



Public

**THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK**

DIRECTOR, OFFICE OF PROFESSIONAL DISCIPLINE  
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March 25, 2011

Michael J. Gianturco, Physician

REDACTED

Re: Application for Restoration

Dear Dr. Gianturco:

Enclosed please find the Commissioner's Order regarding Case No. CP-10-21 which is in reference to Calendar No. 24644. This order and any decision contained therein goes into effect five (5) days after the date of this letter

Very truly yours,

Donald Dawson  
Director of Investigations

By:

REDACTED

Ariana Miller  
Supervisor

DD/AM/go

cc:

The  
University of the  
Education  State of New York  
Department

IN THE MATTER

of the

Application of MICHAEL J.  
GIANTURCO for restoration of his license  
to practice as a physician in the State of  
New York.

Case No. CP-10-21

It appearing that the license of MICHAEL J. GIANTURCO, REDACTED  
to practice as a physician in the State of New York, was revoked by  
Order of the State Board for Professional Medical Conduct, dated January 4, 2000, and he having  
petitioned the Board of Regents for restoration of said license, and the Regents having given  
consideration to said petition and having reviewed the record, and having agreed with and  
adopted the recommendations of the Peer Committee and the Committee on the Professions,  
now, pursuant to action taken by the Board of Regents on October 19, 2010, it is hereby

ORDERED that the petition for restoration of License No. 078527, authorizing  
MICHAEL J. GIANTURCO to practice as a physician in the State of New York, is denied.



IN WITNESS WHEREOF, I, David M.  
Steiner, Commissioner of Education of the  
State of New York for and on behalf of the  
State Education Department, do hereunto set  
my hand and affix the seal of the State  
Education Department, at the City of  
Albany, this 8 day of March, 2011.

REDACTED

Commissioner of Education

Case No. CP-10-21

It appearing that the license of MICHAEL J. GIANTURCO, REDACTED  
to practice as a physician in the State of New York, was revoked by  
Order of the State Board for Professional Medical Conduct, dated January 4, 2000, and he having  
petitioned the Board of Regents for restoration of said license, and the Regents having given  
consideration to said petition and having reviewed the record, including the submission in  
response to the draft report of the Committee on the Professions, and having agreed with and  
adopted the recommendations of the Peer Committee and the Committee on the Professions,  
now, pursuant to action taken by the Board of Regents on October 19, 2010, it is hereby

VOTED that the petition for restoration of License No. 078527, authorizing MICHAEL  
J. GIANTURCO to practice as a physician in the State of New York, is denied.

THE UNIVERSITY OF THE STATE OF NEW YORK  
The State Education Department

Report of the Committee on the Professions  
Application for Restoration of Physician License

Re: **Michael J. Gianturco**

Michael J. Gianturco, REDACTED, petitioned for restoration of his physician license. The chronology of events is as follows:

- 09/26/56 Issued license number 078527 to practice medicine in New York State.
- 01/28/99 Charged with 46 specifications of professional misconduct by the Office of Professional Medical Conduct of the New York State Health Department.
- 01/04/00 Hearing Committee of the of the State Board for Professional Medical Conduct sustained 42 specifications of professional misconduct, revoked license, and assessed a \$10,000 fine.
- 10/23/01 License to practice medicine in the State of Florida revoked based on action taken in New York State.
- 06/10/08 Application submitted for restoration of physician license.
- 08/27/09 Peer Committee restoration review.
- 12/26/09 Report and recommendation of Peer Committee.
- 05/27/10 Committee on the Professions restoration review.
- 10/05/10 Report and recommendation of Committee on the Professions.

**Disciplinary History.** (See attached disciplinary documents.) On January 28, 1999, Dr. Gianturco was charged with 46 specifications of professional misconduct by the Office of Professional Medical Conduct (OPMC). On January 4, 2000, the hearing committee of the State Board for Professional Medical Conduct (BPMC) sustained 42 of the specifications of professional misconduct. The BPMC found Dr. Gianturco guilty of gross negligence, gross incompetence, negligence on more than one occasion, and incompetence on more than one occasion, based on his surgical and or post-surgical treatment of four patients. He was also found guilty of seven specifications of failing to

maintain records which accurately reflected the evaluation and treatment of the patient. He was further found to have performed six thrombectomies which he billed fraudulently as being thromboendarterectomies, which were more complicated and costly procedures, and was therefore found guilty of engaging in the fraudulent practice of medicine, engaging in conduct evidencing moral unfitness to practice medicine, and willfully filing false reports. Dr. Gianturco was also found to have performed eight carotid duplex scans which were not medically indicated, for which he was found guilty of performing excessive treatment. With regard to another patient, Dr. Gianturco was found to have made intentional misrepresentations about test results for the purpose of securing payment for the surgery performed, for which he was found guilty of fraud, moral unfitness, and the willful filing of a false report. The BPMC revoked Dr. Gianturco's license and ordered that he pay a fine in the amount of \$10,000.

On June 10, 2008, Dr. Gianturco submitted the instant application for restoration of his physician license.

**Recommendation of the Peer Committee.** (See attached Report of the Peer Committee.) The Peer Committee (Putnam, Colgan, Uva) convened on August 27, 2009. In its report, dated December 26, 2009, the Committee unanimously recommended that Dr. Gianturco's application for restoration be denied.

**Recommendation of the Committee on the Professions.** On May 27, 2010, the Committee on the Professions (COP) (De Mers, Cannell, Earle) met with Dr. Gianturco to consider his application for restoration. He was accompanied by Jennifer Scharf, his attorney.

#### *Applicant's Statements to the COP*

Dr. Gianturco was asked to explain his understanding of why his license had been revoked. He responded that he lost his license because he overbilled on thrombectomy procedures, which he had identified as another type of procedure, which was reimbursed at a higher rate. He was also found to have performed carotid scans in situations in which they were not indicated. He stated that there had also been problems with certain vascular surgeries that he performed. He explained that he had been practicing medicine in a community where few physicians were trained to perform vascular surgery, and he believes that he had not had enough training to handle the more difficult vascular surgery cases that he had taken on. The applicant told the Committee that it was appropriate that his license had been revoked.

Dr. Gianturco was then asked by the COP what he had been doing since he had lost his license. He responded that he had been doing a lot of reading, including the *Annals of Surgery* and publications of the American Board of Surgery. He stated that he has also taken medical courses, although he could not specify how many credit hours he had taken. He told the COP that there were very few courses for surgeons to take, except for hands-on courses. In addition to the coursework and reading he has done, he indicated that he reviewed the cases involved in his disciplinary proceedings as an additional learning experience. Dr. Gianturco stated that he hopes to have his license restored so that he can give back to his community by assisting in surgery.

In response to a question about what he has done to rehabilitate himself since the loss of his license, Dr. Gianturco stated that he paid the entire \$10,000 fine that had been assessed against him. He indicated that he had not performed volunteer work because his wife needs extra care and he is devoting more time to his family. He stated that he also acts as a chauffeur for his grandchildren frequently. Dr. Gianturco stated that he very much misses his work and dealing with his patients. He indicated that the loss of his license was a blow to his ego, noting that he used to be Chief of Surgery at a hospital in Buffalo. He told the Committee that nobody feels more remorse than a doctor who has lost his license.

When asked by the COP about his plans for the future should his license be returned to him, Dr. Gianturco stated that he did not want to return to the surgical practice he had previously. He told the Committee that he might perform physicals of patients if he were asked to do so. He also stated that he is very interested in acting as an assistant to surgeons in a hospital setting, noting that he would need his license as a physician in order to serve as a surgical assistant. He stated that he did not want to have a practice of his own because of the expense, but hoped that surgeons who asked him to assist would pay for his malpractice insurance and help him obtain hospital privileges. He stated that he does not want to do any billing. He noted that he felt that he could also volunteer at free clinics to provide medical services to the public.

The COP asked Dr. Gianturco his opinion of the Peer Committee's findings and recommendation. Dr. Gianturco stated he felt that the Peer Committee was harsh on him, and he told the COP that he disagreed with the Peer Committee report. He emphasized to the COP that he only wants his license back so that he can assist in surgery and give back to the community he loves. He also hopes to keep his mind sharp by keeping in close contact with the surgical community. Dr. Gianturco's attorney pointed out to the COP that his client would be amenable to getting his license restored subject to conditions or restrictions, such as additional continuing medical education courses or a requirement that he only work as an assistant under another physician.

Following his meeting with the COP, Dr. Gianturco's attorney submitted a letter dated June 18, 2010 on his behalf. In that letter, he reiterated many of the points made at the meeting with the COP and also represented that, if his license is restored, Dr. Gianturco would provide medical services only as a volunteer and does not wish to be paid. We have considered that letter in reaching our recommendation.

#### *COP Recommendation*

The overarching concern in all restoration cases is the protection of the public. New York Education Law §6511 gives the Board of Regents discretionary authority to make the final decision regarding applications for the restoration of a professional license. Section 24.7 of the Rules of the Board of Regents charges the COP with submitting a recommendation to the Board of Regents on restoration applications. Although not mandated by law or regulation, the Board of Regents has instituted a process whereby a Peer Committee first meets with an applicant for restoration and provides a recommendation to the COP. A former licensee petitioning for restoration has a significant burden of satisfying the Board of Regents that there is a compelling reason that licensure should be granted in the face of misconduct that resulted in the

loss of licensure. There must be clear and convincing evidence that the petitioner is fit to practice safely, that the misconduct will not recur, and that the root causes of the misconduct have been addressed and satisfactorily dealt with by the petitioner. It is not the role of the COP to merely accept, without question, the arguments presented by the petitioner, but to weigh and evaluate all of the evidence submitted and to render a determination based upon the entire record.

The COP concurs with the findings and recommendation made by the Peer Committee. As was indicated by the Peer Committee, Dr. Gianturco did not present proof of having undertaken significant re-education or rehabilitation, especially considering the fact that he lost his license to practice medicine over 10 years ago. His proof before the Peer Committee was that he had taken only 74.5 credit hours in continuing medical education, with proof of an additional 24 credits presented to the COP. He did no volunteer work and engaged in no other documented rehabilitation, other than the payment of the fine imposed in his disciplinary proceeding. The COP also found that Dr. Gianturco's expressed remorse appeared to be more about what had happened to him as a result of the loss of his license, as opposed to remorse concerning the patients who were affected by his misconduct. In sum, we agree with the Peer Committee that Dr. Gianturco did not present a compelling case that the health and safety of the public would be protected by the restoration of his medical license.

Finally, it appears that Dr. Gianturco is requesting the restoration of his license in order to enable him to serve as a surgical assistant. While restrictions may be placed on a license during probation, there is no provision of law that allows for such restrictions to continue beyond the probationary period. Accordingly, even if we believed that he could safely provide assistive services, we are unable to recommend the limited restoration he seeks. In this regard, we also note the testimony of his witnesses at the Peer Committee hearing, neither of whom supported the restoration of his license beyond authorizing him to act as an assistant in surgery.

Therefore, after a careful review of the record and its meeting with Dr. Gianturco, the Committee on the Professions votes unanimously to concur with the recommendation of the Peer Committee that Dr. Gianturco's application for restoration of his license to practice medicine in New York State be denied at this time.

Lawrence De Mers, Chair  
Jeffrey Cannell  
Steven Earle



# The University of the State of New York

NEW YORK STATE EDUCATION DEPARTMENT  
OFFICE OF PROFESSIONAL RESPONSIBILITY  
STATE BOARD FOR MEDICINE

-----X

In the Matter of the Application of

MICHAEL J. GIANTURCO

REPORT OF THE  
PEER COMMITTEE  
CAL. NO. 24644

for the restoration of his license to practice as a physician in the State of New York.

-----X

MICHAEL J. GIANTURCO, hereinafter known as applicant, was previously licensed to practice as a physician in the State of New York by the New York State Education Department. Applicant's license to practice medicine in the State of New York was revoked effective January 14, 2000 by an Order of a Hearing Committee of the State Board for Professional Medical Conduct.

Applicant has applied for restoration of his license.

### CHRONOLOGY OF EVENTS

- 09/26/56      Applicant issued license #078527 to practice medicine in the State of New York.
- 01/28/99      Applicant was charged with forty-six specifications of professional misconduct involving his medical care and treatment of thirteen patients.
- 01/04/2000    A Hearing Committee of the State Board for Professional Medical Conduct sustained forty-two specifications of professional misconduct. The specifications sustained included: gross

MICHAEL J. GIANTURCO (24644)

negligence, gross incompetence, negligence on more than one occasion, inadequate records, fraudulent practice, moral unfitness, willfully making or filing false reports and excessive testing. The Hearing Committee ordered that applicant's license to practice medicine in the State of New York be revoked and applicant be fined the sum of \$10,000.

01/14/2000 Effective date of Hearing Committee order.  
06/10/08 Applicant submitted application for restoration of medical license.  
08/27//09 Peer Committee restoration review completed.

BACKGROUND INFORMATION

The written application, supporting papers provided by applicant and papers resulting from the investigation conducted by the Office of Professional Discipline (OPD) have been compiled by the prosecutor from OPD into a packet that has been distributed to this Peer Committee in advance of its meeting and also provided to applicant.

DISCIPLINE PROCEEDING

BPMC ACTION:

On January 4, 2000 a Hearing Committee of the Board for Professional Medical Conduct revoked applicant's license to practice medicine in the State of New York and assessed a fine of \$10,000.

SPECIFICATION OF MISCONDUCT:

Applicant was found to have performed six thrombectomies which he billed fraudulently as thromboendarterectomies, admitted he was therefore overpaid for each procedure, and made

MICHAEL J. GIANTURCO (24644)

no effort to repay the overpayment. Upon each specification charged with regard to such mischaracterization applicant was found to have: engaged in the fraudulent practice of medicine, evidenced moral unfitness to practice medicine, and willfully made or filed a false report.

Applicant was found to have performed eight carotid duplex scans which were not medically indicated and were, therefore excessive.

In regard to the treatment of a patient identified as Patient A, the Hearing Committee found applicant's conduct demonstrated both gross negligence and gross incompetence noting, "...Respondent's conduct in this case verged on abandonment.".

Applicant's treatment of Patient B was found to be a gross deviation from accepted medical standards and the Hearing Committee found applicant's treatment to be both gross negligence and gross incompetence.

The Hearing Committee found applicant's care of Patient C demonstrated both gross negligence and gross incompetence.

In regard to applicant's medical treatment of Patient E, the Hearing Committee found applicant to have committed both gross negligence and gross incompetence.

Although the Hearing Committee found applicant's treatment of Patient F to be in accordance with accepted medical standards, the Committee found applicant made intentional

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misrepresentations of test results for the purpose of securing payment for the surgery performed. The Committee found applicant's misrepresentations to constitute fraud, moral unfitness and willful filing of false reports.

Based upon the foregoing findings, the Hearing Committee also found applicant guilty of negligence on more than one occasion, incompetence on more than one occasion, and failure to maintain accurate medical records.

OTHER STATES'S PROCEEDINGS

Applicant held a medical license in Florida. Based upon the New York discipline action, applicant's license was revoked by the Florida State Board of Medicine on October 23, 2001.

APPLICATION FOR RESTORATION

On June 10, 2008, applicant executed the State Education Department's standard form for applying for restoration of licensure. The application contained information and attachments as referred to, below:

Entries in the basic application form:

Continuing Professional Education: Applicant provided documentation that he had completed 52.5 hours of continuing medical education acquired by personal attendance at live courses. In addition, applicant stated that he regularly reads medical journals, engages in internet research, and engages in personal conversations with physicians who are in the active practice of surgery.

MICHAEL J. GIANTURCO (24644)

Professional Rehabilitation Activities: Applicant has undertaken "...significant soul searching".

Community Service : Applicant has not performed community service

Submissions of Affidavits:

Applicant submitted affidavits from five licensed physicians, each supporting restoration of applicant's license.

Additional attachments to the application:

Applicant attached a personal affidavit setting forth the cause and effect of his revocation, as well as, his plans if restoration is granted.

INVESTIGATIVE INFORMATION

The packet provided by OPD contains a report of the investigation that resulted from the filing of the application for restoration. That report contains no significant information beyond that provided by applicant and others which are already part of the file, other than the investigator's conversations with applicant and the physicians who provided affidavits in support of restoration.

Applicant told the investigator that he is remorseful for his prior "inappropriate behavior", wishes to resume the practice of medicine and has been offered a medical position at Sisters of Charity Hospital when his license is restored. The investigator contacted each of the five physicians who submitted affidavits supporting restoration of applicant's medical license. Each

MICHAEL J. GIANTURCO (24644)

physician supported restoration, most noting that applicant's revocation was based upon "improper billing practices" and was "not related to his surgical skills". Each also stated that it was his understanding the applicant intended to provide medical services to "indigent" patients in "underserved areas".

PEER COMMITTEE MEETING

On August 27, 2009, this Peer Committee met to consider this matter. Applicant appeared before us personally and was represented by his attorney, Jennifer R. Scharf, Esq. of counsel to Connors & Vilardo, LLP.

Also present was Catherine M. Wagner, Esq., an attorney from the Division of Prosecutions, OPD.

Applicant testified in support of his application for restoration. Applicant stated he is very remorseful about the circumstances which led to his license revocation. He describes the revocation as "...a terrible thing that has occurred in my life, and the person who suffers the most is not only the patients that I took care of, but me."

Applicant testified and presented documentary evidence of the continuing profession education courses which he has taken totaling 74.5 hours. He testified that he has also taken courses on the internet but has not received credit for those courses because, "I have enough credits. I don't have to pay for the credits."

MICHAEL J. GIANTURCO (24644)

Applicant testified that his rehabilitation activities consisted of reviewing the cases involved in the disciplinary proceeding and viewing those cases as a learning opportunity.

In the event his medical license is restored, it is the applicant's intention to offer his services to other surgeons in the community as a surgical assistant. Applicant would seek no pay for his services, but would seek to have his malpractice insurance premiums paid by those he would assist. Applicant, and the two physicians who testified before the Peer Committee on his behalf, described a lack of surgeons in the Buffalo area willing to assist in surgical procedures. Applicant, and his witnesses, testified that applicant could perform a service to the local medical community by voluntarily acting as assistant to the treating surgeon.

Applicant presented the testimony of two licensed physicians, both of whom are board certified surgeons. Each physician supported applicant's plan to act as assistant surgeon to head surgeons during procedures. Each did, however, qualify his endorsement when asked if he would support the applicant practicing as head surgeon or maintaining a medical practice. Each physician limited his support of restoration to a situation where applicant's sole responsibility would be to act as an assistant to a head surgeon. One of applicant's witnesses clarified that the role as assistant to a head surgeon is sometimes filled by a nurse or a physician's assistant.

MICHAEL J. GIANTURCO (24644)

Ms. Wagner, on behalf of OPD, took no position as to whether the application should be granted. The Office of Professional Medical Conduct filed no position letter in this matter.

RECOMMENDATION

We have reviewed the entire record in this matter, including the written materials received before our meeting. In arriving at our recommendation, we note that, in a licensure restoration proceeding, the burden is on applicant to demonstrate that which would compel the return of the license. Greenberg v. Board of Regents of University of New York, 176 A.D. 2d, 1168, 575 N.Y.S. 2d 608, 609. In reaching our recommendation, we consider whether applicant demonstrates sufficient remorse, rehabilitation and reeducation. However, we are not necessarily limited to such formulaic criteria but may consider other factors, particularly the seriousness of the original offense and, ultimately, our judgment as to whether the health and safety of the public would be in jeopardy should the application be granted. It is the province of the Committee to determine the credibility and weight to be assigned the testimony presented and determine whether applicant has met his burden of presenting evidence sufficient to support a finding of compelling reasons for restoration.

This Committee finds that applicant has failed to meet his burden of proving compelling reasons for restoration of his license to practice medicine.

MICHAEL J. GIANTURCO (24644)

As noted above, this Committee has the obligation to review the evidence and testimony presented before us and determine the weight and sufficiency of that evidence. A major factor in our deliberations is an assessment of the credibility of the witnesses who testify before us. The Committee has carefully observed applicant's manner and demeanor and we, for the most part, find applicant's testimony credible.

We observe applicant's position to have evolved from a plan to practice as a physician treating indigent patients in underserved areas to acting solely as an assistant to a surgeon. Each of applicant's witnesses made it very clear in his respective testimony that he was not supporting a restoration of applicant's license to practice medicine without limitation. One of those witnesses, Dr. Vasquez, stated in a letter of October 16, 2008 that applicant had told Dr. Vasquez that the misconduct which resulted in the revocation of applicant's license involved "medical billing concerns" and was not related to his "surgical judgment or skills". Each of the physicians supporting restoration of applicant's license made virtually the same representation by letter, affidavit or telephone. Despite applicant's representations that the revocation of his license was not related to his "surgical judgment or skills", a simple review of the Hearing Panel decision shows otherwise. We note that the physicians testifying before this Committee did not

MICHAEL J. GIANTURCO (24644)

unconditionally recommend applicant's return to the practice of medicine.

Applicant's history reveals that he was warned about his billing practices and he was restricted from performing vascular surgery at Sister's Hospital. Despite these very clear warnings of his deficiencies, applicant subsequently lost his license for acts of professional misconduct involving these very same areas. We question whether applicant is able to change his behavior in response to such warnings and whether, if his license is restored, will limit his practice to assisting in surgery.

We do not believe applicant's plan to assist in surgery for no fee other than payment of his malpractice premium is realistic. He has not shown the source of funds for such a payment nor has he shown how the expense could be allocated. The physicians who testified on applicant's behalf made no mention of payment for applicant's malpractice premiums. We have concerns that applicant, when faced with his plan being frustrated, will simply decide to practice in some other way. His own witnesses made it clear that they did not endorse his re-entry into practice.

While we find that applicant's remorse is real, this Committee does not find that applicant has undertaken any significant reeducation or rehabilitation. Applicant's continuing professional education was not even begun until 2006 and does not focus on the education he would need to return to practice. He describes his efforts at rehabilitation as little more than self-

MICHAEL J. GIANTURCO (24644)

reflection on his errors. We cannot find that such self examination is sufficient in itself to meet applicant's burden of proof.

Our ultimate duty to the public requires that we recommend denial of this application in order that public health and safety not be put at risk.

It is the unanimous recommendation of this Peer Committee that the application before us be denied.

Respectfully submitted:

Theodore Putnam, M.D., Chairperson

Ronald Uva, M.D.

Margaret Colgan, M.D.

REDACTED

Chairperson

Dated

**DH** STATE OF NEW YORK  
DEPARTMENT OF HEALTH

433 River Street, Suite 303 Troy, New York 12180-2299

Richard F. Daines, M.D.  
Commissioner

Wendy E. Saunders  
Chief of Staff

**OPMC CASE:**

**CERTIFICATION:**

I, Julie LaPine

Certify that these are complete, true and exact copies/originals of the

Determination and Order

of

Michael J. Gianturco, M.D

kept on file during the regular course of business and were  
made at the time of such event as recorded or written.

SIGNED: REDACTED

TITLE: Investigative Aide

FACILITY: PMP

DATE: 10/29/08

CONNORS & VILARDO, LLP

LAW OFFICES

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TERRENCE M. CONNORS  
LAWRENCE J. VILARDO  
RANDALL D. WHITE\*  
JOHN T. LOSS  
VINCENT E. DOYLE III  
MICHAEL J. ROACH  
LAWLOR F. QUINLAN III  
JAMES W. GRABLE, JR.  
AMY C. MARTOCHE  
JOSEPH D. MORATH, JR.  
JENNIFER R. SCHARP†  
MEGHAN M. BROWN  
ERIC M. SOHNLEIN

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OCT 0 2010

ASSOCIATE COMMISSIONER  
Office of the Professions

September 27, 2010

SUSAN B. FISCHER, R.N.  
CURTIS J. AHRENS, JR.  
LYNN M. BOCHENEK  
JOHN P. KROMER  
NANCY PELHAM, R.N.  
MARY E. RECHIN, R.N.  
PARALEGALS

\*ALSO ADMITTED IN DISTRICT OF COLUMBIA  
†ALSO ADMITTED IN CALIFORNIA

Seth Rockmuller, Esq.  
New York State Education Department  
Office of the Professions  
89 Washington Avenue  
Second Floor, West Wing  
Albany, New York 12234

Re: Michael J. Gianturco, M.D.

Dear Mr. Rockmuller:

We would like to take this opportunity to address the concerns raised in the Committee's Recommendation. First and foremost, as evidenced by his selfless desire to resume the practice of medicine, Dr. Gianturco is remorseful for the conduct that led to his license revocation and intent on making amends by utilizing his skills for the benefit of our community. Based on the Recommendation, it appears that the Committee's concerns fall into three categories: re-education and rehabilitation, remorse, and how to impose conditions on Dr. Gianturco's practice after the probationary period.

First, in terms of Dr. Gianturco's re-education, in the past several years, Dr. Gianturco has obtained scores of continuing medical education credits. Certificates from this courses were submitted with his restoration application, to the Peer Committee, and supplemented at the interview with the Committee on the Professions. In the years following Dr. Gianturco's license revocation, he experienced personal family struggles relating to illness and death of loved ones. For those reasons, much of his time that would otherwise have been devoted to education was devoted to caring for his family. As Dr. Gianturco testified, however,

Seth Rockmuller, Esq.

September 27, 2010

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he continuously read medical journals and periodicals, and, when his family situation permitted, continuing medical education. Regardless of whether his license is restored, Dr. Gianturco intends to participate in additional continuing medical education courses to satisfy his own intellectual curiosity and dedication to continued learning about medicine and developments in the field.

In terms of rehabilitation, Dr. Gianturco explained that his rehabilitation has consisted of reflection upon the circumstances that led to his revocation. The Committee's Recommendation notes that Dr. Gianturco spoke about remorse by describing how the revocation affected him, rather than his remorse about his patients. But in that answer, Dr. Gianturco was describing introspection that is the *sine qua non* of remorse. As the Recommendation correctly states, Dr. Gianturco testified that he believes the punishment of license revocation was appropriate. Dr. Gianturco felt the effects of punishment on a daily basis, on a personal, financial, and professional level. He acknowledged that the board imposed a fitting punishment for the pain he caused the patients that were subjects of the original investigation. As you probably could tell from his interview, Dr. Gianturco is not prone to demonstrating emotion. He is from a generation where such a reaction simply was not a social norm. That does not, however, mean that he lacks remorse. Indeed, his desire to return to medicine is solely in the capacity of providing free services with no personal financial benefit. The benefit Dr. Gianturco would derive, and the reason he seeks restoration, is atonement and a desire to again serve his community. Simply put, there is no clearer demonstration of his rehabilitation or remorse.

Finally, the Recommendation also notes a concern that any restrictions imposed during a probationary period could not be enforced after the probationary period. Dr. Gianturco repeatedly has stated that his desire only is to work under the supervision of another physician, and in the limited capacity as an assistant. The Chief of Surgery at any hospital and the credentialing committee of the hospital would be required authorize Dr. Gianturco to be present in any operating room – regardless of the terms of his probation. Combined with Dr. Gianturco's unequivocal statements that he has no intention of any other sort of practice, the fact that any hospital where he volunteered would supervise Dr. Gianturco is added assurance to the Board of Regents. Finally, as the Administrative Law Judge noted at the Peer Committee, a probationary period can last as long as five years. Under the circumstances of this case, given Dr. Gianturco's age, combined with his desire to practice, and supervision in the hospital, there should be no doubt that Dr. Gianturco's practice would be limited in any way the Board of Regents sees fit for any time he practices medicine.

Seth Rockmuller, Esq.

September 27, 2010

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The overarching concern in restoration is protection of the public. As these proceedings make clear, Dr. Gianturco poses no threat to the public. The manner in which he would re-enter practice is supervised and limited. And his desire for re-entry is to serve the public, to give back to the community that allowed him to practice the craft he loved years ago. If the goals of restoration are to be achieved here – and the public served – Dr. Gianturco's license should be restored. For this reason, we ask that you reconsider your decision and permit Dr. Gianturco to return to practice as proposed above.

As always, please do not hesitate to contact me if you have any questions or require any additional information.

Very truly yours,

REDACTED

Jennifer R. Scharf

cc: Michael J. Gianturo, M.D.