



STATE OF NEW YORK  
DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

Mark R. Chassin, M.D., M.P.P., M.P.H.  
Commissioner

Paula Wilson  
Executive Deputy Commissioner

September 22, 1993

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Gerard J. Hilaire, M.D.  
4 Reeve Road  
Rockville Center, NY 11570

Daniel Guenzburger, Esq.  
NYS Department of Health  
5 Penn Plaza - 6th Floor  
New York, NY 10001-1803

E. Michael Rosenstock, Esq.  
Sawyer, Davis, Halpern & Rosenstock  
200 Garden City Plaza, Suite 300  
Garden City, NY 11530

**RE: In the Matter of Gerard J. Hilaire, M.D.**

Dear Mr. Guenzburger, Mr. Rosenstock and Dr. Hilaire:

Enclosed please find the Determination and Order (No. BPMC-93-146) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified mail or in person** to:

New York State Department of Health  
Office of Professional Medical Conduct  
Corning Tower - Fourth Floor (Room 438)  
Empire State Plaza  
Albany, New York 12237

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

As prescribed by the New York State Public Health Law, §230, subdivision 10, paragraph (p), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "(t)he determination of a committee on professional medical conduct may be reviewed by the administrative review board for professional medical conduct." Either the licensee or the Department may seek a review of a committee determination.

Request for review of the Committee's determination by the Administrative Review Board stays all action until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

All notices of review must be served, by **certified mail**, upon the Administrative Review Board **and** the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

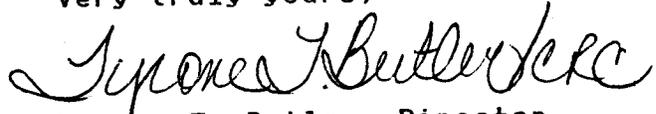
The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge  
New York State Department of Health  
Bureau of Adjudication  
Corning Tower -Room 2503  
Empire State Plaza  
Albany, New York 12237-0030

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the  
Administrative Review Board's Determination and Order.

Very truly yours,

A handwritten signature in cursive script that reads "Tyrone T. Butler". The signature is written in dark ink and is positioned above the typed name.

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:crc  
Enclosure

STATE OF NEW YORK : DEPARTMENT OF HEALTH  
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

-----X  
IN THE MATTER : DETERMINATION  
OF :  
GERARD J. HILAIRE, M.D. : ORDER  
-----X

BPMC ORDER NO. 93-146

A Notice of Hearing and Statement of Charges, both dated May 28, 1993, were served upon the Respondent, Gerard J. Hilaire, M.D. **SHARON C. H. MEAD, M.D. (Chair), STEPHEN W. HORNYAK, M.D., and LOIS A. JORDAN,** duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. **LARRY G. STORCH, ADMINISTRATIVE LAW JUDGE,** served as the Administrative Officer. A hearing was held on July 21, 1993. The Department of Health appeared by Daniel Guenzburger, Esq., Assistant Counsel. The Respondent appeared by Sawyer, Davis, Halpern & Rosenstock, E. Michael Rosenstock, Esq., of Counsel. Evidence was received and witnesses sworn and heard and transcripts of these proceedings were made.

After consideration of the entire record, the Hearing Committee issues this Determination and Order.

**STATEMENT OF CASE**

This case was brought pursuant to Public Health Law Section 230(10)(p). The statute provides for an expedited hearing where a licensee is charged solely with a violation of Education Law

Section 6530(9). In such cases, a licensee is charged with misconduct based upon a prior criminal conviction in New York or another jurisdiction, or upon a prior administrative adjudication regarding conduct which would amount to professional misconduct, if committed in New York. The scope of an expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

In the instant case, Respondent is charged with professional misconduct pursuant to Education Law Section 6530(9)(a)(ii). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order in Appendix I.

#### **FINDINGS OF FACT**

The following Findings of Fact were made after a review of the entire record in this matter. Numbers in parentheses refer to transcript page numbers or exhibits. These citations represent evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence.

1. Gerard J. Hilaire, M.D. (hereinafter "Respondent"), was authorized to practice medicine in New York State on December 7, 1973 by the issuance of license number 118615 by the New York State Education Department. Respondent is currently registered with the New York State Education Department to practice medicine for the

period January 1, 1993 through December 31, 1994 at 4 Reeve Road, Rockville Center, New York 11570. (Pet. Ex. #2).

2. On or about November 6, 1990, in the United States District Court, Eastern District of New York, Respondent was convicted after a jury trial of seven counts of violating 42 U.S.C. Section 1320a-7(b)(b)(1)(B), in that he knowingly and willfully received remuneration in return for ordering, or arranging for the ordering of an item for which payment may be made under the Medicaid or Medicare programs. (Pet. Ex. #4 and #6).

3. Respondent was convicted for knowingly and willfully soliciting and receiving cash payments on seven occasions between September 20, 1988 and November 10, 1989 from the owner of a company which sold and rented medical equipment, in return for which he ordered and arranged for the ordering of medical equipment for home use by patients covered by the Medicaid and Medicare programs. Respondent received cash payments totalling \$2,230.00 from the owner of the medical equipment company. (Pet. Ex. #3, #4, and #6).

4. On or about November 16, 1990, Respondent was sentenced to one month home confinement and a two year period of probation. (Pet. Ex. #5 and #6).

5. While on probation, Respondent undertook an additional six months of residency training, without pay, at Brooklyn Caledonia Hospital. He became board-certified in internal medicine in 1991. (29-30).

6. Respondent is currently practicing medicine as an employee of the New York City Health Department Tuberculosis Bureau. (30).

#### **CONCLUSIONS OF LAW**

The following conclusions were made pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee unless noted otherwise.

The Hearing Committee concluded that the Department had met its burden of proof. The preponderance of the evidence demonstrates that Respondent was convicted, following a jury trial in the United States District Court, Eastern District of New York, of seven counts of violating 42 U.S.C. Section 1230a-7(b)(b)(1)(B), in that he knowingly and willfully received remuneration in return for ordering, or arranging for the ordering of an item for which payment may be made under the Medicaid or Medicare programs. This crime constitutes a felony under Federal Law. As a result, the Hearing Committee voted to sustain the specification of professional misconduct contained in the Statement of Charges.

#### **DETERMINATION AS TO PENALTY**

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that Respondent should receive no additional penalty in satisfaction of the charge brought against him. This determination was reached

upon due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

Respondent was convicted of receiving approximately \$2,230.00 in kickbacks in return for ordering respiratory therapy equipment for his patients from a particular supplier. The Department recommended a sanction of a one-year stayed suspension combined with a requirement that Respondent perform fifty hours of community service.

Although the total amount of kickbacks received was relatively small, the Hearing Committee considers the crime to be serious. However, there was no allegation that any of the equipment prescribed or ordered by Respondent was not medically indicated for the patients. Further, the Committee concluded that Respondent is unlikely to make the same mistake again.

The Committee had the opportunity to observe Respondent's demeanor at the Hearing. The Committee believes that he is sincerely remorseful concerning his past misconduct. Respondent stated that "It was wrong. I was being naive...but I profoundly regret it...." (Tr., p. 26). In addition to successfully serving his term of probation, Respondent suffered economically as a result of his criminal conviction. "Economically, I have been destroyed...I lost my house, my car and had to take my daughter off

college. There were times when I wasn't able to feed my own family...." (Tr., pp. 28-29).

However, the record established that Respondent also took steps to rehabilitate himself professionally. He undertook six additional months of residency training in internal medicine, without pay, while still on probation. He then became board-certified in internal medicine in 1991. Respondent ultimately found employment as a physician for the New York City Health Department's Tuberculosis Bureau.

The Hearing Committee determined that Respondent's six month unpaid residency is more than equivalent to any term of community service which it might impose. The Committee further determined that a period of suspension was unnecessary to protect the public, nor as further punishment for Respondent. Consequently, the Hearing Committee determined that no additional sanction was warranted at this time.

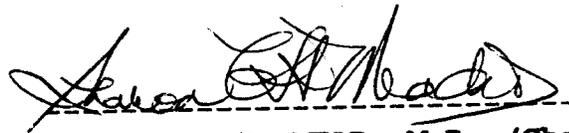
**ORDER**

Based upon the foregoing, **IT IS HEREBY ORDERED THAT:**

1. The Specification of Professional Misconduct contained within the Statement of Charges (Petitioner's Exhibit #1) is **SUSTAINED;**

2. No additional sanction is imposed upon Respondent in satisfaction of the charges.

DATED: Albany, New York  
*15 September*, 1993



**SHARON C. H. MEAD, M.D. (Chair)**

STEPHEN W. HORNYAK, M.D.  
LOIS A. JORDAN

TO: Daniel Guenzburger, Esq.  
New York State Department of Health  
5 Penn Plaza - 6th Floor  
New York, New York 10001-1803

E. Michael Rosenstock, Esq.  
Sawyer, Davis, Halpern & Rosenstock  
200 Garden City Plaza, Suite 300  
Garden City, New York 11530

Gerard J. Hilaire, M.D.  
4 Reeve Road  
Rockville Center, New York 11570

**APPENDIX I**

STATE OF NEW YORK : DEPARTMENT OF HEALTH  
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

-----X  
: IN THE MATTER :  
: OF :  
: <sup>R</sup> GERALD J. HILAIRE, M.D. :  
: :  
-----X

NOTICE OF  
REFERRAL  
PROCEEDING

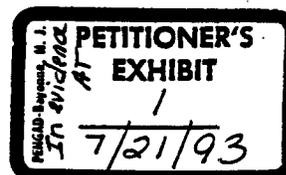
*amended by ALJ  
7/1/93-398*

TO: GERALD J. HILAIRE, M.D.  
4 Reeve Road  
Rockville Center, New York 11570

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230(10)(p) (McKinney Supp. 1993) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1993). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 23rd day of June, 1993 at 3:00 o'clock in the afternoon of that day at 5 Penn Plaza, 6th Floor, New York, New York 10001.

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the proceeding will be made and the witnesses at the proceeding will be sworn and examined.



You may appear in person at the proceeding and may be represented by counsel. You may produce evidence or sworn testimony on your behalf. Such evidence or sworn testimony shall be strictly limited to evidence and testimony relating to the nature and severity of the penalty to be imposed upon the licensee. Where the charges are based on the conviction of state law crimes in other jurisdictions, evidence may be offered which would show that the conviction would not be a crime in New York State. The Committee also may limit the number of witnesses whose testimony will be received, as well as the length of time any witness will be permitted to testify.

If you intend to present sworn testimony, the number of witnesses and an estimate of the time necessary for their direct examination must be submitted to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Corning Tower Building, 25th Floor, Empire State Plaza, Albany, New York 12237, ATTENTION: NANCY MASSARONI, (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before June 14, 1993.

You may file a written answer, brief, and affidavits with the Committee. Six copies of all papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before June 14, 1993. and a copy of all papers must be served on the same date on the Department of

Health attorney indicated below. Pursuant to Section 301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide at no charge a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person.

The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five days prior to the scheduled date of the proceeding. Adjournment requests are not routinely granted. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation. Failure to obtain an attorney within a reasonable period of time prior to the proceeding will not be grounds for an adjournment.

The Committee will make a written report of its findings, conclusions as to guilt, and a determination. Such determination may be reviewed by the administrative review board for professional medical conduct.

SINCE THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT SUSPENDS OR REVOKES YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE AND/OR IMPOSES A FINE FOR EACH OFFENSE CHARGED,

YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT  
YOU IN THIS MATTER.

DATED: New York, New York  
June 1993  
*May 28'*

*Chris Stern Hyman, Deputy Counsel for*

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CHRIS STERN HYMAN  
Counsel  
Bureau of Professional  
Medical Conduct

Inquiries should be addressed to:

Daniel Guenzburger  
Assistant Counsel  
212-613-2617

STATE OF NEW YORK : DEPARTMENT OF HEALTH  
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

-----X  
IN THE MATTER : STATEMENT  
OF : OF  
<sup>R</sup>  
GERAZD J. HILAIRE, M.D. : CHARGES  
-----X

amended by ALI  
7/20/93 898

898 <sup>R</sup>GERAZD J. HILAIRE, M.D., the Respondent, was authorized to practice medicine in New York State on December 7, 1973 by the issuance of license number 118615 by the New York State Education Department. The Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1993 through December 31, 1994 at 4 Reeve Road, Rockville Center, New York 11570.

SPECIFICATION

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law Section 6530(9)(a)(ii) in that he was convicted of an act constituting a crime under federal law, specifically:

On or about November 6, 1990, in the United States District Court, Eastern District of New York, the Respondent was convicted after a jury trial of seven counts of violating 42 U.S.C.

amended by  
Ret. t. over 7/21/93  
JES

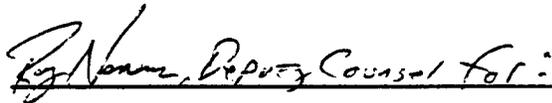
Section 1320a-7<sup>(b)</sup>(1)(B), in that he knowingly  
and willfully received remuneration, a  
kickback, in return for ordering, or arranging  
for the ordering of an item for which payment  
may be made under the Medicaid or Medicare  
programs. A violation of 42 U.S.C.  
1320a-7<sup>(b)</sup>(1)(B) is a felony.

amended by  
Ret. t. over 7/21/93  
JES

The Respondent was convicted for knowingly and  
willfully soliciting and receiving cash  
payments on seven occasions between September  
20, 1988 and November 10, 1989 from the owner of  
a company which sold and rented medical  
equipment, in return for which he ordered and  
arranged for the ordering of medical equipment  
for home use by patients receiving Medicaid and  
Medicare. The Respondent received cash  
payments of \$2,230.00 from the owner of the  
medical equipment company.

On or about November 16, 1990, the Respondent was sentenced to one month home confinement and two years probation.

DATED: New York, New York  
~~June~~ 29, 1993  
May 29

  
\_\_\_\_\_  
Chris Stern Hyman, Deputy Counsel for:

CHRIS STERN HYMAN  
Counsel  
Bureau of Professional Medical  
Conduct