



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

Paula Wilson
Executive Deputy Commissioner

July 18, 1994

RECEIVED
JUL 19 1994
OFFICE OF PROFESSIONAL
MEDICAL CONDUCT

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

David W. Smith, Esq.
NYS Department 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

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

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

Enclosed please find the Determination and Order (No. 94-116) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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), "(t)he 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.

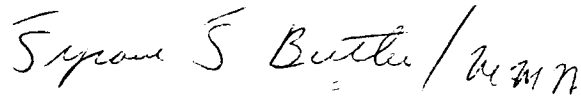
The notice of review served on the Administrative Review Board should be forwarded to:

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 / TTB".

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:mmn

Enclosure

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

-----X
IN THE MATTER : DETERMINATION
OF : AND
Anthony Ruggiero, M.D. : ORDER
: NO. BPMC-94-116
-----X

Olive Jacob, Chairperson, Sanders W. Davis, M.D, and Arthur J. Wise, Jr., M.D., duly designated members of the State Board for Professional Medical Conduct, appointed by the Commissioner of Health of the State of New York pursuant to Section 230(1) of the Public Health Law, served as the Hearing Committee in this matter pursuant to Sections 230(1)(e) and 230(12) of the Public Health Law. Ellen Simon, Esq., Administrative Law Judge, served as Administrative Officer for the Hearing Committee.

After consideration of the entire record, the Hearing Committee submits this determination.

SUMMARY OF THE PROCEEDINGS

Notice of Hearing dated:	March 2, 1994
Amended Statement of Charges dated:	April 20, 1994
Hearing Dates:	May 3, 1994 May 24, 1994
Deliberation date:	June 16, 1994
Place of Hearing:	NYS Department of Health 5 Penn Plaza New York, New York
Petitioner Appeared by:	Peter J. Millock, Esq. General Counsel

NYS Department of Health
By: David W. Smith, Esq.
Associate Counsel

Respondent appeared by:

Finkelstein Bruckman Wohl Most &
Rothman
575 Lexington Avenue
New York, New York
By: T. Lawrence Tabak, Esq.

AMENDED STATEMENT OF CHARGES

The Amended Statement of Charges essentially charges the Respondent with professional misconduct by reason of having failed to use adequate infection control procedures and having failed to maintain accurate, complete patient records.

The Charges are more specifically set forth in the Amended Statement of Charges, a copy of which is attached to and made a part of this Determination and Order.

FINDINGS OF FACT

Numbers in parentheses refer to exhibits, and they denote evidence that the Hearing Committee found persuasive in determining a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the evidence cited.

1. Anthony Ruggiero, M.D., the Respondent, was authorized to practice medicine in New York State in 1943 by the issuance of license number 041707 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 (Petitioner's Exhibit [hereinafter "Pet. Ex."] 2).

2. The Respondent maintains an office at 55 West 11th Street, New York, New York (Transcript at page [hereinafter "T"] 11; Pet. Ex. 2).

3. Pictures of such office were taken by Senior Medical Conduct Investigator Lawrence M. Matlin in June or July 1993, with the permission of the Respondent (T. 20, 24-26; Pet. Exs. 4-1 through 4-24).

4. These pictures show soiled walls and floors, lack of proper sterilizing equipment and handwashing facilities, no separation of clean and used medical equipment, improper storage of medication, inappropriate combinations of food, syringes, and medication in the refrigerator, no environmental control containers or red bags, and plenty of filled plastic garage bags strewn around (T. 13-19, 35-37, 48-55, 72-73; Pet. Exs. 4-1 through 4-24).

5. There is no credible evidence that the Respondent has any infection control procedures in place, and his office does not meet minimum acceptable medical standards for infection control (T. 48, 55; Pet. Exs. 4-1 through 4-24; paragraphs 1-4, supra).

6. The Respondent does not keep a separate chart for each patient. Instead, he keeps log books recording the patient name, date of visit, and treatment (T. 89-90; Pet. Exs. 3, 5, 6).

7. The Respondent makes all log book entries himself; he has no nurse, secretary or receptionist (T. 90-91).

8. The log book entries are not alphabetical but are made in order of visit. In order to put a patient record together, every page of every book must be reviewed (T. 79-90; Pet. Exs. 3, 5, 6).

9. The log books reflecting the care and treatment of Patients A-E were subpoenaed, but the Respondent failed to submit all of them (T. 79-90). The Respondent provided reconstructed patient charts, instead, for Patients A-E, but they have no basis in evidence (Pet. Exs. 5-11).

10. The two patient logs submitted by the Respondent show how he keeps his patient records (T. 79). They do not contain complete medical histories, physical examinations, laboratory tests and reports, references to prior visits, or, for patients treated for obesity, any heights, weights, or blood pressures. It is almost impossible to track the care of any patient, including patients A-E, from these log books (Pet. Exs. 5-11).

11. The Respondent's method of keeping patient records for all his patients, including patients A-E, does not provide accurate meaningful information about the evaluation and treatment of his patients (Pet. Exs. 5, 6; paragraphs 6-10, supra).

CONCLUSIONS

FIRST SPECIFICATION

The Hearing Committee hereby determines that the First Specification is sustained except that no evidence was offered as to whether or not the Respondent used or uses scientifically accepted barrier precautions in his practice. A preponderance of the evidence establishes, however, that the Respondent kept a filthy office and failed to practice infection control.

SECOND SPECIFICATION

The Hearing committee hereby determines that the Second Specification is sustained. A preponderance of the evidence establishes that the Respondent failed to keep accurate meaningful records of the evaluation and treatment of his patients.

From reviewing the photographs presented by the Department of Health and from the Respondent's own testimony, the Hearing Committee finds not only that the physical condition of the Respondent's office at the time the photographs were taken was filthy and deplorable but that the Respondent himself concurred that the photographs accurately represented the state of his office (T. 99-100, 105).

Moreover, the Hearing Committee believes that its findings evidence the Respondent's disregard for even minimally acceptable standards of infection control procedures and practices.

With respect to his patient records, the Respondent has admitted that it has never been his practice to keep an individual record for each patient (Pet. Ex. 3) And, despite a request from the Department for all of his records relating to Patients A through E, the Respondent failed to provide anything more than his log books for 1993 and 1994 and what he represented to be accurate reconstructions of his records for those patients compiled from his log books (T. 92-93) .

The record submitted for Patient D, for example (Pet. Ex. 10), begins with an office visit on March 2, 1987. Since there are not in evidence any original log books relating to the Respondent's treatment of any of his patients A through E for years other than 1993 and 1994, it is impossible for the Hearing Committee to determine whether, in fact, those reconstructed patients'

records (Pet. Exs. 7-11) are accurate and complete.

The Hearing Committee notes in addition that the reconstructed records in evidence differ substantially in form and content from the corresponding 1993 and 1994 log books in evidence and contain much more detail than those log books do. The Hearing Committee is at a loss to determine the source of that additional detail in the reconstructed patient records.

VOTE OF THE HEARING COMMITTEE AND DETERMINATION AS TO PENALTY

After reviewing the entire record in this matter and sustaining substantially all the charges and specifications, the Hearing Committee seriously considered all available penalties and has voted unanimously for revocation.

More specifically, in reaching this determination, the Hearing Committee considered whether a period of probation, retraining, and monitoring would be appropriate but has concluded that it would not.

ORDER

Based upon the foregoing, **IT IS HEREBY ORDERED THAT:**

1. The Respondent's license to practice medicine in the State of New York is hereby
REVOKED.

Dated: Albany, New York
July 13, 1994

Olive M. Jacob

Ms. Olive Jacob, (Chairperson)

Sanders W. Davis, M.D.
Arthur J. Wise, M.D.

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

-----X
: IN THE MATTER :
: OF : NOTICE
: ANTHONY RUGGIERO, M.D. : OF
: : HEARING
-----X

TO: ANTHONY RUGGIERO, M.D.
55 West 11th Street
New York, New York 10011

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 May, 1994, 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

March 2, 1994



CHRIS STERN HYMAN,
Counsel

Inquiries should be directed to: DAVID W. SMITH
Assistant Counsel
Bureau of Professional
Medical Conduct
5 Penn Plaza, 6th Floor
New York, New York 10001
Telephone No.: 212-613-2617

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

-----X AMENDED
IN THE MATTER : STATEMENT
OF : OF
ANTHONY RUGGIERO, M.D. : CHARGES
-----X

ANTHONY RUGGIERO, M.D., the Respondent, was authorized to practice medicine in New York State in 1943 by the issuance of license number 041707 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.

FACTUAL ALLEGATIONS

- A. Respondent has an office for the practice of medicine at 55 West 11th Street, New York City. In such office:
1. Respondent failed to maintain adequate facilities for the cleaning, sterilization, disinfecting or storage of patient care equipment.

2. Respondent failed to maintain adequate facilities for the separation of "clean" and "dirty" instruments.
 3. Respondent inappropriately maintains unprotected sharps scattered around the office without any indication of whether or not they have been used.
 4. Respondent failed to maintain adequate facilities for handwashing.
 5. In his refrigerator, Respondent failed to separate food, specimens, pharmaceuticals and other items to protect them from contamination.
- B. From in or about March, 1990 through in or about February, 1993, Respondent treated Patient A for cough and other medical conditions at his office at 55 West 11th Street, New York City. (All patients are identified in the Appendix attached hereto).
1. Respondent failed to maintain a record accurately reflecting the evaluation and treatment of Patient A.

C. On or about June 22, 1991, Respondent treated Patient B for apprehension and other medical conditions at his office at 55 West 11th Street, New York City.

1. Respondent failed to maintain a record accurately reflecting the evaluation and treatment of Patient B.

D. From in or about November, 1989 through in or about June, 1991, Respondent treated Patient C for anorexia and other medical conditions at his office at 55 West 11th Street, New York City.

1. Throughout the period, Respondent failed to maintain a record accurately reflecting the evaluation and treatment of Patient C.

E. From in or about July, 1987 through in or about March, 1993, Respondent treated Patient D for sore throat and other medical conditions at his office at 55 West 11th Street, New York City.

1. Throughout the period, Respondent failed to maintain a record accurately reflecting the evaluation and treatment of Patient D.

F. On or about July 13, 1991, Respondent treated Patient E for insomnia and other medical conditions at his office at 55 West 11th Street, New York City.

1. Respondent failed to maintain a record accurately reflecting the evaluation and treatment of Patient E.

SPECIFICATIONS

FIRST SPECIFICATION

LACK OF INFECTION CONTROL

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law Section 6530(47) (McKinney Supp. 1994) in that Respondent failed to use scientifically accepted barrier precautions and infection control precautions as established by the Department of Health pursuant to Section 230-a of the Public Health Law. Specifically, Petitioner charges:

1. The facts in Paragraphs A and A1- 5.

SECOND THROUGH SIXTH SPECIFICATIONS

FAILURE TO MAINTAIN RECORDS

Respondent is charged with failure to maintain a record for each patient which reflects the evaluation and treatment of such patient within the meaning of N.Y. Education Law Section 6530(32) (McKinney Supp. 1994). Specifically, Petitioner charges:

2. The facts in Paragraphs B and B1.
3. The facts in Paragraphs C and C1.
4. The facts in Paragraphs D and D1.
5. The facts in Paragraphs E and E1.
6. The facts in paragraphs F and F1.

DATED: New York, New York
4/20/94

Chris Stern Hyman

CHRIS STERN HYMAN
COUNSEL
Bureau of Professional
Medical Conduct