

**NO. S156986**

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**IN THE SUPREME COURT OF CALIFORNIA**

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GIL N. MILEIKOWSKY, M.D.,

*Plaintiff and Respondent,*

v.

WEST HILLS HOSPITAL MEDICAL CENTER,

*Respondent and Appellant.*

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**APPLICATION OF UNION OF AMERICAN PHYSICIANS AND  
DENTISTS FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*  
IN SUPPORT OF PLAINTIFF/RESPONDENT**

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After A Decision by the Court of Appeal  
Second Appellate District, Division Eight  
Case No. B186238

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Union of American Physicians & Dentists (“UAPD”) applies for leave to file the attached amicus brief in this matter. UAPD is an unincorporated association existing for the purpose of representing physicians and dentists. It has over 3000 members, and is headquartered in California, where the vast majority of its members live and practice medicine. Nearly all its members are subject to hospital privileging decisions, and hundreds of its members serve on peer review bodies.

In holding that hearing officers had the right on their own to terminate physician privileges without a vote of the peer review panel, Division II of the Second District expressed concern that the opposite rule would burden the schedules of “busy medical professionals.” *Mileikowsky v. Tenet Healthsystems* (2005) 128 Cal. App. 4th 531, 562. UAPD’s physician board members are busy medical professionals but are fully willing and able to participate in decisions whether an accused physician so unreasonably failed to provide discovery that he has forfeited the right to a full hearing on the merits. UAPD’s board members view participation in peer review as a vital part of their busy professional schedules, not some sort of sideshow. They oppose giving attorney hearing officers the right to terminate peer review proceedings without approval of the peer review body. They believe the lawyer serving as hearing officer is not one of their “peers”, particularly in light of the statutes denying the hearing officer any vote and guaranteeing physicians “self-governance” in professional matters within the hospital.

UAPD has regularly applied for and received leave to file amicus briefs on legal issues related to health care.<sup>1</sup>

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<sup>1</sup> UAPD has filed amicus briefs, pursuant to leave of court or agency, in the following cases (among others): *Mileikowsky v. Tenet Healthsystem* (2005) 128 Cal. App. 4th 531; *Providence Hospital* (1996) 320 NLRB 717, 717 n.1; *American Hospital Association v. NLRB* (1991) 499 U.S. 606; 111

UAPD’s counsel is familiar with the questions involved in this case and the scope of their presentation, and believes further authorities not already cited need to be considered by the Court on the issues of whether Dr. Mileikowsky was entitled to have the continuation of his privileges decided by his medical peers rather than by an attorney selected by the hospital, and whether terminating sanctions for discovery noncompliance are available in a proceeding such as this.<sup>2</sup>

While UAPD’s arguments generally comport with those made by Plaintiff, that is unimportant: courts regularly rely on arguments which an amicus alone presented. *See, e.g., Mapp v. Ohio* (1961) 367 US 643, 646 n. 3 (deciding to impose exclusionary rule on states even though that position urged only by an amicus); *Kolstad v. Am. Dental Ass’n* (1999) 527 US 526 (relying on argument made only by *amici* that employers should be exempted from vicarious liability for certain damages if they make good faith efforts to comply with Title VII).

“Amicus curiae presentations assist the court by broadening its perspective on the issues raised by the parties. Among other services, they facilitate informed judicial consideration of a wide variety of information and points of view that may bear upon important legal questions.” *Bily v.*

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S.Ct. 1539; *Arnette v. Dal Cielo* (1996) 14 Cal.4th 4; *Grier v. Kizer* (1990) 219 Cal.App.3d 422; *Kime v. Bd. Of Med. Qual. Assurance* (unpub.; 3rd Dist., no. 3 Civ. C0065550); *Hillsman v. Sutter Community Hospitals* (1984) 153 Cal.App.3d 743; *Hillsman v. Mercy General Hospital* (unpub. 3rd Dist. no. 3 Civ. C010535); *Stuart v. Sullivan USD*, DNJ no. 92-417. In addition, the UAPD has as a party represented the interests of physicians in several cases, such as *UAPD v. Kizer* (1990) 223 Cal.App.3d 490.

<sup>2</sup> The fact that an organization seeking to file an amicus is generally aligned with one party is immaterial: “[t]here is no rule, however, that *amici* must be totally disinterested.” *Hoptowit v Ray* (CA 9 1982) 682 F.2d 1237, 1260. *Accord, Strasser v. Doorley* (CA 1 1970) 432 F.2d 567, 569 (“by the nature of things an amicus is not normally impartial.”)

*Arthur Young* (1992) 3 Cal. 4th 370, 405 n. 14.

UAPD should be granted leave to file the attached brief.

Dated: June \_\_, 2008

Respectfully submitted,

DAVIS, COWELL & BOWE, LLP

By: \_\_\_\_\_

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