

PUBLIC

**NEW YORK**  
state department of  
**HEALTH**

Nirav R. Shah, M.D., M.P.H.  
Commissioner

Sue Kelly  
Executive Deputy Commissioner

January 3, 2012

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Binyamin Rothstein, D.O.

**REDACTED ADDRESS**

Jude B. Mulvey, Esq.  
NYS Department of Health  
ESP-Corning Tower-Room 2512  
Albany, New York 12237

**RE: In the Matter of Binyamin Rothstein, D.O.**

Dear Parties:

Enclosed please find the Determination and Order (No. 12-01) 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., Chief 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  
Chief Administrative Law Judge  
Bureau of Adjudication

JFH:cah

Enclosure

State of New York : Department Of Health  
State Board For Professional Medical Conduct

In the Matter of

Binyamin Rothstein, D.O. (Respondent)

Determination and Order No. 12 -01

COPY

Eleanor C. Kane, M.D. (Chair), Arsenio G. Agopovich, M.D. and Richards H. Edmonds, Ph.D., duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to New York Public Health Law (PHL) §230(10)(p)(McKinney Supp. 2011). James F. Horan, Administrative Law Judge, served as the Committee's Administrative Officer. The Department of Health (Petitioner) appeared by Jude Mulvey, Esq. The Respondent appeared pro se. The Committee reviewed documents in evidence from both parties, heard testimony from the Respondent and heard arguments from both parties. A stenographic reporter prepared a transcript of the proceeding. After consideration of the record, the Hearing Committee sustains the charge that the Respondent's misconduct in another state would constitute professional misconduct in New York State and makes the Respondent liable to disciplinary action against his license to practice medicine in New York (License). The Committee votes 3-0 to revoke the Respondent's License.

#### Background

The State Board for Professional Medical Conduct (BPMC) functions pursuant to PHL §230 *et seq.* as a duly authorized professional disciplinary agency of the State of New York.

The Petitioner brought this case before BPMP pursuant to PHL §230(10)(p), which provides an expedited hearing (Referral Proceeding) for charges alleging a violation under New York Education Law (EL) §§6530(9)(b) & 6530(9)(d)(McKinney Supp. 2011). That statute defines professional misconduct to include conduct in which a licensee engages in another state that results in misconduct findings and/or disciplinary action in that other state and that would constitute professional misconduct in New York. In a Referral Proceeding, the statute limits the Committee to determining whether the prior conviction or adjudication occurred, whether to impose a penalty against the New York license and, if so, the nature and severity for the penalty against the license, In the Matter of Wolkoff v. Chassin, 89 N.Y.2d 250 (1996).

The Petitioner charged that the Respondent violated New York Education Law (EL) §§6530(9)(b) & 6530(9)(d) by committing professional misconduct, because the duly authorized professional disciplinary agency from another state, Maryland, found the Respondent guilty for professional misconduct [6530(9)(b)] an/or took disciplinary action against the Respondent's medical license in that state [6530(9)(d)], for conduct that would constitute professional misconduct, if the Respondent had committed such conduct in New York. The Petitioner's Statement of Charges [Hearing Exhibit 1] alleged that the Respondent's misconduct in Maryland would constitute misconduct if committed in New York, under the following specifications:

- practicing medicine fraudulently, a violation under EL § 6530(2);
- practicing medicine with negligence on more than one occasion, a violation under EL § 6530(3);
- practicing medicine with gross negligence, a violation under EL § 6530(4);

- practicing medicine with incompetence on more than one occasion, a violation under EL § 6530(5);
- practicing medicine with gross incompetence, a violation under EL § 6530(6);
- engaging in conduct in the practice of medicine that evidences moral unfitness in practice, a violation under EL § 6530(20);
- violating any term of probation or condition or limitation imposed on the licensee, a violation under EL § 6530(29); and/or,
- failing to maintain accurate patient records, a violation under EL § 6530(32).

Copies of the Notice of Referral Proceeding and the Statement of Charges are attached to this Determination and Order as the Appendix.

Prior to the hearing, the Committee's Administrative Officer conducted a conference with the parties and accepted certain documents into the hearing record. From the Petitioner, the Administrative Officer received ten documents: the Notice of Referral Proceeding, Statement of Charges and Affidavit of Service [Exs. 1-2], an amended Statement of Charges and Letters of Service by First Class Mail [Exs. 3-5], a New York State Education Department document relating to the Respondent's New York Licensure [Ex. 6], copies of Maryland documents [Ex. 7], copies of New York documents [Ex. 8], 2000 Maryland Consent Order [Ex. 9] and 1996 Maryland Consent Order [Ex. 10]. The Administrative Officer also received into evidence one multi-document exhibit from the Respondent [Ex. A] that contained the Respondent's answer; letters supporting the Respondent from John Sternberg, M.D. and Michael Michael Felder, D.O.; certifications concerning the Respondent passing the Federation of State Medical Board's SPEX examination and certifications attesting that the Respondent participated in

participated in continuing medical education. The Administrative Officer also declined to receive receive other documents from the Respondent because the documents involved an attempt to re-litigate findings from the State of Maryland. The Administrative Officer designated those documents as Exhibit I. The Committee did not consider the material in Exhibit I in reaching the the Committee's Determination.

The record from the hearing also included the hearing transcript, pages 1-71. The record in the proceeding closed when the Administrative Officer received the transcript on December 5, 2011.

#### Witnesses

For the Petitioner:

None

For the Respondent:

Binyamin Rothstein, M.D.

#### Findings of Fact

The Committee made the following Findings of Fact after reviewing the entire record in this matter. The brackets following the Findings cite to exhibits in the record [Ex.] or testimony from the hearing [T] that the Committee found persuasive in arriving at a particular finding. In instances in which other information in the record conflicts with the evidence on which the Committee relied in making the Findings, the Committee considered and rejected that other information. Under PHL § 230(10), the Petitioner bore the burden to prove its case by a preponderance of the evidence. The Committee agrees unanimously on all Findings.

1. The Respondent received his License (# 151763) from the New York State Education Department on October 15, 1982 [Ex. 6].
2. The Respondent received a license to practice medicine in the State of Maryland in 1983 and the Respondent maintained an office for practice in the Baltimore area [Ex. 9].
3. The Maryland State Board of Physician Quality Assurance (Maryland Board) brought charges against the Respondent in 1995 for failing to follow appropriate care standards in treating ten patients. The charges included allegations that the Respondent failed to evaluate and treat the patients properly, as well as treating the patients with alternative therapies such as chelation, hydrogen peroxide and vitamin therapies [Ex. 7].
4. The Respondent entered into a consent agreement with the Maryland Board in 1996 (1996 Consent), in which the Respondent agreed to a ninety day license suspension, three years on probation, monitoring and retraining [Ex. 7].
5. The Maryland Board brought charges against the Respondent in 1999 for violating the probation terms in the 1996 Consent, for failing to evaluate and to provide proper treatments to nine patients for serious medical conditions, for using alternative treatments such as chelation, hydrogen peroxide and vitamin therapies and for failing to cooperate with a lawful investigation by the Board by failing to comply with a subpoena [Ex 9].
6. The Respondent entered a consent agreement with the Maryland Board in 2000 (2000 Consent) in which the Respondent agreed to serve three additional years on probation and agreed further to practice with a physician supervisor and to terminate the practice of alternative or complimentary medicine [Ex. 9].

7. The 2000 Consent defined the practice of alternative or complimentary medicine to include chelation therapy, hydrogen peroxide therapy and vitamin therapy (except for prescriptions for vitamins the physician supervisor approved) [Ex. 9].
8. The Respondent entered into a Consent Order with BPMC in 2002 (NY Consent) that related to the findings from the 2000 Consent in Maryland [Ex. 8].
9. The Respondent agreed to an indefinite suspension of his License until such time as the Respondent satisfied the terms and conditions in Maryland under the 2000 Consent [Ex. 8].
10. At the time of the hearing in this proceeding, the Respondent's License remained indefinitely suspended under the NY Consent [T 18].
11. The Maryland Board revoked the Respondent's License in 2005 (2005 Order), after an eight day hearing, for violating standards of care in treating three patients, violating the 2000 Consent by practicing alternative medicine and failing to cooperate with a Board investigation by refusing to comply with a subpoena [Ex. 7].
12. The Respondent applied for reinstatement of his Maryland license, but the Maryland Board denied reinstatement in September 2011 [T 51].

#### Hearing Committee Conclusions

The evidence at hearing demonstrated that the Maryland Board found the Respondent guilty for professional misconduct and that the Maryland Board took disciplinary action against the Respondent's license in that state.



The Maryland Board found that the Respondent practiced alternate medicine and thus violated the alternative practice ban under the 2000 Consent's probation terms by providing the substance kali bich, a non-traditional and non-conventional medicine, to one patient and by providing intravenous colchicine in a vitamin cocktail to another patient. Such misconduct by the Respondent would constitute violating probation under EL § 6530(29) in New York.

The Respondent also failed to comply with a subpoena for medical records by failing to provide patient consent forms. The Maryland Board found that the forms described alternative treatments that the Respondent proposed to provide to patients. The Maryland Board concluded that these forms provided strong evidence that the Respondent violated the 2000 Consent intentionally and the Committee inferred that the Respondent withheld the forms as a deliberate and calculated act to prevent the Maryland Board from obtaining evidence about violations under the 2000 Consent. The Committee finds that such misconduct, if committed in New York, would have amounted to failing to provide records upon request to the Department of Health, a violation under EL § 6530(28), and engaging in conduct that evidences moral unfitness in the practice of medicine, a violation under EL § 6530(20).

The Maryland Board also made findings that the Respondent failed to follow accepted standards in treating three persons (Patients A-C). The Maryland Board found that the Respondent failed to document a warning to Patient B about testosterone, when prescribing the medication for that Patient. The failure to document would constitute misconduct in New York as failure to maintain accurate patient records, a violation under EL § 6530(32). The Maryland Board also found that the Respondent failed to evaluate and treat the Patients properly and that the Respondent failed to warn both Patients B and C concerning the dangers of medication the

Respondent prescribed for those Patients. The Committee also found that the Respondent failed to appreciate significant findings concerning Patient A and made improper diagnoses and provided improper treatment to Patients B and C. The Committee concludes that this conduct, if committed in New York, would amount to practicing with negligence on more than one occasion and practicing with incompetence on more than one occasion, violations under EL §§ 6530(3) & 6530(5). The Maryland Board found that the Respondent's misconduct placed the Patients in danger. The Committee concludes that the Respondent's conduct in these cases rose to an egregious level and the Committee finds that the Respondent's misconduct, if committed in New York, would also amount to practicing with gross negligence and gross incompetence, violations under EL §§ 6530(4) & 6530(6). The Petitioner withdrew Factual Allegation B.1., which alleged that the Respondent's conduct from Maryland would also have amounted to practicing fraudulently in New York.

The Respondent engaged in conduct in Maryland that resulted in findings of misconduct and disciplinary action by the Maryland Board for conduct that would have amounted to professional misconduct if committed in New York. The Committee concludes that the Respondent's conduct made the Respondent liable for disciplinary action against his License under EL §§ 6530(9)(b) & 6530(9)(d). The Committee sustains Factual Allegations A and B. 2 to B9 from the Statement of Charges and we further sustain the First and Second Specifications of Misconduct.

The Committee votes 3-0 to revoke the Respondent's License pursuant to PHL §230-a(4). §230-a(4). The Committee made this determination after considering all the evidence and after hearing from both parties. The Petitioner requested revocation due to the Respondent's repeated

repeated misconduct in Maryland and the Respondent's failure to comply with any prior disciplinary orders. The Respondent argued that his past misconduct resulted from arrogance. The Respondent indicated that he desires to return to practice after six years away under the 2005 Order. He assured the Committee that he would abandon alternative practice, would work with BPMC and would abide by any restriction that the Committee saw fit to place on the Respondent's License. The Respondent also argued that the Maryland Board imposed an excessive excessive sanction for failure to comply with a subpoena and for treatment that resulted in no harm harm to any patients.

The Committee rejects the Respondent's argument that Maryland imposed an excessive penalty. The 2005 Order involved misconduct in separate categories for probation violations, patient care and failure to comply with a subpoena. The Respondent and those who wrote in the Respondent's support attempted to separate those categories and argue whether revocation was an appropriate penalty for failing to comply with a subpoena or for patient care that resulted in no patient harm. The Maryland Board considered the misconduct categories in the aggregate, as well as the Respondent's prior misconduct and non-compliance. The Committee agrees with the Maryland Board that any determination on a sanction should consider all current and prior matters. The Committee also finds no credibility in the Respondent's assurance that he would work with BPMC. The Respondent had multiple chances to work with the Maryland Board and the Respondent failed to work with the Maryland Board. Both the 2000 Consent and the 2005 Order found that the Respondent failed to cooperate with Maryland Board investigations and the 2005 Order found such conduct intentional, deliberate and calculated.

The Respondent engaged in a pattern of misconduct in Maryland for over ten years. The Respondent failed to practice according to accepted care standards in providing care to 22 patients over those years. The Respondent failed to learn from prior disciplinary actions, failed to comply with probation terms to which he consented and attempted to hide his non-compliance. The state that knows the Respondent best, Maryland, has found the Respondent unfit to practice in that state. Further, the Respondent has now been away from medical practice of any kind for six years. The Committee sees no reason to trust that the Respondent will correct his past misconduct if he receives a chance to practice in New York, even with restrictions on that practice. The Committee concludes that we can assure the protection of patients in New York State only by revoking the Respondent's License.

#### ORDER

Based on the foregoing, the Committee issues the following ORDER:

1. The Committee sustains the First and Second Specifications of Misconduct contained in the Amended Statement of Charges [Ex. 4];
2. The Committee revokes the Respondent's License.

DATED: 24 Dec 2011 New York  
2011

REDACTED SIGNATURE

---

Eleanor C. Kane, M.D. (Chair),  
Arsenio G. Agopovich, M.D.,  
Richard H. Edmonds, Ph.D.

TO: Binyamin Rothstein. D.O.

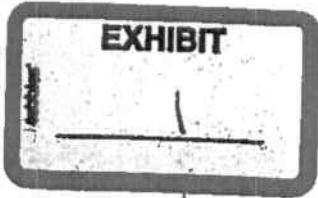
**REDACTED ADDRESS**

Jude B. Mulvey , Esq.  
Associate Counsel  
New York State Department of Health  
Bureau of Professional Medical Conduct  
Corning Tower – Room 2512  
Empire State Plaza  
Albany, New York 12237

Appendix

Statement of Charges (attached)

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



---

IN THE MATTER  
OF  
BINYAMIN ROTHSTEIN, D.O.  
CO-05-06-2999-A

---

NOTICE OF  
REFERRAL  
PROCEEDING

TO: BINYAMIN ROTHSTEIN, D.O.  
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 Procedure 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 21<sup>st</sup> day of December 2005, 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. SEAN O' BRIEN, DIRECTOR, BUREAU OF ADJUDICATION, (hereinafter "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before December 12, 2005.

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 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 December 12, 2005, 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

*November 10*, 2005

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  
BINYAMIN ROTHSTEIN, D.O..  
CO-05-06-2999-a

---

STATEMENT  
OF  
CHARGES

**BINYAMIN ROTHSTEIN, D.O.**, the Respondent, was authorized to practice medicine in New York state on October 14, 1982, by the issuance of license number 151763 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On or about March 28, 1996, the Maryland State Board of Physician Quality Assurance (hereinafter "Maryland Board"), by a Consent Order (hereinafter "Maryland Order 1"), SUSPENDED Respondent from the practice of medicine for THREE (3) years, to be stayed after ninety (90) days contingent upon his successful completion an eight (8) week "Physician Refresher/Retraining Program," a course in electrocardiogram interpretation, and a documentation course, thereafter he shall be placed on PROBATION for three (3) years subject to conditions, based on failure to meet appropriate standards of care.

B. On or about February 23, 2000, the Maryland Board, by a Consent Order (hereinafter "Maryland Order 2"), placed Respondent on THREE (3) years PROBATION, subject to conditions that include, inter alia, that he terminate his practice of "alternative" or "complementary" medicine and practice only "traditional," "conventional" or osteopathic medicine for the entire period of probation, based on failure to meet appropriate standards of care.

C. On or about May 25, 2005, the Maryland Board by a Final Opinion and Order (hereinafter "Maryland Order 3"), REVOKED Respondent's license to practice medicine, based on failing to provide medical or surgical care, and violating the standard of quality medical care.

D. The conduct resulting in the Maryland Board disciplinary actions against Respondent would constitute misconduct under the laws of New York State, pursuant to the following sections of New State law:

1. New York Education Law §6530(2) (practicing the profession fraudulently);
2. New York Education Law §6530(3) (negligence on more than one occasion);
3. New York Education Law §6530(4) (gross negligence);
4. New York Education Law §6530(5) (Incompetence on more than one occasion);
5. New York Education Law §6530(6) (gross Incompetence);
6. New York Education Law §6530(20) (moral unfitness);
7. New York Education Law §6530(29) (violating any term of probation or condition or limitation imposed on the licensee); and/or
8. New York Education Law §6530(32) (failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient).

#### **SPECIFICATIONS**

##### **FIRST THROUGH THIRD SPECIFICATIONS**

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 D.
2. The facts in Paragraphs B and/or D.
3. The facts in Paragraphs C and/or D.

##### **FOURTH THROUGH SIXTH SPECIFICATIONS**

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

4. The facts in Paragraphs A and/or D.
5. The facts in Paragraphs B and/or D.
6. The facts in Paragraphs C and/or D.

DATED: *Nov. 10*, 2005  
Albany, New York

REDACTED SIGNATURE

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