

1 **BOUTIN GIBSON DI GIUSTO HODELL INC.**  
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4

5 Attorneys for Dr. Camille Keene  
6

7 **SUPERIOR COURT OF CALIFORNIA**  
8 **COUNTY OF LAKE**  
9

10 Camille Y. Keene, M.D.,	)	<b>Case No.:</b>
	)	
11 Plaintiff,	)	<b>COMPLAINT FOR DAMAGES AND</b>
vs.	)	<b>INJUNCTIVE RELIEF FOR LIBEL</b>
	)	
12 MediaNews Group, Inc.; Gary Dickson;	)	
13 Richard Kennedy; Elizabeth Wilson; and Does	)	
1-10,	)	
	)	
14 Defendants.	)	<b>Date Action Filed:</b>
	)	

16 Plaintiff Dr. Camille Keene sues the Lake County Record-Bee ("Record-Bee") and its  
17 publisher, editor and writer for libel for false statements published in an article entitled "Getting His  
18 Life Back" on April 15, 2008. Subsequently, Dr. Keene through her counsel demanded of the  
19 Record-Bee's publisher and editor that, in accordance with California Civil Code section 48a, the  
20 article be retracted and that they publish a correction within three weeks. Editor Kennedy seemed  
21 apologetic and indicated that the Record-Bee would make it right. He then ceased communicating  
22 with Dr. Keene's attorney. Dr. Keene subsequently received an unapologetic letter, with a distinctly  
23 intimidating message by an attorney representing the Record-Bee. Dr. Keene's professional and  
24 personal reputation has been severely tarnished in Lake County, and as a result of the Record-Bee's  
25 posting on the internet, far beyond the confines of Lake County. Dr. Keene is the only Neurologist in  
26 Lake County. It is critical that her patients and other doctors in the community, and at large, continue  
27 to maintain faith and confidence in her professional abilities. Dr. Keene faithfully and arduously  
28

1 protects the confidentiality and privacy interests of her patients as required by HIPAA. In order for  
2 Dr. Keene to vindicate her reputation and protect her patients' privacy, Dr. Keene's only recourse is  
3 this complaint for damages and injunctive relief to be proven with much of the evidence to be  
4 produced pursuant to an anticipated protective order.

5 Plaintiff's allegations are:

6 1. Defendant MediaNews Group, Inc. is, and at all times herein mentioned was, the  
7 owner of the Record-Bee. As such, it has purposefully initiated and maintained substantial business  
8 activities in the state of California, including those leading to the legal claim herein.

9 2. Defendant Gary Dickson has been the publisher of the Record-Bee since on or about  
10 April 14, 2008. At all times mentioned herein, on information and belief, Defendant Dickson has  
11 been a resident of Lake County, California.

12 3. Defendant Richard ("Rick") Kennedy has been the managing editor of the Record-  
13 Bee during the relevant time period cited herein. At all times mentioned here, on information and  
14 belief, Defendant Kennedy has been a resident of Lake County, California.

15 4. Defendant Elizabeth Wilson is the author of the libelous article published in the April  
16 15, 2008, edition of the Record-Bee, described below. At all times mentioned herein, on information  
17 and belief, Defendant Wilson has been a resident of Lake County, California.

18 5. Plaintiff is ignorant of the true names and capacities of defendants sued herein as  
19 DOES 1-10, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff will  
20 amend her complaint to allege their true names and capacities when ascertained. Plaintiff is informed  
21 and believes and thereon alleges that each of the fictitiously named defendants is responsible in some  
22 manner for the occurrences herein alleged, and that plaintiff's damages as herein alleged were  
23 proximately caused by their conduct.

24 6. On information and belief, Defendants at all times herein mentioned were the agents  
25 and/or employees of their codefendants and in doing the things hereinafter alleged were acting within  
26 the course and scope of such agency and the permission and consent of their codefendants.

27 7. At all times herein mentioned, defendant Gary Dickson was, and now is, doing  
28

1 business as a publisher and disseminator of news and current events, and was, and now is, publishing  
2 and circulating a daily newspaper in the County of Lake, State of California, known as the "Lake  
3 County Record-Bee." The paper has a wide circulation and is read by a great number of persons and  
4 citizens of the area in which it is published and circulated.

5 8. At all times herein mentioned, plaintiff was, and now is, a practicing neurologist in  
6 Lakeport and resides in the County of Lake, State of California. Plaintiff has resided in Lake County  
7 for over three years and at all times has enjoyed a good reputation generally and in her profession.

8 9. On April 15, 2008, in all the editions of the Record-Bee, defendants printed,  
9 published, and circulated, or caused to be printed, published, and circulated in the newspaper on the  
10 first page, above the fold, and third page thereof, an article (the "Article"), which is attached hereto as  
11 Exhibit A and incorporated herein by reference. The Article was titled: "Misdiagnosed man breathes  
12 huge sigh of relief." The Article was posted on defendant Record-Bee's website on or about April 14,  
13 2008.

14 10. This Article (see Exhibit A) contained the following statements that are false as they  
15 apply to the plaintiff:

16 a. Photo Caption: "Eric Patrick, 46, a well-known disc jockey, was misdiagnosed  
17 with Lou Gehrig's disease last fall";

18 b. Headline: "Misdiagnosed man breathes huge sigh of relief";

19 c. "But instead the doctors at UC San Francisco Medical Center handed Patrick  
20 the good news: he had been misdiagnosed";

21 d. "Following on the heels of his father's death last May, Patrick and his family  
22 had already been through a tough time by the time the misdiagnosis occurred in November"; and

23 e. "She looked at Laura and me and said, 'we have some MRI's to do, but it  
24 looks like you have ALS'."

25 11. Defendants failed to comply with accepted journalistic practices, by failing to attempt  
26 to contact Dr. Keene for her comment regarding the story or, specifically, the defamatory statements.  
27 Defendants' conduct was neither fair nor reasonable.  
28

1           12. Defendant Wilson had published on or about March 17, 2008, an article in which  
2 she stated that, "a little over three months" before, in mid-December, 2007, Eric Patrick's  
3 condition was "then-undiagnosed." So Defendants knew that as of mid-December, 2007, there  
4 had not yet even been a diagnosis of patient Patrick. However, in the Record-Bee's Article, it was  
5 stated that Mr. Patrick had been diagnosed and misdiagnosed the prior month, "in November." In  
6 that same March 17 article, Defendant Wilson quoted Eric Patrick's wife, Laura, as stating, "It is  
7 still early on in Eric's diagnosis." Thus, as of the time of the Article's publication, Defendant  
8 Wilson knew, and the other Defendants knew or should have known, that the statement that Eric  
9 Patrick was misdiagnosed by Dr. Keene in November, 2007, was patently false and defamatory.

10           13. The statements listed in paragraph 10 above are false because evidence will show that  
11 Dr. Keene did not "misdiagnose," nor ever issue a "misdiagnosis" of Eric Patrick, because at no point  
12 in her assessment of him did she arrive at a final, incorrect determination of his medical condition.

13           14. The statements listed above are libelous, either alone or in the context of other  
14 statements in the Article, on their face. They clearly tend to injure Dr. Keene personally and in her  
15 profession as a medical doctor, and in particular a neurologist, and with regard to her standing with  
16 her peers, patients, potential patients, referring doctors, hospitals and contracting insurance  
17 companies, locally and globally, because they harm her reputation as a skilled physician and tend to  
18 cause present and potential patients to avoid her care and question her medical expertise, and other  
19 doctors not to refer their patients to her.

20           15. This article was read by readers of the Record-Bee at that time and on that occasion in  
21 the County of Lake, and plaintiff is informed and believes and thereon alleges throughout the State of  
22 California and beyond.

23           16. Defendants were negligent in publishing this article both in print and on the internet.  
24 With ordinary and reasonable care defendants would have realized or could have discovered that the  
25 Article was obviously false and grossly libelous as it applied to this plaintiff.

26           17. On April 18, 2008, within 3 days after the article appeared in Record-Bee, plaintiff  
27  
28

1 served the publisher listed on the Record-Bee's website, Gregg McConnell, a demand for correction  
2 or retraction as required by Civil Code Section 48a. A copy of the demand is attached hereto, marked  
3 Exhibit B, and incorporated herein by reference. Plaintiff was then informed that Gary Dickson had  
4 just taken over as publisher of the Record-Bee. On April 21, 2008, plaintiff served defendant  
5 publisher Dickson with the April 18, 2008, letter demanding correction.

6 18. Up to and including the date of the filing of this Complaint, defendants have failed  
7 and refused, and still fail and refuse, to publish a correction or retraction, as provided by law.

8 19. As a proximate result of the above-described publication, plaintiff Dr. Keene has  
9 suffered loss of her reputation, mortification, public disgrace, humiliation and hurt feelings all to her  
10 general damage.

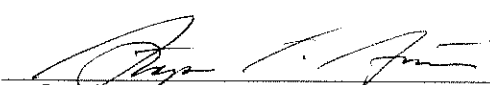
11 20. As a further proximate result of the above-described publication, plaintiff has suffered  
12 special damages, including plaintiff Dr. Keene has experienced diminishing referrals from fellow  
13 doctors in the community, referrals that she relies upon, all to her damage.

14 WHEREFORE: plaintiff Dr. Camille Keene prays judgment against defendants, and each of  
15 them, as follows:

- 16 1. For defendants to be ordered to publish within 20 days a correction of the libelous  
17 statements in substantially as conspicuous a manner in the Record-Bee as the libelous statements in  
18 the April 15, 2008 Article;
- 19 2. For general damages according to proof, exceeding the jurisdictional minimum;
- 20 3. For special damages according to proof;
- 21 4. For costs of suit incurred herein; and
- 22 5. For such other and further relief as the Court may deem proper.

23 Dated: May 22, 2008

BOUTIN GIBSON DI GIUSTO HODELL INC.

24 By:   
25 Stephen F. Boutin  
26 Attorney for Plaintiff

**“EXHIBIT A”**

## ncil to hold lic hearing nnexation

City council will hold a public hearing regarding an environmental review of a re Parallel Drive annexation. The coun- tigated negative declaration, essentially v findings that such mitigation would ntal impacts, Redevelopment Manager 1.

erty includes about 30 acres an Arizona- is considering selling to Mendocino ge would build a new, permanent cam- e developer, Tom Adamson, has in the housing project on additional land he roposed Mendocino College site, and is some commercial development on the id.

the land has been approved by city een included as a priority goal for the general plan since 1992, when the cur- was adopted.

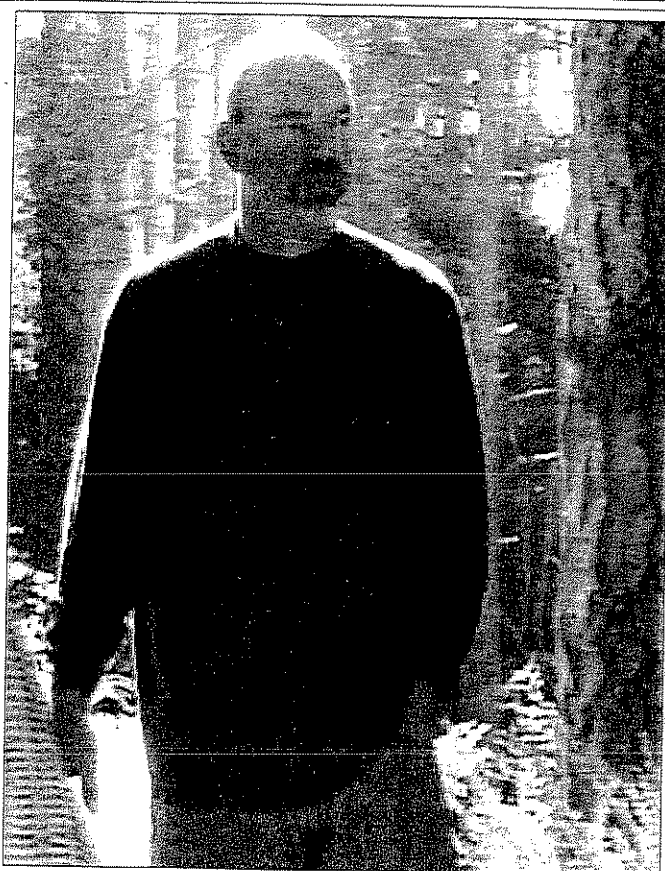
annexation] is implemented, the miti- en recommended will reduce some of l impacts that were identified," Knoll

vironmental law requires any project, ion, to go through an environmental hat same process is required when a kes a site-specific project, such as a or commercial development.

l business, an ordinance will be intro- d amending the Lakeport zoning ordi- maximum number of guest bedrooms at inns to five. The ordinance will be set up and public hearing on May 6.

also consider approval of documents e of the Redevelopment Agency's tax the amount of up to \$4 million. Those e downtown Lakeport transformation ct, slated to begin this summer, will tural make-over of downtown business : landscaping and sidewalk improve-

to receive about \$3.5 million from e able to sell a higher level of bonds.



Contributed photo

Eric Patrick, 46, a well-known disc jockey, was misdiagnosed with Lou Gehrig's disease last fall. Instead, Patrick has Dystonia, which has symptoms similar to ALS but doesn't end in death. The symptoms usually subside.

## Getting his life back...

*Misdiagnosed man breathes huge sigh of relief*

## Street rehab set to begin

Denise Rockenstein  
Staff writer

CLEARLAKE — The City of Clearlake is ready to embark on a street rehabilitation project that has been in the works since Spring 2007. Thanks to the tenacity and perseverance of City Engineer Bob Galusha, Clearlake was the first to receive Prop. 1 funds, which are being supplemented with State Transportation funds for a total project cost of approximately \$3.1 million.

Reconstruction on Lakeshore Drive, Old Highway 53 and a portion of Burns Valley Road will begin on Monday, April 21. The project is expected for completion in August. Work will be performed by Central Valley Paving & Asphalt of Roseville.

Clearlake City Administrator Dale Neiman announced in December 2007 that the city was the first to receive Prop. 1 funds for infrastructure improvements. Neiman attributed the city's good fortune to the tenacity and perseverance of City Engineer Bob Galusha, who he had said worked proactively to secure the \$1.5 million in Prop. 1 funds by keeping one step ahead of the competition.

"This is one-time bond money and the money was allocated based on the readiness of the projects," Neiman had reported in December. "As you know, we used some of the Redevelopment bond proceeds to pay for the engineering design work in order to be ahead of everyone else as much as possible. I was told by Caltrans we were the very first project approved by them in the entire state because of our readiness. Many cities and counties did not receive any money because they didn't have a project ready in time. If we didn't, we would not have received the money.

"Bob did an excellent job in putting the project together and the risk we took with doing the engineering design work prior to receiving the grant paid off," Neiman had told the council.



Contributed photo

Eric Patrick, 46, a well-known disc jockey, was misdiagnosed with Lou Gehrig's disease last fall. Instead, Patrick has Dystonia, which has symptoms similar to ALS but doesn't end in death. The symptoms usually subside.

# Getting his life back...

*Misdiagnosed man breathes huge sigh of relief*

**Elizabeth Wilson  
Record-Bee staff**

COBB — Eric Patrick and his wife Laura walked through the secure, metal-and-glass doors in a museum-like beige building, a cavernous hospital many Lake County residents know as the place to go when an illness is serious enough to warrant specialists.

They sat with baited breath and butterflies as they awaited what they thought was Patrick's ultimatum on life — what to expect from his diagnosis of ALS last fall, also known as Lou Gehrig's, a debilitating disease that usually robs a person of muscle movement and eventually of life.

But instead the doctors at UC San Francisco Medical Center handed Patrick good news: he had been misdiagnosed. Actually, Patrick has Dystonia, which doesn't end in death. And the symptoms can be treated and usually subside.

Patrick watched a close friend of his die of Lou Gehrig's — just last year his band CAM (Cobb Area Musicians) performed a memorial service for Jim Matzinger.

"When I was diagnosed, the first thing I thought of was Jim, and I thought 'oh, you've got to be kidding,'" Patrick said.

The well-known disc jockey for KNTI began experiencing a sore jaw

**See LIFE, Page A3**



# Life

From Page A1

last September. Following on the heels of his father's death last May, Patrick and his family had already been through a tough time by the time the misdiagnosis occurred in November.

After doctors at Sutter Lakeside Hospital discovered Patrick had a herniated disk in his neck, the pain worsened. Patrick, a graduate of Middletown High School, was an all-star quarterback in 1979. He covered Friday Night Game of the Week for the radio.

"We're right there, live for three-and-a-half hours. I noticed at the end that my jaw would hurt really bad, and it was hard for me to pronounce words. I called the doctor Nov. 1 and said, 'something's going on with my speech,'" Patrick said.

Then he visited Dr. Camille Keene, a Lakeport neurologist.

"After she examined me, she said it looks like a fasciculation of the muscle, which is a twitch ... She looked at Laura and me and said, 'we have some MRI's to do, but it looks like you have ALS,'" Patrick said.

Patrick's immediate reaction was just the beginning of several months trying to come to terms with a disease he didn't have.

"Of course your heart stops ... I think people around me showed their emotion more than I did. I also didn't really believe it, I felt too strong - I didn't feel that sick," Patrick said.

Through the whole process, which included the community rallying to help Patrick with a RAKE (Random Acts of Kindness) fundraiser that earned \$46,000 for Patrick to cover his medical expenses, he "didn't let himself get scared."

"I started feeling like I was able to get healthy, I was eating right, losing weight, living right," Patrick said, who is now on an all-organic diet. Dystonia makes it difficult to eat, and talk.

Last Friday, Patrick went to movement specialist Dr. Graham Glass at UCSF Medical Center for an electromyography (EMG) test and to hear what the ALS plan would be.

The long, electrode needle inserted through his chin and tongue about seven times, and then into muscles from his toes to his shoulders, determined he did not have ALS.

After receiving a hug and a handshake from the doctor, Patrick sat in the examining room on the eighth floor, overlooking the Sunset District of San Francisco. "I thought, 'well that's the best thing I've heard in my life,'" Patrick said, his voice catching.

Then he went to the waiting room to get his wife. "She looked at me, I gave her a thumbs up, and she jumped up and hugged me ... We went downstairs, and I called my sister and aunt. It was like the sun was shining again."

Patrick plans to use money raised by RAKE last month for him to go to a Mayo Clinic in Arizona for additional treatment, "just to make sure."

"I'm at the point where I want to dance and be happy that it's just Dystonia, but I want to make sure before I do that dance."

Contact Elizabeth Wilson at [ewilson@record-bee.com](mailto:ewilson@record-bee.com). To comment on this story or others, please visit [www.record-bee.com](http://www.record-bee.com).

**“EXHIBIT B”**

# BOUTIN GIBSON DI GIUSTO HODELL INC.

A PROFESSIONAL CORPORATION

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Of Counsel  
William Dentino  
Richard P. Hoppin  
Dennis Michaels

April 18, 2008

VIA FACSIMILE (707) 263-0600 AND EMAIL

Gregg McConnell, Publisher  
Rick Kennedy, Editor  
Lake County Record Bee  
P.O. Box 849  
Lakeport, CA 95453

Re: **Demand for Correction regarding article in the Lake County Record-Bee of April 15, 2008, titled "Getting his Life Back ... misdiagnosed man breathes huge sigh of relief"**

Gentlemen:

This firm represents Dr. Camille Keene.

We are writing you because the Record-Bee on April 15, on page 1 "above the fold," published false and unprivileged information regarding Dr. Keene.

We are vigorous advocates of the First Amendment, and of the right of the public to know. However, the subject article has crossed the defamatory line. The incorrect and untruthful information in the article certainly exposes Dr. Keene to ridicule, undermines her outstanding reputation, will cause her to be personally shunned and professionally avoided, and will certainly have the tendency of injuring her in the medical profession. We believe and hope that you will want to do the right thing by correcting the defamatory statements. We are hereby respectfully demanding, pursuant to Civil Code section 48a, correction be published as to the libelous statements described below. We ask that they be corrected in substantially as conspicuous a manner as they were published. That correction should be done as soon as possible, but in any case within three weeks of this date. (Any delay will increase Dr. Keene's damages.) As you

Gregg McConnell, Publisher  
Rick Kennedy, Editor  
Lake County Record Bee

Re: **Article in the Lake County Record Bee of April 15, 2008, titled "Getting his Life Back ... misdiagnosed man breathes huge sigh of relief"**

April 18, 2008

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likely recognize, this means that the correction would have to be clear, qualified and sincere, and would have to appear on page 1, above the fold, in a regular issue of the Record-Bee.

As a result of the HIPAA Privacy Rule, Dr. Keene is very limited at this time in the information that we can provide to explain the relevant circumstances, and in turn, to defend Dr. Keene's reputation. Dr. Keene is a fair-minded and ethical person who wishes to strictly adhere to HIPAA regulations, and also wishes to protect the privacy, to the extent it still exists, of her patient Eric Patrick.

First, the statement in the Record-Bee's headline on page 1 that the subject person, who you identify as Eric Patrick, was "misdiagnosed" is libelous and should be corrected. Second, you restate on page 1 that Mr. Patrick was "misdiagnosed." Third, you published on page 2, in the first partial paragraph, that "the misdiagnosis occurred in November."

Initially, and of greatest significance, there never has been a misdiagnosis. The facts do not support those two false statements. Even the contents of your story does not support this reckless conclusion. On page 2 your article purportedly quotes Mr. Patrick. In that quote, Mr. Patrick quotes a statement which Dr. Keene allegedly made. The quote is not accurate. Good journalistic practice would have been for the author or editor to have corroborated this quote and information, namely: Did Dr. Keene specifically tell you that you definitely had ALS? However, even *if* you accurately quoted Mr. Patrick, it does not support the "misdiagnosis" conclusion. You quote Mr. Patrick as saying that he was told, "we have some MRI's to do, but it looks like you have ALS." In other words, your article indicates that Mr. Patrick knew that additional testing was needed to clarify the diagnosis. Moreover, even *if* that were an accurate statement, it would not constitute a definitive, final diagnosis. In order for a patient to be misdiagnosed, one has to first be given a definite diagnosis. Even Mr. Patrick recognized that he did not yet have a definitive diagnosis, so how could your writer responsibly state that Mr. Patrick was "misdiagnosed?"

Then, on page 3 of the article, you purportedly quote Mr. Patrick to the effect that the doctor at UCSF stated that if he (the UCSF doctor) did not have the results from a very specific test, "I would tell you that you (Mr. Patrick) have ALS." Thus, even a specialist at UCSF would have, but for a specialized EMG test, concluded that the patient had ALS. In other words, from your article one concludes that Mr. Patrick certainly had the symptoms of ALS.

Your article did not address how Mr. Patrick got to UCSF. Mr. Patrick could have gotten his appointment with UCSF on his own, or as a result of the referral from some other physician, or possibly as a result of a referral and diligent efforts of Dr. Keene. By what means did Mr. Patrick obtain an appointment at UCSF? Why did he go to UCSF? Did you ever confirm the facts in this regard? After reading the headline that Mr. Patrick had been "misdiagnosed," and

Gregg McConnell, Publisher

Rick Kennedy, Editor

Lake County Record Bee

Re: **Article in the Lake County Record Bee of April 15, 2008, titled "Getting his Life Back ... misdiagnosed man breathes huge sigh of relief"**

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the reiterations on pages 1 and 2, one is led to believe that Mr. Patrick on his own "went to movement specialist Dr. Graham Glass at UCSF Medical Center ...." The Record-Bee has imputed to Dr. Keene incompetence. The Record-Bee should have inquired of Mr. Patrick how he got into UCSF for further testing.

My client has been terribly maligned. If, hypothetically, a doctor performs a preliminary diagnosis, and then refers a patient to a specialist, particularly at an eminent medical institution for further testing and diagnosis, is that good or poor medical practice? We both know the answer, but the article does not address, let alone clarify, this critical factual issue. Apparently your writer did not ask Mr. Patrick the relevant questions.

As I stated above, your article at page 2 stated right before the reference to "Dr. Camille Keene, a Lakeport neurologist," that Mr. Patrick's "misdiagnosis occurred in November," and that he had "called the doctor Nov. 1." Did you get any confirmation that Mr. Patrick even saw, or in anyway communicated with, Dr. Keene in *November*. We can and will tell you that there was no diagnosis whatsoever and no communication in November 2007. Your published statements are false.

I note from your article that Mr. Patrick collected through a "Random Acts of Kindness" fundraising campaign the sum of \$46,000 "to cover his medical expenses." You state later in the article that he plans to use that money "to go to a Mayo Clinic in Arizona for additional treatment, 'just to make sure.'" That raises an observation and a question. The observation is that Mr. Patrick has acknowledged that he is still not sure whether or not he has ALS or Dystonia. In his mind, he still does not have a definitive diagnosis. The question is, given the fact that going to Arizona for "additional treatment" may cost up to \$5,000 (assuming that he does not have insurance), is Mr. Patrick going to donate the remaining \$40,000 plus to an ALS-related charity to help those afflicted with ALS? Given the laudable generosity of the Lake County community, it certainly seems like a relevant question.

Succinctly stated, there was never any misdiagnosis, there was not even any communication between Dr. Keene and Mr. Patrick in November, and your story fails to clarify and omits pivotal facts which show that diligent and proper medical care was provided by Dr. Keene to Mr. Patrick.

Dr. Keene has worked long and exceedingly hard to attain her outstanding reputation. She is board certified in neurology with subspecialty training in neuromuscular diseases. She has practiced for 15 years and is highly skilled. She has expertise spanning the gambit of neurological disorders and she used these skills in the care of Mr. Patrick.

Gregg McConnell, Publisher  
Rick Kennedy, Editor  
Lake County Record Bee

Re: **Article in the Lake County Record Bee of April 15, 2008, titled "Getting his Life Back ... misdiagnosed man breathes huge sigh of relief"**

April 18, 2008

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Dr. Keene has practiced in Lake County at Sutter Lakeside Hospital for over three years. She very much likes the community and has enjoyed serving her patients. She wants to continue providing medical services in Lakeport and Lake County. Your reckless article has put her professional future very much at risk.

We very much hope that you will do the right and fair thing by immediately publishing a similarly conspicuous article which sincerely redresses and rectifies the inaccuracies in your April 15 article, and makes every effort to put Dr. Keene in a good light so that she can in a small way regain her reputation. Indeed, Dr. Keene deserves an apology. We further request that you immediately remove the subject article from your website, so that the damage to Dr. Keene can be mitigated.

We look forward to your immediate attention to this matter. If you have any questions, please do not hesitate contact me.

Very truly yours,

BOUTIN GIBSON DI GIUSTO HODELL INC.

By: \_\_\_\_\_



Stephen F. Boutin

SFB/jws