



STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

Barbara A. DeBuono, M.D., M.P.H.
Commissioner

Karen Schimke
Executive Deputy Commissioner

License # 161419
Date of License: 2/11/1985
Year of birth: 1957

June 7, 1995

RECEIVED
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OFFICE OF PROFESSIONAL
MEDICAL CONDUCT

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Vincent A. Piccone, M.D.
245 North Gannon Avenue
Staten Island, New York 10314

Ralph J. Bavaro, Esq.
Associate Counsel
NYS Department of Health
5 Penn Plaza-Sixth Floor
New York, New York 10001

RE: In the Matter of Vincent A. Piccone, M.D.

Dear Dr. Piccone and Mr. Bavaro:

Enclosed please find the Determination and Order (No. 95-119) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified mail or in person** to:

Office of Professional Medical Conduct
New York State Department of Health
Corning Tower - Fourth Floor (Room 438)
Empire State Plaza
Albany, New York 12237

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the licensee or the Department may seek a review of a committee determination.

Request for review of the Committee's determination by the Administrative Review Board stays all action until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

All notices of review must be served, by **certified mail**, upon the Administrative Review Board and the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

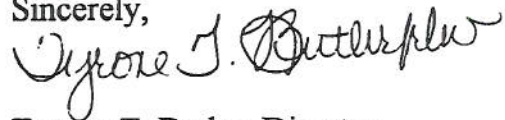
The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Empire State Plaza
Corning Tower, Room 2503
Albany, New York 12237-0030

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's
Determination and Order.

Sincerely,

A handwritten signature in cursive script that reads "Tyrone T. Butler".

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm
Enclosure

License # 161419
Date of License: 2/11/1985
Year of birth: 1957

STATE OF NEW YORK : DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

-----X
: IN THE MATTER :
: OF : DETERMINATION
: : AND
: : ORDER
: VINCENT A. PICCONE, M.D. :
: : BPMC-95-119
-----X

The Hearing Committee, composed of Carolyn Snipe, Chairperson, Pasquale A. Carone, M.D., and Hilda Ratner, M.D., was duly designated and appointed by the Commissioner of Health of the State of New York pursuant to New York Public Health Law § 230, subd. 10(e). Eugene A. Gaer, Esq., Administrative Law Judge, served as Hearing Officer for the Committee.

The Committee, each member of which has considered the entire record in this matter, hereby renders its decision with regard to the charges of professional misconduct filed against Vincent A. Piccone, M.D. (the "Respondent"). All findings, conclusions and dispositions herein are unanimous.

STATEMENT OF CHARGES

Respondent has been charged by Petitioner Department of Health (the "Petitioner" or the "Department") with:

- (1) practicing the medical profession while impaired by mental disability from approximately 1986 through 1994; and
- (2) having a psychiatric condition which impairs

his ability to practice the medical profession.

These charges are defined as forms of professional misconduct in New York Education Law § 6530, subdivisions 7 and 8. The charges are more particularly set forth in the Notice of Hearing and Statement of Charges (the "Notice" and "Statement"), a copy of which is attached hereto as Appendix 1.

RECORD OF PROCEEDINGS

Notice of Hearing and Statement of Charges dated:	December 14, 1994
Pre-hearing Conference:	January 11, 1995
Hearing date:	February 3, 1995
Petitioner's Proposed Findings of Fact and Conclusions of Law ("Pet. Prop. Fin.") submitted:	March 3, 1995 ¹
Deliberation date:	March 29, 1995
Place of Hearing:	New York State Department of Health 5 Penn Plaza New York, New York 10001
Petitioner represented by:	Ralph J. Bavaro, Esq. Associate Counsel Bureau of Professional Medical Conduct 5 Penn Plaza New York, New York 10001
Respondent was not represented by counsel.	

¹Respondent did not submit any proposed findings or other closing brief.

WITNESSES

Petitioner called one witness:

Howard Hess, M.D.

Expert Witness

Respondent testified in his own behalf and called one other witness:

Santapuri Rao, M.D.

Expert Witness

FINDINGS OF FACT

The following findings of fact were made after review of the entire record by the Committee. Citations indicate evidence found persuasive by the Committee in arriving at the finding. "Tr." citations are to the transcript of the hearing. "P.Ex." citations are to the exhibits introduced by Petitioner. Evidence which conflicted with any finding of the Committee was considered and rejected.

Background

1. Respondent was authorized to practice medicine in the State of New York on February 11, 1985, by the issuance of License No. 161419 by the Department of Education (P.Ex. 2, p. 3) and remained licensed thereafter. As of the date this proceeding commenced, Respondent was current in his registration with the

Department of Education for the purpose of practicing medicine in the State. P.Ex. 2, p. 2. His address is 245 North Gannon Avenue, Staten Island, New York. P.Ex. 10, p. 3.

2. Respondent received the degree of M.D.C.M. from the Faculty of Medicine of McGill University, Montreal, Quebec, on November 1, 1983. P.Ex. 2, p. 5; P.Ex. 8, p. 25; P.Ex. 10, p. 3.

3. Respondent was a surgical intern at the University of Medicine and Dentistry of New Jersey, New Brunswick, New Jersey, during the period November 1983-December 1984. P.Ex. 8, pp. 2, 9; P.Ex. 9, p. 101; P.Ex. 10, p. 3.

4. Respondent was a clinical fellow in cardiothoracic surgery at Brooklyn Veteran's Administration Hospital during the period January-June 1985. P.Ex. 8, p. 9; P.Ex. 10, p. 3.

5. Respondent was a surgery resident (classified as "PGY2") at New Rochelle Hospital Medical Center during the period July 1985-June 1986. P.Ex. 8, p. 9; P.Ex. 10, p. 3; cf. P.Ex. 9, pp. 103-04.

The Brooklyn Hospital

6. Respondent was a surgery resident (again classified as "PGY2") at The Brooklyn Hospital during the period July 1986-June 1987. P.Ex. 9, p. 1.

7. In September 1986 four residents in The Brooklyn Hospital Surgery Department (Dr. J. Bustamente, the Chief Resident, Dr. A. Schwartzman, Dr. J. Lamelas and Dr. S. Winchester) reported to Dr. A.E. Alfonso, the Department Chairman, that they had recently experienced or witnessed severe altercations involving Respondent. Among other things, Respondent was alleged to have been disobedient to orders, verbally abusive to another physician in the presence of patients and physically threatening to other physicians. P.Ex. 9, pp. 3-6, 8, 10-11, 13-14.

8. On September 15, 1986, following on the foregoing reports, there was a meeting between Respondent and Dr. R.L. Genato, Associate Director of The Brooklyn Hospital's Surgery Residency Program, Dr. R. Almaleh, Director of the hospital's Surgical Intensive Care Unit (the "SICU") and S.H. Knapp, the House Staff Coordinator. The outcome of the meeting was that Respondent was informed that he was "suspended from [his] duties in the SICU until further notice." P.Ex. 9, p. 50.²

9. On September 17, 1986, Respondent met with an ad hoc committee of the Surgery Department, including Dr. Alfonso. After reviewing Respondent's performance and his difficulty

²The minutes of the September 15 meeting state: "In view of the above meeting and because of Dr. Piccone's defiance of a direct order to care for a patient, therefore jeopardizing good quality patient care, it was decided to suspend Dr. Piccone immediately and indefinitely." P.Ex. 9, p. 11.

working with other residents, the Committee decided that Respondent's suspension should "be lifted immediately" and that he should be placed on probation for three months. During the probationary period Respondent was expected, among other things, to improve his interpersonal relationships with his colleagues, to "apologize to the residents he had confrontations with" and to follow orders from superiors. P.Ex. 9, pp. 6-7.

10. In a September 18, 1986, letter to Respondent, Dr. Alfonso, informed him that the suspension was being lifted, effective that day, and that he was being placed on probation subject to the conditions discussed at the meeting the previous day. P.Ex. 9, p. 2.

11. Respondent is recorded at The Brooklyn Hospital as having satisfactorily completed his PGY2 year, but was not advanced into the PGY3 year of the hospital's surgery program. P.Ex. 9, pp. 24, 37; see also P.Ex. 13, p. 5. Dr. Alfonso wrote letters of recommendation for Respondent to surgery programs at hospitals in Massachusetts, Michigan and Pennsylvania stating that his performance (including his performance in the SICU) was satisfactory and that the reason he was not advanced was that the pyramidal structure of the Brooklyn residency program required that some residents be eliminated. P.Ex. 9, pp. 21-22, 84.

Community Hospital of Brooklyn

12. Respondent was employed by Community Hospital of Brooklyn as an emergency relief surgical assistant during the period November 1989-February 1990. P.Ex. 8, pp. 1, 13.

13. On his application for appointment to the Community Hospital medical staff, dated November 1, 1989, Respondent was asked:

Has your membership status, clinical privileges, employment, association and/or practice of medicine at any other hospital or health care institution ever been or is it in the process of being suspended, diminished, revoked, limited, or not renewed?

Respondent checked "No" in answer to this question. Id., pp. 2, 6.

Mercy Community Hospital

14. Respondent had temporary privileges as an emergency department physician at Mercy Community Hospital, Port Jervis, New York ("Mercy"), during the period May 23-June 12, 1991. At that time he was an employee of American Emergency Services, Inc., on assignment to Mercy. P.Ex. 7, p. 5.

15. While Respondent was on assignment to Mercy he made copies of a number of patient records which he took from Mercy and never returned. P.Ex. 7, pp. 8-10, 12, 15-16; cf. Tr. 144-47.

Doctor's Medi-Center

16. Respondent subsequently was employed at Doctor's Medi-Center ("Medi-Center"), a hospital facility in Carteret, New Jersey. He was dismissed from his position there in June or July 1993. P.Ex. 6, pp. 4-5; P.Ex. 11, p. 23.

17. On January 20, 1994, Respondent visited Medi-Center and spoke with S. Bartkovich, the Director of Client Services. Respondent handed Bartkovich a letter requesting that the medical records of all patients he had seen at Medi-Center be photocopied for him within an hour. When Respondent returned an hour later, Bartkovich refused to release any of the records he requested. Respondent then stated "I hope your daughter is alive next week." P.Ex. 6, p. 4.

18. Bartkovich immediately called the Carteret Police Department and reported the statement Respondent made to her. The Carteret police searched for Respondent in the vicinity and could not find him. They then did a background check on Respondent and found "nothing unusual." On February 1, 1994, the police asked Bartkovich if there had been any further contacts with Respondent. When she said there had not been, the police closed the file. P.Ex. 6, pp. 4-5.

St. Vincent's Medical Center of Richmond

19. On March 26, 1994, Respondent was hospitalized

involuntarily at the Psychiatric Inpatient Unit of St. Vincent's Medical Center of Richmond, in Staten Island, New York. See P.Ex. 3, pp. 1, 7-8, 10; P.Ex. 10, pp. 20-22; Tr. 137-40. The admission, which was through the emergency department, resulted from a complaint to the police by two women that Respondent was stalking them in a mall. The complainants were a woman whom Respondent had tried to date when she was a teenager and her mother. P.Ex. 3, pp. 4, 12; Tr. 137-38.

20. The admitting diagnosis of Respondent at St. Vincent's was "Schizophrenic paranoid type chr[onic] & Acute Exacerb[ation]." P.Ex. 3, p. 92. Respondent remained hospitalized until May 13, 1994. The discharge diagnosis was "SchizoAffective Disorder." Id., pp. 4-5.

Respondent's Letters

21. In the period December 1993-January 1994, Respondent wrote twice to Dr. J. Stinett, a Philadelphia psychiatrist who was allegedly consulted by Respondent's family with respect to obtaining treatment for Respondent. P.Ex. 5, pp. 8-9; cf. P.Ex. 11, p. 53; Tr. 57-59. In one letter to Dr. Stinett, Respondent stated:

The Philadelphia Police are notified at this time that if your stalking of me and my family continues [a] court order of protection will be sought against you[.] If in any way you violate this court order, I will consider it another assault against me

and will use, in self defense, whatever means including physical/deadly force to stop you.
P.Ex. 5, p. 9.

22. During the same period (and continuing into at least February 1994) Respondent also wrote letters complaining about Dr. Stinett to Presidents Bush and Clinton, the Philadelphia Police Department, the Board of Trustees of the University of Pennsylvania, the Bureau of Professional and Occupational Affairs of the Pennsylvania Department of State³ and six members of the United States Senate. P.Ex. 5, pp. 13-14; P.Ex. 11, pp. 10, 31, 40, 44-46.

23. During the period November 1992-March 1994 Respondent wrote numerous letters to government officials and other public figures. Among these were:

(a) letters to President Clinton, Senator Edward M. Kennedy, Jacqueline Kennedy Onassis and the administrators of Arlington National Cemetery requesting exhumation of President Kennedy's body in order to test theories concerning the assassination, including, among others, the theory that Mrs. Kennedy may have

³The letter to the Pennsylvania Department of State, of which Respondent sent a copy to President Bush, stated in part: "I believe that the origin of [Dr. Stinett's alleged actions] is political. If this is not corrected within the next 60 days, criminal charges will be filed to each member of the United States Senate with regards to criminal behavior of high elected officials with my suggestion that such officials be impeached, tried and possibly incarcerated." P.Ex. 11, pp. 44-45.

conspired in her husband's death⁴ (P.Ex. 5, pp. 5-7, 15-16, 18; P.Ex. 11, p. 36);

(b) letters to Presidents Bush and Clinton purporting to diagnose their medical problems and asserting that the Surgeon General would be liable for malpractice if Respondent's diagnoses were not followed up (P.Ex. 11, pp. 7-8; see also, Id., pp. 9-10); and

(c) letters to six United States Senators stating that Respondent was the victim of a conspiracy to label him a paranoid schizophrenic for political reasons and requesting the Senators to contact three specific women to investigate why they refused to go out with Respondent (P.Ex. 5, pp. 13-14).

**CONCLUSIONS AS TO
FACTUAL ALLEGATIONS**

Under the New York statutes governing the practice of medicine, psychiatric conditions which impair physician performance are classified as professional misconduct. The license of a physician found either to be so impaired or to have

⁴Some of these theories (and others concerning the deaths of Lee Harvey Oswald, Jack Ruby and Dr. Martin Luther King, Jr.) were also expressed in letters to the editor of the Staten Island Advance and the New York Times. P.Ex. 5, pp. 2-4.

practiced while so impaired may be revoked and the physician may otherwise be subject to the provisions of New York Public Health Law § 230-a.

In support of its contentions about Respondent's impairment, Petitioner has submitted records of Respondent's hospitalization at St. Vincent's, subsequent office records of his treating psychiatrist, a police report regarding Respondent, records relating to Respondent's employment at certain medical facilities and correspondence between Respondent and various public and private agencies, individuals and the media.

These materials were reviewed by Petitioner's expert witness, who did not personally examine Respondent. Before reviewing the records of Respondent's St. Vincent's hospitalization, this witness summarized his opinion:

I believe on the basis of the material I've reviewed that [Respondent] is suffering from a severe emotional disorder, probably schizophrenia of the paranoid type.... [T]he combination of grandiosity, anger, physical threats, argumentative, difficulty in functioning and a marked lack of judgment all mean that this man should not practice medicine at this time. I believe his continued practice represents a threat to the patient population of our State and to [Respondent's] medical colleagues. Tr. 39-40.

After later reviewing the records of Respondent's

hospitalization, this witness remained firm in his conclusion that the proper diagnosis of Respondent's condition was "paranoid schizophrenia." Tr. 49, 56.

Countering the testimony of Petitioner's expert, the Committee heard Respondent's own explanation of the events and documents on which that expert based his opinions. The Committee also heard the testimony of Respondent's expert witness, a psychiatrist who treated him at St. Vincent's and who continues to treat him. See Tr. 80, 89-90, 95-96.

Based on the foregoing, the Committee has concluded that Petitioner has sustained its burden of showing that Respondent suffers from a psychiatric condition which impairs his ability to practice medicine and that Respondent has practiced the medical profession while impaired by mental disability. With one exception, the Factual Allegations in the Statement are accurate in themselves and tend to support Petitioner's charges.

Paragraph A of the Factual Allegations states:

Between on or about March 26 and May 13, 1994, Respondent was treated as an in-patient at St. Vincent's Medical Center of Richmond, Staten Island, New York, where he was diagnosed with paranoid schizophrenia, chronic with acute exacerbation.

The St. Vincent's records are straightforward that

Respondent was hospitalized during the cited period. The admission records state that Respondent was brought into the hospital by the police who had responded to a complaint from two women whom Respondent was allegedly stalking at a mall. See Finding of Fact 19, supra.

During his stay of more than six weeks at St. Vincent's, Respondent received medication and psychotherapy from members of the staff. P.Ex. 3, passim. According to Petitioner's expert witness the physicians' notes from Respondent's hospitalization are consistent with the initial diagnosis of "paranoid schizophrenia." See Tr. 49, 55-56, 72.

At the time of discharge Respondent's condition was stated to be "SchizoAffective disorder." The Discharge Summary, which was written by the psychiatrist who has continued to treat Respondent (and who testified as his expert witness), noted that Respondent's condition improved once he began receiving medication. P.Ex. 3, pp. 4-5. This expert continues to stand by his diagnosis. Tr. 97-99, 110-11.

Petitioner's expert sharply disagreed with the later diagnosis. In his view, "[t]he diagnosis of schizoaffective type of schizophrenia is a difficult diagnosis [requiring] repeated episodes of depression or elation," which he found to be absent in Respondent's history. Tr. 55-56.

The difference in expert diagnoses should have no effect on the disposition of this matter. Both experts concurred that Respondent's condition precluded treating patients. Tr. 35-38, 74-75, 84, 118-24. **Paragraph A is SUSTAINED.**

Paragraph B of the Factual Allegations states:

On or about January 20, 1994 at the Doctor's Medi-Center, Carteret, New Jersey, Respondent made threats of physical violence to the Director of Client Services.

As discussed above (Findings of Fact 16-18), Respondent was no longer on the staff of Medi-Center at the time of this incident. He returned to the facility because he wished to see the records of patients he had treated there. P.Ex. 6, pp. 4, 7. When Bartkovich, who was Medi-Center's Director of Client Services refused to copy the records for Respondent, he said "I hope your daughter is alive next week." She then called the police.

Respondent has conceded making the statement but denies that it was intended as a threat. He has stated that some unknown person was vandalizing his family's Staten Island property (he believed the damage was caused by gunshots) and that he was only trying to warn Bartkovich that she or her daughter might be in the same kind of danger. See Tr. 22-23, 47, 141; see

also Tr. 153-56; P.Ex. 11, p. 23.

Even if one credits Respondent's description of the damage to his family's Staten Island property, there was no reason to expect that the Director of Client Services at Medi-Center in Carteret, New Jersey, or her daughter, would be similarly targeted. It is understandable that Bartkovich would have regarded Respondent's statement as a threat of physical violence. Paragraph B is **SUSTAINED**.

Paragraph C of the Factual Allegations states:

Between approximately November 1992 and March 1994, Respondent wrote letters to various governmental agencies, academic institutions, high ranking government officials, and others, in which Respondent made various statements, accusations and threats which demonstrated mental and psychiatric impairment.

It is not contested that during the cited period Respondent wrote many letters. See Findings of Fact 21-23, supra. Petitioner argues that those letters may be introduced as "evidence of irrational thinking, unsound judgment, paranoia and a basic disconnect with reality." Tr. 17.

Respondent asserts that, to the contrary, they were not threatening, that he was exercising his First Amendment rights and that using them as evidence in a professional disciplinary

proceeding violates constitutional protections. Tr. 23, 142-44.

A large number of the letters deal with a request to have President Kennedy's body exhumed in order to test Respondent's theories of the assassination. Respondent has pointed out that his interest in the assassination is far from unique. To show that it remains an object of widespread public attention Respondent has submitted a set of videos produced and sold by a leading news organization. P.Exs. 17B-F; Tr. 63; see also P.Ex. 16C.

In answer to Respondent's question whether he considered Respondent's requests to exhume President Kennedy's body as examples of "grandiose" thinking or "poor judgment," Petitioner's expert stated:

...For you to put your two cents in is unusual, and to make a strong case in your life in writing letters to important people or famous people about this, when a special committee was appointed, ...I think illustrates and illuminates your pathology, sir.

...[I]t's poor judgment for you to get involved with these people. It frequently gets the Secret Service on your back, possibly the FBI, because they know that Dr. Piccone doesn't know much about this case. You just know what you've read. Other people have looked at the pathology, have examined witnesses who were there, all these things. Tr. 64-65.

There are other questionable matters in Respondent's letters. His claim to diagnose psychiatric illnesses of Presidents Bush and Clinton, two people he has never examined, plus his assertion that it would be malpractice for the surgeon general not to follow up his diagnoses, do cast doubt on both his medical and practical judgment. See P.Ex. 11, pp. 7-10.

Respondent's request to members of the United States Senate (P.Ex. 5, pp. 13-14) that they investigate why three specific women declined to go out with him displays a lack of perspective on the role of government, much less an appreciation for the privacy of the women.

Perhaps more troubling is Respondent's campaign against Dr. Stinett. Whatever the origins of Respondent's mistrust of that physician, the persistence and tone of Respondent's letters to and about Dr. Stinett may reasonably be considered as evidencing poor judgment, at the least. One can only be alarmed by Respondent's warning that "I will... use, in self defense, whatever means including physical/deadly force to stop you." P.Ex. 5, p. 9.⁵

The letters introduced by Petitioner which were written by Respondent between November 1992 and March 1994 may appropriately

⁵At the hearing Respondent stated that this letter was to inform Dr. Stinett that "I would have to take wild west type action." Tr. 59.

be considered by the Committee in connection with this proceeding. It is no restriction on Respondent's freedom to criticize government officials and public figures for the Committee to conclude that those letters demonstrate mental and psychiatric impairment. **Paragraph C is SUSTAINED.**

Paragraph D of the Factual Allegations states:

Between on or about May 23 and June 12, 1991, while working in the emergency department at Mercy Community Hospital, Port Jervis, New York, Respondent removed and retained patient records from the hospital without authority and contrary to hospital rules and regulations.

In support of this allegation Petitioner introduced a set of documents which essentially constituted Respondent's personnel file at Mercy.⁶ From letters in that file it appears that Respondent made copies of certain patient records from the period he was on Mercy's staff.

At the hearing Respondent maintained (as he had in his correspondence with Mercy shortly after he copied the records) that he did so because he was aware of quality assurance issues

⁶Respondent was never technically on the Mercy payroll. He worked there as an emergency department physician on assignment from American Emergency Services, Inc., which remained his employer. P.Ex. 7, p. 5; cf. id., p. 11.

which he planned to communicate to the Department.⁷ Tr. 144-47.

Petitioner urges that Respondent's admitted act of copying these patient records, ostensibly for transmittal to the Department, was the equivalent of "remov[ing] and retain[ing] patient records from the hospital without authority," as alleged in Paragraph D of the Statement's Factual Allegations. See Pet. Prop. Fin., pp. 8-9.

The Committee does not agree. "Copying and transmitting" patient records to the Department are not the same things as "removing and retaining" them. For purposes of this Determination and Order it is not necessary to decide whether the former could have been a proper basis for action against Respondent. He was not charged with that. **Paragraph D is NOT SUSTAINED.**

Paragraph E of the Factual Allegations states:

On or about November 1, 1989, on an application for appointment to the staff of Community Hospital of Brooklyn, New York, Respondent answered a question regarding prior suspension of hospital privileges in the negative, when in fact such privileges had been temporarily suspended at Brooklyn Hospital Center in September 1986.

⁷Respondent claimed that the records he copied were his own patient history and treatment notes. P.Ex. 7, p. 9.

The underlying details are set forth in Findings of Fact 8-10 and 12-13, supra. At the hearing Respondent attempted to refute this allegation by asserting that, as a second year resident, he never had clinical privileges at The Brooklyn Hospital and that the three day interruption of his service in that unit was more in the nature of a rearrangement of his rotation responsibilities. Tr. 147-50.

The Committee is not convinced. Whether his assignment was called "privileges," "responsibilities" or "duties," Respondent was indeed suspended temporarily from The Brooklyn Hospital SICU, which was the object of the question on the Community Hospital application form. Respondent's failure to answer correctly further demonstrates poor judgment. **Paragraph E is SUSTAINED.**

Paragraph F of the Factual Allegations states:

Between approximately July 1, 1986 and June 30, 1987, during his [residency] training at the Brooklyn Hospital Center, Respondent exhibited threatening and hostile behavior toward other physicians and failed to meet clinical responsibilities.

In support of this allegation, Petitioner points to a number of entries in Respondent's personnel file at Brooklyn Hospital. The most severe incident was the one which led to the September 15, 1986, temporary SICU suspension. At that time a committee of the hospital's surgery department found merit to the complaints

from four other residents (including the Chief Resident) that Respondent had refused to follow directions from more senior colleagues, had insulted a colleague in the presence of patients and had been verbally and physically threatening. See Findings of Fact 6-10, supra.⁸

At the hearing Respondent did not deny that he had interpersonal difficulties with other residents, but asserted that they were the fault of the others, not himself. Tr. 151; see also Tr. 25, 148. There is no question that he satisfactorily completed his PGY2 year at that hospital and that later in the year his department chairman gave him good recommendations for other surgery programs. See Finding of Fact 11, supra; see also Tr. 44-45, 150-51.

Nonetheless the Brooklyn Hospital records introduced by Petitioner demonstrate a sufficient factual basis for this Allegation. They establish that the pattern of Respondent's behavior, and of his impaired psychiatric condition, were in evidence as early as 1986. **Paragraph F is SUSTAINED.**

⁸Petitioner also points out that there were problems with Respondent's performance later in the PGY2 year at The Brooklyn Hospital. See Pet. Prop. Fin., p. 10; cf. P.Ex. 9, pp. 18-19, 30, 34-36, 38-41.

**DISPOSITION
OF SPECIFICATIONS**

An overriding concern in dealing with a case of this nature is the protection of patients. Respondent's own psychiatrist testified that he recommended that Respondent not be involved in patient care. Tr. 84, 118-24. Petitioner's expert stated that it is highly unlikely that Respondent's psychiatric problems could be so compartmentalized that they would not affect his medical judgment adversely. Tr. 71-75. In this regard, it is notable that many of Respondent's disputes involved allegations of poor medical practice made by or against him.

Accordingly, the Committee has entered the following Dispositions of the Specifications of Charges:

FIRST SPECIFICATION (practicing the medical profession while impaired by mental disability):

SUSTAINED

SECOND SPECIFICATION (having a psychiatric condition which impairs his ability to practice the medical profession):


SUSTAINED

ORDER

The Committee, by unanimous vote, has determined, and it hereby is

ORDERED, that the license to practice medicine of Respondent **VINCENT A. PICCONE, M.D.**, shall be **REVOKED**.

Dated: New York, New York
May , 1995

By: 
CAROLYN SNIPE,
Chairperson

Pasquale A. Carone, M.D.
Hilda Ratner, M.D.

APPENDIX 1

STATE OF NEW YORK : DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

-----X
: IN THE MATTER :
: OF : NOTICE
: VINCENT A. PICCONE, M.D. : OF
: : HEARING
-----X

TO: VINCENT A. PICCONE, M.D.
245 North Gannon Avenue
Staten Island, NY 10314

PLEASE TAKE NOTICE:

A hearing will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230 (McKinney 1990 and Supp. 1994) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1994). The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on the 3rd day of February, 1995, at 10:00 in the forenoon of that day at 5 Penn Plaza, Sixth Floor, New York, New York 10001 and at such other adjourned dates, times and places as the committee may direct.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. You shall appear in person at the hearing and may be represented by

counsel. You have the right to produce witnesses and evidence on your behalf, to issue or have subpoenas issued on your behalf in order to require the production of witnesses and documents and you may cross-examine witnesses and examine evidence produced against you. A summary of the Department of Health Hearing Rules is enclosed.

The hearing will proceed whether or not you appear at the hearing. Please note that requests for adjournments must be made in writing and by telephone to the Administrative Law Judge's Office, Empire State Plaza, Tower Building, 25th Floor, Albany, New York 12237, (518-473-1385), upon notice to the attorney for the Department of Health whose name appears below, and at least five days prior to the scheduled hearing date. Adjournment requests are not routinely granted as scheduled dates are considered dates certain. Claims of court engagement will require detailed Affidavits of Actual Engagement. Claims of illness will require medical documentation.

Pursuant to the provisions of N.Y. Pub. Health Law Section 230 (McKinney 1990 and Supp. 1994), you may file an answer to the Statement of Charges not less than ten days prior to the date of the hearing. If you wish to raise an affirmative defense, however, N.Y. Admin. Code tit. 10, Section 51.5(c) requires that an answer be filed, but allows the filing of such an answer until three days prior to the date of the hearing. Any answer shall be forwarded to the attorney for the Department of Health whose

name appears below. Pursuant to Section 301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide at no charge a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person.

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and, in the event any of the charges are sustained, a determination of the penalty to be imposed or appropriate action to be taken. Such determination may be reviewed by the administrative review board for professional medical conduct.

THESE PROCEEDINGS MAY RESULT IN A
DETERMINATION THAT YOUR LICENSE TO PRACTICE
MEDICINE IN NEW YORK STATE BE REVOKED OR
SUSPENDED, AND/OR THAT YOU BE FINED OR
SUBJECT TO THE OTHER SANCTIONS SET OUT IN
NEW YORK PUBLIC HEALTH LAW SECTION 230-a
(McKinney Supp. 1994). YOU ARE URGED TO
OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS
MATTER.

DATED: New York, New York

December 14, 1995


CHRIS STERN HYMAN
Counsel

Inquiries should be directed to: Ralph J. Bavaro
Associate Counsel
Bureau of Professional
Medical Conduct
5 Penn Plaza, 6th Floor
New York, New York 10001
Telephone No.: 212-613-2601

STATE OF NEW YORK : DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

-----X

IN THE MATTER : STATEMENT
OF : OF
VINCENT A. PICCONE, M.D. : CHARGES

-----X

VINCENT A. PICCONE, M.D., the Respondent, was authorized to practice medicine in New York State on February 11, 1985 by the issuance of license number 161419 by the New York State Education Department. The Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1993 through December 31, 1994 from 245 North Gannon Avenue, Staten Island, New York 10314.

FACTUAL ALLEGATIONS

- A. Between on or about March 26 and May 13, 1994, Respondent was treated as an in-patient at St. Vincent's Medical Center of Richmond, Staten Island, New York, where he was diagnosed with paranoid schizophrenia, chronic with acute exacerbation.

- B. On or about January 20, 1994 at the Doctor's Medi-Center, Carteret, New Jersey, Respondent made threats of physical violence to the Director of Client Services.
- C. Between approximately November 1992 and March 1994, Respondent wrote letters to various governmental agencies, academic institutions, high ranking government officials, and others, in which Respondent made various statements, accusations and threats which demonstrated mental and psychiatric impairment.
- D. Between on or about May 23 and June 12, 1991, while working in the emergency department at Mercy Community Hospital, Port Jervis, New York, Respondent removed and retained patient records from the hospital without authority and contrary to hospital rules and regulations.
- E. On or about November 1, 1989, on an application for appointment to the staff of Community Hospital of Brooklyn, Brooklyn, New York, Respondent answered a question regarding prior suspension of hospital privileges in the negative, when in fact such privileges had been temporarily suspended at Brooklyn Hospital Center in September 1986.
- F. Between approximately July 1, 1986 and June 30, 1987, during his residency training at the Brooklyn Hospital

Center, Respondent exhibited threatening and hostile behavior toward other physicians and failed to meet clinical responsibilities.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

Respondent is charged with practicing the medical profession while impaired by mental disability from approximately 1986 through 1994, within the meaning of N.Y. Education Law Section 6530(7) (McKinney Supp. 1994).

1. Petitioner charges the facts alleged in factual allegations A, B, C, D, E and/or F.

SECOND SPECIFICATION

Respondent is charged with having a psychiatric condition which impairs his ability to practice the medical profession within the meaning of N.Y. Education Law Section 6530(8) (McKinney Supp. 1994).

2. Petitioner charges the facts alleged in factual allegations A, B, C, D, E and/or F.

DATED: New York, New York

December 14, 1994

A handwritten signature in black ink, appearing to read "C. Stern Hyman", written over a horizontal line.

CHRIS STERN HYMAN
COUNSEL
Bureau of Professional Medical
Conduct