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

OFFICE OF PROFESSIONAL DISCIPLINE  
(718) 246-3060/3061

195 MONTAGUE STREET - FOURTH FLOOR  
BROOKLYN, NEW YORK 11201



March 3, 2010

*4/13/10  
JPR done*

Angel Prado, Physician

Re: Application for Restoration

Dear Dr. Prado:

Enclosed please find the Commissioner's Order regarding Case No CP-09-24, which is in reference to the restoration of license number 105129. This order and any decision contained therein goes into effect five (5) days after the date of this letter.

Very truly yours,

LOUIS J. CATONE, Director  
Office of Professional Discipline  
By:

ARIANA MILLER  
Supervisor

DJK/AM/er

Enclosure

**CERTIFIED MAIL - RRR**

cc: Ralph A. Erbaio, Jr.

The  
University of the  
Education

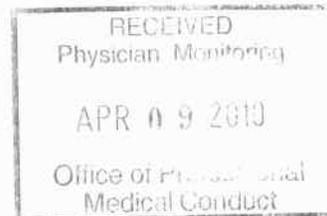


State of New York  
Department

IN THE MATTER

of the

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



Case No. CP-09-24

It appearing that the license of ANGEL PRADO,  
to practice as a physician in the State of New York, was revoked by the  
Administrative Review Board for Professional Medical Conduct effective on or about September  
4, 2001, 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 accepted the recommendations of the Peer Committee and the Committee on the  
Professions, except having adopted the terms of probation recommended by the Committee on  
the Professions, now, pursuant to action taken by the Board of Regents on November 17, 2009, it  
is hereby

ORDERED that the petition for restoration of License No. 105129, authorizing ANGEL  
PRADO to practice as a physician in the State of New York, is denied, but that the execution of  
the order of revocation of said license is stayed, and said ANGEL PRADO is placed on  
probation for a period of five years under specified terms and conditions, and upon successful  
completion of this probationary period, his license to practice as a physician in the State of New  
York shall be fully restored.



IN WITNESS WHEREOF, I, David M.  
Steiner, 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 3 day of February, 2010.

  
Commissioner of Education

Case No. CP-09-24

It appearing that the license of ANGEL PRADO,

to practice as a physician in the State of New York, was revoked by the Administrative Review Board for Professional Medical Conduct effective on or about September 4, 2001, and he having petitioned the Board of Regents for restoration of said license, and the Regents having given consideration to said petition and having agreed with and accepted the recommendations of the Peer Committee and the Committee on the Professions, except having adopted the terms of probation recommended by the Committee on the Professions, now, pursuant to action taken by the Board of Regents on November 17, 2009, it is hereby

VOTED that the petition for restoration of License No. 105129, authorizing ANGEL PRADO to practice as a physician in the State of New York, be denied, but that the execution of the order of revocation of said license shall be stayed, and said ANGEL PRADO shall be placed on probation for a period of five years under specified terms and conditions, and upon the successful completion of this probationary period, his license to practice as a physician in the State of New York shall be fully restored.

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: **Angel Prado**

Attorney: Ralph A. Erbaio, Jr.

Angel Prado, \_\_\_\_\_, petitioned for restoration of his physician license. The chronology of major events is as follows:

- 11/03/69 Issued license number 105129 to practice medicine in New York State.
- 07/14/00 Charged with Professional Misconduct by Department of Health.
- 04/05/01 Department of Health revoked license to practice medicine.
- 08/28/01 Administrative Review Board (ARB) affirmed Committee's findings on most charges, but sustained additional charges of moral unfitness and imposed a \$40,000 fine in addition to the license revocation.
- 08/16/02 New Jersey State Board of Medical Examiners revoked license to practice in New Jersey based on New York action.
- 01/02/03 New York State Appellate Division, Third Department affirmed the ARB decision.
- 10/03/03 Florida Department of Health indefinitely suspended license to practice in Florida based on New York action.
- 02/28/05 Application for Restoration submitted.
- 09/18/06 Peer Committee Restoration Review.
- 10/30/06 Report and Recommendation of Peer Committee. (See "Report of the Peer Committee.")
- 10/17/07 Committee on the Professions Restoration Review.
- 10/06/09 Report and Recommendation of Committee on the Professions

**Disciplinary History.** (See attached disciplinary documents.) On July 14, 2000, the Department of Health (DOH) charged Dr. Prado with professional misconduct for practicing medicine with gross negligence, negligence on more than one occasion, gross incompetence, incompetence on more than one occasion, engaging in fraudulent practice, failing to maintain proper patient records, and engaging in conduct evidencing moral unfitness. The charges stemmed primarily from Dr. Prado's alleged failure to keep appropriate written records of ten patients, hereinafter referenced as patients A through J, from 1983-1998. The Hearing Committee of the State Board for Professional Medical Conduct (BPMC) sustained the charges that alleged that Dr. Prado practiced medicine with negligence on more than one occasion with respect to his treatment of all ten patients, sustained the charges of gross negligence as to patients B, C, G and H, sustained the charge of fraudulent practice in falsely reporting his treatment of patients A, C, D, and J to their health insurers, and found that he had failed to maintain accurate medical records for all ten patients. The Committee revoked Dr. Prado's license to practice medicine in New York. Both BPMC and Dr. Prado sought review by the Administrative Review Board for Professional Medical Conduct (ARB). The ARB affirmed the Committee's findings with regard to the charges that were sustained, as well as its decision to revoke Dr. Prado's license, but modified the Committee's determination by sustaining additional charges on the allegations of moral unfitness, and by adding a \$40,000 fine. Both the Hearing Committee and the ARB found the applicant not guilty of charges of incompetence on more than one occasion, gross incompetence, and fraud. Dr. Prado sought judicial review of the ARB decision. The Appellate Division, Third Department affirmed the ARB decision in its entirety on January 2, 2003. As a result of the action against his license in New York, Dr. Prado lost his licenses to practice in New Jersey and in Florida.

On February 28, 2005, Dr. Prado submitted the instant application for restoration of his New York physician license.

**Recommendation of the Peer Committee.** (See attached report of the Peer Committee.) The Peer Committee (Kavaler, Diamond, and Kase) convened on September 18, 2006. In its report dated October 30, 2006, the Committee voted unanimously to recommend that Dr. Prado's application for restoration be granted, to the extent that the revocation of his license be stayed and that he be placed on probation for a period of five years under specified terms and conditions, including a requirement that he practice medicine only in a supervised setting in an Article 28 facility, Veteran's Administration Hospital, or other government facility, with quarterly performance reports.

**Recommendation of the Committee on the Professions.** On October 17, 2007, the Committee on the Professions (O'Grady-Parent, Hansen, Earle) met with Dr. Prado to consider his application for restoration. Ralph A. Erbaio, Jr., his attorney, accompanied him. The Committee asked Dr. Prado to explain the events that had led up to the loss of his license. Dr. Prado explained that he had started performing plastic surgery back in the 1970s, mostly in Spanish-speaking communities. He told the Committee that, at that time he was a sole practitioner and did not give proper attention to paperwork. He stated that, when patients came in to see him, his approach was to talk to the patient, to obtain a history, and to conduct a physical examination, but that he did not consistently record that information in the patients' records. He stated that no

harm came to any patient, but that he now recognizes that it is very important to take a full history, including a full family history, of his patients, and that all that information, as well as his treatment of the patient, should be fully documented. He indicated that he was found in the prior disciplinary proceedings to have failed to properly document medical histories, his physical examination of the patient, and his follow-up treatment. Upon further questioning by the Committee, Dr. Prado indicated that he was also found to have mislabeled medical procedures that he had provided to patients in order to secure insurance coverage for the procedure. He explained that some patients had requested cosmetic surgery but could not afford to pay for the surgery themselves. In order to assist these patients, he admitted to having noted in the patients' records that certain procedures he had performed were medically necessary, when in fact, they were cosmetic. For instance, on one occasion, he identified a breast augmentation as a lumpectomy.

Dr. Prado emphasized that he is aware of the great pain and suffering that he caused his family, friends, and colleagues by his prior actions. He told the COP that he understands why his errors led to the revocation of his license and understands the importance of good recordkeeping, especially to enable subsequent providers to know exactly what symptoms a patient had had and what procedures he or she had undergone. He emphasized that he has taken an eight hour course in recordkeeping and has also spent numerous hours with colleagues reviewing proper recordkeeping and billing procedures. In addition, in order to keep up with his profession, he has taken numerous continuing medical education courses and has attended seminars.

When asked by the Committee how they could be assured that his inappropriate actions would not reoccur, Dr. Prado explained that he has the deepest regrets for his prior errors and that they would never happen again because he would never want to expose his family and friends to the shame that he had caused in the past. He reported that he is still very embarrassed and troubled by his prior misconduct both at a personal and professional level. He stated that he hopes to get his license back in order to earn once again the respect of his family and peers and so that he can help people by being a good physician. He emphasized that being a doctor is the only type of work that he knows and that he wants to use those skills to make amends for his misconduct. He further indicated that he agreed with the decision by the Peer Committee and had no objection to their proposed probationary terms. However, he suggested that in addition to being able to practice in an Article 28 facility and in the other facilities listed, that he might also be allowed to practice in a private setting if he were practicing under the direct supervision of another physician.

The overarching concern in all restoration cases is the protection of the public. New York Education Law §6511 gives the Board of Regents discretionary authority to make the final decision regarding applications for the restoration of a professional license. Section 24.7 of the Rules of the Board of Regents charges the COP with submitting a recommendation to the Board of Regents on restoration applications. Although not mandated by law or regulation, the Board of Regents has instituted a process whereby a Peer Committee first meets with an applicant for restoration and provides a recommendation to the COP. A former licensee petitioning for restoration has 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 concurs with the analysis of the evidence and the recommendations of the Peer Committee as set forth in its comprehensive and well-reasoned report. We believe that Dr. Prado has presented a compelling case that he understands the nature, causes, and effects of his misconduct, that he is remorseful concerning the actions that led to the revocation of his license, and that he has sufficiently re-educated and rehabilitated himself for restoration purposes. Dr. Prado expressed to the Committee a true passion for his career and genuinely expressed his embarrassment for his past acts. He is adamant about his desire to provide the best possible medical care in the future.

We note that Dr. Prado has undertaken a significant amount of continuing medical education in his specific field, has taken recordkeeping courses to address a major deficiency in his practice as identified in the disciplinary proceeding against him, has worked extensively with other physicians in reviewing the proper maintenance of medical records and appropriate billing procedures, and has participated in the Dominican Republic in mini-residency-type re-education programs in the areas of internal medicine, obstetrics and gynecology, pediatrics, and surgery. All of these efforts are significant factors in our recommendation. However, it is now eight years since Dr. Prado's license was revoked. In order to provide additional assurance that he is currently competent to return to practice, we recommend that, prior to engaging in the practice of medicine, he take and pass the Special Purpose Examination (SPEX) of the Federation of State Medical Boards.

The COP is satisfied that it is highly unlikely that the misconduct involved in this case will recur. We note that Dr. Prado's application was strongly supported by several physicians who had been in close contact with him. We also believe that, with (1) the addition of the SPEX exam, (2) the provision of additional flexibility in the settings in which the applicant may practice, and (3) the addition of a tolling provision for periods when the applicant is not engaged in the practice of medicine in New York State, the probationary terms recommended by the Peer Committee should be adopted to assure that the public will be protected.

Based on all of the forgoing, a complete review of the record, and its meeting with him, the Committee on the Professions votes unanimously to recommend that the order of the Commissioner of Health revoking Dr. Prado's license be stayed; that he be placed on probation for a period of five years in accordance with the terms of probation set forth in the Terms of Probation of the Committee on the Professions, annexed hereto as Exhibit "A"; and that, upon satisfactory completion of the probationary period, his license be fully restored.

Erin O'Grady-Parent, Chairperson  
Stanley Hansen  
Steven Earle

EXHIBIT "A"

TERMS OF PROBATION  
OF THE COMMITTEE ON THE PROFESSIONS

ANGEL PRADO

CALENDAR NO. 22856

1. That the applicant, during the period of probation, shall be in compliance with the standards of conduct prescribed by the law governing his profession;
2. That the applicant shall submit written notification to the New York State Department of Health, addressed to the Director, Office of Professional Medical Conduct, New York State Department of Health, 433 River St., Suite 303, Troy, N.Y. 12180-2299, of any employment and/or practice, his residence, telephone number, or mailing address, and of any change in his employment, practice, residence, telephone number, or mailing address within or without the State of New York;
3. That the applicant shall submit written proof from the Division of Professional Licensing Services (DPLS), New York State Education Department (NYSED), that he has paid all registration fees due and owing to the NYSED and he shall cooperate with and submit whatever papers are requested by DPLS in regard to said registration fees, said proof from DPLS to be submitted by the applicant to the New York State Department of Health, addressed to the Director, Office of Professional Medical Conduct, as aforesaid, no later than the first three months of the period of probation;
4. That the applicant shall submit written proof to the New York State Department of Health, addressed to the Director, Office of Professional Medical Conduct, as aforesaid, that 1) he is currently registered with the NYSED, unless he submits written proof that he has advised DPLS, NYSED, that he is not engaging in the practice of his profession in the State of New York and does not desire to register, and that 2) he has paid any fines which may have previously been imposed upon the applicant by the New York State Department of Health, said proof of the above to be submitted no later than the first two months of the period of probation;
5. That the applicant shall, during the period of probation, only practice the profession of medicine in an Article 28 facility, Veterans Administration Hospital, or other government facility in New York State, or in another setting and under such supervision as may be approved by the Director, Office of Professional Medical Conduct;
6. That, prior to engaging in the practice of medicine, the applicant shall take and receive a passing score on the Special Purpose Examination of the Federation of State Medical Boards, with proof of the receipt of passing score being provided to the Director, Office of Professional Medical Conduct;

7. That the applicant shall have quarterly performance reports submitted to the New York State Department of Health, addressed to the Director, Office of Professional Medical Conduct, as aforesaid, from his employer, evaluating his performance as a physician in his place of employment, said reports to be prepared by respondent's supervisor or employer;
8. That the period of probation shall be tolled during periods in which the applicant is not engaged in the active practice of medicine in New York State. The applicant shall notify the Director of OPMC, in writing, if the applicant is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. The applicant shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon the applicant's return to practice in New York State; and
9. That upon receipt of evidence of noncompliance with or any other violation of any of the aforementioned terms of probation, the New York State Health Department may initiate a violation of probation proceeding and/or such other appropriate proceedings.

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

-----X

In the Matter of the Application of

ANGEL PRADO

REPORT OF  
THE PEER  
COMMITTEE  
CAL. NO. 22856

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

-----X

On or about November 3, 1969, the New York State Education Department issued Angel Prado (hereafter "the applicant") license No. 105129 authorizing him to practice as a physician in New York State. On July 14, 2000, the Bureau of Professional Medical Conduct of the New York State Department of Health issued a Statement of Charges that set forth various specifications alleging that the applicant committed professional misconduct.

By letter dated August 28, 2001, the Administrative Review Board (hereafter "ARB") of the New York State Department of Health notified the applicant that his New York State license to practice medicine was revoked. In its determination, the ARB affirmed in part and modified in part the determination of the Hearing Committee that had conducted the hearing in the disciplinary proceeding. Accordingly, the ARB (1) affirmed the Hearing

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Committee's determination that the applicant (the respondent in the disciplinary proceeding) practiced with negligence on more than one occasion and failed to maintain accurate records for 10 patients, practiced with gross negligence in treating four patients, and practiced fraudulently in the billings for four patients; (2) affirmed the Hearing Committee's determination that the applicant was not guilty and dismissed those charges alleging fraud relating to his application to Cabrini, all the charges of gross incompetence, and all the charges of incompetence on more than one occasion; (3) held that the Hearing Committee's determination contained insufficient findings to support the additional guilt sought by the prosecution regarding charges of gross negligence and fraud and, therefore, denied prosecution's request to modify the Hearing Committee's determination finding the applicant not guilty of such charges; (4) overturned the Hearing Committee's determination regarding four specifications involving charges of moral unfitness and held that the applicant was guilty of such four specifications of the charges; (5) affirmed the Hearing Committee's determination that revoked the applicant's license to practice medicine in the State of New York; and (6) modified the Hearing Committee's determination as to penalty by adding a \$40,000 fine.

The Appellate Division, Third Department, confirmed the determination of the ARB and dismissed the applicant's Article 78

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petition seeking judicial review of such administrative determination. Prado v. Novello, 301 A.D.2d 692 (3rd Dept. 2003). The Court determined that the applicant's challenges to the findings regarding gross negligence and negligence had not been preserved for judicial review. In addition, the Court disagreed with the applicant's remaining contentions that the determination of the ARB that he was guilty of fraud and moral unfitness was not supported by sufficient evidence.

More than three years after the applicant's license was revoked, the applicant signed, on February 28, 2005, an application for the restoration of his license to practice medicine in New York State and submitted this application to this agency. His restoration application is now before this Peer Committee.

#### PROFESSIONAL MISCONDUCT

As stated by the Appellate Division, the charges of professional misconduct by the applicant "largely stemmed from" his failure to keep written records of his treatment of 10 patients between 1983 and 1998. The findings of fact of the Hearing Committee, which were accepted by the ARB, show that the applicant failed to adequately document the care and treatment that he provided to each of the 10 patients. In the eight patient cases of Patients A-H, the applicant failed to record an adequate history, failed to record adequate physical examinations, failed

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to record adequate and accurate patient complaints, care and/or treatment, and failed to record an adequate and accurate operative report/record. In the cases of Patients I and J, the applicant was guilty of a subset of these recording failures. In both of these two cases, the applicant failed to record adequate and accurate patient complaints and care and/or treatment, and failed to record an adequate and accurate operative report/record. In addition, the applicant failed to record adequate physical examinations in the case of Patient J. The applicant was also guilty of negligence on more than one occasion based upon these record-keeping failures in the 10 patient cases.

The findings of fact show that the applicant's patient records were inadequate. For instance, his patient record for Patient A noted the patient's complaint and briefly described the physical examination of the limited area of the complaint. However, the applicant did not mention any family or personal medical history in Patient A's record. Although the applicant noted that A was allergic to penicillin and was currently taking "the pill", he did not obtain any other additional history of the patient.

In the cases of Patients B, C, G, and H, gross negligence was established, based upon the applicant's failure to record an adequate and accurate operative report/record in these four cases. We note that since the determination of gross negligence was only

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based upon the applicant's failure to record an adequate and accurate operative report/record, the applicant was not determined to have committed any gross negligence relating to either the treatment or the results of the treatment that he provided to these 10 patients.

The other major area where the applicant was found guilty related to his falsely reporting to the health insurers for Patients A, C, D, and J the treatment that he had rendered to these patients. The applicant was guilty to the extent indicated of the fourteenth, sixteenth, seventeenth, and twenty-third specifications of fraud. Without enumerating, as the Hearing Committee had, the specific paragraphs of the charges that were and were not sustained, the ARB found the applicant guilty of the thirty-fifth, thirty-seventh, thirty-eighth, and forty-fourth specifications of moral unfitness based upon his intentionally misrepresenting the purpose of the surgical procedures that he performed. In billing the insurance companies for ostensibly necessary surgical procedures for these four patients, the applicant concealed from the insurers the true nature of the cosmetic surgery that he performed. The applicant made these misrepresentations, in these four cases, in order to qualify such patients for health insurance reimbursement.

Both the Hearing Commissioner and ARB found the applicant not guilty of all the charges regarding gross incompetence and

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incompetence on more than one occasion. Therefore, they did not sustain any of the allegations with respect to all of the ten patients, in the twelfth and thirteenth specifications, concerning any alleged lack of the requisite skill or knowledge to practice medicine. Also, both the Hearing Commissioner and ARB found the applicant not guilty of the charges regarding fraud based upon the applicant's application for appointment to the medical staff of the Cabrini Medical Center. As found by the Hearing Committee, the applicant did not conceal his prior relationship with Lenox Hill when he applied for this appointment (finding of fact 149) and there was insufficient evidence that he answered the question on the application with an intent to deceive (finding of fact 148). Furthermore, in the final determination, the applicant was found not guilty of all the charges of gross negligence concerning patients A, D, E, F, I, and J (the second, fifth, sixth, seventh, tenth, and eleventh specifications); and not guilty of all the charges of fraud and moral unfitness concerning patients B, E, F, G, H, and I (the fifteenth, eighteenth, nineteenth, twentieth, twenty-first, twenty-second, thirty-sixth, thirty-ninth, fortieth, forty-first, forty-second, and forty-third specifications). Curiously, the moral unfitness charged in the thirty-fifth specification was sustained by the ARB based upon the findings of the Hearing Committee, even though the Hearing Committee did not sustain the

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factual allegations in paragraph A5 (see, page 30 of the Hearing Committee report), which is the only one of the allegations in the thirty-fifth specification to allege the applicant acted with any intent to deceive. Furthermore, the applicant was neither charged with nor found guilty of any professional misconduct regarding his malpractice insurance coverage.

APPLICATION FOR RESTORATION

On February 28, 2005, the applicant signed and subsequently submitted an application to restore his license to practice as a physician in the State of New York. His application contains various information, documents, and affidavits in support.

The applicant wrote a letter explaining his reasons for submitting his application for restoration. In this letter, the applicant expressed his "deepest regrets" for his "errors" and his understanding of why those errors led to the revocation of his license. He also recognized the "pain, suffering, and embarrassment" he caused his family and friends and the shame he suffered as a consequence of his professional misconduct. The applicant further states that he has taken the steps to "insure that those errors are never repeated."

The applicant writes, in his letter along with his application for restoration, that he has "spent numerous hours with many colleagues reviewing proper record-keeping and billing procedures." He states that he has pursued both formal and

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informal retraining in order to be "worthy of a second chance." This retraining is shown, in this letter, to include continuing medical education courses geared to record-keeping and current techniques in surgery; working closely with former colleagues in their active practice; and reading professional journals extensively. The applicant also wrote that based upon his retraining following the revocation of his license, he now realizes the "seriousness of potential dangers" from failing to follow "indicated procedures."

The application for restoration includes the applicant's employment history starting from February 1964. His residency at various hospitals included surgery and general surgery. As shown in the applicant's Curriculum Vitae, the applicant was engaged in private practice between July 1972 and June 1974 and then again between 1977 and 2001. During July 1974 to June 1976, the applicant was employed as a plastic surgery resident at a hospital.

The application for restoration shows that the applicant performed community service, subsequent to the revocation of his license, at the Holy Apostles Soup Kitchen where he performed various tasks in helping to feed the hungry and homeless. A February 9, 2005 letter from the Programs Coordinator at this Soup Kitchen verifies that the applicant had completed 120 hours of community service with this program beginning in February 2004.

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The applicant has found his experience in the soup kitchen to have "awakened" his "desire to help others."

The application for restoration and the addendum to that application show the continuing education taken by the applicant subsequent to the revocation of his license. This continuing education includes seminars in Medical Records Law and Advance Cardiovascular Life Support. It also includes continuing education courses in Chemical Peel, Round Block Technique for Mastopexy, Rhytidectomy, Rhytidectomy Long Flap Technique, Forehead Lift, Art of Blepharoplasty, Dermabrasion, Submental Lipectomy, and Endoscopic Augmentation Mamoplasty. In addition, the applicant has watched videos in various subjects including the Latest Advances in Cosmetic Surgery, and has read magazines, by subscription, regarding Plastic Surgery and Surgery. The applicant states that he also has "worked closely with former colleagues to see first-hand how these educational skills are utilized in an active practice" and has had the opportunity to review record-keeping and billing practices with licensed physicians. According to the applicant, his educational preparation, through both formal courses and mentoring from colleagues, has provided him with "greater insight and an appreciation for proper record keeping practices" and "a better understanding of appropriate billing practices."

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In his application for restoration, the applicant claims that after devoting more than thirty years to the medical profession, he endured "severe economic hardship" due to his inability to earn a living after the revocation of his license. The applicant not only asks for the opportunity to prove that he is now worthy of holding a license to practice medicine in New York State, but also gives his assurance that, if his license is reinstated, he would practice his profession "at the highest standards of care."

DOCUMENTS IN SUPPORT OF APPLICATION

Along with his application, the applicant submitted affidavits from seven physicians who know him for a long time and recommend the restoration of his professional license. Letters expressing support for the applicant and declaring a willingness to offer the applicant part-time employment and supervision accompanied two of these affidavits. One affidavit, dated February 7, 2005, recommends the restoration of the applicant's license because the affiant believes the applicant is honest, capable, and reliable, and would be an asset to his professional community. Another affidavit, dated January 26, 2005, recommends the restoration of the applicant's license because the affiant believes the applicant has been "rehabilitated professionally" and that he would be "capable to serve the community and take excellent care of his patients." Another theme common in these affidavits in support is that the applicant was known by these

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physicians to have made a "remarkable effort" to improve "his knowledge on record-keeping and other important medical matters."

PANEL MEETING

On September 18, 2006, this panel met to consider the instant restoration application and the evidence submitted and positions asserted by the parties. The applicant appeared in person and was represented by his attorney Robert Conroy, Esq. The Office of Professional Discipline (hereafter "OPD") was represented by Joan Handler, Esq.

Prior to our meeting, the Office of Professional Discipline provided each panel member with a packet that, among other things, included a copy of the applicant's application for restoration, various papers supporting such application, the decision and other papers from the disciplinary proceeding resulting in the revocation of the applicant's license, inspection reports prepared prior to the original meeting of this panel, and the letter from the Director of the Office of Professional Medical Conduct stating the Health Department's view as to this application. Neither party objected to our receipt or consideration of anything in the packet sent to each panel member.

At our meeting, the applicant submitted and we received two new exhibits. The applicant's Exhibit A consists of copies of proof that the applicant took various courses and seminars of medical education. We did not consider any duplicates that are included in this exhibit. One certificate shows that the applicant was awarded

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eight hours of credit in a course in Quality Medical Record Keeping for Health Care professionals. Exhibit A also includes proof that the applicant was awarded two hours of credit in Prevention/Reducing Medical Errors, two and three-quarter credit hours in Risk Management, one hour in Aids Education for Physicians, one credit hour in Domestic Violence, 39 credit hours in Advances in Aesthetic Plastic Surgery: The Cutting Edge IV, and 38 credit hours in General Educational Activities. The applicant's Exhibit B shows examination grades received by the applicant. OPD did not submit any evidence at our meeting.

Also at our meeting, the applicant testified on his own behalf and the OPD examined the applicant. The panel also posed questions to the applicant. The OPD did not produce any witnesses in this proceeding.

On his direct testimony, the applicant stated that he felt "very sorry" about what he had done and realized that he should not have acted as he did. He directly answered "yes" to the question of whether he understood that his conduct in billing the insurance carriers was wrong even if it helped his patients. He further acknowledged that he "was careless" in his record-keeping practices and that he had made "a very big mistake" in not maintaining adequate records.

The applicant told us that he was involved in medicine since he "was very young." Looking back at his career, the now 70 year-old applicant testified that medicine is all he has known.

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The applicant requested a second chance to "repair" himself and restore his "self-esteem."

On cross-examination, the applicant was asked, if his license was reinstated, what "type" of patient history would he consider to be appropriate for him to take for a patient in his practice. The applicant responded that he would "need to take a full history" and that after he took a "full family history", he would "do a complete physical examination" of the patient. His former approach, which he recognized was a "grave mistake" and "not a good medical practice", was to talk to the patient, obtain their history, and conduct a physical examination, but not to record this information in the patient record. In contrast, the applicant assured that, if reinstated, his practice, which he would keep in mind "every day", would be to document a complete history and information about the "whole situation", and to maintain a "correct practice." The applicant well understood that the lack of a complete patient record affects "the whole basic of patient care". Moreover, the applicant knew that by following proper record-keeping practices, another practitioner would be able to review the patient record and know both the patient's complete background and the care and treatment being rendered to the patient.

The applicant testified that he agreed with the determination to revoke his license and accepted responsibility

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for his conduct. He explained that he was taught to change his ways by the pain he caused his family and he endured from this punishment. Consequently, the applicant was resolved to be "completely moral" and testified that you "can be absolutely sure" that he has learned his lesson.

On cross-examination, the applicant responded to questions about what he had told to the affiants, who had submitted affidavits on his behalf, about the reasons that his license had been revoked. The applicant testified that he had provided these affiants with all the reasons that his license had been revoked and asked them to prepare an affidavit. The applicant explained that he did not tell these affiants what to write in preparing these affidavits. No evidence rebuts this explanation.

During the hearing, we reviewed the reeducation that the applicant obtained following the revocation of his license. The record shows the various courses he took and the program he completed in rotating in six hospitals where he went on rounds every day and attended conferences. Furthermore, the applicant told us that he has frequently received guidance from a physician friend on good record-keeping practices and has communicated with plastic surgeons about the latest changes in this specialty.

The applicant spoke about his plans in the event his license was reinstated. The applicant stated he would "try to dedicate" his "entire life" to the profession he loved and dreamed about.

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He testified that, if permitted to return to the practice of medicine, he would work in an underserved area in Queens, New York, under the supervision of a physician, Dr. R., if she is still willing, in her internal medicine practice. The applicant stated that he would see the patients in her office with less severe problems and would build-up his skills over time. The applicant further stated that he would start as a general practitioner and, without performing surgery, would do basic cosmetic treatments. He envisions performing certain "small" cosmetic procedures in her office and eventually working in conjunction with a plastic surgeon with whom he would associate. His attorney nevertheless asserted that, even with a fully reinstated license, the applicant will "certainly not be able to get hospital privileges" in this and many states and "probably" would finish his career where he would resume it in a general practice setting. In his view, the applicant will be limited in his ability to practice and not allowed to perform cosmetic surgery in the future after his license is reinstated because he cannot obtain privileges to do so at any hospital or surgical center.

#### ANALYSIS

In a restoration proceeding, the applicant bears the burden of submitting sufficient evidence to establish that his license should be restored. Jain v. Sobol, 199 A.D.2d 934 (3rd Dept.

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1993). We thus would not recommend the restoration of a professional license unless the applicant submits evidence that compels the exercise of discretion in his favor. Viloria v. Sobol, 192 A.D.2d 969 (3rd Dept. 1993); and Greenberg v. Board of Regents of University of State of New York, 176 A.D.2d 1168 (3rd Dept. 1991). In exercising that discretion, we are not required to weigh or consider any particular factors. Nehorayoff v. Mills, 95 N.Y.2d 671 (2001).

The applicant's attorney recognized the demanding burden of proof that is imposed on the applicant in this proceeding. Nevertheless, such burden of proof is not impossible to overcome where the applicant sufficiently demonstrates that he is worthy of being granted the restoration of his license and that the public will be protected if his license were restored.

Prior to the revocation of his license, the applicant practiced medicine in violation of the profession's ethical standards as well as its standards of care. In revoking his license in August 2001, the ARB concluded that, at that time, there was no other "alternative to protect the public." In this restoration proceeding, the applicant must show that, at this time, this assessment no longer remains true, he has been rehabilitated and retrained, he has changed significantly and deserves the opportunity he seeks, and the public would be protected if his license were restored.

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As his attorney argued, the applicant's professional misconduct has caused him to be "deeply pained" on professional and personal levels. He was very embarrassed about and troubled by his prior misconduct. At the hearing, the applicant yearned to redeem himself professionally and restore his self-esteem. The applicant has set a personal goal that he will gain the confidence of his peers that he became a good physician.

The applicant has demonstrated that he is genuinely remorseful for his prior conduct. We believe that the applicant was, as he testified, "very sorry" about what he did and that he had made "a very big mistake". The applicant acknowledges that it was inappropriate for him to have fraudulently billed insurance carriers. He assured us that he would be a "completely moral" practitioner in the future and is fully motivated to assure that he would never be subjected to disciplinary action again. The applicant declared that "you can be convinced that I will not fill out a paper that is not proper."

We were persuaded by the applicant's testimony that we could be "absolutely sure" that he has learned his lesson. The applicant explained that he accepted responsibility for his mistakes in the past, is sorry for what he did and what he put his family through, and is aware "every single day" that it would be "so foolish and so stupid" for him to ever make these mistakes again. The applicant recognizes that he had to learn this lesson

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"the hard way" and that he agrees with the determination to revoke his license in 2001. In his own words, the manner in which he maintained patient records in the past caused him to "lack a lot in the whole basic of patient care" and that such manner of record-keeping was not in accordance with "good medical practice." The applicant clearly recognizes that he needs to "every day" "document everything" and that it is "very important to document everything."

Subsequent to the revocation of his license, the applicant has gained first-hand experience in four major areas of medicine. He participated in a hospital-based University affiliated program in six hospitals in the Dominican Republic for 60 hours in each of those four areas, for a total of 240 hours. In this program, he went on rounds seeing patients with the attending physicians and attended conferences. He also volunteered in the emergency rooms of those hospitals and spent time with the hospitals' residents.

Subsequent to the revocation of his license, the applicant has completed various courses as well as observed other practitioners practicing the profession over the last several years. The applicant spent time in Dr. R's medical office in New York receiving guidance on the appropriate manner for maintaining patient records. The numerous hours he spent reviewing proper record-keeping and billing procedures in one-on-one discussions

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with licensed practitioners will serve him well. The applicant thus has been re-educated through both formal and informal training.

In addition to taking other courses, the applicant has concentrated on taking courses that taught him about the importance of good record-keeping and what he must do to keep good records. The applicant has learned from these courses that he must take the time to develop adequate records in addition to his efforts in caring for his patients. At our meeting, the applicant submitted a copy of a certificate from the Florida Medical Association showing that the applicant participated in and was awarded eight hours of AMA PRA category 1 credit in Quality Medical Record Keeping for Health Care Professionals. The applicant further submitted documentation to show the scores he received on examinations that he took at the end of the clinical part of his study.

The applicant also watched videos regarding the field of plastic surgery and read professional magazines. He received 39 credit hours for attending a course over several days in the Advances of Aesthetic Plastic Surgery. In addition, the applicant took other courses, including the Prevention/Reducing of Medical Errors and Risk Management.

The applicant's testimony shows that he has substantially changed his thinking after taking courses, learning the

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importance of professional standards, consulting with colleagues, and reflecting on what led to the revocation of his license. In our unanimous opinion, the applicant has gained insight and knowledge about the proper practice of the profession that was formerly lacking. The record shows that the applicant is committed to changing the way that he formerly practiced the profession so that he would conform to professional standards governing the practice of the profession. The applicant thus has deeply reflected on the reasons why he lost his license, learned what he must do to adhere to both ethical standards and standards of care, and is resolved and committed to meeting those standards and fulfilling the trust that the public places in the medical profession.

The applicant performed community service helping in a soup kitchen in downtown New York. At this community service, he frequently worked in the kitchen peeling potatoes, cutting onions, and serving trays to poor people. This post-revocation experience has encouraged the applicant in seeking to practice medicine in an underserved area in New York.

We have reviewed the recommendations of affiants who have known the applicant for a substantial period of time both before and after the revocation of his license. These affiants have fully supported the applicant in seeking the restoration of his

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license.<sup>1</sup> Two of these affiants were willing to offer the applicant part-time employment and supervision. One affiant specifically believes the applicant has been "rehabilitated professionally" and would be "capable to serve the community and take excellent care of his patients." J.S., a physician who has been in close contact with the applicant, specifically found that the applicant has made a "remarkable effort on improving his knowledge on record-keeping and other important medical matters." J.S. also states that he is "sure" that the applicant will practice medicine under required New York standards and that "his patients will fully benefit from the great experience and knowledge he possesses." Dr. R confirms that the applicant has been observing, in her office, her record-keeping techniques. According to Dr. R, the applicant has "genuinely taken measures to correct his problems with documentation" and, after he has corrected his shortcomings, "it would be a great loss to the profession if he's not allowed to practice."

Another physician recommends the restoration of the applicant's license on the basis that the applicant is honest,

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<sup>1</sup> All the affiants provided information favorable to the applicant. In so doing, some, but not all, of the affiants indicated that they understood that the applicant's license was revoked because of both his record-keeping failings and fraud.

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capable, and reliable, and would be an asset to his professional community. This recommendation is significant in evaluating the instant application given the applicant's prior fraudulent conduct. Furthermore, a physician, R.R., who understood that the applicant's license was revoked for both fraudulent practice and poor record-keeping, believes the applicant has been "rehabilitated professionally" and "is capable to serve the community and take excellent care of his patients." This belief, that the applicant is "honest" and "capable" and would be "an asset to the community where he practices", is also shown in the supporting affidavit from physician A.N.

This peer committee has also considered the gravity of the applicant's prior conduct. His misconduct was committed in ten patient cases that ended over eight and one-half years ago. As previously indicated, he was guilty of fraud, gross negligence, negligence, and unprofessional misconduct pursuant to both Education Law §§6530(22) and 6530(30). The applicant's license was revoked first by the hearing panel in April 2001 and then, on appeal, by the ARB in August 2001. Therefore, the applicant has now been prohibited from practicing his profession for more than five years. Given the applicant's rehabilitation, the prior prohibition has served its purpose and the applicant has demonstrated that relief should be granted to him in this proceeding.

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None of the charges of incompetence were sustained against the applicant and no charge was brought that any of his patients were actually harmed by his medical treatment. The determination that the applicant committed professional misconduct shows that the applicant was deficient in his record-keeping practice. The record in this matter shows that the applicant, who began his training as a resident in the nineteen-sixties, has received training in this area during the present decade and has learned, subsequent to the revocation of his license, that his prior record-keeping practices are not acceptable. The applicant's application and testimony both show that, based on the courses he has taken and the time he has spent with other professionals discussing this question, he now appreciates the importance of proper record-keeping. As the applicant wrote, he currently realizes the "importance" of record-keeping and understands "the seriousness of potential dangers" from failing to follow good record-keeping practices. The applicant declared that he would need to take a "full" history and perform a "complete" physical examination of a patient. Based upon this record, the applicant is a competent practitioner who currently does not present any risk of harm to the public that he would maintain records as he formerly did in his treatment of Patients A-J that ended over eight and one-half years ago. In our unanimous opinion, the applicant's prior recordkeeping deficiency has been rehabilitated and, if allowed to practice again, he would maintain

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adequate records of his patients and adhere to good medical practices.

We also focused on the issue raised by the prior determination of the applicant's professional misconduct that he would not commit any fraud. The applicant is sincere in stating that he wishes to be a "moral" practitioner. He would strive to avoid being again subject to the professional discipline that has so pained him. The applicant now knows the wrongfulness of his prior conduct and is committed not to repeat it.

In our unanimous opinion, the applicant has been rehabilitated. He is committed to practicing the profession of medicine "at the highest standards of care" and to adhering to ethical principles. The applicant's return to the practice of the profession of medicine, at this time, would not place the public at risk that he would commit further professional misconduct.

OPD did not offer any new evidence at our meeting to supplement or challenge the packet originally submitted to us concerning the applicant's application. It also did not produce any witnesses at our meeting. On the other hand, the applicant testified and offered new documents both at and after our meeting. His new documents show the various courses he has completed subsequent to the revocation of his license. Post-meeting, the applicant offered, and we hereby receive into the record, a letter from the Medical Liability Mutual Insurance Company (hereafter "MLMIC"), dated August 24, 2001,

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regarding its past decision not to provide him with insurance coverage and its recommendation that he secure insurance coverage from another insurance company.

The applicant testified that he had malpractice insurance with MLMIC while he was practicing medicine and closed his practice after his license was revoked. The above-referred letter submitted by the applicant post-hearing substantiates the applicant's testimony that such letter was not sent to him until after the decision had been rendered to revoke his license. The applicant was not found guilty of committing any professional misconduct regarding his malpractice insurance coverage.

One of the reasons the Office of Professional Medical Conduct of the State Health Department, the Office that prosecuted the disciplinary matter against the applicant, has opposed the applicant's application for restoration of his license relates to its claim that the applicant's malpractice insurance was terminated "two years prior to the convening of the hearing." The applicant, however, was neither charged with nor found guilty of any professional misconduct regarding his malpractice insurance coverage or the termination of such coverage. Significantly, the State Health Department did not include any evidence to support its unsubstantiated assertion that was never heard or tested in the professional disciplinary hearing it initiated. Had there been any issue or basis for believing that

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the applicant had committed any professional misconduct in this regard or that there was any connection between such termination and the issues that were the subject of the hearing, such allegations could have been brought in the professional disciplinary proceeding where the applicant could have had an opportunity to defend himself. Accordingly, we reject this proffered alleged basis for denying the present application for restoration.

In any event, the refuted and unsubstantiated claim by the State Health Department relates to the applicant's conduct before his license was revoked. Such claim does not show that the applicant has not changed subsequent to the revocation of his license and does not demonstrate that the instant application should be denied at this time. Rather, it relates to the irrelevant question of whether the insurance company wished to do business with the applicant to provide him with malpractice insurance coverage at that prior time. As its August 2001 letter indicated, other companies were available to provide such insurance to the applicant. We note that OPD cross-examined the applicant regarding this question, the applicant denied the claim of the State Health Department, and no evidence of record shows that the applicant's insurance coverage was even terminated "two years prior to the convening of the hearing."

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The State Health Department also opposed the instant application for restoration based upon the determination in 2001. Its letter recapitulates what was determined in that proceeding. However, we are not re-litigating what has already been determined. The applicant's prior professional misconduct has been established. While we have considered the applicant's professional misconduct in rendering this decision, the issue presented now is whether, in this restoration proceeding, the applicant is worthy of being re-licensed at this time after his license has been revoked since August 2001.

The State Health Department wrote its letter before our meeting and thus did not base its opposition on the testimony at this meeting. Its letter was written without the benefit of listening to and questioning the applicant. Having afforded the applicant the opportunity to present his case, we can now say that, contrary to the concern expressed by the State Health Department that the applicant has not acknowledged or accepted responsibility for the fraudulent insurance claims he submitted, the applicant has made such acknowledgement and accepted such responsibility. In addition to his agreeing with and accepting the determination that he was guilty of such conduct, the applicant has testified that he is "very sorry" for the fraudulent insurance billings and that he realizes that he "shouldn't have done it". Moreover, the record belies the State

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Health Department's claim that the applicant attributes the fraudulent insurance claims to negligent charting and record-keeping practices.

In her closing argument, the OPD prosecutor did not echo the Health Department's assertion that the applicant attributes the fraudulent insurance claims to negligence. On the contrary, the OPD prosecutor asserted that the applicant did not attribute his mistakes to negligence. In the view of the OPD prosecutor, if the applicant does not appreciate that his conduct was negligent, there is no impetus for him to change his practices. However, the applicant has written that he "was negligent" and has "learned the seriousness of potential dangers" from failing to follow indicated medical standards. Inasmuch as the applicant has demonstrated his appreciation that his practices affected patient care and was inconsistent with professional standards, and inasmuch as he accepted the determination and regrets that he was guilty of negligence as to various charges, we are persuaded that that applicant has evinced ample impetus to change his practices and would, if reinstated, incorporate his changed understanding into his practice. Accordingly, the applicant has demonstrated that he is fully aware of and accepts that he committed the professional misconduct determined by the ARB, including his negligence and fraud, and that he has taken

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measures to remediate his past conduct and enable him to practice appropriately in the future.

The applicant realizes that he has been out of practice for several years and must start practicing slowly and carefully. He seeks an environment to practice where he can build up his medical skills. As will be discussed hereafter, this objective can be achieved in a regulated setting under these circumstances.

We agree that the applicant should proceed slowly and carefully, especially after not having practiced the profession since 2001. Even though he is unlikely to gain hospital privileges, the applicant should not yet be free to practice either independently or in another physician's private practice. We envision the applicant, as he indicated, gaining experience under supervision. In our unanimous opinion, the applicant should resume his career outside a private office and focus on providing basic medical services and not plastic surgery.

#### RECOMMENDATION

In our unanimous opinion, the applicant has met his burden in this restoration proceeding and has established a compelling basis for the exercise of discretion in his favor at this time. The applicant is presently dedicated and committed to possessing the skills and knowledge he needs to assure that the public will be protected if his license is restored. He has kept himself current with the profession and has learned from his proven misconduct.

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He has become rehabilitated in view of the insight and understanding he has demonstrated regarding the wrongfulness of his prior misconduct.

Based on all the foregoing, we unanimously recommend that the instant application for the restoration of the applicant's license to practice as a physician in the State of New York be granted to the extent that: the Order of the Commissioner of Health revoking his license be stayed; the applicant be placed upon probation for a period of five years in accordance with the terms of probation set forth in the exhibit annexed hereto, made a part hereof, and marked as Exhibit "A"; and, upon satisfactory completion of his probationary period, his license be fully restored. The terms of probation include a requirement that the applicant, during the period of probation, only practice the profession of medicine in a supervised setting in an Article 28 facility, Veterans Administration Hospital, or other government facility. The five year period of probation shall be tolled and shall not run or be served whenever and for so long as the applicant shall be either practicing medicine outside New York State or not practicing his profession in New York State in a setting permitted in accordance with the decision in this proceeding, and the applicant shall be subject to the full remaining probationary period upon his return to or resumption of his practice of the profession in New York State in a setting permitted in accordance with the decision in

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this proceeding.

Respectfully submitted,

FLORENCE KAVALER

MARTIN DIAMOND

NATHAN KASE

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Chairperson

Dated

EXHIBIT "A"

TERMS OF PROBATION  
OF THE PEER COMMITTEE

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CALENDAR NO. 22856

1. That the applicant, during the period of probation, shall be in compliance with the standards of conduct prescribed by the law governing his profession;
2. That the applicant shall submit written notification to the New York State Department of Health, addressed to the Director, Office of Professional Medical Conduct, New York State Department of Health, 433 River St., Suite 303, Troy, N.Y. 12180-2299, of any employment and/or practice, his residence, telephone number, or mailing address, and of any change in his employment, practice, residence, telephone number, or mailing address within or without the State of New York;
3. That the applicant shall submit written proof from the Division of Professional Licensing Services (DPLS), New York State Education Department (NYSED), that he has paid all registration fees due and owing to the NYSED and he shall cooperate with and submit whatever papers are requested by DPLS in regard to said registration fees, said proof from DPLS to be submitted by the applicant to the New York State Department of Health, addressed to the Director, Office of Professional Medical Conduct, as aforesaid, no later than the first three months of the period of probation;
4. That the applicant shall submit written proof to the New York State Department of Health, addressed to the Director, Office of Professional Medical Conduct, as aforesaid, that 1) he is currently registered with the NYSED, unless he submits written proof that he has advised DPLS, NYSED, that he is not engaging in the practice of his profession in the State of New York and does not desire to register, and that 2) he has paid any fines which may have previously been imposed upon the applicant by the New York State Department of Health, said proof of the above to be submitted no later than the first two months of the period of probation;
5. That the applicant shall, during the period of probation, only practice the profession of medicine in an Article 28 Facility, Veterans Administration Hospital, or other government facility in New York State;

6. That the applicant shall have quarterly performance reports submitted to the New York State Education Department, addressed to the Director, Office of Professional Discipline, as aforesaid, from his employer, evaluating his performance as a physician in his place of employment, said reports to be prepared by respondent's supervisor or employer;
7. That the applicant shall notify, in writing, the Director, Office of Professional Medical Conduct, of the New York State Department of Health, as aforesaid, of any practice, during the period of probation, of the profession of medicine by him outside New York State or that is not in a setting permitted in accordance with the decision in this restoration proceeding;
8. That upon receipt of evidence of noncompliance with or any other violation of any of the aforementioned terms of probation, the New York State Health Department may initiate a violation of probation proceeding and/or such other appropriate proceedings.