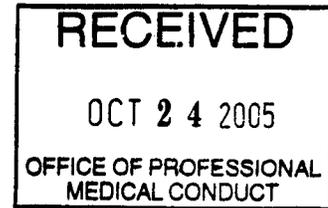




5-855

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

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Public

October 21, 2005

Jacob Neuman, Physician

REDACTED

Re: Application for Restoration

Dear Dr. Neuman:

Enclosed please find the Commissioner's Order regarding Case No. CP-05-05 which is in reference to Calendar No. 19517. 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: 
REDACTED

Gustave Martine
Supervisor

The
University of the
Education  State of New York
Department

IN THE MATTER

of the

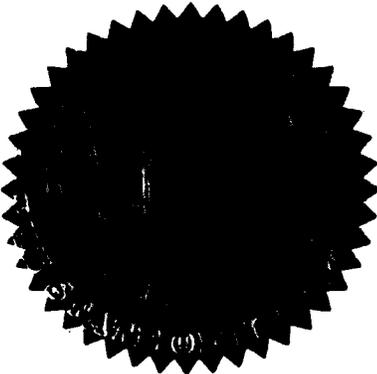
Application of JACOB NEUMAN
for restoration of his license to
practice as a physician in the State of
New York.

Case No. CP-05-05

It appearing that the license of JACOB NEUMAN, 8440 Avon Street, Jamaica, New York 11432, to practice as a physician in the State of New York, was revoked by action of the Administrative Review Board for Professional Medical Conduct effective May 26, 1997, and he having petitioned the Board of Regents for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, now, pursuant to action taken by the Board of Regents on September 9, 2005, it is hereby

ORDERED that the petition for restoration of License No. 150224, authorizing JACOB NEUMAN to practice as a physician in the State of New York, is denied.

IN WITNESS WHEREOF, I, Richard P. Mills,
Commissioner of Education of the State of New York for
and on behalf of the State Education Department, do
hereunto set my hand and affix the seal of the State
Education Department, at the City of Albany, this // 
day of October, 2005.



REDACTED
/ Commissioner of Education

Case No. CP-05-05

It appearing that the license of JACOB NEUMAN, 8440 Avon Street, Jamaica, New York 11432, authorizing him to practice as a physician, was revoked by action of the Administrative Review Board for Professional Medical Conduct, effective May 26, 1997, 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, now, pursuant to action taken by the Board of Regents on September 9, 2005, it was

VOTED that the petition for restoration of License No. 150224, authorizing JACOB NEUMAN to practice as a physician in the State of New York, be denied.

Case number
CP-05-05
August 3, 2005

THE UNIVERSITY OF THE STATE OF NEW YORK
The State Education Department

Report of the Committee on the Professions
Application for Restoration of Physician License

Re: Jacob Neuman

Not Represented by an Attorney

Jacob Neuman, REDACTED petitioned for restoration of his physician license. The chronology of events is as follows:

- 06/11/82 Issued license number 150224 to practice as a physician in New York State.
- 11/07/95 Charged with professional misconduct by Department of Health.
- 02/20/97 Hearing Committee of Office of Professional Medical Conduct revoked physician license.
- 05/19/97 Administrative Review Board for Professional Medical Conduct sustained Hearing Committee's determination of revocation.
- 05/26/97 Effective date of revocation.
- 10/04/99 Submitted application for restoration of physician license.
- 03/16/04 Peer Committee restoration review.
- 01/08/04(sic) Report and recommendation of Peer Committee. (See "Report of the Peer Committee.")
- 03/11/05 Committee on the Professions restoration review.
- 08/03/05 Report and recommendation of Committee on the Professions. (See "Report of the Committee on the Professions.")

Disciplinary History. (See attached disciplinary documents.) On November 7, 1995, the Department of Health charged Dr. Neuman with 47 specifications of professional misconduct involving his care of five patients. Specifically, he was charged with negligence on more than one occasion, incompetence on more than one occasion, fraudulent practice, filing a false report, excessive testing, failing to maintain an adequate record, and moral unfitness. A Hearing Committee of the State Board for Professional Medical Conduct concluded that Dr. Neuman had ordered excessive and unwarranted endoscopic procedures and fraudulently attempted to justify them by submitting fabricated pathology reports to the Office of Professional Medical Conduct. The Hearing Committee sustained allegations that Dr. Neuman ordered excessive tests not warranted by the condition of the patients, failed to have pathology evaluations performed, knowingly and falsely represented that Parkway Hospital had issued pathology reports, and failed to maintain an accurate record of patient evaluation and treatment. The Hearing Committee determined that he was guilty of 46 of the 47 specifications of professional misconduct and voted to revoke Dr. Neuman's physician license and imposed a \$50,000 fine. Dr. Neuman appealed the Hearing Committee's decision to an Administrative Review Board for Professional Medical Conduct. The Review Board sustained the penalty imposed by the Hearing Committee.

Dr. Neuman submitted an application for restoration of his physician license on October 4, 1999.

Recommendation of the Peer Committee. (See attached "Report of the Peer Committee.") The Peer Committee (Harris, Dweck, Riggins) met with Dr. Neuman on June 9, 2004 to review his application for restoration. In its report, dated January 8, 2004, (sic) the Committee voted unanimously to recommend that his application for restoration of his physician license be denied.

Recommendation of the Committee on the Professions. On March 11, 2005, the Committee on the Professions (Porter, Templeman) met with Dr. Neuman to review his application for restoration. An attorney did not accompany him.

The Committee explained to Dr. Neuman that one of the three members of the Committee on the Professions had a personal emergency and was unable to participate in the meeting. Mr. Porter informed Dr. Neuman that he could reschedule his meeting to a future date with three Committee members participating or could proceed with the two members present. Mr. Porter explained that if Dr. Neuman chose to proceed and the two Committee members present could not agree on a recommendation to the Board of Regents, a third Committee member would conduct a paper review of the application and participate in the final decision. Dr. Neuman stated that he wished to proceed with the two Committee members present.

The Committee asked Dr. Neuman to present his understanding of what led to the revocation of his license. He replied that the Office of Professional Medical Conduct (OPMC) asked for 20 of his patients' charts. He indicated that he later discovered that GHI Insurance had questioned the number of tests he had performed and referred his

name to OPMC. Dr. Neuman reported that although he was originally charged with over utilization of test procedures, there were never any patient complaints against him and no malpractice suits.

Dr. Neuman reported that he did not have a "very humble attitude" when he participated in the OPMC hearing. He indicated that the Hearing Committee consisted of a layperson, an OB/GYN specialist, and a gastroenterologist who "didn't like" him. Dr. Neuman said that he felt that his witness rebutted the evidence presented against him. He indicated that in 1996 there were no agreed upon standards for the use of colonoscopies and physicians relied on the training provided in their fellowships. He reported that he was taught to examine slides to help make those determinations. When OPMC informed him that the patients' files did not contain pathology reports, Dr. Neuman said that he panicked and subsequently created the reports. He explained that often he would read the slides with a pathologist in another hospital but, being busy, would sometimes forget to write up the reports for the patients' files. He said that he maintained the slides for the patients in question and that it wasn't his intention to deceive anyone when he later created the missing pathology reports. Dr. Neuman reported that a pathologist had reviewed the slides he developed for the five patients in question and testified that his treatment was appropriate in all cases.

The Committee asked if he felt the repeated endoscopic procedures were warranted. Dr. Neuman replied that he believed that they were based on the patients' conditions. He said that he disagreed with the OPMC finding that his medical records were incomplete as he felt that his "charts are excellent," although he conceded that the charts sometimes lacked laboratory reports. He said that the medical indications supporting the tests he ordered were in the files although the files may not have documented the laboratory results. Dr. Neuman told the Committee, "My mistake is I panicked. Under stress people do stupid things. I was trying to make everything right." He stated, "I lied. They should have revoked my license. I was punished." The Committee asked Dr. Neuman why the revocation was appropriate. He replied, "I could say anything to get a patient to agree to procedures to make money." He said that any implication that he performed extra tests just to make money were erroneous. He stated, "If I were greedy, I wouldn't touch GHI." He explained that they only paid \$350 for a sigmoidoscopy and \$400 for a colonoscopy. Dr. Neuman said that he did not surrender his license because he really thought he did not do any harm to his patients. He further indicated that "My remorse hasn't stopped."

Regarding the Peer Committee's report, Dr. Neuman said that he felt the Committee members had already determined his guilt. He indicated that they never read the entire OPMC report, just a summary. He said that he did not have the money to attend live CME courses and earned many CME credits through on-line courses that he felt were difficult. The Committee asked, "Do you feel you've maintained competency?" Dr. Neuman replied, "100 percent."

The Committee asked Dr. Neuman why he was remorseful. He replied, "I lied. I tried to pull the wool over the eyes of the OPMC panel." He said that his remorse was not related to the procedures that he did because he still felt that they were medically necessary. He explained that the patients came to him and the indications supported the tests he ordered. He indicated that guidelines now exist for the use of such tests. Dr. Neuman told the Committee that he has been punished and has paid the \$50,000 fine. He asked, "How much more do you want me to do." He stated, "I never did anything in my life to harm a patient."

The Committee asked Dr. Neuman what he had learned from the revocation experience that he could apply to a future practice if his license were restored. He replied that he would do a better job of tracking billing and coding and utilize software that documents everything and can't be changed. Additionally, he said that he would engage in discussions with his peers and the gastroenterology chief at the facility where the tests were being performed. He noted that the endoscopic procedures are now done in hospitals rather than physicians' offices. Dr. Neuman said that he would document everything and seek the presence of an anesthesiologist who would also document the procedure.

When questioned by the Committee regarding rehabilitation, Dr. Neuman said that the revocation of his license forced him into bankruptcy and that he "lost everything." The Committee asked about the differing accounts provided by he and his wife regarding the circumstances of his professional discipline as well as the sources of his family's income subsequent to such discipline. He indicated that he felt no need to relate the details of his professional discipline to his wife as she had "gone through enough already." He said, "It's my problem where I'm getting the money from." Dr. Neuman reported that he received treatment from a psychiatrist on three or four occasions but that the psychiatrist was subsequently killed in a skiing accident and there was no way for him to recover his treatment records. He said that he saw another psychiatrist who showed him literature on the effects of stress and then wanted money. Dr. Neuman stated, "This guy was a nut job." He told the Committee that he has been in counseling with a rabbi and completed an ethics course for 30 CME credits. He indicated that he has volunteered his services with ECHO Institute for Health by setting up a database for Holocaust survivors to secure necessary medical treatment. He additionally indicated that he has been working recently as an instructor for medical coding and billing.

In summary, Dr. Neuman stated that he is not now, and has never been, a threat to patients. He indicated that he never did anything to harm a patient. He said, "I lied and deserved revocation. I'm asking for a chance – even under supervision." He indicated that he realizes and regrets what he did because of stress. He said that he continues to help patients by driving them to appointments, talking to them, and helping them through serious illnesses. Dr. Neuman told the Committee, "I can do some benefit with the knowledge I have."

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 well-reasoned, comprehensive rationale presented by the Peer Committee. While Dr. Neuman has a right to disagree with the findings of the Office of Professional Medical Conduct, which led to the revocation of his license, the COP must, nonetheless, accept as a matter of record the misconduct upon which the revocation was based. Dr. Neuman concedes that he was guilty of lying and preparing fraudulent pathology reports. He blames his actions on stress. However, Dr. Neuman failed to present a convincing case that were he presented with stressful circumstances at some point in his future practice that he would not again resort to professional misconduct. The COP does not find Dr. Neuman's continuing education activities to be focused on the sources of his original misconduct. Similarly, if stress were the overriding factor, Dr. Neuman has failed to present convincing evidence from a professional counselor that he has identified the root causes of his behavior and taken the necessary steps to insure that such misconduct will not recur.

It is, likewise, unclear to the COP that Dr. Neuman has actually identified the misconduct for which he claims to feel remorse. He continues to state that he caused no harm to his patients, either physically or mentally. However, as the Peer Panel opined, "Even if we were to accept the applicant's assertion that there were no guidelines or recommendations at that time for colonoscopies, repeated annual testing of such an invasive nature raises significant questions about the applicant's motivation, let alone his oath to do no harm." We note that the Department of Health also questioned Dr. Neuman's remorse and stated, "Nowhere in the petition packet is there any acknowledgement regarding consequences that are not personal in nature."

The COP finds that the basic question of what would happen if Dr. Neuman were placed under similar stress at some future point in his professional practice has not been adequately answered. Without this clarification, the COP believes that the public could be placed at risk if his license were restored. In the final analysis, the COP finds that Dr. Neuman did not present a compelling case for the restoration of his license.

Therefore, after a careful review of the record and its meeting with him, the Committee on the Professions voted unanimously to concur with the recommendation of the Peer Committee that Dr. Neuman's petition for the restoration of his license to practice as a physician in New York State be denied at this time.

Joseph B. Porter, Chair
Leslie Templeman



The University of the State of New York

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

-----X
In the Matter of the Application of

JACOB NEUMAN

REPORT OF
THE PEER
COMMITTEE
CAL. NO. 19517

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

-----X
Jacob Neuman, 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. In February
1997 said license was revoked by the Office of Professional
Medical Conduct (OPMC), New York State Health Department, as a
result of a professional misconduct proceeding. The applicant has
applied for restoration of his license.

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.

PRIOR DISCIPLINARY PROCEEDINGS

Action by the State Board for Professional Medical Conduct:

OPMC Hearing Committee: On February 11, 1997, the OPMC Hearing Committee unanimously determined that the applicant was guilty of 46 out of 47 specifications of professional misconduct. The OPMC Hearing Committee determined that the applicant's license to practice medicine in the State of New York be revoked and imposed a fine of \$10,000 for each patient, for a total of \$50,000.

OPMC Appeals Board/Professional Medical Conduct Administrative

Review Board: On or about May 16, 1997 the Administrative Review Board (ARB), which considered the applicant's request for review of the determination of the OPMC Hearing Committee, unanimously sustained the determination on the charges and penalty of revocation set forth by the OPMC Hearing Committee, with the following modifications:

- 1) The ARB found the OPMC Hearing Committee findings that were based on uncharged conduct involving Patient E* to be harmless error, on the basis that said findings had no effect on the OPMC Hearing Committee's determination to sustain the misconduct specifications regarding Patient E's care; however, the ARB deleted the findings concerning the uncharged conduct;
- 2) The ARB modified the grounds for the imposition of the \$50,000

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

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fine: a) the ARB found the OPMC Hearing Committee's determination that the applicant's "untruthful testimony" warranted the imposition of a financial penalty to be incorrect, since the charges of misconduct did not include "untruthful testimony" and because offering untruthful testimony provided no independent ground on which to base a monetary penalty; however, the ARB concluded that the remaining sustained charges provided sufficient grounds for the imposition of the \$50,000 fine; b) the ARB found that the OPMC Hearing Committee's determination that the applicant's fraudulent conduct warranted the imposition of a financial penalty to be incorrect, since the charges of misconduct did not include allegations that the applicant fabricated records or committed other fraudulent conduct relating to Patient C's case; however, the ARB concluded that the remaining sustained charges provided sufficient grounds for the imposition of a fine in the amount of \$10,000 regarding Patient C.

Order of the Professional Medical Conduct Administrative Review

Board: May 19, 1997, the order enforcing the penalty was served by mail upon the applicant, effective no later than seven days after mailing by certified mail.

Specifications of misconduct: The applicant was charged with one specification of committing professional misconduct as defined in NYS Education Law, section 6530(3) (McKinney Supp. 1995) by practicing medicine with negligence on more than one occasion;

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with one specification of committing professional misconduct as defined by NYS Education Law, section 6530(5) (McKinney Supp. 1995) by practicing medicine with incompetence on more than one occasion; with 17 specifications of committing professional misconduct as defined in NYS Education Law, section 6530(2) (McKinney Supp. 1995) by practicing medicine fraudulently; with 17 specifications of committing professional misconduct as defined in NYS Education Law, section 6530(21) (McKinney Supp. 1995) by willfully making or filing a false report; with 15 specifications of committing professional misconduct as defined in NYS Education Law, section 6530(35) (McKinney Supp. 1995) by ordering excessive tests not warranted by the condition of the patient; with 5 specifications of committing professional misconduct as defined in NYS Education Law, section 6530(32) (McKinney Supp. 1995) by failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient; and with one specification of committing professional misconduct as defined in NYS Education Law, section 6530(20) (McKinney Supp. 1995) by engaging in conduct in the practice of medicine that evidences moral unfitness to practice.

Nature of the misconduct: The applicant treated Patients A-E from approximately 1983-1993. As to Patient A, male then in his fifties, from 1985 to 1989, the applicant performed colonoscopies on a nearly annual basis without adequate indication; the

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applicant failed to have pathological evaluations done on biopsies taken on three separate occasions; failed to maintain accurate patient records; and knowingly and falsely represented that Parkway Hospital (Parkway) issued pathology reports for Patient A when the applicant knew that the purported pathological reports were fabrications. The applicant fraudulently advised Patient A of the need for repeated colonoscopies in order to induce further testing and fostered in Patient A the belief that he had a pre-malignant colon condition, causing Patient A to live under stress from such diagnosis without confirmation that such condition existed.

As to Patient B, a 39 year old female, between 1985 and 1991, the applicant performed 3 colonoscopies without adequate indication; failed to have pathological evaluations done on biopsies taken on 5 separate occasions; knowingly and falsely represented that Parkway issued 5 pathology reports for Patient B when he knew that the purported pathological reports were fabrications; and failed to maintain accurate patient records, including but not limited to having fabricated pathology reports in patient charts.

As to Patient C, a 12-year-old female, the applicant performed one colonoscopy in 1989 and one in 1990 without adequate indication; performed 2 esophagogastroduoendoscopies in 1989 and 1990 without adequate indication; and in 1990 failed to refer her to a specialist for treatment of a retropharyngeal

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abscess.

As to Patient D, a 41 year old female, in 1990, the applicant performed 2 colonoscopies done without adequate indication; failed to have pathological evaluations done on biopsies taken on 3 separate occasions between 1987 and 1990; knowingly and falsely represented that Parkway issued 3 pathology reports when the applicant knew that the purported pathology reports were fabrications; and failed to maintain accurate patient records, including but not limited to knowingly including fabricated pathology reports in the patient record.

As to Patient E, a 23 year old female, between 1983 and 1993, the applicant performed 10 colonoscopies without adequate indication; failed to have pathological evaluations done on biopsies taken on 3 separate occasions between 1984 and 1993; knowingly and falsely represented that Parkway Hospital issued 3 pathology reports for Patient E when he knew that the purported pathology reports were fabrications; and failed to maintain accurate patient records, including but not limited to knowingly including fabricated pathology reports in the patient record.

APPLICATION FOR RESTORATION

On October 4, 1999, the applicant submitted the State Education Department's standard form for applying for restoration of licensure. The application contained information and attachments as referred to, below:

Entries in the basic application form:

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Continuing Education: The applicant lists over 200 CME credits from July 1997 through approximately 1999; a significant portion of the credits were earned through online computer courses. Actual physical attendance at the remaining courses was undocumented. The applicant provides a listing of the Grand Rounds he attended at Flushing Medical Center from January 1997 through December 1998.

Professional Rehabilitation Activities: On his basic application, the applicant lists that he has undergone psychiatric, clergy, and ethical counseling. However, there is no documentation that he undertook psychiatric counseling or counseling from a member of the clergy, nor did he provide with his application any documentation with his CME listing, noted above, that he undertook an internet ethics course.

Submissions of Affidavits: The Applicant submitted 9 affidavits and/or letters of support - 6 were from medical doctors and 1 from an optometrist.

Additional submissions at the Peer Committee meeting

Continuing Education: At our Peer Committee meeting of March 16, 2004, the applicant supplemented his basic application by providing copies of certificates of completion of online computer CME courses taken from about April 2001 to February 2004, for over 100 CME credits, taken primarily through Medscape, an on-line course service. The applicant provided documentation for attendance on September 23, 2003 at the Washington Hospital

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Center to view video/audio tapes on the topic of Gastroenterology Board Review. He also provided documentation that he completed 16 CME credits for the Annual Medical Ethics Convention on August 7-8, 1998, sponsored by the Catholic Medical Center.

Affidavits in Support: At the Peer Committee meeting on March 16, 2004, the applicant submitted an affidavit from Rabbi A.W., Director, the Kest National Jewish Institute for Health/ECHO Institute for Health, and an affidavit from Rabbi C.S, Director, Project Elderserve.

INVESTIGATIVE INFORMATION

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

- May 31, 2001 report of the OPD investigator for this proceeding which includes a summary of a May 7, 2001 interview of the applicant by the investigator in which the investigator noted that, as of said date, OPMC advised that the applicant had not paid his \$50,000 fine. (Subsequent to that interview and prior to our Peer Committee meeting, the fine was paid).

During the interview, the applicant stated that, during the course of the misconduct investigation, he discovered there were no pathology reports in the patient records. The applicant stated he panicked and then wrote pathology notes on Parkway Hospital's pathology report stationery and

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included them in the files. He says he had [previously] reviewed the slides with another physician but they never wrote the pathology reports. He characterized these acts as "... a terrible mistake and he will never do it again."

- May 8, 2003 letter from NYS Assistant Attorney General Kathleen Korvcinski advising that the applicant paid his \$50,000 fine, with Satisfaction of Judgment entered in the Albany County Clerk's office on May 5, 2003.
- May 29, 2001 letter from Dennis Graziano, Director, OPMC, stating his office's position on the current application as follows: OPMC opposed the applicant's request for the restoration of his medical license; the applicant had not paid his fine of \$50,000 and instead offered \$10,000 as payment for such fine, which was rejected by the Attorney General; the applicant had shown no evidence of remorse and focused solely on what he and his family have lost due to his inability to practice medicine; and the public must be protected from a physician whose veracity remains in question.

PEER COMMITTEE MEETING

On March 16, 2004 this Peer Committee met to consider this matter. The applicant appeared before us personally and was represented by an attorney, Ralph Erbaio, Esq. Also present was Jamieone Winston-Day, Esq., an attorney from the Division of Prosecutions, OPD.

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The applicant's attorney, Mr. Erbaio, described that, after the applicant obtained his medical license, he opened his practice in his home and, because of his office location, became a benefit to the community, giving above and beyond the usual kind of medical care. The applicant was the subject of an OPMC investigation because he falsified medical patient records and pathology reports, attributing this to "an extreme lack of judgment." Mr. Erbaio also acknowledged that the applicant was "less than forthright in the [underlying OPMC] hearing," which was inexcusable conduct. The applicant is now a changed individual, is active in his community, has kept up professionally by taking over 100 CME credits and by reading and consulting with other gastroenterologists, has recently paid the \$50,000 fine assessed against him in 1997, in the seven years since he lost his license has learned "humility" and gone through a "time of great personal turmoil, had no assets," filed bankruptcy, and was forced to borrow significant amounts of money from relatives, all of which caused him to become a changed individual. His changed attitude will greatly benefit his patients, and his experiences will help him avoid the mistakes of the past and enable the public to thereby benefit from his reeducation.

In his testimony before us, the applicant described his past misconduct:

He explained that he was contacted by OPMC investigators about certain procedures he had been performing; that at the time,

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in the 1990's, he did not know what OPMC was, but didn't think he had done anything wrong and so was not overly concerned; and he provided OPMC with 20 patient charts. OPMC's investigation centered around the absence of information in patient charts and the absence of pathology reports for procedures that the applicant had performed, as well as concerns reported by his insurer, GHI, about the numbers of procedures performed on a certain group of patients, Patients A-E.

The applicant explained away the concerns about the pathology reports as an error in judgment, stating that he would do a biopsy and write out the patient's information on the pathology, and brought it to Parkway when he did rounds. During the OPMC investigation and hearing, his then-attorney mentioned that if "we had pathology on these patients, you would have no problem." The applicant "had papers used by the pathology department at Parkway" which he used later to create the missing pathology reports, since he decided "I was going to fabricate [the reports]." He wrote the reports of the slides on the Parkway stationery that he had in his possession. He stated that "If I had only done it on a piece of paper, not on pathology of Parkway, I would not be where I am today, because the pathologist came and testified that these were accurate slides for those patients." He admitted he was "caught in a lie," that his "crime was that I lied on these pathology reports on Parkway stationery."

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He claimed that he "didn't think at that time, all he wanted to do was cover up that he didn't have those pathology slides in the charts, that it had been done, but was never recorded by him or the pathologist with whom he had worked on the slides." He noted that "None of us ever got any money from it ... it was never a thing of money." He noted that he did not even tell his wife about "going through the hearings" even though "they took months."

The applicant claimed that in the early 1990's there were no studies as there are today that provide guidelines on how frequently certain procedures [colonoscopies] should be done on patients, thus, it was a subjective determination by the physician to perform a colonoscopy when a patient presented with complaints. He characterized contrary medical opinions as simply "their opinion and [what they do] in their practice." He acknowledged that he had a problem with utilization with one of his insurers, GHI, which had reported the applicant to OPMC for over-utilization of procedures, but that he had no problems with any other insurance company. He indicated that the "fabricated pathology reports that he provided did not make any difference to the patient, it wasn't as though he said the patient had colon cancer and therefore needed a colonoscopy every day or every year. I didn't say anything the patient didn't present with or didn't have. The facts were true; it's just I lied."

When actually confronted with the Parkway pathologist as a witness at the underlying revocation proceeding, the applicant

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claimed he wanted to acknowledge his lies to that panel, but that his then-attorney advised against telling the truth, so the applicant continued to testify and cover up with further lies at that proceeding.

He claimed that he prided himself on his charts; that they were "immaculate," "excellent;" and yet the earlier panel had found his charts to be "horrible." It no longer mattered; it was a done deal; I lost my license and [wants] to plead for a second chance to do what he does best." He claimed he is a good physician and a great diagnostician, but never became board-certified because his chief of medicine didn't push to have the certification. He acknowledged taking and failing the certification exam by one point several times. He explained those results by saying he "is a lousy test-taker, but a great physician."

He stated he "did destroy a lot of patients' lives by not being a doctor today," since those patients have "gone to physicians who have made horrible mistakes and there is nothing he can do about that."

The applicant has supported himself by lecturing on medications like Prevacid, but he had an accident at home and began to receive disability from a private company, which later stopped payment. He applied for social security disability and began to receive payments, which he claimed would end in March 2004. From 1999-2001, he worked for a company called Daxor as a

JACOB NEUMAN (19517)

marketing agent but chose not to accept a salary because he preferred to have stock options, thinking he "would make his money that way." He did not "get any money" from Daxor, but obtained a position with the ECHO Institute of Health in Rockland County, NY, to set up a social program for Holocaust survivors under a grant. He established a medical database at ECHO, and he characterized that as one of the ways he stayed current in medical practice. It is not clear whether ECHO paid the applicant. His wife testified that her mother provided significant financial support to their family.

He also attended grand rounds at Flushing Hospital but could not sign in since he was not licensed, so he could not obtain medical credits, but this allowed him to "maintain current medical knowledge." He has done "hundreds, if not thousands of hours on different online programs for medicine, such as Medscape."

As his "brother-in-law was still maintaining his family," the applicant decided he had to do something. He stated he has done delivery work, driving trucks, and moving office furniture. Despite having no experience in it, he later became an instructor for medical billing and coding at Long Island Business Institute for \$30 per hour, 4 hours per week; he does similar work at Computer Career Center, at \$25 per hour, less than full-time.

He filed for bankruptcy and "lost everything" including three houses. He states that an association that his brother-in-law belongs to purchased the note on his residence but that he

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"doesn't know if his brother-in-law pays for the house while the applicant is living there and he's never asked." His wife testified that she is not sure if her brother-in-law purchased the note on their residence.

The applicant is active in his religious community by helping people to navigate the Medicare or insurance systems, and with billing questions. He has volunteered for 2-3 years with a program called Elderserve in Rockland County, run by Rabbi S., who provided an affidavit in support, helping people with referrals to doctors. He volunteers with Bikur Cholim and visits patients in hospitals, offering companionship.

He is in contact with his former chief of gastroenterology and refers many patients to him; he also discusses medicine with him to stay current. In 2003, he accrued 106 CME credits, in 2002 about 60-70 credits, and he has certification from Mayo. He took one medical ethics course in 1998, the year after his license was revoked. He has taken none since but attended the ethics seminar. He attends Digestive Disease Week to learn of new developments. He reads medical literature "all the time." He says he has gone to therapy with his wife but stopped about 4 years ago, deciding that he needed no further help.

He says he is a changed person and has become more humble and a person who talks to and seeks advice from everybody. He wants his license restored because he loves medicine and the idea of

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being able to save people's lives and that it is what he was born to do.

The applicant presented 3 character witnesses, 2 of whom had no knowledge of the specifics as to why the applicant's license was revoked. The third witness, the applicant's wife, was not aware at the time that the applicant was involved in an OPMC investigation or in subsequent hearings because the applicant did not tell her, as noted above.

The prosecutor, Ms. Winston-Day, opposed restoration of the applicant's license because, since his license was revoked, the applicant failed to acknowledge any responsibility for what occurred. She emphasized that, although the first two character witnesses stated the applicant was a "nice guy" and a "humble guy" since he lost his license, they actually did not know why the applicant lost his license. She pointed out that it was important to learn if the applicant has opened up and shared details with people who are asked to offer an opinion as to his character, and that their testimony demonstrated that the applicant failed to do that.

She highlighted the differences between the applicant's testimony and his wife's testimony -- each offered differing explanations for how their family was financially maintained throughout the years. This discrepancy raised the question whether the applicant was honest with his family and neighbors, as well as himself.

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Ms. Winston-Day further maintained that the applicant failed to acknowledge that his former patients suffered and were harmed as a result of his misconduct, and not just future patients who were deprived of the benefit of his treatment. She pointed out that the applicant referred to himself as an expert on coding but did not know if there was such a course or think there was a course in record keeping. Also, since 1998, he has taken only one course in ethics.

Finally, she noted that it wasn't until just before he was to appear before this panel that the applicant, upon his attorney's advice, paid the \$50,000 fine assessed in 1997.

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.

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Despite repeated questioning, the applicant failed to demonstrate that he was at all cognizant of the serious medical deficiencies that led to the revocation of his medical license. He perceived his problems as merely falsifying test results and lying at the previous OPMC hearing. He has not seriously explored or gained any insight into why he practiced as he did or why he felt it was appropriate to lie at the disciplinary proceeding.

Regrettably, he remains oblivious to the serious harm he caused his former patients, particularly Patient A, who was subjected to years of living in fear of developing cancer and was made to undergo numerous invasive procedures, with their attendant risks and discomforts, despite repeated tests that were negative for any kind of malignancy. The applicant was also found guilty of excessive procedures on other patients, including a 12-year-old girl. Even if we were to accept the applicant's assertion that there were no guidelines or recommendations at that time for colonoscopies, repeated annual testing of such an invasive nature raises significant questions about the applicant's motivation, let alone his oath to do no harm.

The applicant made it abundantly clear to this panel that he still does not understand why he was the subject of an OPMC investigation and subsequent revocation proceeding. Although he says he doesn't blame his then-attorney for his own decision to lie at the OPMC hearing, in fact, he does blame that attorney in all but his words.

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Faced with an obvious ethical lapse, the applicant saw fit to take only one medical ethics course and one seminar on the subject, both a number of years ago. This panel is aware that such courses are offered far more often and it would have been appropriate for the applicant to have availed himself of several more.

The applicant's testimony boils down to asserting that, if he had only lied less foolishly or carelessly, then he would not have lost his license. This demonstrates a clear lack of remorse as well as a lack of an understanding of the gravity of the harm of the professional omissions and of the absence of ethics and conscience that the public is entitled to in its medical practitioners.

The applicant was not open and honest with the very people he asked to testify on his behalf. None of them were truly aware of the extent of the applicant's misconduct, even his wife, who the applicant failed to tell of the OPMC hearings when they were pending. The applicant's explanations as to why other more informed witnesses were not available to testify on his behalf were not convincing.

There is no documentation that substantiates his claims of the psychological help he purportedly received. Unsurprisingly, the applicant declared that he was not in need of therapy early on after his license was revoked. He continues to demonstrate the attitude that he knows all and has no need for help from anyone --

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that he is the best source of information on how to go about doing something. For example, although the gravamen of his misconduct is premised in faulty ethics and poor record keeping, he has done little to remediate these problems and he is actually teaching courses in both subject areas with little more training than he had when his license was revoked. This panel is aware that there are many CME courses available in record keeping.

The applicant's claims that the pathology tests were done and that he drafted his own pathology reports are still not credible to this panel, nor are his claims that there were no standards of practice or guidelines available at the time of the OPMC investigation, since the Department would have been required to prove deviations there from. As to the issue of his social security disability -- we find it more than coincidental that the applicant is now ready to declare himself recovered in order to lay claim to the possibility of practicing medicine once again.

In spite of his claims that his family suffered financially since the loss of his professional medical income, he did not provide financial documentation to the Department of Health regarding the payment of his fine. It appears he only paid his fine when advised to do so by his attorney because it was the legally prudent thing to do before he attended this hearing, and not because it was an element of punishment for which he was prepared to accept responsibility.

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Most tellingly, the applicant minimizes whatever misconduct he does acknowledge as "mistakes," by characterizing them as "errors in judgment," even though the untruths he told went to the heart of the credibility of the system, and the practice specifications he was found guilty of constitute a grave danger to the health and safety of the public.

Finally, the only harm he sees to potential patients is that he is no longer able to practice. This attitude only reinforces our general impression that the applicant shows no insight into the gravity of his misconduct and continues to perceive himself as the most important source of correct information on how to practice medicine. Thus, it cannot be said that the applicant has demonstrated sufficient personal growth to claim the rehabilitation required for the restoration of his medical license.

As to the applicant's reeducation -- he offers spare information, mostly correspondence courses, rather than in person or "hands-on" courses, and no accompanying evidence of true competence. Interestingly, he was able to secure funds to pay his fine upon applying for restoration, yet could not find funding to attend live CME courses to obtain the kind of retraining needed to remedy the serious deficiencies in his former practice. It cannot be said that the applicant has presented sufficient evidence of reeducation such that he is entitled to restoration of his medical license.

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For the reasons set forth above, it is the unanimous recommendation of this Peer Committee that the application before us be denied.

Respectfully submitted,

David Harris, M.D., Chairperson

Monica Dweck, M.D.

Delores Riggins, Public Member

REDACTED

Chairperson

Date