

**NEW YORK**  
state department of  
**HEALTH**

Public ✓

Nirav R. Shah, M.D., M.P.H.  
Commissioner

Sue Kelly  
Executive Deputy Commissioner

September 13, 2011

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Denise Quarles, Esq.  
Quarles & Associates, P.C.  
45 Rockefeller Plaza, Suite 2000  
New York, New York 10111

Daniel Guenzburger, Esq.  
NYS Department of Health  
90 Church Street - 4<sup>th</sup> Floor  
New York, New York 10007

**RE: In the Matter of Eddy G. Rodriguez, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 11- 218) 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), (McKinney Supp. 2007) and §230-c subdivisions 1 through 5, (McKinney Supp. 2007), "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,

REDACTED

James F. Horan, Acting Director  
Bureau of Adjudication

JFH: nm  
Enclosure

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

COPY

IN THE MATTER  
OF  
EDDY G. RODRIGUEZ, M.D.

DETERMINATION  
AND  
ORDER

BPMC NO. 11-218

Alan Kopman, FACHE (Chair), Ralph J. Lucariello, M.D., and James R. Dickson, M.D., duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to §230(10) of the Public Health Law.

Christine C. Traskos, Esq., Administrative Law Judge, ("ALJ") served as the Administrative Officer. The Department of Health appeared by Daniel Guensburger, Esq., Associate Counsel. Respondent, Eddy G. Rodriguez, M.D. appeared personally and was represented by Quarles & Associates, P.C., Denise L. Quarles, Esq. of Counsel.

Evidence was received and examined, including witnesses who were sworn or affirmed. Transcripts of the proceeding were made. After consideration of the record, the Hearing Committee issues this Determination and Order.

PROCEDURAL HISTORY

Date of Notice of Hearing and Statement of Charges:	January 5, 2011
Date of Answer to Charges:	February 17, 2011
Hearings Dates:	March 1, 2011 April 13, 2011 April 27, 2011 May 24, 2011
Pre-Hearing Conference Held:	February 23, 2011
Location of Hearing:	Department of Health Office 90 Church Street New York, NY 10007

Witness called by the Department of Health:	Joseph H. Feinberg, M.D.
Witness called by the Respondent:	Eddy G. Rodriguez, M.D.
Department's Proposed Findings of Fact, Conclusions of Law, and Sanction:	Received June 27, 2011
Respondent's Proposed Findings of Fact, Arguments, and Conclusion:	Received July 15, 2011
Deliberations Held:	August 9, 2011 <sup>1</sup>

### STATEMENT OF CASE

The State Board for Professional Medical Conduct is a duly authorized professional disciplinary agency of the State of New York (§230 *et seq.* of the Public Health Law of the State of New York ["P.H.L."]). This case was brought by the New York State Department of Health, Bureau of Professional Medical Conduct ("Petitioner" or "Department") pursuant to §230 of the P.H.L. Eddy Rodriguez, M.D. ("Respondent") is charged with seven (7) specifications of professional misconduct pursuant to §6530 of the Education Law of the State of New York ("Education Law").

Respondent is charged with professional misconduct by reason of: practicing the profession with negligence on more than one occasion, practicing the profession with incompetence on more than one occasion and ordering excessive testing. The charges are more specifically set forth in the Statement of Charges, dated January 5, 2011, a copy of which is attached as Appendix 1 and made a part of this Determination and Order. Respondent denies the factual allegations and specifications of misconduct contained in the Statement of Charges.

### FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record available to the Hearing Committee. These facts represent documentary evidence and testimony found persuasive by the Hearing Committee in arriving at a particular finding. Where there was conflicting evidence, the Hearing Committee considered all of the evidence presented and

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<sup>1</sup> Re-scheduled from July 20, 2011 at request of Hearing Committee Member.

rejected what was not relevant, believable or credible in favor of the cited evidence. The Petitioner, which has the burden of proof, was required to prove its case by a preponderance of the evidence.

All Findings of Fact made by the Hearing Committee were established by at least a preponderance of the evidence.<sup>2</sup>

1. Respondent, EDDY G. RODRIGUEZ, M.D. was authorized to practice medicine in New York State on or about September 16, 1974 by the issuance of license number 121766 by the New York State Education Department. (Pet. Ex. 2a)
2. Between 1973 and 1975 the Respondent performed a residency in physical medicine and rehabilitation ("PMR") at Downstate Medical Center. Respondent failed the PMR board certifying examination on two occasions. Respondent never obtained board certification in PMR and he lacks certification from the specialty board in electro-diagnostic medicine. (T. 17, 310 and 311)
3. Respondent's medical practice consists almost entirely of treating personal injury patients whose medical care is paid for by no-fault insurance and workers compensation. (T. 504) For over three years, from on or about June 2006 until August 2009, Respondent worked two days a week at an office located at 71 South Central Avenue, Valley Stream, New York. (T. 351, 507 and 520) Respondent described the Valley Stream practice as a shared facility, which included physicians, physical therapists, psychologists, chiropractors, neurologists and other health care professionals. (T.372-374)
4. Respondent was the director and sole shareholder of medical professional service corporation called Valley Medical Care PC (the "PC"). (Pet. Ex. 2a) The PC was the legal entity through which the Respondent conducted his Valley Stream practice.
5. The Respondent hired an administrator who ran the administrative side of Respondent's practice at the Valley Stream facility. The administrator was responsible for submitting insurance claims. (T. 524) Respondent acknowledged that he was the "boss" and the administrator was his employee. (T. 525)

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<sup>2</sup> Numbers in parentheses refer to Hearing transcript page numbers (T.). "Ex." refers to Exhibits admitted into evidence by Petitioner/Department (Pet.) or Respondent (Resp.).

6. Respondent became aware that his medical records were being tampered with several months after he started practicing at the Valley Stream location. (T. 370) Respondent admitted that he knew that the altered medical records were being used to support insurance claims. (T.374-375, 395) Said insurance claims included medical care provided by other health care professionals that were billed through Respondent's PC, including electrocardiograms and spirometry performed by an internist and videonstagnography and electroencephalography performed by a neurologist. (Pet. Exs.4 through 9, T. 442)
7. The Travelers Insurance Company had an ongoing fraud investigation of Respondent's Valley Stream practice. The investigation included review of medical records, including the records of the five patients that are the subject of the Department's Statement of Charges. Respondent left the Valley Stream practice on or about August 2009, after he became aware that he was also being investigated by the Department of Health. (T. 375, 389, 448)

#### PATIENT A

8. On or about November 27, 2007, Respondent treated Patient A, a 46 year old male, for injuries sustained in a motor vehicle accident. ("MVA"). The MVA occurred three days before the office visit. The Patient complained of neck pain, low back pain, right shoulder pain, and pain and numbness radiating down the right upper limb and left lower limb (Pet. Ex. 4 )
9. Respondent inappropriately diagnosed left cervical radiculopathy and lumbar radiculopathy. Respondent noted six diagnoses based on his clinical examination, including a diagnosis of rule out cervical radiculopathy (diagnosis #2) and rule out lumbar radiculopathy (diagnosis #3). (Pet. Ex.4) Radiculopathy is a term that describes injury or compression to a nerve root. Respondent deviated from medically accepted standards by failing to identify whether the radiculopathy was on the left or right side of the spine. (T.33, 35-36)
10. A clinician who suspects possible radiculopathy should focus his physical examination on the following three areas: 1) testing muscle strength; 2) checking sensation; and 3) testing reflexes. Abnormal findings in any of these three areas raises concern about impaired nerve function (T.35) The test for muscle strength is based

on a patient's resistance to the examiner. The examiner rates the muscle strength on a scale of 0 to 5 with 5 being a completely normal finding. (T. 35)

11. Respondent failed to meet accepted medical standards with respect to his diagnosis of lumbar radiculopathy. Patient A had intact sensation and reflexes and Respondent did not perform the critical evaluation of muscle strength for the lower extremities. (T.36; Pet. Ex. 4)
12. Respondent failed to meet accepted medical standards with respect to his diagnosis of cervical radiculopathy. Respondent failed to specify whether the cervical radiculopathy was on the left or on the right. In addition, in the left upper extremity Patient A had normal strength, intact sensation and normal reflexes. Thus, on the left side Patient A had a completely normal physical examination and there was no basis for diagnosing a left cervical radiculopathy. (T. 34- 35; Pet. Ex. 4)
13. Respondent deviated from medically accepted standards by ordering electro-diagnostic studies for both lower extremities. Patient A did not exhibit neurological deficits on physical examination. In addition, the Patient did not complain of symptoms which raise the suspicion of nerve injury. (T.39-40)
14. Similarly, Respondent inappropriately ordered an EMG and NCV of the left upper extremity. The Respondent lacked appropriate indication for performing the electro-diagnostic study because Patient A did not exhibit neurological deficits in the upper left extremity.(T.40)
15. Respondent's defense of ordering and performing the electro diagnostic study on the left upper extremity demonstrates either a lack of comprehension of electro-diagnostic theory and practice, or, alternatively, is evidence of a calculated effort to inflate his billing. Respondent testified that he performed an EMG/NCV study on the left healthy limb for purposes of comparison to the limb with suspected injury. While there are certain conditions where it is useful to compare the electro-diagnostic results from the healthy extremity to the side with injury, Dr. Feinberg opined that such comparative testing is not indicated in the case of radiculopathy (T.40) As Dr. Feinberg testified: "... if all I was concerned about was just cervical radiculopathy, then comparison means nothing especially if the results are normal. And even if they're abnormal, unless there is some unusual circumstance to suspect a more generalized condition, there would not be a reason to do another

side.” (T. 152)

16. Respondent inappropriately evaluated the EMG study of the upper and lower extremities. Respondent diagnosed a C5-C6 radiculopathy on the right upper extremity and a C8-T1 radiculopathy on the left upper extremity. He also diagnosed an L4-L5 radiculopathy on the right and left. An electro-diagnostic impression of radiculopathy should be based on a finding of abnormal activity in both a paraspinal muscle, a muscle near the spine, and abnormal activity in a muscle in the limb. In each instance where Respondent diagnosed radiculopathy the only abnormal electro-diagnostic finding was in a paraspinal muscle. (T. 49-51; 181- 183; Pet. Ex.. 4, p 19)
17. Respondent inappropriately ordered a somatosensory evoked potential test. The SSEP measures nerve conduction from the brain to the periphery, rather than within the limb like the EMG and NCV. The SSEP is primarily used to look at central neurological conditions. The test is most frequently used for intra-operative monitoring and for diagnosing problems with the brain or spinal cord. Respondent lacked appropriate indication to order the SSEP because if you suspect radiculopathy the appropriate tests are the tests which he had already performed, the EMG/NCV. (T.41)
18. Respondent conceded that his electro-diagnostic study for Patient A lacked “all of the findings that are normally described in the literature and that are established by standards...” (T.325) However, because Respondent concluded that the EMG/NCV findings were equivocal, he ordered additional electro-diagnostic testing to “complement” the EMG/NCV findings. The additional test was a somatosensory evoked potential test (“SSEP”) (T. 325)
19. Respondent failed to note the date of the examination on the electro-diagnostic reports for Patients A through E. Respondent conceded that the lack of a date on the report of the electro-diagnostic study was an error. Respondent claimed that he performed electro-diagnostic studies between 3 to 6 weeks after the injury, but the only documentation of when the study was performed was the date of service on the insurance claim. (T. 322-323; Pet. Exs. 4-9)
20. An electro-diagnostic study performed for suspected radiculopathy should not be conducted within the first two weeks of injury. Whether the electro-diagnostic studies for Patient A were performed at an appropriate time could not be adequately evaluated due to the lack of credible documentation of the date the test was performed. (T. 164)

21. Respondent inappropriately ordered an electrocardiogram ("EKG")/stress test. The EKG/stress test was inappropriately ordered since Patient A did not exhibit symptoms that would be considered cardiac in origin. (T. 42-44) Further, in the section of the chart entitled "Review of Systems", the Respondent noted that the Patient's cardiovascular and respiratory systems were normal. (Pet. Ex. 4, p.3)
22. Respondent inappropriately ordered spirometry. Spirometry tests lung function. Respondent lacked appropriate indication for ordering the test because Patient A had a normal lung exam and the Patient did not report any symptoms of abnormal lung function, such as difficulty breathing or shortness of breath. (T.45; Pet. Ex. 4)
23. Patient A was treated with physical therapy from November 27, 2007 through February 15, 2008. The treatment consisted of electrical stimulation, hot or cold packs and therapeutic exercise. The Respondent conceded that the diagnostic work-up had no impact on the patient's treatment. (Pet. Ex. 4a; T.342)

#### **PATIENT B**

24. On or about July 17, 2007, Respondent, treated Patient B, a 34 year female, at his office for injuries the Patient sustained in an automobile accident. Patient B complained of pain in the left shoulder/arm, neck and lower back. (Pet. Ex.5)
25. As with the previous Patient and all others, Respondent diagnosed cervical and lumbar radiculopathy without specifying whether the radiculopathy was on the left or right. (T.172)
26. As with the previous patient and all others, Respondent deviated from accepted standards in the manner he evaluated and noted muscle weakness. In those instances where the Respondent evaluated muscle weakness in an extremity, he would note muscle weakness without specifying which muscle was weak. Dr. Feinberg characterized the Respondent's evaluation of muscle weakness as "vague, non-descript and not standard of care muscle testing." (T.172, Pet. Ex. 5, p. 4)
27. Respondent inappropriately diagnosed lumbar radiculopathy and right cervical radiculopathy. Respondent diagnosed lumbar radiculopathy without performing an adequate neurological examination. Respondent did not even evaluate muscle strength of the lower extremities. (T.173)

28. With respect to the diagnosis of cervical radiculopathy, the Patient had muscle weakness and symptoms on the left. Although a diagnosis of a left radiculopathy would have been acceptable, there was absolutely no basis for a diagnosis of right radiculopathy. (T. 172)
29. Respondent inappropriately ordered an EMG/NCV study of the lower limbs and right upper limb. Patient B did not report symptoms consistent with radiculopathy in either lower limb or the right upper limb and there were no findings on physical examination to justify ordering the electro-diagnostic studies. (T.174)
30. Respondent inappropriately ordered an SSEP. The ordering of the SSEP was unnecessary for the same reasons as set forth in the Findings regarding Patient A.
31. Respondent inappropriately ordered an EKG/stress test. There was no reason to order the tests because Patient B, a 34 year old female, did not present with any issues of a cardiac nature. (T.178)
32. Respondent inappropriately ordered spirometry. There was no reason to order this test because the patient did not present with pulmonary symptoms. (T.178)
33. Respondent inappropriately order videostagnography ("VENG"). Videostagnography is a test to evaluate inner ear problems. The test is indicated in situations where the patient presents with symptoms of dizziness, difficulty hearing and balance issues. Patient B did not present with any of these symptoms. (T.179)
34. Respondent offers inconsistent defenses to the charge that he inappropriately ordered a VENG. First Respondent testified that "... in this instance I don't know if this patient hit her head so the VENG can be warranted..." (T.369) Then Respondent testified "...but I would say that I did not order it." (T. 369) Respondent's assertion that he did not order the VENG is not credible because the order appears in his handwritten note, the type-written narrative report of the initial consultation, and Respondent billed for the procedure through his professional service corporation. (Pet. Ex. 5, pp. 6, 17, 37) (Pet. Ex.6, p. 55)
35. Respondent inappropriately evaluated the EMG study of the upper and lower extremities. As previously discussed, an electro-diagnostic impression of radiculopathy must be based on an abnormal EMG finding in both a paraspinal muscle and a muscle in the limb. Respondent inappropriately concluded that Patient B had a left radiculopathy at

C6-C7 based solely on an abnormal finding in a left cervical paraspinal muscle. (T. 182)

### PATIENT C

36. On or about May 2, 2007, Respondent, treated Patient C, a 20 year old male, at his office for injuries the patient had sustained in an automobile accident. Patient C complained of headaches and dizziness, lower back pain and pain radiating to both legs. (Pet. Ex.6)
37. The Respondent inappropriately diagnosed lumbar radiculopathy. Respondent failed to support the diagnosis with an appropriate findings on physical examination. In particular, he failed to perform muscle strength testing of the lower limbs. (T.198)
38. The Respondent inappropriately ordered an EMG/NCV study of the lower limbs. Respondent's physical examination did not support a need for performing the test because no abnormal reflexes were noted. (T. 210)
39. Respondent inappropriately ordered an SSEP. The ordering of the SSEP was inappropriate for the reasons previously set forth in these Findings.
40. Respondent inappropriately ordered an EKG/stress test. Patient C did not have cardiac symptoms. (T. 211)
41. Respondent inappropriately ordered spirometry. There was no reason to order this test because Patient C did not present with pulmonary symptoms. (T.211)
42. Respondent inappropriately ordered computerized range of motion testing. Computerized range of motion testing is performed with a machine and there is a machine generated report. Computerized range of motion testing has not been accepted as the standard of care. Respondent had already checked the range of motion manually. (Pet. Ex. 5, pp. 3-5) The results of Respondent's manual range of motion testing provided all the information necessary for treating Patient C. In fact, manual range of motion testing is superior to computerized range of motion testing because, in the event the range of motion is found to be restricted, the clinician often gains insight into the cause of the restriction when he or she evaluates the range of motion manually. (T.214)
43. Respondent inappropriately evaluated the EMG/NCV study of the lower extremities. Respondent diagnosed a

bilateral L4-L5 radiculopathy. His electro-diagnostic impression is inappropriate because there were only abnormal findings in the paraspinal muscles. There should have been abnormal activity in a limb muscle as well as in the paraspinal muscles. (T.218)

#### **PATIENT D**

44. On or about June 19, 2007, Respondent, treated Patient D, a 38 year old female, at his office for injuries the patient had sustained in an automobile accident. Patient D complained of neck pain and pain radiating to both arms and shoulders. (Pet. Ex.. 7)
45. Respondent inappropriately ordered the following tests: SSEP; EKG/Stress test; Spirometry; and VENG. The indications for ordering these tests were discussed in previous Findings. Patient D lacked symptoms and/or findings on physical examination that would justify the ordering of the tests. Dr. Feinberg opined as to the reasons the ordering of the tests lacked appropriate medical indication: SSEP (T. 223-224); EKG/Stress test (T.224); Spirometry (T.224); VENG (T.225).
46. Respondent inappropriately ordered electroencephalography ("EEG"). The EEG is a test that is ordered to evaluate brain function. The test is usually performed for a patient who has had a seizure or an injury to the head. Patient D did not present with these symptoms nor did Respondent make physical examination findings that would suggest brain injury. (T.225)

#### **PATIENT E**

47. On or about June 11, 2007, Respondent, treated Patient E, a 26 year old female, at his office for injuries the patient had sustained in an automobile accident. Patient E complained of neck pain, pain radiating into the shoulders, pain in the left elbow and right knee, low back stiffness and pain radiating into the legs. (Dept. Ex. 8, pp.4-5)
48. Respondent inappropriately diagnosed lumbar radiculopathy. Respondent made the diagnosis without performing an adequate neurological exam. He did not perform strength testing. In addition, Patient E's sensory exam was normal. (T. 228-229)
49. The indications for ordering these tests were discussed in previous Findings. Patient E lacked symptoms and/or

findings on physical examination that would justify the ordering of these tests. Dr. Feinberg explained why the ordering of the various tests lacked appropriate medical indication as follows: SSEP (T. 230-231); EKG/stress test (T. 230); Spirometry. (T. 230)

### CONCLUSIONS OF LAW

Respondent is charged with seven (7) specifications alleging professional misconduct within the meaning of §6530 of the Education Law. §6530 of the Education Law sets forth a number and variety of forms or types of conduct which constitute professional misconduct. However §6530 of the Education Law does not provide definitions or explanations of some of the misconduct charged in this matter. During the course of their deliberations on these charges, the Hearing Committee consulted a memorandum prepared by the General Counsel for the Department of Health. This document entitled: Definitions of Professional Misconduct under the New York Education Law sets forth suggested definitions for gross negligence, negligence, gross incompetence, incompetence and the fraudulent practice of medicine.

The following definitions were utilized by the Hearing Committee during its deliberations:

#### Negligence on More Than One Occasion

Negligence in a medical disciplinary proceeding is defined as the failure to exercise the care that would be exercised by a reasonably prudent physician under the circumstances. It is not necessary for the Department to prove that any negligence by the Respondent caused actual harm to a patient. If the Hearing Committee should find negligence on more than one occasion, but that the negligence did not cause harm to a patient, then the lack of harm is a factor that may be considered on the question of what penalty, if any, should be imposed. Similarly, if the negligence did cause harm to a patient, then that is a factor that may be considered on the question of what penalty, if any, should be imposed.

#### Incompetence on More Than One Occasion

Unlike negligence, which is directed to an act or omission constituting a breach of the duty of due care, incompetence on more than one occasion is directed to a lack of the requisite knowledge or skill in the performance of the act or the practice of the profession. The word "incompetence" is to be interpreted by its everyday meaning. These factors may include the Hearing Committee's impression of Respondent's technical knowledge and competence on the various issues and the charges under consideration.

Using the above-referenced definition as a framework for its deliberations, the Hearing Committee concluded, by preponderance of the evidence, that all seven (7) specifications of professional misconduct should be sustained. The rationale for the Committee's conclusions regarding each specification of misconduct is set forth below.

At the outset of deliberations, the Hearing Committee made a determination as to the credibility of the witnesses presented by the parties. The Committee must determine the credibility of the witnesses in weighing each witness's testimony. First, the Hearing Committee must consider whether the testimony is supported or contradicted by other independent objective evidence. When the evidence is conflicting and presents a clear-cut issue as to the veracity of the opposing witnesses, it is for the Hearing Committee to pass on the credibility of the witness and base its inference on what it accepts as the truth. Where a witness's credibility is at issue, the Committee may properly credit one portion of the witness's testimony and, at the same time, reject another. The Hearing Committee also understood that they had the option of completely rejecting the testimony of a witness where they found that the witness testified falsely on a material issue.

With regard to the testimony presented, the Hearing Committee evaluated all witnesses for possible bias or motive. The witnesses were also assessed according to their training, experience, credentials, and demeanor.

The Department called Joseph H. Feinberg, M.D., M.S., as its expert and sole witness. Dr. Feinberg is board certified in physical medicine and rehabilitation. He is also board certified in sports medicine and electrodiagnostics.(T. 17) The Hearing Committee found Dr. Feinberg to be well credentialed, extensively published and very knowledgeable in electrodiagnostics. The Hearing Committee found his testimony to be very credible.

Respondent took the stand on his behalf. The Hearing Committee found that Respondent did not testify in straightforward manner. Respondent's answers to Committee questions demonstrated a clear lack of skill because he could not explain the nature of the tests that were ordered, particularly the EKG, spirometry and SSEP tests. The Hearing Committee did not believe Respondent's explanation that some tests were circled by him but others were not, even though he signed off on all of them. More importantly, the Hearing Committee finds as incredible Respondent's explanation that he continued to work at the Valley Stream clinic for nearly three years even after he became aware that his records had been tampered with in the first few months after he started this practice. (T. 370) As a result, little weight was given to Respondent's testimony.

#### **PATIENT A**

**Factual Allegations A and A.1(a) and A.1(b) : Sustained**

**Factual Allegations A.2 and A.2 (a), A.2 (b), A.2(c), A.2(d) and A.2(e) : Sustained**

**Factual Allegation A.3: Sustained**

#### **PATIENT B**

**Factual Allegations B and B.1(a) and B.1 (b): Sustained**

**Factual Allegations B.2 and B.2(a), B.2(b), B.2(c) , B.2(d), B.2 (e) and B.2(f): Sustained**

**Factual Allegations B.3: Sustained**

### PATIENT C

Factual Allegations C and C.1: Sustained

Factual Allegations C.2 and C.2(a), C.2(b), C.2(c), C.2(d), C.2 (e), C.2(f) and C.2(g): Sustained

Factual Allegation C.3: Sustained

### PATIENT D

Factual Allegation D and D.1(a), D.1(a), D.1(b), D.1(c), D.1(d), D.1(e) and D.1(f): Sustained

### PATIENT E

Factual Allegations E and E.1: Sustained

Factual Allegations E.2 and E.2(a), E.2(b), E.2(c) and (E.2 (d)): Sustained

### NEGLIGENCE ON MORE THAN ONE OCCASION

The Hearing Committee concludes that Respondent's treatment of Patients A through E was negligent. There is a consistent pattern for all five patients where Respondent filled out the records in a uniform fashion and routinely checked off similar boxes. The physical exams and histories of all five patients were incomplete and did not adhere to the standard of care.(T. 146) There was also a distinctive pattern of insufficient subjective complaints from the patients in the record combined with incomplete examinations by Respondent that did not support the diagnosis of radiculopathy (T. 39-40 , 174, 196, 209, 223-226, 228-230) The Hearing Committee concurs with Dr. Feinberg that muscle strength must be tested before a physician can make a diagnosis of radiculopathy and for justification to order additional testing.(T. 210) The Hearing Committee further finds that subsequent exams by a neurologist do not exonerate Respondents actions because the neurological exams found no abnormal activity in the muscles to justify ordering the EMG nerve conduction tests . (T. 155-158, 219-220) The Hearing Committee found that the literature offered by Respondent did not justify his defense of the tests he ordered. As to each patient, Respondent failed to exercise the care that would have been exercised by a reasonably prudent physician. The Hearing Committee concludes that Respondent committed negligence on more than one occasion and they sustain the First Specification.

### INCOMPETENCE ON MORE THAN ONE OCCASION

The Hearing Committee concludes that Respondent's treatment of Patients A through E was incompetent. Respondent exhibited incompetence by failing to fill in the dates of his examinations. He also diagnosed a left cervical

radiculopathy for Patient A when the record shows the patient complained of pain on the right side. There were no follow up notations in the record to measure the patient's improvement after all of these tests were ordered. More importantly, the Hearing Committee finds that Respondent was unable to explain the nature of the tests that he routinely ordered for all five patients. The Hearing Committee concludes that Respondent acted with incompetence on more than one occasion and they sustain the Second Specification.

#### **ORDERING EXCESSIVE TESTING**

The Hearing Committee concludes that Respondent's basis for ordering testing for Patients A through E was not justified by each patient's history, physical and diagnosis. The Hearing Committee concurs with Dr. Feinberg that EKG and stress tests were ordered for patients whose cardiovascular and respiratory systems were normal. (T. 44, 178, 211,230 ) EMGs were pre-maturely ordered within days of the accident, when results would not be accurate until 2-3 weeks after the injury occurred. (T. 163-164, 208-209,) There were no pulmonary symptoms to justify spirometry tests and no complaints of dizziness or balance to justify VENG testing. (T. 178, 229) There was no justification for an EEG. (T. 225) Finally, SSEP testing is not the standard of care to support a diagnosis of radiculopathy. (T. 158, 176, 223) As a result, the Hearing Committee sustains the Third through Seventh Specifications.

#### **DETERMINATION AS TO PENALTY**

After a full and complete review of all of the evidence presented and pursuant to the Findings of Fact, Conclusions of Law and Discussion set forth above, the Hearing Committee, by unanimous vote, determines that Respondent's license to practice as a physician in New York State should be revoked. This determination was reached on due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, the imposition of monetary penalties and dismissal in the interest of justice.

In reviewing the record, the Hearing Committee found that Respondent failed to properly evaluate each patient and then ordered a battery of expensive testing in a uniform manner. Respondent ordered tests that he either knew or should have known were useless in treating these patient's injuries. Respondent acknowledged that he was the CEO of the Valley Stream office and as such the Hearing Committee believes that Respondent is responsible for all billing set out under his name. (T.525,531). The Hearing Committee is most troubled by Respondent's testimony that he became aware of billing tampering in the first few months of the practice yet he continued to profit from the overbilling for nearly three years.

The Hearing Committee found that Respondent exhibited no remorse and no mitigation was offered in his defense. The Hearing Committee believes that the public needs to be protected from physicians like Respondent who place profit over

good and responsible patient care. The Hearing Committee concludes that revocation is the only appropriate penalty for Respondent's conduct. They do not assess a civil penalty because they believe that loss of Respondent's livelihood is a sufficient penalty.

## ORDER

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

1. The First through Seventh Specifications contained in the Statement of Charges (Petitioner's Ex. # 1) are **SUSTAINED**; and
2. Respondent's license to practice as a physician in the State of New York is **REVOKED**; and
3. This Order shall be effective on personal service on the Respondent or seven (7) days after the date of mailing of a copy to Respondent by certified mail or as provided by P.H.L. §230(10)(h).

DATED: Oceanside, New York  
9/12/2011

REDACTED

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Alan Kopman, FACHE, (Chairperson)  
Ralph J. Lucariello, M.D.  
James R. Dickson, M.D.

Denise L. Quarles, Esq.  
Quarles & Associates, P.C.  
45 Rockefeller Plaza, Suite 2000  
New York, NY 10111

Daniel Guenzburger, Esq.  
Associate Counsel  
New York State Department of Health  
Bureau of Professional Medical Conduct 4<sup>th</sup> Fl.  
90 Church Street  
New York, NY 10007

# APPENDIX 1

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

IN THE MATTER  
OF  
EDDY RODRIGUEZ, M.D.

NOTICE  
OF  
HEARING

TO: EDDY RODRIGUEZ, M.D.  
c/o Harold Levy, Esq.  
16 Court Street, Suite 3301  
Brooklyn, New York 11241



PLEASE TAKE NOTICE:

A hearing will be held pursuant to the provisions of N.Y. Pub. Health Law §230 and N.Y. State Admin. Proc. Act §§301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on February 8, 2011 at 10:00 a.m., at the Offices of the New York State Department of Health, 90 Church Street, 4<sup>th</sup> Floor, New York, New York, 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 who shall be an attorney admitted to practice in New York state. 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.

**YOU ARE HEREBY ADVISED THAT THE ATTACHED CHARGES WILL BE MADE PUBLIC FIVE BUSINESS DAYS AFTER THEY ARE SERVED.**

Department attorney: Initial here \_\_\_\_\_

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 New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Hedley Park Place, 433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. JAMES HORAN, ACTING DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication"), (Telephone: (518-402-0748), 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 §230(10)(c), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten days prior to the date of the hearing. Any charge or allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such 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. Pursuant to §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. Pursuant to the terms of N.Y. State Admin. Proc. Act §401 and 10 N.Y.C.R.R. §51.8(b), the Petitioner hereby demands disclosure of the evidence that the Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary evidence and a description of physical or other evidence which cannot be

photocopied.

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 OTHER SANCTIONS SET OUT IN NEW YORK PUBLIC HEALTH LAW §§230-a. YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: New York, New York  
January 5, 2011

REDACTED

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Roy Nemerson  
Deputy Counsel  
Bureau of Professional  
Medical Conduct

Inquiries should be directed to: Daniel Guenzburger  
Associate Counsel  
Bureau of Professional Medical Conduct  
90 Church Street, New York, NY 10007  
212-4174450

**IN THE MATTER**  
**OF**  
**EDDY G. RODRIGUEZ, M.D.**

**STATEMENT**  
**OF**  
**CHARGES**

EDDY G. RODRIGUEZ, M.D., the Respondent, was authorized to practice medicine in New York State on or about September 16, 1974, by the issuance of license number 121766 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

- A. On or about November 27, 2007, the Respondent treated Patient A, a 49 year male, for injuries sustained in an automobile accident. The Patient complained of neck pain, low back pain, right shoulder pain, and pain and numbness radiating down the right upper limb and left lower limb. Patient A and the other Patients in the Statement of Charges are identified in the Appendix. All Patients were treated at Respondent's office, 71 South Central Avenue, Valley Stream, New York. With respect to Patient A, Respondent deviated from medically accepted standards in that he:
1. Inappropriately diagnosed:
    - a. Left cervical radiculopathy.
    - b. Lumbar radiculopathy.
  2. Inappropriately ordered:
    - a. Electromyography ("EMG") and nerve conduction studies ("NCVs") for the lower limbs and for the left upper limb.
    - b. Sensory Evoked Potential tests ("SSEP").
    - c. Electrocardiogram ("EKG").

- d. Stress test.
  - e. Spirometry.
  - 3. Inappropriately evaluated the EMG/NCV studies of the upper and lower limbs.
- B. On or about July 17, 2007, the Respondent, treated Patient B, a 34 year female, at his office for injuries the Patient had sustained in an automobile accident. Patient B complained of pain in the left shoulder/arm, neck and back. Respondent deviated from medically accepted standards in that he:
- 1. Inappropriately diagnosed:
    - a. Lumbar radiculopathy.
    - b. Right cervical radiculopathy.
  - 2. Inappropriately ordered:
    - a. EMG/NCV studies for the lower limbs and for the right upper limb.
    - b. SSEP.
    - c. EKG.
    - d. Stress test.
    - e. Spirometry.
    - f. Videonystagmography ("VENG").
  - 3. Inappropriately evaluated the EMG/NCV studies of the lower and upper limbs.
- C. On or about May 2, 2007, the Respondent, treated Patient C, a 20 year old male, at his office for injuries the Patient had sustained in an automobile accident. Patient C complained of headaches and dizziness, lower back pain

and pain radiating to both legs. Respondent deviated from medically accepted standards in that he:

1. Inappropriately diagnosed lumbar radiculopathy.
2. Inappropriately ordered:
  - a. EMG/NCV studies for the lower limbs.
  - b. SSEP.
  - c. EKG.
  - d. Stress test.
  - e. Spirometry.
  - f. Computerized range of motion testing.
  - g. Electroencephalography ("EEG").
3. Inappropriately evaluated the EMG/NCV studies of the lower limbs.

D. On or about June 19, 2007, the Respondent, treated Patient D, a 38 year old female, at his office for injuries the Patient had sustained in an automobile accident. Patient D complained of neck pain and pain radiating to both arms and shoulders. Respondent deviated from medically accepted standards in that he

1. Inappropriately ordered:
  - a. SSEP.
  - b. EKG.
  - c. Stress test.
  - d. Spirometry.
  - e. Electroencephalography.

f. Videonystagmography.

E. On or about June 11, 2007, the Respondent, treated Patient E., a 26 year old female, at his office for injuries the Patient had sustained in an automobile accident. Patient E complained of neck pain, pain radiating into the shoulders, pain in the left elbow and left knee, low back stiffness and pain radiating into the legs. Respondent deviated from medically accepted standards in that he:

1. Inappropriately diagnosed lumbar radiculopathy.
2. Inappropriately ordered:
  - a. SSEP.
  - b. EKG.
  - c. Stress test.
  - d. Spirometry.

### **SPECIFICATION OF CHARGES**

#### **FIRST SPECIFICATION**

#### **NEGLIGENCE ON MORE THAN ONE OCCASION**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(3) by practicing the profession of medicine with negligence on more than one occasion as alleged in the facts of two or more of the following:

1. Paragraphs A, A1, A1(a), A1(b), A2, A2(a), A2(b), A2(c), A2(d), A2(e), A3, B, B1, B1(a), B1(b), B2, B2(a), B2(b), B2(c), B2(d),

B2(e), B2(f), B3, C, C1, C2, C2(a), C2(b), C2(c), C2(d), C2(e), C2(f), C2(g), C3, D, D1, D1(a), D1(b), D1(c), D1(d), D1(e), D1(f), E, E1, E2, E2(a), E2(b), E2(c), and/or E2(d).

## **SECOND SPECIFICATION**

### **INCOMPETENCE ON MORE THAN ONE OCCASION**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(5) by practicing the profession of medicine with incompetence on more than one occasion as alleged in the facts of two or more of the following:

2. Paragraphs A, A1, A1(a), A1(b), A2, A2(a), A2(b), A2(c), A2(d), A2(e), A3, B, B1, B1(a), B1(b), B2, B2(a), B2(b), B2(c), B2(d), B2(e), B2(f), B3, C, C1, C2, C2(a), C2(b), C2(c), C2(d), C2(e), C2(f), C2(g), C3, D, D1, D1(a), D1(b), D1(c), D1(d), D1(e), D1(f), E, E1, E2, E2(a), E2(b), E2(c), and/or E2(d).

## **THIRD THROUGH SEVENTH SPECIFICATIONS**

### **ORDERING EXCESSIVE TESTING**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(35) by ordering of excessive tests not warranted by the condition of the patient, as alleged in the facts of:

3. Paragraphs A, A2, A2(a), A2(b), A2(c), A2(d), A2(e).
4. Paragraphs B, B2, B2(a), B2(b), B2(c), B2(d), B2(e), B2(f).
5. Paragraphs C, C2, C2(a), C2(b), C2(c), C2(d), C2(e), C2(f), C2(g).

6. Paragraphs D, D1, D1(a), D1(b), D1(c), D1(d), D1(e), D1(f).
7. Paragraphs E, E2, E2(a), E2(b), E2(c), and/or E2(d).

DATE: January 5, 2011  
New York, New York

REDACTED

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Roy Nemerson  
Deputy Counsel  
Bureau of Professional Medical Conduct