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REPLYMEM

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 JUN 09 2003  
 LOS ANGELES  
 SUPERIOR COURT

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 9 FOR THE COUNTY OF LOS ANGELES

10 GIL N. MILEIKOWSKY, M.D. )  
 11 Petitioner, )  
 12 vs. )  
 13 TENET HEALTHSYSTEM, ENCINO - )  
 14 TARZANA REGIONAL MEDICAL )  
 15 CENTER, A CALIFORNIA )  
 16 CORPORATION AND DOES 1 )  
 17 THROUGH 100 INCLUSIVE, )  
 18 Respondents )

CASE NO: BS079131  
 PETITIONER'S REPLY MEMORANDUM  
 IN SUPPORT OF MOTION FOR NEW  
 TRIAL

DATE: June 16, 2003  
 TIME: 9:30 A.M.  
 PLACE: Department 86

Honorable David P. Yaffe  
 (Janavs Disqualified By  
 Respondents on CCP 170.6  
 Challenge)

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1 hospitals. For example, he relied upon Applebaum v. Board of  
2 Directors, 104 Cal.App.3d 648 (1980), where the trial court granted the  
3 petition of a physician to compel a private hospital to restore the  
4 physician's staff privileges. The trial court's ruling was upheld by  
5 the State Court of Appeal, which ruled that the procedure followed by  
6 the hospital violated the physician's fair procedure rights to an  
7 impartial tribunal. One of the significant things involving the  
8 Applebaum decision is that it involved a private hospital. Likewise,  
9 in Rosner v. Eden Township Hospital Dis., (1962) 58 Cal.2d, the  
10 California Supreme Court overturned the exclusion of a physician from a  
11 hospital who was allegedly "not temperamentally suitable...." In so  
12 doing, the Rosner Court stated:

13 " [A] hospital ... should not be permitted  
14 to adopt standards for the exclusion of  
15 doctors from the use of its hospital  
16 which are so vague and ambiguous as to  
17 provide a substantial danger of arbitrary  
18 discrimination in their application. In  
19 asserting their views as to proper  
20 treatment and hospital practices, many  
21 physicians will become involved in a  
22 certain amount of dispute and friction,  
23 and a determination that such common  
24 occurrences have more than their usual  
25 significance and show temperamental  
26 unsuitability for hospital practice of  
27 one of the doctors is of necessity highly  
28 conjectural. In these circumstances  
there is a danger that the requirement of  
temperamental suitability will be applied  
as a subterfuge where consideration  
having no relevance to fitness are  
present. It may be noted that Dr. Rosner  
opposed election to the board of  
directors of a slate of candidates  
endorsed by members of the medical staff  
and that he has apparently testified for  
plaintiffs in malpractice cases. (58  
Cal.2d at 598-99).

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1 More recently in Rosenblit v. Superior Court, 231 Cal.App.3d 1434  
2 (1991) the California Court of Appeal held that the hospital had  
3 deprived him of a fair hearing. In this particular case the Court of  
4 Appeal had to reverse the trial court because the trial court had  
5 rejected the physician's petition. Again, the Rosenblit case is  
6 another example of the appellate courts' concern with fair procedures  
7 for doctors with respect to staff privileges. See also Khajavi v.  
8 Feather River Anesthesia Medical Group, 84 Cal.App. 4<sup>th</sup> 32 (2000) where  
9 the Court of Appeal held that Business and Professions Code Section  
10 2056 "should be construed as its texts reads: to provide that the  
11 termination or penalization of a physician 'principally for advocating  
12 for medically appropriate health care... violates the public policy of  
13 this state...." The California legislature has recognized that "Peer  
14 review which is not conducted fairly results in harm both to patients  
15 and healing arts practitioners by limiting access to care. (Business &  
16 Professions Code Section 809).

17 We now come to the most recent case dealing with fair procedure.  
18 Although the case, Nightlife Partners, Ltd. v. City of Beverly Hills,  
19 108 Cal.App.4th 81; 133 Cal.Rptr.2d 234 (2003) does not involve a  
20 hospital, the fundamental issue of fairness directly applies to this  
21 case.

22 Coincidentally, the Nightlife Partners case began in a fashion  
23 similar to what began the litigation between Dr. Mileikowsky and Tenet  
24 - the refusal to allow a reapplication form to be submitted. This  
25 Honorable Court will recall that the litigation between Dr. Mileikowsky  
26 and Tenet began when the hospital refused to allow Dr. Mileikowsky to  
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