



STATE OF NEW YORK DEPARTMENT OF HEALTH

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

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

Paula Wilson
Executive Deputy Commissioner

October 20, 1993

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Michael N. Weinstein, M.D.
792 Main Street
Melrose, Massachusetts 02176

Terrence Sheehan, Esq.
Associate Counsel
New York State Department of Health
Bureau of Adjudication
5 Penn Plaza - Sixth Floor
New York, New York 10001-1810

RE: In the Matter of Michael N. Weinstein, M.D.

Dear Dr. Weinstein and Mr. Sheehan:

Enclosed please find the Determination and Order (No. BPMC-93-162) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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:

New York State Department of Health
Office of Professional Medical Conduct
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 than 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
Corning Tower -Room 2503
Empire State Plaza
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.

Very truly yours,

Tyrone T. Butler

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:rg
Enclosure

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

-----X
IN THE MATTER OF
OF
MICHAEL N. WEINSTEIN, M.D.

: HEARING COMMITTEE'S
: FINDINGS OF FACT,
: CONCLUSIONS,
: DETERMINATION
: AND ORDER

: No. BPMC-93-162
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A Notice of Referral Proceeding and Statement of Charges, both dated July 7, 1993, were served upon Respondent, MICHAEL N. WEINSTEIN, M.D. GEORGE HYAMS, M.D. (Chair), F. MICHAEL JACOBIOUS, M.D., and KENNETH KOWALD, 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. GERALD H. LIEPSHUTZ, Department of Health Hearing Officer, served as the Administrative Officer. A hearing was held on August 11, 1993. The Department of Health appeared by Terrence Sheehan, Esq., Associate Counsel. Respondent did not appear at the hearing personally or by representative, but he submitted a document for the record. Evidence was received and a transcript of this proceeding was 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). That 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 or upon having had other disciplinary action taken concerning a license to practice medicine regarding conduct which would amount to professional misconduct if committed in New York. The scope of this expedited hearing is limited by Public Health Law Section 230(10)(p) 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 Section 6530(9)(b) in that he was found guilty of improper professional practice or professional misconduct in Massachusetts where the conduct upon which the finding was based would, if committed in New York, constitute negligence on more than one occasion (Education Law Section 6530(3)) and inaccurate patient records (Education Law Section 6530(32)).

FINDINGS OF FACT

The following Findings of Fact were made unanimously (3-0) after a review of the entire record in this matter. Citations in parentheses refer to exhibits in evidence. These citations represent evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence was considered and rejected in favor of the cited evidence.

1. Respondent was authorized to practice medicine in New York State in 1980 by the issuance of license number 141116 by the New York State Education Department. Respondent is not currently registered with the New York State Education Department to practice medicine in New York State. (Uncontested)

2. On or about March 7, 1990, the Massachusetts Board of Registration in Medicine, after a formal hearing, found that Respondent, a gastroenterologist, had practiced negligently on repeated occasions in 1987 and 1988 while at the New England Memorial Hospital in Stoneham, Massachusetts. The Board found that Respondent:

i. Negligently performed a flexible sigmoidoscopy despite the presence of acute abdominal pain and a possible acute diverticulitis. The patient suffered a perforation of the sigmoid colon and underwent a permanent colostomy.

ii. Performed a sigmoidoscopy on another patient which was not indicated due to the patient's unstable cardiac condition.

iii. Inserted a sigmoidoscope into a patient's vagina and failed to note the occurrence of this error in the operative report.

The Massachusetts Board admonished Respondent, ordered him to submit to the Board semi-annual reports regarding his clinical performance and required him to take a preceptorship in endoscopic procedures. (Ex. 2)

3. Respondent, pursuant to the Order of the Massachusetts Board, completed training in endoscopic procedures at Crawford-Long Hospital of Emory University, and he was observed while performing endoscopic procedures for a period of one year by the chief of gastroenterology. During that year, he was also required to submit letters from the other hospitals at which he

practiced stating that he was performing his duties successfully.
(Ex. A)

CONCLUSIONS

The following Conclusions were made pursuant to the Findings of Fact herein. All Conclusions resulted from a unanimous (3-0) vote of the Hearing Committee.

The Committee concludes that the Department of Health has met its burden of proof. The preponderance of the evidence demonstrates that Respondent was found guilty of conduct by a duly authorized professional disciplinary agency of another state which would have, if committed in New York State, constituted professional misconduct within the meaning of New York Education Law Section 6530(9)(b) as charged.

DETERMINATION AND ORDER

The **SPECIFICATION** in the Statement of Charges is sustained.

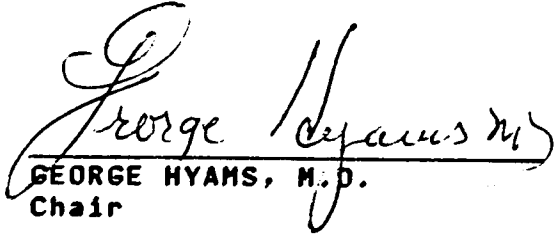
The Hearing Committee unanimously (3-0) determines that the appropriate disposition of this matter would normally be to suspend Respondent's license to practice medicine in New York pursuant to Section 230-a(2)(b) of the Public Health Law until he completed a course of retraining. Inasmuch, however, that he has been retrained pursuant to the Massachusetts' proceeding, it is

unnecessary to add a further penalty. The Committee is satisfied with Respondent's compliance with the requirements for retraining in Massachusetts.

IT IS HEREBY ORDERED:

THAT the charge herein be sustained, but that no further action be taken regarding Respondent's license to practice medicine in New York.

DATED: New York, New York
October , 1993


GEORGE HYAMS, M.D.
Chair

F. MICHAEL JACOBIOUS, M.D.
KENNETH KOWALD

TO: MICHAEL N. WEINSTEIN, M.D.
792 MAIN STREET
MELROSE, MASSACHUSETTS 02176

TERRENCE SHEEHAN, ESQ.
ASSOCIATE COUNSEL
NEW YORK STATE DEPARTMENT OF HEALTH
BUREAU OF ADJUDICATION
5 PENN PLAZA - SIXTH FLOOR
NEW YORK, NEW YORK 10001-1810

APPENDIX I

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

Dept Ex. 1 In EL
KS 8/11/93

-----X
: IN THE MATTER : NOTICE OF
: OF : REFERRAL
: MICHAEL N. WEINSTEIN, M.D. : PROCEEDING
: :
-----X

TO: MICHAEL N. WEINSTEIN, M.D.
792 Main Street
Melrose, Massachusetts 02176

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230(10)(p) (McKinney Supp. 1993) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1993). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 11th day of August at 1:00 P.M. o'clock in the afternoon of that day at 5 Penn Plaza, 6th Floor, New York, New York 10001.

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. 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 which 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, Corning Tower Building, 25th Floor, Empire State Plaza, Albany, New York 12237, ATTENTION: NANCY MASSARONI, (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before August 3, 1993.

You may file a written answer, brief, and affidavits with the Committee. Six copies of all papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before August 3, 1993 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 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: New York, New York

July 7, 1993



CHRIS STERN HYMAN
Counsel
Bureau of Professional
Medical Conduct

Inquiries should be addressed to:

Terrence Sheehan
Associate Counsel
(212) 613-2601

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

-----X
IN THE MATTER : STATEMENT
OF : OF
MICHAEL N. WEINSTEIN, M.D. : CHARGES
-----X

MICHAEL N. WEINSTEIN, M.D., the Respondent, was authorized to practice medicine in New York State in 1980 by the issuance of license number 14116 by the New York State Education Department. The Respondent is not currently registered with the New York State Education Department to practice medicine in New York State.

SPECIFICATION

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law Section 6530(9)(b) (McKinney Supp. 1993) in that he was 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 findings were based would, if committed in New York State, constitute professional misconduct under N.Y. Educ. Law Section 6530(3) and (32) (McKinney Supp. 1993). Specifically, Petitioner alleges:

On or about March 7, 1990, the Massachusetts Board of Registration in Medicine, after a formal hearing, found that Respondent, a gastroenterologist, had practiced negligently on repeated occasions in 1987 and 1988 while at the New England Memorial Hospital in Stoneham, Massachusetts. The Board found that Respondent:

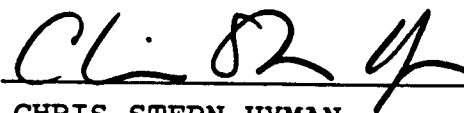
- i. Negligently performed a flexible sigmoidoscopy despite the presence of acute abdominal pain and a possible acute diverticulitis. The patient suffered a perforation of the sigmoid colon and underwent a permanent colostomy.
- ii. Performed a sigmoidoscopy on another patient which was not indicated due to the patient's unstable cardiac condition, and
- iii. Inserted a sigmoidoscope into a patient's vagina and failed to note the occurrence of this error in the operative report.

The Massachusetts Board admonished Respondent, ordered him to submit to the Board semi-annual reports regarding his clinical

performance and required him to take a preceptorship in endoscopic procedures.

DATED: New York, New York

July 7, 1993



CHRIS STERN HYMAN
COUNSEL
Bureau of Professional Medical
Conduct