

STATE OF MICHIGAN  
DEPARTMENT OF CONSUMER & INDUSTRY SERVICES  
BUREAU OF HEALTH SERVICES  
BOARD OF MEDICINE  
DISCIPLINARY SUBCOMMITTEE

In the Matter of

MICHAEL ARTHUR ROTH, M.D.

Complaint No. 43-00-2832-00

ADMINISTRATIVE COMPLAINT

Attorney General Michael Cox, through Assistant Attorney General Merry A. Rosenberg, on behalf of the Department of Consumer & Industry Services, Bureau of Health Services, (Complainant), files this Complaint against Michael Arthur 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, 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 and, at all times relevant to this Complaint, was board certified in obstetrics and gynecology.
3. Section 16221(a) of the Code provides the DSC with authority to take disciplinary action against Respondent 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 which 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 Respondent for incompetence, defined at section 16106(1) to mean: "[A] departure from, or failure to conform to, minimal standards of acceptable and prevailing practice for a health profession whether or not actual injury to an individual occurs."

5. Section 16221(b)(vi) of the Code authorizes the DSC to take disciplinary action against Respondent for a 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 a person 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.

#### COUNT I

7. M.M., (initials will be used to protect patient confidentiality), a 29-year old female, presented to Respondent's office on March 14, 2000, for a voluntary termination of pregnancy. Respondent performed an ultrasound, which he interpreted to show a gestational age of 23 to 24 weeks.

8. Respondent inserted the laminaria for the procedure that same day; M.M. returned to his office the next day, March 15, 2000, to have the procedure completed. His chart for M.M. does not include a pre-operative hemoglobin and hematocrit, any record of her pulse, a recovery record, or a discharge record with discharge instructions.

9. Respondent's conduct described in paragraphs 7-8 above constitutes negligence, in violation of section 16221(a) of the Code.

10. Respondent's conduct described in paragraphs 7-8 above constitutes incompetence, in violation of section 16221(b)(i) of the Code.

#### COUNT II

11. M.E., a 41-year old female, requested Respondent to perform a voluntary termination of pregnancy at her home on or about December 6, 1998. She wanted the procedure done at her home because of her alleged agoraphobia, although Respondent's chart was devoid of any documentation to support that diagnosis. In fact, M.E. identified herself as a "bartender."

12. Respondent performed the termination procedure at M.E.'s home on December 6, 1998. Respondent's chart for M.E. does not include any verification of her age or identity, (*i.e.*, a driver's license), or the consent form that verifies the statutorily required 24-hour waiting period. In fact, this record does reflect that Respondent never saw her before performing the procedure.

13. Respondent's records for M.E. are further devoid of any documentation of a history and physical, pre-procedure hemoglobin or hematocrit, vital signs taken before, during or after the procedure, a recovery record, or discharge instructions.

14. Respondent performed a second voluntary termination of pregnancy on M.E. at her home on October 5, 1999, again because of her alleged agoraphobia. As noted, (paragraph 12 *supra*,) the chart includes no documentation of her identity or age, or that she was seen by Respondent prior to the procedure to receive the statutorily required 24-hour consent information.

15. Respondent's records for the October 5, 1999, procedure do not include a history or physical, a pre-operative hemoglobin or hematocrit, a recovery record, or discharge instructions.

16. Respondent's conduct described in paragraphs 11-15 above constitutes negligence, in violation of section 16221(a) of the Code.

17. Respondent's conduct described in paragraphs 11-15 above constitutes incompetence, in violation of section 16221(b)(i) of the Code.

COUNT III

18. N.F. began treatment with Respondent on June 27, 1997. Respondent performed a dilatation and curettage on June 3, 1998. Respondent's record for that procedure does not include documentation of any vital signs, except for her pre-operative blood pressure.

19. N.F. became pregnant in September of 1999. Respondent performed ultrasounds on October 8, 1999, October 18, 1999, November 2, 1999, November 12, 1999, November 24, 1999, December 1, 1999, and January 12, 2000. Additionally, maternal fetal specialist William Blessed, M.D., performed ultrasounds on N.F. on October 20, 1999, and December 30, 1999. There is no medical justification in Respondent's chart for the ultrasounds Respondent performed on November 12, 1999, November 24, 1999, and January 12, 2000.

20. Respondent's conduct described in paragraphs 18-19 above constitutes negligence, in violation of section 16221(a) of the Code.

21. Respondent's conduct described in paragraphs 18-19 above constitutes incompetence, in violation of section 16221(b)(i) of the Code.

22. Respondent's conduct described in paragraphs 18-19 above constitutes a lack of good moral character, in violation of section 16221(b)(vi) of the Code.

COUNT IV

23. K.Y., a 42-year old female, presented to Respondent's office on November 22, 1999, for weight loss. She weighted 176 pounds at that time. K.Y. continued to see Respondent for that purpose until April 18, 2001. During that 16-month period, she lost only 6½ lbs, despite receiving bi-monthly supplies of Phentermine and Chromium from Respondent.

24. Respondent provided B<sub>12</sub> injections to K.Y. beginning November 22, 1999, and continuing throughout the rest of her care with him, even though his chart includes only one set of laboratory tests which were performed on her initial visit and did *not* reflect a vitamin B<sub>12</sub> deficiency.

25. Respondent's chart for K.Y. is devoid of any documentation of the diet plan that K.Y. was following, a nutrition assessment, counseling, or any other documentation of the regimen she was to follow.

26. Respondent's conduct described in paragraphs 23-25 above constitutes negligence, in violation of section 16221(a) of the Code.

27. Respondent's conduct described in paragraphs 23-25 above constitutes incompetence, in violation of section 16221(b)(i) of the Code.

### COUNT V

28. S.K. began to treat with Respondent in June of 1989. For the period July 1996 through September 13, 2000, Respondent's chart reflects approximately 31 interactions with S.K. Of those visits, four physical examinations are documented: December 9, 1997; July 21, 1998; June 11, 1999; and July 28, 1999. Her chart otherwise includes call-ins to the pharmacy for prescriptions, including multiple antibiotics with no rationale, multiple schedule four sedatives with no rationale, multiple pain medications with no rationale, multiple migraine type medications with no rationale and multiple cardiac-type medications with no rationale.

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

30. Respondent's conduct described in paragraph 28 above constitutes incompetence, in violation of section 16221(b)(i) of the Code.

### COUNT VI

31. C.D., a 40-year old female, presented to Respondent's office on April 30, 1997, for weight loss. She weighed 140 lbs. Respondent prescribed Chromium and Phentermine at that visit.

32. Although C.D. continued to treat with Respondent through March 6, 2001, it appears that her last visit for weight control was on August 2, 2000, at which time no weight was

recorded. The next time her weight was recorded was on February 21, 2001, at which time she weighed 159 lbs, a 19-pound weight gain from her initial visit.

33. Respondent's chart for C.D. is devoid of any documentation of the diet plan that C.D. was following, a nutrition assessment, counseling, or any other documentation of the regimen she was to follow

34. Respondent's conduct described in paragraphs 31 through 33 above constitutes negligence, in violation of section 16221(a) of the Code.

35. Respondent's conduct described in paragraphs 31-33 above constitutes incompetence, in violation of section 16221(b)(i) of the Code.

#### COUNT VII

36. Consumer and Industry Services' Pharmacy Inspector Carol Haynes-Hall conducted an office inspection of Respondent's office on January 3, 2002. At that time, she noted that Respondent's drug control license expired on June 30, 1981. After this inspection, Respondent updated his license and now has a current drug control license. Additionally, Respondent's medical license was not posted in his office.

37. Ms. Haynes-Hall further noted the presence of approximately 200 to 300 envelopes in a cabinet to which Respondent's staff had access. These envelopes contained



misbranded medications, including the controlled substances Phentermine, Diethylpropion, and Phendimetrazone.

38. Inspector Haynes-Hall further noted that the above-described envelopes were not properly labeled, lacked expiration dates for the enclosed medications, and lacked any required caution statements. They also did not have proper safety closures.

39. The logbook maintained in Respondent's office for these medications did not include their lot number and expiration date. Respondent also failed to maintain either a perpetual or an annual inventory.

40. Respondent's medical assistant Chris Threet told Consumer and Industry Services' Investigator Danene Nunez during an interview on January 3, 2002, that she dispensed controlled diet substance medications to Respondent's patients when he was not present in the office.

41. Respondent's conduct described in paragraphs 36-40 above constitutes negligence, in violation of section 16221(a) of the Code.

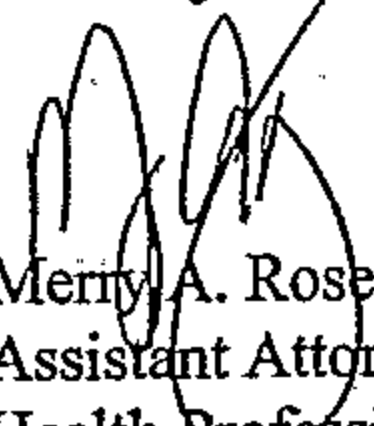
THEREFORE, Complainant requests that this Complaint be served upon Respondent and that Respondent be offered an opportunity to show compliance with all lawful requirements for retention of the aforesaid license. If compliance is not shown, Complainant further requests that formal proceedings be commenced 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.*

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 Services, Department of Consumer & Industry Services, 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,

Michael Cox  
Attorney General



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Dated: October 15, 2003  
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