



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*

October 31, 2001

**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

Joseph L. Lanza, Esq.  
Richard Haynes & Associates  
4300 Scotland  
Houston, Texas 77007-7394

Thomas Ernest Gray, M.D.  
c/o Frank Watson  
10910 White Thorn  
Houston, Texas 77016

Thomas Ernest Gray, M.D.  
12500 Wallisville Road  
Houston, Texas 77013

**RE: In the Matter of Thomas Ernest Gray, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 01-252) 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.

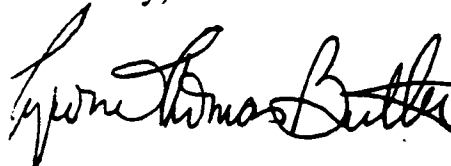
The notice of review served on the Administrative Review Board should be forwarded to:

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,

A handwritten signature in black ink, appearing to read "Tyrone T. Butler". The signature is written in a cursive style with a large initial "T".

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:cah  
Enclosure

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

**COPY**

IN THE MATTER  
OF  
THOMAS ERNEST GRAY, M.D.

DETERMINATION  
AND  
ORDER  
BPMC 01-252

A hearing was held on October 17, 2001, 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 July 20, 2001, were served upon the Respondent, **Thomas Ernest Gray, M.D.** **Rev. Thomas Kornmeyer**, Chairperson, **Ernst Kopp, M.D.**, and **Eleanor Kane, M.D.**, 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. **John Wiley, Esq.**, Administrative Law Judge, served as the Administrative Officer.

The Petitioner appeared by **Donald P. Berens, Jr., Esq.**, General Counsel, by **Robert Bogan, Esq.**, and **Paul Robert Maher, Esq.**, of Counsel. The Respondent appeared in person and was represented by **Joseph L. Lanza, Esq.**, Richard Haynes & Associates, 4300 Scotland, Houston, Texas 77007-7394.

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 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)(a)(ii). A copy of the Notice of Referral Proceeding and the 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.

1. Thomas Ernest Gray, M.D., the Respondent, was authorized to practice medicine in New York State on April 16, 1987, by the issuance of license number 169811 by the New York State Education Department (Petitioner's Ex. 4).

2. On September 8, 1999, in the United States District Court, Western District of Texas, San Antonio Division, the Respondent was found guilty of Driving While Intoxicated in violation of 18 U.S.C. 13, involving Texas Penal Code Section 49.04. He was sentenced to two years probation with conditions and a \$1000.00 fine. (Petitioner's Ex. 6)

### **VOTE OF THE HEARING COMMITTEE**

#### **SPECIFICATION**

"Respondent violated New York Education Law Section 6530(9)(a)(ii) by being convicted of an act constituting a crime under federal law..."

VOTE: Sustained (3-0)

### **HEARING COMMITTEE DETERMINATION**

It is undisputed that the Respondent was convicted of Driving While Intoxicated and sentenced to two years probation and a \$1,000.00 fine. What is in dispute is what this Hearing Committee should do about it. The Petitioner recommended that the Respondent's license to practice medicine in New York State be suspended until he submits to an examination that demonstrates his physical and mental fitness to practice medicine. The Respondent recommended that no penalty be imposed or, at most, there be a censure and reprimand.

The Respondent's attorney argued that the penalty proposed by the Petitioner was excessive because the Respondent has no other convictions, because he has successfully completed his probation, because no patient was harmed by his transgression and because one instance of driving while intoxicated is not evidence of alcoholism.

Although the Respondent asked the Hearing Committee to give him the benefit of the doubt on the need for a penalty in this proceeding, the Respondent chose not to give

the Hearing Committee the evidence it needs to do so. The Respondent's attorney introduced nothing into evidence other than an affidavit that states nothing useful other than that the Respondent has successfully completed his criminal probation. The Respondent did not testify despite a request from the Petitioner that he do so and despite a warning from the Administrative Officer that a negative inference could be drawn by the Hearing Committee from the Respondent's decision not to testify. The Hearing Committee does draw such an inference.

If the Respondent could truthfully testify that the drunk driving incident was an aberration that proves nothing about his present fitness to practice medicine, he would be expected to testify to that effect. There also is no evidence in the record to support the Respondent's argument that there should be no penalty because he has no other convictions or in support of anything else his attorney said in his behalf, other than the evidence on the successful completion of probation.

The Respondent's attorney argued that the Respondent can be trusted to treat patients in New York State, but gave the Hearing Committee virtually no evidence upon which such trust can be based. Because there was no such evidence, other means must be employed to ensure that the Respondent is fit to practice. Those means are described in the Order, below.

### **ORDER**

#### **IT IS HEREBY ORDERED THAT:**

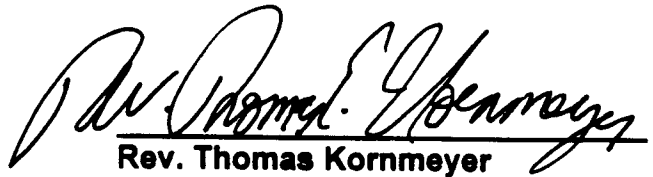
1. The Respondent's license is suspended. The suspension will remain in effect until the Respondent obtains an evaluation report, acceptable to the Petitioner's Office of Professional Medical Conduct, that concludes that the Respondent is physically and mentally fit to practice medicine and does not have a dependence on alcohol that compromises his ability to provide competent medical care. The evaluation must be

conducted by a physician practicing in New York State who is acceptable to the Office of Professional Medical Conduct. The Respondent must submit this report to the New York State Department of Health, Office of Professional Medical Conduct, Hedley Park Place, 433 River Street, Troy, New York 12180-2299.

2. This Order shall be effective upon service on the Respondent or the Respondent's attorney by personal service or by certified or registered mail.

DATED: Newcomb, New York

October 25<sup>th</sup>, 2001



Rev. Thomas Kornmeyer  
Chairperson

Ernst Kopp, M.D.  
Eleanor Kane, M.D.

**APPENDIX I**



C/D 1/01

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

IN THE MATTER  
OF  
THOMAS ERNEST GRAY, M.D.  
CO-00-06-2703-A

NOTICE OF  
REFERRAL  
PROCEEDING

TO: THOMAS ERNEST GRAY, M.D.  
C/O FRANK WATSON  
10910 White Thorn  
Houston, TX 77016

THOMAS ERNEST GRAY, M.D.  
12500 Wallisville Road  
Houston, TX 77013

**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 24<sup>th</sup> day of August 2001, 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 August 14, 2001.

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 August 14, 2001, 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

*July 20*, 2001



**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  
THOMAS ERNEST GRAY, M.D.  
CO-00-08-2703-A

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STATEMENT  
OF  
CHARGES

THOMAS ERNEST GRAY, M.D., the Respondent, was authorized to practice medicine in New York state on April 16, 1987, by the issuance of license number 169811 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

B. On or about September 8, 2000, in the United States District Court, Western District of Texas, San Antonio Division, Respondent was found guilty of Driving While Intoxicated in violation of 18 U.S.C. 13, involving Texas Penal Code, Section 49.04, and was sentenced two (2) years probation with conditions and a \$1,000.00 fine.

**SPECIFICATION TWO**

Respondent violated New York Education Law §6530(9)(a)(ii) by being convicted of an act constituting a crime under federal law, in that Petitioner charges:

1. The facts in Paragraph B.

DATED: *July 20*, 2001  
Albany, New York

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