

Editorial:

Retaliation against Physician Whistleblower: the Shocking Case of Dr. Michael Fitzgibbons

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Dr. Michael W. Fitzgibbons, an infectious diseases specialist and former chief of staff at Western Medical Center in Santa Ana, California, is not a man who simply walks away and gives up, even in the face of grave injustices inflicted upon him and his family. But more than demonstrating his integrity, his story shows how far some hospital administrators will take retaliation against a physician whistleblower. We all have a stake in the integrity of our judicial system. Many would choose another course, but though paying a high professional and personal price, and uncertain of any level of victory, Dr. Fitzgibbons chose to stay on the battlefield.

The battle was *Michael W. Fitzgibbons, M.D., vs. Integrated Healthcare Holdings, Inc., et al.*, which ended on Feb 8, 2013.¹ The details of what was done to Dr. Fitzgibbons are frightening and shocking. His story was detailed in a series of articles published by the *OC Weekly*, a weekly newspaper for Orange County, California, published in Costa Mesa, which covered the story intensely.

Opposing the Takeover of Hospitals

In 2004, the financially struggling Tenet Healthcare Corp. sought to sell four hospitals in southern California—Western Medical Center of Anaheim, Chapman Hospital in Orange County, Coastal Community Hospital in Santa Ana, and Western Medical Center of Santa Ana, the hospital where Dr. Fitzgibbons practiced. Some physicians expressed concerns about the proposed purchaser, Dr. Kali P. Chaudhuri and his company, Integrated Healthcare Holdings, Inc. (IHHI).

According to an article published in *OC Weekly*, “Four years ago, Chaudhuri’s KPC holding company closed 81 Southern California medical clinics it had purchased just a year before. The closures stranded 300,000 patients without care and, in many cases, without medical records. Insurers and doctors scrambled to pick up the pieces. Asked to account for the chain’s assets, a bankruptcy judge said the money trail was too complicated to follow. The resulting charges of mismanagement, fraud, and diversion of assets led to dozens of lawsuits and thousands of creditor claims against Chaudhuri and KPC, most of them unsatisfied to this day.”²

According to another *OC Weekly* article, “So vehemently do they oppose Chaudhuri’s takeover of the four Tenet hospitals that in October Fitzgibbons and fellow physicians took to the streets with picket signs. More than 70 doctors from the targeted hospitals formed their own acquisition group and offered Tenet a competing bid.”³

At the urging of Fitzgibbons and other physicians, state Senator Joe Dunn convened hearings in 2004 that resulted in an agreement to limit the involvement of Dr. Chaudhuri in the takeover of the four hospitals.^{2,4}

IHHI Takes over Hospitals—Financial Troubles Ensurue

In January 2005, *OC Weekly* reported: “Orange County physician Alil [Anil] V. Shah, Integrated Healthcare Holdings Inc’s (IHHI) principal investor, has taken over the deal. Shah and fellow investors bowed to pressure from doctors and Dunn (D-Santa Ana) to limit Chaudhuri’s influence over the hospitals.”²

As Fitzgibbons and other physicians had feared, by May 2005 IHHI had financial difficulties (M.W. Fitzgibbons, personal communication). According to a report in *OC Weekly*, “Santa Ana’s Western Medical Center—one of the three OC hospitals with a heliport and trauma center—has had problems paying its bills, and its doctors are already seeking work at other hospitals because of concern about the financial future of their facility.”⁵

In a meeting with Sen. Dunn in December 2004, IHHI officials admitted that the hospital was an “impaired asset,” and “on May 9 [2005], IHHI received a notice of default when it was unable to make scheduled payments on a \$50 million loan.”⁵

IHHI Sues Dr. Fitzgibbons

Following revelation of the notice of loan default, Fitzgibbons sent an e-mail to a “very select group of people”^{6, p 1151} expressing his opinion and concern about the financial situation of the hospital.⁵ According to information in a court document dated May 1, 2012, IHHI made a filing to the Securities and Exchange Commission regarding the default on the loans, and that fact was also publically reported in the *Orange County Register*.^{6, p 1146} So, information Fitzgibbons included about the hospital’s financial situation in the e-mail was in the public domain at the time he sent the e-mail. Nonetheless, IHHI sued Fitzgibbons, alleging defamation and interference with the company’s business.

Fitzgibbons’s legal bills for his defense began to mount, and although he was able to raise money from fellow physicians to help fund his defense, some physicians were intimidated by what had happened to him, and his medical practice began to suffer.

As recounted in an *OC Weekly* article, “Although he had his supporters, many doctors began to turn against him, worried he’d endanger their careers. ‘They were completely cowed,’ Fitzgibbons says. The number of patients he treated began to dwindle. The hospital hired another doctor to replace him as director of infection control, a job that had paid Fitzgibbons a sorely needed \$1,000 per month. ‘People wouldn’t talk to me who had known me for years,’ he says. ‘Business got slow. I was pretty sure I would go bankrupt.’”⁷

Quality of Care Concerns at Hospital

According to a report in *OC Weekly*, the financial strain on the hospital was beginning to create poor conditions at the hospital.

According to a report dated Feb 16, 2006, "Paint is flaking off the walls and the wallpaper, which hasn't been changed in 15 years, is peeling away. Dirt and dust inhabits what is supposed to be a pathogen-free environment,"⁸ and stained carpets and sheets were abundant.

A Mar 30, 2006, article claimed the situation was so dire that hospital officials conceded that they could not even afford to fully stock surgical supplies.⁹ According to the article, IHHL admitted they had been suffering financial losses: "'Yes, we are still losing money,' said Dr. Anil Shah, president of Orange County Physicians Investment Network, IHHL's primary investor in Western Medical Center. 'The financial state of the hospital is guarded. But we're constantly depleting our losses. We expect to be, probably in the next couple of months, turning around the corner.'"⁹

IHHL's Lawsuit against Fitzgibbons Dismissed

On June 14, 2006, the California Appellate Court 4th District, 3rd Division, dismissed IHHL's lawsuit against Fitzgibbons, and IHHL was ordered to pay his legal bills (\$150,000). Freedom of speech prevailed. However, Fitzgibbons's stressful ordeal was far from over.

Black Gloves, a Gun, and an Alleged "Road Rage" Incident That Never Occurred—Fitzgibbons Arrested

Within two weeks of dismissal of the IHHL lawsuit, Fitzgibbons became the victim of a false accusation that resulted in his arrest. According to a news report, on Jun 28, 2006, Fitzgibbons was eating in the hospital cafeteria when he was approached by Santa Ana Police.¹⁰ According to reports and confirmed in an interview with Fitzgibbons by the *Journal of American Physicians and Surgeons*, two persons placed emergency calls to police, one of them alleging that they had seen a man wearing a white coat¹¹ and black gloves waving a gun in traffic in an alleged "road rage" incident. One anonymous caller, who reportedly called from a disposable, untraceable cell phone, and refused to identify himself,⁷ provided a description of Fitzgibbons's brown Toyota Camry and a license plate number.¹⁰ The anonymous caller followed Fitzgibbons to the Western Medical Center of Santa Ana parking lot, and called 911 a number of times to provide an update on the location of Fitzgibbons's car (as per review of Santa Ana 911 Police recordings on Jun 28, 2006). Each time the anonymous caller called 911, he emphasized that his cell phone battery was low and the call might be cut off. But, curiously, despite the claim of a low battery, each time he called, he was able to give police a detailed description of the car, including license plate number, and its precise location before the cell call was suddenly terminated.

According to Fitzgibbons, the other 911 caller, who was identified, could not pick him out of a photo lineup, could not correctly identify the car he had been driving, and had so many inconsistencies in her story that police could not use her as a reliable witness against him.

After patting down Fitzgibbons, checking for weapons and finding none, the police escorted him from the hospital cafeteria to the hospital parking lot where Fitzgibbons gave police permission to search his car.

To his shock and horror, police found a loaded gun and black gloves in his car, and they arrested Fitzgibbons, handcuffed him in the hospital parking lot, and charged him with "possession of a loaded weapon, carrying a concealed gun and brandishing a firearm."¹⁰

According to another *OC Weekly* article, "By this time, a large crowd of onlookers had gathered. 'I knew this was a frame-up,' Fitzgibbons recalls. 'I didn't own a gun or a pair of black gloves, and they weren't in the car when I parked it. I just knew somebody had set me up.'"⁷

Fitzgibbons was then taken to the police station where he was booked, strip-searched, and placed in a cell for approximately five hours (M.W. Fitzgibbons, personal communication).

The district attorney declined to press charges against Fitzgibbons, as police could not locate any reliable witness to the alleged "road rage" incident, and "police found no evidence linking the gun or gloves to Fitzgibbons."^{1,2} According to *OC Weekly*, "Because prosecutors had no eyewitnesses, his fingerprints weren't on the gun and DNA taken from the gloves failed to show a match, the doctor was never charged with a crime. But when he went to pick up his car at the impound lot..., he quickly saw something that hadn't been in the vehicle when the police had found the gun—a plastic sack [bag] full of pills, each one stamped with the *Playboy* bunny logo"¹¹ (see Figure 1).

Fearing that he was being set up again, he summoned the attendant at the impound lot about what he believed were illegal drugs planted in his car. According to an *OC Weekly* report: "'There were probably 100 or so pills in this sandwich-size Ziploc bag,' Fitzgibbons says. 'I took a photograph of it because I had my camera with me.' [Fitzgibbons provided that photo to the *Weekly*.] Fitzgibbons summoned the lot attendant and told him there was a bag of what looked like Ecstasy pills in his car. The man refused to even look in the vehicle. 'I don't see anything, and if you ask me to testify, I'll say I never saw anything,' Fitzgibbons recalls him saying."⁷



Figure 1. Bag of Pills Planted in Fitzgibbons's Car at Impound Facility



Figure 2. Slash in Tire and Resulting Catastrophic Damage

Hospital Rumor Mill Portrays Fitzgibbons as ‘Paranoid’

At trial, “Lawyers for IHHI tried to convince jurors that Fitzgibbons had somehow set himself up in a bizarre ploy to appear as an unstable martyr, a strategy the jury took less than a day to reject.”¹¹

“Meanwhile, gossip circulated at Western Medical that Fitzgibbons was paranoid and that he’d staged the gun incident. One source shared those same suspicions with the *Weekly* at the time.”⁷ “A few weeks later, on July 13, the hospital’s...chief of staff [Dr. Brian Cross] sent Fitzgibbons a letter demanding that he appear before a ‘well-being committee’ to address the incident.”⁷

In an interview with the *Journal* on May 29, 2013, Fitzgibbons also stated that the hospital had unsuccessfully attempted to trump up quality care concerns against him, filing false professional activities reports. He also stated that the hospital sent him a letter after the trial verdict about the lack of documentation of the precise time when he had performed the history and physical examinations on four patients.

Fitzgibbons Hires Forensic Expert

Fitzgibbons told *OC Weekly* that he was sure that someone had planted evidence in his vehicle: “I knew my car had been broken into and I wanted to prove it,” he says. So he hired Forrest Folck, a San Diego forensic investigator. Evidence of a professional break-in using a slim-jim was found.¹³

Tire Incidents—Daughter’s Life Placed at Risk

After Dr. Fitzgibbon survived being sued by IHHI and being set up and arrested with a gun and drugs planted in his car, the worst was yet to come. On the evening of Jul 21, 2006, only four days after the district attorney refused to prosecute, Fitzgibbons received a frantic telephone call at his Irvine home from his 23-year-old daughter. Her car had suddenly gone out of control and flipped over on the freeway.⁷ Fortunately, his daughter and two Japanese exchange students with her in the car were wearing their seatbelts and were not seriously injured.

As he was pulling out of his driveway in his wife’s vehicle to drive to the scene of the crash, his 22-year-old daughter told him that the right front tire was flat.⁷

The California Highway Patrol reported the crash as an accident, but Fitzgibbons hired another forensic investigator. According to the *OC Weekly*, “It didn’t take long for the investigator to discover a 2-inch horizontal slash on the tire’s tread. His assessment: Someone intentionally slashed the tire, which catastrophically failed, thus causing the crash” (see Figure 2).⁷

Fitzgibbons told the *Journal* that he has complained to Santa Ana Police, Irvine Police, the California Highway Patrol, and FBI, but the authorities have shown little or no interest in investigating what would appear to be a crime that placed his daughter’s life at risk.

Strange Occurrences at His Office

In the course of his ordeal Fitzgibbons also had a water heater burst, flooding his office, due to a “pinhole that suddenly developed in the pipe.”⁷ And, “On several other occasions, Fitzgibbons says, he would be in his office and notice something out of place—a file drawer left slightly open when he could swear it had been shut, furniture that seemed to have been moved ever so slightly. ‘I felt like I knew something was going on, but I couldn’t identify it, like I knew someone was messing with me.’”⁷

Fitzgibbons also told the *Journal* of another water leak and of an incident in which someone spray painted and tore the door knob off the office back door.

Dr. Fitzgibbons Takes IHHI to Court

On Jun 16, 2008, Fitzgibbons sued IHHI et al. for “malicious prosecution, interference with prospective economic advantage, defamation, and intentional infliction of emotional distress.”¹ The matter came to trial on Jan 22, 2013.

Testimony at deposition and trial concerned what had been done to Fitzgibbons and what could be done to another doctor who had complained about IHHI CEO Bruce Mogel.^{14, p244} According to a newsletter published by The Advisory Board Company, “During the trial, former IHHI President Larry Anderson testified that Mogel had instructed him to create a \$10,000 contract for a ‘scary guy’ named Mikey Delgado immediately after Fitzgibbon’s legal victory. The contract was for unnecessary work on the health system’s website. In his testimony, Anderson said he realized after Fitzgibbons was arrested that the contract was actually for the frame.” Charles T. (“Ted”) Mathews, Fitzgibbons’s attorney, told the jury that “the \$10,000 was used to [get] Dr. Fitz set up.”¹⁵

According to the court transcript of proceedings on May 1, 2012, Anderson stated: “In one of those conversations, Bruce commented to me, when only he and I were present at the time, that he was going to humble Fitzgibbons. He didn’t elaborate. He didn’t tell me what he was going to do, he just said he was going to humble him or give him some humility, but I think he used the word ‘humble.’”^{6, p1117}

As attorney Mathews pointed out to the Court, this conversation occurred after the lawsuit against Fitzgibbons had been dismissed, and before he was arrested.^{6, p1118}

Immediately after Mogel said he was going to “humble” Fitzgibbons, “he then immediately pays \$10,000 to a man that we will prove is a thug...and that Anderson admitted...that it was Mikey Delgado who planted the gun on Fitzgibbons and did the mischief that’s there,” stated Mathews.^{6, pp 1122-1123}

Anderson questioned the contract with Delgado to develop the hospital’s Web page because another company was under consideration for developing the website.^{6, p 1116} Anderson stated:

He [Mogel] turned to his computer and he pulled up a website, and the website said, “Form Labs” on it. Looked like a legitimate website and it said something like, we prepare web pages, we will work with you to prepare your web pages. Minimum fee \$25,000. That kind of caught my attention, because I thought that was ridiculous, nobody charges \$25,000 to prepare a web page. Nevertheless, he said, “This is Mikey’s company.” He said, “This is one of Mikey’s Companies.” And I knew who he was talking about because starting in 2005, he had told me on numerous occasions about a friend that he had met traveling to and from Phoenix named—and the only name he ever used for him was Mikey, but he described Mikey to me as a fairly big guy, very powerful, physically very powerful.... He described to me this in a prior conversation, not in this conversation, so I’m just telling you why I knew who Mikey was and that Mikey lives in the shadow of the law, and he has some legitimate businesses, some businesses that are not so legitimate. He told me that Mikey had the Santa Ana Police Department on his payroll. He defined a specific position that was on his payroll, but at this time, I can’t remember who that was, but there was a senior-level position in the Santa Ana Police Department.^{6, pp 1121-1122}

Nevertheless, Anderson admitted that he signed the \$10,000 contract.^{6, p 1115}

Anderson also testified about a conversation Bruce Mogel had with him concerning Dr. Anil V. Shah, who was president of Orange County Physicians Investment Network, IHHI’s primary investor in Western Medical Center (and who had complained about Mogel).^{14, p 244}

He [Mogel] said, “You know, there are people who could kidnap Shah’s wife.” And I thought he was trying to judge my reaction to that comment. And then he said, “You know the same people, there are people,” I think he said, “who could kidnap Shah’s daughter. That might be more impactful.” He didn’t use the word, “impactful,” but that would probably scare Shah more. He was talking about Shah. “Then he [Mogel] said, ‘There are people who could take Shah into a bathroom, strip him down and hold a knife to his penis. They won’t cut it off, they won’t hurt him at all, but they will make him crap his pants.’ He used those words, ‘crap his pants.’”^{6, p 1120}

Following Mr. Mathew’s review of testimony provided by Anderson, IHHI counsel David A. Robinson, stated: “Everything that counsel just said is clearly in the transcript of my client’s former president.”^{6, p 1123}

Also, Anderson reportedly said his suspicion that the \$10,000 payment might have something to do with humbling Fitzgibbons

was confirmed when, on another occasion, Mogel made a strange boast about Fitzgibbons being arrested. “‘People don’t know how powerful I am,’ he claims Mogel told him.”⁷

In his 2008 deposition Anderson was asked: “Okay. Are there any other—before we move on—are there any other facts that you’re aware of that at any time led you to believe that you had reason to be in fear for your physical safety from Bruce Mogel?” Anderson answered: “Um, yeah. I mean there’s lots of them. Lots of facts.”^{14, p 161} In fact, Anderson testified that he did not report his suspicions to the IHHI board that “Mr. Mogel had, in fact, used the Form Labs contract as a vehicle to pay for all this to occur....”^{14, p 185} Anderson testified: “I didn’t do that because Bruce had made it very clear to me that Mikey, who was the counterparty to the Form Labs agreement, was a big scary guy who could do damage to people.”^{14, p 185}

Anderson also testified: “Bruce also told me that Mikey travels with an entourage of former wrestlers, and he described them as huge individuals, and so I had an impression—and I believe Bruce told me this directly—that they’re, like, six-foot four to six-foot eight. I know he said some of them are as tall as six-foot eight and weigh up to 350 pounds. So he travels with personal protection of people who are substantially larger than me, not that I could fight them anyway.”^{14, p 201}

Anderson further stated: “He [Mogel] said Mikey was—he told me at one point that Mikey was either Mafia or connected to the Mafia. He also told me that Mikey has very skilled resources at planting things. For instance, he said he could put kiddie porn on Shah’s computer and, you know, cause him a lot of problems because he had kiddie porn on his computer. So I was led to believe by Bruce that Mikey had some significant technical capabilities, and I didn’t want to be a party to any of that; I didn’t want to be involved in any of that; I didn’t want to be a victim or a subject of any of that.”^{14, p 186}

To avoid any ambiguity, Anderson was also asked: “Were you ever present when anyone suggested that Mr. Mogel was in any way affiliated with organized crime?” He answered: “I just said Bruce told me he was affiliated—Bruce was clearly affiliated with Mikey. We had numerous conversations about that. And he told me Mikey was Mafia or Mafia connected.”^{14, p 211}

“I didn’t know [what] he [Mogel] was going to—that he was likely to do something like the incident with Form Labs that we just testified about in length, until he actually did it,” Anderson stated. “But I knew that honesty was not his greatest virtue. That also put me in fear of what he might do to me if these things were later revealed. But my greatest fear was what Mikey might do to me if these things were revealed, and they came back to Mikey’s desk.”^{14, p 196}

Based on the fact that Mogel told him that people didn’t know how powerful he [Mogel] was and the fact that Anderson concluded that Mogel had somehow used \$10,000 of company money to pay for Mikey to plant the gloves and the gun, Anderson said he was in fear for his life.^{14, p 198}

Jury Awards Fitzgibbons \$5.7 Million

Upon deciding that IHHI acted with “malice, oppression, or fraud against Dr. Fitzgibbons,” the jury awarded him \$5.7 million.

"IHHI's board learned of the \$10,000 contract during Anderson's deposition in 2008, reported *The Daily Briefing*. "Instead of firing Mogel, the board awarded him an eight-month consultancy worth \$43,750 per month," Mathews says. "This showed that the IHHI board 'knew what Mogel did to Fitzgibbons,' Mathews told the jury, adding, "They ratified it, and they gave him a golden handshake goodbye."¹⁵

The jury found that "an agent or employee of IHHI engaged in outrageous conduct intended to cause Fitzgibbons emotional distress," and that "the agent or employee's outrageous conduct occurred within the foreseeable course and scope of the agent or employee's agency or employment with IHHI," and that "the outrageous conduct proximately caused Dr. Fitzgibbons severe emotional distress."¹⁶

In the punitive phase of the trial, IHHI attorney David A. Robinson argued to the jury that: "the folks that you're being asked now to punish are the people who got rid of the wrongdoers. . . . The alleged wrongdoers in this case are and always were Mogel and Anderson. They're long since gone, as you have seen. The evidence showed that Anderson was gone in 2007, and Mogel at the end of 2008. . . . [T]he oppressive conduct that you already found that IHHI committed occurred in 2006. Both Mogel and Anderson have been gone over four years. There was in this trial no evidence of ongoing similar conduct after they left. There is no risk, and indeed no need to deter, similar, future conduct. There is no suggestion that any further thugs have been hired to plant additional guns or drugs or what have you."¹⁷

The jury rejected IHHI counsel's "let bygones be bygones" argument and awarded Fitzgibbons \$5.2 million for severe emotional distress and \$500,000 in punitive damages.

"This destroyed my hospital practice," Fitzgibbons told *OC Weekly*. "It's gone. I'm radioactive; people are afraid to be around me." He said he still had not recovered from the trauma of being set up and having his daughter nearly killed. "If some of this stuff had shaken out differently, I could have gone to jail, and my daughter could have died. 'These bastards were plotting my professional murder, and they almost got away with it."¹¹

Judge Overturns Jury's Verdict

Just when it looked as though Fitzgibbons had gotten some modicum of justice and accountability, on May 1, 2013, an Orange County Superior Court Judge tossed out the jury's verdict and additionally ordered that Fitzgibbons should pay the company's legal bills.

Orange County Superior Court Judge Gregory H. Lewis ruled that, while Fitzgibbons did present plenty of evidence that IHHI's former chief executive officer, Bruce Mogel, had laundered company cash to hire a "thug" who likely planted a gun in the doctor's car to have him arrested in a bizarre road rage incident that both sides in the recent trial acknowledge never happened, the doctor failed to convincingly show that IHHI had "ratified" this conduct, which arose not from Mogel's job function, but rather a "personal grudge."

Additionally, the judge ruled: "The award for emotional distress is completely out of line with similar injuries in other

cases. . . . Plaintiff failed to introduce any evidence of medical expenses or loss of income. . . . Plaintiff was not hospitalized or medically treated. He did not take any medication. . . . While Plaintiff sustained embarrassment, the emotional distress was not of a substantial quality or duration. At worst, some other doctors poked fun at him."¹⁸

On May 21, 2013, Fitzgibbons told the *Journal*: "Judge Lewis' comments regarding my damages were wholly misleading and false. I suffered panic attacks and depression as a result of these incidents, I have chronic abdominal complaints and my practice was destroyed. I presented expert psychiatric testimony that I have post-traumatic stress disorder from these events. I did take medication for depression but suffered side effects and stopped it. I spent over \$15,000 at the psychologist offices."

Fitzgibbons plans to appeal the judge's ruling.

Did the Judge Have a Conflict of Interest?

On May 9, 2012, Fitzgibbons filed a motion for recusal of the Honorable Gregory H. Lewis. "The basis for the challenge," as reviewed by the Court, "is that (1) in 2007, during pending litigation, the Court appointed a former judge to be a director on the board of Defendant Integrated Healthcare Holdings, Inc. in order to break a deadlock on the board; (2) the Court has a professional relationship with the director, Judge Robert Jameson (Retired) because Judge Jameson had previously served as a judge and Presiding Judge of the Orange County Superior Court; and (3) this Court has made adverse rulings against Plaintiff."¹⁹

On May 14, 2012, Judge Gregory H. Lewis ruled: "Since the statement of disqualification on its face discloses no legal grounds for disqualification, and is untimely, it is ordered stricken pursuant to Code of Civil Procedure section 170.4 subdivision (b)."¹⁹

The record is clear that Judge Gregory H. Lewis and the retired Judge he appointed to the IHHI board in 2007 during pending litigation against IHHI, Judge Robert Jameson, "had served on the bench of the Orange County Superior Court together until his [Judge Jameson's] retirement in 2005."¹⁹ Judge Jameson "had served as the Presiding Judge of the Court for a two year term."¹⁹

The record also shows that Judge C. Robert Jameson was present at the deposition of former IHHI president Larry Anderson in 2008, where details of what was done to Fitzgibbons were fully revealed.^{14, p 3} At that deposition, Anderson testified about the \$10,000 contract with Mikey (Form Labs): "I never saw the contract [with Form Labs] again until I was showed—shown the fully executed version by Mr. Simpson and Judge Jameson when I recently met with them, okay."^{14, p 156}

In deposition Mr. Anderson was asked: "Incidentally, we know that you didn't tell anyone at IHHI about any of this black-glove-and-gun-planting information before the board approved your severance. Did you subsequently provide this information to anyone else?" He answered: "I've told Judge Jameson."^{14, pp 202-203}

So, based on Anderson's testimony, it was clear that IHHI director Judge Jameson (Ret.) had knowledge of what had been done to Fitzgibbons in 2008. According to the Plaintiff's motion for recusal of Judge Lewis:

California law states that a judge shall be disqualified if a person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial.... As a result of Judge Lewis's previously undisclosed relationship with a prominent member of Defendant IHHI's Board of Directors, it is evident that Judge Lewis's impartiality is cast into doubt.... In this matter, Plaintiff's counsel has recently learned that the presiding judge in this case, the Honorable Gregory H. Lewis, appointed a professional colleague to Defendant IHHI's Board of Directors. Specifically, Judge Lewis appointed a member of Defendant's IHHI's Board of Directors, who has since made over \$150,000.00 as a result of Judge Lewis's involvement and now owns 250,000 shares of Defendant IHHI's stock. Judge Lewis's rulings in this case could directly impact the value of Judge Jameson's stock. It is clear that Judge Lewis has a professional interest in Defendant IHHI, and his ability to be impartial is reasonably cast in doubt.²⁰

The motion goes on to cite the Code of Judicial Conduct, Canon 2 A: "A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." Further, the Code of Judicial Conduct, Canon 3 E, states, "In all trial court proceedings, a judge shall disclose on the record information that is reasonably relevant to the question of disqualification under Code of Civil Procedure section 170.1, even if the judge believes there is no actual basis for disqualification."

Thus, Fitzgibbons argues:

Because Judge Lewis has such close, intimate professional relationships with Judge Jameson (Ret.), a reasonable person will doubt Judge Lewis's impartiality in this case, since a ruling in Plaintiff's favor would hurt his colleague and friend Judge Jameson....Indeed, the clear language of CCP §170.1 precludes this Court from exercising any discretion in disqualifying Judge Lewis once it has been found that Judge Lewis may be perceived as not being impartial.²⁰

Conclusion

While the last chapter in this saga has yet to be written, physicians can learn from it the tremendous power of hospital cartels, and the ruthlessness they may display in retaliating against a physician who opposes them or exposes their wrongdoing.

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