STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
BUREAU OF HEALTH PROFESSIONS
BOARD OF MEDICINE
DISCIPLINARY SUBCOMMITTEE

In the Matter of

MICHAEL ARTHUR ROTH, M.D.
License No. 43-01-028327

Complaint No. 43-11-119149
(Consolidated with No. 43-09-114385)

ADMINISTRATIVE COMPLAINT

Attorney General Bill Schuette, through Assistant Attorney General Bridget K. Smith, on behalf of the Department of Licensing and Regulatory Affairs, Bureau of Health Professions (Complainant), files this complaint against Michael A. Roth, M.D. (Respondent) alleging upon information and belief as follows:

1. The Board of Medicine, (Board), an administrative agency established by the Public Health Code (Code), 1978 PA 368, as amended, MCL 333.1101 *et seq*, is empowered to discipline licensees under the Code through its Disciplinary Subcommittee (DSC).

2. Respondent is currently licensed to practice Medicine pursuant to the Code. At all times relevant to this complaint, Respondent was employed by Summit Medical Center (Summit), in Detroit, Michigan and WomanCare Clinic

(WomanCare), in Lathrop Village, Michigan. In addition, Respondent owns and operates his own practice, which is located in Novi, Michigan.

3. Section 16221(a) of the Code provides the DSC with the authority to take disciplinary action against a licensee for a violation of general duty, consisting of negligence or failure to exercise due care, including negligent delegation to, or supervision of employees or other individuals, whether or not injury results or any conduct, practice or condition that impairs, or may impair the ability to safely and skillfully practice medicine.

4. Section 16221(b)(i) of the Code provides the DSC with authority to take disciplinary action against a licensee for incompetence, which is defined in section 16106(1) of the Code to mean "a departure from, or failure to conform to minimal standards of acceptable and prevailing practice for the health profession, whether or not actual injury to an individual occurs."

5. Section 16221(b)(vi) of the Code provides the DSC with authority to take disciplinary action against a licensee for lack of good moral character, defined at section 1 of 1974 PA 381, as amended; MCL 338.41 *et seq*, as the "propensity on the part of the person to serve the public in the licensed area in a fair, honest and open manner."

6. Section 16226 of the Code authorizes the DSC to impose sanctions against persons licensed by the Board if, after opportunity for a hearing, the DSC determines that a licensee violated one or more of the subdivisions contained in section 16221 of the Code.

GENERAL ALLEGATIONS

COUNT I

Patient L.H.

7. On February 13, 2008, L.H. (initials used to protect patient confidentiality), a female (D/O/B 10/24/84), contacted Summit to schedule an appointment for termination of her pregnancy. Summit staff scheduled L.H. for an appointment on February 15, 2008. In addition, staff faxed L.H. a written summary of the termination procedure, a description of the fetus, and a copy of a pre-natal care and parenting information pamphlet, in accordance with section 17015 of the Code.

8. On February 15, 2008, L.H. arrived at Summit for her first appointment. At that time, L.H. was counseled by a member of the Summit Staff, who performed an ultrasound and confirmed L.H. was 22 weeks pregnant. Summit staff then sent L.H. to Respondent's Novi office to begin the two-day dilation and evacuation procedure (D and E).

9. At Respondent's Novi office, Respondent gave L.H. a physical exam. After re-confirming that L.H. was 22 weeks pregnant, Respondent began the D and E.

10. The first day of the procedure was without incident. Following the procedure, Respondent's staff gave L.H. instructions on what to do that evening and advised her to return to Summit the next day to complete the D and E.

11. On February 16, 2008, L.H. returned to Summit for completion of the D and E. Prior to starting the procedure, Respondent placed L.H. under intravenous (IV) sedation and monitored her vitals. Respondent then began the second part of the D and E procedure.

12. According to Respondent's February 16, 2008 progress note, at some point during the procedure, L.H. experienced a syncopal episode (fainting). Respondent aroused L.H. with smelling salts and completed the procedure.

13. According to the February 16, 2008 progress note, following the completion of the procedure, L.H.'s blood pressure, pulse and bleeding were normal and L.H. was responsive. Accordingly, Respondent discharged L.H. to the recovery area at 11:15 a.m.

14. At 3:02 p.m., L.H. got up to go to the bathroom where she experienced heavy vaginal bleeding and fainted a second time. Respondent was able to arouse L.H. using smelling salts, but was unable to initiate an IV. Accordingly, Respondent contacted EMS and L.H. was transported to nearby Sinai-Grace hospital. That was the last contact Respondent had with L.H.

15. According to the February 16, 2008 Sinai-Grace Emergency Department Note, Respondent contacted the emergency department physician and notified him or her that L.H. had suffered two episodes of syncope while at Summit. Nothing in the Emergency Department Note indicates that Respondent suggested he may have perforated L.H.'s uterus during the D and E. Further, nothing in Respondent's records for L.H. indicate that he considered uterine perforation as a possible cause for L.H.'s distress, despite the fact that perforation is a known complication of second trimester pregnancy terminations and would account for L.H.'s blood loss and syncopal episodes.

16. Further, Respondent made no effort to contact Sinai-Grace's staff gynecologist/obstetrician to inform them that L.H. was being transferred to their hospital with potentially serious gynecological complications.

17. On February 17, 2008, L.H. checked herself out of Sinai-Grace and presented herself to St. Vincent Mercy Medical Center in Toledo, Ohio. On

February 18, 2008, doctors at St. Vincent determined that L.H. had a possible uterine perforation and scheduled L.H. for exploratory surgery. During the surgery, the surgeon found a laceration on the right side of L.H.'s uterus, consistent with perforation during the D and E. Ultimately, the surgeon at St. Vincent performed a total hysterectomy on L.H.

18. Respondent's failure to recognize and treat L.H. for a possible uterine tear, as well as his failure to provide L.H. with appropriate follow-up care was below standards of care for physicians licensed to practice medicine in the State of Michigan.

19. Respondent's conduct as described above constitutes negligence, in violation of section 16221(a) of the Code.

20. Respondent's conduct as described above constitutes incompetence, in violation of section 16221(b)(i) of the Code.

21. Respondent's conduct as described above evidences a lack of good moral character in violation of section 16221(b)(vi) of the Code.

Count II

Patient B.S.

22. In January, 2011, a genetic counselor referred B.S., female (D/O/B 5/20/71), and her husband J.S., to WomanCare for a pregnancy termination procedure.

23. On January 14, 2011, B.S. had an initial appointment at WomanCare. During that appointment, B.S. filled out paperwork and a technician performed an ultrasound. Following the ultrasound, WomanCare staff informed B.S. and J.S. that Respondent failed to appear at the clinic to perform the procedure. WomanCare staff rescheduled the procedure for January 17, 2011.

24. At 2:00 p.m. on January 17, 2011, B.S. and J.S. returned to WomanCare to begin the termination procedure. They waited until 5:00 p.m. until staff finally called B.S. back to an exam room. Staff gave B.S. a gown and allowed her to change for the procedure.

25. At some point, Respondent entered B.S.'s exam room, briefly reviewed B.S.'s chart and then left the room. Respondent said nothing to B.S., nor did he speak to J.S., who remained in the waiting room. Eventually a staff member informed B.S. that Respondent had left WomanCare and would not be performing the termination procedure that day.

26. Respondent's failure to explain the reason for non-treatment and discuss alternatives with B.S. was below standards of care for physicians licensed to practice medicine in the State of Michigan.

27. On January 20, 2011, B.S. underwent a pregnancy termination procedure at another facility with another physician.

28. Respondent's conduct as described above constitutes negligence, in violation of section 16221(a) of the Code.

29. Respondent's conduct as described above constitutes incompetence, in violation of section 16221(b)(i) of the Code.

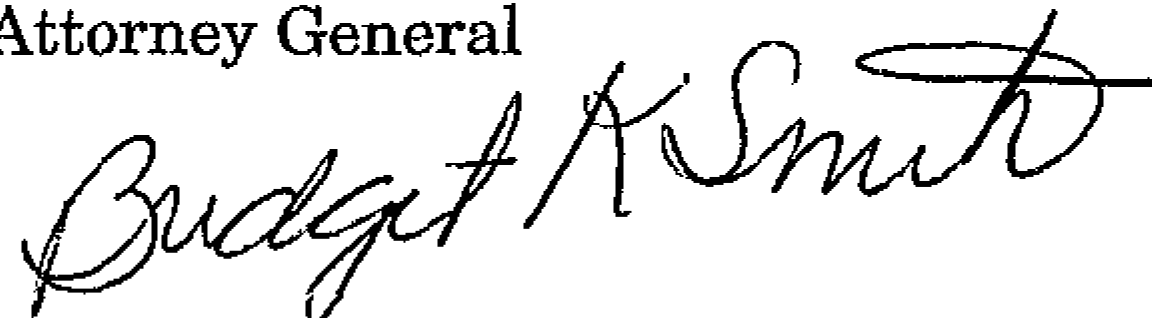
30. Respondent's conduct as described above constitutes a lack of good moral character, in violation of section 16221(b)(vi) of the Code.

THEREFORE, Complainant requests that this complaint be served upon Respondent and that Respondent be offered an opportunity to show compliance with all lawful requirements for retention of the aforesaid license. If compliance is not shown, Complainant further requests that formal proceedings be commenced pursuant to the Public Health Code, rules promulgated pursuant to it, and the Administrative Procedures Act of 1969, 1969 PA 306, as amended; MCL 24.201 *et seq*; MSA 3.560(101) *et seq*.

RESPONDENT IS HEREBY NOTIFIED that, pursuant to section 16231(7) of the Public Health Code, Respondent has 30 days from receipt of this complaint to submit a written response to the allegations contained in it. The written response shall be submitted to the Bureau of Health Professions, Department of Licensing and Regulatory Affairs, P.O. Box 30670, Lansing, Michigan, 48909, with a copy to the undersigned assistant attorney general. Further, pursuant to section 16231(8), failure to submit a written response within 30 days shall be treated as an admission of the allegations contained in the complaint and shall result in transmittal of the complaint directly to the Board's Disciplinary Subcommittee for imposition of an appropriate sanction.

Respectfully Submitted,

BILL SCHUETTE
Attorney General



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