

By: Melisa Nollis
Deputy Agency Clerk

STATE OF FLORIDA
BOARD OF MEDICINE

DEPARTMENT OF HEALTH,

2011 APR 12 A 11:42

Petitioner,

DIVISION OF
ADMINISTRATIVE

vs.

DOH CASES NOS.: 2005-53222
2006-01705
2006-27634
DOAH CASE NO.: 09-5267PL
09-5269PL
09-5270PL
LICENSE NO.: ME0037720

LEONARD ABRAHAM RUBINSTEIN, M.D.,

Respondent.

FINAL ORDER

THIS CAUSE came before the BOARD OF MEDICINE (Board) pursuant to Sections 120.569 and 120.57(1), Florida Statutes, on April 1, 2011, in Tampa, Florida, for the purpose of considering the Administrative Law Judge's Recommended Order, Exceptions to the Recommended Order, and Response to Exceptions to the Recommended Order (copies of which are attached hereto as Exhibits A, B, and C, respectively) in the above-styled cause. Petitioner was represented by Sharmin Hibbert, Assistant General Counsel. Respondent was present and represented by Steven Lubell, Esquire.

Upon review of the Recommended Order, the argument of the parties, and after a review of the complete record in this case, the Board makes the following findings and conclusions.

RULING ON EXCEPTIONS

The Board reviewed and considered the Respondent's Exceptions to the Recommended Order and ruled as follows:

1. Respondent's first exception to paragraph 22 (encompassing paragraphs 5 - 12 of exhibit B) of the Recommended Order is denied for the reasons set forth in writing and stated by the Petitioner.

2. Respondent's second exception to paragraphs 38 and 39 (encompassing paragraphs 13 - 18 of exhibit B) of the Recommended Order is denied for the reasons set forth in writing and stated by the Petitioner.

3. The Respondent's third exception to paragraph 67 (encompassing paragraphs 19 - 22 of exhibit B) of the Recommended Order is denied for the reasons set forth in writing and stated by the Petitioner.

4. The Respondent's fourth exception to paragraph 88 (encompassing paragraph 23 of exhibit B) of the Recommended Order is denied for the reasons set forth in writing and stated by the Petitioner.

5. The Respondent's fifth exception to paragraph 89 (encompassing paragraph 24 of exhibit B) of the Recommended Order is denied for the reasons set forth in writing and stated by the Petitioner.

6. The Respondent's sixth exception to paragraph 90 (encompassing paragraphs 27 - 29 of exhibit B) of the Recommended Order is denied for the reasons set forth in writing and stated by the Petitioner.

7. The Respondent's seventh exception to paragraph 91 (encompassing paragraphs 30 - 32 of exhibit B) of the Recommended Order is denied for the reasons set forth in writing and stated by the Petitioner.

8. The Respondent's eighth exception to paragraph 102 (encompassing paragraphs 33 - 34 of exhibit B) of the Recommended Order is denied for the reasons set forth in writing and stated by the Petitioner.

9. The Respondent's ninth exception also to paragraph 102 (encompassing paragraph 35 of exhibit B) of the Recommended Order is denied for the reasons set forth in writing and stated by the Petitioner.

10. The Respondent's tenth exception again to paragraph 102 (encompassing paragraph 36 of exhibit B) of the Recommended

Order is denied for the reasons set forth in writing and stated by the Petitioner.

11. The Respondent's eleventh exception to paragraph 105 (encompassing paragraph 43 of exhibit B) of the Recommended Order is denied for the reasons set forth in writing and stated by the Petitioner.

12. The Respondent's twelfth exception to paragraph 107 (encompassing paragraph 44 of exhibit B) of the Recommended Order is denied for the reasons set forth in writing and stated by the Petitioner.

FINDINGS OF FACT

1. The findings of fact set forth in the Recommended Order are approved and adopted and incorporated herein by reference.

2. There is competent substantial evidence to support the findings of fact.

CONCLUSIONS OF LAW

1. The Board has jurisdiction of this matter pursuant to Section 120.57(1), Florida Statutes, and Chapter 458, Florida Statutes.

2. The conclusions of law set forth in the Recommended Order are approved and adopted and incorporated herein by reference.

PENALTY

Upon a complete review of the record in this case, the Board determines that the penalty recommended by the Administrative Law Judge be ACCEPTED. WHEREFORE, IT IS HEREBY ORDERED AND ADJUDGED:

DOAH Case No. 09-5267PL

- a. Finding that Dr. Rubinstein violated section 458.331(1)(t), Florida Statutes (2004);
- b. Finding that Dr. Rubinstein did not violate sections 458.331(1)(m) and 458.331(1)(n);
- c. Revoking Dr. Rubinstein's license; and
- d. Imposing a \$10,000 administrative fine.

Said fine shall be paid by money order or cashier's check.

DOAH Case No. 09-5269PL

- a. Finding that Dr. Rubinstein violated sections 458.331(1)(m), 458.331(1)(n), and 458.331(1)(t);
- b. Requiring Dr. Rubinstein to pay C.L. \$2,921 for the allergy testing and the Rotation Diet;
- c. Revoking Dr. Rubinstein's license; and
- d. Imposing an administrative fine of \$10,000. Said fine shall be paid by money order or cashier's check.

DOAH Case No. 09-5270PL

- a. Finding that Dr. Rubinstein violated section

458.331(1)(t), Florida Statutes (2006);

b. Revoking Dr. Rubinstein's license; and

c. Imposing a \$10,000 administrative fine. Said fine shall be paid by money order or cashier's check.

RULING ON MOTION TO ASSESS COSTS

The Board reviewed the Petitioner's Motion to Assess Costs and imposes the costs associated with this case in the amount of \$98,856.70. Said costs are to be paid within 30 days from the date this Final Order is filed. The costs shall be paid by money order or cashier's check.

(NOTE: SEE RULE 64B8-8.0011, FLORIDA ADMINISTRATIVE CODE. UNLESS OTHERWISE SPECIFIED BY FINAL ORDER, THE RULE SETS FORTH THE REQUIREMENTS FOR PERFORMANCE OF ALL PENALTIES CONTAINED IN THIS FINAL ORDER.)

DONE AND ORDERED this 8th day of April, 2011.

BOARD OF MEDICINE

Cynthia A. Sanford for
Joy Tootle, Executive Director
For Michael Chizner, M.D., Chair

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE DEPARTMENT OF HEALTH AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, OR WITH THE DISTRICT COURT OF APPEAL IN

THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been provided by Certified Mail to LEONARD ABRAHAM RUBINSTEIN, M.D., 1805 Siesta Drive, Sarasota, Florida 34239; by email to Steven Lubell, Esquire, Lubell & Rosen, at sll@lubellrosen.com; to Susan B. Harrell, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060; and by interoffice delivery to Veronica Donnelly, Department of Health, 4052 Bald Cypress Way, Bin #C-65, Tallahassee, Florida 32399-3253 this 11th day of April, 2011.

Melissa Nobles
Deputy Agency Clerk

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PS Form 3800, Aug 91	City, State, ZIP+4	Street, Apt. No., or PO Box No.	Sent To	Total Postage & Fee	Restricted Delivery Fee (Endorsement Required)	Endorsement Required	Return Receipt Fee (Endorsement Required)	Certified Fee	Postage	Postmark	For delivery info	Domestic Mail	CERTIFIED	U.S. Postal Service
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