

The American Board of Plastic Surgery, Inc.®

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February 22, 2005

Michael Felix Freshwater, M.D.
9100 South Dadeland BLVD
Miami, FL 33156

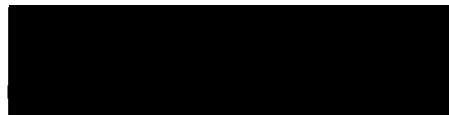
PERSONAL AND CONFIDENTIAL

Dear Dr. Freshwater:

The American Board of Plastic Surgery, Inc. has recently learned that your license to practice medicine "in a state, territory, or possession of the United States or by a Canadian province" has been reprimanded in the past and currently assessed with a non-disciplinary citation.

Restrictions/sanctions or issues of any kind to a Diplomate's medical license must be reported to the Board for consideration by its Ethics Committee. Please provide information concerning your license restriction in a detailed report addressed to the Board and directed to my attention at the above address. Failure to respond may in and of itself be cause for additional disciplinary action by the Board.

Very truly yours,



R. Barrett Noone, M.D.
Executive Director

RBN/tmc

c:

Lawrence L. Ketch, M.D.
John A. Persing, M.D.
Thomas R. Stevenson, M.D.
Ronald E. Iverson, M.D.

Member Board
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Specialties

March 3, 2005

R. Barrett Noone, M.D.
Executive Director
The American Board of Plastic Surgery Inc.
1635 Market Street Suite 400
Philadelphia PA 19103-2204

CERTIFIED MAIL RETURN RECEIPT: 7002 0860 0004 1451 5795

Dear Dr. Noone:

I am responding to your letter of February 22, 2005. You requested that I provide you with "information concerning [my] license restriction".

My licenses to practice medicine have never been restricted in any way. However, I have been fined and reprimanded by the Florida Board of Medicine because of Miami Children's Hospital dismissing me from its medical staff in 1996 and fined, reprimanded and censured by the New York State Department of Health because of the Florida Board's actions.

These are the facts and circumstances concerning the actions by Florida and New York:

In 1995, a now defunct hospital called Deering Hospital reported me to the National Practitioners Data Bank and to the State of Florida Agency for Health Care Administration (AHCA). Deering alleged that I had resigned from its staff while under investigation for substandard patient care. In early 1996, AHCA began its own investigation. Under Florida law, any AHCA investigation must remain confidential until its conclusion. AHCA required me to sign a confidentiality agreement prohibiting my discussing the facts and circumstances of its investigation of Deering's allegations with anyone until the investigation was complete. In 1997, AHCA concluded its investigation of the Deering allegations, cleared me of any wrongdoing, and found "no probable cause" to proceed with any disciplinary action.

I had been a member in good standing of the Miami Children's Hospital medical staff from 1979 where I staffed the hand clinic and where nearly all my surgery was pro bono. When my 1996 application for reappointment was denied, I requested a Fair Hearing. At the November 1996 hearing, I showed the hearing committee a copy of AHCA's confidentiality agreement that prohibited me from discussing the events related to my departure from Deering Hospital. The hearing committee recommended that my reappointment be "deferred" until the AHCA investigation was completed. However, the Miami Children's Hospital Board of Directors ignored the Fair Hearing Committee's recommendation and dismissed me from the staff in November 1996 several months before AHCA concluded its investigation. Sadly, Miami Children's Hospital had no appellate review mechanism whereby I could have provided the results of the AHCA investigation that had cleared me.

In addition to dismissing me from its staff, Miami Children's Hospital reported my dismissal to AHCA and to the National Practitioners Data Bank. Since 1996, I have had to explain these facts to

the medical staffs of my other hospitals during their biannual reappointment processes. Fortunately, my local peers were intimately familiar with the political and economic forces that governed decisions at Deering Hospital and Miami Children's Hospital. Not only did none of these other hospitals ever take any action against my medical staff membership, but also when my membership was due for reappointment at Aventura, Baptist and South Miami Hospitals, I was promoted through the ranks from provisional to courtesy to active staff membership. It was abundantly clear to my local hospitals medical staffs that the actions reported to AHCA and the Data Bank by Deering Hospital and Miami Children's Hospital were not based upon any ethical, patient safety, or quality of care issues.

In December 2002, over six years after Miami Children's Hospital dismissed me, the Board of Medicine met to decide my case. Although the Vice Chairman of the Board who was from Miami and knew me professionally stated:

"This is a very reputable physician, and an excellent physician I've known for many years, too, as well, based on his character, functions and service to the community. So I don't think that we're serving the best purpose, just to keep a reprimand letter on him, and I would definitely speak - a friendly amendment. If it would be okay, just to remove the reprimand. I think it makes sense."

The Board, by a narrow margin, voted to fine and reprimand me, rather than issue a nondisciplinary letter of concern. The Florida Board of Medicine never contemplated suspending, revoking or placing probationary conditions on my license. In the early 1980's, my licenses in New York, Connecticut, and Maryland became inactive because I no longer renewed them. However, after the Florida Board elected to fine and reprimand me as a result of my dismissal from Miami Children's Hospital, the New York State Department of Health required that I pay \$600 to re-activate my license and offered me the opportunity to plead no contest to having been reprimanded by Florida. Not only did New York fine me \$1000, but also, in addition to reprimanding me as had Florida, it censured me. (Apparently, unlike Florida, New York's minimal penalty is both reprimand and censure.) The New York Department of Health never contemplated suspending, revoking or placing probationary conditions on my license.

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I believe that in 1996 Miami Children's Hospital actions against me were economically motivated because I did not have medical malpractice insurance at the time. Despite the fact that I have not been sued or even threatened with a lawsuit since 1984, Miami Children's Hospital was purging itself of all practitioners who did not have medical malpractice insurance because it did not want to be the "deep pocket" for any malpractice action by being tied to any physician who was "bare". To

this day Miami Children's Hospital is the only "not for profit" hospital in Miami that requires its staff members to have medical malpractice insurance. Why do I believe this to be true? Because in 2004 after having been fined and reprimanded by the State of Florida and fined, reprimanded and censured by the State of New York, I reapplied for medical staff membership at Miami Children's Hospital. I was granted provisional staff membership with all the privileges that I had requested. Besides the actions against my licenses in 2002 and 2003, what had changed from 1996 when I had been dismissed to 2004? The answer is that in 2004 I had malpractice insurance.

In summary, this has been a Kafkaesque nightmare triggered by events that occurred almost a decade ago. In 1995, I left Deering Hospital because I believed that it was an unsafe institution rife with activities by Columbia/HCA that were unethical if not illegal. I was proven correct when the federal government fined Columbia/HCA and forced it to sell Deering Hospital as part of a global multimillion-dollar settlement of Medicare fraud. (Deering was the only Columbia/HCA hospital whose sale was mandated by the federal government as part of the settlement.) Deering's administration had falsely accused me of substandard patient care in 1995, and I was cleared by a confidential state investigation in 1997. Miami Children's Hospital fair hearing committee recommended that my reappointment application be deferred until the state investigation was complete, but rather than wait, the hospital terminated my privileges and reported me to the state in 1996. Because of my dismissal from Miami Children's Hospital, Florida fined and reprimanded me in 2002. In 2003, despite my never having either trained or practiced in New York and having had an inactive license for over 20 years, New York forced me to reactivate my license, fined, reprimanded and censured me. Finally, in 2004 Miami Children's Hospital whose dismissal of me resulted in my being fined, reprimanded and censured, reappointed me to its staff. Fortunately, my license has never been restricted and the other local hospital staffs to which I belong realize that I am a safe and ethical physician and not only kept me on their staffs, but promoted me in rank at the appropriate time.

If you require any further information, please feel free to contact me.

Sincerely yours,

M Felix Freshwater, MD

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March 29, 2005

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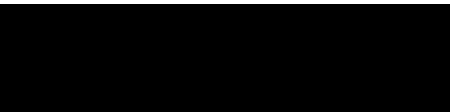
PERSONAL AND CONFIDENTIAL

Dear Dr. Freshwater:

Your letter dated March 3, 2005 was received in the Board Office on March 7, 2005. Thank you for your prompt response to the Board's inquiry regarding reprimands from the Florida Board of Medicine and the New York Department of Health.

Your response is candid, detailed and complete and is sufficient to close the matter. We shall update your file to reflect your response.

Very truly yours,



R. Barrett Noone, M.D.
Executive Director

RBN/tmc

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