



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 6, 1994

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Marcia E. Kaplan, Esq.
Associate Counsel
New York State Department of Health
5 Penn Plaza - Sixth Floor
New York, New York 10001

Nathan L. Dembin, Esq.
Nathan L. Dembin & Associates
225 Broadway - Suite 1905
New York, New York 10007

Zafer A. Termanini, M.D.
59 Main Street
West Orange, New Jersey 07052

RE: In the Matter of Zafer A. Termanini, M.D.

Dear Ms. Kaplan, Dr. Termanini and Mr. Dembin :

Enclosed please find the Determination and Order (No. 94-211) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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:

Office of Professional Medical Conduct
New York State Department of Health
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 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), "(t)he

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

-----X
IN THE MATTER : DETERMINATION
OF : AND
ZAFER A. TERMANINI, M.D. : ORDER
-----X

No. BPMC-94-211

A Notice of Referral Proceeding and Statement of Charges, both dated March 17, 1994, were served upon the Respondent, Zafer A. Termanini, M.D. **RICHARD D. MILONE, M.D. (Chair), ZORAIDA NAVARRO, M.D., and ANTHONY SANTIAGO,** 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. **LARRY G. STORCH, ESQ., ADMINISTRATIVE LAW JUDGE,** served as the Administrative Officer. The Department of Health appeared by Marcia E. Kaplan, Esq., Associate Counsel. The Respondent appeared by Nathan L. Dembin & Associates, Nathan L. Dembin, Esq., of Counsel. A hearing was held on August 25, 1994. Evidence was received and witnesses sworn and heard 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 §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, Respondent is charged with professional misconduct pursuant to Education Law §6530(9)(d). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order in Appendix I.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers in parentheses refer to transcript page numbers or exhibits. These citations represent 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.

1. Zafer A. Termanini, M.D. (hereinafter, "Respondent"), was authorized to practice medicine in New York

State on June 10, 1977 by the issuance of license number 130862 by the New York State Education Department. Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1993 through December 31, 1994 at 59 Main Street, West Orange, New Jersey 07052. (Pet. Ex. #2).

2. On April 9, 1992, the New Jersey State Board of Medical Examiners (hereinafter "New Jersey Board"), issued a Consent Order reprimanding Respondent, ordering him to cease and desist from the conduct charged, and ordering him to undertake corrective action including full and accurate documentation in hospital records and office records, and assessing costs of \$487.50 and a penalty of \$2,000.00, upon Respondent's plea of non vult to charges that he practiced negligently in violation of N.J.S.A. 45:1-21(d), made negligent representations of a guaranteed medical result in violation of N.J.S.A. 45:1-21(b), and failed to prepare adequate or truthful patient records accurately documenting each patient interaction for medical purposes in violation of N.J.A.C. 13:35-6.5 and N.J.S.A. 45:1-21(h). (Pet. Ex. #3-B, 3-D and 3-E).

3. The Consent Order resolved a pending disciplinary action against Respondent which was commenced by filing of a Notice of Hearing and Complaint on August 24, 1990 and by an Amended Complaint on September 26, 1991. The charges alleged that in or about September 1988, Respondent obtained Mrs. M.T.'s consent to a bunionectomy by assuring her that he could have her resume normal ambulatory functioning with comfort in ladies'

dress shoes within a few weeks, which he knew or should have known was not the case. The charges further alleged that Respondent failed to take or perform or review appropriate diagnostic studies, including current x-rays, before confirming his advice for surgery in October, 1988, that he prepared significantly deficient patient records, both before and after surgery, and that he failed to adequately examine the patient despite her complaint of continuing pain in December, 1988. (Pet. Ex. #3-B, 3-D and 3-E).

4. As part of the Consent Order, Respondent asserted that on October 6, 1988 he reviewed two x-rays which the patient presented that had been taken by a podiatrist in 1985. Respondent further asserted that he performed a visual inspection of the patient's feet on October 6, 1988 as well as a palpation of the bunion and conducted range-of-motion testing. Respondent acknowledged that he did not take or review x-rays of the current status of the foot prior to confirming his advice for surgery but instead recommended surgery based upon the patient's subjective complaints, his observations and clinical examination of the foot on October 6, 1988 and his review of the 1985 x-rays. Respondent further asserted that he reviewed pre-operative x-rays taken at St. Barnabas Medical Center after the surgery had been scheduled and found those to support what he perceived to be a warranted bunionectomy. Respondent also acknowledged deficiencies in his patient records regarding M.T. Respondent asserted that he did not intend to guarantee a perfect surgical result or a time-frame for assured recovery, but recognizes that he may not have made

that sufficiently clear to the patient, who believed that he was making such a representation. (Pet. Ex. #3-B).

5. Respondent is board-certified in orthopedic medicine and has a degree in biomechanical engineering. Respondent holds four United States patents for biomedical devices. He has served as the Chief of the orthopedic service at East Orange Hospital since April, 1981 and was elected Chairman of the Department of Surgery at East Orange in December, 1993. (48-52; Resp. Ex. A, Resp. Ex. C).

6. Respondent testified that he has never been disciplined by any governmental agency other than the action by the New Jersey Board which is the genesis for this proceeding. (52-53).

7. Respondent described the corrective actions which he has implemented in order to improve his documentation of medical care and treatment. He testified that he now documents all telephone calls, even when not in his office. He stated that he has also instructed his answering service and office staff to document all patient calls as well. He further testified that he retained a consultant and implemented a new, color-coded filing system. Respondent also testified that there has been no criticism by the hospital or any governmental agency concerning his recordkeeping since 1992. (55-56).

8. Respondent testified that he does not maintain an active medical practice in New York, although he performs consultations as an independent medical examiner for insurance companies in New York. (65).

CONCLUSIONS OF LAW

The following conclusions were made pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee unless noted otherwise.

The Hearing Committee unanimously concluded that the Department has sustained its burden of proof in this matter. The preponderance of the evidence demonstrates that Respondent was reprimanded by the New Jersey Board via a Consent Order that was issued following the institution of disciplinary action by the Board. The Hearing Committee further concluded that Respondent's conduct, as set forth in the Consent Order, if committed in New York State, would constitute professional misconduct in violation of New York Education Law §6530(32) [failing to maintain accurate records] and §6530(34) [guaranteeing that satisfaction or a cure will result from the performance of professional services]. As a result, the Committee voted to sustain the Specification of professional misconduct set forth in the Statement of Charges.

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, determined by a vote of 2-1 that Respondent should receive a censure and reprimand in satisfaction of the charges brought against him. This determination was reached upon due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand,

and the imposition of monetary penalties.

The Hearing Committee carefully considered the appropriate penalty given the situation presented by this case. Although Respondent made mistakes in his management of Patient M.T., it is apparent that he has taken the episode to heart, and has made significant efforts to correct his practice so that similar problems with the completeness and accuracy of his medical records do not occur.

Moreover, Respondent, the holder of multiple patents for biomedical devices, is an obvious contributor to the medical community. This conclusion is based not only on the medical devices he has invented, but also on his reputation in the medical community in which he practices. The Hearing Committee heard and accepted the testimony of Nathan L. Grober, M.D. Dr. Grober, a physician at East Orange General Hospital, testified that he has known Respondent professionally for the past 10-12 years. He further testified that Respondent is held in high regard by the medical community. (See, Tr., pp. 34-43).

The members of the Hearing Committee agree that Respondent presents little risk of danger to the public. As a result, the Committee did not consider suspension or revocation to be appropriate sanctions. One member of the Committee is of the opinion that the sanction imposed by the New Jersey Board was sufficient, and that no further action by the State Board for Professional Medical Conduct was warranted. However, the majority of the members of the Hearing Committee believe that a sanction must be imposed.

TO: Marcia E. Kaplan, Esq.
Associate Counsel
New York State Department of Health
5 Penn Plaza - 6th Floor
New York, New York 10001

Zafer A. Termanini, M.D.
59 Main Street
West Orange, New Jersey 07052

Nathan L. Dembin, Esq.
Nathan L. Dembin & Associates
225 Broadway - Suite 1905
New York, New York 10007

APPENDIX I

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

-----X
: IN THE MATTER : NOTICE OF
: OF : REFERRAL
: ZAFER A. TERMANINI, M.D. : PROCEEDING
: -----X

TO: ZAFER A. TERMANINI, M.D.
59 Main St.
West Orange, N.J. 07052

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. 1994) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1994). 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 May 1994 at 3:00 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.

PLAINTIFF'S
DEFENDANT'S
COMPANY'S
DEPARTMENT'S

~~PETITIONER'S~~

RESPONDENT'S

DATE 8/25/94

STERLING REPORTING SERVICE, INC.

EXHIBIT

1-A

for identification

in evidence

REPORTER

MC

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: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before May 2, 1994 .

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 May 2, 1994 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
March 17, 1994



CHRIS STERN HYMAN
Counsel
Bureau of Professional
Medical Conduct

Inquiries should be addressed to:

Marcia E. Kaplan
Associate Counsel
212-613-2615

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

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IN THE MATTER : STATEMENT
OF : OF
ZAFER A. TERMANINI, M.D. : CHARGES

-----X

ZAFER A. TERMANINI, M.D., the Respondent, was authorized to practice medicine in New York State on by the issuance of license number 130862 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, 1993 through December 31, 1994 from 59 Main St., West Orange, N.J. 07052.

FIRST SPECIFICATION

HAVING A MEDICAL LICENSE SUSPENDED
AFTER DISCIPLINARY ACTION WAS
INSTITUTED BY ANOTHER STATE

1. Respondent is charged with professional misconduct within the meaning of New York Educ. Law Sec. 6530(9)(d) (McKinney Supp. 1994), in that he 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 involving the license would, if committed in New York State, constitute professional misconduct under the laws of New York State, specifically:

On April 9, 1992, the New Jersey State Board of Medical Examiners (N.J. Board) issued a Consent Order reprimanding Respondent, ordering him to cease and desist from the conduct charged, and ordering him to undertake corrective action with regard to each criticism, including full and accurate documentation in hospital records and office records, and assessing costs of \$487.50 and a penalty of \$2000, upon Respondent's plea of non vult to charges that he practiced negligently in violation of N.J.S.A. 45:1-21(d), made negligent representations of a guaranteed medical result in violation of N.J.S.A. 45:1-21(b), and failed to prepare adequate or truthful patient records accurately documenting each patient interaction for medical purposes in violation of N.J.A.C. 13:35-6.5 and N.J.S.A. 45:1-21(h), in the care of patient M.T. The Consent Order resolved a pending disciplinary action against Respondent which was commenced by filing of a Notice of Hearing and Complaint on August 24, 1990 and by an amended Complaint on September 26, 1991. The charges alleged that in or about September 1988, Respondent obtained Mrs. M.T.'s consent to a bunionectomy by assuring her that he could have her resume normal ambulatory functioning with comfort in ladies' dress shoes within a few weeks, which he knew or should have known was not the case, that he failed to take or perform or review appropriate diagnostic studies, including x-rays, before the surgery in October, 1988, that he prepared significantly deficient patient records,

both before and after surgery, and that he failed to adequately examine the patient despite her complaint of continuing pain in December 1988.

The conduct resulting in the disciplinary action involving Respondent's New Jersey medical license, if committed in New York State, would have constituted professional misconduct under New York Educ. Law Section 6530, (McKinney Supp. 1994), as follows: Sec. 6530(3), i.e. practicing the profession with negligence on more than one occasion; Sec. 6530(32), i.e., failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient; and Sec. 6530(34), i.e., guaranteeing that satisfaction or a cure will result from the performance of professional services.

DATED: New York, New York

March 17, 1994



CHRIS STERN HYMAN
Counsel

Bureau of Professional Medical
Conduct