

IN THE MATTER OF

GLEN R. GIBSON, M.D.,

Respondent

License Number: D62550

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BEFORE THE

MARYLAND

BOARD OF PHYSICIANS

Case Number: 2008-0265

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**CONSENT ORDER**

On June 15, 2009, the Maryland State Board of Physicians (the "Board") charged Glen R. Gibson, M.D., (the "Respondent") (D.O.B. 11/14/1970), License Number D62550, under the Maryland Medical Practice Act (the "Act"), Md. Health Occ. Code Ann. ("Health Occ.") § 14-404(a) (2005 Repl. Vol. & 2008 Supp.). Specifically, the Board charged the Respondent with the following provision of the Act under Health Occ. § 14-404:

- (a) Subject to the hearing provisions of § 14-405 of this subtitle, the Board, on the affirmative vote of a majority of the quorum, may reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the licensee:

(3) Is guilty of:

...

- (ii) Unprofessional conduct in the practice of medicine.

On October 7, 2009, a Case Resolution Conference was convened in this matter. Based on negotiations occurring as a result of this Case Resolution Conference, the Respondent agreed to enter into this Consent Order, consisting of Procedural Background, Findings of Fact, Conclusions of Law, and Order.

## **FINDINGS OF FACT**

### **I. BACKGROUND**

The Board finds the following:

1. At all times relevant to these charges, Respondent was and is a physician licensed to practice medicine in the State of Maryland. He was initially licensed in Maryland on or about December 30, 2004, and his license is presently active.
2. At the time of the acts described herein, the Respondent was a physician engaged in the practice of general surgery and surgical oncology at Annapolis Surgical Oncology Associates, 600 Ridgely Avenue, Suite 2222, Annapolis, Maryland, 21401, and held hospital privileges at Anne Arundel Medical Center ("AAMC") in Annapolis.
3. On or about October 17, 2007, the Board received a complaint from a patient (hereinafter, "Patient 1")<sup>1</sup> who had been hospitalized at AAMC alleging the Respondent had violated her "right to privacy" by accessing her medical record through AAMC's computer system without Patient 1's permission.
4. At the time of the acts described herein, Patient 1 was not the Respondent's patient; the Respondent's wife had hired Patient 1 as a contract employee to conduct repairs and painting in the family's personal residence.
5. On or about October 22, 2007, the Board notified the Respondent of Patient 1's complaint and requested a written response.

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<sup>1</sup> Patient names are confidential. The Respondent is aware of the identity of Patient 1.

6. On or about November 22, 2007, the Respondent submitted a response to the Board, admitting that he had accessed Patient 1's records "out of concern for her health" but would not "commit such an error again."
7. On or about July 16, 2008, the Board notified the Respondent it had opened a full investigation.
8. On September 4, 2008, the Board's staff conducted an interview of the Respondent under oath. During the interview, the Respondent admitted to breaching Patient 1's right to privacy by accessing her electronic medical records.

## **II. PATIENT-RELATED FINDINGS**

9. Patient 1 was a 26 year-old female around March 28, 2007 when the Respondent's wife hired her to perform repairs and paint their family home; the Respondent was not present when his wife hired Patient 1.<sup>2</sup>
10. The Respondent's wife paid Patient 1 a total of \$2,600 (\$1,300 to schedule the project, and \$1,300 upon commencement of the project).
11. Patient 1 and her husband began the work on the Respondent's home; however, sometime in April or May 2007, Patient 1 became ill and notified the Respondent's wife that based on her medical condition she would try to complete the remainder of the work, but it was unlikely.
12. According to Patient 1, her husband had completed the drywall repair, but Patient 1 had not yet begun the agreed upon painting. Patient 1 stated that after she had informed the Respondent's wife she would probably not

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<sup>2</sup> According to Patient 1, to date, she has not met the Respondent.

be able to complete the painting, the Respondent left multiple messages on her voice mail requesting the deposit money be returned.

13. Patient 1 presented to AAMC for scheduled surgery to be performed on July 3, 2007. Patient 1's physician however, cancelled the July 3<sup>rd</sup> procedure and postponed the surgery until July 12, 2007.<sup>3</sup>
14. After Patient 1's surgery on July 12, 2007, she notified the Respondent's wife that she would not be able to complete the work on their home.
15. On or about August 13, 2007, Patient 1 wrote a letter to the Respondent and his wife apologizing for not being able to finish the work she started on their home and offering to reimburse them in partial payments for \$2,000 of the money received. Patient 1 noted in her letter to the Respondent that the Respondent had "threatened" her with his intention to hire an attorney and therefore she would no longer verbally communicate with the Respondent or his wife.
16. On or about September 10, 2007, Patient 1 received a letter from an attorney, JG, who represented that the Respondent's wife had retained him to recover the deposits paid to Patient 1. JG wrote:

Before I file a complaint against you with the Maryland Home Improvement Commission (which would include allegations about your operating without a license), or file a lawsuit against you personally to collect the deposit (and seek recovery of my fees and other damages), I would strongly suggest you promptly repay [the Respondent's wife] the money.

17. On or about Friday, September 14, 2007, Patient 1 received a second letter from JG with an attached draft complaint he noted that he intended

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<sup>3</sup> According to Patient 1's physician, the surgery was cancelled based on Patient 1's pending application for a county insurance program.

to file with the Maryland Home Improvement Commission unless the matter was "resolved by Monday."

18. On or about Monday, September 17, 2007, according to Patient 1, she provided \$2,600 in cash to JG to be returned to the Respondent and his wife. Upon receipt, JG provided Patient 1 with a letter "re: Contract for Home Improvements dated April 20, 2007," he signed as "Authorized Representative" for [the Respondent and his wife], stating:

The parties to the above-referenced Contract hereby agree to waive any and all claims against the other party arising out of the contract.

19. Patient 1 had knowledge that the Respondent was a surgeon at AAMC, where she had received medical care.
20. On or about September 21, 2007, Patient 1 contacted the privacy officer at AAMC to ascertain whether the Respondent had "looked into my medical records."
21. AAMC conducted an audit that revealed that the Respondent had accessed Patient 1's electronic medical records ("EMR") on July 4, 2007 and July 14, 2007.
22. On or about October 18, 2007, the Respondent met with administrators from AAMC and admitted to accessing Patient 1's records electronically on July 4, 2007.
23. A few days later, when asked by AAMC, the Respondent denied having accessed Patient 1's records on July 14, 2007. Further investigation by AAMC however, revealed that because of the Respondent's initial EMR

access on July 4, 2007 to Patient 1's records, he had been "flagged" by the EMR system to be an "associated" physician, and therefore received automatic notification on July 14, 2007, of Patient 1's medical test results.<sup>4</sup>

24. Although the Respondent denied any recollection of opening Patient 1's July 14, 2007 report sent by the EMR system, AAMC's investigation determined that the report had been opened by the Respondent at the same time that he had opened 6 of his patient records.

25. A letter to the Board from AAMC's Corporate Compliance Officer dated June 2, 2008, noted in part:

...A meeting was held with Dr. Gibson on October 18, 2007, during which he admitted his error in accessing [Patient 1's] record and described his concern for the patient at the time of access. Dr. Gibson readily acknowledged that he should not have accessed [Patient 1's] chart despite the concern that led to his access. Dr. Gibson agreed to write a letter of apology and explanation to the patient.

26. On or about August 8, 2008, the Interim Risk Manager of AAMC sent a letter to Patient 1 stating in part:

As you may know, our investigation has revealed that Dr. Glen Gibson inappropriately accessed your medical records on July 4, 2007 and July 14, 2007...

I have contacted Dr. Glen Gibson M.D. regarding his letter of apology to you. He is on vacation, and as soon as he returns, I will make certain that you will receive a copy...

27. By letter dated August 14, 2008, the Respondent issued Patient 1 a letter of apology stating:

As you recall, you had informed [my wife] that you would be in the Hospital for a procedure and I happened to be working in the

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<sup>4</sup> Any physician considered by the EMR system to be "associated" with a specific patient is automatically notified of laboratory and other test results by AAMC's EMR system.

operating room on that day. At some point in time it became apparent that there was a medical crisis with a patient in surgery and I became very concerned and only checked your chart to make sure you were not having a problem...

28. It is unclear from the Respondent's letter however, to what day he was referring, as Patient 1's surgical procedure was originally scheduled for July 3, 2007, and the Respondent accessed her EMR on July 4, 2007. Patient 1 had not been a patient at AAMC on July 4, 2007; her physician had sent her home on July 3<sup>rd</sup> without performing the scheduled surgery. Moreover, AAMC's operating room schedule revealed that the Respondent had 2 surgical procedures scheduled on July 3, 2007, but he did not post or schedule any procedures in AAMC's operating room on July 4, 2007 (when he accessed Patient 1's EMR).
29. Sometime around August 20, 2008, AAMC issued the Respondent a letter of Reprimand for accessing personal health information electronically on a patient for whom he was not providing medical care. AAMC noted that the Respondent acknowledged his actions:

...constituted a serious error and violation of AAMC confidentiality policy and [his] signed pledge to abide by it.

Additionally, according to AAMC, the Respondent acknowledged his actions "violated the requirements of federal law under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA")."

### CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent's actions as outlined above constitute a violation of Health Occ. § 14-404(a)(3)(ii).

### ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 18<sup>th</sup> day of November, 2009, by a majority of a quorum of the Board considering this case:

**ORDERED** that as of the date of this executed Consent Order, the Respondent shall be **REPRIMANDED** and placed on **ONE (1) YEAR OF PROBATION** subject to the following terms and conditions:

1. Within six (6) months of the date of the commencement of the probationary period, the Respondent shall complete a comprehensive Board-approved course or tutorial in ethics. This course is not to be counted towards the Respondent's Continuing Medical Education ("CME") requirements for licensure;
2. Within one year of the execution of this Consent Order, the Respondent shall pay a monetary fine in the amount of ten thousand dollars (\$10,000) by bank guaranteed check made payable to the Maryland State Board of Physicians; and it is further

**ORDERED** that the Respondent shall comply with all laws governing the practice of medicine under the Maryland Medical Practice Act and all rules and regulations promulgated thereunder; and it is further



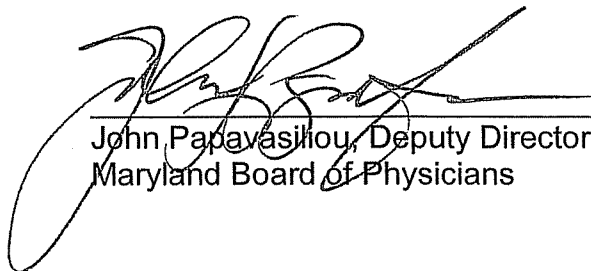
**ORDERED** that the Respondent may submit a written petition to the Board requesting termination of probation no earlier than one (1) year from the date of the commencement of his probationary period but only if he has fully and satisfactorily complied with all the requirements of the Consent Order and if there are no pending complaints against the Respondent; and it is further

**ORDERED** that the Respondent is responsible for all costs incurred in fulfilling the terms and conditions of this Consent Order; and it is further

**ORDERED** that if the Respondent violates any of the terms and conditions of this Consent Order, the Board, in its discretion, after notice and an opportunity for a show cause hearing before the Board, or opportunity for an evidentiary hearing before an Administrative Law Judge at the Office of Administrative Hearings if there is a genuine dispute as to the underlying material facts, may impose any sanction which the Board may have imposed in this case under §§ 14-404(a) and 14-405.1 of the Medical Practice Act, including an additional probationary term and conditions of probation, reprimand, suspension, revocation and/or a monetary fine; and it is further

**ORDERED** that this Consent Order shall be a **PUBLIC DOCUMENT** pursuant to Md. State Gov't Code Ann. § 10-611 et seq. (2004 Repl. vol. & 2008 Supp.).

11/18/09  
Date

  
John Papavasiliou, Deputy Director  
Maryland Board of Physicians

### **CONSENT ORDER**

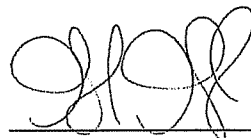
I, Glen R. Gibson, M.D., acknowledge that I am represented by counsel and have consulted with counsel before entering into this Consent Order. By this Consent and for the purpose of resolving the issues raised by the Board, I agree and accept to be bound by the foregoing Consent Order and its conditions.

I acknowledge the validity of this Consent Order as if entered into after the conclusion of a formal evidentiary hearing in which I would have had the right to counsel, to confront witnesses, to give testimony, to call witnesses on my own behalf, and to all other substantive and procedural protections provided by law. I agree to forego my opportunity to challenge these allegations. I acknowledge the legal authority and jurisdiction of the Board to initiate these proceedings and to issue and enforce this Consent Order. I affirm that I am waiving my right to appeal any adverse ruling of the Board that I might have filed after any such hearing.

I sign this Consent Order after having an opportunity to consult with counsel, voluntarily and without reservation, and I fully understand and comprehend the language, meaning and terms of the Consent Order.

10/21/09

Date



Glen R. Gibson, M.D.

Reviewed and Approved by:

  
Thomas L. Doran, Esquire

STATE/Commonwealth of Maryland  
CITY/COUNTY OF Prince Georges County

I HEREBY CERTIFY that on this 21<sup>st</sup> day of October, 2009,  
before me, a Notary Public of the foregoing State and City/County personally  
appeared Glen R. Gibson, M.D., License Number D62550, and made oath in due  
form of law that signing the foregoing Consent Order was his voluntary act and  
deed.

AS WITNESSETH my hand and notarial seal.

Jinda Christine Cawas  
Notary Public