

**DOH 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

September 29, 1997

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Roy Nemerson, Esq.
NYS Department of Health
5 Penn Plaza - Sixth Floor
New York, New York 10001

Melissa Hunt, M.D.
87 Robinhood Road
Clifton, New Jersey 07013

Michael Handwerker, Esq.
handwerker, Honschke, Marchellos and Gaynor
350 Broadway - 10th Floor
New York, New York 10013

RE: In the Matter of Melissa Hunt, M.D.

Dear Mr. Nemerson, Dr. Hunt and Mr. Handwerker:

Enclosed please find the Determination and Order (No.97-120) of the Professional Medical Conduct Administrative Review Board in the above referenced matter. This Determination and Order shall be deemed effective upon 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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.

This exhausts all administrative remedies in this matter [PHL §230-c(5)].

Sincerely,

A handwritten signature in black ink that reads "Tyrone T. Butler/nm". The signature is written in a cursive style with a large initial 'T' and a trailing 'nm' at the end.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm

Enclosure

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

COPY

-----X
IN THE MATTER : ADMINISTRATIVE
: REVIEW BOARD
OF : DECISION AND
: ORDER NUMBER
MELISSA HUNT, M.D. : ARB# 97-120
-----X

Before: ROBERT BRIBER, SUMNER SHAPIRO, WINSTON S. PRICE, M.D.,
EDWARD C. SINNOTT, M.D., and WILLIAM A. STEWART, M.D., Board
Members

After a hearing into charges that the Respondent, Melissa Hunt, M.D., suffers from a psychiatric condition which impairs her ability to practice medicine, and that she practiced the profession while impaired by said psychiatric condition, a Committee on Professional Medical Conduct (Committee) sustained the charge of being impaired, and dismissed the charge of practicing while impaired. The Committee suspended the Respondent's license for six months during which time the Respondent will enter a program with the Physicians Assistance Program. After six months, a report from the Physicians Assistance Program will be provided to the Committee to determine if the Respondent has complied with a treatment program and has shown an improvement as to her condition, and a recommendation as to her license will be made. In this proceeding pursuant to New York Public Health Law (Pub. H.L.) §230-c(4)(a) (McKinney's Supp. 1997), the Petitioner asks that the Administrative Review Board for Professional Medical Conduct modify the Determination and Order of the Committee and revoke the Respondent's license to practice medicine in New York. After reviewing the record in

this case and conducting deliberations on July 25, 1997¹, the Board votes to sustain the Committee's Determination regarding the sanction to be imposed.

Administrative Law Judge **LARRY G. STORCH** served as the Board's Administrative Officer. **ROY NEMERSON, ESQ.**, represented the Petitioner in this proceeding. The Respondent did not participate in this review, personally or through counsel.

COMMITTEE DETERMINATION ON THE CHARGES

Pub. H.L. §230 authorizes three member committees from the State Board for Professional Medical Conduct (BPMC) to conduct disciplinary proceedings to determine whether physicians have committed professional misconduct by violating Educ. L. §6530. The Petitioner filed two specifications of charges with BPMC alleging the Respondent is an habitual user or having a psychiatric condition which impairs her ability to practice medicine, in violation of Educ. L § 6530(8) and practiced the profession while impaired by alcohol, drugs, physical disability, or mental disability in violation of Educ. L. §6530(7) (McKinney's Supp. 1997).

Three BPMC Members, **KENNETH KOWALD (CHAIR)**, **ANDREW CONTI, M.D. AND JACK SCHNEE, M.D.** comprised the Committee which conducted a hearing pursuant to Pub. H.L. §230(10) and which rendered the May 22, 1997 Determination that the Board now reviews. Administrative Law Judge **MARY NOE** served as the

¹Dr. Stewart participated in the deliberations *via* telephone.

Committee's Administrative Officer. The Committee found that the Respondent, a board-certified child psychiatrist, suffers from bipolar disorder. This condition impairs her ability to practice medicine and has required psychiatric hospitalization on four occasions since 1995. The Committee further found that bipolar disorder is a major psychiatric condition which disturbs mood, cognition, reality testing and other aspects of a person's mental functioning, including judgment and rational thought. The Committee further found that the Respondent has never accepted this diagnosis.

The Committee further found that this disease as a whole is characterized by exacerbations and periods of relative remission. During the periods of exacerbation, the Respondent is invariably impaired for the practice of medicine by impaired judgment, loose associations, illogical connections between ideas, grandiosity, hyperactivity, paranoia, helplessness, hopelessness and/or an inability to act. The Committee also found that the Respondent does not recognize the fact that she suffers from a serious chronic disease needing ongoing treatment. The Respondent has essentially no insight into her illness and has been resistant to, and frequently non-compliant with her treatment regimen. The Committee further found that due to her lack of insight into her illness, there is an unacceptable risk that future exacerbations of her condition would not be detected in time to remove her from practice.

The Committee concluded that the uncontradicted evidence established that the Respondent suffers from a

psychiatric condition which impairs her ability to practice medicine. The Committee further concluded that there was no compelling evidence that the Respondent actually engaged in the medical practice while impaired. Consequently, the Committee did not sustain the charge of practicing while impaired.

The Committee recognized the need to protect the public, but noted that there had been no allegation of harm or negligence to the Respondent's patients. The Committee ordered that the Respondent's license be suspended for six months during which time she shall be required to enter into a program with the Physicians Assistance Program. After six months, a report from the Physicians Assistance Program will be provided to the Committee to determine if the Respondent has complied with a treatment program and has shown an improvement as to her condition. Thereafter, a further recommendation as to her license shall be made.

REVIEW HISTORY AND ISSUES

The Petitioner filed a Notice requesting a review on the Committee's Determination, which the Board received on June 6, 1997. The Record on review contained the hearing transcript and exhibits and the parties' briefs. The Board received the Petitioner's brief on July 7, 1997. The Respondent did not submit a brief.

The Petitioner raises the following arguments on his appeal:

I. The Respondent's impairment for the practice of

medicine has been clearly established. All credible evidence in the record indicates an absence of sufficient judgment and insight into her disease to allow her to continue practicing medicine. The Hearing Committee obviously based its decision to remove the Respondent from practice based upon this state of affairs. Where the Committee erred was in its attempt to give the Respondent one more opportunity to demonstrate such insight and judgment, despite the fact that the Respondent failed to appear before the Committee or to demonstrate any basis on which to expect a change for the better. The Hearing Committee's attempt to retain jurisdiction is misplaced, albeit well-meaning, and should be modified as inappropriate.

The Petitioner urges that the Board overturn the sanction and revoke the Respondent's medical license.

THE BOARD'S REVIEW AUTHORITY

Pub. H.L. §230(10)(i), §230-c(1) and §230-c(4)(b) authorize the Board to review determinations by hearing committees for professional medical conduct and to decide:

- whether or not a hearing committee determination and penalty are consistent with the hearing committee's findings of fact and conclusions of law; and
- whether or not the penalty is appropriate and within the scope of penalties permitted by Pub. H.L. §230-a.

Pub. H.L. §230-c(4)(b) permits the Board to remand a case to the Committee for further consideration. Pub. H.L. §230-c(4)(c) provides that the Review Board's Determinations shall be based upon a majority concurrence of the Review Board.

The Board has the authority to substitute our judgement for that of the Hearing Committee, in deciding upon a penalty Matter of Bogdan 195 A.D. 2d 86, 606 NYS 2d 381 (Third Dept. 1993), in determining guilt on the charges, Matter of Spartalis

205 A.D. 2d 940, 613 NYS2d 759 (Third Dept. 1994), and deciding credibility issues Matter of Minielly 222 A.D. 2D 750, 634 NYS 2d 856, 1995.

THE BOARD'S DETERMINATION

The Board renders this Determination after reviewing the hearing record, the Committee's Determination and Order and the parties' briefs. The Board sustains the Committee's Determination finding the Respondent guilty of professional misconduct. There is ample evidence in the record to sustain the Committee's conclusion that the Respondent's psychiatric condition impairs her ability to practice medicine.

The Board votes to sustain the Committee's penalty. We vote unanimously to suspend the Respondent's license for six months during which she is to enter into a treatment program with the Physicians Assistance Program. After six months, a report from the Physicians Assistance Program will be provided to the Hearing Committee to determine if the Respondent has complied with a treatment program and has shown an improvement as to her condition. Thereafter, the Committee will make a final determination as to the status of the Respondent's license to practice medicine in New York State.

The Board agrees with the Hearing Committee that the prognosis for the Respondent is not good, given her lack of insight into her condition. However, the Board also took into consideration the fact that the charge of practicing while impaired was not sustained, and that the Petitioner presented no

proof of harm or negligence involving any of the Respondent's patients. On balance, the Board unanimously determined to give the Respondent one last chance to enter into a meaningful program of treatment for her illness.

ORDER

NOW, based upon this Determination, the Review Board issues the following **ORDER**:

1. The Review Board **SUSTAINS** the Hearing Committee's May 22, 1997 Determination finding the Respondent guilty of professional misconduct.

2. The Review Board **SUSTAINS** the Hearing Committee's Determination suspending the Respondent for six months with a requirement to enter into a treatment program with the Physicians Assistance Program.

3. The Board **SUSPENDS** the Respondent's license to practice medicine in New York State for six months during which she is to enter into a treatment program with the Physicians Assistance Program. After six months, a report from the Physicians Assistance Program will be provided to the Hearing Committee to determine if the Respondent has complied with a treatment program and has shown an improvement as to her condition. Thereafter, the Committee will make a final determination as to the status of the Respondent's license to practice medicine in New York State.

SUMNER SHAPIRO

ROBERT M. BRIBER

WINSTON S. PRICE, M.D.

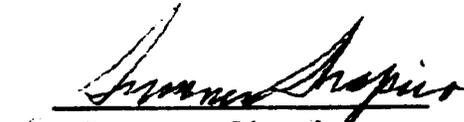
EDWARD SINNOTT, M.D.

WILLIAM A. STEWART, M.D.

IN THE MATTER OF MELISSA HUNT, M.D.

SUMNER SHAPIRO, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Hunt.

DATED: Delmar, New York
September 22, 1997


Sumner Shapiro

IN THE MATTER OF MELISSA HUNT, M.D.

EDWARD C. SINNOTT, M.D., a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Hunt.

DATED: Roslyn, New York

September 22, 1997



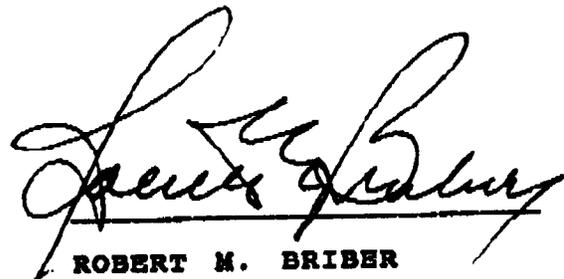
EDWARD C. SINNOTT, M.D.

IN THE MATTER OF MELISSA HUNT, M.D.

ROBERT M. BRIBER, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Hunt.

DATED: Schenectady, New York

September 22, 1997



ROBERT M. BRIBER

NYS DOH - ADJUDICATION Fax:518-402-0751

Sep 22 '97 13:46 P.10

IN THE MATTER OF MELISSA HUNT, M.D.

WILLIAM A. STEWART, M.D., a member of the
Administrative Review Board for Professional Medical Conduct,
concurs in the Determination and Order in the Matter of Dr.
Hunt.

DATED: Syracuse, New York

22 Sept., 1997

WILLIAM A. STEWART, M.D.

IN THE MATTER OF MELISSA HUNT, M.D.

WINSTON S. PRICE, M.D., a member of the
Administrative Review Board for Professional Medical
Conduct, concurs in the Determination and Order in the
Matter of Dr. Hunt.

DATED: Brooklyn, New York

9/22, 1997

A handwritten signature in black ink, appearing to read "W. S. Price", written in a cursive style.