



# Mileikowsky v. Superior Court (Cal. App. 2001)

Topics Covered: Peer Review, Hospitals and Medical Staff

## **Outcome: Unfavorable**

### **Issue**

The issue in this case was whether a hospital was required to provide a timely peer review hearing before suspending a physician's medical staff privileges.

### **AMA Interest**

The AMA supports a timely and fair peer review process.

### **Case Summary**

This case alleged that a hospital, Encino Tarzana Regional Medical Center (ETRMC), abused the peer review process. Dr. Mileikowsky, an obstetrician/gynecologist specializing in in-vitro fertilization at ETRMC, became embroiled in a number of disputes with ETRMC. He testified against ETRMC and against several of the physicians on its staff in malpractice suits. ETRMC attempted to deny or curtail his privileges, and Dr. Mileikowsky obtained two court injunctions against ETRMC.

Without prior notice, ETRMC abruptly informed Dr. Mileikowsky that it had summarily suspended his medical staff privileges. After Dr. Mileikowsky requested a peer review hearing, ETRMC sent Dr. Mileikowsky a formal notice of charges, listing complaints against him that dated back 10 years. ETRMC repeatedly postponed Dr. Mileikowsky's hearing. Thus, Dr. Mileikowsky's medical staff privileges were summarily suspended without a hearing. Dr. Mileikowsky applied to another hospital for medical staff privileges but was refused when that hospital learned of his suspension from ETRMC.

Under California law, a hospital may suspend a physician's staff privileges without a hearing only if it finds that the physician presents an "imminent danger" to patient health or safety. Even then, the hospital must hold a hearing within sixty days after receipt of the physician's request. The entire peer review process must be completed "within a reasonable time." ETRMC, by delay, avoided these obligations.

Dr. Mileikowsky sued the hospital in the Los Angeles County Superior Court and requested a preliminary injunction to restore his staff privileges. The court denied the preliminary injunction, holding that, in light of the ongoing peer review proceeding, it lacked jurisdiction. Dr. Mileikowsky appealed to the California Court of Appeal. He requested a writ of mandamus, which would order the trial judge to adjudicate his request for a preliminary injunction.

The Court of Appeal, in a two paragraph order, denied Dr. Mileikowsky's appeal. Although the hospital had not raised the point in its brief, the court held that Dr. Mileikowsky's lawyer had not given the hospital proper notice of the motion for preliminary injunction. Because of this procedural flaw, the trial court had, indeed, lacked jurisdiction.

### **Litigation Center Involvement**

The Litigation Center joined a brief prepared by the California Medical Association in support of Dr. Mileikowsky. The CMA/Litigation Center brief emphasized Dr. Mileikowsky's procedural rights and avoided taking sides in the ultimate factual dispute. The brief pointed out that a fair peer review procedure requires that a physician's staff privileges not be abridged without a hearing. Summary suspension of those privileges should be allowed only if there is an emergency and then only if a hearing is held promptly to determine if the emergency is genuine. The brief urged an expedited appeal.