

ENCINO-TARZANA REGIONAL MEDICAL CENTER

JUDICIAL REVIEW HEARING

CERTIFIED COPY

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

VOLUME XIII
(Pages 1528 - 1648)

Encino-Tarzana Regional Medical Center
18321 Clark Street
Tarzana, California 91356

Wednesday, November 7, 2001

REPORTED BY:
Theresa A. Crowley
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File No. 11-3-010



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FOR THE MEDICAL EXECUTIVE COMMITTEE:

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RICHARD WULFSBERG, M.D.

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1 APPEARANCES:

2 (Continued)

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4 MEMBERS OF THE HEARING PANEL:

5 Lawrence Pleet, M.D.

6 Darryl Ballin, M.D.

7 Jean Miyashita, M.D.

8 Michael Persky, M.D.

9 Zahi Nassoura, M.D.

10 Arthur Fleisher, M.D.

11 Marlon Brooks, M.D.

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14 Also Present:

15 Debra Miller, Director of Medical

16 Staff Services

17 Layne Hastings

18 Daniel Wiseman, M.D.

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I N D E X

(Procedural Matters contained in
separate Confidential Volume.)

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
FOR THE MEC		1532, 1543	1604	1611
Glenn Irani, M.D.		1560, 1596	1638	1640
Examination by The Hearing Officer - pages 1542,			1557, 1595	
Examination by Dr. Miyashita - pages 1600, 1636				
Examination by Dr. Pleet - pages 1600, 1603, 1635				
Examination by Dr. Fleisher - page 1601				
Examination by Dr. Persky - page 1601				
Examination by Dr. Ballin - page 1602				
Examination by Dr. Brooks - page 1636				
Examination by Dr. Nassoura - page 1638				

MEC EXHIBITS REFERENCED

129B	Medical Record No. 492180T
142	Excerpt from CLINICAL PEDIATRIC UROLOGY - 2ND EDITION Re: Circumcision
135	11-28-00 MEC minutes
148	ETRMC Bylaws, Rules and Regulations approved 10-28-99

1 TARZANA, CALIFORNIA

2 Wednesday, November 7, 2001, 7:20 p.m.

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4 * * * * *

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6 P R O C E E D I N G S

7
8 THE HEARING OFFICER: On the record.

9 Cross-examination of Dr. Irani is continuing.

10 Go ahead, Dr. Mileikowsky.

11 DR. MILEIKOWSKY: Thank you very much,
12 Mr. Willick.

13
14 CROSS-EXAMINATION (Resumed)

15 BY DR. MILEIKOWSKY:

16 Q Good evening, Dr. Irani. How are you?

17 A Very well, thank you.

18 Q We were talking last time about your
19 observations regarding the circumcision I performed
20 November 5, 2000; correct?

21 A Yes.

22 Q Do you have the chart?

23 A The chart is here.

24 Q Will you be kind enough to look at the picture.

25 A I have the picture.

1 Q Were you present when that picture was taken?

2 A My left hand is the hand holding the child's
3 left knee. I was there holding the hand. That baby
4 was --

5 Q Do you see any bleeding on this picture?

6 A Yes. You can see on the gauze and diaper in
7 front that there is flesh blood.

8 Q Not on the diaper. I'm talking about on the
9 penis.

10 A No, not at the time. Because I had swabbed it
11 away to take the photo.

12 Q Now, I think that last time I asked you if you
13 had ever seen a Gomco instrument before. Do you know
14 what a Gomco is?

15 A Yes. You didn't ask me that.

16 Q Okay. Can you -- if I give you a paper and a
17 pen, can you do me a drawing of a Gomco?

18 A No.

19 Q You could not?

20 A No.

21 Q All right.

22 You mentioned that whoever does the
23 circumcision you said was a mohel. I asked you -- or I
24 didn't do the foundations. How many mohels have you
25 seen perform a Bris?

1 A Less than 10.

2 Q Do you remember visualizing the instrument they
3 use?

4 A Yes.

5 Q Can you, if I give you a paper and a pen, do a
6 drawing for me of such an instrument?

7 A No.

8 Q Do you know how the instrument that mohels use
9 for thousands of years is called?

10 A No.

11 Q Do you know if it is the same kind of
12 instrument that is available to us here at the hospital?

13 A I don't know.

14 DR. WULFSBERG: I'm going to ask relevancy.
15 How does this deal with a Gomco?

16 THE HEARING OFFICER: Go ahead.

17 DR. MILEIKOWSKY: Thank you.

18 THE HEARING OFFICER: What is the relevance?

19 DR. MILEIKOWSKY: We're going into the
20 knowledge of the witness into circumcisions. He
21 testified that he never performed a circumcision before,
22 and now I'm going into how is it possible for a Gomco to
23 cause such a damage.

24 THE HEARING OFFICER: Well, then ask him that
25 directly, please.

1 DR. MILEIKOWSKY: That's what I just did. I
2 was laying foundations first.

3 THE WITNESS: What's the question?

4 BY DR. MILEIKOWSKY:

5 Q Okay. Do you have in your mind -- or should I
6 ask maybe something different?

7 THE HEARING OFFICER: Wait.

8 DR. MILEIKOWSKY: Yeah.

9 THE HEARING OFFICER: Let's try and move this
10 along because you took very long in the break, and I
11 want to get through this.

12 DR. MILEIKOWSKY: No problem.

13 THE HEARING OFFICER: Dr. Irani, at the time
14 that you saw the condition of the penis after the
15 circumcision, did you have any opinion as to what caused
16 that condition?

17 THE WITNESS: I do not understand the
18 mechanism of the injury to the boy's penis.

19 THE HEARING OFFICER: All right. Did you have
20 any opinion as to whether the Gomco caused that?

21 THE WITNESS: No.

22 THE HEARING OFFICER: Did you have any
23 opinions to whether some other surgical procedure that
24 was done on the penis caused it?

25 THE WITNESS: No.

1 THE HEARING OFFICER: All right. Next
2 question.

3 BY DR. MILEIKOWSKY:

4 Q Did you do any literature search, other than
5 going to the library at Tarzana Hospital and retrieved
6 the book that was edited, among other people, by
7 Dr. Belman?

8 A No other search.

9 Q No other search.

10 Were you asked to do any search?

11 A No.

12 Q How did you learn of the good outcome of that
13 circumcision?

14 A I don't understand the question.

15 Q You stated in your previous testimony that you
16 knew about the good outcome esthetically and otherwise
17 of the baby.

18 THE HEARING OFFICER: Wait. Wait. That
19 mischaracterizes the testimony.

20 DR. MILEIKOWSKY: All right.

21 THE HEARING OFFICER: You stated that you were
22 informed later on as to how the patient recovered from
23 what you had observed; correct?

24 THE WITNESS: That's right.

25 THE HEARING OFFICER: And what were you

1 informed?

2 THE WITNESS: That it was healing nicely.

3 THE HEARING OFFICER: All right.

4 BY DR. MILEIKOWSKY:

5 Q Who informed you?

6 A The child's pediatrician, Dr. Zukow.

7 Q Did you ever discuss Dr. Shapiro's finding with
8 Dr. Shapiro?

9 A No.

10 Q Are you a member of the American Academy of
11 Pediatrics?

12 A Yes.

13 Q How many years?

14 A I'm going to have to struggle to guess. Hang
15 on a minute. I believe since 1990, but I'm not sure if
16 it was '89, actually. Might have been 1989.

17 Q Are you familiar with the GUIDELINES OF
18 PERINATAL CARE, FOURTH EDITION, that was jointly
19 published by the American Academy of Pediatrics and the
20 American College of Obstetricians and Gynecologists?

21 A I'm aware they have standards. I don't know
22 the specifics, sitting here.

23 Q Would it help you if I provided you a copy?

24 DR. WULFSBERG: I'm going to object. This has
25 not been in evidence; it's not entered into evidence.

1 There's no foundation.

2 DR. MILEIKOWSKY: It's medical literature.

3 THE HEARING OFFICER: It's sustained.

4 Look, I ruled --

5 DR. MILEIKOWSKY: I just discovered it this
6 morning.

7 THE HEARING OFFICER: Well --

8 DR. MILEIKOWSKY: And I specifically indicated
9 in my list of exhibits that I would use the medical
10 literature, and I've used the medical literature
11 before. The first exhibit I presented to the hearing
12 committee was --

13 THE HEARING OFFICER: That's insufficient. The
14 medical literature could encompass filling up all the
15 rooms of this hospital. And you continue to be in
16 default on your obligation to give an exhibit list and
17 to provide exhibits ahead of time. I --

18 DR. MILEIKOWSKY: So if I provide it -- I'm
19 sorry. If I provide this 48 hours in advance, then it's
20 admissible?

21 THE HEARING OFFICER: No. I indicated months
22 ago what you need to do. Now, if you feel that it helps
23 your case to be in defiance of my rulings about this,
24 then go ahead and do that; maybe it does. But I am
25 going to abide by the rulings.

1 You can make reference -- you can ask him if
2 he's familiar with what it says in there --

3 DR. MILEIKOWSKY: All right.

4 THE HEARING OFFICER: -- but I doubt he's going
5 to remember it, if he ever read it in the first place.

6 DR. MILEIKOWSKY: For the record, I have
7 absolutely no desire or interest to object to any of
8 your rulings, other than if they cause me to chop up my
9 exhibit book.

10 THE HEARING OFFICER: Don't go down that path,
11 please.

12 DR. MILEIKOWSKY: All right.

13 Q On page 167 of the FOURTH EDITION OF THE
14 GUIDELINES FOR PERINATAL CARE, are you familiar with
15 what guidelines of the American Academy of Pediatrics is
16 regarding the postop care and discharge of a circumcised
17 baby?

18 DR. WULFSBERG: I object. This is the same
19 issue. He's raised specific --

20 DR. MILEIKOWSKY: Okay. Let me ask it
21 differently.

22 THE HEARING OFFICER: Well, wait.

23 BY DR. MILEIKOWSKY:

24 Q Do you know what the standard of care is?

25 THE HEARING OFFICER: Correct. That's a fine

1 question.

2 DR. MILEIKOWSKY: Okay. Thank you.

3 Q What is the standard of care as set by your own
4 Academy of Pediatrics?

5 THE HEARING OFFICER: Look. Ask him whether he
6 knows what the standard of care is for whatever it is.
7 This is postcircumcision standard of care?

8 DR. MILEIKOWSKY: Correct.

9 THE HEARING OFFICER: Do you have an
10 understanding of what that is?

11 THE WITNESS: I have an understanding, yes.

12 THE HEARING OFFICER: Please state it.

13 THE WITNESS: The postcircumcision standard of
14 care would involve assessment of the child
15 postcircumcision as well as counseling with the family
16 about the care of the postcircumcised area of the body,
17 and assisting them with understanding how to do that
18 care.

19 THE HEARING OFFICER: Next question.

20 BY DR. MILEIKOWSKY:

21 Q Would it surprise you if I was informing you
22 that the standard of care is that you cannot discharge a
23 baby after a circumcision --

24 DR. WULFSBERG: I object to this.

25 / / /

1 BY DR. MILEIKOWSKY:

2 Q -- unless the baby --

3 (Simultaneous colloquy.)

4 THE REPORTER: One at a time.

5 (Continued simultaneous colloquy.)

6 THE REPORTER: I'm not getting this.

7 THE HEARING OFFICER: Excuse me.

8 DR. WULFSBERG: I'm going to object, again,
9 because this document was not presented.

10 THE HEARING OFFICER: Well, there's no evidence
11 as to what -- there's no evidence that is in evidence as
12 to what the document that he believes he's referring to
13 states. But he can ask the witness as to whether the
14 witness has an opinion as to whether the appropriate
15 standard of care is to discharge the infant less than
16 two hours after the bleeding on the circumcision stops.

17 DR. MILEIKOWSKY: Correct.

18 THE WITNESS: Tell me the question you want me
19 to answer, please.

20 THE HEARING OFFICER: Could you repeat what I
21 just said.

22 Wait. I can do it.

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FURTHER EXAMINATION

BY THE HEARING OFFICER:

Q To your knowledge, is the standard of care postcircumcision such that an infant may be discharged from the hospital less than two weeks after --

DR. PERSKY: Two hours.

DR. FLEISHER: Two hours.

THE HEARING OFFICER: Two hours. I'm sorry.

Q -- less than two hours after any bleeding stops?

A Little boys are discharged from the hospital less than two hours after a circumcision quite often.

Q And does it make a difference as to whether there was bleeding after the circumcision?

A It might make a difference in the time of discharge being delayed, or it might be accomplished within a time less than two hours, if that is satisfactory.

Q Would that depend on the amount of bleeding?

A Yes. And other factors, perhaps.

Q Taking those factors into account, do you have an opinion as to what the appropriate standard would be as to discharge?

A The two-hour time frame would be considered a typical amount of time to observe for any postprocedure

1 bleeding. And that two-hour time can be shortened if
2 the clinician would be satisfied that things were at a
3 discharge state.

4 Q And does it make any difference as to the
5 amount of bleeding in terms of the decision to
6 discharge?

7 A There could be reasons to delay it further,
8 yes.

9 Q Under what circumstances?

10 A Gross hemorrhage, bleeding diathesis, things
11 like that.

12 THE HEARING OFFICER: All right. Next
13 question.

14 DR. MILEIKOWSKY: Thank you.

15

16 CROSS-EXAMINATION (Continued)

17 BY DR. MILEIKOWSKY:

18 Q Last time you stated that it was the
19 pediatrician's job description to follow up on
20 complications of circumcision. What is that based on?

21 A I think that's a little bit of a misstatement,
22 but I will say that that's my patient and that the
23 obstetrician is a consultant when performing that
24 procedure.

25 Q How can a surgeon be a consultant when he's the

1 primary surgeon?

2 A I don't think that I spoke incorrectly.

3 Q That wasn't the issue. I asked you how can it
4 be.

5 A It is.

6 Q But in order to have a consult, the
7 pediatrician would have to ask a consult from the
8 gynecologist. Was there a consult requested from myself
9 in this case?

10 A I didn't request the circumcision.

11 Q Correct.

12 A That's right.

13 Q So how am I a consult to you?

14 A To the little boy?

15 Q Yeah.

16 A You're not the primary care doctor. Dr. Zukow
17 was. I was covering for Dr. Zukow.

18 It's a unique place.

19 Q I agree with that. It's very unique.

20 THE HEARING OFFICER: All right. Come on,
21 Dr. Mileikowsky.

22 BY DR. MILEIKOWSKY:

23 Q The primary surgeon on a circumcision has
24 nothing to do with the primary pediatrician.

25 DR. WULFSBERG: This is argument.

1 DR. MILEIKOWSKY: No. It's very important.

2 THE HEARING OFFICER: Well, do it in the form
3 of a question.

4 DR. MILEIKOWSKY: Okay. Please do it in a form
5 that is acceptable. Thank you.

6 THE HEARING OFFICER: I think he's answered the
7 question.

8 It is your understanding that when an
9 obstetrician performs a circumcision, after the
10 circumcision primary responsibility for the care rests
11 with the pediatrician?

12 THE WITNESS: That is the understanding.

13 BY DR. MILEIKOWSKY:

14 Q What is that based on? That's the first time I
15 hear such a thing.

16 DR. WULFSBERG: He's answered the question.

17 THE HEARING OFFICER: Right.

18 BY DR. MILEIKOWSKY:

19 Q What's the standard of care in the country --

20 THE HEARING OFFICER: He stated it.

21 THE WITNESS: I'm not an expert on the
22 standard of care for the rest of the country.

23 BY DR. MILEIKOWSKY:

24 Q Are you an expert on the standard of care for
25 this hospital?

1 A I'm not going to say that either.

2 I can't answer your question. I'm unable to
3 answer it.

4 Q So am I to understand that you're not here as
5 an expert?

6 A I'm not here, except to answer questions about
7 the circumcision.

8 DR. MILEIKOWSKY: So what are we doing here?

9 THE HEARING OFFICER: He's a percipient
10 witness. Next question.

11 BY DR. MILEIKOWSKY:

12 Q Let me try to make it more simple for you. If
13 one of your kids is having a tonsillectomy, usually do
14 you refer the patient to the ears, nose, and throat
15 physician?

16 A Most often, yes.

17 Q Most often.

18 Who takes care of the postop care? Does the
19 baby go back and see the ears, nose, and throat
20 physician afterwards?

21 A Yes.

22 Q So you do not take care of the postop care in
23 that case.

24 A In that case.

25 Q How about when ears, nose and "tube" physician

1 is putting tubes in the ears for ear infections? Do you
2 usually refer them to the ears, nose, and throat
3 physician?

4 A And do postop care for it, too.

5 Q In that case --

6 A It varies.

7 Q So in some case the ears, nose and throat
8 physician does the postop care, and in some cases you
9 do?

10 A It depends on the ear, nose, and throat
11 physician, and it probably depends on the
12 pediatrician.

13 Q Now, what is the difference between a
14 tonsillectomy and a circumcision in respect to postop
15 care?

16 DR. WULFSBERG: This question cannot be
17 answered.

18 THE WITNESS: I can't answer that.

19 DR. MILEIKOWSKY: He just answered. He said he
20 can't answer.

21 Q Why do you believe -- you stated last time in
22 quite, I would say, an annoyed or irritated fashion --

23 DR. WULFSBERG: I object.

24 DR. MILEIKOWSKY: That's how it came through.

25 DR. WULFSBERG: I object. That is not how --

1 BY DR. MILEIKOWSKY:

2 Q -- that obstetrician/gynecologists do not
3 dictate their circumcsions.

4 Ask the question differently if you want.

5 THE HEARING OFFICER: Well, this area of
6 questioning, I think, has been gone over in detail.

7 DR. MILEIKOWSKY: Never. The dictation?

8 Dr. Irani stated last time, in whatever
9 adjective you want to use, that he didn't think very
10 highly of the fact that obstetricians/gynecologists
11 never dictate their circumcsions.

12 DR. WULFSBERG: I object. He did not do such a
13 thing. It's not on the record. That's your opinion.

14 DR. MILEIKOWSKY: No, it's not my opinion at
15 all.

16 DR. WULFSBERG: -- of what --

17 (Simultaneous colloquy.)

18 THE HEARING OFFICER: Whoa. Wait. What do you
19 mean "dictate"?

20 DR. MILEIKOWSKY: When you transcribe. You
21 know, transcription.

22 THE HEARING OFFICER: Oh, transcribe the notes.

23 DR. MILEIKOWSKY: Right. We don't transcribe.
24 We dictate in the telephone.

25 THE HEARING OFFICER: Okay.

1 DR. MILEIKOWSKY: And he was quite strong about
2 it.

3 DR. WULFSBERG: I think you need to ask the
4 question if that was his intent, rather than stating it
5 was. Because he never said that that was his intent.

6 DR. MILEIKOWSKY: The record reflects --

7 THE HEARING OFFICER: Wait. Wait. Wait. I
8 don't know about the hearing panel, but I'm lost at this
9 point.

10 DR. MILEIKOWSKY: Do you understand what I'm
11 talking about?

12 DR. WULFSBERG: He prefaced the question by --
13 (Simultaneous colloquy.)

14 THE HEARING OFFICER: Wait. Let's go back to
15 go. Ask one question.

16 DR. MILEIKOWSKY: Okay.

17 Q Dr. Irani, do you believe that
18 obstetricians/gynecologists should dictate their
19 circumcisions like they do every Cesarean section or
20 other procedures?

21 A Yes.

22 Q Okay. Why?

23 A Newborn circumcision is the most commonly
24 performed operation in the world, and it should be
25 afforded the same level of recordkeeping.

1 Q Well, would you be kind enough to take the
2 yellow progress note of mine of the circumcision in the
3 medical chart.

4 A Yes.

5 Q Do you recognize this as being a typical
6 postcircumcision note by an obstetrician/gynecologist in
7 this institution?

8 A Typical?

9 Q Meaning standard of practice of
10 obstetricians/gynecologists.

11 A Yeah. I would say that there are others that
12 have different notes.

13 Q Of course. Do pediatricians dictate their
14 circumcisions?

15 A I don't know.

16 Q Have you ever seen an op report dictation on
17 any circumcision of an infant that is newly born?

18 A I don't recall seeing any. But, again,
19 circumcisions are handled in a different way than most
20 of the surgeries, in the way you were asking earlier.

21 Q Now, do you place yourself in a certain
22 authority position when you say that circumcisions
23 should be transcribed and dictated by whoever is the
24 surgeon, pediatricians or gynecologists or mohels who
25 perform circumcisions?

1 A No.

2 Q Do you know what the Joint Commission of
3 Accreditation of Hospital Organizations' requirements
4 are regarding operative reports?

5 A I don't know it.

6 Q Do they have to be handwritten, or do they have
7 to be transcribed? Has that subject ever come up in any
8 of the committee meetings that you have attended?

9 A I could only speculate as to the Joint
10 Commission's standards of written versus typed dictated
11 notes.

12 Q Coming back to the exhibit that you have
13 provided to the MEC in the book originating from, among
14 others, Dr. Belman, does it specify anything regarding
15 whether or not this circumcision is performed on a
16 newborn or an adult?

17 THE HEARING OFFICER: Is the question does it
18 specify a different procedure?

19 DR. MILEIKOWSKY: No. The exhibit that was
20 shown -- what was it, 142? What's the number?

21 DR. WISEMAN: Yes, 142.

22 BY DR. MILEIKOWSKY:

23 Q In Exhibit 142, page 142-2 -- sorry. It's
24 142-3, Dr. Wulfsberg showed through the visual
25 assistance --

1 THE HEARING OFFICER: That's page 829 in the
2 text.

3 DR. MILEIKOWSKY: Yes, page 829 of the book.
4 Correct. Thank you.

5 Q On the first column on the left between the two
6 pictures you have excessive removal of penile shaft
7 skin. Do you know if at all page 829 relates to a
8 newborn penis or an adult penis?

9 A I can only say that, in the context of the
10 preceding and following paragraphs, it would seem to be
11 more leaning towards neonatal circumcision rather than
12 any other time of a person's life.

13 Q You mentioned in your testimony -- and correct
14 me if I'm wrong -- that you have never seen such --
15 whatever you described that baby to have that day on
16 November 5, 2000; correct?

17 A Can you repeat your question.

18 Q When asked either by myself or Dr. Wulfsberg or
19 the hearing committee, the questions were, "Have you
20 ever seen such a complication of a circumcision?" And
21 correct me if I'm wrong, you have stated you have only
22 seen it once before.

23 A This would have been the second time.

24 Q Okay. Are you familiar with the rate of
25 potential complications of, among others, to have an

1 excessive removal of penile shaft following the use of a
2 Gomco compared to a different device?

3 A I have no information of that nature.

4 Q Are you familiar at all with the work of
5 William Gee, G-E-E, and Julian Ansell, A-N-S-E-L-L,
6 from the University of Washington School of medicine in
7 Seattle and from Lexington, Kentucky, where there was a
8 review of 5,882 lives --

9 DR. WULFSBERG: I object.

10 THE HEARING OFFICER: Sustained.

11 If you have exhibits --

12 DR. MILEIKOWSKY: I just had it this morning,
13 obviously.

14 THE HEARING OFFICER: I understand. But you
15 can't just --

16 DR. MILEIKOWSKY: I am just asking if he's
17 familiar.

18 DR. WULFSBERG: He's presenting this exhibit --

19 DR. MILEIKOWSKY: No. No. I'm asking him if
20 he's familiar --

21 (Simultaneous colloquy.)

22 THE HEARING OFFICER: But you're making
23 reference to the literature. You haven't provided the
24 other side with the literature.

25 DR. MILEIKOWSKY: Okay. I would be happy to

1 provide it.

2 THE HEARING OFFICER: It has to be done in
3 advance of the hearing, just like they provide their
4 exhibits to you in advance of the hearing?

5 DR. MILEIKOWSKY: Okay. That's fine.
6 Okay.

7 DR. WULFSBERG: I'm going to object to any
8 questions referring to any further literature on the
9 ground that we have had no access to it, no opportunity
10 to prepare our witness. That's precisely what the
11 evidence part of this whole procedure is.

12 This idea of popping this kind of evidence at
13 the last minute to bolster his case is inappropriate.

14 THE HEARING OFFICER: That's sustained. You
15 can ask questions about things which are conclusions in
16 the literature, but I don't think it's fair, if you
17 refer to literature, to make specific reference to
18 literature without allowing the other side to see it
19 well in advance of the hearing, as provided in the
20 bylaws, just as the other side did with their exhibits.

21 DR. MILEIKOWSKY: No problem. But just for the
22 record, I have not seen this particular article or this
23 particular guideline until today.

24 THE HEARING OFFICER: That doesn't matter. The
25 issue is --

1 DR. MILEIKOWSKY: I have no problem. That's
2 okay.

3 The only thing I asked him is whether he was
4 aware of it or knowledgeable of it. That's all.
5 I don't even need to present it into evidence today. I
6 can do it in the form or fashion the way you said, and I
7 will do so.

8 Q So the question is simple: Are you aware or
9 not of what are the statistics of the literature,
10 anything from this article or another article from a
11 book, from the one you have access to you at any point
12 in time at home, in the office, in the library at
13 Tarzana or elsewhere -- of whatever the statistics are
14 regarding complications from a Gomco device for
15 circumcision?

16 A Which question do you want to ask at a time?

17 Q Choose yourself.

18 DR. WULFSBERG: I object.

19 THE HEARING OFFICER: Sustained. Just ask one
20 question.

21 DR. MILEIKOWSKY: Okay. Please go ahead.

22 THE HEARING OFFICER: Are you aware of the
23 frequency with which the complication you observed
24 occurs?

25 THE WITNESS: No.

1 THE HEARING OFFICER: Are you aware of the
2 frequency with which complications occur in circumcision
3 when a Gomco is used?

4 THE WITNESS: No.

5 THE HEARING OFFICER: Next question.

6 BY DR. MILEIKOWSKY:

7 Q Are you at all a member of the faculty of UCLA
8 or any other university?

9 A No.

10 Q Have you ever been since you graduated in
11 pediatrics?

12 A No.

13 Q Have you been involved in any research projects
14 during your residency?

15 A No.

16 Q Have you been involved in any clinical or other
17 research medical projects after you finished your
18 residency?

19 A No.

20 DR. MILEIKOWSKY: Mr. Willick, ask the
21 questions.

22 THE HEARING OFFICER: You're through with the
23 medical part?

24 DR. MILEIKOWSKY: I believe so, yes.

25 THE HEARING OFFICER: All right.

1 FURTHER EXAMINATION

2 BY THE HEARING OFFICER:

3 Q I'm going to ask you some questions to move
4 matters along. These are going to be questions having
5 to do with your relationship with Dr. Mileikowsky.6 I believe you testified that on occasion you
7 referred patients to Dr. Mileikowsky; correct?

8 A Yes.

9 Q At some point did you stop referring patients
10 to him?

11 A Yes.

12 Q And when was that?

13 A I don't know.

14 Q Why?

15 A Because I wasn't getting any newborns the other
16 way.17 Q I'm sorry? Oh, you weren't getting any the
18 other way. Okay.19 Was there any other reason why you stopped
20 referring patients to Dr. Mileikowsky?

21 A No.

22 Q Even though you don't recall the precise date
23 upon which you stopped referring, do you have an
24 estimate as to what year that occurred in?

25 A More than five years ago.

1 Q Okay. Now, I'm told -- because my memory isn't
2 good; that's why I take all these notes -- that your
3 prior testimony was that you voted in the secret ballot
4 at the MEC meeting which resulted in the summary
5 suspension of Dr. Mileikowsky.

6 A I voted at a secret ballot in an informal
7 hearing, yes.

8 Q And that was in November of 2000?

9 A Yes.

10 Q Did you participate in -- that was an MEC
11 meeting; correct?

12 A Yes.

13 Q Did you participate in the discussion at that
14 meeting?

15 A No.

16 DR. MILEIKOWSKY: How do you define
17 "participate"?

18 THE HEARING OFFICER: Well, spoke words.

19 Q Well, did you say anything at the meeting?

20 A Nothing.

21 Q And you voted for the summary suspension?

22 A I'm aware --

23 DR. WULFSBERG: It was a secret ballot.

24 THE HEARING OFFICER: Oh, it was a secret
25 ballot.

1 DR. WULFSBERG: No one knew the outcome
2 afterwards. It was a vote in favor of the summary
3 suspension; however, individual votes were based on a
4 secret ballot.

5 THE HEARING OFFICER: All right. I'm not going
6 to invade the secrecy, then.

7 Q Do you sit on the governing board --

8 A Yes.

9 Q -- or have you sat on the governing board?

10 A Yes.

11 Q Did you sit on the governing board at any point
12 in time when issues concerning Dr. Mileikowsky were
13 discussed?

14 A I can't be sure, to answer your question
15 correctly, because I go to multiple meetings.

16 Q You're not sure.

17 A I'm not sure.

18 Q Okay. Did you ever write a letter to
19 Dr. Mileikowsky which was a critical letter of him?

20 A I don't recall doing so. However, I would
21 answer a question about a letter if you asked me one.

22 Q All right. Well, I think Dr. Mileikowsky will
23 follow up on that question.

24 Do you have some more questions?

25 DR. MILEIKOWSKY: Yes, uh-huh.

1 CROSS-EXAMINATION (Continued)

2 BY DR. MILEIKOWSKY:

3 Q As chairman of the pharmacy and therapeutics
4 committee, do you recall writing to me a very strongly
5 worded letter regarding the fact that I have been using
6 for years preprinted orders and regarding how the
7 medication was indicated on it or not on that form?

8 A I don't recall the letter. I send out letters
9 every month.

10 Q Right. My question to you is: Do you write
11 those letters? Or somebody else writes them for you,
12 and you just review them to make your life easier and
13 then sign them?

14 A It's done both ways.

15 Q So to the best of your recollection, you don't
16 recall writing or admonishing me regarding such --

17 A Not specifically.

18 Q All right.

19 Are you aware of the fact that in March of '99,
20 I was appointed by the department of obstetrics and
21 gynecology to represent the department of obstetrics and
22 gynecology at your committee?

23 A That's a funny sentence.

24 Q I'm sorry?

25 A That's a funny sentence.

1 Q What do you mean?

2 THE HEARING OFFICER: Let me.

3 Do you recall Dr. Mileikowsky being a
4 participant at your committee?

5 DR. MILEIKOWSKY: That wasn't the question.
6 The question was is he aware of the fact -- it's
7 different.

8 THE HEARING OFFICER: It's different, but --

9 DR. MILEIKOWSKY: That something happened.

10 THE HEARING OFFICER: Never mind. Go ahead.

11 BY DR. MILEIKOWSKY:

12 Q Are you aware of the fact that the department
13 of obstetrics and gynecology, and no less than the
14 chairman, Dr. Entin, in a vote approving that decision
15 was to appoint me as a member of the department of
16 obstetrics and gynecology to attend your meetings as
17 committee of pharmaceuticals and therapeutics?

18 A Let me explain what I said a minute ago.
19 Committee membership for that body is based on chairman
20 selection. There can be suggestions, recommendations,
21 but there's no binding power vested in any of the
22 departments to nominate and have someone sit on the
23 committee. Chief of staff can appoint people, and I
24 would refer to the bylaws for the specifics. But that
25 is the way it's done. People don't get voted by their

1 department to become a member of that body.

2 If there was a nomination, a suggestion by the
3 OB people, I would have to defer to what you said.

4 Q Now, my question was: Were you aware of such a
5 thing, that the department of obstetrics and gynecology
6 and the chairman, Dr. Entin, requested that I present
7 the point of view of the obstetrics and gynecology
8 department regarding certain antibiotics issues?

9 A Today I don't recall it.

10 Q Okay. Are you aware of the fact that as I was
11 about to come that day to your meeting that the director
12 of pharmacy called me and told me that I could not come
13 in March of '99?

14 A I'm not aware of that call.

15 Q So he did not consult you?

16 A No.

17 Q Are you aware or were you informed by Debbie
18 Miller in March of '99 that I could not attend your
19 committee?

20 A I don't recall any kind of conversation
21 regarding you.

22 Q Would it refresh your recollection if I told
23 you that you might have been told at that time, either
24 by Debbie Miller or the director of pharmacy, that I
25 could not attend because I had no privileges at this

1 hospital in March of '99?

2 A That doesn't refresh anything.

3 Q How long have you been and which years have you
4 been a member of the governing board of this hospital?

5 A Since July 1, 2000.

6 Q And never before?

7 A No.

8 Q Now, when you are a member of the Medical
9 Executive Committee, you receive the minutes or
10 summaries of minutes of each department; correct? Or a
11 report from each department as part of the documents
12 that are provided to you at the meeting; is that right?

13 A There are reports made by the department
14 chairs.

15 Q And you were a member of the MEC in '96 to '98;
16 is that correct?

17 A Yes.

18 Q Do you recall an incident where an allegation
19 happened in '98 that an obstetrician/gynecologist --
20 namely, myself -- had allegedly passed gas into the face
21 of a patient and had also the poor taste with another
22 patient to tell bad jokes?

23 A No.

24 Q What do you recall hearing or reading in the
25 MEC meetings that you have attended regarding myself

1 prior to November 28, 2000?

2 A Nothing.

3 Q You were not that sure about it when
4 Mr. Willick asked. Is there anything that can help us
5 trigger your memory?

6 A I don't know.

7 Q Now, when you attend those meetings, do you
8 read the "meetings" of the previous meeting, the MEC
9 meeting?

10 THE HEARING OFFICER: I think you need to
11 rephrase the question. Do you mean the minutes?

12 DR. MILEIKOWSKY: I'm sorry.

13 THE HEARING OFFICER: Do you mean the minutes?

14 DR. MILEIKOWSKY: Yes. What did I say?

15 THE HEARING OFFICER: The "meetings" of the
16 meeting.

17 DR. MILEIKOWSKY: I'm sorry.

18 Q When you attend an MEC meeting or a committee
19 that you're chairing -- pharmaceuticals and therapeutics
20 and/or governing board or other committees you
21 attend -- isn't it true that you always have accessible
22 to you the minutes of the previous meeting?

23 A Yes.

24 Q Do you review those minutes?

25 A As often as I can.

1 Q What does it depend on?

2 A Depends if I'm chairing the meeting, what I
3 might be doing otherwise during the meeting.

4 Q Let's take an MEC meeting. You have not
5 chaired it yet, but you might in the future; right?

6 When you have attended so far all the meetings
7 in '96, '98 and since June 1st of 2000, unless it was an
8 issue of pediatrics or an issue that was at heart to you
9 for other reasons -- for instance, pharmaceuticals or
10 therapeutics -- you do have in the minutes everything
11 else that has been discussed or presented as discussed
12 on a previous meeting; correct?

13 A Typically they would be part of the minutes.

14 Q How often percentagewise -- out of a hundred
15 meetings, how many do you actually read or review those
16 minutes?

17 A Best guess in a percentage answer, 67 percent.

18 Q And when you say reviewed the minutes, do you
19 review all the minutes or just certain portions
20 according to whatever at that time you feel is very
21 important that has been discussed on the previous
22 meeting?

23 A I read as much as I can.

24 Q How often have you found it necessary to
25 correct the minutes?

1 A I personally have not found a frequent need to
2 change anything in the minutes.

3 Q But percentagewise, what would you say it would
4 be out of a hundred times?

5 A One, less.

6 Q Would it be on something that you have said or
7 something that someone else had brought up to the
8 attention of the MEC?

9 A I would only be able to make suggestions about
10 an edit of something I had personal knowledge.

11 Q Now, prior to the November 28, 2000 meeting,
12 what were you told was the reason for the meeting?

13 A I don't recall the exact specifics, but that
14 there was the need to meet on a special basis to go over
15 materials regarding a case. We were actually given very
16 little advance information.

17 Q Okay. The meeting, to the best of your
18 recollection, started on or about 5:45? Is that the
19 time you were asked to come? P.m.

20 A I don't know the exact time.

21 Q Roughly, what do you remember?

22 A It might be the right time.

23 Q And what happened when you arrived? Who was
24 there?

25 A Well, there's minutes. I imagine they would be

1 able to support exactly what happened.

2 Q I'm not interested in the minutes because we
3 have a different perspective, you and I, of what the
4 minutes reflect.

5 A I didn't take any notes.

6 Q Excuse me. I'm not finished. I just want to
7 have your recollection.

8 What happened when you came to the room? Which
9 room was it in?

10 A We met in the hospital auditorium.

11 Q Correct. And who was in the room with you when
12 you arrived?

13 A I couldn't give you an exact list, but it would
14 be the Medical Executive Committee members.

15 Q Who else, other than the members of the Medical
16 Executive Committee members, was present when the
17 meeting started?

18 A I would say Debbie Miller and Dr. Wulfsberg.

19 Q Was Dr. Dosik there?

20 A I don't recall.

21 Q Was Mr. Surowitz there?

22 A I'd have to guess. I don't recall
23 specifically.

24 Q Was Dr. Morrow there?

25 A I don't recall the guest list.

1 Q Do you call it a guest list?

2 A That was a wrong term. The attendance list.

3 Q Was that supposed to be a party?

4 DR. WULFSBERG: I would object.

5 THE HEARING OFFICER: Sustained.

6 Let's move it along.

7 DR. MILEIKOWSKY: He says a guest list. I want
8 to know what was his understanding.

9 THE WITNESS: I misspoke.

10 THE HEARING OFFICER: Dr. Mileikowsky --

11 BY DR. MILEIKOWSKY:

12 Q What was your understanding that meeting was
13 supposed to do? What were you told as soon as you
14 arrived? Who took the role of informing you of what was
15 the purpose of that meeting?

16 A Which question would you like me to answer
17 first?

18 Q Your choice.

19 DR. WULFSBERG: All right. I object.

20 THE HEARING OFFICER: Sustained.

21 BY DR. MILEIKOWSKY:

22 Q How long did it take from the time you arrived
23 to the time the meeting started?

24 A Minutes.

25 Q Who addressed the meeting, to the best of your

1 recollection?

2 A I'm not sure what "addressed" means.

3 Q Who started speaking?

4 A I believe it would have been Dr. Kayne.

5 Q And Dr. Kayne at that time was chief of staff?

6 A Yes.

7 Q He's still chief of staff?

8 A Yes.

9 Q And what do you remember Dr. Kayne saying?

10 A I recall there being discussion about the
11 reasons for the meeting and the process and the way the
12 bylaws needed to be followed.

13 Q Was there any attorney present?

14 A I don't recall if an attorney was present.

15 Q Who then advised the Medical Executive
16 Committee of what portions of the bylaws were applicable
17 and what was the whole meaning of the meeting?

18 A Dr. Kayne.

19 Q So what do you recall now from that, from what
20 Dr. Kayne stated or said?

21 A I would recall it as being a description of the
22 informal nature of the process; how the bylaws were
23 written was, I believe, read to us and reviewed. And
24 Dr. Wulfsberg was able to give us some information about
25 background into the process so that those of us who

1 hadn't been involved in the past could be brought up to
2 speed.

3 Q And so what was the process all about?

4 A Again, it was about reviewing the bylaws.

5 Q Which part of the bylaws? If I gave you the
6 bylaws, would you be able to tell me?

7 DR. WULFSBERG: Are we going someplace with
8 this line of questioning?

9 DR. MILEIKOWSKY: Yes, we are.

10 THE HEARING OFFICER: Dr. Mileikowsky, I don't
11 know the value of testing Dr. Irani's recollection of
12 what occurred in the meeting.

13 DR. MILEIKOWSKY: I think it's very valuable,
14 and you'll see why in a few seconds. It's not going to
15 take long.

16 THE HEARING OFFICER: Hopefully it will be a
17 few seconds. Otherwise, I will cut off that line of
18 questions.

19 DR. MILEIKOWSKY: I will let you ask the
20 questions. Maybe it will be faster.

21 THE HEARING OFFICER: Well, I don't know where
22 you're going.

23 DR. MILEIKOWSKY: Okay.

24 Q So Dr. Irani, which part of the bylaws was the
25 subject of that evening?

1 A The subject of the evening was to have an
2 informal hearing.

3 Q About what?

4 A Regarding a physician's suspension from the
5 medical staff.

6 Q Okay. So the bylaws that you referred to are
7 the bylaws that refer to what is called in the bylaws an
8 interview; correct?

9 A I'd have to read it to agree to that.

10 Q All right.

11 Were you told who asked for that meeting?

12 A We actually were told that it was a physician
13 by number.

14 Q All right.

15 But so the physician requested for the meeting,
16 is that what you are saying?

17 A Yes.

18 Q So the physician is appealing a decision. Is
19 that what it is?

20 A If "appeal" is a word that works for this
21 process, yes.

22 Q Now, were you told why that physician had his
23 or her privileges summarily suspended for imminent
24 danger? Do you remember that?

25 A I don't remember the specifics of the way I was

1 informed.

2 Q What do you remember?

3 A It's pretty much a blur today because I've read
4 things, so I can't tell you what I remember versus what
5 I have read in the minutes.

6 Q To the best of your recollection, what do you
7 recall you were told about the reasons that physician's
8 privileges were summarily suspended?

9 A I don't recall the specifics.

10 Q What do you remember in general?

11 DR. WULFSBERG: He's answered now three times
12 that it's a blur.

13 DR. MILEIKOWSKY: No, he's not. That's why I
14 have to ask more questions.

15 THE HEARING OFFICER: One more question.

16 BY DR. MILEIKOWSKY:

17 Q What do you remember?

18 A I don't remember.

19 Q Anything?

20 A That's right.

21 Q Okay. Let me ask you something. How often
22 have you attended an MEC meeting dealing with a summary
23 suspension of a physician?

24 A Once.

25 Q So does it appear to you a routine MEC meeting

1 or something that probably stands out in your mind?

2 A It does not stand out in my mind.

3 Q So correct me if I'm wrong. You have only seen
4 one single time the MEC in this hospital or any
5 hospital -- correct? -- suspend summarily the privileges
6 of a colleague of yours, and it does not stand up in
7 your mind?

8 A The specifics do not stand out in my mind.

9 Q Do you have any recollection of why, what crime
10 that physician committed that led to capital punishment
11 of summarily suspending his privileges?

12 A I don't know --

13 DR. WULFSBERG: Wait. I object because what he
14 said was that subsequent to that time, he has read and
15 seen many documents. The questions relate to the
16 specific meeting. He doesn't say that he doesn't
17 understand the reasons why they are having this hearing.

18 DR. MILEIKOWSKY: That wasn't the question.

19 DR. WULFSBERG: I understand that. But what
20 he's saying is that there is so much more evidence that
21 has caused him at that time to be unsure whether the
22 information that he is now remembering was at that
23 meeting or a subsequent meeting.

24 So he declines to answer on the grounds he's
25 not sure where that information came from, the first

1 meeting or subsequent information. He's said that many
2 times now.

3 THE HEARING OFFICER: All right. The objection
4 to the question is sustained.

5 Ask another question.

6 DR. MILEIKOWSKY: Can I form it a little
7 differently? Because I think it's very important. This
8 is just a "scape-out." This is just a device for the
9 attorneys to tell him what to say so he will not answer
10 the question.

11 DR. WULFSBERG: That is what he actually said,
12 though.

13 THE HEARING OFFICER: The only way to ask the
14 question would be: State to the best of your
15 recollection what you recall having occurred at the
16 meeting.

17 THE WITNESS: I can only give a summary.

18 THE HEARING OFFICER: Go ahead.

19 THE WITNESS: Information was shared with us
20 regarding specific patient-clinician encounters, and
21 they were given in a chronological way up to the time of
22 the suspension. But I don't recall the specifics of
23 each of the different things that might have been
24 mentioned.

25 THE HEARING OFFICER: Go ahead.

1 BY DR. MILEIKOWSKY:

2 Q Did you ask any questions?

3 A No.

4 THE HEARING OFFICER: He already said he
5 doesn't speak.

6 DR. MILEIKOWSKY: He may remember differently
7 now. It happened that way with more than one witness.

8 DR. WULFSBERG: I'm going to object and ask
9 that those comments be stricken because there's always a
10 tag line -- under-the-breath tag line for the entire
11 hearing panel to hear, giving the impression that --

12 THE HEARING OFFICER: Sustained.

13 Just ask the questions. The side comments
14 don't help.

15 DR. MILEIKOWSKY: Fine. Fine. It was a
16 comment for myself. I was not even sure it was a
17 comment out loud to the hearing panel.

18 DR. WULFSBERG: Your comment was said out loud
19 to the hearing panel.

20 DR. MILEIKOWSKY: Well, you --

21 THE HEARING OFFICER: Both of you stop.

22 DR. MILEIKOWSKY: Thank you.

23 THE HEARING OFFICER: Just ask questions,
24 simple questions.

25 DR. MILEIKOWSKY: Yes. Thank you.

1 Q I'm just eager to know what was the level of
2 your own curiosity as to what was happening. So if you
3 didn't ask a question, my question is: Why? Were you
4 completely --

5 THE HEARING OFFICER: You've asked one
6 question.

7 DR. MILEIKOWSKY: Okay.

8 THE HEARING OFFICER: Do you recall today why
9 you didn't ask any questions?

10 THE WITNESS: I would say that I asked no
11 questions because others asked the questions that
12 mattered to my thoughts.

13 THE HEARING OFFICER: Next question.

14 BY DR. MILEIKOWSKY:

15 Q Could you help us and tell us what were those
16 questions that others asked that were important to your
17 thoughts.

18 A There were others who specifically questioned
19 you about the different matters that were shared with us
20 and their efforts at getting you to specifically answer
21 them in the time you were allotted.

22 Q Excuse me. I'm not in the room yet. We are
23 still right now you're in the room alone with the MEC.
24 How long were you there before I was allowed in?

25 A You were asking me about --

1 THE HEARING OFFICER: You answered the
2 question.

3 Next question is --

4 DR. MILEIKOWSKY: No. Because --

5 THE HEARING OFFICER: He answered the question
6 as it was asked, Dr. Mileikowsky.

7 DR. MILEIKOWSKY: All right. Let me ask it
8 differently.

9 THE HEARING OFFICER: No.

10 Here's the question he's trying to ask you, I
11 think. When Dr. Mileikowsky was absent from the room,
12 do you recall what questions were asked that were
13 questions that you would have wished to have asked?

14 THE WITNESS: No, I don't recall the specific
15 questions.

16 THE HEARING OFFICER: Okay. Next question.

17 BY DR. MILEIKOWSKY:

18 Q Do you recall anybody asking any questions
19 before I came into the room?

20 A I don't specifically recall a panel of people
21 asking you specific questions back and forth, no.

22 Q So nobody asked any questions?

23 A I said that I don't recall specifically if
24 anyone did or didn't about the matters I care about.

25 Q To the best of your recollection, how long was

1 the MEC meeting prior to inviting me into the room? How
2 long did it last?

3 A Approximately an hour.

4 Q Approximately an hour.

5 What is your understanding of the notions of
6 fair and reasonable in a peer review process?

7 A I don't know how to answer that.

8 Q Is it fair to you -- let me put it this way:
9 Let's say that on November 28, 2000, I was a member of
10 the MEC, and your privileges were summarily suspended
11 for imminent danger. I'm a member of the MEC, and now I
12 have a full hour with all the other members listening to
13 Dr. Wulfsberg, Dr. Kayne, maybe Ms. Miller, maybe
14 Dr. Dosik, and you're not in the room. You don't even
15 know what the charges are. Your privileges were
16 suspended before, November 16, 2000.

17 THE HEARING OFFICER: Dr. Mileikowsky, you are
18 making a statement.

19 BY DR. MILEIKOWSKY:

20 Q So does it appear to you fair that a discussion
21 of one hour is happening before you're coming into the
22 room?

23 A Your hypothetical situation doesn't necessarily
24 apply.

25 THE HEARING OFFICER: I think the question he

1 intends to ask, maybe, is: Do you have an opinion
2 whether or not it was fair for Dr. Mileikowsky to have
3 been excluded from the meeting at the outset of the
4 meeting for approximately one hour when the subject
5 being discussed was the summary suspension of
6 Dr. Mileikowsky?

7 THE WITNESS: Yes, it was fair.

8 THE HEARING OFFICER: All right. Next
9 question.

10 BY DR. MILEIKOWSKY:

11 Q So if you think it's fair, why do you think
12 it's fair?

13 A I think it was fair because you were given your
14 opportunity to address us separately from the others.

15 Q Does it appear to you fair that I have not been
16 present for a full hour while my name was turned into
17 mud, and I don't know what I'm accused about?

18 DR. WULFSBERG: I object.

19 THE HEARING OFFICER: Sustained.

20 DR. MILEIKOWSKY: I will say it differently.
21 But for a full hour they are talking behind my back. I
22 don't know who I'm accused by. I don't know my charges.
23 And I don't know how to defend myself because I don't
24 know what is discussed for a full hour.

25 THE HEARING OFFICER: That's argument.

1 DR. WULFSBERG: That's argument.

2 THE HEARING OFFICER: The way you would ask the
3 question would be: Do you know whether or not
4 Dr. Mileikowsky had been informed of what the
5 accusations against him were before he came into the
6 meeting?.

7 THE WITNESS: What I remember is it was an
8 informal hearing that doesn't have a lot of specifics as
9 to what the content of the meeting needed. I don't know
10 if he was given a specific list of charges, using your
11 word, beforehand.

12 THE HEARING OFFICER: Or allegations? Using
13 that instead of "charges."

14 THE WITNESS: I don't know if he was given a
15 list of the matters beforehand. I don't know.

16 THE HEARING OFFICER: Go ahead,
17 Dr. Mileikowsky.

18 BY DR. MILEIKOWSKY:

19 Q Don't you remember that when I came, I was
20 provided for the first time a document of three or four
21 pages with eight allegations; and that I had to return
22 that paper before leaving the room; and that I only had
23 a half-hour to read it, discuss it, and questions and
24 answers? You do not recall that Ms. Miller provided me
25 that document and specifically made sure that I returned

1 it before leaving the room? You don't remember that?

2 DR. WULFSBERG: I object.

3 DR. MILEIKOWSKY: I'm asking what he remembers.

4 THE HEARING OFFICER: Wait. You have to ask
5 one question at a time rather than making a statement.

6 DR. MILEIKOWSKY: I apologize.

7 THE HEARING OFFICER: You'll have an
8 opportunity --

9 DR. MILEIKOWSKY: I don't want to make a
10 statement. I want to have his opinion. That's what I'm
11 seeking.

12 THE HEARING OFFICER: Well, but,
13 Dr. Mileikowsky, you will have an opportunity to
14 testify. You will have an opportunity to make
15 argument.

16 When your question really becomes argument and
17 is a long statement involving multiple questions, it's
18 just not appropriate. All right? So you have to -- if
19 you're going to ask him the questions, you have to break
20 it up.

21 DR. MILEIKOWSKY: Okay.

22 Q Do you recall that I was provided a document of
23 three or four pages when I came into the room?

24 A Yes.

25 Q Do you recall that I was mandatorily requested

1 to return that document before leaving the room?

2 A Yes.

3 Q Do you recall Dr. Kayne giving me time to read
4 this document?

5 A Yes.

6 Q So is it reasonable for your recollection that
7 either I have stated or Dr. Kayne has stated that it was
8 clear that I have never seen that document before that
9 evening at around 7:00 p.m. November 28, 2000?

10 A I don't know if you had seen it before, but I
11 know you were given an opportunity to read it at that
12 time.

13 Q And do you recall that Dr. Kayne provided me a
14 total of 30 minutes to provide information to the MEC
15 members after reading this document and to have answers
16 and questions from the MEC members? Do you remember
17 that?

18 A I remember you being given 30 minutes.

19 Q Does that appear to you ample time?

20 A For an informal hearing, yes.

21 Q As you sit here right now, does that what you
22 call informal meeting -- do you realize the impact of
23 that meeting on the life of that physician's profession
24 and future?

25 A I recall the meeting well. I realize the

1 impact.

2 Q What is at stake at that meeting from your
3 perspective and understanding on November 28, 2000?

4 A What's at stake is a question of the suspension
5 being continued, turned over, or modified.

6 Q Does that appear to you something in the life
7 of a physician like yourself -- something that may be of
8 critical importance?

9 A It would be of critical importance to the
10 physician.

11 Q Do you think it might also be of critical
12 importance to the patients of that physician?

13 A It may or may not be of critical importance to
14 the patients of that physician.

15 Q Do you have a different kind of analogy than
16 capital punishment for that physician?

17 DR. WULFSBERG: I object.

18 BY DR. MILEIKOWSKY:

19 Q What is your perspective --

20 THE HEARING OFFICER: Sustained.

21 DR. MILEIKOWSKY: I want to hear from him how
22 does he perceive that.

23 DR. WULFSBERG: Objection. Don't answer the
24 question.

25 DR. MILEIKOWSKY: I'm sorry. He cannot

1 instruct the witness to answer or not. That's your
2 authority.

3 THE HEARING OFFICER: I sustained the
4 objection.

5 DR. MILEIKOWSKY: Okay.

6 Q So you agree this is a critical moment for that
7 physician and potentially for his or her patients.

8 A Yes.

9 Q Don't you think that there should be as much
10 time as necessary for you as a member of that committee
11 to review carefully the reasons for such a critical,
12 drastic act?

13 A I didn't understand the question.

14 DR. MILEIKOWSKY: Do you want to ask it
15 differently?

16 THE HEARING OFFICER: Do you have an opinion
17 about whether Dr. Mileikowsky should have been given
18 more time to express his viewpoints at that meeting?

19 THE WITNESS: No. He didn't have inadequate
20 time.

21 THE HEARING OFFICER: Next question.

22 BY DR. MILEIKOWSKY:

23 Q I did not understand. What did you say?

24 THE HEARING OFFICER: He said you didn't have
25 inadequate time.

1 BY DR. MILEIKOWSKY:

2 Q So in other words -- okay.

3 Did you ask me any question during those 30
4 minutes allotted?

5 A No.

6 Q Why?

7 A I had no questions to ask.

8 Q So what were the pros and cons, in your mind,
9 prior to voting on whether or not to sustain or deny or
10 modify the requests from the CEO and the chief of staff
11 to suspend my privileges?

12 DR. WULFSBERG: I object. This is a secret
13 ballot.

14 THE HEARING OFFICER: Sustained.

15 DR. MILEIKOWSKY: It's not an issue of ballot.

16 THE HEARING OFFICER: Sustained?

17 DR. MILEIKOWSKY: What was his analysis?

18 THE HEARING OFFICER: It's sustained. He gave
19 an opinion about what he -- strike that.

20 Sustained. Let's just leave it at that.

21 BY DR. MILEIKOWSKY:

22 Q Take Exhibit 135-1, please. Can you please
23 start reading it; and as you read it, it might help you
24 refresh your recollection.

25 A Is there more than one page you want me to

1 read?

2 Q Yes.

3 A May I have a glass of water, please?

4 DR. WULFSBERG: Can we take a break, please?

5 THE HEARING OFFICER: Yeah. You want him to
6 read the whole exhibit? Why don't we take a break.

7 It's 18 pages.

8 DR. WULFSBERG: I'm going to object to reading
9 this whole exhibit. It's there for everyone to read,
10 rather than having him read it.

11 DR. MILEIKOWSKY: No. I'm interested in this
12 member of the MEC.

13 THE HEARING OFFICER: Well, we've gone --

14 DR. MILEIKOWSKY: And he is evading all the
15 questions.

16 THE HEARING OFFICER: Well, wait.

17 DR. WULFSBERG: I object. This is on the
18 record?

19 I object to that last comment.

20 THE HEARING OFFICER: Sustained.

21 Look. We've actually gone beyond what I
22 intended to allow in terms of getting into the
23 questioning of this witness beyond the scope of the
24 direct examination. You will have other opportunities
25 to go into, I'm sure, what occurred at the MEC meeting.

1 This witness, by his own testimony, did not participate
2 in the meeting to the extent of asking questions or, I
3 believe, making any comments.

4 I had thought that you were going to go into
5 the question of whether there were other things that you
6 believe showed that the witness may have prejudged
7 issues about you, and his testimony about his
8 participation in the meeting is rather straightforward.
9 He didn't speak at the meeting, I believe he's
10 testified. He voted in secret.

11 So all you have left to ask him is opinions
12 about what went on at the meeting, and I think he
13 expressed his opinions; that he felt that the meeting
14 was appropriate. You, obviously, feel and are going to
15 present evidence on the point that you believe the
16 meeting was inappropriate.

17 So I don't know that there's going to be much
18 to be gained by parsing the minutes of the meeting with
19 the doctor at this point; other than, perhaps, causing
20 problems in terms of the attention span of the hearing
21 committee.

22 Now, if the hearing committee wishes to go into
23 this, they are free to ask questions about it. And if
24 they wish to go into it in detail with this witness,
25 then it will open it back up for you to ask some more

1 questions.

2 If you have other questions of the witness, I
3 would suggest that you pursue that. If you don't have
4 questions of the witness other than more questions about
5 the MEC meeting, I'm going to really, at this point,
6 have the hearing committee ask some questions.

7 DR. MILEIKOWSKY: We can do that. That's fine.

8 THE HEARING OFFICER: Let me go a little
9 further.

10 It's quite clear to me that the hearing
11 committee understands the points that you're seeking to
12 make by your questioning and that you might consider
13 whether you're overdoing it. All right? And one way of
14 knowing that will be to see what questions the members
15 of the hearing committee have.

16 DR. NASSOURA: Can we have a break?

17 THE HEARING OFFICER: Yes. So why don't we
18 take a break, think about that, and we'll come back.

19 What do we want, 5 minutes or 10 minutes? 10
20 minutes precisely. We'll be back at 8:35 p.m.

21 (Recess from 8:23 p.m. to 8:37 p.m.)

22 THE HEARING OFFICER: On the record.

23 Continue.

24 DR. MILEIKOWSKY: Thank you.

25 Q Dr. Irani, do you have a copy of the bylaws? I

1 can provide you one.

2 DR. WULFSBERG: He has a copy. It's in the big
3 book.

4 (A discussion was held off the record.)

5 DR. MILEIKOWSKY: So it's Exhibit 151; is that
6 right?

7 MS. MILLER: Yes.

8 DR. MILEIKOWSKY: Okay. For anyone who is
9 interested, it's Exhibit 151.

10 Q On the table of contents on the first page,
11 article numeral Roman VII, Corrective Action, page 17 --
12 do you see that?

13 A Yes.

14 Q Would you be kind enough to go to page 17.

15 THE HEARING OFFICER: Wait. Are we talking
16 about the bylaws that were in effect in 2000?

17 DR. MILEIKOWSKY: They were in effect in 2000.

18 THE HEARING OFFICER: I don't think it was
19 151. I think it's 148.

20 DR. MILEIKOWSKY: Let's see. Maybe you're
21 right.

22 THE HEARING OFFICER: No. 151 is from '98, I
23 think.

24 DR. FLEISHER: Effective 10-28-99.

25 MS. MILLER: That's 148.

1 THE HEARING OFFICER: That's 148, and 151 is
2 before that.

3 DR. MILEIKOWSKY: Sorry?

4 THE HEARING OFFICER: 151 is from 2-10-98.

5 Page 50.

6 DR. MILEIKOWSKY: So it's 148. Thank you very
7 much.

8 Q So in the bylaws, you are still article Roman
9 VII, Corrective Action, page 15. Do you have page 15 in
10 front of you?

11 A Yes.

12 Q Without going into the details, Section 1 is
13 Routine Monitoring and Education. Without reading the
14 bylaws, what is your understanding of monitoring? In
15 your department do you ever have physicians who are
16 monitored?

17 A All physicians are monitored.

18 Q All right. How are they monitored?

19 A They are monitored from things such as timely
20 completion of medical records to clinical competencies
21 to -- I'm thinking of things across all specialties --
22 to attendance to emergency room pages -- there are a lot
23 of things that are monitored.

24 Q Well, if we just go through the headlines, it
25 defines to you what the responsibilities are of

1 monitoring and the purpose of it. Providing education
2 and counseling; issuing letters of admonition, warning,
3 censure, as necessary; requiring routine monitoring when
4 deemed appropriate.

5 Then you have the procedure of monitoring.
6 Review and studies; informal counseling; No. 3 is
7 following discussion of identified concerns with
8 department member. And on the next page, 16, Section 4
9 is:

10 Should an issue relating to a member of the
11 medical staff be reviewed by a department, division,
12 or committee, the chair shall afford the member the
13 ability to provide information pertaining to the
14 issue if the member is in attendance at the meeting.

15 Did I read this correctly?

16 A Yes.

17 Q To the best of your recollection, was I
18 provided anything as described as monitoring on page 16,
19 Section 4?

20 DR. WULFSBERG: I'm confused on what this has
21 to do with the charges of summary suspension.

22 DR. MILEIKOWSKY: It has to do with the charges
23 precisely.

24 THE HEARING OFFICER: Sustained.

25 Look. This is --

1 DR. MILEIKOWSKY: I wasn't given any --

2 THE HEARING OFFICER: Here, let me cut through
3 this.

4 DR. MILEIKOWSKY: Go ahead.

5 THE HEARING OFFICER: This is what I'm
6 concerned about and what was the basis for my ruling the
7 other day that I pulled back from a little bit. And let
8 me just be direct about it.

9 The MEC needs to present evidence, and I assume
10 will present evidence, about what occurred procedurally
11 regarding the summary suspension of Dr. Mileikowsky.
12 Since the burden of proof is on the MEC to present that
13 evidence, as I said the other day, they should be
14 allowed to present the evidence in the order in which
15 they wish to present the evidence. This witness was not
16 brought here for the purpose of presenting the MEC's
17 case as to the procedures followed in the summary
18 suspension.

19 I have permitted a broadening of the
20 cross-examination of the witness by Dr. Mileikowsky to
21 seek to explore whether the witness had hard feelings
22 toward Dr. Mileikowsky in connection with their prior
23 interactions. And the questioning has now turned into a
24 questioning of the procedures used in the summary
25 suspension, and that really goes beyond the

1 cross-examination that I broadened and permitted by my
2 ruling.

3 I would say this: I will allow Dr. Mileikowsky
4 to ask more questions, but they should be questions
5 dealing with, at this point, issues of whether this
6 witness had some ax to grind with him. The procedural
7 questions about what occurred at the summary suspension
8 meeting and the steps leading up to the meeting I
9 would urge -- I don't know what evidence the MEC is
10 going to present, but I would urge the MEC to present
11 detailed evidence about that in the due course of the
12 hearing.

13 And as I have said before, everybody should
14 wait until all of the evidence is in on all of the
15 subjects before you reach a determination.
16 Unfortunately by the nature of these proceedings,
17 information comes in in fragments, and you're going to
18 have to pull those fragments together to get an
19 understanding of what's going on. And I would say that
20 at this point, those fragments have helped both sides.

21 So now, go ahead with your questioning.

22 DR. MILEIKOWSKY: I think I make it differently
23 and go to the point.

24 Q Did you consider that evening during the MEC
25 meeting on November 28, 2000, any alternative that is

1 provided by the bylaws as a corrective action short of a
2 summary suspension?

3 THE HEARING OFFICER: You're talking about the
4 MEC?

5 DR. MILEIKOWSKY: Right.

6 THE HEARING OFFICER: The minutes -- well,
7 look.

8 DR. MILEIKOWSKY: I'm asking him did he
9 consider --

10 THE HEARING OFFICER: Oh, in his mind?

11 DR. MILEIKOWSKY: Exactly. That's all I'm
12 interested in is him. I'm only interested in him.

13 DR. WULFSBERG: I'm going to object because I
14 think this is going around the back door asking for what
15 was his secret vote, and I think --

16 THE HEARING OFFICER: Well, I will let him --
17 that question --

18 DR. MILEIKOWSKY: I am interested in his
19 thought process.

20 THE HEARING OFFICER: I will let him answer
21 that question.

22 Go ahead.

23 THE WITNESS: I want to understand it. Please
24 repeat the question.

25 / / /

1 FURTHER EXAMINATION

2 BY THE HEARING OFFICER:

3 Q I think the question was, if you recall, as you
4 were sitting in the MEC meeting, in your mind did you
5 have in mind the possibility of there being any other
6 remedial action involving Dr. Mileikowsky other than
7 whether or not he should be summarily suspended?

8 If you don't understand the question --

9 A I'm still confused because the intent of the
10 meeting wasn't that.

11 Q All right. Go ahead. What was the intent of
12 the meeting?

13 A The intent of the meeting was to have the
14 three different outcomes be discussed with him having an
15 opportunity to present evidence to overturn the
16 suspension.

17 Q And the three different outcomes?

18 A I believe it reads that they could -- the
19 outcome could be that you continue the suspension,
20 modify the suspension, or abandon it.

21 Q All right.

22 And what you're describing is the procedural
23 context of the meeting?

24 A Correct.

25 Q And in your mind at the time, if you recall,

1 did you think about whether there could be any
2 alternative other than those three alternatives?

3 A Not at that meeting, no.

4 THE HEARING OFFICER: Okay.

5 DR. MILEIKOWSKY: Actually, one of the
6 alternatives is the same; it's modify. That's what he
7 said. Modify would be an alternative.

8

9 CROSS-EXAMINATION (Continued)

10 BY DR. MILEIKOWSKY:

11 Q So if you use the word "alternative" or
12 modify," what was, in your mind, the option of
13 modification of the action taken by the chief of staff
14 and the CEO?

15 A I didn't have a specific modification in mind
16 that night.

17 DR. MILEIKOWSKY: You see?

18 THE HEARING OFFICER: Yeah. Given what my
19 ruling is, I think we have exhausted his thought
20 process --

21 DR. MILEIKOWSKY: Okay. But what I'm looking
22 for is his thoughts.

23 THE HEARING OFFICER: Yeah. I think we've
24 exhausted the MEC meeting. If you have --

25 DR. MILEIKOWSKY: Yes. I have other questions.

1 THE HEARING OFFICER: And there will be, I
2 believe -- well, you'll have ample opportunity during
3 your case to delve into it. I'm assuming the MEC is
4 going to present a description of the meeting and the
5 events leading up to the meeting and so on.

6 BY DR. MILEIKOWSKY:

7 Q As we sit here today, if I refer to you a
8 patient tomorrow, would you refer to me a patient?

9 A Generally that's what I do.

10 Q I'm not talking generally here; I'm talking
11 specifically me.

12 If a patient comes to you tomorrow that is
13 either a friend of mine or someone that I delivered or
14 someone that is not happy with their pediatrician and is
15 calling my office or myself and is asking me for a
16 referral, and I refer you or your wife -- since you work
17 together; correct? Is your wife still working with you;
18 correct?

19 A Yes.

20 Q Okay. So I refer to you a patient. And
21 tomorrow morning a patient calls you, makes an
22 appointment, and tells you that I referred you that
23 patient. Would you in that case refer to me a different
24 patient next week?

25 A If the opportunity came up, I would consider

1 any physician who is capable of the needs of the
2 patient.

3 Q But I'm not any physician. My question is me.
4 Would you refer to me any patient into the future?
5 Tomorrow, in a month --

6 A One new patient referral is random and not a
7 pattern, so I would answer you "no."

8 Q I don't understand what you mean by "random."
9 Earlier you stated that the reason --

10 A That's my answer.

11 Q -- you do not refer to me is because you
12 believe I stopped referring to you. Am I correct?

13 A That's right.

14 Q So let's say that tomorrow I referred to you a
15 patient, and that patient makes an appointment next
16 week. You see that patient the following week. You
17 learn and you're happy to learn that, as far as you can
18 perceive it, an old or previous referral source has
19 become a source of referral again.

20 Since you indicated that was, in your mind, the
21 reason you did not refer to me anymore when Mr. Willick
22 asked you the question, then my question is: Would you
23 then resume referring to me patients? I'm not in your
24 random system right now.

25 A One new patient would be random, would not be a

1 pattern.

2 Q Oh. So you meant I sending to you random. I
3 misunderstood you. I thought that your referrals were
4 random.

5 Let's say that I refer to you a patient every
6 month, and it's not random; it's regular. Would you
7 refer to me a patient?

8 A Typically I would.

9 Q Not typically. To me.

10 A I answered your question.

11 Q No.

12 THE HEARING OFFICER: Excuse me.

13 DR. MILEIKOWSKY: It's very important.

14 THE HEARING OFFICER: I understand.

15 DR. MILEIKOWSKY: He's evading answering the
16 question.

17 THE HEARING OFFICER: We are running out of
18 time, and I'm not going to bring Dr. Irani back past
19 tonight. I would make a suggestion, which is the
20 suggestion I made on the other evenings, that we let the
21 hearing committee ask whatever questions they have now,
22 and then allow both sides to ask further questions if
23 there is time remaining. If there is no objection from
24 both sides, that's what I would prefer doing.

25 DR. MILEIKOWSKY: No objection.

1 THE HEARING OFFICER: Because I'm not going to
2 keep Dr. Irani beyond that.

3 Now that I've caught the hearing committee off
4 guard, do any members of the hearing committee have any
5 questions?

6 Dr. Miyashita.

7

8 EXAMINATION

9 BY DR. MIYASHITA:

10 Q Do you believe Dr. Mileikowsky is a competent
11 obstetrician? Forget about referring patterns.

12 A Yes.

13 THE HEARING OFFICER: Dr. Pleet.

14

15 EXAMINATION

16 BY DR. PLEET:

17 Q With regard to your testimony at this hearing,
18 have you at any time had advice from any attorney on how
19 to answer the questions?

20 A No.

21 DR. PLEET:

22 THE HEARING OFFICER: Dr. Fleisher.

23 / / /

24 / / /

25 / / /

1 "no" -- refer back to him?

2 A Yes.

3 THE HEARING OFFICER: Dr. Ballin.

4

5

EXAMINATION

6

BY DR. BALLIN

7 Q I just want to ask this question to clarify
8 your response earlier to Dr. Mileikowsky's questions as
9 it related to the amount of time allotted to
10 Dr. Mileikowsky to review the charges and respond to the
11 charges.

12 To the best of your recollection, was he given
13 30 minutes to review and respond to the allegations? Or
14 30 minutes to review the allegations?

15 A I recall his having 30 minutes to respond to
16 the Medical Executive Committee about the issue at hand
17 and that he was given free reign in how to handle the
18 time allotment for the different steps.

19 Q To clarify, was it your testimony that you
20 thought it was fair that 30 minutes was an ample period
21 of time to review the allegations?

22 THE HEARING OFFICER: The question is: Did the
23 30 minutes include both reading the allegations and
24 responding?

25 THE WITNESS: Yes.

EXAMINATION

1
2 BY DR. FLEISHER:

3 Q Never having been involved in a hearing, do you
4 think it's reasonable to bring somebody up on charges;
5 bring them to a committee meeting without them having
6 prior knowledge of the charges and not having any time
7 to review the charges and to answer them; and say, "Here
8 you've got 30 minutes," and then decide on their fate
9 after that kind of procedure?

10 A I'm going to assume what you're asking when I
11 answer. I understood that the nature of that meeting in
12 November last -- that there would be further steps after
13 it of a more formal nature, such as this; and that it
14 was not the end point, unless we found that night to
15 terminate it.

16 THE HEARING OFFICER: Any other questions of
17 the hearing committee?

EXAMINATION

18
19
20 BY DR. PERSKY:

21 Q Again, getting back to the referral pattern, if
22 Dr. Mileikowsky had established multiple referrals a
23 week, a month, given your experience with his
24 circumcision and your past experience with him, because
25 he was sending you referrals would you -- "yes" or

1 BY DR. BALLIN:

2 Q Is it your testimony that you believed at that
3 time that it was a fair amount of time to give
4 Dr. Mileikowsky to review and respond to those
5 allegations?

6 A Yes.

7 Q Hypotheticals are different. If this situation
8 arose -- if you were in the same position or were handed
9 allegations, would you feel that 30 minutes was ample?
10 Or would you feel it more fair to ask for more time?

11 A It might be appropriate to ask for more time.

12 Q To the best of your recollection, did
13 Dr. Mileikowsky ask for more time at that particular MEC
14 meeting?

15 A I believe he asked for more time.

16 Q Was more time allotted?

17 A No.

18 THE HEARING OFFICER: Dr. Pleet.

19

20 FURTHER EXAMINATION

21 BY DR. PLEET:

22 Q Are you aware if any or all of the allegations
23 had been, in some shape, manner or form, previously
24 presented to Dr. Mileikowsky?

25 A I am not aware of their being previously

1 presented to him.

2 THE HEARING OFFICER: Any other questions from
3 the hearing committee?

4 Dr. Wulfsberg, redirect, and then
5 Dr. Mileikowsky.

6 DR. WULFSBERG: I do have some questions.

7

8 REDIRECT EXAMINATION

9 BY DR. WULFSBERG:

10 Q You recall that I made a presentation to the
11 Medical Executive Committee prior to Dr. Mileikowsky
12 being invited to answer questions?

13 A Yes.

14 Q And that I had given a lengthy discussion of
15 the previous history of Dr. Mileikowsky?

16 A Yes.

17 Q Do you recall during that period of time that I
18 said to you that Dr. Mileikowsky had been involved in a
19 hearing regarding his reappointment; and that virtually
20 each and every charge that he had been charged with
21 since suspension were the same changes that had been
22 charged with in the reappointment application six months
23 prior to that meeting?

24 A Yes.

25 Q And that I told you that he had privileged

1 information of all of those charges prior to that time?

2 DR. MILEIKOWSKY: This is nonsense and
3 erroneous.

4 DR. WULFSBERG: I'm asking the questions.

5 THE HEARING OFFICER: Wait.

6 DR. MILEIKOWSKY: No. No. I object.

7 THE HEARING OFFICER: Overruled.

8 DR. MILEIKOWSKY: There were only 8 charges on
9 November 28. The reappointment application issue was 31
10 charges. That's how we have now 38 charges since you
11 did not agree to the bifurcation.

12 So this is a lie.

13 THE HEARING OFFICER: Wait. Wait.

14 DR. MILEIKOWSKY: It's a simple,
15 straightforward lie. It's not a distortion. It's a
16 lie.

17 THE HEARING OFFICER: Wait. Wait.

18 DR. MILEIKOWSKY: No. I object to the
19 question because the question has no foundation.

20 THE HEARING OFFICER: Overruled.

21 DR. MILEIKOWSKY: The foundation is wrong.

22 THE HEARING OFFICER: Overruled.

23 DR. MILEIKOWSKY: This is ridiculous.

24 THE HEARING OFFICER: Next question.

25 DR. MILEIKOWSKY: How can you overrule when

1 there is no foundation?

2 THE HEARING OFFICER: You'll have a chance to
3 ask --

4 DR. MILEIKOWSKY: That's not the question.
5 The statement he made was a lie, and I ask that lie to
6 be stated as a lie.

7 THE HEARING OFFICER: Dr. Mileikowsky --

8 DR. MILEIKOWSKY: And you know it's a lie
9 because you know very well how many times I asked you
10 for a bifurcation.

11 THE HEARING OFFICER: Doctor --

12 DR. MILEIKOWSKY: The issues of summary
13 suspension are based on 8 charges. The issues of
14 reappointment application are issues of 31 charges.

15 THE HEARING OFFICER: Doctor --

16 DR. MILEIKOWSKY: It's apples and oranges.

17 THE HEARING OFFICER: Doctor, you'll have an
18 opportunity to present your case.

19 Next question.

20 DR. WULFSBERG: Thank you.

21 Q You do recall that?

22 DR. MILEIKOWSKY: He recalls what?

23 THE HEARING OFFICER: Wait.

24 DR. MILEIKOWSKY: What does he recall?

25 THE HEARING OFFICER: Ask the question.

1 BY DR. WULFSBERG:

2 Q You do recall that I told you that the
3 substantial portion of the charges for the summary
4 suspension were the very same charges that
5 Dr. Mileikowsky had been charged with in his
6 reappointment denial by the Medical Executive Committee
7 previously, six months previously?

8 A Yes.

9 Q So could you form an assertion -- or form an
10 opinion about Dr. Mileikowsky's assertion that he was
11 completely unaware of all the charges that he was faced
12 with when he entered that meeting?

13 A Yes.

14 Q And what would your opinion be?

15 A That he knew pretty close to the exact charges
16 prior to that meeting starting.

17 Q In fact, I told you, did I not, that he had
18 received those charges six months prior and that he was
19 in a different hearing about that at that time?

20 A Yes.

21 Q Knowing what you now know about Dr. Mileikowsky
22 and all the things that you heard about him, could you,
23 in good conscience, refer a patient to him?

24 A No.

25 Q Based on your understanding of the kind of

1 injury this child sustained, is it reasonable to assume
2 that the complication this child might develop could
3 take years?

4 A Yes.

5 Q So that even if the current appearance of that
6 child's penis appeared to have made some recovery, there
7 is still a real chance that this child might suffer
8 significant injury in the future?

9 DR. MILEIKOWSKY: There's no foundation. He
10 said he's not an expert.

11 DR. WULFSBERG: I'm asking --

12 DR. MILEIKOWSKY: He doesn't perform
13 circumcisions. This has no foundation. What is the
14 basis for such an opinion? We might ask a janitor his
15 opinion.

16 THE HEARING OFFICER: You've made your point.
17 He can answer the question, and the committee will give
18 it whatever weight they will give it. And you can ask
19 him questions on cross-examination.

20 Go ahead.

21 DR. WULFSBERG: I will rephrase it.

22 THE HEARING OFFICER: All right.

23 BY DR. WULFSBERG:

24 Q Based on your understanding of the information
25 you read in Dr. Belman's section of the textbook, do you

1 believe that there is a reasonable chance this child
2 might experience complications based on the injury you
3 observed from the injury to this child's penis during
4 the circumcision?

5 A I would say yes because of Dr. Belman's text
6 discussing excessive removal of penile shaft skin, I
7 would have concern about future problems for this
8 infant.

9 Q That might not be apparent now.

10 A That might not be apparent now.

11 Q Were you satisfied that the bleeding this child
12 experienced was appropriate to the amount of injury the
13 child sustained at the time of the circumcision?

14 A Yes.

15 Q That it was not excessive considering the
16 excessive amount of skin that was removed from this
17 child's penis?

18 A The amount of bleeding was commensurate with
19 the injury.

20 Q Did you feel confident that you had stopped
21 that bleeding subsequent to that injury?

22 A I was very certain to make sure I had stopped
23 the bleeding on that day of the circumcision.

24 Q Did you receive a phone call from the child's
25 mother reporting to you that the child had started to

1 bleed again and it needed immediate attention?

2 A No. And I was on call for the entire evening.

3 Q Did Dr. Zukow suggest to you that that child
4 had subsequent bleeding after you sent the child home?

5 A No.

6 Q Do you routinely refer your postcircumcision
7 babies back to the obstetrician for follow-up?

8 A No.

9 Q Do you know of any pediatrician who does?

10 A I know of no one who has that practice.

11 Q During the informal hearing, did
12 Dr. Mileikowsky in a general way give you a substantive
13 answer -- not to you, the committee -- a substantive
14 answer to any questions that might have changed your
15 mind about the kind of modification you might have made
16 during that meeting?

17 A No. In fact he was requested to give specific
18 answers, and he continued to not give specific answers.

19 Q Were his answers evasive?

20 A They could be alternatively evasive or non
21 sequiter.

22 DR. WULFSBERG: No further questions.

23 THE HEARING OFFICER: Dr. Mileikowsky.

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RE-CROSS-EXAMINATION

BY DR. MILEIKOWSKY:

Q Dr. Wulfsberg -- I'm sorry. Because I don't see the difference anymore between the different members of the MEC committee --

DR. WULFSBERG: I move to strike that.

THE HEARING OFFICER: Dr. Mileikowsky --

BY DR. MILEIKOWSKY:

Q Do you recognize this book, Dr. Irani?

DR. WULFSBERG: Excuse me. There's a motion here --

DR. MILEIKOWSKY: Motion for what?

DR. WULFSBERG: To strike your last comment.

DR. MILEIKOWSKY: This has already been accepted.

THE HEARING OFFICER: Granted.

Dr. Mileikowsky, please sit down.

DR. WULFSBERG: I ask that he sit down and stop harassing the witness as he is walking around the room in an agitated manner.

DR. MILEIKOWSKY: Agitated? Holding a book is agitation?

(Simultaneous colloquy.)

THE REPORTER: One at a time.

(Continued simultaneous colloquy.)

1 THE REPORTER: We're not on the record.

2 THE HEARING OFFICER: Gentlemen, stop. Stop.

3 DR. MILEIKOWSKY: This is wonderful. We have
4 now the definition of "agitation" by Dr. Wulfsberg.

5 THE HEARING OFFICER: Dr. Mileikowsky, if I
6 were in your position, I would cross-examine the
7 witness.

8 DR. MILEIKOWSKY: This is beginning my
9 cross-examination.

10 Q Dr. Irani, do you remember me showing you this
11 book, as well as all the members of the MEC, on
12 November 28, 2000? "Yes" or "no"? Simple question.

13 THE HEARING OFFICER: Wait. Wait.

14 DR. WULFSBERG: May I ask that you lower your
15 voice.

16 DR. MILEIKOWSKY: Simple question.

17 THE HEARING OFFICER: Dr. Mileikowsky --

18 BY DR. MILEIKOWSKY:

19 Q Let's put it this way: If you choke somebody,
20 that person usually raises its voice and asks for help.

21 THE HEARING OFFICER: Doctor --

22 DR. MILEIKOWSKY: Dr. Wulfsberg believes that
23 I'm a rowboat. I am being choked the whole year of my
24 summary suspension.

25 THE HEARING OFFICER: Doctor --

1 DR. MILEIKOWSKY: 95 percent of my practice is
2 down, and I should be smiling.

3 THE HEARING OFFICER: Dr. Mileikowsky, you are
4 out of order.

5 DR. MILEIKOWSKY: I'm out of order?

6 THE HEARING OFFICER: Yes.

7 DR. MILEIKOWSKY: I am being strangled.

8 THE HEARING OFFICER: You are out of order.

9 DR. MILEIKOWSKY: It is out of order to
10 strangle a physician which has just been qualified as
11 competent.

12 THE HEARING OFFICER: Dr. Mileikowsky, just ask
13 the question without yelling.

14 DR. MILEIKOWSKY: I just asked the question.
15 Ask it yourself.

16 THE HEARING OFFICER: Dr. Mileikowsky --

17 DR. MILEIKOWSKY: Please repeat the question.

18 THE HEARING OFFICER: -- I'm close to
19 adjourning --

20 DR. MILEIKOWSKY: I'm not closing the session.
21 Please repeat my question.

22 THE HEARING OFFICER: I'm close to adjourning
23 the hearing.

24 DR. MILEIKOWSKY: There's no reason to.

25 DR. WULFSBERG: I'm asking that we adjourn the

1 hearing.

2 DR. MILEIKOWSKY: That's all you want.

3 DR. WULFSBERG: This kind of outbreak is
4 unacceptable.

5 THE HEARING OFFICER: Dr. Mileikowsky --

6 (Simultaneous colloquy.)

7 DR. MILEIKOWSKY: I would like the court
8 reporter to ask the question.

9 Ask the question.

10 THE HEARING OFFICER: Dr. Mileikowsky, in light
11 of the fact that some of the charges against you are
12 charges that have to do with your cooperation or lack of
13 cooperation in the peer review process, if I were you, I
14 wouldn't engage in this type of behavior. All right?

15 The last question to you, Dr. Irani, was: Do
16 you recall Dr. Mileikowsky showing you this book at the
17 November, 2000 MEC meeting?

18 THE WITNESS: I don't recall if he showed us
19 the book or mentioned the book.

20 THE HEARING OFFICER: All right. Next
21 question.

22 BY DR. MILEIKOWSKY:

23 Q What does the Spanish Inquisition mean to you,
24 Dr. Irani?

25 DR. WULFSBERG: I object on relevance.

1 THE HEARING OFFICER: Sustained.

2 Dr. Mileikowsky --

3 DR. MILEIKOWSKY: It's very important.

4 THE HEARING OFFICER: Dr. Mileikowsky --

5 DR. MILEIKOWSKY: Fine. Let me ask the next
6 question.

7 THE HEARING OFFICER: If you --

8 DR. MILEIKOWSKY: Let me ask the next question.

9 THE HEARING OFFICER: All right. Go ahead.

10 BY DR. MILEIKOWSKY:

11 Q In response to Dr. Miyashita's question whether
12 or not you thought I was competent, you said "yes." So
13 it is your understanding that the reason for my summary
14 suspension is not professional, not based on any
15 professional conduct of mine -- of competence, should I
16 say?

17 A Can you rephrase the question so I can answer
18 it.

19 Q You just stated to Dr. Miyashita that as we sit
20 here tonight, you believe that I'm a competent
21 obstetrician/gynecologist; correct?

22 A I did, yes.

23 Q So why would a competent
24 obstetrician/gynecologist, myself or anyone, have his
25 privileges removed summarily?

1 A I believe the minutes support a lot of
2 reasons --

3 Q I want to understand --

4 A -- if you want to refer to them directly.

5 Q So they are nonprofessional, if you think I'm
6 competent.

7 A I'm not sure how you're going to define
8 professional.

9 Q Well, Dr. Miyashita did not ask you any other
10 question regarding my professional competence.

11 A No. You are.

12 Q I am what?

13 A You are asking the question.

14 Q When you answered Dr. Miyashita and you stated
15 that I was competent, did you mean I was competent in
16 speaking French --

17 DR. WULFSBERG: I object.

18 BY DR. MILEIKOWSKY:

19 Q -- or that I'm competent as an
20 obstetrician/gynecologist?

21 I believe the question of Dr. Miyashita was
22 very specific.

23 A I will help you with it.

24 Q Okay.

25 A Competence, excellence -- these are not

1 necessarily interchangeable words.

2 DR. MILEIKOWSKY: Do you understand his answer?

3 I didn't use the word "excellence."

4 THE WITNESS: I am. One can use the word

5 "competent" meaning different things.

6 BY DR. MILEIKOWSKY:

7 Q So what does it mean to you?

8 A A competent physician is a physician with the
9 basic skills necessary to provide patient care.

10 Q Would a competent physician be summarily
11 suspended then?

12 A Yes. Can happen.

13 Q On what basis?

14 A There may be hundreds of bases.

15 Q Give me just reasons for which the November 28
16 meeting led to that decision.

17 A It was the other way around. It was your
18 opportunity to tell us why the information there wasn't
19 pertinent.

20 Q You don't remember me saying there was no way
21 for me in 10 minutes or 15 minutes to answer those
22 questions? You just stated yourself I asked for more
23 time, didn't I?

24 A You asked for more time and continued to not
25 answer any questions.

1 Q Who asked the questions? You did?

2 A I didn't ask one question.

3 Q Who asked the questions?

4 A You can go through the minutes and find each
5 question's asker.

6 Q How many questions were asked, to the best of
7 your recollection, without looking at the minutes?

8 A I remember one physician asking you the same
9 question three times, and each time he got no answer.

10 Q What was the question?

11 A His question was: Do you understand that by
12 not answering the question, that that would have
13 material basis for the way people vote?

14 Q What was the question that allegedly you
15 believe I did not answer?

16 A That was the question.

17 Q No. The question referred to another question
18 that allegedly I didn't answer. What was the question
19 allegedly I did not answer, to the best of your
20 recollection?

21 A I don't recall it. I recall the interchange
22 being one where you were not seeming to understand the
23 gravity of everyone's needing specific responses.

24 Q If anybody needed specific answers and I
25 stated that I wished to answer every specific question

1 but I couldn't answer every specific question, let alone
2 provide --

3 DR. WULFSBERG: This is argument. This is not
4 a question.

5 BY DR. MILEIKOWSKY:

6 Q If I'm not provided the time to answer the
7 question, how am I going to answer?

8 A After 29 minutes without an answer, the 30th
9 minute arrived.

10 Q When did the question come? In the first
11 minute?

12 A I don't know the timing.

13 Q Do you remember me distributing to you, as well
14 as every other member of the committee, documents in a
15 thickness of about two inches?

16 A Might have been more.

17 Q Might have been more. Do you think it was a
18 reasonable time for you to review, over one or two
19 inches of documents that I have provided every single
20 member of the committee?

21 A I could not read all of the documents.

22 Q You could not.

23 How much time do you think you would have
24 needed to read all those documents?

25 A I don't know the way to estimate that, but I

1 would say that the intent of that night was not to have
2 me read but to rather hear the specifics of your
3 response.

4 Q Let me ask you a different question to follow
5 up on Dr. Fleet's question.

6 How many times have you met with Dr. Wulfsberg
7 since November 28 regarding this matter?

8 A We met once.

9 Q When was that?

10 A It was within the last two weeks.

11 Q And who was present with him?

12 A There was one person present. I'm sorry; her
13 name doesn't come to me.

14 Q Anna Suda, an attorney?

15 A Yes.

16 Q She's in the room next-door?

17 A Yes.

18 Q Okay. So you have met with Anna Suda at least
19 twice since then during our last meeting you were with
20 her before coming into this room and about two weeks
21 before; correct?

22 A Yes.

23 Q And you want to tell Dr. Fleet and this
24 committee that Ms. Anna Suda didn't say anything during
25 that meeting to you?

1 A I wouldn't say that.

2 Q So what did Ms. Anna Suda tell you during those
3 two meetings?

4 A Her time with me was actually spent on
5 educating me about the procedure, process, style, and
6 background; things like that.

7 Q She reviewed with you any exhibits?

8 A No. I didn't have time to review the exhibits
9 with her. I had to report to the medical staff office
10 to review them.

11 Q When was that?

12 A Just before when I was scheduled to do this
13 last week.

14 Q When did you review your own notes and exhibits
15 related to your own participation in this November 5,
16 2000 issue?

17 A Sorry?

18 THE HEARING OFFICER: Did you review any notes
19 of your own regarding the November, 2000 MEC meeting?

20 THE WITNESS: I had no other notes other than
21 the chart notes.

22 BY DR. MILEIKOWSKY:

23 Q Did you discuss anything with Dr. Shapiro
24 regarding anything regarding the November 5th --

25 DR. WULFSBERG: Asked and answered.

1 DR. MILEIKOWSKY: Fine.

2 Q More importantly, what did you ask Ms. Anna
3 Suda, since you were meeting with her in order to advise
4 you on how to conduct yourself in this meeting?

5 A I asked her very little. I cannot recall my
6 exact questions, but they would have been in the nature
7 of clarifying the different nuances of this process.

8 Q Can you give us an example.

9 A No. I can't give you a discrete example.

10 Q It just happened two days ago and happened two
11 weeks ago, and you have no recollection?

12 A Two weeks ago was what I was answering about.
13 I didn't ask any question that was substantive. They
14 were clarifications.

15 Q Can you give us an example that you recall?

16 A No.

17 Q We had a recess earlier before beginning the
18 issues of the MEC and other committees you attend to
19 meet with Dr. Wulfsberg and Ms. Anna Suda for 10
20 minutes. What did you ask Ms. Anna Suda during those 10
21 minutes?

22 A You mean the 10 minutes that expired just a few
23 minutes ago? I asked her no questions.

24 Q No, not the last 10 minutes; the first 10
25 minutes.

1 A Which 10 minutes are we going to talk about?

2 Q Anytime -- we don't care really which time.

3 You're trying to evade the answer.

4 DR. WULFSBERG: Excuse me. I would like that
5 stricken from the record.

6 THE HEARING OFFICER: It will be stricken.

7 Dr. Mileikowsky, just confine yourself to
8 questions and not side comments.

9 BY DR. MILEIKOWSKY:

10 Q Let me ask you a specific question. To the
11 best of your recollection, how many charges are involved
12 in my summary suspension for imminent danger? A number.

13 A You just gave some numbers earlier. I would
14 imagine they have a basis.

15 Q I don't want you to give an answer based on
16 what I said.

17 DR. WULFSBERG: He's not going to testify to
18 that.

19 BY DR. MILEIKOWSKY:

20 Q You are a member of the MEC.

21 THE HEARING OFFICER: Wait. The question --

22 DR. MILEIKOWSKY: He voted that night. On how
23 many charges did he vote?

24 THE HEARING OFFICER: Your question --

25 To be precise, the question is: Do you recall

1 how many charges were the basis for the MEC's action in
2 November, 2000?

3 THE WITNESS: I do not know the exact specific
4 number.

5 BY DR. MILEIKOWSKY:

6 Q Can you give us a range.

7 THE HEARING OFFICER: Do you have an
8 approximation?

9 THE WITNESS: Well over one.

10 THE HEARING OFFICER: Pardon?

11 THE WITNESS: Well over one. I would say that
12 having heard other numbers earlier, I couldn't answer
13 the question in the intent it should be answered.

14 THE HEARING OFFICER: All right. Next
15 question.

16 BY DR. MILEIKOWSKY:

17 Q Is that over 10 or less than 10?

18 DR. WULFSBERG: I'm going to object.

19 DR. MILEIKOWSKY: I'm helping him. There's
20 nothing to object. I'm just asking him to recollect
21 himself.

22 THE HEARING OFFICER: If you recall.

23 THE WITNESS: No.

24 THE HEARING OFFICER: All right.

25 / / /

1 BY DR. MILEIKOWSKY:

2 Q Is it less or more than a hundred?

3 THE HEARING OFFICER: He doesn't recall. Next
4 question.

5 DR. MILEIKOWSKY: This is extraordinary.

6 DR. WULFSBERG: I object to that, too.

7 BY DR. MILEIKOWSKY:

8 Q What do you remember from med school --

9 THE HEARING OFFICER: Sustained.

10 BY DR. MILEIKOWSKY:

11 Q What do you remember from med school in
12 pediatrics? Nothing? You read documents.

13 THE HEARING OFFICER: Wait. Wait.

14 DR. MILEIKOWSKY: This is extraordinary. Here
15 is a sophisticated, intelligent individual --

16 THE HEARING OFFICER: Wait. Doctor --

17 (Simultaneous colloquy.)

18 THE REPORTER: One at a time.

19 (Continued simultaneous colloquy.)

20 THE REPORTER: We're not on the record.

21 THE HEARING OFFICER: Dr. Mileikowsky, this is
22 all comment that you can make in your closing argument.

23 DR. MILEIKOWSKY: I don't want to make comments.
24 I want to give him a chance to answer.

25 THE HEARING OFFICER: No. No. You're arguing

1 with the witness. That is not what we're here for. We
2 are here for you to ask questions and for the witness to
3 answer questions.

4 DR. MILEIKOWSKY: Okay.

5 THE HEARING OFFICER: We're not here for you to
6 argue with the witness. We're not here for you to argue
7 with me.

8 DR. MILEIKOWSKY: Thank you.

9 THE HEARING OFFICER: We're not here for you to
10 argue with Dr. Wulfsberg or him to argue with you. All
11 right? Let's get that clear. Because if we continue in
12 this way, I'm going to get even more active in my
13 intervention in this, and I'm going to truncate the
14 questioning severely. All right?

15 Let's just ask the questions and get the
16 answers.

17 DR. MILEIKOWSKY: Okay. I was trying to
18 understand Dr. Irani's understanding of the word
19 "competent" when he answered the question to
20 Dr. Miyashita. And so I'd like to understand if a
21 competent obstetrician/gynecologist can or not have his
22 privileges suspended and for what professional reason.

23 DR. WULFSBERG: This is asked and answered.

24 DR. MILEIKOWSKY: No, he didn't.

25 DR. WULFSBERG: He answered it.

1 DR. MILEIKOWSKY: He spoke about excellence.
2 He never answered.

3 DR. WULFSBERG: He absolutely answered it.

4 THE HEARING OFFICER: Do you understand the
5 question?

6 THE WITNESS: No.

7 THE HEARING OFFICER: Next question.

8 DR. MILEIKOWSKY: So please, you ask the
9 question in a different way. Be my guest.

10 THE HEARING OFFICER: I'm not able to at this
11 point.

12 DR. MILEIKOWSKY: All right.

13 THE HEARING OFFICER: Next question.

14 BY DR. MILEIKOWSKY:

15 Q What is your understanding for why my summary
16 suspension?

17 A Your summary suspension was initiated because
18 of the question of imminent danger to other patients at
19 the time it was initiated.

20 Q Do you recall as you are sitting here one
21 single patient that was in danger due to my professional
22 or nonprofessional actions?

23 A Do I -- can you repeat it.

24 Q You've just stated that, to the best of your
25 understanding as you are sitting here today, my

1 privileges were suspended because of imminent danger to
2 a patient or more than one patient. Which patient and
3 what is it that I did that made that patient in danger?

4 A I would have to refer to documents to answer
5 your question.

6 Q You have the minutes in the Exhibit 135.

7 A Then I would say those would be the patient
8 contacts.

9 Q The question is: In your mind and your
10 recollection as you are sitting here, and you are a
11 responsible individual member of the MEC meeting today
12 as you were in November 28, 2000, what is it that
13 caused -- I caused to any patient that was so tragic
14 that could cause an imminent danger to that patient,
15 that you can recall?

16 A I didn't commit any of them to memory.

17 Q I'm sorry?

18 A I didn't commit any of them to memory.

19 Q If we allowed you to look through the minutes
20 on Exhibit 135, would it help you?

21 A It would say -- that's what I was told.

22 Q Were told by whom?

23 A By the different documents that were presented
24 that evening.

25 Q What method of verification did you have?

1 A I have no method of verification.

2 Q Do you feel comfortable having no method of
3 verification?

4 A Yes.

5 Q How come? Because you have confidence in
6 Dr. Wulfsberg?

7 A I have confidence in Dr. Wulfsberg and many
8 others that work at the hospital.

9 Q Okay. Who are the others, please? Ms. Miller?

10 A I'm not going to go through a one-by-one list
11 because it's basically saying that the process that was
12 begun at the beginning of the time line in the minutes
13 was continued through in a proper way.

14 Q Is it possible there could be a flaw in the
15 process?

16 A Could be possible.

17 Q Have you looked into the possibility of a flaw
18 in the process?

19 A No.

20 Q Have you looked into the possibility that some
21 individuals in the process may have an agenda against
22 me?

23 A I know of no agenda. I had no need to look for
24 such an agenda.

25 Q Humans don't have agendas, feelings?

1 A That's not what you asked.

2 Q So let me ask it differently. Are humans
3 perfect?

4 DR. WULFSBERG: This line of questioning is
5 going down a road that's irrelevant.

6 DR. MILEIKOWSKY: It's very simple. "Yes" or
7 "no"?

8 Q The process you're describing depends on
9 humans.

10 THE HEARING OFFICER: Wait. Wait. Wait.
11 Sustained.

12 DR. MILEIKOWSKY: So ask it differently.

13 THE HEARING OFFICER: Let's move on. You have
14 made your point.

15 BY DR. MILEIKOWSKY:

16 Q At the MEC meeting do you ever question
17 anything regarding the process of any subject; not
18 necessarily what we're talking about, a summary
19 suspension of mine?

20 A There are questions of many natures at MEC
21 meetings. The word "process" -- what you're talking
22 about is a process parallel to this? I'm not sure how
23 to answer you.

24 Q You were referring to the process -- if I
25 understood correctly, you used the word "process" on how

1 information is digested, filtered, and then ultimately
2 introduced into the attention of the MEC. Am I correct?

3 A I was answering you with regard to the
4 documents that were given that evening.

5 Q And the process of those documents results from
6 different departments, nursing staff, quality assurance,
7 and other departments that have elaborately produced
8 this document. And so that's the process you're talking
9 about?

10 A Yes.

11 Q So have you ever found those individuals
12 involved in this process in a different matter --
13 nothing to do with me -- that may have been flawed?

14 A There are times to edit minutes. There are
15 times to review the process. There are times to get
16 corrections. Yes.

17 Q Give me an example of when you found the
18 process was flawed.

19 DR. WULFSBERG: What's the relevance to this
20 specific process?

21 THE HEARING OFFICER: Answer that one question.
22 Do you have --

23 THE WITNESS: I know of no process that was
24 flawed.

25 THE HEARING OFFICER: Okay. Look. I know some

1 of the members of the hearing committee have further
2 questions, and I think we're reaching the end of our
3 time here this evening. I would suggest that we let the
4 hearing committee members who have questions ask their
5 questions at this point, and then we'll come back to
6 you, Dr. Mileikowsky, and to you, Dr. Wulfsberg, if you
7 have anything further.

8 DR. MILEIKOWSKY: I just have one question.

9 THE HEARING OFFICER: All right.

10 BY DR. MILEIKOWSKY:

11 Q Were you told why I was not in the room and
12 allowed in the room when Dr. Wulfsberg did his
13 presentation to the MEC on November 28 for a full hour
14 before I came?

15 A We were not told that it would be any time
16 period before you would come in. We were just told this
17 is the process, made sure we understood the process, and
18 then began it.

19 Q Were you told that I asked in writing urgently
20 Dr. Kayne, the chief of staff, permission to attend the
21 MEC meeting of November 28 from the beginning?

22 A No.

23 Q Did anyone that evening ask where I was prior
24 to me coming an hour after the meeting started? Did
25 anyone, any member of the MEC or anyone else present in

1 the room, ask, "Where's Dr. Mileikowsky?" prior to me
2 being invited to come in one hour after the MEC meeting
3 started?

4 A I believe people were told that you were
5 waiting nearby.

6 Q And nobody was told why I was not allowed in
7 while my name and my reputation and activities were
8 described in a one-sided fashion without hearing the
9 other side?

10 A The process was explained in the fashion it
11 was, and --

12 Q That's not my question. I just asked you a
13 question --

14 THE HEARING OFFICER: Let him finish.

15 DR. WULFSBERG: He's answering the question.

16 BY DR. MILEIKOWSKY:

17 Q Okay. Go ahead.

18 A -- the specifics of who can attend where and
19 why was decided prior to our meeting.

20 Q Did you agree with that?

21 A It seemed to be a very suitable process to
22 perform.

23 Q If you were suspended, as I was, and I was a
24 member of the MEC, would you also feel it was
25 appropriate?

1 DR. WULFSBERG: This is asked and answered.

2 THE HEARING OFFICER: You can answer.

3 THE WITNESS: If I was suspended, I believe
4 you started with. Continue with the thought, please.

5 BY DR. MILEIKOWSKY:

6 Q So in other words, if you were in my shoes and
7 you were suspended on November 16, 2000; and now I'm in
8 the MEC meeting, and we're meeting for a whole hour
9 listening to Dr. Wulfsberg, Dr. Kayne, Ms. Miller,
10 whoever else has been talking for a full hour; and you
11 are not in the room, and your privileges have been
12 suspended; and -- this hospital represents -- what? --
13 100 percent of your practice here? This hospital
14 represents 100 percent of your practice?

15 THE HEARING OFFICER: The question is becoming
16 confused.

17 BY DR. MILEIKOWSKY:

18 Q Basically, this is an important hospital to
19 you; correct?

20 A This is an important hospital to me.

21 Q Your privileges are now suspended for two
22 weeks. You are not allowed into the room while other
23 doctors are talking about you, and you don't know what
24 they're talking about. You are allowed one hour later,
25 and you still don't know what they are talking about.

1 Do you find that -- if you were suspended and I
2 was a member of the MEC, would you feel that
3 appropriate?

4 A Yes.

5 THE HEARING OFFICER: How about -- let's let
6 the hearing committee ask questions.

7 DR. MILEIKOWSKY: Yes. Absolutely.

8 THE HEARING OFFICER: Dr. Pleet.

9

10 FURTHER EXAMINATION

11 BY DR. PLEET:

12 Q With regard to Dr. Mileikowsky, do you
13 distinguish competence as an obstetrician/gynecologist
14 and competence in performing circumcisions as separate
15 issues?

16 A Yes.

17 Q And in what way?

18 A Having seen the outcome of that particular
19 circumcision, I have had a change of thought about that
20 answer to that question.

21 Q What is your change?

22 A I would be uncomfortable having another
23 circumcision done by him on a new patient.

24 THE HEARING OFFICER: Any other questions from
25 the hearing committee?

1 Dr. Miyashita.

2

3

FURTHER EXAMINATION

4 BY DR. MIYASHITA:

5 Q You were brought here to comment specifically
6 on the circumcision and not about the MEC. As a
7 committee member, do you have an opinion --

8 Dr. Mileikowsky has said he performed hundreds, and I
9 assume others have performed many. In the scheme of
10 things, is one suboptimal circumcision the -- I mean,
11 you discussed this case for over an hour. Can you give
12 me a feeling for how much weight we should place on this
13 one problem circumcision?

14 A I would say that it was a severe injury, and
15 that was the reason for my answering the way I just did.

16 THE HEARING OFFICER: Dr. Brooks.

17

18

EXAMINATION

19 BY DR. BROOKS:

20 Q Do you know if Dr. Mileikowsky received a
21 letter for counseling or proctoring or anything
22 concerning this circumcision?

23 A I'm not aware.

24 Q Like a letter of admonishment, of proctoring,
25 if he needed counseling, education concerning

1 circumcisions?

2 A I don't read incident reports, nor do I know
3 their outcome and what happens as a follow-up. So I do
4 not know of any such letter.

5 Q If this was a pediatrician -- talking about
6 your department, and a circumcision was botched, how
7 would it -- I mean, I am trying to get a feel for the
8 hospital. How would it be handled in your department
9 for a botched circumcision done by a pediatrician? In a
10 stepwise manner, would there be a letter? Would there
11 be -- you know, how would it be handled in your
12 department?

13 A I would have to speak hypothetically, but I
14 would say that there would be a peer review process.
15 And then at the end of that process, some action would
16 be taken, whatever was deemed appropriate based on the
17 review.

18 Q So are you saying to me -- would there be a
19 letter sent to that physician and then follow-up steps?
20 Or how would that --

21 A I believe it's even more variable than that.
22 There could just be telephone calls or letters or more
23 formal referrals of things to follow through on the
24 process.

25 THE HEARING OFFICER: Dr. Nassoura.

EXAMINATION

1
2 BY DR. NASSOURA:

3 Q Was the circumcision issue a major, minor, or
4 nonissue in the suspension during the meeting --
5 suspension of Dr. Mileikowsky during the meeting? Was
6 it a major issue? Was it a No. 1 out of 10? Was it a
7 No. 10 of 10? Or is it a nonissue?

8 A I would answer it was a nonissue.

9 THE HEARING OFFICER: Any other questions by
10 the hearing committee?

11 Dr. Wulfsberg and then Dr. Mileikowsky.
12

FURTHER REDIRECT EXAMINATION

13
14 BY DR. WULFSBERG:

15 Q You testified that you don't recall a lot of
16 the charges.

17 A Yes.

18 Q And by this time you are aware that this is one
19 of the charges, that this injury to this infant by the
20 circumcision was one of the charges.

21 A Yes.

22 Q Would you be reasonably -- in your opinion,
23 would this be a reason for a reasonable explanation for
24 a charge against Dr. Mileikowsky?

25 A Can you repeat that.

1 Q Would this injury to this infant by the
2 circumcision be a cause for a charge against
3 Dr. Mileikowsky, specifically a charge for endangering a
4 patient?

5 A Yes.

6 Q Do you believe that besides having a duty to
7 the physician -- in this case, Dr. Mileikowsky -- that
8 the Medical Executive Committee also has a duty to
9 protect its staff, its patients, and other members at
10 this hospital?

11 A Yes.

12 Q And do you believe that was one of the
13 significant reasons why the summary suspension was
14 upheld the evening that he was invited to speak?

15 A Yes.

16 Q Has anything happened to change your opinion
17 about that decision?

18 A No.

19 Q At any time have I or has any other person
20 asked you to tell an untruth during your testimony?

21 A No.

22 Q Thank you.

23 THE HEARING OFFICER: Dr. Mileikowsky.

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FURTHER RECROSS-EXAMINATION

BY DR. MILEIKOWSKY:

Q Dr. Irani, other than the charge of circumcision -- forget about the number of charges -- what charge, if any, do you remember that led to my summary suspension?

A I didn't remember any specific charge as to what was going on.

Q As we are sitting right now, what is your understanding or what is your recollection of any other charge that exists against me?

A I would be careful to answer you by not having the minutes in front of me to answer it specifically. I have no reason to speak improperly about it. It's an important matter.

Q If you speak the truth, that's all we ask you.

A Then I cannot answer you with a specific answer.

Q So you do not remember any charge whatsoever, other than the circumcision charge?

A I'm not familiar with the details of any other charge. I would be, therefore, speculating about specifics, and I'm not going to do that.

THE HEARING OFFICER: He's asking you if you recall any of the other charges which were discussed at

1 the November, 2000 meeting.

2 THE WITNESS: I recall that there were other
3 charges, yes. But what I'm hesitating about is giving
4 exact answers about them.

5 THE HEARING OFFICER: He's asking you what you
6 recall about the other charges. It's not a test that
7 you're going to get right or wrong; it's what do you
8 recall about the other charges.

9 THE WITNESS: I recall that all of the charges
10 had merit with regard to the issue of the suspension.

11 THE HEARING OFFICER: Do you recall what the
12 substance of any of those other charges was?

13 THE WITNESS: Not specifically.

14 THE HEARING OFFICER: All right.

15 BY DR. MILEIKOWSKY:

16 Q How about vaguely?

17 A I vaguely would answer that they all had merit
18 with regard to the issue of a suspension.

19 Q That was not the question.

20 DR. WULFSBERG: Well, he said --

21 DR. MILEIKOWSKY: No.

22 Q Did it involve nurses? Did it involve
23 patients? Did it involve other physicians?

24 A I believe there were charges involving almost
25 all of those categories.

1 Q So what do you remember about any interaction
2 with any other physician?

3 THE HEARING OFFICER: He's asking what you
4 remember, if anything, about those charges. In other
5 words, what do you remember from the meeting?

6 THE WITNESS: I remember there being
7 discussions of how he responded to questions in
8 different peer review meetings. There were lots of
9 information presented about his disgruntlement with the
10 way his recredentialing was happening. There were a lot
11 of issues like that that were brought up.

12 BY DR. MILEIKOWSKY:

13 Q Anything with other physicians?

14 A I don't recall any other specific physician
15 things.

16 Q Anything with interactions with nurses?

17 A No.

18 Q Anything regarding my interactions with
19 patients?

20 A Yes.

21 Q What do you recall?

22 A I recall the incident you yourself referred to
23 this evening about the issue of a patient and
24 flatulence.

25 Q And do you have -- or were you ever told that

1 that incident was fully investigated?

2 DR. WULFSBERG: Object.

3 DR. MILEIKOWSKY: He's a member of the MEC.
4 He's also a member of the governing board.

5 THE HEARING OFFICER: That you can answer.

6 THE WITNESS: I don't know of any
7 investigation.

8 THE HEARING OFFICER: Okay.

9 BY DR. MILEIKOWSKY:

10 Q As you sit here, you are a member of the
11 governing board since July 1, 2000; correct?

12 A Yes.

13 Q So you must be aware of the fact that I
14 appealed the previous hearing, and the governing board
15 has assigned a committee with two members of your board,
16 Dr. May and Dr. Sogol. Are you aware of the fact that
17 that committee overturned the previous hearing's
18 decision?

19 A I'm not aware of that.

20 Q How many meetings of the governing board
21 percentagewise have you attended this year or since
22 July 1 last year?

23 A I haven't missed a meeting.

24 Q And you would expect that --

25 THE HEARING OFFICER: Wait. A question;

1 don't --

2 BY DR. MILEIKOWSKY:

3 Q If you haven't missed any meeting -- are you
4 aware, first of all, of the fact that the governing
5 board has appointed a committee to be like the hearing
6 panel here, the appeal committee to the previous
7 hearing?

8 A I'm not aware of any such group.

9 Q Could such an appointment happen without the
10 knowledge of the members of the governing board?

11 (Simultaneous colloquy.)

12 THE REPORTER: Wait. Wait. I didn't hear --

13 THE HEARING OFFICER: Whoa. Whoa. Whoa.

14 Look, it's clear that Dr. Mileikowsky wants to get into
15 the procedural context of this.

16 DR. MILEIKOWSKY: No. I want just his
17 understanding and knowledge, not procedures.

18 THE HEARING OFFICER: Well --

19 DR. WULFSBERG: We haven't established that he
20 knows anything.

21 THE HEARING OFFICER: I don't know -- I think
22 we're getting a little bit tangential to what his
23 testimony is about.

24 Let's bring this to a conclusion.

25 DR. MILEIKOWSKY: That is my next question.

1 Q How do you feel about Israel and Israelis?

2 DR. WULFSBERG: I object.

3 THE HEARING OFFICER: All right.

4 DR. MILEIKOWSKY: It's very important.

5 DR. WULFSBERG: I object.

6 DR. MILEIKOWSKY: We are talking about
7 potential bias.

8 DR. WULFSBERG: I object.

9 THE HEARING OFFICER: Sustained.

10 DR. MILEIKOWSKY: Wait a second. He reacted
11 very strongly last time when I stated that Israel saved
12 Christian Lebanese.

13 THE HEARING OFFICER: Sustained.

14 DR. WULFSBERG: No. As a matter of fact,
15 I objected. He didn't object; I objected.

16 THE HEARING OFFICER: Dr. Mileikowsky --

17 DR. MILEIKOWSKY: No. I saw his face. I saw
18 the surprise on his face.

19 THE HEARING OFFICER: Dr. Mileikowsky --

20 DR. MILEIKOWSKY: I saw the expression of his
21 face.

22 THE HEARING OFFICER: Dr. Mileikowsky, we're
23 not --

24 DR. MILEIKOWSKY: We're looking for bias.

25 THE HEARING OFFICER: Well, wait a minute.

1 DR. WULFSBERG: No. You're trying to interject
2 bias.

3 DR. MILEIKOWSKY: No. I'm asking a question.
4 You're the one who is interjecting --

5 THE HEARING OFFICER: Dr. Irani, do you have
6 any negative feelings against Dr. Mileikowsky based on
7 his ethnicity or religion?

8 THE WITNESS: No. And my surprise was based
9 on his going there.

10 THE HEARING OFFICER: That's answered. All
11 right?

12 DR. MILEIKOWSKY: It wasn't a question of
13 religion; it was a question of nationality.

14 THE HEARING OFFICER: I asked --

15 DR. WULFSBERG: I ask that be stricken.

16 THE HEARING OFFICER: Do you have any prejudice
17 against Dr. Mileikowsky based upon your understanding of
18 what his nationality is?

19 THE WITNESS: No.

20 THE HEARING OFFICER: All right. Thank you.

21 Any other questions? I think we're about
22 exhausted.

23 All right. Thank you, Dr. Irani.

24 We're going to meet next Monday, the 12th, and
25 we'll take our trip to the medication room then, if we

1 get a chance.

2

3 (At 9:38 p.m. the proceedings were adjourned.)

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STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES)

I, Theresa A. Crowley, CSR No. 5513, a
Certified Shorthand Reporter in and for the State of
California, do hereby certify:

That the foregoing proceedings were taken
before me at the place therein set forth;

That the foregoing pages comprise a true
and correct transcript of the proceedings had;

That said transcript contains all the
evidence, acts, and statements of the parties made
during the progress of said proceedings.

In witness whereof, I have subscribed my
name this 26th day of November, 2001.

Theresa A. Crowley

Certified Shorthand Reporter
No. 5513