

Public

The
University of the
Education  State of New York
Department

IN THE MATTER

of the

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

Case No. CP-09-12

It appearing that the license of THOMAS SCHULTZ, Redacted Address
to practice as a physician in the State of New York was revoked by order of
the Administrative Review Board for Professional Medical Conduct effective December 18,
1998, 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 Committee on the
Professions, now, pursuant to action taken by the Board of Regents on July 28, 2009 as reflected
in the attached Vote, it is hereby

ORDERED that the petition for restoration of License No. 126674, authorizing
THOMAS SCHULTZ to practice as a physician in the State of New York, is denied.



IN WITNESS WHEREOF, I, Carole F. Huxley, Interim
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 29th
day of September, 2009.

Redacted Signature

Interim Commissioner of Education

Case No. CP-09-12

It appearing that the license of THOMAS SCHULTZ, Redacted Address
, to practice as a physician in the State of New York, was revoked by order of the Administrative Review Board for Professional Medical Conduct effective December 18, 1998, and he having petitioned the Board of Regents for restoration of said license, and the Regents having given consideration to said petition and the record, including his responses to the report of the Committee on the Professions, 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 July 28, 2009, it is hereby

VOTED that the petition for restoration of License No. 126674, authorizing THOMAS SCHULTZ to practice as a physician in the State of New York, is denied.

CERTIFIED MAIL RECEIPT
(Domestic Mail Only: No Insurance Coverage Provided)

Postage	\$ 1.58
Certified Fee	2.80
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	2.30
Total Postage & Fees	\$ 6.68



Sent To Amy T. Kulb, Esq.
Jacobson, Goldberg & Kulb, L.L.P.
Street, Apt. No.: 585 Stewart Avenue
or PO Box No. Suite 720
City, State, ZIP+4® Garden City, New York 11530-4701
PS Form 3800, April 2002 See Reverse for Instructions

9-651

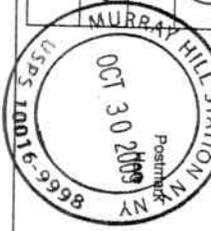


State of the State

IN THE MATTER
OF
THOMAS SCHULTZ
(PHYSICIAN)

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only: No Insurance Coverage Provided)

Postage	\$ 1.58
Certified Fee	2.80
Return Receipt Fee (Endorsement Required)	2.30
Restricted Delivery Fee (Endorsement Required)	4.50
Total Postage & Fees	\$ 11.18



Sent To Thomas Schultze, Physician
Redacted Address

X-----X

STATE OF NEW YORK)
COUNTY OF ALBANY)

SS:

Neil Blumenfeld

being duly sworn, deposes and

says:

I am over the age of twenty-one years and am an employee of the New York State Education Department, Office of Professional Discipline, 475 Park Avenue South, New York, New York 10016.

On the 30th day of October, 2009, I personally delivered to the United States Postal Office, located at 34th Street and Park Avenue, New York, New York 10016 the Duplicate Original Order of the Commissioner of Education Case No. CP-09-12, in reference to Calendar No. 21776 and the Vote of the Board of Regents by Certified Mail - Return Receipt requested to the respondent herein named at 19 Clinton Street, Morristown, New Jersey 07960 & Amy T. Kulb, Esq, Jacobson, Goldberg & Kulb, L.L.P., 585 Stewart Avenue, Suite 720, Garden City, New York 11530-4701.

Certified Mail Receipt No. 7002 0860 0000 6467 .1674

The effective date of the Order being the 6th day of November, 2009.

Sworn to before me this 2nd day of November, 2009
Redacted Signature



MELCIA L. BLAZER
Notary Public, State of New York
Registration #01BL8054271
Qualified in Kings County
My Commission Expires Jan. 29, 2011

Case Number
CP-09-12
July 9, 2009

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: **Thomas Schultz**

Attorney: Amy Kulb, Esq.

Thomas Schultz, ^{Redacted Address}, petitioned for restoration of his physician license. The chronology of events is as follows:

- 10/17/70 Issued license number MD33214 to practice medicine in Missouri.
- 09/14/72 Issued license, certificate number 34849, to practice medicine in Massachusetts.
- 03/05/76 Issued license number 126674 to practice medicine in New York State.
- 02/19/86 Effective date of two year suspension of Massachusetts license to practice medicine.
- 05/27/86 Massachusetts license to practice medicine summarily suspended.
- 09/16/87 License to practice medicine suspended indefinitely by Massachusetts Board.
- 11/09/88 Charged with misconduct in New York State based on having been found guilty of improper professional practice or professional misconduct in MA.
- 05/26/89 Regents Review Committee recommended license be suspended for three years with leave to apply to terminate suspension on specified grounds.
- 07/19/89 Board of Regents suspended license for three years.
- 12/17/97 License to practice medicine in Massachusetts revoked.
- 06/05/98 Charged for the second time with professional misconduct in New York State based on having been found guilty of improper professional practice or professional misconduct in MA.

- 09/19/98 State Board of Professional Medical Conduct Hearing Committee ordered probation for five years with monitoring.
- 12/18/98 DOH Administrative Review Board for Professional Medical Conduct (ARB) revoked license to practice medicine.
- 03/04/99 License to practice as a physician in Missouri revoked by Missouri State Board of Registration for the Healing Arts.
- 06/11/03 Application for restoration of New York State physician license submitted.
- 12/15/04 Peer Committee restoration review.
- 11/13/05 Report and Recommendation of Peer Committee.
- 03/27/06 Committee on the Professions (COP) meeting with applicant.
- 07/09/09 Report and Recommendation of Committee on the Professions.

Disciplinary History. (See attached disciplinary documents.) In May 1986, Dr. Schultz' Massachusetts license was summarily suspended based on charges that he had prescribed controlled substances for no legitimate purpose, practiced while impaired; self-prescribed controlled substances; filed a false response to questions on his license renewal application, and had committed gross misconduct in the practice of medicine. Following a hearing, Dr. Schultz' Massachusetts license was suspended for two years, effective February 19, 1986. His privileges to prescribe controlled substances were also indefinitely suspended, and he was fined \$2,500 for filing a fraudulent license renewal application. In September 1987, Dr. Schultz' license to practice medicine in Massachusetts was suspended indefinitely for practicing medicine while impaired and failing to report hospital discipline. Based on the Massachusetts action, the New York State Board of Regents suspended Dr. Schultz' license for three years, effective July 1989.

In subsequent action, Massachusetts revoked Dr. Schultz' medical license in December of 1997, on the basis of sub-standard care he rendered to seven patients. The Massachusetts revocation then formed the basis of further action in New York by the Office of Professional Medical Conduct. The State Board for Professional Medical Conduct Hearing Committee noted that the Massachusetts Board had found that Dr. Schultz had performed unnecessary and/or excessive surgery, had provided sub-standard post-operative care, had failed to obtain proper informed consent, and had failed to take immediate steps during surgery to handle a patient's life-threatening injury. The penalty imposed by the Hearing Committee was probation for five years. However, the ARB determined that Dr. Schultz' misconduct in Massachusetts demonstrated serious deficiencies that posed a danger to patients if he were allowed to continue to practice in New York State, and therefore revoked his license to practice medicine, effective December 1998. Medical licenses held by Dr. Schultz in Missouri and New Jersey were also revoked in 1998 based on the Massachusetts revocation.

On June 11, 2003, Dr. Schultz submitted an application for restoration of his New York license.

Recommendation of the Peer Committee. (See attached Report of the Peer Committee.) The Peer Committee (Harris, Vorhaus, Kavaler) convened on December 15, 2004. In its report dated November 13, 2005, the Committee voted unanimously to recommend that Dr. Schultz' application for restoration be denied.

Recommendation of the Committee on the Professions. On March 27, 2006, the Committee on the Professions (Ahearn, Templeman, Hansen) met with Dr. Schultz to consider his application for restoration. His attorney, Amy Kulb, accompanied him.

The COP asked Dr. Schultz to explain the events that led to the revocation of his license. He stated that early in his practice in Massachusetts, he had ordered quantities of drugs for indigent patients, including Tylenol with Codeine, Librium, and Motrin. He told the COP that he had placed the drug information in the patients' charts, but had not known that he had to keep separate logs. Thereafter, following a state police investigation, charges were lodged against him. He reported that, at the hearing on the charges, his lawyer recommended that he admit he had an addiction and that he had practiced while impaired. He was suspended for two years in 1986 and received an indefinite suspension in 1987. Dr. Schultz indicated that, as a result of the initial charges against him, state investigations were commenced and multiple lawsuits were started against him. He further reported that there were extensive hearings between 1994 and 1997. His license to practice as a physician in Massachusetts was revoked in December 1997. As a result, his New York license was also revoked.

Regarding the patient care cases, Dr. Schultz indicated that four of the cases were nonsense and that his complication rates were below the national average. He told the COP that, of the seven cases on which the Massachusetts Board had relied, only one of the incidents involved an actual problem in that the patient had suffered a lacerated vessel after a lumbar disc removal. In reference to the other six cases, Dr. Schultz did not feel that he had done anything wrong. He admitted that he could have given greater care if he had not been overextending himself. He reported that at the time he was working about 100 hours per week and was performing too many procedures in too many places, including smaller regional hospitals, as opposed to teaching hospitals. He admitted that he could have done things to make certain operation complications were less likely, but the complications could have occurred anyway. He felt that he had not received due process in his hearings in Massachusetts, but he could not afford to challenge the decisions. He indicated that Massachusetts had changed certain laws in 1987 and that although the charges had to do with his actions in 1983, he was still held to the 1987 standards. He also told the Committee that, because the patient care incidents occurred so many years before the charges were filed against him, his ability to respond and defend himself was compromised.

Dr. Schultz denied that he ever had a drug addiction, although he admitted that he used drugs to deal with back pain following an operation on his back. He also denied that he had practiced while impaired but told the Committee that, in order to deal with the drug charges against him, he spent seven years in the Massachusetts Medical

Society's Physician Health Services program, which was established to address alcohol, substance abuse, and other problems experienced by physicians. Dr. Schultz told the Committee that he had submitted at least 700 negative urine drug screens and that he participated in Alcoholics Anonymous for three years.

In addition to his drug rehabilitation, Dr. Schultz testified that he has received counseling and has also developed a social life in order to address his Type A personality, which he indicated had caused him to overextend himself in his work. He reported that he is still seeing Dr. Alice Fennessey, a psychologist, on an as-needed basis. With respect to re-educating himself, Dr. Schultz indicated that for some period of time, his finances made it difficult for him to pay for courses. He told the Committee that he was forced to file personal bankruptcy at the end of 2000, but that finances are no longer a problem. He reported that he has attended New York University's Neurosurgery Grand Rounds from 1999 through the present, which has kept him abreast of new developments in the medical field. In addition he reported that, as medical director in his job at Excerpta Medical, which he commenced in October 2005, he reads an extensive amount of medical literature, prepares scholarly manuscripts, and interacts with national and international medical experts and advisory panels. He indicated that the reading and writing he does in his new job has allowed him to stay up-to-date on medicine. When asked about remorse, Dr. Schultz indicated that he was very unhappy he couldn't avoid complications with the various patients he had in Massachusetts and that he has great empathy for anyone going through surgery. He told the Committee that he regrets having overextended himself and that he has a new respect for recordkeeping. Dr. Schultz noted that he had practiced in New York with no complaints from 1994 to 1998.

When asked why he wants his license restored, Dr. Schultz indicated that he does not want to go back to practicing medicine in Massachusetts. He stated that he now lives in New York State and wants to remain here. He indicated that he would probably keep his present job, as medical director at Excerpta Medical. He stated that he wants his license back so that he would be able to provide consultations and to participate in clinical trials and national speaker programs, such as the International Society of Professional Writers.

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 rather to weigh and evaluate all of the evidence submitted and to render a determination based upon the entire record.

The COP agrees with the unanimous findings and recommendations of the Peer Committee. We do not believe that Dr. Schultz has presented a compelling case warranting restoration of his license. Although he did express remorse for his actions with respect to those acts for which he admitted to some wrongdoing, we found his expressions of remorse to be both general and equivocal. While an applicant for restoration of a professional license is not required to "surrender his contention that he is innocent of the original charges in order to be readmitted to his profession" (Melone v. State of New York Education Department, 182 A.D.2d 875 at 878 [3d Dept 1992]), we were disturbed by the inconsistency of Dr. Schultz' explanations concerning his responsibility for the misconduct of which he was found guilty, including his admissions that he had overextended himself in his practice and had been performing too many procedures in too many locations, and by what appeared to be an attempt by Dr. Schultz to indicate his remorse while at the same time trying to distance himself from his misconduct. In short, we agree with the unanimous Peer Panel that he did not appear truly remorseful for his misconduct.

With respect to rehabilitation, the applicant indicated that he has been developing a social life and has secured counseling. However, we do not feel that the proof presented as to rehabilitation is sufficient. As noted by the Peer Committee, the letter from Dr. Fennessey, who treated Dr. Schultz for Major Depressive Disorder and Anxiety Neurosis, did not provide insight into applicant's ability to practice safely and competently in the future, and did not detail applicant's treatment, despite the fact that Dr. Schultz indicated that he had been treated by her for over two years and still sees her, as needed.

We also agree with the Peer Committee that Dr. Schultz' re-education is not sufficient. Dr. Schultz has indicated that he does not intend to practice neurosurgery, in part due to a tremor caused by a variant of Parkinson's disease, and, in fact, he is not board-certified in neurosurgery, having failed the written portion of the board certification examination 12 times. Notwithstanding his stated intention, most of the continuing medical education (CME) he listed is in the area of neurosurgery, and he has failed to take significant CME in general practice areas.

Based on all of the foregoing, a complete review of the record, and its meeting with him, the Committee on the Professions voted unanimously to recommend that Dr. Schultz' application for restoration of his license to practice as a physician in the State of New York be denied at this time.

Kathy Ahearn, Chairperson
Leslie Templeman
Stanley Hansen

Addendum to Report of the Committee on the Professions

In accordance with section 24.7(a)(2)(i) of the Rules of the Board of Regents, the applicant's attorney has submitted letters dated May 4 and May 19, 2009 in response to the COP's report and recommendation. Because it appears that pages may be missing from the enclosures provided with the May 19 letter, the COP afforded the applicant an opportunity to provide the missing pages. However, no additional pages have been received.

Two members of the COP panel that heard the case have had an opportunity to review the two letters and have determined not to change their recommendation to the Board of Regents that Dr. Schultz' application be denied. The third member of the panel has left the State Education Department, including her position on the COP, prior to having an opportunity to review the submissions.

One issue raised by the applicant's attorney's May 4 letter requires additional discussion. In that letter, the attorney writes that a member of the Peer Committee that heard the case made two phone calls to Dr. Schultz following the meeting with the Peer Committee and prior to the issuance of the Peer Committee's report. Based on a review of the State Education Department's records, it appears that the applicant's attorney wrote to the Peer Committee's legal advisor and to the Office of Professional Discipline (OPD) attorney handling the case on January 31, 2005 informing them of a message left by the Peer Committee member on the applicant's answering machine and requesting a conference call to discuss the situation. The applicant's attorney wrote again on February 2, 2005 to inform the legal advisor and OPD attorney of a second phone message left for the applicant by the Committee member and again requesting a conference call. Although it does appear that there was subsequent communication at least between the applicant's attorney and the Committee's legal advisor in that the attorney indicates in her May 4, 2009 letter that the matter was taken under advisement by the legal advisor, the record does not contain any further documentation regarding this issue, and it does not appear that the applicant thereafter sought to have the Peer Committee member disqualified or the Committee's subsequent report and recommendation invalidated. Given that the report of the Peer Committee was unanimous; that the report was merely advisory; that, prior to the May 4 letter from Dr. Schultz' attorney, there is no indication of any challenge to the validity of the report based on the alleged actions of the Peer Committee member; and that the COP has had an opportunity to fully review the record of this case, the two remaining members of the COP find the alleged contacts between the Peer Committee member and the applicant to be an insufficient basis to change their recommendation that Dr. Schultz' application be denied.

Jacobson Goldberg & Kulb, LLP
Attorneys at Law
585 Stewart Avenue . Suite 720
Garden City, New York 11530

Rec'd 5-5-09

TEL: (516) 222-2330
FAX: (516) 222-2339

WRITER'S E-MAIL:

akulb@jngllp.com

May 4, 2009

VIA FACSIMILE: 518-474-3863
FEDERAL EXPRESS OVERNIGHT

Mr. Seth Rockmuller
Committee on the Professions
NYS Education Department
Division of Professional Licensing Services
89 Washington Avenue - 2nd Floor, West Wing
Albany, New York 12234

Re: *Thomas Schultz, M.D.*
Our File No.: 0046
Your Case #CP-09-12

Dear Mr. Rockmuller:

This letter is respectfully submitted for the consideration of the COP in preparing their final report and for the consideration of the Board of Regents in reaching a determination on this application. For the reasons set forth below, it is our recommendation that the appropriate determination in this matter based on the entire record would be to grant the restoration of Dr. Schultz's New York License, with five years probation and a permanent license restriction on performing invasive surgical procedures.

This case has a long and complex procedural history. Dr. Schultz was licensed in Missouri in 1970 and was licensed in Massachusetts in 1972 and in New York State in 1976. He graduated from Cornell University and then graduated from medical school at St. Louis University in 1970 and thereafter attended residency training in surgery and then neurosurgery at Columbia Presbyterian from 1974 to 1978. Dr. Schultz was certified by the American Board of Neurological and Orthopedic surgery and was board eligible with the American Board of Neurological Surgery.

Dr. Schultz thereafter practiced medicine in Massachusetts. In 1986, he first faced disciplinary proceedings. Essentially, the issue was an investigation into his prescribing/dispensing scheduled substances to patients with orthopedic injuries, which led to an allegation that he had a substance abuse issue. Dr. Schultz underwent an evaluation at Smithers which found no evidence of substance abuse. He then submitted to twice weekly urine screens for six years, all of which were negative.

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This out of state disciplinary action was the sole basis for the first disciplinary action in New York State of which resulted in a three years suspension with a provision that he could apply for early termination of the suspension. Dr. Schultz successfully completed a four year contract with the Massachusetts Committee for Physicians Health between 1991 and 1995. Dr. Schultz had not practiced medicine in Massachusetts since February 1986.

It should as well be noted that during the period of 1988 through 1994 that Dr. Schultz participated in weekly neuroscience grand rounds, consisting of case presentations, didactic lectures and morbidity and mortality conferences, at Brown University School of Medicine.

In or around February, 1994, hearings began in Massachusetts in a second disciplinary action, some 8 years after Dr. Schultz had ceased practicing medicine in Massachusetts. The charges concerned patients A through I who were treated between 1981 and 1984. Four cases concerned dura tears that were recognized and repaired and Dr. Saunders, a Dartmouth Hitchcock Neurosurgeon, testified that dura tears are not complications. The period of 10 to 13 years that had passed since these cases made it extremely difficult to defend. There were more than 60 days of hearings which concluded in 1997. Further complicating matters, Dr. Schultz's attorney, who was disbarred in 1996, abandoned Dr. Schultz in the midst of these proceedings. There were other significant due process and bias issues, including the fact that the hearing was chaired by the Secretary of the Massachusetts Board and the fact certain laws in Massachusetts had changed in 1987 and Dr. Schultz was held to standards that did not exist in 1981-1984.

Dr. Schultz began practicing medicine in New York State in 1994 and continued until the revocation in 1998. His practice consisted of disability evaluations of patients who had sustained injuries and he voluntarily refrained from any surgical practice. There were no complaints or concerns about his medical practice during this time.

Following the December, 1997 Order of the Massachusetts Board, the Office of Professional Medical Conduct commenced a direct referral hearing. A panel consisting of two physician members and a hospital executive, on September 17, 1998, pursuant to Order BPMC 98-215, ordered a penalty of five (5) years probation, the terms and conditions of which are attached hereto for your ready reference.

OPMC then sought review by the Administrative Review Board. OPMC requested revocation or limiting Dr. Schultz's New York State license permanently to performing evaluations only. Effective December 16, 1998, the Administrative Review Board revoked Dr. Schultz's license.

Dr. Schultz has endeavored to keep his medical knowledge up-to-date by

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participating in weekly ground rounds at NYU School of Medicine from 1999 to the present. He has also attended courses in neurology, acute care medicine and disability medicine at the AADEP. From 2000 to the present, Dr. Schultz has been involved in researching, writing and editing medical and scientific articles and has research, planned and recruited faculty for continuing medical education conventions, courses and seminars for physicians in various specialties and other medical professionals. He continues to subscribe to numerous medical journals or has access to these journals in his work, including JAMA and the New England Journal, as well as neurology publications.

In 1998, Dr. Schultz as well sought care from a psychologist, Dr. Alice Hennessey, regarding the professional and personal adjustment issues resulting from these professional discipline proceedings and the loss of his medical license and to gain insight into his past failings.

In the record of the peer panel hearing in the restoration proceedings, Dr. Schultz was forthright in stating that he blames no one but himself for the problems that arose in Massachusetts and that he takes full responsibility for those problems. He stated that he feels terrible about the patients who suffered.

The peer panel hearing in this restoration case was held on December 15, 2004. On January 31, 2005, when Dr. Schultz returned home from work, there was a bizarre message on his home answering machine from a member of the panel, Louis Voorhaus, MD, stating "This is Dr. Louis Voorhaus. Call me at 4 PM Monday at 212-288-3464 to discuss your case. I don't think this should be too big an assignment for you." I reported this by telephone and fax to the Administrative Officer that Dr. Voorhaus had failed to observe the admonition given to all participants in the hearing and had left a threatening message. Despite this, Dr. Voorhaus left a subsequent message demanding that Dr. Schultz return his call and tell him how he could get work in disability medicine. I immediately reported this as well to the Administrative Officer. This created an obvious concern that Dr. Voorhaus was incapable of serving as a panel member and that this was a denial of due process and that Dr. Schultz was denied a fair hearing. The Administrative Officer took this under advisement. Despite this, a hearing panel report was then issued on November 13, 2005 including Dr. Voorhaus.

Dr. Schultz then met with the COP on March 27, 2006 and has now received the draft report of the COP three years thereafter dated April 21, 2009. Dr. Schultz's c.m.e. and employment activities as described above has continued during the past three years. Documentation is not attached hereto since based on the subsequent rule, which should not apply to a COP meeting which preceded it, the letter dated April 21, 2009 states that this submission may not contain any new evidentiary material. We respectfully submit this is a denial of due process since Dr. Schultz should not be penalized for the three year period that elapsed between his meeting with the COP and

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the issuance of the report.

Dr. Schultz has not practiced surgery since 1986. He was penalized by the Massachusetts Board by the revocation of his license in 1997. His concerns about the denial of due process in various aspects of the Massachusetts proceedings and his sharing of these concerns with the peer panel and COP are understandable and not a basis for now denying the restoration of his New York State license.

Rather, the determination on Dr. Schultz's restoration application should be based upon the record of his practice in New York State from 1994 to 1998 during which time he demonstrated his competency in non surgical medicine and his activities up to the present. The hearing panel in the second direct referral hearing in New York State recognized this in ordering a penalty of five (5) years probation. Even in seeking review by the Administrative Review Board, OPMC proposed an alternative penalty of limiting Dr. Schultz's New York State license to evaluations only.

Thereafter, the record from 1998 to the present further establishes that Dr. Schultz has continued to participate in substantial extensive continuing medical education and in productive medical related employment. He has participated in therapy to gain insight about his past misconduct, as well as to adjust to his post revocation circumstances, and demonstrated both an acceptance of responsibility and remorse and empathy in his testimony.

The ten years that have now passed since the revocation of Dr. Schultz's New York license have been a further substantial punishment for the surgical cases between 1981 and 1984, over 25 years ago. A permanent license restriction precluding surgery, or beyond this to even limiting Dr. Schultz to performing clinical medical evaluations as well as all non clinical activities, would give OPMC what it was seeking in requesting review by the ARB, as well as give the Board of Regents the absolute assurances that the public health, safety and welfare is absolutely protected. Beyond this, the record demands and that fairness requires that Dr. Schultz's license be restored subject to these limitations.

Very truly yours,

JACOBSON GOLDBERG & KULB, LLP

Redacted Signature

Amy T. Kulb

TERMS AND CONDITIONS OF PROBATION

The Respondent's license to practice medicine in New York is placed on probation for a period of five (5) years. This probationary period will not commence until the monitoring program, as set forth below, is in place:

1. Respondent shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct imposed by law and by his profession.
2. Respondent shall comply with all federal, state and local laws, rules and regulations governing the practice of medicine in New York State.
3. Respondent shall submit prompt (within 20 days) written notification to the Board, addressed to the Director, Office of Professional Medical Conduct, 433 River St., 4th Floor, Troy, New York 12180, regarding any change in employment, practice, residence or telephone number, within or without New York State.
4. In the event that Respondent leaves New York to reside or practice outside the State, Respondent shall notify the Director of the OPMC in writing at the address indicated above, by registered or certified mail, return receipt requested, of the dates of his departure and return. Periods of residency or practice outside New York State shall toll the probationary period, which shall be extended by the length of residency or practice outside New York State.
5. During the period of probation, the Director of the OPMC or his designee, may review the professional performance of the Respondent. This review may include but not be limited to a random selection of the office records, patient records or hospital charts, interviews with or periodic visits with the Respondent and his/her staff at the practice location(s) or one of the offices of the OPMC, regarding any change in employment.
6. Respondent shall submit written notification to OPMC of any and all investigations, charges, convictions or disciplinary actions taken by any local, state or federal agency, institution or facility, within 30 days of each charge or action.
7. Respondent's practice of medicine shall be limited as follows:
 - a. Respondent shall not conduct or perform any invasive diagnostic tests or surgical procedures;
 - b. Respondent is prohibited from prescribing any controlled substances as defined by Federal or State Law.
8. Respondent's practice of medicine shall be monitored by a physician monitor, board certified in an appropriate specialty, ("Practice monitor") approved in advance, in writing, by the Director of the Office of Professional Medical Conduct or designee. Respondent may not practice medicine until an approved practice monitor and monitoring program is in place. Any practice of medicine prior to the submission and

approval of a proposed practice monitor will be determined to be a violation of probation.

- a. The practice monitor shall report in writing to the Director of the Office of Professional Medical Conduct or designee, on a schedule to be determined by the office. The practice monitor shall visit Respondent's medical practice at each and every location, on a random basis at least quarterly and shall examine a random (no less than 15) selection of records maintained by Respondent, including patient histories, prescribing information and billing records. Respondent will make available to the monitor any and all records or access to the practice requested by the monitor, including on-site observation. The review will determine whether the Respondent's medical practice is conducted in accordance with the generally accepted standards of professional medical care. Any perceived deviation of accepted standards of medical care or refusal to cooperate with the monitor shall immediately be reported to the Office of Professional Medical Conduct by the monitor.
- b. Any change in practice monitor must be approved in writing, in advance, by the OPMC.
- c. All expenses associated with monitoring, including fees to the monitoring physician, shall be the sole responsibility of the Respondent.
- d. It is the responsibility of the Respondent to ensure that the reports of the practice monitor are submitted in a timely manner. A failure of the practice monitor to submit required reports on a timely basis will be considered a possible violation of the terms of probation.
- e. Respondent must maintain medical malpractice insurance coverage with limits no less than \$2 million per occurrence and \$8 million per policy year, in accordance with Section 230(18)(b) of the Public Health Law. Proof of coverage shall be submitted to the Director or designee prior to the placement of a practice monitor.

2009.05.19
Jacobson Goldberg & Kulb, LLP

Attorneys at Law

*585 Stewart Avenue . Suite 720
Garden City, New York 11530*

TEL: (516) 222-2330
FAX: (516) 222-2339

WRITER'S E-MAIL:

akulb@jngllp.com

May 19, 2009

VIA FACSIMILE: 518-474-3863

FEDERAL EXPRESS OVERNIGHT

Mr. Seth Rockmuller
Committee on the Professions
NYS Education Department
Division of Professional Licensing Services
89 Washington Avenue - 2nd Floor, West Wing
Albany, New York 12234

*Re: Thomas Schultz, M.D.
Our File No.: 0046
Your Case #CP-09-12*

Dear Mr. Rockmuller:

Dr. Schultz promptly submitted the attached but my office did not forward it and I just returned this morning. If the COP and Regents want to look at the actual courses and publications, please let me know and I can overnight. Thanks.

Very truly yours,

JACOBSON GOLDBERG & KULB, LLP

Redacted Signature

Amy T. Kulb

ATK:ccr

Enclosures

COMMENTARY ON THE ENCLOSURES

Thomas S. Schultz, M.D.

- A. A sampling of programs awarding CME credits which I attended.
- B. The following are examples of programs and publications planned by me, written by me, as were the questions necessary to obtain CME credits. I also recruited the faculty.
- B₁. *Epilepsy and Female Reproductive Milestones*. This was the first CD inserted into an issue of *Neurology* (eSert).
- B₂. *Case Studies in Intrathecal Pain Therapy*. I wrote the 21 case studies in pain management from faculty presentations and wrote the post-test questions necessary to obtain CME credit.
- B₃. *Vascular Dementia: A Topic Review with Case Presentations*. I wrote the text, the cases and the post-test questions necessary to obtain CME credit. I recruited the faculty.
- B₄. *Vascular Dementia: The Basics with Case Presentations*. I wrote the text, recruited the faculty, wrote the case studies and the post-test questions, necessary to obtain CME credit.
- B₅. *Psychosis in Alzheimer's disease: New Knowledge, Developing New Treatment Strategies*. Part of the APA's Clinical Highlights Program. I wrote the text (based upon faculty premeditations) and the post-test questions necessary to obtain CME credit.
- B₆. *Chemical Restraints: Clinical, Research, and Ethical Implications*. Part of the APA's Clinical Highlights Program. I wrote the text (based upon faculty premeditations) and the post-test questions necessary to obtain CME credit.
- B₇. *An Evidence-Based Medicine Approach to Pediatric Psychiatry*. Part of the APA's Clinical Highlights Program. I wrote the text (based upon faculty premeditations) and the post-test questions necessary to obtain CME credit.
- C. Examples of my medical writing which resulted in publications for which CME credit was granted

C₁. Management of Acute Stroke/CVA: Focus on Blood Flow Regulation and Blood Pressure- a supplement for *The Neurosurgical Clinics of North America*. I wrote 2 articles and edited 2 articles. I wrote the post-test questions necessary to obtain CME credit

D. Examples of the varied medical topics and specialties upon which I have written

D₁. Diagnosis and Management of Blood Pressure Lability During Hypertensive Crises and Acute Cerebrovascular Accidents. This is a detailed topic outline for a review paper. The outline was used by a freelance writer to create a first-draft which I then edited. It has been published.

D₂. Vasospasm: Pathophysiology and Management after Subarachnoid Hemorrhage. This is a detailed topic outline for a review paper. The outline was used by a freelance writer to create a first-draft which I then edited. It has been published.

D₃. Major Issues in the Management of Blood Pressure in Acute Stroke. This is a detailed topic outline for a review paper. The outline was used by a freelance writer to create a first-draft which I then edited. It has been published.

D₄. Current Issues for Nurse Practitioners: Hyponatremia. This is a review paper which I wrote and it was published by *The Journal of the American Academy of Nurse Practitioners*.

D₅. A Trial Study: The Effect of Low Dose Human Chorionic Gonadotropin on the Symptoms of Benign Prostatic Hyperplasia. I wrote this paper from trial data. It was published by the *Journal of Urology*.

E. Notice from the Board of Bar Overseers of the Supreme Judicial Court of Massachusetts of the disbarment of Lawrence Rizman, Esq., my attorney during the Massachusetts hearing. He abandoned me mid-way through these hearings

OFFICE OF THE BAR COUNSEL
BOARD OF BAR OVERSEERS OF THE SUPREME JUDICIAL COURT

99 High Street
Boston, Massachusetts 02110
(617) 728-8750
Fax: (617) 482-2992
www.mass.gov/obcbbo

Constance V. Vecchione
Bar Counsel

April 18, 2007

Thomas S. Schultz, M.D.
19 Clinton Street
Morristown, NJ 017960

RE: B.B.O. File No. B3-01-0122 (Lawrence Rizman)

Dear Dr. Schultz:

Enclosed please find a Memorandum and Order of the Supreme Judicial Court, entered on April 12, 2007, whereby Mr. Rizman's resignation was accepted and he was suspended from the practice of law in the Commonwealth of Massachusetts for an indefinite period effective immediately upon entry of the order.

While your grievance raised serious allegations about Mr. Rizman's professional conduct, prosecution of disciplinary charges based on those allegations likely would not have changed the sanction imposed in the order. We are therefore considering your complaint subsumed in the discipline already imposed. Disposition of the bar discipline case has no effect on whatever remedies you may have against Mr. Rizman personally.

The Court's rules provide that Mr. Rizman may petition for reinstatement to practice after eight years. If he were to seek reinstatement, the Board of Bar Overseers would hold a public hearing to consider whether the petition should be allowed. If you want to receive notice of any hearing on reinstatement, please send me written notice of all changes in your address or telephone number in the future.

Please note that the Clients' Security Board administers a discretionary fund that is available to reimburse individuals who have suffered a financial loss as a result of a defalcation by a lawyer. Enclosed in this regard is a brochure describing the Clients' Security Board, which administers this fund. I do not know whether you would be eligible for reimbursement, but if you wish to make a claim, you should contact the Clients' Security Board directly at 617-728-8700 for further information.

Your grievance is now concluded in this office. Thank you for bringing the matter to our attention.

Very truly yours,

Redacted Signature

Linda G. Bauer
Assistant Bar Counsel

LGB/sp
Enclosure

the case caption and docket number of the client's or clients' proceedings;

b) resign as of the effective date of the suspension all appointments as guardian, executor, administrator, trustee, attorney-in-fact, or other fiduciary, attaching to the resignation a copy of the notices sent to the wards, heirs, or beneficiaries pursuant to paragraphs 2(c) and 2(d) of this Order, the place of residence of the wards, heirs, or beneficiaries, and the case caption and docket number of the proceedings, if any;

c) provide notice to all clients and to all wards, heirs, and beneficiaries that the lawyer has been suspended; that he is disqualified from acting as a lawyer after the effective date of the suspension; and that, if not represented by co-counsel, the client, ward, heir, or beneficiary should act promptly to substitute another lawyer or fiduciary or to seek legal advice elsewhere, calling attention to any urgency arising from the circumstances of the case;

d) provide notice to counsel for all parties (or, in the absence of counsel, the parties) in pending matters that the lawyer has been suspended and, as a consequence, is disqualified from acting as a lawyer after the effective date of the suspension;

e) make available to all clients being represented in pending matters any papers or other property to which they

are entitled; calling attention to any urgency for obtaining the papers or other property;

f) refund any part of any fees paid in advance that have not been earned; and

g) close every IOLTA, client, trust or other fiduciary account and properly disburse or otherwise transfer all client and fiduciary funds in his possession, custody or control.

All notices required by this paragraph shall be served by certified mail, return receipt requested, in a form approved by the Board.

3. Within twenty-one (21) days after the date of entry of this Order, the lawyer shall file with the Office of the Bar Counsel an affidavit certifying that the lawyer has fully complied with the provisions of this Order and with bar disciplinary rules. Appended to the affidavit of compliance shall be:

a) a copy of each form of notice, the names and addresses of the clients, wards, heirs, beneficiaries, attorneys, courts and agencies to which notices were sent, and all return receipts or returned mail received up to the date of the affidavit. Supplemental affidavits shall be filed covering subsequent return receipts and returned mail. Such names and addresses of clients shall remain confidential unless otherwise requested in writing by the lawyer or ordered by the court;

b) a list of all other state, federal and administrative jurisdictions to which the lawyer is admitted to practice; and

c) the residence or other street address where communications to the lawyer may thereafter be directed.

By *A* the Court (*Cordy, J.*)

Redacted Signature

Maura S. Doyle, Clerk

Entered: April 12 2007

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
BD-2005-052

IN RE: LAWRENCE RIZMAN

MEMORANDUM AND ORDER

Lawrence Rizman was admitted to the practice of law in 1988. On March 29, 2005, in the Dedham District Court, he admitted to having fraudulently used the name and identity of a client to rent an apartment for his family in May, 2003, after having been evicted from another apartment. Subsequent to renting the apartment, Rizman fell into arrears in paying rent, and when the landlord attempted to collect the past due rent from the client, his misconduct was uncovered and admitted. At the plea and sentencing hearing in District Court, Rizman's mental illness was brought to the attention of the judge, and the criminal charge (a misdemeanor violation of G. L. c. 266, § 37E), was continued without a finding for four years with conditions including an order of restitution. The restitution has been paid, and the probation ends on March 29, 2009.

Bar counsel began an investigation into Rizman's conduct in 2004, and Rizman was administratively suspended on December 24, 2004, for failing to cooperate with the bar counsel's inquiry. A petition for discipline was filed on September 20, 2005. A

criminal conduct. Bar counsel asked the court to accept Rizman's resignation and disbar him. I asked for further submissions regarding Rizman's history of mental illness and its treatment. Such submissions were received and responded to by bar counsel.

After considering all of the information before me, I accept Rizman's resignation from the bar, and further impose, by way of discipline, an indefinite suspension from the practice of law effective on the date of this order. This sanction adequately reflects the seriousness of the conduct, regardless of its categorization as a misdemeanor, but at the same time takes into consideration a life time of struggle with mental illness that contributed significantly to the conduct, and the efforts Rizman has undertaken to overcome that effects of that illness, and to make positive contributions to his community and his family.

So ordered.

Redacted Signature

Robert J. Cordy
Associate Justice

Date Entered: 4/12/07



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

THOMAS SCHULTZ

REPORT OF
THE PEER
COMMITTEE
CAL. NO. 21776

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

-----X
THOMAS SCHULTZ, hereinafter known as applicant, was
previously licensed to practice as a physician in the State of
New York by the New York State Education Department.

PRIOR DISCIPLINE

Applicant's history of misconduct began in 1981 when an
incident of patient harm resulted in his restricted privileges at
a Massachusetts hospital, and was followed by his failure to
notify another hospital of this restriction. On May 27, 1986,
applicant's Massachusetts license was summarily suspended on the
basis of charges that included his keeping and prescribing
controlled substances not for any legitimate purpose, practicing
while impaired, self-prescribing of controlled substances, filing

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a false response to questions on his license renewal application and gross misconduct in the practice of medicine. Following a hearing on the charges, applicant's Massachusetts license was suspended for two years, which commenced on February 19, 1986. His controlled substances prescribing privileges were indefinitely suspended and he was fined \$2,500 for filing a fraudulent license renewal application. In 1987, the Massachusetts Board suspended applicant's license indefinitely, for practicing medicine while impaired and failing to report hospital discipline.

Based on the Massachusetts action, the New York State Board of Regents suspended applicant's license for three years, effective July 19, 1989. The license was restored on July 18, 1992 and in 1994, applicant returned to practice in New York State.

In further action, Massachusetts revoked applicant's medical license on December 17, 1997 on the basis of substandard care he rendered to seven patients.

The Massachusetts revocation formed the basis for New York Board action. The Hearing Committee noted that the Massachusetts Board found applicant performed unnecessary and/or excessive surgery, provided substandard post-operative care, failed to obtain proper informed consent, and failed to take immediate steps during surgery to handle a patient's life threatening injury.

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The Administrative Review Board (ARB) of the Board for Professional Medical Conduct unanimously upheld that applicant's misconduct in Massachusetts demonstrated serious deficiencies in his medical judgment that would pose a danger to patients if he was allowed to continue to practice in New York State and revoked applicant's license to practice in New York State, effective December 18, 1998.

THE APPLICATION

On June 11, 2003 applicant petitioned the New York State Education Department for the restoration of his license to practice as a physician in the State of New York.

Regarding continuing medical education (CME) the application states in part:

"As regards my conference attendance for CME, this has been in large measure limited by my precarious financial situation (I filed for bankruptcy in the fall of 2000)."

"I have attended two local conferences weekly:

New York University Medical Center's
Neurosurgical Grand Rounds, held Fridays
9:30-11:30 a.m., from February 19, 1999 to
present

New York University Medical Center's Spine
Conference, held Fridays 8:30-9:30 a.m., from
its beginning in 2000 to present."

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"These conferences center about case presentations and discussions of neurosurgical and neurological management issues of representative problems. They frequently also involve lectures by visiting national and international experts from other medical centers."

"By my weekly attendance at these meetings I have managed to improve my patient evaluation skills and management skills as well as to learn how to avoid many surgical errors and complications."

"Every month the neurosurgical conference is devoted to 'morbidity and mortality' a discussion of deaths and complications on the neurosurgical service. These sessions are particularly valuable in teaching the attendees how to avoid and manage neurosurgical complications. They also teach one which patients should not be offered surgery, but should be managed conservatively."

Regarding professional rehabilitation activities the application states in part:

"initially, my professional rehabilitation activities revolved about my self-defense and proof of sobriety. I enrolled in the Physician Health Program, sponsored by the Massachusetts Medical Society, directed by John Fromson, MD. I also underwent over 600 twice-weekly negative drug screens as well as an in-patient

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evaluation by the Smithers Alcoholism Treatment Center which lasted one week. I completed the Physicians Health Program on March 17, 1995."

"Beginning in 1988 and through 1994 I attended Neuroscience Grand Rounds weekly on Mondays from 9:00 a.m. through 12:00 noon at Brown University School of Medicine held at Providence Hospital. These rounds were a combination of case presentations, didactic lectures, and morbidity and mortality conferences. They challenged my neurological/neurosurgical thinking and allowed me to remain apprised of new developments in the fields. The M and M conferences reminded me of the operative and management pitfalls to avoid."

"While I practiced as a neurosurgical consultant (1994-98) I presented the last of my "Improving Writing Skills for Physicians" Workshops in Chicago, but time constraints prevented me from attending conferences regularly. I relied instead for my continuing education on regular readings of the neurological and neurosurgical literature as well as JAMA and NEJM."

Attached to the application is a letter from Alice Fennessey

Ph.D., who treated applicant for depression and anxiety. The letter states in part:

"It is my opinion emerging from many consultations with him that after undergoing a very emotionally difficult

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time in his professional and personal life that he has emerged stronger. He has often displayed his desire to return to medicine and bring with him the lessons he has learned.

A personal statement attached to the application states:

"The action taken by the Massachusetts Board of Medicine in 1997 was based upon a review of several post-operative complications, the most recent of which occurred in 1984. I was, in fact, charged in 1993 by legislation not in effect until 1987, so my practice before 1984 could not have adhered to the new standards announced in 1987."

"What was, indeed, most prejudicial against me was the fact that the Board's long delay in filing this complaint against me (until 1993) ensured that many knowledgeable physicians who could have joined my defense had died; others had forgotten details, some people had moved away."

"In addition, proceedings were further delayed when my defense attorney withdrew from the case in the midst of a hearing, despite court rulings stating that he could not."

"I practiced medicine without incident in New York State from 1994 until 1998."

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"At that time the Massachusetts action was referred to the New York Department of Health. I appeared before a panel of my peers who reviewed the Massachusetts action very carefully and ordered probation for five years. The Department of Health appealed the decision to the ARB which revoked my New York license."

INVESTIGATIVE INTERVIEW

Applicant in the company of his attorney, Amy Kulb, Esq. was personally interviewed.

Applicant's description of his employment history agreed with the information that he had provided on his application. He is currently employed as the Director, Medical and Scientific Affairs, Bio Continuum Group, New York, NY. (A review of this corporation's website (www.bioc.net) revealed that applicant is listed as a "board certified neurosurgeon since 1978". The American Board of Neurological Surgery (ABNS) has advised that applicant has never been board certified. According to ABNS, applicant completed his residency in 1978 and unsuccessfully attempted to enter the certification process by taking and failing the written primary exam 12 times.) Prior to being employed at Bio Continuum, applicant was employed as a consultant in neurosurgery for Thomas S. Schultz, MD, PC, Little Neck, NY, and Neuromuscular Consultants, Inc., 411 30th Street, Oakland, CA.

Applicant stated that he currently has a tremor that is caused by his suffering from a variant of Parkinson's disease. He

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went on to say that he has had the tremor since 1986 and that he clearly would not be looking to practice surgery with such a disability. He did feel that other practice avenues were open to him, should his license be restored.

Applicant stated that the only thing that he regretted was the fact that his case was so complicated. He felt that the action taken by the Massachusetts authorities was akin to a kangaroo court. He stated that he practiced in New York, from 1994 to 1998, without any problems, but claimed that he could not raise this issue in his defense in Massachusetts because it would have been considered "subsequent and irrelevant".

Applicant admitted that his current employer did not know about his license revocation. If restored, applicant indicated that he would either stay in his present position or enter a field of practice that does not require surgery.

THE MEETING

On December 15, 2004 this Peer Panel met to consider the application in this matter. Applicant appeared and was represented by Amy Kulb, Esq. Frank Kenna, Esq. represented the Division of Prosecutions of the Office of Professional Discipline.

After preliminary opening remarks by the Chairperson applicant offered two additional documents which were accepted and marked as applicant's exhibits "A" and "B".

The parties then made opening statements.

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Applicant was the first witness at the meeting. After a brief history of his education, licensure and practice applicant gave a short description of the disciplinary process he had gone through, most of which is covered in more detail in his application. Applicant said he did not attend the ARB because he never got notice of it. He said he just got a letter saying his license was revoked. He said that perhaps had he attended the ARB he might have gotten probation with a requirement that he not perform surgery which he was not doing anyway. He said that he immediately closed his consulting practice upon receiving said letter.

Applicant went on to say that after his license was revoked he became depressed and sought professional help for his depression. Through this treatment applicant said he came to realize that a large part of his problem stemmed from his having no personal life. He said that for many years he had been working 100 hours a week. In an effort to develop a personal life applicant took up ballroom dancing and now engages in international competition. He said it is a healthy outlet both mentally and physically. Applicant has also become involved in buying and selling works of art.

Applicant went on to say that, in retrospect, his working 100 hours a week was not allowing him to spend enough time with each patient, to get to know the patient and develop a relationship with the patient. He said had he done this he might have avoided some of the patient complaints that arose. He said that he did

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spend more time with his patients in New York from 1994 to 1998 and perhaps that is why there were no patient complaints during that period. Applicant said he also made fewer hospital commitments in New York. He said he blames no one but himself for the problems that arose in Massachusetts and he takes full responsibility for those problems. He said he feels terrible about the patients who suffered.

Applicant went on to describe his present employment at the Bio Continuum Group as follows:

"My official title was director of medical and scientific affairs which is a high-priced title for what I do, but I write manuscripts for all the leading journals. Essentially, I'm a ghost writer and I organize blue ribbon panels for our clients which in large measure are mostly pharmaceutical companies, but they also include the specialty organizations, the APA, the American Epilepsy Society, and others, and we set up or I set up expert panels in various topics. For example, epilepsy, for pain, and then these panels meet and advise on an ongoing basis the pharmaceutical company on either areas to investigate for the future or how to manage introduction of products or how to manage present products effectively in the marketplace.

"So I often write the Power Point presentations that I've asked the faculty that I've recruited to

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present and I'm a Jack of all trades with regards to the assemblage of information. I scan the internet, identify the experts, then if they are too busy to officially participate, I write their presentations, then they participate. Many of these I've given you examples of, are memorialized either in CD Rom format or monographs."

"The Bio Continuum Group is relatively new at this, before that they were strictly involved in setting up meetings and this is all new since I've been there for the last three and a half years. It's been very well-received."

Applicant continued by saying he enjoys his work at Bio Continuum and finds it fulfilling. He said "I don't miss patient contact at all".

Applicant said he wants his New York license back for closure in his mind and also to provide him with further opportunities within his present area of endeavor.

In order to keep up his medical skills applicant said that every week since 1999 he attends the neuroscience teaching sessions at NYU School of Medicine, consisting of an hour of vascular conference, mostly interpretation of angiography, MRI scans of the brain, and CT scans, followed by an hour of spinal conference and then two hours of neurosurgery grand rounds.

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Applicant said that this CME is what is set forth in the handouts that make up applicant's exhibit "A".

When applicant was asked about the drug dealing allegations in Massachusetts in 1986, applicant admitted only to bad record-keeping regarding controlled substances. However, applicant conceded that this alone could have potential for patient harm. Applicant said he could not defend against the other later charges against him because the cases were too old. He said he did not think the real truth was obtained by the Massachusetts Hearing Officer who he described as "hardly an unbiased observer". Applicant went on to say that the charges regarding patient harm "should have been dismissed after being reviewed".

Upon questioning regarding his being listed as a "board certified neurosurgeon since 1978" on the Bio Continuum website applicant said he had nothing to do with writing that website and he has asked his employer to remove that from the website.

When Dr. Kavalier pointed out that applicant's exhibit "A" does not contain evidence that applicant attended any of the listed CME programs, applicant conceded that he does not have documentation of attendance. Applicant also conceded that he has no proof that he wrote some of the articles included in the packet. He said he was a ghost writer for those articles.

When questioned by the Chairperson about his treatment with Dr. Fennessey, applicant said that at first he saw Dr. Fennessey weekly for two to three years, but now he sees her less often.

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because of job restrictions. He said he was being treated at first for a major depressive disorder and for a short time he was on medication, but he is no longer.

Upon further questioning applicant stated that his employer, Bio Continuum, does not know that applicant has lost his medical license.

The following exchange then took place between the Chairperson and applicant:

The Chairperson: ...You testified here today with great emotion that - I will paraphrase that, you're sorry that individuals were hurt by your conduct in Massachusetts, in fact, you did say, even if one individual were hurt that was justification enough for punishment?

The Witness: That's right.

The Chairperson: You affirm that?

The Witness: Yes.

The Chairperson: Now, in light of that, I don't quite understand some statements that you made today, namely that you didn't have time to prepare a defense. If on one hand you admitted that you had done harm to patients, I don't quite understand the relevance of your focusing on the lack of time you had to defend yourself, the death or aging of witnesses because you

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say you had hurt these patients, you had committed the misconduct?

The Witness: No, I said if I had.

And then:

The Chairperson: Let me ask you flat out again, so I understand your view of this, do you believe - can you say that the misconduct that the Massachusetts authorities charged you with and then supported and determined that you were guilty of, are these true, did you do the things of which you were charged?

The Witness: Not entirely, but partially, at least, and I don't think that's the important issue. If I might say, I think just the allegations of having done that is something that I should have avoided and foreseen.

The Chairperson: ...But to make sure I understand precisely where you stand on this, you're saying today that of the charges brought against you in Massachusetts and sustained that resulted in your - in the revocation of your license in the Commonwealth of Massachusetts, you do not believe that you did all the things that they said you did; am I correct?

The Witness: That is correct.

And on re-direct questioning by Ms. Kulb:

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Question: So while you still have the same concerns about the fact that you feel you did not get a fair hearing, you still, as you sit here today, though, accept full responsibility for any complications that may have occurred with these patient?

Answer: Yes.

Question: You regret any complications that may have occurred?

Answer: Absolutely. I find it difficult, my memory disappeared with the memories of potential witnesses, when I'm asked which patient I harmed, I find that very difficult to remember one lady's name or one man's name. I'm sorry for all that, I was accused of harming, if there was any harm.

Ruth Haskal was then called as a witness by applicant. Ms. Haskal is a nurse practitioner and has been licensed in Massachusetts since 1980. Ms. Haskal met applicant at Faulkner Hospital in Boston where they each had offices. Ms. Haskal has not ever observed applicant perform surgery but does know his reputation at Faulkner Hospital and she said he was highly thought of by the medical community there. She said applicant's office was always full of patients and he was very kind to them. She said he treated a lot of indigent and Worker's Compensation patients.

Ms. Haskal knew about the action taken against applicant's license in 1986 in Massachusetts but did not know about the

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actions taken in 1997 and she only learned recently that applicant's New York license had been revoked.

The parties then make closing statements.

Mr. Kenna closed by saying that the Department opposes the restoration of applicant's license on the basis that applicant has failed to demonstrate remorse in that applicant has not grasped the full impact of the seriousness of what took place in Massachusetts.

Ms. Kulb closed by saying applicant was merely questioning the fairness of the Massachusetts proceeding because it took place 15 years after the events charged. She said applicant has taken full responsibility for any complications that may have occurred as a result of his surgery. Ms. Kulb pointed out that applicant practiced in New York from 1994 to 1998 without incident and applicant has made a productive life for himself, where he could use his background, training and experience to keep connected to the field of medicine.

RECOMMENDATION

In coming to a recommendation in this matter we have taken into consideration the entire record including the additional documents submitted by applicant at the meeting.

Regarding remorse and rehabilitation, applicant has said he is sorry if patients were hurt but it does not appear to this Panel that he is sorry for what he did. He avoids admitting that in fact there was harm to patients. He said he was sorry for any

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harm "if there was any harm". He said that the cases regarding patient harm "should have been dismissed after being reviewed". He said the matter regarding controlled substances was a result of bad record keeping. Applicant clings to the feeling that he did not do anything wrong.

Also, applicant has not disclosed to his current employer that he has had his medical licenses revoked in four States. This Panel feels applicant has a moral obligation to make this disclosure. Not to do so is a form of denial.

Further, this Panel rejects applicant's position that he could not defend himself in Massachusetts. The Massachusetts findings, had to be based on substantial evidence or they could not have been made.

In addition, we find the letter from Dr. Fennessey a weak recommendation in that it does not offer sufficient assurance as to applicant's ability to practice safely and competently in the future. It also offers no details of applicant's treatment.

As to applicant having practiced without incident in New York from 1994 to 1998, we find that practice was very limited, essentially doing disability evaluations.

Regarding continuing medical education there is no documentation for CME until after applicant hired an attorney. Also, there is no evidence in applicant's exhibit "A" that applicant attended any of these CME activities. Exhibit "A" is only a collection of programs for courses offered. Most of the CME

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applicant does have is in neurosurgery and applicant never got board certified in neurosurgery. In fact, he took the exam 12 times and failed. Applicant seems to have no CME in general practice. It is the observation of this Panel that applicant is not qualified to be a consultant in neurosurgery and he cannot perform surgery so we do not see what applicant is qualified to do at this time as a physician.

Therefore, we unanimously find that applicant has failed to demonstrate adequate re-education, remorse and rehabilitation before this Panel to warrant a restoration of his license at this time.

Accordingly, we unanimously recommend that the application be denied.

We hope applicant will take our observations into considerations should he reapply in the future.

Respectfully submitted,

DAVID HARRIS, MD, Chairperson
LOUIS J. VORHAUS, MD
FLORENCE KAVALER, MD

Redacted Signature

Chairperson

Dated

11/13/05