

8-381



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

OFFICE OF PROFESSIONAL DISCIPLINE
(718) 246-3060,3061

195 Montague Street – Fourth Floor
Brooklyn, New York 11201

July 2, 2008

Steven St. Lucia, Physician

Redacted Address
12309

Re: Application for Restoration

Dear Dr. St. Lucia:

Enclosed please find the Commissioner's Order regarding Case No. CP-08-06 which is in reference to Calendar No. 22318. 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

/s/ Bv: [Signature]
Redacted Signature

Ariana Millèr
Supervisor

DJK/AM/er
cc: Noreen Grimmick, Esq.
677 Broadway, Suite 301
Albany, New York 12207

RECEIVED
JUL 07 2008
OFFICE OF PROFESSIONAL
MEDICAL CONDUCT

The
University of the
Education  State of New York
Department

IN THE MATTER

of the

Application of STEVEN ST.
LUCIA, for restoration of his license
to practice as a physician in the State
of New York.

Case No. CP-08-06

It appearing that the license of STEVEN ST. LUCIA, Redacted Address *4, Niskayuna,*
to practice as a physician in the State of New York was revoked by order of a
Hearing Committee of the State Board for Professional Medical Conduct dated January 10, 2000,
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 the record, and having agreed
with and adopted the recommendations of the Peer Committee and the Committee on the
Professions, now, pursuant to action taken by the Board of Regents on April 15, 2008, it is
hereby

ORDERED that the petition for restoration of License No. 191715, authorizing STEVEN
ST. LUCIA 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 27th
day of June, 2008.


Commissioner of Education

Case No. CP-08-06

It appearing that the license of STEVEN ST. LUCIA, Redacted Address *Niskayuna*,
, to practice as a physician in the State of New York was revoked by order of a
Hearing Committee of the State Board for Professional Medical Conduct dated January 10, 2000,
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 the record, and having agreed
with and adopted the recommendations of the Peer Committee and the Committee on the
Professions, now, pursuant to action taken by the Board of Regents on April 15, 2008 it is
hereby

VOTED that the petition for restoration of License No. 191715, authorizing STEVEN
ST. LUCIA to practice as a physician in the State of New York, is 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: **Steven St. Lucia**

Attorney: Noreen Grimmick, Esq.

Steven St. Lucia, Redacted Address **Mad. Niskayuna, N**), petitioned for restoration of his physician license. The chronology of events is as follows:

- 03/17/93 Issued license number 191715 to practice medicine in New York State.
- 02/02/99 Charged with professional misconduct by the Bureau of Professional Medical Conduct of the New York State Department of Health.
- 01/10/00 License to practice medicine in New York State revoked.
- 05/10/04 Application for restoration submitted.
- 11/15/05 Peer Committee Restoration Review.
- 03/23/06 Report and recommendation of Peer Committee.
- 06/27/06 Committee on the Professions Restoration Review.
- 03/27/08 Report and recommendation of Committee on the Professions.

Disciplinary History. (see attached disciplinary documents.) In 1999, the Bureau of Professional Medical Conduct of the Department of Health charged Dr. St. Lucia with eleven specifications of misconduct. The State Board for Professional Medical Conduct Hearing Committee, after several days of testimony, found that he had committed conduct in the practice of medicine which evidenced moral unfitness with respect to three different patients. He was found to have had sexual relations with two patients, one within thirty days of surgery when she was at risk for infection, and to have engaged in flirting, kissing, and the physical massaging of a third patient. All of these acts occurred in 1997.¹ Dr. St. Lucia was also found guilty of gross negligence, gross incompetence, and negligence and incompetence on more than one occasion with respect to his treatment of an elderly woman on whom he performed surgery. With respect to that patient, he was found to have failed to adhere to a care plan, failed to arrange for the presence of an on-call

¹ The DOH charges specified that the acts occurred in 1997, rather than in 1998, as indicated in the Report of the Peer Committee on page 2.

pathologist prior to the surgery, failed to consult with an on-call pathologist when his observations were very different from those of a prior treating gastroenterologist, failed to provide appropriate antibiotic therapy before and during the surgery, and failed to provide appropriate antibiotics after cultures were received after a second surgery. He was also found to have failed to provide a timely and accurate operative report with respect to that patient. In addition, he was found to have been negligent on more than one occasion and incompetent on more than one occasion, in reference to the treatment of a male patient with HIV, in that he had failed to perform a proper physical examination on the patient prior to performing an operation on him, and had failed to secure a detailed history of the patient. Lastly, he was found to have failed to maintain accurate records with respect to either of those two surgical patients.

In recommending revocation of Dr. St. Lucia's license, the Hearing Committee noted that revocation would have been appropriate if he had only been found guilty of one case of conduct of a sexual nature concerning a patient. Having been found guilty of three sexual contacts, it indicated to them the establishment of a pattern of predatory behavior, making revocation all the more necessary. Furthermore, the Hearing Committee noted that Dr. St. Lucia had "displayed a cavalier disregard for some of the most basic tenets of medical care..." and that when confronted with his failures, he had "developed fabrications that defil[ed] medical sense."

On May 10, 2004, Dr. St. Lucia submitted an application for restoration of his license.

Recommendation of the Peer Committee. (See attached Report of the Peer Committee.) The Peer Committee (Herrman, Frontera, Holtzapfle) convened on November 15, 2005. In its report dated March 23, 2006, the Committee unanimously recommended that Dr. St. Lucia's application for restoration be denied.

Recommendation of the Committee on the Professions. On June 27, 2006, the Committee on the Professions (Muñoz, Frey, Templeman) met with Dr. St. Lucia to consider his application for restoration. His attorney Noreen Grimmick accompanied him.

The Committee asked Dr. St. Lucia to explain to them the events that led to the loss of his medical license. He indicated that he had been found guilty of sexual misconduct regarding two patients, and for gross negligence for the treatment of two other patients, along with poor record keeping. Regarding the gross negligence claims, he indicated that one patient was a nursing home resident whom he saw in regard to bleeding in her gastrointestinal system. He found an ulcer during surgery and thought that it wasn't cancerous. Others who were present agreed with him, but it did turn out to be cancerous and he had to perform a second surgery. In reference to the second patient, Dr. St. Lucia indicated that he was operating on him for a placement of a Porta-Cath and complications arose during surgery. The patient developed internal bleeding which required him to be called back to the recovery room, at which time an I.V. was inserted into the patient's chest to evacuate blood. The patient had to go back to the operating room where a thoracic surgeon performed a thoracotomy to investigate the bleeding and evacuate blood. Dr. St. Lucia indicated that the cases were reviewed at the time that they originally occurred, and no action was taken by the hospital. The cases were brought up again later after the sexual misconduct charges were made against him.

When the Committee asked Dr. St. Lucia to describe the nature of the intimate encounters that led to his revocation, he indicated that there was kissing involved with

both patients designated as A and B. He indicated that Patient A had not been truthful in her testimony before the State Board for Professional Medical Conduct Hearing Committee when she had indicated that he had had sexual intercourse with her. He stated that only kissing was involved. He admitted that it was his fault for getting into that type of relationship with the patient, because he had talked about personal things with her. Similarly, with Patient B, he told the COP that he had had discussions with her about his private life that led to some intimate touching. However, he indicated that she touched him, and it stopped there. In response to further questioning, Dr. St. Lucia stated that he had seen the two patients on weekends in his office, and had met one patient at a motel. In reference to Patient A, he reported that she was the one who had suggested the hotel room and that she had made the initial moves, kissing him. However, he said that he never had intercourse with her and that he had left the hotel after she had kissed him. Dr. St. Lucia denied any misconduct in reference to a third patient, despite the findings by the Hearing Committee. Dr. St. Lucia explained that he understood that his intimacy with the two patients constituted sexual misconduct and was wrong. However, he indicated that the misconduct occurred over a two-month period when he was undergoing a great deal of stress in his life, as he thought his wife was dying of cancer at the time. He indicated that he had never been intimate with a patient prior to the occurrences in 1997, and he has never acted in such a manner since.

With respect to Dr. St. Lucia's personal statement that he presented to the COP, he was asked to explain why he felt that the process had not been fair to him. Dr. St. Lucia indicated that he believes he has done everything that he could do to re-educate and rehabilitate himself and to show remorse. He told the COP that he secured an M.B.A. and then stayed in close touch with the medical field through his employment as a medical director of a health care consulting firm. He reported having taken numerous CME's on WebMD and a three-day course at Vanderbilt on sexual misconduct. He described the Vanderbilt course as focusing in great detail on boundary issues and indicated that it gave him tools on how to handle unwanted advances. He reported that he also took courses on recordkeeping to help with his history of poor documentation, and then went on to help other physicians improve their recordkeeping through the context of his consulting firm. Despite these actions, the Peer Committee indicated that he had not done enough to re-educate himself, but he told the COP that he was never told what would be enough.

When asked about his therapy with Dr. Krolick, his psychiatrist, Dr. St. Lucia indicated that he first started treatment with Dr. Krolick for an anxiety disorder from which he suffered following the publicity of the events surrounding the loss of his license. He explained that he was afraid to be seen in public and afraid to talk to people, especially women, and was fearful that his past would come up in conversation. He reported that his therapy with Dr. Krolick helped him to deal with those feelings and that it also delved into the motivation behind his behavior with the female patients. He said that he later took the course at Vanderbilt which included group therapy, where he was able to discuss how stress had affected him at the time of the incidents. Dr. St. Lucia indicated that he still goes to see a social worker to talk things out and that he no longer internalizes everything like he used to. He explained that his wife, who is herself a clinical social worker, is very supportive of him and that he can talk to her about everything now so that stress does not affect him as it did before.

In concluding his presentation, Dr. St. Lucia stressed that except for a very short period of his life, he had had no problems with the medical treatment of patients or his dealings with female patients. He opined that he was an excellent physician and that he has done everything in his power to improve himself over the last nine years since these

isolated incidents occurred. He told the COP that he couldn't understand why the Peer Committee was not swayed by his testimony and that of his numerous witnesses at the hearing below. He indicated that he hopes that the COP will restore his license so that he will be able to get an administrative job in a health field.

The overarching concern in all restoration cases is the protection of the public. New York Education Law §6511 gives the Board of Regents discretionary authority to make the final decision regarding applications for the restoration of a professional license. Section 24.7 of the Rules of the Board of Regents charges the COP with submitting a recommendation to the Board of Regents on restoration applications. Although not mandated by 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 a significant burden of satisfying the Board of Regents that there is a compelling reason that licensure should be granted in the face of misconduct that resulted in the loss of licensure. There must be clear and convincing evidence that the applicant 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 applicant. It is not the role of the COP to merely accept, without question, the arguments presented by the applicant, but to weigh and evaluate all of the evidence submitted and to render a determination based upon the entire record.

The COP concurs with the reasoning, findings, and recommendations of the Peer Committee. Nothing substantial was presented to us to convince us otherwise. As was noted in the Report of the Peer Committee, the restoration of a professional license is permissive and is only granted in exceptional cases. Nehorayoff v. Mills, 95 New York Second 671, 675. We defer, in this matter, to the assessment of Peer Committee with respect to its clinical analysis of Dr. St. Lucia's application and presentation, and we endorse its conclusion that Dr. St. Lucia did not meet his burden of demonstrating sufficient remorse, re-education, and rehabilitation to convince us that he is able to practice safely and to warrant reinstatement of his license at this time.

Frank Muñoz, Chair
Joseph Frey
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

Steven St. Lucia, M.D.

REPORT OF
THE PEER
COMMITTEE
CAL. NO. 22318

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

Steven St. Lucia, hereinafter known as the applicant, was previously licensed to practice as a physician in the State of New York by the New York State Board of Regents. The applicant's license was revoked as a result of a professional misconduct proceeding, and he has applied for restoration of this license.

On November 15, 2005, 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 PROCEEDING

Action by State Board for Professional Medical Conduct

Case No. BPMC 00-10

February 3, 1998- the applicant was charged by OPMC with eleven specifications of misconduct.

Applicant served a formal answer to the charges of misconduct through his then attorneys, O'Connell & Aronowitz, wherein applicant denied the charges.

January 10, 2000- an order of the Office of Professional Medical Conduct, New York State Health Department, was issued, revoking the applicant's license to practice medicine, upon receipt, or within seven days after mailing of the order, by certified mail.

OPMC Hearing Committee

On several dates in February, March, and April of 1999, the OPMC held hearings concerning charges against the applicant for violation of New York State Education Law §6530. The OPMC Hearing Committee determined that the applicant was guilty of the first, second, third, fourth, sixth, eighth, ninth, tenth, and eleventh specifications of misconduct contained within the statement of charges, as follows:

- First: Committing conduct in the practice of medicine in 1998, which evidenced moral unfitness to practice medicine in the state, in regard to patient A, in reference to having consensual sexual relations with her, which included sexual relations which occurred within thirty days of her surgery, putting her at risk for infection.

Second: In committing conduct in the practice of medicine which evidenced moral unfitness in regard to patient B in 1997, in reference to consensual sexual relations.

Third: In committing conduct in the practice of medicine in 1997, which evidenced moral unfitness to practice medicine, in regard to flirting with patient C, kissing and massaging her.

Fourth: In committing acts of gross negligence in his treatment of patient D, in:

1. Failing to adhere to the care plan in the absence of a clear basis for same;
2. Failing to arrange for the presence of an on-call pathologist prior to surgery;
3. Failing to consult with an on-call pathologist when applicant's observations were extremely different from those of the gastroenterologist;
4. Failing to provide appropriate antibiotic therapy before and during the first surgery;
5. Failing to provide appropriate antibiotics after cultures were received for the second surgery;
6. Failing to provide a timely and accurate operative report.

Sixth: In committing acts of gross incompetence in his treatment of patient D with respect to those same acts which were listed above in the fourth charge.

Eighth: In committing negligence in his treatment of patient D on six occasions for the same acts specified above in the fourth charge, as well as for two acts of negligence with respect to his treatment of patient E, for failing to perform a

history or physical examination on patient E, and for preparing an inaccurate and incomplete operative report with respect to patient E.

Ninth: For incompetence for committing acts which comprised incompetence on more than one occasion regarding petitioner's treatment of patient D, with respect to the same six separate acts as were listed in the fourth specification above, and for two acts of incompetence in regard to his treatment of patient E, the same acts as listed in the eighth specification above.

Tenth: Failing to maintain accurate records with respect to patient D.

Eleventh: Failing to maintain accurate records with respect to patient E.

Based on the above findings, applicant's license was revoked in an order dated January 10, 2000, to take effect no later than January 17, 2000.

PETITION FOR RESTORATION

Applicant submitted a restoration application dated May 10, 2004, with attachments as described below.

ATTACHMENTS TO THE PETITION

Six affidavits in support of the application from professional colleagues were received. Five were from physicians, and one from a physician's assistant. Additional affidavits were submitted by a school principal, a professor at RPI, the president of applicant's present employer, and from the applicant's wife.

The applicant submitted a statement outlining his remorse for the acts for which he lost his license, and outlining the actions he has taken to assist in getting back his license. He discussed his psychological treatment with Dr. Steven Krolick, his attendance at a three day conference at Vanderbilt

University on physician boundaries, his courses at Union College to secure an MBA in health systems management, and his endeavors to earn more than sixty continuing medical education (CME) credits. Documentation of the continuing education credits were part of the application.

Applicant also submitted affidavits from Dr. Steven Krolick, his treating psychiatrist, as well as an independent psychiatric evaluation report of him by Ewald Horwath, MD, Clinical Professor of Psychiatry at Columbia University, in support of his application.

Ms. E. Whitman, Deputy Director, Operations, Office of Professional Medical Conduct, submitted a letter dated October 6, 2004, on behalf of the State of New York, Department of Health, in opposition to the restoration petition by applicant.

PEER COMMITTEE MEETING

On November 15, 2005, this peer committee met to consider this matter. The applicant appeared before us represented by his attorney, Noreen DeWire Grimmick, Esq. Also present was Walter Ramos, Esq., an attorney for the New York State Education Department.

Ms. Grimmick offered a short opening statement on behalf of the applicant, indicating that applicant felt great remorse for his past acts, that a number of witnesses would be testifying to the applicant's good character, and that two psychiatrists would be testifying regarding insights to explain the applicant's past behavior. Mr. Ramos briefly indicated in his opening statement that evidence presented would show that the applicant had not done enough to merit re-licensure.

The applicant's first witness was Rabbi Cutler of the Congregation Gates of Heaven in Schenectady, NY. Rabbi Cutler testified that he had known the applicant since 1995 and had counseled him since the state action was finalized against the applicant in 2000, when his license to practice medicine was revoked. He believes that the applicant is a good man who is truly repentant for

his former acts and who has the desire to become a better person and doctor. The rabbi knew of the applicant's former acts from his discussions with the applicant and review of newspaper articles.

The next to testify was Christopher McDermott, a professor at RPI, who had been friends with the applicant since their daughters met in nursery school in 1998. He testified that he was aware of the applicant's conduct that led to his revocation from what he had read on the internet about the case. He also discussed the underlying events generally with the applicant. He testified that the actions that he read about by the applicant were inconsistent with the person that he knew the applicant to be, and had known him to be for the last seven years. His opinion was that the applicant was fit morally to practice medicine.

Next to testify was Richard Mark Evans. Mr. Evans testified that he was presently an assistant superintendent for the Ballston Lake School District and had known the applicant since 2000, when they became neighbors and friends. Mr. Evans became aware of the charges against the applicant which led to the loss of his license, when the applicant came to him in 2004, indicating that he needed a support affidavit, and referring him to the official state website which provided information about the charges. Although he did not have extensive discussions with applicant about the earlier charges, the applicant did tell Mr. Evans that he took full responsibility for the sexual misconduct. Mr. Evans testified that he believed the applicant has acted with genuine sincerity and he would trust his family with being treated by the applicant.

Applicant's next witness was Dr. Steven Krolick, a psychiatrist. Dr. Krolick first saw the applicant on August 15, 2003. Applicant's complaints at that time were in regards to feelings of anxiety, embarrassment, and avoidance of social situations stemming from the loss of his medical license. Dr. Krolick took the applicant's medical history over several sessions. The applicant discussed with Dr. Krolick events which had been going on in his life during and before the acts which

led to the loss of his license. Those events included the deaths of his mother and father-in-law, the death of his father, the death of his uncle, the illness of his wife with cancer, the corresponding fear of loss of her life, and the birth of a daughter that was diagnosed with a medical condition that required brain surgery. These events occurred between 1992 and 1997. During these times, according to Dr. Krolick, petitioner was focusing on the needs of others to the detriment of caring for himself, and the experiences were overwhelming and frightening for him. Dr. Krolick, during his treatments with the applicant, discussed applicant's boundary issues, what had led him to act as he had, and how the applicant could avoid stress and factors that could possibly cloud his judgment in the future.

Dr. Krolick discussed with applicant the charges of sexual misconduct that had previously been made against him, as well as the record keeping charges. Dr. Krolick was also provided a copy of the findings of the investigation of the applicant, which he read. Dr. Krolick testified that in his professional opinion, it was highly unlikely that the same type of misconduct by the applicant would occur again, because this misconduct was not an ongoing pattern, having occurred only within a discreet time period when the applicant was dealing with what Dr. Krolick termed a "blind spot", leading from other events in applicant's life. Dr. Krolick also felt the misconduct would not reoccur because the applicant was more insightful and aware of his interactions as a result of his therapy with Dr. Krolick and his course at Vanderbilt University.

On cross examination by Mr. Ramos, Dr. Krolick indicated that a "pattern" meant a display of certain personality attributes over many years. He admitted that sexual misconduct with three different patients over a distinct period of time could possibly be a pattern. He also admitted that an interruption of a pattern could occur as a result of disclosure of the pattern, and that the interruption of a pattern might not necessarily mean that the personality trait that led to the pattern had been removed. Dr. Krolick further admitted on cross that the applicant had discussed the earlier charges against him, and

had indicated to Dr. Krolick that some of the charges were incorrect or inaccurate, although he did acknowledge that some things had occurred.

Dr. Krolick also admitted on cross-examination that boundary violations can be due to underlying sexual pathology. Nevertheless, Dr. Krolick testified that he felt that the sexually related occurrences in applicant's relationships with the three patients was not an ongoing behavior. He did admit, however, in cross examination by Mr. Ramos, that the basis for his opinion might be more reliable if he had been treating the applicant during the times that the events were taking place, rather than treating him in 2003, several years after the boundary issues had actually occurred. Dr. Krolick also admitted on cross examination that one of the reasons the applicant came to him in the first place was due to stresses from the media portrayal of the loss of his licensure.

On re-direct, Dr. Krolick emphasized that he did not believe that the applicant had a sexual pathology. He also testified that some psychological testing was done that he reviewed that was administered at the Vanderbilt University Boundary Violations course, which did not indicate a sexual addiction.

Upon questioning by panel member Dr. Herrman, Dr. Krolick stated that he had taken a history from the applicant regarding prior sexual patterns, and had noted that the applicant exhibited flirtatious behavior in the past, but he had not been told of any prior aberrances. He discussed with the applicant how his flirtatious behavior could be perceived and misperceived. Dr. Herrman also questioned Dr. Krolick further about the applicant's "blind spot", which had to do with the applicant's predisposition to act a certain way. He indicated that the applicant did have a predisposition to being flirtatious with a desire to please others, as well as to take care of others, along with a tendency to be "touchy-feely". Dr. Krolick also indicated to Dr. Herrman that stress could make people revert to old patterns so that the applicant would have to know the old patterns and make himself aware of them so that he would

not revert. Dr. Krolick also responded to an additional question from the panel, requesting his perspective as to how the panel could prevent the applicant from repeating mistakes he had made in the past. Dr. Krolick indicated that a possible avenue would be to have the applicant supervised by others, and to have the applicant continue psychiatric treatment in the early stages of his reinstatement. Dr. Krolick also testified in response to a question by Dr. Herrman, that the numerous stressful events that had occurred in the applicant's life could have carried into causing the applicant to make errors in judgment relating to the record keeping and other medical judgments, although Dr. Krolick admitted that he had not gotten into extensive discussions with the applicant regarding specifics of the medical negligence allegations.

Next to testify was Dr. Ewald Horwath. Dr. Horwath's CV and full report was made part of the record. Dr. Horwath agreed with the applicant's attorney to give an expert opinion in the case. Prior to preparing his report, he had reviewed records concerning the proceedings in the year 2000 where the applicant lost his license, Dr. Krolick's records, the information about the applicant's continuing education courses, and his program at Vanderbilt University. He also met with the applicant for an hour and a half on September 21, 2005.

Dr. Horwath testified that during his meeting with applicant, he noticed his sincere remorse in reference to the actions which led him to lose his license. He testified about applicant's treatment with Dr. Krolick, which was originally for anxiety and the loss of his medical license, and about the applicant's course at Vanderbilt, which was for physicians who had had inappropriate contact with patients. Dr. Horwath testified that he believed that the applicant had emotionally detached himself from his home situation when his wife's life was at risk due to cancer, which contributed to his behavior and the incidents regarding his patients. Dr. Horwath believed that the applicant's treatment

with Dr. Krolick has put him "in touch with his emotions", and at the present time, it would be "unlikely for him to repeat these behaviors based on his improvement."

Dr. Horwath also testified regarding his understanding of several events that occurred in the applicant's life from 1992 through 1997 which included: the death of his mother-in-law, a daughter being born with a cerebella cyst requiring brain surgery, the death of his father-in-law from cancer in 1996, his wife's illness in 1994 with a reoccurrence of her lymphoma in 1997 when she went to Kettering Cancer Center for aggressive chemotherapy and stem cell transplant, as well as the death of his father and uncle. These events were detailed on a timeline exhibit. Dr. Horwath testified that applicant's actions were a symptom of his denial of feelings surrounding these traumatic events, along with the stresses of trying to start a surgical practice. He added that these stressors occurred at the same time as his relationships with his three patients, which, as he understood, was from May 1997 through September 1997. Dr. Horwath testified that in his expert opinion, the applicant was presently fit to resume his practice, based on his rehabilitation, psychotherapy, re-education, and his better understanding of his own actions.

On cross examination from Mr. Ramos, Dr. Horwath testified that his opinion was based on his assumption that applicant's sexual acts with patients only occurred in a limited time period. He expressed no opinion whatsoever about the applicant's surgical skills and other events which occurred in his surgical practice, which is an area out of his own expertise.

Applicant's next witness was Paul R. Wise, a surgical physician's assistant at Ellis Hospital. He has known the applicant since 1996 and has worked with him. Mr. Wise knew of the allegations against the applicant that led to the loss of his license from reading the newspapers. He testified that in his opinion, the applicant was sincere, of fit moral character, and a great physician. On cross

examination by Mr. Ramos, Mr. Wise indicated that he had never discussed the allegations with the applicant and did not believe the allegations.

The next witness to testify on behalf of the applicant was Gerard McGrinder, an obstetrician gynecologist who had dealt with the applicant both professionally, in the operating room, and socially. When the applicant practiced medicine, he would refer patients to him and was impressed by his surgical skill level. Dr. McGrinder testified that he believed the applicant was fit to resume medical practice and that the applicant had a high level of character. On cross examination by Mr. Ramos, Dr. McGrinder indicated that he had no specific knowledge of the applicant's pre and post operative care skills before he lost his medical license. He agreed that surgical practice changes a lot in five years and that to stay current, a physician should take at least the basic requirements for a physician to continue on medical staff. He himself has taken fifty credit hours a year, or two hundred fifty credit hours in the last five years.

The last person to testify at the hearing was the applicant. The applicant testified on direct that he had wanted to be a doctor ever since he was a young boy, to help others and save lives. He described the charges that he had been found guilty of, and testified that he has an appreciation for the effect that those acts had on others. He admitted that his first reaction to losing his license was anger. He then got himself busy and went to an MBA program at Union College at night. He withdrew from the public. He later sought therapy from Dr. Krolick, who treated him for his stress and boundary issues, and recommended articles on boundaries that he read. He also went to a three day course at Vanderbilt University which involved maintaining boundaries, which was attended by other physicians with the same problems. At the three day course, there was role playing, and he learned how stresses in his life affected him and how his actions affected others.

After he graduated from the MBA program in 2002, he went to work for Trio Solutions, where he dealt with physicians regarding implementing better practice procedures along with performance improvement. He worked on databases for performance review and also dealt with record keeping and proper documentation. He felt that his work at Trio had significantly assisted him in helping him with his past record keeping problems. He admitted that prior to losing his medical license, he had had record keeping problems, not taking the time to write things down properly.

Applicant testified that his MBA studies provided him with thirty-five to thirty-six credit hours. He did take a medical ethics course in the MBA program. Applicant testified that as of 2003 he believes he had taken about sixty CME's, but admitted that they were no longer valid, because a physician has to continually do more. Applicant stated that he left Trio Solutions in June, 2005 to become part owner in an enterprise that uses biomechanics to analyze the reasons for a patients' pain by assessing their walk. The applicant testified about the many stresses that were going on in his life from 1992 through 1997, the same time that his surgical practice was being expanded, which put a lot of stress on him. He testified that he believed that if he has stresses in his life at the present time, he knows how to talk about them, something that he never did before. He presently talks to his wife about everything. He has been married to his wife for sixteen years, and has four children.

The applicant testified that he believes he is presently fit to resume a medical practice and he had done a lot of soul searching and found out what happened that led to his transgressions, and has worked to correct it. He wants to live up to the expectations of the many witnesses who came in to testify on his behalf. He testified that if his license was restored, he would not plan to re-enter surgery or private practice at first. He wanted to work in administration in a hospital, although he would also like to work in the operating room as an assistant. He admitted that there were new technologies in

surgery, and he would expect a probation period or supervision for a period of time to ease back into medicine, and would plan to take more CME's!

On cross examination by Mr. Ramos, applicant testified that his experience with Trio had been more important to him than sponsored CME courses. Applicant testified that New York State did not have a CME requirement, but hospitals usually do, requiring fifty or sixty CME credits (per year). There were no questions for the applicant from the panel.

No witnesses were called by Mr. Ramos on behalf of the Office of Professional Discipline. In his closing statement, Mr. Ramos pointed out that the applicant did not take any CME's until the year 2003 and did not seek out psychiatric help until 2003, at a time just prior to his application in 2004 for re-licensing. He pointed out that the applicant had denied certain findings in the underlying action against him that led to the loss of his medical license to Dr. Krolick. Therefore he questioned the extent of the applicant's remorse and rehabilitation. He also pointed out that the applicant had not discussed the specifics of his sexual misconduct with the three patients with Dr. Krolick. Mr. Ramos stated that in his opinion, applicant's lack of CME's and his late trip to the psychiatrist indicated his insincerity. He questioned the believability of whether the stressors in applicant's life was the real motivation for his conduct, pointing out that he never sought treatment until 2003, several years after the stressors occurred. Mr. Ramos also pointed out that applicant's treatment of patients D and E, involving gross or negligent treatment and improper record keeping, were also serious transgressions, and that when he was confronted with those shortcomings, applicant had "developed fabrications that defy medical sense". Mr. Ramos pointed out that panelists should consider whether the applicant had demonstrated remorse, rehabilitation, and re-education, and that applicant had failed to do so.

Applicant's attorney, Ms. Grimmick, in her closing statement, began by referring to the series of events identified as the cause of the applicant's behavior. She pointed out that eight witnesses had

testified on applicant's behalf, about the applicant's sincerity and in support of the restoration of his license, including applicant's treating psychiatrist and expert psychiatrist. These witnesses hold responsible positions in the community and have nothing to gain by testifying. She made note of the credentials of her consulting witness Dr. Horwath. She asserted that the applicant had demonstrated remorse, and pointed out that the applicant had done things to rehabilitate himself, through re-education and counseling, and that ample evidence was produced so that the panel could make a recommendation to restore his license.

RECOMMENDATION

The Peer Committee has considered the entire record in this matter. We have considered the three criteria typically used in restoration determinations: remorse, re-education, and rehabilitation. Greenberg v. Board of Regents of the University of the State of New York, 176A.D.2d 1168: However, we are not necessarily limited to such formulaic criteria, but may consider other factors, particularly the seriousness of the offenses and, ultimately, our judgment as to whether the health and safety of the public would be in jeopardy should the application be granted. Nisnewitz v. Board of Regents of the University of the State of New York, 95A.D.2d, 950:

We begin our analysis with our belief that the grounds upon which the applicant lost his license were extremely serious, requiring the applicant to undergo earnest and substantial efforts in order to make his case for restoration of his license. The applicant engaged in a pattern of pursuit and seduction of three female patients, during which these individuals were under his care, and at a time when they were potentially vulnerable. These were not chance encounters or brief lapses of judgment. As described in the report of the Hearing Committee for the State Board for Professional Medical Conduct, the applicant made substantial and continued efforts to pursue these patients. The applicant attributed this aberrant behavior to stress caused by various events in his life, including

family deaths and the illness of his wife. As explained in more detail below, we do not accept this as a complete explanation of what occurred. Our immediate point is that the severity of the applicant's offenses with these female patients placed a substantial burden on the applicant to demonstrate that he is safe to practice again.

Furthermore, we view the six instances of clinical gross negligence and incompetence concerning applicant's treatment of one patient and his two acts of negligence and incompetence towards another patient, also as very serious offenses, which required specific efforts at rehabilitation and re-education. The Hearing Committee had found that petitioner was wanting in fundamental clinical skills and had found that he had a "cavalier attitude" toward basic tenets of medical care, which made him a danger to the community. These were indeed serious findings.

We were also struck by the frequent off-handed reference, throughout the hearing in this matter, by the applicant and his witnesses to "record keeping" violations. While those violations were a part of what the applicant was found guilty of, we perceived an attempt, both at the hearing and during the applicant's attempts at rehabilitation and re-education, to minimize the significance of those transgressions. Given the seriousness of the various facets of the applicant's guilt, we expected an extensive record of re-education and rehabilitation that would have been focused on the specific issues that these guilty findings related to. We unfortunately did not find this.

Indeed, we found applicant's re-education to be minimal, as the applicant only took in the area of sixty CME credits total. His experience at Trio Solution was in the area of health management, but did not expose him to clinical issues, and was not a substitute for formal re-education. Also, the sheer number of credit hours taken by applicant was not enough, and although he did take a three day course at Vanderbilt University School of Medicine about maintaining proper boundaries for 20.5 credits, we feel that he did not take enough credit hours that focused on

boundary issues and patient rights. We also find that he did not take enough CME's in the area of surgery or in the specific areas of medicine where he was found to have practiced negligently, to sufficiently re-educate himself.

We also find that applicant's attempts at rehabilitation were not enough. The record shows that the applicant spent many hours in therapy. However, the record of what took place during these sessions, as revealed in the treatment notes prepared by Dr. Krolick, and from Dr. Krolick's testimony in this case, does not support a conclusion that these sessions represented sufficient rehabilitation, particularly given the seriousness of the applicant's problems as set forth above.

Regarding the sexual issues, there appeared to be little effort at the sessions with Dr. Krolick to explore causes of the applicant's sexual behavior other than the stressors in applicant's life in the 1990's. There was little indication that Dr. Krolick took a detailed sexual history of the applicant. At the hearing, Dr. Krolick stated that he was not entirely familiar with the details of the applicant's activities with the patients involved. We understand that the thrust of the therapy was to treat the applicant's immediate symptoms, those being social withdrawal and anxiety. However, for our purposes, we needed to be convinced that the applicant had undergone rehabilitation that would explore the basis for his behavior as well as rehabilitation that was designed to assure that the behavior would not occur again. Applicant's sessions with Dr. Krolick, as documented in the record, have not provided us with those assurances. We were further struck by the repeated references in the treatment notes regarding applicant's concerns over the proceedings associated with the restoration of his license. It would have been preferable had the applicant focused on the factors that caused him to lose his license rather than on the process of attempting to get it back.

We were similarly struck by the complete lack of attention in applicant's sessions with Dr. Krolick, in regard to the applicant's clinical deficiencies. Dr. Krolick did testify that since he was

not a surgeon, he was not in a position to discuss the technical aspects of the applicant's lapses.

However, some attention to that area of the applicant's failings would have been appropriate.

We turn now to our main concern, which was the thrust of the applicant's preparation for and presentation at the hearing. This appeared to us to be that certain events in his life, referred to as stressors, were the root cause of his deviant behavior. While we acknowledge the seriousness of those events, we do not believe that this explanation goes far enough to compel us to grant the restoration of the applicant's license.

We believe it is necessary to go beyond a simple statement that the applicant's behavior was the result of stressful events. We believe it is critical to explore the issue of why these events caused the applicant to act the way he did, in contrast to countless other professionals who experience stress in their lives and react in ways that do not jeopardize patients or call into question their ability to perform as professionals. The applicant's focus on the stressful events that occurred prior to his misconduct borders on being a mere strategy to facilitate the restoration proceeding. This focus, in our view, led to an avoidance of other explorations of possible root causes of the applicant's tendency to commit the acts he did, arguably in the face of these stressful events. As a result, we are not convinced that applicant took those steps necessary to prepare himself for the resumption of his career as a medical doctor, either psychologically or medically. We also do not believe that the applicant demonstrated a sufficient amount of remorse for his past acts, particularly with respect to his lack of attention to the patient/doctor relationship, with an emphasis on the sanctity of that relationship when dealing with the vulnerabilities of patients.

We note that the burden of proof is on the applicant to present evidence "so ineluctable in its implications that it would compel affirmative action from a Board which has 'discretion' to restore or to refuse to restore"...the license to an applicant whose license had been revoked. Nehorayoff v.

Mills, as Commissioner of Education of the State of New York, 95 N.Y.2d 671, 675. The

restoration of a license "is permissive and will be granted only in exceptional cases." Id. At 674.

We simply do not believe that the applicant has met his burden of demonstrating sufficient remorse, re-education, and rehabilitation, to warrant reinstatement of his license, at this time.

Therefore, while we commend him for his activities prior to this Peer Committee hearing, we recommend that his license not be restored.

Respectfully submitted,

John C. Herrman, M.D., Chairperson
Alfred Frontera, M.D.
Philip G. Holtzapple, M.D.

Redacted Signature
[Handwritten Signature]
Chairperson

23-2006
Dated