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UNITED STATES DISTRICT COURT FOR THE  
CENTRAL DISTRICT OF CALIFORNIA

Jane Doe, an individual d/b/a  
POGOWASRIGHT.ORG

Plaintiff,

v.

Lillian Glass, Ph.D., an individual  
Defendant.

**CV 09-05648**

**COMPLAINT FOR DECLARATORY  
RELIEF**

**REQUEST FOR TRIAL BY JURY**

**BY FAX**

2009 JUL 31 PM 3:39  
CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
LOS ANGELES

FILED

**TO DEFENDANT AND HER ATTORNEY OF RECORD:**

Plaintiff Jane Doe ("Doe" or "Plaintiff") hereby alleges as follows:

**INTRODUCTION**

1. This case concerns whether the anonymous operator of an internet blog forum may be sued for comments made to the forum by anonymous third parties, or whether the forum operator is protected by Section 230 of the Communications Decency Act, 47 U.S.C. § 230. This case also concerns whether writings critiquing the public

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**TO DEFENDANT AND HER ATTORNEY OF RECORD:**

Plaintiff Jane Doe (“Doe” or “Plaintiff”) hereby alleges as follows:

**INTRODUCTION**

1. This case concerns whether the anonymous operator of an internet blog forum may be sued for comments made to the forum by anonymous third parties, or whether the forum operator is protected by Section 230 of the Communications Decency Act, 47 U.S.C. § 230. This case also concerns whether writings critiquing the public actions of a public figure – which are made at the internet forum by the forum’s operator

– are protected opinions under the First Amendment, and, even if they are not, whether the statute of limitations has nevertheless expired for the claims threatened by an individual subject of the forum’s commentary.

### **JURISDICTION**

2. This action arises under the Declaratory Judgment Act, 28 U.S.C. §§ 2201(a) and 2202, and under the Communications Decency Act, 49 U.S.C. § 230 et seq.

3. This Court has supplemental subject matter jurisdiction over state law claims pursuant to 28 U.S.C. § 1367(a) in that the state law claims form part of the same case or controversy as the federal claims.

4. This Court also has jurisdiction pursuant to 28 U.S.C. § 1332. The amount in controversy regarding all claims exceeds the sum or value of \$75,000. Plaintiff Doe and Defendant Glass are citizens of different states.

### **VENUE**

5. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) and 1400(a).

### **PARTIES**

6. Plaintiff Doe is an individual residing in New York. She<sup>1</sup> is the owner and operator of the website “Pogo Was Right: Privacy News from Around the World” which is located at <http://www.pogowasright.org> (“Pogo”). Doe is also the real life identity of Pogo’s lead author, where she has written under the pseudonym “dissent” since approximately April 2006. The Pogo website focuses primarily on the issue of privacy rights online and in life. A true and correct screen shot of the “About” page for Pogo appears as follows:

---

<sup>1</sup> By using the anonymous “Jane” and the pronoun “she,” Plaintiff does not admit or deny that she is female.



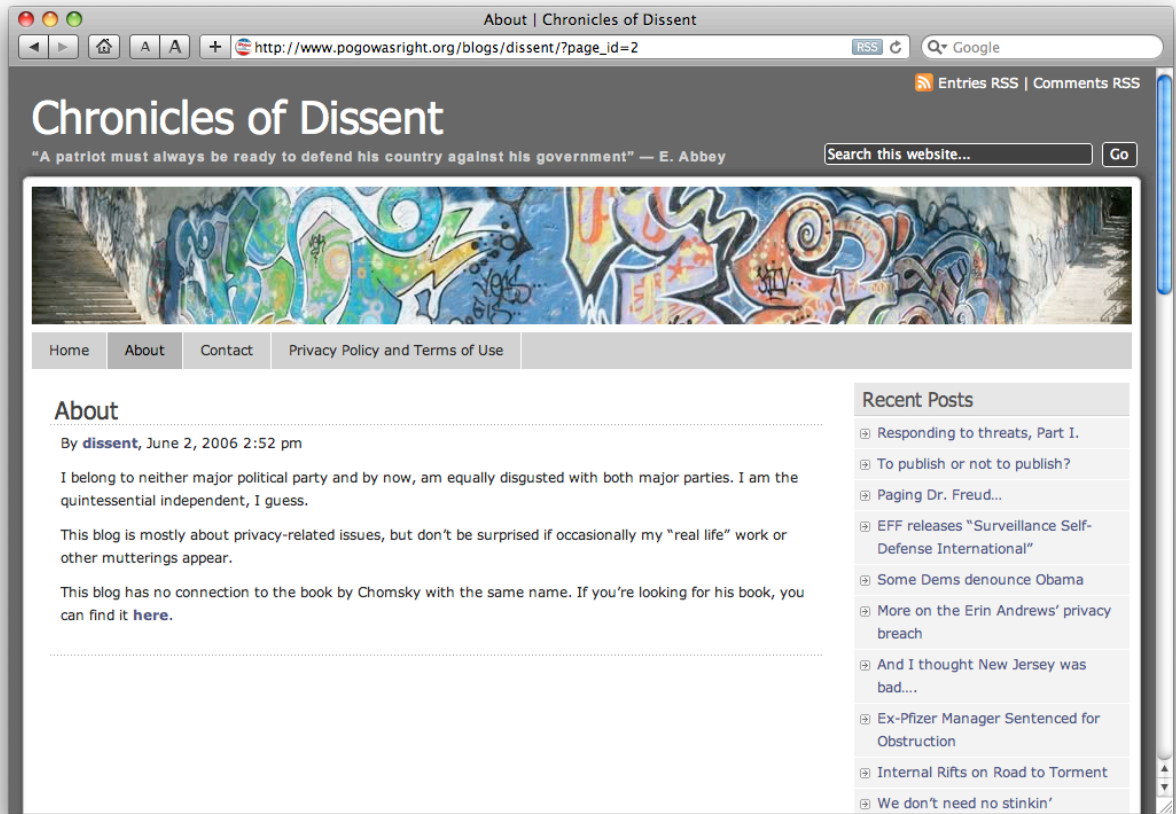
(True and correct copies of this “About” page, available at [http://www.pogowasright.org/?page\\_id=2](http://www.pogowasright.org/?page_id=2), as it appeared on July 28, 2009, are attached to this Complaint as Exhibit A.)

7. Doe also writes and maintains the “Chronicles of Dissent” blog,<sup>2</sup> which is also located at the Pogo website. See *Chronicles of Dissent*, <http://www.pogowasright.org/blogs/dissent/> (last visited July 28, 2009.) The *Chronicles of Dissent* blog contains Doe’s writings and commentary about privacy-

<sup>2</sup> “A blog (a contraction of the term “weblog”) is a type of website, usually maintained by an individual with regular entries of commentary, descriptions of events, or other material such as graphics or video. Entries are commonly displayed in reverse-chronological order ... Many blogs provide commentary or news on a particular subject ... The ability for readers to leave comments in an interactive format is an important part of many blogs.” See <http://en.wikipedia.org/wiki/Blog> (last visited July 30, 2009).



related issues under her pseudonym “dissent”. A true and correct screen shot of the “About” page at the Chronicles of Dissent blog appears as follows:



(True and correct copies of this “About” page, available at [http://www.pogowasright.org/blogs/dissent/?page\\_id=2](http://www.pogowasright.org/blogs/dissent/?page_id=2), as it appeared on July 28, 2009, are attached to this Complaint as Exhibit B.)

8. Defendant Lillian Glass, Ph.D. (“Glass”) is an individual residing in Los Angeles County, California. Defendant Glass operates the website located at <http://drlilianglass.com>. A true and correct copy of the home page of [drlilianglass.com](http://drlilianglass.com) appears in as follows:



(True and correct copies of this homepage, available at <http://www.drllianglass.com>, as it appeared on July 28, 2009, are attached to this Complaint as Exhibit C.)

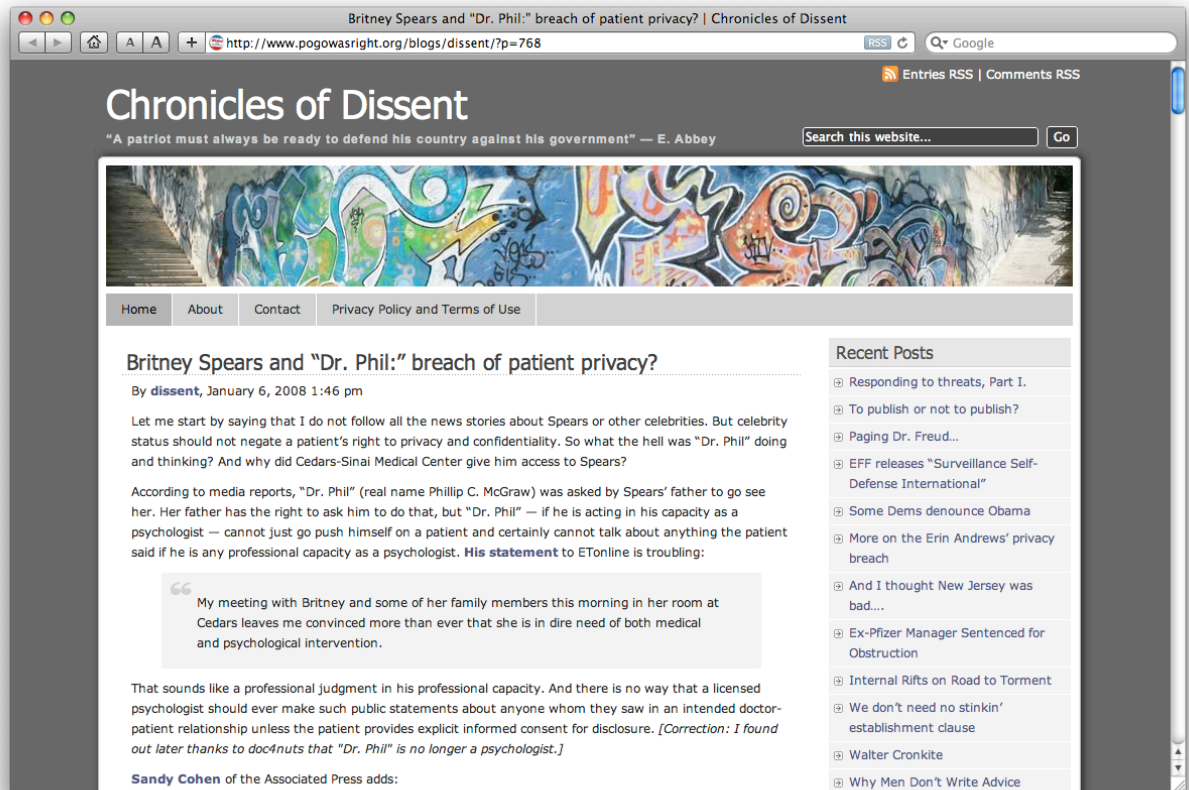
## **GENERAL ALLEGATIONS**

### **A. Britney Spears' Health Controversy, The Ensuing Public Debate, And Jane Doe's Opinions On Patient Privacy.**

9. More than a year and a half ago, renowned entertainment starlet Britney Spears was reported by members of the news media as suffering from an emotional breakdown of sorts. Spears had gained weight, cut her hair, and had reportedly been suffering from various physical and psychological ailments. The media frenzy which ensued included numerous television, radio, internet, newspaper, and magazine reports

all curious about Ms. Spears' personal problems. It did not take long for celebrity psychologists, like "Dr. Phil" and others, to take up the issue of Ms. Spears' alleged problems.

10. Around that time, and disturbed by what she perceived as a grave violation of Ms. Spears' right to privacy and confidentiality as a patient, Jane Doe (writing under her pseudonym "dissent") made the following entry dated January 6, 2008, at her Chronicles of Dissent blog (hereinafter "Post 768"), where she often writes about the issue of patient privacy:



(True and correct copies of this "Post 768," available at <http://www.pogowasright.org/blogs/dissent/?p=768>, as it appeared on July 28, 2009, are attached to this Complaint as Exhibit D.)

1 11. Later in Post 768, Jane Doe asks:

2 “[W]ho is looking out for patient privacy and confidentiality  
3 here? Because the incident occurred in California and “Dr.  
4 Phil” is not licensed to practice psychology in California (as  
5 far as I can tell, anyway), he may or may not have violated  
6 their laws. Did he violate Texas’s laws for psychologists?  
7 *[Clearly not, since he is no longer licensed in Texas].* And  
8 did Cedars-Sinai violate HIPAA?”

9 12. More than a dozen readers of the Chronicles of Dissent blog entered  
10 comments to Post 768. These third party comments appear at the Chronicles of Dissent  
11 blog in the space immediately below the main posting written by Jane Doe. (See Exhibit  
12 **D.**)

13 13. Shortly thereafter, on information and belief, on January 10, 2008,  
14 Defendant Glass wrote on her own blog, located at <http://drlilliangulass.wordpress.com>,  
15 an entry commenting at length on Ms. Spears’ situation:<sup>3</sup>

16 BRITNEY IS NOT THAT CRAZY! SHE IS SANE ENOUGH  
17 TO COMPLETEY REJECT HER TOXIC MANIPULATIVE,  
18 BETRAYING, GREEDY, SELFISH MOTHER.

19 But now, unfortunately we have all witnessed Britney’s  
20 mental disease in action. Her most probable bipolar disorder  
21 and other underlying disorders (borderline personality  
22 disorder, anxiety disorder, and narcissistic disorder) and  
23 reported drug abuse have provided us with an explanation as  
24 to Britney’s bizarre and erratic behaviors. We can all see that  
25 it is not her fault that she has been acting the way she has  
26 been since she shaved her head. She is ill and desperately  
27 needs psychiatric and medical help.

28 14. On information and belief, Defendant Glass wrote another entry on her  
blog, also dated January 10, 2008, offering to help Ms. Spears through her personal

<sup>3</sup> Originally located at: <http://drlilliangulass.wordpress.com/2008/01/10/britney-is-not-that-crazy-she-is-sane-enough-to-completely-reject-her-toxic-manipulative-betraying-greedy-selfish-mother/>. This post has since been removed.

1 trauma and providing the following advice:<sup>4</sup>

2  
3 BRITNEY IS A CANDIDATE FOR SUICIDE IF SHE IS NOT  
4 TREATED IMMEDIATELY!

5 Britney I can definitely help you get your life back together. I  
6 can definitely guide you in the right direction so that you  
7 become more balanced so you can regain custody of your  
8 kids and be a good mother to your kids.

9 I know you have thrown your mother out of your life right  
10 now. I am more than willing to serve as your mother figure  
11 so that you don't jump so far off the deep end that there is no  
12 way back.

13 Britney, the world is NOT out to get you because you are  
14 famous. Your paranoia is the first symptom that is part of  
15 your disease. Your up and down mood swings, your nost [sic]  
16 probable alcohol and or drug use, your lack of caring about  
17 your physical hygiene , your poor grooming, your out of  
18 shape body and the self destructive behavior you exhibit are  
19 all signs of your disease.

20 YOU MUST BE PROPERLY MEDICATED AT ONCE!  
21 PLEASE CHECK INTO UCLA'S NEUROPSYCHIATRIC  
22 INSTITUTE FOR A COMPLETE WORKUP AND  
23 EVALUATION AND TREATMENT! YOU NEED  
24 ATTENTION AT ONCE."

25  
26 15. Defendant Glass' continued her blog entry dated January 10, 2008, with  
27 her contact information and urging Ms. Spears to contact her:  
28

29 Britney, if you a re reading this blog, please email me, call me  
30 at my office at 310 274-0528 or come and see me at 435 N.  
31 Bedford Drive Suite 408 Beverly Hills, Ca. I am here for you.  
32 If anyone is reading this blog knows Britney personally or  
33 has immediate access to who and can get to her, please tell  
34 her that there is a someone out there who can help her get  
35 her life back on track. She needs to know that she won't be  
36 sold out. No press will be contacted or communicated with as  
37 it pertains to her. She needs to know everything will be

38 <sup>4</sup> Originally located at:  
39 [http://drlilianglass.com/blogs/index.php?blog=2&title=brtiney\\_is\\_a\\_candidate\\_for\\_suicide\\_if\\_sh&more=1&c=1&tb=1&pb=1](http://drlilianglass.com/blogs/index.php?blog=2&title=brtiney_is_a_candidate_for_suicide_if_sh&more=1&c=1&tb=1&pb=1). This post has since been removed.

1 handled with the strictest discretion and confidentiality.  
2 Nothing would please me more than to help give Britney  
3 back her life I have done so with countless clients in the past.  
4 To date their lives are not only back on track but even better  
5 than they ever dreamed possible. After over two decades, I  
6 know what I am doing and I am SURE that I can help you  
7 tremendously.

8 16. On information and belief, or about January 18, 2008, Defendant Glass  
9 also wrote the following entry on her blog, discussing her own appearances on national  
10 media programs discussing Ms. Spears' plight and offering her opinion of Ms. Spears'  
11 diagnosis:<sup>5</sup>

12 Britney's Body Language Demonstrates That She May Have  
13 Multiple Personality Disorder. If She Does Have It, Was She  
14 Ever Physically or Sexually Abused As A Child?

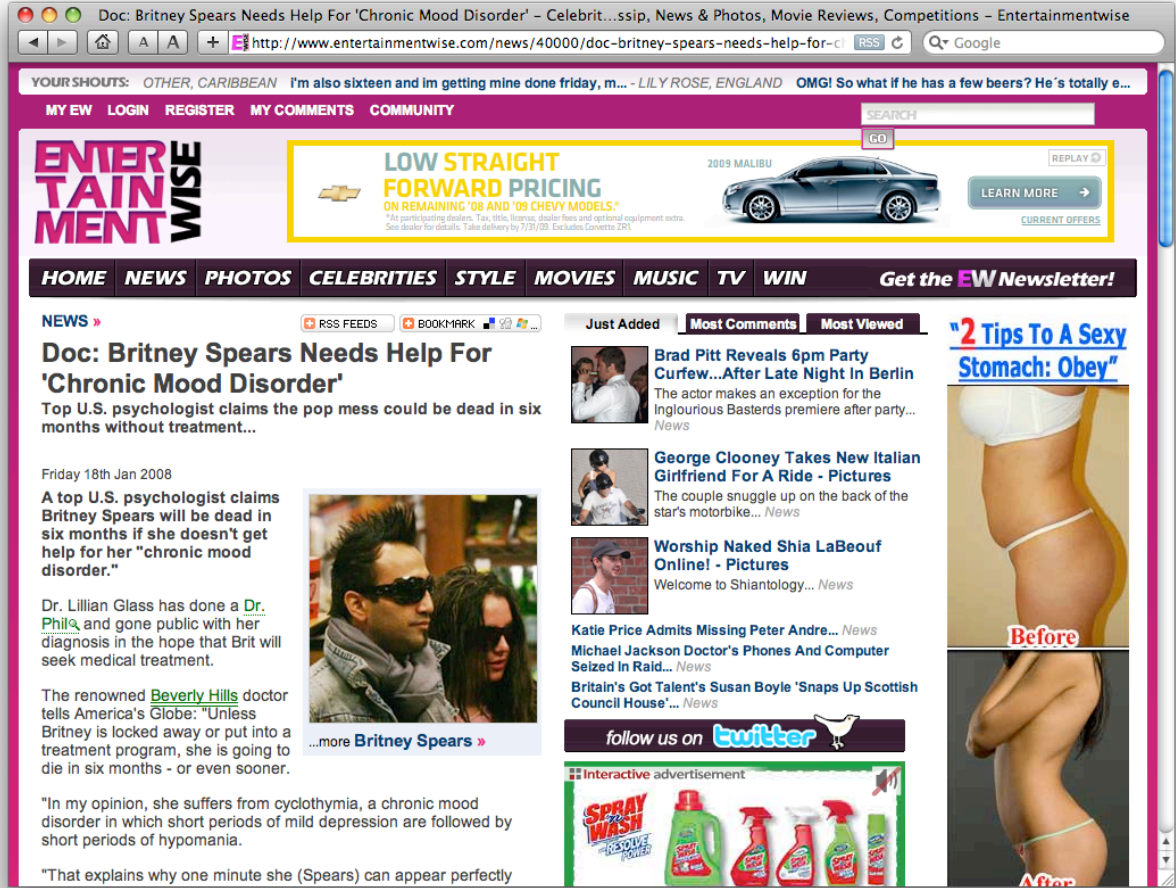
15 The other day I appeared on CNN's Showbiz Tonight and on  
16 CNN's Primetime Live with Erica Hill where I stated that I  
17 believed that Britney may possibly be suffering from  
18 Multiple personality Disorder, or in clinical terms,  
19 Dissociative Identity Disorder (DID) as defined by the  
20 American Psychiatric Association's Diagnostic and  
21 Statistical manual of Mental Disorders (DSM-IV-TR).

22 17. That same date, on January 18, 2008, Entertainment Wise, a celebrity  
23 gossip and news website, published an article at <http://www.entertainmentwise.com>  
24 which reported on Defendant Glass's "diagnosis" of Britney Spears. This article appears  
25 as follows:

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26 <sup>5</sup> Originally posted at:  
27 [http://drlilianglass.wordpress.com/2008/01/18/britney%E2%80%99s-body-  
28 language-demonstrates-that-she-may-have-multiple-personality-disorder-if-she-does-  
have-it-was-she-ever-physically-or-sexually-abused-as-a-child/](http://drlilianglass.wordpress.com/2008/01/18/britney%E2%80%99s-body-language-demonstrates-that-she-may-have-multiple-personality-disorder-if-she-does-have-it-was-she-ever-physically-or-sexually-abused-as-a-child/). This post has since  
been removed.





(A true and correct copy of this article, available at <http://www.entertainmentwise.com/news/40000/doc-britney-spears-needs-help-for-chronic-mood-disorder>, as it appeared on July 28, 2009, is attached to this Complaint as Exhibit E.)

18. Thereafter, also on January 18, 2008, Doe, wrote the following entry at the Chronicles of Dissent blog (hereinafter, "Post 793"), in response to the Entertainment Wise article and to the posts made on Defendant Glass's blog<sup>6</sup>:

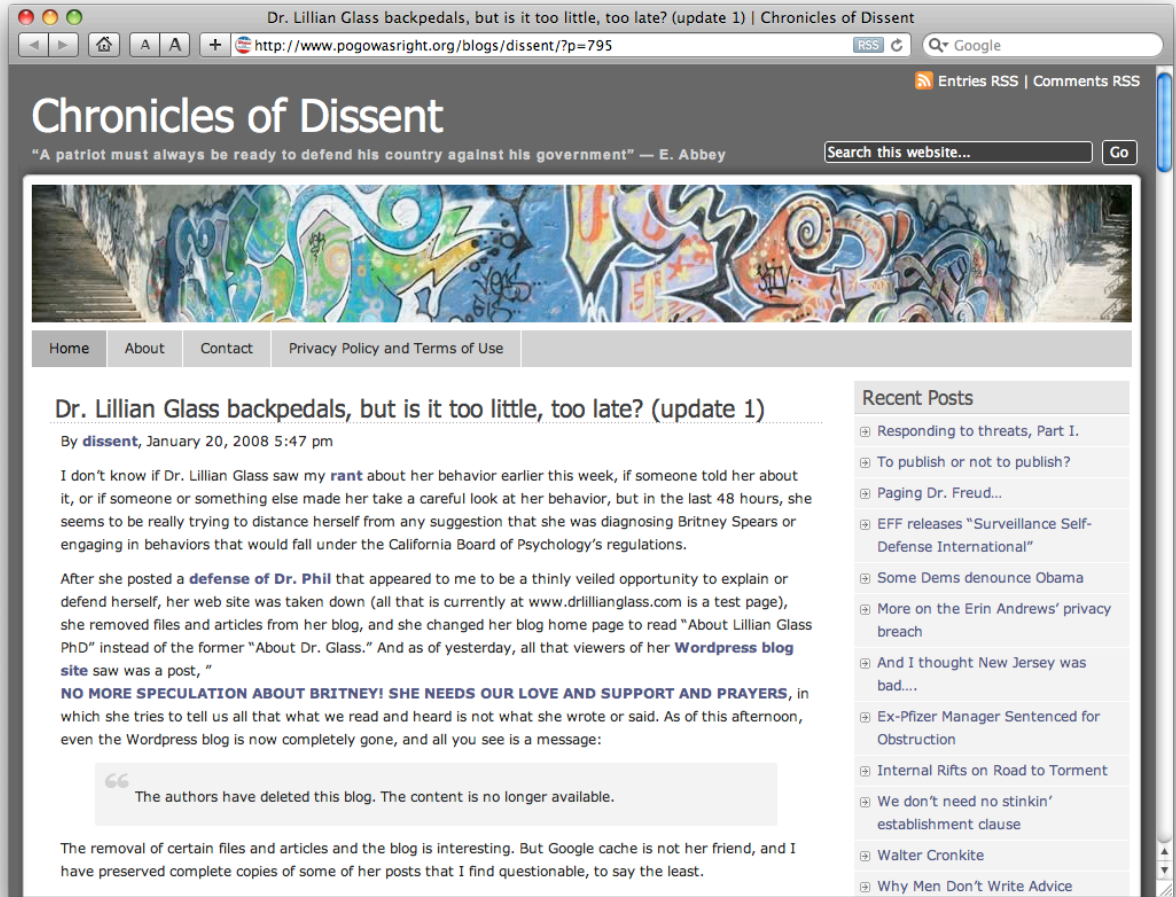
<sup>6</sup> As noted below in paragraph 27 of this Complaint, this blog entry was amended. The image here reflects the posting in its current form.



(True and correct copies of this “Post 793,” available at <http://www.pogowasright.org/blogs/dissent/?p=793>, as it appeared on July 28, 2009, are attached to this Complaint as Exhibit F.) As made clear from the entry, Doe was critical of Defendant Glass’s commentary on Ms. Spears’ well-being, and, in particular, was critical of the risk this sort of conduct has on patient privacy generally — an issue plainly in the public interest.

19. On January 20, 2008, Doe wrote a blog entry (hereinafter “Post 795”) at the Chronicles of Dissent blog further discussing Defendant Glass’s comments:





(True and correct copies of this "Post 795," available at <http://www.pogowasright.org/blogs/dissent/?p=795>, as it appeared on July 28, 2009, are attached to this Complaint as Exhibit G.)

20. Several interested readers of the Chronicles of Dissent blog entered comments to Post 795 including, among others, commenters who self-identified themselves as "Joely Weber".

21. Jane Doe made no comments to her Post 795 (or any other blog post at Pogo) other than responses to third party comments. In so responding, Doe always identified herself using her pseudonym "dissent."

22. On January 20, 2008, Jane Doe edited Post 768 and added the following text to the post:

Update of Jan. 20th: This thread is still “live” and open for comments. I seem to have been on the warpath about people diagnosing Spears when they are not even licensed as psychologists or psychiatrists, or otherwise turning a serious matter into a media circus for their own aggrandizement or commercial interests. For those interested in the topic, you may also wish to see my later posts on this blog about Dr. Phil and Dr. Lillian Glass and their conduct:  
**“Dr. Phil” catches some flak and dishes some out**  
**A complaint filed about Dr. Phil — but is it well-founded?**  
**People who live in Glass psychology houses shouldn’t throw stones. They should be stoned.**  
**Dr. Lillian Glass backpedals, but is it too little, too late?**

See Exhibit D (Post 768.)

23. On February 1, 2008, Doe wrote a final entry regarding the Britney Spears issues (hereinafter “Post 806”) at the Chronicles of Dissent blog reflecting on reports that Ms. Spears had been re-hospitalized and noting “with approval” the silence of media psychologists on the topic. (True and correct copies of this “Post 806,” available at <http://www.pogowasright.org/blogs/dissent/?p=806>, as it appeared on July 30, 2009, are attached to this Complaint as Exhibit H.)

**B. A Year And A Half Later, Defendant Glass Threatens Suit Against Jane Doe For Her Opinions On The Britney Spears Health Controversy.**

24. On June 18, 2009, nearly than one and a half years after Pogo first published Posts 793 and 795, Jane Doe received a letter from counsel to Defendant Glass (the “Glass 2009 Threat Letter”). (A true and correct copy of the letter, dated June 18, 2009, is attached to this Complaint as Exhibit I.)

25. The Glass 2009 Threat Letter alleges, among other things, that:

- Lillian Glass. Ph.D. “has been the subject of disparaging, defamatory, and tortuous comments on ‘PogoWasRight’s’ [sic] blog. Such comments were made by you in your ‘dissent’ and by another individual by the name of [S. B.]<sup>7</sup>, who has commented on the blog. She may also be known as ‘Joley Webber’ [sic] ... ” (at p. 1)
- “you have violated the privacy rights and other rights of my client...” (at p. 1) and “Your blog is replete with false claims concerning [Defendant] Glass.” (at p. 1)
- “You have purposely allowed comments to be published in your blogs, whether by you, or by another, which are false and defamatory in nature, and which are designed to embarrass and hold my client up to ridicule. This has been done improperly and maliciously.” (at p. 1)
- “... while you attempted to be clever in the title of the January 19, 2009 blog in referencing the old adage.. ‘People who live in glass houses shouldn’t throw stones,’ you have urged that Dr. Glass be stoned ... You have in essence incited persons with such propensities and have called for Dr. Glass’ death, simply because you did not like what she said in the media. Whether you meant this or not, the fact that you have said this in a blog headline is egregious and very troublesome.” (at p. 2)
- “Moreover, you have incited persons reading your blog to complain to the media and to the psychological society about Dr. Glass.” (at p. 2)

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<sup>7</sup> Out of an abundance of caution, the names of any individual mentioned in the Glass 2009 Threat Letter who has not clearly published his/her name to the Chronicles of Dissent blog have been removed from this Complaint for privacy reasons. Including information in this Complaint at this time that might disclose a possible doctor-patient relationship or any contents of such a relationship (even if already disclosed through the Glass 2009 Threat Letter to Jane Doe) appears presently unnecessary. Therefore, the Glass 2009 Threat Letter as attached to this Complaint and any excerpts included herein have been redacted to omit potential names not otherwise disclosed at the Chronicles of Dissent blog.

26. The Glass 2009 Threat Letter concludes in unambiguous terms (emphasis added):

Let me make one thing perfectly clear. Unless these blogs pertaining to Dr. Lillian Glass are taken down immediately, ***a lawsuit will be forthcoming against you.*** I trust that a lawsuit will not be necessary.

27. On July 4, 2009, in response to the Glass 2009 Threat Letter, Doe altered the title of Post 793 by adding “(verbally)” to the end of the title, and added the following new text to Post 793 (italics in original):

*Note of July 4, 2009: It was pointed out to me that the original blog title could be construed as encouraging people to attack Dr. Glass or stone her (physically). I thought it was obvious that I was referring to verbal stones only, but just to be clear, I have edited the title for this entry.*

28. On July 20, 2009, Doe received another email from Defendant Glass’s counsel which read as follows (emphasis added):

We have now ascertained that you are the blogger of the "dissent"/"pogowasright.org" website. As you know, my office emailed my June 18, 2009 letter to the blogger of this website, demanding that the defamatory references to my client, Lillian Glass, Ph.D., be removed from the internet. That includes, but is not limited to, the damaging material which you have published.

I had a response to this e-mail dated July 7, 2009 which stated that I would have a substantive response within 48 hours. To date, I have heard nothing further.

In my letter of June 18, 2009, I also stated that, ***unless the defamatory and tortious comments concerning Dr. Lillian Glass were taken off the internet and blog immediatly [sic], a lawsuit would be forthcoming against you (the blogger).*** The vicious and malicious materials continue on the website notwithstanding my letter.

Under the circumstances, I am giving you a deadline of July 24, 2009 to remove all references to Lillian Glass ***or you will be sued for actual and punitive damages as well as injunctive relief. This will***

*be done without further notice and forthwith.*

I should also mention to you that if a suit is filed against you, then there will be a public record of your identity and of your capacity as the blogger of this "pogowasright.org" and other websites. Since you have gone to such great lengths to hide your identity improperly, I think this should also be a concern of yours.

Sincerely,

Martin E. Jacobs, Esq.

(A true and correct copy of the July 20, 2009 email, is attached to this Complaint as Exhibit J.)

**FIRST CAUSE OF ACTION**

**[Declaratory Relief Pursuant To 28 U.S.C. § 2201 et seq.  
(Declaratory Judgment Act) And 49 USC 230 et seq.  
(Communications Decency Act)]**

29. As and for a cause of action against Defendant, Plaintiff readopts, realleges, and incorporates by reference all of the allegations and averments contained in paragraphs 1 through the immediately preceding paragraph as though fully set forth herein.

30. A real and actual controversy of sufficient immediacy and reality to warrant declaratory relief exists between the parties as to whether or not any of the information posted at Pogo forms the basis of a claim. Defendant Glass' 2009 Threat Letter which unambiguously threatens to file a lawsuit against Pogo and/or Jane Doe for defamation among other torts forces Plaintiff to choose between risking legal liability or stifling the free speech and expression that the Pogo website and, in particular, the Chronicles of Dissent blog, was created to promote. The controversy between Jane Doe and Defendant Glass is thus real and substantial and demands specific relief through a decree of a conclusive character, namely, that Jane Doe is without legal liability. The nature and

1 extent of the adverse legal interests between Jane Doe and Defendant Glass are apparent  
2 and the controversy is definite and concrete.

3 31. The Communications Decency Act states that “[n]o provider or user of an  
4 interactive computer service shall be treated as the publisher or speaker of any  
5 information provided by another information content provider,” and expressly preempts  
6 any state law to the contrary. 47 U.S.C. §§ 230(c)(1), (e)(3).

7 32. “The term ‘interactive computer service’ means any information service,  
8 system, or access software provider that provides or enables computer access by multiple  
9 users to a computer server, including specifically a service or system that provides access  
10 to the Internet and such systems operated or services offered by libraries or educational  
11 institutions.” 47 U.S.C. § 230(f)(2).

12 33. “The majority of federal circuits have interpreted the CDA to establish  
13 broad ‘federal immunity to any cause of action that would make service providers liable  
14 for information originating with a third party user of the service.’” *Almeida v.*  
15 *Amazon.com, Inc.*, 456 F.3d 1316, 1321 (11th Cir. 2006) (quoting *Zeran v. America*  
16 *Online, Inc.*, 129 F.3d 327, 331 (4th Cir. 1997)); *see also Carafano v. Metrosplash.com,*  
17 *Inc.*, 339 F.3d 1119, 1122 (9th Cir. 2003) (citing *Batzel v. Smith*, 333 F.3d 1018, 1026-27  
18 (9th Cir. 2003)).

19 34. The United States Court of Appeals for the Ninth Judicial Circuit has held:

20 publication involves reviewing, editing, and deciding  
21 whether to publish or to withdraw from publication third-  
22 party content. (“[A]ny activity that can be boiled down to  
23 deciding whether to exclude material that third parties seek  
24 to post online is perforce immune under section 230.” (See  
25 *Barnes v. Yahoo!, Inc.* CV-05-00926-AA, Filed May 7,  
26 2009).

27 35. Congress enacted Section 230 as part of the Communications Decency Act  
28 of 1996 for two basic policy reasons: to promote the free exchange of information and

1 ideas over the Internet and to encourage voluntary monitoring for offensive or obscene  
2 material.

3 36. Congress incorporated these ideas into the text of Title 47 U.S.C. Section  
4 230 itself, expressly noting that “interactive computer services have flourished, to the  
5 benefit of all Americans, with a minimum of government regulation,” and that  
6 “[i]ncreasingly Americans are relying on interactive media for a variety of political,  
7 educational, cultural, and entertainment services.” 47 U.S.C. §§ 230(a) (4), (5).

8 37. In her capacity as the owner and operator of Pogo and the Chronicles of  
9 Dissent blog located at Pogo, Jane Doe is a “provider ... of an interactive computer  
10 service” as contemplated by 47 U.S.C. § 230.

11 38. Third party commenters at the Chronicle of Dissent blog or otherwise at  
12 Pogo are “other information content providers” as contemplated by 47 U.S.C. § 230.

13 39. In her capacity as the owner and operator of Pogo and the Chronicles of  
14 Dissent blog located at Pogo, and pursuant to 47 U.S.C. 230, Jane Doe is not the  
15 “publisher or speaker” of the third party comments appearing the Chronicles of Dissent  
16 blog. Accordingly, pursuant to 47 U.S.C. § 230, Jane Doe cannot be liable for the  
17 contents of such third-party comments.

18 40. Jane Doe accordingly seeks a declaration from this Court that any and all  
19 claim(s) by Defendant Glass rooted in the publication or speaking of the comments of  
20 third parties appearing on the Chronicles of Dissent blog against Plaintiff are protected  
21 by Section 230 of the Communications Decency Act and therefore not actionable against  
22 Jane Doe.

## 23 **SECOND CAUSE OF ACTION**

### 24 **[Declaratory Relief Pursuant To 28 U.S.C. § 2201 et seq (Declaratory 25 Judgment Act) – (California Civil Code §340, Statute Of Limitations)]**

26 41. As and for a cause of action against Defendant, Plaintiff readopts, realleges,  
27 and incorporates by reference all of the allegations and averments contained in  
28

1 paragraphs 1 through the immediately preceding paragraph as though fully set forth  
2 herein.

3 42. Defendant Glass alleges in the 2009 Glass Threat Letter and subsequent  
4 correspondence that written statements made by Plaintiff Doe are defamatory, and allege  
5 damages – including punitive damages – against Doe.

6 43. Doe’s allegedly defamatory statements at issue on the Chronicles of Dissent  
7 blog were published more than one year ago.

8 44. California Civil Code §340 states that an action for libel or slander shall be  
9 brought within one year.

10 45. Defendant Glass’ claims to the extent they exist are time barred pursuant to  
11 CCP §340.

12 46. Jane Doe accordingly seeks a declaration from this Court that Defendant  
13 Glass’s claims for defamation or libel are time barred.

14 **THIRD CAUSE OF ACTION**

15 **[Declaratory Relief Pursuant To 28 U.S.C. § 2201 et seq. (Declaratory  
16 Judgment Act) – Privileged Speech (CCP §44, 45, 45(a) 46); the Restatement  
17 (Second) of Torts §558)]**

18 47. As and for a cause of action against Defendant, Plaintiff readopts, realleges,  
19 and incorporates by reference all of the allegations and averments contained in  
20 paragraphs 1 through the immediately preceding paragraph as though fully set forth  
21 herein.

22 48. The elements that must be proved to establish defamation are: (a) false and  
23 defamatory statement concerning another; (b) an unprivileged publication to a third  
24 party; (c) fault amounting at least to negligence on the part of the publisher; and (d)  
25 either actionability of the statement irrespective of special harm or the existence of  
26 special harm caused by the publication. *See* Restatement (Second) of Torts §558.

27 49. A statement that does not contain an express or implied assertion of  
28 verifiable fact is not actionable. *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 20 (1990)



(not defamatory if statement "cannot 'reasonably [be] interpreted as stating actual facts' about an individual."); *Ollman v. Evans*, 750 F.2d 970, 981 (D.C. Cir. 1984), cert. denied, 471 U.S. 1127 (1985) ("the reasonable reader . . . perusing [a] column on the editorial or Op-Ed page is fully aware that the statements found there are not 'hard' news like those printed on the front page or elsewhere in the news sections of the newspaper."); *Partington v. Buliosi*, 56 F.3d 1147, 1158, (9th Cir. 1995) (subjective, ambiguous terms such as "false," "phony," "hefty mark-up" are "unprovable, since those adjective admit of numerous interpretations .... [They are] too subjective ... to be verifiable" and therefore are not actionable.") This is consistent with the Supreme Court's holding that "this country has a 'profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide open.'" *New York Times Co. v. Sullivan*, 376 U.S. 254 , 270 (1964) (citation omitted).

50. Defendant Glass is a public figure.

51. Jane Doe's statements concerning Defendant Glass made in posts on her Chronicles of Dissent blog and otherwise at Pogo, are statements of opinion and/or do not contain an express or implied assertion of verifiable fact.

52. Any statements made regarding Defendant Glass were not made with actual malice.

53. Jane Doe's statements concerning Defendant Glass made in posts on her Chronicles of Dissent blog are not defamatory pursuant to Restatement of Torts §558.

54. Jane Doe accordingly seeks a declaration from this Court that Defendant Glass's claims are privileged statements.

WHEREFORE, Plaintiff prays for judgment as follows:

1. For a declaratory judgment that Plaintiff Jane Doe is eligible for the safe harbors under 47 U.S.C. § 230 et seq;

2. For a declaratory judgment that Plaintiff Jane Doe is not liable for any claim for defamation brought by Defendant Lillian Glass arising from the posts made by others on Pogo;
3. For a declaratory judgment that Plaintiff Jane Doe is not liable for any claim for defamation brought by Defendant Lillian Glass as time barred pursuant to California Civil Code §340;
4. For a declaratory judgment that Plaintiff Jane Doe's speech and writing on PogoWASRIGHT.ORG is privileged speech pursuant to the First Amendment of the US Constitution.
5. For a declaratory judgment that Plaintiff Jane Doe is not liable for any claim for any statements made by Plaintiff Jane Doe because such statements are statements of opinion and/or not an express or implied assertion of verifiable fact and thus not actionable pursuant to Restatement (Second) of Torts §558.
6. For costs of suit incurred herein, including reasonable attorney's fees to the extent necessary; and
7. For such other and further relief as the Court may deem just and proper.

Dated: July 30, 2009

By



Gregory Alan Rutchik  
Attorneys for Plaintiff  
JANE DOE



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Wednesday, July 29, 2009

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PogoWasRight.org is my attempt to increase awareness of privacy news and issues. The site is not affiliated with any Pogo or Walt Kelly enterprises or web site. If you are looking for the official Pogo web site, it is at PogoPossum.com. Please send them my love.



PogoWasRight.org was born in 2006 because I wanted to expand the privacy news and issues coverage that I had been providing for Cotse.net and then for TheMissingAmendment.org. I chose the name "PogoWasRight" because I am a fan of the cartoon character and think that his "We have met the enemy and he is us" line applies equally well to privacy as it did to the environment.

This site does not accept any advertising or political sponsorship. If I promote or recommend a site, it's because I believe that they are worth promoting and for no other reason. I am a long-time independent and am an equal opportunity sniper when it comes to political organizations.

When I am not working on this site or its companion sites, [www.databreaches.net](#) and [www.phiprivacy.net](#), I am a licensed health care professional who is also an active advocate for the disability community. I choose to remain pseudoanonymous on my privacy sites for a variety of reasons.

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« Jun Aug »

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		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		EC

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To contact me about the site or for general inquiries, [email me](#).

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By **dissent**, June 2, 2006 2:52 pm

I belong to neither major political party and by now, am equally disgusted with both major parties. I am the quintessential independent, I guess.

This blog is mostly about privacy-related issues, but don't be surprised if occasionally my "real life" work or other mutterings appear.

This blog has no connection to the book by Chomsky with the same name. If you're looking for his book, you can find it [here](#).

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- **Medical Privacy Issues**

Medical privacy news and discussion can be found on a sister site, [PHIPrivacy.net](http://PHIPrivacy.net).

- **John G. Gianutsos, PhD**



If you would like to share your memories of John, or read others' tributes to John, you may do so in this special [tribute thread](#).

If your comments are too lengthy for the form, send them to me via [email](#) and I will ensure that they get posted.

*This thread last updated 07-27-09*

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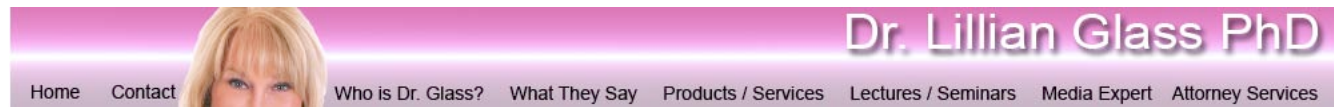
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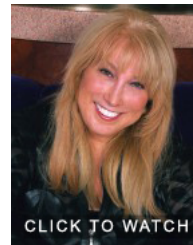
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- |   |                           |                          |
|---|---------------------------|--------------------------|
| 1. I need more SELF CONFIDENCE.                               | <input type="radio"/> Yes | <input type="radio"/> No |
| 2. I want to handle people who make my life MISERABLE.        | <input type="radio"/> Yes | <input type="radio"/> No |
| 3. I want to learn how to accurately read BODY LANGUAGE.      | <input type="radio"/> Yes | <input type="radio"/> No |
| 4. I want to know EXACTLY what to say in any given situation. | <input type="radio"/> Yes | <input type="radio"/> No |
| 5. I never want to be at a LOSS FOR WORDS again.              | <input type="radio"/> Yes | <input type="radio"/> No |
| 6. I want to eliminate SHYNESS which holds me back.           | <input type="radio"/> Yes | <input type="radio"/> No |
| 7. I want a better RELATIONSHIP with my Mate or Date.         | <input type="radio"/> Yes | <input type="radio"/> No |
| 8. I want to improve the way I SPEAK and SOUND.               | <input type="radio"/> Yes | <input type="radio"/> No |
| 9. I want to make more friends and ATTRACT more people.       | <input type="radio"/> Yes | <input type="radio"/> No |
| 10. I want to IMPROVE my PUBLIC SPEAKING skills.              | <input type="radio"/> Yes | <input type="radio"/> No |

LET ME KNOW WHEN DR. GLASS WILL BE GIVING A SEMINAR IN MY AREA. ☐ Yes

Name :  Email Address:

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c. 2008 Dr.Lillian Glass PhD

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## Britney Spears and "Dr. Phil:" breach of patient privacy?

By [dissent](#), January 6, 2008 1:46 pm

Let me start by saying that I do not follow all the news stories about Spears or other celebrities. But celebrity status should not negate a patient's right to privacy and confidentiality. So what the hell was "Dr. Phil" doing and thinking? And why did Cedars-Sinai Medical Center give him access to Spears?

According to media reports, "Dr. Phil" (real name Phillip C. McGraw) was asked by Spears' father to go see her. Her father has the right to ask him to do that, but "Dr. Phil" — if he is acting in his capacity as a psychologist — cannot just go push himself on a patient and certainly cannot talk about anything the patient said if he is any professional capacity as a psychologist. [His statement](#) to EOnline is troubling:

“My meeting with Britney and some of her family members this morning in her room at Cedars leaves me convinced more than ever that she is in dire need of both medical and psychological intervention.

That sounds like a professional judgment in his professional capacity. And there is no way that a licensed psychologist should ever make such public statements about anyone whom they saw in an intended doctor-patient relationship unless the patient provides explicit informed consent for disclosure. *[Correction: I found out later thanks to doc4nuts that "Dr. Phil" is no longer a psychologist.]*

[Sandy Cohen](#) of the Associated Press adds:

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[Sandy Cohen](#) of the Associated Press adds:

McGraw planned to talk more about Spears on his daytime talk show this week, the press release said.

[TMZ](#) offers some additional information that also suggests highly questionable behavior on McGraw’s part:

People on the 7th floor at Cedars-Sinai Medical Center say the doctor arrived about 7:30 AM Saturday. We’re told Britney did not invite him in; she didn’t even know he was coming. Sources say it was Brit’s parents who told Dr. Phil to go to the hospital. When he walked into her room, we’re told, a blindsided Britney walked out — and eventually came back.

Sources say Phil tried speaking with Spears for about 15 minutes — not an hour as [Dr. Phil’s press release](#) states — but she wanted none of it.

[...]

Sources say Dr. Phil wants to do a television intervention, something that isn’t sitting well with some of the people who have known for a while that Britney has a very serious mental condition — likely a bipolar disorder that is now in the red zone.

TMZ contacted Cedars to find out why the hospital let a television doctor on a floor that has such fragile patients, particularly since Britney had no idea he was coming. It’s especially troublesome that Cedars let Dr. Phil go uninvited to Britney’s room, since she had already been discharged and presumably had a right to know if someone wanted to visit. A Cedars rep made it short and sweet, telling us, “No comment.”

Clearly, a lot of this is unconfirmed, but who is looking out for patient privacy and confidentiality here? Because the incident occurred in California and “Dr. Phil” is not licensed to practice psychology in California (as far as I can tell, anyway), he may or may not have violated their laws. Did he violate Texas’s laws for psychologists? *[Clearly not, since he is no longer licensed in Texas]*. And did Cedars-Sinai violate HIPAA?

This is not the first time that “Dr. Phil’s” ethics and conduct would be questioned. McGraw was brought up on ethics charges by the [Texas State Board of Examiners of Psychologists](#) [pdf] in the 1980’s for having a “dual relationship” with a patient. The Board did not strip him of his license, but required him to obtain supervision of his practice for 1 year, and to complete an ethics course as well as further examinations by the Board.

Perhaps “Dr. Phil” thinks that being a “TV psychologist” permits him to make a mockery of professional ethical standards for psychologists. Perhaps he thinks that everyone “knows” he’s not conducting himself like a “real psychologist” and so feels empowered to trample Ms. Spears’ privacy.

I hope this incident is investigated by appropriate licensing boards and hospital review boards.

**Update of Jan. 20th:** This thread is still “live” and open for comments. I seem to have been on the warpath about people diagnosing Spears when they are not even licensed as psychologists or psychiatrists, or otherwise turning a serious matter into a media circus for their own aggrandizement or commercial interests. For those interested in the topic, you may also wish to see my later posts on this blog about Dr. Phil and Dr. Lillian Glass and their conduct:

[“Dr. Phil” catches some flak and dishes some out](#)  
[A complaint filed about Dr. Phil — but is it well-founded?](#)  
[People who live in Glass psychology houses shouldn’t throw stones. They should be stoned.](#)  
[Dr. Lillian Glass backpedals, but is it too little, too late?](#)

 [Medical Privacy](#), [Privacy](#)

- **By Annie**, January 6, 2008 @ [2:24 pm](#)

There’s a victim here: Britney Spears. She also has a right to claim damages from McGraw and from Cedars-Sinai.

I’m somewhat surprised because organizations that are familiar with treating celebrities and persons of public interest are usually pretty savvy about protecting their privacy and respecting their rights. The situation, coming during a usual change of shift time period, makes me wonder if one or more employees took money in exchange for facilitating or outright providing McGraw with access to