



STATE OF NEW YORK  
DEPARTMENT OF HEALTH

433 River Street, Suite 303 Troy, New York 12180-2299

Richard F. Daines, M.D.  
Commissioner

Public

Wendy E. Saunders  
Chief of Staff

May 12, 2009

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Stewart Martin Braunstein, M.D.

Redacted Address

Robert Bogan, Esq.

NYS Department of Health

Hedley Park Place

433 River Street – Suite 303

Troy, New York 12180

**RE: In the Matter of Stewart Martin Braunstein, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 09-89) 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), (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 Respondent 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,  
Redacted Signature

James F. Horan, Acting Director  
Bureau of Adjudication

JFH:cah

Enclosure

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

COPY

IN THE MATTER  
OF  
STEWART MARTIN BRAUNSTEIN, M.D.

DETERMINATION  
AND  
ORDER

BPMC #09-89

A hearing was held on April 22, 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 March 5, 2009, were served upon the Respondent, **Stewart Martin Braunstein, M.D.** Pursuant to Section 230(10)(e) of the Public Health Law, **Irving S. Caplan, M.D.**, Chairperson, **Eleanor C. Kane, M.D.**, and **Fred S. Levinson, M.D.**, duly designated members of the State Board for Professional Medical Conduct ("the Board"), 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)(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. Stewart Martin Braunstein, M.D., the Respondent, was authorized to practice medicine in New York State on February 26, 1970, by the issuance of license number 105563 by the New York State Education Department (Petitioner's Ex. 4).

2. On April 16, 2008, the Florida Board of Medicine ("Florida Board"), by a Final Order ("Florida Order"), issued the Respondent a Letter of Concern, fined him \$7,500.00, imposed \$5,565.41 in costs, and required him to complete 50 hours of community service and five hours of continuing medical education in risk management, based on failing to

practice medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances. (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;" and
- New York Education Law Section 6530(5) - "Practicing the profession with incompetence on more than one occasion;"

The Statement of Charges also alleged that the Respondent's conduct, had it occurred in New York State, would have constituted gross negligence (New York Education Law Section 6530[4]) and gross incompetence (New York Education Law Section 6530[6]). The Hearing Committee does not find sufficient evidence in the hearing record to sustain these allegations.

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

#### **SPECIFICATION**

"Respondent violated New York Education Law Section 6530(9)(d) by having disciplinary action taken by a duly authorized 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 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 service of the Notice of Referral Proceeding and the Statement of Charges on the Respondent and that, therefore, the hearing could proceed on the merits despite the absence of the Respondent.

On or about September 10, 2002, a chest x-ray was performed on a patient who had had a tumor surgically removed from his chest in May of 1996. The Respondent interpreted the x-ray as "stable chest, no active cardiopulmonary process." (Petitioner's Ex. 5). In fact, the x-ray revealed a 2.5 by 3.5 centimeter mass in the patient's left lung. On July 21, 2003, other diagnostic tests were taken and all were positive for a tumor in the left lung. The Respondent did not detect the tumor on this occasion either. The Respondent's initial mistake resulted in a ten-month delay in treatment. When the patient had surgery in November 2003, it was discovered that the malignancy had spread.

Because the Respondent did not appear at the hearing, there is no evidence in the hearing record regarding remorse, rehabilitation, mitigating circumstances or any other factor in the Respondent's favor. The Respondent's failings dictate that he not practice medicine in New York State unless and until he convinces a committee of the Board that it is safe to allow him to practice medicine. His license to practice medicine will be suspended until such time.

ORDER

**IT IS HEREBY ORDERED THAT:**

1. The license to practice medicine of the Respondent, Stewart Martin Braunstein, M.D., is suspended and will remain suspended until he appears before a committee of the Board and such committee rules that he can practice medicine safely.

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: Malone, New York**  
5-7-09, 2009

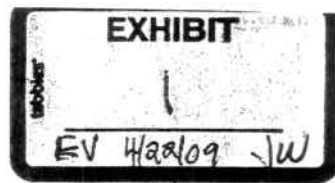
Redacted Signature

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**Irving S. Caplan**  
Chairperson

**Eleanor C. Kane, M.D.**  
**Fred S. Levinson, M.D.**

# **APPENDIX I**





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IN THE MATTER  
OF  
STEWART MARTIN BRAUNSTEIN, M.D.  
CO-08-05-2888-A

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NOTICE OF  
REFERRAL  
PROCEEDING

TO: STEWART MARTIN BRAUNSTEIN, M.D.  
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 22<sup>nd</sup> day of April, 2009, at 10:00 a.m., at the offices of the New York State Department of Health, Hedley Park Place, 433 River Street, 5<sup>th</sup> 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

*March 5*, 2009

Redacted Signature

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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

**These charges are only allegations which may be contested by the licensee in an administrative hearing.**

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

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IN THE MATTER	STATEMENT
OF	OF
STEWART MARTIN BRAUNSTEIN, M.D. CO-08-05-2888-A	CHARGES

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STEWART MARTIN BRAUNSTEIN, M.D., Respondent, was authorized to practice medicine in New York state on February 9, 1968, by the issuance of license number 105563 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On or about April 16, 2008, the State of Florida, Board of Medicine (hereinafter "Florida Board"), by a Final Order (hereinafter "Florida Order"), Issued Respondent a Letter of Concern, fined him \$7,500.00, imposed \$5,565.41 in costs, and required him to complete fifty (50) hours of community service and five (5) hours of CME in Risk Management, based on failing to practice medicine with that level of care, skill, and treatment which is recognized by a reasonable prudent similar physician as being acceptable under similar conditions and circumstances.

B. The conduct resulting in the Florida 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(4) (gross negligence);
3. New York Education Law §6530(5) (incompetence on more than one occasion);

and/or

4. New York Education Law §6530(6) (gross incompetence).

SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by having disciplinary action taken by a duly authorized 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, in that Petitioner charges:

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

DATED: *March 5*, 2009  
Albany, New York

Redacted Signature

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