

**FILED**

MAY 22, 2008

**NEW JERSEY STATE BOARD  
OF MEDICAL EXAMINERS**

STATE OF NEW JERSEY  
DEPARTMENT OF LAW & PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS  
STATE BOARD OF MEDICAL EXAMINERS

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In the Matter of:

HERBERT ROSENGARTEN, M.D.

CONSENT ORDER

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This matter was opened before the New Jersey State Board of Medical Examiners upon the Board's receipt of a report from the Medical Practitioner Review Panel detailing the results of the Panel's investigation of the practice of respondent Herbert Rosengarten, M.D. The Panel commenced an investigation of respondent's practice upon receipt of a malpractice payment report detailing that a payment of \$350,000 was made on respondent's behalf to settle a civil malpractice action brought by patient B.W., wherein it had been alleged that respondent had delayed diagnosing and treating colon cancer. During the pendency of its investigation, the Panel reviewed available information, to include without limitation the medical records respondent maintained for B.W., and considered testimony offered by respondent when he appeared before the Panel on July 20, 2007, represented by Thomas Conlon, Esq.

At the conclusion of its investigation, the Panel found that respondent provided grossly negligent care in this case.

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Specifically, the Panel found that respondent engaged in gross negligence when he failed to appropriately investigate the cause of B.W.'s anemia. The Panel further found that respondent was grossly negligent in his failure to have performed indicated testing and/or to have made indicated referrals to specialists (to include, without limitation, a failure to have either conducted a rectal examination or assured that a rectal examination was done by B.W.'s gynecologist, and/or a failure to have referred B.W. for a GI consultation). Finally, the Panel found that respondent failed to maintain medical records in a manner consistent with the requirements of the Board's record-keeping rule, N.J.A.C. 13:35-6.5.

The Board herein adopts the above delineated findings made by the Panel. Based thereon, the Board concludes that cause for disciplinary action against respondent exists pursuant to N.J.S.A. 45:1-21(c) and 45:1-21(h).

The parties desiring to resolve this matter without need for formal disciplinary proceedings, and the Board being satisfied that the need for such proceedings is obviated by the entry of the within Order, and being further satisfied that good cause exists to support entry of the within Order,

IT IS on this 21 day of May, 2008

ORDERED AND AGREED:

1. Respondent Herbert Rosengarten, M.D., is hereby

reprimanded for having engaged in gross negligence in the care he provided to patient B.W., and for having failed to maintain medical records in a manner consistent with the requirements of the Board's record-keeping rule.

2. Respondent is assessed a civil penalty in the amount of \$10,000, which penalty shall be payable in full upon entry of this Order.

3. Respondent shall attend and successfully complete a continuing medical education course, acceptable to the Board, in medical record-keeping. The course is to be completed within six months of the date of entry of this Order. Prior to commencing said course, respondent shall provide information detailing the content of the course he intends to take (i.e., a course syllabus) to the Medical Educational Director of the Board, and shall obtain approval from the Medical Educational Director for any proposed course. Respondent shall additionally be responsible to ensure that the course provider submits written confirmation to the Board, upon the completion of the course offering, documenting that respondent attended and successfully completed said course.

4. Respondent shall attend and successfully complete a continuing education course, acceptable to the Board, in the diagnosis and treatment of anemia. Prior to commencing said course, respondent shall provide information detailing the content of the course he intends to take (i.e., a course syllabus) to the

Medical Educational Director of the Board, and shall obtain approval from the Medical Educational Director for any proposed course. Respondent shall additionally be responsible to ensure that the course provider submits written confirmation to the Board, upon the completion of the course offering, documenting that respondent attended and successfully completed said course.

NEW JERSEY STATE  
BOARD OF MEDICAL EXAMINERS

By:   
Mario A. Criscito, M.D.  
Board President

I consent to the entry of this Order  
by the State Board of Medical  
Examiners.

  
Herbert Rosengarten, M.D.