

Louisiana State Board of Medical Examiners

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BEFORE THE LOUISIANA STATE BOARD OF MEDICAL EXAMINERS

NUMBER: 11-A-011

IN THE MATTER OF:

PETER H. HERTZAK, M. D.

(Certificate No. 05273R)

OPINION AND ORDER

This matter comes before the Board pursuant to an Administrative Complaint, which charges Respondent Peter H. Hertzak, M. D., with the following violations of the Medical Practice Act, R. S. 37:1261 et seq.

First: He is charged with violations of R. S. 37:1285A(13), which proscribes unprofessional conduct, and R. S. 37:1285A(12), which proscribes professional or medical incompetency. This charge is based on Respondent's alleged failure to complete a residential training in cosmetic surgery and his alleged failure to learn or comply with the proper standards of care within the plastic surgery community.

Second: He is charged with violations of R. S. 37:1285A(12), supra, And R. S. 37:12875A(14), which proscribes continuing or recurring medical practice which fails to satisfy the prevailing and usually accepted standards of medical practice in this state. This charge is based on Respondent's alleged combining multiple risky procedures which should not be combined; his alleged failure to identify and adhere to contraindicators to plastic surgery procedures; and his alleged failure to discontinue plastic surgery procedures when complications arise during surgery.

Third: Respondent is charged with violations of R. S. 37:1285A(4), which proscribes providing false testimony before the Board, or providing false sworn information to the Board, and of R. S. 37:1285A(13), supra. This charge is based on Respondent's alleged failure to be forthcoming, and having made material misrepresentations to the Director of Investigations with regard to when he received certain hospital privileges; whether he had proper privileges to perform cosmetic procedures in question; the methods and processes of his credentialing; and his affiliations with colleagues he used for recommendations, references, and credentialing.

Fourth: Respondent is charged with violation of R. S. 37:1285A(12), supra. This charge is based on Respondent's alleged performance of liposuction and abdominoplasty procedures without proper credentialing or hospital privileges.

Fifth: Respondent is charged with violations of R. S. 37:1285A(7), which proscribes solicitation of patients or self promotion through advertising or communication, public or private, which is fraudulent, false, deceptive or misleading, and R. S. 37:1285A(10), which proscribes efforts to deceive or defraud the public.

With reference to the first, and major, charge against Respondent we are provided with the charts of ten patients, and the testimony of six witnesses. John Lindsay, M. D., accepted as an expert in the field of plastic and cosmetic surgery, testified for the Complainant. Dr. Hertzak testified on his own behalf, and offered the expert testimony of Michael Howard Rosenberg, M. D., who is board certified in general, plastic and cosmetic surgery, and of Jane A. Petro, M. D., who is also board certified in general, plastic, and cosmetic surgery. Clayton Laverne Thomas, M. D., and Diana Gilmore, M. D., also testified on behalf of Dr. Hertzak, but not as expert witnesses.

Dr. Hertzak is board certified in obstetrics and gynecology. Respondent attended medical school in Yugoslavia, now Croatia, and then did a residency in obstetrics and gynecology at Wayne State University in Detroit, Michigan. Since completing his residency he has taken a number of weekend courses, mostly under the auspices of the American Academy of Cosmetic

Surgery. It was stipulated at the beginning of the hearing that the American Academy of Cosmetic Surgery has not been recognized by this Board nor by the American Board of Medical Specialties.

These include one to three day courses in liposuction, two of which were in 1986, and the other three in 2006, 2009, and 2010; seven two or three day courses in breast cosmetic surgery, from 2006 through 2011; three two to three day courses in abdominoplasty, from 2006 through 2011; two three day courses in body contouring after massive weight loss, in 2009 and 2010; and six courses which were general in nature, from 2009 and 2011. Dr. Hertzak testified that he got his training in brachioplasty and thigh lifts at the two body contouring after massive weight loss courses in 2009 and 2010. Possibly ten of these courses involved hands on experience. Dr. Hertzak also testified that he had a preceptorship in Texas with a Dr. Miles, a breast surgeon, for a week in 2008 and a week in 2009.

Dr. Hertzak came to Slidell, LA, to practice in 1981. He has enjoyed privileges at three hospitals, Slidell Memorial; Northshore, formerly a Tenet hospital, now run by Ochsner; and Doctors Hospital, in which Dr. Hertzak has an ownership interest. All of the ten cases involved in this hearing occurred at Doctor's Hospital.

Starting in 1987, Respondent began performing cosmetic and plastic surgery in conjunction with his gynecological surgery, although at the time he had weekend courses in liposuction only. He also increasingly performed cosmetic and plastic surgery unrelated to his gynecology practice. Dr. Hertzak testified that he has performed about 5000 cosmetic and plastic procedures in conjunction with his gynecology practice, and independently.

The thrust of the defense in this case is that Dr. Hertzak did not fall short of the standard of care in any of the ten cases presented to us, and that, even if he did, substandard practice in ten out of 5000 cases should not form a basis for disciplinary action. In support of his defense, Dr. Hertzak offered his own testimony, and that of Drs. Petro and Rosenberg, in great detail, to the effect that Dr. Hertzak's handling of the ten cases presented was within the prevailing standard of care. There were also some hospital records which show that Dr. Hertzak's surgical

performance was above average at Slidell Memorial and Ochsner Northshore. No such records were presented for Doctors Hospital.

Testifying for the Complainant, Dr. Lindsey found that in six of the ten cases presented for consideration, Respondent failed to meet the standard of care, and that the other four cases were marginal but acceptable. He further testified that, in most of the cases, an excessive number of procedures had been scheduled and performed; that there was excessive blood loss; and that the procedures took too long. He opined that all of these factors contributed to higher risk for the patients, most of whom were higher risk patients to start with.

Dr. Lindsey attributed Respondent's shortcomings in the above respects to a lack of good judgment on his part, which he believed was a result of inadequate training. In this connection, we note that Dr. Hertzak testified that he was board eligible, but that he had recently failed the written examination of the American Academy of Cosmetic Surgery.

Considering all of the above, together with the evidence offered by both parties, we note that the ten cases presented for consideration took place over a period of four years beginning in 2006, during the time when Respondent was taking the majority of his Continuing Medical Education. We agree with Dr. Lindsey that Dr. Hertzak exercised poor judgment in scheduling these surgeries on these patients, and we find that he has exhibited a pattern of such substandard practice over a period of years. We recognize that Dr. Hertzak has performed many procedures over a period of many years, but do not feel that this can excuse his evident lack of judgment in the cases presented.

We therefore accept the testimony of Dr. Lindsey as being more appropriate to the circumstances of this case. We do not find it necessary to consider each case individually. We do not believe this matter to involve Dr. Hertzak's technical skills as a surgeon so much as his judgment in scheduling and performing procedures which subject high risk patients to an even higher degree of risk. Conversely, we cannot accept the testimony of Dr. Hertzak, or of his expert witnesses.

We therefore find Dr. Hertzak guilty of the first charge against him. We do not believe that he has educated himself sufficiently to have the judgment to determine when it is appropriate to schedule extensive cosmetic or plastic procedures in conjunction with his gynecological surgeries. A few weekend courses on the technical aspects of a procedure cannot be expected to provide the depth of understanding necessary to make such decisions.

For the same reasons we find him guilty of the second charge against him. To schedule so many risky procedures over a period of four years certainly demonstrates recurring practice which falls below the accepted standards, as does his failure to suspend the procedures when his patients were in apparent distress.

With respect to the third charge against Respondent, we do not find that he has given sworn false testimony before the Board, or to the Director of Investigations, and we therefore find him not guilty of that charge.

The same is true of the fourth charge against Respondent. The evidence before us does not show that Dr. Hertzak was not properly credentialed, or that he did not have hospital privileges to perform the surgeries under consideration in this matter.

With respect to the fifth charge, it is not questioned that Dr. Hertzak misrepresented his qualifications as a plastic and cosmetic surgeon on his web site. He testified that he was unaware of the misrepresentations, which he blamed on his web master. He stated that as soon as he learned of it, he had the false information removed. We cannot believe that Dr. Hertzak did not know the content of his own web page but, be that as it may, he is responsible for it. We therefore find him guilty of the fifth charge against him.

Having found Respondent *guilty of the first, second, and fifth charges* against him, we impose the following sanctions:

First: For the remainder of his career, Dr. Hertzak's practice shall be **LIMITED** to the practice of Obstetrics and Gynecology only.

Second: For the remainder of his career, Dr. Hertzak shall not perform any plastic or cosmetic surgical procedures, including but not limited to, liposuction, abdominoplasty, breast augmentation or reduction, facial or body contouring procedures (such as thigh lift, gluteal lift, arm lift).

Third: Dr. Hertzak shall be placed on **PROBATION** for a period of three years, subject to the general terms and conditions of probation adopted by the Board, a copy of which is attached hereto as exhibit A, and subject to the following special terms and conditions:

- a) For the entire term of this probation, all hospitals at which Respondent has privileges, shall file quarterly reports with the Board's probation officer detailing all operative procedures performed by Respondent within that period.
- b) Respondent shall pay a fine of \$5,000.00, and all costs of this proceeding within the first year of his probationary period.

NEW ORLEANS, LOUISIANA, THIS 16th DAY OF APRIL, 2012.

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS



BY: KIM EDWARD LEBLANC, M. D., VICE-PRESIDENT

EXHIBIT A
GENERAL PROBATIONARY TERMS
FOR PHYSICIANS

The following general conditions are imposed on all physicians placed on supervised probation by the Louisiana State Board of Medical Examiners:

- 1) **Cooperation with the Board's Probation and Compliance Officer.** Probationer shall direct all matters required pursuant to this Order to the attention of the Probation and Compliance Officer and he/she shall cooperate on all matters and inquiries pertaining to his/her compliance with the terms and conditions of this Order. The probationer is required to report, in person to his/her probation officer, within thirty (30) days of receipt of notification that the opinion of the Board is final and at such other times as may be directed. The probationer is required immediately to complete all forms, fully and carefully, when received, and to present these to his/her probation officer at the first meeting or as directed. Probationary shall immediately thereafter, notify the Board's Probation and Compliance Officer of any changes in his/her current home and professional addresses and telephone numbers, and shall allow such access to his/her office, business practice or home and to patient medical records as may be necessary to his/her supervision.
- 2) **Continuing Medical Education.** Probationer shall obtain not less than fifty (50) credit hours per year for each of the years of the probationary term through attendance at and participation in continuing medical education ("CME") programs accredited by the American Medical Association. On or before the anniversary date of the effective date of this Order and for each additional year of the probationary term, probationer shall cause to be submitted to the Board written certification of the CME programs and credits completed during the preceding twelve (12) months.
- 3) **Probation Monitoring Fee.** For each year of the probationary term probationer shall pay the Board a probation monitoring fee of Three Hundred (\$300.00) Dollars. Payment of the initial fee shall be due not later than sixty (60) days from the effective date of this Order. All subsequent annual payments shall be due on or before the anniversary date of the initial fee payment.
- 4) **Board Approval of Practice Setting.** Following the effective date of this Order and for the duration of the probationary period, before continuing or accepting any employment with any clinic, hospital, or other entity providing healthcare services to patients, the probationer shall obtain the Board's written approval of his/her employment setting and shall provide any and all information that the Board may then require in connection with such approval. The probationer shall not engage in the practice of medicine in any practice setting in advance of the Board's specific written approval of such practice setting. (when applicable)
- 5) **Notification of Order and Authorization.** Probationer shall provide a copy of this Order to each hospital, clinic, facility or other employer or prospective employer at which or for whom he/she provides services as a physician in this state, and upon request of the Board's probation officer, the probationer shall immediately execute and provide, as may be necessary, authorization to obtain any and all peer review records or other employment records pertaining to probationer from any hospital, institution or other health care entity where probationer has or has had privileges.

- 6) **Prohibitions on Practice /Management of Chronic Pain or Obesity.** Probationer shall not prescribe controlled substances to any patient for the management of chronic pain or obesity. Nor shall he/she receive any remuneration from, have any ownership interest in or association with any clinic or practice setting or arrangement that advertises or holds itself out to the public as a clinic or practice for the care and/or treatment of patients for the management of chronic pain or obesity. Until and unless otherwise modified by the Board, in its sole discretion, the restrictions contained in this provision shall survive the probationary period and remain in effect so long as probationer shall hold a license to practice medicine in the state of Louisiana. (when applicable)
- 7) **Collaboration With Nurse Practitioners, Supervision of Physician Assistants Prohibited.** Throughout the probation term, the probationer shall not enter into nor continue in a collaborative or supervisory practice agreement with a mid-level provider, *e.g.*, nurse practitioner or physician assistant. This restriction shall not preclude probationer from employing nurses or other medical personnel to assist in his/her practice, as long as he/she is present and directing their activities appropriate to their level of expertise and ability.
- 8) **Dispensing Permit Prohibited.** If probationer has a dispensing permit, he/she shall immediately surrender his/her permit to his/her probation officer. In addition, until and unless otherwise modified by the Board, in its sole discretion, the probationer shall be ineligible for registration as a dispensing physician for as long as he holds a license to practice medicine in the state of Louisiana when applicable.
- 9) **Self-Reporting of Violations.** Probationer shall immediately self-report in writing to the probation officer any violation of or failure to adhere to the terms, conditions or restrictions of this order. Furthermore, the probationer shall immediately self-report in writing any personal action or inaction which constitutes a violation of the Act.
- 10) **Self-Reporting of Other Investigations.** Probationer shall immediately self-report in writing to the probation officer any and all investigations, inquiries, charges, convictions, or disciplinary actions taken by any local, state or Federal agency, or any institution of facility.
- 11) **Drug Screens.** Upon request of the probation officer, the probationer shall immediately submit to alcohol or drug screens, including EtG and PEth levels, through urine, blood, saliva and/or hair specimen, to determine chemically through laboratory analysis that probationer is free from alcohol and/or controlled and other mood-altering substances. Probationer shall pay for the costs of such chemical analysis. (when applicable)
- 12) **Payment of Fines and Costs.** Within one year of the effective date of this order, or such shorter period as may be specified by the Decision, the probationer shall pay all fines and costs imposed in this Board decision.
- 13) **Absence from State or Discontinuance of Practice - Effect on.** Should probationer at any time during the period of probation ordered herein be absent from the state of Louisiana, relocate to and/or take up residency in another state or country, or discontinue practicing as a physician, for a

period of thirty (30) days or more, he/she will so advise the Board in writing. In such instance, the probationary period ordered herein shall be deemed interrupted and extended for no less than the period of time during which he/she was not engaged in practice or was absent from the state of Louisiana; however, all terms and conditions may continue to be in effect as ordered or may be modified or altered as needed in the Board's discretion.

- 14) **Certification of Compliance with Probationary Terms/Personal Appearance before the Board.** At least sixty (60) days prior to the conclusion of the probationary term imposed herein, probationer shall contact the Board and arrange for a personal appearance before the Board, or a committee that may be designated by the Board, as its meeting preceding the expiration of the probationary term ordered herein. As a precondition to his/her request for termination of probation, probationer shall provide the Board with an executed affidavit certifying that he/she has complied with each of the terms of probation imposed upon him/her by this Order. The probationary period and all of its terms and conditions shall be, and shall be deemed to be, extended and continued in full force and effect pending probationer's compliance with the requirements of this provision.
- 15) **Effect of Violation/Sanction.** If the Board has received apparently reliable information which indicates probationer's failure to abide by the terms and conditions of this Decision, and has provided written notification to probationer of the violation and has provided for timely response to the notification, the Board may, without need for formal hearing or providing probationer with any right to which he/she may be entitled pursuant to the Louisiana Administrative Procedure Act, La. Rev. Stat. §§49:951, et seq., or which otherwise may be afforded to him/her by law, immediately suspend his/her license to practice medicine in this state pending the issuance of a decision by the Board following administrative adjudication of such charges.
- 16) **Effective Date.** Unless otherwise specified by the Decision, this Order shall be effective the date it is approved and accepted by the Board as shown by the signature of the Board's representative.