

Public

The University of the State of New York Department of Education



IN THE MATTER

of the

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

Case No. CP-09-22

It appearing that the license of RAJENDRA GUPTA, 5 Beverly Road, Great Neck, New York 11021, to practice as a physician in the State of New York was surrendered by Order of the State Board for Professional Medical Conduct effective August 29, 2003, and he having petitioned the Board of Regents for restoration of said license, and the Regents having given consideration to said petition and having reviewed the record, and having agreed with and adopted the recommendations of the Peer Committee and Committee on the Professions, now, pursuant to action taken by the Board of Regents on September 15, 2009 as reflected in the attached Vote, it is hereby

ORDERED that the petition for restoration of License No. 109890, authorizing RAJENDRA GUPTA 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 30th day of September, 2009.

Redacted Signature
Interim Commissioner of Education

Case No. CP-09-22

It appearing that the license of RAJENDRA GUPTA,

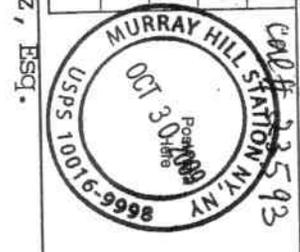
, to practice as a physician in the State of New York, was surrendered by Order of the State Board for Professional Medical Conduct effective August 29, 2003, and he having petitioned the Board of Regents for restoration of said license, and the Regents having given consideration to said petition and 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 September 15, 2009, it is hereby

VOTED that the petition for restoration of License No. 109890, authorizing RAJENDRA GUPTA to practice as a physician in the State of New York, is denied.

U.S. Postal Service
CERTIFIED MAIL RECEIPT
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Postage	\$ 1.80
Certified Fee	2.80
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Total Postage & Fees	\$ 6.90



Sent To: Alfredo F. Mendez, Esq.
 Attorney at Law
 Street, Apt. No.: 630 Third Avenue, 5th Floor
 or PO Box No.
 City, State, ZIP+4: New York, New York 10017
 PS Form 3800, April 2002 See Reverse for Instructions

9-655



State of the State

IN THE MATTER
 OF
 RAJENDRA GUPTA
 (PHYSICIAN)

OFFICIAL USE

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

Postage	\$ 1.80
Certified Fee	2.80
Return Receipt Fee (Endorsement Required)	2.30
Restricted Delivery Fee (Endorsement Required)	4.50
Total Postage & Fees	\$ 10.80



Sent To: Rajendra Gupta, Physician
 Street, Apt. No.: 5 Beverly Road
 or PO Box No.
 City, State, ZIP+4: New York, New York 11021

X-----X

STATE OF NEW YORK)
 COUNTY OF ALBANY) SS.: A

Redacted Signature _____ 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.

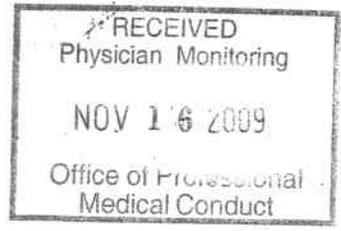
On the 30th day of October, 2009, I personally delivered to the United States Postal Office, located at 34th Street and Park Avenue, New York, New York 10016 the Duplicate Original Order of the Commissioner of Education Case No. CP-09-22, in reference to Calendar No. 23593 and the Vote of the Board of Regents by Certified Mail - Return Receipt requested to the respondent herein named at 5 Beverly Road, Great Neck, New York 11021 & Alfredo F. Mendez, Esq., Attorney at Law, 630 Third Avenue, 5th Floor, New York, New York 10017.

Certified Mail Receipt No. 7002 0860 0000 6467 1759

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

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

Redacted Signature
 NELLIA L. BEAZES-McNEARY
 Notary Public, State of New York
 Registration #01BL6054271
 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: **Rajendra Gupta**

Attorney: Alfredo F. Mendez

Redacted Address

Rajendra Gupta, petitioned for
restoration of his physician license. The chronology of events is as follows:

- 08/17/71 Issued license number 109890 to practice as a physician in New York State.
- 06/10/02 Pled guilty to Healthcare Fraud, a felony, in U.S. District Court, Southern District of New York.
- 06/24/03 Sentenced to 24 months of imprisonment followed by three years of supervised release and ordered to pay \$402,186 in restitution.
- 08/05/03 Charged with professional misconduct by the Office of Professional Medical Conduct of the New York State Health Department, based on the federal conviction.
- 08/27/03 Surrender Order BPMC No. 03-227.
- 08/29/03 Effective date of Surrender Order.
- 01/04/07 Application submitted for restoration of physician license.
- 11/07/07 Peer Committee restoration review.
- 12/20/07 Report and recommendation of Peer Committee.
- 09/30/08 Committee on the Professions meeting with applicant.
- 09/01/09 Report and Recommendation of Committee of the Professions.

Disciplinary History. (See attached disciplinary documents.) On June 10, 2002, Dr. Gupta pled guilty in federal district court to charges of Health Care Fraud for submitting claims to insurance companies for medical services that were not in fact rendered. The fraudulent billings occurred from 1994 until 2001. Among the services for which Dr. Gupta submitted bills but which he did not perform were EKGs, X-rays,

sigmoidoscopies, laryngoscopies, and blood examinations. On June 2, 2003, he was sentenced to serve 24 months in prison followed by three years of supervised release. He was also ordered to pay restitution in the amount of \$402,186, which was to be paid in monthly installments of 15% of his gross monthly income, without interest. The restitution was to reimburse insurance companies who had paid for the fraudulent claims. On August 5, 2003, the State Board for Professional Medical Conduct served a statement of charges on Dr. Gupta for professional misconduct based on his federal conviction. Dr. Gupta surrendered his license, effective August 29, 2003.

On January 4, 2007, Dr. Gupta 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, Cordice, Diamond) convened on November 7, 2007 to consider Dr. Gupta's application for restoration of his physician license. In its report dated December 20, 2007, the Committee voted unanimously to recommend that Dr. Gupta's application for restoration be denied.

Recommendation of the Committee on the Professions. On September 30, 2008, the Committee on the Professions (COP) (Templeman, Cannell, Hanson), met with Dr. Gupta to consider his application for restoration. He was represented by Alfredo F. Mendez, Esq.

The Committee asked Dr. Gupta to explain the events that resulted in the surrender of his license and his application for restoration of his license. He explained that his medical office had used a paper system for billing until an employee working in his office asked that they obtain a computer to use for billing purposes. Dr. Gupta stated that he did not know anything about computers at the time but that he did get a computer for her to use. The applicant related to the Committee that, at some point, the employee began billing improperly and excessively. He indicated that he found out about her improper billing because he noticed extra money was coming into his office. He reported to the Committee that he told his employee to stop the improper billing but that she continued with it. When questioned by the COP about the employee's motives for billing improperly, Dr. Gupta stated that he did not know why she had done it. He indicated that he should have fired her but did not. He admitted that the fraudulent billing continued for at least two years after he discovered what was happening and that he was the only one to benefit from the actions of his employee. He later pled guilty to Health Care Fraud charges and spent 20 months in jail followed by three years of supervised release, which ended on April 24, 2008.

The COP asked Dr. Gupta to explain how much he had paid of the over \$400,000 in restitution that he was ordered to pay to the insurance companies that he had defrauded. Dr. Gupta stated that he has been paying the restitution off at a rate of 15% of his income, which amounts to about \$450 per month. He told the COP that he still owed approximately \$389,000.

The COP then asked Dr. Gupta to respond to the observation in the Peer Committee's report that his failure to accelerate "the leisurely [restitution] scheme formulated by federal court" was an indication of lack of true remorse. The COP also

asked Dr. Gupta whether the repayment plan approved by the federal court would prevent him from making a good faith effort at paying the restitution back quicker. In response Dr. Gupta's attorney, Mr. Mendez, indicated that the federal court system had done a thorough pre-sentence investigation into Dr. Gupta's assets, which showed that the real property in his possession was jointly owned with his wife and that the properties were purchased and maintained primarily by her. Dr. Gupta's wife, who is a physician, had taken the position that she had done no wrong and should not be made to pay with her assets. Mr. Mendez told the COP that the federal court determined that it would not be fair for the restitution to be paid from her assets, and therefore ordered the restitution to be paid from Dr. Gupta's income at a rate of 15% of his income each month. Dr. Gupta added that if it were possible, he would pay more than \$450 a month to pay off the restitution, but he only makes \$12 an hour at the present time. He indicated that if he could work again as a physician, he would pay more. When asked by the COP how much money he gained from the fraudulent billing, Dr. Gupta responded that he did not know. Regarding what happened to the money, Dr. Gupta stated that it had gone toward various expenses, including taxes and legal fees.

In reference to his present employment, Dr. Gupta indicated that he was working as Assistant Finance Officer at Ridgewood Dialysis Center. The COP asked what he had learned about billing procedures by working at Ridgewood. Dr. Gupta responded that he was not involved in medical billing at Ridgewood and admitted that he had not taken any education courses about billing since the loss of his license.

The COP asked Dr. Gupta to explain to them how they could feel confident that he would not bill fraudulently again, should his license be restored, especially since he had allowed the improper billing to go on for several years. Dr. Gupta responded that he had never been involved with fraudulent billing prior to the events that led to his conviction in 2002 and that he is a fully qualified doctor who has paid for his crime. He stated that he was sorry for his prior actions and knew that he would not engage in such misconduct again.

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 report and recommendation of the Peer Committee. As noted by that Committee, Dr. Gupta appears to have made substantial efforts to remain up-to-date in his profession by his regular attendance at grand rounds at two hospitals. However, we do not find that he has presented a compelling case in favor of restoration. He indicated that the billing fraud was carried out by an employee in his office, but, notwithstanding his responsibility for the operations of his office, he allowed the improper billing to continue for two years after he became aware of it. We are also concerned that the applicant did not provide any information about how the improper billing was done and did not indicate any understanding of the billing process. After reviewing the entire record and meeting with the applicant, we are not convinced that he has a real appreciation of the magnitude of the crime of fraud to which he pled guilty. In addition, since losing his license, he has not taken any courses in billing, nor has he taken any ethics courses in an effort to rehabilitate himself. As a result, we cannot be confident that he would not engage in similar acts of misconduct in the future.

We agree with the Peer Committee that Dr. Gupta did not present a substantial showing of remorse and rehabilitation. Noting the substantial assets that he owns jointly with his wife, we also agree that, notwithstanding the court's determination that he need pay only 15% of his income toward restitution, he could have made, but chose not to make, a greater effort to pay off the restitution in a reasonable amount of time. Such accelerated repayment of the restitution amount might have demonstrated both his acceptance of responsibility for his misconduct and his rehabilitation by providing prompter reimbursement of the entities that he defrauded.

Based on all of the foregoing, a complete review of the record, and its meeting with him, the Committee on the Professions voted to concur with the recommendation of the Peer Committee that the application herein be denied at this time.

Leslie Templeman, Chair
Jeffrey Cannell
Stanley Hansen



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

Rajendra Gupta, M.D.

REPORT OF
THE PEER
COMMITTEE
CAL. NO. 23593

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

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Rajendra Gupta, hereinafter also known as the applicant, was previously licensed to practice as a physician in the State of New York by the New York State Board of Regents. The applicant's license was surrendered to the Office of Professional Medical Conduct, New York State Health Department, in disposition of a professional misconduct proceeding, and he has applied for restoration of his license.

Chronology of Events

- | | |
|----------|---|
| 08/17/71 | Issued license no. 109890 to practice medicine in the State of New York. |
| 06/10/02 | Pled guilty to Healthcare Fraud, a felony, in United States District Court. |
| 06/02/03 | Sentenced to 24 months imprisonment followed by three years of supervised release, and ordered to pay restitution of \$402,186. |

08/05/03 Charged with professional misconduct by the Department of Health.
08/27/03 Surrender Order BMC No. 03-227.
08/29/03 Effective date of Surrender Order.
01/04/07 Application for restoration of license to practice medicine submitted.
11/07/07 Peer Committee restoration review.

BACKGROUND INFORMATION

The written application with supporting papers provided by the applicant, and papers resulting from the investigation conducted by the Office of Professional Discipline (OPD), were compiled by the prosecutor from OPD into a packet that was distributed to this Peer Committee in advance of its meeting and also provided to the applicant.

Listed below is information from that packet, which was also submitted as an exhibit on the day of the meeting. Further details pertaining to these documents may be found therein.

PRIOR DISCIPLINARY HISTORY

Action by State Board for Professional Medical Conduct

Case No. BMC 03-227

On or about August 5, 2003, the Bureau of Professional Medical Conduct served a Statement of Charges alleging that the applicant had committed professional misconduct as defined in New York Education Law §6530(9)(a)(ii) for having been convicted of a federal crime. The charge stemmed from the applicant's conviction after a guilty plea to Healthcare Fraud in violation of 18 USC 1347 for submitting claims to insurance companies for medical services that were not in fact

rendered. The fraudulent billings occurred from 1994 to 2001. Some of the services that were billed for but not performed were EKG's, x-rays, sigmoidoscopies, laryngoscopies, and blood/feces examinations. The applicant pled guilty to the charges in United States District Court for the Southern District of New York on June 10, 2002. On June 2, 2003 he was sentenced to serve 24 months in prison, which was to be followed by three years of supervised release. He was also ordered to pay an assessment of \$100. and restitution in the amount of \$402,186., which he was to pay in monthly installments of 15% of his gross monthly income, without interest. The restitution money was to be paid to six different insurance companies who had paid the fraudulent claims, with over half of the money to be paid to GHI.

On July 29, 2003, the applicant submitted an application to surrender his license in which he did not contest the charge against him set forth in the Statement of Charges. On August 27, 2003, the State Board for Professional Medical Conduct executed Surrender Order BPMC No. 03-227, accepting the surrender of the applicant's license, effective August 29, 2003.

APPLICATION FOR RESTORATION

Applicant submitted a restoration application dated January 4, 2007, with attachments, some of which are summarized below.

Continuing Medical Education & Community Service

Applicant submitted a pamphlet from North Shore University Hospital indicating a schedule of grand rounds that were offered by its Department of Medicine from May 3, 2005 through December 12, 2006, which included 56 lectures. The applicant indicated in his application that he had attended all of the grand rounds on the schedule. He also indicated in his application that he had

attended grand rounds at Wycoff Medical Center from May 2005 through December 2006. In May 2007, the applicant provided a copy of additional schedules for grand rounds that were offered at North Shore University Hospital from January 2007 through December 2007 that he indicated he had taken or planned to attend in the future. He also furnished a letter from the director of his Hindu temple in Flushing describing his active participation in the temple community and his assistance with their food drives.

Supporting Affidavits

Applicant submitted six affidavits in support of his application, all of which recommended him as a caring and competent physician. Three of the affidavits were from physicians who had worked with the applicant and three were from individuals who had been treated by him or whose family members he had treated. The affidavit from Dr. Scherr, a former Chairman of the Department of Medicine at North Shore University Hospital, who had worked with the applicant for almost 15 years, indicated that the applicant was a doctor with superior skills. He verified that the applicant had been attending grand rounds at the hospital.

Rehabilitation Activities

The applicant indicated in his application that he had been working full time in the finance unit of the Ridgewood Dialysis Center since May 2005, and as a result, had gained additional knowledge about billing and collecting procedures in the field of medicine.

Additional Attachments

The applicant provided a claims report from his medical malpractice carrier, indicating that from 1975 through the time he surrendered his license, there had been only five claims made against him, two of which were closed without payment. The other three were closed out after payments of

amounts between \$95,000. and \$195,000.

DEPARTMENT'S EXHIBITS

OPD Investigators Reports

The Investigator's Case Summary Report dated June 20, 2007 included a brief synopsis of meetings between the investigator and the applicant, a review of the supporting affidavits provided by the applicant, and a review of his federal conviction and punishment. A report of an interview by the investigator with the applicant on May 3, 2007 was also provided. In the interview, the applicant indicated that he had only pled guilty to the federal charges on the advice of his attorney. His employee had done the actual improper billing. He admitted to the investigator that he had become aware of the situation and had not told anyone. The report also outlined the applicant's discussion about his attendance at grand rounds and how he was keeping current in his profession by reading, as well as his comments about his prison experience, the repayment of his restitution at the rate of \$450. a month based on his present income, and other issues regarding his application for restoration. He told the investigator that his present lifestyle had not changed much following the loss of his license, since his wife makes good money and they have income properties. He still drives a Mercedes, lives in the same home, and his two daughters attend Harvard. There was also an addendum report by the investigator dated June 25, 2007, accompanied by a sworn statement by the applicant, in which the applicant stated that he had never practiced medicine after the surrender of his license.

Records From the Office of Professional Medical Conduct, New York State Health Department

These records were referenced previously in setting forth applicant's prior disciplinary

tory.

Letter from Keith W. Servis, Director of Professional Medical Conduct, dated June 29, 2007

The position taken by the Office of Professional Medical Conduct was a recommendation to deny the application, and that it not even be considered until the applicant had completed his criminal probation period and had satisfied his restitution order.

Other Pertinent Documents

- Exhibit 3 Certified copy of applicant's June 10, 2002 guilty plea in United States District Court.
- Exhibit 4 Certified copy of applicant's sentencing in United States District Court on June 2, 2003.
- Exhibit 5 Judgment filed June 3, 2003 in United States of American v. Gupta referencing the \$402,186. restitution to be paid to six insurance companies.
- Exhibit 13 May 24, 2007 telephone contact report by OPD investigator with U.S Attorney's Office indicating that Dr. Gupta was still under supervised release until December of 2007.
- Exhibit 14 May 24, 2007 letter from the U.S. Department of Justice indicating that \$393,325.35 of the \$402,186. restitution to be paid by the applicant was still outstanding and was being paid at a rate of \$450. a month.

PEER COMMITTEE MEETING

On November 7, 2007 this Peer Committee met to consider this restoration matter. The applicant appeared before us personally and was not represented by an attorney. The applicant was

advised of his right to have an attorney present and selected to proceed without one. Michael Gary Hilf, Esq. represented the Division of Prosecutions, OPD.

The first witness produced by the applicant was his wife, Dr. Kusum V. Gupta. Mrs. Gupta testified generally that her husband's conviction had caused quite an ordeal for her and her two daughters, but they had gotten through it together. She has worked very hard and has paid tuitions for both daughters to go to Harvard. She stated that her family could be put "back together as a whole" if her husband were given back his license.

On cross-examination, Mrs. Gupta indicated that she was aware that her husband still owed about \$392,000. of the restitution he was ordered to pay. When asked about property that she and her husband owned jointly, Mrs. Gupta identified the following properties: 1) a five bedroom home in Great Neck, N.Y. that presently has no mortgage on it; 2) a two bedroom, two bath condominium in East Hampton; 3) a medical office building in Bayside, Queens, that still has a mortgage of approximately \$270,000. requiring monthly payments of \$4,000., that is rented out for \$5,000. a month; 4) a two family home in Port Washington, N.Y. where each unit has two or three bedrooms and two baths, and each unit is rented out for \$1600. or \$1700. a month, that still has a mortgage on it of about \$250,000.; and 5) a second two family home in Port Washington, where each unit also has two or three bedrooms and two baths and which are each rented out for \$1600. or \$1700. a month, but which has no mortgage on it at the present time. She testified that although she and her husband own the properties jointly, her money paid for them initially. Her husband also independently owns an IRA of an amount unknown to her.

Mrs. Gupta further testified that her husband stopped working at his medical office on July 2003, and that she drove him to the Otisville facility where he was imprisoned on July 31, 2003.

Once he was out of prison, he worked at a position for \$10. an hour, and then took another position at the Ridgewood Dialysis Center, earning \$12. an hour. His income at the present is about \$35,000. a year, which includes his Social Security payments. He is paying back the restitution he owes by paying 15% of his gross earnings as the judge had mandated, which comes out to about \$5,000. a year. Mrs. Gupta stated that her husband had had a solo practice separate from hers for almost thirty years, and she had been unaware of the acts that lead to his conviction. She and her husband had filed joint tax returns. Her income between 2000 and 2003 was approximately \$350,000. a year, but she could not recall what her husband had earned. She denied knowledge as to what became of the over \$400,000. that her husband was convicted of stealing. She emphasized that if her husband's license were to be restored, the restitution could hopefully be paid back shortly.

The only other person who testified at the hearing was the applicant himself. Dr. Gupta testified that he believes he should be given his license back because he is a fully qualified doctor and because he has paid for his crime and is paying his restitution in accordance with the judge's order based on his present income. If he were to get his license back, he would be able to pay the rest of the restitution quicker. He noted that he is board certified in the United States in internal medicine and also has a certificate in anti-aging. He has attended grand rounds at North Shore Hospital and the doctors there are pleased with his capabilities.

When asked by the panel to explain why the deviations that lead to his conviction had occurred, Dr. Gupta had no response. He stated simply that a girl in his office had started billing for procedures that had not been performed. He found out about it, told her not to do it, but never did anything about it. That is why he pled guilty. He did testify at one point that once HMO's had become prevalent, his income had changed a lot. He indicated that he felt that no one besides himself

was harmed by his actions. "I didn't do anything wrong to any patient, the hospital, or this or that, or any doctor." He stated that "the only one person in the office who got hurt was me." He did admit that he was the only one who gained any money from the billing procedures. When asked if he thought that others had indeed been harmed by the theft, such as the insurance companies, Dr. Gupta indicated that he thought that insurance companies "make enough." The panel asked Dr. Gupta what had happened to the \$400,000. that he had stolen . Dr. Gupta stated that the money was all gone. Some of it was used for taxes, some was spent on family expenses and on the properties, and some money was stolen from his bank account by a "friend" who is now dead. He never told the police nor his wife about this theft.

The panel questioned Dr. Gupta about whether he felt he had a moral obligation to pay back the money that he had stolen and if he had considered selling some of his jointly owned property to pay it off. Dr. Gupta emphasized that he was paying the money back at the rate required by the court and asked why he should pay any more. He testified that he did not know how much his net worth was, how much his five properties were worth, nor the value of his IRA.

In his closing argument, Mr. Hilf questioned the veracity of Dr. Gupta's claim that he did not know his net worth, suggesting that Dr. Gupta was a wealthy man who should have been paying back the money that he had stolen at a faster rate despite the ruling by the court, pointing out that at the rate Dr. Gupta was paying it back, it would not be paid back over his lifetime. In his closing, Dr. Gupta stressed that he had completed his full punishment, and that prison had been the worst experience of his life. He had worked hard there, eaten horrible food, given medical lectures every week, and had helped other prisoners at any time of day. He could not explain why the theft occurred that it had, and he had accepted the punishment. Dr. Gupta stated that medicine is his life and he has

all of the educational requirements to be a doctor. He apologized for his mistakes and indicated that he sincerely wanted to pay off his restitution with a return of his license.

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 his license. Greenberg v. Board of Regents of University of New York, 176 A.D.2d 1168.

In reaching our recommendation, we consider whether the applicant has demonstrated sufficient remorse, rehabilitation, and re-education. However, we may consider other factors, particularly the seriousness of the original offense, and our judgment as to whether the health and safety of the public could be in jeopardy should the application be granted.

In our meeting, we had the opportunity to observe, evaluate, and question Dr. Gupta personally. We have no reason to believe that he has not kept up with his profession since the time that he stopped practicing in 2003, as he claimed, by attending grand rounds. However, he failed to demonstrate to us sufficient remorse or rehabilitation to warrant a return of his license, despite his stated apology for his actions.

When asked why he had become involved in the fraudulent billing, Dr. Gupta had no response. He apparently has gained little personal perception into the reason for his actions.

Furthermore, his stated belief that no one was injured by his actions besides himself, indicated to us that he has no insight into the moral or ethical issues concerning his actions, nor the impact such theft

has on society and the image of the medical profession. His comment that insurance companies have enough money, which implied that he felt that they had not really been harmed by the theft, was further indication to us of his lack of true remorse and lack of rehabilitation. As a result, we cannot be sure that such acts would not reoccur.

Finally, the fact that Dr. Gupta has not bothered to pay more than a small portion of the over \$400,000. judgment against him to repay the insurance companies from whom he stole money, regardless of the leisurely payback scheme formulated by federal court, when he has significant assets, is further indication of his lack of true remorse. The crime committed by Dr. Gupta was a very serious offense, involving the theft of large amounts of money over a period of seven years, thus requiring, in our eyes, a substantial showing of remorse and rehabilitation.

We also note that Dr. Gupta relied on the fact that he had been working in a finance unit of an establishment to show that he had acquired more experience in billing as a form of rehabilitation. However, the crime committed by Dr. Gupta did not come about as a result of mistakes in billing, but as a result of fraudulent billing that he had become aware of himself. Certainly some courses in ethics would have been more likely to address rehabilitation issues relating to his specific offense.

It is the applicant's burden to submit evidence that would compel a discretionary vote to restore his license, since the restoration of a license "is permissive and will be granted only in exceptional cases." Chaudry v. Mills as Commissioner of Education of the State of New York, 285 A.D.2d 849. See also Nehorayoff v. Mills as Commissioner of Education of the State of New York, 95 N.Y.2d 671,675. We simply do not believe that Dr. Gupta has met his evidentiary burden in this case.

Therefore, it is the unanimous recommendation of this Peer Committee that the application before us be denied.

Respectfully submitted,

Florence Kavalier, MD, Chair
John V. Cordice, MD
Martin Diamond, DO

Redacted Signature


Chairperson

Dated

10/07