



**Department
of Health**

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Acting Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

December 22, 2016

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Rosendo Icochea, M.D.



Anthony Z. Soher, Esq.
800 Westchester Avenue – Suite N-841
Rye Brook, New York 10573

Courtney Berry, Esq.
NYS Department of Health
80 Church Street – 4th Floor
New York, New York 10007

RE: In the Matter of Rosendo Icochea, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No.16-411) 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 (l), (McKinney Supp. 2015) and §230-c subdivisions 1 through 5, (McKinney Supp. 2015), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the Respondent 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., Chief Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Riverview Center
150 Broadway – Suite 510
Albany, New York 12204

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,


James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH:cah

Enclosure

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

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**IN THE MATTER
OF
ROSENDO ICOCHEA, M.D.**

**DETERMINATION
AND
ORDER**

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BPMC #16-411
COPY

The New York State Department of Health ("Department") charged Rosendo Icochea, M.D. ("Respondent"), with professional misconduct. A hearing was held on February 18, May 5, June 16, and July 14, 2016, in New York, New York. Trevor A. Litchmore, M.D., Chair, Ifpath Abbasi Hoskins, M.D., and Joan Martinez McNicholas, duly designated members of the Board for Professional Medical Conduct ("BPMC"), served as the Hearing Committee ("Committee"), pursuant to New York State Public Health Law ("PHL") § 230 (10) (e). Jankhana Desai served as the Administrative Law Judge ("ALJ").

The Department appeared by Courtney Berry, Associate Counsel for the Bureau of Professional Medical Conduct. Respondent appeared by Anthony Z. Scher, Attorney at Law. Evidence was received, arguments were heard, and transcripts of the proceedings were made. After consideration of the entire record, the Committee issues this Determination and Order.

HEARING RECORD

Hearing Dates: February 18, 2016
May 5, 2016
June 16, 2016
July 14, 2016

Department's Witnesses: Patient A
Keyko Ocasio
Martha Quizhpi
Paul Weiss, M.D.

Respondent's Witnesses: Respondent
Lourdes Dominguez
Jose Saladin, M.D.

Hearing Transcript: Pages 1-748

Deliberations Held: October 20, 2016

BACKGROUND

This case was brought pursuant to PHL § 230. Respondent was charged with eight specifications of professional misconduct, as defined in § 6530 of the New York State Education Law ("Education Law"), including:

- § 6530(2): practicing the profession of medicine fraudulently.
- § 6530(4): practicing the profession with gross negligence on a particular occasion.
- § 6530(21): willfully making or filing a false report, or failing to file a report required by law or by the Department or the Education Department.
- § 6530(26): performing professional services which have not been authorized by the patient and/or her representative.
- § 6530(32): failing to maintain a record of the patient that accurately reflected the evaluation and treatment of the patient.

- **§ 6530(35): ordering of excessive tests, treatment, or use of treatment facilities not warranted by the condition of the patient.**

FINDINGS OF FACT

The following findings of fact were made unanimously by the Committee.

- 1. On August 25, 1993, Respondent was authorized to practice medicine in New York State, by the issuance of license number 193456, by the New York State Education Department ("Education Department").**
- 2. In June 2006, Patient A sought breast surgery and an abdominoplasty from Respondent, a plastic surgeon. Both surgeries were performed in New York. Post-operative care was done in Respondent's New Jersey office.**
- 3. Patient A's native language is Spanish.**
- 4. Respondent and Patient A signed a consent form written in Spanish dated July 15, 2006 at the top, and dated July 16, 2006 on the signature line at the bottom, indicating consent for "reduccion de seno" (breast reduction). (Exhibit 3.)**
- 5. Respondent, but not Patient A, signed the back of the same consent form, written in English, and dated July 16, 2006, indicating consent for a bilateral simple mastectomy (breast removal). (Exhibit 3.)**
- 6. On July 16, 2006, Respondent performed a bilateral mastectomy on Patient A. (Exhibit 4.) A bilateral mastectomy is a total removal of both breasts. (Transcript, p. 237.)**
- 7. In November 2006, Respondent performed an abdominoplasty (tummy tuck) on Patient A. (Exhibit 6.)**
- 8. Respondent completed a "Brief Operative Record," for the breast surgery and for the abdominoplasty. (Exhibits 4, 6.)**

9. On September 14, 2011, the New Jersey Board of Medical Examiners ("New Jersey Board") filed a Consent Order which required Respondent to cease and desist from the practice of medicine in New Jersey until he obtained a valid New Jersey medical license, rendered Respondent ineligible to obtain a New Jersey medical license for a period of two years, and assessed a \$90,000 civil penalty. (Exhibit 9; Transcript, p. 529.)

10. In 2013, Respondent submitted a registration renewal to the New York State Education Department and answered "No" to the question: "Has any licensing or disciplinary authority revoked, annulled, cancelled, accepted surrender of, suspended, placed on probation, or refused to issue or renew a professional license or certificate held by you previously, or fined, censured, reprimanded or otherwise disciplined you?" (Transcript, p. 529-30.)

DISCUSSION

The Department's Statement of Charges contains two sets of factual allegations. Allegation A makes four specific allegations (A1 through A4) about two surgical procedures performed on Patient A in 2006. Allegation B charges that the Respondent misrepresented his disciplinary history to the Education Department in his 2013 renewal of his medical registration.

Factual allegation A1 charges that Respondent performed a mastectomy that was neither requested nor consented to by Patient A. Patient A testified that she sought breast reduction surgery due to neck pain induced by her large breasts. (Transcript, p. 109, 111.) Respondent testified that Patient A sought a mastectomy due to her fear that she will die of breast cancer. (Transcript, p. 448-49, 514, 570.)

The Committee found that Patient A did not consent to a mastectomy. While there was conflicting testimony about what Patient A orally agreed to or sought, with the parties presenting contradictory evidence, the only consent form that both Patient A and Respondent

signed was for a breast reduction. (Exhibit 3.) At hearing, Respondent claimed that this was a simple mistake. (Transcript, p. 556.) He said that after signing the consent and then immediately noticing that the procedure was described incorrectly as a breast reduction, he turned to the other side of the consent form, written in English, documented the procedure as a bilateral simple mastectomy, and signed that opposite side. He stated that he did not ask the patient to sign again because, as Patient A had already signed one side of the consent, "it was ... enough and it was my mistake that I did not ask her to sign that part of it." (Transcript p. 457-61.) The Committee found that the only properly executed consent form was for a breast reduction and sustained this factual allegation in a 2-1 vote.

Factual allegation A2 charges the Respondent performed a mastectomy without medical justification. According to Dr. Paul Weiss, a plastic surgeon who testified on behalf of the Department, a mastectomy was not medically justified in this case. (Transcript, p. 238-39, 274.) Dr. Weiss explained the medical indications for a mastectomy. (Transcript, p. 238, 255-57.) They include conditions that increase the risk of cancer or create a rational fear of cancer including genetic predispositions, a strong family history of cancer, or a history of multiple biopsies for suspicious breast lesions in patients who are living "mammogram to mammogram." (Transcript, p. 299-302.) Patient A did not fall into any one of these categories. (Transcript, p. 158.) Per Dr. Weiss, a fear of developing breast cancer, in and of itself, is not justification. (Transcript, p. 257.)

Respondent claimed that Patient A wanted a mastectomy because she had cancerphobia and thought she would die of cancer. (Transcript, p. 448-49, 486, 514, 541.) "She wanted a total reduction of her breasts because she was concerned about some day she was going to get cancer," explained Respondent. He also testified that "There were indications in this case. She

had a fear that she is going to die if she continued with her breasts.” (Transcript, p. 571-72.) Respondent also said that the risk of breast cancer can be reduced only by removal, not reduction. (Transcript, p. 463.) The Committee, however, agreed with Dr. Weiss’s opinion, found that no medical justification existed, and unanimously sustained this factual allegation.

Factual allegation A3 charges that the Respondent failed to adequately document the two surgeries he performed. Dr. Weiss explained that Respondent’s “Brief Operative Record” for the breast surgery did not contain a “narrative that would indicate how the procedure was performed.” (Exhibit 3; Transcript, p. 242.) The operative record should have included “how the flaps were developed, ... how the nipple areola was treated, ... how the closure of the wound was performed.” (Transcript, p. 241-42, 264-265.) It also did not mention “drains, dressing, and blood loss.” (Transcript, p. 265.) Respondent claimed that he dictated a more detailed operative report, but his transcriptionist disappeared with the tape. (Transcript, p. 501-502, 563-64.) He subsequently did not attempt to recreate the operative report. (Transcript, p. 589-91.)

Dr. Weiss also testified that Respondent also failed to adequately document the abdominoplasty because his “Brief Operative Record” did not have necessary details including, “how the flaps were raised, where the markings were for the incisions, anything about how the muscle layer was treated, how the wound was closed, whether or not drains were employed, the blood loss, any details about what sutures were used in the repair of the wound.” (Exhibit 6, Transcript, p. 279-80.) Respondent did not offer persuasive evidence challenging Dr. Weiss’s findings regarding the inadequacy of the abdominoplasty documentation. The Committee sustained this factual allegation with regard to both surgeries in a 2-1 vote.

Factual allegations A4 and A4a state: “Respondent drafted false documentation to justify the mastectomy he performed on Patient A; Respondent did so knowingly and with intent to

deceive.” The Committee found that Respondent believed that Patient A has cancerphobia. (Transcript, p. 448-49, 472, 514; Exhibits 3, 4.) On July 12, 2006, in the “Patient’s Progress Notes,” Respondent wrote: “Concerned about Cancer of Breast.” (Exhibit 4.) On July 15, 2006, in the “Adult History and Physical Examination” notes, under Chief Complaint, Respondent wrote: “Patient is afraid to develop breast cancer and die from it.” (Exhibits 3, 4.) Patient A acknowledged that she told Respondent that she feared developing breast cancer prior to the surgery. (Transcript, p. 114.) The Committee credited Respondent’s testimony that these notes were made at the time of the patient visit in July 2006, not afterwards.

Therefore, the Committee unanimously did not sustain factual allegation A4. As Respondent did not falsify these documents, there was no intent to deceive and, therefore, factual allegation A4a was also not sustained in a 3-0 vote.

Factual allegations B and B1 allege Respondent was disciplined by the New Jersey Board and lied to the Education Department on his registration renewal by answering “No” to a question whether any disciplinary action had been taken against Respondent. On September 14, 2011, the New Jersey Board, by Consent Order, required Respondent to cease and desist from the practice of medicine in New Jersey until he obtained a valid New Jersey medical license, rendered Respondent ineligible to obtain a New Jersey medical license for a period of two years, and assessed a \$90,000 civil penalty. Respondent was well aware of the Consent Order as his signature is on the last page of the order. (Exhibit 9.) Nevertheless, in 2013, Respondent submitted a registration renewal to the Education Department and answered “No” to the question, “Has any licensing or disciplinary authority revoked, annulled, cancelled, accepted surrender of, suspended, placed on probation, or refused to issue or renew a professional license or certificate held by you now or previously, or fined, censured, reprimanded or otherwise

disciplined you?" (Transcript p. 502-504.) This answer was false. Respondent claimed that he believed this answer to be correct since he never had a New Jersey medical license. (Transcript, p. 530, 546-47.) The Committee did not find this explanation persuasive and unanimously sustained factual allegations B and B1.

Factual allegation B1a alleges Respondent lied on his registration renewal knowingly and with intent to deceive. The Committee unanimously sustained this allegation as well.

VOTE OF THE COMMITTEE

FIRST SPECIFICATION

The Committee sustained the charge that Respondent committed professional misconduct as defined in Educ. Law § 6530(26), by performing professional services which had not been authorized by the patient and/or her representative.

Vote: SUSTAINED (3-0).

Respondent contended that Patient A provided verbal consent to perform the mastectomy. The Committee found this to be insufficient. The only written consent that was signed by both patient and doctor was for a breast reduction. (Exhibit 3.) The written consent for a breast mastectomy was only signed by Respondent, and not by Patient A. (Exhibit 3.) Therefore, the Committee found that Patient A had not consented to the breast mastectomy.

SECOND SPECIFICATION

The Committee did not sustain the charge that Respondent committed professional misconduct as defined in Educ. Law § 6530(4), by practicing medicine with gross negligence on a particular occasion.

Vote: NOT SUSTAINED (2-1).

Gross negligence, in the specific context of a professional misconduct proceeding, may consist of “a single act of negligence of egregious proportions, or multiple acts of negligence that cumulatively amount to egregious conduct... .” Rho v. Ambach, 74 N.Y.2d 318 at 322. No single formula has been articulated to differentiate between simple negligence and errors that are viewed as “gross.” There is adequate proof of gross negligence if it is established that the physician’s errors represent significant or serious deviations from acceptable medical standards that present the risk of potentially grave consequences to the patient. Post v. State of New York Department of Health, 245 A.D. 2d 985, 986. The Committee found that Respondent’s conduct did not amount to gross negligence. It found that Respondent had no intent to harm Patient A. Respondent’s intent was to manage Patient A based on his understanding of her cancerphobia. (Transcript, p. 448, 514.) Respondent wanted to do what was best for Patient A, but failed in certain aspects of medical care, such as documentation. These failures, however, do not amount to gross negligence.

THIRD SPECIFICATION

The Committee sustained the charge that Respondent committed professional misconduct as defined in Educ. Law § 6530(35), by ordering excessive tests, treatment, or use of treatment facilities not warranted by the condition of the patient.

Vote: SUSTAINED (3-0).

The Committee found that a mastectomy of Patient A was not medically warranted, as supported by the testimony of Dr. Paul Weiss. (Transcript, p. 238-39, 274.)

FOURTH SPECIFICATION

The Committee did not sustain the charge that Respondent committed professional misconduct as defined in Educ. Law § 6530(2), by practicing the profession of medicine fraudulently as alleged in Factual Allegations A through A4a.

Vote: NOT SUSTAINED (2-1).

To sustain a charge that Respondent was engaged in the fraudulent practice of medicine, the Committee must find that (1) a false representation was made by the Respondent, whether by words, conduct or concealment of that which should have been disclosed, (2) the licensee knew the representation was false, and (3) the licensee intended to mislead through the false representation. Sherman v. Board of Regents, 24 A.D. 2d 315, 266 N.Y.S.2d 39 (3d Dept.1966). The Committee found that Respondent's conduct did not rise to the level of fraud, finding that Respondent did not make a false representation with respect to the breast surgery and had no intent to deceive Patient A regarding the surgical procedure.

FIFTH SPECIFICATION

The Committee sustained the charge that Respondent committed professional misconduct as defined in Educ. Law § 6530(2), by practicing the profession of medicine fraudulently as alleged in Factual Allegations B through B1a.

Vote: SUSTAINED (3-0).

Respondent was disciplined for practicing medicine in New Jersey without a license and failed to disclose this to the State of New York, with an intent to deceive. Respondent falsely denied that he was disciplined in New Jersey. He knew he had been disciplined since his signature is on the last page of the New Jersey consent order. He had obvious motive to conceal the fact since it would affect his ability to practice in New York. The Committee inferred from

all of these circumstances that Respondent's concealing was intentional and that he practiced medicine fraudulently as alleged in Factual Allegations B through B1a.

SIXTH SPECIFICATION

The Committee sustained the charge that Respondent committed professional misconduct as defined in Educ. 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 Education Department, as alleged in Factual Allegations A and A3.¹

Vote: SUSTAINED (2-1).

The Committee sustained this specification of misconduct because Respondent failed to file standard dictated post-operative notes and failed to file adequate documentation of the medical procedures.

SEVENTH SPECIFICATION

The Committee sustained that the charge that Respondent committed professional misconduct as defined in Educ. 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 Education Department, as alleged in Factual Allegations B and B1.

Vote: SUSTAINED (3-0).

Respondent knowingly submitted a falsely answered registration renewal to the Education Department. In 2011, Respondent was disciplined by the New Jersey Board. Subsequently, in 2013, Respondent falsely answered "No" to the registration renewal question to the New York State Education Department asking if he had been previously disciplined by another authority.

¹ The Committee did not sustain this specification of misconduct based on factual allegation A4, since the Committee did not sustain factual allegation A4.

EIGHTH SPECIFICATION

The Committee sustained the specification that Respondent committed professional misconduct as defined in Educ. Law § 6530(32), by failing to maintain a record for each patient, which accurately reflects the evaluation and treatment of the patient.

Vote: SUSTAINED (2-1).

Respondent failed to adequately document the breast surgery and abdominoplasty. He failed to file a standard postoperative note. As Dr. Weiss explained, a narrative of the surgery procedure is important so that "another ... physician looking at the operative note would be able to understand what was done during the procedure," and could assume care of the patient. (Transcript, p. 242.) Matter of Schwartz v. Board of Regents, 89 A.D. 2d 711 (3rd Department 1982), lv. denied 57 N.Y. 2d 604. The Committee found Respondent's medical documentation to be devoid of critical details that would allow another physician to continue Patient A's care.

PENALTY DETERMINATION

Respondent was charged with eight specifications of professional misconduct, as defined in § 6530 of the Education Law. The Committee sustained six of the eight specifications. The Committee considered the full spectrum of penalties available by statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

The Committee unanimously found that Respondent did not create false documentation to justify the mastectomy. The Committee also noted that Patient A returned to see Respondent on several occasions after the mastectomy, and there is no documentation reflecting Patient A's dissatisfaction with the procedure. There was no evidence showing that Respondent intended to harm Patient A. Nor did the evidence show that Respondent would have received any added

financial benefit to performing a mastectomy instead of breast reduction. (Transcript, p. 148, 509.)

The Committee found that Respondent's conduct was well intentioned, but had significant concerns about Respondent's documentation practices as well as patient communications. The Committee felt that Respondent needs to temporarily halt his practice and be reeducated in medical records keeping and medical ethics. At the same time, the Committee noted that this case appears to be an isolated one for Respondent, and that Respondent is highly qualified, talented, and has the capacity to contribute significantly to the community. Therefore, the most appropriate penalty in this case is to suspend Respondent's license for a period of six months and require that Respondent take courses in medical documentation/record keeping and medical ethics during his time of suspension. The Committee found that six months suspension is justified since this time period is sufficient to protect the public, reduce the risk of recidivism, and allow Respondent to complete the required courses.

ORDER

IT IS HEREBY ORDERED THAT:

1. The first, third, fifth, sixth, seventh, and eighth specifications of professional misconduct, as set forth in the Statement of Charges, are **SUSTAINED**.
2. The second and fourth specifications of professional misconduct, as set forth in the Statement of Charges, are **DISMISSED**.
3. Respondent's license to practice medicine in New York State is suspended for a period of six months. During this time, Respondent must complete, to the satisfaction of the Director of the Office of Professional Medical Conduct, a course in medical documentation / record keeping and medical ethics. Respondent must complete both courses prior to lifting of the suspension.
4. This Determination and Order shall be effective upon service on the Respondent by personal service or by registered or certified mail as required by PHL 230(10)(h).

DATED: December 20, 2016


2/28/16

Trevor A. Litchmore, M.D., Chair

Iffath Abbasi Hoakins, M.D.
Joan Martinez McNicholas

To:

Rosendo Icochea



**Anthony Z. Scher
Attorney at Law
800 Westchester Avenue, Suite N-641
Rye Brook, NY 10573**

**Courtney Berry
Associate Counsel
Bureau of Professional Medical Conduct
90 Church Street, 4th Floor
New York, NY 10007**

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

IN THE MATTER
OF
Rosendo Icochea, M.D.

NOTICE
OF
HEARING

TO: Rosendo Icochea, M.D.
40-23A Junction Blvd.
2nd Floor
Corona, N.Y. 11368

PLEASE TAKE NOTICE:

A hearing will be held pursuant to the provisions of N.Y. Pub. Health Law §230 and N.Y. State Admin. Proc. Act §§301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on February 18, 2016 at 10:00 a.m., at the Offices of the New York State Department of Health, 90 Church Street, 4th Floor, N.Y., N.Y. 10007, 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, which 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 who shall be an attorney admitted to practice in New York state. 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.

YOU ARE HEREBY ADVISED THAT THE ATTACHED CHARGES WILL BE MADE PUBLIC FIVE BUSINESS DAYS AFTER THEY ARE SERVED.

Department attorney: Initial here

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 New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Riverview Center, 150 Broadway - Suite 510, Albany, NY 12204-2719, ATTENTION: HON. JAMES HORAN, DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication"), (Telephone: (518-402-0748), upon notice to the attorney for the Department of Health whose name appears below, and at least five 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 §230(10)(c), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten days prior to the date of the hearing. Any charge or 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 §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. Pursuant to the terms of N.Y. State Admin. Proc. Act §401 and 10 N.Y.C.R.R. §51.8(b), the Petitioner hereby demands disclosure of the evidence that the Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary evidence and a description of physical or other evidence which cannot be photocopied.

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 OTHER SANCTIONS SET OUT IN NEW YORK PUBLIC HEALTH LAW §§230-a. YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATE 1/18/16

New York, NY


Roy Nemerson
Deputy Counsel
Bureau of Professional Medical Conduct

Inquiries should be directed to:

Courtney Berry, Associate Counsel
Bureau of Professional Medical Conduct
90 Church Street 4th Floor
New York, N.Y. 10007
(212)417-4450

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

IN THE MATTER

OF

Rosendo Icochea, M.D.

STATEMENT
OF
CHARGES

Rosendo Icochea, M.D., the Respondent, was authorized to practice medicine in New York State on or about August 25, 1993 by the issuance of license number 193456 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. Respondent treated Patient A from in or about March 2006 through in or about November 2006. Patient A sought breast reduction surgery and abdominoplasty from Respondent.
1. Respondent performed a bilateral mastectomy which was neither requested nor consented to by the Patient.
 2. Respondent inappropriately performed a bilateral mastectomy without medical justification.
 3. Respondent failed to adequately document the surgeries he performed on Patient A.
 4. Respondent drafted false documentation to justify the mastectomy he performed on Patient A.
 - a. Respondent did so knowingly and with intent to deceive.
- B. In or about September 14, 2011, the State of New Jersey Department of Law and Public Safety, the Division of Consumer Affairs and the State Board of Medical Examiners

B. In or about September 14, 2011, the State of New Jersey Department of Law and Public Safety, the Division of Consumer Affairs and the State Board of Medical Examiners filed a Consent Order which required Respondent to cease and desist from the practice of medicine in New Jersey until he obtained a valid license from the Board; rendered Respondent ineligible to obtain a New Jersey medical license for a period of two years; and assessed a \$90,000 civil penalty.

1. In 2013, Respondent submitted a registration renewal to the New York State Education Department and falsely answered "No" to the question: Has any licensing or disciplinary authority revoked, annulled, cancelled, accepted surrender of, suspended, placed on probation, or refused to issue or renew a professional license or certificate held by you now or previously, or fined, censured, reprimanded or otherwise disciplined you?"

a. Respondent did so knowingly and with intent to deceive.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

PERFORMING SERVICES NOT AUTHORIZED BY THE PATIENT

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(26) by performing professional services which have not been authorized by the patient and/or her representative, as alleged in the facts of:

1. Paragraphs A, A1 and/or A2.

SECOND SPECIFICATION

GROSS NEGLIGENCE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(4) by practicing the profession of medicine with gross negligence on a particular occasion as alleged in the facts of the following:

2. Paragraphs A, A1, and/or A2.

THIRD SPECIFICATION

UNWARRANTED TESTS/TREATMENT

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(35) by ordering of excessive tests, treatment, or use of treatment facilities not warranted by the condition of the patient, as alleged in the facts of:

3. Paragraphs A and A2.

FOURTH AND FIFTH SPECIFICATIONS

FRAUDULENT PRACTICE

Respondent is charged with committing professional misconduct as defined by N.Y. Educ. Law § 6530(2) by practicing the profession of medicine fraudulently as alleged in the facts of the following:

4. Paragraphs A, A1, A2, A3, A4, and A4a.
5. Paragraphs B, B1 and B1a

SIXTH AND SEVENTH SPECIFICATIONS

FALSE REPORT

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. 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, as alleged in the facts of:

6. Paragraphs A, A3, and A4.
7. Paragraphs B, and B1.

EIGHTH SPECIFICATION

FAILURE TO MAINTAIN RECORDS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(32) by failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient, as alleged in the facts of:

8. Paragraphs A, A3 and A4.

DATE: January 14, 2016
New York, New York



Roy Nemerson
Deputy Counsel
Bureau of Professional Medical Conduct