



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

December 6, 2018

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Marc S. Nash, Esq.
New York State Department of Health
Bureau of Professional Medical Conduct
Room 2512, Corning Tower, ESP
Albany, New York 12237

Paul M. Linnenburger, Esq.
Rothstein Donatelli, LLP
1215 Paseo de Peralta
Santa Fe, New Mexico 87501

Guy Rosenschein, M.D.
[REDACTED]

Guy Rosenschein, M.D.
[REDACTED]

RE: In the Matter of Guy Rosenschein, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No.18-269) 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
Office of Professional Medical Conduct
Riverview Center
150 Broadway - Suite 355
Albany, New York 12204

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. 2015) and §230-c subdivisions 1 through 5, (McKinney Supp. 2015), "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
Riverview Center
150 Broadway – Suite 510
Albany, New York 12204

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,



James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH: cmg
Enclosure

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

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: **IN THE MATTER** : **DETERMINATION**
: **OF** : **AND**
: **GUY ROSENSCHEIN, M.D.** : **ORDER**
: **18-269**
-----X

A hearing was held on November 15, 2018, at the offices of the New York State Department of Health (Department), 150 Broadway, Menands, New York. Pursuant to Public Health Law (PHL) § 230(10)(e), Lyon M. Greenberg, M.D., Chairperson, Reid T. Muller, M.D., and Janet Axelrod, Esq., duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. Tina M. Champion, Administrative Law Judge (ALJ), served as the Administrative Officer.

The Department appeared by Marc S. Nash, Senior Attorney. A Notice of Referral Proceeding dated May 15, 2018, and Statement of Charges dated March 7, 2018, were duly served upon Guy Rosenschein, M.D. (Respondent), who did not appear at the hearing.¹

The Hearing Committee received and examined documents from the Department (Exhibits 1-8). A stenographic reporter prepared a transcript of the proceeding.

¹ This matter was initially scheduled for hearing on July 19, 2018. On July 18, 2018, ALJ Tina M. Champion received an email from Attorney Paul Linnenburger of New Mexico stating that he represented the Respondent and seeking an adjournment to November 2018 to discuss settlement with the Department. The Department did not object and the matter was adjourned to November 15, 2018. On November 14, 2018, ALJ Champion received an email from Mr. Linnenburger stating that the Respondent could not appear as he was in custody in New Mexico and requesting that he or Marc Lowry be allowed to appear by telephone at the hearing. At 10:30 a.m. on November 15, 2018, ALJ Champion called Mr. Linnenburger's office at the telephone number Mr. Linnenburger provided by email the day before and was told by a woman who identified herself as Mr. Lowry's assistant that both Mr. Linnenburger and Mr. Lowry were unavailable. ALJ Champion provided the assistant with the telephone number for Mr. Linnenburger or Mr. Lowry to call to be connected to the hearing and advised that the hearing would proceed as scheduled.

After consideration of the entire record, the Hearing Committee unanimously votes 3-0 to sustain the charges that the Respondent committed professional misconduct in violation of Education Law (Educ. Law) § 6530(9), and that the penalty of revocation of his medical license is appropriate.

BACKGROUND

The Department brought this case pursuant to PHL § 230(10)(p), which provides for a hearing when a licensee is charged solely with a violation of Educ. Law § 6530(9). The Respondent is charged with professional misconduct pursuant to Educ. Law § 6530(9)(b) for "[h]aving 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." The Respondent is also charged with 6530(9)(d) for "[h]aving his...license to practice medicine revoked, suspended or having other disciplinary action taken...where the conduct resulting in the revocation, suspension or other disciplinary action involving the license...would, if committed in New York state, constitute professional misconduct under the laws of New York state." Pursuant to PHL § 230(10), the Department has the burden of proving its case by a preponderance of the evidence. Any licensee found guilty of professional misconduct under the procedures prescribed in PHL § 230 "shall be subject to penalties as prescribed in [PHL § 230-a] except that the charges may be dismissed in the interest of justice."

FINDINGS OF FACT

The following findings and conclusions are the unanimous determinations of the Hearing Committee:

1. Guy Rosenschein, M.D., the Respondent, was authorized to practice medicine in New York State on March 12, 1998, by issuance of license number 209769. (Ex. 6.)

2. On November 18, 2016, the New Mexico Medical Board issued a Notice of Contemplated Action alleging that the Respondent violated the New Mexico Statutes Annotated 1978, New Mexico Medical Board rules, and provisions of the Code of Medical Ethics of the American Medical Association as adopted by the New Mexico Medical Board. The underlying allegations included that:

- A. the Respondent had been engaged in the practice of medicine in New Mexico as a pediatric surgeon for several years;
- B. the Respondent was arrested at his home in New Mexico in November 2016 by local law enforcement agents who, upon executing a search warrant, discovered child pornography in the Respondent's possession;
- C. the search warrant was obtained after an investigation revealed that other pornographic images involving children had been electronically transmitted via an IP address registered to Respondent's home address;
- D. the Respondent admitted to law enforcement agents that he knowingly possessed and traded pornographic images of children with others via the internet;
- E. at the time of Respondent's arrest, a minor-aged male was found in Respondent's bed wearing only his underwear; and
- F. the Respondent admitted to law enforcement agents that the minor-aged male was a "former patient." (Ex. 8.)

3. The Respondent was notified via the Notice of Contemplated Action that if he did not request a hearing within the requisite time frame then the New Mexico Medical Board would take action against the Respondent's license to practice medicine. (Ex. 8.)

4. On February 23, 2017, the New Mexico Medical Board issued an Entry of Default and Default Order of Revocation based on Respondent failing to submit a timely request for a hearing on the Notice of Contemplated Action after due notice was given. (Ex. 7.)

5. The New Mexico Medical Board concluded that the allegations set forth in the Notice of Contemplated Action are true as uncontested and that Respondent's conduct violated provisions of the New Mexico Medical Practice Act and/or New Mexico Medical Board Regulations. (Ex. 7.)

6. The New Mexico Medical Board revoked the Respondent's license to practice as a physician in the State of New Mexico. (Ex. 7.)

VOTE OF THE HEARING COMMITTEE

FIRST AND SECOND SPECIFICATIONS

The Hearing Committee decided, by a vote of 3-0, that the evidence supports sustaining the charges of the Respondent having committed professional misconduct as defined in Educ. Law § 6530(9)(b) and (d).

HEARING COMMITTEE DETERMINATIONS

The Department charged the Respondent with two specifications of professional misconduct pursuant to Educ. Law § 6530(9).

The first specification relates to the New Mexico Medical Board's finding that the Respondent was guilty of improper professional practice or professional misconduct. The Department alleges that the conduct upon which that finding was based would, if committed in New York State, constitute professional misconduct under the laws of New York State pursuant to Educ. Law § 6530(20) [conduct in the practice of medicine which evidences moral unfitness to practice medicine]. The Hearing Committee agrees.

The second specification relates to the New Mexico Medical Board taking disciplinary action against the Respondent's medical license. The Department alleges that the conduct resulting in that disciplinary action would, if committed in New York State, constitute professional misconduct under the laws of New York State pursuant to Educ. Law § § 6530(20) [conduct in the practice of medicine which evidences moral unfitness to practice medicine]. The Hearing Committee agrees.

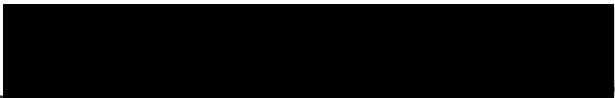
The Department has recommended that the Respondent's license to practice medicine in New York State be revoked. The Hearing Committee, in considering the full spectrum of penalties available under PHL § 230-a, the nature of the allegations against Respondent in conjunction with the Respondent's practice as a pediatric physician, and the Respondent's interaction in his home with a minor identified as a former patient, wholly agrees with the Department's recommendation.

ORDER

Now, after reviewing the evidence from the hearing, it is hereby ordered that:

1. All specifications of professional misconduct, as set forth in the Statement of Charges, are sustained;
2. The Respondent's license to practice medicine in the State of New York is revoked; and
3. This Order shall be effective upon service on the Respondent in accordance with the Requirements of PHL § 230(10)(h).

Dated: Albany, New York
November 23, 2018


Lyon M. Greenberg, MD, Chairperson
Reid T. Muller, MD
Janet R. Axelrod, Esq.

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Santa Fe, New Mexico 87501

Guy Rosenschein, M.D.



Guy Rosenschein, M.D.



APPENDIX I

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

IN THE MATTER
OF
GUY ROSENSCHEIN, M.D.

STATEMENT
OF
CHARGES

GUY ROSENSCHEIN, M.D., the Respondent, was authorized to practice medicine in New York State on or about March 12, 1998, by the issuance of license number 209769 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about February 23, 2017, the New Mexico Medical Board (hereinafter "New Mexico Board") issued an Entry of Default and Default Order of Revocation which found the allegations set forth in the Notice of Contemplated Action dated November 18, 2016 are uncontested and revoked Respondent's license to practice as a physician in the State of New Mexico. On November 6, 2016, Respondent was found with a former patient, a minor-aged male, in his bed wearing only underwear.

B. The conduct resulting in the New Mexico Board's 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(20) (Conduct in the practice of medicine which evidences moral unfitness to practice medicine).

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

HAVING BEEN FOUND GUILTY OF PROFESSIONAL MISCONDUCT

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. 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 (namely N.Y. Educ. Law §§ 6530(20)) as alleged in the facts of the following:

1. The facts in Paragraphs A, B and B.1.

SECOND SPECIFICATION

HAVING HAD DISCIPLINARY ACTION TAKEN

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(d) by having his or her license to practice medicine revoked, suspended or having other disciplinary action taken, or having his or her application for a license refused, revoked or suspended or having voluntarily or otherwise surrendered his or her license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation, suspension or other disciplinary action involving the license or refusal, revocation or suspension of an application for a license or the surrender of the license would, if

committed in New York state, constitute professional misconduct under the laws of New York state (namely N.Y. Educ. Law § 6530(20)) as alleged in the facts of the following:

2. The facts in Paragraphs A, B, and B.1

DATE: March 7, 2018
Albany, New York


MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct