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New Tests for Tenet

The big hospital chain faces looming battles on several fronts.

By [Melissa Davis](#)

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Tenet Healthcare ([THC](#)) could be feeling a little low on Christmas spirit right now.

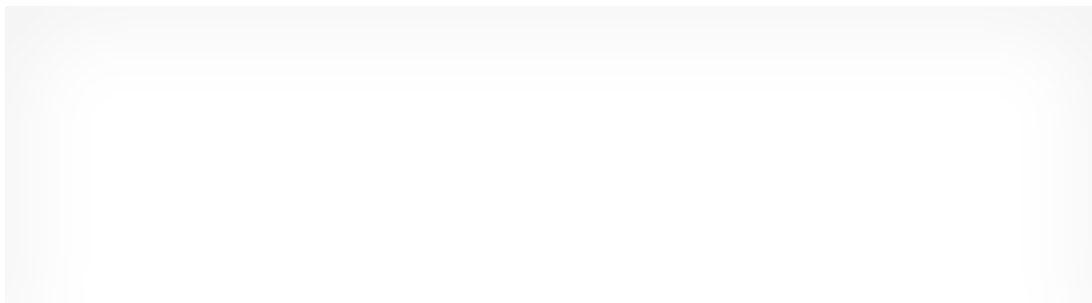
Just this week, Louisiana's top prosecutor told *CNN* -- for the first time -- that allegations about possible mercy killings at a Tenet-owned hospital in New Orleans are "credible and worth investigating." Meanwhile, a San Diego judge opted to replace a disobedient juror rather than declare a mistrial in a kickback case against the company that has been dragging on for months. And finally, high-profile attorney Alan Dershowitz has asked the Supreme Court to consider a case involving a physician who claims that Tenet retaliated against him for exposing problems with patient care.

Dershowitz -- together with both the Association of American Physicians and Surgeons and the Association of Trial Lawyers in America -- is seeking a ruling that would protect medical whistleblowers in the future.

"This case epitomizes why doctors are afraid to report medical errors and problems," said Larry Huntoon, M.D., chairman of the AAPS Committee to Combat Sham Peer Review. "To bury their own mistakes, hospitals label doctors as 'disruptive' and file trumped-up charges of wrongdoing. Then they count on the 'where there's smoke, there's fire' perception to make the doctor the scapegoat."

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Tenet has prevailed in the case, filed by reproductive specialist Gil Mileikowsky, so far. Mileikowsky claims that Tenet essentially destroyed his career after he testified that a patient had both fallopian tubes removed -- without her consent -- at one of the company's hospitals. Mileikowsky is among a swelling crowd of physicians who say they have come under attack for exposing problems with hospital care.

Tenet declined to comment on the Mileikowsky case. The company's stock inched up 7 cents to \$8.09 on Thursday but continues to hover near lows last seen more than a decade ago.

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Bad Press

For Tenet, the coverage by *CNN* just keeps getting worse.

The cable news giant has, by now, spent months investigating allegations that hospital workers euthanized patients at Tenet's Memorial Medical Center in New Orleans during the aftermath of Hurricane Katrina. It continued to build on that story -- offering increasingly damaging testimony -- in an update this week.

Bryant King, a contract physician who first came forward with the story, painted a troubling picture in that update.

Physician Anna Pou "had a handful of syringes," King told *CNN*. "That was strange on a lot of levels. Number one, we don't give medications; nurses give medications. We almost never give medications ourselves unless it's something critical. Nobody walks around with a handful of syringes and goes and gives the same thing to each patient. It's not how we do it."

Pou has stopped commenting to *CNN* and hired an attorney to defend her. Her attorney, Rick Simmons, portrayed the conditions at Memorial as horrific -- and the actions by its physicians as heroic -- but stopped short of denying the mercy killings in a statement supplied to *CNN*.

Tenet declined to comment on *CNN's* latest coverage.

Authorities located 45 dead bodies inside Memorial after the hospital was evacuated during hurricane-related floods. Tenet has said that some of the patients perished prior to the hurricane -- and that others were under the care of another company that rents space inside the facility -- but has admitted that roughly a dozen died during the aftermath of the storm. The company has portrayed its workers' actions as heroic, as well, while promising to cooperate with the attorney general's investigation.

But the Tenet Shareholder Committee, a group long critical of company management, sees the potential for more bad publicity ahead.

"We believe ... that as more details become available about events at Memorial, the nation will again be reminded of the Terri Schiavo tragedy," the group stated on its Web site last month. "That case centered on a single instance of so-called 'mercy killing.' At Memorial, there may be more than a dozen."

San Diego Saga

In the meantime, Tenet continues its long wait for a verdict in a high-stakes case in San Diego.

After hearing months of testimony from both sides, the jury has spent weeks trying to reach decisions on multiple charges against a Tenet subsidiary, Tenet's Alvarado Hospital Medical Center and former Alvarado CEO Barry Weinbaum. All three parties were allegedly involved in a kickback scheme that rewarded physicians for patient referrals. An unfavorable verdict could bar Alvarado from doing business with Medicare -- an essential deathblow -- and send the former hospital executive to jail.

The same case ended in a mistrial last time around. But lengthy deliberations -- and even reports of juror misconduct -- have yet to derail this case. The judge this week simply replaced a juror, who reportedly discussed the case on a subway, with an alternate and told the group to start deliberating again.

Tenet said it respects the judge's decision but declined to comment any further. Meanwhile, Prudential analyst David Shove has chosen to look on the bright side.

"We highly doubt that the new juror can dramatically change the Alvarado jury's mindset," said Shove, who has a neutral-weight rating on Tenet's shares. "Pretty soon, Judge (James) Lorenz could concede the Alvarado jury's befuddled status. Should this occur, Tenet would receive a significant legal victory in its ongoing litigation."

But Caymus Partners analyst Jeff Villwock, who conducts research on behalf of the Tenet Shareholder Committee, sees no evidence of another mistrial yet.

"There's been no indication -- absolutely no indication -- of a hung jury," Villwock says. "The jury continues to ask for certain pieces of the court transcript to be read, and it appears to be going through all of the counts very judiciously. It sounds like they are doing a good job -- which is a good thing."

Looking ahead, Tenet could find itself embroiled in a Supreme Court case next. In a press release issued Tuesday, AAPS boasted that it had assembled a "dream team" of doctors and lawyers to fight a potentially precedent-setting case against one of the company's hospitals.

For his part, Dershowitz portrayed the case as an important one for the entire country.

"Physicians who are entrusted with the care of their patients can see their professional careers destroyed if they dare to challenge a hospital's practices," Dershowitz said. "When a 'whistle-blowing' physician is retaliated against, it threatens not only the physician's livelihood, but the care of all patients. This is a case, therefore, that affects every patient and potential patient in America."

Critics have long accused Tenet of placing corporate profits ahead of patient care. The company has already paid a number of significant fines in the past and continues to seek a global government settlement to resolve the slew of allegations still pending. It has maintained its innocence all along.

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