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

Office of Professional Discipline, 475 Park Avenue South, 2nd Floor, New York, NY 10016-6901
Tel. (212) 951-6400
Fax (212) 951-6420
E-mail: OP4INFO@MAIL.NYSED.GOV

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OFFICE OF PROFESSIONAL MEDICAL CONDUCT

October 21, 2005

William Joseph Hicks, Physician
Post Office Box 4221
Baton Rouge, Louisiana 70821

Re: Application for Restoration

Dear Dr. Hicks:

Enclosed please find the Commissioner's Order regarding Case No. CP-05-07 which is in reference to Calendar No.19890. 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 State of New York
Education Department

IN THE MATTER

of the

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

Case No. CP-05-07

It appearing that the license of WILLIAM JOSEPH HICKS, P.O. Box 4221, Baton Rouge, Louisiana 70821, to practice as a physician in the State of New York, was surrendered by action of the State Board for Professional Medical Conduct effective December 12, 1994, and he having petitioned the Board of Regents for restoration of said license, and the Regents having given consideration to said petition and having disagreed with the recommendations of the Peer Committee and the Committee on the Professions, now, pursuant to action taken by the Board of Regents on September 9, 2005, it is hereby

ORDERED that the petition for restoration of License No. 168625, authorizing WILLIAM JOSEPH HICKS 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 11th day of October, 2005.

Commissioner of Education

Case No. CP-05-07

It appearing that the license of WILLIAM JOSEPH HICKS, P.O. Box 4221, Baton Rouge, Louisiana 70821, authorizing him to practice as a physician, was surrendered by action of the State Board for Professional Medical Conduct effective December 12, 1994, and he having petitioned the Board of Regents for restoration of said license, and the Regents having given consideration to said petition and having disagreed with the recommendations of the Peer Committee and the Committee on the Professions, now, pursuant to action taken by the Board of Regents on September 9, 2005, it was

VOTED that the petition for restoration of License No. 168625, authorizing WILLIAM JOSEPH HICKS to practice as a physician, be denied in the State of New York.

Case number
CP-05-07
August 3, 2005

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: William Joseph Hicks

Not Represented by an Attorney

William Joseph Hicks, P.O. Box 4221, Baton Rouge, Louisiana 70821, petitioned for restoration of his physician license. The chronology of events is as follows:

11/12/86	Issued license number 168625 to practice as a physician in New York State.
11/04/94	Charged with professional misconduct by Department of Health.
11/22/94	Submitted Application to Surrender License.
11/30/94	State Board for Professional Medical Conduct accepted application to surrender physician license.
12/12/94	Effective date of revocation.
01/31/01	Submitted application for restoration of physician license.
04/14/04	Peer Committee restoration review.
03/03/05	Report and recommendation of Peer Committee. (See "Report of the Peer Committee.")
05/11/05	Committee on the Professions restoration review.
08/03/05	Report and recommendation of Committee on the Professions. (See "Report of the Committee on the Professions.")

Disciplinary History. (See attached "Application to Surrender License.") On November 22, 1994, Dr. Hicks submitted an Application to Surrender License after the Department of Health charged him with 10 specifications of professional misconduct; specifically, gross negligence, gross incompetence, negligence on more than one occasion, and incompetence on more than one occasion. The charges related to the obstetric care he provided to four patients. In his application to surrender his physician license, Dr. Hicks admitted guilt to five of the specifications related to three patients – gross incompetence, negligence on more than one occasion, and incompetence on more than one occasion. Dr. Hicks admitted guilt to not hospitalizing a patient with possible preeclampsia timely, not adequately monitoring the patient's blood pressure, and failing to effect delivery in a timely manner. For a second patient, Dr. Hicks admitted guilt to the charge of using excessive force while attempting a vaginal delivery. Regarding the third patient, Dr. Hicks admitted guilt to the charge that he failed to meet acceptable standards of care by not timely transferring the patient to a facility capable of handling pregnancies and deliveries with significant complications. The patient had an umbilical cord prolapse and the infant subsequently died after birth. On November 30, 1994, the State Board for Professional Medical Conduct accepted Dr. Hicks' application to surrender his physician license and the surrender became effective December 12, 1994

Dr. Hicks submitted an application for restoration of his physician license on January 31, 2001.

Recommendation of the Peer Committee. (See attached "Report of the Peer Committee.") The Peer Committee (Diamond, Carone, Gitman) met with Dr. Hicks on April 14, 2004 to review his application for restoration. In its report, dated March 3, 2005, the Committee voted unanimously to recommend that the order of his surrender be stayed for five years and that he be placed on probation for five years under specified terms and conditions. The Committee recommended that Dr. Hicks complete a Clinical Competency Assessment at the Upstate New York Clinical Competency Center and complete a residency program at Tulane University School of Medicine, a retraining program Dr. Hicks referred to in his restoration application.

Recommendation of the Committee on the Professions. On May 11, 2005, the Committee on the Professions (Munoz, Frey, Hansen) met with Dr. Hicks to review his application for restoration. His attorney did not attend the meeting. Dr. Hicks presented the Committee with a change of address, additional CME credits he has earned, and information about the Master of Public Health program at Louisiana State University.

The Committee asked Dr. Hicks to explain why he surrendered his license. He said that he made mistakes in his care of three high-risk obstetrics patients. The Committee asked him to briefly describe each case. He said that the first patient had a hidden umbilical cord prolapse, which he failed to diagnose. He indicated that significant changes in blood pressure should have been a tip-off to him. Additionally, he reported that the patient said that her side hurt and he should have realized that "liver swelling"

could have been another indication of the problem. He indicated that the patient was admitted twice to the hospital with "false" labors and during her third admission delivered an infant that died despite resuscitative efforts. Regarding the second patient, Dr. Hicks said that she had a ruptured membrane for a month and he could "see the umbilical cord across the opening." He indicated that, eventually, he asked to transfer the patient to Strong Memorial Hospital, which was better equipped to handle high-risk cases, and rode in the ambulance with her. Dr. Hicks reported that during the C-Section the infant's fetal heart rate went down and the baby died. He told the Committee that he now realizes that he should have talked to his partners and arranged to have the patient's care transferred earlier to a specialist in high-risk pregnancies. He stated, "If that transfer were done, I don't know if the result would have been the same. I still don't know what happened during the C-Section." Regarding the third patient, Dr. Hicks reported that he used a vacuum extractor for delivery of an infant for a time period longer than most physicians felt was appropriate. He said that since the Chair of the C-Section Committee wanted the physicians to reduce the number of C-Sections performed, he decided to use the vacuuming procedure on this patient in lieu of a C-Section.

Dr. Hicks explained that prior to joining an OB/GYN practice, he was the Chief Resident in the high-risk obstetrics department at Strong Memorial Hospital and participated in many high-risk deliveries. He said that he realizes that coming from that environment he should have known that possible high-risk deliveries and pregnancies should be referred to those specializing in such cases and also that patients should be admitted timely into a hospital that can provide the appropriate services. He stated, "I didn't switch gears to a community-based hospital." Regarding his utilization of the vacuum extractor, he told the Committee that he might have been over-zealous but he had performed 15 or 20 such procedures that were successful at Strong Memorial Hospital. He reported that he had extensive training in using the vacuum and had used it for long periods of time previously. After the misconduct occurred, Dr. Hicks reported that standards were established that recommended the vacuum's use for five minutes or for five pulls.

Dr. Hicks said that he decided to surrender his license upon the advice of his attorney. He reported that his attorney told him that a revocation of his license would be permanent and that the Department of Health wanted him to surrender his license. Dr. Hicks said that his attorney told him that if he surrendered, he could come back to practice after some retraining.

The Committee asked about his reaction to the probationary terms suggested by the Peer Committee. Dr. Hicks replied that he would accept any conditions to have his license restored. He indicated that he was prepared to do a progressive reentry into the practice of medicine. He said that he no longer wanted to practice high-risk medicine and felt that his talents could be best utilized in community-based medicine. Dr. Hicks stated that he has no intentions to practice in New York State and wants to practice in Louisiana where he has a strong support group. However, he reported that he cannot become licensed in Louisiana until New York restores his license. He discussed the

Master of Public Health Program at Louisiana State University as a viable option he is exploring.

Dr. Hicks outlined his extensive continuing education activities and his desire to insure that he would not make future mistakes were his license restored. He indicated that he continually thinks about the infants that did not survive and what he might have done to give those infants a better chance at survival. Dr. Hicks said that he participated in the Physician Prescribed Educational Program and could do the didactic coursework recommended but could find no place in New York State where he could get clinical experience without having a physician license. He reported that the director of the program felt that he could benefit from a reeducation program and outlined the elements of such a program. Dr. Hicks said that he has recently received a promotion with the State of Louisiana and is now state-wide Manager of Customer Service with the Bureau of Community Supports and Services. In this position, he indicated that he manages a staff who administer long-term care services throughout the State of Louisiana. He reported that prior to that he worked as a Disease Surveillance Specialist at the Louisiana Office of Public Health. He explained how these positions have allowed him to interact with physicians and help keep abreast of what's happening in the medical profession.

The Committee asked Dr. Hicks to summarize why he felt his license should be restored. He replied that he continues to accept responsibility for the mistakes he made with his care of the patients and continues to explore the reasons why he made them. He indicated that he now understands he should have explored other options at the time and needs to consult with his colleagues and understand his own limitations as well as the limitations of individual hospitals. He stated that he has a better understanding of when to make the determination to transfer a patient to another physician or facility. Dr. Hicks said that if his license were restored he would not practice in the high-risk field of obstetrics. He told the Committee that he knows that he needs retraining before resuming practice and is willing to have an evaluation and perform the training recommended. He said that he viewed retraining as a "reinvention of myself." He added that he has family and an extensive support system in Louisiana and would not hesitate to ask for help when needed.

The overarching concern in all restoration cases is public protection. Education Law §6511 gives the Board of Regents discretionary authority to make the final decision regarding applications for the restoration of a license to practice as a physician in New York State. 8NYCRR §24.7(2) 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 first 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 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 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, without question, the arguments presented by the petitioner but to weigh and evaluate all of the evidence submitted and to render a recommendation based upon the entire record.

The COP concurs with the opinion of the Peer Committee that Dr. Hicks "has expressed and demonstrated remorse and has made continuous efforts to reeducate and rehabilitate himself." The COP found Dr. Hicks straightforward and credible in responding to its questions. He was able to discuss each of the three cases that formed the basis for the surrender of his license and was able to articulate clearly what he did wrong and what he might have done differently to effect more desirable outcomes. Realizing his need for additional hands-on experience, Dr. Hicks contacted the Physician Prescribed Educational Program (PPEP) at Upstate Medical University for an evaluation and made extensive efforts to find a program or facility where he could update his clinical competencies. However, without a physician license, he was stymied.

Although the Department of Health opined that they felt his misconduct did not make Dr. Hicks a candidate for retraining, the Director of PPEP stated, "The results point to a generally superior level of ability with no measured area of disruption that would interfere with daily functioning or a reeducation process. Under personality testing, all clinical skills were at the normal limits with no clear evidence of disruptive levels of depression or anxiety. Results indicate that there is no doubt that Dr. Hicks has the intellectual and cognitive capacity to benefit greatly from a reeducation program ..." The Department of Health did state, however, that if Dr. Hicks' license were to be restored, he should obtain a Clinical Competency Assessment at The Upstate New York Clinical Competency Center and adhere to the recommendations from that assessment.

Dr. Hicks has expressed a desire to no longer practice in the high-risk area of obstetrics and the COP concurs with the belief of the Peer Committee that "his goal to return to practice as a physician in low-risk, community-based medicine is realistic." The COP finds that Dr. Hicks presented a compelling case for the restoration of his license at this time but agrees with the recommendation of the Peer Committee that he needs to complete a retraining program before resuming independent practice. The COP believes the training program need not be limited to the residency program at Tulane University School of Medicine. Rather, the retraining should be tied specifically to the recommendations resulting from the Clinical Competency Assessment and could be completed in whatever manner that is approved by the Director of the Office of Professional Medical Conduct.

Therefore, after a careful review of the record and its meeting with him, the Committee on the Professions voted unanimously to concur with the recommendation of the Peer Committee that the order of surrender of Dr. Hicks' license to practice as a physician in New York State be stayed for five years, that he be placed on probation for five years under specified terms attached to this report and labeled as Exhibit "B," and that upon satisfactory completion of the probationary period, his license be fully restored.

Frank Munoz, Chair
Joseph Frey
Stanley Hansen

EXHIBIT "B"

TERMS OF PROBATION
OF THE COMMITTEE ON THE PROFESSIONS

WILLIAM JOSEPH HICKS

1. That the applicant, during the period of probation, shall be in compliance with the standards of conduct prescribed by the law governing the applicant's profession;

2. That the applicant shall submit written notification to the Director, Office of Professional Medical Conduct (OPMC), New York State Department of Health, Suite 303, 4th Floor, Hedley Park Place, 433 River Street, Troy, NY 12180-2299, of any employment and/or practice, applicant's residence, telephone number, and mailing address and of any change in the applicant's employment, practice, residence, telephone number, and mailing address within or without the State of New York;

3. That the applicant shall submit written proof from the Division of Professional Licensing Services (DPLS), New York State Education Department (NYSED), that the applicant has paid all registration fees due and owing to the NYSED and the applicant shall cooperate with and submit whatever papers are requested by DPLS in regard to said registration fees, said proof from DPLS to be submitted by the applicant to the Department of Health (DOH), addressed to the Director, OPMC, as aforesaid, no later than the first three months of the period of probation;

4. That the applicant shall submit written proof to the DOH, addressed to the Director, OPMC, as aforesaid, that 1) the applicant is currently registered with the NYSED, unless the applicant submits written proof that the applicant has advised DPLS, NYSED, that the applicant is not engaging in the practice of the applicant's profession in the State of New York and does not desire to register, and that 2) the applicant has paid any fines which may have previously been imposed upon the applicant by the Board of Regents or pursuant to section 230-a of the Public Health Law, said proof of the above to be submitted no later than the first two months of the period of probation;

5. That the applicant shall enroll in and successfully complete a Clinical Competency Assessment to be conducted at the Upstate New York Clinical Competency Center located at Albany Medical College, with the applicant to provide proof that he has provided the AMC Clinical Competency Center with copies of OPMC Order No. 94-255 which sets out those specific subject

areas which the Clinical Competency Assessment must address. Applicant shall cause a written report of such assessment to be provided directly to the Director, OPMC, within ninety (90) days of the effective date of this Order;

6. That the applicant shall be responsible for all expenses related to the Clinical Competency Assessment and shall provide to the Director, OPMC, proof of full payment of all costs that may be charged;

7. That the applicant shall submit to the Director, OPMC. a remediation plan consistent with the recommendations resulting from the Clinical Competency Assessment within sixty (60) days of receiving the results of the Clinical Competency Assessment; such plan to be approved in writing by the Director, OPMC;

8. That the applicant, at the conclusion of the approved remediation program, shall submit to the Director, OPMC, a detailed assessment of the progress made by the applicant toward remediation of all identified deficiencies;

9. That the applicant can only practice medicine within the parameters established for the remediation program until the Director, OPMC, has determined that the applicant has satisfactorily completed the remediation program;

10. That the applicant, once the remediation program has been satisfactorily completed, shall practice medicine for the duration of the period of probation in accordance with the remaining terms of probation;

11. That the applicant shall make quarterly visits to an employee of the OPMC, DOH, unless otherwise agreed to by said employee, for the purpose of said employee monitoring the applicant's terms of probation to assure compliance therewith, and the applicant shall cooperate with said employee, including the submission of information requested by said employee, regarding the aforesaid monitoring; and

12. That upon receipt of evidence of noncompliance with or any other violation of any of the aforementioned terms of probation, the OPMC may initiate a violation of probation proceeding.

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

WILLIAM JOSEPH HICKS

REPORT OF
THE PEER
COMMITTEE
CAL. NO. 19890

for the restoration of his license to practice medicine in the State of New York.

----------X

WILLIAM JOSEPH HICKS, hereinafter known 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 surrendered his license in disposition of a professional discipline proceeding. The applicant has applied for restoration of his license.

On April 14, 2004, 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. Further details pertaining to these documents may be found therein.

PRIOR DISCIPLINE PROCEEDINGS

Board for Professional Medical Conduct Action

- November 30, 1994 - by order dated November 30, 1994, Case No. BPMC 94-255, the Board of Professional Medical Conduct (BPMC) of the Department of Health of the State of New York, accepted the applicant's application to surrender his license to practice as a medical doctor in the State of New York; by letter dated December 5, 1994 the Director of the Bureau of Adjudication of the Department of Health of the State of New York issued the order enforcing the surrender of the applicant's license and his name was stricken from the roster of physicians in New York State.

Specifications of misconduct:

On November 4, 1994, the applicant was charged with

professional misconduct by practicing the medical profession with gross negligence on a particular occasion within the meaning and purview of Section 6530(4)(McKinney Supp., 1994) of the Education Law of the State of New York; with professional misconduct by practicing the medical profession with gross incompetence within the meaning and purview of Section 6530(6)(McKinney Supp., 1994) of the Education Law of the State of New York; with professional misconduct by practicing the medical profession with negligence on more than one occasion within the meaning and purview of Section 6530(3)(McKinney Supp., 1994) of the Education Law of the State of New York; and with professional misconduct by practicing the medical profession with incompetence on more than one occasion within the meaning and purview of Section 6530(5)(McKinney Supp., 1994) of the Education Law of the State of New York.

Nature of the misconduct:

The BPMC accepted the applicant's application to surrender his license to practice medicine, in which he admitted that he practiced with gross incompetence under N.Y. Education Law Section 6530(6) (McKinney Supp., 1994); that he practiced with negligence on more than one occasion under N.Y. Education Law Section 6530(3)(McKinney Supp., 1994); that he practiced with

incompetence on more than one occasion under N.Y. Education Law Section 6530(5) (McKinney Supp., 1994); as to each of the following:

Patient B* -

That he treated Patient B from on or about January 7, 1992 to on or about August 27, 1992 for pregnancy and delivery. That on August 21, 1992 he delivered Patient B of a stillborn female infant and that his care and treatment of Patient B failed to meet acceptable standards of medical care by failing to hospitalize Patient B on August 18, 1992 for observation and treatment of possible preeclampsia; that he failed in the absence of indicated hospitalization, to adequately monitor Patient B's blood pressure subsequent to the finding she had significantly abnormal blood pressure on August 18, 1992 and prior to the hospital admission in labor on August 21, 1992; that he failed to institute adequate seizure prevention measures for Patient B during

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*Initials rather than names may be used in this report when referring to persons other than the respondent, panel members, Administrative Officer, those representing the parties, and those that may appear in any annexed exhibit.

labor and immediately post-partum; that he failed to effect delivery in a timely manner.

Patient C -

That he treated Patient C from on or about October 10, 1990 to on or about June 7, 1991 for pregnancy and delivery. On June 2, 1991 at Highland Hospital he delivered of Patient C a male infant and that the applicant's care and treatment of Patient C failed to meet acceptable standards of medical care in that he used excessive force in attempting to accomplish a vaginal delivery.

Patient D -

That he treated Patient D from on or about December 8, 1989 to on or about February 28, 1990 for pregnancy and expected delivery. From February 20-24, 1990 he treated Patient D at Highland Hospital, that on February 24, 1990 Patient D's care was taken over by an obstetric team at Strong Memorial Hospital where Patient D was delivered of a male infant, who died despite resuscitative efforts; and that the applicant's care and treatment of Patient D failed to meet acceptable standards of medical care in that, on

February 20, 1990 after evaluating Patient D in her thirtieth week of pregnancy the applicant failed to transfer her care to a tertiary center capable of complete care of a significantly preterm infant; that on February 23, 1990 he discharged Patient D from Highland Hospital in spite of continuing indications of s gnificant complications of pregnancy; that on February 24, 1990, because she was exhibiting clear indications of preterm labor, he readmitted Patient D to Highland Hospital, a facility incapable of providing complete care to a significantly preterm infant; that on February 24, 1990 upon recognition of an umbilical cord prolapse, he failed to perform an emergency Caesarean section upon Patient D; that on February 24, 1990 he transferred Patient D from Highland Hospital to Strong Memorial Hospital with the fetus at risk of severe injury and/or death from umbilical cord prolapse.

Based upon the applicant's admission(s), on November 30, 1994 the BPMC accepted the application for surrender with accompanying provisions, and ordered that the applicant's name be stricken from the roster of physicians in the State of New

York.

APPLICATION FOR RESTORATION

On January 31, 2001, the applicant executed the State Education Department's standard form to apply for restoration of licensure. The application contained the information and attachments listed below:

Entries in the basic application form:

Continuing Education - The applicant lists over 275 hours of continuing education credits received for approximately 68 courses taken from 1995 through 2004 through various professional medical entities such as the Louisiana Department of Health & Hospitals Office of Public Health, the National Foundation for Infectious Diseases, and Albany Medical College. The certificates indicate that the applicant personally attended the majority of the courses and that some courses were offered in videoconference format.

Volunteer Work - The applicant indicates that in 1995-1996 he performed 8 hours of volunteer service for the Episcopal Church, Rochester, NY; in 1997 he was granted a license to serve as a Lay Eucharistic Minister for the Episcopal Diocese of Rochester, NY for one year and in 1998 performed 10 hours of volunteer service for St. Luke and Simon Church, Rochester, NY;

he performed 10 hours of volunteer service at The Haven Shelter, Houma, Louisiana; and in 2002 served as a Big Brother for the Big Brothers/Big Sisters of Terrebone Lafourche, Louisiana. The applicant has also been a presenter for at least 2 continuing medical education seminars.

Affidavits and letters - The applicant submits affidavits from 9 individuals, including 8 medical doctors.

Additional attachments to the application -

- The applicant submits an Authorization to Release Treatment Records dated September 9, 2000, directed to M.D., an Associate Counselor at Samaritan Pastoral Counseling Center, University of Rochester, NY, from whom the applicant sought counseling from November 1995 until June 1997, meeting 21 times. The applicant submitted a letter from M.D., Associate Counselor at the Samaritan Pastoral Counseling Center, University of Rochester, NY, confirming that the counseling sessions had been provided and that M.D. also recommended that the applicant be evaluated for clinical depression by Dr. M. P., a medical doctor at Strong Memorial Hospital, Rochester, NY. The applicant was evaluated by Dr. M.P., who

diagnosed the applicant as suffering from unipolar depression and prescribed Paxil for a limited period of time. M.D., the Associate Counselor, indicated that this treatment was beneficial to the applicant in the counseling sessions.

- **March 30, 1994 Letter from R.V., Medical Liability Mutual Insurance Company,** concerning retention of medical records.
- **April 17, 1998 Letter from G.C.G., Medical Liability Mutual Insurance Company,** advising of a defendant's verdict in a legal action against William J. Hicks, M.D.
- **May 29, 1997, Lay Eucharistic Minister's License (1 year),** granted to William Hicks by W.G.B., Bishop, Episcopal Diocese of Rochester, NY.
- **December 18, 1996 Letter from D.G., Mission Personnel Officer, Domestic and Foreign Missionary Society, the Protestant Episcopal Church in the USA,** concerning applicant's request to serve as a medical doctor or perform missionary service in Uganda.
- **May 29, 2001 Letter from S.F.D., Human Resources Technician, Terrebone General Medical Center, Houma,**

Louisiana, verifying the applicant's employment as a transcriptionist.

- **June 27, 2001 letter from Dennis Graziano, Director, OPMC**, indicating OPMC's opposition to the restoration of the applicant's license to practice as a medical doctor. The OPMC takes the position that "...[Dr. Hicks'] misconduct, including acts of gross incompetence and negligence, would exclude him from being considered by this Office to be a likely candidate for retraining. We see no reason to change our position and do not recommend restoration of this medical license."
- **July 27, 2001 Letter from W.D.G., Ed. D., Director, Physician Prescribed Educational Program (PPEP), Upstate Medical University, S.U.N.Y. at Syracuse, NY**, setting forth PPEP recommendations for Dr. W. Joseph Hicks.
- **February 5, 2002 Letter from J.V.D., Director, Physician Monitoring Program, OPMC, NYS Department of Health**, reaffirming opposition to restoration of Dr. Hicks' medical license; the letter also sets forth alternative recommendations should the Board of

WILLIAM JOSEPH HICKS (19890)

Regents grant restoration.

Hearing Submissions - the applicant provided the following at the hearing -

- Supplementary Continuing Medical Education credits earned, (Exhibit 1).
- Supplemental Petition by William J. Hicks, (Exhibit 2).
- Supporting Affidavits from Dr. R.C.R., Dr. G.O.P., (Exhibit 3).
- Supporting Affidavits from Dr. W.R.M., Dr. R.L.D., (Exhibit 4).
- Letter (undated) from M.A.K.W., M.D., M.S.P.H., Director, Preventive Residency Program, Tulane University, (Exhibit 5).

Post-Hearing Submission -

- **May 8, 2004 letter from the Applicant,** providing supplementary information and further detail regarding a proposed retraining/reeducation program, as requested by the Hearing Panel. Upon receipt and review by the Hearing Panel of the requested supplementary information, the record was closed.

INVESTIGATIVE INFORMATION

The packet provided by OPD contains the following additional information from the investigation that resulted from the filing of the application for restoration:

- June 6, 2001 Letter from the Applicant verifying employment, a description of his self-created digital library of medical journal articles, a contact-person at the Louisiana State Board of Medical Examiners, and verification of his community service.

PEER COMMITTEE

On April 14, 2004, this Peer Committee met to consider this matter. The applicant appeared before us personally and was represented by attorneys William L. Wood, Esq. and H. Todd Bullard, Esq. The Office of Professional Discipline, Prosecutions, was represented by Lydia Perez, Esq.

The applicant's attorney, Mr. Wood, gave an opening statement in which he highlighted the applicant's medical education and training, as well as the medical cases that led to the charges of misconduct in 1994 and the applicant's subsequent plea of guilt to several of those charges. Mr. Wood noted that at that time, the applicant relied upon the advice of his then-attorney who recommended that the applicant plead

guilty and surrender his medical license rather than defend against the charges, purportedly because one could later seek restoration of one's license only if it had been surrendered, and not revoked. The applicant followed that recommendation, pled guilty, and applied to surrender his medical license, which application was accepted by the BPMC on November 30, 1994.

The applicant was later evaluated for the Physician Prescribed Educational Program (PPEP), Upstate Medical University, S.U.N.Y., administered by W.D.G., Ed.D., Director. Based upon the results of the evaluation, W.D.G determined that the applicant could undertake a six-week remedial plan that would remedy any deficiencies revealed by the evaluation. A plan was developed that could enable him to seek restoration of his license. (The plan was included with the applicant's original application for restoration.) W.D.G. also recommended that the applicant develop a support network to assist him in reaching his goals.

Despite determined efforts, by 1997 the applicant had not found a remediation program in New York State. He decided to move to Louisiana where he had family that could provide him with the support network suggested by W.D.G., and where he

continued to search for a remediation program. In Louisiana he applied for licensure with the State Medical Board of Louisiana. However, since he no longer had a valid New York license to practice medicine, the State Board of Louisiana could not consider his application.

Eventually, the applicant obtained employment with the Louisiana Office of Public Health as a Disease Surveillance Specialist. He contacted Tulane University and learned that he might be able to pursue a medical residency program while continuing at the Office of Public Health. The applicant has indicated that if his medical license is restored, he does not plan to return to New York, nor does he plan to practice his former specialty, obstetrics and gynecology, but would instead remain in Louisiana and specialize in "less invasive", lower-risk medicine, specifically, community/public health medicine.

In his presentation before us, the applicant described his medical education at the University of Michigan Medical School from which he graduated in 1985, his residency in obstetrics and gynecology (1989) and board certification in 1992 and that in 1989 he joined an established, specialized medical practice group in Rochester, NY and practiced obstetrics and gynecology, as well as serving as a clinical associate professor at Strong

Memorial Hospital, Rochester, NY. He repeatedly stressed that he had a particular interest in working with populations that had limited or no access to medical care.

During his description of the medical situations that led to his surrender, the applicant expressed and clearly demonstrated remorse several times.

He described how his then-attorney offered him two options to resolve the specifications - that he surrender his medical license and preserve the option to apply for restoration of his license in the future, or, that he request a hearing and risk revocation of his license, a penalty that his attorney mistakenly advised would foreclose the option to apply for restoration. Wanting to preserve his option to seek restoration and return to the practice of medicine, the applicant chose to surrender his medical license. Only afterwards did he discover that the penalty of revocation would not have foreclosed his option to apply for restoration of his license.

Still intending to obtain restoration of his license, the applicant tried to follow the PPEP recommendations on his own. He devised a way to maintain currency in medical education by completing several self-created goals. He completed a

curriculum for Bio-Physical Medicine in Rochester, , developed by G.E. He participated in curriculums in Family Assistance Medicine and Family Therapy at Strong Memorial Hospital, Rochester, NY. He also undertook work examining the spiritual aspect of restoring health at the Rochester Dominican Divinity School, Rochester, NY. He subscribed to medical journals, read and annotated various articles, then created a personal digital library of those articles that could be accessed and reviewed in the future.

In Louisiana, the applicant found a position as a research fellow with Christian Health Ministries. He felt that this position provided a supportive community, an integrated approach to medicine and the opportunity to work with underserved populations. He later took a position as proofreader with a medical transcription service, which hel him stay abreast of medical and pharmacological practices. Hired as a Disease Surveillance Specialist at the Louisiana Office of Public Health, his duties included monitoring specific geographic regions in order to detect any developing patterns of disease. As a result, the applicant had contact with physicians w.o reported diseases, he educated those physicians about detectic and treatment of diseases such as

SARS, West Nile virus, and he also gave lectures at medical staff meetings. A number of his supervisors or workplace colleagues are themselves medical personnel who encouraged him to pursue restoration of his NY license and who have provided references in support of this application.

He applied to the State Board of Louisiana for a medical license in order to begin a retraining program there. The State board could not grant a license because of the circumstances regarding his NY license, so the matter was left open to allow the applicant to resolve the NY license issue. The applicant also investigated residency programs in Louisiana and found two that suited his interests in low-risk, community-based preventive medicine - one at Tulane University and one at Louisiana State University. His intent has been not to return to high-risk obstetrics, but to retrain within a monitored practice in lower-risk community medicine according to the parameters set forth in the PPEP. He indicated that Tulane was prepared to accept him into its residency program if he possessed a retraining license and that he could retrain while continuing employment as a Disease Surveillance Specialist. He explained that he has been able to remain motivated because he believes that he was meant to serve people, that he sees a need

for doctors who wish to work with underserved populations, and that preventive medicine is not only cost-effective, but has greater impact since it can address disease in its early stages before it becomes complicated and more costly.

When cross-examined by Ms. Perez about whether he had completed the PPEP plan, the applicant explained that his efforts to complete portions of the plan were frustrated because he no longer possessed a medical license and that he had to be careful not to "cross the boundary and try to do patient care." When questioned about the decisions he made in the three patient cases, the applicant acknowledged that he "could have made different decisions in the care of those patients", that "they were high risk patients", that "the whole country is divided about how to take care of [such patients]", and that he thought "it was partially my grief over the outcomes that has delayed my progress."

Questioned by members of our panel, the applicant again acknowledged that there were things he could and should have done differently, such as seeking more consultation on certain cases, providing patients with more information, or not making such decisions in isolation. After he surrendered his license, he was evaluated by a psychiatrist who diagnosed depression and

prescribed an antidepressant medication for about one year. The applicant attributed his depression to prolonged grief over the cases, which also led to his participation in psychotherapy. He believes he "got a lot of benefit out of both [psychotherapy and medication]", but also learned that he "is not responsible for everything."

Several witnesses testified about the applicant's character. One witness, L.R., a retired medical doctor, serves as a member of the OPMC, and was a Clinical Assistant Professor at the University of Rochester when the applicant was a resident physician there. L.R.'s opinion of the applicant at that time was that he was capable and performed as well as other resident physicians at the university. L.R. had had a professional medical practice with a physician who later practiced with the applicant. L.R. has not had contact with the applicant since 1994 and had limited knowledge of the circumstances that led to the surrender of the applicant's license. However, based on his familiarity with the applicant while at the University of Rochester, L.R. was of the opinion that the applicant has the capacity and appropriate attitude to enter a retraining program.

A second witness, F.F., a special education teacher, was a

patient of the applicant's in Rochester, NY, as were two of her sisters. She said that the applicant's professional reputation was "good", that "he was very approachable, personable...had a genuine heart for what ...he was doing". F.F. said if the applicant currently had a medical license, she would trust him to provide medical care for her family since he is capable of evaluating a patient as a "whole person" and not just as a medical problem. On cross-examination, F.F. indicated that she has maintained a friendship with the applicant since the surrender of his license.

J.K., also a former patient of the applicant, testified that he had been vigilant, accessible, very caring, "a damn good doctor." He was "highly esteemed" in her community. J.K. even referred her friend, A.L., to the applicant for care. A.L. provided J.K. with a letter that J.K. read into the record. A.L. explained that her son, R.L., was born with problems and is a quadriplegic due to "poor judgment and unprofessional ethics" demonstrated by the applicant during her delivery. Although A.L. felt the applicant had "a right for another chance," she questioned "his ability to make quick medical decisions in simple or complex cases."

J.K. concluded her testimony saying she knew that the

applicant is "a man with a conscience" and that she knew "he was regretful of what he did."

The applicant declined to make a closing statement. Ms. Perez closed by stating her office's recommendation that the application for restoration be denied.

RECOMMENDATION

We have reviewed the entire record in this matter, including the written materials received before and during our meeting. In arriving at our recommendation, we note that, in a licensure restoration proceeding, the burden is on the applicant to produce evidence sufficient to compel the return of the license. In reaching our recommendation, we consider whether the applicant demonstrates sufficient remorse, rehabilitation and reeducation. However, we are not necessarily limited to such formulaic criteria but may consider other factors, particularly the seriousness of the original offense and, ultimately, our judgment as to whether the health and safety of the public would be in jeopardy should the application be granted.

Toward this end, as a result of our deliberations at the end of the proceeding, this Hearing Panel requested supplementary information from the applicant. The record was

left open for that purpose. The applicant provided the requested supplemental information by letter dated May 8, 2004. We subsequently reviewed the supplemental information, determined that it was sufficient, was of assistance in our further deliberations, and enabled us to reach a final determination and recommendation (which is set forth below.) Thereupon, the record was closed.

The record before us shows an applicant who has expressed and demonstrated remorse and has made continuous efforts to reeducate and rehabilitate himself. He has pursued these efforts within the larger parameters of the care-giving aspects of the medical profession and also within the parameters of his personal situation.

We are unanimously impressed with the applicant's efforts and testimony describing his strong desire, but inability, to find a local (NYS) program that would allow him to complete the PPEP program. Clearly remorseful, he is genuine and sincere, and has become a pillar in his new community in Louisiana, engendering both loyalty and respect. He has provided solid references that also demonstrate a longstanding loyalty and respect for him from both former colleagues in Rochester, New York, and from current colleagues in Louisiana.

WILLIAM JOSEPH HICKS (19890)

He has demonstrated rehabilitation by providing extensive, dedicated service to his community, both as a volunteer and as a compensated employee. He has been consistent in his goal to obtain restoration of his license, taken numerous continuing medical education courses, undergoing personal therapy in order to "take stock of himself" to understand his own motivations and his spirituality, as well.

He has been able to reeducate himself as shown by documentation of his ongoing training, by the fact that he created a personal computer program that afforded access to his medical literature library, and by his attendance at the numerous continuing medical education courses.

While we are concerned about his judgment in the past, the applicant has shown that he has learned new techniques to better evaluate medical situations and obtain satisfactory outcomes. He acknowledges that he is better suited to a medical practice in low-risk medical situations, such as community medicine, as demonstrated by his recent position as a community disease surveillance specialist. We believe his goal to return to practice as a physician in low-risk, community-based medicine is realistic.

However, since the applicant has not been licensed to

practice as a physician since 1994, we are concerned about his current level of competence as a physician. In order to address this concern, we recommend that the applicant undertake additional education and training as a physician, as set forth in Exhibit "A", attached. Successful completion by the applicant of said additional education and training would assure us that he possesses current medical knowledge and training. We believe this is a further means of ensuring the protection of the health, safety and welfare of the public, our most important concern.

It is our unanimous recommendation that execution of the surrender of the applicant's license to practice as a physician in the state of New York be stayed for a period of 5 years, and that the applicant then be placed on probation for a period of 5 years in accordance with the terms and conditions of probation annexed hereto made a part hereof and marked as Exhibit "A." Upon successful completion of the probation, the applicant's license would be fully restored.

WILLIAM JOSEPH HICKS (19890)

Respectfully Submitted,

MARTIN DIAMOND, D.O., Chairperson
PATRICK CARONE, M.D.
PAUL GITMAN, M.D.

3/3/05

Chairperson Dated

EXHIBIT "A"

TERMS OF PROBATION
OF THE PEER COMMITTEE
WILLIAM JOSEPH HICKS
CALENDAR NO. 19890

1. That applicant, during the period of probation, shall be in compliance with the standards of conduct prescribed by the law governing applicant's profession;

2. That applicant shall submit written notification to the Director, Office of Professional Medical Conduct (OPMC), 433 River Street - Suite 303, Troy, NY 12180-2299, of any employment and/or practice, applicant's residence, telephone number, and mailing address and of any change in applicant's employment, practice, residence, telephone number, and mailing address within or without the State of New York;

3. There shall be a stay of surrender for a period of 5 years, with applicant to serve a term of probation of 5 years, during which time the applicant shall enroll in and successfully complete a Clinical Competency Assessment to be conducted at the Upstate New York Clinical Competency Center located at Albany Medical College (AMC), with the applicant to provide proof that he has provided the AMC Clinical Competency Center with copies of OPMC Order No. 94-255 which sets out those specific subject areas which the Clinical Competency Assessment must address; and the applicant shall thereafter enroll in and successfully complete a 3 year residency at Tulane University School of Medicine as referred to in Applicant's Exhibit 5; upon successful completion of the term of probation, the applicant's license to practice medicine in the State of New York shall be fully restored.

4. That applicant shall submit quarterly performance reports to the New York State Department of Health (DOH), addressed to the Director, Office of Professional Medical Conduct, as aforesaid, from his employer, evaluating his performance as a disease surveillance specialist in his place of employment, said reports to be prepared by applicant's supervisor or employer;

5. That applicant shall submit written proof from the Division of Professional Licensing Services (DPLS), New York State Education Department (NYSED), that applicant has paid all

registration fees due and owing to the NYSED and applicant shall cooperate with and submit whatever papers are requested by DPLS in regard to said registration fees, said proof from DPLS to be submitted by applicant to the Department of Health (DOH), addressed to the Director, OPMC, as aforesaid, no later than the first three months of the period of probation;

6. That applicant shall submit written proof to the DOH, addressed to the Director, OPMC, as aforesaid, that 1) applicant is currently registered with the NYSED, unless applicant submits written proof that applicant has advised DPLS, NYSED, that applicant is not engaging in the practice of applicant's profession in the State of New York and does not desire to register, and that 2) applicant has paid any fines which may have previously been imposed upon applicant by the Board of Regents or pursuant to section 230-a of the Public Health Law, said proof of the above to be submitted no later than the first two months of the period of probation;

7. That applicant shall make quarterly visits to an employee of the OPMC, DOH, unless otherwise agreed to by said employee, for the purpose of said employee monitoring applicant's terms of probation to assure compliance therewith, and applicant shall cooperate with said employee, including the submission of information requested by said employee, regarding the aforesaid monitoring;

That upon receipt of evidence of noncompliance with or any other violation of any of the aforementioned terms of probation, the OPMC may initiate a violation of probation proceeding.