S156986

IN THE SUPREME COURT OF CALIFORNIA

GIL N. MILEIKOWSKY, M.D.,
Plaintiff and Appellant,

vs.

WEST HILLS HOSPITAL MEDICAL CENTER et al.,
Defendants and Respondents.

AFTER A DECISION BY THE COURT OF APPEAL
SECOND APPELLATE DISTRICT, DIVISION EIGHT
CASE NO. B186238

REPLY BRIEF ON THE MERITS

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REPLY BRIEF ON THE MERITS

INTRODUCTION

This case concerns whether hearing officers presiding over medical staff peer review proceedings have authority to terminate a proceeding due to a participant's refusal to comply with lawful discovery orders. This court should decide that issue based on the applicable Business and Professions Code provisions, medical staff bylaws, and common-law fair procedure principles. (See OBOM 34-36.) All of this governing authority permits hearing officers to enter such orders. (OBOM 37-56.)

In response, Dr. Mileikowsky attempts to shift this court's attention to administrative procedures that are applicable only to

certain state agencies, not private entities such as hospital peer review committees. Where he addresses the authorities that actually apply to medical staff peer review proceedings, he misconstrues them. He also confuses the different authorities and expertises of hearing officers on the one hand and the physician members of the judicial review committee on the other. As a result, his analysis is flawed from beginning to end.

Before addressing Dr. Mileikowsky's arguments, we note two critical points that he does not contest: (1) the primary goal of medical staff peer review is to protect public health (OBOM 29-30); and (2) this goal cannot be achieved unless the medical staff has complete and accurate information germane to a physician's privileges application (OBOM 31-32). It is important to not lose sight of these critical undisputed points when determining whether the Legislature intended to limit hearing officers' authority to enforce discovery orders.

LEGAL ARGUMENT

I.

HEARING OFFICERS MAY TERMINATE MEDICAL STAFF PEER REVIEW PROCEEDINGS BASED ON PROCEDURAL MISCONDUCT.

A. The Legislature intended to allow hospitals flexibility in structuring peer review proceedings.

The Legislature never intended to prohibit peer review hearing officers from terminating proceedings because of a participant's discovery abuses. To the contrary, such authority is both implied in the applicable peer review statutes and medical staff bylaws, and inherent in the hearing officer's position. (OBOM 37-44.)

The Legislature established only skeletal peer review procedures, and then left it to hospitals and their medical staffs to adopt bylaws specifying the detailed procedures governing their peer review process. (Bus. & Prof. Code, §§ 809, subd. (a)(8) ["It is the intent of the Legislature that written provisions implementing Sections 809 to 809.8, inclusive, in the acute care hospital setting shall be included in medical staff bylaws"], 809.6, subd. (a) ["The parties are bound by any additional notice and hearing provisions contained in any applicable . . . medical staff bylaws which are not inconsistent with Sections 809.1 to 809.4, inclusive"].) "It is these [medical staff] bylaws

that govern the parties' administrative rights." (*Payne v. Anaheim Memorial Medical Center, Inc.* (2005) 130 Cal.App.4th 729, 739, fn. 5.)

West Hills' bylaws specify that a physician's failure "to appear and proceed at [a judicial review committee (JRC)] hearing shall be deemed to constitute voluntary acceptance of the recommendation or action involved, which shall become effective immediately, and his/her waiver of all other rights inuring to him/her" under the bylaws. (CT 1651-1652; see OBOM 7-9.) And, mirroring statutory law, the bylaws further authorize the hearing officer to "impose any safeguards" that the "protection of the peer review process and justice requires." (CT 1654 [bylaw § 10.3-2(c)]; see CT 1655; accord, Bus. & Prof. Code, § 809.2, subd. (d).) Thus, the hearing officer is authorized to determine what safeguards are necessary in specific circumstances. Unless the safeguard imposed is inconsistent with a statute or deprives a physician of a fair procedure, courts should not interfere with the hearing officer's determination.

Dr. Mileikowsky advocates a narrow reading of the statutory and bylaw provisions allowing hearing officers to impose safeguards. He contends they "relate[] only to protecting the confidentiality of documents." (ABOM 56.) But safeguarding the confidentiality of documents is a much more limited objective than "protect[ing] . . . the peer review process." Protecting the peer review process must mean something more—including enforcing lawful discovery orders and sanctioning participant discovery abuses. (See OBOM 37-44.) And even if these provisions do not expressly give hearing officers

termination authority, neither do they forbid it, nor do they negate the bylaw provision that makes a physician's failure to "proceed" at a JRC hearing a waiver of that hearing.

Dr. Mileikowsky seeks to divert attention from the controlling authorities by devoting the bulk of his brief to a detailed historical analysis of California's Administrative Procedures Act (APA), the federal Health Care Quality Improvement Act of 1986, and cases from other jurisdictions concerning their administrative procedures law. None is relevant.

The APA applies to certain state agencies. (Gov. Code, §§ 11500, subd. (a), 11501, subd. (b); see *Allen v. Humboldt County Board of Supervisors* (1963) 220 Cal.App.2d 877, 883; *Usher v. County of Monterey* (1998) 65 Cal.App.4th 210, 216-217.) However, "[a]s a rule, the APA does not apply to adjudicative proceedings conducted by private entities." (Cal. Administrative Hearing Practice (Cont.Ed.Bar 2d ed. 2007) Understanding Administrative Adjudication, § 1.16, p. 11.) Rather, "adjudicative proceedings of private entities, when affecting the public interest, may be subject to common law 'fair procedure' requirements." (*Ibid.*) Hospital peer review proceedings fall into this category. (*Id.* § 1.16B, p. 12; see OBOM 53-56.) Thus, Dr. Mileikowsky's tome on the development of the APA and the restrictions it imposes on some hearing officers in some state and local agency adjudications is not germane to the question before this court.[1/]

1/ If this court were to hold that the APA applies to private (continued...)

Needless to say, cases from other jurisdictions interpreting their versions of the APA have even less significance. The same is true regarding Dr. Mileikowsky's discussion of the federal Health Care Quality Improvement Act of 1986; California opted out of that federal law. (Bus. & Prof. Code, § 809.) Moreover, Dr. Mileikowsky fails to distinguish the authorities West Hills cited in its opening brief demonstrating that, even in some public administrative proceedings, hearing officers are permitted to terminate proceedings on a variety of procedural grounds prior to any ruling on the merits. (See OBOM 45-47 & fn. 17.)

The Legislature knew how to explicitly bar hearing officers from terminating administrative proceedings. (OBOM 39-40.) In the case of medical staff peer review proceedings, the Legislature chose not to so constrain the hearing officers' authority, and this court should reject Dr. Mileikowsky's proposal to add such a limitation. (OBOM 40-42.)

1/ (...continued)
hospital peer review committees, and by extension in other private contexts such as trade unions and professional associations, the decision would reflect a dramatic change in California law that is not justified by anything presented in Dr. Mileikowsky's answer brief.

B. Hearing officers make no substantive medical decisions when terminating peer review proceedings based on discovery abuse.

Dr. Milikowsky claims that "the Hearing Officer's decision to issue a terminating sanction amounted to a dispositive ruling on the *medical question* of whether Dr. Mileikowsky merited hospital credentials." (ABOM 42, emphasis added; see ABOM 1, 47.) He frames the issue as "whether the discovery dispute negated Dr. Mileikowsky's right to privileges." (ABOM 45.) And he argues that only the JRC "could say whether a lesser sanction—such as evidence preclusion or claim preclusion, or even no sanction at all—would have been appropriate." (ABOM 43.)

West Hills agrees that it is the JRC's task to rule on medical issues. But, as Dr. Mileikowsky concedes later in his brief, the question at the heart of the dispute in this peer review proceeding—"whether Dr. Mileikowsky was justified in withholding the documents—is a *legal* one." (ABOM 66, emphasis added.) The issues of whether Dr. Mileikowsky's conduct *in the peer review proceeding* waived his right to a JRC review of the Medical Executive Committee's (MEC) recommended denial of privileges or warranted termination of the proceedings to safeguard the peer review process are legal questions. The issue was not a medical question regarding whether Dr. Mileikowsky's conduct in the hospital or private practice met the minimum standards necessary to allow him to treat patients in the

hospital. The hearing officer decided no *medical* issue. He made only a *legal* decision that he was particularly and uniquely qualified to make.[2/]

Dr. Mileikowsky's failure to distinguish between legal and procedural issues on the one hand and substantive medical issues on the other leads him to another flawed argument. He asserts that the Legislature intended to deprive hearing officers of authority to terminate medical staff peer review proceedings when it specified that hearing officers may not vote. (See Bus. & Prof. Code, § 809.2, subd. (b).) He argues that this prohibition means that hearing officers are not allowed to make *any* decisions that affect the outcome of the proceeding. (ABOM 1, 21-22, 23-31.)

Dr. Mileikowsky's interpretation is too broad. The prohibition on voting precludes hearing officers from deciding the *medical* merits of a privileges application, but not from deciding *procedural* issues within the province and legal expertise of the hearing officer. (See OBOM 37-42, 45-53.) The Legislature's determination that hearing officers may rule on evidentiary issues, including relevance (Bus. & Prof. Code, § 809.2, subd. (e)), decisions which necessarily may affect the outcome of the peer review proceeding, establishes that Dr. Mileikowsky's statutory interpretation cannot be correct.

2/ There also was no reason to ask JRC physician members whether Evidence Code section 1157 prevented Dr. Mileikowsky from producing the Cedars-Sinai materials; that was a legal question for the hearing officer.

Dr. Mileikowsky cites several cases for the unremarkable proposition that the hearing officer's order must be subject to administrative review by a governing board with final decision making authority. (ABOM 27-29, 48-50.) Dr. Mileikowsky's lead case actually upholds the right of an administrative law judge to enter sanctions affecting the outcome of the case, provided that ruling is subject to agency review. (*Matter of Certain Sections of the Uniform Administrative Procedural Rules* (1982) 90 N.J. 85, 106-107 [447 A.2d 151, 163]; see ABOM 28-29, 49-50.) That is exactly what happened here: West Hills' governing board—the administrative body with final decision making authority—reviewed and affirmed the hearing officer's order terminating the peer review proceedings based on Dr. Mileikowsky's discovery abuses.[3/] (CT 3814; see CT 758-765, 1634-1635, 1638, 1653, 1657; OBOM 6, 10, 23; ABOM 21.)

Finally, Dr. Mileikowsky questions how a hearing officer could have authority to terminate peer review proceedings when the physician disregards discovery orders, unless the hearing officer likewise has authority to order reinstatement of privileges when the

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3/ The hospital's governing board is the "agency" that makes final peer review decisions. (See OBOM 6, 8; e.g., *Kumar v. National Medical Enterprises, Inc.* (1990) 218 Cal.App.3d 1050, 1055.) Dr. Mileikowsky claims that West Hills' governing board is comprised of "business people whose first duty is to guard the hospital's bottom line." (ABOM 36.) This accusation is unfounded and, indeed, directly conflicts with the Legislature's mandate that the board "act exclusively in the interest of maintaining and enhancing quality patient care." (Bus. & Prof. Code, § 809.05, subd. (d).)

medical staff disregards the hearing officer's orders. (ABOM 48.) Dr. Mileikowsky's question presents a false dichotomy.

The hearing officer can *never* decide that privileges should be revoked or reinstated. That is the job of the hospital board, based on recommendations from the medical staff acting through its MEC or the physicians appointed to a JRC. (See OBOM 6-10 & fn. 1.) One of the things the hearing officer *can* do to safeguard the peer review proceedings from a participant's discovery abuse is to terminate the proceeding. If a hearing officer were to enter such an order based on an *MEC's* discovery abuse, the affected physician could seek administrative relief from the hospital board, and/or legal relief from the court, based on the hearing officer's finding. (See *Rosenblit v. Superior Court* (1991) 231 Cal.App.3d 1434, 1445-1447 [granting petition for writ of mandate to compel hospital to afford a doctor a fair peer review hearing because the MEC had refused to provide the doctor with access to medical charts].)

C. The Legislature did not leave hearing officers powerless to effectively respond to procedural misconduct by physicians.

According to Dr. Mileikowsky's view of Business and Professions Code section 809.2, subdivision (d), no matter how flagrant a physician's abuse of the peer review discovery system, the most a hearing officer can do is endlessly continue the proceedings. (ABOM

55-57.) West Hills' opening brief explained both the legal error and the practical harm in this interpretation. (OBOM 48-53.)

One of the adverse consequences of multiple continuances is that a physician—against whom a peer review committee has already made an adverse determination—maintains his or her privileges during the protracted proceedings. (OBOM 49.) Dr. Mileikowsky brushes aside these concerns by noting that a physician's privileges can be summarily suspended under Business and Professions Code section 809.5. (ABOM 58.) His argument is unpersuasive; it does not address the very real risk that physicians who should have their privileges terminated or restricted will instead retain them because the JRC hearing cannot be completed.

A hospital may summarily suspend privileges only in the rare circumstance "where the failure to take that action may result in an imminent danger to the health of any individual . . . ." (Bus. & Prof. Code, § 809.5, subd. (a).) Many peer review proceedings do not involve situations that satisfy this summary suspension criteria. When care is poor but not an imminent danger, a physician retains his or her privileges and has every incentive to delay the peer review proceeding that may result in the loss of those privileges. (See OBOM 49.) Such delay thwarts the public's interest in ensuring that peer review proceedings are conducted "efficiently." (See Bus. & Prof. Code, § 809, subd. (a)(7).) It also runs counter to the Legislature's primary goal of protecting the public from potentially incompetent physicians.

Dr. Mileikowsky claims that "under the doctrine of *expressio unius est exclusion alterius,*" the provision in section 809.2 specifying that a failure to comply with discovery demands is good cause for a continuance means that "continuance is the *only available procedural response to a failure to make discovery.*" (ABOM 55-58, emphasis added.) Not so. The statutory interpretation doctrine cited by Dr. Mileikowsky is inapplicable where, as here, its application would lead to an unintended result, such as thwarting the Legislature's goal of protecting the public's health and welfare. (See *Estate of Banerjee* (1978) 21 Cal.3d 527, 539 & fn. 10 [*"expressio unius est exclusio alterius* . . .has many exceptions . . . [and] shall always '"be subordinated to the primary rule that the intent shall prevail over the letter"'"]; accord, *In re Joseph B.* (1983) 34 Cal.3d 952, 957.) The statute allows a hearing officer to continue the proceedings when discovery is not produced; it does not say the hearing officer's *only* remedy is to continue the proceedings until the physician elects to comply with discovery orders.

II.

SUBSTANTIAL EVIDENCE SUPPORTS THE GOVERNING BOARD'S DETERMINATION THAT THE HEARING OFFICER DID NOT ABUSE HIS DISCRETION BY TERMINATING THE PEER REVIEW PROCEEDINGS.

West Hills' governing board determined that the hearing officer's order terminating the proceedings due to Dr. Mileikowsky's discovery abuses substantially complied with the bylaws, and was reasonable, warranted, and supported by the weight of the evidence. (CT 3814; see CT 3818-3823.) The board's interpretation of the hospital's bylaws is entitled to deference. *(Mileikowsky v. Tenet Healthsystem* (2005) 128 Cal.App.4th 531, 555; *Weinberg v. Cedars-Sinai Medical Center* (2004) 119 Cal.App.4th 1098, 1108; OBOM 41-42.)[4/]

Dr. Mileikowsky disputes that the hearing officer's terminating order and the hospital's affirmance of that order were supported by substantial evidence. He claims that the Cedars-Sinai peer review documents he withheld in violation of discovery orders were not "sufficiently important to determine the outcome" of the proceeding. (ABOM 43.) He also asserts that "[t]his appeal is not about charges

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4/ Dr. Mileikowsky complains that West Hills is attempting to rewrite the law when it asserts that the governing board must give deference to the MEC's staff privileges recommendations. (ABOM 35.) But the board did not review the MEC's decision at all; it reviewed and approved the hearing officer's procedural ruling.

brought by other hospitals" (ABOM 3), that "demands for the Cedars-Sinai documents became a *pretext* for stripping [him] of his West Hills privileges" (ABOM 5, emphasis added; see ABOM 42), and that if the charges made by other hospitals ever became relevant, he would refute them (ABOM 3). There are numerous flaws in Dr. Mileikowsky's argument.

First, "sufficient[] import[ance]" is not the correct legal standard, *relevancy* is. (Bus. & Prof. Code, § 809.2, subds. (d)-(e); see CT 2704, 3425.) And there can be no serious question about the relevancy of the Cedars-Sinai peer review documents. It was important for the JRC to have the Cedars-Sinai peer review documents that were in Dr. Mileikowsky's possession when deciding whether his privileges at West Hills should be terminated or extended.

Cedars-Sinai's summary suspension and subsequent revocation of Dr. Mileikowsky's privileges had reflected its assessment that Dr. Mileikowsky's continued presence "may result in an imminent danger to the health of any individual . . . ." (Bus. & Prof. Code, § 809.5, subd. (a).) California law *required* West Hills to investigate the details of Cedars-Sinai's action before West Hills could extend or expand Dr. Mileikowsky's privileges. (*Ibid.*; *Medical Staff of Sharp Memorial Hospital v. Superior Court* (2004) 121 Cal.App.4th 173, 182; OBOM 31-32.)

Dr. Mileikowsky maintains that a hearing officer lacks the medical knowledge to determine whether the Cedars-Sinai documents were relevant to the proceedings. (ABOM 43.) But the applicable

statute *requires* hearing officers to rule on relevancy issues (Bus. & Prof. Code, § 809.2, subds. (d)-(e)), and it did not take medical knowledge to interpret section 805.5's mandate that adverse actions at other hospitals had to be reviewed. Moreover, it was physicians on West Hills' medical staff, not the hearing officer, who demanded production of Cedars-Sinai's peer review documents. (CT 253, 432, 2447, 2758; see CT 326-327, 2764; see also OBOM 12-13, 15-19 & fn. 7; ABOM 6.)

Dr. Mileikowsky also argues that terminating sanctions were too severe a sanction for his refusal to produce Cedars-Sinai documents. (ABOM 69.) But the only authority he cites are civil cases involving terminating sanctions that forever bar litigants from seeking relief. (*Ibid.*) The analogy is inapt because termination of a peer review proceeding on procedural grounds does not bar a physician from reapplying for staff privileges. (See CT 2705.) All the physician must do is what is required by the hospital bylaws—produce adequate information to establish his or her professional competence and ethical qualifications. (CT 1630-1632; see OBOM 6-7.)

Dr. Mileikowsky claims that the West Hills "Medical Staff first expressed interest in documents concerning Cedars-Sinai *after* Dr. Mileikowsky demanded a hearing on the denial of his application" on May 23, 2002. (ABOM 17, original emphasis; see CT 2547.) To the contrary, the medical staff had been seeking those documents from Dr. Mileikowsky for *years* prior to his May 2002 hearing request. (E.g., CT 2447, 2512-2514; OBOM 12-13, 17, fn. 7.)

Dr. Mileikowsky also claims that West Hills never attempted to secure the Cedars-Sinai documents from Cedars-Sinai, and that the documents would have been produced by Cedars-Sinai if West Hills had only asked for them. (ABOM 16, 18, 20-21, 23.) The record established that West Hills *did* ask Cedars-Sinai to produce its peer review documents but it declined to do so. (CT 628, 2510-2514.)

Although Dr. Mileikowsky has never denied possessing the Cedars-Sinai peer review documents, he asserts that he lacked authority to produce them. (ABOM 7, 9-10, 15, 17, 21, 23, 66-67, 68, 69, 72.) He claims Cedars-Sinai "refus[ed] to allow [him] to provide [the Cedars-Sinai peer review] documents to West Hills in support of his credentialing application." (ABOM 67 [claiming Dr. Mileikowsky was "in trouble no matter what he did regarding the Cedars-Sinai documents," especially if he "defied Cedars-Sinai's *directives* and submitted to West Hills the documents he was told he could not submit" (emphasis added)].)

Dr. Mileikowsky is wrong. Cedars-Sinai never issued any "directives" forbidding him from complying with the medical staff's document requests or the hearing officer's discovery orders. The *only* statement from Cedars-Sinai was an April 16, 1999 letter by its attorney to Paul Hittelman, Dr. Mileikowsky's counsel in this case, declining to grant Dr. Mileikowsky a blanket release for the production of its peer review documents to other hospitals because the law required individual patient consent to the release of their medical information and because Cedars-Sinai was concerned about waiving its rights

under Evidence Code section 1157, a statute that generally makes peer review records immune from discovery. (CT 2970-2971; OBOM 12-13.)

As explained, no legal impediment prevented Dr. Mileikowsky from complying with the MEC's discovery requests and the hearing officer's orders enforcing those requests. (OBOM 58-60.) Thus, Dr. Mileikowsky could have allowed West Hills' medical staff to assess his privileges application based on *all* of the relevant evidence, but he declined to do so.

Finally, Dr. Mileikowsky claims that West Hills had adequate information concerning Cedars-Sinai's summary revocation of his privileges because Dr. Mileikowsky had explained to West Hills that Cedars-Sinai took that action "'without notice or hearing, and without appropriate justification'" and because he supplied West Hills with a signed release for Cedars-Sinai's records, provided West Hills with select medical records from Cedars-Sinai, and was prepared to answer West Hills' questions about the events leading to his loss of privileges at Cedars-Sinai. (ABOM 5, 7, 10, 16-17, 18, 71.)

Neither Dr. Mileikowsky's self-serving characterization of the Cedars-Sinai peer review action nor his tender of select medical records that he claimed were the sole basis of Cedars-Sinai's action was adequate.[5/] Regardless what patient charts Dr. Mileikowsky produced,

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5/ The record does not establish that Dr. Mielikowsky provided West Hills with *all* of the medical charts that were at issue during the Cedars-Sinai peer review proceedings. Cedars-Sinai's "action was based on *three* patient cases [reflecting] . . . a potential or imminent

(continued...)

West Hills' medical staff was entitled (if not legally required) to review *all* of the Cedars-Sinai peer review documents, not just the ones selected by Dr. Mileikowsky. (See, e.g., *Medical Staff of Sharp Memorial Hospital v. Superior Court, supra,* 121 Cal.App.4th at pp. 181-182; *Bell v. Sharp Cabrillo Hospital* (1989) 212 Cal.App.3d 1034, 1048.) And because Cedars-Sinai had already declined West Hills' request for the documents, Dr. Mileikowsky's release was insufficient and West Hills properly asked him to produce documents in his possession or his privileges would be denied. (See Bus. & Prof. Code, § 809.2, subd. (d); CT 1654 [hospital bylaw § 10.3-2(b)]; CT 253, 401, 2746-2747.)[6/]

5/ (...continued)
danger of harm to medical center patients." (CT 69, capitalization omitted, emphasis added.) In November 2000, Dr. Mileikowsky produced just *one* Cedars-Sinai patient chart to West Hills that he identified as the sole basis of Cedars-Sinai's action against his privileges, but later claimed he had produced *three* patient charts to West Hills. (CT 278, 2451-2452.)

6/ Dr. Mileikowsky complains that West Hills "exaggerates" the number of section 805 reports filed against him, claiming we cited "a single report (at CT 5:894) as coming from two different hospitals." (ABOM 2, fn. 1.) We did no such thing. The section 805 report referenced by Dr. Mileikowsky, which was filed by Encino-Tarzana, itself discussed the earlier section 805 report filed by Cedars-Sinai. (CT 894; see OBOM 10-11 & fn. 3, 57 & fn. 19.)

III.

NO ISSUE REGARDING DR. MILEIKOWSKY'S FAILED ATTEMPT TO DISQUALIFY THE HEARING OFFICER IS BEFORE THIS COURT.

Dr. Mileikowsky argues that the hearing officer should have been disqualified because he had a financial interest in the outcome of the proceeding and was biased. (ABOM 60-65; see ABOM 4-5, 13-14, 19, 23.) This issue is not before this court.

Dr. Mileikowsky made this disqualification argument to the Court of Appeal, which rejected it. (*Mileikowsky v. West Hills Hospital Medical Center* (Aug. 27, 2007, B186238) typed opn. pp. 29-31, review granted Dec. 12, 2007, No. S156986.) Neither West Hills' petition for review nor Dr. Mileikowsky's answer to the petition raised the issue. (PFR 1; APFR 1-2.) Thus, Dr. Mileikowsky is not permitted to raise the issue in his brief on the merits. (Cal. Rules of Court, rule 8.520(b)(3).)

CONCLUSION

For the reasons stated above and in West Hills' opening brief, this court should reverse the Court of Appeal's judgment.

Dated: July 29, 2008

Respectfully submitted,

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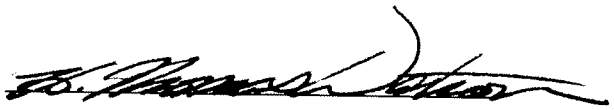
CERTIFICATE OF WORD COUNT
(Cal. Rules of Court, rule 8.504(d)(1).)

The text of this brief consists of 3,921 words as counted by the Corel WordPerfect version 10 word-processing program used to generate the brief.

Dated: July 29, 2008



H. Thomas Watson

PROOF OF SERVICE [C.C.P. § 1013a]

I, **Anna Ramos**, declare as follows:

I am employed in the County of Los Angeles, State of California and over the age of eighteen years. I am not a party to the within action. I am employed by Horvitz & Levy LLP, and my business address is 15760 Ventura Boulevard, 18th Floor, Encino, California 91436. I am readily familiar with the practice of Horvitz & Levy LLP for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, such correspondence would be deposited with the United States Postal Service, with postage thereon fully prepaid, the same day I submit it for collection and processing for mailing. On **July 29, 2008**, I served the within document entitled **REPLY BRIEF ON THE MERITS** on the parties in the action by placing a true copy thereof in an envelope addressed as follows:

Counsel Name/Address/Telephone	**Party(ies) Represented**
Paul Hittelman Law Offices of Paul M. Hittelman 11999 San Vicente Blvd Ste 350 Los Angeles, CA 90049 (310) 471-7600	Attorneys for Plaintiff and Appellant GIL N. MILEIKOWSKY, M.D.
Charles M. Kagay Spiegel Liao & Kagay LLP 388 Market Street, Suite 900 San Francisco, CA 94111 (415) 956-5959	Attorneys for Plaintiff and Appellant GIL N. MILEIKOWSKY, M.D.
Hon. Dzintra Janavs Los Angeles Superior Court 111 N. Hill Street Los Angeles, CA 90012-3117	Case No. BS091943
California Court of Appeal Second Appellate District, Division Eight 300 S. Spring Street, 2nd Floor, N. Tower Los Angeles, CA 90013-1213	Court of Appeal No. B186238
Andrew J. Kahn Davis Cowell & Bowe 595 Market Street, Suite 1400 San Francisco, CA 94105	Attorneys for Amicus Curiae UNION OF AMERICAN PHYSICIANS AND DENTISTS

and, following ordinary business practices of Horvitz & Levy LLP, by sealing said envelope and depositing the envelope for collection and mailing on the aforesaid date by placement for deposit on the same day in the United States Postal Service at 15760 Ventura Boulevard, Encino, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on **July 29, 2008**, at Encino, California.

Anna Ramos