

March 6, 2003
Miliekowsky
rfjnl

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2 2115 Main Street
Santa Monica, CA 90405
(310) 399-3259
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State Bar No. 40146

4 Attorney for Petitioner

RECEIVED
MAR 10 2003
DEPT. 86

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

10 GIL N. MILEIKOWSKY, M.D.) CASE NO: BS079131
11 Petitioner,)
12 vs.) REQUEST FOR JUDICIAL NOTICE NO.
13 TENET HEALTHSYSTEM, ENCINO -) 1
14 TARZANA REGIONAL MEDICAL)
15 CENTER, A CALIFORNIA)
CORPORATION AND DOES 1)
THROUGH 100 INCLUSIVE,) DATE: March 14, 2003
16 Respondents) TIME: 9:30 A.M.
PLACE: Department 86
Honorable David P. Yaffe
(Janavs Disqualified By
Respondents on CCP 170.6
Challenge)

17 Pursuant to Evidence Code Section 452(g) Petitioner requests the
18 Court to take judicial notice of the Los Angeles Business Journal of
19 October 14-20, 2002 for the purpose of reviewing the paid advertisement
20 by Respondent's attorney (Mark T. Kawa), in which he explains how a
21 hospital may rid itself of doctors who have not endangered any patients
22 nor engaged in negligent conduct, but whose behavior is "abusive."

23 This paid advertisement was not in existence at the time of the

24 ///

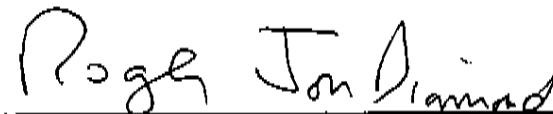
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rfjn1

1 administrative hearing.

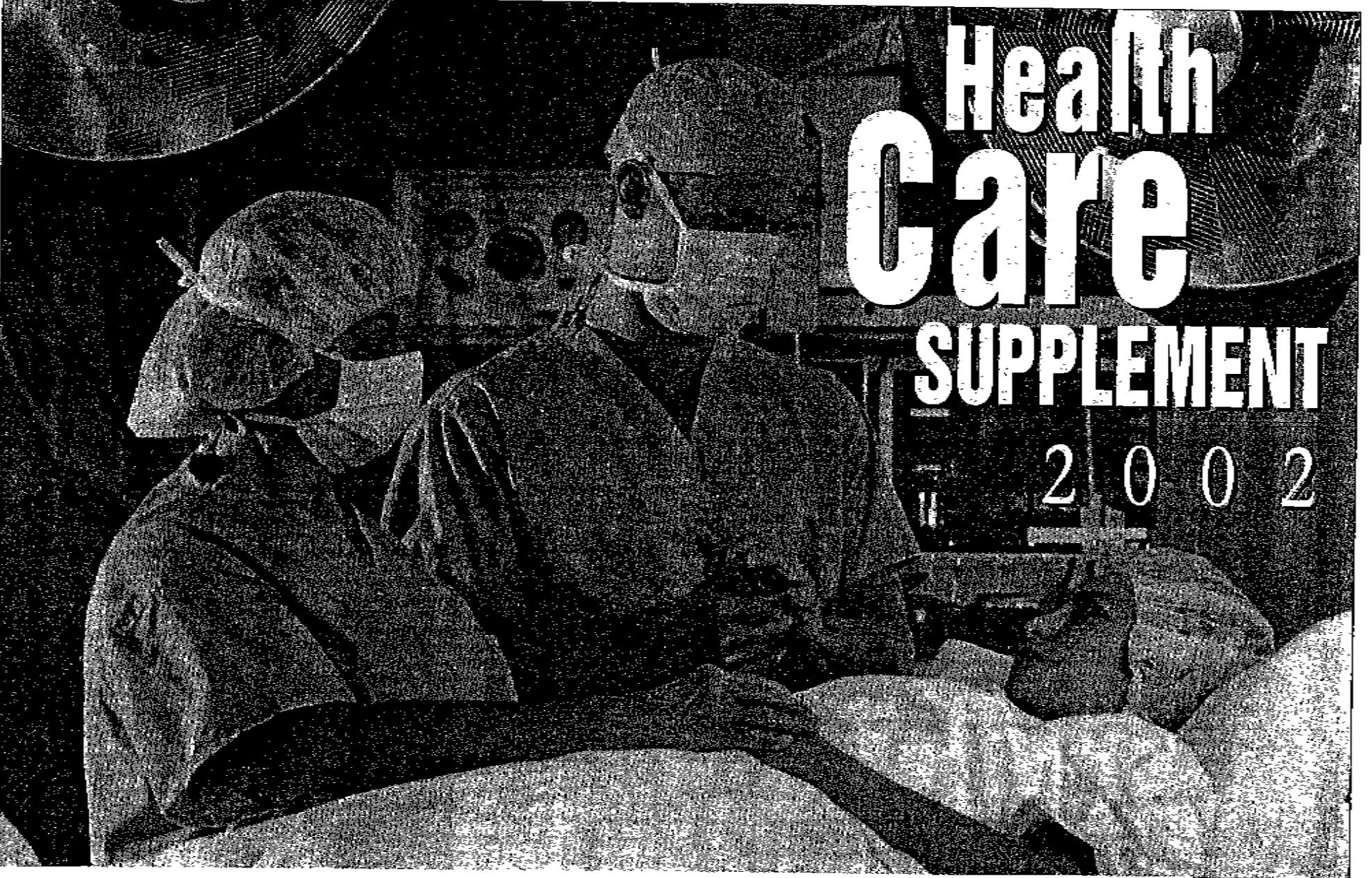
2 Respectfully submitted,

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5 ROGER JON DIAMOND
6 Attorney for Petitioner

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AN ADVERTISING SUPPLEMENT TO THE LOS ANGELES BUSINESS JOURNAL



Health Care SUPPLEMENT

2002

October 14, 2002

Taming the Disruptive Physician

BY MARK T. KAWA

ANYONE who has worked in a hospital for any length of time probably knows one — and wishes he didn't. I'm talking about the disruptive physician. You know the type, he (and with increasing frequency, she) throws temper tantrums, yells at colleagues, threatens lawsuits if his conduct or medical practice is reviewed, complains to patients about the nursing staff and generally adheres to the belief that the hospital's and Medical Staff's rules apply to everyone but him.

The disruptive physician's impact on patient care and hospital operations can be severe. Nurses and support staff may be so intimidated by the disruptive physician's conduct that they hesitate contacting him about patient issues for fear of incurring his wrath. Medical Staff members may find him so abusive that they choose to move their practice elsewhere. Hospital administrators may find themselves constantly addressing employee complaints and threats of hostile work environment litigation.

So how do you break the cycle and tame the seemingly untamable? Here's a few tips.

cian to sign a "behavior contract" which sets forth the Medical Staff's expectations and identifies the types of discipline the physician will face if further violations persist. Following the meeting, the Department Chair or Chief of Staff should send the physician a letter summarizing the meeting and reiterating that disruptive conduct will not be tolerated.

Taking Disciplinary Action - Be Creative

At some point, the warnings must end and consequences imposed. In some instances, this may be done through administrative – as opposed to medical staff – sanctions. For example, if the physician's primary abuse is yelling at Medical Staff Office employees, the facility's Administrator can ban the physician from the Medical Staff Office. Likewise, if the physician physically threatens others, the Administrator can assign a security officer to follow the physician throughout the facility. Because these remedies are administrative in nature and do not impose a limitation on the practitioner's privileges, they are non-reportable and do not require a fair hearing prior to implementing.

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Program — 8:30 am to 1:00 pm.



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So how do you break the cycle and tame the seemingly untamable? Here's a few tips.

Identify Conduct That Is Unacceptable

All applicants to the Medical Staff should be notified at the time they apply for privileges (and when they are appointed and reappointed) that disruptive behavior will not be tolerated. The admonition should clearly describe what conduct is unacceptable and the consequences for acting inappropriately. The standards should be set forth in both the Medical Staff Bylaws and in a written Policy and Procedure.

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Preparing For An Administrative Hearing

Sometimes the only viable remedy is to sanction the physician through the Medical Staff's peer review hearing process. If so, remember the following:



Document disruptive behavior immediately with incident reports or through other established reporting mechanisms. Prosecuting disruptive physician cases sometimes requires showing a pattern and practice of disruptive conduct spanning several years. Due to the passage of time, some wit-

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ECJ PHILOSOPHY

- *Transactions should be business driven not legally driven. Transaction models are meaningless without economic content.*
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Send The Message That Disruptive Conduct Will Not Be Tolerated

Sometimes the physician's anger or frustration is justified, but his reaction is not. For example, a physician may have a legitimate cause for anger if a nurse gives the wrong medication. Yet rather than calmly addressing the situation through a private one-on-one conversation, or raising the matter with the nurse's supervisor, the physician screams at the nurse, writes an inappropriate note in the medical records or makes comments to the patient about the nurse's purported incompetence.

Situations such as these must be addressed with the physician firmly and immediately. Ignoring abusive conduct until it becomes intolerable sends the wrong message. It tells others that that disruptive physicians are welcome at your institution. It also makes it difficult when you finally do take disciplinary action. The physician will point to other physicians who have not been disciplined and argue that he is being unfairly singled out.

Use Progressive Discipline

A first time offender should be counseled face to face by his or her Department Chair. If the physician's conduct is directed at a hospital employee, the Chief Executive Officer and/or Human Resources representative should attend as well. The Chief of Staff should avoid involvement at this stage since it may be deemed an "investigation" under the Medical Staff bylaws and trigger reporting obligations to the Medical Board and Data Bank if the physician subsequently voluntarily resigns.

The tone of the meeting should be non-threatening, however the physician should be warned that further disruptive conduct could result in disciplinary action.

A subsequent infraction should be addressed in another face to face meeting led by the Department Chair and the Chief of Staff. The tone of the meeting should be harsher. At this point, it may be appropriate to require the physi-



nesses may no longer work at the facility and cannot be located; other witnesses may have faulty memories. An incident report, prepared at the time of the incident, can provide admissible evidence of the physician's disruptive conduct.

Establish the link between disruptive conduct and patient care. Under California law, a physician's abusive conduct, by itself, is insufficient to justify disciplinary action. The conduct must impact patient care. Under the federal Health Care Quality Improvement Act ("HCQIA"), immunity exists only if the corrective action is taken in furtherance of quality health care.

Often the link between conduct and patient care will be easy to find. A physician who routinely yells at nurses every time they call him at home impacts patient care if the nurses become too intimidated to make further calls. Likewise, a physician who is constantly late to the operating room impacts patient care especially if his patients are under general anesthesia during the delay.

Use an expert witness. There are experts (generally psychiatrists) who are knowledgeable and well qualified to opine on the psyche of the disruptive physician. Hearing panel members who may not fully appreciate the disruptive impact of a physician may benefit from the testimony of an expert.

Focus on the Medical Staff's prior counseling efforts. Administrative hearing panels almost always consist of fellow physicians. By and large, they are a forgiving group when it comes to imposing discipline. Thus, if the peer review body believes the disruptive physician did not get sufficient warning or was otherwise treated unfairly, the disruptive physician will win, consequently emboldening him with respect to future behavior. It is therefore imperative to emphasize the Medical Staff's efforts to modify the physician's conduct prior to initiating disciplinary action.

Mark T. Kawa is a Litigation and Healthcare Partner at Ervin, Cohen & Jessup LLP.

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA }

3 COUNTY OF LOS ANGELES }

4 I am employed in the county of Los Angeles, State of California. I am over the age of
5 18 and not a party to the within action; my business address is 5200 KAHAN RD #223
6 AGOURA, CA 91301

7 On the date shown below I served the foregoing document described as: REQUEST
8 FOR JUDICIAL NOTICE on interested parties in this action by placing a true copy thereof
9 enclosed in a sealed envelope addressed as follows:

11 Christensen & Auer
12 Jay Christensen, Esq.
13 Stephen Auer, Esq.
14 225 South Lake Ave., 9th Floor
15 Pasadena, Ca 91101

17 I caused such envelope to be personally delivered by hand to the offices of the
18 addressee.

19 I declare under penalty of perjury, under the laws of the State of California, that the
20 foregoing is true and correct and was executed at Los Angeles, California
21 on the 10 day of March 2003.

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Juliet Lapa

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*This is exactly what
Mr. Surovitz - CEO of ETRMC -
did on 6/23/00 immedia-
-tely after I became a
designated Expert on 6/19/00
in the Medical Malpractice
Case of Mrs and Mr. HEAD
V. Vermesh, et al., TARZANA et al.*

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**Superior Court of California
County of Sacramento
Department 25
Judge Cadei**

**Case Name: Mileikowsky v. Medical Board
Case No. : 04CS00969**

**INDEX
VOLUME 2**

Documents faxed by Petitioner to Susan Cady, Manager-Supervisor Staff Services at the Medial Board of California on November 4, 2002; with fax cover sheet and transmission verification report.

- Exh. 1A "Rape of the Medical Peer Review Process by Tenet Healthsystem" letter from Petitioner to the Hearing Officer of Tenet, Mr. Willick, dated March 21, 2002 (9 pages typed)**
- Exh. 1B Same as 1A but 20 pages long as the original document faxed to Ms. Cady was handwritten**
- Exh. 2 Los Angeles Superior Court case number BS056525 contempt, filed October 11, 2002 by Petitioner's attorney, Roger Jon Diamond, Esq.; Notice of Motion for OSC Re contempt; Declaration of Gil N. Mileikowsky; Memorandum of Points & Authorities**
- Exh. 3 Los Angeles Superior Court Case No. BS079131, 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 filed by Petitioner's attorney, Roger Jon Diamond, Esq. on October 15, 2002.**
- Exh. 4 "Taming the Disruptive Physician" by Mark Kawa (Tenet's attorney) page 36 of an advertising supplement to the Los Angeles Business Journal dated October 14, 2002 with Dr. Mileikowsky's comments**

Exh. 5 **June 23, 2000 letter to Dr. Mileikowsky from D. Suowitz, CEO of Tenet's Encino-Tarzana Medical Center.**

Exh. 6 **June 19, 2000 designation of Dr. Mileikowsky in the medical malpractice case of Mrs. and Mr. Head. Case No. L C046932**

Exh.7 **Excerpt of Supreme Court of Nevada's published opinion in Kenneth Clark v. Columbia/HCA, June 21, 2001.**