



C L A R E L O C K E

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**THOMAS A. CLARE, P.C.**

tom@clarelocke.com  
(202) 628-7401

10 Prince Street  
Alexandria, Virginia 22314

(202) 628-7400

www.clarelocke.com

**JERED T. EDE<sup>†</sup>**

jered@clarelocke.com  
(202) 628-7409

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Via Email

**Confidential - Not For Publication or Attribution**

Dr. Elisabeth Potter  
6818 Austin Center Blvd,  
Suite 204  
Austin, TX 78731  
Email: [elisabeth@drpotter.com](mailto:elisabeth@drpotter.com)  
[elisabeth.potter@gmail.com](mailto:elisabeth.potter@gmail.com)

**Re: Your Defamatory TikTok and Instagram Videos About  
UnitedHealthcare**

Dr. Elisabeth Potter:

Clare Locke LLP is defamation counsel for UnitedHealthcare. We are writing to demand you correct your knowingly false, misleading, and defamatory social media posts regarding UnitedHealthcare. In short, *UnitedHealthcare never asked or expected you to step out of surgery to make a phone call and any suggestion that we did so is false.* On the morning of the surgery, your office incorrectly ordered an inpatient hospital stay when you meant to order an outpatient observation stay. Had you not made that error, UnitedHealthcare would not have reached out. You have taken actions on social media to defend your actions and remove comments that are critical to you while failing to remove threatening, harassing, and intimidating comments directed at others.

You must promptly correct the record by removing your videos, posting a public apology to UnitedHealthcare, and condemning the threats of violence aimed at our client resulting from your posts. We also expect you to contact *Newsweek*, and any other media outlet who has reported on this issue and inform them that your claims were false, that you unequivocally retract your claims, and that you are requesting them to remove all stories about your claims.

<sup>†</sup>Admitted in California, Texas, and Florida. Not admitted in Virginia.



As you know, on January 7, 2025, you posted a social media video in which you falsely claimed that UnitedHealthcare required you to leave the operating room during a surgery to discuss the patient's coverage, among other things:

*I got a phone call into the operating room saying that UnitedHealthcare wanted me to call them about one of the patients who was having surgery today—who's actually asleep having surgery **and you know said I had to call right now**. So I scrubbed out of my case and I called UnitedHealthcare and the gentleman said he needed some information about her [and wanted to] know her diagnosis and whether ... her inpatient stay should be justified. And I was like do you understand that she's asleep right now? And that she has breast cancer? And the gentleman said actually I don't **that's a different department that would know that information**. And I was like well ... she does need to stay overnight tonight and **you have all the information with you because I got approval for this surgery** and I need to go back and be with my patient now. But yeah, it's out of control. Insurance is out of control. I have no other words.<sup>1</sup>*

The patient you reference was scheduled for surgery at HCA St. David's Medical Center in Austin, Texas on January 6, 2025. As you know, UnitedHealthcare had already approved a previously submitted prior authorization request for outpatient surgery for this patient. But, HCA has informed us that your office notified them on the day of the surgery that the patient should be admitted for an inpatient stay, rather than the observation stay that should have been ordered and was already approved as part of the prior authorization. That was your error, which you subsequently acknowledged to UnitedHealthcare when you confirmed you only wanted to observe the patient overnight.<sup>2</sup>

It was your error that caused UnitedHealthcare to call you for a peer-to-peer review. As you should know, Texas law only gives insurers one day to review concurrent cases and provide a reasonable opportunity to discuss the plan of treatment for the patient before issuing a denial.<sup>3</sup> Because of the erroneous notification for an inpatient stay, UnitedHealthcare was mandated by law to provide a reasonable opportunity to discuss the patient's treatment with you prior to issuing a

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<sup>1</sup> Dr. Elisabeth Potter (@drelisabethpotter), TikTok (Jan. 7, 2025), <https://www.tiktok.com/@drelisabethpotter/video/7457293170678762798?r=1&t=ZP-8ssrnnC2sKU>; Dr. Elisabeth Potter (@drelisabethpotter), Instagram (Jan. 7, 2025), <https://www.instagram.com/reel/DEid-1npNbA/?igsh=bDJ4dHZ2ZTF4Mzdo>.

<sup>2</sup> The error notifying UnitedHealthcare that the patient required an inpatient stay did not originate with UnitedHealthcare nor did UnitedHealthcare have any responsibility for that error.

<sup>3</sup> See Tex. Ins. Code § 4201.206 (Opportunity to Discuss Treatment Before Adverse Determination); § 4201.304 (Time for Notice of Adverse Determination); 28 Tex. Admin. Code § 19.1710 (Requirements Prior to Issuing an Adverse Determination); 28 Tex. Admin. Code § 19.1709 (e)(3) (Required Time Frames and expressly incorporating Tex. Ins. Code § 4201.304).



denial, and to do so promptly. But this does not mean UnitedHealthcare ever asked or expected you to step out of surgery to return that call.

Let us be clear: any suggestion that UnitedHealthcare asked you to step out of surgery, or that the call was urgent, is *false*. UnitedHealthcare did not ask—nor would it ever expect—a physician to interrupt patient care to return a phone call about a notification error or any other insurance matter. UnitedHealthcare’s representative called HCA at 2:29 p.m. on January 6, 2025. UnitedHealthcare explained the purpose for the call and asked to be transferred to the *nurse* caring for the patient. HCA transferred our client’s representative to the operating room department. When UnitedHealthcare’s representative was informed the patient was in surgery, UnitedHealthcare asked the operating room department simply to take a message and informed them that the call was not urgent and that you could call UnitedHealthcare back *when convenient to you*.

UnitedHealthcare did not ask or expect you to “scrub out of surgery” and “call right now” as you falsely claim.<sup>4</sup> Rather, our client was surprised that you left a patient mid-surgery to return a call that it had informed your staff was not urgent and could wait. You know this, because UnitedHealthcare’s representative told you this and insisted the call could wait until *after surgery*. Yet *you* insisted on talking to UnitedHealthcare *while your patient* was in the operating room unconscious under anesthesia.

Your insinuation that UnitedHealthcare’s call forced you to leave your patient in the operating room in the middle of surgery is also false. In a subsequent video, you concede this is precisely how your initial video was interpreted. But because that interpretation caused *you* to look bad, you felt forced to and did clarify that your patient was *not* left alone, and her surgery was *not* stopped. In fact, in your subsequent video, you expressly admit that “*when I left the operating room the other day, I had another surgeon with me scrubbed in so the patient wasn’t alone.*”<sup>5</sup> Yet viewers of your video *still* reach the false conclusion that “UnitedHealthcare stopped a cancer surgery to ask if it was medically necessary.”<sup>6</sup> You are liable not just for what you expressly say, but

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<sup>4</sup> To the extent HCA’s staff told you to scrub out of surgery because you needed to “call right now,” your attempt to lay the blame for this on UnitedHealthcare is entirely dishonest, irresponsible, and misplaced.

<sup>5</sup> Dr. Elisabeth Potter (@drelisabethpotter), TikTok (Jan. 8, 2025), <https://www.tiktok.com/@drelisabethpotter/video/7457709979127287086?r=1&t=ZP-8svdojemRLy>; Elisabeth Potter (@drelisabethpotter), Instagram (Jan. 8, 2025), <https://www.instagram.com/drelisabethpotter/reel/DEIzIINNELR/>.

<sup>6</sup> See Suzanne Blake, *Doctor Says UnitedHealthcare Stopped Cancer Surgery to Ask If Necessary*, Newsweek (Jan. 8, 2025), <https://www.newsweek.com/doctor-says-unitedhealthcare-stopped-cancer-surgery-ask-if-necessary-2012069> (“A doctor has shared a shocking story of how UnitedHealthcare stopped a cancer surgery to ask if it was medically necessary in a new Instagram video.”).



also for what you imply.<sup>7</sup> And you are liable not just for the damages stemming from your false statement, but also from the republication of your false statement.<sup>8</sup> Though you took swift action to protect your own reputation—a concession that you understood the damage your videos were causing—you have done nothing to correct your viewers’ interpretation of your claims as it relates to UnitedHealthcare.

Similarly, your claim that the reason for the call was UnitedHealthcare’s fault is provably false. As discussed above, your office’s erroneous submission for inpatient care (as opposed to observation care) was the only reason the call was made. Had you submitted a notification for observation care, no call would have occurred. And, in fact, no notification was even needed for observation care. You conceded your office’s inpatient notification was erroneous when you spoke with UnitedHealthcare. When our client informed you that a notification for an inpatient stay had been submitted, you confirmed you only wanted to observe the patient overnight and discharge the patient the following day.

UnitedHealthcare also never told you that “a different department would know that information” (about the patient’s care) as you falsely claimed. Rather, UnitedHealthcare advised you that your office’s notification for an inpatient stay was not submitted with any clinical information supporting an inpatient stay. The notification appeared to be an error. And, again, you confirmed this error during your brief conversation with UnitedHealthcare. At bottom, you should know what you are saying is false and misleading, but you continue defaming UnitedHealthcare for your own personal gain.

Publishing a knowingly false claim as you have done constitutes libel, if not libel *per se*. As mentioned above, you can be held liable both for the damages stemming from your false statement, and from the republication of your false statement.<sup>9</sup> As also mentioned above, in addition to significant engagement online across multiple platforms, various media outlets, including *Newsweek*,

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<sup>7</sup> See, e.g., *Elhanafi v. Fox Television Stations, Inc.*, No. 9722/11, 2012 WL 6569341, at \*5 (N.Y. Sup. Ct. Dec. 17, 2012) (Speaker of defamatory statement could be liable for the implication the statement “could implant in the minds of the average viewer.”)

<sup>8</sup> See *Oparaugo v. Watts*, 884 A.2d 63, 73 (D.C. Cir. 2005) (“The original publisher of a defamatory statement may be liable for republication if the republication is reasonably foreseeable.”); *Pisani v. Staten Island Univ. Hosp.*, No. 06-CV-1016 JFB MLO, 2008 WL 1771922, at \*10 (E.D.N.Y. Apr. 15, 2008) (“[A]n original publisher will be liable for the republication of his libelous statement if he gave a statement to a representative of a newspaper authorizing or intending that it be republished.”); *Neary v. Regents of Univ. of Cal.*, 185 Cal.App.3d 1136, 1147 (1986) (holding authors of a university report liable for defamatory statements made in the university report and the republication of those statements in the media); 1 Law of Defamation §§ 4:87, 91 (2d ed.) (“the original publisher of a defamatory statement may be liable for republication if repetition by third persons was reasonably expected as the natural and probable consequence of the original publication”).

<sup>9</sup> See *supra*, n.8.



have republished your false claims.<sup>10</sup> Your liability for republication is nowhere clearer than with *Newsweek*, where you doubled down on your false statement by claiming your story demonstrates “the pressure of insurance” is felt “even in the operating room.” As discussed above, however, that story (and your description of it provided to *Newsweek*) is demonstrably false. And it demonstrates that you were aware of *Newsweek*’s false characterization of your already false story and, rather than ask them to correct it, you perpetuated that false characterization.

In addition to our client’s overarching and strong concern for the safety of the patient you left in the operating room, our client is concerned about the potential life and safety threat your willfully malicious post presents to our client’s employees. Your videos received significant engagement online across multiple platforms. On TikTok alone the first video generated more than 4.8 million views, approximately 762,000 likes, and approximately 20,000 comments and the second generated more than 144,000 views, 26,000 likes, and nearly 900 comments. Numerous comments, such as “In Luigi we trust,” and “Need more Luigi,” were posted in response to your false claims, attempting to justify the assassination of UnitedHealthcare’s CEO, Brian Thompson. Many comments called for similar actions against UnitedHealth Group and UnitedHealthcare executives and employees. For instance, one TikTok user commented “We can keep taking out each CEO that steps up until they get it.” Another user commented “*guess someone else needs to be killed* for them to get the point lol what in the world.” Other comments include similar sentiments, including “They got the wrong CEO. There’s one above in United Heath Group[;]” “Maybe we need to review the lesson. We can go over it as many times as it takes for them to get the message. They’ll run out of CEOs before we run out of supplies [;]” and “Like *what’s next? The employees?!*”

Although you have not condemned any of the violent comments left in response to your videos, we hope you would agree that threats and calls for violence are unacceptable and should not be tolerated. We also hope that, in light of the violent rhetoric offered in response to your false claims (and the *Newsweek* article republishing them), you can understand why this is so important and so urgent.

Your claims are false. You clearly know they are false. You falsely laid the blame for your office’s error on UnitedHealthcare publicly, unleashing a firestorm of dangerous misinformation.

We expect you to promptly correct this publicly by removing your videos and posting a public apology to UnitedHealthcare that explains that the reason for the call was your office’s erroneous submission of a notification for inpatient care when you meant to order overnight observation, that Texas law required UnitedHealthcare to provide a reasonable opportunity to discuss the plan of

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<sup>10</sup> See e.g., Suzanne Blake, *Doctor Says UnitedHealthcare Stopped Cancer Surgery to Ask If Necessary*, *Newsweek* (Jan. 8, 2025), <https://www.newsweek.com/doctor-says-unitedhealthcare-stopped-cancer-surgery-ask-if-necessary-2012069>; Emily Joshu Sterne, *UnitedHealthcare slammed for denying cancer patient’s surgery...while she was on the operating table*, *DailyMail* (Jan. 09, 2025), <https://www.dailymail.co.uk/health/article-14262801/unitedhealthcare-slammed-denying-cancer-patient-care-operating-table.html>.



treatment for the patient before issuing a denial, that UnitedHealthcare's call was prompted by your office's erroneous submission of a notification for inpatient care, that UnitedHealthcare repeatedly told HCA (and you) that the call could be returned at your convenience, that you *voluntarily* chose instead to leave the operating room to return the call, that when you did so UnitedHealthcare again told you the call could wait until after surgery, that you refused the offer and insisted on taking the call while your patient was in surgery, that you confirmed UnitedHealthcare was right about the notification and in fact you had only meant to order overnight observation, *not* the inpatient care for which you had erroneously submitted a notification, and that you condemn the threats of violence stemming from your claims.

We further expect you to promptly contact *Newsweek* and inform them that your claims were false, that you unequivocally retract your claims, and that you are requesting *Newsweek* remove their story about your claims.

The foregoing is not intended to be a full statement of our client's rights and remedies, all of which are expressly reserved.

Very truly yours,  
CLARE LOCKE LLP

Thomas A. Clare, P.C.

Jered T. Ede

cc: John B. Shely, [jshely@hicks-thomas.com](mailto:jshely@hicks-thomas.com)