



# STATE OF NEW YORK DEPARTMENT OF HEALTH

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

January 30, 1995

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Johanna Cavender, M.D.  
1938 East Fayette Street  
Syracuse, New York 13210

Cindy M. Fascia, Esq  
NYS Dept. of Health  
Rm. 2429 Corning Tower  
Empire State Plaza  
Albany, New York 12237

RECEIVED  
JAN 31 1995  
OFFICE OF PROFESSIONAL  
MEDICAL CONDUCT

**RE: In the Matter of Johanna Cavender, M.D.**

Effective Date: 2/06/95

Dear Dr. Cavevder and Ms. Fascia:

Enclosed please find the Determination and Order (No. 94-201) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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  
Empire State Plaza  
Corning Tower, Room 438  
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 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" followed by a stylized flourish.

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:

Enclosure

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

**IN THE MATTER**

**OF**

**JOHANNA CAVENDER, M.D.**

**ADMINISTRATIVE  
REVIEW BOARD  
DECISION AND  
ORDER NUMBER  
BPMC 94-201**

The Administrative Review Board for Professional Medical Conduct (hereinafter the "Review Board"), consisting of **ROBERT M. BRIBER, SUMNER SHAPIRO, WINSTON S. PRICE, M.D., EDWARD C. SINNOTT, M.D.** and **WILLIAM A. STEWART, M.D.**<sup>1</sup> held deliberations on December 9, 1994 to review the Hearing Committee on Professional Medical Conduct's (Hearing Committee) September 20, 1994 Determination finding Dr. Johanna Cavender (Respondent) guilty of professional misconduct. The Respondent requested the Review through a Notice which the Board received on October 11, 1994. James F. Horan served as Administrative Officer to the Review Board. Cindy M. Fascia, Esq. filed a brief for the Office of Professional Medical Conduct (Petitioner), which the Review Board received on November 14, 1994 and a motion to dismiss the Respondent's appeal, which the Board received on October 14, 1994. The Respondent has not submitted a brief to the Board.

**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:

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<sup>1</sup>Dr. Stewart participated in the deliberations by telephone conference.

- 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 Petitioner charged the Respondent with violating terms of probation. The charges were based on Respondent's alleged violation of conditions of probation from a November 23, 1992 Order restoring the Respondent's license to practice medicine. The Respondent had executed a Temporary Surrender of her license on October 23, 1991, following her admission that she was incapacitated to practice medicine due to drug dependency.

The Hearing Committee found that the Respondent had violated the terms of her probation by failing to obtain a successor practice monitor since April, 1993; by failing to report for urine screenings in December, 1992, February, 1993 and March, 1993; and by failing to call her practice monitor on February 15, 1993 and March 22, 1993. The Committee found that there was insufficient credible evidence to support the charge that the Respondent had violated her probation by working in excess of twenty-five hours per week. The Committee noted that the Respondent has not cooperated and has at times been obstructive to persons and agencies assigned to monitor or aid her during the period of probation.

The Hearing Committee voted to suspend the Respondent from the practice of medicine for one year, with the last nine months stayed. The stay of the last nine months is conditional upon the Respondent's obtaining a practice monitor during the ninety days of the actual suspension. If the

Respondent has failed to obtain a practice monitor by the conclusion of the ninety day suspension, then she will remain suspended until she obtains a practice monitor. The Committee provided further, that following the actual suspension the Respondent shall be on probation for the period remaining from the original Restoration Order, under the terms set out in the Restoration Order and/or in the Hearing Committee's Determination.

In making their Determination on the Penalty, the Hearing Committee noted that the record established the Respondent's unwillingness to comply with certain terms of the Restoration Order. The Committee noted favorably, however, the Respondent's negative drug screens over the past fifteen months and the positive testimony by witnesses on the Respondent's behalf. The Committee stated that the Respondent's conduct was serious but that they felt the Respondent was capable of learning from her errors and capable of rehabilitation.

#### **REQUESTS FOR REVIEW**

The Respondent failed to submit a brief to the Review Board, although she requested a review of the Hearing Committee's Determination.

The Petitioner has asked the Review Board to dismiss the Respondent's appeal for the Respondent's failure to serve the Petitioner with a Notice of Review.

In the event that the Review Board does review the Hearing Committee's Determination, the Petitioner requests that the Review Board affirm the Hearing Committee's Determination and Penalty. The Petitioner alleges that the Hearing Committee's Penalty provides the Respondent with an extraordinary opportunity to remake her professional life.

#### **REVIEW BOARD DETERMINATION**

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

The Review Board denies the Petitioner's request to dismiss the appeal due to the Respondent's

failure to serve the Petitioner with a Notice of Review. The Petitioner was not prejudiced by the Respondent's failure to serve a copy of her Notice on the Petitioner. The Petitioner received actual notice of the appeal from our Administrative Officer's letter, advising the parties as to the date to file briefs.

The Review Board votes to sustain the Hearing Committee's Determination finding Dr. Cavender guilty of professional misconduct for violating the probation terms from the 1992 Order restoring the Respondent's medical license. The Committee's Determination is consistent with their findings that the Respondent failed to obtain a successor practice monitor and failed to appear for mandatory urine screens.

The Review Board sustains the Hearing Committee's Determination to suspend the Respondent's license for ninety days certain, and to continue the suspension past ninety days if the Respondent has failed to obtain a practice monitor. The Review Board further sustains the Committee's Determination that the Respondent shall continue on probation following the suspension, for the time remaining under the original Restoration Order.

The Committee's Determination is appropriate to impress upon the Respondent the requirement that she must comply with all the terms of her probation, that she is not free to choose which requirements she will follow and that she is not free to refuse cooperation with the persons who monitor or aid the Respondent in her probation. The Respondent has regained her privilege to practice medicine in this state only upon her agreement to comply with the reasonable and legal probationary terms from her Restoration Order. The probationary terms are necessary to protect the public and assure that the Respondent will not return to the drug dependency which led to her license's initial loss. The Respondent must understand that her failure to comply with and cooperate in her probation in the future could lead to the loss of her license permanently.

**ORDER**

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

1. The Review Board **sustains** the Hearing Committee on Professional Medical Conduct's September 20, 1994 Determination finding the Respondent guilty of professional misconduct.
2. The Review Board **sustains** the full terms of the Penalty which the Hearing Committee imposed through their Determination.

**ROBERT M. BRIBER**

**SUMNER SHAPIRO**

**WINSTON S. PRICE, M.D.**

**EDWARD SINNOTT, M.D.**


**WILLIAM A. STEWART, M.D.**

**IN THE MATTER OF JOHANNA CAVENDER, 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. Cavender.

**DATED: Albany, New York**

12/29, 1994



**ROBERT M. BRIBER**



**IN THE MATTER OF JOHANNA CAVENDER, 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. Cavender.

**DATED: Delmar, New York**

Dec. 28, 1994

  
**SUMNER SHAPIRO**

**IN THE MATTER OF JOHANNA CAVENDER, 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. Cavender.

**DATED: Brooklyn, New York**

\_\_\_\_\_, 1994

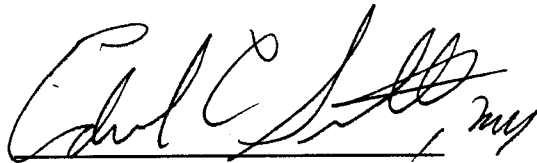
  
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**WINSTON S. PRICE, M.D.**

**IN THE MATTER OF JOHANNA CAVENDER, 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. Cavender.

**DATED: Roslyn, New York**

December 23, 1994

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

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

**IN THE MATTER OF JOHANNA CAVENDER, 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. Cavender.

**DATED: Syracuse, New York**

27 Dec, 1994

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

**WILLIAM A. STEWART, M.D.**