ver/ai

**STATE OF OHIO**
**THE STATE MEDICAL BOARD**

**PERMANENT SURRENDER OF CERTIFICATE**
**TO PRACTICE OSTEOPATHIC MEDICINE AND SURGERY**

I, ROBERT H. ROSENBERG, D.O., am aware of my rights to representation by counsel, the right of being formally charged and having a formal adjudicative hearing, and do hereby freely execute this document and choose to take the actions described herein, after being fully advised by legal counsel.

I, ROBERT H. ROBENBERG, D.O., do hereby voluntarily, knowingly, intelligently, and permanently surrender my certificate to practice osteopathic medicine and surgery, No. 34-003448, to the State Medical Board of Ohio, thereby permanently relinquishing all rights to practice osteopathic medicine and surgery in Ohio. This surrender shall be effective as of midnight, December 15, 1999.

I understand that as a result of the surrender herein that I am no longer permitted to practice osteopathic medicine and surgery in any form or manner in the State of Ohio.

I agree that I shall be ineligible for, and shall not apply for, reinstatement of certificate to practice osteopathic medicine and surgery No. 34-003448 or issuance of any other certificate pursuant to Chapters 4730. or 4731., Ohio Revised Code, on or after the date of signing of this Surrender of Certificate to Practice Osteopathic Medicine and Surgery. Any such attempted reapplication shall be considered null and void and shall not be processed by the Board.

I stipulate and agree that I am taking the action described herein in lieu of further formal disciplinary proceedings in accordance with R.C. Chapter 119 and R.C. 4731.22 for the matters described in the Notice of Opportunity for Hearing dated November 17, 1999. I further stipulate and admit the allegations in said Notice, which is attached hereto in Exhibit A and incorporated herein by this reference.

I, ROBERT H. ROSENBERG, D.O., hereby release the State Medical Board of Ohio, its members, employees, agents and officers, jointly and severally, from any and all liability arising from the within matter.

This document shall be considered a public record as that term is used in Section 149.43, Ohio Revised Code.

Further, this information may be reported to appropriate organizations, data banks and governmental bodies.

Signed this 9 day of December 1999

Signature of Physician

Witness ALICIA M. PEREZ

Witness Cynthia Turner

Sworn to and subscribed in my presence, this 9 day of December 1999.

NOTARY PUBLIC

OFFICIAL NOTARY SEAL
SANDRA ESTRADA
NOTARY PUBLIC STATE OF FLORIDA
COMMISSION NO. CC749125
MY COMMISSION EXP. JUNE 7,2002

(This form must be either witnessed OR notarized.)

Accepted by the State Medical Board of Ohio:

ANAND G. GARG, M.D.
Secretary

01/11/00
DATE

RAYMOND J. ALBERT
Supervising Member

1/12/00
DATE

# State Medical Board of Ohio

77 S. High Street, 17th Floor • Columbus, Ohio 43266-0313 • 614/ 466-3934 • Website: www.state.oh.us/med/


November 17, 1999

Robert H. Rosenberg, D.O.
2851 NE 183rd Street, #902
North Miami Beach, Florida 33160

Dear Doctor Rosenberg:

In accordance with Chapter 119., Ohio Revised Code, you are hereby notified that the State Medical Board of Ohio intends to determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate your certificate to practice osteopathic medicine and surgery, or to reprimand or place you on probation for one or more of the following reasons:

(1) On or about June 22, 1999, the Florida Board of Osteopathic Medicine (hereinafter the "Florida Board") entered a Final Order Approving Consent Agreement Order (hereinafter the "Final Order") which reprimanded you and fined you $3,750.00. The Final Order further required that, in addition to the continuing medical education (CME) required for renewal, you undertake 35 additional hours of Category I CME over the next twelve (12) months with five (5) hours risk management and thirty (30) hours in reading and diagnosing lung cancer.

The allegations underlying the Final Order are set forth in the Administrative Complaint attached thereto, and concern your review of radiological studies of Patient M.V. The Administrative Complaint alleged that an x-ray revealed a "growing mass in the left lung" but that you failed to document any density in the lung, order further studies or notify the referring physician of any change in the x-ray after you compared it to previous x-rays.

While you did not admit or deny these allegations the Consent Agreement, you agreed that the disposition of the case under that agreement was fair, appropriate and acceptable.

The Florida Board Final Order as alleged in paragraph (1) above, constitutes "[a]ny of the following actions taken by the state agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatry, or the limited branches of medicine in another state, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual's license to practice; acceptance of an individual's license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or

Mailed 11/18/99

issuance of an order of censure or other reprimand;" as that language is used in Section 4731.22(B)(22), Ohio Revised Code.

Pursuant to Chapter 119., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must be made in writing and must be received in the offices of the State Medical Board within thirty (30) days of the time of mailing of this notice.

You are further advised that you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

In the event that there is no request for such hearing received within thirty (30) days of the time of mailing of this notice, the State Medical Board may, in your absence and upon consideration of this matter, determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate your certificate to practice osteopathic medicine and surgery or to reprimand or place you on probation.

Please note that, whether or not you request a hearing, Section 4731.22(L), Ohio Revised Code, effective March 9, 1999, provides that "[w]hen the board refuses to grant a certificate to an applicant, revokes an individual's certificate to practice, refuses to register an applicant, or refuses to reinstate an individual's certificate to practice, the board may specify that its action is permanent. An individual subject to a permanent action taken by the board is forever thereafter ineligible to hold a certificate to practice and the board shall not accept an application for reinstatement of the certificate or for issuance of a new certificate."

Copies of the applicable sections are enclosed for your information.

Very truly yours,

Anand G. Garg, M.D.
Secretary

AGG/jag
Enclosures

CERTIFIED MAIL # Z 233 896 484
RETURN RECEIPT REQUESTED

STATE OF FLORIDA
BOARD OF OSTEOPA

Final Order No. DOH-99-0673- S -MOA Date 6-22-99
FILED
Department of Health
Angela Hall, AGENCY CLERK
By Stephanie O. Dix
Deputy Agency Clerk

DEPARTMENT OF HEALTH

Petitioner,

vs.

CASE NO.: 96-07010
LICENSE NO.: OS 0002063

ROBERT H. ROSENBERG, D.O.,

Respondent.

_____/

FINAL ORDER APPROVING CONSENT AGREEMENT

THIS MATTER came before the Board of Osteopathic Medicine (hereinafter referred to as the "Board") pursuant to Section 120.57(3), Florida Statutes, on June 4, 1999, in Miami, Florida, for a determination of whether to accept the proposed consent agreement, a copy of which is attached and incorporated herein by reference entered into between the parties in the above-styled case. The Petitioner was represented by Carol Lanfri, Senior Attorney. The Respondent was present and represented by Peter Sumara, Attorney at Law.

Upon consideration of the Administrative Complaint and the proposed consent agreement in this matter, and being otherwise fully advised in the premises, it is hereby ORDERED AND ADJUDGED:

1. The proposed consent agreement is hereby approved, adopted and incorporated herein by reference.

2. The Respondent will adhere to and abide by all of the terms and conditions of the consent agreement.

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3. This Order shall be placed in and become a part of Respondent's official records and shall become effective upon filing with the Clerk of the Department of Health.

DONE and ORDERED this 16 day of Jan, 1999.

BOARD OF OSTEOPATHIC MEDICINE

JOEL B. ROSE, D.O.
CHAIR

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by United State Mail to Robert H. Rosenberg, D.O., 2851 NE 183rd Street, North Miami Beach, Florida 33160; to Jonathan P. Lynn, Attorney at Law, 301 E. Las Olas Blvd., Suite 800, Ft. Lauderdale, Florida 33301; and by interoffice delivery to Carol Lanfri, Senior Attorney, Agency for Health Care Administration, Post Office Box 14229, Tallahassee, Florida 32317-4229, this ____ day of _____, 1999.

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**STATE OF FLORIDA**
**DEPARTMENT OF HEALTH**

**DEPARTMENT OF HEALTH,**

**Petitioner,**

**v.** **AHCA Case No. 96-07010**

**ROBERT H. ROSENBERG, D.O.,**

**Respondent.**
_____/

## CONSENT AGREEMENT

Robert H. Rosenberg, D.O., referred to as the "Respondent," and the Department of Health, referred to as "Department" stipulate and agree to the following Agreement and to the entry of a Final Order of the Board of Medicine, referred to as "Board," incorporating the Stipulated Facts and Stipulated Disposition in this matter.

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## STIPULATED FACTS

1. At all times material hereto, Respondent was a licensed physician in the State of Florida having been issued license number OS 0002063.

2. Respondent was charged by an Administrative Complaint filed by the Department and properly served upon Respondent with violations of Chapter 458, Florida Statutes, and the rules enacted pursuant thereto. A true and correct copy of the Administrative Complaint is attached hereto as Exhibit A.

3. Respondent neither admits nor denies the allegations of fact contained in the Administrative Complaint for purposes of these proceedings only.

## STIPULATED CONCLUSIONS OF LAW

1. Respondent admits that, in his capacity as a licensed physician, he is subject to the provisions of Chapters 455 and 458, Florida Statutes, and the jurisdiction of the Department and the Board.

2. Respondent admits that the facts set forth in the Administrative Complaint, if proven, would constitute violations of Chapter 458, Florida Statutes, as alleged in the Administrative Complaint.

3. Respondent admits that the Stipulated Disposition in this case is fair, appropriate and acceptable to Respondent.

## STIPULATED DISPOSITION

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1. FUTURE CONDUCT. Respondent shall not in the future violate Chapters 455, 458 and 893, Florida Statutes, or the rules promulgated pursuant thereto. Prior to signing this agreement, Respondent read Chapters 455, 458, and 893, Florida Statutes, and the Rules of the Board of Medicine, at Section 64B8, Florida Administrative Code.

2. FINE. The Board shall impose an administrative fine in the amount of $3,750.00 against the Respondent. The fine shall be paid by the Respondent to the Board of Medicine within SIXTY (60) days of its imposition by Final Order of the Board. **THE RESPONDENT ACKNOWLEDGES THAT THE TIMELY PAYMENT OF THE FINE IS HIS/HER LEGAL OBLIGATION AND RESPONSIBILITY AND THE RESPONDENT AGREES TO CEASE PRACTICING IF THE FINE IS NOT PAID AS AGREED TO IN THIS CONSENT AGREEMENT, SPECIFICALLY: IF THE RESPONDENT HAS NOT RECEIVED**

**WRITTEN CONFIRMATION THAT THE FULL AMOUNT OF THE FINE HAS BEEN RECEIVED BY THE BOARD OFFICER WITHIN 60 DAYS OF THE FILING OF THIS FINAL ORDER, THE RESPONDENT AGREES TO CEASE PRACTICE UNTIL SUCH WRITTEN CONFIRMATION IF RECEIVED BY THE RESPONDENT FROM THE BOARD. (SEE EXHIBIT B, PARAGRAPH D OF THIS CONSENT AGREEMENT FOR BOARD ADDRESS AND STANDARD TERMS).**

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3. CONTINUING MEDICAL EDUCATION. Respondent shall attend THIRTY-FIVE (35) hours of Category I Continuing Medical Education courses over the next twelve (12) months, five (5) hours in risk management and thirty (30) hours in reading and diagnosing lung cancer. Respondent shall submit a written plan to the Chairman of the Board for course approval prior to the completion of said courses. In addition, Respondent shall submit documentation of completion of these courses in his required reports. These hours shall be in addition to those hours required for renewal of licensure. Unless otherwise approved by the Board or the Chairman of the Probation Committee, said courses shall consist of a formal live lecture format.

4. REPRIMAND. The Respondent shall receive a reprimand from the Board of Osteopathic medicine

STANDARD PROVISIONS

Respondent's probation shall be governed by the attached "Standard Terms Applicable to Consent Agreements," Exhibit B, which is incorporated as if fully set forth herein.

1. It is expressly understood that this Agreement is subject to the approval of the Board and the Department. In this regard, the foregoing paragraphs (and only the foregoing paragraphs) shall have no force and effect unless a Final Order incorporating the terms of this Agreement is entered by the Board.

2. Respondent has to appear before the Board at the meeting of the Board where this Agreement is considered. Respondent, in conjunction with the consideration of this Agreement by the Board, shall be available, shall respond to questions under oath from the Board, Board staff or

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Agency Staff. Respondent shall be prepared to explain the circumstances involved in this matter, and what measures have been taken to prevent recurrence.

3. Should this Agreement be rejected, no statement made in furtherance of this Agreement by the Respondent may be used as direct evidence against the Respondent in any proceeding; however, such statements may be used by the Petitioner for impeachment purposes.

4. Respondent and the Department fully understand that this joint Agreement and subsequent Final Order incorporating same will in no way preclude additional proceedings by the Board and/or the Department against the Respondent for acts or omissions not specifically set forth in the Administrative Complaint attached as Exhibit "A" herein.

5. Upon the Board's adoption of this Agreement, Respondent expressly waives all further procedural steps, and expressly waives all rights to seek judicial review of or to otherwise challenge or contest the validity of the Agreement and the Final Order of the Board incorporating said Agreement.

6. Upon the Board's adoption of this Agreement, the parties hereby agree that with the exception of costs noted above, each party will bear his own attorney's fees and costs resulting from prosecution or defense of this matter. Respondent waives the right to seek any attorney's fees or costs from the Department in connection with this matter.

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7. This Agreement is executed by the Respondent for the purpose of avoiding further administrative action with respect to this cause. In this regard, Respondent authorizes the Board to review and examine all investigative file materials concerning Respondent prior to or in conjunction with consideration of the Agreement.

8. Furthermore, should this joint Agreement not be accepted by the Board, it is agreed that presentation to and consideration of this Agreement and other documents and matters by the

Board shall not unfairly or illegally prejudice the Board or any of its members from further participation, consideration or resolution of these proceedings.

SIGNED this 10 day of May, 1999.

Robert H. Rosenberg, M.D.
ROBERT H. ROSENBERG

Before me, personally appeared Robert Rosenberg, whose identity is known to me by Driver's License (type of identification) and who, under oath, acknowledges that his/her signature appears above.

Sworn to and subscribed before me this 10 day of May, 1999.

Carol A. Mallard
NOTARY PUBLIC

Carol A. Mallard
MY COMMISSION # CC492448 EXPIRES
October 28, 2001
BONDED THRU TROY FAIN INSURANCE, INC.

My Commission Expires:

APPROVED this 11 day of May, 1999.

Robert G. Brooks, M.D.
Secretary, Department of Health

By: Larry G. McPherson, Jr.
Chief Attorney
Medical Section

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## EXHIBIT B

## STANDARD TERMS APPLICABLE TO CONSENT AGREEMENTS

The following are the standard terms applicable to all consent agreements, including supervision and monitoring provisions applicable to licensees on probation.

A. PAYMENT OF FINES. Unless otherwise directed by the consent agreement, all fines shall be paid by check or money order and sent to the Board address set forth in paragraph E, below. The Board office does not have the authority to change the terms of payment of any fine imposed by the Board.

B. COMMUNITY SERVICE AND CONTINUING EDUCATION UNITS. Unless otherwise directed by the consent agreement, all community service requirements, continuing education units/courses must be completed, and documentation of such completion submitted to the Board of Medicine at the address set forth below in paragraph F, **WITHIN ONE YEAR OF THE DATE OF THE FINAL ORDER.**

C. ADDRESSES. Respondent must keep current residence and practice addresses on file with the Board. Respondent shall notify the Board within ten (10) days of any changes of said addresses. Furthermore, if the Respondent's license is on probation, the Respondent shall notify the Board within ten (10) days in the event that Respondent leaves the active practice of medicine in Florida.

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D. BOARD ADDRESS. Unless otherwise directed by the Board office, all fines, reports, correspondence and inquiries shall be sent to: **Board of Medicine, Client Services Unit, 1940 North Monroe Street, Tallahassee, Florida 32399-0750, Attn: Medical Compliance Officer.**

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STATE OF FLORIDA
DEPARTMENT OF HEALTH

| | | |
|---|---|---|
| DEPARTMENT OF HEALTH, PETITIONER, | ) | |
| v. | ) | CASE NO. 96-07010 |
| ROBERT H. ROSENBERG, D.O., RESPONDENT. | ) | |

## ADMINISTRATIVE COMPLAINT

COMES NOW the Petitioner, Department of Health, hereinafter referred to as "Petitioner," and files this Administrative Complaint before the Board of Osteopathic Medicine against Robert H. Rosenberg, D.O., hereinafter referred to as "Respondent," and alleges:

1. Effective July 1, 1997, Petitioner is the state agency charged with regulating the practice of osteopathic medicine pursuant to Section 20.43, Florida Statutes (Supp. 1996); Chapter 455, Florida Statutes, and Chapter 459, Florida Statutes. Pursuant to the provisions of Section 20.43(3)(f), Florida Statutes, the Petitioner has contracted with the Agency for Health Care Administration to provide consumer complaint, investigative, and prosecutorial services required by the Division of Medical Quality Assurance, councils, or boards, as appropriate.

2. Respondent is and has been at all times material hereto a licensed osteopathic physician in the state of Florida, having been issued license number OS 0002063. Respondent's last known address is 2851 NE 183rd Street, Suite 902, North Miami Beach, Florida 33160-2139.

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3. From in or about 1991 through on or about April 29, 1994, Patient M.V., a seventy-one (71) year old female, had a series of chest x-rays taken while being treated by her primary care physician. Patient M.V. had been complaining of pain in the area of the left scapula (the shoulder blade) since in or about late 1992.

4. Respondent was the physician who reviewed radiographic studies performed by Patient M.V.'s primary care physician.

5. On or about April 29, 1994, Respondent reviewed a chest x-ray of Patient M.V. Respondent's findings were negative for cardiopulmonary abnormalities.

6. The chest x-ray performed on or about April 29, 1994, when compared to previous x-rays, reveals a growing mass in the left lung.

7. Patient M.V. was diagnosed in or about August 1994 with metastatic adenocarcinoma (lung cancer).

8. Patient M.V. expired on or about September 24, 1994 from lung cancer.

9. Respondent failed to document in the medical records of Patient M.V. any density of the left lung.

10. Respondent failed to request further studies.

11. Respondent failed to notify Patient M.V.'s referring physician of any change in the April 29, 1994 x-ray after he compared the x-ray to previous x-rays.

12. A reasonably prudent physician in a similar situation would have documented in the medical records of Patient M.V. any density of the left lung; requested further studies; and notified Patient M.V.'s referring physician of any change in the April 29, 1994 x-ray.

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13. Based on the foregoing, Respondent violated Section 459.015(1)(x), Florida Statutes, by failing to practice osteopathic medicine with an acceptable level of care, skill, and treatment which is recognized by a reasonably prudent similar osteopathic physician as being acceptable under similar conditions and circumstances.

WHEREFORE, the Petitioner respectfully requests the Board of Osteopathic Medicine enter an order imposing one or more of the following penalties: permanent revocation or suspension of the Respondent's license, restriction of the Respondent's practice, imposition of an administrative fine, issuance of a reprimand, placement of the Respondent on probation, the assessment of costs related to the investigation and prosecution of this case, other than costs associated with an attorney's time, as provided for in Section 455.624(3), Florida Statutes, and/or any other relief that the Board deems appropriate.

SIGNED this 23 day of February, 1998

James T. Howell, M.D., Secretary

Larry G. McPherson, Jr.
Chief Medical Attorney

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COUNSEL FOR DEPARTMENT:

Larry G. McPherson, Jr.
Chief Medical Attorney
Agency for Health Care Administration
P. O. Box 14229
Tallahassee, Florida 32317-4229
Florida Bar # 765996
FP/kt
PCP: February 19, 1998
PCP Members: Kaufman, D.O., and Hand, D.O.

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK Stephanie Q. Dion
DATE 2-24-98