

Senate Bill 206 – Proponent Testimony Ohio Senate Oversight and Reform Committee

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My name is Geoff Mitchell. I am a physician who has practiced medicine in Ohio for more than thirty years. My work has been recognized nationally and even internationally. Over the course of my career, I correctly discerned and resisted two otherwise unrelated perpetrators of Enron-level healthcare fraud years before their frauds were publicly known. Both Rebecca Parrett and Richard Scrushy were eventually incarcerated in federal prison. In 2010, I was sanctioned in a SLAPP suit adjudicated by Judge Timothy Horton. I was SLAPPED for my attempts to fight Richard Scrushy's Ohio healthcare fraud. Judge Horton is himself profoundly unethical and I also discerned and resisted his unethical conduct for years. He may be removed and/or disbarred later this summer. His case is # 2018-010, currently pending before the Board of Professional Conduct.

Rebecca Parrett was the vice president and business manager of my first emergency medicine employer. My partners and I ousted her and her group from St. Ann's Hospital in 1987 for what we called "parasitic business practices." Parrett went on to orchestrate the three-billion-dollar National Century Financial Enterprises fraud. Convicted in 2008, Parrett is now serving twenty-five years in federal prison.

When Richard Scrushy was chairman of MedPartners in 1998, I was fired as a whistleblower for advocating gender equality and fighting against his fraud in emergency care. I reported my suspicion of MedPartners' fraud to the hospital compliance officer. I wrote what came to be known as the "*Scrushy Warning Memo*" for my medical staff (attached). Chairman Scrushy's secret payment of \$1.5 million to the hospital negotiating agent enabled MedPartners to acquire a trophy emergency department contract (through its MOES/TeamHealth subsidiary).

The Scrushy/MedPartners successors and affiliates (MOES/TeamHealth) won the initial public policy/wrongful termination lawsuit. I alleged that they won by means of their attorneys' lying to Ohio courts. I suggest that the conduct of Scrushy's successors and affiliate companies and their attorneys in covering up or defending their 1998 Ohio conduct was reflective of the character of their 1998 corporate chairman, Richard Scrushy. In 2006, Richard Scrushy was incarcerated in federal prison for bribing the governor of Alabama. In 2007, he was fined \$81 million by the SEC. In 2009, Scrushy was found civilly liable for \$3 billion - the largest individual healthcare-related fraud ever. **I wrote my attached *Scrushy Warning Memo* in 1998.**

The Rule 60(B) Motion to Vacate

Having read so much law in the course of litigation, I decided to enter law school. I entered law school hoping to find justice. Instead, I found Judge Horton. Armed with the then newly-discovered contract between MedPartners' chairman Richard Scrushy and Hospital agent Clifford Findeiss, I filed a Rule 60(B) motion to vacate. Findeiss' contract performance owed in exchange for the \$1.5 million consideration was that he was to acquire emergency department contracts on behalf of Scrushy's MedPartners. Findeiss did in fact, acquire my hospital's emergency department contract while he was under contract with Scrushy. It was never demonstrated that Findeiss ever acquired any other emergency department contracts for the \$1.5 million he was paid. As a law student with no income to pay for legal fees, I filed *pro se*.

I also reported to various government agencies where I thought it appropriate. For example, in 2004, my report was published on its website and in the Congressional Record by the House Ways & Means Committee.¹ I alleged in my Rule 60(B) Motion that the MedPartners/TeamHealth/MOES defendants prevailed by means of misrepresentations to the courts. I particularly alleged that defendants lied in denying that Scrushy's MedPartners secretly paid Hospital Agent Clifford Findeiss the \$1.5 million. Finally, in 2008, when the attorneys were themselves under oath, they admitted, I believe for the first time, that this was true.

The SLAPP Suit & the Bar Admission Case

The Scrushy successors and affiliates retaliated with a SLAPP suit. As part of their SLAPP strategy, the Scrushy successors and affiliates attempted to stop my bar admission. Obtaining a continuance in the county court SLAPP suit and absent any shred of medical evidence, the same two lawyers for Scrushy's successors and affiliates diagnosed me mentally ill and dragged me before the Ohio Supreme Court. Knowing that their abuse of process claim would not stand alone, these attorneys lied to the Supreme Court to obtain a hearing. They falsely attested that I was mentally ill. It is indisputable that their challenge to my bar admission was brought in large part under Gov.Bar R. I, Section 11(D)(3)(e) (mental or psychological disorder).

This was utterly and completely false. There was never any mental or psychological disorder. It was like something out of Stalinist Russia. The Court found their fake, attorney-rendered psychiatric diagnoses to be false and they were stricken. Any court should know that lawyers are not permitted to render psychiatric diagnoses but those two attorneys were never held to account for lying to the Ohio Supreme Court about my (nonexistent) mental illness.

Regarding their other abuse of process claim, the Ohio Supreme Court held that apart from "questions" about me calling the attorneys liars, my "conduct and credentials are beyond reproach." As far as I can tell from Ohio Supreme Court records, the Court has never before used such language in describing a challenged bar applicant. I successfully petitioned the Supreme Court to unseal my entire record. Ohio's leading legal ethics experts² resoundingly answered any "questions" the Supreme Court had. They attested to precisely the same facts that I had alleged for years - that the same psychiatrist-impersonating attorneys did lie to Ohio courts for ten years.

The SLAPP Suit Judge - Timothy Horton

Returning to pursue the SLAPP suit, the same two expert-alleged attorney-liars then found a kindred spirit in Judge Horton. Judge Horton unethically sanctioned me in that SLAPP suit. In the SLAPP suit Judge Horton's unethical misconduct was pervasive. The chairman of the board of one of the SLAPP suit plaintiff's hospital was Horton's former boss and mentor. Judge Horton failed to recuse, he exhibited bias and judicial favoritism toward his former boss and mentor, he manipulated the magistrates, he relied upon false, attorney-rendered psychiatric diagnoses³,

¹ <https://www.gpo.gov/fdsys/pkg/CHRG-108hrg99670/html/CHRG-108hrg99670.htm>

² Charles Kettlewell and Kenneth Donchatz were two of Ohio's most respected legal ethics experts. Mr. Donchatz was at least five times, endorsed by the Ohio Supreme Court as an ethics expert or leader. When Mr. Donchatz faced Horton in 2010, he was Chair of the OSC's Client Services Commission, thus one of the top three legal ethics experts in the Ohio Judiciary under the OSC. Mr. Donchatz may have learned from Horton that misconduct pays. Unfortunately, Mr. Donchatz would go on to have his own difficulties with finances and ethics. *See also*, FN4.

³ Judge Horton relied upon the bar case and thus wrongly applied the inverted, bar admission, guilty (unfit) till proven innocent (fit) burden of proof in a civil case. Apart from Horton's reliance on false, lawyer rendered psychiatric diagnoses, this might be considered more of a legal error than pure ethical misconduct.

he honored attorney misconduct, and ultimately, as the legal experts attested, he “relied upon” attorney falsifications in adjudicating the SLAPP suit and fining me more than \$300,000.

Specifically, Judge Horton failed to inform appropriate authorities of professional misconduct in his Court, an express violation of Rule 2:15(B) of the Code of Judicial Conduct. Judge Horton was complicit with the misconduct. Leading legal ethics experts filed a sworn affidavit with Judge Horton attesting to the attorney misconduct. Judge Horton completely ignored the experts’ sworn attestation. Horton also ignored my attorney’s motion for sanctions.

After Horton’s verdict, Ohio’s leading legal ethics experts further confirmed to authorities the secret Scrushy payments (i.e. bribe) and further attested that Horton “relied upon” attorney falsification in his adjudication of the SLAPP suit against me. This misconduct by Judge Horton is thought unique in Ohio history. One of the ethics experts met face-to-face with the appropriate authority to report the misconduct in Judge Horton’s Court. Charles J. Kettlewell notarized and ratified the sworn affidavit cataloging the misconduct and filed with the Judge. Horton is probably the only judge in history to violate Rule 2:15(B) by ignoring an ethics warning by a Kettlewell.⁴

Judge Horton’s misconduct, especially in ignoring the experts’ affidavits, was obvious even while the case was being tried in 2008. In 2010, I explicitly asserted that Judge Horton’s adjudication of the SLAPP suit was unconscionable. In 2015, I filed a grievance against Judge Horton. The Office of Disciplinary Counsel was initially dismissive. Of course, it turned out that I was correct about Judge Horton’s lack of ethics. Judge Horton is horrifically unethical and ODC finally filed its long-overdue formal complaint against him on January 30, 2018. My grievance turns out to be one of several. On May 23, 2018, by filing public notice of the grievances against him, under Gov. Bar R. V(8)(A)(1)(a), Judge Horton waived confidentiality as to my grievance.

A couple of examples of Judge Horton’s other misconduct prosecuted by the ODC include the fact that Ohio taxpayers paid forty-five thousand dollars to settle sexual harassment allegations. Horton is arguably the most unethical judge in Ohio. He went to jail for campaign finance violations. Horton is the only Ohio judge ever to go to jail and return to the bench as a convicted criminal. The Ohio Auditor filed a five-hundred-page report recommending felony charges for Judge Horton. A review of all of Judge Horton’s misconduct is beyond the scope of this testimony. Horton faces a hearing and potential disbarment in July, 2018.

I did not personally send Parrett or Scrushy to federal prison or personally hold them accountable for their billion-dollar frauds, nor did I personally cause Judge Horton to face judicial discipline. But, I know of no one else who has shown this degree of advance discernment. I humbly suggest that I have shown an uncanny ability to discern right from wrong and I never deserved to be treated the way I was in the SLAPP suit. Thus, I urge the Ohio Senate to pass SB 206 – this anti-SLAPP bill, for the protection of Ohio citizens. What would SLAPP prohibition mean? Anti-SLAPP protection will make it harder for unethical judges like Judge Horton to harm citizens. Anti-SLAPP protection will make it harder for unethical and vengeful lawyers, corporations or individuals to harm citizens or find judges willing to enact revenge or quash citizens’ constitutional rights. Thank you for your consideration of my testimony.

⁴ Charles W. Kettlewell was the most famous ethics lawyer in U.S. History. The Association of Professional Responsibility Lawyers, the nation’s largest association of ethics lawyers calls its lifetime achievement award the “Kettlewell Award”- named in honor and in memory of Charles W. Kettlewell, who was one of APRL’s founders and who served as its first President. Charles J. Kettlewell was Charles W.’s son, protégé and partner. Charles J. Kettlewell is an Ohio legal ethics expert in his own right. He was twice named the Central Ohio Legal Ethics Lawyer of the Year, in 2012 and again in 2016. The Kettlewells are the first family of American legal ethics. Charles J. Kettlewell is the heir to the legacy of America’s greatest legal ethics lawyer. Charles J. Kettlewell was one of the experts who, pursuant to Rule 2:15(B) of the Code of Judicial Conduct, warned Judge Horton of lawyer misconduct in his Court.

Medical Staff Update

MedPartners Loss Exceeds Its Forecast

By ANITA SHARPE

Staff Reporter

reprinted from THE WALL STREET JOURNAL THURSDAY, MARCH 19, 1998

Many of you have asked us to keep you informed regarding our current negotiations --

You may also know, several of our administrators have emphasized how pleased they have been with the performance of InPhyNet / MedPartners in the ED on the Grant Campus. We're not convinced that it's wise for any of us to partner more closely with this company at this time. We have several ongoing concerns about this group.

MedPartners has wanted the RMH ED contract for quite some time. They still have deep pockets and must be making some big promises in order to make themselves look so attractive. We believe it is appropriate to ask whether InPhyNet / MedPartners will be able to live up to promises currently being made. After losing \$840 million, and restructuring their top leadership, the MedPartners of 1999 will not be the same company that performed so well at Grant in 1997.

Given these economic realities, and their demonstrated willingness to renegotiate their physician contracts, we remain doubtful that InPhyNet / MedPartners will be able to retain quality physicians here in the RMH ED.

- submitted for your consideration

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MedPartners Inc. posted a much larger than forecast fourth-quarter loss and said it is bringing in Mac Crawford, formerly head of Magellan Health Services Inc., as its new president and chief executive.

The Birmingham, Ala., physician-practice-management company reported a loss of \$840.8 million, or \$4.47 a diluted share compared with a year-earlier profit of \$29.9 million, or 17 cents a share. MedPartners took \$646.7 million in charges in the latest fourth quarter, mostly related to a writedown of goodwill associated with acquisitions. In addition, MedPartners said its clinic expenses soared 71% to \$1.21 billion from \$706 million a year earlier.

MedPartners said revenue in the quarter climbed 22% to \$1.69 billion from \$1.38 billion a year ago.

The company warned shareholders in January that it would take a quarterly charge of \$145 million associated with overutilization of its clinics in southern California and additions to medical-claim reserves; it said at that time that its loss could be as much as 25 cents a share. That news battered MedPartners' stock price and paved the way for **the departure of co-founder Larry House as chairman and chief executive**. Richard **Scrushy**, a major MedPartners shareholder and head of HealthSouth Corp., took over as chairman and acting chief executive.

The news of the big loss came after the stock market had closed for the day. In New York Stock Exchange composite trading, MedPartners shares finished at \$11.875, down 12.5 cents.

Stock market analysts, who speculated that MedPartners would load as many charges as possible into an already-ugly quarter, had been braced for a massive fourth-quarter loss. Mr. **Scrushy**, for his part, had been hinting to the investment community that the loss might be much bigger than expected.

Mr. **Scrushy**, in an interview late yesterday declined to address the outlook for the first quarter, but said, "We're making progress; the company is definitely turning. We don't anticipate these kinds of write-downs in the future." "Frankly, the bigger the number for the fourth-quarter loss, the more likely they've got the problems contained," said Piper Jaffray analyst Brooks O'Neil.

MedPartners said it is in the process of closing 84 clinics affecting 238 physicians, leaving the company with 13,531 affiliated doctors. Mr. **Scrushy** said the company merged some clinics that were near one another and **closed clinics in certain cases where the doctors were unwilling to renegotiate their contracts**. Mr. **Scrushy** called the clinic closings "nonstrategic" and said they primarily involve smaller facilities. "This company is not up set up to manage little onsie and twosies," he said. "It's difficult to attract managed care contracts when you don't have any coverage" in an area, he added.

MedPartners is hoping that by bringing in Mr. Crawford, who transformed Magellan Health Services from a beleaguered psychiatric hospital company into a managed care concern, it can get a better grip on some of its managed care contracts. The company, according to some people familiar with the situation, entered into some contracts in Southern California which encouraged overutilization of its clinics without bringing in enough revenue to cover medical claims.

"They may not be bad contracts," said Mr. O'Neil, but as MedPartners aggressively snapped up clinics and physician-practice companies in recent years, "things fell between the cracks," he said.

Some investors and analysts have been clamoring for MedPartners to spin off some of its sprawling businesses, particularly its large pharmacy-benefit management unit. Mr. Crawford doesn't rule out such a possibility. "Could that be considered? Sure," he said in an interview. Mr. **Scrushy** reiterated, however, that the company isn't in talks to sell itself or any of its divisions.

Some shareholders have been betting that **Mr. Scrushy**, who remains chairman of MedPartners, would quickly move to shore up investor confidence and boost the company's stock price.

Indeed, FMR Corp., parent of the Fidelity mutual-fund company, this year added about 19 million MedPartners shares to the shares that it owned at the end of 1997 and now controls about 11% of the company. An FMR spokeswoman said the company doesn't comment on individual holdings. Separately, Atlanta based Magellan said it named Henry T. Harbin as new president and chief executive. Dr. Harbin was a founder of Green Spring Health Services, in which Magellan bought a controlling interest in 1995.

* **Memo written and circulated in 1998, color highlights added later.**

"Scrushy Warning Memo," written on behalf of Riverside Emergency Physicians in 1998.