



STATE OF NEW YORK  
DEPARTMENT OF HEALTH

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

Mark R. Chassin, M.D., M.P.P., M.P.H.  
Commissioner

October 28, 1994

Paula Wilson  
Executive Deputy Commissioner

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Anthony Ruggiero, M.D.  
55 West 11th Street  
New York, New York, 10011

David W. Smith, Esq  
NYS Dept. of Health  
5 Penn Plaza - Sixth Floor  
New York, New York 10001

T. Lawrence Tabak, Esq.  
Finkelstein, Bruckman, Wohl, Most & Rothman  
575 Lexington Avenue  
New York, New York 10022-6102

Effective Date: 11/4/94

RECEIVED  
NOV 04 1994  
OFFICE OF PROFESSIONAL  
MEDICAL CONDUCT

**RE: In the Matter of Anthony Ruggiero, M.D.**

Dear Dr. Ruggiero, Mr. Smith and Mr. Tabak:

Enclosed please find the Determination and Order (No. 94-116) of the Professional Medical Conduct Administrative Review Board in the above referenced matter. This Determination and Order shall be deemed effective upon 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.

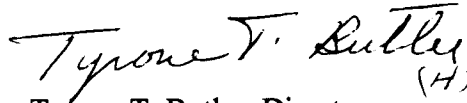
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified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

Office of Professional Medical Conduct  
New York State Department of Health  
Empire State Plaza  
Corning Tower, Room 438  
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.

This exhausts all administrative remedies in this matter [PHL §230-c(5)].

Sincerely,

A handwritten signature in cursive script that reads "Tyrone T. Butler". To the right of the signature, there is a small handwritten mark that appears to be "(H)".

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:

Enclosure

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

IN THE MATTER  
OF  
ANTHONY RUGGIERO, M.D.

ADMINISTRATIVE  
REVIEW BOARD  
DECISION AND  
ORDER NUMBER  
ARB NO. 94-116

The Administrative Review Board for Professional Medical Conduct (hereinafter the "Review Board"), consisting of **ROBERT M. BRIBER, SUMNER SHAPIRO, WINSTON S. PRICE, M.D., EDWARD C. SINNOTT, M.D.** and **WILLIAM A. STEWART, M.D.** held deliberations on September 30, 1994 to review the Hearing Committee on Professional Medical Conduct's (Hearing Committee) July 18, 1994 Determination finding Dr. Anthony Ruggiero (Respondent) guilty of professional misconduct. The Respondent requested the Review through a Notice which the Board received on August 3, 1994. James F. Horan served as Administrative Officer to the Review Board. T. Lawrence Tabak, Esq. filed a brief for the Respondent on September 7, 1994. David W. Smith, Esq. filed a brief for the Office of Professional Medical Conduct (Petitioner) on September 12, 1994.

**SCOPE OF REVIEW**

New York Public Health Law (PHL) §230(10)(i), §230-c(1) and §230-c(4)(b) provide that the Review Board shall review:

- whether or not a hearing committee determination and penalty are consistent with the hearing committee's findings of fact and conclusions of law; and
- whether or not the penalty is appropriate and within the scope of penalties permitted by PHL §230-a.

Public Health Law §230-c(4)(b) permits the Review Board to remand a case to the Hearing Committee for further consideration.

Public Health Law §230-c(4)(c) provides that the Review Board's Determinations shall

be based upon a majority concurrence of the Review Board

### HEARING COMMITTEE DETERMINATION

The Petitioner charged the Respondent with failing to use adequate infection control procedures and failing to maintain adequate, complete patient records. The Hearing Committee sustained both charges. The Committee found, based upon photographs taken of the Respondent's office, that the Respondent kept a filthy office and failed to practice infection control. The Committee found further that the Respondent admitted that he never kept individual records for each patient and that the Respondent failed to provide records relating to certain patients, other than office log books for the years 1993 and 1994.

The Hearing Committee voted to revoke the Respondent's license to practice medicine. The Committee considered other penalties, but concluded that revocation alone was appropriate.

### REQUESTS FOR REVIEW

The Respondent raises two issues on this review. First, the Respondent contends that the specification charging lack of infection control is defective because the charge does specify the time period during which the Respondent failed to practice proper infection control. Second, the Respondent contends that the sanction of revocation is disproportionate to the offenses because there was no proof of patient harm or any intentional conduct in violation of any statute. The Respondent argues that he is an elderly physician with a limited practice and that his problems with infection control and record keeping could be corrected by monitoring.

The Petitioner urges the Review Board to uphold the Hearing Committee's Determination on the charges and the Penalty. The Petitioner contends that the Respondent failed to raise any defect in the charges at the time of the hearing and that the Review Board lacks the authority to dismiss charges on the grounds that the charges are defective. The Petitioner contends further that the Penalty in this case is appropriate because revocation is the only means to protect the public in view of the Respondent's failure to pay attention to infection control and to maintain adequate records.

### REVIEW BOARD DETERMINATION

The Review Board has considered the record below and the briefs which counsel have submitted.

The Review Board votes to sustain the Hearing Committee's Determination finding the Respondent guilty of failure to maintain adequate records and failure to use adequate infection control procedures. The Committee's Determination is consistent with the Committee's Findings of Fact and Conclusions, and it is consistent with the evidence that demonstrated that the Respondent kept no individual patient records and failed completely to use adequate infection control procedures.

The Review Board sustains the Hearing Committee's Determination revoking the Respondent's license to practice medicine. The penalty is appropriate and consistent with the Committee's Determination that the Respondent maintains a filthy office and disregards even minimally acceptable standards of infection control. The failure to maintain adequate infection control places the Respondent's patients at a substantial risk and the Respondent could only be allowed to continue practicing medicine if there were some assurance that the Respondent could begin to practice infection control effectively and to maintain minimally acceptable records for his patients. The Hearing Committee who heard the Respondent's testimony and observed him at the hearing made no finding that would indicate that the Respondent could improve his practice to the point that he would no longer constitute a danger to his patients.

The Review Board believes that it is regrettable that the Respondent's medical career should end with the revocation of his license rather than with his voluntary retirement, but the Respondent can not be allowed to maintain a practice which poses such substantial risks to his patients. The Respondent is an elderly physician, with a limited practice, who poses a danger to his patients and who shows no sign this late in his career that he can commence to follow minimally acceptable standards for charting the course of his patients' conditions and for protecting his patients from the danger of infection.

**ORDER**

**NOW**, based upon this Determination, the Review Board issues the following **ORDER**:

1. The Review Board **sustains** the Hearing Committee on Professional Medical Conduct's July 18, 1994 Determination finding Dr. Anthony Ruggiero guilty of professional misconduct.

2. The Review Board **sustains** the Hearing Committee's Determination to **revoke** Dr. Ruggiero's license to practice medicine in New York State.

**ROBERT M. BRIBER**

**SUMNER SHAPIRO**

**WINSTON S. PRICE, M.D.**

**EDWARD SINNOTT, M.D.**

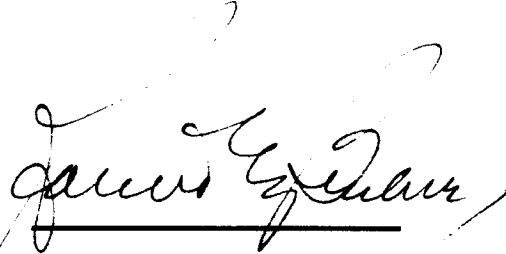
**WILLIAM A. STEWART, M.D.**

**IN THE MATTER OF ANTHONY RUGGIERO, M.D.**

**ROBERT M. BRIBER**, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Ruggiero.

**DATED: Albany, New York**

10/24, 1994

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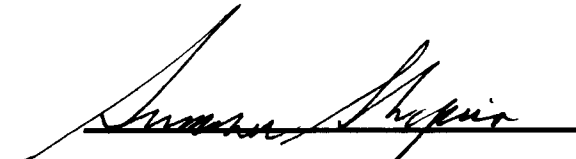
**ROBERT M. BRIBER**

**IN THE MATTER OF ANTHONY RUGGIERO, M.D.**

**SUMNER SHAPIRO**, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Ruggiero.

**DATED: Delmar, New York**

Oct 27, 1994

  
**SUMNER SHAPIRO**




**IN THE MATTER OF ANTHONY RUGGIERO, M.D.**

**WINSTON S. PRICE, M.D.**, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Ruggiero.

DATED: Brooklyn, New York

\_\_\_\_\_, 1994

  
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**WINSTON S. PRICE, M.D.**

**IN THE MATTER OF ANTHONY RUGGIERO, M.D.**

**WILLIAM A. STEWART, M.D.**, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Ruggiero.

**DATED: Syracuse, New York**

*9 Oct*, 1994

*William A Stewart*

**WILLIAM A. STEWART, M.D.**

**IN THE MATTER OF ANTHONY RUGGIERO, M.D.**

**EDWARD C. SINNOTT, M.D.**, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Ruggiero.

**DATED: Roslyn, New York**

*October 21*, 1994

A handwritten signature in cursive script, reading "Edward C. Sinnott, M.D.", written over a horizontal line.

**EDWARD C. SINNOTT, M.D.**