have but failed to recuse themselves made little or no effort to obtain the actual facts of the matter, struggled to find fault, and cast anonymous votes lacking in accountability so they could reach predetermined conclusions and impose anti-competitive sanctions against practitioners who competed with them or criticized their kangaroo process, all in an effort to stifle competition and criticism rather than promote patient care, in violation of the express and implied terms of [SGMC's]

> Bylaws, Rules and Regulations, and the Policy Manual incorporated within it.

According to Dr. Behram, Dr. Gurdian, while "being recused in name only," failed in her efforts to generate adverse action against him based on reviews of two patients she selected for case review. She nevertheless continued "to engineer some adverse action," by "illegally access[ing] confidential health information of [Dr. Behram's] patients[,]" secretly submitting additional cases to the OBGYN Peer Review process, contributing "false and misleading descriptions" that "did not include [his] explanation and defense of why he did what he did in each case[,]" and "lobb[ying] the formal reviewers to reach her predetermined result."

As a result of these efforts, Dr. Behram's Medical Staff membership and clinical privileges at SGMC were suspended twice in 2019. In May 2019, he received notice "that six of his cases were being sent for 'external peer review.'" On July 17, 2019, SGMC notified him that his staff membership and clinical privileges had been suspended "because of 'significant concerns about the quality' of [his] care of patients at SGMC, 'which [were] deemed to represent an immediate risk of harm or an immediate or imminent risk of danger to patients.'" Although the notice "also alleged that '[o]ther situations are under further examination at this time[,]'" the only case cited as grounds for this action involved a septic patient whose "hospital-acquired infection did not reveal itself until after [Dr. Behram's] role in the delivery ended[.]" According to Dr. Behram, "he was not involved again in the patient's care until post-partum day 3, at which time he performed a life-saving procedure." Once SGMC's "misinformation" and failure to

investigate that course of care became apparent, Dr. Behram alleges, "SGMC rescinded the suspension days later[.]"

Next, SGMC reviewed a case in which the patient's caesarian section was delayed. Dr. Behram alleged that delay was the direct and sole result of SGMC breaching its own duty of care to have an operating room and anesthesiologist available. Pointing to "[t]he unfairness, bias and conflict of interest inherent in SGMC using its peer review process to try to shift its own culpability for the delay to" him, Dr. Behram alleges that "the result of the investigation was predetermined[.]" Adding to the irregularities he alleges tainted the review and violated his due process rights under SGMC's "Bylaws, Rules and Regulations" (the "Bylaws"), was the receipt of testimony by "a provider with a financial interest in the outcome of the investigation, who was permitted to testify outside of [his] presence and without cross-examination, and who was also permitted to vote on the matter[,] including on the merit of her own testimony."

On September 26, 2019, SGMC "again summarily suspended" Dr. Behram's privileges. Around the same time, Dr. Behram alleges that Dr. Nancy Markus, a former business partner of Dr. Gurdian, "contrived a frivolous referral of [him] to Maryland Physician Health Program (MPHP), . . . with the intent of humiliating and further defaming" him. Although MPHP closed that investigation in January 2020, finding that "there was no basis whatsoever for action or further recommendation[,]" Dr. Behram claims that Dr. Markus then wrote him a letter "disingenuously stating that he had '. . . successfully completed the program,' *despite the fact that he was never recommended to attend or be treated in a program*."

Dr. Behram alleges that he refused SGMC's pressure "to voluntarily resign his privileges and leave SGMC while under investigation." On November 7, 2019, he demanded the "fair hearing" he was contractually entitled to within 60 days under the Bylaws. After improperly delaying for months, SGMC "finally scheduled the Fair Hearing for September 14-16, 2020," as a remote hearing that could and should have been conducted within the 60-day deadline.

As a result of that delay, Dr. Behram alleges that the "baseless allegation" against him regarding the delayed caesarian case "continued to besmirch his stellar reputation and cripple his practice" long after the January hearing deadline. Instead of "a suspension that should have lasted just enough time for [SGMC] to realize that the basis for the second suspension, like the basis for the first suspension, was without merit – *i.e.*, less than thirty days[,]" Dr. Behram's second suspension "lasted for almost a year."

The Settlement Agreement

Ultimately, Dr. Behram alleges, he "was never afforded the Fair Hearing" because "[d]ays before" the scheduled date, SGMC "dropped its accusations against him; agreed to restore [his] clinical privileges in full; and further agreed to release, discharge and waive any and all liabilities whatsoever, including any disclosed or undisclosed allegations relating to patient care, that it ever had against him." "In return, [he] agreed that only *after* [SGMC] waived all of its meritless claims against him, and only *after* his clinical privileges were restored in full, he would voluntarily resign from the Medical Staff at SGMC and continue his practice elsewhere" because "the toxic atmosphere

SGMC created by its baseless allegations . . . made it clear that he could not continue to practice there."

That Settlement Agreement is attached to the Third Amended Complaint. Pertinent to this appeal are the following provisions and highlighted language:

> **WHEREAS,** the Physician's privileges were summarily suspended on September 26, 2019; and
>
> **WHEREAS,** the Physician is entitled to a fair hearing under the Medical Staff Bylaws; and
>
> **WHEREAS,** the Medical Staff's Executive Committee has agreed to resolve the matter by voting to reinstate the Physician before the Physician exercised his rights to a fair hearing under the Medical Staff Bylaws; and
>
> **WHEREAS,** the Physician has determined to continue his medical practice elsewhere and wishes to resign his clinical privileges and Medical Staff membership at the Hospital.
>
> **NOW THEREFORE,** the parties agree as follows:
>
> **1. Effective Date.** This Agreement shall become effective on full execution by the Parties (the "Effective Date").
>
> **2. Undertakings by the Parties**. *In consideration of the release and waiver set forth in Section 3 herein and the undertakings contained in this Agreement, the Parties agree to the following:*
>
> **a**. **Reinstatement of Privileges**. Upon execution of this Agreement by both parties, the Medical Executive Committee will convene to reinstate Physician's clinical privileges at the Hospital. . . .
>
> **b. Resignation Letter.** Immediately after the Physician's clinical privileges are reinstated . . . , the Physician will be deemed to have submitted the [resignation] letter attached to this Agreement as Exhibit 1, to resign . . . .

* * *

e. <u>NPDB Entry</u>. *The Hospital will submit the report attached hereto as Exhibit 3, to the National Practitioner Data Bank by no later than 15 days after the Effective Date of this Agreement. The Hospital will provide this same language to the Maryland Board of Physicians at the same time. . . .*

* * *

3. <u>Release and Waiver by Physician</u>. *In consideration of the execution and delivery of this Agreement, the undertakings provided for herein, . . . Physician . . . fully, finally and unconditionally releases and forever discharges Adventist HealthCare, Inc.* (including all members of its Medical Staff, committees, employees, contractors, departments, divisions, affiliates, programs, subsidiaries, . . . officers, directors, deans, chairpersons, program directors[)] *. . . from and waives any and all past, or present claims,* demands, actions, causes of action, complaints, lawsuits, compensation, agreements, damages, judgments, appeals, attorney's fees, grievances, costs, debts, liens, obligations, promises, and liabilities whatsoever, of any kind, nature or amount, whether in law or equity, liquidated or unliquidated, *which Physician had or now has against such persons which arose or occurred from the beginning of time up to and including the date on which the Hospital signs this Agreement that relates to the Hospital's July 17, 2019 suspension and subsequent reinstatement of the Physician's privileges on August 13, 2019, and, the Hospital's suspension of the Physician's privileges on September 26, 2019*.

4. <u>Release and Waiver by the Hospital.</u> *In consideration of the execution and delivery of this Agreement, the undertakings provided for herein, . . . none of which is required by any law or any policy of the Hospital, . . . hereby fully, finally and unconditionally releases and forever discharges Physician from and waives any and all past or present claims*, demands, actions, causes of action, complaints, lawsuits, compensation, agreements, damages, judgments, appeals, attorney's fees, grievances, costs, debts, liens, obligations, promises, and liabilities whatsoever, of any

kind, nature or amount, whether in law or equity, whether liquidated or unliquidated, which Adventist HealthCare, Inc. had or now has against Physician which arose or occurred *from the beginning of time up to and including the date on which the Hospital signs this Agreement that relates to the Hospital's July 17, 2019 suspension and subsequent reinstatement of the Physician's privileges on August 13, 2019, the Hospital's suspension of the Physician's privileges on September 26, 2019, and any disclosed or undisclosed allegations relating to patient care including, but not limited to, "RL" incident reports*[3] *or any other similar reports or allegations against the Physician. . . .*

* * *

7. <u>Complete Agreement</u>. *This Agreement constitutes the full and complete understanding between the Parties, and except as provided herein, cancels and supersedes any prior understanding or agreement* . . . . Physician is not relying on any representation by or on behalf of the Hospital, except as expressly set forth in this Agreement . . . .

* * *

11. <u>Non-Admission</u>. *Neither this Agreement nor the undertaking, negotiating nor execution of this Agreement shall constitute or operate as or be asserted as an acknowledgement or admission of any kind that Physician departed from accepted standards of care/practice . . . . This Agreement is the compromise of disputed claims,* and the terms of settlement contained herein and the releases executed are not intended to be and shall not be construed as admissions of any liability or responsibility whatsoever, and *each released Party expressly denies any liability or responsibility whatsoever. The Hospital expressly denies that it has any liability to the Physician for any matter, and*

[3] According to Adventist HealthCare, "RL Solutions is an online incident reporting program for [] staff and physicians, and is used to report any adverse occurrence, near-miss, or patient safety risk." *Medical Staff and Allied Health Professional/Advanced Practitioner Orientation,* ADVENTIST HEALTHCARE, https://www.adventisthealthcare.com/app/files/public/61dd086e-3289-4f1b-ba72-9566bef7c62a/AHC-Orientation.pdf (last visited May 9, 2023).

> *Physician denies that the Hospital had cause to suspend his clinical privileges on July 17, 2019 or September 26, 2019 . . . .*
>
> * * *
>
> **15. <u>Advice of Attorney</u>.** Physician has been advised to consult with an attorney prior to executing this Agreement. The Parties acknowledge that they each have had ample time to consult with an attorney in connection with this Agreement if they chose to do so. . . .

(Emphasis added.)

In addition to exhibits specifying the language in Dr. Behram's resignation letter and the language to be used in any reference letter from SGMC, the Settlement Agreement also incorporates Exhibit 3 governing reports to both the MBP, which licenses physicians, and the NPDB, which "is a database operated by the United States Department of Health and Human Services containing information on malpractice actions and other adverse actions against healthcare professionals" that is "visible to certain members of the public, including hospitals and state licensing boards and their representatives, and is the basis for important decisions about a provider's credentials, including clinical privileges and licensing actions." According to Dr. Behram, "[a]dverse actions reported to the NPDB can have severe deleterious effects on a physician's ability to obtain hospital privileges, and can be devastating to an OBGYN practice like [his], which is particularly dependent on hospital privileges." Exhibit 3 of "the Settlement Agreement set[s] forth the exact language" to be used in SGMC's reports to the NPDB and the MBP, as follows:

> Dr. Steve Behram's clinical privileges were *summarily suspended on September 26, 2019 for concerns regarding the quality of his patient care*. The Medical Executive Committee voted on September 14, 2020 to approve his reappointment and *reinstate his clinical privileges* as full and unrestricted privileges. *Thereafter, Dr. Behram voluntarily resigned* his clinical privileges and medical staff membership at the Hospital.

(Emphasis added.)

After his privileges and membership were fully reinstated, Dr. Behram signed the Settlement Agreement on September 16, 2020. SGMC signed it on September 21, 2020.

Post-Settlement Reports to the NPDB

On September 17, 2020, nearly a year after Dr. Behram's second suspension, and one day after Dr. Behram signed the Settlement Agreement, SGMC filed its first NPDB report (the "First Report") regarding those events. Using NPDB's standardized format, SGMC selected codes describing both the "CLINICAL PRIVILEGES ACTION" it took on September 26, 2019, and the reinstatement and resignation that occurred a year later, in September 2020.

Under the section for "Initial Action[,]" SGMC selected the following from among NPDB's lengthy list of pre-formatted codes:

- SUMMARY OR EMERGENCY SUSPENSION OF CLINICAL PRIVILEGES
- VOLUNTARY SURRENDER OF CLINICAL PRIVILEGE(S), WHILE UNDER, OR TO AVOID, INVESTIGATION RELATING TO PROFESSIONAL COMPETENCE OR CONDUCT

As the "Basis for Initial Action[,]" SGMC selected the following two codes:

- IMMEDIATE THREAT TO HEALTH OR SAFETY

- SUBSTANDARD OR INADEQUATE CARE

In its "Description of Subject's Act(s) or Other Reasons for Action(s) Taken and Description of Action(s) Taken by Reporting Entity[,]" SGMC used the exact language prescribed in Exhibit 3 of the Settlement Agreement, then added the following sentence: "The Professional Affairs Sub-Committee of the Board approved the reinstatement and resignation on September 30, 2020 with a retroactive date of September 16, 2020."

According to Dr. Behram, in addition to publishing this false and "non-conforming First Report" to the NPDB, SGMC also sent it to "the Maryland Board of Physicians, thus casting [him] in a false light before the very entity that controls his license to practice medicine." Rather than limiting itself to the negotiated language in Exhibit 3 of the Settlement Agreement, Dr. Behram alleges that SGMC made the following "knowingly false" statements in that First Report:

> - that the "initial action" against him involved "summary or emergency suspension of clinical privileges," followed by his "voluntary surrender" of those privileges "while under, or to avoid, investigation relating to professional competence or conduct";
>
> - that the basis for the reported action was Dr. Behram's "substandard or inadequate care" that created an "immediate threat to health or safety"; and
>
> - that Dr. Behram "admitted that the suspension was based on an 'immediate threat to health and safety' and that he had 'voluntarily' surrendered his clinical privileges 'while under, or to avoid, investigation relating to professional competence or conduct.'"

Upon learning of this report, Dr. Behram immediately objected that it violated the Settlement Agreement, prompting negotiations and amendments that resulted in SGMC

filing three additional NPDB reports. In emails attached to the Third Amended Complaint, Robert S. Morter, Esq., counsel for Dr. Behram, asked counsel for SGMC at that time to rescind and revise the report, by instead describing its "Subsequent Action" as "CLINICAL PRIVILEGES RESTORED OR REINSTATED, COMPLETE – MODIFICATION OF PREVIOUS ACTION[,]" and the "Basis for Initial Action" as "SUBSTANDARD OR INADEQUATE CARE[.]"

In response, Dr. Behram avers, SGMC "filed an equally false and misleading Second Report" on October 14, 2020, which "fixed none of the problems with the First Report" because it merely removed the sentence about "retroactive approval[,]" which "was of minor concern compared to the major misrepresentations and knowingly false statements in the First Report." Mr. Morter again objected that "the codes chosen" by SGMC to describe the reason for its summary suspension "are not correct, nor do they reflect the clear terms of the settlement agreement" because "[i]t is indisputable that [he] did not resign under investigation," so that "representing" otherwise to the NPDB "is, in addition to a clear breach of the settlement agreement, fraudulent and defamatory."

"For more than two months, from the time the First Report was filed on September 17, 2020 until November 18, 2020," Dr. Behram claims that "anyone with access to NPDB reporting was privy to the false and misleading misrepresentations" in SGMC's First and Second Reports. "On information and belief," he avers that these include "a number of entities with which [he] has or would want to have business relationships, and their employees." Among the identified recipients of those disputed reports were "Privia Medical Group LLC," Dr. Behram's employer, and "MedStar Montgomery Medical

Center, University of Maryland Medical Systems Health Plans Inc., and Innovations Surgery Center."

Despite Mr. Morter "implor[ing]" SGMC "to correct its false and misleading reporting," it took weeks before SGMC filed "two new reports" to replace the First and Second Reports. The Third Report, filed on November 17, 2020, deleted the disputed reporting codes stating that the suspension of Dr. Behram's clinical privileges on September 26, 2019, was an "EMERGENCY" to "AVOID" an "IMMEDIATE THREAT TO HEALTH AND SAFETY" and that the doctor "VOLUNTAR[IL]Y SURRENDERED" his clinical privileges while under "INVESTIGATION RELATING TO PROFESSIONAL COMPETENCE OR CONDUCT[,]" instead simply stating that his initial "SUSPENSION OF CLINICAL PRIVILEGES" was based on "SUBSTANDARD OR INADEQUATE CARE." In a separate Fourth Report, filed the following day, SGMC submitted a "REVISION TO TITLE IV CLINICAL PRIVILEGES ACTION[,]" identifying as a "Subsequent Action" on September 16, 2020, that Dr. Behram's "CLINICAL PRIVILEGES RESTORED OR REINSTATED, COMPLETE[.]" This revision retains as the "Basis for Initial Action" the code for "SUBSTANDARD OR INADEQUATE CARE[.]"

Dr. Behram's Complaints

Meanwhile, on October 26, 2020, while these NPDB reports were still in dispute, Dr. Behram filed suit against SGMC, asserting four counts: breach of the Settlement Agreement, "injurious falsehood," defamation, and "delay in reinstatement." On December 7, 2020, after SGMC filed the Third and Fourth Reports, Dr. Behram amended

his complaint. After moving to compel discovery, including SGMC's correspondence with the NPDB and NPHP,[4] Dr. Behram filed a Second Amended Complaint on December 7, 2021.

SGMC moved to dismiss the Second Amended Complaint. At the conclusion of a February 22, 2022, hearing, the circuit court denied the motion as to breach of contract and granted the motion as to "injurious falsehood," defamation, and "delay in reinstatement," with leave to amend the dismissed counts. Because the court's rationale is pertinent to its ruling on the ensuing motion under review in this appeal, we summarize the basis for that dismissal:

- On the Count One claim for breach of the Settlement Agreement, the motions court, noting "there may be something that might support a summary judgment argument[,]" ruled that Dr. Behram stated a claim upon which relief could be granted because the revised complaint alleged that SGMC "was required to submit a report to MPDB conforming with the provisions set forth in the settlement and using the exact language therein."

- On the Count Two claim for "injurious falsehood" and Count Three claim for defamation, the court ruled that Dr. Behram's "vague allegations" lacked sufficient information about "what was . . . published to the MPDB" and "to the public" to put SGMC "on notice about what specifically the defamatory statements are and to whom they were published." After distinguishing claims for injurious falsehood as typically

[4] On October 25, 2021, Dr. Behram moved to compel supplemental discovery responses from SGMC. In response, SGMC filed opposition and a motion for a protective order. Thereafter, Dr. Behram amended his complaint, and SGMC filed the motion to dismiss or for summary judgment at issue in this appeal. In March 2022, the circuit court, citing that pending motion and the upcoming hearing on it, denied the discovery motion "without prejudice to [Dr. Behram] filing a new motion to compel and [SGMC] filing a new motion for protective order, in the event the defamation claim survives the pending motion to dismiss or for summary judgment."

> arising from clouds on title to real property, the court granted leave to amend both counts "to include specific statements that are the allegedly defamatory statements and also to define in some form who the public is to whom these statements were allegedly made" because "[w]e just don't know who received these defamatory statements, and that also related to what harm the plaintiff has allegedly suffered[.]"
>
> - On the Count Four claim, identified at that time as "delay in reinstatement," the motions court ruled that "there's no such claim under Maryland law[,]" but granted leave to amend "to allege with certainty and definiteness facts showing a contractual obligation the defendant owes to the plaintiff and what the breach was."

On March 1, 2022, Dr. Behram filed his Third Amended Complaint, along with a redlined version showing changes. This complaint deleted the previous Count Two for injurious falsehood and amended his other claims to address the pleading deficiencies identified by the circuit court. Dr. Behram reasserted claims for breach of the Settlement Agreement (Count One), defamatory disparagement of his "skill and competence as an OBGYN and the quality of his professional practice" (Count Three), and breach of SGMC's contractual obligation to provide him a hearing and due process in accordance with its Bylaws (Count Four). Dr. Behram alleged that SGMC's "delay in correcting its knowingly false statements to the NPDB, and its failures to comply with its obligations under the Settlement Agreement and Bylaws caused, and continue to cause, significant injury to [him], including but not limited [to] delaying his ability to obtain clinical privileges elsewhere," to his financial detriment, and by otherwise damaging his "reputation and professional goodwill[.]"

He acknowledged that "[t]he Settlement Agreement contained a release of certain claims that [he] had against" SGMC, but affirmatively denied releasing "claims related to . . . [the] second reinstatement of [his] privileges almost a year after its second suspension of those privileges." Because reinstating his "privileges after suspending them was a separate credentialing decision, [which] occurred almost a year after the credentialing decision to suspend them[,]" he alleged that the Settlement Agreement did not encompass a "release of claims arising under [SGMC's] Bylaws, Rules and Regulations related to [its] unconscionable, bad faith delay in reinstating [his] privileges after the second suspension." As parol evidence supporting that interpretation, the doctor attached correspondence and earlier drafts of the Settlement Agreement showing rejected provisions.

SGMC's Motion to Dismiss and in the Alternative for Summary Judgment

On March 16, 2022, SGMC moved to dismiss the Third Amended Complaint, or in the alternative for summary judgment. In support, SGMC asserted immunity from civil liability under the federal Health Care Quality Improvement Act.[5] Citing the

[5] 42 U.S.C. § 11133 through § 11137 governs confidential reports regarding suspension of clinical privileges for more than 30 days and "surrender of clinical privileges . . . while the physician is under an investigation by the entity relating to possible incompetence or improper professional conduct, or . . . in return for not conducting such an investigation or proceeding[.]" Under 42 U.S.C. § 11137(c), "[n]o person or entity . . . shall be held liable in any civil action with respect to any report made under this subchapter . . . without knowledge of the falsity of the information contained in the report."

undisputed language and terms of its "fully integrated" Settlement Agreement with Dr. Behram, SGMC further contended that all of Dr. Behram's claims "are factually unsupported and/or were released by [him] through the Settlement Agreement." According to SGMC, Count Three for defamation fails because the NPDB reports were a mandatory part of the peer review process that were "permitted by [its] Bylaws[,]" contemplated by the Settlement Agreement, "not[] defamatory *per se*[,]" and released under the Settlement Agreement.

Dr. Behram's Opposition to the Motion

Dr. Behram filed written opposition to the motion, an itemized statement of material facts in dispute, and supporting affidavits from both Dr. Behram and his attorney, accompanied by exhibits showing "redlined" versions of the Settlement Agreement and correspondence between counsel regarding the disputed suspension, hearing, and NPDB reports.

In his opposition memorandum, Dr. Behram argued that the motion fails "[a]s to Counts One and Three . . . because it is premised on an assertion of 'immunity' that was waived," not timely pleaded, and otherwise "does not exist on the facts of this case" because "the reports were made with actual knowledge of their falsity[.]" To the extent Counts Three for defamation and Four for breach of the Bylaws allege "statements made to third parties to whom they were disseminated by the NPDB[,]" all statements made after the Settlement Agreement was executed are not covered by the release. "[T]o the extent that there is any perceived ambiguity in the express terms of the Settlement

Agreement," Dr. Behram asserted that he "need[ed] document and deposition discovery to obtain other evidence, including parol, that would shed light on the parties' intentions."

In his 16-page affidavit, Dr. Behram explained that both his Count One claim for "breach of our Settlement Agreement" and his Count Three claim for defamation are predicated on SGMC's "statements regarding [his] fitness to practice medicine that [SGMC] must have made to the [MPHP] to justify the referral and trigger an evaluation of [his] fitness to practice medicine" and also "on the separate false and defamatory statements that [SGMC] made to others, when the false and defamatory reports [SGMC] made to the NPDB were distributed to others." His amended Count Four claim for breach of contract "is based on [SGMC's] failure to provide . . . a Fair Hearing" to "clear [his] name, in violation of the [SGMC] Bylaws[.]"

Dr. Behram averred that the Third Amended Complaint "accurately describes the dispute [he] had with those in control of the Medical Staff at SGMC, regarding the continuing efforts of some to drive [him] from the practice of medicine there, for reasons unrelated to patient care." According to the doctor, "[b]ecause [he] was fully aware of the potential impact of reporting to the NPDB on [his] ability to secure privileges elsewhere," given the "severe deleterious effects" that such "adverse actions . . . can have . . . on a physician's ability to obtain hospital privileges" generally, and the potentially "devastating" impact on "an OBGYN practice like" his specifically, he and Mr. Morter "worked with SGMC's counsel to carefully craft the language of the Settlement Agreement to provide for exactly what [SGMC] would report to the NDPB concerning [his] suspension, reinstatement and departure." "By describing and delimiting what

SGMC could report to the NPDB, to the generalized and comparatively neutral language of 'concerns regarding the quality of patient care,' and by shutting-down any other inquiries or investigations into [his] patient care and reinstating [him] to full and unrestricted privileges *before* [he] resigned," Dr. Behram viewed the Settlement Agreement as

> assurance that SGMC would not report [his] suspension and reinstatement in other, highly charged and defamatory language, such as that used at the time of the suspension and before a Fair Hearing at which [he] could show it was false, that [he] presented "an immediate threat to patient health and safety." It also provided assurance that SGMC could not report that [he] had resigned "while under or to avoid investigation," because it agreed to terminate any such investigation and reinstate [him] to full and unrestricted privileges *before* [his] resignation."

According to Dr. Behram, after SGMC filed its First Report on September 17, 2020, "incorporat[ing] the fact of the suspension into the report of [his] reinstatement a year later[,]" the NDPB notified him "in early October" that "a report had . . . been filed by SGMC." When he "logged into the NPDB website to review" that report, he learned that SGMC "had filed a single report" stating both that his "privileges had been suspended because [he] presented an 'immediate threat to [patient] health and safety,' and that [he] had 'voluntarily surrendered [his] privileges while under, or to avoid investigation relating to professional competence or conduct.'" According to Dr. Behram, "those assertions were not only false and misleading, but flatly prohibited by the terms and tenor of the Settlement Agreement."

Although his counsel "demanded" rescission, SGMC "then filed an equally false and misleading Second Report on October 14, 2020[,]" which "fixed none of the problems with the First Report" and remained on file even after Mr. Morter "repeatedly" explained how to correct the misstatements by "separat[ing] the two events" of suspension and resignation into two separate reports. SGMC finally did so on November 17, 2020, reporting that Dr. Behram's suspension was "due to 'substandard or inadequate care,' which was close enough to the agreed language, 'concern regarding the quality of patient care,' to be acceptable[,]" while "delet[ing] the false assertion that [he] presented an 'immediate risk to patient health or safety.'" When SGMC filed the Fourth Report the next day, it finally "deleted the assertion that [he] had voluntarily resigned 'while under, or to avoid, investigation relating to professional competence or conduct.'"

During the two months that the First and Second Reports remained on file in the NPDB, Dr. Behram averred that "anyone with access to NPDB reporting was privy to the false and misleading misrepresentations[.]" He was "aware that reports that are on file on a physician, are automatically distributed to anyone with access to the NPDB, such as hospitals, other medical institutions and licensing agencies who have queried the NPDB about that physician in the prior months." According to Dr. Behram, "a number of entities" with whom he had or "would want to have business relationships, and their employees, obtained or were provided with [SGMC's] knowingly false and misleading reporting." Although he did not "know all of the entities and all of their employees to whom [SGMC's] knowingly false and misleading reports were published," he did "know that they include [his] employer, Privia Medical Group, LLC; MedStar Montgomery

Medical Center; University of Maryland Medical Systems Health Plans Inc.; and Innovations Surgery Center." Furthermore, as a result of SGMC's "delay in correcting its knowingly false statements to the NPDB, . . . its failures to comply with its obligations under the Settlement Agreement caused, and continue to cause, significant injury[,]" including "delaying [his] ability to obtain clinical privileges elsewhere[.]"

In a separate affidavit identifying defenses that were not yet available, pursuant to Maryland Rule 2-501(d),[6] Dr. Behram asserted that the case was not ripe for either summary judgment or dismissal because SGMC had "failed and refused to" provide discovery, including deposition dates. In support, Dr. Behram asserted that SGMC had refused to produce all the documents that it "provided to or obtained from the Maryland Physician Health Program relating to" its referral. Despite missing those documents, the doctor did have NPHP's January 2020 letter notifying SGMC that it had completed and closed its investigation, stating:

> After interviewing Dr. Behram at length and reviewing all available information, our full clinical team including our medical director, who is a board-certified psychiatrist, as well as our full Physician Health Committee, found no evidence of any potential underlying conditions that could impact his

[6] The Maryland rules permit opposition predicated on a need for additional discovery:

> **(d) Affidavit of Defense Not Available.** If the court is satisfied from the affidavit of a party opposing a motion for summary judgment that the facts essential to justify the opposition cannot be set forth for reasons stated in the affidavit, the court may deny the motion or may order a continuance to permit affidavits to be obtained or discovery to be conducted or may enter any other order that justice requires.

> ability to practice medicine in a safe, competent and professional manner.

In his affidavit, Mr. Morter explained that the first suspension on July 17, 2019, was quickly resolved by reinstatement "when it became apparent that SGMC had accused [the doctor] of failing to promptly diagnose an infection in a patient who was not under his care at the time the infection occurred." According to Mr. Morter, the second suspension on September 26, 2019, was predicated on an "accusation . . . that Dr. Behram had failed to timely request a caesarian section for a patient during delivery at SGMC." The doctor's "defense to the charge was that he had in fact called for the caesarian section, but SGMC was not able to provide an anesthesiologist and operating room to perform it for a substantial period of time, so that the procedure was delayed . . . because of SGMC's failure to provide the necessary staff and room to conduct it." After Dr. Behram requested the Fair Hearing he was entitled to under the SGMC Bylaws on November 17, 2019, he remained suspended pending that hearing. SGMC failed to schedule that hearing within the 60 day period required under the Bylaws, then refused to schedule one "because of the alleged difficulty in gathering participants in a room during the pandemic." On August 12, 2020, SGMC scheduled a remote hearing for September 14-16, 2020, without explaining why it could not have done so earlier. Meanwhile, "[w]henever counsel for SGMC suggested that Dr. Behram resign before the Fair Hearing," Mr. Morter responded that he "would never resign under investigation, and instead would insist on the Fair Hearing . . . to clear his name."

When counsel for SGMC then "offered to resolve the dispute" before the hearing date, "the parties fully understood the need to report their agreement to the NPDB and the potential consequences to Dr. Behram if it was not reported consistent with the purpose and intent of the Settlement Agreement." According to Mr. Morter, "[w]e negotiated the express language that SGMC would use to report the events of Dr. Behram's suspension of September 26, 2019 and his later reinstatement" under the terms of their settlement. "[T]he purpose" in restricting this language "was to eliminate the possibility that SGMC would report the events in other, charged language that would undermine the purpose of the Settlement Agreement[.]" Under the Settlement Agreement, Mr. Morter asserts, SGMC was not authorized "to report to anyone that Dr. Behram was suspended because he presented 'an immediate threat to patient health or safety,' because he was not." Likewise, SGMC was not authorized "to report to anyone that [Dr. Behram] resigned 'while under or to avoid investigation,' because he did not."

Mr. Morter further averred that Dr. Behram's release was meant to be limited to the three "events" enumerated in the Settlement Agreement, which did not include any of the proceedings that occurred after Dr. Behram's suspension on September 26, 2019, including his demands for a Fair Hearing under the Bylaws. Mr. Morter authenticated and attached two "earlier drafts of the Settlement Agreement[,]" to show that "the parties did not agree to waive all claims related to 'credentialing' matters, as that would have included claims arising from SGMC's failure to provide Dr. Behram with the Fair Hearing[,]" from "the second reinstatement of September 14, 2020[,]" and from "SGMC's referral of Dr. Behram to the Maryland Physician Health Program[,]" which in

his experience would not be connected to peer review unless there had been an allegation "that the case was handled as it was because the physician was medically impaired by some physical or mental illness."

According to Mr. Morter, he was "shocked and dismayed when [he] learned, on or about October 12, 2020, that SGMC had violated the letter and spirit of the Settlement Agreement by reporting that Dr. Behram presented an immediate threat to patient health [and] safety and that he had resigned while under or to avoid investigation." He attached to his affidavit correspondence with SGMC's former attorney, in which Mr. Morter describes the "problem" as being one of SGMC's "own making" because when it "report[ed] two different events that occurred about a year apart[,]" it was "not able to access the proper codes." Mr. Morter recounted that "SGMC was very reluctant to separate the two events into two reports" because it "did not want to risk the potential consequences of their having kept Dr. Behram on summary suspension for almost a year, without ever reporting that fact to NDPB in violation of its reporting requirements" and at the risk of losing immunity and confidentiality for "their peer review process." Only after filing two reports that "violated the terms and spirit of the Settlement Agreement" did then-counsel for SGMC do what Mr. Morter "had been imploring her to do for the previous two months – split the two events into two reports." "Once SGMC did so, it could and did access the correct codes that allowed it to properly report the suspension and reinstatement in a manner consistent with the Settlement Agreement."

During the weeks that "the offending reports were on file at the NPDB," Mr. Morter avers "upon information and belief" that "they were distributed to a number of

entities outside of the NDPB." "To [his] knowledge, they are distributed automatically to persons and entities who have properly accessed reports on that physician in the past few months, and distributed to others entitled to request them who do request them."

Dr. Behram filed a separate statement of material facts and evidence that he contends remain in dispute. With respect to the Count One claim for breach of the Settlement Agreement, he identified the following disputes:

> (1) "[w]hether the statement [SGMC] made to the [NPDB], that [Dr. Behram] presented an 'immediate threat to [patient] health or safety,' was consistent with the terms and tenor of the Settlement Agreement";
>
> (2) "[w]hether th[at] statement . . . 'was somehow required by the coding options available to [SGMC] when it filed the First and Second Reports'";
>
> (3) whether SGMC's statement to NPDB that Dr. Behram "'voluntarily surrendered his privileges 'while under, or to avoid, investigation relating to professional competence or conduct,' was consistent with the terms and tenor of the Settlement Agreement"; and
>
> (4) "somehow required by the coding options available to [SGMC] when it filed the First and Second Reports[.]"

Similarly, Dr. Behram asserted that material disputes and missing discovery precluded judgment on Count Three "based on two sets of false and defamatory statements that [SGMC] made[,]" to the NPDB, MBP, and MPHP. Although Dr. Behram "believed" that SGMC's defamatory referral to the MPHP occurred "in the Fall of 2019," he did not know the date or language used by SGMC because it had "so far refused to provide [him] with the date and text of the . . . statements and information that it provided to the MPHP[.]" After being "subjected to the embarrassment and humiliation of an

assessment of [his] fitness to practice medicine[,]" Dr. Behram "received a letter from Dr. Nancy Markus on March 16, 2020, stating" that because she had "received a letter from the program dated January 4, 2020 which indicated that [he had] successfully completed the [MPHP] program[,]" he would be "allow[ed] to end [his] attendance with MPHP" and be released "from the SGMC Health Committee review." Because "there was no recommendation by MPHP for [Dr. Behram] to attend any program, whatsoever[,]" Dr. Behram averred that both "[t]he aim of such a referral, and the goal of such a letter, was to further disparage [him] by falsely padding [his] dossier with additional false items with the hopes of convincing any third-party reviewer that [he] might have suffered from some type of impairment."

As for SGMC's reports to the NPDB, Dr. Behram maintained that the defamatory statement that he was summarily suspended because he "presented an 'immediate threat to [patient] health or safety'" was predicated on false statements that he "was responsible for a delay in providing a caesarian-section to a patient" even though he "timely recognized the need . . . and called for one, but the procedure was delayed because SGMC did not have an anesthesiologist and operating room available to provide it." Similarly, Dr. Behram avers that the defamatory statement that he "resign[ed] while under or to avoid investigation" falsely disparaged him because he "did not resign until after [SGMC] shut-down any pending investigations into [his] patient care and reinstated [him] to full and unrestricted privileges[,]" in order "to escape the toxic atmosphere at SGMC." These professionally denigrating statements were made in violation of the Settlement Agreement, then "automatically distributed by the NPDB to [his] employer

and to others with whom" Dr. Behram had "or would want to have business relations[,]" and also were "sent to the Maryland Board of Physicians . . . , thus defaming [him] before the very entity that controls [his] license to practice medicine."

With respect to the Count Three claim for "defamatory statements to third parties" and "to the MPHP[,]" Dr. Behram identified material factual disputes over:

> (1) "[w]hether the statements [SGMC] made to the NPDB . . . were disseminated . . . to third parties, including [Dr. Behram's] employer and others with whom he had or would want to have a business relationship";
>
> (2) "[w]hether, in addition to the referral [to MPHP] itself, [SGMC] made false and defamatory statements to the MPHP regarding his fitness to practice medicine, designed to impair his ability to practice medicine at SGMC and in Montgomery County in competition with [SGMC] and its agents[,]" based on "inferential evidence" from his affidavits, including his averment that SGMC "has so far failed and refused to produce the communications it had with the MPHP that triggered his evaluation";
>
> (3) "[w]hether, either by its express terms or by the only reasonable reading of the Settlement Agreement, [Dr. Behram] waived his claim for defamation arising from" such "statements to third parties[,]" including to his employer and prospective business relations;
>
> (4) "[w]hether, either by its express terms or by the only reasonable reading of the Settlement Agreement, [Dr. Behram] waived his claim for defamation arising from [SGMC's] referral of him to the MPHP" and "from SGMC's statements to MPHP regarding his "fitness to practice medicine."

Turning to Count Four, Dr. Behram asserted that this claim

> is based on [SGMC's] violation of its Bylaws, in failing to provide [him] with the Fair Hearing to which [he] was entitled to clear [his] name within the time it was required to

> be provided, which prolonged [his] suspension and delayed [his] reinstatement, all while pressuring [him] to resign while [he] was still under investigation, thereby causing substantial harm to [his] reputation and practice.

According to Dr. Behram, after he "demanded the Fair Hearing on November 7, 2019," and again on March 25, 2020, SGMC "failed or refused to schedule" one within the 60-day period required under the Bylaws, instead pressuring him to resign while under investigation. SGMC scheduled a remote hearing for September 14 through September 16, 2020, even though such a remote proceeding could have happened within the sixty days when the hearing should have taken place. As a result, the "baseless allegations that [he] should have been permitted to refute no later than January 6, 2020, continued to impact [his] reputation" while SGMC denied him a Fair Hearing.

Dr. Behram also disputed SGMC's contention that the release in the Settlement Agreement encompasses his defamation and breach of Bylaws counts. Pointing to "earlier draft[s] of the Settlement Agreement" that would have released either "all claims related to all 'credentialing' matters" or "only claims related to . . . the second suspension of September 26, 2019," he avers that the release is "expressly limited to claims related to three specific events" enumerated in the Agreement: (i) the first suspension on July 17, 2019; (ii) his reinstatement on August 13, 2019; and (iii) his second suspension on September 26, 2019. Dr. Behram claims that he compromised by releasing "claims related to more than just the second suspension, but less than all claims related to credentialing decisions[,]" so that "the Settlement Agreement did not release [his] claims related to the second reinstatement of [his] privileges, in September 2020, such as

[SGMC's] breach of its Bylaws in refusing to provide the Fair Hearing." His purpose in resigning after reinstatement under the terms of the Settlement Agreement was not "to avoid investigation[,]" but "to remove [himself] from the toxic atmosphere at SGMC, mitigate the damages [SGMC] caused by delaying [his] reinstatement, and continue [his] practice at another hospital."

Motions Hearing

At the motions hearing on April 8, 2022, counsel for SGMC maintained that the Third Amended Complaint was "not materially different" and "still deficient for the reasons" that the court previously dismissed the Second Amended Complaint. On the Count One claim for breach of the Settlement Agreement, SGMC argued Dr. Behram's claim "is premised on the use of the codes and the two codes in particular[,]" but "there's no reference to the code[s]" within "the four corners of the [A]greement[,]" "[s]o, it's not a condition, and it's certainly not material to the" Settlement Agreement. Moreover, after working with SGMC to "fix" the "perceived deficiency" in the report, Dr. Behram cannot claim "any damages related to that."

With respect to Count Three for defamation**,** SGMC acknowledged there was "probably" a dispute over whether the challenged statements were knowingly false, but argued the pleading was still insufficient "as it relates to the harm[,]" "which is dispositive as to all counts." Although Dr. Behram amended his complaint to identify "four entities that may have received the Data Bank report[,]" the defamation count still lacked "the requisite particularity" to sufficiently plead damages or prove the injury element of defamation, because there "is no evidence produced, to date, in support that

anyone has ever looked at these statements that are allegedly defamatory[,]" nor has Dr. Behram identified "a single person . . . who actually laid eyes on this report" or took "some type of adverse action in response to reading this report . . . that would, in any way, have caused Dr. Behram to not receive medical privileges somewhere, or not enter into some type of business relationship or . . . he's not seeing the same number of patients, nothing."

As for the Count Four claim that SGMC breached its Bylaws by denying him a timely hearing and delaying his reinstatement, while referring him to the MPHP, SGMC argued that "Dr. Behram entered into a settlement agreement and forewent his opportunity to undertake the fair hearing" as "specifically reflect[ed]" in "the whereas provisions[.]" Because "this [was] an integrated contract" constituting a "complete agreement[,]" it may not be altered by "exhibits" that "bring in parol evidence[,]" especially when both parties were represented by counsel throughout the settlement. In any event, because "the doctor released . . . . any and all claims that could have been raised at the time of the execution of the agreement related to the September 26th, 2019 suspension[,]" and his claim arising from "any statements that any member from [SGMC] made to the Maryland Physician Health Program" was "specifically related to his suspension," the release encompassed claims based on such statements.

Motions Court's Ruling and Rationale

At the conclusion of the motion hearing, the court ruled that Dr. Behram's amendments to his complaint "did not cure the deficiencies[.]" Consequently, "for the same reasons" it dismissed the defamation and "delayed reinstatement" claims from the

Second Amended Complaint, the court granted SGMC's motion to dismiss Counts Three and Four "with prejudice and without leave to amend."

The court also granted summary judgment on all counts. Working in reverse order, the court explained that the Count Four breach of bylaws claim presents "a simple contract interpretation matter that is to be decided by the Court as a matter of law" based on the "very broad" language in paragraph 3 of the Settlement Agreement, stating "that Dr. Behram is releasing and waiving any and all past or present claims" he had "up to and including, the date on which the hospital sign[ed] this agreement[.]" The court observed that "[t]hese agreements are negotiated for a reason[,]" which in this case was "to put an end to ongoing controversies and to end litigation." Because it is undisputed that the Settlement Agreement "was negotiated by these parties at arms' length, both sides being sophisticated entities[,]" and "represented by experienced attorneys," and "there is an integration clause[,]" the court concluded that "[i]t strains the imagination to try to find some carve outs from that" broad provision based on SGMC's breach of its Bylaws.

Next, the motions court granted summary judgment on Count Three, on the grounds that "any defamation claims were waived and released by the parties' execution of this settlement agreement" and that "[t]here is simply insufficient evidence to show that [Dr. Behram] suffered damages as a result of the allegedly defamatory statement. This is not a situation where damages are presumed."

Finally, on the Count One claim for breach of the Settlement Agreement, the motions court granted summary judgment because the court "agreed with [SGMC] that there's no contractual obligation on the part of the defendant to utilize any particular code

for reporting the incident or the occurrence, and there, simply, is no sufficient allegation that the hospital breached any duty owed to the plaintiff arising out of the execution of the settlement agreement."

The motions court entered a final judgment order consistent with its bench ruling.

STANDARDS OF REVIEW

Under Maryland Rule 2-501(a), "[a]ny party may file a written motion for summary judgment on all or part of an action on the ground that there is no genuine dispute as to any material fact and that the party is entitled to judgment as a matter of law." When reviewing a grant of summary judgment de novo, appellate courts may affirm only on the grounds relied upon by the motions court. *See Gambrill v. Bd. of Educ. of Dorchester Cnty.*, 481 Md. 274, 297 (2022) (citation omitted). "We conduct an independent review of the record to determine whether a general dispute of material facts exists and whether the moving party is entitled to judgment as a matter of law." *Id.* (citation omitted). In doing so, "[w]e review the record in the light most favorable to the non-moving party and construe any reasonable inferences which may be drawn from the facts against the movant." *Md. Cas. Co. v. Blackstone Int'l, Ltd.*, 442 Md. 685, 694 (2015) (citation and quotation marks omitted). Our role is not "to resolve factual disputes, but merely determine whether they exist and are sufficiently material to be tried." *Gambrill*, 481 Md. at 297 (citation omitted). When "no material facts are in dispute, we determine whether the trial judge's ruling was legally correct." *Id.* (quoting *Newell v. Runnells*, 407 Md. 578, 608 (2009)).

In reviewing the grant of a motion to dismiss, we ask "whether the trial court was legally correct" after "accept[ing] all well-pled facts in the complaint, and reasonable inferences drawn from them, in a light most favorable to the non-moving party." *Davis v. Frostburg Facility Operations, LLC*, 457 Md. 275, 284-85 (2018) (citations and quotation marks omitted). "When examining the pertinent facts, the Court limits its analysis to the four corners of the complaint[.]" *Id.* (citations and quotation marks omitted). A cause of action must set forth the facts that, if true, establish all elements of the stated cause of action "with sufficient specificity[,]" because "bald assertions and conclusory statements by the pleader will not suffice." *Id.* (citations and quotation marks omitted).

DISCUSSION

Dr. Behram challenges the summary judgments granted on all three counts of his Third Amended Complaint and the alternative dismissal of the defamation and breach of Bylaws claims. Addressing each count in turn, we conclude that the motions court erred in granting judgment on Dr. Behram's Count One claim for breach of the Settlement Agreement and his Count Three claim for defamation, but did not err in granting partial summary judgment on his Count Four claim for breach of the SGMC Bylaws.

I. THE MOTIONS COURT ERRED IN GRANTING SUMMARY JUDGMENT ON COUNT ONE FOR BREACH OF THE SETTLEMENT AGREEMENT.

Dr. Behram contends that the motions court erred in granting summary judgment on his Count One claim for breach of the Settlement Agreement on the ground that the parties "prescribed what was to be reported to the" NPDB and MBP, "but did not specify

how it was to be reported," so that SGMC had no duty to refrain from selecting "reporting codes antithetical to what it promised to report in the Settlement Agreement. For reasons that follow, we agree that the motions court erred in granting summary judgment based on its ruling that, as a matter of law, SGMC had no duty to refrain from filing reports with language that materially differed from the negotiated language set forth in the Settlement Agreement.

"To prevail in an action for breach of contract, a plaintiff must prove that the defendant owed the plaintiff a contractual obligation and that the defendant breached that obligation." *Taylor v. NationsBank, N.A.*, 365 Md. 166, 175 (2001). Proof of "damages resulting from the breach" is not "necessary" because "it is well settled that where a breach of contract occurs, one may recover nominal damages even though he has failed to prove actual damages." *Id*. (citations omitted).

The motions court ruled that "there's no contractual obligation on the part of [SGMC] to utilize any particular code for reporting the incident or the occurrence[,]" so that SGMC did not breach "any duty" to Dr. Behram. Dr. Behram argues this "startling" holding "that the codes SGMC selected could not be a breach of the Settlement Agreement because no codes were specified" ignores both "the significant factual differences between what SGMC promised to report to the NPDB and what it did report[,]" as well as the established principle that a contract may be breached "by conduct that is not expressly prohibited" when such "conduct is clearly inconsistent with and undermines a principal purpose of the contract." In his view, the language in SGMC's reports that he posed "an immediate threat to health and safety" "is far more damning

than a statement that there were 'concerns regarding the quality of patient care.'" Likewise, SGMC's statement that he "'resigned while under or to avoid investigation' is far more damning than a statement that he was suspended and then reinstated to full clinical privileges and *thereafter* resigned."

As evidence demonstrating the material dispute over whether SGMC had a contractual obligation to avoid using codes with language that disparages the medical care he rendered to patients, Dr. Behram points to affidavits in which he and his counsel call into question SGMC's

> attempt[] to justify its choice of codes by claiming that the options were limited and that the ones it chose were dictated by the NPDB "drop-down [menus]" and were "the most benign." But SGMC's choice of code was limited only because it first chose to combine two different events, separated by almost a year, into one report, in an effort to avoid sanctions for its illegal failure to timely report the Second Suspension.
>
> It was only because its first choice was unlawful that SGMC's second choice was limited. Had SGMC not previously violated federal law, or had it simply accepted the risk of sanction and filed a belated report of the Second Suspension and a separate, timely report of the reinstatement (as it eventually did), the choice of codes would not have been so limited and SGMC could have properly reported consistent with the Settlement Agreement. If there were any room for doubt as to whether SGMC was somehow "forced" to select the codes it did, the question was for the jury.

Dr. Behram argues that in granting summary judgment, the court disregarded the evidence that a "principal purpose" of "carefully craft[ing]" paragraph 2e and Exhibit 3 "to provide for exactly what [SGMC] would report to the NPDB concerning [his] suspension, reinstatement and departure" was to "describ[e] and delimit[] what SGMC

could report to the NPDB, to the generalized and comparatively neutral language" set forth by the parties, so as "to eliminate the possibility that SGMC would report the events in other, charged language that would undermine the purpose of the Settlement Agreement." In his view, the motions court's contrary reading of the Settlement Agreement "would undo . . . established contract law" that "under the covenant of good faith and fair dealing, a party impliedly promises to refrain from doing anything that will have the effect of injuring or frustrating the right of the other party to receive the fruits of the contract between them."[7] *Clancy v. King*, 405 Md. 541, 570-71 (2008) (quoting *E. Shore Mkts., Inc. v. J.D. Assocs., Ltd. P'ship*, 213 F.3d 175, 184 (4th Cir. 2000) (interpreting Maryland law)).

SGMC counters that the motions court correctly concluded that the Settlement Agreement did not impose a contractual obligation regarding which codes it could or could not use in its NPDB reports. Although "the Settlement Agreement obligated SGMC to submit a report" with the agreed-upon language, it is undisputedly "silent on the issue of NPDB codes" and otherwise "fully integrated," so that parol evidence cannot be considered as proof of pre-execution negotiations by these "sophisticated parties" who were represented by counsel. Challenging Dr. Behram's argument that its reporting

[7] We do not address SGMC's alternative argument that summary judgment was warranted based on evidence that it proffered to show that Dr. Behram entered into the Settlement Agreement in order to avoid investigation, because our review is limited to the basis for granting summary judgment stated by the motions court, which was that SGMC did not have any contractual obligation with respect to the codes and associated language it used to describe the nature of and basis for its September 2019 suspension of Dr. Behram and the September 2020 reinstatement and resignation of his clinical privileges. *See Gambrill*, 481 Md. at 297.

codes "destroyed his rights under the Settlement Agreement[,]" SGMC points out that the parties expressly "agreed to the submission of NPDB reports, which exist solely and specifically for the purpose of communicating adverse credentialing actions" and that "Dr. Behram most certainly 'received the fruits' of the Settlement Agreement" when he was reinstated and voluntarily resigned under its express terms.

In *Credible Behavioral Health, Inc. v. Johnson*, 466 Md. 380 (2019), the Supreme Court of Maryland (at the time, named the Court of Appeals)[8] summarized the standards governing interpretation of private contracts such as the Settlement Agreement at issue here:

> Generally, Maryland courts subscribe to the objective theory of contract interpretation. Under this approach, the primary goal of contract interpretation is to ascertain the intent of the parties in entering the agreement and to interpret "the contract in a manner consistent with [that] intent." An inquiry into the intent of the parties, where contractual language is unambiguous, is based on what a reasonable person in the position of the parties would have understood the language to mean and not "the subjective intent of the parties at the time of formation."
>
> Ascertaining the parties' intentions requires us to consider the plain language of the disputed contractual provisions "in context, which includes not only the text of the entire contract but also the contract's character, purpose, and 'the facts and circumstances of the parties at the time of execution.'" Throughout this review, we interpret a

[8] At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022. See also Md. Rule 1-101.1(a) ("From and after December 14, 2022, any reference in these Rules or, in any proceedings before any court of the Maryland Judiciary, any reference in any statute, ordinance, or regulation applicable in Maryland to the Court of Appeals of Maryland shall be deemed to refer to the Supreme Court of Maryland . . . .").

> contract's plain language in accord with its "ordinary and accepted meaning[.]"
>
> Contractual language is ambiguous where a reasonably prudent person could ascribe more than one reasonable meaning to it. Where a court determines contractual language to be ambiguous, the narrow bounds of the objective approach give way, and the court is entitled to consider extrinsic or parol evidence to ascertain the parties' intentions. Additionally, we have previously noted that "a term which is clear in one context may be ambiguous in another."

Id. at 393-94 (citations omitted).

In this case, there is no dispute that SGMC agreed to "submit the report attached . . . as Exhibit 3" to the NPDB and to "provide this same language to the Maryland Board of Physicians at the same time." Nor is there any dispute that when SGMC submitted its first two reports to the NPDB on September 17, 2020, and October 14, 2020, it selected pre-formatted NPDB codes describing its "initial action" as a "summary or emergency suspension of clinical privileges" based on an "immediate threat to health and safety[,]" which was followed by Dr. Behram's "voluntary surrender of clinical privilege(s) while under, or to avoid, investigation relating to professional competence or conduct[.]" Instead, the dispute here is over whether SGMC had a duty under the Settlement Agreement not to use that language in those reports.

Viewing the text, character, and purpose of the Settlement Agreement in light of the facts and circumstances surrounding its execution, *see id.*, we conclude that a reasonable person in the position of SGMC could understand the obligation to "submit the report" set forth in Exhibit 3 to prohibit SGMC from filing reports with language that materially deviates from that negotiated provision. As stated in the "whereas" clauses,

the goal of the settling parties was to resolve their past and present disputes surrounding SGMC's suspension of Dr. Behram's clinical privileges, by compromising their conflicting positions while mutually "den[ying] any liability or responsibility whatsoever." Both parties expressly agreed that SGMC would submit reports containing specific language:

> **[2]e. NPDB Entry**. *The Hospital will submit the report attached hereto as Exhibit 3, to the National Practitioner Data Bank* by no later than 15 days after the Effective Date of this Agreement. *The Hospital will provide this same* language to the Maryland Board of Physicians at the same time.

(Emphasis added.) They also specified the exact language for SGMC to use in its reports to the NPDB and the MBP:

> **EXHIBIT 3**
> **[REPORT TO NPDB AND MBP]**
>
> Dr. Steve Behram's *clinical privileges were summarily suspended on September 26, 2019 for concerns regarding the quality of his patient care*. The Medical Executive Committee voted on September 14, 2020 to approve his reappointment and *reinstate his clinical privileges as full and unrestricted privileges. Thereafter, Dr. Behram voluntarily resigned* his clinical privileges and medical staff membership at the Hospital.

(Emphasis added.)

This reporting restriction was central to Dr. Behram's agreement to forgo a hearing at which he could present evidence and argument to challenge the suspension of his clinical privileges, in order to "resolve the matter" on terms that allowed him to continue "den[ying] that the Hospital had cause" for that suspension, while facilitating

his "wish[] to resign his clinical privileges and Medical Staff membership" after a full reinstatement, in order "to continue his medical practice elsewhere[.]" To the extent there is any ambiguity about the meaning and scope of this reporting restriction, Dr. Behram and his attorney proffered in their affidavits that their purpose in negotiating for specific limits on what SGMC reported to the NPDB and MBP "was to eliminate the possibility that SGMC would report the events in other, charged language that would undermine" their compromise. *See Chicago Title Ins. Co. v. Lumbermen's Mut. Cas. Co.*, 120 Md. App. 538, 548-49 (1998). According to Mr. Morter, SGMC ran afoul of its duty to use the neutral reporting language in Exhibit 3 by using the problematic codes in its first two reports to the NPDB only because its options from the "drop-down menu" of codes were limited as a result of its unilateral decision to combine its belated report of his suspension in September 2019, with his reinstatement in September 2020, in an effort to camouflage its failure to timely report the suspension within the mandatory reporting period.

We also read the parties' negotiated provisions in light of "the covenant of good faith and fair dealing" under which "each party must 'do nothing to destroy the rights of the other party to enjoy the fruits of the contract and [] do everything that the contract presupposes they will do to accomplish its purpose.'" *Questar Builders, Inc. v. CB Flooring, LLC*, 410 Md. 241, 281 (2009) (quoting *Photovest Corp. v. Fotomat Corp.*, 606 F.2d 704, 728 (7th Cir. 1979)). *See also Automatic Laundry Serv., Inc. v. Demas*, 216 Md. 544, 551 (1958) (recognizing that the obligation of good faith "is no novelty in Maryland law" and requires that neither party act in a way that renders their contract

"valueless"). Whether the party whose performance of its contractual obligation is in dispute exercised "good faith ordinarily is a question of fact[.]" *Clancy*, 405 Md. at 571 (quoting *David A. Bramble, Inc. v. Thomas*, 396 Md. 443, 465 (2007)).

We agree with Dr. Behram that by singularly focusing on the absence of an express agreement regarding the NPDB-designated codes, the motions court disregarded the text, character, purpose, and circumstances surrounding this restriction on SGMC's reporting. *See Credible Behav. Health*, 466 Md. at 393-94. Mindful that our inquiry into the contractual intent of the parties must be "based on what a reasonable person in the position of the parties would have understood the language to mean[,]" *id*. at 393, we conclude that a reasonable person could understand SGMC's duty to "submit the report attached . . . as Exhibit 3" to encompass a corollary obligation to act in good faith by not adding language that undermines the negotiated description of the nature and reasons for Dr. Behram's September 2019 suspension and September 2020 resignation. Indeed, a factfinder could conclude that a contrary interpretation would effectively deny Dr. Behram the benefit of his settlement bargain, by holding him to his release of his right to a Fair Hearing at which he could have defended himself against SGMC's disparaging allegations, while allowing SGMC to report such untested allegations to the NPDB and MBP, to the detriment of Dr. Behram's professional reputation and opportunity "to continue his medical practice elsewhere[.]"

Based on the pleadings and proffered evidence, Dr. Behram presented sufficient facts and evidence to establish a material dispute over whether SGMC breached its reporting obligation by acting in bad faith when it submitted the first two NPDB reports

with different and disparaging language about its suspension of his clinical privileges and his subsequent "voluntary surrender" of them. Because a factfinder could determine that SGMC breached the Settlement Agreement, we hold that the motions court erred in granting summary judgment on Count One.

II. THE MOTIONS COURT ERRED IN GRANTING JUDGMENT ON COUNT THREE FOR DEFAMATION.

Dr. Behram next challenges the motions court's entry of judgment on his Count Three claim for defamation on the ground that he failed to sufficiently plead and proffer evidence that he was harmed by SGMC's statements to the NPDB, MBP, and MPHP. With respect to SGMC's post-settlement statements to the NPDB and MBP, we conclude that the motions court erred. But we conclude that under the Settlement Agreement, Dr. Behram released any claim predicated on pre-settlement statements, including those that SGMC made to the MPHP in connection with its referral of Dr. Behram following its suspension of his clinical privileges on September 26, 2019. After reviewing the legal standards governing defamation, we address each of the allegedly defamatory statements in turn.

A. Standards Governing Review of Defamation Claims

A statement is defamatory if it "tends to expose a person to public scorn, hatred, contempt[,] or ridicule, thereby discouraging others in the community from having a good opinion of, or associating with, that person." *Seley-Radtke v. Hosmane*, 450 Md. 468, 482-83 (2016) (citations omitted). *See* MPJI-Cv 12:1. To establish a prima facie claim for defamation, a plaintiff must plead and proffer sufficient facts to prove the

following four elements: (1) a defamatory statement made to a third person, (2) that was false, (3) in circumstances where the defendant was legally at fault in making the statement, and (4) the plaintiff suffered harm. *Lindenmuth v. McCreer*, 233 Md. App. 343, 356-57 (2017).

Under Maryland common law, we recognize a distinction between statements that are defamatory per se, for which separate proof of harm is not required, and those that are defamatory per quod, for which pleading and proof of injury is necessary. *See Indep. Newspapers, Inc. v. Brodie*, 407 Md. 415, 441 (2009) (citation omitted); *Shapiro v. Massengill*, 105 Md. App. 743, 773 (1995) (citations omitted). A statement is actionable per quod when its injurious effect must be examined in context and established by allegations and proof of actual damage. *Samuels v. Tschechtelin*, 135 Md. App. 483, 549 (2000) (citations omitted). In contrast, a statement is defamatory per se when its injurious quality is apparent from the words themselves. *Shapiro*, 105 Md. App. at 773 (citations omitted).

Although "summary judgment is typically inappropriate in a defamation case[,]" *Lindenmuth*, 233 Md. App. at 353, the threshold decision about whether a particular statement is defamatory on its face, or instead whether it is "reasonably capable of a defamatory interpretation" only in light of extrinsic facts, is a question of law decided by the court upon reviewing the statement as a whole. *Batson v. Shiflett*, 325 Md. 684, 723 (1992). "Where the words themselves impute the defamatory character [per se], no innuendo – no allegation or proof of extrinsic facts – is necessary" because "the injurious character of" such a statement "is a self-evident fact of common knowledge[.]" *Indep.*

Newspapers, 407 Md. at 441 (quoting *Metromedia, Inc. v. Hillman*, 285 Md. 161, 172-73 (1979); *Samuels*, 135 Md. App. at 549 (citation omitted). For purposes of pleading and proving defamation, such a statement presumes damage to reputation without further evidence of injury. *Hearst Corp. v. Hughes*, 297 Md. 112, 125-26 (1983) ("[A]s a matter of Maryland law, the presumption of harm to reputation still arises from the publication of words actionable per se. A trier of fact is not constitutionally barred from awarding damages based on that presumption in a constitutional malice case. A trier of fact is constitutionally barred from awarding damages based on that presumption in a negligent defamation case.").

At common law, therefore, when a statement about a private person is defamatory per se, and made with reckless disregard for its truth or with actual knowledge of its falsity, no proof of injury is required. *Samuels*, 135 Md. App. at 549 (explaining that when a plaintiff establishes that a "statement is defamatory per se" and that "it was made with actual malice," "damages are presumed . . . even in the absence of proof of harm") (citations omitted). *See generally* MPJI-Cv 12:2 ("A statement made about a private figure is defamatory only if the party making the statement should have known that the statement was false."). To be actionable under 42 U.S.C. § 11137(c), however, statements made within the statutory privilege for health care reports regarding suspension and surrender of clinical privileges must be made without "knowledge of the falsity of the information contained in the report." *See infra*, footnote 4.

False statements denigrating a person's professional competence, or that otherwise negatively affect that person's employability or community reputation, are classic

examples of defamation per se. *See generally Shapiro*, 105 Md. App. at 775 (recognizing that defamation may be predicated on a false statement impairing or harming the plaintiff's trade or livelihood by "adversely affect[ing] [his] fitness for the proper conduct of his business"). For instance, this Court has recognized as defamatory per se a statement by a stadium vendor that an usher "is a thief[,]" *Carter v. Aramark Sports and Ent. Svcs., Inc.*, 153 Md. App. 210, 238 (2003); a college president's statement that a professor was discharged for "poor performance[,]" *Samuels*, 135 Md. App. at 544, 550; and a union agent's statement insinuating that a union member "was untrustworthy and not a fit person to perform the type of work in which he specialized; that is, the installation of safes, bank vaults, safe deposit boxes, and other similar items." *Nistico v. Mosler Safe Co.*, 43 Md. App. 361, 367 (1979). In an instructive case involving defamatory statements bearing on a professional practice, a law firm principal's statements to firm employees that a discharged attorney was "the 'subject' and the 'target' of a criminal investigation[,]" "could be indicted[,]" "had intentionally concealed this damaging information[,]" and "was evasive, secretive, dishonest, dishonorable, and perhaps even a criminal" were defamatory per se because they "impute . . . incapacity or lack of due qualification" that "would disqualify him or render him less fit properly to fulfill the duties incident' to the practice of law." *Shapiro*, 105 Md. App. at 775, 777 (citations and quotation marks omitted).

B. Statements to the National Practitioner Data Base

Dr. Behram argues that the motions court erred in granting summary judgment on his Count Three claim for defamation on the ground that there was "insufficient evidence

to show that [he] suffered damages as a result of the allegedly defamatory statement[s]" in SGMC's first two reports to the NPDB, given that "[t]his is not a situation where damages are presumed." To the contrary, Dr. Behram asserts, "[t]his *is* a situation where damages are presumed" because the knowingly false statements disparaged his "skill and competence" in an attempt "to discourage others from entering into professional relationships with" him and to "interfere with [his] relations with patients, prospective patients, other physicians and other health care facilities, to [his] disadvantage."

SGMC counters that the language of the NPDB codes it selected was not defamatory per se and does not otherwise support a defamation claim "because there was no evidence of any false statement made by SGMC or any specific damages sustained[.]" Yet, as counsel for SGMC conceded at the motions hearing, there is a factual dispute over whether the challenged statements were knowingly false. And this Court has recognized that a false statement disparaging an employee's "fitness for the proper conduct of his business" is defamatory per se, making it unnecessary to plead and prove specific damages. *Shapiro*, 105 Md. App. at 775 (quoting *Hearst Corp.*, 297 Md. at 118).

> This is not to imply, however, that every negative evaluation of an employee's performance is potentially defamatory. Rather, "[t]he words must go so far as to impute to him some incapacity or lack of due qualification to fill the position." In other words, the defamatory statement must be such that "if true, would disqualify him or render him less fit properly to fulfill the duties incident to the special character assumed."

Shapiro, 105 Md. App. at 775 (citations omitted).

We agree with Dr. Behram that the motions court erred in granting summary judgment on his defamation claim arising from SGMC's post-settlement reports to the

NPDB, on the ground that "[t]his is not a situation where damages are presumed." To the contrary, SGMC's first two reports to NPDB, stating that Dr. Behram's "substandard care" of patients created an "immediate threat to health and safety" that required a summary suspension, and that he voluntarily resigned "while under, or to avoid, investigation," were defamatory per se, because those statements disparaged Dr. Behram's medical competence in a manner that patently affected his fitness to practice medicine and, therefore, his employability.

In any event, we are satisfied that Dr. Behram did allege specific injury in both his Third Amended Complaint and in his affidavit. He asserted that SGMC's false and damaging statements were published to his employer, Privia, as well as others in the medical community with whom he sought "business relations." He specifically identified three other medical entities who allegedly received those reports. Given the professionally disparaging reports, made to a database that allegedly disseminated them to Dr. Behram's current employer and prospective business relations, we conclude that Dr. Behram alleged sufficient facts and proffered sufficient evidence to establish a material dispute as to whether such reports, in addition to being defamatory per se, were knowingly false, so as to be actionable in accordance with 42 U.S.C. § 11137(c) ("No person or entity . . . shall be held liable in any civil action with respect to any report made under this subchapter[,]" governing confidential reports to state license boards and other health care entities regarding suspension of clinical privileges, "without knowledge of the falsity of information contained in the report."). Accordingly, we conclude that the

circuit court erred in granting summary judgment on Count Three with respect to SGMC's post-settlement statements made to the NPDB.

C. Statements to the Maryland Board of Physicians

If, as Dr. Behram alleges, SGMC made one or more reports to the Maryland Board of Physicians with false statements comparable to those made in the First and Second Reports to the NPDB, those statements also could be defamatory per se because they denigrate Dr. Behram's professional competence to "the very entity that controls his license to practice medicine." Although we have not been directed to any such report, we recognize that shortly before the summary judgment hearing, the circuit court denied Dr. Behram's motion to compel SGMC to produce additional discovery, with the express proviso that its decision was "without prejudice to [Dr. Behram] filing a new motion to compel and SGMC filing a new motion for protective over, in the event the defamation claim survives the pending motion to dismiss or for summary judgment." Upon remand, therefore, the parties and the court may address any post-settlement statements that SGMC made to the Maryland Board of Physicians.

D. Statements to the Maryland Physician Health Program

To the extent Dr. Behram predicates his defamation claim on statements that SGMC made to the MPHP when it referred him for evaluation, those statements undisputedly occurred before the MPHP closed its investigation in January 2020, which was months before the Settlement Agreement became effective in September 2020. Based on that timeline, and the mutual releases in the Settlement Agreement, we

conclude that the motions court did not err in granting summary judgment on any MPHP-based defamation claim.

"Releases are bilateral contracts supported by consideration flowing between the parties." *Women First OB/GYN Assocs., LLC v. Harris*, 232 Md. App. 647, 677 (2017). For that reason, we interpret the mutual releases in sections 3 and 4 of the Settlement Agreement according to

> ordinary contract principles. The principal rule governing the interpretation of a release, as with other contracts, is to effect the intention of the parties. "The primary source for determining the intention of the parties is the language of the contract itself."
>
> The interpretation of unambiguous contract terms presents a question of law for the court to resolve. When the language of the contract is clear, the court will presume that the parties intended what they expressed, even if the expression differs from the parties' intentions at the time they created the contract. When the language of the contract is ambiguous, however, the ambiguity must be resolved by the trier of fact.

Chicago Title Ins. Co., 120 Md. App. at 548-49 (citations omitted).

Here, the Settlement Agreement contains separate sections for each party's release. In section 3, Dr. Behram released and waived

> any and all past, or present claims, demands, actions, causes of action, complaints . . . of any kind, nature or amount, whether in law or equity, liquidated or unliquidated, which [he] had or now has against such persons which arose or occurred from the beginning of time up to and including the date on which the Hospital signs this Agreement that relates to the Hospital's July 17, 2019 suspension and subsequent reinstatement of [Dr. Behram's] privileges on August 13, 2019, and, the Hospital's suspension of [Dr. Behram's] privileges on September 26, 2019.

In section 4, SGMC reciprocally – but not in identical language – released all claims it may have had

> from the beginning of time up to and including the date on which the Hospital signs this Agreement that relates to the Hospital's July 17, 2019 suspension and subsequent reinstatement of [Dr. Behram's] privileges on August 13, 2019, the Hospital's suspension of [Dr. Behram's] privileges on September 26, 2019, and any disclosed or undisclosed allegations relating to patient care including, but not limited to, "RL" incident reports or any other similar reports or allegations against the [Dr. Behram].

We agree with the motions court that under the broadly comprehensive language in these mutual releases and throughout the Settlement Agreement, Dr. Behram waived any defamation claim he may have had based on statements that SGMC made before the effective date of the Settlement Agreement in September 2020, including any made in connection with SGMC's referral to the MPHP. Reciting an encyclopedic list of every type of potential claim that Dr. Behram ever had against SGMC "from the beginning of time," while simultaneously accepting that the "Agreement is the compromise of disputed claims" and that "[t]he Hospital expressly denied that it has any liability to [Dr. Behram] *for any matter*[,]" the language in this release leaves no ambiguity that the scope of Dr. Behram's waiver encompasses any claim predicated on events that took place before the September 2020 effective date of the Settlement Agreement. (Emphasis added.) This includes the MPHP referral, which undisputedly occurred before Dr. Behram agreed to that broad release.

We are not persuaded otherwise by Dr. Behram's argument that his release is ambiguous about the events and claims it covers, so that we must consider parol evidence

of prior drafts allegedly showing that he intended to release only "claims related to [those] three specific events" identified by date, as shown by correspondence and drafts exchanged during negotiations. Even if there were ambiguity regarding the scope of the mutual releases, we would consider countervailing parol evidence indicating that SGMC's statements to the MPHP were "related to" his September 2019 suspension, and therefore covered by the release.

Specifically, according to a letter dated October 22, 2019, notifying Dr. Behram that SGMC was continuing his suspension and referring him to the MPHP, SGMC expressly predicated its MPHP referral on what happened when Dr. Behram appeared before the Medical Executive Committee on October 15, 2019, for his "informal interview regarding the summary suspension of [his] privileges" on September 26, 2019. In that letter, signed by Nancy Markus, M.D. and Brett Gamma, M.D., SGMC stated that its referral was based on its "continued concerns about patient safety that were not adequately allayed" by Dr. Behram during that meeting, "an unusually large number of RL's[,]" and "a significant complaint from a patient about care [he] provided to her on and about September 15, 2019." SGMC explained that Dr. Behram's "account of events during the interview raised concern that [he] might be suffering from a cognitive disconnect that have [sic] impacted [his] decision-making abilities." "Because of this concern," SGMC advised Dr. Behram that he "must contact the" MPHP within 10 days "to make an intake appointment." Consequently, even if we were to read the release as narrowly as Dr. Behram suggests, so that it covers only statements that "relate[] to" his suspension in September 2019, nevertheless, SGMC's statements to the MPHP regarding

Dr. Behram "relate to" that suspension and therefore fall within the scope of Dr. Behram's release. Accordingly, we conclude the circuit court did not err in granting summary judgment on any MPHP-based defamation claim.

III. THE MOTIONS COURT DID NOT ERR IN GRANTING JUDGMENT ON COUNT FOUR FOR BREACH OF SGMC'S BYLAWS.

Dr. Behram also contends that the motions court erred in ruling that his Count Four claim for breach of the SGMC Bylaws did not state a claim upon which relief could be granted and is otherwise "barred by the doctrine of release[.]" We disagree.

Just as Dr. Behram released claims predicated on any pre-settlement statements that SGMC made to the MPHP, he also released his claim predicated on any pre-settlement violation of SGMC's Bylaws. Indeed, the Settlement Agreement expressly acknowledges that, following his second suspension, Dr. Behram was "entitled to a fair hearing under the Medical Staff Bylaws[,]" then states that "the Medical Staff's Executive Committee . . . agreed to resolve the matter by voting to reinstate" him before he "exercised" that right, in exchange for "the execution and delivery of" Dr. Behram's release and waiver of "any and all past, or present claims" that he "had or now has . . . from the beginning of time up to and including the date on which the Hospital sign[ed] this Agreement[.]" Because Dr. Behram resolved his claim that SGMC breached its Bylaws by releasing it under the Settlement Agreement, the motions court did not err in granting summary judgment on Count Four.

CONCLUSION

For the reasons we have explained, we conclude that the motions court erred in granting summary judgment on Dr. Behram's claims for breach of the Settlement Agreement (Count One) and defamation regarding post-settlement statements (Count Three), but correctly granted partial summary judgment on his claim for breach of the SGMC Bylaws (Count Four). Consequently, we will vacate the judgment and remand for further proceedings on Counts One and Three of the Third Amended Complaint, consistent with the limitations on claims arising from pre-settlement statements and rights that we have discussed in this opinion.

JUDGMENTS OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED IN PART AND VACATED IN PART.

CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION, ON COUNT ONE FOR BREACH OF CONTRACT AND COUNT THREE FOR DEFAMATION.

COSTS TO BE PAID ONE-THIRD BY APPELLANT, TWO-THIRDS BY APPELLEE.