



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

March 27, 2009

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Terry A. Gillian, M.D.
1193 East Herndon Avenue
Suite 106
Fresno, CA 93720

Terry A. Gillian, M.D.
Redacted Address

Robert Bogan, Esq.
NYS Department of Health
433 River Street - 4th Floor
Troy, New York 12180

RE: In the Matter of Terry A. Gillian, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 09-53) 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.

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 together with the registration certificate. Delivery shall be by either certified mail or in person to:

Office of Professional Medical Conduct
New York State Department of Health
Hedley Park Place
433 River Street - Fourth Floor
Troy, New York 12180

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 (i), (McKinney Supp. 2007) and §230-c subdivisions 1 through 5, (McKinney Supp. 2007), "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.

Request for review of the Committee's determination by the Administrative Review Board stays penalties other than suspension or revocation 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
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,

Redacted Signature

James F. Horan, Acting Director
Bureau of Adjudication

JFH:nm

Enclosure

COPY

IN THE MATTER
OF
TERRY A. GILLIAN, M.D.

DETERMINATION

AND

ORDER

BPMC-09-53

A hearing was held on March 18, 2009, at the offices of the New York State Department of Health ("the Petitioner"). A Notice of Referral Proceeding and a Statement of Charges, both dated January 28, 2009, were served upon the Respondent, **Terry A. Gillian, M.D.** Pursuant to Section 230(10)(e) of the Public Health Law, **Lyon M. Greenberg, M.D.**, Chairperson, **Cindy Hoffman, D.O.**, and **Thomas W. King, Jr., M.P.A., P.E.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **John Wiley, Esq.**, Administrative Law Judge, served as the Administrative Officer.

The Petitioner appeared by **Thomas Conway, Esq.**, General Counsel, by **Robert Bogan, Esq.**, of Counsel. The Respondent did not appear at the hearing either in person or by counsel.

Evidence was received and transcripts of these proceedings were made.

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

BACKGROUND

This case was brought pursuant to Public Health Law Section 230(10)(p). The statute provides for an expedited hearing when 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 State or another jurisdiction, or upon a prior administrative adjudication regarding conduct that 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 Section 6530(9)(b) and (d). Copies of the Notice of Referral Proceeding and the Statement of Charges are 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. All Hearing Committee findings were unanimous.

1. Terry A Gillian, M.D., the Respondent, was authorized to practice medicine in New York State on March 5, 1976, by the issuance of license number 126382 by the New York State Education Department (Petitioner's Ex. 4).

2. On April 4, 2008, effective May 5, 2008, the Medical Board of California, Department of Consumer Affairs ("California Board"), by a Decision ("California Decision"), revoked the Respondent's license to practice medicine, stayed the revocation for seven years, during which time he will be on probation under terms and conditions,

based on simple negligence, gross negligence, negligent misrepresentation, and repeated negligent acts. (Petitioner's Ex. 5).

HEARING COMMITTEE CONCLUSIONS

The Hearing Committee concludes that the conduct of the Respondent would constitute professional misconduct under the laws of New York State, had the conduct occurred in New York State, pursuant to:

- New York Education Law Section 6530(3) - "Practicing the profession with negligence on more than one occasion;"
- New York Education Law Section 6530(4) - "Practicing the profession with gross negligence on a particular occasion;" and
- New York Education Law Section 6530(32) - "Failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient..."

VOTE OF THE HEARING COMMITTEE

FIRST SPECIFICATION

"Respondent violated New York Education Law Section 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 Section 6530(9)(d) by having his license to practice medicine revoked and/or having other disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct

resulting in the revocation and/or other 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 Respondent did not appear at the hearing either in person or by counsel. The Administrative Law Judge ruled that the requirements of law had been met for the service of the Notice of Referral Proceeding and the Statement of Charges and that the hearing could proceed on the merits despite the absence of the Respondent.

The Respondent specializes in upper extremity surgery with an emphasis on the hand and wrist. The California Board found many acts of negligence and two acts of gross negligence in the Respondent's treatment of four patients. The most frequent act of negligence found by the California Board was performing unnecessary surgery. Much of the California Decision is devoted to descriptions of the Respondent's practice of recommending and performing surgery without an adequate basis. He did not first attempt to solve the patient's problem using conservative therapy in cases in which such therapy might have worked. He recommended and performed surgery without doing an adequate workup to determine whether the surgery was needed. The California Board concluded that the surgery was not needed in several instances.

Other acts of negligence involved deviating from the standard of care while performing surgery. An example is a surgery performed on December 11, 1997. The Respondent, while performing carpal tunnel surgery on the patient's left wrist, damaged the median nerve. This is not an act of negligence. However, before closure of the surgery, the Respondent did not inspect the entire exposed portion of the nerve for damage and failed to see the damage. The surgery was closed with the damaged nerve untreated. This was the act of negligence cited in the California Decision.

Since the Respondent did not appear at the hearing, the hearing record contains no evidence of rehabilitation, remorse, mitigating circumstances or any other factor that could be helpful to the Respondent. The Petitioner recommended that the Respondent's license to practice medicine be revoked. This recommendation will be adopted because no other penalty would adequately protect the public.

ORDER

IT IS HEREBY ORDERED THAT:

1. The license of the Respondent, Terry A. Gillian, M.D., to practice medicine is revoked.
2. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10)(h).

DATED: Albany, New York

3-25, 2009

Redacted Signature

**Lyon M Greenberg, M.D.
Chairperson**

**Cindy Hoffman, D.O.
Thomas W. King, Jr., M.P.A.**

APPENDIX I

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

EXHIBIT
EV 3/18/09 JW

IN THE MATTER
OF
TERRY A. GILLIAN M.D.
CO-08-05-3366-A

NOTICE OF
REFERRAL
PROCEEDING

TO: TERRY A. GILLIAN, M.D.

TERRY A. GILLIAN, M.D.

Redacted Address

Redacted Address

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of New York Public Health Law §§230(10)(p) and New York State Administrative Procedures Act §§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 18th day of March, 2009, at 10:00 a.m., at the offices of the New York State Department of Health, Hedley Park Place, 433 River Street, 5th Floor, Troy, NY 12180.

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 who shall be an attorney admitted to practice in New York state. 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, Hedley Park Place, 433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. SEAN D. O'BRIEN, DIRECTOR, BUREAU OF ADJUDICATION (Telephone: (518-402-0748), (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, no later than ten days prior to the scheduled date of the Referral Proceeding, as indicated above.

Pursuant to the provisions of New York Public Health Law §230(10)(p), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten days prior to the date of the hearing. Any charge or allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such 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 written brief and affidavits with the Committee. Six copies of all papers you submit must be filed with the Bureau of Adjudication at the address indicated above, no later than fourteen days prior to the scheduled date of the Referral Proceeding, and a copy of all papers must be served on the same date on the Department of Health attorney indicated below. Pursuant to §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. Pursuant to the terms of New York State Administrative Procedure Act §401 and 10 N.Y.C.R.R. §51.8(b), the Petitioner hereby demands disclosure of the evidence that the Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary evidence and a description of physical or other evidence which cannot be photocopied.

YOU ARE ADVISED, HEREBY, THAT THE ATTACHED CHARGES WILL BE MADE PUBLIC FIVE BUSINESS DAYS AFTER THEY ARE SERVED.

Department attorney: Initial here Redacted Signature

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

January 28, 2009

Redacted Signature

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

IN THE MATTER

OF

TERRY A. GILLIAN, M.D.
CO-08-05-3366-A

STATEMENT

OF

CHARGES

TERRY A. GILLIAN, M.D., Respondent, was authorized to practice medicine in New York State on March 5, 1976, by the issuance of license number 126382 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about April 4, 2008, effective May 5, 2008, Medical Board of California, Department of Consumer Affairs (hereinafter "California Board"), by a Decision (hereinafter "California Decision"), inter alia, revoked Respondent's license to practice medicine, stayed the revocation for a period of seven (7) years, during which time he is placed him on probation under terms and conditions, based on simple negligence, gross negligence, negligent misrepresentation, and repeated negligent acts.

B. The conduct resulting in the California 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 State Education Law §6530(3) (negligence on more than one occasion);
2. New York State Education Law §6530(4) (gross negligence);
3. New York State Education Law §6530(32) (failure to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient).

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 State Education Law §6530(9)(d) by having his license to practice medicine revoked and/or having other disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation and/or other disciplinary action would, if committed in New York state, constitute professional misconduct under the laws of New York state, in that the Petitioner charges:

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

DATED: *January 28*, 2009
Albany, New York

Redacted Signature

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