

STATE OF MAINE  
BOARD OF LICENSURE IN MEDICINE

In re: )  
David S. Rosen, M.D. ) DECISION AND ORDER  
Complaint No. CR 05-020 )

I. PROCEDURAL HISTORY

Pursuant to the authority found in 32 M.R.S.A. Sec. 3263, *et seq.*, 5 M.R.S.A. Sec. 9051, *et seq.* and 10 M.R.S.A. Sec. 8001, *et seq.*, the Maine State Board of Licensure in Medicine (Board) met on August 14, 2007 at the Board's Offices located in Augusta, Maine. The purpose of this meeting was to conduct an adjudicatory hearing to decide whether David S. Rosen, M.D. (Dr. Rosen or Respondent) committed fraud or deceit in renewing his Maine medical license as more particularly alleged in the Board's Notice of Adjudicatory Hearing dated July 17, 2007. A quorum of the Board was present at all stages of the proceedings. Participating and voting were Board Chair, Sheridan R. Oldham, M.D., and Board members, Kimberly K. Gooch, M.D., Gary R. Hatfield, M.D., Bettsanne Holmes (public member), George K. Dreher, Jr., M.D., David Nyberg PhD., (public member), Dr. Daniel Onion, M.D. and Maroulla S. Gleaton, M.D..

Assistant Attorney General Dennis E. Smith (Mr. Smith) presented the State's case. Dr. Rosen was present and was represented by Elizabeth Stouder, Esq. (Ms. Stouder). Dennis J. Harnish, Esq., served as Presiding Officer.

Following the convening of the adjudicatory hearing the Board determined that no Board member present at the hearing had a conflict of interest or bias. Mr. Smith and Ms. Stouder waived all objections to the participation of all Board members as well as to the Notice of Adjudicatory

Hearing dated July 17, 2007 and all other pre-hearing procedures. Exhibits 1 through 17 were all admitted as joint exhibits pursuant to the stipulation of the parties. Dr. Rosen was called as a witness and examined by both Ms. Stouder and Mr. Smith. Besides receiving the testimony and the exhibits described above the Board also heard opening and closing statements from Ms. Stouder and Mr. Smith.

After the evidentiary portion of the hearing was closed the Board deliberated in open session and found the following facts based upon the preponderance of the credible evidence.

## II. FINDINGS OF FACT

1. Dr. Rosen was first licensed to practice emergency medicine in the Commonwealth of Pennsylvania in October of 2001. He is also licensed to practice medicine in the State of Maine pursuant to Maine medical license # 015730.
  
2. On November 30, 2004 Dr. Rosen submitted to the Board an application for renewal of his Maine medical license ("2004 application"). In answer to question 15-9 in the 2004 application, Dr. Rosen stated that he had no pending claims or lawsuits alleging malpractice liability.
  
3. Dr. Rosen was named as a defendant in *Harris v. Rosen, M.D. et al.*, a civil lawsuit filed in a Pennsylvania state court in March of 2004, that alleged that that Dr. Rosen had failed to properly diagnosis and treat

a patient causing that patient harm. The complaint that originated this lawsuit was served upon Mercy Hospital and Health System (Mercy) which was Dr. Rosen's employer. Dr. Rosen received a copy of this lawsuit in May of 2004.

4. On November 1, 2004 Dr. Rosen was notified on behalf of the Pennsylvania Board of Medicine (Pennsylvania Board) that he had failed to provide the Pennsylvania Board with a copy of the complaint in *Harris v. Rosen, M.D. et al*, which the Pennsylvania Board called a "medical professional liability action", as required by Pennsylvania law. The Pennsylvania Board gave Dr. Rosen 30 days within which to submit a copy of the complaint in order to avoid investigation and prosecution.
  
5. Dr. Rosen discussed the November 1, 2004 notice with legal counsel for Mercy and was told that legal counsel would provide a copy of the *Harris v. Rosen, M.D. et al* complaint to the Pennsylvania Board. However, legal counsel failed to provide a copy of said complaint to the Pennsylvania Board within the proscribed deadline and the matter was referred for prosecution.
  
6. On February 22, 2005 Dr. Rosen entered a consent agreement with the Pennsylvania Board in which he admitted to failing to notify the

Pennsylvania Board of the outstanding civil lawsuit in a timely manner and agreed to pay a \$1000.00 fine for this violation of Pennsylvania law.

7. On or about March 8, 2005 the Board received a Disciplinary Alert Report from the Federation of State Medical Boards concerning the February 22, 2005 consent agreement entered by Dr. Rosen with the Pennsylvania Board.
8. Following investigation the Board issued a complaint against Dr. Rosen alleging fraud or deceit in obtaining his Maine medical license based upon his answer to question 15-9 in his 2004 renewal application.
9. Dr. Rosen responded to the Board's complaint acknowledging that he had read the complaint in *Harris v. Rosen, M.D. et al* prior to filing his 2004 renewal application and stating that he answered question 15-9 in the negative because the complaint nowhere specifically alleged "malpractice liability".
10. Dr. Rosen did not seek legal advice prior to answering question 15-9 on his renewal application nor did he read the instructions that he received from the Board along with this application describing how he should answer question 15-9.

11. The instructions that accompanied the 2004 renewal application required the reporting of all professional liability claims, even claims that had been settled or dismissed, and noted that this is the question on the renewal application most likely to generate follow up letters from Board staff if not answered completely.

### III. DISCUSSION

The findings of fact set forth above are based upon exhibits admitted pursuant to stipulation of Dr. Rosen's counsel as well as upon Dr. Rosen's testimony. None of these facts was disputed by the Respondent. While acknowledging that these facts are true Dr. Rosen stated that he had not knowingly committed either fraud or deceit in obtaining his Maine medical license. Dr. Rosen testified that although he was aware of *Harris v. Rosen, M.D. et al* when he answered question 15-9 on his 2004 renewal application, he did not believe that this lawsuit was a malpractice lawsuit since it was captioned only as a civil lawsuit and the complaint never used the term "malpractice" Moreover, Dr. Rosen pointed out that subsequent to November of 2004 a jury unanimously found for him in *Harris v. Rosen, M.D. et al*.

Dr. Rosen acknowledged that he did not consult legal counsel (even his brother who is an attorney) before answering question 15-9. The Respondent further admitted that he did not read the instructions that accompanied the 2004 renewal application and had he done so he would have known that he should have reported the *Harris* lawsuit. Finally, Dr. Rosen testified that he

narrowly construed question 15-9 in part because he was concerned that the Maine Board might not grant renewal of his Maine medical license if he reported to the Board that he had been alleged to have committed malpractice.

In short, Dr. Rosen admitted that, in retrospect, he had failed to properly answer question 15-9 on his 2004 renewal application. However, Dr. Rosen maintained that he never intended to defraud or deceive the Board. As evidence of his good character Dr. Rosen pointed to his 10 years of international work in the public health field that included two years of Peace Corps service. Accordingly, Dr. Rosen requested that he should not be subject to disciplinary action by the Board.

Although there was no disagreement among Board members about the facts set forth in the findings above, nor did Dr. Rosen dispute these facts, there was a split on the Board with regard to what, if any, disciplinary action to impose based upon these facts. Three Board members felt that in failing to properly answer question 15-9 Dr. Rosen was more naïve than guileful. These members found Dr. Rosen's 10 year career in public service to be strong evidence of his good character and support for his testimony that he never intended to defraud or deceive the Board. They also believed that Dr. Rosen had learned his lesson and would never again fail to fully and completely fill out renewal applications. These Board members would have dismissed the charges against Dr. Rosen.

Five members of the Board viewed Dr. Rosen's conduct less charitably. These members took note that Dr. Rosen received notice from the State of

Pennsylvania on November 1, 2004 that the *Harris* lawsuit was a medical professional liability lawsuit yet failed to cite this case in the renewal application he filed with the Board on November 30, 2004. These members believed that Dr. Rosen failed to notify the Board of the *Harris* lawsuit in part because he wanted to present himself to the Board in a more positive light and in part because he was in denial over the lawsuit. While these Board members acknowledged that the terms “fraud” and “deceit” as used in 32 M.R.S.A. Section 3282-A(2)(A) are strong terms with distinctly negative connotations, they construed these words as requiring that applicants be honest and truthful when filing an application with the Board. Because these Board members found that Dr. Rosen knew that he had a pending lawsuit that alleged professional misconduct when he answered question 15-9 yet failed to answer this question in the affirmative they determined that the Respondent had not been honest and truthful with the Board. Accordingly, these Board members determined that Dr. Rosen should be subject to a letter of warning and should be required to pay the costs of the hearing.

### III. CONCLUSIONS OF LAW

The Board, exercising its knowledge, experience and training and particularly having had the opportunity to observe Dr. Rosen’s demeanor, concludes that:

1. By answering question 15-9 on his 2004 renewal application for his Maine medical license in the negative when he knew that there was a lawsuit pending against him that alleged professional misconduct, Dr.

Rosen committed fraud or deceit in renewing his Maine medical license within the meaning of 32 M.R.S.A. Section 3282-A(2)(A).

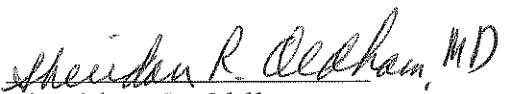
V. SANCTIONS

The Board, exercising its knowledge, experience and training and particularly having had the opportunity to observe Dr. Rosen's demeanor, hereby imposes the following sanctions:

- A. Dr. Rosen shall receive a letter of warning regarding the conduct described in this Decision and Order.
- B. Dr. Rosen shall pay all costs associated with this hearing within thirty (30) days of receipt of an invoice from the Board. Dr. Rosen shall forward a check for the amount of these outstanding costs made payable to the Maine Board of Licensure in Medicine to the attention of Randal C. Manning at the Maine Board of Licensure in Medicine, 137 State House Station, Augusta, Maine. 04333.

SO ORDERED:

Dated:

  
Sheridan R. Oldham  
Chair, Maine Board of  
Licensure in Medicine

APPEAL RIGHTS

Pursuant to the provisions of 5 M.R.S.A Section 10051.3 and 10 M.R.S.A. Section 8003 any party that appeals this Decision and Order must file a Petition



for Review in Superior Court within 30 days from receipt of this Order. The petition shall specify the person seeking review, the manner in which they are aggrieved and the final agency action which they wish reviewed. It shall also contain a concise statement as to the nature of the action or inaction to be reviewed, the grounds upon which relief is sought and a demand for relief. Copies of the Petition for Review shall be served by Certified Mail, Return Receipt Requested upon the Maine State Board of Licensure in Medicine, all parties to the agency proceeding and the Attorney General.