



STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

Lorna McBarnette
Executive Deputy Commissioner

May 28, 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

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 of the Hearing Committee 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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

As prescribed by the New York State Public Health Law, §230, subdivision 10, paragraph (p), 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.

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 of the Hearing Committee's Determination and Order.

The notice of review served on the Administrative Review Board should be forwarded to the New York State Department of Health, Bureau of Adjudication, Corning Tower -Room 2503, Empire State Plaza, Albany, New York 12237-0030, **Attention: James F. Horan, Esq., Administrative Law Judge**. 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.

Very truly yours,

Tyrone T. Butler

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:
Enclosure

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

-----X
IN THE MATTER : DETERMINATION
OF : AND
DAN F. UMANOFF, M.D. : ORDER
-----X Order No. BPMC-92-42

A Notice of Hearing and Statement of Charges, both dated March 11, 1992, were served upon the Respondent, Dan F. Umanoff, M.D. ERWIN LEAR, M.D. (Chair), MARGERY W. SMITH, M.D., and CAROLYN C. SNIFE, 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. LARRY G. STORCH, ADMINISTRATIVE LAW JUDGE, served as the Administrative Officer. A hearing was held on April 23, 1992. The Department of Health appeared by Marcia E. Kaplan, Esq., Associate Counsel. The Respondent appeared by Jacobson and Goldberg, Amy T. Kulb, 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 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)(a)(ii).

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, 1978 by the issuance of license number 134467 by the New York State Education Department. Respondent is not currently registered with the New York State Education Department to practice medicine. His license has been inactive since July 27, 1989 pursuant to a temporary surrender of license and registration. (Pet. Ex. #2 and 3).

2. Respondent voluntarily surrendered his license and registration because of his incapacity to practice medicine due to abuse of Hycodan. (Pet. Ex. #3).

3. On or about May 17, 1991, Respondent was convicted

after a plea of guilty in the United States District Court, Eastern District of New York, of acquiring possession of a controlled substance, in violation of 21 USC §843(a)(3), in that on or about July 29, 1989, Respondent knowingly, intentionally and unlawfully obtained and acquired possession of a controlled substance, hydrocodone, through misrepresentation, fraud, deception and subterfuge, in that, while suspended from the practice of medicine in New York State, he issued a prescription for hydrocodone in the name of Noel Umanoff and thereby obtained and acquired the drug for his own use. (Pet. Ex. #4 - Plea Agreement and Transcript of Plea).

4. As part of the plea agreement, Respondent also admitted that between November, 1986 and May 1990, he obtained controlled substances for his own use by writing numerous improper prescriptions. This conduct included a period of approximately ten months following Respondent's surrender of his medical license. (Pet. Ex. #4 - Plea Agreement and Transcript of Plea).

5. Respondent further admitted to possession of small quantities of heroin which were seized by agents of the Drug Enforcement Administration (DEA). (Pet. Ex. #4 - Plea Agreement and Transcript of Plea).

6. On or about October 11, 1991, Respondent was sentenced as follows: five years probation, with special conditions of probation that he receive drug and alcohol counselling as required by the Probation Department, that he abide by an Order of Protection issued against him, a fine of \$5,000 and a special

assessment of \$50. (Pet. Ex. #4 - Judgment).

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 Committee concluded that the Department has met its burden of proof. Respondent was convicted of acquiring possession of a controlled substance, a felony under Federal law, on May 17, 1991 in the United States District Court, Eastern District of New York. Education Law §6530(9)(a)(ii) defines professional misconduct, in pertinent part, as "Being convicted of committing an act constituting a crime under Federal law...." As a result, the Hearing Committee unanimously voted to sustain the specification of misconduct alleged by the Department.

DETERMINATION AS TO PENALTY

The Hearing Committee unanimously concluded that Respondent's license to practice medicine in New York State should be revoked. Respondent's suggested discipline, an extended period of probation in the event that Respondent's voluntarily surrendered licenses should be restored, is wholly inadequate.

Although this is a disciplinary hearing, Respondent chose to approach his defense as though it were a hearing on a petition for restoration of his surrendered license. However, the record established at the hearing clearly demonstrated that Respondent is not sufficiently rehabilitated to even contemplate a restoration of his license.

Respondent voluntarily surrendered his medical license on July 27, 1989 because he was incapacitated for the active practice of medicine due to his abuse of controlled substances. Two days after he surrendered his license, Respondent fraudulently issued a prescription for hydrocodone in his wife's name and obtained it for his own use. He later admitted that he had improperly obtained controlled substances for his own use by writing fraudulent prescriptions over the period between November, 1986 and May 1990, inclusive. This period included approximately ten months when he issued fraudulent prescriptions while his license was surrendered. In addition, at the time of Respondent's arrest, he was in possession of small quantities of heroin.

Respondent has a long history of substance abuse, extending over a period spanning nearly three decades. He has been in and out of a long succession of treatment programs without any demonstrated long-term success. His testimony at the hearing clearly demonstrated that the current status of his recovery is fragile, at best. He became visibly agitated, and gave rambling responses to the questions posed by the members of the Hearing Committee.

The Hearing Committee unanimously concluded that the long-term prognosis for Respondent's recovery from substance abuse is poor, based upon his past performance. His felony conviction, coupled with the major breach of the Respondent's obligations under the terms of his temporary surrender of his license and registration, warrant the penalty of revocation. In the event

that Respondent maintains a successful long-term recovery, he may petition the Board of Regents for reinstatement. At that time, he will have an opportunity to demonstrate that he is no longer incapacitated for the practice of medicine.

ORDER

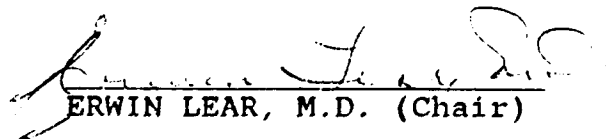
Based upon the foregoing, **IT IS HEREBY ORDERED THAT:**

1. The Specification of professional misconduct contained within the Statement of Charges (Pet. Exhibit #1) is **SUSTAINED**, and

2. Respondent's license to practice medicine in the State of New York is **REVOKED**.

DATED: Albany, New York

May 26, 1992


ERWIN LEAR, M.D. (Chair)

Margery W. Smith, M.D.
Carolyn C. Snipe

TO: 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.
Associate Counsel
New York State Department of Health
5 Penn Plaza, 6th Floor
New York, New York 10001

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

-----X
IN THE MATTER :

OF :

DAN F. UMANOFF, M.D. :

NOTICE OF
REFERRAL
PROCEEDING
:-----X

TO: DAN F. UMANOFF, M.D.
16 Tradewinds Drive
Bayville, New York 11790

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230(10)(p) (McKinney Supp. 1992) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1992). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 23rd day of April, 1992 at 10:00 o'clock in the forenoon of that day at 5 Penn Plaza, 6th Floor, New York, New York 10001.

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 Larry Storch, Administrative Law Judge, New York State Department of Health, Corning Tower Building, 25th Floor, Empire State Plaza, Albany, New York 12237, as well as the Department of Health attorney indicated below, on or before April 13, 1992 .

You may file a written answer, brief, and affidavits with the Committee. Seven copies of all papers you wish to submit must be filed with Judge Storch at the address indicated above on or before April 13, 1992 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 Judge Storch 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: New York, New York
March 11, 1992


CHRIS STERN HYMAN
Bureau of Professional
Medical Conduct

Inquiries should be addressed to:

Marcia E. Kaplan
Associate Counsel
212 613-2615

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

-----X
IN THE MATTER : STATEMENT
OF : OF
DAN F. UMANOFF, M.D. : CHARGES
-----X

DAN F. UMANOFF, M.D., the Respondent, was authorized to practice medicine in New York State on May 19, 1978 by the issuance of license number 134467 by the New York State Education Department. The Respondent is not currently registered with the New York State Education Department to practice medicine. His license has been inactive since July 27, 1989 pursuant to a temporary surrender of license and registration under N.Y. Pub. Health Law Sec. 230(13) (McKinney Supp. 1989) (now substantially reenacted as N.Y. Pub. Health Law Sec. 230(13)(a) (McKinney Supp. 1992)).

FIRST SPECIFICATION


HAVING BEEN CONVICTED OF AN ACT
CONSTITUTING A CRIME UNDER FEDERAL LAW

1. Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law Sec. 6530(9)(a)(ii) (McKinney Supp. 1992) in that he has been convicted of committing an act constituting a crime under federal law, specifically:

On or about May 17, 1991, the Respondent was convicted after a plea of guilty in the United States District Court, Eastern District of New York, United States Courthouse, Uniondale, New York, of Acquiring Possession of a Controlled Substance, a felony, in violation of 21 USC 843(a)(3), in that on or about July 29, 1989, the Respondent knowingly, intentionally and unlawfully obtained and acquired possession of a controlled substance, hydrocodone, through misrepresentation, fraud, deception and subterfuge, in that, while suspended from the practice of medicine in New York State, he issued a prescription for hydrocodone in the name of Noel Umanoff and thereby obtained and acquired the drug for his own use.

On or about October 11, 1991, the Respondent was sentenced as follows: five years probation, with special conditions of probation that he receive drug and alcohol counseling as per the Probation Department and that he abide by the Order of Protection against him; a fine of \$5000, payable within 30 days; and a special assessment of \$50, payable immediately.

DATED: NEW YORK, NEW YORK
March 11, 1992


CHRIS STERN HYMAN
Counsel
Bureau of Professional
Medical Conduct