

in his mind. At one point, Spare denied that Fuchs and the clinic wage issues had anything to do with his decision, but admitted that he did not document anything that he discussed with either one of Claimants at the termination. (1218:21-23)

If Dillon's issues precipitated the terminations, does that mean that Bauer and Romney were terminated for non-actionable reasons under Washington law? No. What mattered was that their involvement in the Fuchs competency issues was a significant motivator for their termination. If there were other motivators as well, that does not change the analysis.

As of Tuesday, May 13, Dillon knew Claimants were going to be fired (Exh. 149 May 16) though it did not actually happen until the 19th, the following Sunday. During that week, Dillon imagined that Childress was being extra nice to her; Wilson stoked her paranoia: "I thought Kristen seemed very happy yesterday, too. something is up." (Exh. 149 May 16)

The problems at SAPC did not stop after Claimants were fired

Once Claimants were gone, Fuchs continued to practice in an unsafe way.⁸ Claimants and others filed complaints with the Dept. of Health (*See, e.g.*, Exhs. 104, 105, 106) which began an investigation.

FMG took action to protect itself and make its peer review look real. Management all (Fegley Exh. 150; Harrison Exh. 111; Lim Exh. 230) stated they were unaware of problems with Fuchs or any patient complaints. Dillon helpfully said (Exh. 166) she had noticed no issues with Fuchs. All of the statements were orchestrated to be sure Fuchs escaped any restriction on his license. Of those still employed, only the nursing staff reported contrary observations (Marasco Exh. 175; Mercer Exh. 213; Williams Exh. 176)

Fuchs made FMG's situation easier by saying in February he wanted to go part time and then in August retire. Fuchs wrote to Green on November 6, 2013, reporting his August 12 meeting with Spare and Fegley (1140:23- 1141:4) to discuss his retirement plans and then again later with Spare. (Exh. 182) By the time the Dept. of Health issued its finding in April, 2014, he had been gone from SAPC for three months.

In October, 2013, Dillon changed her tune. She reported to the Dept. of Health that she had seen problems with Fuchs's skills. Immediately, she stated that she feared she would be retaliated against by FMG and reported that she suspected her mail was being opened.

Dillon also claimed at the hearings to have reported problems concerning Fuchs to Wilson when she got reports from the staff. (1677:8-1678:20) While she claimed that she always believed what the nurses told her, she did not say that in her first Dept. of Health statement.

When Dillon testified, she claimed not to remember anything about her October 7, 2013 call to Dept. of Health. (Exh. 167) When confronted with the statement by the investigator at the Dept.

⁸ Even Fuchs did not find his colleagues not "collegial." He reached out to Romney by phone after the termination and left a voicemail message. (Exh. 162)

of Health relating her call, she first claimed that she had brought concerns to Wilson about this subject. She testified that as long as Childress was working at SAPC, it was uncomfortable, but Exhibit 167 did not mention Childress. (1611:19-23) Then, she testified that she couldn't say that was what she was talking about in the statement (1674:20-21) and claimed not to remember anything about this phone call. (1611:1-7) Exhibit 167 reported that she told the Dept. of Health she feared retaliation since her contract was about up and she was trying to hold on—she went on to say that FMG had opened the Dept. of Health letter to her, so she gave them her personal address. (1688:20-1689:5)

In Exhibit 168, dated October 14, Dillon reported her concerns. Interestingly, based on the cases of only two patients, she had enough evidence to conclude that it was “TIME (her emphasis) for Dr. Fuchs to be pulled from the clinic.” (1706:3–1711:18; Exh. 168.) This was a remarkable about face after her August 30 statement (Exh. 166) six weeks before. In reporting Fuchs's incompetence, she based her conclusions largely on what staff told her.

Dillon promised the Dept. of Health that she had reported Fuchs's deficient patient care to Wilson, who was going to pass information to O'Connor and Harrison. O'Connor denied any information about it when asked at the hearings. (246:1-15; 248:21-250:9) Wilson said she would tell the others up the chain of command (1712:5-1713:11) Dillon did not recall the situation, but her statement reported it. She also did not recall writing an IRIS report about Fuchs. (1713:23-24) She did not recall directing other staff to write IRIS reports about Fuchs. She testified only that she thought she told staff to report in general.

The retaliation Dillon claimed at the hearings she feared after reporting Fuchs to the Dept of Health was by Childress and Fuchs. She also claimed that though terminated, Romney and Bauer were still in contact with the staff. (1612:1-7) She even testified that Bivens told her “they are coming after you”. (1618:6-11) She left SAPC in December, 2014.

VII.

WAS PAY ADVOCACY A TERMINATION REASON?

Claimants argue that they were also terminated in part due to their push for pay equity for themselves and others, but the Arbitrator is not convinced. While their May 19 termination did immediately precede their planned May 21 presentation to the Compensation Committee, that was more of a coincidence than a cause. Dillon's machinations triggered the terminations when they happened. Claimants had been advocating regarding wages and payment for “OT” for years. Exhibit 4, for example, is a Bauer email in May, 2010 to Tim Marsh, O'Connor's predecessor, in which he stated gratitude for a pay increase and then raised an issue of not being paid for all hours worked. The SAPC providers group constantly argued for better pay for themselves. (Exhs. 6, 7)

The evidence demonstrates that Respondents' pay policies changed over this period, and payment to providers may not have been in accordance with their written contracts. (*See, e.g.*, footnote 4) However, a committee regularly met to consider compensation issues and generally it was not considered “not collegial” to argue for higher pay. While it is clear that Claimants did