



# STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Barbara A. DeBuono, M.D., M.P.H.  
*Commissioner*

Dennis P. Whalen  
*Executive Deputy Commissioner*

October 14, 1998

## **CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Robert Bogan, Esq.  
NYS Department of Health  
Corning Tower Room 2509  
Empire State Plaza  
Albany, New York 12237

Diane Bay Humenansky, M.D.  
1413 Spencer Road  
St. Paul, Minnesota 55108-5211

**RE: In the Matter of Diane Bay Humenansky, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 98-243) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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  
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 cursive script, appearing to read "Tyrone T. Butler".

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:nm  
Enclosure

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

**COPY**

**IN THE MATTER  
OF  
DIANE BAY HUMENANSKY, M.D.**

**DETERMINATION**

**AND**

**ORDER**

**BPMC-98-243**

A Notice of Hearing and Statement of Charges, both dated August 12, 1998, were served upon the Respondent, **DIANE BAY HUMENANSKY, M.D. JOSEPH CHANATRY, M.D.**, (Chair), **MOHAMMED GHAZI-MOGHADAM, M.D.** and **D. MARISA FINN**, 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.**, Administrative Law Judge, served as the Administrative Officer. A hearing was held on September 16, 1998. The Department of Health appeared by **HENRY M. GREENBERG, GENERAL COUNSEL**, by **ROBERT BOGAN, ESQ.** of Counsel. The Respondent did not appear and was not represented by 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 issues this Determination and Order.

**STATEMENT OF CASE**

This case was brought pursuant to Public Health Law Section 230(10)(p). The statute provides for an expedited hearing where a licensee is charged solely with a violation of Education Law Section 6530 (9). In such cases, a licensee is charged with misconduct based upon a prior

criminal conviction in New York or another jurisdiction, or upon a prior administrative adjudication regarding conduct which would amount to professional misconduct, if committed in New York. The scope of an expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

In the instant case, Respondent is charged with professional misconduct pursuant to Education Law Section 6530 (9) (b) and 6530 (9) (d). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order in Appendix I.

### **FINDINGS OF FACT**

The following Findings of Fact were made after a review of the entire record in this matter. Numbers in parentheses refer to transcript page numbers or exhibits. These citations represent evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence.

1. Respondent was authorized to practice medicine in New York State on May 19, 1969, by the issuance of license number 103456 by the New York State Education Department. ( Ex. 3 )
  
2. On December 2, 1996, as the result of a Pretrial Conference and Hearing held on October 29, 1996 and November 1, 1996 respectively, the Minnesota Board of Medical Practice (hereinafter "Minnesota Board") entered a finding of Fact, Conclusions, and Final Order (hereinafter "Minnesota FCFO") against Respondent. (Pet. Ex.4)
  
3. At the aforementioned Hearing, Respondent entered a plea of no contest to the pending allegations and although she did not admit the allegations they were "deemed proven" and

were "taken as true and incorporated into (the Minnesota FCFO) Findings of Fact."

4. The Minnesota FCFO Conclusions include:

(1) "The allegations deemed proven in this matter demonstrate professional incompetence in violation of Minn. Stat. § 147.091, subd. 1(g)."

(2) "The allegations deemed proven in this matter constitute engaging in unprofessional conduct in violation of Minn. Stat. § 147.091, subd. 1(k). That clause of the statute defines unprofessional conduct to include any departure from or failure to conform to the minimal standards of acceptable and prevailing medical practice and state that actual injury to a patient need not be established. The jury determinations of negligence in failing to meet recognized medical standards in the diagnosis, care, and treatment of patients causing direct harm or injury to the patients are binding determinations of failure to conform to the minimal standards of prevailing medical practice. The numerous complaints against Respondent and facts determined during the investigation of this matter support that conclusion."

(3) "The allegations deemed proven in this matter constitute an inability to practice medicine with reasonable skill and safety to patients in violation of Minn. Stat. § 147.091, subd. 1 (1). (Ex. 4)

5. The Minnesota FCFO Order includes among other matters that:

(1) "Respondent's license to practice medicine and surgery in the State of Minnesota shall be **SUSPENDED FOR AN INDEFINITE PERIOD OF TIME;**" and

(2) The Respondent shall reimburse the Board \$5,000 for a portion of the cost of the investigation and proceeding. (Ex. 4)

6. A Consent Order was entered into by the State of Michigan, Department of Consumer and Industry Services, Board of Medicine, Disciplinary Subcommittee (hereinafter "Michigan Board") and the Respondent on September 26, 1997. (Ex. 4)

7. The Consent Order referred to in the abovementioned paragraph was based on the Minnesota action described in Paragraphs 2, 3, 4 and 5 and upon Respondent's failure to notify the State of Michigan of that action which "constitutes a failure to report a violation."  
(Ex. 4)
8. The Consent Order with the Michigan Board resulted, among other things, in Respondent's license to practice medicine in Michigan being "SUSPENDED for a period of three years."  
(Ex. 4)

### **CONCLUSIONS OF LAW**

The following conclusions were made pursuant to the Findings of Fact listed above. All conclusions resulted from a 2-0 vote of the Hearing Committee with the third member abstaining. The majority of the Hearing Committee concluded that the Department has sustained its burden of proof. The preponderance of the evidence demonstrates that Respondent's license to practice medicine in Minnesota was suspended for an indefinite period of time after a hearing was held in that state. In addition, Respondent entered into a Consent Order with the Michigan State Board for Respondent's failure to report the disciplinary action taken by the Minnesota Board. The Michigan Board suspended Respondent's license for three years. Section 6530(9)(b) defines professional misconduct as 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. Section 6530(9)(d) defines professional misconduct as having his or her license to practice medicine revoked, suspended or having other 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 revocation, suspension or other disciplinary action, would if committed in New York State, constitute professional

misconduct under the laws of New York state. As a result, a majority of the Hearing Committee voted to sustain the Specifications of professional misconduct contained within the Statement of Charges.

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

The majority of the Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, determined that Respondent's license to practice medicine in New York State should be revoked. This determination was reached upon due consideration of the full spectrum for penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

The Hearing Committee notes that Respondent did not appear at the hearing, but she sent in numerous correspondence that she asked to be included in the record. (Resp. Ex. A). The Hearing Committee notes that the Minnesota Board suspended Respondent license indefinitely until she submitted to a mental and physical examination and other conditions. This determination was based on "a finding that Respondent's professional practice included serious and repeated boundary violations and her professional communications were of a loose, inappropriately personal, disorganized and rambling nature." (Ex. 4 p. of 22) The Hearing Committee further notes that the Minnesota Board concluded that Respondent's practice problems presented "serious threats to respectful, consistent, noninjurious patient care." (Ex. 4, p. 2 of 22) The Hearing Committee also notes that Respondent received additional discipline by the Michigan Board for failure to notify them regarding the violations found by the Minnesota Board. (Ex. 4)

The Hearing Committee has reviewed the documentation submitted by Respondent. (Ex. A) They concluded that Respondent is in total denial of her circumstances and offered no medical evidence in support of her contentions. The Hearing Committee believes that Respondent creates a risk of harm to patients of New York State if she were to practice medicine here. Therefore, revocation is the appropriate sanction in this instance.



**ORDER**

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

1. The Specifications of professional misconduct contained within the Statement of Charges (Petitioner's Exhibit #1) is **SUSTAINED.**
2. Respondent's license to practice medicine in New York State be and hereby is **REVOKED.**

**Dated:**            **Utica, New York**  
*Oct. 8* , 1998

  
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**JOSEPH CHANATRY, M.D. (Chair)**

**MOHAMMED GHAZI-MOGHADAM, M.D.**  
**D. MARISA FINN**

**TO:**    Robert Bogan , Esq.  
         Associate Attorney  
         NYS Department of Health  
         Corning Tower- 25th Floor  
         Empire State Plaza  
         Albany, NY 12237

**Diane Bay Humenansky, M.D.**  
**1413 Spencer Road**  
**St. Paul, Minnesota 55108-5211**

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

-----X

IN THE MATTER : NOTICE OF  
OF : REFERRAL  
DIANE BAY HUMENANSKY, M.D. : PROCEEDING

-----X

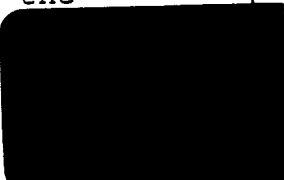
TO: DIANE BAY HUMENANSKY  
1413 Spencer Road  
St. Paul, Minnesota 55108-5211

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law Section 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 September, 1998 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 Statement of Charges, which is attached. 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 which 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 12180, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before September 8, 1998.

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 or 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 September 8, 1998 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  
*August 12, 1998*

*Peter D. Van Buren*

PETER D. VAN BUREN *by K.P.S.*  
Deputy Counsel  
Bureau of Professional  
Medical Conduct

Inquiries should be addressed to:

Robert Bogan  
Assistant Counsel  
NYS Department of Health  
Division of Legal Affairs  
Corning Tower Building  
Room 2509  
Empire State Plaza  
Albany, New York 12237  
(518) 473-4282

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

-----X

IN THE MATTER : STATEMENT  
OF : OF  
DIANE BAY HUMENANSKY, M.D. : CHARGES

-----X

DIANE BAY HUMENANSKY, M.D., the Respondent, was authorized to practice medicine in New York State on May 19, 1969 by the issuance of license number 103456 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. Before the Minnesota Board of Medical Practice (hereinafter "Minnesota Board") a Finding of Fact, Conclusions, and Final Order (hereinafter "Minnesota FCFO") was entered against the Respondent on December 20, 1996 as the result of a Pretrial Conference and Hearing held on October 29, 1996 and November 1, 1996 respectively.

B. At the Hearing referred to in Paragraph A above the Respondent entered a plea of no contest to the pending allegations and although she did not admit the allegations they were "deemed proven" and were "taken as true and incorporated into (the Minnesota FCFO) Findings of Fact."

C. The Minnesota FCFO Conclusions include:

1. "The allegations deemed proven in this matter demonstrate professional incompetence in violation of Minn. Stat. § 147.091, subd. 1(g)."
2. "The allegations deemed proven in this matter constitute engaging in unprofessional conduct in violation of Minn. Stat. § 147.091, subd. 1(k). That clause of the statute defines unprofessional conduct to include any departure from or failure to conform to the minimal standards of acceptable and prevailing medical practice and states that actual injury to a patient need not be established. The jury determinations of negligence in failing to meet recognized medical standards in the diagnosis, care, and treatment of patients causing direct harm or injury to the patients are binding determinations of failure to conform to the minimal standards of prevailing medical practice. The numerous complaints against Respondent and facts determined during the investigation of this matter support that conclusion."
3. "The allegations deemed proven in this matter constitute an inability to practice medicine with reasonable skill and safety to patients in violation of Minn. Stat. §147.091, subd. 1(1).

D. The Minnesota FCFO Order includes among other matters that:

1. "Respondent's license to practice medicine and surgery in the State of Minnesota shall be SUSPENDED FOR AN INDEFINITE PERIOD OF TIME;" and
2. the "Respondent shall reimburse the Board \$5,000 for a portion of the cost of the investigation and proceeding.

E. The conduct resulting in the Minnesota Board's disciplinary action against Respondent would constitute misconduct under the laws of New York State, pursuant to the following sections of New York State law:

1. N.Y. Education Law Section 6530(3) [practicing the profession with negligence on more than one occasion]; and/or
2. N.Y. Education Law Section 6530(5) [practicing the profession with incompetence on more than one occasion].

F. A Consent Order was entered into by the State of Michigan, Department of Consumer and Industry Services, Board of Medicine, Disciplinary Subcommittee (hereinafter "Michigan Board") and the Respondent on September 26, 1997.

G. The Consent Order referred to in Paragraph F above was based on the Minnesota action described in Paragraphs A, B, C, and D above, and upon Respondent's failure to notify the State of Michigan of that action which "constitutes a failure to report a violation."



H. The Consent Order referred to in Paragraph F above resulted, among other things, in Respondent's license to practice medicine in Michigan being "SUSPENDED for a period of three years."

I. The conduct resulting in the Michigan Board's disciplinary action against Respondent would constitute misconduct under the laws of New York State, pursuant to the following section of New York State law:

1. N.Y. Education Law Section 6530(21) [wilfully failing to file a report required by law or by the department of health or the education department].

#### FIRST AND SECOND SPECIFICATIONS

Respondent is guilty of violating N.Y. Education Law §6530 (9) (b) by reason of 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 could, if committed in New York State, constitute professional misconduct under the laws of New York State, in that the Petitioner charges the following:

1. The facts in paragraphs A, B, C, D, and/or E.
2. The facts in paragraphs F, G, H, and/or I.

THIRD AND FOURTH SPECIFICATIONS

Respondent is guilty of professional misconduct under N.Y. Education Law §6530(9)(d) by reason of his having had disciplinary action taken against her 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, in that Petitioner charges:

3. The facts in paragraphs A, B, C, D, and/or E.
4. The facts in paragraphs F, G, H, and/or I.

DATED: *Aug, 12*, 1998  
Albany, New York

*Peter D. Van Buren*  
PETER D. VAN BUREN  
Deputy Counsel  
Bureau of Professional  
Medical Conduct

*K.F.S.*