

On June 14th, 2006 the California Court of Appeals ruled in Dr. Michael Fitzgibbons favor in the matter of I. H. H. I. vs. Fitzgibbons, dismissing IHHI's lawsuit. IHHI was the owner of four Orange County California hospitals, including Western Medical Center in Santa Ana where Dr. Fitzgibbons practiced. IHHI had sued Dr. Fitzgibbons June 21, 2005 over a May 19, 2005 email Dr. Fitzgibbons sent to ten physicians and others commenting on IHHI's financial situation and its leadership, after IHHI had defaulted on its loans, triggering a loan interest rate increase to 19%, by its then lender Medical Capital Corporation. The California Appellate Court ruled the lawsuit against Dr. Fitzgibbons was a SLAPP lawsuit intended to stifle Dr. Fitzgibbons' legitimate freedom of speech. Prior to Dr. Fitzgibbons' May 19 2005 email, on March 15, 2005, IHHI's flagship hospital's CEO, Dan Brothman announced IHHI's plan to retaliate against Dr. Fitzgibbons, Dr. Peter Wawro, and Dr. Brian Cross. On June 24th, 2006 an article appeared on the front page of the Orange County Register, detailing the results of the litigation against Dr. Fitzgibbons and portraying him in a favorable light. Four days later IHHI's conspiracy against Dr. Fitzgibbons reached its pinnacle. On June 28th, 2006, the day after his birthday, Dr. Fitzgibbons 1995 tan Toyota Camry was broken into, and a gun and pair of gloves were planted in Dr. Fitzgibbons car and he was falsely accused of brandishing a weapon. The person who planted the gun called "911" on June 28, after 2pm and reported a driver brandishing a gun in a brown Camry, reportedly with Dr. Fitzgibbons' license number. This report was entirely false. The reporting person could not be found by the police. Dr. Fitzgibbons was completely innocent of the charges of brandishing a gun, or knowingly carrying a concealed weapon, or knowingly carrying a loaded weapon.

On June 28, 2006 at 2 PM Dr. Fitzgibbons left his office on his way to Western Medical Center for lunch. His trip to the hospital took approximately 4 minutes. He traveled directly to the hospital. For virtually all the trip he spoke on his cell phone with Dr. Tom Badin (the use of a cell phone while driving a car in 2005 was not illegal in California). They discussed plans to celebrate Dr. Fitzgibbons' court victory over IHHI. Dr. Fitzgibbons parked at the hospital and went down to eat in the Western Medical Center Doctors' dining room. After about 10 minutes, the two other doctors present left and Dr. Fitzgibbons was alone. Then several policemen entered. The police asked if he was "Michael Fitzgibbons" and did he drive a brown Camry with a specific license number. He said yes. The police asked if he had a weapon. He said no. The officer asked Dr. Fitzgibbons if they could search him. He said yes, and they patted him down. They asked if he had been involved in any disputes or altercations of the way to the hospital. He said no. They then asked to search Dr. Fitzgibbons' vehicle and as he had nothing to hide he said, "Sure". The police and Dr. Fitzgibbons went to the doctors' parking lot and he opened his car for them. The police car was in the doctors' parking lot and there were four or five policemen already there. After Dr. Fitzgibbons opened his car the policeman asked him to move away from the vehicle. Dr. Fitzgibbons, sensing trouble, asked if he could telephone his attorney. Dr. Fitzgibbons anticipated that this was a false report. Things got weird. One of the officers shouted out "there is a weapon" in the vehicle and the next thing Dr. Fitzgibbons knew the cell phone was knocked from his hand, his hands were pulled behind his back, he was handcuffed, his cell phone taken away, and he was told to lean against the police car. The officer searching the vehicle said he found gloves and a gun. Dr. Fitzgibbons' head

started swimming at that point and he began to understand what happened. He had been setup. Someone had broken into Dr. Fitzgibbons vehicle and planted a loaded gun and black gloves in his car. Dr. Fitzgibbons never saw the gun or gloves. The police asked Dr. Fitzgibbons to sit in their squad car. A crowd started to gather. Employees he knew from the hospital were gawking at Dr. Fitzgibbons, wondering what was going on. "Dr. Fitzgibbons is in a police car in the doctor is parking lot." Dr. Fitzgibbons friends later told Dr. Michael Fitzgibbons that rumors circulated wildly, that "he had been pursued on the freeway by police", and that "he was brandishing a gun from Dr. Fitzgibbons vehicle." Of course all that was untrue. What was true was someone had planted in gun and gloves in Dr. Fitzgibbons car and that they had called in a false police report. With that, the loss of Dr. Fitzgibbons civil rights followed quickly. He was not read his Miranda rights. Instead, he was detained by the police for approximately two hours in the parking lot. They mentioned vaguely that they were holding Dr. Fitzgibbons for having a concealed weapon in his car which they told him and was loaded. He asked to stand up outside the police car and the police approved. At 5 PM by police carted Dr. Fitzgibbons off to jail. He was told in jail that he was under arrest and he was again handcuffed and shackled, booked, strip searched, put into a holding cell, and kept incommunicado for another hour and a half. There was nothing in the cell but a toilet, sink, and cement bench. Finally the police brought Dr. Fitzgibbons out for a mug shot in a jailhouse shirt. Police fingerprinted and took DNA samples from Dr. Fitzgibbons. He was told he could make a phone call, a collect call. He was able to get through to his elderly parents, Kenneth and Margaret, who called his wife, sister, and his friend Dr. Tom Badin. At 1915 hours Dr. Fitzgibbons was released from Santa Ana jail and his wife and Dr. Badin were waiting for him, shocked and bewildered by the awful crime perpetrated upon him that day. Dr. Fitzgibbons was the victim of a conspiracy to break into his car and plant a loaded gun and gloves. The conspirators called in a false 911 report of 'road rage', which could not have happened the way they described it. Dr. Fitzgibbons protested his innocence of this incident to the Santa Ana police. Dr. Fitzgibbons' car had scratch marks on the passenger side window, which were new and caused by the break-in of his car.

Dr. Fitzgibbons was innocent of the criminal charges against him by the Santa Ana police—brandishing a firearm and possession of a concealed weapon. IHHI's conspiracy to defame, frighten and intimidate Dr. Michael Fitzgibbons, his family, and deprive him of his medical license and practice was consummated. IHHI's paid criminals conspired to break into Dr. Fitzgibbons car, plant an illegal loaded firearm and black gloves in his car, and make a false police report concerning an accident and that he was brandishing a pistol while wearing black gloves. The events as described by two 911 callers could not have happened, because Dr. Fitzgibbons was talking on the telephone while driving and could not have brandished a weapon, held a telephone and driven at the same time. The accusations were patently false, the 'witnesses' failed to show, and telephone records of Dr. Fitzgibbons and Badin proved "the road rage event" could not have happened.

Later testimony of Mr. Larry Anderson, president of IHHI, shed light on IHHI's conspiracy. Mr. Bruce Mogel, CEO of IHHI, threatened that Dr. Fitzgibbons prior to these events. Mr. Anderson heard Mogel say, he planned to humble Dr. Fitzgibbons. "People don't know how powerful I am," Mogel bragged to Mr. Anderson. Sued for embezzlement, forgery, misappropriation of company funds and breach of fiduciary duty by Alta Med in 2002, Mr. Mogel had lied repeatedly under oath about his background in

SEC filings. Further, Mr. Mogel bragged to Mr. Anderson, about Mikey, a thug whom he knew, who worked for a company called Form Labs. Mogel said Mikey was a big strong guy, a former strip club bouncer, who had mafia connections and contacts within the Santa Ana Police Department, who could 'fix' things. For a while Mr. Anderson was intimidated by Mogel -- afraid for his safety. Shortly after the crimes against Dr. Michael Fitzgibbons, Mr. Mogel asked Mr. Anderson to draft a contract with Mikey and 'FormLabs' for \$10,000 for 'web design.' But Mr. Anderson knew IHHI already had someone doing web design. When investigated by Nick Schou, a reporter for the OC Weekly, FormLabs turned out to be a front. According to Mr. Anderson, FormLabs never did any 'web work' for IHHI. After Dr. Fitzgibbons was arrested, Western Medical Center's CEO, Dan Brothman, assisted the IHHI conspiracy by spreading the false rumor that "everybody knew" Dr. Fitzgibbons kept a gun in his car. Many IHHI employees joined in the rumors.

Later, on or about July 2, 2006, a bag of ecstasy drugs were planted in Dr. Fitzgibbons car, while it was in the police impound lot. Dr. Fitzgibbons took the drugs to his attorney, Gary Pohlson. July 21, 2006, two of Dr. Fitzgibbons' cars had their tires slashed. One of the slashings was botched, and the tire blew out on the freeway, nearly killing the three occupants, one of whom was Dr. Fitzgibbons' daughter. Later it was learned that Mr. Mogel was protecting Joey Lampariello, the president of Medical Capital Corporation, the Ponzi schemer who stole over \$1.8 billion dollars in a securities fraud scheme. The Securities and Exchange Commission is now in the process of investigating Mr. Lampariello and his cohorts.

Dr. Fitzgibbons' case starkly points out the extreme measures which hospitals can go to retaliate against physicians. In most cases a physician attacked by a hospital will be destroyed, his reputation ruined and his fortune wasted in futile litigation with the hospital. As Mr. Brothman, CEO of Western Medical Center bragged after outlining his plan of retaliation against three physicians, '...and the hospital always wins.' The losers are the patients, because hospital errors go unreported, system problems aren't fixed, and the money doesn't go where it should. It's easier to silence the whistleblower than fix the problems. The legislature's of the states need to recognize the vital role physicians and others play in assuring quality and reporting errors and system problems. Hospitals need better internal controls to collect and analyze errors and system problems. Medical Staffs need to be protected from rogue administrators. Medical Staffs must have independent funding, not dependent on the whim of administration. The blame and shame cultures must be replaced with quality controls and meaningful system change.