



# 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*

June 25, 1993

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

Hector Perez, M.D.  
93 Scholes Street - #1C  
Brooklyn, New York 11206

Michael S. Kelton, Esq.  
Lippman, Kransnow & Kelton  
711 Third Avenue  
New York, New York 10017

Terrence Sheehan, Esq.  
NYS Department of Health  
Bureau of Professional Medical Conduct  
5 Penn Plaza - Sixth Floor  
New York, New York 10001-1810

**RE: In the Matter of Hector Perez, M.D.**

Dear Dr. Perez, Mr. Kelton and Mr. Sheehan:

Enclosed please find the Determination and Order (No. ARB-93-38) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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  
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 than 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)].

Very truly yours,

*Tyrone T. Butler, nam*

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:nam  
Enclosure

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

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IN THE MATTER	:	<u>ADMINISTRATIVE</u>
	:	<u>REVIEW BOARD</u>
OF	:	<u>DETERMINATION</u>
	:	<u>AND ORDER</u>
HECTOR PEREZ, M.D.	:	<u>ARB NO.93-38</u>

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The Administrative Review Board for Professional Medical Conduct (Review Board), consisting of **ROBERT M. BRIBER, MARYCLAIRE B. SHERWIN, WINSTON S. PRICE, M.D. EDWARD C. SINNOTT, M.D. and WILLIAM A. STEWART, M.D.** held deliberations on June 1, 1993 to review the Professional Medical Conduct Hearing Committee's (Committee) March 24, 1993 Determination finding Dr. Hector Perez guilty of professional misconduct and imposing a penalty of suspension and probation. The Office of Professional Medical Conduct (OPMC) requested the review through a Notice which the Review Board received on April 12, 1993. James F. Horan served as Administrative Officer to the Review Board. Terrence Sheehan, Esq. submitted a brief for OPMC on May 13, 1993. Michael Kelton, Esq. submitted a response on Dr. Perez's behalf on May 26, 1993.

### SCOPE OF REVIEW

New York Public Health Law (PHL) §230(10)(i), §230-c(1) and §230-c(4)(b) provide that the Review Board shall review:

- 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 PHL §230-a.

Public Health Law §230-c(4)(b) permits the Review Board to remand a case to the Hearing Committee for further consideration.

Public Health Law §230-c(4)(c) provides that the Review Board's Determinations shall be based upon a majority concurrence of the Review Board.

### HEARING COMMITTEE DETERMINATION

The Office of Professional Medical Conduct charged the Respondent with practicing medicine while impaired, being a habitual alcohol abuser and with being convicted of a crime.

The Hearing Committee determined that the Respondent had practiced while impaired by alcohol on December 2, 1992, that Respondent was a habitual abuser of alcohol and that the Respondent had been convicted for driving while intoxicated on three separate occasions. The Hearing Committee voted to suspend the Respondent's license and ordered that the Respondent enter a full-time alcohol recovery program under the auspices of the State Medical Society's Impaired Physician Program. The Committee's penalty provides that the Respondent's license would be restored

upon certification that the Respondent had completed the recovery program successfully. At the time the Respondent completes the recovery program successfully, he will be on probation for two years. The Hearing Committee imposed terms of probation which limit the Respondent's practice during probation to an organized primary health care center and which include requirements that the Respondent obtain a practice monitor and undergo urine testing for alcohol at least twice per month throughout the period of probation.

#### **REQUESTS FOR REVIEW**

The OPMC has asked that the Review Board overturn the Hearing Committee's penalty and revoke the Respondent's license to practice medicine. OPMC argues that the Respondent is not truly serious about rehabilitation, that no one can properly judge his potential for recovery and that revocation is the only prudent course to protect the public. In the alternative, OPMC requests that the Review Board modify the terms of the suspension and probation, including an increase in the period of probation to five years.

#### **REVIEW BOARD DETERMINATION**

The Review Board has considered the entire record below and the briefs which counsel have submitted.

The Review Board votes to sustain the Hearing Committee's Determination that the Respondent practiced medicine while impaired, that the Respondent was a habitual alcohol abuser and that the Respondent had committed professional misconduct due

to his conviction for three driving while intoxicated offenses. The Committee's findings and conclusions are consistent with the Determination.

The Review votes to sustain the Hearing Committee's penalty in part and to modify the penalty in part. We sustain the Committee's Determination to suspend the Respondent's license until he completes successfully a full-time alcohol recovery program, of at least six months duration, under the auspices of the Committee on Physicians Health and the Impaired Physicians Program. We also sustain the Committee's Determination to place the Respondent on probation following the successful completion of the suspension and to require, as a condition of probation, that the Respondent's practice will be limited to an organized primary health care center. We feel that this penalty is consistent with the findings and conclusions concerning the Respondent's impairment. We also feel this penalty is appropriate. OPMC contends in its brief that the suspension is not legal because its term is indefinite. Although the Hearing Committee described the suspension as indefinite, the terms of the suspension are actually that the Respondent is suspended until he successfully completes a course of treatment or therapy, which is a penalty expressly permitted by Public Health Law Section 230-a(2)(c).

We modify the Hearing Committee's penalty, first, by extending the period of probation following the suspension from two years to five years. Due to the Respondent's age and the

apparent extent of his impairment, we feel that a two year probation is not a long enough period in which to determine whether the Respondent has been able to rehabilitate himself. Further, we modify two of the conditions of probation, which the Hearing Committee imposed. Condition 3 on page 11 of the Hearing Committee Determination is modified to read: "The Respondent shall remain drug and alcohol free." Condition 7 on page 12 is modified to require that the Respondent's practice monitor during the probationary period shall cause to be performed, at least twice monthly, unannounced urine tests for the presence of alcohol and drugs in the Respondent. Although there was no evidence from the hearing to indicate that the Respondent suffers impairment due to drug use, the Review Board believes that the nature and the extent of the Respondent's alcohol impairment indicates that he could be susceptible to impairment or addiction to other substances. We do not believe it is necessary, as OPMC recommends, to further modify the Hearing Committee's penalty to provide that the Respondent's practice monitor can not be a friend of the Respondent. The provisions of probation require already that the Respondent's practice monitor must be approved by OPMC.

**ORDER**

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

1. The March 24, 1993 Determination by the Hearing Committee on Professional Medical Conduct, finding Dr. Hector Perez guilty of Professional Misconduct, is sustained.

2. The Determination of the Hearing Committee to suspend Dr. Perez's license to practice medicine, until he successfully completes a full time drug treatment program and which then places the Respondent on probation, is sustained, except that the period of probation is extended to five years instead of two and certain conditions of the probation are modified as explained in this Board's Determination.



**IN THE MATTER OF HECTOR PEREZ, M.D.**

**MARYCLAIRE B. SHERWIN**, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Perez.

**DATED: Albany, New York**

*June 15, 1993*

*Maryclaire B. Sherwin*

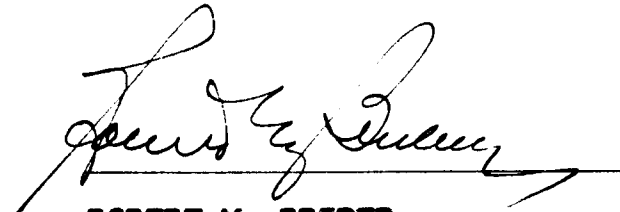
**MARYCLAIRE B. SHERWIN**

**IN THE MATTER OF HECTOR PEREZ, 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. Perez.

**DATED: Albany, New York**

*June 15*, 1993

A handwritten signature in cursive script, appearing to read "Robert M. Briber", written over a horizontal line.

**ROBERT M. BRIBER**

IN THE MATTER OF HECTOR PEREZ, 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. Perez.

DATED: Albany, New York

10 June , 1993

A handwritten signature in cursive script that reads "William A. Stewart". The signature is written in dark ink and is positioned above the printed name.

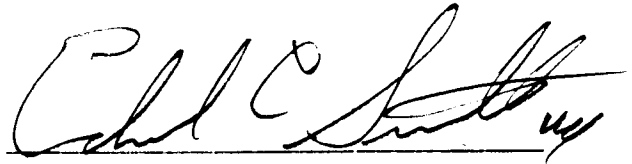
WILLIAM A. STEWART, M.D.

**IN THE MATTER OF HECTOR PEREZ, 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. Perez.

**DATED: Albany, New York**

*June 21*, 1993

A handwritten signature in cursive script, appearing to read "Edward C. Sinnott", written over a horizontal line.

**EDWARD C. SINNOTT, M.D.**

IN THE MATTER OF HECTOR PEREZ, 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. Perez.

DATED: Brooklyn, New York

*June 22, 1993*

A handwritten signature in black ink, appearing to read 'W. S. Price', written over a horizontal line.

**WINSTON S. PRICE**