

ENCINO-TARZANA REGIONAL MEDICAL CENTER

JUDICIAL REVIEW HEARING

In the Matter of)
)
GIL N. MILEIKOWSKY, M.D.)
)
_____)

VOLUME VII
(Pages 769 - 921)

CEMENTED COPY

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Monday, September 24, 2001



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I N D E X

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
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FOR THE MEC

Gerald Clute		775	899, 916	904
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Examination by Dr. Nassoura - page 893

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MEC EXHIBITS REFERENCED

118 12-24-99 Clute letter to Mileikowsky

106 7-16-99 credentials committee meeting
minutes

121 7/4-6/00 ETRMC security record

DOCUMENTS ATTACHED BY DR. MILEIKOWSKY

Mileikowsky v. Tenet Preliminary Injunction

8-28-00 Hafer memo to Office Managers

1 CROSS-EXAMINATION (Resumed)

2 BY DR. MILEIKOWSKY:

3 Q Good evening, Jerry. I still can call you
4 Jerry; right?

5 A Please.

6 Q All right.

7 Last time we were trying to explore what might
8 be your perception, because we know each other for a
9 long time, and I know that you are capable of lateral
10 thinking and beyond a small, narrow angle, and I was
11 trying to explore how you would perceive an escort on a
12 physician, any physician, as threatening from the point
13 of view of the physician.

14 Have you ever thought about it?

15 A To any physician, whether it would be
16 threatening?

17 Q Has there been in your career of -- what? -- 15
18 or 20 years in the hospitals?

19 A Closer to 27.

20 Q 27 since you've been in X ray.

21 A Right.

22 Q In 27 years in several hospitals, not just one,
23 do you recall ever seeing any physician being escorted
24 by uniformed guards?

25 A Never.

1 Q Never.

2 Yet if I recall -- correct me if I'm wrong --
3 was that your suggestion or was that the suggestion of
4 someone else to have me escorted?

5 A That's a good question. I don't believe that I
6 initiated it. I supported it because I believed that it
7 was the right thing to do, but don't know if I initiated
8 it.

9 Q Who initiated it, to the best of your
10 recollection?

11 A I believe Mr. Surowitz initiated it.

12 Q And where did Mr. Surowitz get the idea? Do
13 you know who suggested it to Mr. Surowitz?

14 A I don't know.

15 Q Now, why at the time did you think it was a
16 good idea?

17 A Well, the previous experience where you were in
18 the operating room and my perception of that particular
19 event back in December of '99 was that it was a hostile,
20 aggressive, very uncomfortable act, and there were
21 several employees that were affected deeply by it. And
22 I had heard by them when I was there that they felt
23 threatened. So I considered it an appropriate act.

24 Q But you did say last time that you never felt
25 threatened by me, and we know each other for 15 years.

1 A That's true.

2 Q You also said that you were aware of the fact
3 that on December 17, '99, I asked for you; correct?

4 A Right.

5 Q But I'm still not clear about, number one,
6 knowing that I asked for you, and in view of the fact
7 that we have had a very friendly rapport for over 15
8 years, why haven't you come over to me after the surgery
9 or left a message where I could have called you after
10 the surgery?

11 A Actually, I went up to the operating room, and
12 at the time there were enough employees -- I don't know
13 how many, but there were enough employees that were very
14 disturbed, a couple of doctors that were very
15 disturbed -- that it occurred to me that in my role,
16 that I needed to be supportive of a protective
17 environment where people don't have to be abused. And I
18 really thought it was an abusive and terrible event,
19 and it was frightening to a lot of people.

20 So from my perspective it seemed appropriate.

21 Q But, Jerry, you know that a coin has more than
22 one side. Have I ever been abusive to you in 15 years?

23 A No.

24 Q All right.

25 Have I ever threatened you in any way or form

1 or shape?

2 A No.

3 Q Have you felt threatened by me in any form or
4 shape?

5 A No.

6 Q So still try to answer my question because the
7 question was --

8 A Sure.

9 Q -- why didn't you try to find out if I had
10 called you from the operating room, I must have -- did
11 you perceive that I was disturbed by the situation?
12 Troubled is appropriate.

13 A Well, at the time my chief concern, to be
14 honest, was the staff. It wasn't a personal thing. I
15 wasn't personally angry or felt threatened by you, but I
16 do know that the staff did. Whether I feel or not
17 didn't seem relevant.

18 So did I then extend myself to call you up?
19 No. I think that the event was a poor event and spoke
20 for itself.

21 Q Let me ask you a broad question. In 15 years
22 have you ever seen a surgeon call a COO of the hospital,
23 stat?

24 A Well, yeah. A number of reasons.

25 Q And how did the COO respond? Did he ever talk

1 When you wrote that, have you conceived the
2 possibilities that one of the members of your staff
3 actually jeopardized, potentially, the quality care and
4 delivery of that quality of care that day?

5 A No.

6 Q It did not even --

7 A No.

8 Q Okay. Next?

9 A -- including members of the medical staff. It
10 is quite disheartening to me when I am compelled to
11 write a letter of admonition and warning such as
12 this letter.

13 ' Continue?

14 Q Yes, please.

15 A Your assault on the director services --

16 Q Stop right there.

17 What is your definition of "assault" that day
18 when you wrote that? Was that your word, or was that
19 Mr. Christensen's suggestion to use that word?

20 A I still think assault is the right word.

21 Q What was your understanding of the word
22 "assault" when you wrote that or you had it written in
23 your letter?

24 A The fact that another physician had to insert
25 himself between you and the director of the operating

1 room, to me, was an attempt to prevent you from doing
2 harm to this person.

3 Q First of all, there were compounded questions,
4 so let me try to rephrase it clearly.

5 Who came up with the idea of using the word
6 "assault"? Was it Mr. Christensen?

7 A These are my words, and I will stand by my
8 words.

9 Q Okay. So try to focus on the question.

10 When you wrote that and you chose that word,
11 what -- let's say that you're Webster's Dictionary. In
12 your mind, what was your understanding of the meaning of
13 the word "assault"?

14 Don't talk about the incident. Just let's say,
15 which I am, grown in a different language, and I ask,
16 "Jerry, what does the word 'assault' mean?"

17 A My interpretation of it is that when a person
18 feels that -- whether through verbiage or physical
19 contact that that person feels threatened, then that is
20 assaultive behavior.

21 Q So in your concept at that time, it's not for
22 the person that is doing the act that is important, but
23 it's how the other person in their mind perceives that
24 act; is that right?

25 A You know, I think that they are intertwined.

1 But, you know, I know how they felt, the staff, and how
2 Ms. Hafer felt. And I suppose she's the one that felt
3 that you were assaulting, so did Dr. Hudosh, so do I, so
4 did the staff there.

5 So your behavior -- I don't see how you can
6 separate one from the other.

7 Q You mentioned physical contact. To the best of
8 your knowledge, was there any physical contact between
9 myself and anyone, including Ms. Hafer, on December 17,
10 1999?

11 A Not that I know of.

12 Q Let's continue. And conduct towards --

13 A . . . towards another member of the medical
14 staff was ill-tempered and confrontational and is
15 entirely inappropriate and will not be tolerated.

16 Q Stop one second.

17 When you wrote the word "confrontational," have
18 you ever conceived -- again, I'm asking the question
19 because I know you a long time; otherwise I wouldn't
20 even waste my time or your time. And I know you like to
21 read a lot of books of different kind of thinking and
22 cultures beyond -- out of the box.

23 When you used the word "confrontational," have
24 you ever conceived that actually Ms. Hafer's conduct was
25 confrontational or may have cause to be interpreted by

1 someone else as confrontational?

2 A Well, she did have to confront you as to the
3 rules and regulations about how medical staff shall
4 proceed with doing cases, but I wouldn't called it
5 confrontational. Confronting is different, to me, than
6 confrontational.

7 Q But you do -- correct me if I'm wrong, but you
8 do state presently that I did not walk out of the
9 operating room to confront her; she came into the
10 operating room, and whatever way, form, or shape, rules
11 and regulations, whatever it is was the subject and the
12 cause of the confrontation.

13 So when you use the word "confrontational," was
14 it a dual-sided option? Or was it only one-sided
15 option?

16 A Well, you said something that I don't agree to,
17 and that's when you say that she was being
18 confrontational and she came into the room. That's her
19 job. We pay Marlene and other people to assure that we
20 abide by the bylaws and that people are privileged to do
21 the procedures that they do.

22 Q All right.

23 Since you're talking about job description,
24 whose job is it to verify the credentials of an
25 assistant surgeon in this hospital?

1 Do you want me to help you, tell you what page
2 it's on? I think it's page 46 of the rules and
3 regulations. It is page 46 on top. Would you please
4 read us just those two lines.

5 A This is the general rules and regulations --

6 Q These are the medical staff bylaws and rules
7 and regulations, so it's towards the end, page 46.

8 A It starts off "Staff surgeons are permitted"?

9 Q No. Page 45 says -- "Surgical Assistant,
10 Department of Surgery" is the paragraph.

11 A Right. And then so it first starts here:

12 The need for and selection --

13 Q Correct. Read it slowly, please.

14 A The need for and selection of an appropriate
15 physician assistant shall be at the primary
16 surgeon's discretion.

17 Q Stop right there.

18 Was Ms. Hafer the primary surgeon on
19 December 17, '99?

20 A No.

21 Q Thank you. Please read the next sentence.

22 A The assistant must be granted privileges to
23 surgically assist by the department of surgery.

24 Q Okay. Is Ms. Hafer the department? Is the
25 department physicians or nurses?

1 When it says "department of surgery," who
2 basically has the qualifications to determine whether or
3 not an assistant surgeon is qualified to assist? Is
4 that determined by physicians in the department of
5 surgery, or is that determined by nurses in the
6 department of surgery?

7 A Qualifications are determined by physicians.

8 Q Thank you.

9 So where does it say in the rules and
10 regulations that Ms. Hafer is responsible for assisting
11 surgeons' qualifications? Nowhere. Correct?

12 A No. That's not what she was doing.

13 Q Well, you said she was doing her job. It
14 doesn't say so anywhere that it's her job.

15 The job of credentialing -- you just said it
16 yourself --

17 A Uh-huh.

18 Q -- is determined by the physicians of that
19 department, not the nurses; correct?

20 A This is true.

21 Q Thank you.

22 Please read the next paragraph.

23 A General rules and regulations --

24 Q No. Forget that. I'm sorry. The next
25 paragraph of your letter. "As a member of the medical

1 Q Why?

2 THE HEARING OFFICER: That's irrelevant. He's
3 never been a member of the union. I know you're getting
4 up to issues involving the union here, so continue.

5 DR. MILEIKOWSKY: All right.

6 Q Can you tell us what is your knowledge of
7 Ms. McDaniel in the union of the nurses in this
8 hospital?

9 A She is a steward -- I believe a shop steward
10 for the union at this hospital for the nurses union.

11 Q Can you educate us and tell us what is a "shot"
12 steward.

13 THE HEARING OFFICER: Shop, S-H-O-P.

14 BY DR. MILEIKOWSKY:

15 Q Shop steward. What is that?

16 A She's the representative for nurses --
17 actually, not just nurses; there are other professionals
18 within the union -- that if they run into a problem or
19 if they have questions or they want to be represented or
20 there's -- if they want to have another person there
21 during disciplinary actions, they go and ask for this
22 person to be present to help to represent them.

23 Q And how long, to the best of your knowledge,
24 has Ms. McDaniel been representing as a shot --

25 THE HEARING OFFICER: Shop.

1 THE WITNESS: Shop steward.

2 BY DR. MILEIKOWSKY:

3 Q -- shop steward of the union?

4 A I don't know. As long as I've been here, I
5 believe.

6 Q Now, educate me. Is shop steward the top
7 position for the union representative here in the
8 hospital?

9 A No. They have another part of the structure
10 where they have the president -- I don't know the
11 terminology, but I think it was the president
12 representing the staff at the hospital.

13 Q And the president is also an employee of the
14 hospital --

15 A Yes.

16 Q -- or someone else?

17 A No.

18 And I don't know if that's the exact term, but
19 it is somebody that represents, you know, in
20 negotiations and all that other business. So they
21 conduct all the representation for all of the union
22 members.

23 So there is somebody that is slightly above
24 that cadre of people, or the shop steward.

25 Q Now, are you aware of any animosity or

1 hostility between myself and Ms. McDaniel going all the
2 way back to June, '92, nine years ago?

3 A I have no idea.

4 Q Have you ever discussed with Ms. McDaniel her
5 feelings and thoughts about me, as a union
6 representative?

7 A Could you ask me that one more time.

8 Q Sure. Have you ever discussed with Ms. Karen
9 McDaniel her feelings about me, as a representative of
10 the union?

11 A Well, not her feelings, but she came to me
12 stating that the nurses in L and D, labor and delivery,
13 after November 10 -- that they were fearful. And she
14 asked, as a representative of the union, for
15 administration -- meaning me representing
16 administration -- to take action to prevent that from
17 occurring in the future.

18 THE HEARING OFFICER: This is November 10,
19 2000?

20 THE WITNESS: Pardon?

21 THE HEARING OFFICER: This is November 10,
22 2000?

23 THE WITNESS: It was after that November 10,
24 2000 event, yes.

25 / / /

1 BY DR. MILEIKOWSKY:

2 Q Has Ms. McDaniel or any other member of the
3 union approached the administration, or anyone else that
4 you know of, in that frame of mind?

5 A Approached in terms of just any communication?

6 Q Any communication.

7 A After that I got a letter from the union
8 stating pretty much what I just said a minute ago; and
9 that is, that the union represents the staff here and
10 views administration as having the role of protecting
11 its staff. And they also feel that they had the role to
12 protect their staff. And it was directly related also
13 to that November 10, 2000 incident.

14 Q So if I understand you clearly, no one in this
15 hospital administration, physician, or whoever it is --
16 medical staff, whatever -- has not had any
17 communications regarding me in any way, form, or shape
18 from the union or a representative of the union prior to
19 November 10, 2000; is that correct?

20 A Not to me.

21 Q Or anyone that you know of?

22 A I wouldn't know.

23 Q Okay. And nobody approached you from the union
24 after the alleged incident of December 17, '99?

25 A No.

1 A You didn't send it to me, though. I mean, were
2 you asking for me to respond to a letter you sent to
3 Dr. Dosik?

4 Q That was not the question of Dr. Nassoura.
5 Dr. Nassoura's question was: Did Dr. Mileikowsky ever
6 provide you his side of the story? And you said "No."

7 A You had not.

8 Q So because I sent you a copy of a letter that
9 I'm sending to Dr. Dosik responding to both of your
10 letters at the same time, that's not a response to your
11 question?

12 A Did you describe in the letter the text of the
13 events?

14 Q Yes. It was a pretty thick letter.

15 A Well --

16 Q Okay. Let me ask you a completely different
17 question.

18 Do you have any bylaws, rules, and regulations
19 in front of you -- or any time since you have been, in
20 May, 1998, the COO at Tarzana Hospital -- anything
21 regarding regulations of anyone taking pictures anywhere
22 in the hospital? Is there anything in that document?

23 A I don't think there is. Not that I know of.

24 Q So for instance, patients that want to have
25 their family take pictures of the delivery, there's

1 nothing to prevent them from doing it?

2 A No. There's a policy in labor and delivery
3 about photography. But nothing in these bylaws or -- I
4 don't even think it addresses the physicians.

5 Q So there's nothing that addresses the
6 physicians' authority or lack of authority to take
7 pictures during operations -- which is routine; right?
8 I'm known as a Japanese tourist -- or in labor and
9 delivery or for whatever purpose that physician believes
10 is the purpose of his or her pictures; correct?

11 A (No audible response.)

12 Q Coming back to the very important meeting you
13 had with Karen McDaniel, was it at that time your
14 response to Ms. McDaniel that in order for you as an
15 administrator to act upon her complaints that you needed
16 an official letter?

17 A No. Actually, she was official enough because
18 that's her role. And I documented that meeting with
19 her, and that was sufficient for me.

20 Q Did she at that time provide you any document?

21 A No.

22 Q Did she at that time have any note or incident
23 report or memos or anything else from any of the nurses
24 that allegedly felt threatened on November 10, 2000?

25 A I did not see anything.

1 Q Did you ever see, since then, any --

2 A Well --

3 Q -- originating from the unions?

4 A Originating from the union?

5 Q From the union.

6 A No. Other than the letter that they sent me.

7 Q To the best of your recollection, was Ms. Karen
8 McDaniel present when you were there on November 10,
9 2000?

10 A I don't think she was.

11 Q She was not.

12 So since you were there and she was not, didn't
13 you, during your conversation with her, say, "You know,
14 Karen, I happen to have been there, and I think this is
15 a little inflated. Dr. Mileikowsky was upset at me,
16 Jerry Clute. He was upset at the presence of security
17 guards, but I don't recall Dr. Mileikowsky ever
18 complaining or addressing any of the nurses, threatening
19 them in any way, form, or shape. Yes, they were shook
20 because he was upset, but at no point did he have
21 anything to say or address verbally or gesturally or
22 physically to any of the nurses. I, Jerry Clute, was
23 there"?

24 Have you ever discussed the fact that you were
25 there and Karen McDaniel was not there; and since you

1 have nothing, you say, in writing, so it was all
2 verbal -- you wrote notes of your conversation with
3 her. What did you do with those notes?

4 A I don't remember what I did with the notes.

5 But to answer your question specifically, I
6 wouldn't say that to Karen McDaniel or anyone else
7 because I think they were very afraid, and that's why
8 the nurses at the station asked me to stay.

9 THE HEARING OFFICER: Okay. I think we're at
10 the end of this. One of the hearing committee members
11 does have another question.

12 Dr. Ballin?

13
14 EXAMINATION

15 BY DR. BALLIN:

16 Q Mr. Clute, you had mentioned a response to one
17 of the other hearing panel members that you were not
18 aware of Dr. Mileikowsky's actions being reported to the
19 medical staff committee.

20 In the past have you ever reported any
21 physicians' actions, such as a change in behavior, to
22 the medical staff committee?

23 A You mean myself, just report to medical staff?

24 Q Yourself.

25 A I don't think I ever have.

1 reported to medical staff in the past. I just didn't
2 have that opportunity or need.

3 THE HEARING OFFICER: One more question,
4 Doctor.

5 DR. MILEIKOWSKY: I was interrupted, but I'm
6 happy to have an interruption coming from the hearing
7 committee.

8

9 FURTHER RECROSS-EXAMINATION

10 BY DR. MILEIKOWSKY:

11 Q We were talking about the notes you were taking
12 while you had a meeting with Ms. McDaniel. What did you
13 do with those notes?

14 DR. WULFSBERG: Asked and answered.

15 BY DR. MILEIKOWSKY:

16 Q Where did you keep them?

17 A I have files all over the place in my office.

18 Q Okay. So in your office.

19 Who did you discuss it with after you met with
20 Ms. McDaniel?

21 A I discussed it with Mr. Surowitz.

22 Q Anybody else?

23 A I don't think so. I discussed it directly with
24 Mr. Surowitz.

25 Q What was the substance of your conversation?

1 A I reported that I had been approached by the
2 union in a legitimate capacity as their representative;
3 and that I felt that I needed to report to him that they
4 were asking us to protect the staff, specifically; and
5 that I told him that I was sure that the union would be
6 contacting us.

7 THE HEARING OFFICER: Okay. That's it. One
8 more question and we're through with Mr. Clute.

9 BY DR. MILEIKOWSKY:

10 Q On the weekend of July 4th --

11 Actually, you interrupted me before the hearing
12 committee. I had a question that he didn't answer, so
13 it's two questions; the one from before and the one now.

14 THE HEARING OFFICER: All right, two. Finish.

15 BY DR. MILEIKOWSKY:

16 Q The question I asked you before the hearing
17 committee asked you questions was regarding the issue of
18 any policy that exists if a physician asks any member of
19 the staff for their name. There's no reason for them
20 not to say the name; correct?

21 A I can think of no reason.

22 Q So why did you instruct Mr. Carlos not to tell
23 me his name on November 10, 2000?

24 A I did not instruct him -- oh, you're right. I
25 did tell him not to because prior to that, he refused to

1 it. I feel he terrorized these people.

2 And it was not a good experience for me. I
3 admitted that I have never been fearful, but I sure have
4 been uncomfortable. And I'm the COO; these people are
5 not in my position. And to have this happen to them, I
6 just can't imagine.

7 DR. MILEIKOWSKY: I have a follow-up question.

8 THE HEARING OFFICER: One more. That's it.

9

10 FURTHER RECROSS-EXAMINATION

11 BY DR. MILEIKOWSKY:

12 Q You talk all the time about your concerns about
13 the nursing staff and so forth. Do you feel you're
14 responsible for how the physicians feel?

15 Where is your business coming from, if not from
16 physicians? Are you at all concerned about how your
17 physicians on staff feel -- and not only about their own
18 feelings, but about the conduct of your personnel,
19 whether it's professional or unprofessional or
20 threatening to the physician --

21 A Yes.

22 Q -- or to other physicians?

23 Is that one of your concerns?

24 A Yes, it is.

25 Q So why didn't I hear you talk about it, neither

1 this evening or the last time? You always talk about
2 the nurses; you never talk about the physicians.

3 Is that because you have never been a
4 physician?

5 A No. It's because your behavior was about you
6 and not globally about anybody else.

7 Q That wasn't the question.

8 THE HEARING OFFICER: All right. We're done at
9 this point.

10 Thank you, Mr. Clute. You're excused.

11 I remind the hearing committee that the next
12 meeting is going to be Tuesday evening, October 16. The
13 hearing committee can leave.

14 I have talked to the hearing committee -- this
15 is still on the record.

16 I have talked to the hearing committee at a
17 prior break about weekends, and there were strong
18 feelings that they're not available on weekends. So the
19 only dates that we have in October are the dates that I
20 indicated. We're not going to be able to get people
21 here on weekends.

22 DR. MILEIKOWSKY: Can you please repeat the
23 dates. One second.

24 THE HEARING OFFICER: Sure.

25 The committee can leave. Thank you all.