



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

Office of Professional Discipline, One Park Avenue, 5<sup>th</sup> Floor, New York, NY 10016-5802  
Tel. (212) 951-6400  
Fax (212) 951-6488  
E-mail: OP4INFO@MAIL.NYSED.GOV

April 8, 2004

PUBLIC

Mitchell L. Kaphan, Physician  
575 Pinebrook Boulevard  
New Rochelle, New York 11804

Re: Application for Restoration

Dear Dr. Kaphan:

Enclosed please find the Commissioner's Order regarding Case No.CP-04-02 which is in reference to Calendar No. 20416. This order and any decision contained therein goes into effect five (5) days after the date of this letter.

Very truly yours,

Daniel J. Kelleher  
Director of Investigations

By: *Gustave Martine*

Gustave Martine  
Supervisor

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

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MEDICAL CONDUCT

The  
University of the  
Education  State of New York  
Department

IN THE MATTER

of the

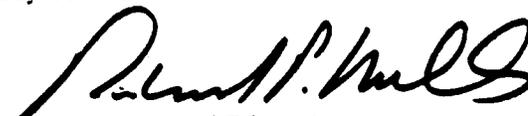
Application of MITCHELL L.  
KAPHAN for restoration of his  
license to practice as a physician in  
the State of New York.

Case No. CP-04-02

It appearing that the license of MITCHELL L. KAPHAN, 575 Pinebrook Boulevard, New Rochelle, New York 11804, to practice as a physician in the State of New York, was revoked by the Administrative Review Board for Professional Medical Conduct, effective February 20, 1999, and he having petitioned the Board of Regents for restoration of said license, and the Regents having given consideration to said petition, and having agreed with and accepted the recommendations of the Peer Committee and the Committee on the Professions, except having amended the terms of probation, as reflected in the "Terms of Probation of the Board of Regents," now, pursuant to action taken by the Board of Regents on February 23, 2004, it is hereby

ORDERED that the petition for restoration of License No. 139985, authorizing MITCHELL L. KAPHAN to practice as a physician in the State of New York, is denied, but that the Order of Revocation of his license be stayed for 5 years, and said MITCHELL L. KAPHAN be placed on probation for 5 years under the terms and conditions specified by the Board of Regents, and that upon successful completion of the probationary period, his license to practice as a physician in the State of New York shall be fully restored.

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 23<sup>rd</sup>  
day of March, 2004.

  
Commissioner of Education

Case No. CP-04-02

It appearing that the license of MITCHELL L. KAPHAN, 575 Pinebrook Boulevard, New Rochelle, New York 11804, to practice as a physician in the State of New York, having been revoked by the Administrative Review Board for Professional Medical Conduct, effective February 20, 1999, and he having petitioned the Board of Regents for restoration of said license, and the Regents having given consideration to said petition, and having agreed with and accepted the recommendations of the Peer Committee and the Committee on the Professions, except having amended the terms of probation, as reflected in the "Terms of Probation of the Board of Regents," now, pursuant to action taken by the Board of Regents on February 23, 2004, it was

VOTED that the petition for restoration of License No. 139985, authorizing MITCHELL L. KAPHAN to practice as a physician in the State of New York, is denied, but that the Order of Revocation of his license be stayed for 5 years, and said MITCHELL L. KAPHAN be placed on probation for 5 years under the terms and conditions specified by the Board of Regents, and that upon successful completion of the probationary period, his license to practice as a physician in the State of New York shall be fully restored.

Case number  
CP-04-02  
January 16, 2004

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: Mitchell L. Kaphan**

Attorney: Amy Kulb

Mitchell L. Kaphan, 575 Pinebrook Boulevard, New Rochelle, New York 11804, petitioned for restoration of his physician license. The chronology of events is as follows:

- 10/05/79 Issued license number 139985 to practice as a physician in New York State.
- 02/25/98 Charged with professional misconduct by Department of Health. (See "Disciplinary History.")
- 06/30/98 Hearing Committee of the State Board for Professional Medical Conduct voted to suspend physician license for one year, suspension stayed and placed on probation for five years under specified terms.
- 10/21/98 Professional Medical Conduct Administrative Review Board voted to revoke physician license.
- 02/10/99 Appellate Division, Third Department, vacated stay of the revocation.
- 02/20/99 Effective date of revocation.
- 02/27/02 Completed application for restoration submitted.
- 10/16/02 Peer Committee restoration review.
- 09/08/03 Report and recommendation of Peer Committee. (See "Report of the Peer Committee.")
- 11/04/03 Committee on the Professions restoration review.

01/16/04 Report and recommendation of Committee on the Professions.  
(See "Report of the Committee on the Professions.")

**Disciplinary History.** (See attached disciplinary documents.) On February 25, 1998, the Department of Health charged Dr. Kaphan with eleven specifications of professional misconduct, including negligence on more than one occasion, gross negligence, incompetence on more than one occasion, gross incompetence, and unwarranted treatment. The charges related to his orthopedic surgery on three patients. The charges alleged that on or around December 19, 1995, Dr. Kaphan incorrectly performed surgery on Patient A's left hip, instead of the fractured right hip. Further, it was alleged that on or around February 19, 1992, Dr. Kaphan incorrectly performed arthroscopic surgery on Patient B's right knee, instead of on the injured left knee. Finally, the charges alleged that on or around April 2, 1987, Dr. Kaphan incorrectly made a surgical incision to Patient's C's left hip, instead of the injured right hip. On June 30, 1998, a Hearing Committee of the State Board for Professional Medical Conduct determined that he was guilty of negligence on more than one occasion, guilty of gross negligence with regard to Patient A, guilty of incompetence on more than one occasion, and guilty of performing professional services that were not warranted. The Hearing Committee voted to suspend his license for one year but stayed the suspension and placed him on probation for five years under specified terms and conditions. Both the Department of Health and Dr. Kaphan appealed parts of the findings and decision to a Professional Medical Conduct Administrative Review Board. The Review Board sustained the Hearing Committee's determination that Dr. Kaphan committed professional misconduct but overturned the Committee's determination of penalty and voted to revoke his license. Dr. Kaphan appealed the action of the Department of Health to the Appellate Division, Third Department, which issued a stay of the penalty and permitted Dr. Kaphan to practice medicine, but not surgery, pending Court review. The stay was vacated by the Appellate Division and the revocation of Dr. Kaphan's medical license became effective February 20, 1999.

On February 27, 2002, Dr. Kaphan submitted a completed application for restoration of his physician license.

**Recommendation of the Peer Committee.** (See attached "Report of the Peer Committee.") The Peer Committee (Cordice, Kavalier, Riggins) met with Dr. Kaphan on October 16, 2002 to review his application for restoration. In its report, dated September 8, 2003, the Committee voted unanimously to recommend that the order of revocation be stayed and that he be placed on probation for five years under specified terms and conditions.

**Recommendation of the Committee on the Professions.** On November 4, 2003, the Committee on the Professions (Duncan-Poitier, Porter, Munoz) met with Dr. Kaphan to review his application for restoration. Amy Kulb, Esq., his attorney, accompanied him. Prior to the meeting, Ms. Kulb provided documentation of additional continuing medical education courses that Dr. Kaphan completed as well as two additional letters of recommendation from physicians. Subsequent to the meeting, Ms. Kulb sent a letter, dated November 21, 2003, to the Committee, clarifying some of Dr.

Kaphan's responses to Committee questions. The Committee accepted the additional information as part of the record.

The Committee asked Dr. Kaphan to explain what led to the loss of his license. He replied that his revocation resulted from his treatment of three patients. He indicated that he failed to execute proper care in their treatment and neglected to follow established protocols. He said that he attempted to treat too many patients and had, in haste, made errors in judgment. Dr. Kaphan indicated that after seeking help from his peers and his psychiatrist, he implemented new surgical procedures from 1995-97 to ensure that he was operating on the proper part of a patient's body. The Committee asked if there were any other patients for whom he did not provide satisfactory service. He replied that, because of his large practice, he kept patients waiting for long periods of time and did not spend as much time with them in the examining room as he should have. He said, "Only these three received questionable treatment."

The Committee asked Dr. Kaphan why he continued operating on Patient B after he realized that he was working on the wrong knee. He replied that after making the initial incisions for the arthroscopic surgery and inserting the scope, he remembered his review of the MRI, which indicated a complex tear and noticed that the knee did not reflect that condition. Dr. Kaphan said that he asked the anesthesiologist to look at the chart and was informed that he was operating on the wrong knee. Dr. Kaphan told the Committee that he continued, however, because he found a tear in the meniscus and he felt he should repair it as the incisions had already been made. The Committee asked Dr. Kaphan why he should have stopped immediately after realizing his mistake. He replied, "It is the ethical thing to do. A physician has the responsibility not to do any harm to a patient." He said that he harmed the patient by making the original incisions and also by the delay in time it took to get the patient off the operating table.

The Committee questioned how Dr. Kaphan had managed to operate on the wrong body part on three separate occasions. Dr. Kaphan replied that the operations occurred in 1987, 1992, and 1995. He indicated that with the 1995 case, he now realizes he should have stopped and ordered another x-ray as the x-ray didn't confirm the results of his examination in the Emergency Room. He reported that the x-ray was inadvertently switched for another patient also at the hospital. He said that he also didn't take the time to carefully check the patient's consent form and chart and failed to discuss his concerns with others in the operating room. Regarding the 1987 case, Dr. Kaphan indicated that he saw the patient in the Emergency Room for a fractured hip. He reported that the patient had severe pain moving both legs. He said that prior to the operation the patient indicated that her left hip hurt even though he thought the x-rays had confirmed a fracture in her right hip. Dr. Kaphan stated that he should have stepped back to reevaluate the situation to erase any doubts in his mind as to the correct hip on which he should be operating. He told the Committee that the operation on the wrong knee was between these two procedures. Dr. Kaphan stated that he is sorry that these patients had to suffer unnecessary pain and remains concerned that he "had done something so bad." Dr. Kaphan reiterated that after the 1995 error, he started bringing notes into the operating room, carefully checked x-rays and ordered new ones if he was unclear about anything. He, likewise, stated that he routinely checked patient consent forms after 1995. He indicated that current procedures require patients to mark the body part requiring surgery.

The Committee asked Dr. Kaphan if he felt it was appropriate for the Department of Health (DOH) to revoke his license. He replied, "DOH has a responsibility to do what's necessary to protect the public. They did do a proper thing." Dr. Kaphan pointed out that during the DOH disciplinary hearing, he was not allowed to present any evidence of how he had changed his surgical procedures. He said that DOH just wanted to know what he had done on the three patients in question. The Committee asked Dr. Kaphan why he appealed the Hearing Committee's decision to place his suspension for five years. Ms. Kulb stated that the Office of Professional Medical Conduct initiated the appeal to the Administrative Review Board and that the Board's report erroneously gives the impression that Dr. Kaphan also appealed.

Dr. Kaphan said that he is currently working as a sales associate for Zimmer Orthopedics and is able to watch surgeons perform surgery. In addition, he said that he is teaching an anatomy course at Westchester Community College. He indicated that he has received professional assistance from a psychiatrist and spoken to peers to help make certain that he would not perform the same misconduct were his license restored. He stated, "The process has been to look back on what I did. I started to talk to other surgeons and asked what procedures they followed." Dr. Kaphan reported that his peers told him his workload was too heavy and he couldn't possibly have had sufficient time to follow the established protocols necessary to truly help his patients. He indicated that he also obtained a better understanding of medical and Jewish ethics. Dr. Kaphan said that he now realizes that at the time he was just trying to make a living rather than assuming the primary responsibility of a surgeon. He indicated that he and his family have de-emphasized materialistic concerns in their daily lives.

Dr. Kaphan told the Committee that he has been attending Grand Rounds two times a week at hospitals, reads the Journal of Bone and Joint Surgery, continues to attend conferences and medical meetings, and continues to complete formal continuing medical education courses. If his license were restored, he indicated that he would continue using some of the procedures he instituted in 1995. Dr. Kaphan said that he started to see fewer patients, limited the number of hospitals with which he was affiliated, brought patient charts to the hospital, and repeated x-rays and blood tests when questions arose in his mind. He said that before resuming surgery, he would like to complete a refresher course for both didactic and hands-on learning. Additionally, he indicated that he would want a senior doctor with him as he resumes surgery.

Dr. Kaphan said that there hasn't been a time over the last five years when he's forgotten about the patients he harmed and how he let them down. He stated, "They were grave errors. I realize I can never let that happen again." He said that the surgical error in 1995 was an "awakening" for him and he sought help to make the necessary adjustments in his practice and procedures to ensure that he wouldn't harm his patients in the future. He indicated that he implemented those revisions into his surgical practice just prior to losing his license. Dr. Kaphan told the Committee that he realizes he shirked his responsibility but now believes that he's prepared to treat his patients more effectively if his license is restored.

The overarching concern in all restoration cases is public protection. Education Law §6511 gives the Board of Regents discretionary authority to make the final decision regarding applications for the restoration of a license to practice as a physician in New York State. 8NYCRR §24.7(2) charges the Committee on the Professions (COP) with submitting a recommendation to the Board of Regents on restoration applications. Although not mandated in law or regulation, the Board of Regents has instituted a process whereby a Peer Committee first meets with an applicant for restoration and provides a recommendation to the COP. A former licensee petitioning for restoration has the significant burden of satisfying the Board of Regents that there is a compelling reason that licensure should be granted in the face of misconduct so serious that it resulted in the loss of licensure. There must be clear and convincing evidence that the petitioner is fit to practice safely, that the misconduct will not recur, and that the root causes of the misconduct have been addressed and satisfactorily dealt with by the petitioner. It is not the role of the COP to merely accept, without question, the arguments presented by the petitioner but to weigh and evaluate all of the evidence submitted and to render a recommendation based upon the entire record.

The COP concurs with the opinion of the Peer Committee that Dr. Kaphan has made a significant effort at reeducation and rehabilitation and has demonstrated remorse. Dr. Kaphan took the initiative to seek professional counseling from both a psychiatrist and a rabbi and spoke with other orthopedic surgeons to help discover the root causes of his misconduct and steps he could take to make certain such misconduct would not recur. He was able to clearly articulate that material concerns led him to take on too many patients at the same time, resulting in his provision of inadequate medical care. He explained the steps he took in 1995 to make certain his previous errors would not recur and indicated that he would incorporate those and additional new procedures of which he is now aware if his license is restored. He demonstrated a clear understanding of the pain and danger to which he subjected his patients. The COP found Dr. Kaphan's responses to its questions credible and believes he is truly remorseful for harming the three patients at issue. He was able to demonstrate a proper understanding of the ethics necessary to be an effective physician. Although he has taken a substantial amount of continuing medical education courses and attends Grand Rounds twice a week, the COP agrees with the Peer Committee that he should complete an intensive review course in orthopedic surgery. The COP believes such retraining should occur prior to his resuming the practice of orthopedic surgery, although he could practice nonsurgical areas of medicine in a hospital or other Article 28 facility. The COP notes that, in its meeting with him, Dr. Kaphan agreed that he needed additional didactic and hands-on training. The Department of Health concurs that Dr. Kaphan's application for restoration reveals that he has come to accept his responsibility for his serious misconduct and suggests that he complete an intensive review course in his field of practice and subsequently practice in a setting where his practice can be monitored. The COP finds that Dr. Kaphan presented a compelling case for the restoration of his license at this time and believes the public would not be placed at risk were his license restored.

Therefore, after a careful review of the record and its meeting with him, the Committee on the Professions voted unanimously to recommend that the order of revocation of Dr. Kaphan's license to practice as a physician in New York State be stayed for five years, that he be placed on probation for five years under specified

terms attached to this report and labeled as Exhibit "A," and that upon satisfactory completion of the probationary period, his license be fully restored.

Johanna Duncan-Poitier, Chair

Joseph B. Porter

Frank Munoz

EXHIBIT "A"

TERMS OF PROBATION  
OF THE COMMITTEE ON THE PROFESSIONS

MITCHELL L. KAPHAN

1. That the applicant, during the period of probation, shall be in compliance with the standards of conduct prescribed by the law governing the applicant's profession;
2. That the applicant shall submit written notification to the Director, Office of Professional Medical Conduct (OPMC), New York State Department of Health, Suite 303, 4<sup>th</sup> Floor, Hedley Park Place, 433 River Street, Troy, NY 12180-2299, of any employment and/or practice, applicant's residence, telephone number, and mailing address and of any change in the applicant's employment, practice, residence, telephone number, and mailing address within or without the State of New York;
3. That the applicant shall submit written proof from the Division of Professional Licensing Services (DPLS), New York State Education Department (NYSED), that the applicant has paid all registration fees due and owing to the NYSED and the applicant shall cooperate with and submit whatever papers are requested by DPLS in regard to said registration fees, said proof from DPLS to be submitted by the applicant to the Department of Health (DOH), addressed to the Director, OPMC, as aforesaid, no later than the first three months of the period of probation;
4. That the applicant shall submit written proof to the DOH, addressed to the Director, OPMC, as aforesaid, that 1) the applicant is currently registered with the NYSED, unless the applicant submits written proof that the applicant has advised DPLS, NYSED, that the applicant is not engaging in the practice of the applicant's profession in the State of New York and does not desire to register, and that 2) the applicant has paid any fines which may have previously been imposed upon the applicant by the Board of Regents or pursuant to section 230-a of the Public Health Law, said proof of the above to be submitted no later than the first two months of the period of probation;
5. That, the applicant's practice of medicine shall be restricted to prohibit the practice of orthopedic surgery until applicant, at the applicant's expense, enrolls in, diligently pursues and successfully completes a retraining program or intensive review course in orthopedic surgery approved by the Director, OPMC Applicant shall attest to compliance with the prescribed practice restriction by

signing and submitting to the Director, OPMC, a Practice Restriction Declaration, as directed by the Director;

6. That the applicant, during the period of probation, shall work only in a supervised setting, such as a facility licensed by New York State, where close practice oversight is available on a daily basis and where quality assurance and risk management protocols are in effect. Applicant shall not practice medicine until the supervised setting proposed by applicant is approved, in writing, by the Director, OPMC;
7. That the applicant, during the period of probation, shall make available to a board certified orthopedic surgeon, proposed by applicant and subject to the written approval of the Director, OPMC, any and all patient records requested by the approved orthopedic surgeon to determine whether applicant's medical practice is conducted in accordance with the generally accepted standards of professional medical care. Applicant shall cause the approved orthopedic surgeon to report quarterly, in writing, to the Director, OPMC;
8. That the applicant, during each year of probation, shall enroll in and complete 30 hours of continuing medical education;
9. That the applicant shall make quarterly visits to an employee of the OPMC, DOH, unless otherwise agreed to by said employee, for the purpose of said employee monitoring the applicant's terms of probation to assure compliance therewith, and the applicant shall cooperate with said employee, including the submission of information requested by said employee, regarding the aforesaid monitoring; and
10. That upon receipt of evidence of noncompliance with or any other violation of any of the aforementioned terms of probation, the OPMC may initiate a violation of probation proceeding.

EXHIBIT "B"

TERMS OF PROBATION  
OF THE BOARD OF REGENTS

MITCHELL L. KAPHAN

1. That the applicant, during the period of probation, shall be in compliance with the standards of conduct prescribed by the law governing the applicant's profession;
2. That the applicant shall submit written notification to the Director, Office of Professional Medical Conduct (OPMC), New York State Department of Health, Suite 303, 4<sup>th</sup> Floor, Hedley Park Place, 433 River Street, Troy, NY 12180-2299, of any employment and/or practice, applicant's residence, telephone number, and mailing address and of any change in the applicant's employment, practice, residence, telephone number, and mailing address within or without the State of New York;
3. That the applicant shall submit written proof from the Division of Professional Licensing Services (DPLS), New York State Education Department (NYSED), that the applicant has paid all registration fees due and owing to the NYSED and the applicant shall cooperate with and submit whatever papers are requested by DPLS in regard to said registration fees, said proof from DPLS to be submitted by the applicant to the Department of Health (DOH), addressed to the Director, OPMC, as aforesaid, no later than the first three months of the period of probation;
4. That the applicant shall submit written proof to the DOH, addressed to the Director, OPMC, as aforesaid, that 1) the applicant is currently registered with the NYSED, unless the applicant submits written proof that the applicant has advised DPLS, NYSED, that the applicant is not engaging in the practice of the applicant's profession in the State of New York and does not desire to register, and that 2) the applicant has paid any fines which may have previously been imposed upon the applicant by the Board of Regents or pursuant to section 230-a of the Public Health Law, said proof of the above to be submitted no later than the first two months of the period of probation;
5. That, the applicant's practice of medicine shall be restricted to prohibit the practice of orthopedic surgery until applicant, at the applicant's expense, enrolls in, diligently pursues and successfully completes a retraining program or intensive review course in orthopedic surgery approved by the Director, OPMC. After the Director, OPMC, attests to applicant's successful completion of the prescribed retraining program or course, applicant, for the remainder of the

period of probation, shall be restricted to performing surgery only under supervision, as approved by the Director, OPMC. Applicant shall attest to compliance with the prescribed practice restriction by signing and submitting to the Director, OPMC, a Practice Restriction Declaration, as directed by the Director;

6. That the applicant, during each year of probation, shall enroll in and complete 30 hours of continuing medical education;
7. That the applicant shall make quarterly visits to an employee of the OPMC, DOH, unless otherwise agreed to by said employee, for the purpose of said employee monitoring the applicant's terms of probation to assure compliance therewith, and the applicant shall cooperate with said employee, including the submission of information requested by said employee, regarding the aforesaid monitoring; and
8. That upon receipt of evidence of noncompliance with or any other violation of any of the aforementioned terms of probation, the OPMC may initiate a violation of probation proceeding.



# The University of the State of New York

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

-----X

In the Matter of the Application of

**MITCHELL KAPHAN**

**REPORT OF  
THE PEER  
COMMITTEE  
CAL. NO. 20416**

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

-----X

Applicant, MITCHELL KAPHAN, was authorized to practice as a  
physician in the State of New York by the New York State Education  
Department.

### PRIOR DISCIPLINARY PROCEEDING

A Hearing Committee of the New York State Board for  
Professional Medical Conduct found applicant guilty of misconduct  
for his care and treatment of three patients. In each case  
applicant operated on the wrong surgical site. He was found guilty  
of negligence on more than one occasion, gross negligence,  
incompetence on more than one occasion and performing services  
unwarranted by the patient's condition by continuing surgery after  
realizing he was operating on the wrong knee of a patient.

MITCHELL KAPHAN (20416)

Following an appeal, the Administrative Review Board upheld the findings of the Hearing Committee and revoked applicant's medical license.

The revocation of applicant's medical license became effective February 20, 1999.

#### APPLICATION

On November 8, 2001 applicant petitioned for the restoration of his license to practice as a physician in the State of New York.

Regarding his continuing medical education (CME) and how it is relevant to his prior misconduct the application states in part:

"Since the revocation of my license I have spoken at length with my psychiatrist, rabbi and daily religious leader. I have spoken with doctors in my field and others. I have read books on ethics, religion, and started teaching biomedical courses in college."

"By speaking with the clergy, professionals and having time to reflect on what I have read, there has been a revelation that there is no tolerance for mistakes and cutting corners. The ethics of this profession require that the care of the patient is the most paramount activity I may be allowed to perform. Teaching has allowed me to refocus on the goals of my profession-that trust to tell the truth and be exact with my planning and execution of the process is important. The conduct I did to cause the loss of my

MITCHELL KAPHAN (20416)

license was based on my rushing into things without proper workup and follow through."

Regarding professional rehabilitation activities the applications states in part:

"I began to take steps to correct my flawed approach to medical practice. I sought counseling after the incidents, in 1992 and 1995. In 1996, I passed the written part of the orthopaedic boards. I thought back to 1991 and Operation Desert Storm. I served as a military surgeon during the Allied operation to free Kuwait from Iraqi occupation, and I felt a sense of service to my country during this experience, which made me proud to be a physician and a soldier. As I thought about the horrible mistakes I thereafter made, I realized that I would have to change not only my approach to medicine, but also my sense of ethics if I were ever to resume once again the role of healer and teacher. I am filing this restoration petition because beyond my love for G-d and family, there is nothing more important in my life than returning to the practice of medicine."

"I began teaching in the military. I paid strict attention to detail, pre-operative workup and personally marked the operative site. By the time I lost my license in 1998, I had begun to take these corrective steps, but I cannot fault the Office of Medical Conduct for seeking to revoke my license. I had made serious, repeated mistakes, and patients had been unnecessarily harmed."

"I frequently attend Orthopaedic Grand rounds, attend medical

MITCHELL KAPHAN (20416)

conferences, and religiously keep up with my professional reading. I became an adjunct professor at Monroe College in the Bronx, and teach medical terminology, anatomy/physiology and pathophysiology. I sought to tie together the religious tradition and the medical professionalism I would need to practice medicine again. With the help of my psychiatrist, my Rabbi, and my physician colleagues who have sought to encourage me and give me strength, I know that I can return to surgery and help my patients. However, because of this experience, I could not approach surgical practice in the manner I once did."

"Teaching, ethical introspection, and the humiliation I have felt because of my own misdeeds would not permit me to do anything but practice in a structured, controlled environment."

"If the opportunity to obtain my license to practice medicine were granted, I would want to work initially with close monitoring and mentoring by another orthopaedic surgeon. I want to continue my education both as a participant and a provider."

**PEER PANEL REVIEW**

On October 16, 2002 this Peer Panel met to review the application in this matter. Applicant appeared and was represented by Amy T. Kulb, Esq. The Department was represented by Joan Handler, Esq.

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

**MITCHELL KAPHAN (20416)**

He went on to say that if his license is restored, he knows that he would have to revitalize his surgical skills and learn the more recent, improved techniques. He said he would be taking one of the five-day didactic review courses offered by the Academy of Orthopaedics. He said he would also attend workshops offered by professional equipment companies, regarding the use of their surgical products.

Applicant also said he would request to work with a mentor. He has spoken with the doctor who is in charge of Lincoln Hospital and that doctor has expressed an interest in bringing applicant on as one of his junior attending physicians. Applicant said he has had similar interest from Bronx Lebanon Hospital.

Applicant went on to say that he does not want to go into a private practice on his own. He said he would only do private practice in a group setting so he would be able to discuss his patients with the other members of the group.

Upon questioning by Ms. Handler, applicant said that he attends Grand Rounds at both New York Medical College and Montefiore Hospital for a total of about four and a half hours a week. He said he spends about five hours a week doing other CME. He said he intends to continue doing both of these things.

Applicant said that, while he still teaches at Westchester Community College, he no longer is at Monroe College. He left that position to become a junior sales associate with Zimmer Orthopaedics.

MITCHELL KAPHAN (20416)

Upon questioning by the panel, applicant said he has two possible employment positions should he get his license restored. Both are salaried staff positions, one at Lincoln Hospital and one at Bronx Lebanon Hospital. He said there is also the possibility of getting involved with a group private practice that is associated with Lincoln Hospital. It is an Article 28 practice. There is also the possibility of a group private practice associated with Bronx Lebanon Hospital.

When asked how he would prevent a recurrence of his past errors, applicant said that starting in 1995 he had adhered strictly to the algorithm or checklist method of proceeding regarding his practice and continued with that until his license was revoked in 1998.

The parties then made closing statements. Ms. Handler said that the Office of Professional Discipline opposed the restoration of applicant's license but if the panel does recommend restoration of licensure, it should be under the conditions suggested by the Health Department as set forth in item three of the packet herein.

Ms. Kulb stated that she believed that applicant had made a compelling case for restoration of licensure and the application should be granted, with whatever terms and conditions the panel deems necessary.

#### RECOMMENDATION

We unanimously recommend that the application herein be granted and that the revocation of applicant's license to practice

MITCHELL KAPHAN (20416)

medicine in the State of New York be stayed. Applicant has made a significant effort at re-education and rehabilitation.

Applicant has also demonstrated remorse before this Panel. He has admitted to and recognized his previous problems.

We further unanimously recommend that applicant be placed on probation for five years under the standard terms of probation, plus the following terms of probation:

That during the period of probation, applicant shall practice medicine only as a salaried physician in a hospital on other Article 28 facility;

That during the period of probation, applicant shall undergo quarterly practice monitoring of his patient records (with strict adherence to documented clinical algorithms) by an orthopaedic surgeon approved by the Department of Health;

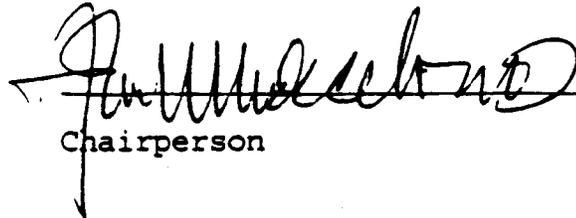
That during each of the first two years of the period of probation, applicant shall attend an intensive review course in orthopaedic surgery;

That during each year of the period of probation, applicant shall complete 30 hours of continuing medical education.

MITCHELL KAPHAN (20416)

Respectfully submitted,

John W.V. Cordice, MD, Chairperson  
Florence Kavalier, MD  
Delores Riggins, Public Member

 9/8/03  
Chairperson Dated