

October 10, 2002
Mileikowsky
NOTMOT

1 ROGER JON DIAMOND
2 2115 Main Street
3 Santa Monica, CA 90405
4 (310) 399-3259
5 (310) 392-9029 Fax
6 State Bar No. 40146
7
8 Attorney for Petitioner
9

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

OCT 11 2002

John A. Clarke, Executive Officer/Clerk
Deputy

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

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

CASE NO: BS056525
NOTICE OF MOTION FOR ORDER TO
SHOW CAUSE RE CONTEMPT;
DECLARATION OF GIL N.
MILEIKOWSKY; MEMORANDUM OF
POINTS AND AUTHORITIES
DATE: November 4, 2002
TIME: 9:30 A.M.
PLACE: Department 86
The Hon. David P. Yaffee, Judge
Presiding (Judge Dzintra Janavs
Previously Recused)

18 To Respondent Tenet Healthsystem, Encino-Tarzana Regional Medical
19 Center, a California corporation, and to its attorney Mark T. Kawa,
20 and Irvin, Cohen & Jessup:

21 PLEASE TAKE NOTICE that on Monday November 4, 2002 at 9:30 A.M. or
22 as soon thereafter as counsel can be heard in Department 86 of the
23 above-entitled court Petitioner Gil N. Mileikowsky will move the Court
24 for an order to show cause ordering Respondent Tenet Healthsystem,
25 Encino-Tarzana Regional Medical Center to show cause why they should
26 not be held in contempt pursuant to Code of Civil Procedure Sections
27

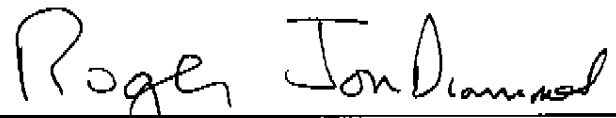
October 9, 2002
Mileikowsky
NOTMOT

1 1209 et.seq. for willfully violating the provisions of a preliminary
2 injunction issued on April 20, 1999 by the Superior Court in this case
3 (by the Honorable Robert H. O'Brien).

4 Said motion will be based upon this Notice of Motion, the attached
5 declaration of Gil N. Mileikowsky, the following Memorandum of Points
6 and Authorities, upon the file in this case, and upon such other
7 evidence as may be produced at the hearing.

8 Said motion will be based upon Code of Civil Procedure Sections
9 1209 et.seq..

10 Respectfully submitted,

11 

12 ROGER JON DIAMOND
13 Attorney for Petitioner
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

October 10, 2002
Mileikowsky
NOTMOT

1 O'Brien) granted my request for a preliminary injunction over the
2 objection of Tenet, Tarzana, and Kawa. The purpose of the preliminary
3 injunction was to reinstate my staff privileges at Tarzana, which had
4 been taken from me on the pretext that I had failed to submit my
5 reappointment application in a timely fashion despite the fact that I
6 never received it.

7 Among other things, the preliminary injunction restrained
8 Respondent Tenet HealthSystem, Inc., Respondent Encino-Tarzana Regional
9 Medical Center, and "their respective agents, servants, employees . . .
10 and all persons acting in concert or participating with them," from
11 engaging in the following acts:

12 "A. Excluding or preventing Petitioner
13 Gil N. Mileikowsky, M.D. from exercising
14 the privileges to which he was
15 reappointed on April 17, 1997 as an
16 attending physician and surgeon, an
17 active status member of the medical staff
18 of Encino-Tarzana Regional Medical
19 Center;

20 B. Excluding or preventing Petitioner
21 Gil N. Mileikowsky, M.D. from admitting
22 treating or performing obstetrical
23 services or surgery upon patients at
24 Encino-Tarzana Regional Medical Center;

25 C. Publishing, disseminating,
26 distributing, communicating or otherwise
27 transmitting to any person or entity,
28 directly or indirectly, orally or in
writing, a report of, or any information
concerning, the "purported voluntary
resignation" of medical staff privileges
of Petitioner of Petitioner Gil N.
Mileikowsky, M.D. at Encino-Tarzana
Regional Medical Center deemed effective
by Tarzana's governing board on February
25, 1999;

D. Publishing, disseminating,
communicating, concerning or otherwise
transmitting to any person or entity
directly or indirectly, orally or in
writing, any report or of or information

October 10, 2002
Mileikowsky
NOTMOT

1 concerning any action taken concerning
2 Petitioner Gil N. Mileikowsky, M.D. by
3 Encino-Tarzana Regional Medical Center on
4 or about February 25, 1999, including
5 rejection of the challenge by Petitioner
6 Gil N. Mileikowsky, M.D. of the alleged
7 'voluntary resignation' of his medical
8 staff membership at Encino-Tarzana
9 Regional Medical Center."

6 On April 20, 1999 my attorney served a copy of the preliminary
7 injunction upon Tenet, Tarzana, and Kawa.

8 When Judge O'Brien issued his preliminary injunction on April 20,
9 1999, Article VII, Section 2 of the By-Laws of Tarzana provided a list
10 of conduct which could be utilized by the hospital in determining
11 whether to grant or deny staff privileges. In particular, Section 2 of
12 Article VII provided as follows:

13 "A. Any person may provide information
14 to the hospital or medical staff about
15 the conduct, performance, or competence
16 of any member. When reliable information
17 indicates a member may have exhibited
18 acts, demeanor, or conduct reasonably
19 likely to be:

17 1. Detrimental to patients' safety or to
18 delivery of quality patient care within
19 the hospital;

18 2. Unethical;

19 3. Contrary to the medical staff or
20 hospital By-Laws, rules and regulations,
21 standards or policies and procedures; or

20 4. Below applicable medical staff or
21 hospital professional standards;

21 A request for an investigation or
22 corrective action against such member may
23 be requested by any member of the medical
24 staff or the governing board, or the
25 chief executive. All requests for
26 corrective action shall be in writing,
27 shall be made to the executive committee,
28 and shall be supported by reference to
the specific activities or conduct which
constitute the grounds for request."

26 After April 20, 1999, and in direct response to the preliminary
27

October 10, 2002
Mileikowsky
NOTMOT

1 injunction, Kawa drafted an amendment to Section 2 above. Tenet,
2 Tarzana, and Kawa inserted item number 5 to read as follows:

3 "5. Disruptive to the functioning of the
4 hospital or interfering with the
5 provision of quality patient care."

6 Item No. 5 quoted above was not in the By-Laws when Judge O'Brien
7 issued the injunction on April 20, 1999. It was specifically added to
8 be directed at me.

9 Respondent and Tenet, Tarzana, and attorney Kawa also changed
10 Article VI, Section G of the By-Laws in response to the injunction
11 issued by Judge O'Brien. At the time the injunction was issued, April
12 20, 1999, paragraph G read, in part, as follows:

13 "Recommendation shall also be based upon
14 the practitioner's compliance with legal
15 requirements applicable to the practice
16 of his/her profession, with the medical
17 staff By-Laws, rules and regulations and
18 hospital policies, review and evaluation
19 of the care provided by the practitioner,
20 physical and/or mental impairment which
21 might interfere with the applicant's
22 ability to carry out clinical privileges
23 as requested, and provision of accurate
24 and complete information to enable the
25 medical staff to evaluate his/her current
26 competency and qualifications."

27 Attorney Kawa added the following language to the paragraph quoted
28 above:

29 "Evaluation of interactions with hospital
30 staff and peers."

31 This language was inserted in paragraph G so that paragraph G now
32 reads as follows:

33 "Recommendation shall also be based upon
34 the practitioner's compliance with legal
35 requirements applicable to the practice
36 of his/her profession, with the medical

October 10, 2002
Mileikowsky
NOTMOT

1 staff By-Laws, rules and regulations and
2 hospital policies, review and evaluation
3 of the care provided by the practitioner,
4 evaluation of interactions with hospital
5 staff and peers, physical and/or mental
6 impairment which might interfere with the
7 applicant's ability to carry out clinical
8 privileges as requested, and provision
9 of accurate and complete information to
10 enable the medical staff to evaluate
11 his/her current competency and
12 qualifications."

13 Accordingly, attorney Kawa added the language "evaluation of
14 interactions with hospital staff and peers" to the language in
15 paragraph G.

16 On July 23, 1999 Tenet and Tarzana, sent a draft of the changes
17 authored by Kawa to physicians at the Encino-Tarzana Regional Medical
18 Center. The changes were approved by the Board of Trustees of
19 Respondent Hospital and became the amended By-Laws in August of 1999.

20 After the court issued the preliminary injunction on April 20,
21 1999, Tenet, Tarzana, and Kawa purported to process my application in
22 accordance with the By-Laws. Article VI governs the reappointment
23 process. Paragraph B of VI of the By-Laws provides as follows:

24 "The medical staff office shall transmit
25 the completed reappointment application
26 form and supporting materials to the
27 Credentials Committee, to the Chair of
28 the Clinical Department to which the
staff member belongs and to the Chairman
of any other department in which the
member has or requests privileges."

On January 11, 2000, in direct violation of the preliminary
injunction issued on April 20, 1999, the Medical Executive Committee of
Tarzana met to discuss my reappointment application. Although I was
not present and not given notice of the meeting I do know that the

October 10, 2002
Mileikowsky
NOTMOT

1 meeting occurred because I have reviewed the minutes of the meeting.
2 I was not told about the meeting at the time and not invited to attend
3 the meeting. At the meeting in the presence and under the direction of
4 Tenet's attorneys Kawa and Jay Christensen, the Medical Executive
5 Committee of Tarzana circumventing the authority of the Department of
6 OB/GYN voted to deny my reappointment application in violation of the
7 preliminary injunction and the By-Laws of Tarzana.

8 The conduct of Tenet was willful and a deliberate violation of the
9 preliminary injunction.

10 I appealed the decision of the Medical Executive Committee of
11 January 11, 2000 pursuant to the By-Laws and in order to exhaust my
12 administrative remedies. My appeal was directed to the Judicial Review
13 Committee convened pursuant to the By-Laws. A Judicial Review
14 Committee began hearing evidence in October of 2000 with respect to the
15 reappointment application - Hearing - I.

16 While my reappointment application was yet to be finally resolved
17 by the Judicial Review Committee, Tarzana violated once again the
18 preliminary injunction by purporting to summarily suspend my privileges
19 on November 16, 2000. No reasons were given for the summary suspension.
20 On November 28, 2000 the Medical Executive Committee of Tarzana upheld
21 the summary suspension of my staff privileges in violation of the By-
22 Laws and in violation of the preliminary injunction.

23 On November 30, 2000 - Hearing I was aborted illegally by its
24 alleged Hearing Officer Lowell Brown (attorney of Tenet) and its
25 Hearing Committee.

26 I was then provided with what Tarzana claimed to be a second
27
28

October 11, 2002
Mileikowsky
NOTMOT

1 hearing. The "bogus charges" with respect to my reappointment denial
2 were combined with the fabricated charges with respect to my summary
3 suspension. After the Appeals Body of Tarzana remanded on April 26,
4 2001 the illegal conduct of the Hearing Officer, Lowell Brown, and its
5 committee, I was purportedly given a combined hearing regarding both
6 the reappointment application and the summary denial of my staff
7 privileges - Hearing -II.

8 Tarzana dragged the hearings on. Despite my requests Tarzana would
9 not allow me to have an attorney in the hearing because its By-Law do
10 not permit it. On March 15, 2002 I delivered copies of my brief to
11 each of the members of the Judicial Review Committee. This was not an
12 ex parte communication because I also gave copies to the opposition and
13 Willick "opened the door" by previously sending a memorandum to the
14 members of the Committee. In any event, Willick aborted the hearing on
15 March 30, 2002 without obtaining approval of the Judicial Review
16 Committee. Willick purported to suspend the hearing because, among
17 other things, I allegedly delivered copies of the brief on an ex parte
18 basis, which, as stated, was not true. Willick had no authority to
19 deny me my right to exhaust my administrative remedies under the By-
20 Laws or under the Constitution of the United States or the State of
21 California. The unilateral denial of my right to a hearing by Willick
22 violated the provisions of the preliminary injunction. Willick had
23 notice that such conduct was illegal as, I provided him prior to his
24 "ruling", the April 26, 2001 decision of the Appeal Body condemning
25 such conduct by Lowell Brown, alleged Hearing Officer and the Committee
26 of Hearing - I.

27

28

October 11, 2002
Mileikowsky
NOTMOT

1 By its conduct Tenet clearly violated the provisions of the
2 preliminary injunction. In addition to this motion for contempt I am
3 filing a separate Petition for Writ of Administrative Mandamus and
4 Mandamus to challenge the conduct of Tenet. I appealed the March 30,
5 2002 ruling to the Appeals Body but that Body upheld this illegal
6 decision on July 25, 2002. The act of approving the March 30, 2002 order
7 of Willick ending my hearing also violates the preliminary injunction
8 and constitutes an additional act of contempt.

9 I understand that under the Code of Civil Procedure a contempt
10 finding can generate at the most a \$1,000.00 fine and a five (5) day
11 jail sentence. However, in this case the failure to reappoint me is an
12 on-going violation and each day should be considered a separate
13 violation allowing each day to be \$1,000 fine and a five (5) day jail
14 sentence.

15 I am suffering gravely as a result of the misconduct of Tenet,
16 Tarzana, and their attorneys. I spent a lot of money on legal fees to
17 obtain the preliminary injunction which had been violated willfully
18 numerous times in this case with impunity. My practice is shredded and
19 reduced to a skeleton.

20 Not only are Tarzana's alleged charges fabricated by Tenet's
21 attorneys, administration and selected corrupt physicians but, there is
22 not even a single complaint from any of my patients nor any negligence
23 cause of action against me, let alone any alleged imminent danger.

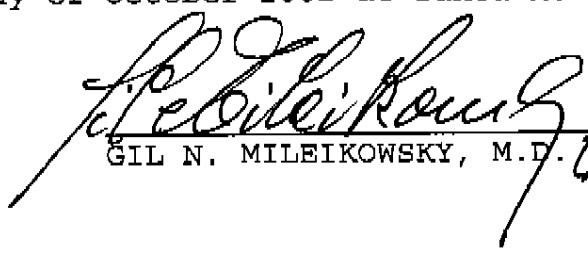
24 There has been no finding by any Judicial Review Committee that I
25 committed any negligence or misconduct with respect to any patient.
26 Nor is there any complaint from any of my patients. This is all a
27

October 11, 2002
Mileikowsky
NOTMOT

1 procedural fight led by Tenet for reasons explained in my declaration
2 previously filed with this Court in connection with the initial
3 Petition for Writ of Mandate.

4 I declare under penalty of perjury that the foregoing is true and
5 correct.

6 Executed this 11th day of October 2002 at Santa Monica,
7 California.


GIL N. MILEIKOWSKY, M.D.

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

October 10, 2002
Mileikowsky
NOTMOT

MEMORANDUM OF POINTS AND AUTHORITIES

I

INTRODUCTION

This is a contempt motion filed by Petitioner in this action because Respondent Tenet Healthsystem, Encino-Tarzana Regional Medical Center has flagrantly violated the provisions of the preliminary injunction issued by Superior Court Judge Robert H. O'Brien on April 20, 1999. Essentially Judge O'Brien ordered Respondent to process Petitioner's application for reappointment to the position he previously enjoyed for many years.

Respondent violated the terms of the preliminary injunction by denying his reappointment application and then compounded the contempt by then purporting to summarily suspend staff privileges. Furthermore, Petitioner has never been afforded a complete hearing. No findings have ever been made by Tenet with respect to the underlying issues.

By this motion Petitioner seeks to have Tenet held in contempt pursuant to Code of Civil Procedure Section 1209 et.seq..

II

STATEMENT OF THE CASE

The facts of this case are straight forward and are set forth in the verified Petition and in the declaration supporting this motion.

Superior Court Judge Robert H. O'Brien on April 20, 1999 very clearly enjoined Respondent Tenet from excluding or preventing Petitioner from exercising the privileges to which he was reappointed on April 17, 1997 as an attending physician and surgeon. Respondent Tenet was specifically enjoined from denying Petitioner's staff

October 11, 2002
Mileikowsky
NOTMOT

1 privileges at the Tarzana Hospital.

2 Contrary to the explicit provisions of the preliminary injunction
3 issued by Judge O'Brien, Respondent Tenet not only denied Petitioner
4 his reappointment application, it also summarily suspended Petitioner
5 from staff privileges and then did not afford him a hearing on the
6 merits with a final ruling analyzing the evidence. Instead, Tenet
7 hired two attorneys named Lowell Brown and Daniel Willick who purported
8 to conduct a hearing and, without having such authority, prematurely
9 aborted their hearings on October 30, 2000 and on March 30, 2002 by
10 illegally ruling that Petitioner violated certain rules by falsely
11 claiming that Petitioner did not attend a meeting in Hearing - I and,
12 allegedly by engaging in ex parte communication with the Judicial
13 Review Committee in Hearing - II. All Petitioner did was serve
14 Committee members with copies of his briefs and memorandum to make sure
15 each member had one in response to a memorandum Willick sent previously
16 to each member of the Hearing Committee.

17 Attorney Lowell Brown and Daniel Willick, on behalf of Respondent
18 Tarzana Hospital, violated the preliminary injunction by aborting their
19 respective hearings without allowing it to be completed where Findings
20 of Fact and Conclusions of Law could have been made.

21 III

22 THE LAW

23 Code of Civil Procedure Section 1209 (5) makes it a contemptuous
24 act for anyone to disobey a lawful order of a court. In this
25 particular case we have a lawful order, namely the preliminary
26 injunction issued by Judge O'Brien.

PROOF OF SERVICE

STATE OF CALIFORNIA)
)
 COUNTY OF LOS ANGELES)

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 2115 Main Street, Santa Monica, California 90405.

On the date shown below I served the foregoing document described as: NOTICE OF MOTION FOR ORDER TO SHOW CAUSE RE CONTEMPT; DECLARATION OF GIL N. MILEIKOWSKY; MEMORANDUM OF POINTS AND AUTHORITIES on interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Mark Kawa
 Irvin & Cohen Jessup
 9401 Wilshire Blvd.
 9th Floor
 Beverly Hills, CA 90212

Catherine I. Hanson
 California Medical Association
 221 Main Street, Third Floor
 San Francisco, CA 94105

Berney Law Corporation
 11693 San Vicente Blvd., Suite 320
 Los Angeles, CA 90049

Richard G. McCracken
 Davis, Cowell & Bowe, LLP
 100 Van Ness Avenue, 20th Fl.
 San Francisco, CA 94102

Leonard A. Nelson
 American Medical Association
 AMA Litigation Center
 515 N. State Street
 Chicago, IL 60610

Russell Iungerich
 3580 Wilshire Blvd., Suite 1920
 Los Angeles, CA 90010

I caused such envelope with postage thereon fully prepaid to be placed in the United States Mail at Santa Monica, California on October 11, 2002

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct and was executed at Santa Monica, California on the 11 day of October 2002.



 JUDITH A. BURGDORF