



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

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OFFICE OF PROFESSIONAL
MEDICAL CONDUCT

August 2, 2002

Edwin Y. Fondo, Jr. Physician
77 Columbia Street – Apt. 8C
New York, New York 10002

Re: Application for Restoration

Dear Dr. Fondo:

Enclosed please find the Commissioner's Order regarding Case No. CP-02-10 which is in reference to Calendar No. 18860. 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

The
University of the
Education  State of New York
Department

IN THE MATTER

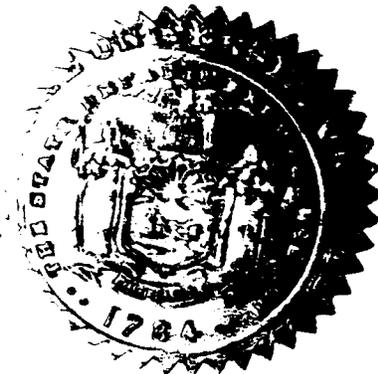
of the

Application of EDWIN Y.
FONDO, Jr. for restoration of his
license to practice as a physician
in the State of New York.

Case No. CP-02-10

It appearing that the license of EDWIN Y. FONDO, JR., Apt. 8C, 77 Columbia Street, New York, NY 10002, authorizing him to practice as a physician in the State of New York, was revoked by action of the Board of Regents, effective December 23, 1992, and he having petitioned the Board of Regents for restoration of said license, and the Regents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 agreed with and accepted the recommendations of the Peer Review Panel and the Committee on the Professions, now, pursuant to action taken by the Board of Regents on July 18, 2002, it is hereby

ORDERED that the petition for restoration of License No. 113966, authorizing EDWIN Y. FONDO, JR. 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 26 day
of July, 2002.


Commissioner of Education

CP-02-10

It appearing that the license of EDWIN Y. FONDO, JR., Apt. 8C, 77 Columbia Street, New York, NY 10002, authorizing him to practice as a physician in the State of New York, was revoked by action of the Board of Regents, effective December 23, 1992, and he having petitioned the Board of Regents for restoration of said license, and the Regents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 agreed with and accepted the recommendations of the Peer Review Panel and the Committee on the Professions, now, pursuant to action taken by the Board of Regents on July 18, 2002, it is hereby

VOTED that the petition for restoration of License No. 113966, authorizing EDWIN Y. FONDO, JR. to practice as a physician in the State of New York, be denied.



Case number
CP-02-10
June 26, 2002

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: Edwin Y. Fondo, Jr.

Edwin Y. Fondo, Jr., Apt 8C, 77 Columbia Street, New York, New York 10002, petitioned for restoration of his physician license. The chronology of events is as follows:

- 08/28/72 Issued license number 113966 to practice as a physician in New York State.
- 01/23/91 Charged with professional misconduct by Department of Health. (See "Disciplinary History.")
- 02/14/92 Hearing Committee of the State Board for Professional Medical Conduct recommended revocation.
- 04/01/92 Commissioner of Health recommended revocation.
- 11/27/92 Regents Review Committee recommended revocation.
- 12/18/92 Board of Regents voted to revoke physician license.
- 12/23/92 Commissioner's Order served.
- 12/18/98 Submitted application for restoration.
- 07/20/01 Peer Committee restoration review.
- 12/15/01 Report and recommendation of Peer Committee. (See "Report of the Peer Committee.")
- 05/07/02 Committee on the Professions restoration review.
- 06/26/02 Report and recommendation of Committee on the Professions. (See "Report of the Committee on the Professions.")

Disciplinary History. (See attached disciplinary documents.) On January 23, 1991, the New York State Department of Health charged Dr. Fondo with 13 specifications of professional misconduct involving five females. A Hearing Committee of the State Board for Professional Medical Conduct concluded that Dr. Fondo was guilty of the charges regarding Patient D of practicing fraudulently, unprofessional conduct for moral unfitness, and unprofessional conduct for willfully abusing a patient (third, eighth, and twelfth specifications). The Committee recommended that his license be revoked. The Commissioner of Health, by designee, accepted the Committee's conclusions regarding Patients D and E, but recommended that the conclusions regarding Resident A and Patients B and C be modified. Based upon the nine specifications of professional misconduct he felt should be sustained, he recommended that Dr. Fondo's license be revoked.

On November 27, 1992, a Regents Review Committee determined that Dr. Fondo was guilty of the first, sixth, and tenth specifications of practicing the profession fraudulently, unprofessional conduct for moral unfitness, and unprofessional conduct for willfully abusing a patient physically to the extent allegation B.2 relates to his improperly squeezing Patient B's nipple; and the third, eighth, and twelfth specifications for practicing fraudulently, unprofessional conduct for moral unfitness, and unprofessional conduct for willfully abusing a patient physically to the extent allegation D.2 relates to Dr. Fondo, on April 13, 1989, inserting more than one finger into Patient D's vagina, rubbing her vagina and clitoris in a sexual manner, and rubbing Patient D which became so rough that he caused her to bleed from the vagina. The Committee recommended that Dr. Fondo's license be revoked. On December 18, 1992, the Board of Regents voted to accept the conclusions of the Regents Review Committee and revoked Dr. Fondo's license. The Commissioner's Order was served on December 23, 1992.

Dr. Fondo submitted an application for restoration of his license on December 18, 1998.

Recommendation of the Peer Committee. (See attached "Report of the Peer Committee.") The Peer Committee (Harris, Josephson, Boyce) met with Dr. Fondo on July 20, 2001 to review his application for restoration. In its report, dated December 15, 2001, the Committee recommended unanimously that the application be denied.

Recommendation of the Committee on the Professions. On May 7, 2002, the Committee on the Professions (Muñoz, Alexander, Templeman) met with Dr. Fondo to review his application for restoration. An attorney did not accompany him. Mr. Muñoz explained to Dr. Fondo that he had previously served as an Assistant District Attorney in the Manhattan District Attorney's office and had worked with Linda Fairstein of the Sex Crimes Unit on some sexual abuse cases. Because of Ms. Fairstein's involvement in Dr. Fondo's criminal cases, Mr. Muñoz offered to recuse himself from consideration of Dr. Fondo's restoration application if he so desired. Dr. Fondo said that he had no objection to Mr. Muñoz continuing as a member of the Committee on the Professions and told Mr. Muñoz that he believed his experience would be helpful. Dr. Fondo gave the Committee copies of letters of support from three former patients. The Committee also received Dr. Fondo's "Response to the Report of the Peer Committee dated 12/15/01," dated March 13, 2002.

The Committee asked Dr. Fondo to discuss what led to the revocation of his license to practice as a physician. He replied that he was a breast surgeon who received many referrals and performed about 250 surgeries a year. He said, "One patient complained that I molested her sexually." Dr. Fondo reported that the patient was the wife of a physician, a colleague, and that he offered her free service. He indicated that she went to Metropolitan Hospital and was examined using a rape kit but the finding was negative. Dr. Fondo explained that prior to that allegation, in 1987, the sister-in-law of Linda Fairstein's boyfriend accused him of forcing her to have sex with him. At that time, Ms. Fairstein was a prosecutor in the Sex Crimes Unit of the Manhattan District Attorney's office. Dr. Fondo reported that he was acquitted of that charge through a criminal trial. He told the Committee that he believed that the allegations of the physician's wife resulted in another trial because Ms. Fairstein wanted to have him convicted of something after the earlier acquittal. He reported that he was also found not guilty of those charges after a trial. Dr. Fondo said that he believed Ms. Fairstein referred his name to the Office of Professional Medical Conduct (OPMC) and paid the physician's wife to submit a list of witnesses for OPMC. He said these people became the complainants referred to in OPMC's charges.

Dr. Fondo said that he wanted to appeal the initial findings of OPMC but his attorney didn't follow through with the necessary paperwork in a timely manner even though he gave him \$10,000 as a down payment for the appeal. He reported that in 2000 Citibank foreclosed on about \$2 million of his properties, forcing him to eventually go on public assistance. On the advice of an attorney, he told the Committee that he did not try to obtain any job that dealt with patient contact as it might be considered the illegal practice of medicine. He indicated that he did earn some income from selling medical products in Africa.

The Committee asked Dr. Fondo why he felt his license should be restored. He said that he was "incensed that the Panel wanted me to show remorse" for a crime that he did not commit. He indicated that he has respect for the law and for the revocation of his license, and has avoided any contact with patients in the United States. He acknowledged that he did practice in Africa. Dr. Fondo stated, "I've made every effort to make sure the situations wouldn't occur again." He said that he would try to keep current in breast surgery techniques. He reported that he has received some counseling from his Archbishop and saw a psychologist who "found nothing." Dr. Fondo stated, "I'm completely committed to the rules and regulations to avoid any situation that would show improprieties with any patient."

The Committee asked Dr. Fondo why there were so many complaints against him by patients. He replied that the Office of the Assistant District Attorney took his appointment books and submitted the patient names to OPMC, which then contacted the patients concerning Dr. Fondo. The Committee asked why the patients would have agreed to testify against him. He responded, "They were paid." He reported that one of the complainants, a former resident, had her "way from Chicago paid."

Dr. Fondo stated, "I'm fit and ready to practice." He indicated that he felt he was prepared mentally, physically, and clinically to perform breast surgery. He reported that

the last surgery he performed was in Africa in 1999. Regarding continuing medical education, Dr. Fondo said he takes whatever free courses he can on the Internet. However, he indicated that he doesn't have certificates of completion because you have to submit a fee before being able to print a certificate. He said that he couldn't afford to go to professional meetings but reads most medical journals on the Internet. The Committee noted that he had been out of practice for 10 years and questioned his current competency. Dr. Fondo said that anyone who has been trained as a surgeon doesn't forget what he's learned. He continued, "The hospital would make me take any necessary refresher courses." He indicated that it was up to him to prove his capability but that he would take a refresher course if it were mandated.

In closing, Dr. Fondo said that he was committed to return to the practice of medicine. He indicated that he has the desire and determination and is mentally prepared. He told the Committee that he felt "no one is incorrigible." He stated, "I will never stop learning. I will do whatever is required even if it means sweeping the floor. I want to practice – not just teach. I want to work with residents. I'm determined." Dr. Fondo indicated that he was committed to making certain the situation for such allegations never recurs. He said, "I will ask them (patients) to complain to me." He indicated that he realizes he must have someone else in the examining room at all times. Dr. Fondo stated, "I will take any advice – even personal counseling."

The overarching concern in all restoration cases is public protection. 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 recommendation based upon the entire record.

The Peer Committee noted that Dr. Fondo presented no documentation of completing continuing medical education courses. Although he subsequently presented documentation for some recent courses after meeting with the Peer Committee, the COP finds that it is not sufficient to provide a level of assurance that Dr. Fondo is currently competent to resume practice as a physician, especially to perform surgery. Dr. Fondo did not present sufficient documentation to convince the COP that the public would not be placed in danger were his license restored. Additionally, although the Peer Committee noted that Dr. Fondo has made some efforts at rehabilitation, such as seeking counseling from his Archbishop and meeting with a psychologist, he was

unable to clearly articulate what he has discovered and applied in his daily life from these experiences.

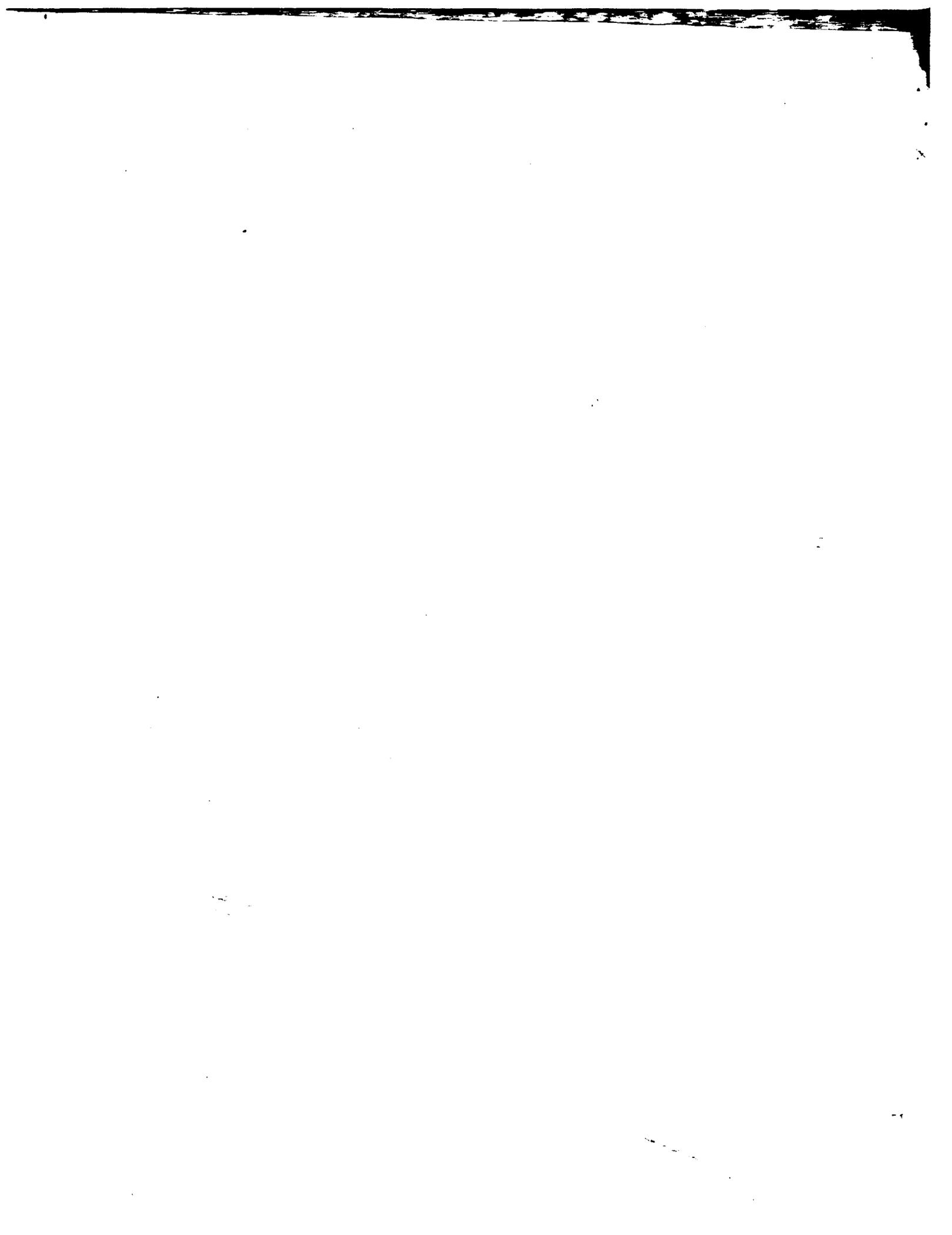
Throughout its meeting with him, the COP found that Dr. Fondo continued to blame others for what happened to him. As the Peer Committee pointed out, Dr. Fondo need not admit guilt to the charges of which he was found guilty. However, Dr. Fondo must accept this determination of guilt and move forward in his life. Dr. Fondo's continued concentration on relitigating the original charges which led to the revocation of his license indicated to the Committee that he has not yet moved on and might benefit from professional counseling on this issue. Dr. Fondo told the COP that he is willing to do whatever is required, but the Committee believes that he must take such initiative prior to seeking restoration of his license. The COP finds that Dr. Fondo failed to present a compelling case for the restoration of his license.

Therefore, after a complete review of the record and its meeting with him, the Committee on the Professions concurs with the recommendation of the Peer Committee to deny Dr. Fondo's application to practice as a physician in the State of New York at this time.

Frank Muñoz, Chair

Claudia Alexander

Leslie Templeman





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

EDWIN Y. FONDO

REPORT OF
THE PEER
COMMITTEE
CAL. NO. 18860

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

-----X

Applicant, EDWIN Y. FONDO, was authorized to practice as a
physician in the State of New York by the New York State Education
Department.

PRIOR DISCIPLINE

By order No. 13129 dated December 18, 1992, the Education
Department revoked applicant's license to practice medicine in New
York State. This action was initiated through a disciplinary
investigation conducted by the Office of Professional Medical
Conduct. The Regent's Review Committee accepted the penalty of
the Hearing Committee and the recommendation of the Commissioner
of Health. Applicant was found guilty of practicing the

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profession fraudulently, moral unfitness, and willfully abusing a patient.

THE APPLICATION

On December 18, 1998 applicant petitioned the New York State Education Department for the restoration of his license to practice as a physician in the State of New York.

The application states in part: "Upon the completion of the hearings, the Hearing Committee concluded that the testimony of one out of the eight (8) Committee witnesses, (patient "D") was credible based on her allegations that she had been trying to develop a sexual relationship with Petitioner but things went foul because, (according to her claim), Petitioner "no longer" responded to her sexual demands and even refused to give her money for taxi-fare when she went to see Petitioner at his office. Notwithstanding the fact that there was no corroboration of patient "D's" testimony, the Hearing Committee found her testimony credible and that formed the basis of the revocation of petitioner's license."

"Of the eight (8) witnesses presented at the Committee Hearings by the Office of Professional Medical Conduct (OPMC), the testimony of seven (7) of them was found to be not credible. Witness, patient "D", whose mode of testimony was characterized in

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the Hearing Committee Report as credible, had obvious financial motives for her allegations. She never filed a complaint considering the fact that, in her past history she unsuccessfully brought similar charges of sexual battery on two separate occasions, one against a co-worker while she was employed as a security guard at Columbia University and the other against the father of her son. In her rush to capitalize on my situation, she filed a multimillion dollar claim against petitioner in State Supreme Court, New York County even before the Hearing Committee issued its report. The Board for Professional Medical Conduct concluded that petitioner was not guilty of any of the other specifications relating to other patients."

"From the date that petitioner's license was revoked, a drastic turn of events occurred. Petitioner suffered irreparable public and professional ridicule as well as embarrassment because of the over-zealous, over-played, unwarranted and improper allegations."

"Petitioner has never been convicted of any crime! He has never intentionally or unintentionally, consciously or willfully abused any patient or any body at all. He has never billed any patient or third party payer for services before they were provided or those that were never provided. Petitioner accepted

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insurance payment as 'payment in full' from all his patients even if they did not possess major medical coverage."

"Petitioner's medical records in all the institutions in New York were thoroughly searched by Police Investigators for the entire period during which he was licensed to practice in New York State (August 28, 1972 - December 23, 1992) and not a single instance of medical incompetence or fraudulent practice was found."

INVESTIGATIVE INTERVIEW

A tape-recorded interview of applicant was conducted in the OPD Harlem offices on June 28, 2000. He emphasized that he is making the application on his own without an attorney. His former attorney filed an appeal shortly after the license revocation. The appeal was dismissed for abandonment of process, according to applicant, because his attorney did not file the required documents.

Applicant said he was currently unemployed and had been so since 1998. He said he volunteers in a Senior Citizen's Center three times weekly to maintain eligibility for his medical benefits and food stamps. Periodically, he travels to Africa as a representative of Akers Laboratories, a manufacturer of a rapid screening process for the diagnosis of diseases such as HIV,

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Hepatitis, and Malaria. He has demonstrated the product and taught its use in many countries. He receives a commission for the sale of the product, but the travel to Africa has been at his own expense. He continues to have the opportunity to return to Africa representing Akers Laboratories, and has been offered a teaching position in Nigeria, but has elected instead to remain in New York to see his restoration process through. Applicant said that he has chosen not to take any employment involving patient care such as an EKG technician or a phlebotomist because he does not want to put himself in a position where the Department could interpret that he was practicing medicine.

Applicant said that he maintains current knowledge of his profession by researching the online medical libraries such as "Doctors Med Access" and "Web MD". When requested, he prepares lectures for African medical schools in this manner. He said that he "will only stop learning when I die", and enjoys keeping current. He said he also attends medical conferences and is planning to attend the conference for the American Board of Surgery this year. He is a Board Certified Surgeon, and if his license is restored he said he will take a two-week review course in surgery offered by the University of Illinois to update his surgical skills.

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In terms of efforts at rehabilitation, applicant said that upon having his license revoked, he went to the Archbishop of his church to offer an explanation. The Archbishop arranged for counseling in 1993, first three times a week, and then weekly. In addition, applicant sought the services of a psychologist, asking to be evaluated with the premise that he was sick. He said he underwent a series of psychological tests and was told that there was nothing wrong with him.

Applicant was asked about the statement in his application to the effect that the witnesses who testified against him were recruited from advertisements in the media. He responded that the witnesses told him they were paid to testify by Linda Fairstein of the Manhattan District Attorney's Sex Crimes Unit. He went on to explain that a woman who came to his office in 1987 complained to Ms. Fairstein's boyfriend that she had been sexually attacked by applicant. Following this complaint, applicant was arrested and an investigation ensued. He said that despite a thorough review of his patient records by the police department, and an undercover investigation in which people posing as patients were sent to his office wearing tape recorders, the allegation was not upheld. It is applicant's belief that Ms. Fairstein referred the case to the

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Department of Health, and put pressure on the Committee to revoke his license.

Applicant said that he does assume culpability in two areas. First he was too open, too nice and too compassionate in his practice of medicine. Secondly he said that he should have taken issue with the patient who asked him to put false information on her medical forms, for it was this woman who was later seen to be a credible witness against him.

THE MEETING

On July 20, 2001 this Peer Panel met to consider the application in this matter. Applicant appeared and elected to proceed without an attorney. Stephen Lazzaro, Esq. represented the Division of Prosecutions of the Office of Professional Discipline.

After preliminary opening remarks by the Chairperson and the parties, applicant spoke on his own behalf and repeated much of what is in his application and in the investigative interview.

Regarding continuing medical education (CME) he added that he has practiced surgery in Africa (last time was 1999) and goes to libraries like the Cornell Medical Library. He stated that he does not have any CME credits from a United States institution but has gone overseas for this. He added that he has done Grand

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Rounds at Beth Israel and Albert Einstein. Regarding rehabilitation applicant stated that he now speaks to his archbishop monthly and sees him about once every three months. He stated that he went to the psychologist initially because he had been found "morally unfit" and that hurt him. He still sees the psychologist periodically.

When questioned about the charges against him he stated that he never caused patient "D" to bleed and that he never had sex with patient "D" adding "may God strike me dead".

He said that he can't say the charges are false because he left himself open by not having another person in the room at all times.

When asked if he thought consensual sex with a patient was ever alright, applicant replied "never". He stated that he never had sex with any patient and that he will not admit to something he did not do.

When asked why two of the character references (Dr. Freeman and Dr. Massina) said they did not know the nature of applicant's misconduct applicant stated that he had told them.

When asked what he had learned in counseling applicant stated that he learned that he had been too open with patients, that he should draw the line between himself and patients and be careful

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and always have another person present. He added that he is a very devoted person and proud of himself and if he has flaws he will correct them.

Mr. Lazzaro closed by saying applicant's CME is woefully inadequate. He also added that he did not believe applicant had demonstrated any remorse.

Applicant closed saying he would abide by any suggestions or restrictions recommended by the panel, even a residency program, to get a second chance. He add that if his is flawed "fix me, don't throw me away".

RECOMMENDATION

We unanimously recommend that the application herein be denied. While applicant has made some efforts at rehabilitation such as seeking counseling with his archbishop and seeing and being evaluated by a psychologist, all applicant seems to have gained from this is that he has been too open with patients and that he should have always had a third person present when he was with a patient. In addition, this panel finds applicant's allegations regarding the district attorney to be bizarre.

Regarding CME, applicant presented no documentation whatsoever.

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With regard to remorse, applicant has consistently denied any misconduct took place and this panel recognizes that he has the right to do so. However, this panel must accept, as a matter of law, that applicant has committed the misconduct that he has been found guilty of. Given this conflict we strongly believe applicant is in need of serious psychological counseling to help him deal with this situation, whatever applicant believes the facts to be.

Accordingly, we cannot recommend restoration of licensure in this matter.

We hope applicant will take our comments into consideration should he reapply in the future.

Respectfully submitted,

DAVID HARRIS, M.D., Chairperson

JORDAN JOSEPHSON, M.D.

JOHN BOYCE, M.D.



Chairperson

12/15/01

Dated