

ENCINO-TARZANA REGIONAL MEDICAL CENTER

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In re the matter between:
MEDICAL EXECUTIVE COMMITTEE OF
ENCINO-TARZANA REGIONAL
MEDICAL CENTER
and
GIL N. MILEIKOWSKY, M.D.
Respondent.

MARCH 30, 2002 RULING
TERMINATING HEARING BECAUSE
OF MISCONDUCT BY DR.
MILEIKOWSKY

I. INTRODUCTION.

This hearing is hereby terminated because:

- A. The intentional acts of misconduct by Dr. Mileikowsky¹ have so prejudiced the hearing that it is impossible to complete it consistent with the requirements of fair procedure and due process imposed by California law.
- B. Dr. Mileikowsky's repeated acts of misconduct at this hearing have created a situation where he has waived his right to the completion of this hearing and thereby has failed to exhaust his administrative remedies.

Before reviewing and documenting the multiple acts of misconduct by Dr. Mileikowsky, it important to recognize that the Legislature has mandated that "[p]eer review, fairly conducted is essential to preserving the highest standards of medical practice" and that this is necessary "[t]o protect the health and welfare of the people of California . . . [by excluding] through the peer review mechanism . . . those healing arts practitioners who provide substandard care or who engage in professional misconduct, regardless of the effect of that exclusion on competition." Business and Professions Code section 809 subds. (a)(3), (6). While due process and fair

¹ Submissions by Dr. Mileikowsky also implicate his physician advisors, Dr. Wiseman and Dr. Spiwak, in improper conduct. See III.A, infra.

EXHIBIT C PAGE 1

1 procedure must be provided to the practitioner who stands accused, that practitioner has an
2 obligation to participate in peer review in good faith and to abide by the rules governing peer
3 review. Any failure to do so threatens one of the pillars upon which protection of the public
4 against substandard care rests. To permit a physician to flaunt the peer review process by
5 flagrant violations of rules and procedures governing that process is unacceptable. In my over
6 twenty years of experience in participating in peer review, I have never seen a case with
7 physician misconduct regarding the hearing process which matches this one.

8 9 II. DR. MILEIKOWSKY'S MULTIPLE ACTS OF MISCONDUCT.

10 This hearing was requested by Dr. Mileikowsky to contest the summary suspension of his
11 Medical Staff Privileges at Encino Tarzana Regional Medical Center ("ETRMC") by the Medical
12 Executive Committee of the Medical Staff ("MEC"), and to contest the MEC's recommendations
13 not to renew his Medical Staff privileges and to terminate his Medical Staff privileges. The
14 MEC's actions and recommendations are based upon allegations that Dr. Mileikowsky provided
15 substandard medical care in two cases, engaged for nearly ten years in repeated obstruction of
16 peer review of his work, and engaged in abusive behavior towards other members of the Staff.

17 There was a prior hearing on the MEC's proposal not to renew Dr. Mileikowsky's
18 Medical Staff privileges. That hearing resulted in a Hearing Committee decision that Dr.
19 Mileikowsky had defaulted in his defense of the allegations against him due to his refusal to
20 produce relevant documents during the discovery phase of the proceeding. Dr. Mileikowsky
21 appealed that decision to the ETRMC Governing Board where there was a ruling remanding the
22 matter for a new hearing. The present hearing was to provide Dr. Mileikowsky with that
23 rehearing. Nevertheless, Dr. Mileikowsky has chosen to repeat his conduct by refusing to
24 produce relevant evidence in violation of my orders,² and has engaged in other misconduct. The
25 sad details of that misconduct are spelled out below and include ex parte contacts with members
26 of the Hearing Committee for the purpose of misleading and prejudicing them, repeated use of

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28 ² See III.D., *infra*.

1 personal invective, repeated violations of my rulings, and disruption of hearing sessions.

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3 **III. DR. MILEIKOWSKY'S IMPROPER ACTS WHICH HAVE PREJUDICED THIS**
4 **HEARING.**

5 A. Dr. Mileikowsky's unauthorized ex parte communications with each member of
6 the Hearing Committee regarding the subject matter of the hearing.

7 In a letter to me dated 3/20/02, regarding "Method of Delivery of Memorandum and Brief
8 to the JRC", Dr. Mileikowsky admits that on March 18, or 19, 2002, he personally delivered to
9 each member of the Hearing Committee written material regarding the subject matter and the
10 merits of the pending hearing. This included his thirty-five page typewritten brief, a March 15,
11 2002 one page memorandum from him and his two physician advisors, Dr. Jose Spiwak and Dr.
12 Daniel Wiseman, and a letter to me from Drs. Wiseman and Spiwak falsely dated February 28,
13 2002. These materials contain a number of misrepresentations and misleading statements. This
14 direct communication with members of the Hearing Committee was unauthorized and an obvious
15 attempt to prejudice their consideration of the matters before them.

16 From the very outset of this proceeding, starting in January, 2001, during voir dire of the
17 members of the Hearing Committee, I repeatedly made it clear that there should be no ex parte
18 communications with members of the Hearing Committee regarding the subject matter of the
19 hearing.³ Dr. Mileikowsky was acutely aware of the prohibition against such ex parte
20 communications. On October 22, 2001, he sent me a letter regarding "My Right to a FAIR
21 Hearing and Violations of Rules of Conduct by Dr. Wulfsberg and Ms. Miller." In that letter, Dr.
22 Mileikowsky alleged that Dr. Wulfsberg and Ms. Debbie Miller had violated "basic rules of
23 conduct" by engaging in ex parte communications with members of the Hearing Committee
24 regarding the subject matter of this proceeding. I dealt with that issue in my November 1, 2001
25 Ruling on page 1 wherein I reiterated that it was my instruction that the Hearing Committee have

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27 ³ See, e.g., Transcript of Proceedings, January 30, 2001 at p. 62, lines 5 -10; Transcript of
28 Proceedings, June 20, 2001, p. 486, lines 15 -25; and Transcript of Proceedings June 20, 2001, p.
564, lines 13 -22.

1 no communication "regarding the substance of these proceedings, except in the hearing room." I
 2 also stated in my ruling that it was important that "the parties not . . . have communications with
 3 members of Hearing Committee regarding the substance of these proceedings, except in the
 4 hearing room." Dr. Mileikowsky's awareness of the prohibition on ex parte communications
 5 with members of the Hearing Committee is established by his October 22, 2001 letter alleging
 6 that such prohibited contacts were occurring. Hence his actions on March 18 or 19, 2002, in
 7 personally delivering to each member of the Hearing Committee his brief and other materials
 8 regarding the subject matter of this proceeding was a flagrant and intentional violation of what he
 9 himself has characterized in his October 22, 2001 letter as "basic rules of conduct."

10 Dr. Mileikowsky's typed brief dated March 26, 2002 and captioned "Brief of Gil N.
 11 Mileikowsky, M.D. Requested by March 20, 2002 letter of Hearing Officer Daniel Willick"
 12 attempts to present a legal justification for his ex parte communications. Although the brief
 13 contains citations to legal authority, none of the authority cited authorizes or permits ex parte
 14 communications with members of a hearing panel or a jury. The only case cited by Dr.
 15 Mileikowsky which deals with such communications absolutely repudiates Dr. Mileikowsky's
 16 position. People v. Fitzgerald (1961) 56 Cal.2d 855, 863. In that case, the court recognized that
 17 ex parte communications with a jury regarding a trial which was in progress were improper and
 18 prejudicial.⁴

19 B. The Ex Parte Communications from Dr. Mileikowsky to the Hearing Committee
 20 were Designed to Mislead and to Prejudice the Hearing Committee.

21 The materials personally delivered by Dr. Mileikowsky to each member of the Hearing
 22 Committee contain a number of misstatements and were designed to mislead and to prejudice.⁵

24 ⁴ None of the other cases cited by Dr. Mileikowsky deal with ex parte communications to a jury or
 25 a hearing panel. Those cases cited by Dr. Mileikowsky regarding the principles of estoppel have
 26 absolutely no applicability in this matter. See, e.g. Kolodge v. Boyd (2001) 88 Cal.App.4th 349.
 This is because the doctrine of estoppel has no application to the actions of a judge or a hearing
 officer.

27 ⁵ Materials delivered to the Hearing Committee by Dr. Mileikowsky include a thirty-five page
 28 typewritten brief, a misdated February 28, 2002 letter to me from Dr. Wiseman and Dr. Spiwak,
 a memorandum to the Hearing Committee from Dr. Wiseman and Dr. Spiwak dated March 15,

E. 4

1 The legal brief and the falsely dated February 28, 2002 letter to me from Dr. Wiseman and Dr.
 2 Spiwak create the untrue impression that I would hold hearing sessions after I had ruled that
 3 neither Dr. Mileikowsky nor his physician advisors, Dr. Wiseman and Dr. Spiwak, would
 4 question witnesses on behalf of Dr. Mileikowsky.

5 From the very outset of this hearing it was anticipated that Dr. Mileikowsky's physician
 6 assistants, that is Dr. Spiwak, and later Dr. Wiseman, would be available to question witnesses.
 7 Indeed, on occasion Dr. Spiwak has conducted questioning,⁶ and he and Dr. Wiseman have
 8 participated in hearings and addressed members of the Hearing Committee. Furthermore, from
 9 the very outset of the proceedings both I and the MEC understood that a representative of Dr.
 10 Mileikowsky might question witnesses. This is evidenced by the MEC's request that only one
 11 person, either Dr. Mileikowsky or his physician representative, should be permitted to question
 12 each witness on his behalf and by my ruling granting that request.⁷ Accordingly, when Dr.
 13 Mileikowsky's disruptions of the hearing, which are described below, went well past what was
 14 permissible, I ruled that questioning on behalf of Dr. Mileikowsky would proceed with
 15 appropriate safeguards and be carried out by Dr. Wiseman or Dr. Spiwak. This was first stated in
 16 my January 3, 2002 Ruling. Indeed, on January 4, 2002, Dr. Mileikowsky sent me a letter
 17 proposing limited questioning by his advisors.⁸ It was not until over two months later on or
 18 about March 15, 2002, when I first received the falsely dated February 28, 2002 letter to me from
 19 Dr. Wiseman and Dr. Spiwak, that I was informed that Drs. Wiseman and Spiwak were refusing
 20 to question witnesses on behalf of Dr. Mileikowsky. I promptly cancelled the March 20, 2002
 21 hearing session, because there would be no one to question witnesses on behalf of Dr.
 22 Mileikowsky and because, as stated in my March 19, 2002 letter to Dr. Mileikowsky and Dr.

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24 _____
 2002 and various items of correspondence.

25 ⁶ See June 20, 2001 Transcript at p. 519, lines 5 -10, p.552, line 18 to p. 553, line 11

26 ⁷ See, Dr. Wulfsberg's June 29, 2001 letter to me and my July 11, 2001 Ruling at page 2, lines 15 -
 27 22.

28 ⁸ In Dr. Mileikowsky's January 4, 2002 letter to me at pp. 6 - 7, he offered to have Dr. Spiwak or
 Dr. Wiseman question a witness for him.

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1 Wulfsberg, "Dr. Mileikowsky is unable to proceed in compliance" with my ruling that
2 questioning occur through his assistants Dr. Wiseman and Dr. Spiwak.

3 Dr. Mileikowsky's ex parte communications to the Hearing Communication, by
4 enclosing the misdated February 28, 2002 letter to me from Dr. Wiseman and Dr. Spiwak,
5 created the false impression that I was proposing to have the hearing proceed without anyone
6 being available to ask questions on behalf of Dr. Mileikowsky.⁹

7 There is evidence that Dr. Mileikowsky's ex parte communications to the Hearing
8 Committee created prejudice. At least one Hearing Committee member is reported to have been
9 outraged by my purported refusal to allow any representative of Dr. Mileikowsky to question
10 witnesses.¹⁰

11 There were other misleading statements in the materials delivered by Dr. Mileikowsky to
12 the Hearing Committee. For example:

13 1. Dr. Mileikowsky contends in his March 15, 2002 brief at pages 10 - 11, that
14 he has been denied his right to advice by an attorney. This is absolutely false. During the course
15 of these proceedings, Dr. Mileikowsky has been represented by no less than four attorneys or law
16 firms - Mirch & Mirch; Arthur Chenen of Stephan, Oringer, Richman & Theodora; Paul
17 Hittelman; and Ethan Schulman of Howard, Rice, Nemerovski, Canady, Falk & Rabkin. In fact,
18 at the request of Dr. Mileikowsky, I have extended deadlines so his attorneys could prepare briefs
19 and have sent various rulings to his attorneys.

20 2. Dr. Mileikowsky contends in his March 15, 2002 brief that he has been deprived of
21 the right to make a record of his disagreements with my rulings. This is false. The record is
22 replete with his hundreds of letters disagreeing with my rulings.

23 Dr. Mileikowsky's ex parte communications to the Hearing Committee also take
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25 ⁹ It is significant to note that Dr. Mileikowsky in a March 19, 2002 letter to me (captioned "1. Dr.
26 Wiseman and Spiwak's letter of 2/28/02. 2. Our Response Memorandum of 3/15/02") goes to
27 elaborate lengths to try to explain the misdating of the February 28, 2002 letter to me from Dr.
28 Wiseman and Dr. Spiwak which was not received by me until March 15, 2002.

¹⁰ See, the March 19, 2002 letter to me from Ms. Ana Suda which reports that one member of the
Hearing Committee, Dr. Pleet, was outraged.

1 reference to his lawsuits in front of the Hearing Committee and by misrepresenting the rulings in
2 his lawsuits. The details of Dr. Mileikowsky's violations of my order regarding references to his
3 lawsuits and of his efforts to mislead the Hearing Committee regarding the lawsuits are
4 documented in my September 13, 2001 Ruling at pages 1 - 2.

5 D. Dr. Mileikowsky's Violation Of My Orders Regarding Discovery.

6 California law, Business and Professions Code section 809.2 subd. (d), requires that the
7 MEC has the right to review and copy any documentary evidence in the possession of Dr.
8 Mileikowsky which is relevant to its charges against him. This right is also guaranteed by the
9 Medical Staff Bylaws at Article VIII, Section 3.G. Nevertheless, despite my repeated rulings, Dr.
10 Mileikowsky has refused to provide documents directly bearing upon the charges against him for
11 review by the MEC. See, for example, my June 11, 2001 Ruling at pages 2 - 4 and my July 11,
12 2001 Ruling at pages 2 - 3. Those rulings document in detail Dr. Mileikowsky's refusals to
13 produce documents which I have ordered him to produce for review by the MEC. For example,
14 Dr. Mileikowsky refuses to produce documents directly relating to the decision of the Governing
15 Board of Cedars Sinai Medical Center to suspend and terminate his Medical Staff privileges for
16 deficiencies in care. (The MEC alleges at Charge No. 27 that Dr. Mileikowsky violated his peer
17 review obligation at ETRMC to produce information about the discipline against him at Cedars
18 Sinai.) Dr. Mileikowsky has also refused to produce documents relevant to allegations that he
19 was repeatedly unavailable for peer review of his treatment of patients. The MEC requested and
20 pursuant to my orders was entitled to review original copies of Dr. Mileikowsky's calendars and
21 appointment books regarding his activities on dates when he disrupted or avoided appearing at
22 peer review investigations. Dr. Mileikowsky has violated my orders and refused to allow the
23 MEC access to the documents in question.

24 E. Dr. Mileikowsky's Violation of My Ruling Regarding His Obligation to Provide
25 His Proposed Exhibits and an Exhibit List.

26 California Law, Business and Professions Code section 809.2 subd. (f) requires that Dr.
27 Mileikowsky "produce copies of documents expected to be introduced at the hearing" and that
28 this occur at least ten days before the commencement of the hearing. Failure to meet this

1 requirement is good cause to postpone the hearing. There is a similar requirement in the Medical
2 Staff Bylaws at Article VIII, Sections 3H and 3I.

3 Dr. Mileikowsky has failed to produce in a timely manner his exhibit list or his proposed
4 exhibits. See, for example, my July 11, 2001 Ruling at page 2, lines 6 -14 and my September 5,
5 2001 Ruling at pages 2 - 3. Since July 11, 2001, I have repeatedly requested that Dr.
6 Mileikowsky submit an appropriate exhibit list and copies of his proposed exhibits in compliance
7 with my July 11, 2001 Ruling. He has consistently failed to do so. This violation of California
8 Law and the Medical Staff Bylaws, standing alone justifies a suspension of this hearing.
9 Notwithstanding these failures by Dr. Mileikowsky to produce his proposed exhibits and his
10 proposed exhibit list, he has disrupted hearing sessions by pulling out surprise documents which
11 he wishes to use as exhibits, and then acting as if he is aggrieved by my insistence on compliance
12 with the Medical Staff Bylaws and California Law. (On January 28, 2002, Dr. Mileikowsky
13 finally submitted a proposed exhibit list without copies of any proposed exhibits.)

14 F. Dr. Mileikowsky's Violation of My Order to Submit a Brief Concerning
15 Allegations That He Failed to Cooperate in Peer Review.

16 Many of the MEC's allegations against Dr. Mileikowsky, such as Charge Numbers 1
17 through 19 and 27, concern Dr. Mileikowsky's alleged failure to cooperate in peer review. These
18 charges do not allege that his underlying care of patients in the matters under review was
19 deficient. Rather they allege that there were grounds to conduct peer review of his underlying
20 care and that he repeatedly failed to cooperate in peer review and disrupted the peer review
21 process. Because of the extensive nature of these charges, my June 11, 2001 Ruling at page 7,
22 lines 12 - 17, ordered that "[a]s to each allegation that Dr. Mileikowsky failed to cooperate in
23 peer review involving patient care where there is no present charge that Dr. Mileikowsky
24 provided deficient patient care, I will permit each party to submit in writing a brief statement of
25 no longer than one paragraph concerning the subject of the peer review in question and attaching
26 documents from the medical record regarding the matter subject to peer review." These written
27 statements were to be submitted at least one week before the evidentiary hearings with the
28 Hearing Committee commenced. My ruling went on to state that, unless the Hearing Committee

1 wished otherwise, there would be no other presentation regarding the underlying patient care.
2 The purpose of my ruling was to expedite this hearing and not to bog it down in questions
3 regarding underlying patient care where there was no present contention of deficient care. Dr.
4 Mileikowsky never complied with this ruling. He never submitted the required written
5 statement.

6 G. Dr. Mileikowsky's Repeated Disruption of Hearing Sessions.

7 Dr. Mileikowsky has disrupted hearing sessions by yelling, by disobeying my rulings
8 regarding the questioning of witnesses, and by misrepresenting whether he received documents
9 which are the subject of a particular hearing. For example, my September 13, 2001 Ruling
10 documents that at the September 5, 2001 hearing, Dr. Mileikowsky disrupted the proceedings
11 because he disagreed with my prohibition of his reference to his litigations in front of the Hearing
12 Committee. My December 26, 2001 Ruling at pages 3 - 4 and the Transcript of the November
13 29, 2001 hearing document that Dr. Mileikowsky disrupted the November 29, 2001 hearing, by
14 falsely contending that he had not received a November 19, 2001 letter from Dr. Wulfsberg
15 enclosing exhibits. Examples of Dr. Mileikowsky's disorderly conduct and disruption of hearings
16 are found in the transcripts of the hearings on September 5, 2001, November 29, 2001, and
17 December 17, 2001.

18 H. Dr. Mileikowsky's Repeated Use of Personal Invective and Threatening
19 Language.

20 Throughout these hearings, Dr. Mileikowsky has engaged in written and oral statements
21 which abuse witnesses, the MEC's representatives, hospital administrators, and me. For
22 example, at the December 17, 2001 hearing despite my efforts to restrain him, Dr. Mileikowsky
23 heaped verbal abuse on the witness Dr. Ben Yehuda. He called Dr. Ben Yehuda "superficial and
24 careless" (December 17, 2001 Transcript, p. 2003, lines 10 -11), stated to the witness "you don't
25 have the knowledge" (*id.* p. 2005, lines 22 - 23), and stated that the witness has an "interest to
26 see that my practice goes down the tube" (*id.* p. 2007, line 25 - p. 2008, line 1). Dr.
27 Mileikowsky in his January 11, 2002 letter to me accuses Mr. Auer, an attorney for the MEC, of
28 "fabrications". In his January 3, 2002 letter to me, he states "Clearly you are oblivious to the

1 danger to your own life if an armed guard shoots in the wrong direction and kills you." A letter
2 from Dr. Mileikowsky which states it was sent at 5:00 a.m. on January 4, 2002, states at page 2
3 that I "still LIE by omission" and at page 3 states that I "Suffer from the Same Delusions as Mr.
4 Auer." In the same letter at page 5, Dr. Mileikowsky states to me he fails "to understand the
5 logic behind your madness." The record is replete with other instances of personal invective
6 being used by Dr. Mileikowsky.

7 I. Dr. Mileikowsky's Insistence that He May Disobey my Orders Regarding the
8 Conduct of this Hearing.

9 After the December 17, 2001 hearing session, the evidentiary portion of this hearing was
10 suspended. This was after repeated disruptions of hearing sessions and a continuing series of
11 refusals by Dr. Mileikowsky to abide by the rules governing these proceedings. These
12 disruptions and refusals are detailed above. In my January 3, 2002, January 14, 2002 and
13 February 19, 2002 Rulings, I set ground rules for the continuation of this hearing and stated that
14 the hearings would not continue until Dr. Mileikowsky agreed in writing to abide by my rulings.
15 (Copies of these rulings are attached as Exhibits 1, 2 and 3 respectively.) They document Dr.
16 Mileikowsky's responses to my rulings with a series of letters vowing his defiance and stating he
17 would interfere with instructions I was going to give to the Hearing Committee. He also sought
18 to contend that he could not comply with my rulings because there were many pending
19 unresolved issues. I dealt with these contentions in my February 28, 2002 Ruling, which is
20 attached as Exhibit 4.

21 In light of Dr. Mileikowsky's continuing refusals to obey my rulings for the conduct of
22 this hearing, in my March 1, 2002 Ruling I requested briefing on the issues of whether Dr.
23 Mileikowsky had abandoned his defense due to his failures to comply with the rules and rulings
24 for this hearing, and whether I could suspend the hearing and report to the ETRMC Board of
25 Directors that the suspension was due to Dr. Mileikowsky's abandonment of his defense and
26 failure to exhaust his administrative remedies. I also requested briefs suggesting an alternative
27 procedure which might be used to complete the hearing. Subsequently, Dr. Mileikowsky
28 punctuated his refusals to obey my rulings by initiating his ex parte communications with the

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1 members of the Hearing Committee on the merits of this hearing as described above in Sections
2 III.A. and III.B.

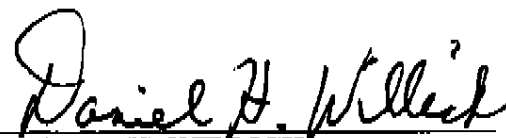
4 **IV. CONCLUSION.**

5 California Business and Professions Code section 809.2, subd. (d) authorizes me to
6 "impose any safeguards the protection of the peer review process and justice requires." The
7 Medical Staff Bylaws at Article VIII, Section 4B authorize me to "maintain decorum and assure
8 that all participants in the hearing have a reasonable opportunity to present oral and documentary
9 evidence." Article VIII, Section 4A of the Medical Staff Bylaws authorizes me to rule that a
10 practitioner "who fails without good cause to appear and proceed" at the hearing "shall be
11 deemed to have waived his/her rights" I rely upon these provisions to rule that this hearing
12 is terminated because:

13 A. The intentional acts of misconduct by Dr. Mileikowsky have so
14 prejudiced the hearing that it is impossible to complete it consistent with the requirements of fair
15 procedure and due process imposed by California law.

16 B. Dr. Mileikowsky's repeated acts of misconduct at this hearing have
17 created a situation where he has waived his right to the completion of this hearing and thereby
18 has failed to exhaust his administrative remedies.

21 DATED: March 30, 2002


DANIEL H. WILICK
Hearing Officer

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EDWARD C. PAGE 12

EXHIBIT 1

ENCINO-TARZANA REGIONAL MEDICAL CENTER

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In re the matter between:
MEDICAL EXECUTIVE COMMITTEE OF
ENCINO-TARZANA REGIONAL
MEDICAL CENTER

and

GIL N. MILEIKOWSKY, M.D.

Respondent.

JANUARY 3, 2002 RULING

A. EXAMINATION OF WITNESSES ON BEHALF OF DR. MILEIKOWSKY

Dr. Mileikowsky has acted to disrupt the orderly conduct of this hearing on a number of occasions. Actions which he has taken include his repeated refusals to comply with my Rulings regarding the examination of witnesses and the introduction of evidence in this case. He has engaged in noisy yelling at hearing sessions, including the hearings on September 5, 2001, November 29, 2001 and December 17, 2001. He has made repeated statements in front of the Hearing Committee which contain invective and personal attacks directed towards witnesses, Dr. Wulfsberg, me and others. As a result of these difficulties by Dr. Mileikowsky and in response to the pending requests by the Medical Executive Committee ("MEC"), the procedures for the questioning of witnesses on behalf of Dr. Mileikowsky shall be as follows:

1. All questioning of witnesses on behalf of Dr. Mileikowsky shall be conducted by either of his assistants, that is Dr. Daniel Wiseman or Dr. Jose Spiwak;
2. Only Dr. Mileikowsky's representatives may ask questions on his behalf at the hearing;
3. Dr. Mileikowsky shall be given a reasonable opportunity to confer with his representatives regarding questions to be asked, including adequate time prior to the next hearing, as well as recesses during the hearing to allow him to consult with his representatives;

C. [Signature]

1 4. Testimony by Dr. Mileikowsky shall only be pursuant to questions posed to him by
2 one of his representatives; and

3 5. Dr. Mileikowsky shall be permitted to present his own closing argument if he so
4 wishes.

5 **B. ADDITIONAL PROCEDURES FOR THE CONDUCT OF THIS HEARING**

6 1. In light of Dr. Mileikowsky's repeated outbursts and personal verbal attacks during
7 the hearing, and personal attacks in his letters, the following additional procedures requested by
8 the MEC shall apply at the hearing:¹

- 9 a. The hearing shall be videotaped;
- 10 b. A security guard in plain clothes shall be present in the hearing room;
- 11 c. The hearing session will be terminated, if and when, Dr. Mileikowsky acts in
12 a manner which is abusive or out of control; and
- 13 d. The hearing sessions shall not reconvene until Dr. Mileikowsky responds in
14 writing that he will comply with my rulings regarding the conduct of this hearing, including
15 specifically the rules set forth in this Ruling. Dr. Mileikowsky is ordered to respond in writing
16 by the close of business on January 10, 2002, with service on the MEC and me via facsimile and
17 U.S. mail.

18 2. I note for the record that Dr. Mileikowsky in one of his letters dated January 1, 2002,
19 states that he will interfere with my instruction to the Hearing Committee regarding his
20 litigation.² (That instruction is due to Dr. Mileikowsky's violations of my rulings that no

21 _____
22 ¹ I previously warned Dr. Mileikowsky that should his inappropriate behavior continue, I would
23 impose additional measures to seek to protect the decorum of this proceeding. See, e.g. my
September 13, 2001 Ruling.

24 ² In his letter Dr. Mileikowsky states: "You also know that if you choose to continue to
25 misrepresent the TRUTH you force me to expose you and your lies to the members of the
26 Hearing Committee. As a consequence of your intentional provocations I shall have to set the
record straight. You will then raise your voice, point your finger at me in your typical
threatening fashion, your eyes bulging and your red flushed face screaming at me: 'Dr.
Mileikowsky your are out of order!!'

27 "I shall then respond in my Defense you are 'OUT OF LAW!!'"

28 Dr. Mileikowsky's letter goes on to state:

"It should be patently clear to you that any Statement by you will exacerbate the tension between

1 reference should be made to his litigation and due to his misrepresentation to the Hearing
2 Committee of what has occurred in his litigation. See, e.g. my September 13, 2001 Ruling and
3 November 12, 2001 procedural transcript at pages 11 - 13.) While there will be some
4 modification in my instruction based upon points raised by Dr. Mileikowsky, Dr. Mileikowsky
5 will not be permitted to interfere with the instruction. If he persists in his position that he will do
6 so, I will not reconvene the hearing until I have made a further ruling imposing additional
7 measures to deal with his refusal to comply with my rulings.

8 **C. THE JANUARY 7, 2002 HEARING SESSION WILL BE POSTPONED**

9 The January 7, 2002 hearing session will be postponed to permit Dr. Mileikowsky to
10 consult with his representatives regarding the questioning of witnesses and to have time to
11 respond to this Ruling. The Medical Staff office shall inform the Hearing Committee of this
12 change in schedule.

13 **D. MEC WITNESSES FOR THE JANUARY 17, 2002 HEARING SESSION**

14 The MEC shall promptly inform Dr. Mileikowsky of the identity of witnesses which it
15 proposes to present for the hearing session on January 17, 2002, so that Dr. Mileikowsky and his
16 representatives may prepare questioning to be conducted by his representatives at that session.
17 I suggest to the MEC that, if all possible, they present Dr. Ben-Yehuda for the conclusion of his
18 testimony at the January 17, 2002 session, and/or present Ms. Debbie Miller for the conclusion of
19 her examination. Given the amount of time already provided for cross-examination of Dr. Ben
20 Yehuda, Dr. Mileikowsky's representative will be permitted no more than 1.5 hours of additional
21 time to complete that cross-examination.

22 **E. REVISION TO THE STATEMENT TO THE HEARING COMMITTEE**

23 **REGARDING DR. MILEIKOWSKY'S LAWSUITS**

24 Based upon points raised in Dr. Mileikowsky's letter to me dated "1/1/01 8:00 p.m." I
25 have made a modification to the description of legal proceedings which I will read to the Hearing
26 Committee. That modification is after heading C below. The revised statement is as follows:

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28 us and will force me to confront your intentional misrepresentations."

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"DESCRIPTION OF LEGAL PROCEEDINGS

"A. INTRODUCTION

"This hearing concerns:

"1. The Medical Executive Committee's ("MEC") January 12, 2000 proposal to deny Dr. Mileikowsky's application for reappointment to the Encino Tarzana Regional Medical Center ("ETRMC") Medical Staff;

"2. The MEC's November 16, 2000 Summary Suspension of Dr. Mileikowsky's Medical Staff privileges at ETRMC; and

"3. The MEC's December 1, 2000 recommendation to terminate Dr. Mileikowsky's ETRMC Medical Staff membership and clinical privileges.

"The MEC's allegations against Dr. Mileikowsky are set forth in its Second Amended Notice of Medical Staff Hearing and Charges (the "Second Amended Notice") which is found as Exhibit 144B in the Exhibit book which you have and in the Third Amendment to the Charges (the "Third Amendment") which is found at Exhibit 144C of the Exhibit book.

"Although my original ruling was to permit the Hearing Committee to decide these issues without reference to Court rulings in two pending lawsuits filed by Dr. Mileikowsky, repeated references to these lawsuits by Dr. Mileikowsky before the Hearing Committee lead me to provide a brief description of the rulings in these lawsuits so that the Hearing Committee may have a more complete description of those proceedings. It is important to note that the rulings in the two lawsuits are not final and in no way limit or bind the Hearing Committee in its decisions. To place the pertinent rulings in the lawsuits in a chronological context they will be described by me with reference to the MEC's allegations against Dr. Mileikowsky.

"B. THE LAWSUIT ABOUT THE MEC'S PROPOSAL NOT TO REAPPOINT DR. MILEIKOWSKY TO THE MEDICAL STAFF

"1. The MEC proposes to deny Dr. Mileikowsky's application for

1 reappointment to the Medical Staff based upon the allegations set forth in items 1 through
2 28 of the Second Amended Notice (MEC Exhibit 144B).

3 "2. Initially, in early 1999, the MEC proposed to treat Dr. Mileikowsky as
4 having voluntarily relinquished his Medical Staff membership for failure to submit a
5 timely application for reappointment. The MEC's allegations in that regard are found at
6 item 20 of the Second Amended Notice (MEC Exhibit 144B). Additionally, item 25 of
7 the Second Amended Notice concerns the alleged action of Dr. Mileikowsky when he
8 came to the Medical Staff office on February 2, 1999 to communicate regarding his
9 alleged failure to submit a timely application for reappointment.

10 "3. Dr. Mileikowsky filed a lawsuit over the proposal to treat him as having
11 voluntarily relinquished his Medical Staff privileges and on April 20, 1999 was
12 successful in obtaining a preliminary injunction prohibiting ETRMC from treating him as
13 having voluntarily relinquished his Medical Staff membership. As a result of the
14 preliminary injunction, Dr. Mileikowsky's application for reappointment to the Medical
15 Staff was processed and he was not deemed to have voluntarily relinquished his Medical
16 Staff membership.

17 "4. Dr. Mileikowsky's lawsuit over his application for reappointment is still
18 pending and has not resulted in a final judgment.

19 "5. On January 12, 2000, the MEC notified Dr. Mileikowsky that it was
20 recommending denial of his application for reappointment to the Medical Staff on the
21 grounds he engaged in dangerous, disruptive, threatening, abusive and unprofessional
22 conduct in relation to Medical Center personnel, Medical Staff officers, and patients.
23 (MEC Exhibit 1.) This Medical Staff hearing will rule on Dr. Mileikowsky's
24 disagreement with this MEC recommendation.

25 **"C. THE LAWSUIT ABOUT THE SECURITY PERSONNEL ESCORT FOR DR.**
26 **MILEIKOWSKY AT ETRMC**

27 "1. On June 23, 2000, Mr. Dale Surowitz, the Chief Executive Officer at
28 ETRMC, notified Dr. Mileikowsky that security measures were being instituted which

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1 required Dr. Mileikowsky to notify Mr. Surowitz or the nursing supervisor whenever Dr.
2 Mileikowsky entered the premises of ETRMC, so that security personnel would
3 accompany him on the premises. (Second Amended Notice, item 29.) The rationale for
4 this measure was described in a June 23, 2000, letter from Mr. Surowitz to Dr.
5 Mileikowsky. (MEC Exhibit 119.)

6 "2. On July 10, 2000, Dr. Mileikowsky filed a lawsuit challenging the propriety
7 of the security escort. On July 11, 2000, Judge Yaffe of the Los Angeles Superior Court
8 issued a temporary restraining order prohibiting any security escort of Dr. Mileikowsky in
9 front of patients. Dr. Mileikowsky contended that ETRMC violated the temporary
10 restraining order. The court never issued a ruling resolving that issue. The temporary
11 restraining order was terminated on September 14, 2000, when Judge Yaffe dissolved the
12 temporary restraining order and refused to issue a preliminary injunction prohibiting any
13 security escort for Dr. Mileikowsky. The Judge issued an order which ruled that 'bizarre
14 and unexplained conduct' by Dr. Mileikowsky 'on August 29, and September 5, 2000,
15 when . . . [he] entered the hospital in the middle of the night accompanied by a female
16 companion, locked himself in a room in which narcotics are stored, and took flash
17 pictures of hospital personnel for no discernable reason', removed the Judge's doubt
18 about the reasonableness of the restrictions on the doctor. This ruling meant that there
19 were no longer any restrictions regarding a security escort for Dr. Mileikowsky at
20 ETRMC.

21 "3. Dr. Mileikowsky's lawsuit about the security escort is still pending and has
22 not resulted in a final judgment.

23 "4. After the Judge's September 14, 2000 ruling, there were other alleged
24 incidents involving ETRMC security and Dr. Mileikowsky on November 10 and 25,
25 2000. (See items 35 and 37 of the Second Amended Notice - MEC Exhibit 144B.)"

26 ///

27 ///

28 ///

ENCLOSURE C-1005-19

1 **"D. DR. MILEIKOWSKY'S ASSERTION IN THE LAWSUITS OF A RIGHT TO AN**
2 **EXPEDITED HEARING**

3 "1. Both of Dr. Mileikowsky's lawsuits were consolidated into one proceeding
4 after the summary suspension of his Medical Staff privileges at ETRMC.

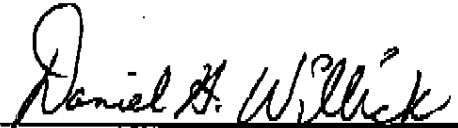
5 "2. Dr. Mileikowsky unsuccessfully sought to have the Court order injunctive
6 relief prohibiting the summary suspension of his Medical Staff privileges and
7 unsuccessfully sought to have the Court order an expedited hearing before a Medical
8 Staff Committee of the propriety of the summary suspension."

9 **F. EXTENSION OF TIME FOR DR. MILEIKOWSKY TO RESPOND**

10 1. My December 14, 2001 letter gave Dr. Mileikowsky until the close of business on
11 December 28, 2001 to respond to certain requests for rulings contained in Dr. Wulfsberg's letter
12 of December 21, 2001. (The requests concerned Dr. Mileikowsky's compartment and the cross-
13 examination of Dr. Ben Yehuda.) Although Dr. Mileikowsky failed to comply with this
14 deadline, I have considered his submissions through January 3, 2002 in my rulings set forth
15 above.

16 2. My December 24, 2001 letter gave Dr. Mileikowsky until the close of business on
17 December 31, 2001 to respond in writing regarding my authority to declare a default or to seek
18 direction on that issue. Dr. Mileikowsky has requested an extension of time to respond. He is
19 granted until the close of business on January 10, 2002 to respond in writing with delivery by
20 facsimile and U.S. mail on me and the MEC. Dr. Mileikowsky also has until the same deadline
21 to respond in writing as required by this Ruling. (See heading B.1.d. at page 2 of this Ruling.)
22 The MEC may also submit additional comments by the same deadline.

23
24 DATED: January 3, 2002

25 
26 DANIEL H. WILLICK
27 Hearing Officer
28

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am over the age of eighteen years and not a party to the within action. I am employed in the office of a member of the bar of this court, at whose direction the within service was made. My business address is 1925 Century Park East, Suite 1700, Los Angeles, California 90067.

On January 3, 2002, I served the following:

JANUARY 3, 2002 RULING

on the interested parties in this action by placing true copies thereof, enclosed in sealed envelopes, with first-class postage thereon, in the United States Mail at Los Angeles, California, addressed as follows:

SEE MAILING LIST ATTACHED

I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice, mail is deposited with the U.S. Postal Service on the same day with postage thereon fully prepaid at 1925 Century Park East, Suite 1700, Los Angeles, California 90067 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.

I declare under penalty of perjury under the laws of the United States of America and of the State of California that the foregoing is true and correct.

DATED: January 3, 2002



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VIA FACSIMILE, CERTIFIED RETURN RECEIPT MAIL & U.S. MAIL

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Ms. Debbie Miller
Director of Medical Staff Services
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Fax No. (775) 324-7748
Telephone No. (775) 324-7744

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EXHIBIT 2

EXHIBIT 2
C-111123

1 and continue to use inappropriate personal invective.

2 1. Dr. Mileikowsky's January 11, 2002 letter to me states he will disobey my
3 January 3, 2002 Ruling regarding the examination of witnesses on his behalf. His letter accuses
4 an attorney, Mr. Auer of the law firm representing the MEC, of "fabrications" and states "For my
5 own sake and yours, I hope you wake up sooner rather than later".

6 2. Dr. Mileikowsky's January 4, 2002 letter to me inaccurately characterizes my
7 January 3, 2002 Ruling regarding the video taping of future hearings, and threatens to bring his
8 own videographer to the hearing. Dr. Mileikowsky will not be permitted to bring any video or
9 recording devices to the hearing. Adequate transcription of the hearing will continue to be
10 provided by the court reporter retained for these proceedings, and the video recording of any
11 future hearings will be provided by a videographer recommended by the court reporter and
12 retained by Encino-Tarzana Regional Medical Center ("ETRMC"). I have spoken to the
13 videographer and have instructed him that should the hearings continue, the videotaping would
14 involve him focusing his camera on the witness, unless there is disruption or yelling in the
15 hearing, in which event he will train his camera on the person yelling or disrupting the hearing
16 and he will also follow my instructions should I ask him to train his camera elsewhere during the
17 hearing. (I am also arranging for a larger room at ETRMC to be used for the hearing so that the
18 videographer may be accommodated.)

19 3. In Dr. Mileikowsky's January 3, 2002 letter to me about security, he states at
20 page 6 that if security is present in the hearing he will come with his own bodyguard. At pages 9
21 and 10, of his letter he states "Clearly you are oblivious to the danger to your own life if an
22 armed guard shoots in the wrong direction and kills you." Dr. Mileikowsky is not permitted to
23 bring any bodyguard to the hearing.

24 4. Dr. Mileikowsky's 5:00 a.m. January 4, 2002, letter objects to my proposed
25 statement regarding his litigations and states he or his representatives will attempt to contradict
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1 **ENCINO-TARZANA REGIONAL MEDICAL CENTER**

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4 In re the matter between:

5 MEDICAL EXECUTIVE COMMITTEE OF
6 ENCINO-TARZANA REGIONAL
7 MEDICAL CENTER

JANUARY 14, 2002 RULING (AS
CORRECTED)

8 and

9 GIL N. MILEIKOWSKY, M.D.

10 Respondent.

11 **A. POSTPONEMENT OF JANUARY 17, 2002 HEARING SESSION.**

12 The January 17, 2002 hearing will be postponed because of Dr. Mileikowsky's continuing
13 refusal to comply with my rulings regarding the conduct of this hearing, and to permit me to have
14 an opportunity to review his new attorneys' anticipated, but late, submission on January 15,
15 2002¹ concerning any authority I possess to impose a default or forfeiture based upon Dr.
16 Mileikowsky's violations of my rulings and his disruption of hearings. The hearing dates for
17 January 23, 28 and 30, 2002, remain as scheduled. The MEC may respond by the close of
18 business on January 18, 2002 to any submission from Dr. Mileikowsky's attorneys.

19 The recent letters from Dr. Mileikowsky, including but not limited to the letters described
20 below, continue to state his intention to violate my rulings regarding the conduct of the hearing

21
22 The attorneys previously requested an extension to January 15, 2002 to file a response. This is at
23 least the fourth attorney or law firm to advise Dr. Mileikowsky regarding this hearing. His
24 attorneys have included:

25 1. Mirch & Mirch;

26 2. Arthur Chenen of Stephan, Oringer, Richman & Theodora;

27 3. Paul Hittelman; and

28 4. Ethan Schulman of Howard, Rice, Nemerovski, Canady, Falk & Rabkin.

C 025/061

1 my instruction to the Hearing Committee on the subject.² (That proposed statement is being
 2 prepared in response to Dr. Mileikowsky's repeated violations of my prior orders that there be no
 3 reference at this hearing to any lawsuits in which he is involved.) Dr. Mileikowsky's letter at
 4 page 2 states that I "still LIE by omission" in my proposed statement and at page 3 states that I
 5 "Suffer from the Same Delusions as Mr. Auer." He goes on to state to me at page 5 that he fails
 6 "to understand the logic behind your madness" and indicates that neither he nor his
 7 representatives will remain silent before the Hearing Committee in response to my instruction to
 8 the Hearing Committee regarding his litigation. This is a further refusal by Dr. Mileikowsky to
 9 comply with my rulings. Although I am considering further modification of the proposed
 10 ~~statement~~ to my proposed statement to the Hearing Committee based upon information submitted
 11 by the MEC and by Dr. Mileikowsky regarding what has occurred in Dr. Mileikowsky's lawsuits,
 12 I do not intend to allow Dr. Mileikowsky or any party to engage in any further personal attacks or
 13 to interfere with my instruction of the Hearing Committee.

14 **B. DR. WISEMAN'S PROPOSAL FOR A PROCEDURAL HEARING ON JANUARY 17,**

15 **2002.**

16 Daniel Wiseman, M.D., who has been assisting Dr. Mileikowsky in this proceeding, sent
 17 me a letter dated January 10, 2002, requesting a procedural hearing without the Hearing
 18 Committee on January 17, 2002 to discuss procedural matters. Dr. Wiseman telephoned me on
 19 January 11, 2002, to inquire on this topic and other procedural issues. I am not willing to order a
 20

21 _____
 22 ² In letters to me of January 1, 2002 and January 4, 2002, Dr. Mileikowsky states he will
 23 violate my order regarding the reading of a statement concerning his litigation to the
 24 Hearing Committee. Dr. Mileikowsky contends that he never misrepresented the content
 25 of his lawsuits, or the rulings in those lawsuits. Besides Dr. Mileikowsky's repeated
 26 violations of my order that there should be no reference before the Hearing Committee to
 27 his lawsuits, Dr. Mileikowsky attempted to convince the Hearing Committee that after the
 28 September 14, 2000 hearing before Judge Yaffe, it was improper for ETRMC to have a
 security escort for him when he was on its grounds. The Judge's September 14, 2000
 Minute Order makes clear that the Judge dissolved the temporary restraining order and
 refused to issue a preliminary injunction prohibiting the security escort. Hence, such a
 security escort became permissible. See my September 13, 2002 Ruling at pages 1 - 2.

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1 procedural hearing on January 17, 2002, since Dr. Mileikowsky continues to refuse to abide by
2 my clear rulings regarding the conduct of this hearing and continues to wish to engage in
3 personal attacks on the MEC representatives, their counsel and me. Furthermore, I wish to have
4 an opportunity to review the belated submission from Dr. Mileikowsky's new attorneys regarding
5 my authority to impose a default or forfeiture based on Dr. Mileikowsky's violations of my
6 rulings and his disruption of the hearings. Upon reflection, I suggest that Dr. Wiseman
7 communicate directly with Dr. Wulfsberg, the representative of the MEC, to see if they can reach
8 some consensus on a telephonic or in-person hearing to discuss pending procedural matters.
9 Although in our January 11, 2002 telephone conversation, I suggested to Dr. Wiseman the
10 possibility of a telephone conference regarding procedural matters involving him and Dr.
11 Wulfsberg, I wish to clarify my comments to include that I believe that Dr. Mileikowsky should
12 have an opportunity to participate in any telephonic or in-person hearing on procedural issues.
13 However, in the present environment which is suffused with Dr. Mileikowsky's verbal and
14 written personal attacks on those with whom he disagrees, I am not going to order any such
15 procedural hearing at this time. I will wait to review the January 15, 2002 submission from Dr.
16 Mileikowsky's new counsel and any response from the MEC before I decide on whether to order
17 a face to face procedural hearing.

18 **C. NOTICE TO THE MEMBERS OF THE HEARING COMMITTEE.**

19 The Medical Staff Office is requested to contact the members of the Hearing Committee
20 and inform them that the hearing on January 17, 2002 has been postponed, but that they should
21 hold their calendars available for the scheduled hearings on January 23, 28, and 30, 2002. The
22 members of the Hearing Committee should also be canvassed by the Medical Staff Office for
23 their availability for hearing dates in February and March. However, I reiterate to Dr.
24 Mileikowsky and his representatives, that my January 3, 2002 Ruling means what it says when it
25 states "The hearing sessions shall not reconvene until Dr. Mileikowsky responds in writing that
26 he will comply with my rulings regarding the conduct of this hearing, including specifically the
27 rules set forth in this Ruling." Please note that my January 3, 2002 Ruling also states that
28

1 hearing sessions will be terminated, if and when, Dr. Mileikowsky acts in a manner which is
 2 abusive or out of control. Dr Mileikowsky's recent flurry of letters contain a number of personal
 3 attacks on participants in this hearing, some of which are quoted above.

4
 5 **D. CONCLUSION.**

6 Dr. Mileikowsky appears to believe that by engaging in statements which personally
 7 attack the MEC representatives and me, and by demanding my removal, he will be able to change
 8 my rulings or to stop the hearing from proceeding with me as the hearing officer. It would set an
 9 improper precedent for a hearing officer to resign because the respondent in a Medical Staff
 10 hearing resorts to personal invective. Such a precedent would encourage a situation where a
 11 physician who is the subject of a medical staff hearing could abort the hearing at will. I will
 12 continue as the hearing officer and will seek to complete the hearing with appropriate respect for
 13 the participants and for the required procedures.

14
 15
 16 DATED: January 15, 2002

Daniel H. Willick
 DANIEL H. WILLICK
 Hearing Officer

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PROOF OF SERVICE

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STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am over the age of eighteen years and not a party to the within action. I am employed in the office of a member of the bar of this court, at whose direction the within service was made. My business address is 1925 Century Park East, Suite 1700, Los Angeles, California 90067.

On January 15, 2002, I served the following:

JANUARY 14, 2002 RULING (AS CORRECTED)


on the interested parties in this action by placing true copies thereof, enclosed in sealed envelopes, with first-class postage thereon, in the United States Mail at Los Angeles, California, addressed as follows:

SEE MAILING LIST ATTACHED

I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice, mail is deposited with the U.S. Postal Service on the same day with postage thereon fully prepaid at 1925 Century Park East, Suite 1700, Los Angeles, California 90067 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.

I declare under penalty of perjury under the laws of the United States of America and of the State of California that the foregoing is true and correct.

DATED: January 15, 2002



Maria Pla

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28**VIA FACSIMILE, CERTIFIED RETURN RECEIPT MAIL & U.S. MAIL**

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VIA FACSIMILE & U.S. MAIL

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Christensen & Auer
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VIA FACSIMILE & U.S. MAIL

Ms. Debbie Miller
Director of Medical Staff Services
Encino Tarzana Regional Medical Center
18321 Clark Street
Tarzana, CA 91356

VIA FACSIMILE & U.S. MAIL

Kevin Mirch, Esq.
Marie Mirch, Esq.
MIRCH & MIRCH
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VIA FACSIMILE & U.S. MAIL

Daniel Wiseman, M.D.
6833 Katherine Avenue
Van Nuys, CA 91405

EXHIBIT 3

ENCINO-TARZANA REGIONAL MEDICAL CENTER

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In re the matter between:
MEDICAL EXECUTIVE COMMITTEE OF
ENCINO-TARZANA REGIONAL
MEDICAL CENTER

and

GIL N. MLEIKOWSKY, M.D.

Respondent.

FEBRUARY 19, 2002 RULING

A. INTRODUCTION.

Appropriate medical staff peer review is essential to the operation of hospitals and depends upon the participants abiding by the applicable rules. It is only through such voluntary compliance by the participants that a viable system of medical staff peer review and quality assurance that provides fair procedure is possible. When any party to a peer review hearing refuses to abide by the rules fair procedure is compromised and unavailable. In such a situation, the Hearing Officer is entitled to suspend the hearing until the offending participant or participants indicate a willingness to abide by the rules and the rulings of the Hearing Officer interpreting those rules. In the present hearing the respondent, Dr. Mileikowsky has been unwilling to abide by the rules for the hearing or my rulings applying those rules. As a result, several hearing sessions have been postponed to permit me to consider written submissions by the parties regarding my authority in these circumstances. Although, after review of these submissions, I have concluded that it would be inappropriate at this time for me to enter an order of default against Dr. Mileikowsky or to invite review by a court or the ETRMC Board of Directors, I reiterate my ruling that the "hearing sessions shall not reconvene until Dr. Mileikowsky responds in writing that he will comply with my rulings regarding the conduct of this hearing, including specifically the rules set forth in" my January 3, 2002 Ruling. I am aware that Dr. Mileikowsky has stated in writing that he will defy pertinent portions of my rulings

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1 regarding the conduct of this hearing. [See my January 14, 2002 Ruling (As Corrected)].

2 However, these threats do not change my position.

3 **B. DR. MILEIKOWSKY MUST RESPOND IN WRITING THAT HE WILL COMPLY**
4 **WITH CERTAIN HEARING PROCEDURES BEFORE THE COMMENCEMENT OF**
5 **THE NEXT HEARING SESSION.**

6 To be perfectly clear, Dr. Mileikowsky must respond in writing on or before February 28,
7 2002, that is before the next scheduled hearing session of March 5, 2002, that he will comply
8 with the following procedures which are embodied in my January 3, 2002 Ruling:

9 1. All questioning of witnesses on behalf of Dr. Mileikowsky shall be conducted by
10 either of his assistants, that is Dr. Daniel Wiseman or Dr. Jose Spiwak;

11 2. Only Dr. Mileikowsky's representatives may ask questions on his behalf at the
12 hearing;

13 3. Dr. Mileikowsky shall be given a reasonable opportunity to confer with his
14 representatives regarding questions to be asked, including adequate time prior to the next
15 hearing, as well as recesses during the hearing to allow him to consult with his representatives;

16 4. Testimony by Dr. Mileikowsky shall only be pursuant to questions posed to him by
17 one of his representatives;

18 5. Dr. Mileikowsky will not interfere with or address the Hearing Committee to
19 contradict my instruction regarding his litigation¹;

20 6. Dr. Mileikowsky shall be permitted to present his own closing argument if he so
21 wishes;

22
23
24 ¹ In a letter to me dated January 1, 2002 Dr. Mileikowsky states: "You also know that if you
25 choose to continue to misrepresent the TRUTH you force me to expose you and your lies to the
26 members of the Hearing Committee. As a consequence of your intentional provocations I shall
27 have to set the record straight. You will then raise your voice, point your finger at me in your
28 typical threatening fashion, your eyes bulging and your red flushed face screaming at me: 'Dr.
Mileikowsky your are out of order!!'

"I shall then respond in my Defense you are 'OUT OF LAW!!'"

Dr. Mileikowsky's letter goes on to state:

"It should be patently clear to you that any Statement by you will exacerbate the tension between
us and will force me to confront your intentional misrepresentations."

1 7. Because of Dr. Mileikowsky's repeated outbursts and personal verbal attacks during
2 the hearing, and personal attacks in his letters, I have ruled that the following additional
3 procedures requested by the MEC shall apply at the hearing and that Dr. Mileikowsky must
4 respond in writing that he will comply with these rulings:

5 a. The hearing shall be videotaped as described in my January 14, 2002 Ruling
6 (As Corrected) and Dr. Mileikowsky is not permitted to videotape or make an audio recording of
7 the hearing. The present arrangements with a court reporter and a videographer are adequate and
8 appropriate.

9 b. A security guard in plain clothes shall be present in the hearing room and Dr.
10 Mileikowsky is not permitted to bring a bodyguard to the hearing.

11 c. The hearing session will be terminated, if and when, Dr. Mileikowsky acts in
12 a manner which I rule is abusive or out of control.

13 Since the refusal of Dr. Mileikowsky to date to provide the written response I have
14 requested has delayed and interfered with the MEC's presentation of its case, I will entertain a
15 request for corrective measures to deal with this interruption.

16 **C. OTHER RULINGS WHICH DR. MILEIKOWSKY HAS DISOBEYED FOR WHICH**
17 **I DO NOT REQUIRE HIS WRITTEN COMMITMENT OF COMPLIANCE SINCE HIS**
18 **DISOBEDIENCE HAS BEEN OR WILL BE REMEDIED BY MY PRIOR RULINGS.**

19 There are other instances where I have ruled Dr. Mileikowsky has violated my rulings and
20 for which I have imposed or may impose remedies. (See, for example, my June 11, 2001 Ruling
21 at pages 2 - 4). As to those other instances, I do not at this time require a written statement from
22 Dr. Mileikowsky.

23 **D. REVISIONS TO THE STATEMENT REGARDING DR. MILEIKOWSKY'S**
24 **LITIGATION.**

25 As a result of submissions from the parties, I have made revisions to B.3, C.2, and D.1 of
26 my Description of Legal Proceedings which I will read to the Hearing Committee. The revised
27 description is set forth below:
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"DESCRIPTION OF LEGAL PROCEEDINGS

"A. INTRODUCTION

"This hearing concerns:

"1. The Medical Executive Committee's ("MEC") January 12, 2000 proposal to deny Dr. Mileikowsky's application for reappointment to the Encino Tarzana Regional Medical Center ("ETRMC") Medical Staff;

"2. The MEC's November 16, 2000 Summary Suspension of Dr. Mileikowsky's Medical Staff privileges at ETRMC; and

"3. The MEC's December 1, 2000 recommendation to terminate Dr. Mileikowsky's ETRMC Medical Staff membership and clinical privileges.

"The MEC's allegations against Dr. Mileikowsky are set forth in its Second Amended Notice of Medical Staff Hearing and Charges (the "Second Amended Notice") which is found as Exhibit 144B in the Exhibit book which you have and in the Third Amendment to the Charges (the "Third Amendment") which is found at Exhibit 144C of the Exhibit book.

"Although my original ruling was to permit the Hearing Committee to decide these issues without reference to Court rulings in two pending lawsuits filed by Dr. Mileikowsky, repeated references to these lawsuits by Dr. Mileikowsky before the Hearing Committee lead me to provide a brief description of the rulings in these lawsuits so that the Hearing Committee may have a more complete description of those proceedings. It is important to note that the rulings in the two lawsuits are not final and in no way limit or bind the Hearing Committee in its decisions. To place the pertinent rulings in the lawsuits in a chronological context they will be described by me with reference to the MEC's allegations against Dr. Mileikowsky.

"B. THE LAWSUIT ABOUT THE MEC'S PROPOSAL NOT TO REAPPOINT DR. MILEIKOWSKY TO THE MEDICAL STAFF

"1. The MEC proposes to deny Dr. Mileikowsky's application for reappointment to the Medical Staff based upon the allegations set forth in items 1 through

C 35

1 28 of the Second Amended Notice (MEC Exhibit 144B).

2 "2. Initially, in early 1999, the MEC proposed to treat Dr. Mileikowsky as
3 having voluntarily relinquished his Medical Staff membership for failure to submit a
4 timely application for reappointment. The MEC's allegations in that regard are found at
5 item 20 of the Second Amended Notice (MEC Exhibit 144B). Additionally, item 25 of
6 the Second Amended Notice concerns the alleged action of Dr. Mileikowsky when he
7 came to the Medical Staff office on February 2, 1999 to communicate regarding his
8 alleged failure to submit a timely application for reappointment.

9 "3. Dr. Mileikowsky filed a lawsuit over the proposal to treat him as having
10 voluntarily relinquished his Medical Staff privileges and on April 20, 1999 was
11 successful in obtaining a preliminary injunction prohibiting ETRMC from treating him as
12 having voluntarily relinquished his Medical Staff membership. As a result of the
13 preliminary injunction, Dr. Mileikowsky's application for reappointment to the Medical
14 Staff was processed and he was not deemed to have voluntarily relinquished his Medical
15 Staff membership. In other words, as a result of the issuance of the preliminary
16 injunction, the MEC changes its position to permit review of Dr. Mileikowsky's
17 application for reappointment and Dr. Mileikowsky was permitted to continue practicing
18 at the ETRMC until he was summarily suspended on or about November 16, 2000.

19 "4. Dr. Mileikowsky's lawsuit over his application for reappointment is still
20 pending and has not resulted in a final judgment.

21 "5. On January 12, 2000, the MEC notified Dr. Mileikowsky that it was
22 recommending denial of his application for reappointment to the Medical Staff on the
23 grounds he engaged in dangerous, disruptive, threatening, abusive and unprofessional
24 conduct in relation to Medical Center personnel, Medical Staff officers, and patients.
25 (MEC Exhibit 1.) This Medical Staff hearing will rule on Dr. Mileikowsky's
26 disagreement with this MEC recommendation.

27
28 ///

ENCLOSURE C 36

1 incidents involving ETRMC security and Dr. Mileikowsky on November 10 and 25,
2 2000. (See items 35 and 37 of the Second Amended Notice - MEC Exhibit 144B.)"

3 **"D. DR. MILEIKOWSKY'S ASSERTION IN THE LAWSUITS OF A RIGHT TO AN**
4 **EXPEDITED HEARING**

5 "1. Both of Dr. Mileikowsky's lawsuits currently are being or have been
6 consolidated into one proceeding pursuant to a stipulation between the parties and with
7 the court's permission.

8 "2. Dr. Mileikowsky unsuccessfully sought to have the Court order injunctive
9 relief prohibiting the summary suspension of his Medical Staff privileges and
10 unsuccessfully sought to have the Court order an expedited hearing before a Medical
11 Staff Committee of the propriety of the summary suspension."


12
13 **E. NEW HEARING DATES AND POSSIBLE POSTPONEMENT OF THOSE HEARING**
14 **DATES.**

15 The Medical Staff Office has reported to me that all members of the Hearing Committee
16 are available for hearings on February 28, 2002 and March 5, 6, 7, 13, 20, 28, 2002. The hearing
17 will reconvene on March 5, 6, 7, 13, 20, 28, 2002, if Dr. Mileikowsky provides a timely written
18 commitment to abide by my rulings as required by this Ruling. The Medical Staff Office is
19 requested to inform the Hearing Committee of the March dates. (Under separate cover I will send
20 Dr. Mileikowsky and Dr. Wulfsberg copies of the calendars of availability submitted by the
21 members of the Hearing Committee.)

22
23 **F. OTHER ISSUES RAISED BY THE PARTIES.**

24 I will address other unresolved issues raised by the parties in a separate ruling.

25
26
27 DATED: February 19, 2002

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DANIEL H. WILLICK
Hearing Officer

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am over the age of eighteen years and not a party to the within action. I am employed in the office of a member of the bar of this court, at whose direction the within service was made. My business address is 1925 Century Park East, Suite 1700, Los Angeles, California 90067.

On February 19, 2002, I served the following:

FEBRUARY 19, 2002 RULING

on the interested parties in this action by placing true copies thereof, enclosed in sealed envelopes, with first-class postage thereon, in the United States Mail at Los Angeles, California, addressed as follows:

SEE MAILING LIST ATTACHED

I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice, mail is deposited with the U.S. Postal Service on the same day with postage thereon fully prepaid at 1925 Century Park East, Suite 1700, Los Angeles, California 90067 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.

I declare under penalty of perjury under the laws of the United States of America and of the State of California that the foregoing is true and correct.

DATED: February 19, 2002



Maria Pla

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MAILING LIST**VIA FACSIMILE, CERTIFIED RETURN RECEIPT MAIL & U.S. MAIL**

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Daniel Wiseman, M.D.
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EXHIBIT 4

EXHIBIT 4

ENCINO-TARZANA REGIONAL MEDICAL CENTER

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In re the matter between:
MEDICAL EXECUTIVE COMMITTEE OF
ENCINO-TARZANA REGIONAL
MEDICAL CENTER

and

GIL N. MILEIKOWSKY, M.D.

Respondent.

FEBRUARY 28, 2002 RULING

A. INTRODUCTION.

Dr. Mileikowsky's letter to me dated "2/25/02" contends that he cannot comply with my February 19, 2002 Ruling because there are "presently about fifty pending rulings". This is not correct and probably stems from the fact that Dr. Mileikowsky has repeatedly sent letters requesting reconsideration of my rulings. He is not excused from the deadline set in my February 19, 2002 Ruling, and if he fails to comply with the ruling, I will act pursuant to the ruling. Nevertheless, in this ruling I will deal with the various issues raised by Dr. Mileikowsky, including issues on which he has repeatedly sought reconsideration of my rulings. Also, I will address several pending requests by the MEC for rulings.

B. DISCOVERY.

My March 26, 2001 Ruling, which followed extensive exchanges of requests for documents, production of documents and consideration of discovery disputes, set a deadline of April 2, 2001 for each party to claim any deficiencies in discovery and set a deadline of April 9, 2001 for each party to provide responses concerning any claimed deficiencies in discovery. Subsequently, I resolved and concluded the discovery matters pursuant to rulings, including my Rulings of March 14, 2001, April 12, 2001, June 11, 2001 and July 11, 2001. The time is long past for there to be demands for discovery. I refer the parties to my December 26, 2001 Ruling at

C. [Signature]

1 heading B. on pages 1 and 2, regarding the conclusion of discovery many months ago.
2 Nevertheless, I will once again respond briefly to Dr. Mileikowsky's continuing efforts to seek to
3 reopen the discovery phase of this proceeding.

4 1. Dr. Mileikowsky's Demand For His Credentials file - In his letter to me dated
5 February 3, 2002, Dr. Mileikowsky requests the right to inspect his credentials file. The issue
6 was resolved by my March 14, 2001 Ruling at page 2, lines 18 -22, and by my April 12, 2001
7 Ruling at page 1, lines 17 -24. Dr. Mileikowsky, had an opportunity to review the credentials file
8 and received copies of his credentials file as he admits in his February 3, 2002 letter to me. This
9 is also verified in the April 18, 2001 letter to me from Dr. Wulfsberg. It is inappropriate at this
10 late date for Dr. Mileikowsky to seek to reopen this matter.

11 2. Dr. Mileikowsky's Requests to Meet and Confer - In various letters, including
12 his January 2, 2002 letter to me, Dr. Mileikowsky requests a meet and confer session regarding
13 his default under my rulings requiring him to produce documents for review by the MEC. My
14 prior rulings such as my April 12, 2001 Ruling, at page 2, my June 11, 2001 Ruling at pages 2 -4,
15 and my July 11, 2001 Ruling, at pages 2 and 3, clearly set forth Dr. Mileikowsky's obligations
16 during the discovery phase of this proceeding to produce documents for review by the MEC. Dr.
17 Mileikowsky defaulted on a number of those obligations. If he wishes at this late date to produce
18 the documents voluntarily he may do so without having a so called meet and confer session. He
19 may then be in a position to present mitigating arguments in response to my various rulings
20 finding him in default and permitting the MEC to disclose that to the Hearing Committee.

21 3. The Baby B CT Scan - In his January 2, 2002 letter to me, Dr. Mileikowsky
22 requests access to the CT scan for Baby B and an exact duplicate of the scan. My December 26,
23 2002 Ruling at heading C. on page 2, deals with that issue and Dr. Wulfsberg's January 8, 2002
24 letter to me of provides procedures for the scan to be available to Dr. Mileikowsky.

25 4. Dr. Mileikowsky's Requests for Retainer Agreements - In a letter dated
26 January 1, 2002, and in a letter dated January 2, 2002, Dr. Mileikowsky requests copies of
27 "retainer agreements" for members of the Hearing Committee and for Dr. Wulfsberg. These
28 matters were dealt with during the voir dire questioning of members of the Hearing Committee

E 43

1 and further inquiry is not appropriate at this stage in the proceedings given my prior rulings
2 referenced above concluding the discovery months ago. Furthermore, Dr. Mileikowsky is not
3 entitled to delve into any retainers or arrangements involving Dr. Wulfsberg. By the same token,
4 the MEC is not entitled to delve into Dr. Mileikowsky's arrangements with his attorneys or his
5 advisors. The only exception to this rule is that I would permit questioning of expert witnesses
6 regarding any engagement they have or their compensation for testifying in this proceeding.

7 5. Dr. Mileikowsky's Requests Regarding Incident Reports - Dr. Mileikowsky's
8 letter dated January 12, 2002 requests access to incident reports. This issue was previously dealt
9 with in my March 1, 2001 Ruling at page 11, line 15 through page 12, line 2. My understanding
10 is that my ruling has been complied with and I will not reopen the matter.

11 6. Miscellaneous Points Made in Dr. Mileikowsky's "1/02/02 5:00 a.m." Letter -
12 In a letter designated 1/02/02 at 5:00 a.m. Dr. Mileikowsky makes various assertions about
13 discovery. In particular, he contends that adverse findings should be entered against the MEC for
14 vaguely described failures to produce documents. I know of no such failures on the part of the
15 MEC. Matters such as the security sign in sheet for July 26, 2001, have already been resolved.
16 (See the March 30, 2001 letter from Dr. Wulfsberg at B. 3, which states the document cannot be
17 located.) At page 5 of the 1/02/02 letter Dr. Mileikowsky makes reference to charts for the three
18 patients involved in the charges and discipline against him at Cedars Sinai Medical Center. I
19 never indicated or ruled that charts for those patients could be appropriately presented. The
20 proceeding will not relitigate the charges against Dr. Mileikowsky at Cedars Sinai. The only
21 issues before the present hearing deal with Dr. Mileikowsky's alleged failure to provide
22 information on, or a suitable explanation of the action taken by Cedars Sinai against him. (See,
23 for example, Charge No. 27, my March 26, 2001 Ruling at page 5, my April 12, 2001 Ruling at
24 pages 2 - 3, my June 11, 2001 Ruling at pages 3 - 4, and my July 11, 2001 Ruling at pages 2 - 3.)

25 7. Dr. Mileikowsky's Request for Copies of all Correspondence Regarding these
26 Proceedings for his Attorneys Mirch & Mirch - Dr. Mileikowsky's February 3, 2002 letter
27 requests that all correspondence regarding this matter be furnished to his attorneys Mirch &
28 Mirch. If his request is that all correspondence and rulings sent between the parties hereafter in

Case 44

1 this matter be copied to Mirch & Mirch, I will do so and instruct the MEC to do so.
2 (Communications with Mirch & Mirch may be mailed promptly via first class U.S. mail and need
3 not be sent via registered or certified mail.) If Dr. Mileikowsky is referring to correspondence
4 between the parties occurring prior to Mirch & Mirch representing him, such as correspondence
5 between him and the MEC which is found in his credentials file, he has copies which he may
6 furnish to Mirch & Mirch.

7 8. Dr. Mileikowsky's Request for a Listing of All Documents in his Credentials
8 File - Dr. Mileikowsky's January 30, 2002 letter to me states that there is a comprehensive listing
9 of all documents in his credentials file and requests that I order the MEC to provide that to him. I
10 deny this request. Such discovery matters are no longer open to discussion. Dr. Mileikowsky
11 has a copy of his credentials file pursuant to my prior rulings and may review the document
12 copies in his possession to make a list if so wishes. Also, the MEC has stated in Dr. Wulfsberg's
13 February 1, 2002 letter at page 2 that it has no such list.

14 **C. DR. MILEIKOWSKY'S REQUESTS FOR DISMISSAL OF CHARGES**

15 In letters to me dated 1/17/02 and 1/28/02 at 9:00 p.m.. Dr. Mileikowsky requests
16 dismissal of Charge No. 34. As I stated in my prior rulings on Dr. Mileikowsky's repeated
17 requests for dismissal of charges - I do not have the authority to dismiss charges. (See, e.g. my
18 March 1, 2001 Ruling at page 12.) However, Dr. Mileikowsky's comments concerning Charge
19 No. 34 and concerning the letter from Dr. Shapiro to Dr. Zukow, leave open the possibility that
20 Dr. Mileikowsky's representative may seek to question witnesses with knowledge of that letter
21 during his defense.¹

22 **D. DR. MILEIKOWSKY'S REQUEST FOR AN EXPEDITED HEARING.**

23 Dr. Mileikowsky has made repeated assertions that his right to an expedited hearing has
24 been violated. I have ruled on this matter. In particular, please review my December 26, 2001
25

26
27 I note that I lack the power to order any private person who is not a party to this proceeding to
28 produce a letter in their possession. It is my understanding, based upon the information provided
to date, that the letter from Dr. Shapiro to Dr. Zukow may not be in the possession or control of
any party to this hearing.

C. M. O'NEIL 45

1 Ruling at heading E on pages 4 and 5. This hearing was initially delayed, in part, due to Dr.
2 Mileikowsky's unavailability due to travel. It was delayed by his refusals to meet discovery
3 obligations and delayed by his refusals to obey rulings which I have made regarding the conduct
4 of this hearing. Dr. Mileikowsky has no right to a hearing on terms which he dictates and which
5 violate fair procedure. These points are discussed in detail in prior rulings.

6 **E. DR. MILEIKOWSKY'S EXHIBIT LIST SUBMITTED WITH HIS LETTER DATED**
7 **1/28/02 2:50 P.M.**

8 Dr. Mileikowsky's letter to me dated January 28, 2002 at 2:50 p.m. attaches a proposed
9 exhibit list without furnishing any of the exhibits. This is a belated but welcome step by Dr.
10 Mileikowsky to seek to relieve himself from his default regarding the submission of exhibits and
11 an exhibit list. I will consider his request for relief from this default when he produces a
12 complete exhibit list and copies of the proposed exhibits for me and the MEC. If I chose to
13 relieve Dr. Mileikowsky of his default, I will allow the MEC a chance to recall witnesses and
14 address any issues raised by the exhibits and the exhibit list or to seek authorization for other
15 remedial measures. Contrary to Dr. Mileikowsky's assertions, I did not require him to furnish
16 copies of exhibits to each member of the Hearing Committee. I merely stated that he might find
17 it to his advantage to do so should he relieve himself from his default regarding exhibits.

18 **F. DR. MILEIKOWSKY'S DEFAULT REGARDING A WRITTEN SUBMISSION**
19 **ABOUT PEER REVIEW**

20 The MEC has requested that the Hearing Committee be informed of Dr. Mileikowsky's
21 default under my rulings regarding submissions in writing concerning patient care for those
22 allegations that Dr. Mileikowsky failed to cooperate in peer review involving patient care where
23 there is no present charge that Dr. Mileikowsky provided deficient care. My October 12, 2001
24 Ruling at page 3, lines 2 through 8, provides for an instruction by me to the Hearing Committee
25 regarding Dr. Mileikowsky's default. As requested by the MEC, I am now prepared to give the
26 instruction the Hearing Committee.

27 **G. OTHER SANCTIONS REQUESTED BY THE MEC**

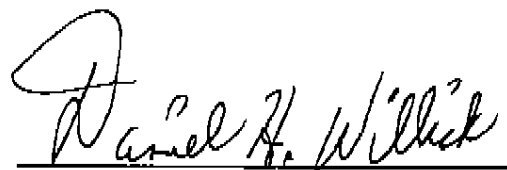
28 Dr. Wulfberg's January 25, 2002 letter at page 2, requests the imposition of sanctions

DR. C. WOLFBERG

1 threatened in my October 12, 2001 Ruling. I will not rule on all of the requested sanctions at this
 2 time. However, I am prepared to inform the Hearing Committee on the record of Dr.
 3 Mileikowsky's defaults regarding discovery, the admission of exhibits and the submission of a
 4 brief concerning his underlying patient care that was involved in peer review where there is no
 5 present contention that his patient care was deficient. I am also prepared to inform the Hearing
 6 Committee of Dr. Mileikowsky's decision to refuse to abide by my rulings regarding the
 7 continuation of this hearing. I am considering informing the Hearing Committee of these matters
 8 in the future. Should Dr. Mileikowsky refuse to comply with my February 19, 2002 Ruling there
 9 will be a statement from me to the members of the Hearing Committee in conjunction with my
 10 informing them that hearing dates previously scheduled are being vacated because of Dr.
 11 Mileikowsky's failure to comply with my February 19, 2002 Ruling.

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DATED: February 28, 2002



DANIEL H. WILLICK
Hearing Officer

U.S. Postal Service
CERTIFIED MAIL RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

[Redacted area]

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Return Receipt Fee (Endorsement Required)	✓
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

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Recipient's Name (Please Print Clearly) (to be completed by mailer)
Gib Mileikowsky, M.D.
 Street, Apt. No., or PO Box No.
2734 E Beverly Glen Circle PNB 373
 City, State, ZIP+4
LA CA 90077

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 9876 9284 4200 0000 0001

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am over the age of eighteen years and not a party to the within action. I am employed in the office of a member of the bar of this court, at whose direction the within service was made. My business address is 1925 Century Park East, Suite 1700, Los Angeles, California 90067.

On February 28, 2002, I served the following:

FEBRUARY 28, 2002 RULING

on the interested parties in this action by placing true copies thereof, enclosed in sealed envelopes, with first-class postage thereon, in the United States Mail at Los Angeles, California, addressed as follows:

SEE MAILING LIST ATTACHED

I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice, mail is deposited with the U.S. Postal Service on the same day with postage thereon fully prepaid at 1925 Century Park East, Suite 1700, Los Angeles, California 90067 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.

I declare under penalty of perjury under the laws of the United States of America and of the State of California that the foregoing is true and correct.

DATED: February 28, 2002


Maria Pla

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MAILING LIST**VIA FACSIMILE, CERTIFIED RETURN RECEIPT MAIL & U.S. MAIL**

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am over the age of eighteen years and not a party to the within action. I am employed in the office of a member of the bar of this court, at whose direction the within service was made. My business address is 1925 Century Park East, Suite 1700, Los Angeles, California 90067.

On March 31, 2002, I served the following:

MARCH 30, 2002 RULING

on the interested parties in this action by placing true copies thereof, enclosed in sealed envelopes, with first-class postage thereon, in the United States Mail at Los Angeles, California, addressed as follows:

SEE MAILING LIST ATTACHED

I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice, mail is deposited with the U.S. Postal Service on the same day with postage thereon fully prepaid at 1925 Century Park East, Suite 1700, Los Angeles, California 90067 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.

I declare under penalty of perjury under the laws of the United States of America and of the State of California that the foregoing is true and correct.

DATED: March 31, 2002



Maria Pla

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28**VIA FACSIMILE, CERTIFIED RETURN RECEIPT MAIL & U.S. MAIL**

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Ms. Debbie Miller
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KONOWIECKI & RANK, LLP

Library Tower
633 West 5th Street, Suite 3500
Los Angeles, California 90071-2007
(213) 229-0990
TELE-FAX NUMBER (213) 229-0992

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TELE-FAX COVER SHEET**PRIVILEGED/CONFIDENTIAL****DATE:** April 26, 2001

TO: Jay Christensen, Esq.
Christensen & Auer
225 South Lake Avenue, 9th Floor
Pasadena, CA 91101

FAX #: (626) 568-1566 **TELEPHONE #:** (626) 568-2900

Arthur R. Chenen, Esq.
Stephan, Oringer, Richman & Theodora
2029 Century Park East, Sixth Floor
Los Angeles, CA 90067-2907

FAX: (310) 551-0283 **TELEPHONE #:** (310) 557-2009

FROM: Peter Rank, Esq. 

RE: Appeal of Gil Mileikowsky, M.D. of the JRC Decision to Deny Reappointment at Encino-Tarzana Regional Medical Center

MESSAGE: Attached are the Certification of Action of Encino-Tarzana Regional Medical Center and Order and Findings of the Appellate Review Body of the Governing Body of Encino-Tarzana Regional Medical Center in the above referenced matter. Telefaxed: 04/26/01.

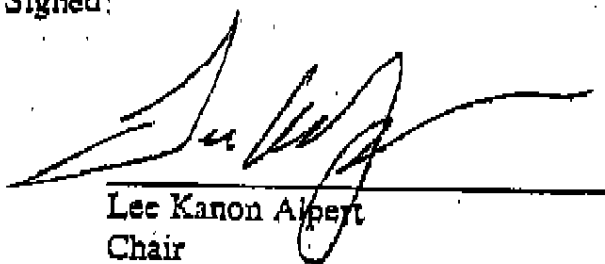
8 PAGES AFTER THIS COVER SHEET ARE BEING TRANSMITTED. PLEASE CALL JULIE AT (213) 229-0990 IF YOU DO NOT RECEIVE THE ENTIRE TRANSMISSION.

2001/04/26 D: [unclear]

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

It is certified that the attached Order and Findings in the matter of the 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 April 26, 2001.

Signed:



Lee Kanon Alpert
Chair

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

**In The Matter Of the Denial of
the Reappointment Application
of Gil N. Mileikowsky, M.D.**

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ORDER AND FINDINGS

INTRODUCTION

On October 24, 25 and 26, 2000 a Judicial Hearing Committee ("Hearing Committee") of the Medical Staff of the Encino-Tarzana Regional Medical Center ("ETRMC") met to consider the challenge by Gil N. Mileikowsky, M.D. to the recommendation by the ETRMC Medical Executive Committee ("MEC") that Dr. Mileikowsky's application for reappointment to the ETRMC Medical Staff be denied.

On August 10, 2000, in a written prehearing order, the Hearing Officer made the following ruling regarding the production of documents prior to the evidentiary portion of the Hearing:

"If either party does not timely produce documents or identify witnesses or exhibits as required under the Medical Staff Bylaws (and as discussed at length in the July 19 pre-hearing conference), I believe the Hearing Committee will be entitled to make such adverse findings of facts against that party based upon such inferences, and I will so advise the Hearing Committee. I also want to make it clear to the parties that if I determine that either party is acting in a frivolous or dilatory manner in failing to meet discovery deadlines, I will be amenable to granting a motion simply to exclude from the hearing any documentary information or exhibit that was not timely produced or identified, or any witness who was not timely identified."

On September 29, 2000, the MEC submitted a motion to the Hearing Officer that he rule that Dr. Mileikowsky had waived his hearing rights by failing after many requests to produce documents regarding his termination of medical staff membership and clinical privileges at Cedars Sinai Medical Center ("CSMC"). On October 11, 2000, the MEC further submitted a motion that the Hearing Officer rule that (a) Dr. Mileikowsky could not introduce in evidence documents requested by the MEC; (b) that the Hearing Committee could make adverse findings of fact based on Dr. Mileikowsky's failure to produce requested documents; and (c) that Dr. Mileikowsky had waived his right to a hearing since he had no way to proceed with his defense.

The Hearing Officer then ordered that the issue of a waiver of right to a hearing would be submitted to the Hearing Committee which rendered its decision after oral arguments heard on October 24, 25 and 26, 2000 as follows:

"The Judicial Hearing Committee concludes that under both Article VIII(4)(A) and Article VII(10)(C) of the Bylaws, Dr. Mileikowsky has waived his right to a hearing on the Medical Executive Committee's recommendation that his reappointment application be denied."

Following this decision, Dr. Mileikowsky brought the appeal which is now before this Appellate Review Body. This Body was appointed by the Chair of the Governing Board pursuant to Article VIII, Section 6.D of the Medical Staff Bylaws (the "Bylaws"). Arthur Chenen, Esq. represented Dr. Mileikowsky and Jay Christensen, Esq. represented the MEC at the Appellate Review Hearing.

ORDER

After hearing and due deliberation, the Appellate Review Body orders as follows:

The decision of the Hearing Committee is reversed and the matter shall be returned to the Hearing Committee to conduct an evidentiary hearing on Dr. Mileikowsky's challenge to the MEC recommendation that his application for reappointment be denied. It is further ordered that such evidentiary hearing be conducted under the following conditions and requirements:

1. Dr. Mileikowsky shall be disallowed from entering into evidence:
 - a. Matters regarding his termination of medical staff membership and clinical privileges at CSMC which have not already been produced by him on a timely basis; and
 - b. Any other matters which have not already been produced by him on a timely basis.
2. The Hearing Committee shall be entitled to make adverse findings of facts against Dr. Mileikowsky based:
 - a. On his failure to produce documents requested by the MEC regarding his termination of medical staff membership and clinical privileges at CSMC; and
 - b. On his failure to produce documents requested by the MEC regarding any other matter.

3 A substitute Hearing Officer shall be appointed to preside at the
evidentiary hearing pursuant to Article VIII, Section 3.D of the Bylaws.

4 Reasonable best efforts shall be made to add an additional member to the
Hearing Committee who practices the same specialty as Dr.
Mileikowsky.

FINDINGS

The following findings are made by the Appellate Review Body:

1. Dr. Mileikowsky violated Article VIII, Section 3.G, of the Bylaws. The Record and the Briefs of the parties provide ample evidence that Dr. Mileikowsky deliberately delayed and refrained from producing evidence which is vital to the MEC in the Hearing. Further, on oral argument at the Appellate Review, counsel for Dr. Mileikowsky indicated that the documents requested might not be forthcoming if the Hearing were to proceed.
2. The Hearing Officer should not have submitted the issue of waiver to the Hearing Committee and the Committee should not have denied Dr. Mileikowsky a full evidentiary hearing in this matter. We agree with MEC counsel that Article VIII, Section 10.C of the Bylaws provides the basis for waiver of rights under the Bylaws in a broad range of circumstances. Nonetheless, a waiver of the right to a Hearing is an extreme remedy. It is ruled that under the specific facts of this case, the MEC had sufficient evidence of the CSMC matter to proceed, given the

Hearing Officer's ruling regarding the negative inferences which may be drawn from Dr. Mileikowsky's failure to produce evidence required by Article VIII, Section 3.G. Furthermore, we believe that the Hearing Officer was in error, after having made his ruling on August 10, 2000 regarding to penalties for failing to comply with production of documents, to reverse himself by referring the issue of waiver of Dr. Mileikowsky's hearing rights to the Hearing Committee for decision.

3. The issues regarding notice of charges are not relevant to this appeal.

Counsel for Dr. Mileikowsky puts forth several issues regarding the nature and timeliness of charges. It is ruled that such issues are not relevant to this appeal in that the Appeals deals only with the issue of whether Dr. Mileikowsky did, in fact, waive his right to a hearing.

4. Members of the Hearing Committee and the Hearing Officer are not biased against Dr. Mileikowsky. Although Dr. Mileikowsky's voir dire established that panel members have a financial relationship with ETRMC and the Hearing Officer's law firm provides legal counsel to the corporate owner of ETRMC, no evidence has been brought forward that provides evidence of bias. The Hearing panel is comprised of persons meeting the legislative and Bylaw requirements of "...individuals who shall gain no direct financial benefit from the outcome, who have not acted as an accuser, investigator, fact finder or initial decision maker in the same matter..." In order to assemble a committee of his peers, it

would be impossible to have physicians without personal and professional relationships with Dr. Mileikowsky.

It is noted that the order herein which requires a substitute Hearing Officer comes not from a judgment of bias of any kind, but because of the intense interaction between Dr. Mileikowsky and the Hearing Officer as illustrated by the voluminous transcripts. The objective of a fair hearing for all parties will be better served with appointment of a new Hearing Officer.

5. Article VIII, Section 3.C. does not require the Chief of Staff to include on the Hearing Committee a practitioner who has the same specialty as Dr. Mileikowsky, but further reasonable attempt to do so should be made for the evidentiary portion of the Hearing.

6. No evidence exists in the Record or Briefs that: (a) the Fair Hearing was improperly "initiated and directed" by the ETRMC administration; or the peer review action was "unlawful retaliation for Mileikowsky's advocacy of Patient Care." Careful review of the Record illustrates no unusual activity of the administration. Legal advice by Medical Staff counsel to the MEC which most likely existed throughout this matter is entirely appropriate. In addition, the Record, Briefs and argument by the parties indicate at least a prima facie case against Dr. Mileikowsky for the action taken by the MEC. Dr. Mileikowsky's counsel's argument that retaliation was the basis for the MEC action appears without basis.

ADOPTED

Sandy Goldman
Sandy Goldman

April 26, 2001
Date

Larry May
Larry May, M.D.

April 26, 2001
Date

Paul Sogol
Paul Sogol, M.D.

April 26, 2001
Date

PROOF OF SERVICE

STATE OF CALIFORNIA)

COUNTY OF LOS ANGELES)

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 2115 Main Street, Santa Monica, California 90405.

On the date shown below I served the foregoing document described as: NOTICE OF MOTION FOR PEREMPTORY WRIT OF ADMINISTRATIVE MANDAMUS;
MEMORANDUM OF POINTS AND AUTHORITIES on interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

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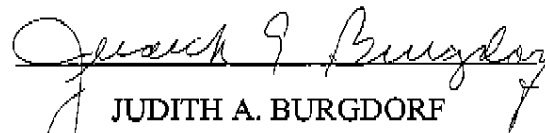
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I caused such envelope with postage thereon fully prepaid to be placed in the United States Mail at Santa Monica, California on December 6, 2002

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct and was executed at Santa Monica, California on the 6 day of December 2002.


JUDITH A. BURGDORF