



STATE OF NY
DEPARTMENT C.

Corning Tower The Governor Nelson A. Rockefeller En. State Plaza Albany, New York 12237

Mark R. Chassin, M.D., M.P.P., M.P.H.
Commissioner

Paula Wilson
Executive Deputy Commissioner

September 12, 1994

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Leonard A. Rubinstein, M.D.
801 Hudson Avenue
Sarasota, Florida 34236

Kevin C. Roe, Esq.
NYS Department of Health
Empire State Plaza
Corning Tower - Room 2438
Albany, New York 12237

Effective Date: 9/19/94

RE: In the Matter of Leonard A. Rubinstein, M.D.

Dear Dr. Rubinstein and Mr. Roe :

Enclosed please find the Determination and Order (No. 94-184) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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
Corning Tower - Fourth Floor (Room 438)
Empire State Plaza
Albany, New York 12237

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), "(t)he

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 all action 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.

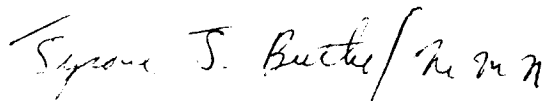
The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Empire State Plaza
Corning Tower, Room 2503
Albany, New York 12237-0030

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:mmn

Enclosure

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

**IN THE MATTER
OF
LEONARD A. RUBINSTEIN, M.D.**

**DETERMINATION
AND
ORDER**

NO BPMC-94-184

ARSENIO G. AGOPOVICH, M.D., (Chair), **ARTHUR J. SEGAL, M.D.** and **MICHAEL J. BROWN, R.P.A.** duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to §230(10)(e) of the Public Health Law.

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

The Department of Health appeared by **KEVIN C. ROE, ESQ.**, Associate Counsel.

LEONARD A. RUBINSTEIN, M.D., (hereinafter "Respondent") appeared personally at the hearing on his own behalf and was not represented by counsel.

A hearing was held on August 10, 1994. Evidence was received, witnesses were sworn or affirmed and examined. A transcript of the proceedings was made. After consideration of the entire 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 [hereinafter 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).

Respondent, LEONARD A. RUBINSTEIN, M.D., is charged with professional misconduct within the meaning of §6530(9)(d) of the Education Law of the State of New York (hereinafter N.Y.S. Education Law), to wit: "professional misconduct ... by reason of having disciplinary action taken by a duly authorized professional disciplinary agency of another state, for conduct, which conduct, would, if committed in New York State constitute professional misconduct under the Laws of New York State. (Petitioner's Exhibit # 1 and §6530[9][d] of the N.Y.S. Education Law).

In order to find that Respondent committed professional misconduct, the Hearing Committee, pursuant to §6530(9)(d) of the N.Y.S. Education Law, must determine: (1) whether Respondent had some disciplinary action taken or instituted against him by a duly authorized professional disciplinary agency of another state and (2) whether Respondent's conduct on which the disciplinary action was taken would, if committed in New York State, constitute professional misconduct under the laws of New York State.

¹ P.H.L. §230(10)(p), fifth sentence.

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

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. Unless otherwise noted, all Findings and Conclusions herein were unanimous.

1. Respondent was authorized to practice medicine in New York State on October 10, 1980 by the issuance of license number 143735 by the New York State Education Department. (Petitioner's Exhibit # 1 & Petitioner's Exhibit # 2)²

2. The Respondent is not currently registered with the New York State Education Department. (Petitioner's Exhibit # 1) and [T-5]³

3. Steven Stuart Hurt personally served a Notice of Referral Proceeding and a Statement of Charges, both dated June 2, 1994, on Respondent on June 13, 1994 at 801 Hudson Ave., Sarasota, Florida (Petitioner's Exhibit # 1)

4. The Florida Department of Business and Professional Regulation, acting by the Florida Board of Medicine, (hereinafter "Florida Board") is a state agency charged with regulating the practice of medicine pursuant to the laws of the State of Florida. (Petitioner's Exhibits # 3, 4 and 5)

² refers to exhibits in evidence submitted by the New York State Department of Health (Petitioner's Exhibit) or by Leonard A Rubinstein, M.D. (Respondent's Exhibit)

³ Numbers in brackets refer to transcript page numbers. [T-]

5. On August 19, 1991, the Department of Professional Regulation of the State of Florida (hereinafter "Florida Department") charged⁴, Respondent with twenty-one (21) separate counts of violating Florida Statutes. (Petitioner's Exhibit # 3)

6. As a result of the August 19, 1991 charges, the Florida Department and Respondent entered into a Consent Agreement⁵. (Petitioner's Exhibit # 3)

7. As a result of said Consent Agreement, the Florida Board issued a Final Order on August 15, 1992⁶. Said Order indicated that Respondent was represented by counsel and that the facts were not in dispute. (Petitioner's Exhibit # 3)

8. In the August 15, 1992 Final Order, the Florida Board approved, adopted and incorporated the allegations set forth in the August 19, 1991 Administrative Action Complaint as their findings of fact. The Florida Board also approved, adopted and incorporated the conclusions of law set forth in the August 19, 1991 Administrative Action Complaint as their conclusions of law. (Petitioner's Exhibit # 3)

9. A review of the August 15, 1992 Final Order, the May 1, 1992 Consent Agreement and the August 15, 1991 Amended Administrative Complaint indicates the following conduct by Respondent⁷:

⁴ Department of Professional Regulation, Petitioner, vs. Leonard A. Rubinstein, M.D., Respondent. DOAH CASE Nos.: 90-5216/ 91-1724/ 91-4461. DPR CASE Nos.: 0081610/ 0109045/ 89-6844/ 89-3225/ 89-7820. Amended Administrative Complaint, signed by Bruce D. Lamb, Chief, Trial Attorney and dated August 19, 1991. (Petitioner's Exhibit # 3)

⁵ Consent Agreement, signed and sworn by Respondent, May 1, 1992 and approved by Larry G. McPherson, Jr., Chief Attorney, Medical Section on May 7, 1992. (Petitioner's Exhibit # 3)

⁶ Hearing held August 8, 1992, Order dated August 15, 1992 and filed with the Department of Professional Regulation on August 24, 1992. (Petitioner's Exhibit # 3)

⁷ The May 1, 1992 Consent Agreement, at numbered paragraph # 3 of the Stipulated Conclusions of Law, provides that Counts Five through Sixteen and Eighteen through Twenty-One were voluntarily dismissed on acceptance of the agreement by the board. The Florida Board explicitly accepted the May 1, 1992 Consent Agreement in its August 15, 1992 Final Order. Therefore the conduct of Respondent for Counts Five through Sixteen and Eighteen through Twenty-One were not considered by the Hearing Committee.

1. Engaging in false, deceptive, or misleading advertising (Petitioner's Exhibit # 3, Amended Administrative Complaint ¶¶ 3-9);
2. Making deceptive, untrue, or fraudulent representations in or related to the practice of medicine (Petitioner's Exhibit # 3, Amended Administrative Complaint ¶¶ 13-25);
3. Exercising influence on the patient or client in such a manner as to exploit the patient or client for financial gain of the licensee or of a third party (Petitioner's Exhibit # 3, Amended Administrative Complaint ¶¶ 26-28);
4. Failing to practice medicine with an acceptable level of care (Petitioner's Exhibit # 3, Amended Administrative Complaint ¶¶ 29-39);
5. Making or filing a report known to be false or making deceptive, untrue or fraudulent representations in or related to the practice of medicine (Petitioner's Exhibit # 3, Amended Administrative Complaint ¶¶ 111-118);

10. A review of the August 15, 1992 Final Order, the May 1, 1992 Consent Agreement and the August 15, 1991 Amended Administrative Complaint indicates that Respondent had committed prohibited acts under the following Florida Statutes:

§458.331(1)(d) of Title 32 (Professions and Occupations), by engaging in "False, deceptive or misleading advertising.";

§458.331(1)(k) of Title 32 (Professions and Occupations), by "Making deceptive, untrue, or fraudulent representations in or related to the practice of medicine or employing a trick or scheme in the practice of medicine.";

§458.331(1)(n) of Title 32 (Professions and Occupations), by "Exercising influence on the patient or client in such a manner as to exploit the patient or client for financial gain of the licensee or of a third party, which shall include, but not be limited to, the promoting or selling of services, goods, appliances, or drugs.";

§458.331(1)(h) of Title 32 (Professions and Occupations), by "Making or filing a report which the licensee knows to be false, ..."; (Petitioner's Exhibit # 3)

11. In the August 15, 1992 Final Order, Respondent was fined \$15,000.00, received a reprimand, was forbidden from initiating contacts with patients or their families for the purpose of persuading them to agree to his treatment recommendations. In addition, Respondent's license to practice medicine in the State of Florida was placed on probation for one (1) year. Restrictions during the one year probation included indirect supervision by a monitor and various other terms and conditions. (Petitioner's Exhibit # 3)

12. On March 8, 1993, the Florida Department charged⁸, Respondent with nineteen (19) separate counts of violating Florida Statutes. (Petitioner's Exhibit # 4)

13. As a result of the March 8, 1993 charges, the Florida Department and Respondent entered into a Consent Agreement⁹. (Petitioner's Exhibit # 4)

14. As a result of said Consent Agreement, the Florida Board issued a Final Order on August 6, 1993¹⁰. Said Order approved, adopted and incorporated the Consent Agreement in toto. (Petitioner's Exhibit # 4)

⁸ Department of Professional Regulation, Petitioner, vs. Leonard A. Rubinstein, M.D., Respondent. CASE No.'s: 9006221; 9106043; 9108800; 9112051; 9200308. Administrative Complaint, signed by Larry G. McPherson, Jr., Chief Medical Attorney, dated March 8, 1993 and filed with the Department of Professional Regulation, March 9, 1993. (Petitioner's Exhibit # 4)

⁹ Consent Agreement, signed and sworn to by Respondent on August 6, 1993 and approved by Larry G. McPherson, Jr., Chief Attorney, Medical Section on August 6, 1993. (Petitioner's Exhibit # 4)

¹⁰ Matter before the Florida Board on August 6, 1993, Order dated August 6, 1993 and filed with the Department of Business and Professional Regulation on August 23, 1993. (Petitioner's Exhibit # 4)

15. A review of the August 6, 1993 Final Order, the August 6, 1993 Consent Agreement and the March 8, 1993 Administrative Complaint indicates the following alleged conduct by Respondent¹¹:

1. Failed to keep written medical records justifying the course of treatment of at least 3 separate patients (Petitioner's Exhibit # 4, Administrative Complaint ¶¶ 17-19 and ¶¶ 69-71 and ¶¶ 98-100);
2. Making deceptive, untrue, or fraudulent representations in or related to the practice of medicine to at least 3 separate patients (Petitioner's Exhibit # 4, Administrative Complaint ¶¶ 20-22 and ¶¶ 38-47 and ¶¶ 78-80);
3. Exercising influence on at least 5 separate patients or clients in such a manner as to exploit them for Respondent's financial gain (Petitioner's Exhibit # 4, Administrative Complaint ¶¶ 23-25 and ¶¶ 35-37 and ¶¶ 51-53 and ¶¶ 75-77 and ¶¶ 95-97);
4. Gross or repeated malpractice or the failure to practice medicine with that level of care, skill and treatment which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances for at least 4 patients. (Petitioner's Exhibit # 4, Administrative Complaint ¶¶ 26-28 and ¶¶ 54-56 and ¶¶ 72-74 and ¶¶ 101-103).

16. A review of the August 6, 1993 Final Order, the August 6, 1993 Consent Agreement and the March 8, 1993 Administrative Complaint indicates that Respondent was alleged to have committed prohibited acts under the following Florida Statutes: (Petitioner's Exhibit # 4)

¹¹ Unlike the August 15, 1992 Final Order, the August 6, 1993 Final Order does not adopt the findings of fact and conclusions of law of the Administrative Complaint of March 8, 1993. In the Consent Agreement, Respondent neither admits nor denies the allegations of fact contained in the Administrative Complaint of March 8, 1993.

§458.331(1)(m) of Title 32 (Professions and Occupations), by "Failing to keep written medical records justifying the course of treatment of the patient, ...";

§458.331(1)(k) of Title 32 (Professions and Occupations), by "Making deceptive, untrue, or fraudulent representations in or related to the practice of medicine or employing a trick or scheme in the practice of medicine.";

§458.331(1)(n) of Title 32 (Professions and Occupations), by "Exercising influence on the patient or client in such a manner as to exploit the patient or client for financial gain of the licensee or of a third party, which shall include, but not be limited to, the promoting or selling of services, goods, appliances, or drugs.";

§458.331(1)(t) of Title 32 (Professions and Occupations), by committing "Gross or repeated malpractice or the failure to practice medicine with that level of care, skill and treatment which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances. ...".

17. In the August 6, 1993 Final Order and Consent Agreement, Respondent was fined \$10,000.00, was prohibited from committing future violations of Chapters 455, 458 and 893 of Florida Statutes or the rules promulgated pursuant thereto and his license to practice medicine in the State of Florida was placed on probation for five (5) years. Restrictions during the five year probation included: indirect supervision by a monitor, and various other terms and conditions of probation. (Petitioner's Exhibit # 4)

18. On January 24, 1993, the Florida Department charged¹², Respondent with one (1) count of violating a Florida Statute. (Petitioner's Exhibit # 5)

19. As a result of the January 24, 1993 charges, the Florida Department and Respondent entered into a Consent Agreement¹³. (Petitioner's Exhibit # 5)

20. As a result of said Consent Agreement, the Florida Board issued a Final Order on June 5, 1993¹⁴. Said Order approved, adopted and incorporated the Consent Agreement in toto. (Petitioner's Exhibit # 5)

21. A review of the June 5, 1993 Final Order, the June 5, 1993 Consent Agreement and the January 24, 1993 Administrative Complaint indicates the following alleged conduct by Respondent¹⁵:

1. Respondent continued to practice medicine without a Board approved monitoring physician, as required by the Final Order of the Florida Board of August 15, 1992. (Petitioner's Exhibit # 5, Administrative Complaint ¶¶ 1-10); [T-28]

22. A review of the June 5, 1993 Final Order, the June 5, 1993 Consent Agreement and the January 24, 1993 Administrative Complaint indicates that

¹² Department of Professional Regulation, Petitioner, vs. Leonard A. Rubinstein, M.D., Respondent. CASE No.: 9213503. Administrative Complaint, signed by Larry G. McPherson, Jr., Chief Medical Attorney, dated January 24, 1993 and filed with the Department of Professional Regulation, January 25, 1993. (Petitioner's Exhibit # 5)

¹³ Consent Agreement, signed by Respondent on May 3, 1993 and approved by Larry G. McPherson, Jr., Chief Medical Attorney, Medical Section on May 11, 1993. (Petitioner's Exhibit # 5)

¹⁴ Matter before the Florida Board on June 5, 1993, Order dated June 5, 1993 and filed with the Department of Professional Regulation on June 8, 1993. (Petitioner's Exhibit # 5)

¹⁵ Unlike the August 15, 1992 Final Order, the June 5, 1993 Final Order does not adopt the findings of fact and conclusions of law of the Administrative Complaint of January 24, 1993. In the Consent Agreement of May 3, 1993, Respondent neither admits nor denies the allegations of fact contained in the Administrative Complaint of January 24, 1993.

Respondent was alleged to have committed prohibited acts under the following Florida Statute: (Petitioner's Exhibit # 5)

§458.331(1)(x) of Title 32 (Professions and Occupations), by "Violating any provision of this chapter, a rule of the board or department, or a lawful order of the board or department previously entered in a disciplinary hearing ...".

23. In the June 5, 1993 Final Order and the May 3, 1993 Consent Agreement, Respondent was fined \$5,000.00, was prohibited from committing future violations of Chapters 455, 458 and 893 of Florida Statutes or the rules promulgated pursuant thereto and received a reprimand. (Petitioner's Exhibit # 5)

24. Edward C. Fetherolf, M.D. has a medical practice, specializing in Ophthalmology in the State of Florida. He was approved as a supervisor by the Florida Board and is currently acting as an indirect practice monitor for Respondent. (Respondent's Exhibit # B and C); [T-24; T-26; T-40-41]

25. Respondent has satisfied and is continuing compliance with the terms of the Final Orders of the Florida Board, including community service, courses on medical ethics and documentation and all other stipulated requirements. [T-27]

26. Respondent is in compliance with the indirect practice monitoring required by the Florida Board. [T-43-44]

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 following Factual Allegations, from the June 2, 1994 Statement of Charges, are SUSTAINED ¹⁶:

Paragraph A. : (4 - 11)

except for the following Allegation: "and failing to keep written medical records justifying the course of treatment of the patient in violation of Section 458.331(1)(m); Florida Statutes.", which is NOT SUSTAINED.

Paragraph B. : (4 and 12 - 17)

Paragraph C. : (4 and 18 - 23)

The last sentences of paragraphs A, B and C are not factual allegations, but require a conclusion for this Hearing Committee to make, as discussed infra.

The Hearing Committee further concludes that the following Specifications of Charges are SUSTAINED ¹⁷:

FIRST SPECIFICATION: (Paragraph: A)

SECOND SPECIFICATION: (Paragraph: B)

THIRD SPECIFICATION: (Paragraph: C)

¹⁶ The numbers in parentheses refer to the Findings of Fact previously made herein by the Hearing Committee and support each Factual Allegation.

¹⁷ The citations in parentheses refer to the Factual Allegations which support each Specification.

The Hearing Committee concludes that the Department of Health has shown by a preponderance of the evidence that the State of Florida took disciplinary action against Respondent for improper professional practices and Respondent's conduct in Florida would constitute professional misconduct under the laws of New York State. The Department of Health has met its statutory burden of proof.

Service of Charges and of Notice of Hearing.

P.H.L. §230(10)(d) requires that the Charges and Notice of Hearing be served on the licensee personally, at least twenty (20) days before the Hearing. If personal service cannot be made, due diligence must be shown and certified under oath. After due diligence has been certified, then, the Charges and Notice of Hearing must be served by registered or certified mail to the licensee's last known address, at least fifteen (15) days before the Hearing.

From the affidavit submitted, personal service of the Notice of Referral Proceeding and the Statement of Charges on Respondent was proper and timely. In addition, Respondent appeared at the Hearing and had no objection to service of the Statement of Charges and the Notice of Referral Proceeding.

Professional Misconduct under §6530(9)(d) of the N.Y.S. Education Law.

The Florida Board of Medicine is a duly authorized professional disciplinary agency. In August 1991, January 1993 and March 1993, the Florida Department of Professional Regulation instituted disciplinary actions against Respondent.

The record establishes that Respondent committed professional misconduct pursuant to §6530(17)¹⁸ of the N.Y.S. Education Law.

In the August 15, 1992 Final Order, the facts and conclusions establish that Respondent tried to influence his patient to order medical tests and sold a medicinal drug without giving or offering a prescription. Although there were no specific findings, admissions or denials, in the August 6, 1993 Final Order, the Hearing Committee finds that Respondent's conduct on which the March 8, 1993 Administrative Complaint was based would, if committed in New York State, constitute the exercising of undue influence by Respondent on his patients in such a manner as to exploit them for his financial gain. The Hearing Committee finds that the legal requirements of Florida Statute §458.331(1)(n) is in all relevant respect identical to §6530(17) of the N.Y.S. Education Law.

The record establishes that Respondent committed professional misconduct pursuant to §6530(21)¹⁹ of the N.Y.S. Education Law.

In the August 15, 1992 Final Order, the facts and conclusions establish that Respondent billed his patient's insurance company for medical procedures which were not done. Although there were no specific findings, admissions or denials, in the August 6, 1993 Final Order, the Hearing Committee finds that Respondent's conduct on which the March 8, 1993 Administrative Complaint was based would, if committed in New York State, constitute the willful filing of a false report by Respondent. The

¹⁸ Each of the following is professional misconduct... [E]xercising undue influence on the patient, including the promotion of the sale of services, goods, appliances and drugs in such a manner as to exploit the patient for the financial gain of the licensee or of a third party;

¹⁹ Each of the following is professional misconduct... [W]illfully making or filing a false report, ...

Hearing Committee finds that the legal requirements of Florida Statute §458.331(1)(h) is in all relevant respect identical to §6530(21) of the N.Y.S. Education Law.

The record establishes that Respondent committed professional misconduct pursuant to §6530(27)²⁰ of the N.Y.S. Education Law.

In the August 15, 1992 Final Order, the facts and conclusions establish that Respondent engaged in false, deceptive, or misleading advertising in the Manatee/Sarasota Phone Book's Yellow Pages. Respondent's conduct, if committed in New York State, constitutes advertising or soliciting for patronage that is not in the public interest. The Hearing Committee finds that Florida Statute §458.331(1)(d) has the same legal requirements of §6530(27) of the N.Y.S. Education Law.

The record establishes that Respondent committed professional misconduct pursuant to §6530(32)²¹ of the N.Y.S. Education Law.

Although there were no specific findings, admissions or denials, in the August 6, 1993 Final Order, the Hearing Committee finds that Respondent's conduct on which the March 8, 1993 Administrative Complaint was based would, if committed in New York State, constitutes failure to maintain a record for, at least 3 patients which accurately reflects the evaluation and treatment of those patients by Respondent. The Hearing Committee finds that the requirements of Florida Statute §458.331(1)(m) are the same requirements of §6530(32) of the N.Y.S. Education Law. ("evaluation and treatment" is equivalent to "justifying the course of treatment")

²⁰ Each of the following is professional misconduct... [A]dvertising or soliciting for patronage that is not in the public interest. (a) Advertising or soliciting not in the public interest shall include, but not be limited to, advertising or soliciting that: (i) is false, fraudulent, deceptive, misleading, sensational, or flamboyant; ...

²¹ Each of the following is professional misconduct... [F]ailing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient. ...

The record establishes that Respondent committed professional misconduct pursuant to §6530(29)²² of the N.Y.S. Education Law.

Although there were no specific findings, admissions or denials, in the June 5, 1993 Final Order, the Hearing Committee finds that Respondent's conduct on which the January 24, 1993 Administrative Complaint was based would, if committed in New York State, constitute a violation of the terms and conditions placed on Respondent which required him to not engage in the practice of medicine without being under the indirect supervision of a Florida Board approved monitoring physician.

The Hearing Committee finds that the legal requirements of Florida Statute §458.331(1)(x) are the same legal requirements as §6530(29) of the N.Y.S. Education Law.

It is clear that, under the 1992 and both 1993 Final Orders, Respondent had disciplinary action taken against him. It is also clear that the conduct of Respondent, as set forth above and as more fully set forth in Petitioner's Exhibits # 3, 4 and 5, is the type of conduct that would, if committed in New York State, constitute professional misconduct pursuant to §6530(9)(d) of the N.Y.S. Education Law.

²² Each of the following is professional misconduct...[V]iolating any term of probation or condition or limitation imposed on the licensee pursuant to section two hundred thirty of the public health law;

DETERMINATION

The Hearing Committee, pursuant to the Findings of Fact, Conclusions of Law and Discussion set forth above, unanimously determines as follows:

1. Dr. Rubinstein's license to practice medicine shall be placed on probation in New York State for a period of five (5) years from the effective date of this Determination and Order and Respondent must comply with the terms of probation contained in the 1992 and 1993 Final Orders of the Florida Board of medicine; and

2. The above five (5) year period of probation shall be extended by the length of residency or practice outside of New York State; and

3. The terms and conditions set forth in the August 15, 1992 Final Order, the August 6, 1993 Final Order, the June 5, 1993 Final Order, together with the May 1, 1992 Consent Agreement, the August 6, 1993 Consent Agreement and the May 3, 1993 Consent Agreement (See Petitioner's Exhibits # 3, 4 and 5) shall be equally applicable to Respondent's practice in the State of New York, and shall be supervised by the Office of Professional Medical Conduct; and

4. Respondent shall submit a copy of the monitoring reports, required by his Florida probation, to the Office of Professional Medical Conduct.

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 record establishes that Respondent committed significant violations of Florida Laws, located within Title 32 of the Professions and Occupations Code.

The Hearing Committee concludes that if this case had been held in New York, on the facts presented, the pattern of deception, abuse of the practice of medicine, improper medical records and tests, influence on patients for Respondent's financial gain, failure to abide by the Florida Board's requirements and questionable ability to practice medicine with that level of care, skill, and treatment which would be exercised by a reasonably prudent similar physician under the circumstances would have resulted in a finding of professional misconduct.

The Hearing Committee considers Respondent's misconduct to be very serious. The fact that Respondent has been complying with the Florida Board's Orders, including the indirect practice monitor requirement was taken into consideration by the Hearing Committee. The presence and testimony of the Florida Board's approved practice monitor, Dr. Fetherolf was useful to the Hearing Committee in evaluating Respondent and the appropriate penalty to apply pursuant to P.H.L. §230-a. Given the aforementioned considerations, together with Respondent's past conduct and with a concern for the health and welfare of patients in New York State, the Hearing Committee determines that the above sanctions on Respondent's license are the appropriate and minimum sanctions to impose under the circumstances.

ORDER

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

1. The Specifications of professional misconduct contained within the Statement of Charges (Petitioner's Exhibit # 1) are **SUSTAINED**, and

2. Respondent's license to practice medicine in the State of New York is **RESTRICTED**, as follows:

A. Dr. Rubinstein's license to practice medicine shall be placed on probation in New York State for a period of five (5) years from the effective date of this Determination and Order; and

B. As part of the New York State terms of probation, Respondent must comply with the terms of probation contained in the 1992 and 1993 Final Orders of the Florida Board of medicine; and

C. The five (5) year period of probation shall be extended by the length of residency or practice outside of New York State; and

D. The terms and conditions set forth by the Florida Board of Medicine shall be equally applicable to Respondent's practice in the State of New York, and shall be supervised by the Office of Professional Medical Conduct; and

E. Respondent shall submit a copy of the monitoring reports, required by his Florida probation, to the Office of Professional Medical Conduct.

DATED: Albany, New York
September, 4, 1994



ARSENIO G. AGOPOVICH, M.D., Chair

ARTHUR J. SEGAL, M.D.
MICHAEL J. BROWN, R.P.A.

To: Leonard A. Rubinstein, M.D.
801 Hudson Avenue
Sarasota, Florida, 34236

Kevin C. Roe, Esq., Associate Counsel,
New York State Department of Health
Bureau of Professional Medical Conduct
Corning Tower Building, Room 2429
Empire State Plaza
Albany, New York 12237

A P P E N D I X I

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

-----X

IN THE MATTER : STATEMENT
OF : OF
LEONARD A. RUBINSTEIN, M.D. : CHARGES

-----X

LEONARD A. RUBINSTEIN, M.D., the Respondent, was authorized to practice medicine in New York State on October 10, 1980, by the issuance of license number 143735 by the New York State Education Department. The Respondent is not currently registered with the New York State Education Department to practice medicine.

FACTUAL ALLEGATIONS

A. On or about August 19, 1991, the Department of Professional Regulation of the State of Florida charged Respondent with twenty one counts of professional misconduct which included engaging in false, deceptive, or misleading advertising in violation of Section 458.331(1)(d), Florida Statutes; by making deceptive, untrue, or fraudulent representations in or related to the practice of medicine in violation of Section 458.331(1)(k), Florida Statutes; exercising influence on a patient or client in such a manner as to exploit the patient or client for financial gain of a licensee or a third party in violation of Section 458.331(1)(n), Florida Statutes; failing to practice medicine with that level of care, skill, and

treatment which a reasonably prudent similar physician recognizes as acceptable under the circumstances in violation of Section 458.331(1)(t), Florida Statutes; making or filing a report which the licensee knows to be false in violation of Section 458.331(1)(h), Florida Statutes; and failing to keep written medical records justifying the course of treatment of the patient in violation of Section 458.331(1)(m); Florida Statutes. On or about August 15, 1992, the Board of Medicine of the State of Florida issued a Final Order which reprimanded Respondent, fined him \$15,000.00, prohibited from initiating contacts with patients or their families for the purpose of persuading them to agree to his treatment recommendations and placed his license to practice medicine on probation for a period of one year. The conduct resulting in the disciplinary action against Respondent by the State of Florida would, if committed in New York State, constitute professional misconduct under New York Educ. Law §§6530(2), (3), (4), (17), (21), (27) and/or (32).

B. On or about March 9, 1993, the Department of Professional Regulation of the State of Florida charged Respondent with nineteen counts of professional misconduct which included failing to keep medical records justifying the course of treatment of patients in violation of Section 458.331(m), Florida Statutes; making deceptive, untrue, or fraudulent representations in or related to the practice of medicine in violation of 458.331(1)(k), Florida Statutes; exercising influence on a patient or client in such a manner as to exploit the patient or client for the financial gain of the licensee or a third party in violation of Section 458.331(1)(n), Florida Statutes; and failing

to practice medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent similar physician as being acceptable under the circumstances in violation of Section 458.331(1)(t), Florida Statutes. On or about August 23, 1993, the Board of Medicine of the State of Florida issued a Final Order which prohibited Respondent from violating certain Florida Statutes, fined him \$10,000.00 and placed him on five years probation. The conduct resulting in the disciplinary action against Respondent by the State of Florida would, if committed in New York State, constitute professional misconduct in violation of N.Y. Educ. Law §§6530(2), (3), (5), (17), and/or (32).

C. On or about January 25, 1993, the Department of Professional Regulation of the State of Florida charged Respondent with one count of professional misconduct for engaging in the practice of medicine without being under the supervision of an approved monitoring physician in violation of the August 15, 1992 Order of the Board of Medicine. On or about June 5, 1993, the Board of Medicine of the State of Florida issued a Final Order which reprimanded Respondent, fined him \$5,000.00 and prohibited future violations of the Florida Statutes by Respondent. The conduct which resulted in the disciplinary action by the State of Florida would, if committed in New York State, constitute professional misconduct in violation of N.Y. Education Law §6530(29).


SPECIFICATIONS

FIRST THROUGH THIRD SPECIFICATIONS

Respondent is charged with having a disciplinary action taken against him 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, in violation of N.Y. Educ. Law §6530(9)(d), in that, Petitioner alleges:

1. The facts in Paragraph A.
2. The facts in Paragraph B.
3. The facts in Paragraph C.

DATED: *June 2*, 1994
Albany, New York


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