



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, N.Y. 12234

OFFICE OF PROFESSIONAL DISCIPLINE  
ONE PARK AVENUE, NEW YORK, NEW YORK 10016-5802

June 20, 1990

Robert Lieberman, Physician  
1623 Barcelona Way  
Winter Park, Florida 32789

Re: License No. 106271

Dear Dr. Lieberman:

Enclosed please find Commissioner's Order No. 10500. This Order and any penalty contained therein goes into effect five (5) days after the date of this letter.

If the penalty imposed by the Order is a surrender, revocation or suspension of your license, you must deliver your license and registration to this Department within ten (10) days after the date of this letter. In such a case your penalty goes into effect five (5) days after the date of this letter even if you fail to meet the time requirement of delivering your license and registration to this Department.

Very truly yours,

DANIEL J. KELLEHER  
Director of Investigations  
By:

MOIRA A. DORAN  
Supervisor

DJK/MAH/er  
Enclosures

CERTIFIED MAIL- RRR

cc:

**REPORT OF THE  
REGENTS REVIEW COMMITTEE**

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**ROBERT A. LIEBERMAN**

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**CALENDAR NO. 10500**



# The University of the State of New York

IN THE MATTER

of the

Disciplinary Proceeding

against

**ROBERT A. LIEBERMAN**

**No. 10500**

who is currently licensed to practice  
as a physician in the State of New York.

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## REPORT OF THE REGENTS REVIEW COMMITTEE

ROBERT A. LIEBERMAN, hereinafter referred to as respondent, was given due notice of this proceeding and informed that he could appear and be represented by an attorney.

On March 28, 1990 respondent did not appear before us in person or by an attorney, but submitted documents by mail. Terrence Sheehan, Esq., represented the Department of Health.

Respondent informed us that he would not be attending the March 28, 1990 proceeding. We note that this matter had been previously adjourned at respondent's request. Respondent seeks our acceptance into the record of the documents he submitted by mail and requests a stay of this proceeding. We accepted respondent's documents into the record, and, after considering his request for a stay, denied such request. The Florida administrative proceedings have been concluded and this proceeding

ROBERT A. LIEBERMAN (10500)

will not be delayed indefinitely due to an appeal to the Florida Court.

Petitioner's recommendation as to the penalty to be imposed, should respondent be found guilty, was that respondent's license to practice as a physician in the State of New York be revoked.

**FINDINGS OF FACT**

1. Respondent was licensed to practice as a physician in this State by the New York State Education Department.
2. Two Administrative Complaints were brought against respondent by the State of Florida Department of Professional Regulation. At respondent's request, the two complaints were consolidated for hearing.
3. A hearing regarding the two consolidated complaints was held before a Hearing Officer with the State of Florida Division of Administrative Hearings. At the hearing, respondent was represented by counsel, testified in his own behalf, and presented three additional witnesses.
4. The Hearing Officer in Florida issued a recommended order.
5. On June 13, 1989, the State of Florida Board of Medicine issued a final order approving and adopting the findings of fact, conclusions of law, and penalty recommended by the Hearing Officer.
6. The State of Florida Board of Medicine found respondent guilty of counts IV through IX of the complaint in case number 88-

ROBERT A. LIEBERMAN (10500)

3333 and of the allegations in the complaint in case number 88-3334, and revoked respondent's license to practice medicine in Florida.

7. Respondent has been found guilty, after an administrative hearing in the State of Florida, 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 Education Law §6509(9) and 8 N.Y.C.R.R. §29.1(b)(5) (conduct in the practice of the profession which evidences moral unfitness to practice the profession).

**DETERMINATION AS TO GUILT**

Petitioner failed to cite or furnish a copy of the Florida statute respondent is alleged to have violated. In other direct referral proceedings, the Board of Regents has dismissed, without prejudice, matters where petitioner failed to supply a copy of the sister state statute in issue. These dismissals resulted from the lack of proof of the elements between the sister state statute and the New York professional misconduct analogue. See Dragan v. Commissioner of Education, 142 A.D.2d 846 (3rd Dept. 1988).

However, in this matter, the record happens to contain the pertinent parts of the Florida statutes upon which respondent's violations of Florida law were based. This essential proof is set

**ROBERT A. LIEBERMAN (10500)**

forth in the Florida recommended order attached to the final order in evidence here as Petitioner's Exhibit 3. As shown by this exhibit, respondent was served by the Florida agency with a true and correct copy of such orders. Thus, we can examine the comparability between Florida and New York law.

Petitioner alleges that the comparable New York provisions are Education Law "§6509(2), and (9) [8 NYCRR 29.1(b)(5)]". Education Law §6509(9) and 8 N.Y.C.R.R. §29.1(b)(5) define unprofessional conduct to be conduct in the practice of a profession which evidences moral unfitness to practice the profession. In Florida, respondent was found to have violated: (1) FLA. STAT. §458.331(1)(j), exercising influence within a patient-physician relationship for purposes of engaging a patient in sexual activity; and (2) FLA. STAT. §458.331(1)(x), violating any provision of the chapter of Florida law involving physician discipline - FLA. STAT. §458.329, sexual misconduct in the practice of medicine is prohibited.

The conduct alleged in the New York statement of charges paragraph 4 subparagraphs a, b, and c, as determined by the Florida agency, demonstrates conduct in the practice of a profession which evidences moral unfitness to practice the profession. In our unanimous opinion, the influence for purposes of sexual activity and the sexual misconduct committed by respondent on two patients would, if these acts were committed in New York, constitute

**ROBERT A. LIEBERMAN (10500)**

unprofessional conduct pursuant to Education Law §6509(9) and 8 N.Y.C.R.R. §29.1(b)(5).

Petitioner's allegation regarding Education Law §6509(2) stands on a different footing. This section contains six different definitions of professional misconduct. Petitioner did not indicate which of these definitions was claimed to be comparable to the Florida violations and did not attempt to establish how the particular statutes are comparable. The statement of charges is insufficient to give proper notice to respondent of the comparable provision(s) charged and to establish respondent's guilt regarding Education Law §6509(2). Accordingly, petitioner did not specify the applicable statutory language in both New York and Florida, and did not demonstrate any equivalence between the elements of particular statutes.

In view of all the above, we unanimously determine that the charge contained in the statement of charges pursuant to Education Law §6509(5)(b), a copy of which is annexed hereto, made a part hereof, and marked as Exhibit "A", has been proven, by a preponderance of the evidence, and respondent is guilty thereof solely to the extent that the conduct determined by the duly authorized professional disciplinary agency of Florida would, if committed in New York State, constitute professional misconduct under Education Law §6509(9) and 8 N.Y.C.R.R. §29.1(b)(5).

ROBERT A. LIEBERMAN (10500)

**RECOMMENDATION AS TO THE  
PENALTY TO BE IMPOSED**

Respondent's license to practice as a physician in the State of New York be revoked upon the charge of which respondent has been found guilty, as aforesaid. Respondent may, pursuant to Rule 24.7(b) of the Rules of the Board of Regents, apply for restoration of said license after one year has elapsed from the effective date of the service of the order of the Commissioner of Education to be issued herein, but said application shall not be granted automatically.

Respectfully submitted,

EMLYN I. GRIFFITH

JANE M. BOLIN

PATRICK J. PICARIELLO

  
Chairperson

Dated:

5/4/90

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

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IN THE MATTER : STATEMENT  
OF : OF  
ROBERT A. LIEBERMAN, M.D. : CHARGES

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ROBERT A. LIEBERMAN, M.D., the Respondent, was authorized to practice medicine in New York State on July 1, 1970 by the issuance of license number 106271 by the New York State Education Department. The Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1989 to December 31, 1991 at 609 Virginia Drive, Orlando, Florida 32803.

SPECIFICATION

4. Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law Section 6509(5)(b) (McKinney Supp. 1985), 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 6509(2), and (9) [8 NYCRR 29.1(b)(5)] (McKinney 1985), specifically:

EXHIBIT "A"

On or about June 13, 1989, the Florida Board of  
Medicine found that:

a. On or about July 2, 1982, Respondent  
had forcible sexual intercourse with a  
patient during the course of an office  
visit.

b. On or about July 20, 1982, during an  
office visit, Respondent touched the same  
patient's genitalia for purposes of sexual  
gratification and removed his trousers in  
order to engage in sexual intercourse.  
Actual intercourse was prevented by the  
patient.

c. On or about September 1, 1981, during  
an office visit, Respondent forcibly  
caressed a different patient's breasts and  
forced her to kiss him.

d. On several occasions between 1982 and  
1984 Respondent negligently failed to

diagnose a patient's cervical cancer or to  
obtain a biopsy.

Based on these facts the Florida Board found  
Respondent guilty of three counts of negligence or  
gross or repeated instances of malpractice; two  
counts of sexual misconduct and two counts of  
improperly influencing a patient within a  
professional relationship to engage in sexual  
activity.

The Florida Board revoked Respondent's license to  
practice medicine.

DATED: New York, New York

December 7, 1989



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CHRIS STERN HYMAN  
Counsel  
Bureau of Professional  
Medical Conduct

**ORDER OF THE COMMISSIONER OF  
EDUCATION OF THE STATE OF NEW YORK**

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**ROBERT A. LIEBERMAN**

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**CALENDAR NO. 10500**



# The University of the State of New York

IN THE MATTER

OF

ROBERT A. LIEBERMAN  
(Physician)

DUPLICATE  
ORIGINAL  
VOTE AND ORDER  
NO. 10500

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Upon the report of the Regents Review Committee, a copy of which is made a part hereof, the record herein, under Calendar No. 10500, and in accordance with the provisions of Title VIII of the Education Law, it was

**VOTED (May 25, 1990):** That the record herein be accepted; that the findings of fact, determination as to guilt, and recommendation as to the penalty to be imposed rendered by the Regents Review Committee in the matter of ROBERT A. LIEBERMAN, respondent, be accepted; that respondent is guilty of the charge by a preponderance of the evidence solely to the extent that the conduct determined by the duly authorized professional disciplinary agency of Florida would, if committed in New York State, constitute professional misconduct under Education Law §6509(9) and 8 N.Y.C.R.R. §29.1(b)(5); that respondent's license and registration to practice as a physician in the State of New York be revoked upon the charge of which respondent has been found guilty; that respondent may, pursuant to Rule 24.7(b) of the Rules of the Board of Regents, apply for restoration of said license after one year has elapsed from the effective date of the service of the order of the Commissioner of Education to be issued herein, but said application shall not be granted automatically; and that the Commissioner of Education be empowered to execute, for and on

ROBERT A. LIEBERMAN (10500)

behalf of the Board of Regents, all orders necessary to carry out the terms of this vote;

and it is

ORDERED: That, pursuant to the above vote of the Board of Regents, said vote and the provisions thereof are hereby adopted and **SO ORDERED**, and it is further

ORDERED that this order shall take effect as of the date of the personal service of this order upon the respondent or five days after mailing by certified mail.

IN WITNESS WHEREOF, I, Thomas Sobol,  
Commissioner of Education of the State of  
New York, for and on behalf of the State  
Education Department and the Board of  
Regents, do hereunto set my hand and affix  
the seal of the State Education Department,  
at the City of Albany, this 1<sup>st</sup> day of  
*June*, 1990.  
*Thomas Sobol*  
Commissioner of Education