



STATE OF NEW YORK  
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Antonia C. Novello, M.D., M.P.H., Dr.P.H.  
Commissioner

Dennis P. Whalen  
Executive Deputy Commissioner

June 14, 2002

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Robert Bogan, Esq.  
& Robert Maher, Esq.  
NYS Department of Health  
Hedley Park Place – 4<sup>th</sup> Floor  
Troy, New York 12180

Gary Gilyard, M.D.  
4609 Ravine Drive  
Bloomfield Hills, Michigan 48301

Gary Gilyard, M.D.  
28800 Ryan Road  
Warren, Michigan 48092

**RE: In the Matter of Gary Gilyard, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 02-197) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the 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.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "the 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.

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.

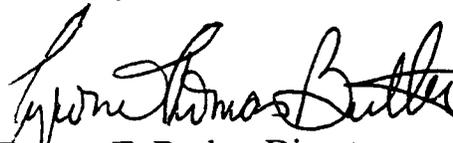
The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge  
New York State Department of Health  
Bureau of Adjudication  
Hedley Park Place  
433 River Street, Fifth Floor  
Troy, New York 12180

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.

Sincerely,



Tyone T. Butler, Director  
Bureau of Adjudication

TTB:cah  
Enclosure

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

IN THE MATTER  
OF  
**GARY GILYARD, M.D.**

DETERMINATION

AND

ORDER

BPMC #02-197

**COPY**

A Notice of Referral Proceeding and Statement of Charges, both dated March 28, 2002, were served upon the Respondent, **GARY GILYARD, M.D.** **FRED LEVINSON, M.D.**, Chairperson, **ERNST A. KOPP, M.D.** and **MR. JOHN D. TORRANT**, 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. **STEPHEN L. FRY, ESQ.**, Administrative Law Judge, served as the Administrative Officer.

A hearing was held on May 23, 2002, at the Offices of the New York State Department of Health, Hedley Park Place, 433 River Street, Troy, New York. The Department appeared by **DONALD P. BERENS, JR., ESQ.**, General Counsel, by **PAUL ROBERT MAHER, ESQ.** and **ROBERT BOGAN, ESQ.**, of Counsel. The Respondent did not appear at the hearing.

Evidence was received 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, the Respondent is charged with professional misconduct pursuant to Education Law Sections 6530(9)(b) and (d), based upon actions constituting violations of subdivisions (3), (5), and (26). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order as Appendix 1.

### WITNESSES

For the Petitioner: None

For the Respondent: None

### FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers below in parentheses refer to exhibits, denoted by the prefix "Ex.". These citations refer to 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. All Hearing Committee findings were unanimous unless otherwise specified.

1. **GARY GILYARD, M.D.**, the Respondent, was authorized to practice medicine in New York State on June 29, 1989, by the issuance of license number 178534 by the New York State Education Department (Ex. 4).
  
2. On October 17, 2001, the State of Michigan, Department of Consumer & Industry Services, Bureau of Health Services, Board of Medicine, Disciplinary Subcommittee (hereinafter "Michigan Board"), by a Consent Order (hereinafter "Michigan Order"), reprimanded Respondent and fined him \$1,000.00, based upon findings of negligence and, as defined under Michigan law, incompetence. By signing the stipulation, Respondent agreed that, although not admitting to the truth of allegations in the Administrative Complaint which led to the proceeding, the allegations could be treated as true for the purposes of resolution of the complaint. The allegations in the complaint related to Respondent's performance of wrong-ankle arthroscopic surgery and errors made in the handling of a serious leg fracture case (Ex. 5).

### **HEARING COMMITTEE CONCLUSIONS**

The hearing Committee concludes that the conduct resulting in the Michigan Board's disciplinary actions against Respondent would constitute misconduct under the laws of New York State, pursuant to New York Education Law §6530(b) and (d), and that these findings were tantamount to findings of the following definitions of misconduct under New York law:

- New York Education Law §6530(3) (negligence on more than one occasion);

- New York Education Law §6530(26) (performing services which have not been authorized by the patient or the patient's legal representative);

The Hearing Committee concludes that Respondent's conduct did not constitute incompetence, as that term is used in New York State.

## **VOTE OF THE HEARING COMMITTEE**

### **SPECIFICATIONS**

#### **FIRST SPECIFICATION**

Respondent violated New York Education Law §6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state.

**VOTE: SUSTAINED (3-0)**

#### **SECOND SPECIFICATION**

Respondent violated New York Education Law §6530(9)(d) by having had disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action would, if committed in New York state, constitute professional misconduct under the laws of New York state.

**VOTE: SUSTAINED (3-0)**

### **HEARING COMMITTEE DETERMINATION**

The record in this case indicates that On October 17, 2001, the Michigan Board, by issuance of the Michigan Order, reprimanded Respondent and fined him \$1,000.00, based

upon findings of negligence and, as defined under Michigan law, incompetence. The allegations in the complaint related to Respondent's performance of wrong-angle arthroscopic surgery and errors made in the handling of a serious leg fracture case.

The Hearing Committee determines that the conduct described in the Michigan Order would have constituted negligence on more than one occasion and the performance of unauthorized services had it been committed in New York State. The Hearing Committee concludes, however, that the findings of "incompetence" in the Michigan Order are not tantamount to findings of misconduct in New York State.

The term "incompetence" is defined, according to Michigan law, as cited in the Michigan Order, as "a departure from, or failure to conform to, minimal standards of acceptable and prevailing practice for the health profession whether or not actual injury to an individual occurs". The Hearing Committee concludes that this definition is closer to the definition of "negligence" applied in New York professional misconduct proceedings than it is to the definition of "incompetence". The term "incompetence", as applicable in New York proceedings, is understood by the hearing committee to mean 'failure to possess the requisite skill or knowledge necessary to practice medicine'. The Hearing Committee concludes that the Respondent's conduct, as described in the complaint, does not evince a lack of knowledge or skill, but does evince a failure to exercise due care and to conform to minimally accepted medical standards.

It is noted that Respondent, despite being personally served with the Notice of hearing, Statement of Charges and copy of the Health Department Hearing Rules (Ex. 2), did not appear at the hearing. Furthermore, in the Notice of Hearing, Respondent was specifically advised that he had to file an answer to each of the charges and allegations therein no later than 10 days prior to the hearing, or the charges and allegations would be

deemed admitted, pursuant to Public Health Law §230(10)(p). Respondent did not file an answer and did not appear at the hearing.

Accordingly, and since no evidence in mitigation was presented by Respondent, the Hearing Committee imposes the penalty that it feels is appropriate under the circumstances. That penalty is a one-year suspension of Respondent's license, and a three-year period of probation, to be imposed should Respondent return to New York State to practice in the future. The details of Respondent's probation are set forth in the attached Order.

### ORDER

#### IT IS HEREBY ORDERED THAT:

1. The medical license of **GARY GILYARD, M.D.** is hereby **SUSPENDED** for a period of **ONE (1) YEAR**.
2. Respondent is hereby placed on **PROBATION** for a period of **THREE (3) YEARS**, to commence when and if Respondent returns to New York State to practice medicine.
3. The terms of Respondent's probation are as follows:
  - A). If and when the Respondent chooses to resume practice in New York, he must provide thirty (30) days prior written notice concerning his intention to the New York State Office of Professional Medical Conduct ("OPMC"). This notice should be sent by registered or certified mail, return receipt requested, to the Board, addressed to the Director, Office of Professional Medical Conduct, Hedley Park Place, 433 River Street - Fourth Floor, Troy, New York 12180-2299. Said notice is to include a full description of any employment and practice since the date of this hearing, as well as a listing of professional and residential addresses and telephone numbers within or without New York State. The notification must also list any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility since the date of this hearing.

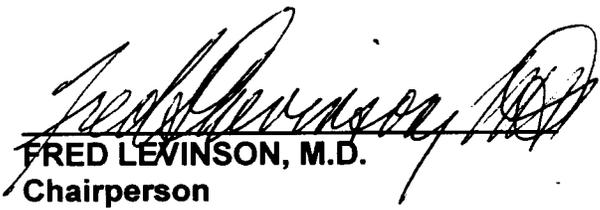
- B). Respondent shall notify in writing any a group, clinic or medical facility with whom he becomes affiliated or at which he practices during the effective period of this probation, of the contents of this order and terms of probation, and provide a copy of any such notification to OPMC.
- C). OPMC may, at its discretion, take any and all steps necessary to monitor Respondent's status, condition or professional performance. Respondent must cooperate in providing releases permitting unrestricted access to records and other information, to the extent permitted by law, from any employer, medical facility or institution with which he is affiliated or at which he practices; any treatment facility, treating practitioner, support group or other individual/facility involved in the education, treatment, monitoring or oversight of Respondent, or maintained by a rehabilitation program for impaired physicians. Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of his compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.
- D). Respondent shall submit written descriptive notification to OPMC at the address listed above, of any changes in employment and practice, professional and residential addresses or telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility during the probationary period, within 30 days of each event;
- E). Respondent shall notify the Director of OPMC, in writing, if he ceases to be engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. Respondent shall again notify the Director prior to any change in that status.
- F). Respondent shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his profession. Respondent shall maintain legible and complete medical records that accurately reflect the evaluation and treatment of patients.
- G). Respondent shall comply with all terms, conditions, and restrictions to which he is subject pursuant to the Order and shall assume and bear all costs related to compliance.
- H). If there is full compliance with every term and condition set forth herein, Respondent may practice as a physician in New York State; provided, however, that on receipt of evidence of non-compliance or any other violation of the term(s) and condition(s) of probation, a violation of probation proceeding and/or such other proceeding as may be warranted, may be initiated against Respondent pursuant to New York Public Health Law Sections 230 or any other applicable laws.

- l). OPMC may, in its discretion, and upon request by Respondent, relieve him of any uncompleted term of his probation, or any individual provision(s) thereof, if it is satisfied that such relief would not be contrary to the best interests of New York State residents.

The **ORDER** shall be effective upon service on the Respondent or the Respondent's attorney by personal service or by certified or registered mail.

**DATED: Middletown, New York**

*June 12* 2002

  
**FRED LEVINSON, M.D.**  
Chairperson

**ERNST A. KOPP, M.D.**  
**MR. JOHN D. TORRANT**

# APPENDIX 1

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

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**IN THE MATTER**  
  
**OF**  
  
**GARY GILYARD, M.D.**  
**CO-01-12-6178-A**

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**NOTICE OF**  
  
**REFERRAL**  
  
**PROCEEDING**

**TO:**    GARY GILYARD, M.D.  
          4609 Ravine Drive  
          Bloomfield Hills, MI 48301

GARY GILYARD, M.D.  
28800 Ryan Road  
Warren, MI 48092

**PLEASE TAKE NOTICE THAT:**

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law § 230(10)(p) and N.Y. State Admin. Proc. Act Sections 301-307 and 401. The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 23<sup>rd</sup> day of May 2002, at 10:00 in the forenoon of that day at the Hedley Park Place, 5<sup>th</sup> Floor, 433 River Street, Troy, New York 12180.

At the proceeding, evidence will be received concerning the allegations set forth in the attached Statement of Charges. 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 that 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, Hedley Park Place, 5<sup>th</sup> Floor, 433 River Street, Troy, New York, ATTENTION: HON.

TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (hereinafter "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before May 3, 2002.

Pursuant to the provisions of N.Y. Public Health Law §230(10)(p), you shall file a written answer to each of the Charges and Allegations in the Statement of Charges no later than ten days prior to the hearing. Any Charge of Allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such an answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below. You may file a brief and affidavits with the Committee. Six copies of all such papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before May 3, 2002, 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 the 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: Albany, New York  
*March 28*, 2002

  
PETER D. VAN BUREN  
Deputy Counsel  
Bureau of Professional Medical Conduct

Inquiries should be addressed to:

Robert Bogan  
Associate Counsel  
New York State Department of Health  
Office of Professional Medical Conduct  
433 River Street – Suite 303  
Troy, New York 12180  
(518) 402-0828

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

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**IN THE MATTER**  
**OF**  
**GARY GILYARD, M.D.**  
**CO-01-12-6178-A**

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**STATEMENT**  
**OF**  
**CHARGES**

**GARY GILYARD, M.D.**, the Respondent, was authorized to practice medicine in New York state on June 29, 1989, by the issuance of license number 178534 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A.        On or about October 17, 2001, the State of Michigan, Department of Consumer & Industry Services, Bureau of Health Services, Board of Medicine, Disciplinary Subcommittee (hereinafter "Michigan Board"), by a Consent Order (hereinafter "Michigan Order"), REPRIMANDED Respondent and fined him \$1,000.00, based on negligence and incompetence on more than one occasion.

B.        The conduct resulting in the Michigan Board disciplinary action against Respondent would constitute misconduct under the laws of New York state, pursuant to the following sections of New York state Law:

1.        New York Education Law §6530(3) (negligence on more than one occasion);
  2.        New York Education Law §6530(5) (incompetence on more than one occasion);
- and/or
3.        New York Education Law §6530(26) (performing services which have not been authorized).

**SPECIFICATIONS**  
**FIRST SPECIFICATION**

Respondent violated New York Education Law §6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state, in that Petitioner charges:

1. The facts in Paragraphs A and/or B.

**SECOND SPECIFICATION**

Respondent violated New York Education Law §6530(9)(d) by having had disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action would, if committed in New York state, constitute professional misconduct under the laws New York state, in that Petitioner charges:

2. The facts in Paragraphs A and/or B.

DATED: *March 28*, 2002  
Albany, New York

  
PETER D. VAN BUREN  
Deputy Counsel  
Bureau of Professional Medical Conduct