



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

December 29, 1994

RECEIVED

JAN 3 1995

OFFICE OF PROFESSIONAL
MEDICAL CONDUCT

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Silvia P. Finkelstein, Esq.
Tower Building-Room 2438
Empire State Plaza
Albany, New York 12237

James A. Griffin, Esq.
Griffin, Pellicane & Sands, P.C.
1400 Old Country Road
Suite 306
Westbury, New York 11590

Richard Rieger, M.D.
520 Franklin Avenue
Garden City, New York 11530

RE: In the Matter of Richard Rieger, M.D.

Effective Date: 02/07/95

Dear Ms. Finkelstein, Dr. Rieger and Mr. Griffin:

Enclosed please find the Determination and Order (No. 94-283) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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 black ink that reads "Tyrone T. Butler /klew". The signature is written in a cursive, flowing style.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm

Enclosure

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

-----X
IN THE MATTER : DETERMINATION
OF : AND
RICHARD RIEGER, M.D. : ORDER
: BPMC-94-283
-----X

A Notice of Hearing and Statement of Charges, both dated May 17, 1994 were served upon the Respondent, Richard Rieger, M.D. BENJAMIN WAINFELD, M. D. Chairperson, JANICE PRIDE -BOONE, M.D., and OLIVE M. JACOB, 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. CHRISTINE C. TRASKOS , Esq., served as Administrative Officer for the Hearing Committee. The Department appeared by Silvia P. Finkelstein, Esq. Associate Counsel. The Respondent appeared by Griffin, Pellicane & Sands, James A. Griffin, Esq. of counsel. Evidence was received and witnesses sworn and heard and transcripts of these proceedings were made.

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

STATEMENT OF CASE

Respondent was charged with three specifications of misconduct regarding his treatment of a patient on or about April 12, 1992. More specifically, Respondent was charged with practicing the profession with gross negligence, abandoning or neglecting a patient and moral unfitness to practice the profession.

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

SUMMARY OF PROCEEDINGS

Notice of Hearing Date: May 17, 1994

Prehearing Conference: June 14, 1994

Hearing Dates: June 17, 1994
June 30, 1994
August 3, 1994
August 23, 1994
September 23, 1994

Place of Hearing: NYS Department of Health
5 Penn Plaza
New York, New York

Date of Deliberations: October 25, 1994

Petitioner Appeared By: Peter J. Millock, Esq.
General Counsel
NYS Department of Health
By: Silvia P. Finkelstein, Esq.
Associate Counsel

Respondent Appeared By: James A. Griffin, Esq.
Griffin, Pellicane & Sands, P.C.
1400 Old Country Road
Suite 306
Westbury, NY 11590

WITNESSES

For the Petitioner: Virginia Paone
Gianfranco Paone
Marie Grimaldi
Brendan McElroy, M.D.
Theodore Fink, M.D.

Herbert Porter, M.D.

For the Respondent:

Elsie Bertram

Richard Rieger, M.D.

S. Stephen Bonadonna

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers in parenthesis refer to transcript pages or exhibits, and they denote evidence that the Hearing Committee found persuasive in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the evidence cited.

1. Richard Rieger, M.D., the Respondent, was authorized to practice medicine in New York on August 12, 1955, by the issuance of license number 076849 by the New York State Education Department. (Pet. Ex. 2)

2. 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 at 520 Franklin Avenue, Garden City, New York 11530. (Pet. Ex. 2).

3. At all times herein mentioned, Respondent was a pediatrician affiliated with Winthrop University Hospital. (T. pp. 453-454)

4. Respondent was Patient A's pediatrician from her birth on or about May 29, 1991

until on or about April 12, 1992 (the identity of Patient A is disclosed in the Appendix annexed to the Statement of Charges). During this period of time, Respondent treated Patient A as needed for illness and for all well baby care visits. (T. 19-25, 60-62, 71-72, 78, 93-4, 439-40, 487, 499-500).

5. On or about April 7, 1994, Patient A's Mother (hereinafter referred to as Mrs. P), telephoned Respondent to inform him that Patient A was ill, with a very runny nose and a high, loose cough. (T.26).

6. On or about April 12, 1992, Patient A was 10 months old. At about 1:00 p.m. she appeared ill, vomited, and had a temperature of 103.4 (T. 27, 74). Patient A's mother gave her Tylenol and the Patient vomited several times. (T. 28) Patient A's mother phoned Respondent and spoke to his answering service. She was told that "the Doctor will call you." (T. 28-29, 74-79)

7. After waiting approximately an hour and a half, Patient A's mother called Respondent again and was told the service was trying to locate Respondent. In the course of the next hour, Patient A's grandmother continued calling Respondent's service while Mrs. P. tended to Patient A. (T. 75-76) The answering service indicated that they could not locate Respondent but would keep trying. (T. 86) After several additional phone calls from Patient A's mother, the answering service stated that Respondent was not carrying a beeper, nor did he leave a covering physician. Patient A's mother further testified that the service told her that they did not know where to reach Respondent. (T. 33, 77) On April 12, 1992, Respondent's answering service received calls from Patient A's family at 1:09 p.m., 2:31 p.m., 3:15 p.m. and 3:53 p.m. (Pet. Ex. 4)

8. At or about 3:30 p.m., Patient A's parents decided to take her to the Emergency Room at Winthrop University Hospital, Mineola, New York, because her condition was worsening. (T. 29-30, 32, 79-80). Mr. and Mrs. P knew that Respondent was affiliated with Winthrop

University Hospital and anticipated that he would meet them there. (T. 32, 77-78)

9. At or about 4:30 p.m., Patient A's grandmother, (hereinafter referred to as Mrs. G) who had remained at the house, received a telephone call from Respondent and she told him that Patient A was very sick and had been taken to the emergency room at the hospital by her parents. Respondent told Mrs. G, "Well, they just bought themselves a new doctor." (T. 78-79)

10. At Winthrop University Hospital's Emergency Room, Patient A was seen and examined by Dr. Theodore Fink. Mr. and Mrs. P. asked Dr. Fink to contact Respondent. On physical examination, Dr. Fink found Patient A lethargic, coughing, and there were diffuse rales on one side. Dr. Fink attempted to contact Respondent and left a message. (T. 186-187). When Respondent called him back, Dr. Fink informed him that blood and urine tests had been requested, a spinal tap was being done and Patient A needed to be admitted. (T. 227-228) Respondent told Dr. Fink that the child should not have gone to the emergency room, and that Respondent should have been called. Further, that if Dr. Fink admitted the Patient, Respondent would send him the records and Patient A would be Dr. Fink's "new patient". Dr. Brandon McElroy, who was Dr. Fink's supervisor, testified that Dr. Fink told him that Respondent stated that he did not want to be involved in the care of the patient. (T.187-188, 238-39, 128)

11. During a second telephone call to Respondent, Dr. Fink told Respondent that Patient A was looking worse and needed to be admitted. (T. 189, 223-224) Throughout the afternoon and evening, Mr. and Mrs. P attempted several times to reach Respondent by phone and left several messages. (Pet. Ex. 4)(T. 88-90)

12. Dr. Brandon McElroy was the physician in charge of the Emergency Room on April 12, 1992, as well as Dr. Fink's supervisor in the E.R. (T. 121-122) Dr. Fink asked

Dr. McElroy to examine Patient A. Dr. McElroy's initial impression was that the child possibly may have had meningitis. Dr. McElroy testified that his reading of the chest X-ray indicated the possibility of pneumonia. The child appeared septic, tachypneic, tachycardic and they decided to do a full sepsis workup. (T.122-123)

13. Patient A's mother testified that she overheard Dr. McElroy speak to Respondent on the telephone and that he told Respondent that the baby had pneumonia, that she clinically appeared septic, and that she would need to be admitted to the hospital. Respondent told Dr. McElroy that he would not come into the hospital and would not admit the Patient. Respondent indicated he had not sent Patient A to the ER and did not want to take care of the Patient or assume responsibility for the Patient being there. In addition, Respondent refused to speak to Patient A's parents who were standing next to Dr. McElroy. (T. 37-38, 90-92, 128, 131) (Pet. Ex. 5, p. 42).

14. The next morning, on April 13, 1994, as Mr. P. was walking out of the hospital he encountered Respondent. Mr. P asked Respondent what happened and why had Respondent refused to care for Patient A. Respondent told Mr. P. that once they came to the hospital it was out of Respondent's hands. (T. 92-93). Mr. P. further told Respondent that Patient A was gravely ill with a very high fever and could die. Respondent told him that many children have high fever. (T. 93-94).

15. Patient A died on April 13, 1992. Mr. and Mrs. P. never heard from Respondent again. (T. 94-95)

16. At all times herein mentioned, Respondent was affiliated with Winthrop University Hospital and maintained admitting privileges therein. Respondent has been affiliated with Winthrop University Hospital since 1957. (T. 453-454).

17. The Rules and Regulations of the Medical Staff at Winthrop University Hospital, Reg. 11, states: "Naming a Substitute. Each member of the medical staff who may not be available in an emergency shall name a member of the medical staff who may be called to attend his patient in an emergency." (Pet. Ex. 3) (T. 450). In his application for reappointment to the medical staff, Respondent acknowledged in writing that he had the responsibility of reading the medical staff by-laws and rules and regulations and agreed to be bound by the terms thereof. In addition, Respondent agreed in writing to provide for the continuous care of his patients and those assigned to him. (T. 451, 544-545)

18. On the afternoon of Sunday, April 12, 1992, Respondent testified that he left for his summer home in Fire Island at approximately 12:30 p.m. He returned to his home in Garden City at approximately 4:30 p.m. At that time, Respondent did not have coverage for his practice and was on call for his service, himself. (T. 456,525) Between 12:30 p.m. and 4:30 p.m. Respondent further stated that he failed to call his answering service to ascertain if there had been any calls from his patients. (T.492, 526) At 4:30 p.m., Respondent became aware that Patient A's family had tried to contact him and that she had been taken to the emergency room. (T.463-465, 466) Subsequently, Respondent had two conversations with Dr. Fink, who called him from the Emergency Room and one conversation with Dr. McElroy who called him also from the E.R. In addition, Respondent received messages as follows: at 5:43 p.m. Dr. Fink called form the Emergency Room; at 6:15 p.m. Patient A's mother called form the Emergency Room; at 6:19 p.m. a call was received from the Emergency Room regarding Patient A; at 6:42 p.m. Patient A's mother called Respondent from the Emergency Room still waiting to hear from him; and at 6:54 p.m. another call was received from the Emergency Room regarding Patient A. (Pet. Ex.4)

19. Respondent failed to go to the hospital, which is located a mile and a half from his home, to ascertain the condition of patient A and care for her. (T. 520-521).

20. After being told that Patient A had been admitted to another Physicians's service, Respondent failed to follow-up on Patient A's condition. (T.500-501, 512-513, 527).

21. Respondent failed to respond to Mr. and Mrs. P's calls from the hospital and failed to discuss the case with them, as well as, Dr. Ginnino, even after being informed of the Patient's death. (T. 44-46, 49, 527-529, 537-538).

22. Herbert M. Porter, M.D., an expert witness for the Petitioner testified that the doctor-patient relationship between a pediatrician and his/her infant patients is based on trust and necessitates communication between the physician and the parents of the patient. (T. 328-331).

23. Dr. Porter testified that a reasonably prudent physician would provide continued care to an infant who was brought into the emergency room by his/her parents after repeated attempts to contact him. (T. 337-339, 342, 344-345).

24. Dr. Porter testified that a reasonably prudent physician would not refuse to speak with the parents of an infant patient being treated in an emergency room. (T. 339).

25. Dr. Porter testified that a reasonably prudent physician would not refuse to care for his/her patient when contacted by emergency room personnel treating said patient. (T. 337-339)

CONCLUSIONS OF LAW

The following conclusions were made pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee unless noted otherwise. The Hearing Committee concluded that the following Factual Allegations should be sustained. The citations in parenthesis refer to the Findings of Fact which support each Factual Allegation:

Paragraph A: (4)

Paragraph A.1: (6)

Paragraph A.2: (7,8)

Paragraph A.3: (9)

Paragraph A.4: (10-13) except with respect that Respondent was not informed initially of Pt. A's serious condition

Paragraph A.5: (15) except with respect to the cause of death

The Hearing Committee further concluded that the following Specifications should be sustained. The citations in parentheses refer to the Factual Allegations which support each specification:

PRACTICING THE PROFESSION WITH GROSS NEGLIGENCE

First Specification: (Paragraphs A, A.2, A.3, A.4)

ABANDONING OR NEGLECTING A PATIENT

Second Specification: (Paragraphs A, A.3, A.4)

ENGAGING IN CONDUCT WITHIN THE PRACTICE OF MEDICINE WHICH EVIDENCES MORAL UNFITNESS TO PRACTICE THE PROFESSION

Third Specification: (Not sustained)

DISCUSSION

Respondent is charged with three specifications alleging professional misconduct within the meaning of Education Law Section 6530. This statute sets forth numerous forms of conduct which constitute professional misconduct, but does not provide definitions of the various types of misconduct. During the course of its deliberations on these charges, the Hearing Committee consulted a memorandum prepared by Peter J. Millock, Esq., 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, and the fraudulent practice of medicine.

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

Gross Negligence is the failure to exercise the care that would be exercised by a reasonably prudent physician under the circumstances, and which failure is manifested by the conduct that is egregious or conspicuously bad.

In addition, Section 6530 (30) of the Education Law defines misconduct in part as "Abandoning or neglecting a patient under and in need of immediate professional care, without making reasonable arrangements for the continuation of such care . . ."

Using the above-referenced definitions as a framework for its deliberations the Hearing Committee unanimously concluded, by a preponderance of the evidence, that two of the specifications of professional misconduct should be sustained. The Hearing Committee, however, determined that there was insufficient evidence to sustain the Third Specification which alleged moral unfitness to practice the profession.

DETERMINATION OF THE HEARING COMMITTEE AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that Respondent's license to practice medicine in New York State should be suspended for two years. The suspension shall be stayed in full and Respondent placed on Probation. The complete terms of probation are attached to this Determination and Order in Appendix II. This determination was reached upon due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

The Hearing Committee found each member of Patient A's family to be credible in their testimony. In particular, Patient A's grandmother, Mrs. G. testified that when informing Respondent that Patient A's parents had taken her to the emergency room, Respondent replied, "Well they just bought themselves a new doctor." (T. 78) The Hearing Committee also found that Dr. Fink's testimony was consistent with the attitude that was exhibited by Respondent to Patient A's grandmother, Mrs. G. The Hearing Committee further found Dr. Fink's testimony to be consistent with the Patient's parents and Dr. McElroy's notation in the hospital record. This notation sets forth in part:

"Dr. Rieger stated that he did not send patient to the ER and emphatically refused to admit or take care of patient or speak to patient's parents on the phone." (Pet. Ex. 5, pp. 42)

By contrast, the Hearing Committee found Respondent's testimony to be evasive and inconsistent. He failed to clarify his answer when asked if he still considered Patient A to be his patient subsequent to her hospital admission. (T. 499-500) Respondent testified that he was dissatisfied with the information provided by the ER doctors, yet he failed to drive one and one-half miles to the hospital to personally see his patient. (T. 509, 520, 521) The Hearing Committee

rejects Respondent's response that he wanted to await test results before taking any action. Both ER physicians testified that adequate information was provided to the Respondent over the phone. (T. 130,131, 188, 229-30) Respondent also offered the testimony of Elsie Bertram, who was employed by Respondent's answering service at the time of the incident. Although Ms. Bertram testified about general procedures of the answering service, the Hearing Committee found that her recollection was weak as to specifics on April 12, 1992. Ms. Bertram also stated that no records of the calls were presently retained by her office. (T. 276-277)

The Hearing Committee found Respondent's failure to provide for coverage by another physician when he knew that he would be out of the area for at least four hours on April 12, 1992 to constitute gross negligence as well as abandonment. At the hearing, Respondent exhibited a cavalier attitude in admitting that he never read the hospital rules and regulations upon his appointment to Winthrop University Hospital. (T. 514) After contact was finally made, Respondent's blatant refusal to involve himself in Patient A's care further compounded his professional misconduct. Once it became clear that Patient A was not a treat and release, Respondent should have followed up on her care. The Hearing Committee found that Respondent's failure to speak to Patient A's parents by phone during their time of crisis was inexcusable. While the Hearing Committee was impressed with Respondent's knowledge and many years of experience, he demonstrated no sense of responsibility in this instance. Respondent tried to blame his answering service and the ER physicians, but his indifference to Patient A's situation cannot be justified. The Hearing Committee noted that Respondent has apparently learned from this experience in that he has now employed an associate for his practice and has improved his call system. (T. 451) The Hearing Committee believes that under the totality of the circumstances, a two year stayed suspension with probation is the appropriate sanction in this instance.

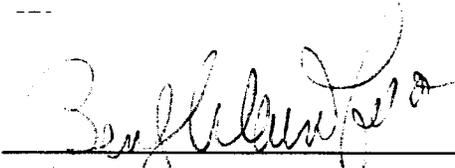
ORDER

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

1. The First and Second Specifications of professional misconduct, as set forth in the Statement of Charges (Department's Exhibit #1) are **SUSTAINED**, and

2. Respondent's license to practice medicine in New York State be and hereby is **SUSPENDED** for a period of two years from the effective date of this Determination and Order. The suspension shall be stayed and Respondent shall be placed on probation in accordance with the terms of probation contained in Appendix II which is attached to this Determination and Order and incorporated herein.

Dated: 2/23 Albany, New York
, 1994



BENJAMIN WAINFELD, M.D.
(Chairperson)

JANICE PRIDE-BOONE, M.D.
OLIVE M. JACOB

To: Silvia P. Finkelstein, Esq.
Associate Counsel
New York State Department of Health
5 Penn Plaza - 6th Floor
New York, NY 10001

James A. Griffin, Esq.
Griffin, Pellicane & Sands, P.C.
1400 Old Country Road
Suite 306
Westbury, NY 11590

Richard Rieger, M.D.
520 Franklin Avenue
Garden City, NY 11530

APPENDIX I

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

Petitioner's 1
for F.D. ①
6.14.94
In Evidence

IN THE MATTER OF

Richard Rieger, M.D.

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
COUNTY OF) SS:

Allan S. Lind, being duly sworn, states:

1. I am over eighteen years of age and am not a party to the above-captioned proceeding.

2. I am employed by the New York State Department of Health's Office of Professional Medical Conduct as a Senior-Medical Conduct Investigator

3. I served the annexed Notice of Hearing/Statement of Charges upon Richard Rieger, M.D. by going to 520 Franklin Ave., Garden City, Room 153, N.Y. on May 20, 1994, at approximate 9:06 a.m. and handing said person a true copy thereof.

4. A description of the person so served is as follows:
Approx. age: 67; Approx. weight 155 lbs; Approx. height: 5'10"
Sex Male; Skin Color: White; Hair Color: Grey;
Other identifying characteristics: Glasses



SIGNATURE

Sworn to before me
on this 24th day of
May, 1994

Silvia P. Finkelstein
NOTARY PUBLIC

SILVIA PASTOR FINKELSTEIN
Notary Public, State of New York
No. 4791537
Qualified in Nassau County
Commission Expires December 31, 1995

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

IN THE MATTER
OF
RICHARD RIEGER, M.D.

**NOTICE
OF
HEARING**

TO: RICHARD RIEGER, M.D.
520 Franklin Avenue
Garden City, New York 11530

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 17th day of June, 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

May 17 , 1994


CHRIS STERN HYMAN,
Counsel.
Bureau of Professional
Medical Conduct

Inquiries should be directed to:

**Silvia P. Finkelstein
Associate Counsel
Bureau of Professional
Medical Conduct
5 Penn Plaza, 6th Floor
New York, New York 10001
Telephone No.: 212-613-2607**

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

IN THE MATTER
OF
RICHARD RIEGER, M.D.

STATEMENT
OF
CHARGES

RICHARD RIEGER, M.D., the Respondent was authorized to practice medicine in New York State on August 12, 1955, by the issuance of license number 076849 by the New York State Education Department. The Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1993 through December 31, 1994 from 520 Franklin Avenue, Garden City, New York 11530.

FACTUAL ALLEGATIONS

A. Respondent was Patient A's pediatrician from her birth on or about May 29, 1991 until on or about April 13, 1992, (the identity of Patient A is disclosed in the annexed Appendix).

1. On or about April 12, 1992, Patient A was 10 months old. At about 1:00 P.M. she had a temperature of 103.4% and vomited. Patient A's mother phoned Respondent and spoke to his answering service.

2. After waiting approximately an hour and a half, Patient A's mother called Respondent again. The answering service indicated that they could not locate Respondent but would keep trying. After several additional phone calls from Patient A's mother, the answering service stated that Respondent was not carrying a beeper, nor did he leave a covering physician and the service did not know where to reach Respondent, but would keep trying. At or about 3:30 P.M., Patient A's parents decided to take her to Winthrop University Hospital, Mineola, Long Island, New York 11501.

3. At or about 4:30 P.M., Patient A's grandmother, who had remained at the house, received a telephone call from Respondent and she told him that Patient A had been taken to the hospital by her parents.

4. At Winthrop University Hospital, the Emergency Room physicians made several attempts to contact Respondent. When Respondent finally called back he was informed of Patient A's serious condition and the need for hospital admission. Respondent was told that the Emergency room physicians thought that Patient A was septic, would require a lumbar tap for suspicion of meningitis, and a chest x-ray revealed right lung infiltrate. Respondent refused to admit Patient A, take care of her, or to speak to the parents claiming

that he did not send Patient A to the Emergency Room.

Respondent refused to have anything to do with the case and indicated he did not feel the child was seriously ill.

5. Patient A died on or about April 13, 1992 from pneumococcal septicimia.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

GROSS NEGLIGENCE

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law section 6530(4) (McKinney, Supp. 1994), by practicing the profession with gross negligence, in that Petitioner charges:

1. The facts in paragraph A, A.1, A.2, A.3, A.4 and/or A.5.

SECOND SPECIFICATION

ABANDONING OR NEGLECTING A PATIENT

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law section 6530(30) (McKinney, Supp. 1994) by abandoning or neglecting a patient under and in need of immediate professional care, without

making reasonable arrangements for the continuation of such care, in that

Petitioner charges:

2. The facts in paragraph A, A.1, A.2, A.3, A.4, and/or A5.

THIRD SPECIFICATION

ENGAGING IN CONDUCT IN THE PRACTICE OF MEDICINE WHICH
EVIDENCES MORAL UNFITNESS TO PRACTICE THE PROFESSION

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law section 6530(20) (McKinney, Supp. 1994), by engaging in conduct in the practice of medicine which evidences moral unfitnes to practice the profession, in that Petitioner charges:

3. The facts in paragraph A, A.1, A.2, A.3, A.4 and/or A.5.

DATED: NEW YORK, NEW YORK
May 17, 1994



CHRIS STERN HYMAN
Counsel
Bureau of Professional
Medical Conduct

APPENDIX II

APPENDIX II
TERMS OF PROBATION

1. Dr. Rieger shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct imposed by law and by his profession.
2. Dr. Rieger shall comply with all federal, state and local laws, rules and regulations governing the practice of medicine in New York State.
3. Dr. Rieger shall submit prompt written notification to the Board addressed to the Director, Office of Professional Medical Conduct, Empire State Plaza, Corning Tower Building, Room 438, Albany, New York 12237, regarding any change in employment, practice, residence or telephone number, within or without New York State.
4. In the event that Dr. Rieger leaves New York to reside or practice outside the State, Dr. Rieger shall notify the Director of the Office of Professional Medical Conduct in writing at the address indicated above, by registered or certified mail, return receipt requested, of the dates of his departure and return. Periods of residency or practice outside New York shall toll the probationary period, which shall be extended by the length of residency or practice outside New York.
5. Dr. Rieger's probation shall be supervised by the Office of Professional Medical Conduct.
6. For the first year of probation, Dr. Rieger shall have bi-monthly, and for the remaining one year, quarterly meetings with a monitoring physician who shall review his practice. The monitoring physician shall be a board certified pediatrician who has been in practice as such for at least five years, selected by Dr. Rieger and subject to the approval of the Office of Professional Medical Conduct. This monitoring physician shall review randomly selected medical records and evaluate whether Dr. Rieger's medical care compares with generally accepted standards of medical practice. Dr. Rieger shall not practice medicine in New York State until an acceptable monitoring physician is approved by the Office of Professional Medical Conduct.

7. Dr. Rieger shall submit quarterly declarations, under penalty of perjury, stating whether or not there has been compliance with all terms of probation and, if not, the specifics of such non-compliance. These shall be sent to the Director of the Office of Professional Medical Conduct at the address indicated above.
8. Dr. Rieger shall submit written proof to the Director of the Office of Professional Medical Conduct at the address indicated above that he has paid all registration fees due and is currently registered to practice medicine with the New York State Education Department. If Dr. Rieger elects not to practice medicine in New York State, then he shall submit written proof that he has notified the New York State Education Department of that fact.
9. If there is full compliance with every term set forth herein, Dr. Rieger may practice as a physician in New York State in accordance with the terms of probation; provided, however, that upon receipt of evidence of non-compliance or any other violation of the terms of probation, a violation of probation proceeding and/or such other proceedings as may be warranted, may be initiated against Dr. Rieger pursuant to New York Public Health Law Section 230(19) or any other applicable laws.