

Nothing in the case involved an interpretation of by-laws or the Business and Professions Code.

Finally, in its discussion of scope of review Tenet cites Pinksker v. Pacific Coast Society of Orthodontists, 12 Cal.3d 541 (1974), but this case did not involve peer review or an attempt by a hearing officer to exceed the authority given to him by by-laws or by the Business and Professions Code. Pinksker involved the exclusion of an orthodontist by a private membership organization. The Supreme Court held that the orthodontist had a common law right to fair procedure in terms of his application for membership.

## II

### STATEMENT OF FACTS

Petitioner set forth the relevant facts at pages 3-21 of his Opening Brief. Nowhere in Tenet's Statement of the Case does it suggest that any fact was misstated by Petitioner in his Opening Brief. Unfortunately, Tenet misstates certain key facts, distorts others, and forgets that no written findings were ever rendered with respect to the underlying accusation against Petitioner. Tenet did not wait very long to make its first misstatement. Indeed, it appears in the very first sentence of Tenet's Statement of the Case.

#### A. REAPPOINTMENT APPLICATION

Tenet begins with the following false statement:

"In late 1998, the Hospital sent Mileikowsky a reappointment application in the same manner as other medical staff members.

fileikowsky  
replybrief

Despite several reminders, Dr. Mileikowsky failed to submit his application. . . ."

These two sentences are totally false and not supported by the record.

Tenet refers to Volume I, Exhibit No. 104 of the exhibit book, a letter dated February 1, 1999 to Dr. Mileikowsky. That letter falsely stated that Tenet had mailed him his reappointment application on December 2, 1998 and that because he did not return it timely he was deemed to have voluntarily resigned from the staff. The second reference in footnote 1 at the bottom of page 4 is to Volume II of the exhibit book, Exhibit 151, pp. 14-15, which is a portion of the by-laws relating to the reappointment process. This issue was litigated in the case filed by Petitioner against the hospital which resulted in the issuance of a preliminary injunction by Judge O'Brien ordering Tenet to consider his application. The preliminary injunction was never vacated.

Given the obvious hostility of Tenet towards Petitioner it is now obvious that Tenet deliberately tried to prevent Petitioner from having his reappointment application considered on its merits. It is hardly coincidental that Tenet failed to deliver the reappointment application to Petitioner and then denied him his reappointment after being compelled to process the reappointment application by the Superior Court.

**B. DECEMBER 17, 1999 OPERATING ROOM INCIDENT**

In its second paragraph under the heading "Statement of the

2<sup>ND</sup> Civil 168705

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION TWO

GIL N. MILBIKOWSKY, M.D. )  
 )  
Plaintiff and Appellant, )  
 )  
vs. )  
 )  
TENET HEALTHSYSTEM, ENCINO )  
PARZANA REGIONAL MEDICAL )  
CENTER, A CALIFORNIA )  
CORPORATION, )  
 )  
Defendant and Appellee )  
\_\_\_\_\_ )

2<sup>nd</sup> Civil No. B168705  
L.A.S.C. NO. BS079131

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APPEAL FROM THE SUPERIOR COURT  
OF THE COUNTY OF LOS ANGELES

HONORABLE DAVID P. YAFFE, JUDGE PRESIDING

APPELLANT'S REPLY BRIEF

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