

S156986

**In the
Supreme Court of California**

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

vs.

WEST HILLS HOSPITAL MEDICAL CENTER ET AL.,
Defendants and Respondents.

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

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**APPLICATION FOR PERMISSION TO FILE
BRIEF OF AMICI CURIAE IN SUPPORT OF
PLAINTIFF/APPELLANT**

**American Association for Justice
Association of American Physicians & Surgeons
Consumer Attorneys of California
The E-Accountability Foundation
Government Accountability Project
Health Administration Responsibility Project, Inc.
Health Care Patient Advocates
Legal Affairs Council
The Liberty Coalition
National Whistleblower Center
No Fear Coalition
OSC Watch
Simmelweis Society International
U.S. Bill of Rights Foundation**

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Pursuant to California Rule of Court 8.520(f), we respectfully request leave to file the accompanying Brief of Amici Curiae in support of Dr. Gil Mileikowsky, the Plaintiff and Appellant in the above-named action. This application is timely made within 30 days after the filing of the reply brief on the merits.

IDENTITIES AND INTERESTS OF THE AMICI CURIAE

The **American Association for Justice** (formerly Association of Trial Lawyers of America) is a voluntary national bar association whose approximately 50,000 members primarily represent plaintiffs in injury cases, including medical malpractice cases, in California and in every State. AAJ is committed to the guarantee of fundamental fairness for individuals before our judicial and administrative tribunals. AAJ is also convinced that enforcement of fair procedures for physicians facing peer review is essential to protecting doctors from retaliation by those who place profits ahead of patients.

The **Association of American Physicians & Surgeons, Inc.** (AAPS) is a non-profit, national group founded in 1943 and consisting of thousands of member physicians, including many in California. AAPS is dedicated to defending the patient-physician relationship and opposing hospital disciplinary procedures, like the one at bar, which disrupt that relationship contrary to law. Appellate courts, including the U.S. Supreme Court, have found AAPS amicus briefs useful. *See, e.g., Springer v. Henry*, 435 F.3d 268, 271 (3d Cir. 2006) (citing an AAPS amicus brief in the first paragraph of its decision).

Consumer Attorneys of California, founded in 1962, is a voluntary membership organization of approximately 3,000 consumer attorneys practicing throughout California. Consumer Attorneys' members include numerous attorneys who represent victims injured by medical malpractice. The growing efforts by hospitals, medical associations and others to retaliate against doctors who testify on behalf of those victims is of extreme importance to those members. As such, Consumer Attorneys has a compelling interest in assuring that such retaliatory practices are circumscribed and prohibited.

The **E-Accountability Foundation** is a charitable organization that advocates for due process rights and the rule of law. Its online newsmagazine, Parentadvocates.org, exposes corruption and fraud and advocates, through in-depth journalism, for the rights of whistleblowers and people who in good faith speak out about misappropriations of funds, wrong-doing, and malicious prosecution, and are retaliated against for doing his/her civic duty.

The **Government Accountability Project (GAP)** is a non profit, non partisan public interest organization whose mission is to help whistleblowers, those employees who exercise free speech rights to challenge abuses of power that betray the public trust. Since 1977 GAP has represented or otherwise assisted over 5,000 whistleblowers, and been a leader in campaigns to enact or defend nearly all of America's national whistleblower laws. GAP currently is working for enactment of statutory whistleblower rights protecting doctors from retaliation through the use of bad faith peer review as a way to circumvent their legal rights.

Health Administration Responsibility Project, Inc. (HARP) is a non-profit organization that serves as an educational and informational resource for patients, doctors, and attorneys regarding health care organizations, and seeks to enhance the quality of medical care benefits provided in the managed care and hospital setting. HARP thus has an immediate interest in assuring the protection of the right of physicians to speak freely and openly in order to improve medical care and to appear in court on behalf of plaintiffs without retaliation by organized medical groups.

Health Care Patient Advocates (HCPA), a grassroots group of uncompensated individuals, includes, but is not limited to patients, families, friends of families, health care professionals and concerned citizens. HCPA's goals are focused on striving for quality safe care for all patients in all health care settings, with a focus on dialysis facilities, and to strive towards patients, families, health care workers and physicians to be able to openly voice concerns regarding delivery of care without fear of any covert or overt retaliation. We believe that patients, and their families, look to physicians for protection and, therefore our expectation is that physicians will be able to speak freely when it comes to any aspect of delivery of care that will protect their patients and improve patient care.

For more than twenty years, the **Legal Affairs Council** has fought for due process, fairness, and accuracy in legal proceedings and criminal prosecutions, particularly for whistleblowers and individuals being retaliated against for their activism and political beliefs or unfairly targeted as scapegoats in media and

political firestorms. LAC has created legal defense funds in selected circumstances and joined amicus briefs. LAC remains concerned that standards of due process and impartial proceedings are vitally important in protecting all American citizens.

The Liberty Coalition works to help organize, support, and coordinate transpartisan public policy activities related to civil liberties and basic rights. The Liberty Coalition works in conjunction with groups of partner organizations that are interested in preserving the Bill of Rights, personal autonomy and individual privacy.

The **National Whistleblower Center** was founded in 1988 in order to provide assistance to whistleblowers who risk their careers to serve the public interest. The NWC has assisted whistleblowers throughout the United States, including within the State of California. We have provided direct assistance to medical doctors who have disclosed threats to patient health and safety. Our extensive nation-wide educational and advocacy programs are set forth at www.whistleblowers.org.

The **No FEAR Coalition** was founded in 2002 to lead the fight for the passage of the first civil rights and whistleblower law of the 21st Century: The Notification of Federal Employees Anti-discrimination and Retaliation Act of 2002. The Coalition provides assistance to whistleblowers who risk their careers to serve the public interest. The No FEAR Coalition has assisted whistleblowers throughout the United States, including within the State of California. We have

provided a forum and direct assistance to medical doctors who have disclosed threats to patient health and safety. Our extensive nation-wide educational and advocacy programs are set forth at www.w3conference.org.

OSC Watch is an ad hoc, grassroots, organization with 3 goals: 1) Expose long-standing non-compliance by the Office of Special Counsel (OSC) and Merit Systems Protection Board (MSPB) with key nondiscretionary duties to protect federal employees from agency violations of the merit system principles of the federal civil service (also called “prohibited personnel practices (PPP’s)”; 2) stop it, and 3) obtain some measure of justice for the thousands of loyal, patriotic federal employees harmed by it. OSC Watch supports and defends the merit system principles of the federal civil service and federal employees who put themselves at professional jeopardy to adhere to them, including licensed medical professionals employed by the federal government.

The federal government employs thousands of licensed health care professionals, who are subject to the significantly self-regulating medical professions to obtain and maintain their licenses and practice privileges, which they generally need in their positions in the federal government. Therefore, the abuses in the self-regulation of the medical profession addressed in this amicus brief are of interest to OSC Watch, because the merit principles of the federal civil service require licensed professionals employed by the federal government to comply with the rules of professional conduct of those licensing organizations. If their doing so put them at professional jeopardy in their professions, it is relevant

to the merit system principles of the federal civil service and the mission of OSC Watch.

Semmelweis Society International was founded by physicians who have first-hand experience in present day sham peer review, a process intended originally to improve outcomes by educating physicians who have had some clinical issues. The intent of HCQIA passed in 1986 was to ensure that this process would occur in a controlled hospital environment by health care professionals. Unfortunately for most, including Dr. Mileikowsky, this law is being used to eliminate physicians who are trying to improve the healthcare environment. Dr. Mileikowsky's case strikes at the heart of due process and how hospitals have perverted HCQIA to neatly fit in their armamentarium to control physicians at the expense of quality healthcare. The victims are the patients and those healthcare professionals who were trying to help them.

The **U. S. Bill of Rights Foundation** is a non-partisan public interest law policy development and advocacy organization seeking remedies at law and public policy improvements on targeted issues that contravene the Bill of Rights and related Constitutional law. This Foundation has advocated for better legal protections against bad faith physician peer review and whistle blower retaliation for the last five years.

ASSISTANCE TO THIS COURT

Amici respectfully submit that the accompanying brief will assist this Court in addressing the important questions presented in this case. These organizations represent trial lawyers as well as doctors, nurses and other health care professionals. They include organizations devoted to protecting whistleblowers, to fostering accountability in government, and to promoting the rule of law. Amici thus represent a broad diversity of viewpoints that have come together to address this Court on an issue that affects not only the parties to this case, but the People of California and many Americans across the country.

Physicians are justly proud of their ethical commitment to the welfare of their patients. Nevertheless, medical care in the United States has always been influenced by financial considerations. The legislature, following the lead of this Court, has enacted guarantees of fairness to protect doctors from malevolent peer review by those whose first allegiance is to the financial wellbeing of the hospital. Amici believe that their experiences across the country teach that strict enforcement of those protective guarantees is essential to maintaining and advancing the quality of hospital patient care.

CONCLUSION

For the foregoing reasons, the amici curiae respectfully request that the court accept the accompanying brief for filing in this case.

Dated: August 28, 2008

Respectfully submitted,

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