

**IN THE MATTER OF** \* **BEFORE THE MARYLAND**  
**BINYAMIN ROTHSTEIN, D.O.** \* **STATE BOARD OF**  
**Respondent.** \* **PHYSICIANS**  
**License No. H 30277** \* **Case No. 1994-0718**

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**FINAL OPINION AND ORDER**

**I. PROCEDURAL HISTORY**

On August 13, 2003, the Board charged Dr. Rothstein with: (1) violation of a Consent Order executed on February 23, 2000 ("Consent Order II") ; (2) failing to meet the appropriate standards for the delivery of quality medical of care within the meaning of Md. Health Occ. Code Ann. § 14-404 (a) (22); and (3) failing to cooperate with a lawful investigation of the Board within the meaning of Md. Health Occ. Code Ann. § 14-404 (a) (33).

An eight-day hearing was held before an Administrative Law Judge ("ALJ") of the Office of Administrative Hearings in March of 2004. Dr. Rothstein was represented by counsel and the State was represented by the Administrative Prosecutor. Eight witnesses testified, including six expert witnesses. Eighty-five exhibits were admitted into evidence.

ALJ Richard O'Connor issued his Proposed Decision on June 21, 2004, recommending that the charges be upheld in part and dismissed in part. Both the State and Dr. Rothstein filed Exceptions to the ALJ's Proposed Decision, and

both parties filed responses to each other's written Exceptions. An oral Exceptions Hearing was held before the Board on September 22, 2004.

This decision constitutes the Board's Final Opinion and Order in this case. In making this decision, the Board has considered the entire record in this case, including the transcript of the hearing and all exhibits admitted into evidence, the Proposed Decision of the ALJ and all of the arguments made during the Exceptions process by each of the parties.

The Board incorporates by reference and attaches as Attachment A to this Final Opinion and Order the Proposed Decision of the ALJ issued on June 21, 2004.

### **III. FINDINGS OF FACT**

#### **a. Standard of Proof Employed**

The Board has applied the following standard of proof. With respect to allegations that Dr. Rothstein violated the standard of quality medical care, those allegations are treated as allegations of statutory violations of § 14-404 (a) (22) only, and all findings made have been made under the "clear and "convincing" evidentiary standard. With respect to the allegations of violations of conditions of probation specifically set out in Consent Order II (but excluding any general requirement in Consent Order II that Dr. Rothstein "comply with all laws governing the practice of medicine under the Act"), and also with respect to violation of § 14-404 (a) (33) of the Medical Practice Act, the preponderance of the evidence standard has been applied. The Board thus rejects the

Administrative Prosecutor's Exception regarding the standard of proof. The Board notes, however, that the proof in these latter two categories was also clear and convincing in any case.

### **b. History Of Prior Discipline**

#### First Charges: 1995

On June 28, 1995, the Board first charged Dr. Rothstein with violating appropriate standards of medical care within the meaning of Section 14-404 (a) (22) of the Medical Practice Act, Md. Health Occ. Code Ann. § 14-404 (a) (22).

Dr. Rothstein was charged with: (1) failing to evaluate or treat a patient presenting with symptoms of meningitis, and instead treating the patient with intravenous hydrogen peroxide; (2) failing to evaluate, diagnose, treat or refer to another physician a two-month-old baby who was experiencing seizures, and instead performing a manipulation; (3) failing to refer to the emergency room a 67-year-old patient with an x-ray finding of pneumonia and complaints of chest pain, shortness of breath, fever and a cough with bloody production, and instead administering four intravenous hydrogen peroxide treatments and three injections of vitamins and minerals; (4) diagnosing and prescribing medication for high blood pressure for a 57-year-old patient whose blood pressure readings were all normal, failing to order a chest x-ray after that patient had a positive tuberculosis test, failing to follow up on complaints suggestive of unstable angina, and failure to follow up on treatment administered by covering physician for a dental abscess, and instead administering hydrogen peroxide and mineral injections without a history or physical examinations supporting their use; (5) failing, in the

case of an 82-year-old patient with dyspnea, swollen ankles, rales, pitting edema, wheezing, coughing and abdominal fluid, to treat the symptoms suggestive of congestive heart failure, and instead administering hydrogen peroxide intravenously; (6) failing to adequately evaluate a patient complaining of back pain who was in fact suffering from metastatic bone cancer, and instead injecting vitamins; (7) failure to do an adequate examination of the cause of fainting accompanied by shortness of breath and chest pain in a 72-year-old patient who died shortly thereafter of a myocardial infarction and congestive heart failure, and instead administering intravenous vitamins; (8) failing to adequately examine and evaluate a 46-year-old male complaining from lower back pain who was in fact suffering from metastatic bone cancer, and instead injecting intravenous vitamins and minerals; (9) administering intravenous hydrogen peroxide and vitamins after an inadequate examination which was not detailed enough to support the diagnoses of a patient complaining of dry throat, fatigue, muscle aches and lack of coordination; and (10) diagnosing a patient and treating that patient by intravenous hydrogen peroxide and vitamins and manipulation over eleven visits without a valid basis for that diagnosis in the physical findings.

#### First Consent Order: 1996

Those charges were settled by a Consent Order of March 28, 1996. Under the terms of that Consent Order, Dr. Rothstein admitted that his care did not meet the statutory standard in these cases. Dr. Rothstein's license was suspended for ninety days and he was placed on probation for a period of three years. Dr. Rothstein was also required to employ a Board-approved mentor to

monitor his care of patients, to develop Board-approved consent forms for alternative medicine, to complete a Board-approved documentation course, to complete a Physician Refresher or Retraining Program, and to complete a Board-approved course in electrocardiogram interpretation. He was also subject to subsequent peer review.

#### Second Charges; Consent Order II: 2000

On September 15, 1999, the Board charged Dr. Rothstein with violating the terms of the probation in the previous Consent Order by failing to meet appropriate standards of patient care. These charges were settled by a second Consent Order ("Consent Order II") executed on February 23, 2000. In Consent Order II, Dr. Rothstein admitted once again that he had violated appropriate medical standards in the treatment of nine (of ten) patients whose care was reviewed by the Board.

The violations admitted in Consent Order II were similar to the original violations that had first caused the Board to charge Dr. Rothstein. All but one patient was given chelation therapy, vitamin injections and/or hydrogen peroxide injections, and many patients were given other treatments such as flaxseed oil; but once again serious medical problems for which conventional treatments are available were not evaluated or, if evaluated, not properly treated. In one patient, he failed to address the patient's shortness of breath, wheezing, high cholesterol and epigastric discomfort upon exertion, and he misinterpreted the patient's EKG. In another patient he also misinterpreted an EKG, failed to address the patient's Chronic Obstructive Pulmonary Disease, wheezing, and profound exercise

intolerance, failed to order any pulmonary function tests, failed to monitor for the possible side effects of chelation therapy and failed to make any assessment of whether chelation therapy was effective. In another patient, he again failed to monitor for side effects of chelation therapy, failed to properly address the patient's high blood pressure and diagnosed a patient without a sufficient examination, based on the patient's word that her daughter had the disease. He prescribed a steroid to a patient whose blood levels of that steroid were normal, though that steroid could exacerbate her already high cholesterol problem, and he did not discuss the cholesterol problem with her. He treated a patient who had a history of cancer and a non-healing fracture of the right fibula with hydrogen peroxide and manipulation, but he failed to order an x-ray to check for metastatic cancer. He failed to evaluate another patient's chest pain. In another patient with shortness of breath and angina-like pain, he failed to address the angina issue at all and also failed to address the patient's abnormal thyroid tests or to address or treat the patient's elevated cholesterol.

In Consent Order II, Dr. Rothstein agreed with the facts alleged in the charging document and agreed to a disposition of the case by the imposition of probation and numerous conditions. The Board placed Dr. Rothstein on probation for three years and imposed many conditions, including the following conditions especially relevant to this case:

1. Dr. Rothstein was required to cease his practice of alternative or complementary medicine, and practice only traditional, conventional or osteopathic medicine. The term "alternative or complementary medicine"

was defined as including chelation therapy, hydrogen peroxide therapy, and vitamin therapy except for prescriptions for vitamins approved by the supervisor;

2. Dr. Rothstein was required to cooperate fully with the Board and its agents and employees in the monitoring, supervision and investigation of his compliance with the terms of the order.

### **c. Current Charges of Violating the Standard of Quality Care**

#### **Patient A**

The Board adopts the ALJ's proposed findings of fact numbers 23 through 30. Dr. Rothstein, upon observing that his patient had a petechial rash over his entire back, failed to treat the rash or to order any tests to determine its cause. A petechial rash is a sign of thrombocytopenia, and it is a matter of some urgency that a CBC be ordered to evaluate the platelet count. Dr. Rothstein's failure to order a CBC in these circumstances constituted a violation of the standard of quality medical care.

Again with respect to Patient A, the Board adopts the ALJ's proposed findings of fact # 31 through 36. The Board additionally finds that Dr. Rothstein violated the standard of quality medical care when, upon observing atrophy in the patient, he failed to conduct or to order tests of motor function or reflexes or to offer the patient a referral to a neurosurgeon or other specialist who might conduct such an evaluation. The ALJ found that Dr. Rothstein did evaluate the patient's reflexes and strength (finding # 38), but the ALJ failed to note that this

evaluation took place a month before the finding of atrophy. The Board finds as additional facts that Dr. Rothstein did not evaluate the patient's reflexes and strength at all subsequent to his finding of thoracic outlet syndrome or his finding of atrophy.<sup>1</sup> The ALJ apparently failed to appreciate the significance of these findings or the fact that such findings call for *subsequent* strength and reflex testing or evaluation. The Board, therefore, finds that Dr. Rothstein's failure to conduct such tests, order tests or to offer a referral to specialist in the face of his own findings violated the standard of quality medical care. The Board credits the expert testimony of Dr. MacGregor on this point. The Board is not faulting Dr. Rothstein for his use of osteopathic manipulation on this patient, but he has an obligation as well to recognize the signs and symptoms that require medical testing and evaluation. As in the case of the petechial rash, Dr. Rothstein recorded a symptom clearly calling for further medical evaluation but failed to perform or order that evaluation. This places a patient in danger and violates the standard of quality medical care,

#### **Patient B**

The Board adopts the ALJ's proposed findings of fact # 39 through 42. The Board also agrees with the reasoning of the ALJ on this issue. The standard of quality care requires that, when prescribing testosterone to a female patient, the patient be individually warned of the possible severe side effects of the treatment, which include virilization (increased facial hair, deepening of the voice, and acne) and also that the warning be documented in the patient's chart. Dr. Rothstein violated this standard.

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<sup>1</sup> See State's Ex. 11, FS 1004, 1003.

Again with respect to Patient B, the Board adopts the ALJ's proposed findings of fact # 43 through 52. Dr. Rothstein improperly diagnosed and treated this patient for hypothyroidism with Armor Thyroid when the only acceptable test for hypothyroidism showed a THS of 3.88, which was within normal limits. Again, when the patient's THS subsequently was measured at 2.4, another normal reading, Dr. Rothstein not only continued Armor Thyroid inappropriately but also tripled the dose of Armor Thyroid to 45 mg.<sup>2</sup> Whether caused by a lack of knowledge of appropriate diagnostic or treatment standards or by a simple unwillingness to accept them, Dr. Rothstein's provision of medical care to this patient was substandard. With respect to the charge that Dr. Rothstein failed to consider that his prescribing of Armor Thyroid may have caused this patient to develop iatrogenic<sup>3</sup> hyperthyroidism, the Board disagrees with the proposed finding of the ALJ. The ALJ failed to appreciate the significance of the possible effects of hyperthyroidism, which include loss of bone mass and cardiac toxicity which could possibly cause cardiac arrhythmias, including atrial fibrillation. The Board is not finding that Dr. Rothstein caused severe iatrogenic hyperthyroidism in this patient, but his tripling of the dosage of Armor Thyroid in the face of continuing normal THS values raised the very real possibility of iatrogenic damage, and his chart shows no recognition of the possible danger to which he was subjecting this patient. Dr. Rothstein's treatment of this patient with Armor

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<sup>2</sup> The Board has considered Dr. Rothstein's evidentiary arguments against the ALJ's proposed findings on this issue but rejects them.

<sup>3</sup> Iatrogenic means caused by the treatment itself.

Thyroid was not only unjustified by the patient's condition, but it also subjected this patient to the possibility of damage from this unnecessary treatment.

Again with respect to Patient B, the Board finds, in accordance with Dr. MacGregor's testimony, that there was no clinical indication for the prescription of progesterone to a woman post-hysterectomy who was not *both*: (1) experiencing hot flashes, *and* (2) intolerant of estrogen. This patient did not present both symptoms. Dr. MacGregor's testimony was based on sound medical principles, while that of the defense experts appears to the Board to be based on little more than medical wishful thinking. The Board credits the opinion of Dr. MacGregor and gives it more weight than did the ALJ on this issue.

### **Patient C**

The Board adopts the ALJ's proposed findings of fact # 53-73. In addition, the Board adopts the ALJ's reasoning set out on pages 40 through 47 of the proposed decision. Once again, Dr. Rothstein failed to advise a female patient of the possible side effects of the testosterone he prescribed. Dr. Rothstein once again used the incorrect standard in deciding to treat this patient with Armor Thyroid, and he failed to consider that his administration of Armor Thyroid may have caused iatrogenic hyperthyroidism. In fact, in this case, Dr. Rothstein's treatment actually did cause iatrogenic hyperthyroidism. In addition, although the chart showed that this patient had been noncompliant in the past, and the test results at one point strongly pointed toward noncompliance, Dr. Rothstein also failed to inquire about compliance before carrying out his treatment. He recognized that the patient had hypertension, and he prescribed appropriate

medications at times, but he failed to check her blood pressure over a period of over four months. Each of these failures constitutes a violation of the standard of quality medical care.

The Board rejects Dr. Rothstein's evidentiary arguments in his Exceptions that he met the standard of quality care in his treatment of Patients A, B and C. The findings above reflect substandard care, not reasonable "differences of opinion" or "differences in semantics about a rash." Dr. Rothstein provided substandard care to these patients.

#### **Patient E**

The Board agrees with the proposed findings of the ALJ that it was not proven by clear and convincing evidence that Dr. Rothstein's treatment of this patient with a sinus problem violated the standard of quality care. The Board agrees that it was not proven by the requisite standard of proof that the patient necessarily required antibiotics, decongestant therapy, steam or saline treatment at the time of these particular visits to Dr. Rothstein. The Board rejects the Administrative Prosecutor's Exception with respect to the treatment of Patient E.

#### **d. Failure to Cooperate with a Lawful Investigation of the Board**

The Board adopts the ALJ's proposed factual findings # 20 through 22. When Dr. Rothstein received the Board's subpoena for any and all medical records for six patients, he supplied some of the records but failed to supply the patient consent forms which he had had the patients sign. Almost two years later, and then only in response to a second subpoena specifically naming the patient consent forms, did Dr. Rothstein produce these forms.

The Board agrees with the ALJ's evaluation of the evidence on this issue set out on pages 50-51 of the Proposed Decision. The Board, like the ALJ, finds Dr. Rothstein's testimony on this issue not credible. The patient consent forms, in and of themselves, were strong evidence that Dr. Rothstein may have been intentionally violating Consent Order II. For example, the patient consent forms describe his treatment unequivocally:

It is important to understand that these theories and treatments are considered by most physicians to be "alternative treatment" and not supported by generally accepted scientific evidence.

Considering that Dr. Rothstein was under an obligation under Consent Order II to cease his practice of alternative or complementary medicine, and practice only traditional, conventional or osteopathic medicine, these consent forms were, on their face, strong evidence that Dr. Rothstein may have intentionally violated Consent Order II. The Board infers that Dr. Rothstein's failure to provide the patient consent forms in response to the subpoena was not inadvertent or the result of a misreading of Board communications, but was a deliberate act calculated to prevent the Board from obtaining evidence in the medical record which might show that he was guilty of violating Consent Order II.

Dr. Rothstein has an affirmative duty to "cooperate" with the Board under the statute, Md. Health Occ. Code Ann. § 14-404 (a) (33). Consent Order II also specifically warned Dr. Rothstein of his duty to cooperate with the Board. Dr. Rothstein failed to cooperate with the Board's investigation. His deliberate

withholding of possibly critical evidence over a long period of time is an extremely serious offense.<sup>4</sup>

#### **e. Violation of Consent Order II**

Consent Order II required Dr. Rothstein to:

terminate his practice of "alternative" or "complimentary" medicine and shall practice only "traditional," "conventional" or osteopathic medicine for the entire period of the probation.

Dr. Rothstein violated this provision by treating Patient E with a substance known as Kali Bich. The State's expert, Dr. MacGregor, testified that such treatment was not within the range of any conventional treatment of which she is aware. The Board is confident that Dr. MacGregor has knowledge of the range of therapies accepted in "traditional" and "conventional" medicine, and the Board infers that Dr. MacGregor has not heard of any such therapy because it is not a therapy accepted in traditional or conventional medicine.<sup>5</sup> This inference is in conformity with the Board's collective experience in traditional and conventional medicine.<sup>6</sup> The Board, based on its own knowledge and experience, simply gives more weight to Dr. MacGregor's opinion on this issue than did the ALJ.

Dr. Rothstein also clearly violated Consent Order II by administering intravenous colchicine to Patient A. Although colchicine is not a vitamin, Dr. Rothstein included it in his "vitamin cocktails" for this patient. Dr. Rothstein was charged with practicing alternative or complimentary medicine by the use of

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<sup>4</sup> The Board rejects Dr. Rothstein's contentions in his Exceptions that he did cooperate with the Board.

<sup>5</sup> There is no issue of Kali Bich being an osteopathic treatment.

<sup>6</sup> The Board notes that even Dr. Teitelbaum was unfamiliar with the substance, and that Dr. Blood does not use it.

these "cocktails" containing colchicine. See Charges # 25 & 26.<sup>7</sup> The expert testimony of Drs. MacGregor and Braman was more convincing to the Board than the testimony to the contrary. Treatment with colchicine, which can cause GI toxicity and possible cardiac arrhythmias, does not constitute conventional or traditional medical treatment, except for acute gouty arthritis. This patient did not suffer from acute gouty arthritis. The testimony of these experts also comports with the Board's own experience. The Board also notes that Dr. Rothstein himself admitted on one of his patient forms that the administration of colchicine was considered alternative medical treatment. This was a clear and obvious violation of Consent Order II.

The Board agrees with the ALJ that the evidence was insufficient to prove that the osteopathic treatment provided to these patients violated Consent Order II or the standard of quality care in and of itself.

Dr. Rothstein also violated Consent Order II by providing intravenous vitamins to all four of these patients. The ALJ found that there was no serious dispute that the provision of intravenous vitamin therapy constitutes alternative medicine, and the Board agrees. Consent Order II explicitly prohibited Dr. Rothstein from practicing alternative medicine for the term of probation. In addition to prohibiting alternative medicine in general, Consent Order II also specifically prohibited "vitamin therapy," with the exception of "prescriptions for vitamins approved by the physician's supervisor."

Dr. Rothstein's argument, that the exception for "prescriptions" overrides not only the specific prohibition of "vitamin therapy" but also the general

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<sup>7</sup> The ALJ's statement that the administration of colchicine was not an issue is simply not correct.

prohibition of alternative medicine, is rejected. Even under the definition put into evidence by Dr. Rothstein, a prescription is an "order for medication, therapy or therapeutic device which ultimately goes to a person properly authorized to dispense or perform the order." (Rothstein Exhibit 1) This definition comports with the Boards' understanding of a prescription to mean an order by a physician to someone else (usually a pharmacy but at times other practitioners, such as nurses or physical therapists) for medication or treatment. It certainly does not mean a physician's decision to perform a treatment himself or herself without the involvement of another provider. Dr. Rothstein's notations in the chart that he performed these treatments do not constitute prescriptions. These notations do not even meet even the basic requirements for a medical "order," since they do not even indicate the dosage. And in any case, the Board concludes that a physician's decision to personally perform a treatment is not a prescription. In addition, in the grammatical context of Consent Order II, to read the exception for "prescriptions" to allow intravenous vitamin therapy would be illogical, for there would be no need for the express prohibition of "vitamin therapy" if there was an exception which allowed all types of vitamin therapy. Since Dr. Rothstein was performing "alternative" medical treatment and "vitamin therapy," this was an additional violation of Consent Order II.<sup>8</sup>

Consent Order II came about because Dr. Rothstein had violated the standard of quality medical care numerous times and had been charged on two separate occasions. On the first occasion, Dr. Rothstein administered

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<sup>8</sup> Even if Dr. Rothstein had produced persuasive evidence that "IV Vitamin Cocktails" now had scientific backing -- and he did not -- "IV Vitamin Cocktails" would still constitute "vitamin therapy" and thus still be prohibited by Consent Order II. His Exception raising this point is thus rejected.

intravenous hydrogen peroxide to several patients but failed to evaluate symptoms of meningitis, pneumonia, unstable angina and congestive heart failure; he prescribed intravenous injections in other patients while failing to evaluate bone cancer (twice) and congestive heart failure. On the second occasion, he provided chelation therapy and intravenous vitamin injections but failed to properly evaluate shortness of breath (twice), EKGs (twice), high blood pressure, and the indications of cancer.

One or more of these three alternative medicine treatments were involved in almost all of these instances of substandard care: (1) hydrogen peroxide injections; (2) chelation therapy; and (3) intravenous vitamin therapy. When Consent Order II provided specifically that "chelation therapy, hydrogen peroxide therapy and vitamin therapy" were prohibited, the obvious intent was to prohibit especially these three particular alternative medicine treatments that had repeatedly distracted Dr. Rothstein in the past from dealing with his patients' critical medical problems. To read the word "prescriptions" as overruling the entire prohibition of vitamin therapy would be unjustified in the face of the Board's obvious concern that Dr. Rothstein had been using intravenous vitamin therapy, chelation therapy, and hydrogen peroxide therapy while ignoring his patients' potentially fatal symptoms. It is clear that the intent of Consent Order II was to protect the public by prohibiting all three (not just two) of those specific practices which had so distracted Dr. Rothstein from providing adequate medical care in the past.

#### **IV. CONCLUSIONS OF LAW**

By providing substandard care to Patients A, B and C, as set out in the findings of fact above, Dr. Rothstein failed to provide "quality medical or surgical care" as those terms are used in the Medical Practice Act, in violation of that Act at Md. Health Occ. Code Ann. § 14-404 (a) (22).

Dr. Rothstein failed to cooperate with a lawful Board investigation within the meaning of Md. Health Occ. Code Ann. § 14-404 (a) (33) when he withheld the consent forms from his response to the Board's investigative subpoena for any and all medical records.

Dr. Rothstein violated the probationary terms of the Consent Order of February 23, 2000 by practicing alternative medicine during the term of the probation.

#### **V. SANCTION**

The Board has attempted to work with Dr. Rothstein for a decade. In the first Consent Order, every effort was made to accommodate his desire to practice alternative medicine, as long as he provided his patients with informed consent, did his patients no harm and did not neglect their conditions that required traditional medical evaluation or treatment. The first Consent Order was not effective in protecting the public health, because he continued to neglect his patients' serious medical symptoms and conditions. Despite this failure, the Board once more entered into a consent order, Consent Order II, with Dr.

Rothstein. This second time, however, the Board attempted to alleviate any danger to the public by prohibiting him from practicing alternative medicine and requiring that he practice competent conventional medicine. He was also ordered to "cooperate fully with the Board at all times" in the Board's oversight of his practice.

Dr. Rothstein did not cooperate with the Board, and in fact he failed to disclose to the Board in response to its investigative subpoena certain documents from the medical files which on their face appeared to show that he was continuing to practice alternative medicine in violation of Consent Order II. This violation of Section 14-404 (a) (33) is extremely serious in the Board's view, since it has destroyed the trust which the Board must have in the cooperation of a physician before it can allow that physician to practice medicine even under supervision.

After years of probation, peer reviews and supervision, Dr. Rothstein continues to practice substandard medicine. His failure to order a CBC when Patient A displayed a petechial rash, his treatment of Patient B with Armor Thyroid without medical justification, and his inappropriate treatment of Patient C with Armor Thyroid without consideration of the fact that his treatment may be causing iatrogenic hyperthyroidism, are alone sufficient examples of continued substandard care to convince the Board that Dr. Rothstein is not capable of being re-educated and will pose a danger to the public if allowed to continue to practice. The additional findings of substandard care proposed by the ALJ and found by the Board are also of serious concern to the health of his patients. The

Board will revoke his license to practice medicine and will not entertain any reapplication for at least five years.

The Board also has made findings of violations of the standard of quality care which were in addition to those recommended by the ALJ. The Board also made the additional finding that Dr. Rothstein violated Consent Order II. The additional findings of violations made by the Board are additional indications that Dr. Rothstein should not be practicing medicine and cannot be trusted to respond appropriately to any sort of probationary arrangement. Even without these additional findings, however, the Board would have imposed the same sanction. The Board simply cannot allow Dr. Rothstein to continue to practice substandard medicine on the public after two unsuccessful efforts to rehabilitate his practice.

The Board rejects Dr. Rothstein's repeated statement in his Exceptions that the Board is disciplining him because he advocates for the practice of alternative and complimentary medicine. The Board's past rulings on this issue were accurately summarized in the article cited in State's Exhibit 10 and will not be repeated at length here. The Board is not concerned with the fact that Dr. Rothstein advocates for the use of alternative and complimentary medicine. The Board is concerned that Dr. Rothstein is placing his patients in danger by ignoring serious symptoms which could be treated or at least evaluated by conventional medicine, that he is misinterpreting the results of conventional medical tests and that this problem has endured for years despite the Board's attempts to help him remediate these problems.

The Board notes that Dr. Rothstein admitted during the Exceptions process that many of the most serious charges relating to Patients A, B and C had nothing to do with alternative or complimentary medicine. Dr. Rothstein characterizes these problems as "niggling matters." The Board strongly disagrees. These were serious medical lapses which could have resulted in serious patient injury or death. The fact that none of this particular set of patients died does not detract from the seriousness of the continuing deficiencies in Dr. Rothstein's practice of medicine.

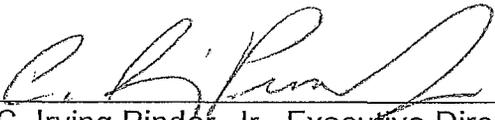
The Board has also considered all of the remaining exceptions filed by Dr. Rothstein but finds them to be without merit.

#### **VI. ORDER**

It is hereby ORDERED that the medical license of Binyamin Rothstein, D.O., be and it hereby is, REVOKED; and it is further

ORDERED that the Board will not consider any application for reinstatement before five years from the date of this order.

So ordered the 26th day of May, 2005.

  
C. Irving Pinder, Jr., Executive Director  
Maryland State Board of Physicians

### **NOTICE OF RIGHT TO APPEAL**

Pursuant to Maryland Health Occ. Code Ann. § 14-408 (b), Dr. Rothstein has the right to take a direct judicial appeal. Any appeal shall be filed within 30 days from the receipt of this Final Opinion and Order and shall be made as provided for judicial review of a final decision in the Maryland Administrative Procedure Act, State Gov't Article § 10-222 and Title 7, Chapter 200 of the Maryland Rules of Procedure.

If Dr. Rothstein files an appeal, the Board is a party and should be served with the court's process. In addition, Dr. Rothstein should send a copy to the Board's counsel, Thomas W. Keech, Esq. at the Office of the Attorney General, 300 West Preston Street, Suite 302, Baltimore, Maryland 21201. The Administrative Prosecutor is not involved in the case at this point and need not be served with or copied on the pleadings.