

I call the following
document: "The Confession
of a Serial Killer":

Mark KAWA, Esq. has dedicated the
last four years of his life to the
destruction of my life. He has
destroyed probably numerous physicians'
careers in the last 15 years.

In Oregon, they found out that
1/3 of physicians who lose their license
to practice Medicine Commit Suicide?
KAWA is a principal Attorney for TENET
P.P.

Taming the Disruptive Physician

BY MARK T. KAWA

ANYONE who has worked in a hospital for any length of time probably knows one — and wishes he didn't. I'm talking about the disruptive physician. You know the type, he (and with increasing frequency, she) throws temper tantrums, yells at colleagues, threatens lawsuits if his conduct or medical practice is reviewed, complains to patients about the nursing staff and generally adheres to the belief that the hospital's and Medical Staff's rules apply to everyone but him.

The disruptive physician's impact on patient care and hospital operations can be severe. Nurses and support staff may be so intimidated by the disruptive physician's conduct that they hesitate contacting him about patient issues for fear of incurring his wrath. Medical Staff members may find him so abusive that they choose to move their practice elsewhere. Hospital administrators may find themselves constantly addressing employee complaints and threats of hostile work environment litigation.

So how do you break the cycle and tame the seemingly untamable? Here's a few tips.

Identify Conduct That Is Unacceptable

All applicants to the Medical Staff should be notified at the time they apply for privileges (and when they are appointed and reappointed) that disruptive behavior will not be tolerated. The admonition should clearly describe what conduct is unacceptable and the consequences for acting inappropriately. The standards should be set forth in both the Medical Staff Bylaws and in a written Policy and Procedure.

cian to sign a "behavior contract" which sets forth the Medical Staff's expectations and identifies the types of discipline the physician will face if further violations persist. Following the meeting, the Department Chair or Chief of Staff should send the physician a letter summarizing the meeting and reiterating that disruptive conduct will not be tolerated.

Taking Disciplinary Action - Be Creative

At some point, the warnings must end and consequences imposed. In some instances, this may be done through administrative — as opposed to medical staff — sanctions. For example, if the physician's primary abuse is yelling at Medical Staff Office employees, the facility's Administrator can ban the physician from the Medical Staff Office. Likewise, if the physician physically threatens others, the Administrator can assign a security officer to follow the physician throughout the facility. Because these remedies are administrative in nature and do not impose a limitation on the practitioner's privileges, they are non-reportable and do not require a fair hearing prior to implementing.

This is exactly what Mr. Swartz - CEO of ETRMC - did on 6/23/00 immediately after I became a designated Expert on 6/19/00 in the Medical Malpractice Case of Mrs and Mr. HEAD V. Vermesk, MD, TARZANA et al.

Preparing For An Administrative Hearing

Sometimes the only viable remedy is to sanction the physician through the Medical Staff's peer review hearing process. If so, remember the following:

Document disruptive behavior immediately with incident reports or through other established reporting mechanisms. Prosecuting disruptive physician cases sometimes requires showing a pattern and practice of disruptive conduct spanning several years. Due to the passage of time, some witnesses may no longer work at the facility and cannot be located; other witnesses may have faulty memories. An incident report, prepared at

the time of the incident, can provide admissible evidence of the physician's disruptive conduct.

Establish the link between disruptive conduct and patient care. Under California law, a physician's abusive conduct, by itself, is insufficient to justify disciplinary action. The conduct must impact patient care. Under the federal Health Care Quality Improvement Act ("HCQIA"), immunity exists only if the corrective action is taken in furtherance of quality health care.

Often the link between conduct and patient care will be easy to find. A physician who routinely yells at nurses every time they call him at home impacts patient care if the nurses become too intimidated to make further calls. Likewise, a physician who is constantly late to the operating room impacts patient care especially if his patients are under general anesthesia during the delay.

Use an expert witnesses. There are experts (generally psychiatrists) who are knowledgeable and well qualified to opine on the psyche of the disruptive physician. Hearing panel members who may not fully appreciate the disruptive impact of a physician may benefit from the testimony of an expert.

Focus on the Medical Staff's prior counseling efforts. Administrative hearing panels almost always consists of fellow physicians. By and large, they are a forgiving group when it comes to imposing discipline. Thus, if the peer review body believes the disruptive physician did not get sufficient warning or was otherwise treated unfairly, the disruptive physician will win, consequently emboldening him with respect to future behavior.. It is therefore imperative to emphasize the Medical Staff's efforts to modify the physician's conduct prior to initiating disciplinary action.

Mark T. Kawa is a Litigation and Healthcare Partner at Ervin, Cohen & Jessup LLP.



Send The Message That Disruptive Conduct Will Not Be Tolerated

Sometimes the physician's anger or frustration is justified, but his reaction is not. For example, a physician may have a legitimate cause for anger if a nurse gives the wrong medication. Yet rather than calmly addressing the situation through a private one-on-one conversation, or raising the matter with the nurse's supervisor, the physician screams at the nurse, writes an inappropriate note in the medical records or makes comments to the patient about the nurse's purported incompetence.

Situations such as these must be addressed with the physician firmly and immediately. Ignoring abusive conduct until it becomes intolerable sends the wrong message. It tells others that that disruptive physicians are welcome at your institution. It also makes it difficult when you finally do take disciplinary action. The physician will point to other physicians who have not been disciplined and argue that he is being unfairly singled out.

Use Progressive Discipline

A first time offender should be counseled face to face by his or her Department Chair. If the physician's conduct is directed at a hospital employee, the Chief Executive Officer and/or Human Resources representative should attend as well. The Chief of Staff should avoid involvement at this stage since it may be deemed an "investigation" under the Medical Staff bylaws and trigger reporting obligations to the Medical Board and Data Bank if the physician subsequently voluntarily resigns.

The tone of the meeting should be non-threatening, however the physician should be warned that further disruptive conduct could result in disciplinary action.

A subsequent infraction should be addressed in another face to face meeting led by the Department Chair and the Chief of Staff. The tone of the meeting should be harsher. At this point, it may be appropriate to require the physi-

the time of the incident, can provide admissible evidence of the physician's disruptive conduct.

Establish the link between disruptive conduct and patient care. Under California law, a physician's abusive conduct, by itself, is insufficient to justify disciplinary action. The conduct must impact patient care. Under the federal Health Care Quality Improvement Act ("HCQIA"), immunity exists only if the corrective action is taken in furtherance of quality health care.

Often the link between conduct and patient care will be easy to find. A physician who rou-

HEALTH CARE LAW

ECJ's Health Care Law Department has an extensive and diversified practice. Celebrating 50 years as a firm, *ECJ* has a long and rich tradition of providing a broad range of services to the health care industry.

ECJ believes in helping clients avoid problems before they arise, providing legal services that produce results quickly and economically, as well as building strong client relationships.

ECJ PHILOSOPHY

- ▣ *Transactions should be business driven not legally driven. Transaction models are meaningless without economic content.*
- ▣ *Risk should be quantified for the parties.*
- ▣ *Legal compliance should be governed by substance rather than form. Incentive structures that create a potential for abuse should be avoided.*
- ▣ *In a changing health care market, the parties should plan exits that preserve existing relations and goodwill.*

ECJ

John A. Meyers, Esq. ▼ Gary Q. Michel, Esq.
9401 Wilshire Boulevard ▼ Ninth Floor ▼ Beverly Hills ▼ California 90212-2974
Phone 310.273.6333 ▼ Fax 310.859.2325 ▼ www.ecjlaw.com

RE: Security Monitoring

Dear Doctor Mileikowsky:

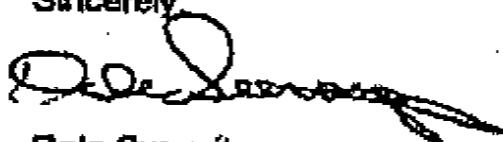
As Chief Executive Officer of this facility, and as an *ex officio* member of the Medical Executive Committee, I have reviewed evidence relating to a pattern of events in which, in my opinion, you have assaulted hospital personnel and engaged in threatening, disruptive, dangerous and unacceptable behavior toward hospital and medical staff personnel. Your behavior also reflects chronic violations of hospital and medical staff policies and legal standards.

Accordingly, in order to discharge the hospital's legal obligations to protect both patients and individuals who work here, I am instituting certain security monitoring provisions which are described below. These measures are administrative actions and do not constitute a restriction or limitation of your medical staff membership or clinical privileges. Please understand, however, that any failure by you to comply with the measures described below, or any further violation of hospital policies (including, but not limited to, perceived threats or intimidation of hospital personnel or medical staff members, and copying of patient records), will result in the summary suspension of your medical staff membership and privileges.

As a condition to your continued access to hospital facilities and use of hospital resources, you are directed to inform my office (or the nurse supervisor in charge outside normal business hours) whenever you enter hospital premises. You are also directed to inform my office, in advance, of any surgical procedure, which you schedule at this facility. Hospital Administration will then assure that security personnel accompany you whenever you are on hospital premises. Those personnel will be instructed to remove you from hospital premises if you engage in any threatening or disruptive conduct. They will also monitor your overall compliance with hospital policies and other legal standards.

If you have any questions relating to these measures, you may contact me directly. The measures described above will be in effect as of 12:01 a.m., June 29, 2000.

Sincerely,



Dale Surowitz
Chief Executive Officer
DS:dm

Encino - Tarzana Regional Medical Center

Tarzana Hospital
Tenet HealthSystem

Tarzana Hospital
18321 Clark Street
Tarzana, CA 91356

June 23, 2000

PERSONAL & CONFIDENTIAL
CERTIFIED RETURN RECEIPT - US MAIL
COPY BY FAX (310) 858-1303

Gil N. Mlleikowsky, M.D.
2834 1/2 Beverly Glen Circle
PMB 373
Los Angeles, CA 90077

RE: Security Monitoring

Dear Doctor Mlleikowsky:

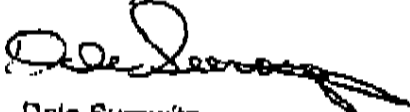
As Chief Executive Officer of this facility, and as an *ex officio* member of the Medical Executive Committee, I have reviewed evidence relating to a pattern of events in which, in my opinion, you have assaulted hospital personnel and engaged in threatening, disruptive, dangerous and unacceptable behavior toward hospital and medical staff personnel. Your behavior also reflects chronic violations of hospital and medical staff policies and legal standards.

Accordingly, in order to discharge the hospital's legal obligations to protect both patients and individuals who work here, I am instituting certain security monitoring provisions which are described below. These measures are administrative actions and do not constitute a restriction or limitation of your medical staff membership or clinical privileges. Please understand, however, that any failure by you to comply with the measures described below, or any further violation of hospital policies (including, but not limited to, perceived threats or intimidation of hospital personnel or medical staff members, and copying of patient records), will result in the summary suspension of your medical staff membership and privileges.

As a condition to your continued access to hospital facilities and use of hospital resources, you are directed to inform my office (or the nurse supervisor in charge outside normal business hours) whenever you enter hospital premises. You are also directed to inform my office, in advance, of any surgical procedure, which you schedule at this facility. Hospital Administration will then assure that security personnel accompany you whenever you are on hospital premises. Those personnel will be instructed to remove you from hospital premises if you engage in any threatening or disruptive conduct. They will also monitor your overall compliance with hospital policies and other legal standards.

If you have any questions relating to these measures, you may contact me directly. The measures described above will be in effect as of 12:01 a.m., June 29, 2000.

Sincerely,



Dale Surowitz
Chief Executive Officer
DS:dm

Encino-Tarzana
Regional Medical Center
Tarzana Hospital
Tenet California HealthSystem

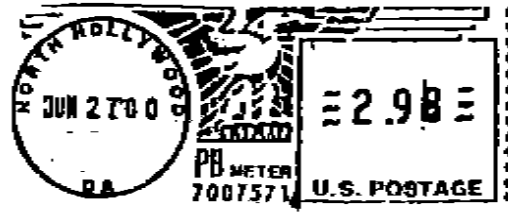
Tarzana Hospital
18321 Clark Street
Tarzana, CA 91356

Place an adhesive label on the envelope in
the center of the return address

CERTIFIED

498 289 072

MAIL



**PERSONAL &
CONFIDENTIAL**

Received 6/28/00
[Signature]

**PERSONAL &
CONFIDENTIAL**

**PERSONAL &
CONFIDENTIAL**

98877-1724 38



**Medical Board of California**

Central Complaint Unit
1426 Howe Avenue, Suite 54
Sacramento, CA 95824-3236
(916) 263-2424
www.medbd.ca.gov



March 15, 2002

Gil Mileikowsky, M.D.
2934 1/2 Beverly Glen Circle
PMB 373
Los Angeles, CA 90077

Dear Dr. Mileikowsky:

The Medical Board of California has concluded its review of the information you submitted regarding your concerns about the peer review process conducted by Encino-Tarzana Regional Medical Center. You asked that the Medical Board initiate an investigation into the practice of this center indicating that they had filed a false 805 report suspending your hospital privileges and withheld exculpatory information from you.

As you are aware, the Medical Board is responsible for performing an investigation when an 805 report has been filed to determine whether any action should be taken against the physician based on the circumstances reported by a peer review body. The Board is in the process of investigating the circumstances reported by Encino-Tarzana Regional Medical Center in the 805 report they filed. I have taken the liberty of providing the information you submitted to the investigator assigned to this case as it appears to relate to the issues raised in the 805 report.

However, the Board has no statutory authority to investigate hospital peer review bodies for any sanctions or restrictions they impose. For that reason, we have referred a copy of the information you provided to the Department of Health Services, Licensing and Certification Division, for any assistance they may be able to provide.

Sincerely,

SUSAN CADY
Staff Services Manager

cc: Department of Health Services
Licensing and Certification Division
5555 Ferguson Drive, Third Floor
City of Commerce, CA 90022

Gil Mileikowsky, M.D.
2934 1/2 Beverly Glen Circle
PMB 373
Los Angeles, CA 90077

Dear Dr. Mileikowsky:

The Medical Board of California has concluded its review of the information you submitted regarding your concerns about the peer review process conducted by Encino-Tarzana Regional Medical Center. You asked that the Medical Board initiate an investigation into the practice of this center indicating that they had filed a false 805 report suspending your hospital privileges and withheld exculpatory information from you.

As you are aware, the Medical Board is responsible for performing an investigation when an 805 report has been filed to determine whether any action should be taken against the physician based on the circumstances reported by a peer review body. The Board is in the process of investigating the circumstances reported by Encino-Tarzana Regional Medical Center in the 805 report they filed. I have taken the liberty of providing the information you submitted to the investigator assigned to this case as it appears to relate to the issues raised in the 805 report.

my documents were not included in the Investigator's file?
However, the Board has no statutory authority to investigate hospital peer review bodies for any sanctions or restrictions they impose. For that reason, we have referred a copy of the information you provided to the Department of Health Services, Licensing and Certification Division, for any assistance they may be able to provide.

Sincerely,


SUSAN CADY

care will be easy to find. A physician who routinely yells at nurses every time they call him at home impacts patient care if the nurses become too intimidated to make further calls. Likewise, a physician who is constantly late to the operating room impacts patient care especially if his patients are under general anesthesia during the delay.

→ Use an expert witnesses. There are experts (generally psychiatrists) who are knowledgeable and well qualified to opine on the psyche of the disruptive physician. Hearing panel members who may not fully appreciate the disruptive impact of a physician may benefit from the testimony of an expert.

Focus on the Medical Staff's prior counseling

1 BEFORE THE DEPARTMENT OF CONSUMER AFFAIRS

2 STATE OF CALIFORNIA

3 In the Matter of the Investigation of Gil Mileikowsky, M.D.

Case No. 17-2000-116392

4
5 DECLARATION IN SUPPORT OF A PETITION TO COMPEL AN ADMINISTRATIVE,
6 INTERNAL MEDICINE AND PSYCHIATRIC EVALUATION
7

8 I Randolph H. Noble, M.D. declare as follows:

9 If called as a witness in the case entitled Gil Mileikowsky, M.D., Case no: 05-2000-116392, OAH
10 # _____, I would testify as follows:11 I am licensed to practice medicine in the State of California having been issued Physician and
12 Surgeon's certificate number A26017 by the Medical Board of California in 1974. I have attached a true
13 and accurate copy of my most recent curriculum vitae (Exhibit 1) to this Declaration. It accurately sets forth
14 my education, training and experience. I am board certified by the American Board of Internal Medicine
15 for Internal Medicine and the sub-specialty of Pulmonary Diseases. I am also board certified as a
16 psychiatrist by the American Board of Psychiatry and Neurology. By this reference, I incorporate the
17 contents of my curriculum vitae into this Declaration as if herein fully set forth.18 I am a District Medical Consultant with the Medical Board of California. One of my duties is to
19 review questionable medical and surgical practices of Physicians and Surgeons licensed by the Board. In
20 this regard, it is my responsibility to maintain familiarity with the standard of practice in the State of
21 California, and based upon my personal knowledge, I am familiar with the standard of practice in the State
22 of California. Business and Professions Code Section 2001 through 2008 set forth the composition of the
23 Medical Board of California and describe the statutory mandated functions of each division pursuant to the
24 provisions of Business and Professions Code Section 2004, 2220 and 2224. The Division of Medical
25 Quality of the Medical Board of California bears responsibility for reviewing the quality of medical practice
26 carried out by Physicians and Surgeons licensed by the Board and the responsibility for the enforcement
27 of the disciplinary and criminal provisions of the Medical Practice Act. Business and Professions Code
28

1 Section 820 et. seq. provides that the Division of Medical Quality shall take action against any licensee who
2 is charged with mental illness which interferes with their appropriate conduct as a physician.

3 The Medical Board of California received an 805 Report from Encino-Tarzana Regional Medical
4 Center dated 12-5-00 and signed by the Chief Executive Officer, Mr. Dale Surowitz and David Kayne,
5 M.D., Chief of the Medical Staff, which states that the staff privileges for Gil Mileikowsky, M.D. were
6 suspended as of November 28, 2000 for an indefinite period of time. The 805 Report states that Dr.
7 Mileikowsky "exhibited a pattern of disruptive, threatening and non-cooperative behavior" during his
8 tenure as a member of the Medical Staff. The 805 Report alleges that Dr. Mileikowsky has been
9 threatening, out of control, and assaultive with hospital staff. On 2-2-99, Dr. Mileikowsky presented to the
10 Medical Center of Tarzana staff office to complain that he received a notice that his medical staff
11 appointment had expired based on his failure to submit a timely application for reappointment. He
12 demanded to see his credential file and was told that this would have to be discussed with a supervisor
13 before rendering him access. Dr. Mileikowsky became angry, loud and aggressive, and employee Pat Jones
14 related that she feared for her safety and moved away from Dr. Mileikowsky. Another employee, Ms.
15 Rosie Franco was physically assaulted by Dr. Mileikowsky as he is reported in the 805 Report to have
16 "roughly grabbed her by the lapel badge." Dr. Mileikowsky then threatened Pat Jones saying that she had
17 "fucked up" and then responded to security with a comment "Don't listen to that bitch; she doesn't know
18 what she is talking about."

19 A second incident occurred on 12-17-99 when Dr. Mileikowsky attempted to use a Physician
20 Surgical Assistant who was found to not have privileges at the hospital. The Director of Surgical Nurses
21 attempted to speak to the Assistant Surgeon, however, Dr. Mileikowsky left his anesthetized patient, and,
22 as described in the 805 Report, after screaming at the Director, approached her jabbing his finger at her
23 face and backing her up against a wall. The Director is said to have feared physical assault. The 805
24 Report states that "Many staff members reported that they believed that the Director was in imminent
25 danger of harm." Subsequent to this incident and beginning June 23rd, 2000, the Chief Executive Officer
26 required Dr. Mileikowsky to be monitored by security personnel whenever he was on hospital premises.

27 A third incident occurred on August 30th, 2000 when Dr. Mileikowsky telephoned the Nursing
28

1 Supervisor at midnight and requested to drop off prenatal records at the hospital prior to his vacation out
2 of the City. Dr. Mileikowsky arrived at the Labor and Delivery Unit with an unknown companion and
3 entered the medication room and began taking pictures. Dr. Mileikowsky attempted to close the door with
4 his foot to keep the Charge Nurse from entering the medication room at which time the Nursing Supervisor
5 was called in order to intervene. Dr. Mileikowsky was observed taking pictures of the various nurses on
6 the hospital floor as well as pictures of the nursing facility after midnight. He insisted that his non-medical
7 companion be allowed to sit at the nurses station and security finally escorted both of them out of the Unit
8 and hospital. Dr. Mileikowsky was later observed outside the emergency room exit taking pictures and a
9 medical staff member became "...startled, frightened, and upset" after her pictures were unexpectedly taken
10 by Dr. Mileikowsky.

11 Dr. Mileikowsky has also been observed to exercise poor judgment and possible negligence and
12 incompetence in regards to a vacuum extraction delivery on October 24, 2000. He ignored the hospital
13 obstetrical policy and unsuccessfully applied vacuum extraction repeatedly against policy. He also asked
14 the nurse to apply fundal pressure which is also said to be against hospital policy. The baby was delivered
15 with fetal distress and required emergent intubation. The 805 Report mentions that Dr. Mileikowsky's care
16 was below the standard and in violation of expressed hospital rules.

17 On November 5, 2000, Dr. Mileikowsky was observed to exhibit bizarre behavior while
18 performing a circumcision. Dr. Mileikowsky was observed wearing a radiology vest instead of a surgical
19 gown and he asked whether he should wash his hands for this surgical procedure. He also asked the nurse
20 about the types of clamps and the technique required for the surgical procedure. The observing nurse was
21 questioned in a threatening manner which caused her to experience fear. The circumcision was performed
22 such that no foreskin was left on the infant's penis and urological consultation and further care was
23 required.

24 Finally, on November 16, 2000, the union which represents the Encino-Tarzana nurses submitted
25 a complaint to Mr. Surowitz, Chief Executive Officer complaining that their physical safety was threatened
26 because of Dr. Mileikowsky's inappropriate behavior. They alleged a non-safe working environment
27 because of him. Subsequent to this action and further review of Dr. Mileikowsky's behavior and care
28

1 rendered to patients, his request for reappointment to the hospital staff was denied.

2 In conclusion, an 805 Report from Encino-Tarzana Regional Medical Center dated December 5th
3 2000 states that staff privileges for Gil N. Mileikowsky, M.D. were suspended as of November 28th 2000
4 for an indefinite period of time. The hospital staff observed Dr. Mileikowsky's behavior to be inappropriate
5 and bizarre at times. He was described as threatening, out of control and assaultive with hospital staff.
6 Furthermore, there are instances where his bizarre behavior was associated with inappropriate medical care.
7 During the 12-17-99 incident, Dr. Mileikowsky left his anesthetized patient in surgery and was
8 subsequently admonished by the Chief of Obstetrics and Chief Operating Officer at the hospital for "...his
9 assaultive, dangerous, disruptive and unacceptable behavior and his flagrant disregard of hospital policy."
10 The patient undergoing surgery was subject to prolonged anesthesia by Dr. Mileikowsky's inappropriate
11 behavior.

12 There is reason to believe that Dr. Mileikowsky has behavioral dysfunction with anger dyscontrol
13 and a possible Intermittent Explosive Disorder. His behavior could also be explained by an Axis I
14 psychiatric disorder such as a Mood Disorder from either depression, anxiety or bipolar illness. It is also
15 reasonably probable that Dr. Mileikowsky has a Paranoid Personality Disorder as he has been observed to
16 take up to 150 pictures after performing a hysterectomy and his statements indicate significant paranoid
17 thoughts. There is also the consideration of a thought disorder such as Schizoaffective Disorder, and lastly,
18 a possible organic problem with underlying brain dysfunction from a neoplastic, degenerative or
19 inflammatory process must also be considered. Therefore, Dr. Mileikowsky will benefit by having both
20 a compelled psychiatric as well as an internal evaluation in order to rule out an organic as well as a
21 functional psychiatric disorder. Finally, Dr. Mileikowsky's behavior may represent drug abuse or
22 dependency and a drug screen should also be performed during the course of his compelled examinations.

23 ///

24 ///

25 ///

26 ///

27 ///

28

1 Screening for drugs of abuse can easily be performed using simple urine testing which can screen for
2 multiple possible drugs of abuse.

3 I declare under penalty of perjury that foregoing is true and correct and, as to those statements
4 made on information and belief, I believe them to be true.

5 Executed this 10th day of October 2002 at Glendale, County of Los Angeles, California.

6 *Randolph H. Noble, M.D.*

7 **RANDOLPH H. NOBLE, M.D., F.C.C.P.**
8 **DISTRICT MEDICAL CONSULTANT**
9 **DIPLOMATE, AMERICAN BOARD OF PSYCHIATRY AND NEUROLOGY**
10 **DIPLOMATE, AMERICAN BOARD OF INTERNAL MEDICINE**
11 **AND PULMONARY DISEASES**

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Noble, R.H.

Page 3 of 4

SPECIALTY PROCEDURES

- Electroconvulsive Treatment, Certified 12/31/97 UCLA/Neuropsychiatric Hospital
- Polysomnogram Interpretation
- Pulmonary Function Interpretation
- Fiberoptic Bronchoscopy and Transbronchial Lung Biopsy
- Central Venous Catheter and Arterial Line Placement
- Closed Chest Tube Thoracostomy

APPOINTMENTS

fired!

District Medical Consultant, Enforcement, Medical Board of California	1995-Present
Assistant Clinical Professor of Medicine, UCLA School of Medicine	1998-Present
Assistant Clinical Professor of Psychiatry, UCLA School of Medicine	2000-Present
Clinical Attending, Pulmonary Medicine WLA/VA Hospital	1981-85, 1998-Presen
Clinical Attending, Anxiety Disorders Clinic, UCLA Psychiatry Residency Program	1999-Present
<u>Director</u> , Moonlight Sleep Laboratory → <i>supported by TENET</i>	2000-Present
Member, UCLA Trauma Psychiatry Service	1996-1997
<u>Director</u> , Respiratory Care Services, Sherman Oaks Hospital & Burn Center	1983-1994
<u>Director</u> , Respiratory Care Services, Medical Center of North Hollywood	1983-1994
<u>Co-Director</u> , Intensive Care Unit, Medical Center of North Hollywood	1983-1993
<u>Director</u> , Respiratory Care Services, Rancho Encino Hospital	1983-1989
<u>Chairman</u> , AIDS Committee, Sherman Oaks Hospital	1989-1990
<u>Chairman</u> , Pharmacy & Therapeutics Committee, Medical Center of North Hollywood	1985-1989
<u>Member</u> , Medical Executive Committee, Sherman Oaks Hospital	1983-1992
<u>Member</u> , Medical Executive Committee, Medical Center of North Hollywood	1983-1992
<u>Member</u> , Medical Executive Committee, Rancho Encino Hospital	1985-1989
<u>Lecturer</u> , Advanced Cardiac Life Support	1980-1989
<u>Director</u> , Sleep Disorders Unit, Sherman Oaks Hospital	1986-1994
<u>Vice-Chief of Staff</u> , Board of Directors, Rancho Encino Hospital	1986-1989
<u>Chief of Medicine</u> , Sherman Oaks Hospital & Burn Center	1986-1987

TENET

HOSPITAL STAFFS

- UCLA/Neuropsychiatric Institute and Hospital, Los Angeles, CA
- * Encino Hospital, Encino, CA
- * Medical Center of Tarzana, Tarzana, CA } *TENET's facility filed FALSE 805 North Hollywood Med. Ctr.*
- Temple Hospital, Los Angeles, CA

RESEARCH

AMI/TENET bought Rancho Encino Hospital and CLOSED them!

Pulmonary Immuno-Biology: Cell culture techniques, staining, monolayer assay, scintillation counting with tritiated thymidine. Comparing immune response in normal and in cancer patients.

RANDOLPH H. NOBLE, M.D., F.C.C.P.

Diplomate, American Board of Psychiatry and Neurology
 Diplomate, American Board of Internal Medicine and Pulmonary Diseases
 Assistant Clinical Professor of Medicine & Psychiatry, UCLA School of Medicine
 Qualified Medical Examiner & Agreed Medical Examiner

15840 Ventura Bl., Suite 301
 Encino, CA 91436

Tel: (818) 986-8714
 Fax: (818) 385-1459

CURRICULUM VITAE**EDUCATION**

University:	University of Southern California Los Angeles, CA	1965-1969
Medical School:	University of California at Los Angeles Los Angeles, CA	1969-1973
Internship:	Straight Medicine USC/LA County Medical Center Los Angeles, CA	1974-1975
Residency:	Internal Medicine WLA/VA Hospital/UCLA Los Angeles, CA	1974-1976
	Psychiatry Neuropsychiatric Institute/UCLA Los Angeles, CA	1995-1997
Fellowship:	Pulmonary Diseases WLA/VA Hospital/UCLA Los Angeles, CA	1977-1979

LICENSURE & CERTIFICATION

California State Board of Medicine	#A26017	June 1974
Oregon State Board of Medicine	#MD17189	July 1991
American Board of Psychiatry & Neurology	#49224	January 2001
American Board of Internal Medicine	#57132	June 1976
Subspecialty, Pulmonary Diseases	#57132	November 1986
American Board of Hyperbaric Medicine		February 1989
Qualified Medical Evaluator, State of California		1991
Agreed Medical Examiner, State of California		1994

Noble, R.H.
Page 2 of 4.

PROFESSIONAL ORGANIZATIONS

Fellow, American College of Chest Physicians	1988-Present
Member, American Psychiatric Association	1998-Present
Member, Southern California Psychiatric Society	1998-Present
Member, Los Angeles County Medical Association	1980-1998
Member, American Thoracic Society	1980-1994
Fellow, American College of Hyperbaric Medicine	1988-1994

AWARDS & HONORS

Trustee Scholar, University of Southern California	1965-1969
Phi Beta Kappa, University of Southern California	1969
Phi Kappi Phi, University of Southern California	1969
Los Angeles City Jr. Golf Champion	1963
United States Golf Assoc. Jr. Championship Quarter Finalist	1963
Team Member, United States vs. Mexico Jr. Golf Matches	1963

PROFESSIONAL EXPERIENCE

District Medical Consultant, Enforcement, Medical Board of California	1995-Present
Consultant, Dept. of Corrections, California State Prison, LAC/Lancaster	1998-Present
Attending Physician, Pulmonary Medicine, WLA/VA Hospital	1981-85, 1998-Present
Attending Physician, Anxiety Disorders, UCLA Psychiatry Residency Program	1999-Present
Trauma Psychiatrist, UCLA Center for the Health Sciences	1996-1997
Qualified Medical Evaluator, Workers' Compensation, State of California	1991-Present
Agreed Medical Examiner, Workers' Compensation, State of California	1994-Present
Independent Medical Examiner, California Dept. of Industrial Relations	1992-Present
Psychiatry Consultant, Grossman Burn Center, Sherman Oaks Hospital	1998-Present
Pulmonary Consultant, Grossman Burn Center, Sherman Oaks Hospital	1980-1994
Physician, Mid-Valley Pulmonary Medical Group, Inc.	1980-1997
Hyperbaric Oxygen Chamber Specialist, Sherman Oaks Hospital	1986-1994
Director, Sleep Disorders Center, Sherman Oaks Hospital	1986-1994
Specialist, Immune Suppressed Unit, Sherman Oaks Hospital	1985-1994
Pulmonary Consultant, Jewish Homes for the Aging, Reseda, CA	1986-1994
Ship Physician, "Sea Cloud"	1985
Ship Physician, "Danae"	1983
Emergency Room Physician, Centinela Hospital	1978-1979
Emergency Room Physician, Daniel Freeman Hospital	1977-1978
Emergency Room Physician, Glendale Memorial Hospital	1976
Instructor, Paramedic School, Daniel Freeman Hospital	1977

Noble, R.H.

Page 3 of 4

SPECIALTY PROCEDURES

Electroconvulsive Treatment, Certified 12/31/97 UCLA/Neuropsychiatric Hospital
 Polysomnogram Interpretation
 Pulmonary Function Interpretation
 Fiberoptic Bronchoscopy and Transbronchial Lung Biopsy
 Central Venous Catheter and Arterial Line Placement
 Closed Chest Tube Thoracostomy

APPOINTMENTS

District Medical Consultant, Enforcement, Medical Board of California	1995-Present
Assistant Clinical Professor of Medicine, UCLA School of Medicine	1998-Present
Assistant Clinical Professor of Psychiatry, UCLA School of Medicine	2000-Present
Clinical Attending, Pulmonary Medicine WLA/VA Hospital	1981-85, 1998-Present
Clinical Attending, Anxiety Disorders Clinic, UCLA Psychiatry Residency Program	1999-Present
Director, Moonlight Sleep Laboratory	2000-Present
Member, UCLA Trauma Psychiatry Service	1996-1997
Director, Respiratory Care Services, Sherman Oaks Hospital & Burn Center	1983-1994
Director, Respiratory Care Services, Medical Center of North Hollywood	1983-1994
Co-Director, Intensive Care Unit, Medical Center of North Hollywood	1983-1993
Director, Respiratory Care Services, Rancho Encino Hospital	1983-1989
Chairman, AIDS Committee, Sherman Oaks Hospital	1989-1990
Chairman, Pharmacy & Therapeutics Committee, Medical Center of North Hollywood	1985-1989
Member, Medical Executive Committee, Sherman Oaks Hospital	1983-1992
Member, Medical Executive Committee, Medical Center of North Hollywood	1983-1992
Member, Medical Executive Committee, Rancho Encino Hospital	1985-1989
Lecturer, Advanced Cardiac Life Support	1980-1989
Director, Sleep Disorders Unit, Sherman Oaks Hospital	1986-1994
Vice-Chief of Staff, Board of Directors, Rancho Encino Hospital	1986-1989
Chief of Medicine, Sherman Oaks Hospital & Burn Center	1986-1987

HOSPITAL STAFFS

UCLA/Neuropsychiatric Institute and Hospital, Los Angeles, CA
 Encino Hospital, Encino, CA
 Medical Center of Tarzana, Tarzana, CA
 Temple Hospital, Los Angeles, CA

RESEARCH

Pulmonary Immuno-Biology: Cell culture techniques, staining, monolayer assay, scintillation counting with tritiated thymidine. Comparing immune response in normal and in cancer patients.

PAPERS

- Noble, R.H., Williams, A.J., "Multiple Cavitating Pulmonary Nodules Due to Eosinophilic Granuloma." Clinical Notes on Respiratory Disease. 21:10-12, 1982.
- Noble, R.H., Fan, P., "A Comparison of Lymphocyte-Macrophage Interaction in Normals and in Patients with Bronchogenic Carcinoma." Submitted Western Journal of Medicine 1983.
- Noble, R.H., Pasnau, R., "a Case Study of Psychotherapy and Medication to Resolve Homicidal Ideation." UCLA clinical Faculty Psychiatry Newsletter. 1998.

LECTURES (Partial List)

- "Assessment of Dangerousness"
- "Malingered Illness"
- "The Impaired Physician: Licensure and Medical-Legal Considerations"
- "The Psychiatrist's Role in Evaluating the Impaired Physician"
- "The Legitimate Use of Controlled Substances Based on Practice Specialty"
- "The Use of Psychopharmacologic Agents in Mood and Anxiety Disorders"
- "Distinguishing Between Psychiatric and Medical Complaints for Work-Related Injuries"
- "Boundary Violations Comparing Psychiatrists and Other Physicians in California"
- "A Forensic Introduction for Psychiatry Residents"
- "A Workers' Compensation Approach to Lung Disease and Asthma"
- "A Workers' Compensation Approach to Burn Care"
- "Pulmonary Disability Evaluation in Patients with Occupational Asthma"
- "Diagnosis of Pneumonia in Patients with AIDS"
- "Sleep Disorders in Geriatric Patients"
- "Obstructive Sleep Apnea"
- "Respiratory Care of the Burned Patient"
- "Smoke Inhalation"
- "Pathophysiology of Shock"
- "Current Treatment of Shock"
- "A Workers' Compensation Approach to Tuberculosis Exposure"
- "Diagnosis and Treatment of Adult Respiratory Distress Syndrome"
- "Allergic Broncho-Pulmonary Aspergillosis"
- "Acute Respiratory Failure"
- "Preoperative Evaluation Using Pulmonary Function Testing"
- "Near Drowning"
- "Flow Volume Loop for Diagnosis"
- "Arterial Blood Gases"
- "Complication of Ventilator Therapy"
- "Prophylaxis of Pneumocystis Carinii Pneumonia with Inhaled Pentamidine"
- "History of Hyperbaric Oxygen Treatment with Hyperbaric Oxygen"

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO**

DATE/TIME : 12/21/04 nunc pro tunc December 10, 2004
JUDGE : Raymond M. Cadei
REPORTER : none

DEPT. NO : 25
CLERK : Cindy Jo Miller
BAILIFF : Michelle Luther

GIL N. MILEIKOWSKY, M.D. - RET,
Petitioner,

VS. Case No.: 04CS00969

MEDICAL BOARD OF CALIFORNIA-RES,
Respondent.

PRESENT:
Roger Diamond, Esq. &
Paul Hittleman, Esq.

Robert C. Miller,
Deputy Attorney General

David B. Parker, Esq. for Applicant
and Proposed Amicus Curiae - Assoc of
American Physicians & Surgeons, Inc.

Nature of Proceedings: **AMENDED MINUTE ORDER
HEARING RE: PETITION FOR WRIT OF MANDAMUS**

The above-entitled cause came on for hearing this day for which the court issued a tentative ruling the previous day. The court affirmed its tentative ruling in that neither party requested hearing to argue the tentative ruling.

MILEIKOWSKY v. MEDICAL BOARD OF CALIFORNIA, Case No. 04 CS 00969:

The following shall constitute the Court's tentative ruling on the petition for writ of mandate, set for hearing on Friday, December 10, 2004. The tentative ruling shall become the ruling of the Court unless a party desiring to be heard so advises the clerk of this Department no later than 4:00 p.m. on the court day preceding the hearing, and further advises the clerk that such party has notified the other side of its intention to appear.

The petition for writ of mandate is granted.

An order for examination under Business and Professions Code section 820 is an investigatory procedure that does not require the full range of procedural due process protections that are available to a licensee in an adjudicatory procedure. (See, *Alexander D. v. Board of Dental Examiners* (1991) 231 Cal. App. 3d 92.)

BOOK : 25
PAGE :
DATE : December 10, 2004
CASE NO. : 04CS00969
CASE TITLE : Mileikowsky v. Med Brd

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SACRAMENTO**

BY: Cindy Jo Miller,
Deputy Clerk

In this case, the Court finds that, as the result of various irregularities in the process that resulted in the order that petitioner submit to a mental examination, no showing of good cause was made, or, in fact, could be made under the procedure followed in this case. Those irregularities may be summarized as follows.

The "805 report" on which the order was based does not, by itself, inevitably lead to the conclusion that petitioner suffers from mental or physical illness that renders him unable to practice medicine safely within the meaning of Business and Professions Code section 820. The incidents described in the report do not appear to fit into a neat pattern, and not all of them truly suggest bizarre or unbalanced behavior. Some of the incidents described in the report, in fact, are equivocal in nature and might just as accurately be characterized as incidents of aggressive or unpleasant behavior by petitioner in the context of a confrontation, rather than as evidence of mental illness or impairment. Some of the incidents listed in the report, such as that petitioner was required to be monitored by security personnel while on hospital premises, or that a representative of the nurses' union complained that nurses felt threatened by petitioner, are presented without any specific factual context, are based on hearsay, and (as above) may reflect a confrontational personality rather than mental illness or impairment. Finally, two of the incidents were at least a year old at the time of the report, and all of them were more than two years old at the time of the order. The age of the incidents raises questions about their relevance to determining petitioner's condition at the time of the order.

Petitioner contends that many of the incidents recounted in the report may indeed be explained as arising out of a dispute between himself and the hospital management. Respondent permitted petitioner to submit documentation explaining his side of the matter, but the record indicates that respondent did not forward those materials to the assigned medical reviewer for consideration. Moreover, it does not appear that petitioner's materials were considered in respondent's investigation report, although there is evidence that they had been forwarded to the assigned investigator approximately seven months prior to the date of the report. Similarly, there is no indication in the final order for examination that petitioner's materials were considered by anyone on behalf of respondent.

Finally, and perhaps most significantly, the record shows that the assigned medical reviewer, Dr. Noble, was associated with the institution that had made the "805 report", and that respondent knew of that association at the time he was appointed to review petitioner's case. Such association suggests, at a minimum, the possibility of a conflict of interest that might taint Dr. Noble's ultimate conclusions. As noted, Dr. Noble did not receive the material petitioner submitted to explain his actions. His declaration in support of the petition to compel the examination of petitioner largely mirrors the content of the "805 report", with, however, at least one additional allegation (regarding petitioner taking up to 150 photographs after a hysterectomy) that does not appear in the "805 report", the source of which has never been adequately explained.

In any case, Dr. Noble's declaration, which appears to have been the only expert medical opinion in support of the order, does not address the age of the allegations against petitioner or the explanatory factual context in which they arose. Whether this was the reflection of a conflict of interest or of a simple failure to have available and consider all of the relevant facts, the result is that Dr. Noble's declaration fails to establish good cause to order petitioner to submit to an examination.

Based on the foregoing, the Court finds that there was no showing of good cause to support the order that petitioner submit to an examination under Business and Professions Code section 820. Under the principles stated in *Kees v. Medical Board, supra*, 7 Cal. App. 4th at 1815, as a matter of law the finding that petitioner violated section 820 cannot stand. The petition for writ of mandate accordingly is granted to require respondent to vacate the disciplinary order entered against petitioner dated July 16, 2004 as well as the underlying order for examination dated November 12, 2002. The stay previously entered by the Court shall be continued in effect until respondent has complied with the writ. The Court's ruling does not preclude respondent from taking further action on the basis of the "805 report", as opposed to the orders that have been vacated by this ruling, provided that such action is taken in conformity with the views expressed herein regarding full consideration of all relevant factors and available evidence, and the use of a disinterested medical reviewer.

In the event that this tentative ruling becomes the final ruling of the Court, counsel for petitioner is directed to prepare a written order, judgment and writ of mandate in conformity with this ruling, submit them to

1 Roger Jon Diamond, Esq.
 2 2115 Main Street
 3 Santa Monica, CA 90405
 4 State Bar No. 40146
 Telephone No: 310/399-3259
 Facsimile No.: 310/392-9029

5 Paul M. Hittelman
 6 12400 Wilshire Blvd., 15th Fl.
 7 Los Angeles, CA 90025-1023
 Telephone No: 310/442-0555
 Facsimile No: 310/442-0888

8 Attorneys for Petitioner
 9 GIL NATHAN MILEIKOWSKY, M.D.

The annexed instrument is a correct copy of
 the original on file in my office.

Attest:
 Certified: DEC 30 2004

Superior Court of California
 By Deputy Clerk

11 SUPERIOR COURT OF CALIFORNIA
 12 COUNTY OF SACRAMENTO

13 GIL NATHAN MILEIKOWSKY, M.D.
 14 Petitioner,

15 vs.

16 MEDICAL BOARD OF CALIFORNIA,
 17 Respondent.

Department Number: 25

Case Number: 04CS00969

PEREMPTORY WRIT OF MANDAMUS

18 PEREMPTORY WRIT OF ADMINISTRATIVE MANDAMUS

Judge: Hon. Raymond M. Cadei

19 TO RESPONDENT MEDICAL BOARD OF THE STATE OF CALIFORNIA:

20 Pursuant to the judgment of the Superior Court of the State of California for the County of
 21 Sacramento, you are hereby commanded to vacate and set aside your order of November
 22 12, 2002 compelling Petitioner to submit to a mental and physical examination and to
 23 vacate and set aside your decision of July 16, 2004 revoking Petitioner's medical license.
 24 You are hereby further directed to file a return to this writ within 60 days of service of the
 25 writ.

Issued: December 30, 2004

Cindy Jo Miller, Clerk

26 Date: 12-30-04

27 C.J. MILLER

