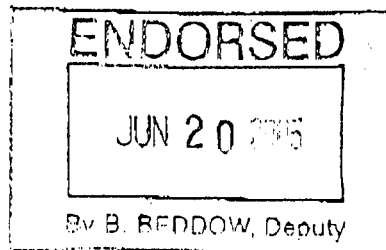


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9 Attorneys for Petitioner
10 GIL NATHAN MILEIKOWSKY, M.D.



11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SACRAMENTO

13 FILED BY FAX

14 GIL NATHAN MILEIKOWSKY, M.D.,

15 Petitioner,

16 vs.

17 MEDICAL BOARD OF CALIFORNIA

18 Respondent

19 CASE NO: 04CS00969

20 PETITIONER'S DECLARATIONS OF:

- 21 1. Lawrence R. Huntoon, M.D.,
PhD, FAAN;
- 22 2. Dr. Robert Weinmann;
- 23 3. C. William Hinnant, Jr. M.D,
J.D.;
- 24 4. Dr. Deane Hillsman; and
- 25 5. Barbara Hensleigh

26 IN SUPPORT OF MOTION FOR
27 ATTORNEYS' FEES

28 DATE: July 22, 2005
TIME: 11:00 A. M.
DEPT: 25

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2115 Main Street
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Telephone(310) 399-3259; Fax (310) 392-9029

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6 Attorneys for Petitioner
7 GIL NATHAN MILEIKOWSKY, M.D.

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SACRAMENTO**

10
11 GIL NATHAN MILEIKOWSKY, M.D.,

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13 vs.

14 MEDICAL BOARD OF CALIFORNIA

15
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CASE NO: 04CS00969

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PhD, FAAN;
2. Dr. Robert Weinmann;
3. C. William Hinnant, Jr. M.D,
J.D.;
4. Dr. Deane Hillsman; and
5. Barbara Hensleigh

**IN SUPPORT OF MOTION FOR
ATTORNEYS' FEES**

DATE: July 22, 2005
TIME: 11:00 A. M.
DEPT: 25

1 DECLARATION OF LAWRENCE R. HUNTOON, M.D., Ph.D., F.A.A.N.

2
3 I, Lawrence R. Huntoon, M.D., PH.D, F.A.A.N., declare:
4

5 1. I am a physician licensed in the state of New York. I am editor-in-chief of the
6 *Journal of American Physicians and Surgeons*, and I currently serve on the board of
7 directors of the Association of American Physicians and Surgeons (“AAPS”). I am
8 Chairman of the AAPS Peer Review Committee. I can testify to the matters herein set
9 forth of my own, personal knowledge.
10

11 2. I have served on the AAPS Board for two three-year terms: a.) from 1996 to
12 1999 and b.) from 2003 to 2006. I have served on its peer review committee since its
13 inception in 2004. I was President of AAPS from 1999 to 2000. I am extremely familiar
14 with Peer Review matters and issues throughout the health care industry, particularly in
15 private hospitals throughout the United States. I am also very familiar with State Medical
16 Board licensing and disciplinary matters throughout the United States.
17

18 3. The Association of American Physicians and Surgeons, founded in 1943, is one
19 of the oldest and largest defenders of the practice of private medicine in the United States.
20 Promoting the practice of ethical private medicine and the preservation of the patient-
21 physician relationship have remained the primary guiding principles of the AAPS for the
22 past 62 years. AAPS has a significant interest in assuring that physicians are treated fairly
23 in peer review proceedings, including those under the auspices of medical boards.
24

25 4. In January of 2004, the AAPS Board of Directors formed the AAPS Peer
26 Review Committee in response to the troubling increase in sham peer review (false and
27 malicious accusations made against physicians under the guise of legitimate peer review).
28 I was appointed the first Chairman of this committee and continue to serve in that capacity.

1 In the face of the numerous injustices which we saw taking place, we sought to explore
2 ways to assist physicians who have been targeted for sham peer review.

3
4 5. In October, 2004, AAPS unanimously passed a resolution (a true and correct
5 copy of which is attached hereto, marked Exhibit "A" and is incorporated herein by this
6 reference) condemning the practice of sham peer review and declaring that "...those who
7 participate in sham peer review are engaging in unethical and/or professional misconduct."

8
9 6. AAPS is especially concerned about the increasing number of wrongful
10 accusations of "psychiatric impairment" made by unscrupulous hospital administrations
11 against physicians who express concerns regarding quality of care or patient safety in the
12 hospital. Hospitals have used these spurious accusations as a form of retaliation against
13 physician whistleblowers or other physicians they dislike. Unfortunately, some medical
14 boards have gone along with this charade, utilizing biased information supplied by the
15 hospital and using evaluators who have clear conflicts of interest. The result is that
16 physicians, who have no psychiatric impairment, who have merely disagreed with a
17 hospital administration or have complained about poor quality of care or safety issues in
18 the hospital, are often labeled as "psychiatrically impaired," and face loss of their medical
19 license and livelihood. False accusations of "behavioral problems" have also spawned a
20 whole for-profit industry to treat these alleged impairments which often do not exist.

21
22 7. I have reviewed the decision of this Court with respect to Dr. Mileikowsky's
23 petition for a writ of mandamus. The Medical Board of California's lack of good cause for
24 requiring Dr. Mileikowsky to submit to an unneeded psychiatric examination, as noted in
25 the Court's ruling, has exposed the sham nature of the entire process in this case, and the
26 Court's ruling serves to uphold fairness and due process for wrongly accused physicians.

1 8. The Court's ruling in this case has provided a significant benefit to the public
2 interest. By upholding fundamental fairness and due process, the Court has assured the
3 public access to a highly trained physician, whom they would have lost to sham
4 proceedings if the medical board's action had been upheld. The public's interest is also
5 served by sending a message that a hospital's manipulation of the process, utilizing a
6 medical board to ruin a physician's reputation or end his career, for purposes other than the
7 furtherance of quality care, will not be tolerated. Furtherance of quality medical care
8 serves the public's best interest and demands that the medical board conduct thorough, fair
9 and unbiased investigations. The only way to insure that a medical board does not
10 continue to engage in misconduct, to the public's detriment, is by holding the medical
11 board fully accountable for all legal expenses incurred by the wrongfully accused
12 physician in defending against a shabby and unprofessional investigation.

13
14
15 I declare under penalty of perjury under the laws of New York and California that the
16 foregoing is true and correct.

17 Executed this 11th day of April 2005, in Eden, New York.

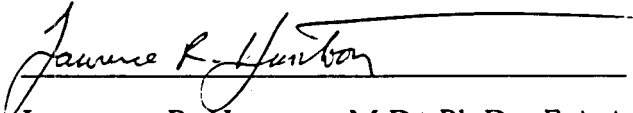
18
19 
20 _____
21 Lawrence R. Huntoon, M.D., Ph.D., F.A.A.N.

EXHIBIT "A"



1601 N. Tucson Blvd. Suite 9
- - Tucson, AZ 85716-3450
Phone: (800) 635-1196
Hotline: (800) 419-4777

Association of American Physicians and Surgeons, Inc.
A Voice for Private Physicians Since 1943
Omnia pro aegrotis

RESOLUTION 61-01, 2004: Sham Peer Review

WHEREAS: the Association of American Physicians and Surgeons supports fair and unbiased peer review in the interest of improving the safety and quality of patient care, and;

WHEREAS: the Health Care Quality Improvement Act (HCQIA) of 1986 has created an environment in which those who conduct or participate in sham peer review (bad faith peer review) enjoy substantial immunity, and;

WHEREAS: substantive due process in peer review corrective actions is often lacking in the hospital setting, and;

WHEREAS: physicians who raise quality of care concerns in the hospital setting are often targeted for retaliation via sham peer review, and careers are often ruined as a result, and;

WHEREAS: in recognition of the fact that sham peer review is a growing problem nationwide;

THEREFORE BE IT RESOLVED that the Association of American Physicians and Surgeons condemns the practice of sham peer review, and;

BE IT FURTHER RESOLVED that the Association of American Physicians and Surgeons declares that those who conduct or participate in sham peer review are engaging in unethical and/or unprofessional conduct

BE IT FURTHER RESOLVED: that existing physicians' "Whistleblower" and "Patient Advocate" laws in effect for physicians who are employees of hospitals, managed care organizations, States, and federal institutions be extended to all physicians in the country.

Editorial: Abuse of the "Disruptive Physician" Clause

Lawrence R. Huntoon, M.D., Ph.D.

Buried deep in the "Corrective Action" section of most medical staff bylaws is a provision known as the "Disruptive Physician" clause. It is arguably the most dangerous and, in recent years, the most abused provision in medical staff bylaws.

The term "disruptive physician" is purposely general, vague, subjective, and undefined so that hospital administrators can interpret it to mean whatever they wish.

How this treacherous trap got into medical staff bylaws is no mystery in most instances. It was added at the urging of hospital administrators, often with help from a medical staff president who was duped into believing that the clause would only be used in those extreme cases where a physician was found running drunk or naked through the halls of the hospital.

Lack of vigilance by physicians, and failure of medical staffs to obtain independent legal advice on changes to the bylaws, allowed most hospital administrations to insert this clause without difficulty or any meaningful opposition.

Why this clause was strategically placed in medical staff bylaws is also no mystery. It is part of the strategic plan developed in 1990 by the hospital industry. The stated goal was to gain more control over physicians in hospitals. Abuse of the disruptive-physician clause and increasing use of sham peer review has allowed hospital administrations to make great strides in achieving that goal.

Attorneys who specialize in representing hospitals have definite recommendations on how "disruptive physician" can be defined by a hospital, in order to remove a targeted physician from staff. In fact, some law firms offer seminars for hospital officials and their legal representatives that teach optimal methods for eliminating certain physicians that the hospital dislikes. Here are a few of the criteria for identifying a "disruptive physician":

1. **Political:** Expressing political views that are disagreeable to the hospital administration.
2. **Economic:** Refusing to join a physician-hospital venture, or to participate in an HMO offered to hospital employees, or offering a service that competes with the hospital.
3. **Concern for quality care:** Speaking out about deficiencies in quality of care or patient safety in the hospital, or simply bringing such concerns to the attention of the hospital administration.
4. **Personality:** Engaging in independent thought or resisting a hospital administration's "authority."
5. **Competence:** Striving for a high level of competence, or considering oneself to be right most of the time in clinical judgment.
6. **Timing:** Making rounds at times different than those of the "herd."

Although the disruptive-physician clause and sham peer review are current weapons of choice used by hospital administrations across the country, more weapons of physician destruction loom on the horizon.

Physicians should be aware of the "Code of Conduct" and "Exclusion from the Hospital Premises" clauses currently being promoted by the hospital bar.

AAPS has posted a letter dated January 31, 2003, to the General Counsel of the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), which was drafted by the leaders of the credentialing and peer review practice group of the American Health Lawyers Association, in the Hall of Shame on our website (see www.aapsonline.org). The letter is rated "R" for stark Reality. Physicians need to wake up quickly and take notice because this is what hospitals really have in mind for medical staffs across the nation. Interested readers can also learn more about the hospital industry's strategic plan, developed in 1990: see "Hospital Industry Reveals Its Strategic Plan: Control Over Physicians" in the AAPS Hall of Shame.

Physician vigilance, and advice from knowledgeable, independent counsel, are key to preventing further abuse of medical staff bylaws by hospital administrations.

Lawrence R. Huntoon, M.D., Ph.D., is a practicing neurologist and editor-in-chief of the *Journal of American Physicians and Surgeons*.

Memo to the Disruptive Physician

*Oh how we strive
For quality high,
For health
And most of all safety.*

*But a word to the wise:
Reproof we despise
And outspoken physicians:
We hate thee.*

*Feel free to opine,
But note we define
All critics
As never constructive.*

*And, thus shall ensue
A sham peer review
And henceforth
You're labeled "disruptive."*

APR 13 05 9:43 AM

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7 Attorneys for UAPD

8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SACRAMENTO

10 DR. GIL MILEIKOWSKY

CASE NO. 04-CS-00969

11 Petitioner,

12 vs.

**DECLARATION OF UAPD PRESIDENT
DR. ROBERT WEINMANN IN
SUPPORT OF PETITIONER'S
MOTION FOR ATTORNEYS FEES**

13 MEDICAL BOARD OF CALIFORNIA,

14 Respondent.
15

16
17
18 I, Dr. Robert Weinmann, declare:

19 1. I am a licensed physician and President of the Union of American
20 Physicians and Dentists (UAPD). I can testify to the following of my own knowledge:
21 UAPD is an organization with approximately 3000 members, almost all of whom are
22 licensed in California. I have been the President of UAPD for over 15 years, and have
23 been active in the organization's work with respect to the Medical Board of California
24 (MBC) for over 25 years. One of our functions has been to assist our members who
25 are facing investigation or prosecution by MBC. On numerous occasions our
26 members have complained to us about MBC's actions in pursuing disciplinary
27 matters, including MBC making unjustified referrals to psychiatrists for examination

1 and relying upon biased or conflicted sources (such as hospital managers who are
 2 retaliating against physicians who brought legitimate complaints) without considering
 3 the physician's rebuttal evidence before the MBC prosecutes such physician.
 4 Attached hereto as Exhibits A and B are true and correct copies of newspaper articles
 5 involving similar problems experienced by other physicians. We have reviewed this
 6 Court's decision granting Dr. Mileikowsky's petition. Based on our experience this
 7 decision is an important one which will significantly benefit hundreds of physicians,
 8 as absent such a decision MBC would likely have engaged again in the same sort of
 9 misconduct, but this decision will likely deter MBC from doing so (and if it does not
 10 prevent that misconduct, it will serve as a valuable guide for other physicians,
 11 attorneys and judges). Also, often MBC investigations and prosecutions are resolved
 12 by negotiations between MBC and the physician, and this decision provides
 13 physicians with valuable ammunition in such negotiations. In addition, on several
 14 occasions over the years hospital managers and peer review bodies have urged (and
 15 sometimes ordered) psychiatric examinations of physicians who were whistleblowers
 16 or engaged in union activism. This Court's decision will serve to restrain this
 17 improper means of dealing with dissent. We have notified UAPD members about this
 18 decision and are providing copies to those who wish one.

19 I declare under penalty of perjury that the foregoing is true and correct under
 20 the laws of the State of California and the United States of America. Executed at
 21 San Jose, California this 11 day of April 2005.

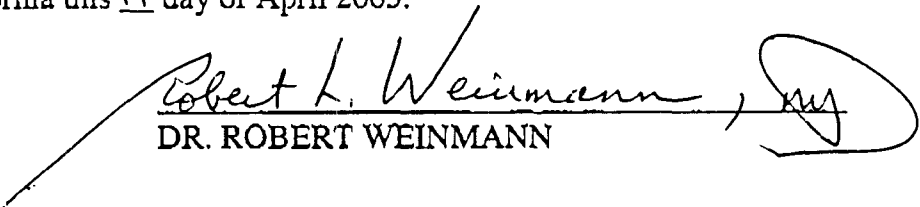
22 
 23 DR. ROBERT WEINMANN

EXHIBIT "A"

Doctor is accused of mental illness

PORTERVILLE (UPI) — Dr. Charles Harman, a former Porterville State Hospital neurologist who raised questions concerning the death of Dr. Franklin Job Hadsall, Tuesday failed to appear for a Board of Medical Quality Assurance hearing into charges he is mentally ill.

Administrative Law Judge Philip Hanley, who conducted the BMQA hearing before a panel of Fresno nurse Carol Trainer and Drs. Mortimer Iger and George Skaff, said the panel would recommend during the next 30 days whether Harman's license to practice should be revoked. Their recommendation, he said, would be forwarded to the BMQA in Sacramento for final action.

The BMQA has accused Harman, now living in Brookings, Ore., of mental illness and failing to submit to a psychiatric examination while employed as a neurologist at the State Hospital. He later resigned from the staff.

Two days of hearings for Harman were held in January but continued when he asked for time to find an attorney. Harman has claimed he is being harassed by Porterville State Hospital Executive Director James T. Shelton.

Harman also contended that he went to the office of BMQA psychiatrist Lewis Wessalius of Fresno, as requested, but asked to have his wife present and to tape-record the proceedings. Wessalius said at the January hearing that he was unable to conduct the examination under such conditions.

Harman said the Union of American Physicians and Dentists has recommended that all doctors ordered to submit to a psychiatric examination by the BMQA have an attorney present.

UAPD officials have said the BMQA, in some cases, is harassing physicians who question medical practices in their hospitals or communities by

ordering the doctors to submit to psychiatric examination.

Hadsall, 40, who reportedly suffered from manic-depressive illness, went to work at Porterville State Hospital in August 1979 and died unexpectedly in his apartment about five weeks later.

Harman says Shelton began accusing him of mental illness after he began criticizing hospital procedures and raised questions about the cause of Hadsall's death and the deaths of other physicians employed at the state hospital.

Hadsall's death certificate said he died of respiratory illness and bulous emphysema. His family said he had no history of emphysema.

EXHIBIT "B"

Galbreath

Continued from page B1
his practice and the sexual relationship was bringing the two together.

C.M. had been a patient of Galbreath's for some time before May 14, 1980, when the sexual contacts began.

But Park said he was persuaded by the evidence that the two had terminated their doctor-patient relationship before their first sexual encounter.

The love affair ended when C.M. told Galbreath that she was having sex with another man in Santa Cruz, according to court records. Afterward, C.M. returned to Galbreath's office for medical consultations.

But the judge said the later visits did not establish a continuous doctor-patient relationship.

And subsequent letters written by Galbreath "were written out of the love and frustration and mixed feelings that inevitably follow the end of a relationship," and were not, as the BMQA alleged, evidence of gross negligence, Park ruled.

Physician cleared in sex case

Judge says woman not patient at time

By Wayne Wilson
Bea Staff Writer

A Sacramento physician who had been accused of becoming sexually involved with a patient has been cleared of professional wrongdoing by a Superior Court judge.

In a tentative decision signed Dec. 18, Judge Richard K. Park ruled that the intimate liaisons between Dr. Allan H. Galbreath and a woman identified only as C.M. occurred during a time when she was not his patient.

Further, the judge found that all of the sexual encounters "took place in private, away from the office, between people in love, and with their mutual consent and enjoyment."

The state Board of Medical Quality Assurance has until Saturday to file an objection to the tentative decision.

The BMQA had moved to place Galbreath on probation and invoke a 120-day suspension from the practice of medicine.

The state agency that polices medical practitioners found Galbreath's actions to be in violation of the Business and Professions Code.

The primary issue centered on the status of the relationship between the two at the time of the sex acts.

The record compellingly demonstrates that two single adults became attracted to one another, dated for a time, had sex for their mutual enjoyment, and actually fell in love and discussed marriage," Park said.

C.M. was not Galbreath's patient during the period of sexual relations, Park ruled.

Park said the conduct of the two was not related to the qualifications, functions and duties of a physician. The only connection between

See GALBREATH, page B2

EXHIBIT B

SUPERIOR COURT OF CALIFORNIA)
COUNTY OF SACRAMENTO)
)
Gil N. Mileikowsky, M.D.,)
)
Petitioner,)
vs.)
)
Medical Board of California,)
)
Respondent.)

CASE NO.: 04CS00969

DECLARATION OF C. WILLIAM HINNANT, JR., MD, JD, ON BEHALF OF SEMMELWEIS SOCIETY INTERNATIONAL, INC., AND THE CENTER FOR PEER REVIEW JUSTICE, INC., IN SUPPORT OF PETITIONERS MOTION FOR ATTORNEY'S FEES

Before me the undersigned authority duly authorized to administer oaths appeared C. William Hinnant, Jr., MD, JD, individually and as President of the Semmelweis Society International who after being duly sworn sayeth as follows:

1. That I am C. William Hinnant, Jr., MD, JD, a licensed physician and attorney admitted to the South Carolina Bar. I presently serve as President of the Semmelweis Society International, a public interest group consisting of physicians, attorneys and concerned citizens interested in protecting health care integrity through opposing bad faith medical peer review and advocating fundamental fairness and procedural due process both in the administrative peer review setting and before Medical Licensure Boards. This declaration is also made on behalf of the Center for Peer Review Justice, Inc. of New Orleans, LA, a organization advocating for the same ends..

2. That the Semmelweis Society International advocates that all medical peer review be conducted in good faith and feels that the general public is benefited when physicians discuss quality assurance in a setting aimed at improving patient care and safety as opposed to one dominated by biased economic competitors, hospital-contracted

or employed physicians and hospital administrators typically motivated by issues other than health care quality. The independence and objectivity of any physician having an investment interest or compensation arrangement with a hospital is always compromised and said individuals should be excluded from the peer review process.

3. That the Semmelweis Society International has spent considerable time alerting the general public and more recently both federal and state legislators as well as public interest groups that medical peer review is now more often motivated by considerations other than quality patient care, including but not limited to retaliation against whistleblowers having legitimate quality concerns, the desire to eliminate economic competitors and finally hospital politics, so-called “turf battles” and personality conflicts involving physicians, who typically have significant egos.

4. That Dr. Ignaz Phillip Semmelweis was a Professor of Medicine in Vienna, Austria in the 1840s whose birthing clinic was credited with a notable decline in maternal and fetal death due to puerperal fever after the implementation of antiseptic techniques including specifically hand washing with disinfectant chlorinated water.

5. That the practices of changing surgical garments between patient procedures and autopsies as well as the use of clean linen and a prohibition of smoking cigars during deliveries were among the many innovations that Semmelweis utilized to substantially improve patient care.

6. That Semmelweis suffered substantial professional and personal animosity as a result of his (at that time revolutionary) techniques which were seen more as a disruption of the status quo than the truly remarkable advances in quality patient care that

they represented. The egos of his less insightful peers drove them to act against him and turn what should have been a glowing success into a source of pain and sorrow.

7. That Semmelweis was ostracized and rejected by the majority of his colleagues despite making one of the most significant findings in world medical history.

8. That in my role as an attorney, I have devoted a substantial portion of my practice to physician representation in peer review, credentialing and licensure matters. A continuum exists among all of these administrative settings in that credentialing issues frequently lead to peer review administrative hearings, followed by licensure investigations and finally the filing of a formal Complaint by the respective state medical board. Biased psychiatric evaluations, usually specifically from hospital-friendly psychiatrists are often a chief cog in the wheel that allows the fundamentally unfair process to escape scrutiny.

9. That as above, such matters are typically more related to personal and/or professional disagreements, jealousy and retaliation against healthcare whistleblowers than to realistic quality health care concerns and furthermore, that scientifically-controlled studies have demonstrated little, if any, benefit to peer review as it is presently practiced in terms of quality improvement.

10. That there has been an alarming increase in the incidents of bad faith peer review such that at this point legislative action both at the federal and state level is an absolute necessity to prevent further harm to patients whose generally well-qualified physicians are excluded through this practice typically based on their legitimate concerns as to health care quality.

11. That until such legislative change occurs, physicians, patients and all concerned citizens must rely on the state and federal courts to assure that justice prevails when physicians and their beneficiaries are assaulted by well funded hospitals, health systems and managed care organizations that put profit ahead of patients.

12. That many whistleblower protection groups are well aware of the phenomena of psychiatric retaliation, some calling it the “cruellest retaliation of all”.

13. That this declaration is made on behalf of Semmelweis Society International and likewise expresses my personal opinion as a physician-attorney and that it is made at the request of Gil N. Mileikowsky, M.D. and is provided free of charge. Specifically, it addresses his Motion for payment of attorney’s fees incurred in pursuing his Writ of Mandate against the California Medical Board which was recently decided in his favor.

14. That the Semmelweis Society International feels that Dr. Mileikowsky’s case is of substantial importance in assuring that the general public has continued access to qualified physicians, that public funds are not utilized to pursue the often illegitimate ends of unethical hospitals and that psychiatric retaliation by such hospitals is recognized.

15. That these statements are based solely upon my personal knowledge obtained through my experience in physician representation, my thorough review of Dr. Mileikowsky’s case including the Section 805 proceedings, his filed Petition for a Writ of Mandate and this Court’s Order related thereto.

17. That the Semmelweis Society International feels that Dr. Mileikowsky’s case furthers the advantageous public policy of favoring the public’s interest in having access to qualified, compassionate and professional physicians. Such physicians are

robbed of their ability to practice when they are ordered to undergo sham psychiatric investigation for the sole purpose of suspending their privileges and subsequently the hospital submitting an 805 report to the Medical Board whereby further sanctions can be imposed in a discretionary fashion.

18. That taxpayers funds should not be utilized to subsidize the unethical attempts of a hospital to exclude a physician for illegitimate reasons. All would recognize the substantial liberty interest of patients in having freedom of choice in choosing their own physicians. Secondly, the phenomena of psychiatric retaliation wherein a sham summary suspension occurs resulting in recommended psychiatric evaluation of the affected practitioner culminates in a report to the Medical Board (through Business and Professional Code Section 805, in the case of California). The hospitals pretextual and unethical allegations that initiated the physician's downfall are now utilized by the Medical Board, in combination with the often biased psychiatric report to eliminate the accused from medical practice. The Medical Board thereby "runs interference" for the pretextual allegations of the hospital and as such effectively absolves the hospital as the proximate cause of any of the physician's damages. Such manipulation of the system and unethical diversion of tax dollars to eliminate what otherwise is a qualified caring physician is indeed a travesty. Dr. Mileikowsky's case has shined a light on this process nationwide and in the future will hopefully prevent similar occurrences.

19. That the now historic case Patrick v. Burget, 480 U.S. 904, 107 S.Ct. 1345 (1987), and the recent Connecticut case of Chadha v. Charlotte Hungerford Hospital, 272 Conn. 776, 865 A.2d 1163 (2005), both illustrate the detrimental effects that allowing

economic competitors and those aligned with the accusatory hospital and/or clinic can have on professional peer review. In both cases, our American judicial system came to the rescue of truly aggrieved physicians, victimized by well-financed provider entities. The federal courts and our traditional jury system prevailed again when they came to the rescue of Lawrence Poliner, MD; *see* 2003 WL 22255677, N.D.Tex. (2003), in the Federal District Court of Northern Texas late last year, wherein the jury recognized that a hospital corporation and economic competitors had utilized the peer review system improperly in an attempt to exclude a qualified cardiologist, awarding him a verdict of \$366 million.

20. That I believe the general public in California and throughout our country has benefited substantially as a result of Dr. Mileikowsky's peer review matter, despite the personal pain to which he has been subjected. A qualified physician can continue to practice while the taxpayers have saved those funds which would otherwise be utilized to pursue a predetermined sham investigation including an improperly demanded psychiatric evaluation. Such psychiatric "fitness for duty" examinations are highly abused and used to bolster pretextual allegations by hospitals for totally illegitimate reasons. Perhaps the Medical Board will even realize that it is but another tool intentionally and maliciously used by hospitals and managed care organizations to eliminate physicians' legitimately concerned about quality of care issues who simply voice their opinion to health care executives more concerned with profit than actual quality patient care. Reexamination of his case will facilitate the usage of unbiased independent psychiatrists by hospitals and licensure boards and aid legal counsel in the representation of those physicians who could be faced with similar circumstances. It will

provide a documented factual scenario wherein a physician was unethically manipulated by a powerful hospital system utilizing the Medical Board as its accessory. This scenario is becoming more and more common throughout this country and must be stopped. Dr. Mileikowsky's case should be an index case on which all can rely hopefully for the betterment of physicians, patients, our peer review system and the health care industry throughout this country as a whole.

21. That I make these statements under penalty of perjury and that further I sayeth not.



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112 Essex Drive
Anderson, SC 29621
(864) 226-6132, fax: (864) 225-0830

SWORN TO BEFORE ME THIS)
19th day of April, 2005)
Cindy C. Reaves)
Notary Public for South Carolina)
My Commission Expires: 10-8-2013)

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7 Attorneys for Union of American Physicians & Dentists

8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SACRAMENTO

10 GIL MILEIKOWSKY, M.D.;

CASE NO.

11 Petitioner,

12 v.

**DECLARATION OF UAPD BOARD
MEMBER DR. DEANE HILLSMAN IN
SUPPORT OF PETITIONER'S MOTION
FOR ATTORNEYS FEES**

13 MEDICAL BOARD OF CALIFORNIA,

14 Respondent.

15
16 _____ /
17 I, Dr. Deane Hillsman, declare:

18 1. I am a licensed physician and since 1991 have been chair of the Due Process Committee of the
19 Union of American Physicians and Dentists. I have frequently assisted members who are facing
20 investigation or prosecution by the Medical Board of California (MBC), and have regularly
21 attended the Board's public meetings. On several occasions members have complained to us about
22 MBC making unjustified referrals to psychiatrists and/or relying upon conflicted or biased sources
23 to prosecute a physician without considering the physician's own evidence. I have read this
24 Court's decision granting Dr. Mileikowsky's petition. Based on my experience this decision is an
25

1 important one which will significantly benefit hundreds of physicians, as absent such decision
2 MBC would likely continue engaging in this sort of conduct, but I expect it to be deterred by this
3 decision. This decision will serve as a valuable resource for other physicians and their attorneys,
4 especially considering that typically MBC investigations and prosecutions are resolved by
5 negotiations between MBC and the physician, so this decision provides physicians with valuable
6 ammunition in negotiations. I have communicated with other UAPD members about this decision
7 and provided copies in response to several requests.

8 I declare under penalty of perjury that the foregoing is true and correct. Executed at
9 Soledad California this 17 day of March 2005.

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DR. DEANE HILLSMAN

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DECLARATION OF BARBARA HENSLEIGH

I, Barbara Hensleigh, declare as follows:

1. I am an attorney licensed to practice in the State of California and admitted to practice before the courts of the State of California. I can testify to the matters hereinafter set forth of my own, personal knowledge.

2. I have been practicing in this State almost twenty years. Before becoming a lawyer, I was a registered nurse. Throughout my career, my practice has involved representing physicians in litigation matters, many of which involve hospital-based privileging controversies. I have also represented physicians in a small number of Medical Board licensing matters. As I am very active in these medical-legal areas, I keep myself informed of developments in the filed by reading current literature and attending educational presentations.

3. Many of the privileging matters in which I have served as counsel arise out of the misuse by hospitals of the peer review system as a means to retaliate against physicians who express concerns over the quality of medical care or for anticompetitive purposes. Based upon my experience, I think it is a fair statement to make that the misuse of the peer review system by hospitals has reached an all time high and it is only a matter of time before legislative action occurs to right the misuse of the process. Until then, we must rely on the courts to intervene to protect communities and patients from losing valuable physicians and the physicians from losing their livelihood.

4. I make this declaration on behalf of the request by Gil Mileikowsky, MD for his attorneys' fees incurred in the writ proceedings in this court. I have never met Dr. Mileikowsky and do not anticipate representing him. I am not charging him (or anyone) for preparing this

1 declaration. I am submitting the declaration because I believe this case is important for ensuring
2 the public's continued access to qualified physicians, for protecting the misuse of tax dollars to
3 aid private entities pursuing illegitimate ends and assuring that the Medical Board's
4 investigation process is designed to uncover those physician who warrant discipline. The facts
5 stated in this declaration are based upon my personal knowledge and I could and would testify
6 hereto if called upon to do so.
7

8 5. I have read Dr. Mileikowsky's writ and the decision of this court on Dr.
9 Mileikowsky's petition for a writ of mandate.

10 6. The action by Dr. Mileikowsky enforces an important right affecting the public
11 interest because it addresses the issue of the abuse of the use of psychiatric examinations to
12 damage physicians. I have represented physicians who have been subject to the abuse. In one
13 case, after the physician was wrongfully suspended and reinstated, the hospital demanded a
14 psychiatric examination of the physician as a condition for reappointment. The hospital chose
15 only one physician for the examination—a forensic psychiatrist—who could testify in the
16 litigation between the hospital and the physician arising out of the wrongful suspension. The
17 hospital essentially was forcing a psychiatric examination on the physician through holding
18 hostage his hospital privileges in a case where a court would be unlikely to order such an
19 examination. One hospital also attempted to require the physician to go to Houston, Texas for a
20 six day psychiatric evaluation, at his expense.
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22 7. With regard to Dr. Mileikowsy in particular, the Court's decision: (1) ensures
23 that the public is not robbed of the choice of a qualified physician, due to the suspension of his
24 medical license because he would not submit to a sham psychiatric examination; and (2) ensures
25 that public funds are not being expended by the Medical Board to conduct investigations and
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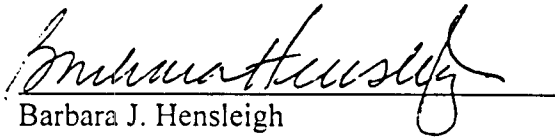
1 psychiatric examinations designed to aid a hospital to exclude a physician for illegitimate
2 means. These two interests are not abstract. As to the first point, patients naturally should be
3 entitled to choose from a vast array of competent and qualified physicians. The elimination of a
4 qualified physician hurts the public by reducing competition and by wasting the vast resources
5 expended in training and licensing the physician. As to the second point, especially recently, I
6 have been involved in situations where hospitals, that desire to drive a physician out of
7 business, uses the Medical Board to do so. The process goes like this: The hospital summarily
8 suspends the physician's privileges for reasons that do not meet the legal requirements for
9 summary suspension. Along with depriving the physician of income to fight the summary
10 suspension, the physician loses the good will of his patients who leave his practice for other
11 physicians with hospital privileges. Summary suspension has the additional benefit to the
12 hospital of triggering the requirement under Cal. Business & Professions Code § 805 that the
13 hospital report the summary suspension to the Medical Board. The Medical Board begins an
14 investigation and the hospital then supplies the Medical Board with all the damning information
15 it can muster. (In a recent case, I am told the hospital supplied eleven feet of documents). If the
16 Medical Board takes action based upon the hospital's "information", the physician has even less
17 resources to fight the hospital's action, since he/she must divert them to defending his license.

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22 8. If the hospital can trigger a biased investigation, including a biased psychiatric
23 evaluation, as in Dr. Mileikowsky's case, it is a bonanza. If the Medical Board terminates the
24 physician's license based on the biased examination, then the hospital is off Scot-free. It does
25 not have to use the privileging process to get rid of the physician. The Medical Board will do it
26 for the hospital, through terminating the physician's license to practice medicine. By using the
27 free resources (to the hospital anyway) of the Medical Board, the hospital also has limited or
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1 negated damages for its conduct in wrongfully suspending the physician's privileges. In any
2 lawsuit brought by the physician after he wins reinstatement of his privileges, the hospital can
3 argue that it was the Medical Board's action in terminating the physician's license, not its own
4 conduct in wrongfully suspending the physician's privileges, that caused the loss of the
5 physician's career. It is in the public's interest that its tax dollars not be spent to eliminate a
6 qualified physician through the hospital's manipulation of the process for anticompetitive or
7 other illegitimate purposes. The Court's ruling has prevented that in Dr. Mileikowsky's case,
8 but at no cost to the Medical Board or the hospital involved.
9

10 9. I believe that a significant benefit has been conferred on the general public and
11 on physicians who practice in California as a result of Dr. Mileikowsky's case. As a result of
12 the decision, the public has the benefit of another physician to choose from. The Medical Board
13 has not wasted the public's money prosecuting a physician for illegitimate reasons. The
14 Medical Board investigatory system will improve, redirecting it toward ferreting out
15 incompetent physicians and away from serving as a tool used by unscrupulous hospitals for
16 illegitimate ends. The Medical Board, no doubt, will reevaluate its investigations to ensure that
17 the people assigned to do them are unbiased, especially if this Court grants Dr. Mileikowsky
18 attorneys' fees and costs. Obviously, if the Court grants the fees, it will act as a deterrent to the
19 Medical Board. Physicians generally have benefited as well. If the Medical Board refuses to
20 change, physicians and their counsel will be able to use this decision, even as an unpublished
21 decision, as a means to demand that the Medical Board conduct of fair investigation of the
22 physician involved. Accordingly, I support the award of attorneys' fees in this case.
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2 I declare under penalty of perjury under the laws of California that the foregoing is true
3 and correct and that this declaration was executed this 16 day of June 2005 at Los Angeles,
4 California.
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Barbara J. Hensleigh

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PROOF OF SERVICE

STATE OF CALIFORNIA)
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COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is: 12400 Wilshire Boulevard, 15th Floor, Los Angeles, California 90025.

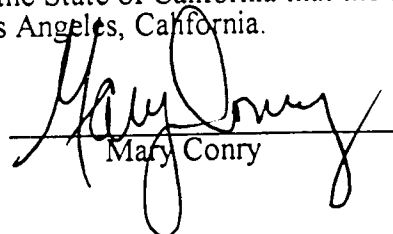
On June 20, 2005, Appellant served the foregoing document(s) described as **PETITIONER'S DECLARATIONS OF: 1) Lawrence R. Huntoon, M.D., PhD, FAAN; 2) Dr. Robert Weinmann; 3) C. William Hinnant, Jr. M.D, J.D.; 4) Dr. Deane Hillsman; and 5) Barbara Hensleigh IN SUPPORT OF MOTION FOR ATTORNEYS' FEES** on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope, addressed as follows:

Robert C. Miller, Deputy Attorney General Attorney General's Office 1300 "I" Street, Suite 125 Sacramento, CA 94244-2550	David Parker, Esq. Parker, Mills & Patel, LLP 865 So. Figueroa St. Suite 3200 Los Angeles, CA 90017 Fax: (213) 622-1444 (Association of American Physicians & Dentists - AAPS)
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(BY MAIL) In accordance with the regular mail collection and processing practices of this business office with which I am familiar, by means of which mail is deposited with the United States Postal Service at Los Angeles, California that same day in the ordinary course of business, I deposited such sealed envelope for collection and mailing on this same date following ordinary business practices, and/or

STATE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on June 20, 2005, at Los Angeles, California.



Mary Conry