



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

August 26, 1992

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Dan F. Umanoff, M.D.
16 Tradewinds Drive
Bayville, New York 11709

Amy T. Kulb, Esq.
Jacobson & Goldberg
585 Stewart Avenue
Garden City, New York 11530

Marcia E. Kaplan, Esq.
New York State Department of Health
Bureau of Professional Medical Conduct
5 Penn Plaza - Sixth Floor
New York, New York 10001-1810

EFFECTIVE DATE 9/2/92

RE: In the Matter of Dan F. Umanoff, M.D.

Dear Dr. Umanoff, Ms. Kulb and Ms. Kaplan:

Enclosed please find the Determination and Order (No. BPMC-92-A) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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

-----X
IN THE MATTER : ADMINISTRATIVE
OF : REVIEW BOARD
DAN F. UMANOFF, M.D. : DETERMINATION
-----X AND
ORDER
-----X ORDER NO. BPMC-92-42-A

A quorum of the Administrative Review Board for Professional Medical Conduct (hereinafter the "Review Board"), consisting of Robert M. Briber, Maryclaire B. Sherwin, Edward C. Sinnott, M.D. and William A. Stewart, M.D.¹ held deliberations on August 6, 1992 to review the Professional Medical Conduct Hearing Committee's (hereinafter the "Hearing Committee") May 28, 1992 Determination revoking Dr. Dan F. Umanoff's license to practice medicine in New York State. Dr. Umanoff requested the review through a Notice of Appeal received by the Board on May 28, 1992. James F. Horan, Esq., served as Administrative Officer to the Review Board. Amy T. Kulb, Esq. submitted a brief on behalf of Dr. Umanoff and Marcia E. Kaplan, Esq. submitted a brief and a response on behalf of the Department of Health.

¹ At the time at which the Administrative Review Board met to deliberate this case, the New York State Senate had confirmed only four members of the five-member Administrative Review Board that was created pursuant to Chapter 606 of the Laws of 1991.

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.

PHL §230-c(4)(b) permits the Review Board to remand a case to the hearing committee for further consideration.

PHL §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 brought this proceeding against Dr. Umanoff pursuant to Public Health Law §230(10)(p), and Education Law §6530(9), which provide an expedited hearing when the misconduct charges against the licensee

are based upon a prior criminal conviction in New York or another jurisdiction or upon a prior administrative adjudication concerning conduct which would amount to misconduct if committed in New York. The expedited hearing determines the nature and severity of the penalty which the Hearing Committee will impose based upon the criminal conviction or prior administrative adjudication.

The Hearing Committee in this matter determined that the Department had met its burden of proof in establishing that Dr. Umanoff had entered a guilty plea to unlawfully obtaining a controlled substance for his own use in violation of Title 21 USC §843(a)(5). The Hearing Committee determined further that Dr. Umanoff had admitted as part of his plea agreement to possessing small amounts of heroin which Drug Enforcement Administrative agents had seized and to obtaining controlled substances for his own use by writing improper prescriptions between November 1986 and May 1990. The Respondent surrendered his license to practice due to Hycodan abuse on July 27, 1989 (Hearing Committee Finding

of Facts 1 and 2).

The Hearing Committee voted unanimously to revoke Dr. Umanoff's license to practice in New York State.

The Respondent appeals the revocation penalty as arbitrary and factually incorrect. The Respondent's brief faults the Hearing Committee for failing to assess Dr. Umanoff's medical practice and for focusing upon the period of the Respondent's drug abuse rather than considering his sobriety in recent years. The Respondent argues that his criminal conduct resulted from his drug addiction and that the most relevant mitigating evidence for purposes of penalty were the evidence the Respondent presented concerning his abstinence and stable recovery since his arrest on the criminal charges.

REVIEW BOARD DETERMINATION

The Review Board has considered the record from the hearing, the Hearing Committee's Determination and Order and the

Briefs from both parties and votes unanimously to sustain the Determination and the revocation penalty.

The purpose for the hearing in this case was not to evaluate whether the Respondent qualified for restoration of his license, but rather to assess what penalty to impose for the acts of misconduct which the Respondent admitted during his guilty plea. The proof before the Hearing Committee established that the Respondent had been convicted of a Federal felony and had prescribed a controlled substance for his own use after he had surrendered his license to practice.

The Hearing Committee rejected as wholly inadequate the Respondent's request for extended probation in the event the Respondent's license was restored. The Hearing Committee, for the reasons set out in pages 4-6 of its Determination, felt that the felony conviction coupled with the Respondent's breach of the obligations under his temporary surrender warranted revocation. The Review Board feels that this penalty is consistent with the Hearing Committee's Findings of Fact and Conclusions of Law and is

an appropriate penalty under Public Health Law §230-a based upon the reasons which the Hearing Committee set out in their Determination.

ORDER

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

1. The May 28, 1992 Determination by the Hearing Committee on Professional Medical Conduct is hereby sustained.
2. The Hearing Committee's Determination revoking the license of Dan F. Umanoff, M.D. to practice medicine in the State of New York is sustained.

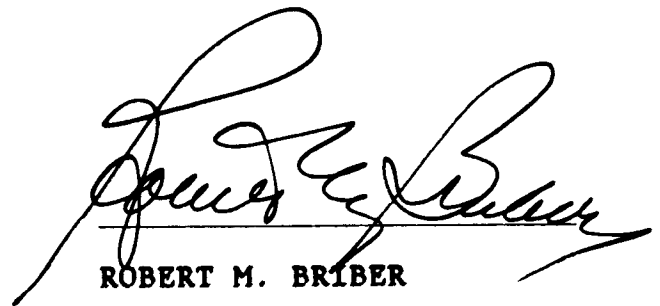
**ROBERT M. BRIBER
MARYCLAIRE B. SHERWIN
EDWARD C. SINNOTT, M.D.
WILLIAM A. STEWART, M.D.**

IN THE MATTER OF DAN F. UMANOFF, 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. Umanoff.

DATED: Albany, New York

August 14, 1992



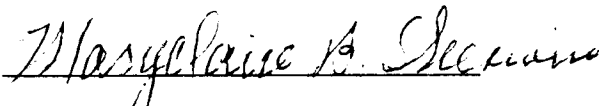
ROBERT M. BRIBER

IN THE MATTER OF DAN M. UMANOFF, 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. Umanoff.

DATED: Malone, New York

August 6, 1992


MARYCLAIRE B. SHERWIN

IN THE MATTER OF DAN F. UMANOFF, 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. Umanoff.

DATED: Syracuse, New York

August 14, 1992

A handwritten signature in cursive script, reading "William A. Stewart", written in dark ink.

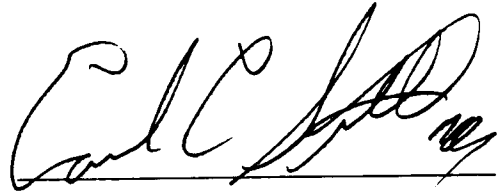
WILLIAM A. STEWART, M.D.

IN THE MATTER OF DAN F. UMANOFF, 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. Umanoff.

DATED: Roslyn, New York

August 6, 1992

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

EDWARD C. SINNOTT, M.D.