

**FILED**

APRIL 17, 2009

**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

In the Matter of:

BARRY P. RUBINO, M.D.

CONSENT ORDER

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 information regarding a civil malpractice action brought by L.K. against respondent Barry P. Rubino, M.D. Specifically, the Panel received information detailing that a payment of \$400,000 was made on respondent's behalf to settle the civil malpractice action, which action was based on allegations that respondent failed to timely diagnose testicular cancer. During the pendency of its investigation, the Panel reviewed available information, to include without limitation the medical records which respondent maintained for patient L.K. and testimony offered by respondent when he appeared before the Panel on July 18, 2008, represented by John Orlovsky, Esq.

At the conclusion of its investigation, the Panel found that respondent provided care to patient L.K. commencing in March 1999, at which time respondent conducted a physical examination of L.K. and palpated an abnormality in L.K.'s right testicle, which he

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diagnosed as a fibroma. Respondent ordered an ultrasound in April 1999, which ultrasound was performed on May 13, 1999 and revealed a mixed echogenic mass measuring 9 mm x 5.2 mm inferior to the right testicle. Respondent thereafter saw respondent in his office for not less than six visits, to include a visit on May 11, 2001 and office visits in March, June, September and December 2002. On May 11, 2001, L.K. saw respondent with a complaint of rectal bleeding, at which time respondent conducted an examination and again noted the presence of a testicular mass. Respondent did not thereafter re-examine L.K.'s testicular mass until the office visit in September 2002.

The Panel concluded that respondent engaged in repeated acts of negligence during the course of his treatment of L.K. Specifically, the Panel found that, not later than L.K.'s office visit on May 11, 2001, respondent had information available to him sufficient to require him to, at a minimum, have referred L.K. for examination by a urologist, and that his failure to do so on May 11, 2001 and on each visit thereafter until December 2002 constituted independent acts of negligence. The Panel further concluded that respondent engaged in negligence during L.K.'s office visits in March and June 2002 by failing to then re-examine the testicular mass.

Additionally, 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. While respondent testified, when appearing before the Panel, that he made recommendations on each office visit to L.K. that he obtain a repeat ultrasound, those recommendations were not recorded in L.K.'s chart. In a similar manner, while respondent testified that he was not initially (i.e., in 1999) alarmed about the findings on the ultrasound, based on his having obtained a history from L.K. that the testicular mass had been present since age 13, there is no mention of that history within respondent's patient record.

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(d) 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 17<sup>th</sup> day of April , 2009

ORDERED AND AGREED:

1. Respondent Barry P. Rubino, M.D., is hereby reprimanded for having engaged in repeated acts of negligence in the care he provided to patient L.K., 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 \$5,000, which penalty shall be payable in ten equal monthly installments of \$500. The first such payment shall be made on or before April 8, 2009, and each subsequent monthly payment shall be forwarded to the Board on or before the 8<sup>th</sup> of each ensuing month. The final payment shall be made on or before January 8, 2010.

3. Respondent shall attend and successfully complete a continuing medical education course, acceptable to the Board, in the diagnosis and treatment of testicular masses. The course is to be completed within six months of the date of entry of this Order.

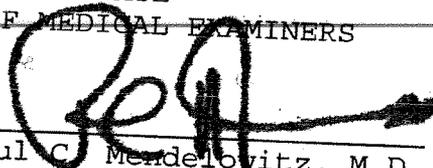
Prior to commencing said course, respondent shall obtain approval from the Board for any proposed course. In the event the Board has not previously approved the course respondent intends to take, respondent shall provide information detailing the content of said course (i.e., a course syllabus) to the Board office. Respondent shall additionally be responsible to ensure that the course provider submits written confirmation to the Board, upon respondent's completion of the course offering, documenting that respondent attended and successfully completed said course.

4. 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 obtain approval from the Board for any proposed course. In the event the Board has not previously approved the course respondent intends to take, respondent shall provide information detailing the content of said course (i.e., a course syllabus) to the Board office. Respondent shall additionally be responsible to ensure that the course provider submits written confirmation to the Board, upon respondent's completion of the course offering, documenting that respondent attended and successfully completed said course.

NEW JERSEY STATE  
BOARD OF MEDICAL EXAMINERS

By:

  
Paul C. Mendelovitz, M.D.  
Board President

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

  
Barry P. Rubino, M.D.