



# IHHI v. Fitzgibbons, 140 Cal. App. 4th 515, 44 Cal. Rptr.3d 517 (Cal. Ct. App. 2006)

Topics Covered: Abusive Litigation Against Physicians, Physician Advocacy and SLAPP Laws

**Outcome: Very Favorable**

## Issue

The issue in this case was whether a physician should be allowed to make truthful statements about the financial solvency of a publicly held corporation that owned a hospital in which the physician held medical staff privileges.

## AMA Interest

The AMA believes that physicians should be entitled to express their opinions on matters affecting public health and the health of their patients, without fear that such expression will subject them to the burdens of an unfounded lawsuit.

## Case Summary

Michael Fitzgibbons, MD, an infectious disease specialist practicing in Santa Ana, California, was a past chief of staff of the Western Medical Center-Santa Ana ("WMCSA"). He remained on the medical staff executive committee during the incident that led to the lawsuit. Integrated Healthcare Holdings, Inc. ("IHHI") was a publicly owned investment company, organized to own and manage health care facilities.

During 2004, Tenet Healthcare Corporation, then the WMCSA owner, sought to divest itself of its Orange County, California hospitals, including WMCSA. Tenet entered into an agreement to sell those hospitals to IHHI, which had been incorporated for that purpose. Both the Orange County Board of Supervisors and the California Senate held formal hearings to investigate the proposed acquisitions. These hearings were reported in the Orange County Register, the Orange County Weekly, and the Los Angeles Times. Eventually, the hospitals were sold, the California hospital licensing board approved the acquisitions, and IHHI began to operate them.

Shortly after closing the deal, IHHI reported to the SEC that it had received a notice of default on two loans that it had received to fund the acquisitions. The effects of the claimed defaults were to suspend IHHI's ability to obtain further loans, increase the interest rate on its outstanding loans, and make immediately due and payable almost \$64 million in debt. The SEC filing was the subject of a critical article in the May 17, 2005 Orange County Register.

Dr. Fitzgibbons, through an e-mail sent to other physicians on the WMCSA medical staff, criticized the acquisitions and expressed doubts about the financial viability of IHHI. Most of the

information in the e-mail came from the Orange County Register article, which in turn came from IHHI's own SEC filing. Ultimately, the e-mail found its way into the hands of IHHI.

Based on Dr. Fitzgibbons' e-mail, IHHI sued him for: (1) defamation, (2) intentional interference with a contractual relationship, (3) negligent interference with a contractual relationship, (4) breach of contract, (5) breach of the duty of good faith and fair dealing, and (6) violation of the California unfair business practices statutes. Dr. Fitzgibbons filed a special motion to strike the complaint under the California anti-SLAPP statute. Cal. Code Civ. Proc. §425.16.

The trial court denied the special motion to strike under the anti-SLAPP statute, and it also awarded IHHI \$1,925 in attorney's fees and costs. Dr. Fitzgibbons appealed the denial of his special anti-SLAPP motion.

On June 14, 2006, the Court of Appeal reversed, finding that IHHI had failed to demonstrate a probability of success. It directed the lower court to grant Dr. Fitzgibbons' motion to strike under the anti-SLAPP statute, and it awarded him his costs on appeal.

### **Litigation Center Involvement**

The Litigation Center and the California Medical Association filed an amicus curiae brief in the California Court of Appeal to support Dr. Fitzgibbons.

California Court of Appeal brief