



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

October 20, 1993

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Melvin W. Cohen, M.D.
42 Bay 25th Street
Brooklyn, New York 11214

George Weinbaum
Attorney At Law
3 Barker Avenue
White Plains, New York 10601

Paul Stein
Associate Counsel
New York State Department of Health
Bureau of Adjudication
5 Penn Plaza - Sixth Floor
New York, New York 10001-1810

RE: In the Matter of Melvin Warren Cohen, M.D.

Dear Dr. Cohen, Mr. Weinbaum and Mr. Stein:

Enclosed please find the Determination and Order (No. BPMC-93-165) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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:

New York State Department of Health
Office of Professional Medical Conduct
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.

As prescribed by the New York State Public Health Law, §230, subdivision 10, paragraph (i), and §230-c subdivisions 1 through 5, (McKipney 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.

Request for review of the Committee's determination by the Administrative Review Board stays all action until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

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 and receipt of the enclosed Determination and Order.

The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Corning Tower -Room 2503
Empire State Plaza
Albany, New York 12237-0030

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:rg
Enclosure

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

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IN THE MATTER

OF

MELVIN WARREN COHEN, M.D.

: HEARING COMMITTEE'S
: FINDINGS OF FACT,
: CONCLUSIONS,
: DETERMINATION
: AND ORDER

: No. BPMC-93-165

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A Notice of Referral Proceeding and Statement of Charges, both dated July 1, 1993, were served upon Respondent, MELVIN WARREN COHEN, M.D. GEORGE HYAMS, M.D. (Chair), F. MICHAEL JACOBIUS, M.D., and KENNETH KOWALD, 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. GERALD H. LIEPSHUTZ, Department of Health Hearing Officer, served as the Administrative Officer. A hearing was held on August 11, 1993. The Department of Health appeared by Paul Stein, Esq., Associate Counsel. George Weinbaum, Esq., appeared on behalf of Respondent. Evidence was received and a transcript of this proceeding was 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). That statute provides for an expedited hearing where a licensee is charged solely with violations 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 or upon having had other disciplinary action taken concerning a license to practice medicine regarding conduct which would amount to professional misconduct if committed in New York. The scope of this expedited hearing is limited by Public Health Law Section 230(10)(p) 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 Sections 6530(9)(a)(ii) (First Specification) and 6530(9)(b) (Second Specification).

FINDINGS OF FACT

The following Findings of Fact were made unanimously (3-0) after a review of the entire record in this matter. Citations in parentheses refer to exhibits in evidence. These citations represent evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting

evidence was considered and rejected in favor of the cited evidence.

1. Respondent was authorized to practice medicine in New York State on July, 1, 1970 by the issuance of license number 106131 by the New York State Education Department. Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1993 through December 31, 1994, with a registration address of 42 Bay 25th Street, Brooklyn, New York 11214. (Ex. 2)

FIRST SPECIFICATION

2. On or about December 17, 1992, Respondent was convicted, by way of a jury verdict, in the United States District Court for the District of New Jersey, before the Honorable Harold A. Ackerman, District Judge, Docket No. CR 92-118, on all nine counts of an indictment charging Respondent as follows:

"At relevant times, defendant MELVIN W. COHEN, M.D., in exchange for money, provided prescriptions for Schedule IV controlled substances outside the usual course of medical practice, and for other than legitimate medical purposes.

"On or about the dates indicated below, at Newark, in the District of New Jersey, the defendant MELVIN W. COHEN, M.D. did knowingly and intentionally

dispense the Schedule IV controlled substances described below other than as authorized by Subchapter I, Chapter 13, of Title 21, United States Code:

<u>Count</u>	<u>Date</u>	<u>Drug</u>
1	October 9, 1991	Valium
2	October 9, 1991	Ativan
3	October 16, 1991	Valium
4	October 16, 1991	Valium
5	October 16, 1991	Valium
6	October 23, 1991	Valium
7	October 23, 1991	Valium
8	October 23, 1991	Valium
9	October 23, 1991	Xanax

"In violation of Title 21, United States Code, Section 841(a)(1)." (Exs. 3 through 7)

SECOND SPECIFICATION

3. In an Order of Licensure Revocation filed June 25, 1993, the State of New Jersey, Department of Law & Public Safety, Division of Consumer Affairs, State Board of Medical Examiners (the "Board"), after a hearing before the Board, found:

"Dr. Melvin Cohen was convicted, following a jury trial in the Federal District Court for the District Court (sic) of New Jersey, upon nine counts of violating 21 U.S.C. Section 841(a)(1). Dr. Cohen's conviction was predicated upon his selling prescriptions to individuals without any medical justification. The conviction is clearly that of a crime of moral turpitude, and thus provides grounds for disciplinary sanction by this Board pursuant to N.J.S.A. 45:1-21 (g). We also

find beyond dispute that the acts established by Dr. Cohen's conviction-- namely, the sale of prescriptions without medical justification-- constitute acts of fraud and professional misconduct, and thereby provide independent bases for disciplinary action pursuant to N.J.S.A. 45:1-21(b) (engaging in the use or employment of dishonesty, fraud, deception, and misrepresentation) and N.J.S.A. 45:1-21(e)(engaging in acts constituting professional misconduct)...." (Ex. 8)

CONCLUSIONS

The following Conclusions were made pursuant to the Findings of Fact herein. All Conclusions resulted from a unanimous (3-0) vote of the Hearing Committee.

FIRST SPECIFICATION

The Committee concludes that the Department of Health has met its burden of proof. The preponderance of the evidence demonstrates that on or about December 17, 1992, Respondent was convicted of nine counts in violation of federal criminal law found in 21 United States Code Section 84(a)(1). This constitutes professional misconduct within the meaning of New York State Education Law Section 6530(9)(a)(ii) by virtue of this criminal conviction.

SECOND SPECIFICATION

The Committee concludes that the Respondent of Health has met its burden of proof. The preponderance of the evidence demonstrates that Respondent has been found guilty of improper professional practice or professional misconduct by a duly authorized disciplinary agency of the State of New Jersey based upon conduct which would, if committed in New York State, constitute professional misconduct under New York State Education Law Section 6530(2) (practicing the profession fraudulently). The underlying conduct was identical to the conduct alleged and proved in the **FIRST SPECIFICATION** herein.

DETERMINATION AND ORDER

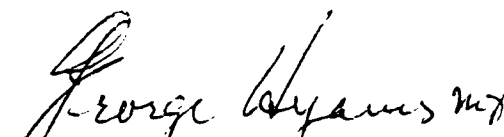
The **FIRST SPECIFICATION** and the **SECOND SPECIFICATION** in the Statement of Charges are sustained.

Respondent committed reprehensible acts by acting as an illegal drug dealer in using his medical license to profit from criminal drug sales. There exist no mitigating circumstances in this matter which call for less than the severest penalty.

IT IS HEREBY ORDERED:

THAT pursuant to Section 230-a(4) of the Public Health Law of the State of New York, Respondent's license to practice medicine in New York State is revoked.

DATED: New York, New York
October , 1993



GEORGE HYAMS, M.D.
Chair

F. MICHAEL JACOBUS, M.D.
KENNETH KOWALD

TO: MELVIN W. COHEN, M.D.
42 BAY 25th STREET
BROOKLYN, NEW YORK 11214

GEORGE WEINBAUM
ATTORNEY AT LAW
3 BARKER AVENUE
WHITE PLAINS, NEW YORK 10601

PAUL STEIN
ASSOCIATE COUNSEL
NEW YORK STATE DEPARTMENT OF HEALTH
BUREAU OF ADJUDICATION
5 PENN PLAZA - SIXTH FLOOR
NEW YORK, NEW YORK 10001-1810

APPENDIX I

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

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: IN THE MATTER : NOTICE OF
: OF : REFERRAL
: MELVIN WARREN COHEN, M.D. : PROCEEDING
:-----X

TO: MELVIN WARREN COHEN, M.D.
42 Bay 25th Street
Brooklyn, New York 11214

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. 1993) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1993). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 11th day of August, 1993 at 2 o'clock in the afternoon 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 the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Corning Tower Building, 25th Floor, Empire State Plaza, Albany, New York 12237, ATTENTION: NANCY MASSARONI, (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before August 2, 1993.

You may file a written answer, brief, and affidavits with the Committee. Six copies of all papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before August 2, 1993, 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 Bureau of Adjudication, 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

July 1, 1993



CHRIS STERN HYMAN
Counsel
Bureau of Professional
Medical Conduct

Inquiries should be addressed to:

Paul Stein
Associate Counsel
Bureau of Professional
Medical Conduct
5 Penn Plaza, 6th Floor
New York, New York 10001
212-613-2605

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

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IN THE MATTER	:	STATEMENT
OF	:	of
MELVIN WARREN COHEN, M.D.	:	CHARGES

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MELVIN WARREN COHEN, M.D., the Respondent, was authorized to practice medicine in New York State on July 1, 1970 by the issuance of license number 106131 by the New York State Education Department. Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1993 through December 31, 1994. His current registration address is 42 Bay 25th Street, Brooklyn, NY 11214.

SPECIFICATIONS

FIRST SPECIFICATION

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law Sec. 6530(9)(a)(ii) (McKinney Supp. 1993), in that he has been convicted of committing an act constituting a crime under federal law, specifically:

On or about December 17, 1992, Respondent was convicted, by way of a jury verdict, in the United States District Court for the District of New Jersey, before the Honorable Harold A. Ackerman, District Judge, Docket No. CR 92-118, on all nine counts of an indictment charging Respondent as follows:

"At relevant times, defendant MELVIN W. COHEN, M.D., in exchange for money, provided prescriptions for Schedule IV controlled substances outside the usual course of medical practice, and for other than legitimate medical purposes.

"On or about the dates indicated below, at Newark, in the District of New Jersey, the defendant MELVIN W. COHEN, M.D. did knowingly and intentionally dispense the Schedule IV controlled substances described below other than as authorized by Subchapter I, Chapter 13, of Title 21, United States Code:

<u>Count</u>	<u>Date</u>	<u>Drug</u>
1	October 9, 1991	Valium
2	October 9, 1991	Ativan
3	October 16, 1991	Valium
4	October 16, 1991	Valium
5	October 16, 1991	Valium
6	October 23, 1991	Valium
7	October 23, 1991	Valium
8	October 23, 1991	Valium
9	October 23, 1991	Xanax

"In violation of Title 21, United States Code, Section 841(a)(1)."

On or about March 30, 1993, Respondent was sentenced to:

a six month term of imprisonment as to each of the nine counts, to run concurrently with each other, totalling a term of imprisonment of six months;

upon release from imprisonment, a term of supervised release for a term of one year on each of the nine counts, to run concurrently with each other;

participation in a mental health program for evaluation and/or treatment as directed by the U.S. Probation Office, the defendant to remain in treatment until satisfactorily discharged and with the approval of the U.S. Probation Office; and payment of a special assessment of \$450.00.

SECOND SPECIFICATION

Repondent is charged with professional misconduct within the meaning of N.Y. Educ. Law Sec. 6530(9)(b) (McKinney Supp. 1993), in that he has been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state, as defined in N.Y. Educ. Law Sec. 6530 (2) and/or (9)(a)(2) (McKinney Supp. 1993), specifically:

In an Order of Licensure Revocation filed June 25, 1993, the State of New Jersey, Department of Law & Public Safety, Division of Consumer Affairs, State Board of Medical Examiners (the "Board"), after a hearing before the Board, found:

"Dr. Melvin Cohen was convicted, following a jury trial in the Federal District Court for the District Court (sic) of New Jersey, upon nine counts of violating 21 U.S.C. Section 841 (a) (1). Dr. Cohen's conviction was predicated upon his selling

prescriptions to individuals without any medical justification. The conviction is clearly that of a crime of moral turpitude, and thus provides grounds for disciplinary sanction by this Board pursuant to N.J.S.A. 45:1-21 (g). We also find beyond dispute that the acts established by Dr. Cohen's conviction--namely, the sale of prescriptions without medical justification--constitute acts of fraud and professional misconduct, and thereby provide independent bases for disciplinary action pursuant to N.J.S.A. 45:1-21 (b) (engaging in the use or employment of dishonesty, fraud, deception, and misrepresentation) and N.J.S.A. 45:1-21 (e) (engaging in acts constituting professional misconduct)...."

Based on all the evidence presented, the Board unanimously revoked Respondent's license to practice medicine and surgery in the State of New Jersey.

Dated: New York, New York

July 1, 1993



CHRIS STERN HYMAN
Counsel
Bureau of Professional Medical
Conduct

SUMMARY OF DEPARTMENT OF HEALTH HEARING RULES

(Pursuant to Section 301 SAPA)

The following items are addressed by the Uniform Hearing Procedures Rules of the New York State Department of Health:

Applicability

Definitions

Notice of Hearing

Adjournment

Answer or Responsive Pleading

Amendment of Pleadings

Service of Papers

Discovery

Hearing Officer/Pre-Hearing Conference

Pre-Hearing Conference

Stipulations and Consent Orders

The Hearing

Hearing Officer's Report

Exceptions

Final Determination and Order

Waiver of Rules

Time Frames

Disqualification for Bias

The exact wording of the rules is found at 10 NYCRR Part 51 of Volume 10 of the New York Code of Rules and Regulations. Each of the above items may be summarized as following:

51.1 Applicability. These regulations apply to most hearings conducted by the Department of Health.

51.2 Definitions.

1. "Commissioner" means Commissioner of the New York State Department of Health.
2. "CPLR" means Civil Practice Law and Rules.
3. "Department" means New York State Department of Health.
4. "Hearing Officer" means the person appointed to preside at the hearing or the person designated as administrative officer pursuant to Public Health Law Section 230.
5. "Party" means all persons designated as petitioner, respondent or intervenor.
6. "Report" means the Hearing Officer's summary of the proceeding and written recommendation or the findings, conclusions and determination of the hearing committee pursuant to Public Health Law Section 230.

51.3 The Department's Notice of Hearing and/or Statement of Charges should be served at least 15 days prior to the first hearing date, specify time, place and date(s) and should contain the basis for the proceeding.

51.4 Adjournment. Only the Hearing Officer may grant an adjournment and only after he/she has consulted with both parties. In hearings pursuant to Public Health Law Section 230, an adjournment on the initial day may be granted by the hearing committee.

51.5 Answer to Responsive Pleading. A party may serve a response to the allegations of the Department.

51.6 Amendment to Pleadings. A party may usually amend papers if no substantial prejudice results by leave of the Hearing Officer.

51.7 Service of Papers. Except for the Notice of Hearing and/or Statement of Charges, all papers may be served by ordinary mail.

51.8 Disclosure. Generally, there is no disclosure of any kind and the Hearing Officer cannot require it, unless all parties agree. If agreed to, the Hearing Officer will ensure all parties proceed in accordance with their agreement. However, in a hearing in which revocation of a license or permit is sought or possible, a party may demand in writing that another party disclose the names of witnesses, documents or other evidence such other party intends to offer at the hearing. A demand for such disclosure must be served at least 10 days prior to the first scheduled hearing date. Disclosure or a statement that the party has nothing to disclose must be made at least 7 days before the first scheduled hearing date. A party that determines to present witnesses or evidence not previously disclosed must supplement its disclosure as soon as practicable. The Hearing Officer may, upon good cause shown, modify the times for demands for and response to disclosure or allow a party not to disclose or limit, condition or regulate the use of information disclosed and may preclude the introduction of evidence not disclosed pursuant to a demand.

51.9 Hearing Officer. He/she presides over the hearing and has the authority to ensure it is conducted in an orderly fashion. He/she may also order the parties to meet before the hearing to discuss the procedure. He/she does not have the authority to remove testimony from the transcript and/or dismiss charges unless authorized by delegation.

51.10 Stipulation and Consent and Surrender Orders. At any time prior to a final order, parties may resolve all or any issues by stipulation. An order issued pursuant to a stipulation has the same force and effect as one issued after hearing.

51.11 The Hearing. A party may have an attorney represent him or her. Failure to appear may result in an adverse ruling. A hearing may be combined with or separated from another hearing depending on whether such action will result in delay, cost or prejudice. While the rules of evidence as applied in a courtroom are not observed, witnesses must be sworn or give an affirmation

and each party has the right to present its case and to cross-examine. The Department has broad discretion to place documents into evidence. A record of the proceeding must be made. In enforcement cases, the Department has the burden of proof and of going forward. In matters relating to neglect or abuse of patients under Public Health Law Section 2803-d, the Hearing Officer may not compel disclosure of the identity of the person making the report or who provided information in the investigation of the report.

Complaints relating to Public Health Law Section 230 may not be introduced into evidence by either party and their production cannot be required by the Hearing Officer.

Claims that a hearing has been unreasonably delayed is treated as an affirmative defense (Section 51.5) or as part of claimant's case. The burden of going forward and of proof are on the claimant.

A verbatim record of the proceeding shall be made by any means determined by the Department. The record shall include notice of hearing and any statement of charges, responsive pleadings, motions, rulings, transcript or recording, exhibits, stipulations, briefs, any objections filed, any decision, determination, opinion, order or report rendered.

51.12 Hearing Officer's Report. In matters governed by Public Health Law Sections 230, 230-a and 230-b, the final report should be submitted not more than 52 days after completion of the hearing if service is effectuated by mail and not more than 58 days of service if effectuated personally. In all other matters, the Hearing Officer, within 60 days of the completion of the hearing, should submit a report.

51.13 Filing of Exceptions. Within 30 days of the date of a copy of the report of the Hearing Officer and proposed order or, within 15 days of a date a report of the hearing committee and proposed recommendation for hearings conducted pursuant to Public Health Law Section 230 is sent to the parties, any party may submit exceptions to said report and proposed order to the Supervising Administrative Law Judge. On notice of all parties, a party may request, before the expiration of the exception period, the Supervising Law Judge to extend the exception period. All parties have the opportunity to state their position on the extension on the record. Extensions may be granted on good cause shown; however, they are not granted to allow a party to respond to exceptions already filed.

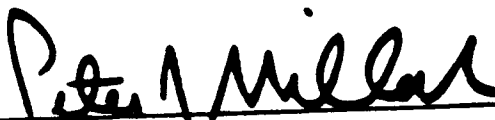
51.14 Final Determination Order. The hearing process ends when an order is issued by the Commissioner or his designee or the appropriate board of council. The order should state a basis for the decision. Each party receives a copy of the order.

51.15 Waiver of Rules. These rules and regulations may be dispensed with by agreement and/or consent.

51.16 Establishment, Construction, Rate Hearings. Hearings involving any of these issues have time limits concerning the issuance of notices of hearing of 365 days of receipt by the Department of a request for hearing.

51.17 Disqualification for Bias. Bias shall disqualify a Hearing Officer and/or a committee member in hearings governed by Public Health Law Section 230. The party seeking disqualification must submit to the hearing officer an affidavit pursuant to SAPA Section 303. Mere allegations are insufficient. The Hearing Officer rules on the request.

DATED: Albany, New York
February 7, 1992



PETER J. MILLOCK
General Counsel