

This is a case involving intrigue, manipulation, criminal histories, and fraud at Plaintiff Medical Legal Experts MLE ("MLE") and its predecessors, and Defendant Dr. Joe Tichio's escape from it when he resigned and started his own company, Defendant United Medical Evaluators ("UME").

Stephen Stepaniuk was the owner of several predecessor companies to MLE. In 2019, he and two of these companies were indicted on multiple counts of fraud by federal prosecutors. Finding it difficult to collect on billings after his indictment became known by carriers, Dr. Stepaniuk convinced his longtime employee, Dr. Tichio, to set up yet another company (Medical Legal Experts, Inc.) to operate in the same space, same office and use the same employees as Dr. Stepaniuk's companies to run billing through it. Dr. Tichio agreed, even though he lived and worked 500 miles away from the office.

Subsequently, knowing he was going to prison, Dr. Stepaniuk asked Dr. Tichio to buy one of his companies, Medical Legal Evaluations. Dr. Tichio refused, but agreed to stay on to assist the new owner, Alvin Lee, learn the business. Mr. Lee, a Canadian citizen lacking any experience in the California Workers' Compensation medical legal evaluations business, purchased Dr. Stepaniuk's companies and Dr. Tichio's company, asked Dr. Tichio to form a new company under his name as the only director (MLE), and Alvin Lee holding all the corporate offices, and then Mr. Lee dissolved the other companies. This left only MLE.

There were no board meetings for any of these companies. Dr. Stepaniuk and Mr. Lee could not recall the details of any annual meetings or records of the meetings, but asserted each was the sole attendee. Dr. Tichio continued in the same duties as he had long performed for all the companies: assisting doctors in their exams and with their reports, answering doctor's questions about their regulatory requirements, and doing continuing education classes for MLE's doctors. No employees reported to him, and he did not see the contracts between MLE and its doctors, except on an occasional basis. As the nominal "director" of MLE, he earned \$150,000 per year. Dr. Stepaniuk, now working as an IT tech at MLE, earned \$240,000 per year plus \$600,000 per year in software licensing fees. When Dr. Tichio asked Mr. Lee if he could move out of state, Mr. Lee said Dr. Stepaniuk said "no."

Dr. Tichio became increasingly uncomfortable by events at MLE. Dr. Stepaniuk, in his role as IT tech, appeared to still be directing MLE operations despite the state Department of Industrial relations prohibiting him from doing so. After Dr. Stepaniuk reported to federal prison at Lompoc in January 2021, it was rumored in the office that he still was running MLE. Mr. Lee referred to Dr. Stepaniuk as "the boss" in meetings with Dr. Tichio.

Dr. Tichio, after long thought, decided to leave to start his own medical legal evaluations company where he lived in Roseville, California. He incorporated UME in February 2021, but took no further action to set up the company. He then resigned from MLE on March 5, 2021. Shortly before he left, Dr. Tichio stopped in to see two MLE doctors with whom he worked for years. As a courtesy to them, he told them that he was leaving MLE. When asked, he said only that the former owner was in prison and that he did not feel comfortable working at MLE any longer. He did not mention any names. When asked what he was going to do, he admitted that he was going to open his own medical legal evaluations company in Northern California. He did not ask them to leave MLE and come to his not-yet-opened company.

After Dr. Tichio left, MLE doctors became very unhappy with MLE's service. MLE began submitting doctor's reports late. Billing fell behind, and employees left. Mr. Lee would not take doctor's calls, and doctors could not get answers to their questions. By December 2021 or January 2022, multiple doctors could no longer get examination slots with MLE because it had begun to schedule hundreds of exams of former workers comp claimants with no requests from a doctor or attorney to do so. One of its former doctors said he thought MLE had become "unprofessional."

Shortly after MLE sent a notice to all its doctors to say Dr. Tichio had left MLE. The doctors called Dr. Tichio to ask where he had gone and to ask him the questions MLE could not answer. Dr. Tichio said only that he had opened his own company in May 2021 (UME) and answered the doctors' technical questions. When asked why he left MLE, he merely said he no longer felt uncomfortable working there. He did not mention Dr. Stepaniuk's incarceration. Eventually, eleven of MLE's doctors contracted with UME and/or companies.

After MLE filed its complaint against Dr. Tichio and UME, it reached out to two medical transcription companies Dr. Tichio mentioned in his deposition and threatened to pull its business if they continued to do work for UME. Both services notified Dr. Tichio, saying they could not lose MLE's far larger business, so had to terminate their contracts with UME. UME ended up having to go with transcription services that charged four times what the former transcriptionists charged. UME, in a major growth phase, had to turn away new doctors until it could find new transcription companies, losing significant income.

Plaintiff and Cross-Defendant is Medical Legal Experts MLE ("MLE"), a California corporation headquartered in the greater Los Angeles area. Dr. Stephen Stepaniuk, a chiropractor, founded MLE's predecessor companies before he was indicted by state and federal authorities for fraud and kickbacks. MLE and its predecessors are medical legal examination companies.

Defendants and Cross-Claimants are Dr. Joe Tichio and United Medical Evaluators, LLC ("UME") UME is a medical legal examinations company headquartered in Roseville in Northern California. Dr. Tichio is a chiropractor who learned the medical legal evaluation business from Dr. Stepaniuk. He lives in the Roseville area.

California strictly regulates Workers' Compensation medical examinations. Doctors must be part of that system in order to receive compensation for their examinations. Medical legal exam companies offer one or more types of services to these doctors: exam room space in different locations, examination assistants, transcription services, report editing, making sure reports are submitted timely to carriers, providing continuing education to doctors, etc.

Doctors may contract with up to 10 of these companies in any calendar year. Some doctors do all this work themselves, some run their own medical legal companies, some contract with other companies, or a combination of the above. Doctors who contract with one medical legal company may also contract with others (up to 10 total), depending on their needs.

Reimbursement rates are set by the state, and are not trade secrets. Doctors disclose to other medical legal companies the fee splits they get from another company when negotiating or renegotiating contracts. These fee splits are not trade secrets either.

Similarly, medical legal companies often use the same transcription services, whether off-shore or domestic. Dr. Tichio found two lower-cost Philippine transcription companies when he worked at MLE. UME contracted with these same two transcription companies when it began using outside transcription services.

Dr. Tichio works for MLE predecessors In May 2012, Dr. Tichio began assisting in worker's compensation exams as an independent contractor chiropractor with Dr. Stepaniuk's company, Safety Works. Stepaniuk eventually offered Dr. Tichio a salaried employee position with another of his companies, Medical Legal Evaluations dba Medical Legal Experts. Dr. Stepaniuk told Dr. Tichio that his title would be President, but made it clear that the position was in name only, and Stepaniuk would continue to run the company as the sole decision maker. Dr. Tichio's job duties remained the same: editing reports and assisting doctors who were performing Functional Capacity Exams ("FCE") when needed. When ordered he would perform FCEs himself. Dr. Tichio moved to Northern California and began working out of his house. He would travel to the company office in Southern California about once a month.

In June 2017, Dr. Stepaniuk informed Dr. Tichio that he was having legal issues that were related to his old company, Safety Works, but he did not provide details. Dr. Stepaniuk and two of his companies were eventually indicted for Honest Service Mail Fraud and Health Care Fraud. (Ex. 1.) Due to Stepaniuk's legal issues, Medical Legal Evaluations dba Medical Legal Experts was having difficulty collecting FCE billing from insurance companies and law firms. In July 2018, Dr. Stepaniuk asked Dr. Tichio to start a new company in Dr. Tichio's name: Medical Legal Experts, to run billing through the new company.

At Stepaniuk's urging, Dr. Tichio created Medical Legal Experts, resigning as President (in name only) of Medical Legal Evaluations dba Medical Legal Experts. Dr. Tichio was the CEO and President of this new company. Both companies shared office space and staff. Dr. Tichio continued to work for Medical Legal Evaluations dba Medical Legal Experts. His paychecks continued to come from that company, although he had no title or contract.

In May 2019, Dr. Stepaniuk entered into a plea agreement with federal prosecutors that resulted in him pleading guilty in exchange for a dismissal of charges against Safety Works and Medical Legal Evaluations dba Medical Legal Experts. (Ex. 2.) The state Department of Industrial Relations suspended Dr. Stepaniuk from participating in the workers' compensation system as a physician, practitioner or provider. (Ex. 3.) Dr. Stepaniuk offered to sell his company to Dr. Tichio, who declined. After that, Dr. Stepaniuk told Dr. Tichio that he had found a buyer in Canada, Alvin Lee. Mr. Lee had no background or experience in the medical legal evaluations business. Dr. Stepaniuk told Dr. Tichio not to let anyone know that he was still working with the company.

Mr. Lee purchased Medical Legal Evaluations from Dr. Stepaniuk for an unknown amount. On May 20, 2019, Mr. Lee purchased Dr. Tichio's company, Medical Legal Experts, for \$1,000. On August 19, 2019, at Dr. Stepaniuk's instruction, Dr. Tichio incorporated Plaintiff Medical Legal Experts, MLE ("MLE"). The following day, August 20, 2019, Mr. Lee purchased MLE from Dr. Tichio for \$500. Mr. Lee then dissolved Medical Legal Evaluations on May 12, 2020 and ordered Dr. Tichio to dissolve Medical Legal Experts on November 10, 2020. This left only MLE.

After Mr. Lee purchased the three companies in 2019, Dr. Tichio's name was still on MLE's Secretary of State filings as the sole director of MLE, with Mr. Lee holding all the officer positions. Per Mr. Lee, shareholder meetings were once per year, with only him attending. Despite being the nominal sole director, Dr. Tichio was never invited to, nor attended, any board meetings or shareholder meetings of MLE. Dr. Tichio did not sign a non-compete agreement with MLE or his own company, Medical Legal Experts, Inc. (now dissolved).

After Mr. Lee began operating MLE, he began buying new laptops and phones for the company, as well a new luxury car for himself, and, according to MLE former employees, spending lavishly. Sometime in 2020, Mr. Lee sent Dr. Tichio a new laptop and cell phone. Dr. Tichio believed these items were part of his compensation for advising Mr. Lee on operating MLE.

Although Dr. Tichio's business cards and continuing education presentations list Dr. Tichio as Director of MLE, his duties were not that of any officer or director. Instead, he was the subject matter expert at MLE. His duties were nearly identical to when he was a contract employee. His job was to edit doctor's reports, help scheduling staff schedule appointments, deal with the transcription teams, assist doctors in their exams when needed, and participate in meetings with Lee and Stepaniuk (when requested). Dr. Tichio could not hire or terminate employees on his own volition. He had no one reporting to him. Dr. Tichio also was the go-to person to answer doctor's questions about QME regulations, reports, and continuing education requirements.

He was not involved in MLE (or its predecessors) in contracting with doctors, nor did he know their contractual payment splits or with which of Dr. Stepaniuk's/Mr. Lee's entities they had contracted.

From MLE's founding, Dr. Stepaniuk continued to run the company, though his "official" role was that of an IT tech and software licensor. Dr. Tichio, Mr. Lee and Dr. Stepaniuk had meetings where Stepaniuk ran the meetings and gave directions. Mr. Lee referred to Stepaniuk as "the boss." When Dr. Tichio asked Mr. Lee if he could move to the East Coast to be closer to family, Mr. Lee agreed, then consulted with Stepaniuk. Mr. Lee then refused the request because Dr. Stepaniuk did not want Dr. Tichio to move until Stepaniuk had been released from prison. When asked to sign a lease for the office under his name to replace Dr. Stepaniuk, Dr. Tichio said he would only do this if MLE deposited a year's worth of rent in an escrow account due to his knowing Stepaniuk wanted to move the company. Mr. Lee told Dr. Tichio that Dr. Stepaniuk refused. At one point, the bank account that Dr. Tichio had opened for MLE was transferred out of his name and he had no further access to it. Mr. Lee and Dr. Stepaniuk called Dr. Tichio and ordered Dr. Tichio to apply for a PPP loan for MLE because Stepaniuk could not with his felony conviction and Lee is not a U.S. citizen. Dr. Tichio reluctantly agreed to do so, primarily to keep his job.

Up to January 2021, MLE paid Dr. Stepaniuk \$20,000/month salary as one of its IT techs, and \$50,000/month software licensing fees for use of his proprietary software. During this time, Mr. Lee told the staff and Dr. Tichio not to tell anyone that Stepaniuk was involved with MLE. Mr. Lee instructed MLE employees to tell doctors and clients that Stepaniuk had sold the company and left to go into a new business in Nevada, and that they had no contact with him. Even while Dr. Stepaniuk was in prison, MLE continued to pay a portion of his salary.

Dr. Stepaniuk reported for federal prison at Lompoc in January 2021. By this time, Dr. Tichio was very unhappy with some of the things Mr. Lee directed him to do while Dr. Stepaniuk was in prison, as well as the behavior that landed him in prison. Several MLE employees, including Dr. Tichio, had concerns that Stepaniuk was continuing to run the company from prison. Intending to resign from MLE, Dr. Tichio filed Articles of Incorporation with the Secretary of State for UME in February 2021.

Sometime in late February 2021, Dr. Tichio was in the San Diego area on MLE business. He stopped at the offices of two of MLE's doctors with whom he had worked for years, Dr. Murphy and Dr. Austin. He wanted to tell both of them in person that he was leaving MLE. When they asked why he was leaving, Dr. Tichio told them only that he was not comfortable working at MLE any longer and mentioned that a former owner was incarcerated. He did not say who it was. He did not state which company this person formerly owned. He did not mention indictments against MLE itself or any of its predecessors.

Dr. Tichio resigned from MLE on March 5, 2021. Still living 500 miles from MLE, he did not return his office keys immediately. He thought that the laptop and phone were his to keep and Mr. Lee did not request they be returned. The laptop stopped working (black screen) so he threw it away. He lost the phone at a dog park. He returned the office keys through counsel after MLE filed its lawsuit.

In May 2021, Dr. Tichio began operating UME. Because MLE's doctors had Dr. Tichio's cell phone number from when he worked at MLE, they continued to call him with questions when they could not get responses from anyone at MLE. (Ex. 4, ¶ 4.) Then, after MLE sent a letter out to all its doctors saying the Dr. Tichio had left MLE, some doctors called Dr. Tichio to ask where he was working. (Id., ¶¶ 3, 4.) Some asked why he left. Dr. Tichio's response was that he did not feel comfortable at MLE and he had opened his own business. He provided no other details.

One of MLE's doctors, Dr. Trujillo, called Dr. Tichio after receiving the notice letter, when he could not get an answer from MLE to a question he had. (Ibid.) Dr. Trujillo thought that MLE's operations had become "deficient" after Dr. Tichio left. (Id., ¶ 5.)

Another MLE doctor, Dr. Atazai, called Dr. Tichio after receiving MLE's letter to ask why he left. (Ex. 5, ¶ 3.) Dr. Tichio told him, without going into details, that he no longer wanted to be associated with MLE. (Ibid.) Dr. Atazai went with Dr. Tichio because he liked and trusted him, and thought MLE was "unprofessional." (Id., ¶¶ 4, 5.) Both Dr. Trujillo and Dr. Atazai affirmed that neither Dr. Tichio nor anyone at his company said anything negative about MLE or any of its employees, including Dr. Stepaniuk. (Ex. 4, ¶ 2; Ex. 5, ¶ 2.)

Over twenty doctors called Dr. Tichio to ask why he left MLE or to ask him a medical legal question no one at MLE could answer. Dr. Tichio told them all the same thing: that he didn't feel comfortable working at MLE any further. He did not solicit any of them to leave MLE or join UME. Some doctors left to join UME, some left to join other companies or go out on their own, and some stayed with MLE. Eleven doctors left MLE to go to UME. One never did work with UME due to a stroke. Two others maintained their contracts with MLE, but also contracted with UME.

Susan Postnikoff, MLE's former Customer Relations Manager, said no doctor or MLE employee told her that Dr. Tichio was saying anything negative about MLE. (Ex. 6, ¶ 2.) So too did Andi Islam, MLE's former Scheduling Supervisor, who worked extensively with MLE's doctors. (Ex. 7, ¶ 4.) MLE's doctors told Ms. Islam of their unhappiness with MLE, but never that Dr. Tichio said anything to cause them to leave MLE. (Ibid.) Ms. Islam never heard from any of MLE's doctors that Dr. Tichio was soliciting them to leave MLE, and she worked closely with them, sometimes even assisting with exams. (Id., ¶ 5.)

After Dr. Stepaniuk's early release from prison in December 2021, he returned to work at MLE. Per Mr. Lee in his deposition, MLE had continued to pay him some of his salary and pay the \$50,000/month licensing fees while Stepaniuk was in prison. Upon his return, Mr. Lee instructed MLE employees to copy Dr. Stepaniuk on reports unrelated to IT. Dr. Stepaniuk monitored MLE email and routed emails to employees. Mr. Lee refused to take or return doctor calls, something Dr. Tichio had handled.

Per former MLE employees, in December 2021, Mr. Lee approached them with an idea to churn old files to pay back a PPP loan. He explained Dr. Stepaniuk's plan was to schedule examinations of former claimants and tell the doctors that the insurance companies were requesting the reevaluations, and tell the insurance companies that the doctors were scheduling exams. Some of the doctors on the files were no longer even with MLE. At least one doctor subsequently left MLE because there were no open slots in the schedule for his valid exams due to these fraudulent "re-examinations." There were 200 of these exams, but only one slot for his valid exam.

Mr. Lee then hired an ex-convict, Jason Norbeck, for a position Lee created for him in "marketing." Mr. Norbeck had been released from prison on January 5, 2022. Mr. Norbeck's arrest record includes arrests over a five-year period for auto theft, intend to defraud, forgery, credit card fraud, identity theft, and multiple drug arrests. Jason Norbeck's name was on the schedule as the scheduler of the "re-evaluations," then disappeared when employees began to protest that all the exam slots were filled and they could not accommodate doctors' exam slot requests. Several MLE employees had Googled Mr. Norbeck and knew that he had a criminal history. They no longer felt comfortable staying with MLE and left.

MLE has refused to put a dollar amount for claimed lost profits, even when sanctioned for not providing the information. Instead, it is claiming all revenue UME has earned from the doctors who left MLE to go to UME—approximately 11 doctors since April 2021. In MLE's PMQ deposition (where Dr. Stepaniuk was put forth as MLE's PMQ) MLE alleged that a drop of gross revenue right after Dr. Tichio left in March 2021 was due to his taking MLE's doctors. (Ex. 8.) The graph is missing the gross revenue figures prior to January 2021, so we cannot compare those revenues to those in the graph. However, Dr. Stepaniuk estimated that the graph showed a loss in gross revenue of about \$2,000,000 gross revenue/year that he attributed directly to Dr. Tichio leaving MLE in March 2021. Dr. Stepaniuk claimed that he could not recall whether his prior three similar companies experienced revenue fluctuation, but admitted that there are normal ups and downs in revenue in the industry. He attributed the down revenue months solely to Dr. Tichio's actions alleged in the complaint.

The \$2M/year lost revenue assertion does not reflect the split between MLE and the doctors. MLE would receive only 30-35% of the net revenue. MLE did not provide net revenue figures.

In his deposition, Mr. Lee stated there was no other reason for the loss in gross revenue other than Dr. Tichio's departure. When asked if it was at least possible that there were other reasons for doctors leaving MLE, such as Dr. Stepaniuk's prison term, MLE hiring an ex-convict, **delayed billing, and the lack of available slots for legitimate doctor exams**, Mr. Lee only response was, "No."

Mr. Lee also testified that MLE did not see a slowdown in revenue from the pandemic. However, former employees disagree. Two former MLE employee said they estimated about a 30% loss in revenue due to a fall-off in appointments from the pandemic. (Ex. 6, ¶ 5; Ex. 7, ¶ 9.) They also said that, due to the billing cycles and delayed payments from insurers and other reasons, any The Hon. Andrew J. Guilford (ret.) July 25, 2023 Page 9 losses due to Dr. Tichio leaving would not show up for at least 90-120 days or more after he left MLE. (Ex. 7, ¶ 10; Ex. 6, ¶ 6.)

Beyond this, after Dr. Tichio left, MLE fell behind on getting reports back from its doctors to submit to insurance and attorneys for payment. There were also delays in billing during several months after Dr. Tichio left. (Ex. 7, ¶ 11.)

**Some of Dr. Tichio's doctors reported that at least one insurance company refused to pay their billings because it believed that UME was just one more hydra head of Dr. Stepaniuk's organization.** Presumably it also refused to pay or delayed payment of MLE doctors' billings. This would cut deeply into MLE's revenue stream and would not be the result of Dr. Tichio's actions or departure.

MLE reaching out to UME's service providers to threaten them. During discovery in this case, MLE reached out to two Philippine transcription companies that Dr. Tichio identified in his deposition as ones he found for MLE that UME then contracted with after it began getting significant business. Both companies notified Dr. Tichio that MLE told them to terminate their work for UME or MLE would pull its much larger business. Both were afraid to lose MLE's business, so regretfully told Dr. Tichio that they could no longer work for UME. At least one of these companies does transcription work for some of MLE's competitors beyond UME, but MLE had not warned them not to work for these other companies. Defense counsel reached out to plaintiff's counsel with a cease and desist letter. Plaintiff's counsel informed defense counsel to say MLE had the right to do what it did.

As a result, UME had to take on all the transcription work in house until it could find other transcription services. Two employees resigned, likely as a result of the greatly increased work load. The transcription services UME could find charged 4 times what the Philippine companies did. UME had to turn away new doctors who wanted to contract with UME because it did not have the capacity, given the contraction in transcription availability.

1. MLE Cannot Establish That Dr. Tichio or UME Tortuously Interfered with MLE's Contractual Relationships.

This claim requires both that Dr. Tichio took action intending to disrupt MLE's contracts with its doctors, and that his actions was a substantial factor in causing MLE's harm. (CACI No. 2201.) It cannot.

First, Dr. Tichio told only two doctors of his upcoming departure from MLE. Both were doctors with whom he had worked for years. There is no evidence that he told those doctors of his departure with the intention that they leave MLE. It was a mere courtesy to longtime work colleagues. Dr. Tichio's company was not operational for another two months, though it signed contracts with its first two doctors in April.

Other than the two doctors with whom Dr. Tichio had worked for years, he did not reach out to any MLE doctors to tell them of his departure, either before or after he left MLE. Each of the other MLE doctors with whom he spoke reached out to Dr. Tichio, either with questions no one at MLE could answer, to ask where he was working, and/or to ask why he left. To each doctor who asked why he left MLE, he told them only that he no longer felt comfortable working at MLE or did not want to be associated with it, but refused to say more. He said nothing negative about MLE and did not solicit any doctors to come to UME. (Ex. 4, ¶¶ 2, 4, 5; Ex. 5, ¶¶ 2, 3, 4-6.)

Both Ms. Postnikoff and Ms. Islam confirmed that no doctor told them the Dr. Tichio was soliciting them to leave MLE. (Ex. 6, ¶ 2; Ex. 7, ¶¶ 4, 5.) Moreover, any doctor in the Workers' Compensation system could contract with up to 10 medical legal evaluation companies. A MLE doctor could stay with MLE and also contract with UME or others.

Second, Dr. Tichio's actions did not cause any doctor to leave MLE. They left because MLE's services suffered a steep decline after Dr. Tichio left. There was no longer anyone at MLE who could answer doctor's technical questions. Mr. Lee refused to take their calls or return their calls. Mr. Lee had no background in the medical legal evaluations business prior to buying Medical Legal Evaluators and Medical Legal Experts, Inc., then forming MLE. Dr. Tichio had been the only one left at MLE after Dr. Stepaniuk's incarceration who had experience in running a medical legal evaluation company.

Beyond those reasons, Dr. Stepaniuk and two of his companies, who had also worked with doctors for years, had been indicted for fraud and kickbacks. The state had suspended Dr. Stepaniuk from working in the field after he pled guilty. (Ex. 3.) That suspension notice was posted on the Department of Industrial Relations website. Workers' Comp doctors frequently visit that website. Ms. Postnikoff said it was common knowledge that Dr. Stepaniuk was in prison. (Ex. 6, ¶ 3.) Then MLE hired another ex-convict, Jason Norbeck. MLE employees questioned this decision because they found out about his criminal background.

After MLE began Dr. Stepaniuk's plan to churn old claimant files as a way to generate money. As a result of the churning scheme, doctors could not get a time slot for their legitimate exams. MLE lost several employees who had worked with MLE doctors for years. Reports and billings fell behind. MLE was in chaos. In Dr. Atazai's words, MLE was "unprofessional." (Ex. 5, ¶ 4.) Dr. Trujillo called MLE's operations "deficient." (Ex. 4, ¶ 5.)



Beyond this, at least one insurer, Employers Insurance, stopped paying doctors who used MLE due to a belief Dr. Stepaniuk was still involved in the company.

MLE Cannot Establish That Dr. Tichio Defamed MLE or Any of Its Employees.

MLE cannot prove defamation if Dr. Tichio spoke the truth. Truth is a complete defense to defamation. Dr. Tichio never said that any current MLE employee was in prison. He told two MLE doctors with whom he had worked for years that a former owner of the company was in prison. That was true. Dr. Stepaniuk was in prison from January 2021 to December 2021 as a result of his pleading guilty to honest services mail fraud and healthcare fraud. (Ex. 2.)

Dr. Tichio did not feel comfortable continuing to work at MLE because of Stepaniuk's apparent continued control of MLE from prison, and what Mr. Lee was asking Dr. Tichio to do. That is not defamation without Dr. Tichio providing any untrue details of why he no longer felt comfortable at MLE. He did not.

2. MLE Cannot Establish That Dr. Tichio Breached His Fiduciary Duty.

"A director shall perform the duties of a director... in good faith, in a manner such director believes to be in the best interests of the corporation and its shareholders and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances." (Corp. Code § 309.) "The elements of a cause of action for breach of fiduciary duty are the existence of a fiduciary relationship, breach of fiduciary duty, and damages." (Oasis West Realty, LLC v. Goldman (2011) 51 Cal.4th 811, 820.)

- a. Dr. Tichio had no fiduciary duty to MLE. There are extensive facts to show that Dr. Tichio was not a director, officer or manager of MLE in fact, and therefore did not owe any fiduciary duty to MLE. Dr. Tichio only agreed to stay on with MLE to assist Mr. Lee with learning the business. He had no actual duties as a director, officer or manager. He did not attend the purported "annual meeting" that Mr. Lee said only he attended. Mr. Lee changed the MLE bank account so that Dr. Tichio's name was not on the account and he could not view the bank statements. Mr. Lee called Dr. Stepaniuk "the boss" and deferred to him for operational decisions. He could not move out of state because Dr. Stepaniuk would not allow it.

Dr. Tichio could not hire or fire without approval from Lee or Stepaniuk, and Diane Sagerian, the office manager. Dr. Tichio did not manage any MLE employees. He did not contract with doctors to use MLE's services. Dr. Tichio did his work assisting doctors with their examinations, editing their reports, advising them on compliance issues, and conducting continuing education courses from his home 500 miles away from MLE's office. In fact, Dr. Tichio's actual duties were those of an employee, not an officer, director or manager. His duties were nearly the same as when he worked as a contract employee for Safety Works. He did what Dr. Stepaniuk and Mr. Lee told him to do.

- b. Even if Dr. Tichio had a fiduciary duty to MLE, he did not breach it.

Even if MLE can prove Dr. Tichio was an actual in fact officer, director or manager with a fiduciary duty to MLE, he did not breach it. Up to the time of his resignation on March 5, 2021, Dr. Tichio continued to contribute to MLE, performing his work as usual. Even after his formal departure, Mr. Lee asked him to help with the PPP loan forgiveness application, and he agree to help. He did not solicit any doctors to come to his new company either before or after his departure from MLE. He did not sign on any UME clients until about two months after he left MLE. He did not solicit MLE doctors to come to UME. Other than the two doctors to whom he disclosed his plan to leave MLE before his departure, he did not reach out to any MLE doctors. Doctors reached out to Dr. Tichio after MLE mailed a letter to all its doctors to inform them that Dr. Tichio had left MLE. He had not signed a non-compete agreement with MLE.

Dr. Tichio did not use any proprietary information from MLE. Reimbursement rates are set by the state. Dr. Tichio was not directly involved in contracting with MLE's doctors, so did not know the fee splits MLE and its predecessors negotiated with doctors. Doctors told Dr. Tichio what their fees splits were with MLE when they bargained with UME for similar or better splits. This is a common industry practice.

As for the duty of care, there is no evidence that Dr. Tichio breached that duty to MLE (if he actually was an officer/director/manager). There is no evidence that he did not continue to perform his duties up to the date of his departure with the same care as a reasonable person in his position.

c. MLE has no ascertainable damages from Dr. Tichio's actions

MLE cannot prove that it lost any revenue from any action by Dr. Tichio before he left MLE. Although MLE asserts that the immediate dip in revenues the month after Dr. Tichio left MLE, MLE had lower revenue months before Dr. Tichio's departure. The pandemic caused a revenue loss. (Ex. 6, ¶ 5; Ex. 7, ¶ 9.)

Moreover, there were multiple very good reasons for MLE losing doctors: Dr. Stepaniuk's incarceration, Mr. Lee's inexperience in the industry and refusal to take doctors' calls, MLE's hiring an ex-convict with a history of property theft, identify fraud and drug use for "marketing," doctors' inability to get exam slots due to Dr. Stepaniuk's scheme to churn old accounts, long time employees leaving as a result of the above, late billing submissions, etc. After Dr. Tichio's departure, doctors were concerned that MLE was "unprofessional" and "deficient." (Ex. 4, ¶ 5; Ex. 5, ¶ 4.) Some doctors told Dr. Tichio that insurance companies were refusing to accept billings from MLE due to Dr. Stepaniuk's suspected continued involvement with MLE.

It will be nearly impossible for MLE to prove its damages.

3. MLE Cannot Establish Its Claim of Conversion against Dr. Tichio.

MLE must show that it owned the laptop, cell phone and office keys that Dr. Tichio had in his possession. It also must prove that Dr. Tichio refused to return these items when requested, that MLE did not consent to Dr. Tichio keeping the items, and that MLE was harmed as a result. (CACI No. 2100.)

Alvin Lee sent Dr. Tichio a laptop and cell phone that Dr. Tichio thought were part of his compensation. Dr. Tichio had a set of office keys from the time when his company, Medical Legal Experts, Inc., shared office space with Medical Legal Evaluations, Inc. After Dr. Tichio resigned from MLE in March 2021, he continued to help Mr. Lee with requesting forgiveness of the PPP loan MLE obtained.

Mr. Lee did not request the Dr. Tichio return the laptop, phone or keys. Dr. Tichio intended to return the office keys, but forgot until MLE filed this lawsuit. He returned the keys through counsel. When the laptop stopped working, Dr. Tichio disposed of it. He lost the phone at his local dog park one day.

The remedy for conversion of chattel is damages—the fair market value of the personal property at the time of loss, plus the reasonable time and money a plaintiff spent to recover the property. (CACI No. 2102.) Here, Dr. Tichio had the laptop and cell phone for about a year and a half. The fair market value of a one and a half year old laptop and cell phone are typically significantly less than their original cost. This is a de minimis amount.