

Public

The
University of the
Education  State of New York
Department

IN THE MATTER

of the

Application of VICTOR M.
FLORES, for restoration of his
license to practice as a physician in
the State of New York.

Case No. CP-09-09

It appearing that the license of VICTOR M. FLORES, 90-11 35th Avenue, Apartment 3J, Jackson Heights, New York 11372, to practice as a physician in the State of New York was revoked by order of a Hearing Committee of the State Board for Professional Medical Conduct dated October 26, 1994, and he having petitioned the Board of Regents for restoration of said license, and the Regents having given consideration to said petition and having reviewed the record, and having agreed with and adopted the recommendations of the Peer Committee and the Committee on the Professions, now, pursuant to action taken by the Board of Regents on May 18, 2009 as reflected in the attached Vote, it is hereby

ORDERED that the petition for restoration of License No. 097473, authorizing VICTOR M. FLORES 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.

Carole Huxley
Interim Commissioner of Education

Case No. CP-09-09

It appearing that the license of VICTOR M. FLORES, 90-11 35th Avenue, Apartment 3J, Jackson Heights, New York 11372, to practice as a physician in the State of New York, was revoked by order of a Hearing Committee of the State Board for Professional Medical Conduct dated October 26, 1994, and he having petitioned the Board of Regents for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, 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 May 18, 2009, it is hereby

VOTED that the petition for restoration of License No. 097473, authorizing VICTOR M. FLORES to practice as a physician in the State of New York, is denied.

9-654



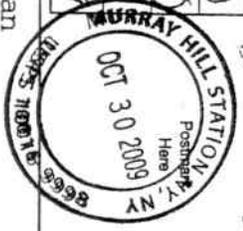
City of the State of New York

IN THE MATTER
OF
VICTOR FLORES
(PHYSICIAN)

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

OFFICIAL USE

Postage	\$ 1.39	Calc# 20280
Certified Fee	2.80	
Return Receipt Fee (Endorsement Required)	2.30	
Restricted Delivery Fee (Endorsement Required)	4.50	
Total Postage & Fees	\$ 10.99	



Sent To
Victor Flores, Physician
Street, Apt. No.: 90-11 35th Avenue, Apt. 3J
or PO Box No.
City, State, Zip+4
Jackson Heights, New York 11372

STATE OF NEW YORK)
COUNTY OF ALBANY)

Neil Blumfeld
SS.:

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-09-09, in reference to Calendar No. 20280 and the Vote of the Board of Regents by Certified Mail - Return Receipt requested to the respondent herein named at 90-11 35th Avenue, Apt. 3J, Jackson Heights, New York 11372.

Certified Mail Receipt No. 7002 0860 00006467 1575

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



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

Nellia L. Blazes McNear

NELLIA L. BLAZES-McNEAR
Notary Public, State of New York
Registration # 10054271
Qualified in Kings County
My Commission Expires Jan. 29, 2011



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: **Victor M. Flores**

Victor M. Flores, 90-11 35th Avenue, Apt. 3J, Jackson Heights, N.Y. 11372, petitioned for restoration of his physician license. The chronology of events is as follows:

- 11/17/60 Issued license to practice as a physician in El Salvador.
- 09/20/66 Issued license number 097473 to practice as a physician in New York State.
- 05/07/93 Found guilty after a jury trial in U.S. District Court for the Southern District of New York of violating 21 USC §846, Conspiracy to Possess Dilaudid with the Intent to Distribute.
- 04/04/94 Sentenced in to serve 8 years in prison to be followed by 3 years of supervised release.
- 08/23/94 Charged with professional misconduct by the Office of Professional Medical Conduct of the New York State Department of Health based on the federal conviction.
- 10/26/94 Decision and Order BPMC-94-244 by a Hearing Committee of the State Board of Professional Medical Conduct sustained charges and revoked license.
- 01/11/01 Application submitted for restoration of physician license.
- 05/03/05 Peer Committee restoration review.
- 05/08/06 Report and recommendation of Peer Committee.
- 10/30/07 Committee on the Professions meeting with applicant.
- 05/01/09 Report and recommendation of Committee of the Professions.

Disciplinary History. (See attached disciplinary documents.) On May 7, 1993, Dr. Flores was found guilty after a trial in U.S. District Court for the Southern District of

New York of conspiracy to possess Dilaudid, a heroin synthetic, with intent to distribute. On April 4, 1994, he was sentenced to serve 8 years in prison, to be followed by 3 years of supervised release. The Department of Health's State Board for Professional Medical Conduct (BPMC) served charges on Dr. Flores on or about August 23, 1994 for professional misconduct under Education Law section 6530(9)(a)(iii) for having been convicted of a crime under federal law. He was found guilty of that charge, and his license was revoked on October 26, 1994.

On January 11, 2001, Dr. Flores submitted the instant application for restoration of his physician license.

Recommendation of Peer Committee. (See attached Report of the Peer Committee.) The Peer Committee (Kavaler, Josephson, Kase) convened on May 3, 2005 to consider Dr. Flores' application for restoration of his physician license. In its report dated May 8, 2006, the Committee voted unanimously to recommend that Dr. Flores' application for restoration be denied.

Recommendation of the Committee on the Professions. On October 30, 2007, the Committee on the Professions (COP) (Ahearn, Muñoz, Earle) met with Dr. Flores to consider his application for restoration. He was not represented by an attorney.

The Committee asked Dr. Flores to explain the events that brought him to his present situation of having to seek restoration of his license. He explained that he had run a family medical practice in New York City since the early 1970's with no problems. His New York medical license was revoked following his conviction in Federal Court in 1993 of conspiracy to possess Dilaudid with intent to distribute the drug illegally. However, Dr. Flores maintained that he was innocent of the charges. He stated that new patients kept coming to his office seeking pain medication. Many sought renewal of a prescription for Dilaudid that they indicated had been prescribed to them at a hospital for cancer pain. These patients brought empty bottles with labels. They told him that they preferred to get a renewal prescription from him to avoid long lines at the hospital. Dr. Flores stated that he took a history and did a physical exam of each patient before renewing his or her prescription. He stated that he told them he would only renew the prescription once and after that they would have to return to the hospital. He told the Committee that he later learned that these patients were actually imposters who were being sent to him by a drug dealer and who then sold their prescriptions to the dealer, who, in turn, took the prescriptions to a pharmacist in Manhattan. Dr. Flores reported that the pharmacist contacted the Drug Enforcement Administration (DEA) and that the DEA put the drug dealer under surveillance for a long period of time. He indicated that neither the DEA nor the pharmacist ever told him what was going on. Dr. Flores told the COP that doctors rely on pharmacists to report prescription problems to them and that the pharmacist involved in his case was to blame for failing to notify him that there were problems with the prescriptions. The doctor asserted that his conviction was based on entrapment. However, in response to further questions by the COP, Dr. Flores, while maintaining his innocence, stated that he was remorseful for what happened and that he should have known what was happening and been more aware. He indicated that no one would be able to do this to him again.

The COP asked Dr. Flores to address the Peer Committee's concern with whether the public would be adequately protected if his medical license were returned to him, especially since he has not practiced medicine for the last 14 years. Dr. Flores maintained that he had kept up with the profession by reading medical journals and by taking continuing medical education courses provided on the internet. He informed the panel that he had practiced medicine for 25 years before his conviction with no problems and had been well-liked by his patients. Although he has been living again in San Salvador after getting out of prison, he had previously lived in New York City for over 40 years and wanted to return there to practice family medicine.

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

The COP agrees with the reasoning, findings and recommendations of the Peer Committee. Dr. Flores was entitled to maintain his innocence in regard to the Federal charges of which he was convicted in presenting his case before us. As noted above, however, in order to have his license restored, he must present a compelling case that he understood the seriousness of his public record in reference to the offense of which he was convicted, that he has achieved sufficient rehabilitation and re-education, and that the public would not be at risk if his license were returned to him. He failed to do so. We were particularly concerned about Dr. Flores' lack of proof of significant continuing education courses given the number of years that he has been out of practice, the fact that the documentation he did provide lacked appropriate certificates of completion, and his failure to prove that he was fully re-educated with respect to prescribing practices. We agree with the assessment of the Peer Committee that the safety of the public could very well be in jeopardy if Dr. Flores' license to practice medicine were to be restored at this time.

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 concur with the recommendation of the Peer Committee that the application herein be denied at this time.

Kathy Ahearn, Chair
Frank Muñoz
Steven Earle



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

VICTOR M. FLORES

REPORT OF
THE PEER
COMMITTEE
CAL NO. 20280

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

-----X
Victor M. Flores, hereinafter known as the applicant, was
previously licensed to practice as a physician in the State of
New York by the New York State Education Department. That
license was revoked as a result of a professional misconduct
proceeding. The applicant has applied for restoration of his
license.

On May 3, 2005, this Peer Committee convened to review this
matter and make the following recommendation to the Committee on
the Professions and the Board of Regents.

BACKGROUND INFORMATION

The written application, supporting papers provided by the
applicant and papers resulting from the investigation conducted

by the Office of Professional Discipline (OPD) have been compiled by the prosecutor from OPD into a packet that has been distributed to this Peer Committee in advance of its meeting and also provided to the applicant.

Listed below is the background information from that packet. Further details pertaining to these documents may be found therein.

PRIOR DISCIPLINE PROCEEDING

Action by the New York State Department of Health

December 2, 1994, The New York State Department of Health State Board for Professional Medical Conduct, Determination and Order #94-244, voted unanimously to revoke the applicant's license to practice medicine in the State of New York.

Specifications of misconduct

The applicant was charged with professional misconduct within the meaning of New York Education Law §6530 (9) (a) (ii), in that the applicant was convicted of committing an act constituting a crime under federal law.

Nature of the misconduct

Pursuant to the United States District Court, Southern District of New York Indictment Number 92 Cr. 704, on or about May 7, 1993, the applicant was found guilty after a jury trial of violating 21 USC 846, conspiracy to possess Dilaudid with intent to distribute. On or about April 4, 1994, the applicant

was sentenced to prison for a period of eight years to be followed by three years of supervised release.

The professional discipline proceeding upon which this matter was based was a "direct referral," based on the applicant having been convicted of a crime. As such, we are only provided with the name of the crime of which the applicant was convicted and some other paperwork showing the disposition of the matter in the criminal courts and the applicant's prison sentence.

However, based on statements by the applicant in his restoration application, and the characterization of his crime provided in the letter in our record from the Director of the Office of Professional Medical Conduct (OPMC), we can infer that the crime for which the applicant was convicted consisted of writing a large number of fraudulent prescriptions for Dilaudid, which were sold to or otherwise got into the hands of a major drug trafficker, who used the fraudulent prescriptions to obtain the drug for distribution and sale on the streets.

As will be apparent below, the applicant denies his guilt to the crime. Also, OPMC takes this opportunity to characterize the extent and scope of the applicant's activities. These characterizations by the applicant and OPMC are not officially corroborated by records from the criminal proceedings provided to us or the decision papers in the direct referral, but they do fill in for this Peer Committee the general nature of the crime

for which the applicant was convicted.

APPLICATION FOR RESTORATION

On January 11, 2001, the applicant executed the New York State Education Department's standard form for applying for restoration of licensure. The application contained information and attachments as referred to below:

Continuing Education

The applicant provided copies of various medical journals and Continuing Medical Education (CME) coursework completed through correspondence classes. There were no CME credit hours certificates provided with this application.

Submissions of Affidavits:

In support of his application, the applicant submitted 18 affidavits, 3 of which were from professional colleagues, 4 from community professionals and 11 were submitted from friends, family members and former patients.

Additional Attachments to the Application

The application included a personal statement from the applicant in which he expressed his remorse. The applicant stated that his being sentenced to eight years in prison caused moral and physical suffering, financial distress and anxiety due to his detachment from society. All of this his family has endured and is without question the basis for the regret the applicant has. He is aware of the damage that "drug trafficking"

is doing to the country and the applicant would like to help people who need medical attention in these cases.

In a statement made by the applicant in his application for restoration, the applicant claims that his conviction was based on allegations that were made by J.B., who refused to testify in court. Another witness, L.S., did testify to the allegations but this information was based on the information that he had received from J.B. The applicant claimed that this testimony was not credible in that it was "hearsay" information.

The applicant wrote in his statement that he is not a risk to the public and potential patients. He feels he has a very good medical background, has been in practice for more than 25 years, and, with the exception of these charges, has never had any problems with the law or any malpractice issues.

The applicant, in his personal statement attached to his application for restoration, listed the editorials and publications that he has read as part of his CME. In addition, the applicant stated that he plans on taking several other courses as soon as possible.

Also included in his personal statement is the applicant's explanation of events, as referred to above, and legal documents from the criminal matter, which appear to have been used in an appeal and/or to make the case for his innocence to the original conviction.

The applicant concluded by saying that he finished the sentence for which he had been convicted. He has paid for the alleged crime and feels he now should be allowed to go back to practice. The applicant respectfully begs this committee to consider the stress and financial burden that has been placed on his family and prays for a favorable decision.

INVESTIGATION BY OPD

Subsequent to the filing of the petition, OPD conducted an investigation for the purposes of this proceeding. Information from that investigation, including reports from the investigators and other documentation, was made part of the packet for the proceeding. Certain information from the packet has been summarized above. Among the information not summarized is a report from the investigator dated January 30, 2002.

The report summarizes an in-person interview with the applicant on December 13, 2001.

The report begins with an outline of the applicant's disciplinary history as filed by the New York State Department of Health, State Board for Professional Medical Misconduct.

The investigator noted that the applicant could not find nor provide Section "E" of his application for Restoration. This section states, "A Verification of Licensure in Another Jurisdiction Form (3R) must be submitted for each license (including all inactive licenses) listed."

Concerning the Continuing Education section of the restoration application, the applicant, in the investigative interview, stated that the correspondence courses were taken via computer after leaving prison. The applicant also stated that he read various journals while in prison and continues to read and do computer work. When asked about completion of coursework, the applicant said that he has no documentation to show that he completed the courses but that he would attempt to supply the information regarding the completion of coursework.

When asked about community service, the applicant said that he was not involved in any community service at this time.

At the time of the interview, the applicant stated that he was working for an organization called Patient Care Ind., which is located in Forest Hills, NY. The applicant is employed there as an attending intern in Home Health and they are aware of his revocation.

The applicant was informed that, in addition to missing documents previously stated, that there were second pages of some of the supporting affidavits that were also missing.

The investigator contacted people who had completed the affidavits and came up with the following information:

Dr. J.P. C. said that he did not fill out the affidavit, was aware of the applicant's problems and had no problem with the applicant receiving his license back.

R.V. said he did not fill out the affidavit form and was not aware of the applicant's problem.

Dr. R. G. stated that the applicant had given him the affidavit to fill out but did not remember filling out a second page. In addition, the doctor said that he was not aware of the problems that led to the revocation of the applicant's license.

Dr. C. T. called in support of the applicant. He stated that he was aware of the circumstances surrounding the applicant's revocation and has been a friend of the applicant's for 30 years.

The applicant was asked to make a statement about his feelings since the revocation. In response, the applicant stated that he had never committed any crime.

Other information on the record, not already summarized:

Letter dated November 13, 2001 from Dennis J. Graziano, Director, OPMC, expressing strong opposition to the restoration of the applicant's license. In summary, OPMC feel that the applicant's petition "contains no evidence that he fully understands the nature of his misconduct or accepts responsibility for his role in the crime for which he was convicted and sentenced".

PEER COMMITTEE MEETING

On May 3, 2005 this Peer Committee met to consider this matter. The applicant appeared before us pro se (without legal

representation). Also present was Frank Kenna, Esq., an attorney from the Division of Prosecutions, OPD.

The legal advisor to this Peer Committee, Andrew Tolhoff, reminded the applicant that he was entitled to representation by an attorney but the applicant chose to proceed *pro se*. In addition, Mr. Tolhoff explained the sequential procedure of the hearing process to the applicant.

The applicant began his opening statement with a short review of some of the circumstances that led to the criminal charges that had been brought against him. As was previously documented in his personal statement, the applicant explained that the accuser who made the criminal allegations against him never testified in court and that another person did testify but his information had come second hand. The applicant felt his constitutional rights were violated and that his attorney who represented him for the criminal matter did not make an appeal on the applicant's behalf.

After serving five years of an eight-year sentence, the applicant is now free and asks for his license back. He explained that he has spent all of his savings and has no means of living. The applicant feels he can work as a doctor and this is all he has known since graduation from medical school over 43 years ago. The applicant stated that he has been using the Internet and reading medical journals to keep up to date.

At this point the applicant finished his remarks but Mr. Tolkoﬀ reminded the applicant that the burden was on him to demonstrate why the panel can feel comfortable in giving him back his license. Mr. Tolkoﬀ reminded the applicant that this was his opportunity to say what he wishes and tell the panel whatever he can to convince them to rule in his favor.

The applicant continued his statement, explaining how he came to this country. The applicant graduated from the University of Mexico in 1959, went on to practice medicine in El Salvador for one year and came to the United States in 1961. The applicant began working in a hospital under a fellowship. He took the exam for medical graduates, passed, and then did his internship in Anesthesiology. The applicant took the New York licensing exam and passed in 1969. Shortly after, the applicant opened a family practice office. The applicant acknowledges that he is not board certified but did continue his fellowship with the American Society of Family Practice. During his time practicing, the applicant maintained over 50,000 records and during these years was never sued for malpractice, never committed a crime, never broke the law or even had a speeding ticket.

The applicant went on to say that serving his sentence for five years was one of the worst things in the world that could happen to a person. The applicant stated that being in prison at the age of 64 made survival very difficult. The applicant cannot

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accept the guilty verdict that was handed him but did pay for his crime and now believes that there is no reason why he should not get his license back.

The applicant further explained that his practice had mostly consisted of Spanish Americans or Puerto Rican Americans whose main language was Spanish. The applicant feels his bi-lingual skills were and will be very helpful to these people should he get his license back.

Mr. Kenna began his cross-examination by asking the applicant his current age and what kind of practice he envisioned doing. The applicant is currently 74 years old and would like to work in the same type of family practice he had previously. When asked whether he would be able to set up a practice at this point, the applicant responded that, with some financial help, he felt that he would be able to do so.

Mr. Kenna questioned the applicant about his current address. The applicant explained that he had just flown in from El Salvador the day prior and that he will stay with his son while in town. The applicant explained that he will wait here in the United States for a decision on his license restoration and would go back to his old country but does not want to practice there. The applicant verified that he was licensed to practice medicine in El Salvador.

Mr. Kenna then asked about the applicant's employment and financial status since being released from prison. The applicant stated that he has had a couple of employments but left each due to physical limitations and lack of reasonable income. Today he supports himself through the last of his savings and help from family.

The next series of questions all had to do with the affidavits the applicant submitted as part of his restoration packet. Mr. Kenna looked for clarification as to who some of the people were who in fact had signed these affidavits, who had filled out the affidavit forms, who notarized the forms and about the reliability and qualifications of the affidavits. The applicant verified that C.T. was a doctor who used to practice in New York City. The applicant stated that he had frequent contact with Dr. T. when they had worked at the same hospital and this was why he had asked for an affidavit from him. The applicant, when told by Mr. Kenna that Dr. T. had surrendered his license to practice medicine, said that his only knowledge was that Dr. T. had retired. He was unaware that Dr. T. had surrendered his license. When asked about the affidavit of R.A., the applicant stated that she was an elderly woman and that her son had helped her fill out the affidavit. The applicant had filled out the first part and then sent it to R.A. to complete. The applicant also

testified that he took two affidavits to have them notarized with the I.D.'s of the patients who filled them out.

Mr. Kenna asked the applicant about his feelings on being wrongly convicted and his attempt at appeal. The applicant stated that he never committed any crime. He did not have knowledge about the laws and criminal procedures so he did whatever the lawyers had told him to do. The applicant said that he did not understand the ramifications of his guilty verdict by trial. The applicant did appeal his conviction and the result was the higher courts' agreement with the original decision.

Mr. Kenna went on to ask about the applicant's CME, specifically his lack of attending any seminars. The applicant explained that he had the understanding that if you did not have a medical license then you could not get admission into seminars.

Dr. Josephson asked the applicant further questions about taking seminars. The applicant repeated his previous response and added that because they charge for these courses and they are very expensive, it would not be beneficial for him to take these classes by the American Medical Association (AMA) if they were not approved. Dr. Josephson asked the applicant who had told him that he could not take seminars if he were not a licensed medical professional. The applicant stated that NYU and Columbia University had told him they do not accept you without a license.

Mr. Kenna began his closing statement by making a recommendation to the Committee on the Professions that the applicant does not receive his license back. He stated that his position was two-fold.

Procedurally, Mr. Kenna feels the application made by the applicant is defective and if this were a true legal proceeding as opposed to an informal hearing, he would move to dismiss. If a motion were to be made, it would state that the applicant has not complied with the requirements of the statute in that you need to have five supporting affidavits backing up your application for restoration. The affidavits submitted are defective for the following reasons; 1) they were improperly executed because if something is executed in a foreign jurisdiction, the person making that has to either appear before the U.S. consulate for use of that document in a U.S. court or a notary, and if they go to any foreign jurisdiction they have to have their seal authenticated. 2) Within particular affidavits are various handwritings and two different languages. Also, Mr. Kenna found it very suspicious that the same people who may or may not have known each other went to the same notary on the same day.

In substance, there are three elements that the applicant is supposed to demonstrate in a restoration matter. They are: remorse, rehabilitation and reeducation.

Mr. Kenna feels that the applicant has failed in his reeducation. He asked that the panel, as professionals, evaluate whether they would send somebody out practicing at this stage of the game who had not taken courses and who has not maintained employment in an unlicensed capacity in the medical field. Mr. Kenna asked the panel to consider past restoration applications where the applicant has done everything humanly possible to stay on top of their profession.

As far as remorse is concerned, Mr. Kenna understands the applicant's position that he disagrees with the decision of the Office of Professional Medical Conduct, but the applicant was in fact convicted of a serious crime. There was strong evidence in the case and the applicant still maintains his position today that it did not happen. Mr. Kenna does not believe that this is remorse in any sense of the word. The applicant lacked evidence of character witnesses and any outpouring of support from patient's, family members, clergy or professional associates.

For the reasons stated, Mr. Kenna is asking that the application for restoration for the applicant's license to practice medicine in the State of New York be denied.

The applicant, in his closing statement, began by stating that there was nothing wrong with his restoration application. He explained that the reason that there were different handwritings was because a person who does not know how to write in Spanish

wrote them. A lot of his patients were willing to submit the affidavits but needed assistance in filling them out. The applicant stated that their information was truthful.

The applicant understands that although the forms may not have been filled out perfectly on his application, he is not a lawyer, and he could not afford to hire one to assist him in filling out these documents.

In speaking about his prison sentence, the applicant was told in prison that he would have been better off had he pleaded guilty to his charges versus being convicted by a jury. Apparently he was told that he might not have lost his medical license had he pled to his charges. The applicant found all this amazing.

As to his reeducation, the applicant says that if he gets his license back then he will take courses and understands he will need to gain knowledge to get up to date and practice effectively.

RECOMMENDATION

We have reviewed the entire record in this matter, including the written materials received before and during our meeting. In arriving at our recommendation, we note that, in a licensure restoration proceeding, the burden is on the applicant to demonstrate, that which would compel the return of the license. Greenberg v. Board of Regents of University of New York, 176 A.D. 2d, 1168, 575 N.Y.S. 2d 608, 609. In reaching our recommendation, we consider whether the applicant demonstrates

sufficient remorse, rehabilitation and reeducation. However, we are not necessarily limited to such formulaic criteria but may consider other factors, particularly the seriousness of the original offense and, ultimately, our judgment as to whether the health and safety of the public would be in jeopardy should the application be granted.

Initially, we note that we accept the applicant's explanations about the inconsistency of some of the affidavits submitted being caused by language problems and assistance provided to the writers of the affidavits, and we do not make any negative inferences against the application on that issue.

In terms of the criterion of remorse, the applicant clearly made mention of the strain, stress and financial burden these circumstances have brought to his family and himself.

In Melone v. State of N.Y. Educ. Dept., 581 N.Y.S.2d 894, the court stated "Petitioner need not surrender his contention that he is innocent of the original charges in order to be readmitted to his profession." Therefore, in cases where the applicant denies his guilt to the original misconduct, the criterion of remorse is undercut and limited in its usefulness. In these circumstances, we instead must consider the other criteria, particularly whether the public is protected.

In that regard, while this applicant is entitled to deny his past guilt, we still look for some acknowledgment from the

applicant of the seriousness of the public record and his need to convince us of his trustworthiness to have his license restored.

Rehabilitation and reeducation correlate with each other in that reeducation shows that positive steps are being made towards the rehabilitative process. The applicant admitted to this committee that he was not ready to practice yet and yet he lacked formal CME, especially for someone out of practice for so long. The applicant failed to explore all his options for CME. The applicant gave a very weak explanation of why he was not able to participate in seminars and the panel does not believe the applicant attempted to get the correct information. In addition, documentation of the limited CME that the applicant provided lacked the appropriate certificates showing the completion of coursework.

As part of both reeducation and rehabilitation, the applicant could have pursued employment in the health care environment (not constituting the practice of medicine). In fact, the applicant, who has been living in El Salvador and has a license to practice medicine in that country, could have sought employment there.

In terms of rehabilitation, the applicant seems to have no recognition of the significance of his conviction and his need to show education and understanding of prescribing practices. In its letter addressed to this proceeding, OPMC noted that part of its

VICTOR M. FLORES (20280)

investigation showed that the applicant was the largest prescriber in the state for this particular drug. The applicant can deny his past guilt, but even if he feels he was innocent, he must still speak to the public record and demonstrate why he is not at risk to prescribe controlled substances excessively which could get into the wrong hands. This committee is not convinced nor assured that the applicant would not go down this same road again.

For this reason and those mentioned previously, it is our judgment that the health and safety of the public would be at risk if the applicant were to be allowed to resume practicing medicine.

It is therefore the unanimous recommendation of this Peer Committee that the application before us for the restoration of the applicant's license to practice as a physician in the State of New York be denied.

Respectfully submitted,

Florence Kavalier, M.D.,
Chairperson,

Jordan S. Josephson, M.D.

Nathan G. Kase, M.D.

Florence Kavalier 5/8/06
Chairperson Dated