



# 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

*Public*

Dennis P. Whalen  
Executive Deputy Commissioner

June 9, 2005

## CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Leonard Abraham Rubinstein, M.D.  
4921 Heigl Avenue  
Sarasota, Florida 34202

Leonard Abraham Rubinstein, M.D.  
1805 Siesta Drive  
Sarasota, Florida 34239

Dennis P. Garcia  
Skadden, Arps, Slate, Meagher & Flow, LLP  
Four Times Square  
New York, New York 10036-6522

Robert Bogan, Esq.  
NYS Department of Health  
Office of Professional Medical Conduct  
433 River Street - 4<sup>th</sup> Floor  
Troy, New York 12180

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

Dear Parties:

Enclosed please find the Determination and Order (No. 05-115) 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 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.

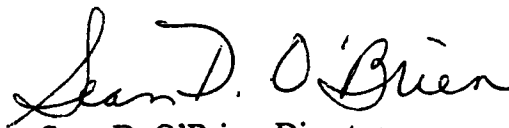
The notice of review served on the Administrative Review Board should be forwarded to:

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,



Sean D. O'Brien, Director  
Bureau of Adjudication

SDO:cah  
Enclosure

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

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

DETERMINATION  
AND  
ORDER  
BPMC #05-115

COPY

A Notice of Referral Proceeding and Statement of Charges, both dated December 14, 2004, were served upon the Respondent, **LEONARD ABRAHAM RUBINSTEIN, M.D.** **DENNIS GARCIA**, Chairperson, **JAGDISH M. TRIVEDI, M.D.** and **FRED. S. LEVINSON, M.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 May 25, 2005, 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.**, of Counsel. The Respondent failed to appear at the hearing.

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) (d), based upon actions constituting violations of subdivisions (3), (4), (5), (6), (17), (20), (32) and (35). 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: None

### 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.

1. **LEONARD ABRAHAM 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 (Ex. 4).
2. On January 6, 2004, the State of Florida, Board of Medicine ("the Florida Board") entered a Final Order incorporating a consent agreement between Respondent and the State of Florida Department of Health, as amended by the terms of a Counter Consent Agreement. In the Consent Agreement, Respondent admitted that the allegations in the Administrative Complaints that initiated the proceeding might, if proven, constitute improper practice in violation of Florida statutes, and he neither admitted nor denied these allegations (the allegations are set forth below). In the Final Order, Respondent agreed to accept a variety of disciplinary actions, including payment of a \$20,000 fine; payment of costs totaling \$9,048.32; performance of 60 hours of community service; submission to a 2-day evaluation by the Institute Physician Education and compliance with its recommendations; placement on 5 years probation with terms and conditions; quarterly appearances before the probation committee; and practice only under the supervision of a monitoring physician. (Ex. 5)
3. The allegations in the Florida Administrative Complaints included:
  - That Respondent fraudulently, and by use of undue influence on patients, performed excessive, expensive allergy testing, and failed to document actual justification for these tests in his charts;
  - That Respondent fabricated symptoms in his chart in order to justify such testing;
  - That Respondent improperly attempted to sell Amway products to a patient;
  - That Respondent failed to assess patient conditions;
  - That Respondent failed to administer or order needed treatments, or improperly administered treatments;
  - That Respondent violated Florida statutes regarding advertising for medical services; and
  - That Respondent fraudulently advertised that he was certified by a medical

board that does not exist;

### **JURISDICTION AND FAILURE TO APPEAR**

Respondent was personally served with the Notice of Hearing and Statement of Charges on December 17, 2004, scheduling the hearing for January 18, 2005 (Ex. 2). This service was in accord with Public Health Law §230(10)(d) and vested jurisdiction in the Department over this matter.

On January 18, 2005 this hearing was adjourned at the request of Respondent's attorney to March 16, 2005 so that he could prepare a request for settlement (Ex. 6). On March 10, 2005, this latter date was adjourned to April 21, 2005 at the request of Respondent's attorney because he had been involved in a car accident (Ex. 7).

On April 14, 2005, the hearing was again adjourned, to May 25, 2005, because Respondent's attorney needed more time to prepare a settlement proposal. The Department's letter to Respondent's attorney advising him of this adjournment stated that if the hearing was not settled prior to the new hearing date, the hearing would proceed at that time (Ex. 8).

On May 24, 2004, the Department's attorney again advised Respondent's attorney, by faxed letter, that unless the matter was settled, the hearing would proceed on May 25, whether or not Respondent or the attorney appeared, and that if Respondent did not submit any evidence at the hearing, the decision would be based solely upon the evidence to be presented by the Department (Ex. 9).

On the morning of the hearing, May 25, 2005, the Department's attorney called the Respondent's attorney, who stated that he could not get a flight to attend the hearing. No exigent circumstances were explained as a basis for this problem. However, the Department's attorney agreed to delay the commencement of the hearing so that some

documentation could be faxed for consideration by the Hearing Committee (representation of Mr. Bogan at the hearing), and the Committee acceded to this request.

At 11:00 a.m. the Hearing Committee received a faxed letter from Respondent's attorney stating that Respondent wished to attend the hearing, but could not do so due to some unexplained "last minute exigent circumstances", and requesting that the attorney be allowed to appear "via telephone", or, in the alternative, to be allowed 24 additional hours to submit supplemental information as "mitigation".

The Hearing Committee, after considering the forgoing, determined that the hearing should not be delayed further and that Respondent's attorney should not be allowed to appear by telephone. Respondent and his attorney had over 5 months from the time the Notice and Statement of Charges were first served to offer a settlement proposal, to present documents for the Hearing Committee's consideration or to appear at a hearing (preferably so Respondent could testify personally). No valid basis has been shown for Respondent's failure to appear in person or to present documents in a timely fashion for consideration by the Hearing Committee, or to offer a settlement proposal as promised. In fact, the Hearing Committee concludes that the Department bent over backward in delaying the hearing several times, including for an hour on the date of the hearing, to accommodate Respondent's attorney.

Inasmuch as Respondent was notified clearly of the consequences of failure to attend the hearing and chose not to attend or to present evidence, the Hearing Committee renders its decision solely on the evidence presented by the Department.

## HEARING COMMITTEE CONCLUSIONS

The hearing Committee concludes that the conduct resulting in the Florida Board's disciplinary actions against Respondent would constitute misconduct under the laws of New York State, pursuant to New York Education Law §6530(9)(d), in that the conduct would have constituted misconduct in New York, had it been committed here, under:

- New York Education Law §6530(3) (negligence on more than one occasion);
- New York Education Law §6530(17) (exercising undue influence on a patient);
- New York Education Law §6530(20) (moral unfitness);
- New York Education Law §6530(32) (failure to maintain complete and accurate records; and
- New York Education Law §6530(35) (ordering excessive tests)<sup>1</sup>

## VOTE OF THE HEARING COMMITTEE

### SPECIFICATION

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

**VOTE: SUSTAINED (3-0)**

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<sup>1</sup> The Hearing Committee can find no support in the Florida Board documents for the Department's allegations that Respondent's conduct, had it been committed here, would have constituted gross negligence, incompetence on more than one occasion or gross incompetence.



## HEARING COMMITTEE DETERMINATION

The record in this case establishes that Respondent agreed to accept discipline, as set forth above, after the Florida Board instituted two proceedings against him for the improper practice of medicine. Although Respondent, in the consent agreement settling these matters, neither admitted nor denied the allegations in the complaints, and although he stipulated only that the allegations "...if proven, may constitute violations..." of Florida laws, the Hearing Committee infers from Respondent's agreement to fairly stringent sanctions and monitoring, and from Respondent's failure to appear and testify at this hearing, that the allegations in the complaints should be treated in this proceeding as if they were true and constituted improper practice under Florida law.

Accordingly, since Respondent's conduct constitutes misconduct under New York Law, as set forth above, the only issue remaining to be addressed is the penalty to be imposed in New York State. The Hearing Committee concludes unanimously that revocation of Respondent's New York license is the appropriate penalty.

The Respondent's acts and omissions evince a blatant disregard for the ethical and moral tenets of the practice of medicine, and a disregard for the health and welfare of his patients. Despite this, Respondent's attorney contended, in his faxed letter to the Hearing Committee, that imposition of a penalty no more severe than that agreed to in Florida was the appropriate penalty in the instant proceeding.

The Hearing Committee rejects this contention because Respondent presented no evidence that he understands the nature of his wrongdoing, that he has any remorse for the acts he committed, that he has taken any steps to correct the deficiencies in his practice and judgment that led to these violations, or that he is currently in compliance with the Florida Final Order. Furthermore, Respondent presented no other evidence that would

mitigate against the penalty of license revocation. The Hearing Committee is not inclined to show any leniency in this matter in the absence of evidence that Respondent is unlikely to repeat conduct of the sort that led to the institution of the Florida proceedings. Respondent may reapply for a license after the passage of three years, and should be prepared to demonstrate significant changes in his practice and compliance with the Florida Final Order.

**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. The New York medical license of **LEONARD ABRAHAM RUBINSTEIN, M.D.** is hereby **REVOKED.**

This **ORDER** shall be effective upon service on the Respondent pursuant to Public Health Law section 230(10)(h).

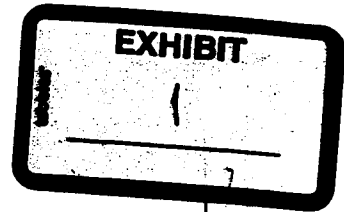
**DATED: Katonah, New York**  
6/8, 2005



**DENNIS GARCIA**  
Chairperson

**JAGDISH M. TRIVEDI, M.D.**  
**FRED. S. LEVINSON, M.D.**

# APPENDIX 1



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

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IN THE MATTER

OF

LEONARD ABRAHAM RUBINSTEIN, M.D.  
CO-04-03-1370-A

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NOTICE OF  
REFERRAL  
PROCEEDING

TO: LEONARD ABRAHAM RUBINSTEIN, M.D.  
4921 Heigl Avenue  
Sarasota, FL 34202

LEONARD ABRAHAM RUBINSTEIN, M.D.  
1805 Siesta Drive  
Sarasota, FL 34239

**PLEASE TAKE NOTICE THAT:**

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law § 230(10)(p) and N.Y. State Admin. Proc. Act Sections 301-307 and 401. The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 19<sup>th</sup> day of January 2005, at 10:00 in the forenoon of that day at the Hedley Park Place, 433 River Street, 5<sup>th</sup> Floor, Troy, New York 12180.

At the proceeding, evidence will be received concerning the allegations set forth in the attached Statement of Charges. 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 that 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, Hedley Park Place, 5<sup>th</sup> Floor, 433 River Street, Troy, New York, ATTENTION: HON. SEAN O' BRIEN, DIRECTOR, BUREAU OF ADJUDICATION, (hereinafter "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before January 10, 2005.

Pursuant to the provisions of N.Y. Public Health Law §230(10)(p), you shall file a written answer to each of the Charges and Allegations in the Statement of Charges no later than ten days prior to the hearing. Any Charge of Allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such an 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. You may file a brief and affidavits with the Committee. Six copies of all such papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before January 10, 2005, 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 the 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: Albany, New York

*Dec. 14*, 2004



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

Inquiries should be addressed to:

Robert Bogan  
Associate Counsel  
New York State Department of Health  
Office 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

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IN THE MATTER  
OF  
LEONARD ABRAHAM RUBINSTEIN, M.D.  
CO-04-03-1370-A

STATEMENT  
OF  
CHARGES

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LEONARD ABRAHAM 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.

**FACTUAL ALLEGATIONS**

A. On or about July 6, 2004, the State of Florida, Department of Health, Board of Medicine (hereinafter "Florida Board"), by a Final Order (hereinafter "Florida Order"), inter alia, reprimanded Respondent, fined him \$25,000.00, assessed \$9,048.32 in administrative costs, permanently restricted his license to practice medicine from advertising himself as a Certified Diplomat of the International Board of Plastic Aesthetic & Reconstructive Surgery and advertising a reduced fee or giving a coupon for rendering medical services, unless such advertisement includes a disclaimer, placed his license to practice medicine on five (5) years probation subject to terms and conditions, required him to perform sixty (60) hours of community service, based on failing to practice medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent similar physician as acceptable under similar conditions and circumstances; 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; failing to keep legible medical records; and exercising undue influence on the patient.

B. The conduct resulting in the Florida 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(3) (negligence on more than one occasion);
2. New York Education Law §6530(4) (gross negligence);
3. New York Education Law §6530(5) (incompetence on more than one occasion);



4. New York Education Law §6530(6) (gross incompetence);
5. New York Education Law §6530(17) (exercising undue influence on the patient);
6. New York Education Law §6530(20) (moral unfitness);
7. New York Education Law §6530(32) (failure to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient); and/or
8. New York Education Law §6530(35) (ordering of excessive tests and/or treatment not warranted by the condition of the patient).

**SPECIFICATION**

Respondent violated New York Education Law §6530(9)(d) by having disciplinary action taken 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, in that Petitioner charges:

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

DATED: *Dec. 14*, 2004  
Albany, New York

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