



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

June 12, 1998
Executive Deputy Commissioner

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Robert Manenkoff, PA
R. D. 1, Box 57
New Columbia, Pennsylvania 17856-9701

Jean Bresler, Esq.
Associate Counsel
NYS Department of Health
Bureau of Professional Medical Conduct
5 Penn Plaza - Sixth Floor
New York, New York 10001

RE: In the Matter of Robert Manenkoff, PA

Dear Mr. Manenkoff and Ms. Bresler:

Enclosed please find the Determination and Order (No. BPMC-98-113) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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,

A handwritten signature in cursive script that reads "Tyrone T. Butler".

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
ROBERT MANENKOFF, P.A.

DETERMINATION
AND
ORDER
BPMC - 98 - 113

KENNETH KOWALD (Chair), **JAMES EISENKRAFT, M.D.** and **HILDA RATNER, M.D.** duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to § 230(10) of the Public Health Law.

MARC P. ZYLBERBERG, ESQ., ADMINISTRATIVE LAW JUDGE, served as the Administrative Officer.

The Department of Health appeared by **HENRY M. GREENBERG, ESQ.**, General Counsel, by **JEAN BRESLER, ESQ.**, Associate Counsel and **BARRY P. KAUFMAN, ESQ.**, of counsel.

Respondent, **ROBERT MANENKOFF, P.A.**, did not appear personally, was not represented by counsel but did submit documents for the Hearing Committee's consideration.

A Hearing was held on June 4, 1998. Evidence was received and examined. A transcript of the proceeding was made. After consideration of the record, the Hearing Committee issues this Determination and Order, pursuant to the Public Health Law and the Education Law of the State of New York.

STATEMENT OF CASE

The State Board for Professional Medical Conduct is a duly authorized professional disciplinary agency of the State of New York. (§230 et seq. of the Public Health Law of the State of New York ["P.H.L."]). This case, brought pursuant to P.H.L. §230(10)(p), is also referred to as an "expedited hearing". The scope of an expedited hearing is strictly limited to evidence or sworn testimony relating to the nature and severity of the penalty to be imposed on the licensee¹ (Respondent).

ROBERT MANENKOFF, P.A., is charged with professional misconduct within the meaning of §6530(9)(b) of the Education Law of the State of New York ("Education Law"), to wit: "professional misconduct ... by reason of having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state ..." (Petitioner's Exhibit # 1 and §6530[9][b] of the Education Law).

In order to find that Respondent committed professional misconduct, the Hearing Committee, pursuant to §6530(9)(b) of the Education Law, must determine: (1) whether Respondent was found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state and (2) whether Respondent's conduct on which the findings were based would, if committed in New York State, constitute professional misconduct under the laws of New York State.

A copy of the Statement of Charges is attached to this Determination and Order as Appendix I.

¹ P.H.L. §230(10)(p), fifth sentence.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. These facts 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. Some evidence was rejected as irrelevant. Unless otherwise noted, all Findings and Conclusions herein were unanimous. The State, who has the burden of proof, was required to prove its case by a preponderance of the evidence. All Findings of Fact made by the Hearing Committee were established by at least a preponderance of the evidence.

1. Respondent was authorized to practice as a physician's assistant in New York State on August 9, 1976 by the issuance of registration number 000474 by the New York State Education Department (Petitioner's Exhibits # 1 & # 2)².

2. The State Board For Professional Medical Conduct has obtained personal jurisdiction over Respondent (legal decision made by the Administrative Officer [Respondent was personally served and had no objection to the personal service effected]); (P.H.L. § 230[10][d]); (Department's Exhibit # 1).

3. Respondent is currently registered with the New York State Education Department to practice as a Physician Assistant during the period January 1, 1996 through July 31, 1998 (Department's Exhibit # 2).

² refers to exhibits in evidence submitted by the New York State Department of Health (Department's Exhibit) or by P.A. Manenkoff (Respondent's Exhibit).

4. The State Board of Medicine through the Bureau of Professionals and Occupational Affairs of the Commonwealth of Pennsylvania ("**Pennsylvania Board**") is a state agency charged with regulating the practice of medicine pursuant to the Laws of the Commonwealth of Pennsylvania (Department's Exhibit # 3).

5. On June 24, 1997, the Pennsylvania Board issued a Consent Agreement and Order ("**1997 Order**"), which indicated that Respondent had violated Pennsylvania Statute §422.41(8)³. The Pennsylvania Board found that Respondent had engaged in unprofessional conduct by making a comment, which was not medically necessary and which was of a sexual nature, during a gynecological examination of a patient (Department's Exhibit # 3).

6. As a result of the 1997 Order, a formal reprimand was issued to Respondent, he was fined \$500 and assessed costs of \$675 (Department's Exhibit # 3).

7. Respondent admits to the charges having been filed and to agreeing to the 1997 Order (Respondent's Exhibits # A & B).

8. Respondent has paid the fine and explained the circumstances of his conduct (Respondent's Exhibit # B) (uncontested by the Department).

³ 63 P.S. §422.41 The board (Pennsylvania) shall have the authority to impose disciplinary or corrective measures on a board-regulated practitioner for any or all of the following reasons: ... (8) Being guilty of immoral or unprofessional conduct. Unprofessional conduct shall include departure from or failure to conform to an ethical or quality standard of the profession. ... (i) The ethical standards of a profession are those ethical tenets which are embraced by the professional community of this Commonwealth.

CONCLUSIONS OF LAW

The Hearing Committee makes the following conclusions, pursuant to the Findings of Fact listed above and the record herein. All conclusions resulted from a unanimous vote of the Hearing Committee.

The Hearing Committee concludes that the Factual Allegations (paragraphs A and B), from the April 6, 1998 Statement of Charges, are **SUSTAINED**.

The Hearing Committee further concludes that the Specification of Charges is **SUSTAINED**⁴.

The Hearing Committee concludes that the Department of Health has shown by a preponderance of the evidence that Respondent was found guilty of improper professional practice by the State of Pennsylvania and his conduct in Pennsylvania would constitute professional misconduct under the laws of New York State. The Department of Health has met its statutory burden of proof.

I Professional Misconduct under §6530(9)(b) of the Education Law.

The Medical Board of Pennsylvania is a duly authorized professional disciplinary agency. In June of 1997, said Medical Board issued a Consent Order, in which Respondent admitted to engaging in unprofessional conduct by making a sexual comment during a gynecological examination.

⁴ It is also noted that Respondent has not submitted a written answer to the charges and allegations in the Statement of Charges, as required by P.H.L. §230(10)(c). Therefore, in addition to the Hearing Committee's independent determination, the charges and allegations are deemed admitted.

Respondent's conduct (comment) was a violation of Pennsylvania Law which warranted disciplinary action by the Pennsylvania Board. The Hearing Committee finds that Respondent's conduct, as indicated in his admission, if committed in New York State, would constitute professional misconduct under §6530(31)⁵ of the Education Law.

Therefore, Respondent has committed professional misconduct pursuant to §6530(9)(b) of the Education Law.

DETERMINATION

The Hearing Committee, pursuant to the Findings of Fact, Conclusions of Law and Discussion set forth above, unanimously determines that Respondent should be Censured and Reprimanded for his conduct in Pennsylvania.

This determination is reached after due and careful consideration of the full spectrum of penalties available pursuant to P.H.L. §230-a, including:

(1) Censure and reprimand; (2) Suspension of the license, wholly or partially; (3) Limitations of the license; (4) Revocation of license; (5) Annulment of license or registration; (6) Limitations; (7) the imposition of monetary penalties; (8) a course of education or training; (9) performance of public service and (10) probation.

The Committee has carefully reviewed the documentary evidence presented by Department and by Respondent. The record establishes that Respondent committed one act of unprofessional conduct by making a sexual comment during a gynecological exam.

⁵ Each of the following is professional misconduct... Willfully harassing, abusing, or intimidating a patient either physically or verbally;

The Hearing Committee concludes that if this case had been held in New York, on the facts presented, the conduct alleged and admitted to would have resulted in a finding that Respondent had committed professional misconduct. Respondent's comment, under the circumstances, was certainly inappropriate but do not place in question his ability to practice medicine as a physician assistant with skill and safety to patients.

The Hearing Committee discussed the possibility of dismissing the charges in the interest of justice (§6530 - first paragraph). However, the Hearing Committee determined that even in a prison setting, with an uncooperative patient and all of the other circumstances presented by Respondent, the comment was uncalled for and inappropriate. Therefore, Respondent's conduct should not be tolerated and Censure and Reprimand is an appropriate penalty for New York to impose under the circumstances presented to the Hearing Committee.

The Hearing Committee also determines that the sanctions imposed by the Pennsylvania Board are sufficient sanctions under the circumstances presented here.

All other issues raised by the parties have been duly considered by the Hearing Committee and would not justify a change in the Findings, Conclusions or Determination contained herein.

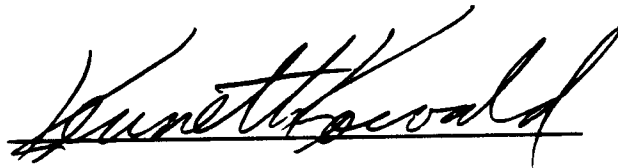
By execution of this Determination and Order, all members of the Hearing Committee certify that they have read and considered the complete record of this proceeding.

ORDER

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

1. The Specification of professional misconduct contained within the Statement of Charges (Department's Exhibit # 1) is **SUSTAINED**, and
2. Respondent is **CENSURED AND REPRIMANDED** for his conduct in Pennsylvania.

DATED: **New York, New York**
 June // , 1998



**KENNETH KOWALD (Chair),
JAMES EISENKRAFT, M.D.
HILDA RATNER, M.D.**

**ROBERT MANENKOFF, P.A.
RD 1, Box 57
New Columbia, PA 17856-9701**

**Jean Bresler, Esq.
Associate Counsel,
New York State Department of Health
Bureau of Professional Medical Conduct
5 Penn Plaza, 6th Floor
New York, New York 10001**

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APPENDIX I

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

IN THE MATTER
OF
ROBERT MANENKOFF, P.A.

STATEMENT
OF
CHARGES

Robert Manenkoff, P.A., the Respondent, was authorized to practice medicine in New York State on or about August 9, 1976, by the issuance of registration number 000474 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about June 30, 1997 the Respondent entered into a consent agreement with the Pennsylvania Bureau of Professional and Occupational Affairs and the Pennsylvania State Board of Medicine whereby he admitted violating The medical Practice Act of 1985, P.L. 457, No. 112, as amended, section 63 P.S. §422.41 (8), in that he engaged in unprofessional conduct by making a comment, which was not medically necessary and which was of a sexual nature, during a gynecological examination. This conduct if committed in New York would constitute misconduct pursuant to N.Y. Educ. Law §6530 (31), Willfully harassing,... a patient ... verbally.
- B. An order was entered by the Board on June 30, 1997, where by the Respondent was found to have violated The Medical Practice Act of 1985 §63 P.S., 422.41(8). A formal reprimand was issued. The Respondent was required to pay a penalty of Five Hundred Dollars (\$500.00) and costs of Six Hundred Seventy Five Dollars.

SPECIFICATION OF CHARGES

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)(McKinney Supp. 1998) 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 § N.Y. Educ. Law §6530 (31)) as alleged in the facts of the following:

1. Paragraphs A and B above.

DATED: April 6, 1998
New York, New York



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct