



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

November 16, 2001

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Robert Bogan, Esq.
& Robert Maher, Esq.
NYS Department of Health
Hedley Park Place – 4th Floor
Troy, New York 12180

Michael J. Keating, Esq.
Dughi & Hewit
340 North Avenue
Cranford, New Jersey 07016

Andrew Weiss, M.D.
556 Eagle Rock Avenue
Suite 207
Roseland, New Jersey 07068

Andrew Weiss, M.D.
Pelham Medical Associates
3250 Westchester Avenue
Bronx, New York 10461

RE: In the Matter of Andrew Weiss, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 01-275) 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.

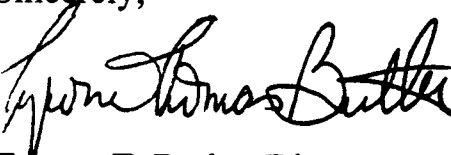
The notice of review served on the Administrative Review Board should be forwarded to:

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,



Tyrone T. Butler, Director
Bureau of Adjudication

TTB:cah
Enclosure

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

IN THE MATTER
OF
ANDREW B. WEISS, M.D.

DETERMINATION
AND
ORDER

BPMC #01-275

COPY

A Notice of Referral Proceeding and Statement of Charges, both dated July 20, 2001, were served upon the Respondent, **ANDREW B. WEISS, M.D.** **HRUSIKESH PARIDA, M.D.**, Chairperson, **RAFAEL LOPEZ, M.D.** and **NANCY J. MACINTYRE, R.N., PH.D.**, 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 October 18, 2001, 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.** and **PAUL ROBERT MAHER, ESQ.**, of Counsel. The Respondent appeared in person and by **MICHAEL J. KEATING, ESQ.**

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 (2), (21), (32) and (40). 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:

Respondent

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. **ANDREW B. WEISS, M.D.**, the Respondent, was authorized to practice medicine in New York State on March 17, 1970, by the issuance of license number 105462 by the New York State Education Department (Ex. 4).
2. On December 22, 1998, the State of New Jersey, Department of Law and Public Safety, Division of Consumer Affairs, State Board of Medical Examiners, (hereinafter "New Jersey Board"), by a Consent Order, (hereinafter "New Jersey Order"), reprimanded Respondent, based on several findings, including failure to provide patient records in a timely manner to a law firm and failure to mention all tests he considered, including MRI and EMG diagnostic studies, in his evaluation report on a patient (Ex. 5).

3. On November 7, 2000, Respondent checked the "no" box next to the question on his New York license reregistration application that read, "[s]ince you last registered, has any state other than New York instituted charges against you for professional misconduct, incompetence or negligence or revoked, suspended or accepted surrender of a professional license held by you?" (Ex. 5).

HEARING COMMITTEE CONCLUSIONS

The hearing Committee concludes that the conduct resulting in the New Jersey Board's disciplinary actions against Respondent would constitute misconduct under the laws of New York State, pursuant to:

- New York Education Law §6530(32);
- New York Education Law §6530(40);

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: SUSTAINED (3-0)

SECOND SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by having had disciplinary action taken after a disciplinary action was instituted 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.

VOTE: NOT SUSTAINED (3-0)

HEARING COMMITTEE DETERMINATION

The record in this case indicates that on December 22, 1998, New Jersey Board, by issuance of the New Jersey Order, reprimanded Respondent, based on several findings, including failure to provide patient records in a timely manner to a law firm and failure to mention all tests he considered, including MRI and EMG diagnostic studies, in his evaluation report on a patient.

The Hearing Committee determines that had Respondent committed the acts covered by the New Jersey Order in New York, they would have constituted misconduct in this state. Specifically, his failure to turn over records to a law firm would have violated New York Education Law §6530(40), which covers "fail[ure] to provide access by qualified persons to patient information in accordance with the standards set forth in section eighteen of the Public Health Law as added by chapter 497 of the laws of 1986". The patient is a "qualified person" entitled to access to his or her medical records, and the Hearing Committee concludes that it is implicit from the New Jersey Order that the patient, through a law firm, had requested copies of his or her records.

In addition, the Hearing Committee concludes that Respondent's failure to include in a consultation report the results of all MRI and EMG tests that showed "abnormality" would have constituted misconduct in New York, had it occurred here, pursuant to New York Education Law §6530(32). The Hearing Committee feels that Respondent should have mentioned all test result reports in his report, irrespective of whether he agreed with the conclusions raised therein.

Respondent's conduct in New Jersey would have constituted misconduct had it occurred in New York. Inasmuch as these findings of improper professional practice or professional misconduct were made by the New Jersey Board, Respondent committed misconduct in New York pursuant to New York Education Law §6530(9)(b), quoted above. However, the Hearing Committee concludes that Respondent did not commit misconduct in New York pursuant to Education Law §6530(9)(d), which requires a showing that the physician had disciplinary action taken after a disciplinary action was instituted in the other state. There is no evidence in this proceeding as to when a disciplinary "action" is legally instituted in New Jersey, and there is, therefore, no evidence that disciplinary action was, in fact, instituted.

The Department also charged Respondent with committing acts that would have constituted misconduct in New York under two other subdivisions of the statute, had the acts been committed here (Education Law §6530(2) and (21), covering practicing the profession fraudulently and willfully filing a false report). Both charges deal with Respondent's having checked the "no" box next to the question on his New York license reregistration application that read, "[s]ince you last registered, has any state other than New York instituted charges against you for professional misconduct, incompetence or

negligence or revoked, suspended or accepted surrender of a professional license held by you?"

The Department contended that the opening of the investigation by the State of New Jersey constituted the initiation of disciplinary action. However, as noted above, there is no evidence in this proceeding as to when a "disciplinary action" is legally instituted in New Jersey. Although the New Jersey Order was entered subsequent to Respondent's previous New York registration, the New Jersey Board did not bring charges against Respondent, nor did it revoke, suspend or accept surrender of, Respondent's New Jersey license. Therefore, the Hearing Committee concludes that it cannot be found that Respondent answered this question in the negative with intent to deceive the New Jersey Board; as Respondent was concerned, he avoided the institution of disciplinary action by entering into the consent decree.

Having found that Respondent committed professional misconduct in New York State, the issue remains as to the appropriate penalty to be imposed. The Hearing Committee concludes that a censure and reprimand imposed pursuant to Public Health Law §230-a(1) is the appropriate penalty, given the relatively minor nature of the acts cited by the State of New Jersey and the absence of any demonstrated patient harm.

ORDER

IT IS HEREBY ORDERED THAT:

1. A public **CENSURE AND REPRIMAND** should be issued covering the findings of misconduct upheld herein.

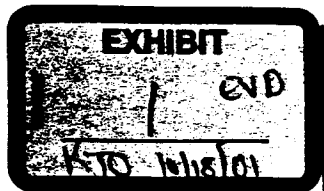
The **ORDER** shall be effective upon service on the Respondent or the Respondent's attorney by personal service or by certified or registered mail.

DATED: Middletown, New York
9 Nov., 2001

Hrusikesh Parida
HRUSIKESH PARIDA, M.D.
Chairperson

RAFAEL LOPEZ, M.D.
NANCY J. MACINTYRE, R.N., PH.D.

APPENDIX 1



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

-----X

IN THE MATTER : NOTICE
OF : OF
ANDREW WEISS, M.D. : HEARING
CO-00-11-5290-A

-----X

TO: ANDREW WEISS, M.D.
556 Eagle Rock Avenue
Suite 207
Roseland, NJ 07068

ANDREW WEISS, M.D.
Pelham Medical Associates
3250 Westchester Avenue
Bronx, NY 10461

PLEASE TAKE NOTICE:

A hearing will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230 and N.Y. State Admin. Proc. Act Sections 301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on the 23rd of August, 2001, at 10:00 in the forenoon of that day at the Heldey Park Place, 5th Floor, 433 River Street, Troy, New York, 12180 and at such other adjourned dates, times and places as the committee may direct.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, that is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. You shall appear in person at the hearing and may be represented by counsel. You have the right to produce witnesses and evidence on your behalf, to issue or have subpoenas issued on your behalf in order to require the production of witnesses and documents and you may cross-examine witnesses and examine evidence produced

against you. A summary of the Department of Health Hearing Rules is enclosed.

The hearing will proceed whether or not you appear at the hearing. Please note that requests for adjournments must be made in writing and by telephone to the Bureau of Adjudication, Hedley Park Place, 5th Floor, 433 River Street, Troy, New York 12180, (518-402-0748), upon notice to the attorney for the Department of Health whose name appears below, and at least five(5) days prior to the scheduled hearing date. Adjournment requests are not routinely granted as scheduled dates are considered dates certain. Claims of court engagement will require detailed Affidavits of Actual Engagement. Claims of illness will require medical documentation.


Pursuant to the provisions of N.Y. Pub.. Health Law Section 230(10)(c), you shall file a written answer to each of the Charges and Allegations in the Statement of Charges no later than ten(10) days prior to the date of the hearing. Any Charge and Allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such 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. 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.

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or

dismissed, and, in the event any of the charges are sustained, a determination of the penalty to be imposed or appropriate action to be taken. Such determination may be reviewed by the administrative review board for professional medical conduct.

THESE PROCEEDINGS MAY RESULT IN A
DETERMINATION THAT YOUR LICENSE TO PRACTICE
MEDICINE IN NEW YORK STATE BE REVOKED OR
SUSPENDED, AND/OR THAT YOU BE FINED OR
SUBJECT TO THE OTHER SANCTIONS SET OUT IN NEW
YORK PUBLIC HEALTH LAW SECTION 230-a. YOU ARE
URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU
IN THIS MATTER.

DATED: Albany, New York
July 20, 2001


PETER D. VAN BUREN
Deputy Counsel

Inquiries should be directed to:

Robert Bogan
Associate Counsel
Division of Legal Affairs
Bureau 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

**IN THE MATTER
OF
ANDREW B. WEISS, M.D.
CO-00-11-5290-A**

**STATEMENT
OF
CHARGES**

ANDREW B. WEISS, M.D., the Respondent, was authorized to practice medicine in New York state on January 28, 1970, by the issuance of license number 105462 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about December 22, 1998, the State of New Jersey, Department of Law and Public Safety, Division of Consumer Affairs, State Board of Medical Examiners, (hereinafter "New Jersey Board"), by a Consent Order, (hereinafter "New Jersey Order"), reprimanded Respondent, based on failure to provide patient records in a timely manner and failure to mention all tests he considered, including MRI and EMG diagnostic studies, in his evaluation report.

B. The conduct resulting in the New Jersey Board's 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(32) (failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient); and/or
2. New York Education Law §6530(40) (failing to provide access by qualified persons to patient information).

C. On or about November 7, 2000, Respondent prepared and submitted a registration document to The New York State Education Department, wherein he checked the "No" box to the question, "Since you last registered, has any state other than New York instituted charges against you for professional misconduct, unprofessional conduct, incompetence or negligence or revoked, suspended, or accepted surrender of a professional license held by you?"

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

*on 11/7/00
SF*

Respondent violated New York Education Law §6530^(a)(d) by having had disciplinary action taken after a disciplinary action was instituted 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 that Petitioner charges:

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

THIRD SPECIFICATION

Respondent violated New York Education Law §6530(2) by practicing the profession fraudulently, in that Petitioner charges:

3. The facts in Paragraphs A, B, and/or C.

FOURTH SPECIFICATION

Respondent violated New York Education Law §6530(21) by willfully making or filing a false report, or failing to file a report required by law or by the department of health or the education department, in that Petitioner charges:

4. The facts in Paragraphs A, B, and/or C.

DATED: *July 20*, 2001
Albany, New York

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