



# California Medical Association

221 Main Street, P.O. Box 7690, San Francisco, CA 94120-7690 • (415) 541-0900  
*Physicians dedicated to the health of Californians*

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July 5, 2005

Clerk of the Court  
**Attn: Roberta Gilmore**  
California Supreme Court  
350 McAllister Street, Room 1295  
San Francisco, CA 94102

Re: *Milelkowsky v. Tenet Healthsystem*, et al. Case No. S134269

Dear Clerk of the Court:

Enclosed for filing with the Court in the above-referenced case, please find the original and 14 copies of the **Letter Urging Review** with proofs of service. Please file the documents and return the extra copies with file-stamps thereon to us with the enclosed postage-paid return envelope.

Thank you. If you have any questions, please call me at 415-882-3361.

Sincerely,

A handwritten signature in black ink that reads 'Geoffrey Andersen'. The signature is written in a cursive, flowing style.

Geoffrey Andersen  
CMA Legal Division

GTA



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Honorable Chief Justice Ronald M. George  
Honorable Associate Justices  
California Supreme Court  
350 McAllister Street, Room 1295

**Re: Mileikowsky v. Tenet Healthsystem, et al**  
**Case No. S134269**  
**Letter Urging Review**

Dear Chief Justice George and Associate Justices:

The California Medical Association urges this Court to grant the petition for review filed in the above referenced case. The opinion raises a number of issues regarding the role and authority of the lay hearing officer in physician peer review disciplinary cases under Business & Professions Code §809 et seq.

The CMA is a non-profit, incorporated professional association of more than 30,000 physicians practicing in the state of California. CMA's membership includes California physicians engaged in the practice of medicine on hospital medical staffs, both at public sector and private hospitals, throughout the state, and in all specialties. CMA's primary purposes are "...to promote the science and art of medicine, the care and well-being of patients, the protection of public health, and the betterment of the medical profession." CMA and its members share the objective of promoting high-quality, cost effective health care for the people of California. CMA has been involved as amicus curiae in numerous cases before this and other courts of the state, including in cases involving physician peer review procedure and exhaustion of remedies.

This opinion has arrived at the extraordinary conclusion that a lay hearing officer unilaterally appointed by the prosecuting entity in a physician peer review disciplinary proceeding<sup>1</sup> may terminate the hearing with prejudice against the physician (subject to internal and judicial review) under the circumstance where there is "an extensive record of misbehavior . . . to justify a decision to deprive a practitioner of the peer review afforded by statute." (Slip op. at p. 38.) The ruling below affords undue deference to the evaluations and conclusions of both the hearing officer and the governing body of the hospital. We believe the degree of deference afforded by the court below in this case is

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<sup>1</sup> See *Haas v. County of San Bernardino* (2002) 27 Cal.4<sup>th</sup> 1017 [expectation of future employment creates impermissible conflict of interest in administrative law judge unilaterally chosen and paid for by the county to preside over business license denial hearing] and *Yaqub v. Salinas Valley Memorial Hospital System* (2004) 122 Cal.App.4<sup>th</sup> 474 [citing *Haas*, expectation of future employment creates impermissible conflict of interest of hearing officer unilaterally chosen and paid for by the hospital to preside over physician peer review hearing]. See also petition for review pending in *Kaiser v. Sup. Ct. (Dennis-Johnson)*, Supreme Court Case Number S133918 [*Haas/Yaqub* issue raised].

Honorable Chief Justice Ronald M. George and Honorable Associate Justices  
California Supreme Court  
July 5, 2005

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fraught with peril, creates an inappropriate risk of unfairness in such cases, and is incorrect as a matter of law.

We urge this court to grant the petition for review in this case. If the Court grants review, CMA will seek leave to file an amicus curiae brief.

Respectfully submitted,  
Catherine I. Hanson  
Gregory M. Abrams

By: Gregory M. Abrams /ga  
Gregory M. Abrams

**PROOF OF SERVICE**

*Mileikowsky v. Tenet Healthsystem, et al.*  
Case No. S134269

I am employed in the City and County of San Francisco, California; I am over the age of 18 years and not a party to the within cause; my business address is 221 Main Street, San Francisco, California 94105.

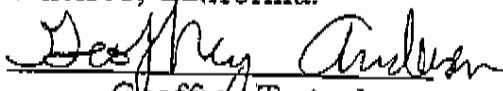
I served the document(s) listed below by placing a true copy thereof in a sealed envelope with postage thereon fully prepaid, addressed as follows:

Date Served: July 5, 2005  
Document: Letter Urging Review  
Parties Served: (See attached list)

- (BY MAIL) I caused such envelope to be placed for collection and mailing on that date in accordance with ordinary business practice for deposit in the United States at San Francisco, California. I am readily familiar with the practice of this office for collection and processing of correspondence for mailing with the United States Postal Service and that this correspondence will be deposited with the United States Postal Service on the same day as I deposit it in the office mail system in the ordinary course of business.
- (BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the offices of the addressee.
- (BY FEDERAL EXPRESS) I caused such envelope to be placed for collection and delivery on this date in accordance with standard Federal Express Overnight delivery procedures.
- (State) I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct.
- (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

The original of any document filed with the court was printed on recycled paper.

Executed on July 5, 2005, at San Francisco, California.

  
Geoffrey T. Andersen

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