

**BEFORE THE MINNESOTA
BOARD OF MEDICAL PRACTICE**

In the Matter of the
Medical License of
Diane Bay Humenansky, M.D.
Date of Birth: 10-8-35
License Number: 32,069

**FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER**

The above-entitled matter was considered by Administrative Law Judge Steve M. Mihalchick on October 29 and November 1, 1996. At the November 1, 1996, hearing, Respondent entered a plea of no contest to the allegations made in the Notice of and Order for Hearing issued by the Complaint Review Committee (hereinafter "Committee") of the Minnesota Board of Medical Practice (hereinafter "Board") on July 1, 1996. On November 7, 1996, Judge Mihalchick issued his Findings of Fact, Conclusions of Law and Recommendation.

Jacquelyn E. Albright, Assistant Attorney General, 525 Park Street, St. Paul, Minnesota 55103, represented the Committee. Philip G. Villaume, Attorney At Law, 7900 International Drive, Suite 675, Bloomington, Minnesota 55425, appeared on behalf of Respondent, Diane B. Humenansky, M.D.

The Board met to consider this matter on December 14, 1996, at the University Park Plaza, 2829 University Avenue Southeast, Minneapolis, Minnesota. The following members of the Board were present: Zenas Baer; Adrienne Breiner; Sandra Engwall, M.D.; James Gavisser, M.D.; Patricia A. Jilk; James F. Knapp, M.D.; Barbara LeTourneau, M.D.; Janet Lindquist, M.D.; M. J. Martin, M.D.; Mary Mika; Peter T. Smyth, M.D.; Craig Stone; Scott Tongen, M.D.; Elliot V. Troup, M.D.; and Joseph Willett, D.O. Jacquelyn E. Albright appeared and presented oral argument for the Committee. Philip E. Villaume appeared on behalf of Respondent, Diane B. Humenansky, M.D., who was also present. Robert T.

Holley, Assistant Attorney General, was present as legal adviser to the Board. James F. Knapp, M.D., was a member of the Complaint Review Committee that commenced this proceeding and, therefore, did not vote in this matter.

Based upon its review of the record of this proceeding, the Board makes the following:

FINDINGS OF FACT

1. On March 17, 1995, the Board issued its Findings of Fact, Conclusions and Order to Respondent, concluding that it had probable cause to order Respondent to submit to a mental and physical examination pursuant to Minn. Stat. § 147.091, subd. 6(a). This determination was made upon a finding that Respondent's professional practice included serious and repeated boundary violations and her professional communications were of a loose, inappropriately personal, disorganized and rambling nature. The Board's mental health consultant concluded that Respondent's practice problems presented "serious threats to respectful, consistent, noninjurious patient care." Consequently, the Board suspended Respondent's license to practice medicine and surgery in the State of Minnesota, but stayed the suspension upon Respondent's compliance with a previously issued Order for Mental and Physical Examination. The Findings of Fact, Conclusions and Order of March 17, 1995, are part of the record in this matter pursuant to the stipulation of counsel.

2. On July 1, 1996, the Committee issued a Notice of and Order for Hearing in this matter. It contained the following allegations and violations.

ALLEGATIONS

The grounds for disciplinary action are as follows:

1. In approximately 1992, the Board initiated an investigation into Respondent's medical practice after receiving numerous complaints regarding Respondent and her ability to practice medicine. To date, the Board has received twenty (20) complaints against Respondent which allege multiple violations of the Medical Practice Act.

2. After thorough investigation of this matter, the Board determined that probable cause existed to believe that Respondent was unable to practice medicine with

reasonable skill and safety to patients due to a mental or physical condition. Consequently, the Board ordered Respondent to submit to a mental and physical examination, pursuant to Minn. Stat § 147.091, subd. 6(a).

3. From April 17 through April 21, 1995, Respondent underwent the Board-ordered mental and physical evaluation at the Menninger Clinic in Topeka, Kansas. The assessment team diagnosed Respondent, in part, as follows:

Axis II: 301.9 Personality Disorder NOS with dependent and avoidant features (PD).

* * *

Axis IV: Current GAF: 55
Highest GAF Past Year: 55

4. Upon discharge, evaluation staff at the Menninger Clinic recommended that Respondent:

a. Work in a structured environment which includes opportunity for supervision and peer review and dialogue, and where clear clinical expectations and ongoing medical education are available.

b. Upgrade her continuing medical education. Specifically, it was recommended that Respondent receive education in the areas of addictions, psychopharmacology and prescribing practices, medical malpractice/practice management, and ongoing psychotherapy supervision with particular emphasis on transference/counter-transference issues.

c. Participate in psychotherapy to further her own psychological growth and development.

d. Be restricted from working with Dissociative Identity Disorder patients.

5. On July 31, 1995, a Ramsey County jury found Respondent negligent in failing to meet the recognized medical standards in the diagnosis, care and treatment of

patient #1 and that such failing was a direct cause of harm or injury to patient #1. The jury awarded patient #1 and her family in excess of two million dollars for damages caused by Respondent.

6. On January 24, 1996, a Ramsey County jury found Respondent negligent in failing to meet the recognized medical standards in the diagnosis, care and treatment of patient #2 and that such failing was a direct cause of harm or injury to patient #2. The jury awarded patient #2 and her family in excess of two million dollars for damages caused by Respondent.

7. In or about June 1996, Respondent's insurance company agreed to out-of-court settlements with four former patients who had accused Respondent of planting false memories of abuse. To date, there are four more false memory lawsuits pending against Respondent.

VIOLATIONS

The foregoing conduct would constitute:

1. Engaging in . . . [medical practice which is professionally incompetent] in violation of Minn. Stat. § 147.091, subd. 1(g).

2. Engaging in unprofessional conduct in violation of Minn. Stat. § 147.091, subd. 1(k).

3. An inability to practice medicine with reasonable skill and safety to patients in violation of Minn. Stat. § 147.091, subd. 1(1).

3. By letter dated October 22, 1996, Respondent informed counsel to the Committee of her desire to "surrender and resign" her medical license. In this letter, Respondent denied any wrongdoing and indicated that she was a "victim" in this matter. Respondent wrote that she has been "harassed, harried, tormented and abused by the Minnesota Board for the better part of five years." With respect to the numerous complaints and civil lawsuits filed against her, Respondent blamed those on the "perpetrators of childhood sexual assault." Respondent wrote, "Well, enough of victimization, I want no more. I refuse to take responsibility for

mistakes, which I have not made. I will not sign a perjurious document, which the Assistant Attorney General prepared, as it is not factual and constitutes a total fabrication of my practice of medicine."

4. On October 29, 1996, a pre-hearing conference was held at the Office of the Administrative Hearings with both counsel and Respondent present to discuss the surrender of Respondent's license and other options. Respondent indicated that she is not and never has been mentally ill, but does not wish to go through the rigors of a contested case. She and her counsel had assumed that if she did surrender her license or entered a plea of no contest, the Board would revoke her license to practice medicine. It was explained to her that if she did enter a plea of no contest to the allegations, the Board would still have all of its disciplinary options available and she would be entitled to argue appropriate discipline to the Board. Respondent requested and was granted a few days to consider her options of entering a plea of no contest or of proceeding to a contested case on the allegations. On November 1, 1996, in a telephone conference with counsel for the Committee and counsel for Respondent, counsel for Respondent advised the Administrative Law Judge that Respondent had decided to enter a no contest plea to the factual basis of the allegations.

5. Respondent does not admit the allegations made in the Notice of and Order for Hearing, but by virtue of her entry of a plea of no contest, they are deemed proven. Therefore, the allegations are taken as true and incorporated into these Findings of Fact.

Based upon the forgoing Findings of Fact, the Board makes the following:

CONCLUSIONS

1. The Minnesota Board of Medical Practice and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50, 147.091, and 214.10 (1994).

2. The Board and the Complaint Review Committee gave proper notice in this matter and have fulfilled all relevant substantive and procedural requirements of law and rules.

3. The Board has authority to take disciplinary action against physicians, including Respondent, under Minn. Stat. §§ 147.01 to 147.36, 214.10 and 214.103.

4. The allegations deemed proven in this matter demonstrate professional incompetence in violation of Minn. Stat. § 147.091, subd. 1(g).

5. The allegations deemed proven in this matter constitute engaging in unprofessional conduct in violation of Minn. Stat. § 147.091, subd. 1(k). That clause of the statute defines unprofessional conduct to include any departure from or failure to conform to the minimal standards of acceptable and prevailing medical practice and states that actual injury to a patient need not be established. The jury determinations of negligence in failing to meet recognized medical standards in the diagnosis, care, and treatment of patients causing direct harm or injury to the patients are binding determinations of failure to conform to the minimal standards of prevailing medical practice. The numerous complaints against Respondent and facts determined during the investigation of this matter support that conclusion.

6. The allegations deemed proven in this matter constitute an inability to practice medicine with reasonable skill and safety to patients in violation of Minn. Stat. § 147.091, subd. 1(l).

Based on the forgoing Findings of Fact and Conclusions, the Board issues the following:

ORDER

1. NOW, THEREFORE, IT IS HEREBY ORDERED that Respondent's license to practice medicine and surgery in the State of Minnesota shall be **SUSPENDED FOR AN INDEFINITE PERIOD OF TIME**. During the period of suspension, Respondent shall not in any manner practice medicine or surgery in the State of Minnesota. Respondent may petition for removal of the suspension no sooner than three (3) years from the date of this order and upon completion of the following:

a. Respondent shall submit to a mental health evaluation by an evaluator approved in advance by the Board. The purpose of the evaluation will be to assess whether Respondent is capable of practicing medicine with reasonable skill and safety to patients, either with or without restrictions. The nature, scope and duration of the evaluation shall be

determined by the Board-approved evaluator. Respondent shall complete and sign waivers to allow the Board to release any and all private information to the evaluator prior to the evaluation and to allow the Board to communicate with the evaluator before, during, and after the evaluation, if the need arises. The evaluation results shall be transmitted directly by the evaluator to Robert Leach, or his successor, at the Board office. Respondent is responsible for the cost of the evaluation.

b. Respondent shall participate in individual psychotherapy by a licensed psychologist or psychiatrist, approved in advance by the Board, and shall comply with all treatment recommendations made by the psychotherapist. Prior to Respondent's petitioning for reinstatement of her medical license, the psychotherapist shall verify in writing to the Board that Respondent is fit and capable of practicing medicine with reasonable skill and safety to patients.

c. Respondent shall reimburse the Board \$5,000.00 for a portion of the cost of the investigation and proceeding.

d. Upon petitioning for reinstatement, Respondent shall meet with the Board's Complaint Review Committee to discuss her petition and the supporting evidence. Upon hearing the petition, the Board may continue, modify or remove the suspension, or may impose appropriate and reasonable conditions and/or limitations on Respondent's license.

Dated: 20 December, 1996

MINNESOTA BOARD OF
MEDICAL PRACTICE

M. J. Martin, MD
M. J. MARTIN, M.D.
President

AFFIDAVIT OF SERVICE BY INTEROFFICE MAIL

Re: In the Matter of the Medical License of Diane B. Humenansky, M.D.
OAH Docket No. 12-0903-10686-2

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

SANDRA BUSH, being first duly sworn, deposes and says:

That at the City of St. Paul, County of Ramsey and State of Minnesota, on December 24, 1996, she served the attached FINDINGS OF FACT, CONCLUSIONS AND FINAL ORDER by putting it in Jacquelyn E. Albright's Office Mailbox located on the 5th Floor of 525 Park Street, St. Paul, Minnesota, and addressed to:

Jacquelyn E. Albright
Assistant Attorney General
Suite 500, 525 Park Street
St. Paul, MN 55103-2106

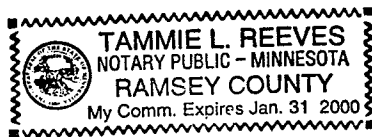
Sandra Bush

SANDRA BUSH

Subscribed and sworn to before me
this 24th day of December, 1996.

Tammie L. Reeves

Notary Public



AFFIDAVIT OF SERVICE BY MAIL

Re: In the Matter of the Medical License of Diane B. Humenansky, M.D.
OAH Docket No. 12-0903-10686-2

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

SANDRA A. BUSH, being first duly sworn, deposes and says:

That at the City of St. Paul, County of Ramsey and State of Minnesota, on December 24, 1996, she served the attached FINDINGS OF FACT, CONCLUSIONS AND FINAL ORDER by depositing in the United States mail at said city and state, a true and correct copy thereof, properly enveloped, with first class postage prepaid, and addressed to:

Philip G. Villaume
Attorney at Law
International Plaza, Suite 675
7900 International Drive
Bloomington, Minnesota 55425

Steve M. Mihalchick
Administrative Law Judge
Office of Administrative Hearings
Suite 1700
100 Washington Square
Minneapolis, MN 55401-2138

Sandra A. Bush
SANDRA A. BUSH

Subscribed and sworn to before me
this 24th day of December, 1996.

Tammie L. Reeves
Notary Public

