



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK

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March 14, 2001

Purnendu Dutta, Physician
61 Waterford Park
Williamsville, New York 14221

RECEIVED
MAR 22 2001
OFFICE OF PROFESSIONAL
MEDICAL CONDUCT

Re: Application for Restoration

Dear Dr. Dutta:

Enclosed please find the Commissioner's Order regarding Case No. 01-02-60 which is in reference to Calendar No. 18129. This order and any decision contained therein goes into effect five (5) days after the date of this letter.

Very truly yours,

Daniel J. Kelleher
Director of Investigations

By: *Gustave Martine*
Gustave Martine
Supervisor

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

The University of the State of New York
Education  Department

IN THE MATTER

of the

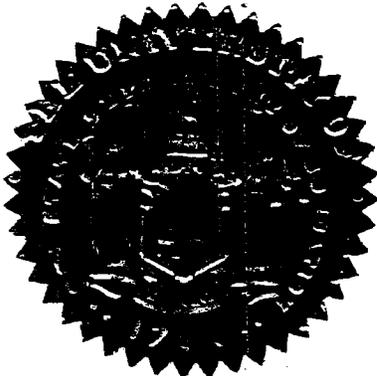
Application of PURNENDU
DUTTA for restoration of his license
to practice as a physician in the State
of New York.

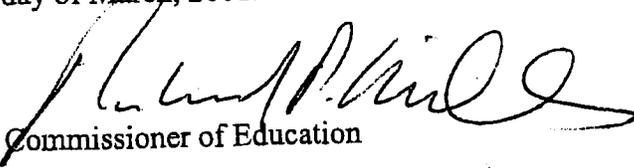
Case No. 01-02-60

It appearing that the license of PURNENDU DUTTA, 61 Waterford Park, Williamsville, New York 14221, to practice as a physician in the State of New York, was revoked by action of the Board of Regents effective June 5, 1992, and he having petitioned the Board of Regents for restoration of said license, and the Regents having given consideration to said petition and having reviewed and disagreed with the recommendation of the Peer Review Panel and having agreed with and accepted the recommendation of the Committee on the Professions, now, pursuant to action taken by the Board of Regents on February 6, 2001, it is hereby

ORDERED that the petition for restoration of License No. 113946, authorizing PURNENDU DUTTA to practice as a physician in the State of New York, is denied.

IN WITNESS WHEREOF, I, Richard P. Mills,
Commissioner of Education of the State of New York for
and on behalf of the State Education Department, do
hereunto set my hand and affix the seal of the State
Education Department, at the City of Albany, this 9th
day of March, 2001.




Commissioner of Education

Case No. 01-02-60

It appearing that the license of PURNENDU DUTTA, 61 Waterford Park, Williamsville, New York 14221, to practice as a physician in the State of New York, was revoked by action of the Board of Regents effective June 5, 1992, and he having petitioned the Board of Regents for restoration of said license, and the Regents having given consideration to said petition and having reviewed and disagreed with the recommendation of the Peer Review Panel and having agreed with and accepted the recommendation of the Committee on the Professions, now, pursuant to action taken by the Board of Regents on February 6, 2001, it was

VOTED that the petition for restoration of License No.113946, authorizing PURNENDU DUTA to practice as a physician in the State of New York, be denied.

THE UNIVERSITY OF THE STATE OF NEW YORK
The State Education Department

Report of the Committee on the Professions
Application for Restoration of Physician License

Re: Purnendu Dutta

Attorney: Amy Kulb

Purnendu Dutta, 61 Waterford Park, Williamsville, New York 14221, petitioned for restoration of his physician license. The chronology of events is as follows:

- 08/01/72 Issued license number 113946 to practice as a physician in New York State.
- 01/12/87 Charged with professional misconduct by Department of Health. (See "Disciplinary History.")
- 07/02/87 Report of Hearing Committee of the State Board for Professional Medical Conduct recommending a stayed revocation, five years probation and a \$25,000 fine.
- 10/28/87 Report of Commissioner of Department of Health recommending revocation.
- 08/28/88 Regents Review Committee recommended remand to a new Hearing Committee.
- 09/16/88 Board of Regents voted to remand case.
- 10/26/88 Effective date of Commissioner's Order remanding case.
- 02/05/90 Charges amended.
- 07/16/91 Report of Hearing Committee of the State Board for Professional Medical Conduct recommending revocation.
- 08/28/91 Report of Commissioner of Department of Health recommending revocation.
- 03/09/92 Report of the Regents Review Committee recommending revocation.

- 03/27/92 Board of Regents voted revocation.
- 04/01/92 Effective date of Commissioner's Order revoking licensure.
- 04/02/92 Temporary Restraining Order granted by Appellate Division of the Supreme Court.
- 06/05/92 Supreme Court, Appellate Division, dismissed CPLR Article 78 petition for review of determination of Board of Regents.
- 06/05/92 Temporary Restraining Order vacated.
- 06/05/92 Revocation effective.
- 05/25/93 Submitted first application for restoration.
- 10/13/95 Peer Committee restoration review.
- 05/24/96 Report of Peer Committee recommending revocation continue with a concurrent 10-year probation term, but the revocation be stayed after adequate psychological evaluation and treatment.
- 11/13/96 Report and recommendation of the Committee on the Professions recommending the application be denied.
- 12/20/96 Board of Regents voted to deny application for restoration.
- 01/22/97 Effective date of Commissioner's Order denying application for restoration.
- 08/28/98 Submitted second application for restoration.
- 02/11/00 Peer Committee restoration review.
- 07/18/00 Report and recommendation of Peer Committee. (See "Report of the Peer Committee.")
- 09/25/00 Report and recommendation of Committee on the Professions. (See "Report of the Committee on the Professions.")

Disciplinary History. (See attached disciplinary documents.) On January 12, 1987, the Department of Health charged Dr. Dutta with seven specifications of professional misconduct: committing unprofessional conduct by his conduct in the practice of medicine which evidenced moral unfitness; willfully harassing, abusing or intimidating a patient either physically or verbally; practicing the profession of medicine fraudulently; gross negligence and/or gross incompetence on more than one occasion; and negligence and/or incompetence on more than one occasion. It was charged that,

with regard to two patients, Dr. Dutta engaged in physical contact of a sexual nature and made verbal comments of a sexual nature.

On July 2, 1987, the Hearing Committee of the State Board for Professional Medical Conduct found Dr. Dutta guilty of the charges and recommended that his license be revoked and a civil penalty of \$25,000 be imposed. The Committee further recommended that the revocation be stayed and that Dr. Dutta be placed on probation for five years. On October 28, 1987, the Commissioner of Health recommended that the findings of fact and conclusions of the Hearing Committee be accepted but that the Committee's recommendation be rejected and that Dr. Dutta's license be revoked. On August 28, 1988, a Regents Review Committee recommended that the findings, conclusions, and recommendations of the Hearing Committee and the Commissioner of Health not be accepted and that Dr. Dutta be found not guilty of the second specification of charges which involved the telephone call allegedly placed by Dr. Dutta to a patient at her residence. The Regents Review Committee further recommended that the matter be remanded to another hearing committee and another administrative officer for a de novo hearing on the remaining charges. On September 16, 1988, the Board of Regents voted to accept the recommendation of the Regents Review Committee and remanded the case to a new hearing committee. The Commissioner's Order became effective on October 26, 1988.

On February 5, 1990, the Statement of Charges was amended and Dr. Dutta was charged with eight specifications of professional misconduct in that he had committed unprofessional conduct by his conduct in the practice of medicine which evidenced moral unfitness, and that he had willfully harassed, abused or intimidated a patient either physically and/or verbally. It was charged that, with regard to two patients, on several occasions Dr. Dutta engaged in physical contact of a sexual nature and made verbal comments of a sexual nature.

On July 16, 1991, a Hearing Committee of the State Board for Professional Medical Conduct recommended that Dr. Dutta be found guilty of the charges and that his license be revoked. On August 28, 1991, the Commissioner of Health recommended that the findings of fact, conclusions, and recommendation of the Hearing Committee be accepted. On March 9, 1992, the Regents Review Committee recommended that Dr. Dutta's license be revoked. On March 27, 1992, the Board of Regents voted to revoke Dr. Dutta's medical license. The Commissioner's Order become effective on April 1, 1992. On April 2, 1992, Dr. Dutta instituted an Article 78 proceeding to contest the action of the Board of Regents and obtained a Temporary Restraining Order. On June 5, 1992, the Temporary Restraining Order was vacated, and the revocation became effective.

On May 25, 1993, Dr. Dutta submitted his first application for restoration. The Peer Committee met on October 13, 1995 to review his application for restoration. In its report, dated May 24, 1996, the Committee recommended that the revocation be continued and that he concurrently be placed on ten years probation. The Committee recommended that the revocation be stayed for the balance of the probation upon completion of adequate psychological or psychiatric evaluation, and, if necessary, treatment that must include dealing specifically with the misconduct committed. Additionally, the Committee recommended that once found fit to practice, Dr. Dutta only

be permitted to practice in a supervised setting and may only examine or treat female patients with a female chaperone present. The Committee on the Professions met with Dr. Dutta on November 13, 1996. The Committee recommended that Dr. Dutta's application for restoration be denied. The Committee expressed concern that Dr. Dutta did not understand the effect that his abuse might have had on his victims. The Committee also stated, "One of the factors that must be taken into account in this petition is the egregious nature of the offenses against the two female patients involved." The Committee was also concerned that in Dr. Dutta's initial therapy he "failed to take full responsibility for his actions, which led to the disciplinary charges" and noted that "it was not until after the Peer Review Panel's meeting that Dr. Dutta sought out additional psychotherapy to deal with his responsibility for his actions."

On December 20, 1996, the Board of Regents voted to deny the application for restoration and the Commissioner's Order became effective on January 22, 1997.

On August 28, 1998, Dr. Dutta submitted his second application for restoration.

Recommendation of the Peer Committee. (See attached Report of the Peer Committee.) On February 11, 2000, the Peer Committee (Putnam, Anthone, Wu) met with Dr. Dutta to review his application for restoration. In its report, dated July 18, 2000, the Committee recommended, by a vote of 2-1, that the revocation be stayed and that the applicant be placed on probation for five years with specific terms. The dissenting opinion believed that the application for restoration should be denied. The dissenting opinion finds that although the applicant demonstrated remorse for his actions, the acts committed were so dangerous and damaging to his patients, that a potential threat to the public still exists.

Recommendation of the Committee on the Professions. On September 25, 2000, the Committee on the Professions (Duncan-Poitier, Ahearn, Muñoz) met with Dr. Dutta to review his application for restoration. Mrs. Eva Dutta, his wife, and Ms. Amy Kulb, his attorney, accompanied him. At the meeting, he provided the Committee with an updated letter from his therapist, Dr. David Heffler. Prior to the meeting, Ms. Kulb sent the Committee the following:

- Letter from Gerald L. Logue, M.D., Director of the Department of Medicine, SUNY Buffalo, based on his review of the Peer Committee report.
- Letter from Eddie L. Hoover, M.D., Director of the Department of Surgery, SUNY Buffalo, based on his review of the Peer Committee report.
- Documentation of C.M.E., specifically 7/1/98 to the present.
- Documentation of completion of 12,500 hours of volunteer service at the Buffalo VA Hospital.

The Committee began by asking Dr. Dutta to describe what had changed since his first application for restoration was denied. Dr. Dutta told the Committee that he had a self-image of being a good surgeon and a good person that people looked up to as a role model. He said that after the misconduct occurred, he was "knocked off the pedestal." He added that he had to "admit it to myself, my wife, my attorneys and others, and then go on from there." He told the Committee that he had much time to

reflect and has now gone through a more comprehensive therapy program. He reported that he has been in sex-offender therapy for more than three years.

The Committee then asked Dr. Dutta why he waited so long to obtain help and since he had lied under oath at the disciplinary hearing, why the Committee should believe him now. He responded, "I was petrified." He said that he didn't know how he could face his wife and daughters. He stated, "everyone had looked up to me." Dr. Dutta indicated that he was a "long time member" at a Hindu temple and it was very difficult to admit his misconduct at that time. Dr. Dutta said he felt he "had to address this" and sought professional help. He said he asked Dr. Heffler to help him solve his problem. He added that he learned he must "be focused on myself in every encounter," that he "must consider the interests of others," and that "this will make me a good person."

In response to the Committee's inquiry, Dr. Dutta admitted that he committed serious misconduct. He told the Committee that the two young women had trust and faith in him as a physician and he sexually abused them, both verbally and by prolonged touch. Dr. Dutta said that through his therapy and self-reflection he has learned that what he did to them could have had many negative effects. He said that he could have caused them anger that could affect future relations with males and with physicians. He added that he had "no idea" what happened to the patients and the uncertainty bothers him. Dr. Dutta told the Committee, "It's unbelievable to me how I could have done this. I have young daughters."

The Committee asked Dr. Dutta how they could be assured the misconduct would not recur and noted that Dr. Heffler, his psychotherapist, admitted that there was some chance of a relapse. He replied that this was a legitimate concern for everyone. Dr. Dutta stated that the therapy he went through was extremely difficult, just like "boot camp." He said that he has "made a life-long commitment" and will continue with his support group. He added, "We give notes to Heffler and he reviews them." Dr. Dutta told the Committee that Dr. Heffler "is a tough man." He said that he learned from his therapy and self-reflection and knows right from wrong. He assured the Committee that he would never cross boundaries again and would accept any conditions or suggestions "with open arms." He told the Committee that he didn't start sex offender therapy until after the first restoration proceeding because he didn't know it was available at that time.

The Committee asked Dr. Dutta what he felt they should consider in giving back his license. He told the Committee, "I believe it is your job to properly weigh the seriousness of the misconduct" and to see "what he has learned and done." The Committee reminded Dr. Dutta that restoration was also not an entitlement. He iterated that the law does not state that you could never get your license back. The Committee asked if he would send his daughter to a physician who had committed his misconduct and had his license restored. Dr. Dutta replied, "If I knew he had gone through this long process, I would. I don't know what others would do." He added, "I have done everything possible to improve myself and am still open to suggestion." I will work hard. I know people are prejudiced and won't believe I'm rehabilitated."

The Committee asked for a description of the support group in which he participates. He said the group consists of five or six people of different backgrounds

and having committed different offenses who "graduated" from the same therapy program he attended. He reported that they meet every two weeks and keep regular contact with the therapist via notes he sends regarding the group meetings. He described himself as a "key" person in the group and said that they discuss "seemingly unimportant decisions (SUD)." The Committee asked him to give an example of a SUD in his life. He said that if a doctor colleague suggested that they go out where there would be alcohol, partying and young females, he wouldn't go. He stated, "I don't want to put myself in that situation." The Committee noted to Dr. Dutta that his previous misconduct was not related to partying and asked him if he could give a concrete example related to himself describing how he was implementing the practices he learned in therapy, which could be applied to professional practice. Dr. Dutta then described the possibility of giving computer instruction to a female friend of his daughters and said that he would avoid such a situation since it could possibly "arouse" him, though it had never occurred.

The Committee asked Dr. Dutta how he would deal with problems in future practice were he to receive his license. He stated that he would always have a chaperone present and that if it were an emergency, he would call a colleague and ask him/her to assist him to "protect the patient and me." He said that if no one were available, he would ask a relative of the patient or another professional to be present. He told the Committee that if nobody were available, it "would be my ultimate test."

The Committee questioned whether Dr. Dutta felt he had a sense of entitlement to having his license restored. He replied, "They said I wasn't fit to practice. Sex-offender therapy and the support group have made me a better person and allowed myself to grow up to your expectations. I have met all the goals set for me." He added that he had spent every cent he had saved and money he had put away for retirement. He told the Committee that he was at the point of being a "vagrant." Dr. Dutta indicated that he now leads a low-profile life, including having a modest house. He added, "I will not offend anyone. I would like to get my license back. I don't know how else to make a living."

The Committee asked Dr. Dutta how he has kept current in the field. He stated that he has worked at the VA hospital and completed all the continuing education courses available in Buffalo that don't require monetary input. He added that he has learned through the internet, taught some courses and interacted with colleagues at the hospital, conducts research, and is a studious person that likes to read to keep abreast of changing information.

Upon closing, Dr. Dutta's attorney added that Dr. Dutta would be willing to have his license restored with probationary restrictions that might require review and approval of practice settings and that Dr. Heffler, his psychotherapist, has said he would be available for any monitoring.

The overarching concern in all restoration cases is the protection of the public. Education Law (section 6511) gives the Board of Regents discretionary authority to make the final decision regarding restoration of a license to practice as a physician in New York State. Section 24.7(2) of the Rules of the Board of Regents charges the Committee on the Professions (COP) with submitting a recommendation to the Board of

Regents on restoration applications. Although not mandated in law or regulation, the Board of Regents has instituted a process whereby a Peer Committee meets with an applicant for restoration and provides a recommendation to the COP. A former licensee petitioning for restoration has the significant burden of satisfying the Board of Regents that there is a compelling reason that licensure should be granted in the face of misconduct so grievous and serious that it resulted in the loss of licensure. There must be clear and convincing evidence that the petitioner is fit to practice safely, that the misconduct will not recur, and that the root causes of the misconduct have been addressed and satisfactorily dealt with by the petitioner. It is not the role of the COP to merely accept as valid whatever is presented to it by the petitioner but to weigh and evaluate all of the evidence submitted and to render a determination based upon the entire record.

The COP found Dr. Dutta to be articulate and is convinced that he is truly sorry that he lost his license and lost his previous standing in the community. During his first restoration proceeding, he was criticized for not having undergone extensive therapy to identify the root causes of his misconduct and demonstrate behavioral changes that would provide some assurance that the public would not be in danger were his license restored. The COP commends him for his recent efforts in therapy and with his support group. Nonetheless, while he admitted that he was a sexual offender, he most often referred to the negative effects of the misconduct as happening to him. Likewise, he referred to the damage inflicted upon the abused patients in the third person, not truly verbalizing or clearly stating that the damage was the direct result of what he had done.

In Matter of Melone v. SED, 182 AD2d (3rd Dept. 1992), the court found that the gravity of the offense and the risk of harm to the public were two factors that needed to be considered in evaluating a restoration petition. The COP notes that the misconduct committed by Dr. Dutta was most egregious and occurred over several years, and concurs with the minority opinion of the Peer Committee that it was "so dangerous and damaging to his patients, that a potential threat to the public still exists." Dr. Dutta told the Committee that he learned through his therapy that he targeted specific patients he perceived as vulnerable, including a sixteen-year-old girl having her first gynecological examination. Regarding this teenager (Patient B), the Hearing Committee of the State Board concluded Findings of Fact, such as the following:

Respondent massaged her breasts and rubbed her nipples. He asked her which was the most sensitive part. Respondent proceeded to rub Patient B's vagina with his finger. He was not wearing a glove. Respondent asked Patient B if she could climax. Patient B said "no," but Respondent continued to rub her vagina. Patient B had a climax. Respondent asked if he "could empty her out again." Respondent also smelled Patient B's vagina. She felt his nose on her vaginal area.

Respondent asked Patient B if her boyfriend was the "jealous type." He also asked her if he and she could be "more than friends."

Dr. Dutta initially denied such misconduct and the COP commends him for now acknowledging the misconduct and taking steps to initiate the rehabilitative process. The serious nature of the misconduct mandates that there exist a comfortable level of

assurance that recidivism will not occur. In 1999, Dr. Heffler wrote, "However, to assure the safety of the community, he has agreed to continuous involvement in some form of treatment and/or supportive intervention. This activity is for the primary intent of assuring his treatment progress and maintaining the safety of the community." Most recently, Dr. Heffler stated, and the COP agrees, that there can never be a guarantee of assurance that a sex-offender might not relapse. Dr. Heffler indicates that research has shown that "individuals completing a specialized sexual abuser treatment program have a significantly reduced risk to reoffend. Additionally, risk is also reduced by each year it has been since his last offense." While Dr. Heffler opines that he feels Dr. Dutta "does not present a significant risk to reoffend," the COP believes that Dr. Dutta has not yet made a compelling case to demonstrate sufficient assurance that the public would not be in danger were his license restored. Dr. Dutta's responses to COP questions raise concerns that he is not totally confident himself that he will not commit this type of misconduct again. He said that he has avoided and plans to continue to avoid "partying" situations; however, the COP notes that being in these types of situations did not lead to his initial misconduct. Further, Dr. Dutta told the Committee that he hopes to avoid any situations of potential sexual stimulation and even requested a probationary term that would limit his practice with female patients, thereby protecting the patient who might be vulnerable and "preventing me from doing something again." The Committee finds that Dr. Dutta's primary plan for dealing with his problem is avoidance. Therefore, the Committee is concerned about the doctor's ability to deal directly with patients on a daily and intimate basis. He indicated that if he would ask colleagues to see patients who might potentially sexually stimulate him. When asked what he would do if nobody else was available or if it were an emergency situation, he responded, "That would be my ultimate test." Although he has made significant progress in his rehabilitation, the COP finds that Dr. Dutta has not yet presented a compelling case to demonstrate that he would pass that "ultimate test." The COP finds that the risk factor is still too high. Additionally, the COP questions, as did the dissenting member of the Peer Committee, whether Dr. Dutta is realistically ready to practice surgery.

The COP notes that the Department of Health strongly opposes restoration of Dr. Dutta's license based on the egregious nature of the misconduct.

Therefore, after a complete review of the record and its meeting with him, the Committee on the Professions unanimously concurs with the minority recommendation of the Peer Committee that Dr. Dutta's application for restoration of his license to practice as a physician in the State of New York be denied at this time.

Johanna Duncan-Poitier, Chair

Kathy Ahearn

Frank Muñoz



The University of the State of New York

NEW YORK STATE EDUCATION DEPARTMENT
OFFICE OF PROFESSIONAL RESPONSIBILITY
STATE BOARD FOR MEDICINE

-----X

In the Matter of the Application of

PERNENDU DUTTA

for the restoration of his license to
practice as a physician
in the State of New York.

-----X

REPORT OF
THE PEER
COMMITTEE
CAL. NO. 18129

PERNENDU DUTTA, hereinafter referred to as the applicant, was previously licensed to practice as a physician in the State of New York by the New York State Education Department. The applicant's license was revoked as a result of a professional misconduct proceeding, and he has applied for restoration of this license.

On February 11, 2000, this Peer Committee convened to review this matter and make the following recommendation to the Committee on the Professions and the Board of Regents.

BACKGROUND INFORMATION

The written application, supporting papers provided by the applicant, and papers resulting from the investigation conducted by the Office of Professional Discipline (OPD) have been compiled by the prosecutor from OPD into a packet that has been distributed to this Peer

Committee in advance of its meeting and also provided to the applicant.

Listed below is the background information from that packet and the information contained in the applicant's submissions on the day of the meeting. Further details pertaining to these documents may be found therein.

PRIOR DISCIPLINE PROCEEDINGS

Calendar No. 12459

Action by the Board of Regents

March 27, 1992 – order of the Board of Regents issued, accepting the recommendations of the Regents Review Committee and revoking the applicant's license to practice as a physician in the State of New York.

March 9, 1992 – report of the Regents Review Committee issued, accepting the findings of fact of the hearing committee and of the designee of the Commissioner of the Department of Health, and accepting an additional finding of fact that the applicant also felt and squeezed both of patient "A's" thighs, and accepting the conclusions of the hearing committee and designee of the Commissioner of the Department of Health, and the recommendation of the hearing committee and designee of the Commissioner of the Department of Health that the applicant's license to practice as a physician in the State of New York be revoked.

August 28, 1991 – recommendation of the designee of the Commissioner of the Department of Health issued, accepting the findings of fact and conclusions of the hearing committee, and the hearing committee's recommendation that the applicant's license to practice as a physician in the State of New York be revoked.

July 16, 1991 – report of the hearing committee issued, concluding that the specifications contained in the statement of charges filed against the applicant, as amended, as identified in the

report, which allege that the applicant committed unprofessional conduct by his conduct in the practice of the profession which evidences moral unfitness to practice the profession, and by his willfully harassing, abusing or intimidating a patient either physically or verbally be sustained, and recommending that the applicant's license to practice as a physician in the State of New York be revoked.

Nature of the Misconduct

The applicant was found to have committed unprofessional conduct within the meaning of Education Law § 6509(9) by his conduct in the profession which evidence a moral unfitness to practice the profession within the meaning of 8 NYCRR §29.1(b)(5). Specifically, the applicant engaged in various physical and verbal activity of a sexual nature during an appointment with female patient "A" on or about June 16, 1983, and at various times from approximately July 1988 through August 24, 1989 with female patient "B," born in 1971. The applicant was found to have committed unprofessional conduct within the meaning of Education Law §6509(9) by his willfully harassing, abusing or intimidating a patient either physically or verbally within the meaning of 8 NYCRR §29.1(a)(2) based upon the same conduct with patients "A" and "B."

PRIOR RESTORATION PROCEEDING

Calendar No. 15449

January 22, 1997 – order of the Board of Regents issued, denying the applicant's petition for restoration.

November 13, 1996 – report of the Committee on the Professions issued, recommending that the petition for restoration be denied. The Committee questioned the depth of the applicant's insight into the effects of his abuse on the victims, and concluded that the severity of his offenses and the fact that they were repeated after a number of years weigh against restoration of his license.

May 24, 1996 – report of the Peer Committee issued, recommending that the revocation of the applicant's license be continued; that the applicant be placed on probation for ten years; that the revocation be stayed for the balance of the probation only after adequate psychological evaluation and treatment.

PETITION FOR RESTORATION

The applicant submitted an eleven page affidavit dated August 5, 1998.

He first described his early years in India and his educational background, explaining that his interest in medicine began due to illnesses suffered by his father, and his experience in community projects fighting cholera and typhoid epidemics. He describes his clinical education in India, England and the United States and, thereafter, his decision to open a part-time private practice in the Buffalo area.

The applicant attributes his denial of the allegations of verbal and sexual abuse at his revocation hearing to the guilt and shame he was feeling at the time. He states that the time between that proceeding and his first restoration hearing was a period of intense reflection and self examination, and that he began therapy shortly after the issuance of the Peer Committee report. He expresses disappointment with the ultimate denial of this application by the Board of Regents, but states that he remained determined to progress in his treatment and demonstrate his readiness to re-enter the profession.

The applicant describes the volunteer work he has done at the VA Hospital in Buffalo. since his revocation, stating that he has worked 12,000 hours as of July 31, 1998, which is documented in attachments to the petition. This time, as he describes it, was spent doing quality assurance work, assisting with coding procedures and in the abstraction of medical case summaries.

The applicant also describes his teaching activities in life support techniques and computer

research to health professionals.

The petition then sets forth a list of the individuals who provided supporting affidavits, describing their credentials and their relationship to him.

He states that spiritual guidance is an important element in his rehabilitation process, and describes the volunteer activities he has been involved in through his religious congregation. The applicant closes the petition by expressing his interest in working in an environment with collegial contact, and his goal of returning to practice in a teaching hospital.

ATTACHMENTS TO THE PETITION

- Completed application for restoration of a professional license, with the following addendum attached:
 - Documentation of continuing education;
 - Documentation of community service;
 - Employment history in the form of a curriculum vitae;
 - Fifteen affidavits of support on behalf of the applicant from colleagues and friends;
 - Treatment summaries from the applicant's therapists, and documentation of the credentials of these individuals.

INVESTIGATION BY OPD

Subsequent to the filing of the Petition, OPD conducted an investigation for the purposes of this proceeding. Information from that investigation, including reports from the investigators and other documentation, was made part of the packet for the proceeding. Certain information from the packet has been summarized above. Among the information not summarized is a report from the investigator dated March 30, 1999.

This report summarizes an interview with the applicant conducted on March 19, 1999. In

that interview, the applicant expressed his agreement with the revocation of his license by the Board of Regents. He accepted full responsibility for his actions, and was remorseful for the pain he caused others. He described for the investigators his ongoing treatment for sexual offenders. He also described his volunteer work, as explained in his petition, and his continuing medical education.

The submission by OPD also included the following material, not already summarized:

- letter dated November 20, 1998 from the Department of Health's Office of Professional Medical Conduct expressing strong opposition to the restoration of the applicant's license, citing the egregious nature of his misconduct.
- verification of medical licensure from the Commonwealth of Pennsylvania, with an original licensure date of July 1, 1972, and an expiration date of December 31, 1988.

PEER COMMITTEE

On February 11, 2000, this Peer Committee met to consider this matter. The applicant appeared before us personally, and was represented by Joel Daniels, Esq. Also present was Mary H. Doyle, Esq., an attorney who appeared on behalf of the Division of Prosecutions of OPD.

The applicant's first witness was Dr. David Heffler, the applicant's treating psychologist. Dr. Heffler began his testimony by describing his initial evaluation of the applicant which took place in 1996 and involved approximately ten sessions with the applicant. He stated that the applicant's behavior was the result of his failure to maintain appropriate boundaries in his professional relationships, his abuse of the power he felt over his patients, and his narcissism or tendency to put his own feelings ahead of others. Dr. Heffler then described the applicant's treatment, which consisted of individual sessions with him, followed by group therapy with other

sex offenders. He stated that the applicant was discharged from group therapy in May 1999, based upon his being a low risk factor, his development of a relapse prevention strategy, and involvement with a sex offenders support group, which the applicant created.

Upon cross examination by Ms. Doyle, Dr. Heffler stated that the applicant's risk for relapse is minimal, but admitted that there is some risk. He related to the Committee the applicant's description of what occurred with the two patients, and stated that these two individuals were chosen by the applicant based upon their being established patients, who the applicant believed held him in high regard. He then described in more detail the applicant's development of empathy towards his victims, and the mechanisms that the applicant has developed to prevent a relapse of abusive behavior.

Upon questioning by the Committee, Dr. Heffler discussed techniques for avoidance of high risk situations for sex offenders, and also addressed the issue of recidivism. He opined that the high rate of recidivism in the past was due to poor treatment of offenders, but that current treatment procedures yield studies of recidivism in the eight to thirteen percent range.

The applicant then testified, first describing his medical training in India, and later in England and the United States. He depicted for the Committee the allegations which the two patients made against him, and admitted that these allegations were true. He acknowledged that he had denied these allegations while under oath during the revocation hearing, stating that he did so out of fear, and a belief that he could deal with his problem by himself.

The applicant described his treatment by Dr. Heffler, and his participation in group therapy sessions with other offenders. With regard to the cause of his offenses, he stated that he put his own desires above the welfare of these two patients. He also expressed the opinion that if his license were restored, he could be trusted with female patients, describing the understanding he has

developed for the feelings of his victims, and relating their experience to the fact that he has a young wife and daughters of his own. He concluded his testimony by describing his ongoing support group for offenders, and providing detail regarding the volunteer work he has done since his license was revoked.

On cross examination by Ms. Doyle, the applicant discussed his participation in the support group, and the written proposal he developed to start this group. The precursors to offending were reviewed, and the applicant conceded that he had low victim empathy prior to his treatment. He then discussed at length the process of accepting responsibility for his behavior, and the concept of seemingly unimportant decisions. These are acts taken by the offender which, while not offensive in themselves, set the stage for the aberrant sexual behavior. The applicant stated that inviting a patient for a follow up visit would be an example of this behavior. He also admitted that his final acts against patient "B" occurred after the commencement of the initial disciplinary hearing involving patient "A."

The Committee members questioned the applicant, and discussed the applicant's plans to practice privately in the event his license is restored and he cannot obtain employment in an institutional setting. The applicant stated that the nature of such a practice would depend on where he would be able to obtain hospital credentials. He also discussed his intended methods for dealing with female patients, which would involve having a chaperone in the examining room. The applicant's time away from surgery was discussed, and the applicant asserted that he felt confident that he could resume his surgical practice despite this absence. He stated that he has attended all available continuing education courses in Buffalo, and would work with a supervising surgeon if necessary.

The applicant's supporting witnesses then addressed the Committee. These consisted of:

Dr. Gerald L. Logue, former chief of staff at the Buffalo VA Hospital; Dr. Joginder H. Bhayana, cardiac surgeon; Mrs. Evelyn Haberl, nurse practitioner; Dr. John P. Naughton, professor, State University of New York at Buffalo Medical School; Ms. Bonnie Phillips, personal friend of the applicant; Dr. Joseph A. Hyde, dentist and personal friend of the applicant; Dr. Basab Mookerjee, Chief of Nephrology Service at the Buffalo VA Hospital and the Roswell Park Cancer Center, and Dr. Eddy Hoover, Chairman of the Department of Surgery, State University of New York at Buffalo Medical School. These witnesses generally provided testimony supportive of the restoration of the applicant's license to practice.

In her closing statement, Ms. Doyle expressed the opinion that the applicant poses too great a risk for re-offending to be licensed. She stressed the aspects of Dr. Heffler's testimony which indicated that this risk always exists, and asserted that the techniques the applicant suggested to prevent relapse were he to be licensed were not infallible.

Mr. Daniels, in closing, discussed the character witnesses who testified on the applicant's behalf, noting the credentials of the professional witnesses, and also the experience of a witness such as Mrs. Haberl. He argued that the applicant has done everything possible to restore himself, and that the evidence demonstrates a compelling case for restoration.

RECOMMENDATIONS

This Peer Committee has considered the entire record in this matter. It is the recommendation of two of our members, Drs. Theodore I. Putnam and Thomas Wu, that the revocation of the applicant's license to practice medicine in the State of New York be stayed and that the applicant be placed on probation for five years under the terms of probation annexed hereto, and made a part hereof, and marked as exhibit "A."

It is the recommendation of the other member of this Peer Committee, Dr. David Anthone,

that the applicant has not met the compelling burden of demonstrating that his license should be restored, and that therefore the application should be denied.

REASON FOR MAJORITY RECOMMENDATION

The majority believes that the applicant has presented evidence which clearly demonstrates his fulfillment of the three criteria used in these proceedings: reeducation, remorse and rehabilitation. We also take the position that, based upon the applicant's testimony before us, and the seriousness with which he has approached his rehabilitation efforts, that he would not longer represent a threat to the public were his license to practice be restored.

Since the applicant's license was revoked, he has participated in extensive reeducation, using the resources available in the Buffalo area. He has regularly and diligently attended seminars and conferences in a variety of medical specialties. He has also focused his volunteer activity on the VA Hospital in Buffalo, working in its quality assurance area and training new physicians in the cardiac life support. Due to his association with the hospital, he has never ceased active participation in a health care setting. This participation contributed to his reeducation, and also contributes to the majority's perception that the applicant is a sincere and motivated individual who values his medical career and who would be unlikely to jeopardize it by acts of misconduct in the future.

The applicant's lack of effort at rehabilitation was one of the reasons why his first application for restoration was rejected in a recommendation by the Committee on the Professions. Since that time, he has taken the Committee's advice to heart and has engaged in extensive work with a psychologist who specializes in sexual offenders. This therapist provided the Peer Committee with lengthy and detailed testimony regarding his treatment philosophy and the course of treatment pursued by the applicant. The applicant participated in individual sessions followed by

group therapy over a period of almost three years. Thereafter, he has continued working with a support group of his own design. Although this group now only consists of the applicant and one other individual, we see these efforts as evidence of the seriousness with which the applicant approached his rehabilitation, and his sincere interest in expunging those aspects of his makeup which led to his deviant behavior in the past. He presented us with an opinion from his psychologist that his treatment has been successful and that he is safe to practice as a physician. The majority believes that the applicant has taken all of the steps reasonably required to rehabilitate himself, and would question what else the applicant could present in this regard.

As to remorse, the applicant presented testimony in which he frankly admitted the disturbing acts which led to his license revocation, and openly displayed his regret and remorse for these acts. While regret over his loss of licensure was also expressed, this applicant appeared to us to finally have realized how his actions had a damaging impact on the two patients who were the subject of his egregious misconduct.

REASON FOR MINORITY RECOMMENDATION

The dissenting member of the Peer Committee respectfully disagrees with his colleagues and strongly believes that the applicant's license should not be restored. Dr. Anthone believes that the applicant has shown signs of remorse, but he views the acts committed by the applicant as so dangerous and damaging to his patients, that a potential threat to the public still exists. Given this threat, Dr. Anthone believes that restoration cannot be recommended.

In the area of rehabilitation, Dr. Anthone notes that the applicant waited until after the denial of the first restoration applicant before obtaining serious help. He also views as significant the fact that he failed to admit the acts of misconduct to a treatment provider he worked with in anticipation of his first proceeding.

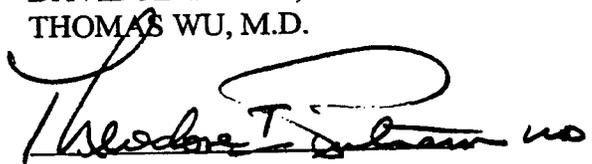
With regard to the character witnesses presented by the applicant, Dr. Anthone questions whether Ms. Haberl was fully aware of the extent of the sexual misconduct which occurred, and fully appreciates the potential damage of this conduct on the applicant's patients. He also notes that Dr. Naughton declined to offer an opinion of the applicant's moral character, only providing his view of the applicant's medical competency.

Dr. Anthone is also not convinced that any monitoring procedure followed during probation could be completely fool proof, given the realities of a busy medical practice. He is somewhat skeptical of the ability of the surgical unit of the Buffalo VA Hospital to provide the monitoring and oversight required to assure the safety of the public during any probation period, were the applicant to become affiliated with that hospital. He also questions whether the applicant has had sufficient reeducation, not having attended any conferences out of the Buffalo area, and whether he could realistically resume a surgical career, given his eight year absence from practice.

For the above stated reasons, it is the recommendation of the dissenting member that the application before us be denied.

Respectfully submitted,

THEODORE I PUTNAM, M.D.,
Chairperson,
DAVID ANTHONE, M.D.
THOMAS WU, M.D.



Chairperson

Dated 7/12/00