

C. William Hinnant, Jr., MD JD

Raymond E. MacKay, Esq.

Medicolegal Consultants, LLC
Attorneys & Counselors at Law
112 Essex Drive
Anderson, South Carolina 29621
Telephone: (864) 226-6132, Statewide: (866) 462-6634
Fax: (864) 225-0830

RECEIVED

JUN 24 2005

CLERK SUPREME COURT
LOS ANGELES

June 21, 2005

CLERK'S OFFICE
COURT OF APPEAL-SECOND DIST.

RECEIVED

JUN 24 2005

Office of the Clerk
Supreme Court of California
350 McAlister Street
San Francisco, CA 94102-4783

JOSEPH A. LANE Clerk

RE: Amicus Curiae Letter on Behalf of Plaintiff/Appellant Gil N. Mileikowsky
Gil N. Mileikowsky v. Tenet Health System, et al.
C.A. No.: 2nd Civ. B168705
Los Angeles County Superior Court No: BS079131
Amicus Curiae Letter Filed by Semmelweis Society International

Dear Honorable Justices and Honorable Clerk of the California Supreme Court:

This letter is in support of the above-Plaintiff/Appellant's petition for review of a decision of the Court of Appeals, 2nd Appellate District, Division 4, affirming judgment of the Los Angeles County Superior Court. It is filed on behalf of Semmelweis Society International, Inc., a public interest group composed of approximately eighty (80) physicians and attorneys advocating good faith professional peer review in medicine.

My name is C. William Hinnant, Jr., MD, JD. I am a physician licensed to practice medicine in the State of South Carolina and an attorney admitted to the State and Federal Courts of South Carolina. Presently I am the President of the Semmelweis Society International, a public interest group furthering the cause of good faith medical peer review and conversely opposed to bad faith peer review directed against physicians particularly including the absence of fundamental fairness and a modicum of due process.

Individually, I have had occasion to represent and/or advise over a hundred physicians nationwide in peer review matters at varying stages of development including those still in the hospital forum, before administrative tribunals and involving civil litigation both at the federal and state level. The Semmelweis Society has literally been involved in the cases of well over a thousand physicians in virtually all states who have been victimized by bad faith peer review. Presently the phenomena of bad faith peer review is epidemic in this country and typically is predicated on changes occurring within the healthcare system wherein economic pressures are presently being felt disproportionately by physicians, hospitals and health organizations. Bad faith peer review is typically directed at the accused physician based on matters involving said economic competition, disagreement with hospital administration over policy matters, health care whistleblowing and/or independent contracting physicians whom hospitals

typically would like to replace with employed physicians particularly when they generate substantial revenues.

Health care whistleblowers, typically physicians who express quality concerns aimed at improving patient care are frequently victimized by bad faith peer review as are physicians who provide expert testimony for Plaintiffs in medical malpractice matters. Dr. Mileikowsky fits the profile of such a physician as he has acted in both these roles. His Appellate Brief, which I have had occasion to review, presents important matters for consideration by this Honorable Court including the ability of a reviewed physician to be heard by his peers, not uninformed members of the public at large including, but not limited to, attorneys. This explains the relevant interest of the Semmelweis Society International in this matter and is the predicate for the organization filing this amicus curiae letter.

I have had occasion to review the statutory and case law cited in the Plaintiff/Appellant's Brief and support his contention that his peer review hearing could and should not have been terminated by the hospital's appointed Hearing Officer. Not coincidentally, said officer had previously performed legal work for the hospital organization and I am sure that his prior involvement with the hospital will be minimized by it so as to foster the appearance that he was impartial. The recent cases of *Haas v. County of San Bernardino*, 27 Cal. 4th 1017 (2002) and *Yaqub v. Salina Valley Memorial Hospital System*, 122 Cal. App. 4th 474 (2004) both strongly address conflicts of interest involving Hearing Officers utilized by hospitals and speak to how the process is undermined by the inclusion of such participation. It also appears that California statutory and additional case law support the peer review of physicians by other medical licensees as opposed to those with little knowledge as to the scientific and clinic aspects of medical practice.

It appears that the Plaintiff/Appellant in this matter has been roundly abused procedurally at virtually every level of this peer review matter and that such has been the case in other matters in which I have dealt with Tenet Healthcare in more than one jurisdiction. Speaking personally, I have yet to fail to resolve a matter involving Tenet in a favorable fashion for one of my clients. The Plaintiff/Appellant in this matter is a solo practitioner with little political support and one who voiced quality concerns fits the profile of physicians typically labeled as disruptive by hospitals given the current climate of bad faith peer review which is literally sweeping this country. Law firms which represent hospitals in these matters and particularly the firm of *Horty, Springer and Mattern* of Pittsburgh even promotes a course for hospital administrators, attorneys and staff physicians entitled "*Disruptive Physician v. Whistleblower: How to tell the difference*". This course actually teaches hospital personnel how to utilize bad faith peer review to more or less silence the dissent in matters such as those involving Dr. Mileikowsky. The phenomena is well known among hospitals and has even been mentioned by Dr. Linda Peeno in her prior testimony involving the Health Corporation of

America (HCA). That group of cases has cumulatively resulted in the largest civil settlement concerning health care fraud to date in our country.

Personally and as president of this organization, I was recently involved in a Congressional Forum sponsored by the Health Integrity Project aimed at restoring integrity in medicine through attacking bad faith peer review. Dr. Mileikowsky's case was discussed by numerous participants in that Congressional Forum, the consensus of which was that bad faith peer review had compromised patient care quality, been the direct and proximate cause of more than one patient death and had contributed in an adverse way to increasing health care cost.

There is presently an ongoing case being tried in Augusta, Georgia concerning the diversion of public funds appropriated for the management of a charity hospital to the Georgia Senates Majority Leader. In that particular matter, bad faith peer review was utilized to silence physician whistleblowers who were concerned about an alleged illegal anti-kickback scheme involving the politician/Defendant accused in that matter and potentially other politicians yet to be indicted.

In reviewing the Plaintiff/Appellant's Brief, it very well demonstrates how both Health Care Quality Improvement Act of 1986, 42 U.S.C. 11101 et seq. and California Business and Professional Code Section 809 et seq. both contemplate adjudication in peer review matters by a duly appointed Hearing Committee which does not involve economic competitors or those with a conflict of interest. Here, the hospital's interjection of a biased Hearing Officer, having an obvious conflict of interest is simply another way that hospitals attempt to skirt the requirements of HCQIA and in the case of California, Business and Professional Code Section 809. To allow a biased Hearing Officer to terminate a peer review hearing without the consent of the committee itself robs the accused of his right to a fair and unbiased hearing on the merits as mandated by the federal and state legislation mentioned above.

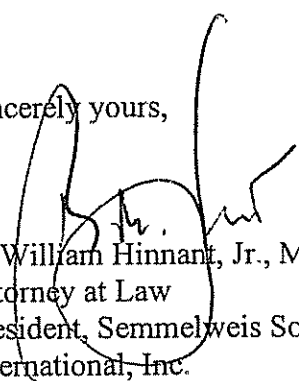
I believe that this should Court's rule in favor of Dr. Mileikowsky and reverse the lower Court's prior opinion and/or remand this matter to the lower Court for further adjudication consistent with this Court's forthcoming favorable opinion. This case involves a matter of substantial public policy concern not only to the State of California but the United States of America as a whole as our health care system now encompasses seventeen percent (17%) of our gross national product and continues to grow in complexity and cost. The ability of health care whistleblowers, concerned physicians and those at odds with administration to express their dissent with patient care matters is an important dialog which must be allowed to occur. For this Court to rule against Dr. Mileikowsky will effectively chill such dialog not only in the State of California but potentially on a nationwide basis. Likewise, to allow a Hearing Officer to unilaterally terminate a peer review fair hearing in the absence of the approval of the Hearing Committee itself is fundamentally unfair and at odds with the federal and state statutes mentioned above. The Plaintiff/Appellant deserves to have his fair hearing completed as

his career as an obstetrician/gynecologist rides on its outcome. To deny Dr. Mileikowsky the completion of such a hearing, is to basically rob him of his ability to be employed, a fundamental protected property right under the United States Constitution.

I am happy to discuss this matter with any judicial authority who might seek clarification and/or desire further information. By and through this letter, the Semmelweis Society International joins with the American Association of Physicians and Surgeons, Inc., the Union of American Physicians and Dentists and the Consumer Attorneys of California in supporting this Plaintiff/Appellant. Thank you for your consideration.

With best regards, I remain

Sincerely yours,



C. William Hinnant, Jr., MD, JD
Attorney at Law
President, Semmelweis Society
International, Inc.

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action; my business address is: 865 S. Figueroa Street, Suite 3200, Los Angeles, CA 90017.

On June 24, 2005, I served the following described as: **JUNE 21, 2005 LETTER FROM C. WILLIAM HINNANT, JR., MD JD TO SUPREME COURT OF CALIFORNIA – AMICUS CURIAE LETTER FILED BY SEMMELWEIS SOCIETY INTERNATIONAL** on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

SEE ATTACHED SERVICE LIST

- [x] **(MAIL)** I am readily familiar with the firm’s practice of collection and processing correspondence by overnight mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- [] **(BY TELECOPY)** I caused such document to be delivered by telecopy transmission to the offices of the addressee.
- [] **(BY PERSONAL DELIVERY)** I caused such envelope to be delivered by hand to the offices of the addressee.
- [x] **(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 offices of a member of this Court at whose direction the service was made.

Executed on June 23, 2005, at Los Angeles, California.

ALICIA NAVARRO
PRINT NAME


SIGNATURE

SERVICE LIST

Clerk
COURT OF APPEAL
300 S. Spring Street
Los Angeles, California 90013

Roger Jon Diamond Esq.
2115 Main Street
Santa Monica, California 90405-2215
(Attorneys for Appellant)

Catherine L. Hanson, Esq.
General Counsel
CALIFORNIA MEDICAL
ASSOCIATION
221 Main Street, Third Floor
San Francisco, California 94105

Andy Schlafly Esq.
General Counsel AAPS
939 Old Chester Rd.
Far Hills, NJ 07931

Sharon J. Arkin, Esq.
ROBINSON, CALCAGNIE &
ROBINSON
620 Newport Center Drive, 7th Flr.
Newport Beach, CA 92660
(President - Consumer Attorneys of
California)

Russell Iungerich, Esq.
IUNGERICH & SPACKMAN
28441 Highridge Road, Suite 201
Rolling Hills Estates, CA 90274-4871
(President - California Academy of
Attorneys for Health Care
Professionals)

Hon. David P. Yaffe, Judge
LOS ANGELES SUPERIOR COURT
111 N. Hill Street, Dept. 86
Los Angeles, California 90012

Jay D. Christensen, Esq.
CHRISTENSEN & AUER
225 S. Lake Avenue, 9th Flr.
Pasadena, California 91101
(Tenet's Attorneys)

Leonard A. Nelson, Esq.
General Counsel
AMERICAN MEDICAL ASSOCIATION
AMA LITIGATION CENTER
515 North State Street
Chicago, IL 60610

Andrew Kahn, Esq.
General Counsel
DAVIS, COWELL & BOWE
595 Market Street, Suite 1400
San Francisco, California 94105
(Union of American Physicians &
Dentists)

Steven Ingram, Esq.
CAOC
770 L Street, Suite 1200
Sacramento, CA 95814
(Consumer Attorneys of California)

Gil Mileikowsky, M.D.
WEST VALLEY MEDICAL CENTER
5363 Balboa Blvd., Suite 245
Encino, California 91316