



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Barbara A. DeBuono, M.D., M.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

April 9, 1997

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Robert Bogan, Esq.
NYS Department of Health
Bureau of Professional Medical Conduct
Empire State Plaza
Corning Tower - Room 2438
Albany, New York 12237

Melvyn Rosenstein, M.D.
515 Ocean Avenue
Santa Monica, California 90402

RE: In the Matter of Melvyn Rosenstein, M.D.

Dear Mr. Bogan and Dr. Rosenstein:

Enclosed please find the Determination and Order (No. BPMC-97-82) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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), 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.

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., 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,


Tyrone T. Butler, Director
Bureau of Adjudication

TTB:crc
Enclosure

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

COPY

IN THE MATTER
-OF-
MELVYN ROSENSTEIN, M.D.
Respondent

DETERMINATION

AND

ORDER

BPMC-97-82

A Notice of Referral Proceeding and Statement of Charges, both dated February 4, 1997, were served upon the Respondent, Melvyn Rosenstein, M.D. **PAUL J. WEINBAUM, M.D. (Chair), JOSEPH G. CHANATRY, M.D. and MARYCLAIRE SHERWIN** duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee (hereinafter "the Committee") in this matter pursuant to Section 230(10)(e) of the Public Health Law. **JEFFREY W. KIMMER, ESQ., ADMINISTRATIVE LAW JUDGE**, served as the Administrative Officer. The Department of Health appeared by Robert Bogan, Esq., Assistant Counsel. The Respondent appeared pro se. Evidence was received, statements were heard and transcripts of these proceedings were made.

After consideration of the entire record, the Committee issues this Determination and Order.

STATEMENT OF CASE

This case was brought pursuant to Public Health Law Section 230(10)(p). This statute provides for an expedited proceeding 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 prior professional disciplinary action or criminal conviction. The scope of this expedited proceeding is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

In the instant case, Respondent is charged with professional misconduct pursuant to Education Law § 6530(9)(d) (disciplinary action taken against the license by another state). The charges herein arise from Respondent entering into a Stipulation For Surrender Of License with the State of California whereby he surrendered his license to practice medicine in California. The Stipulation incorporated by reference the Accusation filed by California. That Accusation enumerated numerous acts of unprofessional conduct attributed to the Respondent in relation to seven (7) patients who retained the services of the Respondent for cosmetic penile enhancement surgery. The acts included gross negligence, repeated acts of negligence, incompetence, dishonest and corrupt acts, false advertising and making false statements in medical records. The allegations in this proceeding are set forth in the Statement of Charges, a copy of which is attached to this Determination and Order as Appendix One.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers in parentheses refer to exhibits. These citations represent

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.

1. Melvyn Rosenstein, M.D. (hereinafter, "Respondent"), was licensed to practice medicine in New York State on December 23, 1966, by the issuance of license number 96997 by the New York State Education Department. (Ex. 4)

2. On or about July 26, 1996, the Division of Medical Quality, Medical Board of California, State of California (hereinafter "Medical Board") accepted a STIPULATION FOR SURRENDER OF LICENSE offered by the Respondent and the Attorney General of the State of California, pursuant to which the Respondent surrendered his California Physician's and Surgeons Certificate. (Ex. 5)

3. The California Stipulation incorporated by reference the Accusation which set forth the specific charges of unprofessional conduct against the Respondent. (Ex. 5)

4. The unprofessional conduct charged by the State of California in conjunction with the Respondent's cosmetic penile enhancement surgery practice, included false and misleading advertising, employment of a sales staff to procure patients, failure to fully disclose the risks and complications of surgical procedures, failure to obtain patients' pre-operative history, failure to conduct appropriate pre-operative physical examinations, failure to follow practices regarding sterility in the operating room, failure to maintain complete and accurate medical records, failure to provide appropriate and necessary post-operative care, falsifications of medical records and being intoxicated while in attendance of patients. (Ex. 6)

CONCLUSIONS OF LAW

The following conclusions were made pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Committee unless noted otherwise.

The Committee concluded that the Department has sustained its burden of proof in this matter. The preponderance of the evidence demonstrates that Respondent surrendered his license after a disciplinary action was instituted by the Medical Board of California. The underlying conduct which resulted in the Respondent's surrender of his license to practice medicine would, if committed in New York, constitute professional misconduct under New York law. Specifically, the Committee found the Respondent's actions would fall within the definitions of misconduct set forth at N.Y. Education Law §6530(2) (Practicing the profession fraudulently), N.Y. Education Law §6530(3) (Negligence on more than one occasion), N.Y. Education Law §6530(4) (Gross negligence), N.Y. Education Law §6530(5) (Incompetence on more than one occasion), N.Y. Education Law §6530(6) (Gross incompetence), N.Y. Education Law §6530(7) (Practicing while impaired by alcohol), N.Y. Education Law §6530(17) (Undue influence on the patient), N.Y. Education Law §6530(20) (Conduct which evidences moral unfitness), N.Y. Education Law §6530(27) (Advertising or soliciting for patronage that is not in the public interest), N.Y. Education Law §6530(32) (Failing to maintain an accurate) and N.Y. Education Law §6530(34) (Guaranteeing that satisfaction or a cure will result from the performance of a professional service).

DETERMINATION AS TO PENALTY

The Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that Respondent's license to practice medicine in New York State should be revoked. This determination was reached upon due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

The Committee views the conduct of the Respondent as a serious breach of acceptable professional conduct. The Committee views such conduct as evidence of a lack of moral fitness for the practice of medicine. It is the Hearing Committee's duty to protect the consumers of medical services of this state. The practice of medicine is a privilege to be bestowed on those who warrant it. The Respondent has showed that he does not possess the necessary good moral character to be allowed to exercise this privilege. The Hearing Committee unanimously determined that a person capable of such conduct should not be afforded the privilege of practicing medicine in New York and that revocation is the only appropriate sanction under the circumstances.

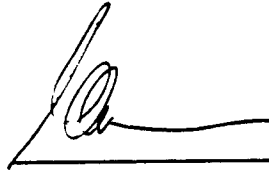
ORDER

Based upon the foregoing, **IT IS HEREBY ORDERED THAT:**

1. The single Specification of professional misconduct, as set forth in the Statement of Charges (Appendix I) is **SUSTAINED**;

2. Respondent's license to practice medicine in New York State be and hereby is **REVOKED**.

DATED: Albany, New York
4/4, 1997



PAUL J. WEINBAUM, M.D. (CHAIR)
Joseph G. Chanatry, M.D.
Maryclaire Sherwin

TO: Robert Bogan, ESQ.
Assistant Counsel
Bureau of Professional Medical Conduct
New York State Department of Health
Corning Tower Building - Rm. 2503
Empire State Plaza
Albany, N.Y. 12237-0032

Melvyn Rosenstein, M.D.
515 Ocean Avenue
Santa Monica, California 90402

APPENDIX I

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

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IN THE MATTER : STATEMENT
OF : OF
MELVYN ROSENSTEIN, M.D. : CHARGES

-----X

MELVYN ROSENSTEIN, M.D., the Respondent, was authorized to practice medicine in New York State on December 23, 1966, by the issuance of license number 096997 by the New York State Education Department. The Respondent is not currently registered with the New York State Education Department.

FACTUAL ALLEGATIONS

1. On or about July 29, 1996 by DECISION AND ORDER OF THE DIVISION OF MEDICAL QUALITY, MEDICAL BOARD OF CALIFORNIA, the surrender of Respondent's Physician's and Surgeon's Certificate to practice medicine in the State of California was accepted.
2. On or about July 12, 1996, the Respondent submitted a STIPULATION FOR SURRENDER OF LICENSE to the Medical Board of California in satisfaction of an ACCUSATION - BEFORE THE DIVISION OF MEDICAL QUALITY MEDICAL BOARD OF CALIFORNIA, DEPARTMENT OF CONSUMER AFFAIRS, STATE OF CALIFORNIA, dated February 23, 1996.
3. In the Stipulation for Surrender of License Respondent

"...agrees that if the matter were to proceed to hearing, the complainant would be able to present a *prima facie* case in support of the Allegations contained in the Accusation" and "if he if ever files an application for relicensure or reinstatement in the State of California... the causes for discipline contained in the Accusation will be deemed admitted by the respondent."

4. The conduct resulting in the surrender of Respondent's license to the Division of Medical Quality, Medical Board of California would, if committed in New York State constitute professional misconduct under N.Y. Educ. Law §6530(2) [practicing fraudulently], N.Y. Educ. Law §6530(32) [failing to maintain a record]; N.Y. Educ. Law §6530(4) [gross negligence]; N.Y. Educ. Law §6530(6) [gross incompetence]; N.Y. Educ. Law §6530(3) [negligence on more than one occasion]; N.Y. Educ. Law §6530(5) [incompetence on more than one occasion]; N.Y. Educ. Law §6530(27) [advertising or soliciting for patronage that is not in the public interest]; N.Y. Educ. Law §6530(7) [practicing the profession while impaired by alcohol]; N.Y. Educ. Law §6530(17) [undue influence on the patient]; N.Y. Educ. Law §6530(20) [moral unfitness]; and N.Y. Educ. Law §6530(34) [guaranteeing that satisfaction or a cure will result from the performance of professional services].

SPECIFICATION OF MISCONDUCT

**VOLUNTARY SURRENDER OF LICENSE AFTER
DISCIPLINARY ACTION INSTITUTED BY ANOTHER STATE**

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530(9)(d) (McKinney Supp. 1997) by reason of having voluntarily surrendered his license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the surrender of the license 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 1, 2, 3 and/or 4.

DATED: *February 4,* 1997

Albany, New York

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