



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Antonia C. Novello, M.D., M.P.H., Dr.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

October 25, 2002

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Giuliano Russo, M.D., a/k/a Guiliano Russo, M.D.
P.O. Box 924210
Homestead, Florida 33092

Giuliano Russo, M.D., a/k/a Guiliano Russo, M.D.
19150 SW 248th Street
Homestead, Florida 33031-1797

Giuliano Russo, M.D., a/k/a Guiliano Russo, M.D.
15545 Miami Lakeway N
Hialeah, Florida 33014

Robert Bogan, Esq.
Associate Council
NYS Department of Health
Office of Professional Medical conduct
433 River Street – Suite 303
Troy, New York 12180

**RE: In the Matter of Giuliano Russo, M.D.
A/K/A Guiliano Russo, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. BPMC 02-330) 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 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
Hedley Park Place
433 River Street - Fourth Floor
Troy, New York 12180

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 penalties other than suspension or revocation 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
Hedley Park Place
433 River Street, Fifth Floor
Troy, New York 12180

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 black ink that reads "Tyrone T. Butler". The signature is written in a cursive style with a large initial 'T'.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:djh
Enclosure

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

COPY

DETERMINATION

AND

ORDER

BPMC NO. 02-330

IN THE MATTER
OF
GIULIANO RUSSO, M.D.

A Notice of Referral Proceeding and Statement of Charges, both dated September 9, 2002, were served upon the Respondent, **GIULIANO RUSSO, M.D.** **FRANK E. IAQUINTA, M.D.**, Chairperson, **WILLIAM K. MAJOR, M.D.** and **MS. DONNA MICKLEY**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. **STEPHEN L. FRY, ESQ.**, Administrative Law Judge, served as the Administrative Officer.

A hearing was held on October 16, 2002, at the Offices of the New York State Department of Health, Hedley Park Place, 433 River Street, Troy, New York. The Department appeared by **DONALD P. BERENS, JR., ESQ.**, General Counsel, **ROBERT BOGAN, ESQ.**, of Counsel. The Respondent did not appear at the hearing.

Evidence was received and transcripts of these proceedings were made.

After consideration of the entire record, the Hearing Committee issues this Determination and Order.

1. **GIULIANO RUSSO, M.D.**, the Respondent, was authorized to practice medicine in New York State on June 17, 1975, by the issuance of license number 123959 by the New York State Education Department (Ex. 4).
2. On December 18, 2001, The State of Florida Board of Medicine ("the Florida Board") issued a Final Order wherein Respondent's license to practice medicine was suspended until such time as he personally appears before the Board and demonstrates the ability to practice medicine with skill and safety and offers an explanation to the Board as to the matters raised in the Complaint which led to the proceeding (Respondent did not appear at the hearing, did not contest the allegations in the Complaint and was found to be in default). The Board noted in the Order (Ex. 5) that it found as aggravating factors that Respondent's departure from standards of practice, as set forth in the Administrative Complaint that initiated the proceeding, was "serious" and that it resulted in the death of a patient. The allegations in the Complaint related to Respondent's transfer of an emergency room patient to a psychiatric hospital without ascertaining or following up on the patient's blood lithium level test results (the patient died of complications from lithium toxicity).

HEARING COMMITTEE CONCLUSIONS

The hearing Committee concludes that the conduct resulting in the Florida Board's disciplinary action against Respondent would constitute misconduct under the laws of New York State, pursuant to New York Education Law §6530(3) (negligence on more than one occasion) and (4) (gross negligence)¹.

VOTE OF THE HEARING COMMITTEE

SPECIFICATIONS

FIRST SPECIFICATION

Respondent violated New York Education Law §6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state.

VOTE: SUSTAINED (3-0)

SECOND SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by having had disciplinary action taken after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action would, if committed in New York state, constitute professional misconduct under the laws of New York state.

VOTE: SUSTAINED (3-0)

¹ The Florida Order contains no findings tantamount to findings of incompetence, so the allegations that Respondent's conduct would have constituted gross incompetence or incompetence on more than one occasion in this state were not substantiated.

HEARING COMMITTEE DETERMINATION

It is noted at the outset that it is apparent from the evidence presented and the representations of the Department's attorney at the hearing, that Respondent probably did not receive actual notice of the instant hearing. The Administrative Law Judge ruled, however, and for reasons set forth in the next paragraph, that the Department met the statutory service requirements and that the hearing could proceed in Respondent's absence.

On September 25, 2002, a process server attempted unsuccessfully to personally serve Respondent with a copy of the Notice of Referral Proceeding, Statement of Charges and Summary of the Health Department Hearing Rules. The Affidavit of the process server (Ex. 2) contains a note that the current resident stated that Respondent had moved to Palermo Sicily one year previously. On September 10, 2002, the Department mailed to Respondent by first class mail and Certified Mail, Return Receipt Requested, copies of the same documents addressed to his last three know addresses. Service by this means failed, and on September 24, 2002, the Department repeated the same mailing, adding another address for Respondent as provided by the Florida Board (Ex.'s 3A and 3B). When these mailings failed, one of the Department's attorneys contacted a representative of the Florida Board and ascertained that the Board had sent correspondence to Respondent at the last address he had listed (one of the addresses to which this Department's mailings were made), but that these mailings had been returned to it without delivery. The Florida Board also reported that Respondent had not contacted the Board since its Order was issued.

Pursuant to §230(10)(d) of the Public Health Law, a copy of the charges and the notice of hearing shall be served on the licensee personally by the board at least twenty days

before the hearing. If personal service cannot be made after due diligence and such fact is certified under oath, a copy of the charges and the notice of hearing shall be served by registered or certified mail to the licensee's last known address by the board at least fifteen days before the hearing.

In this case, personal service attempted pursuant to the statute was unsuccessful, so service by mail was authorized. Service was attempted by Certified and regular mail to Respondent's the last known addresses, which is what is required by, and satisfies, the statute. Any failure of Respondent to receive actual notice of the instant hearing was occasioned by his own failure to keep the New York State Education Department apprised of his current address, as required by law (Education Law §6502(5)) and to keep the Florida Board apprised of his address.

On the merits, it is clear that Respondent's conduct would have constituted misconduct in New York State, as specified above. Therefore, the only issue to be addressed at this proceeding is the penalty to be imposed. The Respondent has presented no evidence in mitigation of the sanction of revocation proposed by the Department, such as of evidence of remorse, rehabilitation or training, or other factors that might weigh against the imposition of the sanction of revocation. There is, in short, no evidence that Respondent could be expected to practice medicine safely in this state were he to move here and be allowed to retain his license. As far as this record reveals, Respondent has abandoned the practice of medicine in this country. Accordingly, the Hearing Committee concludes that Respondent's New York medical license should be revoked. It is noted, however, that Respondent may reapply for a New York license after three years and provide evidence that he can safely practice medicine at that time.

ORDER

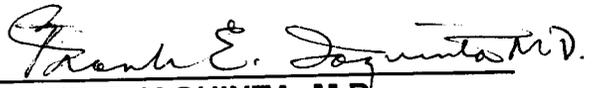
IT IS HEREBY ORDERED THAT:

The New York medical license of **GIULIANO RUSSO, M.D.** is **REVOKED**.

The **ORDER** shall be effective upon service on the Respondent or the Respondent's attorney by personal service or by certified or registered mail.

DATED: LAKE SUCCESS, NEW YORK

October 22, 2002


FRANK E. IAQUINTA, M.D.
Chairperson

WILLIAM K. MAJOR, M.D.
MS. DONNA MICKLEY

APPENDIX 1



IN THE MATTER
OF
GIULIANO RUSSO, M.D., aka GUILIANO RUSSO, M.D.
CO-02-02-0892-A

NOTICE OF
REFERRAL
PROCEEDING

TO: GIULIANO RUSSO, M.D., aka GUILIANO RUSSO, M.D.
P.O. Box 924210
Homestead, FL 33092

GIULIANO RUSSO, M.D., aka GUILIANO RUSSO, M.D.
19150 SW 248th Street
Homestead, FL 33031-1797

GIULIANO RUSSO, M.D., aka GUILIANO RUSSO, M.D.
15545 Miami Lakeway N
Hialeah, FL 33014

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law § 230(10)(p) and N.Y. State Admin. Proc. Act Sections 301-307 and 401. The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 16th day of October 2002, at 10:00 in the forenoon of that day at the Hedley Park Place, 5th Floor, 433 River Street, Troy, New York 12180.

At the proceeding, evidence will be received concerning the allegations set forth in the attached Statement of Charges. A stenographic record of the proceeding will be made and the witnesses at the proceeding will be sworn and examined.

You may appear in person at the proceeding and may be represented by counsel. You may produce evidence or sworn testimony on your behalf. Such evidence or sworn testimony shall be strictly limited to evidence and testimony relating to the nature and severity of the penalty to be imposed upon the licensee. Where the charges are based on the conviction of state law crimes in other jurisdictions, evidence may be offered that would show that the conviction would not be a crime in New York state. The

Committee also may limit the number of witnesses whose testimony will be received, as well as the length of time any witness will be permitted to testify.

If you intend to present sworn testimony, the number of witnesses and an estimate of the time necessary for their direct examination must be submitted to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Hedley Park Place, 5th Floor, 433 River Street, Troy, New York, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (hereinafter "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before October 7, 2002.

Pursuant to the provisions of N.Y. Public Health Law §230(10)(p), you shall file a written answer to each of the Charges and Allegations in the Statement of Charges no later than ten days prior to the hearing. Any Charge of Allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such an answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below. You may file a brief and affidavits with the Committee. Six copies of all such papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before October 7, 2002, and a copy of all papers must be served on the same date on the Department of Health attorney indicated 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.

The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to the Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five days prior to the scheduled date of the proceeding. Adjournment requests are not routinely granted. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation. Failure to obtain an attorney within a reasonable period of time prior to the proceeding will not be grounds for an adjournment.

The Committee will make a written report of its findings, conclusions as to guilt, and a determination. Such determination may be reviewed by the Administrative Review Board for Professional Medical Conduct.

SINCE THESE PROCEEDINGS MAY RESULT IN A DETERMINATION
THAT SUSPENDS OR REVOKES YOUR LICENSE TO PRACTICE
MEDICINE IN NEW YORK STATE AND/OR IMPOSES A FINE FOR
EACH OFFENSE CHARGED, YOU ARE URGED TO OBTAIN AN
ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York

September 9, 2002



PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional Medical Conduct

Inquiries should be addressed to:

Robert Bogan
Associate Counsel
New York State Department of Health
Office of Professional Medical Conduct
433 River Street – Suite 303
Troy, New York 12180
(518) 402-0828

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

IN THE MATTER
OF
GIULIANO RUSSO, M.D., aka GIULIANO RUSSO, M.D.
CO-02-02-0892-A

STATEMENT
OF
CHARGES

GIULIANO RUSSO, M.D., aka GIULIANO RUSSO, M.D., the Respondent, was authorized to practice medicine in New York state on June 17, 1975, by the issuance of license number 123959 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about December 18, 2001, the State of Florida, Board of Medicine (hereinafter "Florida Board"), by a Final Order (hereinafter "Florida Order"), found Respondent to be in DEFAULT, and SUSPENDED Respondent's license to practice medicine until such time as he personally appears before the Board and demonstrates the ability to practice with skill and safety, based on gross or repeated malpractice or the failure to practice medicine with that level of care, skill, and treatment recognized by a reasonably prudent physician as being acceptable under similar conditions and circumstances, resulting in the death of a patient.

B. The conduct resulting in the Florida Board disciplinary actions against Respondent would constitute misconduct under the laws of New York state, pursuant to the following sections of New York state law:

1. New York Education Law §6530(3) (negligence on more than one occasion);
 2. New York Education Law §6530(4) (gross negligence);
 3. New York Education Law §6530(5) (incompetence on more than one occasion);
- and/or
4. New York Education Law §6530(6) (gross incompetence).

SPECIFICATIONS

FIRST SPECIFICATION

Respondent violated New York State Education Law §6530(9)(b) having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based, would if committed in New York state, would constitute professional misconduct under the laws of New York State, in that Petitioner charges:

1. The facts in Paragraphs A and/or B.

SECOND SPECIFICATION

Respondent violated New York State Education Law §6530 (9)(d) by having his license to practice medicine suspended or having other disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the suspension or other disciplinary action would, if committed in New York state, constitute professional misconduct under the laws of New York state, in that Petitioner charges:

2. The facts in Paragraphs A and/or B.

DATED: *September 9*, 2002
Albany, New York


PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional
Medical Conduct