

# MD who uncovered Laguna Honda Hospital patient gift fund scandal files wrongful termination lawsuit

by Patrick Monette-Shaw  
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On November 16, 2010 doctor Derek Kerr — a former physician in good standing at Laguna Honda Hospital for over 21 years — filed a lawsuit in San Francisco County Superior Court, alleging retaliatory termination of employment.

His lawsuit names as defendants the City and County of San Francisco; San Francisco's director of public health, Dr. Mitch Katz; Laguna Honda Hospital's executive administrator, Mivic Hirose; LHH's current medical director, Colleen Riley; and 25 fictitiously-named [John or Jane] "Does" who may have potentially been responsible in some manner for occurrences alleged in Kerr's lawsuit.

The five causes of action Kerr's lawsuit alleges include:

- Deprivation of his First Amendment freedom of speech activities;
- Deprivation of due process rights guaranteed by the Fourteenth Amendment;
- Violation of California Government Code §53298 that prohibits reprisals against employees who file complaints regarding gross mismanagement or a significant waste of funds, or an abuse of authority;
- Violation of California's Health and Safety Code §1432 that prohibits discrimination or retaliation against employees for initiating or participating in proceedings relating to care, services, or conditions of a long-term health facility; and
- Violation of California Labor Code §1102.5 that prohibits retaliation against any employee for disclosing information to a government or law enforcement agency when an employee has reasonable cause to believe that the information discloses a violation of state or federal statutes, or a violation or noncompliance with a state or federal rule or regulation.

Kerr had filed two whistle-blower complaints in September 2009 with his co-worker, Dr. Maria Rivero. On March 2, 2010 Kerr and Rivero filed an unrelated complaint with the San Francisco Whistleblower Program administered by the City Controller's office, alleging mismanagement and misappropriation of funds in LHH's patient gift fund, specifically identifying Ms. Hirose as a responsible party, possibly among others.

Three days later, Kerr was informed on March 5 he was being laid off and that his employment with the City would be terminated effective June 11, 2010.

On March 15, 2010 Kerr then filed a Whistleblower Retaliation Complaint with the San Francisco Ethics Commission alleging that his termination was in retaliation for the multiple ethics complaints he had previously submitted.

Kerr's lawsuit seeks unspecified monetary damages for lost pay, general damages, punitive damages, and other relief a court may deem proper, among other penalties.

Kerr is being represented by the San Francisco law firm Kochan & Stephenson, which has previously represented other Laguna Honda Hospital employees, including a case recently settled against the City for \$268,452.

A case management conference regarding Kerr's lawsuit has been set for March 18, 2011.



Trying to protect LHH's patient gift fund may have cost Dr. Kerr his job.