



HealthSouth's CEO Exposes, Sues Anonymous Online Critics

By MICHAEL MOSS Staff Reporter of THE WALL STREET JOURNAL July 7, 1999
BIRMINGHAM, Ala.

Richard Scrusby, the chief executive officer of HealthSouth Corp., was making the rounds of investor conferences last fall when analysts pulled him aside to ask if he had seen the latest Internet banter. A bulletin board devoted to his company had turned into a broadside.

One posting called the company, which provides rehabilitation services, a house of cards starting to tumble. Others predicted that he would be probed for billing fraud. A series of messages alleged that executives were swapping their spouses, with one poster going so far as to boast of his supposed affair with Mr. Scrusby's wife.

Hardly a cybersophisticate, Mr. Scrusby had never even heard of the electronic board owned by Yahoo! Inc., where the messages were piling up. "Here I am, the CEO of a multibillion dollar company, and I'm having to answer about what some weirdo has said on a message board," Mr. Scrusby fumes.

So he jumped into the fray. Using cybersleuths and shoeleather detectives, Mr. Scrusby has begun unmasking the message writers on his board, and he is suing some to put a stop to their postings. One enthusiast turned out to be the husband of a disgruntled employee. Another was an ex-employee.

Many of the anonymous posters aren't even aware that HealthSouth knows who they are and may sue those whose messages it deems defamatory. The latest target for its detectives is someone with the online name "gletel," who recently posted that HealthSouth had been downgraded. It hadn't been.

Until the Internet came along, the traffic in opinion about stocks and bonds was largely ?? and for the most part calmly ?? controlled by Wall Street analysts. The message boards, however, let all comers vent their feelings, and that's the root of a growing problem for corporate executives: To ignore the postings is to risk seeing them grow even more outrageous and spread.

Some companies have gone straight to the message boards to try reasoning with posters. More are trying to thwart those of their online critics who promulgate falsehoods, which is complicated by posters' use of secrecy software to protect their anonymity. When the brokerage firm E*Trade Group Inc. discovered that a problematic poster on its Yahoo board was using secrecy software, it hired a computer whiz to slice through the shields. "My non-

anonymizer was better than his anonymizer," crows Henry Carter, E*Trade's vice president for compliance.

Liars and Schemers

Mr. Scruschy calls some of his online detractors liars and schemers. But the cybercritics and their defenders see an overreaction to what in some instances is fair and accurate commentary, and they fear that message boards will be stripped of the free expression that has made them so popular.

A few have begun fighting what they view as corporate intimidation. They include Kimberly Landry, a former HealthSouth employee who posted many of the more salacious messages on the Yahoo board. Sued by HealthSouth for defamation, Ms. Landry is demanding access to corporate records to prove that her postings were correct. Her attorney, Jill Craft, asserts: "Truth is an absolute defense, and the truth will come out."

The HealthSouth board began on an upbeat note when Yahoo launched it in late 1997. "This has an awesome recommendation by the pros. Check it out," reads the first posting, concerning HealthSouth stock, by Loony987.

Yahoo now has several thousand of these boards, each dedicated to a single company. Yahoo prohibits vulgarity, defamation and other offensive behavior like posting junk mail, but it doesn't screen or edit messages before they are posted, and the discourse varies tremendously.

Serious investors find merit in the boards. Paul Kloepper, a physician's assistant from Hastings, Neb., scans the HealthSouth board as an "early warning system" for public reports that he might not otherwise hear about. Analyst Howard Capek of Warburg Dillon Read in New York, says, "At the end of the day, I'm not going to put a buy, sell or hold recommendation based on a bulletinboard posting. But looking at and monitoring the boards is something a prudent analyst has to do."

Initially, the HealthSouth chatter dwelled on the company's niche in providing clinical rehabilitative care, and the finer points of its earnings ratios. But a seismic shift occurred last summer when the company's stock price began to ebb. "Get out and stay out," wrote dcm555 on July 22. "I can't believe anyone would invest long-term in this pyramid scheme calling itself a company."

Jr111 replied: "You may not be far wrong. I have heard rumors of a federal lawsuit for several weeks now." No such suit materialized.

Mr. Scruschy presented an easy target. Self-made and brash, he founded HealthSouth 15 years ago with \$50,000, and he doesn't hide his pride in reaching sales last year of \$4 billion. His 1997 compensation made headlines: \$106.8 million including bonus and stock gains.

Now 46 years old, Mr. Scruschy uses a helicopter and five private planes to reach the company's more than 1,900 facilities in all 50 states, while the new 73-acre headquarters complex in Birmingham displays his name in tall script. The

grounds are patrolled by a security force; the CEO says he has had several death threats in recent years.

Were They Duped?

Posters poked fun at Mr. Scrusby's executive style and business practices, but the message board went wild last September when HealthSouth disclosed that it would face pricing pressures from its managed-care customers, and its share price plunged to below \$8 from the \$30 peak it had reached that summer. In composite trading on the New York Stock Exchange, HealthSouth closed Tuesday at \$15.125 a share, up 37.5 cents. "WE WERE ALL DUPED!!!" Bonesman3 wrote.

Worse was to come. Scurrilous messages from one poster proclaimed that Mr. Scrusby's wife, Leslie, who was seven months pregnant at the time, was having an affair with him. Investors were calling to ask about various messages. And the head of a company that Mr. Scrusby was trying to buy raised the sexcapade talk as a concern. "He brought it up at dinner," Mr. Scrusby says. The deal never gelled.

Mr. Scrusby had staffers monitor the board for the worst postings, and when their printouts turned into a stream he phoned Bruce Fischman, a Miami attorney who handles various matters for the company. Mr. Fischman recalls: "He was angry. He was frustrated. And the cause for his frustration was that he didn't know how to stop the bleeding."

Until then, companies aggrieved by an Internet posting mostly had sued the message-board provider. But only those providers who tried to control what moved through their system have been held liable by the courts ?? much as a publisher, but not a distributor, is subject to libel law.

With Yahoo taking a hands-off stance, Mr. Fischman instead sued the message writers, starting with a "John Doe" filing in Florida's Dade County on Oct. 16 that let him subpoena Yahoo records.

Yahoo warns its users that it might be legally compelled to release information on them. HealthSouth asked for records on each of its board's more than 300 anonymous posters, and Yahoo turned over only about 20. Yahoo officials say HealthSouth's request was "overly broad."

'Scrusby Should Resign'

On Oct. 27, just four days after Mr. Fischman got his first Yahoo records, Peter Krum, 33, was in his office by the loading dock at the Pennsylvania State University Conference Center Hotel, sending a message to the Yahoo board: "Scrusby should resign." Hours later, the campus security chief came through the door wanting to know if Mr. Krum was Dirk Diggle, the author of that message and dozens of others, including the "house of cards" characterization of the company. He was.

Mr. Fischman had tracked Mr. Krum down by computer, and a detective he hired then filled in the blanks. Mr. Krum had previously worked for HealthSouth as a hospital food service manager. He didn't own any company stock. He was married, and his wife was pregnant with their first child. He had boasted on the board of an affair with Mrs. Scrusby, but what alarmed Mr. Scrusby was his claim to have been inside the Scrusby home.

Mr. Scrusby and his wife sued Mr. Krum and pressed criminal charges of harassment and stalking, which were dropped when Mr. Krum signed an apology stating he had made everything up. He lost his \$35,000-a-year manager's job at Penn State. Mr. Krum, who declined to comment for this article, said in court records: "It was a really stupid game. I did not intend to harm anyone, but this was a game."

HealthSouth asked Yahoo to remove all of Mr. Krum's postings, but some were left on the board. Asked how they made this decision, Yahoo officials referred only to their "terms and conditions," which prohibit any posting that is "unlawful, harmful ... or otherwise objectionable."

Mr. Scrusby points out that the board has turned almost cordial since he went on the hunt.

Legal observers say it's difficult to foresee what factors might play out in a message-board defamation case that goes to trial. Are the boards even seen as believable? Can anyone be harmed by the chatter? "There are good arguments on both sides," says Lyrisa Barnett Lidsky, an associate professor at the University of Florida College of Law.

Mr. Scrusby says he knows where to draw the line. "If somebody's got an opinion that I'm making too much money ... or somebody doesn't think that we should have hired this person, or bought this company, that's fine. . . . But when they come on and have a direct assault about an individual, or are making a statement that the company's earnings are going to be X amount, and they're not, I have a problem with that. That's the kind of stuff that should be dealt with."

As for HealthSouth's defamation suit against Ms. Landry, the company is citing such postings as "Screwshe and his cronies are all megalomaniacs. Instead of having sex they get off on their power and positions." She called Mr. Scrusby a "bozo" and a "crook" and predicted the company stock would decline because it paid too much for its surgery centers.

HealthSouth says the postings were false, though believable enough to cause damage. Ms. Landry is now asking HealthSouth for a long list of financial and personal records that she says will prove she was right. Among them: Mr. Scrusby's income statements and expense reports back to 1995 and flight records for the company's aircraft.

"This is a First Amendment issue," says Ms. Landry's attorney, Ms. Craft. Mr. Fischman has filed objections to the requests and says the company will prevail

