

# Opinion

## DUE PROCESS

# First things first in peer review

**T**he summary suspension of a physician's hospital privileges is a crisis response to patients put in peril. In California, where an important legal case is being played out on the issue, the standard set by law is one of "imminent danger" to patients.

So how does it figure that a summary suspension — the abrupt barring of a doctor from practice at a hospital — can be based on a list of allegations that rapidly grew to 37 items, some going back as far as 10 years and including charges with no direct connection to recent patient care? ("Suspended California physician's hearing put on hold" *AMNews*, June 18).

That question is at the heart of a friend-of-the-court brief by the California Medical Assn. and the AMA in connection with an appeal filed by ob-gyn Gil N. Mileikowsky, MD. He has gone to court to finally get a peer review hearing on his November 2000 summary suspension from Tenet HealthSystem's Encino-Tarzana Regional Medical Center. (Tenet has said it does not comment on pending litigation. In a recent court filing, Tenet and the other defendants strongly stand by the appropriateness of their actions in this matter.)

The CMA-AMA brief takes no sides on the underlying disputes of the case but strongly contends that a two-part process is required. Start with an expedited, limited-scope hearing — in this case there are charges

proximate to the time the doctor was suspended — on whether the drastic step of a summary suspension is warranted. Unless, at the expedited hearing, there is a finding of imminent danger, the physician could continue to practice until a full hearing is held on termination of staff privileges.

Peer review is a fact of life in medicine. In fact, the profession often takes pride that it can effectively police itself. But if not conducted fairly and in accordance with the law, peer review can wrongfully exclude physicians from medical staffs and deprive patients of access to care.

The CMA-AMA brief paints a broad context for physician concerns over the current state of peer review and why this case may set an important precedent. Over the years, largely due to hospital vulnerability to lawsuits, peer review has changed. It has gone from an informal system of review to one often driven by legal liability considerations. The result, says the brief, "is added pressure on hospitals to make conservative staff credentialing decisions," to bring in lawyers early and often, and to use the tactic of "piling on" charges to overwhelm a doctor's ability to dispute a disciplinary action.

Certainly, some doctors should be kept away from patients. But this remedy can come at a very high price. It breaks apart the patient-doctor relationship and may delay treatment (Dr. Mileikowsky is a fertility specialist with patients who presumably are already fighting the biological clock). Clearly, such a result also can destroy a doctor's reputation and livelihood.

Such high stakes demand high standards. Are 37 charges across over 10 years a sign of thoroughness or an intimidation tactic inconsistent with the abrupt nature of a summary suspension? The medical community awaits an answer from the California Court of Appeal. ♦

## Suspended California physician's hearing put on hold

**Some say peer review is jeopardized after a hospital revokes a doctor's privileges and keeps delaying an inquiry on the charges.**

By [Tanya Albert](#), *AMNews* staff. June 18, 2001.

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More than six months after a San Fernando Valley, Calif., obstetrician-gynecologist had his staff privileges immediately suspended, he is still waiting for the hospital to hold a hearing on the charges.

Now Gil N. **Mileikowsky**, MD, is asking the Court of Appeal of the State of California to help resolve when Tenet HealthSystem is going to provide him the due process to which he's entitled. Dr. **Mileikowsky's** lawsuit also questions whether the hospital had the right to "summarily suspend" his privileges in the first place.

With this article  
▪ [Case at a glance](#)

The harsh suspension -- where a physician's privileges are immediately revoked without warning -- is intended for doctors who are an "imminent danger" to patient health and safety. The charges the hospital has levied against him don't seem to support that, court documents say.

"This is outrageous conduct by the hospital," said neurologist Robert L. Weinmann, MD, president of the Union of American Physicians & Dentists. "What Tenet HealthSystem has done amounts to a call for arms, and physicians ... should take heed of this case and get involved."

UAPD, the AMA and the California Medical Assn. filed briefs supporting Dr. **Mileikowsky's** right to a quick hearing.

In November 2000, Encino-Tarzana Regional Medical Center executives told Dr. **Mileikowsky** he no longer had medical staff privileges at the hospital. Dr. **Mileikowsky** wasn't given prior notice and at the time wasn't given a specific reason for the suspension, according to court documents.

About two weeks later, at an informal interview with the hospital's medical executive committee, he received a list of seven charges. The list contained several items that related to events that happened months earlier and in one case, two years earlier.

After Dr. **Mileikowsky** made repeated requests for an expedited hearing, the hospital sent him a letter Dec. 22, 2000 that outlined 37 charges with at least one charge dating back 10 years. The letter said the charges would be addressed at an administrative hearing on the Medical Executive Committee's recommendations.

But more than six months after he was suspended, there is still not a date

for a hearing, and a panel hasn't been chosen, said Ethan P. Schulman, attorney for Dr. **Mileikowsky**. The physician had privileges at only one hospital and essentially has been unable to work since the suspension.

"Whatever a reasonable time is, seven months is not a reasonable time," he said.

A Tenet spokesman said it was their policy not to comment on ongoing cases.

## **Peer review process jeopardized**

The AMA and CMA say an unfair peer review process jeopardizes the system as a whole.

A fair system is needed to ensure that doctors aren't wrongly removed from hospital medical staffs, said CMA attorney Catherine I. Hanson. "There's got to be a reasonable check," she said.

That's what the medical associations advocate in their brief. "When a medical staff refuses to provide a fair and expedited hearing solely as to whether a summary suspension is justified, the court should intervene to protect the peer review process, to protect physicians and their patients and to determine whether the summary nature of the disciplinary action is warranted."

And in this case, the AMA and CMA also question whether a summary suspension was justified. Suspensions should be used only as a last resort in extreme cases where it's absolutely necessary to protect patients from real and impending harm, said the associations.

"Because of these draconian ramifications, summary suspensions must not be utilized routinely to deal with concerns arising from a physician's medical practice or behavior," the groups said in the brief. "Normal peer review channels with presuspension hearing procedures are tailored to handle these cases appropriately and expeditiously."

According to court documents, the 37 charges against Dr. **Mileikowsky** don't appear to be anything that put patients in "imminent danger."

Of the charges, only two relate to quality of patient care. In those two cases, the hospital doesn't contend that either patient was harmed, according to court documents.

In October 2000, Dr. **Mileikowsky** did not follow hospital policy in performing a vacuum extraction delivery. In a November 2000 case, he exhibited "bizarre" behavior during a circumcision, accompanied by a "serious surgical mishap," according to court documents.

Dr. **Mileikowsky** was able to show that the baby was born healthy without lasting complications and that there weren't any problems with the circumcision, court documents say.

Also, with some of the charges dating back as far as 10 years, attorney Schulman also questions how that can be "imminent" danger.

"The evidence is this is a doctor who offended the management of the hospital, and they decided they didn't like him and wanted to get rid of him," Schulman said. "They aren't right to summarily suspend him."

[Back to top.](#)

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#### ADDITIONAL INFORMATION:

### Case at a glance

*Gil N. Mileikowsky, MD, v. Tenet HealthSystem, et al.*

**Venue:** Court of Appeal of the State of California, Second Appellate District, Division 4.

**At issue:** Whether physicians who are "summarily suspended" are entitled to a prompt hearing and whether incidents that happened years ago or incidents that have nothing to do with the quality of patient care meet the "imminent danger" standard for summary suspension.

**Potential impact:** A published ruling in favor of Dr. Mileikowsky could set precedent to help ensure physicians get due process.

[Back to top.](#)

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