

December 6, 2002
Miliekowsky
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ORIGINAL FILED
DEC 06 2002
LOS ANGELES
SUPERIOR COURT

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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF LOS ANGELES
12

13 GIL N. MILEIKOWSKY, M.D.)
14 Petitioner,)
15 vs.)
16 TENET HEALTHSYSTEM, ENCINO -)
17 TARZANA REGIONAL MEDICAL)
18 CENTER, A CALIFORNIA)
19 CORPORATION AND DOES 1)
20 THROUGH 100 INCLUSIVE,)
21 Respondents)

CASE NO: BS079131

NOTICE OF MOTION FOR PEREMPTORY
WRIT OF ADMINISTRATIVE
MANDAMUS; MEMORANDUM OF POINTS
AND AUTHORITIES

DATE: December 30, 2002
TIME: 8:30 A.M.
PLACE: Department 86

22 TO RESPONDENTS TENET HEALTHSYSTEM, ENCINO-TARAZANA REGIONAL MEDICAL
23 CENTER, A CALIFORNIA CORPORATION, TO THE LAW FIRM OF CHRISTENSEN AND
24 AUER AND PETER RANK OF K & R LAW GROUP, ATTORNEYS FOR RESPONDENT:

25 PLEASE TAKE NOTICE that on December 31, 2002 or a soon thereafter
26 as counsel can be heard in Department 86 of the above-entitled Court
27 located at 111 North Hill Street, Los Angeles, CA 90012 Petitioner will
28 move the Court for a peremptory writ of administrative mandamus (and
writ of mandate) directing Respondent to set aside its summary
suspension of Petitioner's clinical privileges, to set aside the order
of March 30, 2002 by Hearing Officer Dan Willick, to set aside the

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1 order of the Appellate Review Body of July 25, 2002 upholding the
2 decision of Willick, and to reinstate his staff privileges.

3 Said motion will be based upon this Notice of Motion the verified
4 First Amended Petition filed November 12, 2002, the administrative
5 record, and any supplemental evidence to be offered.

6 Said motion will be based upon the ground that Dan Willick
7 unlawfully aborted the Judicial Review Committee proceeding on March
8 30, 2002 and that the Appellate Review Body illegally upheld that
9 decision on July 25, 2002.

10 Respectfully submitted,

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12 _____
13 ROGER JON DIAMOND

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I

3 INTRODUCTION

4 This writ proceeding involves two related administrative hearings
5 conducted by Respondent Hospital which were combined. Hearing-I
6 related to denial of the reappointment application and Hearing-II
7 related to the denial of staff privileges, which decision was not made
8 by the Judicial Review Committee but rather by an attorney retained by
9 the hospital, who did not allow the hearing to go forward and be
10 completed but rather aborted the hearing prematurely on March 30, 2002.

11 That decision, prematurely terminating the hearing, was upheld by the
12 Appeals Body on July 25, 2002. Petitioner has filed this action with
13 two causes of action, one in traditional mandate and the other in
14 administrative mandamus because it is not clear which remedy applies
15 since no final decision on the merits was ever rendered in this case.

16 The Appeal Body abused its discretion and did not proceed in the
17 manner required by law when it approved on July 25, 2002 the ruling of
18 Willick, see Exhibit A. The Appeal Body cited no controlling legal
19 authority that authorized Willick to conclude the hearing. The
20 members of the Judicial Review Committee never voted on Willick's order
21 terminating the proceedings nor, were they consulted.

22 Neither Willick nor the Appellate Body considered the fact that
23 Petitioner was not and is not an attorney. Essentially both Willick and
24 the Appeals Body criticized Petitioner for the manner in which he was
25 conducting his own case, which he was compelled to do since the By-Laws
26 precluded him from having an attorney and Willick himself would not
27 allow Petitioner to have an attorney. This clearly was a Catch 22

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1 situation in that Petitioner, who is not a lawyer, was expected to
2 conduct himself as a lawyer might conduct himself. The Appeals Body
3 implicitly upheld Willick's determination that because Petitioner did
4 not include proper argument in his written submissions that he should
5 not have a hearing at all. At no time did the Judicial Review Committee
6 or the Appellate Body ever reach the merits of the two medical claims
7 against Petitioner - the circumcision and the vacuum extraction. The
8 evidence at that stage of the proceedings when, Willick illegally
9 aborted the proceeding, was favorable to Petitioner. The Medical
10 Executive Committee did not rest its case and Petitioner never had the
11 opportunity to present his evidence.

12 II

13 STATEMENT OF THE CASE

14 The administrative record in this case is voluminous but this
15 Court need not be intimidated by the length of the record since the
16 procedural facts are straight forward and not contested. The narrow
17 legal issue is whether an attorney hired by the hospital can take the
18 case away from the Judicial Review Committee and terminate the
19 proceeding based on the erroneous decision that Petitioner, who was
20 forced to represent himself, delivered copies of his administrative
21 trial brief to members of the Judicial Review Committee in response to
22 false accusations previously provided to the Judicial Review Committee
23 (JRC) by the hearing officer.

24 Petitioner obtained medical and surgical privileges at the Encino-
25 Tarzana Regional Center (hereinafter "Tarzana Hospital") in 1996. On
26 September 18, 1997 Petitioner was appointed to Tarzana Hospital's
27 permanent staff with active member status. Every two years he was

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1 reappointed without incident. On February 2, 1999 Petitioner received
2 a letter from Tarzana Hospital stating that he had not timely filed an
3 application for reappointment he never received. As a result,
4 Petitioner filed a lawsuit on April 6, 1999 and obtained a preliminary
5 injunction from Judge Robert H. O'Brien on April 20, 1999 in the case
6 of Mileikowsky v. Tenet Healthsystem, BS056525, which is still in
7 effect to date. The preliminary injunction required Tarzana Hospital
8 to process his reappointment application.¹

9 On January 11, 2000 the Medical Executive Committee denied the
10 reappointment application. Petitioner appealed the denial to a
11 Judicial Review Committee which was convened in October of 2000
12 pursuant to the By-Laws.

13 After the Judicial Review Committee began conducting the hearing
14 to which Petitioner was entitled under the By-Laws, Tarzana Hospital
15 summarily suspended Petitioner's privileges on November 16, 2000.

16 The first hearing afforded Petitioner with respect to his
17 reappointment was deemed to be Hearing I and was conducted by Tenet's
18 attorney, Lowell Brown, who refused to recuse himself.

19 On November 16, 2000 Tarzana Hospital summarily suspended
20 Petitioner's privileges without any charges or explanations. On
21 November 28, 2000 the Medical Executive Committee upheld the summary
22 suspension, based on seven (7) fabricated charges. Petitioner appealed
23 and was given a hearing with respect to the summary suspension of his
24 staff privileges.

25 On November 30, 2000, Hearing I was aborted illegally by its
26

27 ¹ The complete preliminary injunction language is set forth at p. 7,
lines 1-20 of the First Amended Petition. See attached exhibit B.

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1 alleged Hearing Officer Lowell Brown (attorney of Tenet) and its
2 Hearing Committee. Petitioner appealed this decision as well.

3 On December 22, 2000 Tarzana Hospital provided Petitioner with the
4 written charges. Tarzana expanded the original 7 charges to 37
5 charges against Petitioner. However, these allegations dated back to
6 December 12, 1990, over 10 years before the illegal summary suspension
7 of Petitioner for alleged non existent imminent danger. Petitioner had
8 no patient at Tarzana on November 16, 2000.

9 Of all the charges against Petitioner only two of them were
10 medically related. The first of these two was that on November 5,
11 2000 Petitioner performed a circumcision that allegedly resulted in a
12 serious complication requiring additional medical attention of a
13 urologist. This will be referred to as "the circumcision charge."

14 The second charge was that in delivering a baby on October 24,
15 2000 Petitioner allegedly deviated from Tarzana Hospital's guidelines
16 for nurses by applying a vacuum more than three times and requesting
17 fundal pressure (hereinafter referred to as "the vacuum extraction"
18 charge). The remaining 35 charges related to non medical issues most
19 were resolved in finality in favor of Petitioner either by the court or
20 by Tarzana's own Peer Review Committees.

21 The second hearing commenced and later the charges from the first
22 hearing were combined with the charges of the second hearing. As
23 stated, all of the 31 charges related to the first hearing had been
24 resolved with finality in Petitioner's favor by prior decisions.

25 With respect to the two medical cases, the circumcision charge and
26 the vacuum extraction charge, no evidence was presented at the hearing
27 to support any claim regarding an alleged sub standard care by

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1 Petitioner. With respect to the circumcision charge, the evidence at
2 the hearing was that Petitioner performed an entirely normal
3 circumcision. The only criticism came from Dr. G. Irani, who examined
4 the patient yet, he discharged the child immediately after his
5 examination. Dr. Irani conceded at the hearing that he had never
6 performed a circumcision in his life.

7 A urologist, Dr. Shapiro, provided a favorable examination on
8 November 6, 2000 (The circumcision was performed on November 5, 2000 at
9 7:00 P.M.). That exculpatory evidence was withheld from Mileikowsky
10 and the members of the Hearing Committee. Upon its discovery,
11 Mileikowsky submitted this critical evidence to Mr. Willick in a motion
12 to dismiss this charge. Mr. Willick denied that motion without
13 consulting or forwarding this important information to the members of
14 the Judicial Review Committee following the objections of Tenet's
15 attorneys.

16 With respect to the vacuum extraction charge, there was no
17 violation of physician care. The mother and the baby were in good
18 health and complimented Petitioner for his outstanding care.

19 The hearing was conducted by attorney Dan Willick, paid by
20 Tarzana.

21 According to Article VIII, Section 4 of the By-Laws Petitioner was
22 not permitted to have an attorney during his hearing over which
23 attorney Willick presided. Dan Willick conducted the hearing pursuant
24 to Article VIII, Section 4 (B) of the By-Laws, which provides as
25 follows:

26 "The hearing officer shall act to
27 maintain decorum and to assure that all

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1 participants in the hearing have a
2 reasonable opportunity to present
3 relevant oral and documentary evidence.
4 He shall be entitled to determine the
5 order of procedure during the hearing and
6 shall make all rulings on matters of
7 procedure and the admissibility of
8 evidence."

9 On March 15, 2002 Petitioner sent copies of a brief to each of the
10 seven members of the Judicial Review Committee. The brief related to
11 certain issues that were pending before the Committee. Copies of
12 Petitioner's brief were submitted to all interested parties including
13 Mr. Willick and the Medical Executive Committee representative.

14 On March 30, 2002 attorney Willick terminated Petitioner's hearing
15 depriving the Judicial Review Committee of judging the case on its
16 merits. At the time, Petitioner had already demonstrated that his
17 conduct with respect to the circumcision and the vacuum extraction were
18 proper and within the medical standard of care.

19 A copy of the March 30, 2002 ruling by Hearing Officer Willick is
20 attached to this Petition as Exhibit C. Willick stated that he
21 terminated the hearing because of intentional acts of misconduct by
22 Petitioner. Willick stated that Petitioner's "repeated acts of
23 misconduct" was deemed by Willick as being a waiver of Petitioner's
24 right to the completion of the hearing. The major point of Willick's
25 order was that Petitioner engaged in unauthorized ex parte
26 communications with each member of the hearing committee. Willick
27 spent a substantial amount of time in his order explaining why the ex

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1 parte communication was improper. Willick's order of March 30, 2002
2 made other references to the manner in which Petitioner participated in
3 his hearing. Essentially, Willick contended in his order that
4 Petitioner's arguments are what disrupted the hearing. In the
5 conclusion to his order dated March 30, 2002 Willick referred to
6 Article VIII, Section 4(B) of the By-Laws which authorized him to
7 "maintain decorum and assure that all participants in the hearing have
8 a reasonable opportunity to present oral and documentary evidence."
9 Ironically, Willick's order had the opposite effect - to deny
10 Petitioner a reasonable opportunity to present oral and documentary
11 evidence. Willick also referred to Article VIII, Section 4(A) of the
12 By-Laws which Willick contended authorized him to rule that a
13 practitioner who fails without good cause to appear and proceed shall
14 be deemed to have his rights waived. Yet, Mikeikowsky never failed to
15 appear. No provision of the By-Laws authorized Willick to do what he
16 did. The ex parte communication to which Willick referred to was not
17 ex parte. Copies were provided to everyone including Willick and the
18 Medical Executive Committee representative. There was no basis for
19 Willick's order. Willick had no authority to make the order and the By-
20 Laws do not authorize it. Willick's order violated Petitioner's right
21 to a fair hearing and to due process under the By-Laws, California law,
22 and the United States and California Constitutions. Willick did not
23 allow the Judicial Review Committee to reach the decision on the merits
24 of the case.

25 Petitioner appealed the improper order terminating the hearing to
26 the Appeal Body of Tarzana in order to correct this illegal decision
27 and exhaust his administrative remedies. On July 25, 2002 the

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1 Appellate Review Body upheld the termination of Petitioner's hearing.
2 The basis of the Appeals Body decision and that of Mr. Willick was that
3 Petitioner dealt ex parte by sending copies of his brief to members of
4 the Judicial Review Committee which was known to be false. A copy of
5 the July 25, 2002 Appellate Body decision is Exhibit A.

6 III

7 ARGUMENT

8 A. WILICK VIOLATED THE BY-LAWS AND PETITIONER'S DUE PROCESS RIGHT TO
9 A FAIR HEARING BY TERMINATING HIS HEARING

10 No statute and no rule prohibited Petitioner from distributing
11 copies of a brief to members of the Judicial Review Committee
12 simultaneously with distribution to the Hearing Officer and the Medical
13 Executive Committee representative.

14 Willick had no authority to deprive the Committee of making a
15 decision based on the merits of the case. By aborting the hearing
16 Willick revealed his prejudice against Petitioner. Petitioner was
17 entitled to have a fair administrative hearing. See Haas v. County of
18 San Bernardino, 27 Cal.4th 1017 (2002). There is no provision in the
19 By-Laws for the hearing officer ending the proceedings. Moreover, the
20 basis for interrupting the hearing was improper - that Petitioner
21 allegedly delivered ex parte briefs to the Judicial Review Committee.
22 That was a lie.

23 An ex parte communication is one done unilaterally, without notice
24 to the other side. In this particular case Petitioner did not send
25 copies just to the Committee members but to everyone.

26 The hearing officer contended that Petitioner forfeited his right
27 to a hearing by failing to assert the right. However this is not true.

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1 The only way to conclude a hearing is for the Petitioner to fail to
2 attend a hearing. Respondent can cite no rule of the By-Laws that
3 authorized the hearing officer to terminate the proceedings. The
4 Judicial Review Committee had no such authority even if Willick had
5 asked the Judicial Review Committee. See decision of Appeal Body - I
6 of April 26, 2001, Exhibit D.

7 Willick took the matter from the Committee and decided the matter
8 himself even though he had no authority to do so.

9 Willick cannot claim that he was maintaining decorum by aborting
10 the hearing. Premature termination of a hearing is not the same thing
11 as maintaining decorum.

12 IV

13 REMEDY

14 It would be futile for this Court to simply remand Petitioner to
15 the Judicial Review Committee for another hearing. The hearing was
16 essentially over. The testimony at the hearing established that
17 Petitioner did not mistreat any patient or doing anything that was
18 medically improper. Simply remitting Petitioner to Respondent for
19 another hearing would accomplish nothing because Respondent wants to
20 deprive Petitioner of his clinical privileges for whatever pretext.

21 If this Court should remand the matter to the Judicial Review
22 Committee for further proceedings the same members should be
23 reconstituted for this Committee with a different Hearing Officer.
24 Another Committee should not be established since this Committee has
25 heard most of the evidence and was selected after 9 months of voir
26 dire.

27 For the foregoing reasons, Petitioner respectfully requests this

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1 Honorable Court to vacate the orders and restore him to his staff
2 privileges.

3 WHEREFORE, PETITIONER PRAYS FOR JUDGMENT AS FOLLOWS:

4 1. That a peremptory writ of administrative mandamus and writ of
5 mandate issue under the seal of this Court directing Respondent to
6 complete his Judicial Review Committee hearing and exhaust his
7 administrative remedies within 30 days before an administrative law
8 judge at the Office of Administrative Hearings, without any security
9 guards and allow Petitioner to be represented at the hearing by an
10 attorney as Tarzana's By-Laws do not allow Petitioner to be represented
11 by an attorney at a hearing.

12 2. For a writ of administrative mandate and mandamus compelling
13 Respondent to set aside its order denying Petitioner's reappointment
14 application and an order directing Respondent to set aside its summary
15 suspension of Petitioner's clinical privileges, without any of
16 Tarzana's security guards' stalking Gil N. Mileikowsky, M.D., since
17 there is no complaint from any patient nor any negligence cause of
18 action against Petitioner let alone any alleged imminent danger;

19 3. For an order directing Respondent to readmit Petitioner to
20 full and complete clinical privileges as an active staff member;

21 4. For damages according to proof;

22 5. For punitive damages for Respondent's willful acts in
23 depriving Petitioner of staff privileges, for depriving Petitioner of
24 the opportunity to practice medicine at Tarzana Hospital since November
25 16, 2000;

26 6. For punitive damages for Respondent's willful acts in denying
27 Petitioner's right to a hearing and exhaust his administrative

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1 remedies;

2 7. For such other and further relief as the Court deems just and
3 proper as, Respondents fraudulently fabricated bogus charges and
4 falsely pretended these proceedings represent an alleged Medical Peer
5 Review. Here again, Respondents violated Tarzana's By-Laws, California
6 and federal Health Care Quality Improvement Acts (HCQIA).

7 8. For punitive damages for fraud;

8 9. For publication of such order and providing it verbatim to all
9 physicians on staff at Tarzana, all nurses and personnel of Tarzana,
10 posting on all of Tarzana's bulletin boards within 24 hours of issuing
11 the order with proof of such publication delivered to attorney Roger
12 Jon Diamond within 48 hours;

13 10. For publication of such order verbatim to the California
14 Medical Board, the California Department of Health Services (DHS), the
15 California Institute for Medical Quality (IMQ), the Joint Commission on
16 Accreditation of Healthcare Organizations (JCAHO), the National Data
17 Bank, West Hills Hospital, Century City Hospital and all other
18 hospitals and institutions, insurance carriers who were provided by
19 Tarzana information regarding Petitioner's suspension of privileges
20 and/or denial of his reappointment at Tarzana within 24 hours of
21 issuing this order with proof of such publication delivered to attorney
22 Roger Jon Diamond within 48 hours.

23 Respectfully submitted,

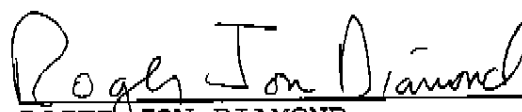
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ROGER JON DIAMOND
Attorney for Petitioner



PETER C. RANK
ATTORNEY-AT-LAW
Los Angeles Office
prank@knrlaw.com

July 25, 2002

VIA FEDERAL EXPRESS

Gil Mileikowsky, M.D.
c/o 2934 1/2 Beverly Glen Circle
PMB 373
Los Angeles, CA 90077

Re: **Appeal of Gil Mileikowsky, M.D.**

Dear Dr. Mileikowsky:

Enclosed is one copy of the executed Order and Findings of the Appellate Review Body and Board Certificate of Action in the above matter.

Very truly yours,

Peter Rank

PCR:jmj
enclosures
(Federal Express Tracking #7904 9881 6796)

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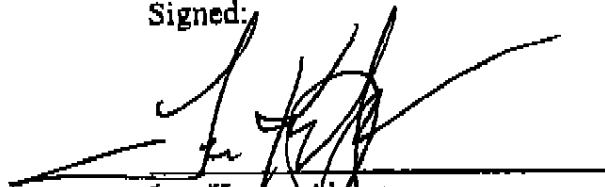
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EXHIBIT A PAGE 1

**CERTIFICATION OF ACTION OF
ENCINO-TARZANA REGIONAL MEDICAL CENTER**

It is certified that the attached Order and Findings in the Matter of the Summary Suspension and Denial of the Reappointment Application of Gil N. Mileikowsky was duly adopted as an action of the Governing Board of the Encino-Tarzana Regional Medical Center on July 25, 2002.

Signed:



Lee Kanon Albert
Chair

EXHIBIT A. 10/12

**APPELLATE REVIEW BODY
OF THE GOVERNING BODY OF
ENCINO-TARZANA REGIONAL MEDICAL CENTER**

**In The Matter Of the Summary)
Suspension and Denial of the) ORDER AND FINDINGS
Reappointment Application of)
Gil N. Mileikowsky, M.D.)
)**

INTRODUCTION

On January 11, 2000, the Medical Executive Committee (the "MEC") of Encino-Tarzana Regional Medical Center (the "Medical Center") recommended the denial of the reappointment of Gil Mileikowsky, M.D. to the Medical Staff of the Medical Center. Dr. Mileikowsky was granted a hearing before a Judicial Review Committee ("JRC") to contest this recommendation. In October, 2001 the JRC composed of Dr. Mileikowsky's peers at the Medical Center determined that Dr. Mileikowsky had waived his right to a hearing because of his failure to respond to discovery requests, the subject of which were key to the issues at hand. Dr. Mileikowsky appealed this decision to the Governing Body of the Medical Center. On April 26, 2001, the Appellate Review Body of the Governing Body remanded the matter for a new hearing and imposed evidentiary standards on Dr. Mileikowsky.

On November 26, 2000 Dr. Mileikowsky's clinical privileges at the Medical Center were summarily suspended due to complaints of Dr. Mileikowsky's unprofessional conduct and violation of security measures placed on him by Medical Center administration. On November 28, 2000 the MEC voted to continue the summary suspension and to terminate Dr. Mileikowsky's Medical Staff membership and clinical

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privileges. Dr. Mileikowsky requested and was provided a hearing to contest these actions.

Dr. Mileikowsky's two hearings were consolidated and action taken by the Hearing Officer at the Consolidated Hearing is the subject of this appeal.

On January 11, 2001, Dr. Mileikowsky commenced the voir dire of the Hearing Officer who was approved without challenge. After five sessions of voir dire of his peers, on August 21, 2001 eight physicians were approved to the JRC panel.

On March 30, 2002, after numerous hearing sessions, correspondence, motions by the parties and orders by the Hearing Officer, the Hearing Officer terminated the Consolidated Hearing due to the conduct of Dr. Mileikowsky. At that time, the MEC was still in the process of presenting its case. Dr. Mileikowsky appealed this decision to the Governing Body which appointed a three person Appellate Review Body. The Appellate Review Body, after preliminary motions and orders, heard the Appeal on July 2, 2002. This is the Order and Findings of the Appellate Review Body which is recommended for approval by the Governing Body pursuant to Article VIII, Section 7.I. of the Medical Staff Bylaws.

ORDER

After hearing and due deliberation, the Appellate Review Body affirms the decision of the Hearing Officer that Dr. Mileikowsky waived his right to a hearing and that Dr. Mileikowsky's hearing be terminated. The Appellate Review Body concludes that Dr. Mileikowsky received a fair hearing and that the Hearing Officer's decision was reasonable.

FINDINGS

The following findings are made by the Appellate Review Body:

1. A Hearing Officer at a JRC Hearing established pursuant to California Business and Profession's Code Section 809 et. seq. and the Medical Staff Bylaws has the legal authority to terminate such Hearing based on misconduct of the physician requesting and participating in the Hearing.

When the California legislature enacted statutory provisions regarding peer review, it stated in its preamble that:

"Peer review, fairly conducted, is essential to preserving the highest standards of medical practice.

Peer review which is not conducted fairly results in harm both to patients and healing arts practitioners by limiting access to care."¹

In order for peer review to meet these standards, it must be participated in by all parties in accordance with the law and bylaws established by the organized Medical Staff. It is up to the Hearing Officer

¹ Business and Professions Code Sections 809(a)(3) and (4).

A
FACIES

to assure that the hearing is a fair process for all parties. The Medical Staff Bylaws provide that:

"The hearing officer shall act to maintain decorum and to assure that all participants in the hearing have a reasonable opportunity to present relevant oral and documentary evidence"²

When a physician acts to prevent the process of peer review from taking place, the Hearing Officer must act to assure a fair proceeding for all parties. As stated by the Hearing Officer in his order:

"...[the] practitioner has an obligation to participate in peer review in good faith and to abide by the rules governing peer review. Any failure to do so threatens one of the pillars upon which protection of the public against substandard care rests. To permit a physician to flaunt the peer review process by flagrant violations of rules and procedures governing that process is unacceptable."³

We concur with this. Just as in the court system, there must be a remedy when a party deliberately sabotages an administrative or judicial process. A fair hearing means fair to both parties, including the Medical Executive Committee as well as the physician.

2. The decision of the Hearing Officer to terminate the Hearing in this matter was reasonable based on the evidence. The Record on Appeal reveals the following instances of misconduct by Dr. Mileikowsky:
 - a. Dr. Mileikowsky repeatedly disrupted hearing sessions and used personal invective and threatening language. The hearing

² Medical Staff Bylaws Article VIII, Section 4.B.

³ March 30, 2002 Ruling, Hearing Officer's Order, Page 2, Lines 1-5.

transcript is replete with examples of his disorderly conduct.⁴ Dr. Mileikowsky repeatedly misrepresented whether he received documents and frequently criticized the Hearing Officer's rulings. There are written and transcript examples of abuse of witnesses, MEC representatives, Medical Center administrators and MEC Counsel. Even at the Appellate Review Hearing, when represented by Counsel, Dr. Mileikowsky referred to MEC counsel, Jay Christensen as follows:

"...I just imagine myself showing the work of Mr. Christensen to Goebbels. His reaction would be prima, superb lies...A tissue of lies very skillfully put together" and further "Have no illusions, behind the smile of Mr. Christensen lies a criminal..." and "so look at the facts and ask yourself, despite the distinguished gift wrapping of Mr. Christensen, he is lying, is he another Arthur Anderson..."⁵

Further, verbally and in writing, Dr. Mileikowsky openly defied the Hearing Officer's rulings made to control Dr. Mileikowsky's conduct.

- b. Dr. Mileikowsky repeatedly violated the Hearing Officer's order that he refrain from referencing his two lawsuits brought against the Medical Center's parent company and many Medical Staff physicians. The Hearing Officer concluded that, since such lawsuits were still in process, these pleadings would be prejudicial

⁴ See Hearing Transcript, September 5, 2001 and November 29, 2001.

⁵ Appellate Hearing Transcript, dated July 2, 2002, Page 72, Lines 2-4; and 6-7; Page 73, Line 25; Page 74, Line 1; and Page 76, Lines 13-15.

to either party without final orders. Despite this, Dr. Mileikowsky repeatedly, and often falsely, referred to pleadings in the lawsuits.⁶

- c. Dr. Mileikowsky refused to comply with Discovery required by Section 809 and the Medical Staff Bylaws. The Record on Appeal indicates clearly that Dr. Mileikowsky refused to provide information requested by the MEC and required by law which directly related to the charges against him and which were specifically ordered by the Hearing Officer. Particularly significant was his failure to provide documents directly related to his suspension and termination from the Medical Center at Cedars-Sinai Medical Center.⁷ This is the same failure which led the Medical Staff to conclude that he had not cooperated with his reapplication in 1999.

In addition, despite orders of the Hearing Officer, Dr. Mileikowsky never produced a full exhibit list as required by law and the Medical Staff Bylaws. This caused disruption to the Hearing process when Dr. Mileikowsky attempted to introduce previously unannounced documents. A similar instance occurred minutes before the current Appellate Review Hearing when Dr. Mileikowsky attempted to introduce an unannounced "reply brief"

⁶ Hearing Transcripts dated September 5, 2001, November 29, 2001, December 3, 2001 and December 17, 2001.

⁷ Rulings dated January 12, 2002, January 19, 2001, February 16, 2001, March 1, 2001, March 14, 2001, March 26, 2001, April 3, 2001, April 12, 2001, June 11, 2001, July 11, 2002, August 28, 2001, September 5, 2001, October 1, 2001, October 12, 2001, December 26, 2001 (Hearing Officer's Correspondence, Tabs 5, 8, 13, 15, 21, 23, 24, 25, 34, 42, 48, 51, 53, 54 and 69, respectively).

which was not agreed to or even requested by him during the pre-hearing procedural discussions.

- d. Dr. Mileikowsky entered into unauthorized ex parte communications with the entire Hearing Panel relating to the subject matter of the Hearing. On or about March 18 and 19, 2002, Dr. Mileikowsky personally delivered to each member of the Hearing Panel a 35 page typewritten brief, a one page letter from him and his two physician advisors and copy of a letter to the Hearing Officer from the two physician advisors which was falsely dated. Dr. Mileikowsky's brief contained misrepresentations which we conclude were intended to mislead the Hearing Panel. This ex parte communication was done by Dr. Mileikowsky despite warnings by the Hearing Officer and a letter from Dr. Mileikowsky dated October 22, 2001 alleging such communication had occurred by the MEC. We believe that Dr. Mileikowsky's communication with the Hearing Panel severely prejudiced the MEC. We question whether the Hearing could have continued with this Panel after Dr. Mileikowsky's ex parte action.

3. Dr. Mileikowsky's right to a fair hearing has not been violated by actions of the Hearing Officer. A review of the Hearing transcript illustrates a process in which the Hearing Officer provided Dr. Mileikowsky ample opportunity to comply with the legal processes required of him. For instance, the Hearing Officer issued 14 rulings in 12 months and granted

seven extensions trying to obtain documents from Dr. Mileikowsky as required by law. (See Footnote 7, *supra*.) The Hearing Officer entered an order for both parties to submit briefs regarding Dr. Mileikowsky's failure to cooperate in the Medical Staff peer review process. Despite five warnings by the Hearing Officer, Dr. Mileikowsky failed to submit such a brief. Hearing sessions were scheduled to meet the needs of Dr. Mileikowsky's vacation and seminar schedule.

The most convincing illustrations of Dr. Mileikowsky's refusal to cooperate with legal procedures, despite the efforts of others to safeguard his rights, occurred in the past actions of hearing panels, appellate reviews and Superior court actions, all of which are a part of the Record on Appeal. In the first hearing regarding the denial of Dr. Mileikowsky's reappointment, the Hearing Panel determined in the middle of the Hearing that Dr. Mileikowsky had waived his right to a hearing due to this behavior. While the Governing Board sent the matter back for a new hearing, it issued evidentiary sanctions against Dr. Mileikowsky for his failure to produce evidence and delay of the Hearing.

In the Hearing upon which this appeal is based, the Hearing Officer terminated Dr. Mileikowsky's hearing due to his failure to cooperate with the legal process.

Finally, in Dr. Mileikowsky's Court Cases, on April 24, 2002, the Superior Court entered orders for Terminating Sanctions due to the

conduct of Dr. Mileikowsky. To quote the Discovery Referee in regards to Dr. Mileikowsky as petitioner:

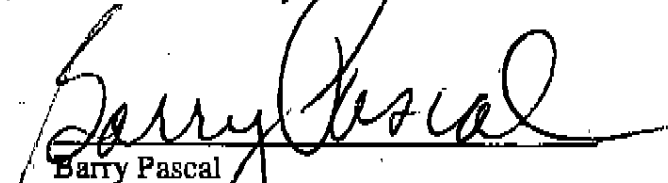
"Pursuant to CCP 2023(a), the Discovery Referee finds that respondents' motion for terminating sanctions and monetary sanctions should be GRANTED. Petitioner has demonstrated a pattern of promises and stipulations for the production of discovery responses that are unfulfilled. Instead of production, petitioner has changed counsel and repeated the pattern of delay and non-production. The Referee finds this repetition to be obstructive and willful, and in violation of petitioner's responsibility to participate in discovery and to comply with stipulations and court orders. Sanctions are warranted under CCP 2023(a)(3,(4), and (7)."⁸

A Hearing Officer, a Discovery Referee and a Superior Court Judge have previously terminated hearings due to Dr. Mileikowsky's conduct. We believe the Hearing Officer was correct in taking the same action in the matter which is the subject of this appeal.

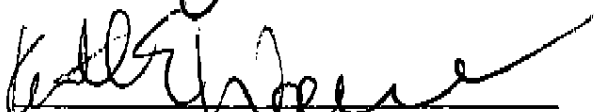
ADOPTED:


Louanne Kennedy

7/25/02
Date


Barry Pascal

7/25/02
Date


Keith Weaver

7/25/02
Date

⁸ Report and Recommendation of Discovery Referee, Gil N. Mileikowsky, MD v. Tenet Health System, et al. No. BS 056125 related to Case No. BC 233153.

Attest


November 8, 2002
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CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court
NOV 12 2002
John A. Clarke, Executive Officer/Clerk
By KATINA JOHNSON, Deputy

1 ROGER JON DIAMOND
2 2115 Main Street
3 Santa Monica, CA 90405
4 (310) 399-3259
5 (310) 392-9029 Fax
6 State Bar No. 40146
7 Attorney for Petitioner

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES

10	GIL N. MILEIKOWSKY, M.D.)	CASE NO: BS079131
11	Petitioner,)	FIRST AMENDED PETITION FOR WRIT
12	vs.)	OF ADMINISTRATIVE MANDAMUS
13	TENET HEALTHSYSTEM, ENCINO -)	PURSUANT TO CODE OF CIVIL
14	TARZANA REGIONAL MEDICAL)	PROCEDURE SECTION 1094.5 AND
15	CENTER, A CALIFORNIA)	TRADITIONAL MANDAMUS UNDER CODE
16	CORPORATION AND DOES 1)	OF CIVIL PROCEDURE SECTION 1085
17	THROUGH 100 INCLUSIVE,)	
	Respondents)	

18 This is a Petition for Writ of Administrative Mandamus and
19 Traditional Mandamus to review and challenge the decision of the
20 appellate review body of Respondent Tenet Healthsystem, Encino-Tarzana
21 Regional Medical Center, a California corporation of July 25, 2002
22 which affirmed the decision of hearing officer Daniel H. Willick of
23 March 30, 2002 illegally aborting a judicial review committee hearing
24 regarding the denial of Petitioner's reappointment application and
25 suspending Petitioner's staff privileges. Petitioner alleges as
26 follows:

28 FIRST AMENDED PETITION FOR WRIT OF ADMINISTRATIVE MANDAMUS PURSUANT TO
CODE OF CIVIL PROCEDURE SECTION 1094.5 AND TRADITIONAL MANDAMUS UNDER
CODE OF CIVIL PROCEDURE SECTION 1085

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FIRST CAUSE OF ACTION:

TRADITIONAL MANDAMUS UNDER CODE OF CIVIL PROCEDURE SECTION 1085

1
2
3 1. Petitioner is a physician and surgeon licensed to practice
4 medicine under the laws of the State of California. On December 13,
5 1991 Petitioner became board certified by the American Board of
6 Obstetrics and Gynecology and is an active member of American Board's
7 Division of Reproductive Endochrinology.

8 2. Respondent Tenet Healthsytem, Encino-Tarzana Regional Medical
9 Center is a California corporation and it and Does 1 through inclusive
10 own and operate the Tenet Healthsytem, Encino-Tarzana Regional Medical
11 Center.

12 3. Petitioner is informed and believes and thereon alleges that
13 Respondent Tenet Healthsytem, Encino-Tarzana Regional Medical Center
14 (hereinafter "Trazana") is a corporation duly organized and existing
15 under the laws of the State of California which owns and operates a
16 hospital and appurtenant facilities located in Tarzana, California,
17 known as Tenet Healthsytem, Encino-Tarzana Regional Medical Center
18 ("Tarzana").

19 4. Petitioner is unaware of the true names and capacities of
20 Respondents sued herein as Does 1 through 100 and affirmatively alleges
21 that each one of them is the owner and operator of Tarzana.

22 5. In July 1986, Petitioner completed his Fellowship in
23 Reproductive endocrinology at USC. Only a relatively few physicians in
24 the United States and in California have received such special training
25 in assisted reproductive technology and could be considered specialists
26 in these fields. Petitioner is such a specialist.

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1 6. Petitioner is informed and believes and thereon alleges that
2 on or about December 1991, Respondent Tarzana opened its Women's
3 Pavilion, a state of the art facility for providing OB/GYN Neo-Natology
4 services to the public.

5 7. Petitioner is informed and believes and thereon alleges that
6 the Tarzana Women's Pavilion is the most advanced, well reputed OB/GYN
7 facility in the San Fernando Valley.

8 8. Petitioner could not practice his speciality of obstetrics,
9 gynecology, infertility and reproductive surgery in the San Fernando
10 Valley or effectively utilize his training there without access the
11 limited number of fully equipped hospitals with trained, experienced
12 personnel.

13 9. Women undergoing treatment for obstetrics-gynecology and
14 infertility require frequent trips to the physician/clinic.
15 Accessibility and proximity is a key factor in the selection of a
16 physician and facility. Accordingly, it is appropriate to consider
17 the San Fernando Valley as the relevant geographic area in assessing
18 the issues in this proceeding.

19 10. Petitioner had medical and surgical privileges at Tarzana
20 since the Fall of 1986, over 14 years.

21 11. On or about July 18, 1986, Petitioner submitted to Tarzana an
22 application for membership on the medical staff. Thereafter, on March
23 18, 1987 Tarzana granted Petitioner temporary privileges to practice
24 medicine at Tarzana pending approval of his application for membership
25 on the medical staff. On September 18, 1987, Petitioner was appointed
26 to Tarzana's permanent medical staff with active member status.

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1 12. Each two years thereafter Petitioner was reappointed to the
2 medical staff. The most recent reappointment extended from April 17,
3 1997 for two years, to April 17, 1999.

4 13. Petitioner is informed and believes and thereon alleges that
5 his 1988 legal dispute with his former employers, Dr. Schein and Dr.
6 Greenberg brought him into conflict with the medical establishment at
7 Tarzana, as Petitioner's former employees were founders of Trazana,
8 long standing members of its medical staff and were friendly with
9 several powerful members of Tarzana's Medical Executive Committee and
10 its Department of OB/GYN. In October of 1998 the Tarzana medical staff
11 office, which was charged with the responsibility for coordinating
12 Petitioner's reappointment applications violated the medical staff By-
13 Laws by failing to provide to Petitioner the appropriate, required
14 notifications concerning his privileges' reappointment.

15 14. At all times mentioned herein the Tarzana Hospital was
16 governed by By-Laws which were drafted to ensure that each medical
17 staff member is fully advised of the term of his privileges and given
18 actual notice of the approaching expiration date of his current term
19 and is timely furnished with reappointment materials. Article VI.A of
20 the By-Laws provides as follows:

 "Members of the medical staff shall be
reappointed every two years, the date of
which shall be determined based upon the
date of last reappointment. Six months
prior to the expiration of the members
reappointment, a member shall be sent a
reappointment application by certified or
registered mail, return receipt
requested. The member must return the
completed application within 60 days of
the date it was mailed by the medical

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1 staff office. If the completed
2 reappointment has not been returned to
3 the medical staff office within 45 days
4 after the application was mailed, the
5 medical staff office shall send a
6 reminder to the practitioner notifying
7 him/her that failure to return the
8 completed application packet by the end
9 of the 60 days shall be deemed a
10 voluntary resignation from medical
11 staff. A member who is deemed to have
12 resigned shall not be entitled to a
13 hearing but may request a review by the
14 medical executive committee to confirm
15 that the member failed to comply with the
16 requirements of this section. A member's
17 medical staff membership and privileges
18 may be extended during the foregoing
19 reappointment cycle only after
20 appropriate and verification has been
21 done to deem the member qualified to
22 continue such membership and privileges
23 and a temporary privilege is completed in
24 order to provide for the granting of
25 continuation of membership and clinical
26 privileges."

15 15. Respondent did not properly transmit reappointment materials
16 to Petitioner as required by the By-Laws in the fall of 1998.
17 Accordingly, Petitioner received no notification, reappointment
18 applications nor notifications that his privileges were approaching
19 their expiration date or that his reappointment application was due or
20 overdue.

21 16. On February 2, 1999 Petitioner received a letter dated
22 February 1, 1999 from Tarzana Hospital stating that he had not timely
23 filed his application for reappointment to the Tarzana medical staff
24 and was thus considered to have voluntarily resigned.

25 17. Immediately upon receiving the February 1, 1999 letter
26 Petitioner attempted to reapply for the staff privileges for the next

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1 two years. He went to the office of Respondent on February 2 1999 to
2 try to obtain the form which he would then fill out and submit as part
3 of the reapplication process but Respondent, contrary to law and
4 contrary to its By-Laws and in violation of Petitioner's due process
5 rights, arbitrarily refused to give him the reappointment form.

6 18. On February 2, 1999 Respondent did provide Petitioner with an
7 application form for a new staff privilege not the renewal. This form
8 would be given to new applicants. However as of February 1, 1999 there
9 were no openings. The OB-GYN department was closed to new applicants.
10 Therefore Petitioner's receipt of a form which he could have submitted
11 as a new applicant would not have helped him since the department was
12 closed to new applicants.

13 19. As a result of the foregoing Petitioner was compelled to file
14 a lawsuit on April 6, 1999 challenging the conduct of Respondent as
15 described herein above. The caption of the case is Mileikowsky v.
16 Tenet HealthSystem, etc., et al., BS056525.

17 20. On April 20, 1999 the Superior Court (the Honorable Robert
18 H.O'Brien) granted Petitioner a preliminary injunction over the
19 objection of Respondent Tenet HealthSystem, Inc., Encino-Tarzana
20 Regional Medical Center, and its attorneys, Irvin, Cohen and Jessup and
21 Mark T. Kawa.

22 21. Among other things, the preliminary injunction restrained
23 Respondent Tenet HealthSystem, Inc., Respondent Encino-Tarzana Regional
24 Medical Center, and "their respective agents, servants, employees . . .
25 and all persons acting in concert or participating with them," from
26 engaging in the following acts:

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1 "A. Excluding or preventing Petitioner
 2 Gil N. Mileikowsky, M.D. from exercising
 3 the privileges to which he was
 4 reappointed on April 17, 1997 as an
 5 attending physician and surgeon, an
 6 active status member of the medical staff
 7 of Encino-Tarzana Regional Medical
 8 Center;

9 B. Excluding or preventing Petitioner
 10 Gil N. Mileikowsky, M.D. from admitting
 11 treating or performing obstetrical
 12 services or surgery upon patients at
 13 Encino-Tarzana Regional Medical Center;

14 C. Publishing, disseminating,
 15 distributing, communicating or otherwise
 16 transmitting to any person or entity,
 17 directly or indirectly, orally or in
 18 writing, a report of, or any information
 19 concerning, the "purported voluntary
 20 resignation" of medical staff privileges
 21 of Petitioner of Petitioner Gil N.
 22 Mileikowsky, M.D. at Encino-Tarzana
 23 Regional Medical Center deemed effective
 24 by Tarzana's governing board on February
 25 25, 1999;

26 D. Publishing, disseminating,
 27 communicating, concerning or otherwise
 28 transmitting to any person or entity
 directly or indirectly, orally or in
 writing, any report or of or information
 concerning any action taken concerning
 Petitioner Gil N. Mileikowsky, M.D. by
 Encino-Tarzana Regional Medical Center on
 or about February 25, 1999, including
 rejection of the challenge by Petitioner
 Gil N. Mileikowsky, M.D. of the alleged
 'voluntary resignation' of his medical
 staff membership at Encino-Tarzana
 Regional Medical Center."

21 22. On April 20, 1999 the preliminary injunction was served upon
 22 Respondent Tarzana.

23 23. Respondent Tarzana did not want to comply with the
 24 preliminary injunction and did not want to reappoint Petitioner.
 25 Respondent did not want Petitioner to enjoy staff privileges. Thus,
 26 Respondent Tarzana embarked upon a scheme to violate the provisions of

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1 the preliminary injunction and the spirit of the preliminary
 2 injunction. Among the things Respondent Tarzana did was amend the By-
 3 Laws of Tarzana in the Summer of 1999.

4 24. Prior to April 20, 1999, Article VII of the By-Laws of
 5 Respondent hospital provided in Section 2 a list of conduct which could
 6 be utilized by the hospital in determining whether to grant or deny
 7 staff privileges. In particular, Section 2 of Article VII provided as
 8 follows:

9 "A. Any person may provide information
 10 to the hospital or medical staff about
 11 the conduct, performance, or competence
 12 of any member. When reliable information
 13 indicates a member may have exhibited
 14 acts, demeanor, or conduct reasonably
 15 likely to be:

1. Detrimental to patients' safety or to
 16 delivery of quality patient care within
 17 the hospital;
2. Unethical;
3. Contrary to the medical staff or
 18 hospital By-Laws, rules and regulations,
 19 standards or policies and procedures; or
4. Below applicable medical staff or
 20 hospital professional standards;

21 A request for an investigation or
 22 corrective action against such member may
 23 be requested by any member of the medical
 24 staff or the governing board, or the
 25 chief executive. All requests for
 26 corrective action shall be in writing,
 27 shall be made to the executive committee,
 28 and shall be supported by reference to
 the specific activities or conduct which
 constitute the grounds for request."

25. After April 20, 1999, Respondent amended Section 2 of the By-
 Laws quoted above to insert item number 5 to read as follows:

"5. Disruptive to the functioning of the
 hospital or interfering with the
 provision of quality patient care."

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1 26. Item No. 5 quoted above was not in the By-Laws when Judge
2 O'Brien issued the injunction on April 20, 1999. It was specifically
3 added to be directed at Petitioner.

4 27. Respondent Tarzana also changed Article VI, Section G of the
5 By-Laws in response to the injunction issued by Judge O'Brien. At the
6 time the injunction was issued, April 20, 1999, paragraph G read, in
7 part, as follows:

8 "Recommendation shall also be based upon
9 the practitioner's compliance with legal
10 requirements applicable to the practice
11 of his/her profession, with the medical
12 staff By-Laws, rules and regulations and
13 hospital policies, review and evaluation
14 of the care provided by the practitioner,
15 physical and/or mental impairment which
16 might interfere with the applicant's
17 ability to carry out clinical privileges
18 as requested, and provision of accurate
19 and complete information to enable the
20 medical staff to evaluate his/her current
21 competency and qualifications."

22 29. Respondent added the following language to the paragraph
23 quoted above:

24 "Evaluation of interactions with hospital
25 staff and peers."

26 30. This language is inserted in paragraph G so that paragraph G
27 now reads as follows:

28 "Recommendation shall also be based upon
29 the practitioner's compliance with legal
30 requirements applicable to the practice
31 of his/her profession, with the medical
32 staff By-Laws, rules and regulations and
33 hospital policies, review and evaluation
34 of the care provided by the practitioner,
35 evaluation of interactions with hospital
36 staff and peers, physical and/or mental
37 impairment which might interfere with the
38 applicant's ability to carry out clinical

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privileges as requested, and provision of accurate and complete information to enable the medical staff to evaluate his/her current competency and qualifications."

31. After the court issued the preliminary injunction on April 20, 1999, Respondents purported to process Petitioner's application in accordance with the By-Laws. Article VI governs the reappointment process. Paragraph B of VI of the By-Laws provides as follows:

"The medical staff office shall transmit the completed reappointment application form and supporting materials to the Credentials Committee, to the Chair of the Clinical Department to which the staff member belongs and to the Chairman of any other department in which the member has or requests privileges."

32. While Respondent Tarzana continued to handle Petitioner's reappointment application pursuant to the preliminary injunction Petitioner was able to continue to exercise his staff privileges at Tarzana.

33. By passing the Department OB/GYN, in the presence and under the direction of Tenet's attorneys, Mark Kawa and Jay Christensen, on January 11, 2000 the Medical Executive Committee of Respondent Tarzana voted to deny Petitioner's reappointment application without notice to Petitioner. He was not told of the meeting and not invited to appear.

34. Petitioner appealed the decision of the Medical Executive Committee of January 11, 2000 denying his reappointment application to a Judicial Review Committee convened pursuant to the By-Laws. A Judicial Review Committee began hearing evidence in October of 2000 with respect to the reappointment application - Hearing - I.

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1 35. While Petitioner's reappointment application was yet to be
2 finally resolved, Respondent Tarzana blatantly violated once again the
3 preliminary injunction by purporting to summarily suspend Petitioner's
4 privileges on November 16, 2000. No reasons were given for the
5 summary suspension. On November 28, 2000 the Medical Executive
6 Committee of Respondent Tarzana upheld the summary suspension of
7 Petitioner's staff privileges in violation of the By-Laws, in violation
8 of the preliminary injunction, and in violation of the due process
9 clauses of the federal and state constitutions.

10 36. On November 30, 2000, Hearing - I was illegally aborted by
11 its alleged Hearing Officer, Lowell Brown (attorney of Tenet who
12 refused to recuse himself during his voir dire) and its Hearing
13 Committee in violation of Tarzana's By-Laws, California and federal
14 laws.

15 37. Pursuant to the By-Laws, Petitioner was then provided with
16 what Respondent Tarzana deemed to be another hearing. After the
17 Appeal Body of Tarzana remanded on April 26, 2001 the illegal conduct
18 of Hearing - I's committee and its alleged Hearing Officer, Lowell
19 Brown, the "bogus charges" with respect to the reappointment denial
20 were combined with the fabricated charges with respect to the summary
21 suspension. Respondent Tarzana purported to provide Petitioner with a
22 combined hearing regarding his reappointment application and the
23 summary denial of his staff privileges with a new Hearing Officer and a
24 new Hearing Committee, i.e., Hearing - II.

25 38. Respondent Tarzana, in violation of the By-Laws and in
26 violation of the Due Process Clauses of the Fourteenth Amendment to the

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1 United States Constitution and Article I, Section 15 of the California
 2 Constitution, terminated ("aborted") Petitioner's combined hearing-II.
 3 The "hearing" was illegally suspended on March 30, 2002 by hearing
 4 officer Daniel H. Willick, who failed to obtain the approval of the
 5 Judicial Review Committee. Willick purported to end the hearing
 6 because, among other things, Petitioner allegedly delivered copies of
 7 his brief to each member of the Judicial Review Committee. In view of
 8 the decision taken on April 26, 2001 by a previous Appeal Body at
 9 Tarzana in favor of Petitioner, Willick had notice that he had no such
 10 authority under the By-Laws or under the Constitutions of the United
 11 Stats and the State of California. The denial of Petitioner's right
 12 to exhaust his administrative remedies also violated the provisions of
 13 the preliminary injunction previously issued by the Court.

14 39. Pursuant to the By-Laws Petitioner attempted to exhaust his
 15 administrative remedies by appealing the March 30, 2002 ruling of Mr.
 16 Willick by appealing to the Appellate Review Body. The Appellate
 17 Review Body upheld the illegal denial of Petitioner's right to complete
 18 his hearing by Willick in a decision of July 25, 2002.

19 40. In aborting Petitioner's hearing without ruling on the merits
 20 of Petitioner's qualifications, Respondent violated Petitioner's due
 21 process rights under the federal and state constitutions and also
 22 violated the By-Laws. To the extent that Respondent complied with the
 23 amended By-Laws Respondent violated the provisions of the preliminary
 24 injunction by purporting to enforce amendments to the By-Laws which
 25 were added after the issuance of the preliminary injunction.

26 41. In depriving Petitioner of a completed hearing, Respondent did

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1 not proceed in the manner required by law. The decision of Willick to
2 interrupt the hearing was not supported by substantial evidence and the
3 findings of Mr. Willick, to the extent that his statement can be
4 construed as findings, did not support the decision to abort the
5 hearing.

6 42. The denial of Petitioner's right to a hearing without reaching
7 the merits has caused Petitioner substantial damages but Petitioner has
8 no remedy in the ordinary course of law because his remedy is under
9 Code of Civil Procedure Section 1094.5 and 1085.

10 44. Hearing Officer Daniel H. Willick clearly violated
11 Petitioner's rights and a remand to the Judicial Review Committee with
12 Willick presiding over the Committee will not accomplish anything.
13 Petitioner needs to have his matter remanded to the Judicial Review
14 Committee so that it complete the hearing within 30 days with a new
15 hearing officer with no biases, no prejudices, who will abide by the
16 By-Laws, California and federal laws. Petitioner requests this
17 Honorable Court to appoint an administrative law judge from the Office
18 of Administrative Hearings pursuant to the California Administrative
19 Procedure Act.

20 44. In the alternative, Petitioner would like this Honorable Court
21 to conduct the administrative hearing in the form of a trial pursuant
22 to Code of Civil Procedure Section 1094.5, which allows the Court to
23 take evidence if that evidence was not permitted to be introduced at
24 the hearing. Petitioner is confident that either the reassembled
25 Judicial Review Committee, which heard part of the case, or a Superior
26 Court judge, will afford Petitioner due process and will render a fair

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1 decision on the merits. This Court is in a position to review the
 2 limited record already made before Willick prematurely aborted the
 3 "hearing." The evidence already demonstrated that there was no basis
 4 for the summary suspension.

5 45. Petitioner also requests that this Honorable Court retain
 6 jurisdiction to award damages pursuant to Code of Civil Procedure
 7 Section 1095.

8 46. Petitioner has been compelled to retain attorneys to assist
 9 and/or represent him in these proceedings. Upon the successful con-
 10 clusion of this case Petitioner will seek an award of attorney's fees.

11 SECOND CAUSE OF ACTION:

12 ADMINISTRATIVE MANDAMUS

13 47. Petitioner incorporates by reference Paragraphs 1 through 46
 14 of his First Cause of Action.

15 WEREFOR, PETITIONER PRAYS FOR JUDGMENT AS FOLLOWS:

16 1. That a peremptory writ of administrative mandamus and writ of
 17 mandate issue under the seal of this Court directing Respondent to
 18 complete his Judicial Review Committee hearing and exhaust his
 19 administrative remedies within 30 days before an administrative law
 20 judge at the Office of Administrative Hearings, without any security
 21 guards and allow Petitioner to be represented at the hearing by an
 22 attorney as Tarzana's By-Laws do not allow Petitioner to be represented
 23 by an attorney at a hearing.

24 2. For a writ of administrative mandate and mandamus compelling
 25 Respondent to set aside its order denying Petitioner's reappointment
 26 application and an order directing Respondent to set aside its summary

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1 suspension of Petitioner's clinical privileges, without any of
2 Tarzana's security guards' stalking Gil N. Mileikowsky, M.D., since
3 there is no complaint from any patient nor any negligence cause of
4 action against Petitioner let alone any alleged imminent danger;

5 3. For an order directing Respondent to readmit Petitioner to
6 full and complete staff privileges as an active staff member;

7 4. For damages according to proof;

8 5. For punitive damages for Respondent's willful acts in
9 depriving Petitioner of staff privileges, for depriving Petitioner of
10 the opportunity to practice medicine at Tarzana Hospital since November
11 16, 2000;

12 6. For punitive damages for Respondent's willful acts in denying
13 Petitioner's right to a hearing and exhaust his administrative
14 remedies;

15 7. For such other and further relief as the Court deems just and
16 proper as Respondents fraudulently fabricated bogus charges and falsely
17 pretended these proceedings represent an alleged Medical Peer Review.
18 Here again, Respondents violated Tarzana's By-Laws, California and
19 federal Health Care Quality Improvement Acts (HCQIA).

20 8. For punitive damages for fraud;

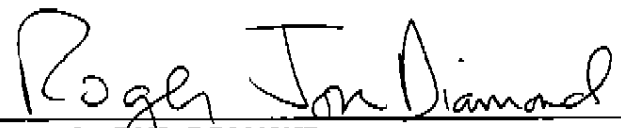
21 9. For publication of such order and providing it verbatim to all
22 physicians on staff at Tarzana, all nurses and personnel of Tarzana,
23 posting on all of Tarzana's bulletin boards within 24 hours of issuing
24 the order with proof of such publication delivered to attorney Roger
25 Jon Diamond within 48 hours;

26 10. For publication of such order verbatim to the California

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1 Medical Board, the California Department of Health Services (DHS), the
 2 California Institute for Medical Quality (IMQ), the Joint Commission on
 3 Accreditation of Healthcare Organizations (JCAHO), the National Data
 4 Bank, West Hills Hospital, Century City Hospital and all other
 5 hospitals and institutions, insurance carriers who were provided by
 6 Tarzana information regarding Petitioner's suspension of privileges
 7 and/or denial of his reappointment at Tarzana within 24 hours of
 8 issuing this order with proof of such publication delivered to attorney
 9 Roger Jon Diamond within 48 hours.

Respectfully submitted,



ROGER JON DIAMOND
 Attorney for Petitioner

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VERIFICATION
Los Angeles

STATE OF CALIFORNIA, COUNTY OF Los Angeles First Amended Petition for Writ of Administrative Mandamus

I have read the foregoing First Amended Petition for Writ of Administrative Mandamus Pursuant to Code of Civil Procedure Section 1094.5, et seq and know its contents.

CHECK APPLICABLE PARAGRAPH

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am an Officer a partner _____ a _____ of _____

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am one of the attorneys for _____ a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on November 8, 2002 ~~xxxxxx~~ Santa Monica California
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

GIL N. MILEIKOWSKY, M.D. _____
Type or Print Name Signature

ACKNOWLEDGMENT OF RECEIPT OF DOCUMENT
(other than summons and complaint)

Received copy of document described as _____

on _____ 19 _____

Type or Print Name

Signature

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF Los Angeles, State of California.

I am employed in the county of Los Angeles. I am over the age of 18 and not a party to the within action; my business address is: _____

2115 Main Street, Santa Monica, CA 90405

On Nov. 8, 2002 ~~xx~~, I served the foregoing document described as First Amended Petition for Writ of Administrative Mandamus Pursuant to Code of Civil Procedure Section 1094.5 and Tradational Mandamus Under Code of Civil Procedure Section 1085 on interested parties in this action

- by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list;
- by placing the original a true copy thereof enclosed in sealed envelopes addressed as follows:

Jay Christensen, Esq.
Christensen & Auer
225 South Lake Ave. 9th Fl.
Pasadena, CA 91101

Peter Rank
K&R Law Group
350 S. Grand Ave., 21st Fl.
Los Angeles, CA 90071

(BY MAIL) I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Santa Monica, California.

Executed on November 8, 2002 ~~xxxxxx~~ Santa Monica, California.

(BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the offices of the addressee. Executed on _____, 19 _____, at _____, California.

- (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
- (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Judith A. Burgdorf
Type or Print Name

Judith A. Burgdorf
Signature