



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

*Public*

April 29, 2005

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Larry Robert Rosenthal, M.D.  
4827 W. Bay Court  
Apartment 301E  
Tampa, Florida 33611-1013

Robert Bogan, Esq.  
NYS Department of Health  
Office of Professional Medical Conduct  
433 River Street - 4<sup>th</sup> Floor  
Troy, New York 12180

**RE: In the Matter of Larry Robert Rosenthal, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 05-86) 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.

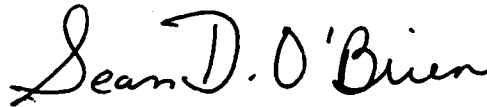
The notice of review served on the Administrative Review Board should be forwarded to:

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 cursive script that reads "Sean D. O'Brien". The signature is written in dark ink and is positioned above the printed name and title.

Sean D. O'Brien, Director  
Bureau of Adjudication

SDO:cah

Enclosure

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

IN THE MATTER  
OF  
**LARRY ROBERT ROSENTHAL, M.D.**

DETERMINATION

AND

ORDER

BPMC #05-86

**COPY**

A Notice of Referral Proceeding and Statement of Charges, both dated February 17, 2005, were served upon the Respondent, **LARRY ROBERT ROSENTHAL, M.D.**, **STEVEN V. GRABIEC, M.D.**, Chairperson, **ALEXANDER M. YVARS, M.D., F.A.C.S.** and **FRANK J. KING, R.P.A.-C.**, 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. **STEPHEN L. FRY, ESQ.**, Administrative Law Judge, served as the Administrative Officer.

A hearing was held on April 20, 2005, at the Offices of the New York State Department of Health, Hedley Park Place, 433 River Street, Troy, New York. The Department appeared by **DONALD P. BERENS, JR., ESQ.**, General Counsel, by **ROBERT BOGAN, ESQ.**, of Counsel. The Respondent, although properly served pursuant to Public Health Law section 230(10)(h), failed to appear in person or by an attorney.

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 where 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 or another jurisdiction, or upon a prior administrative adjudication regarding conduct which 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 Sections 6530(9)(b) and (d), based upon actions constituting violations of subdivisions (21) and (28). A copy of the Notice of Referral Proceeding and 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 unless otherwise specified.

1. **LARRY ROBERT ROSENTHAL, M.D.**, the Respondent, was authorized to practice medicine in New York State on July 30, 1984, by the issuance of license number 159559 by the New York State Education Department (Ex. 4).
2. On April 8, 2004, the Virginia Board of Medicine ("the Virginia Board") issued an Order fining Respondent \$1,000 for his repeated failure to timely respond to requests from the Board to provide legally mandated information to complete his Practitioner Profile.

### **HEARING COMMITTEE CONCLUSIONS**

The hearing Committee concludes that the conduct resulting in the Virginia Board's disciplinary actions against Respondent would constitute misconduct under New York Education Law §6530(9)(d) (having had disciplinary action taken by the duly authorized professional disciplinary agency of another state) since the conduct, had it occurred here, would have constituted misconduct under §6530(21) (failure to file a report required by law or by the department of health or education). Failure to provide information to be used in preparing a physician's profile is also prohibited in New York State, under §2995-a of the Public Health Law and 10 NYCRR 1000, so the findings against Respondent in Virginia also constitute misconduct here.

The Hearing Committee concludes, however, that Respondent's conduct would not have constituted misconduct in this state, had it occurred here, pursuant to subdivision (28) of this statute, which covers failures to respond to communications from the Health Department with regard to inquiries and complaints about the licensee's professional misconduct, since the Virginia Board's communications were not about Respondent's misconduct.

The Hearing Committee also concludes that Respondent cannot be found to have committed misconduct under New York Education Law §6530(9)(b), which covers the licensee "having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state". The Virginia order does not, on its face, mention findings that Respondent committed misconduct or unprofessional practice, but merely cites violation of the statute governing physician profile information, and cites other statutes as the basis for the proceeding. No notice taking was requested by the Department of these latter statutes, and their contents are, therefore, unknown to this record and will not be presumed, in the absence of some evidence, to cover misconduct or unprofessional practice.

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

#### **SPECIFICATIONS**

##### **FIRST SPECIFICATION**

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.

**VOTE: NOT SUSTAINED (3-0)**

##### **SECOND SPECIFICATION**

Respondent violated New York Education Law §6530(9)(d) by having had disciplinary action taken by a duly authorized professional 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)**

### **JURISDICTION**

Respondent did not appear at the hearing, and the preliminary issue to be addressed is whether the Department achieved jurisdiction over Respondent.

At the time he received his license in New York State, Respondent was living at an address in Syracuse, NY. However, the Education Department reported to the New York State Office for Professional Medical Conduct ("OPMC") that Respondent was not then registered to practice in New York and had not done so for at least the previous 8 years (Ex. 4).

When the Department became aware that Respondent had been fined by the Virginia Board, it undertook a search to locate Respondent's current address. It obtained an address for Respondent (4827 West Bay Court, Apartment 301E, Tampa, Florida) from the Florida Board, but personal service of the Notice of Hearing and Statement of Charges at that address failed because Respondent was "unknown" at that address (Ex. 2); the Department also sent copies of these documents to Respondent by Certified Mail, Return Receipt Requested and First Class Mail. There is no indication that Respondent received these documents at that address, although documents previously sent to Respondent at that address were returned as "unclaimed", and first class mail sent to him was not returned to the Department (Ex. 9).

In addition, a Department investigator left messages on the answering machine at the phone number it had for Respondent at that address, the greeting message identifying

the phone as that of "Larry Rosenthal, M.D.", but the calls were not answered, and subsequently the phone was disconnected (Ex. 9).

The Department also had previously obtained an address for Respondent that was the home address of one Sylvia F. Carra, Ph.D., P.A., but in November, 2004, she advised the Department that he did not live there, nor had she had contact with him in several years (Ex. 7). She gave her last known address for Respondent as 601 South Newport Ave., Tampa, Florida, 33606, which corresponded to the "current" address obtained for Respondent in a LexisNexis "person report" on April 19, 2005, and with later information provided by the Florida Board. On April 5, 2005, the Department mailed a packed of documents to Respondent at this address, and they were returned marked with indications that he had moved and left no address, and that the postal service was unable to forward the mail (Ex. 9). In addition, the Department's attorney represented at the hearing that he had tried to call Respondent at the phone number for Respondent listed at that address by LexisNexis, but that the phone number had been disconnected.

It is concluded that the address at which the Department attempted to serve Respondent personally was his "last know address". Since personal service failed, the Department was authorized by the statute (Public Health Law §230(10)(d)) to serve him by mailing the documents to him by registered or certified mail, which it did.

It is noted that Respondent may well not have received the Department's documents, but that failure was largely occasioned by his failure to keep the various licensing agencies and postal authorities apprised of his addresses.

The Administrative Law Judge concluded, based on the foregoing, that the Department met the requirements of the statute for serving the Notice of Hearing and Statement of Charges, and that the hearing could proceed in Respondent's absence.



## HEARING COMMITTEE DETERMINATION

The record in this case indicates that Respondent was fined for failing to timely file, after numerous requests, information necessary to complete his Virginia physician's profile, and that Respondent's failure constituted misconduct for the reasons set forth above. Accordingly, the only issue to be decided in this hearing is the penalty to be imposed for Respondent's misconduct.

The Hearing Committee determines that the appropriate penalty is a censure and reprimand, accompanied by a \$1,000 fine. Hopefully, this will impress upon Respondent the importance of responding when requested to by licensing agencies, and in complying with the laws regarding provision of information necessary to complete state physicians' profiles.

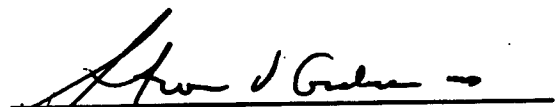
**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. A **CENSURE AND REPRIMAND** are issued against the New York medical license of .  
**LARRY ROBERT ROSENTHAL, M.D.**
2. A fine of \$1,000 is assessed against Respondent. Payment of the fine shall be due within 60 days of the effective date of this Order. The Respondent shall make payment to the Bureau of Accounts Management, New York State Department of Health, Erastus Corning Tower Building, Room 1258, Empire State Plaza, Albany, New York, 12237. Any fine not paid by the prescribed date shall be subject to all provisions of law relating to debt collection by the State of New York. This includes, but is not limited to, the imposition of interest; late payment charges and collection fees; referral to the New York Department of Taxation and Finance for collection; and non-renewal of permits or licenses (Tax Law §171(27); State Finance Law §18; CPLR §5001; Executive Law §32).

This **ORDER** shall be effective upon service on the Respondent pursuant to Public Health Law section 230(10)(h).

**DATED: Niagara Falls, New York**  
**4/28/, 2005**

  
**STEVEN V. GRABIEC, M.D.**  
**Chairperson**

**ALEXANDER M. YVARS, M.D., F.A.C.S.**  
**FRANK J. KING, R.P.A.-C.**

# **APPENDIX 1**



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

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IN THE MATTER  
OF  
LARRY ROBERT ROSENTHAL, M.D.  
CO-04-06-3158-A

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NOTICE OF  
REFERRAL  
PROCEEDING

TO: LARRY ROBERT ROSENTHAL, M.D.  
4827 W. Bay Court  
Apt. 301E  
Tampa, FL 33611-1013

**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 20<sup>th</sup> day of April 2005, at 10:00 in the forenoon of that day at the Hedley Park Place, 433 River Street, 5<sup>th</sup> Floor, 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 April 11, 2005.

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 April 11, 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

*February 17, 2005*



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 STATEMENT  
OF OF  
LARRY ROBERT ROSENTHAL, M.D. CHARGES  
CO-04-06-3158-A

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LARRY ROBERT ROSENTHAL, M.D., the Respondent, was authorized to practice medicine in New York state on July 30, 1984, by the issuance of license number 159559 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On or about April 4, 2004, the Virginia Board of Medicine (hereinafter "Virginia Board"), by an Order (hereinafter "Virginia Order"), required Respondent to pay a \$1,000.00 MONETARY PENALTY, based on failing to provide, upon request, information to the Virginia Board in response to six (6) letters sent to his official address of record.

B. The conduct resulting in the Virginia 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(21) (failing to file a report required by law or by the department of health or the education department); and/or
2. New York Education Law §6530(28) (failing to respond within thirty days to written communications from the department of health).

**SPECIFICATIONS**

**FIRST SPECIFICATION**

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 B.

**SECOND SPECIFICATION**

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

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

DATED: *February 17*, 2005  
Albany, New York

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