

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

OFFICE OF PROFESSIONAL DISCIPLINE  
ONE PARK AVENUE, NEW YORK, NEW YORK 10016-5802

January 13, 1999

Arthur J. Gross, Phy.  
7 Heiko Court  
Northport, New York 11768

Re: Application for Restoration

Dear Dr. Arthur J. Gross:

Enclosed please find the Commissioner's Order regarding Case No. 98-143-60 which is in reference to Calendar No. 0016136. This order and any decision contained therein goes into effect five (5) days after the date of this letter.

Very truly yours,

Daniel J. Kelleher  
Director of Investigations

By: 

Gustave Martine  
Supervisor

DJK/GM/bt

RECEIVED

JAN 15 1999

OFFICE OF PROFESSIONAL  
MEDICAL CONDUCT

The University of the State of New York  
Education Department



IN THE MATTER

of the

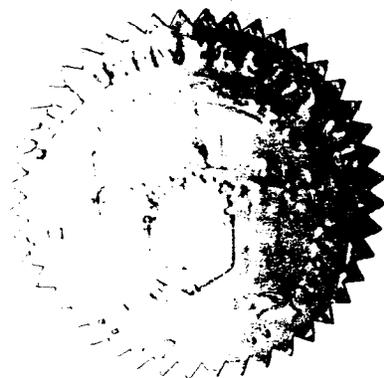
Application of ARTHUR J. GROSS  
for restoration of his license to  
practice as a physician in the State of  
New York.

Case No. 98-143-60

It appearing that the application of ARTHUR J. GROSS, 7 Heiko Court, Northport, New York 11768, to surrender his license to practice as a physician in the State of New York, was granted by action of the State Board for Professional Medical Conduct on January 19, 1993, 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 and rejected the recommendations of the Peer Review Panel and having agreed with and accepted the recommendations of the Committee on the Professions, now, pursuant to action taken by the Board of Regents on December 11, 1998, it is hereby

ORDERED that the petition for restoration of License No. 071697, authorizing ARTHUR J. GROSS, to practice as a physician in the State of New York, is denied.

IN WITNESS WHEREOF, I, Richard P. Mills,  
Commissioner of Education of the State of New York for  
and on behalf of the State Education Department, do  
hereunto set my hand and affix the seal of the State  
Education Department, at the City of Albany, this 4<sup>th</sup> day of  
January, 1999.



*Richard P. Mills*  
Commissioner of Education

Case No. 98-143-60

It appearing that the application of ARTHUR J. GROSS, 7 Heiko Court, Northport, New York 11768, to surrender his license to practice as a physician in the State of New York, was granted by action of the State Board for Professional Medical Conduct on January 19, 1993, 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 and rejected the recommendations of the Peer Review Panel and having agreed with and accepted the recommendations of the Committee on the Professions, now, pursuant to action taken by the Board of Regents on December 11, 1998, it was

VOTED that the petition for restoration of License No. 071697, authorizing ARTHUR J. GROSS, to practice as a physician in the State of New York, be denied.

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

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

**Re: Arthur J. Gross**

Not represented by counsel

Arthur J. Gross, 7 Heiko Court, Northport, New York 11768, petitioned for restoration of his physician's license. The chronology of events is as follows:

- |          |  |
|----------|--|
| 09/26/51 | Issued license number 071697 to practice as a physician in New York State.   |
| 01/04/93 | Charged with professional misconduct by New York State Department of Health. (See "Disciplinary History.")             |
| 01/04/93 | Applied to surrender physician's license.  |
| 01/19/93 | State Board for Professional Medical Conduct grants application to surrender physician's license.                      |
| 01/24/93 | Board for Professional Medical Conduct Order effective.  |
| 04/04/94 | Petition for restoration of physician's license submitted.   |
| 10/10/97 | Peer Committee restoration review.   |
| 02/28/98 | Report and recommendation of Peer Committee. (See "Recommendation of the Peer Committee.")                             |
| 08/10/98 | Report and recommendation of Committee on the Professions. (See "Recommendation of the Committee on the Professions.") |

**Disciplinary History.** On January 4, 1993, the Department of Health charged Dr. Gross with professional misconduct within the meaning of section 6530(9)(a)(1) of New York State Education Law because he was convicted of committing an act constituting a crime under New York State Law. On October 9, 1992, Dr. Gross was convicted in the First District Court of Nassau County, "upon a guilty plea, of committing

an unclassified misdemeanor in violation of N. Y. Public Health Law section 3332 which prohibits prescribing of a substance for which an official New York State Prescription is required, 'except on an official New York state prescription, and in good faith and in the course of his professional practice only.'" Dr. Gross applied to surrender his physician's license to the State Board for Professional Medical Conduct on January 4, 1993 on the grounds that he admitted the specification of professional misconduct. On January 19, 1993, the State Board for Professional Medical Conduct granted the Application to Surrender License and its Order became effective January 24, 1993. Dr. Gross submitted his petition for restoration of his physician's license on April 4, 1994.

**Recommendation of the Peer Committee.** (See attached Report of the Peer Committee.) The Peer Committee (Jordan; Cordice, Jr.; Kavalier) met on October 10, 1997. In its report dated February 28, 1998, the Peer Committee recommended that "the revocation of applicant's license to practice medicine in the State of New York be stayed" and "that applicant be placed on probation for a period of five years under the standard terms of probation plus the following terms of probation:

That applicant shall have semi-annual performance reports submitted to the New York State education department, addressed to the Executive 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 applicant's supervisor or employer;

1. That applicant, during the period of probation, shall work only in a hospital setting under supervision;
2. That applicant shall only prescribe on hospital prescription forms during the period of probation."

**Recommendation of the Committee on the Professions.** On August 10, 1998, the Committee on the Professions (Ahearn, Muñoz, Alexander) met with Dr. Arthur J. Gross to consider his petition for the restoration of his license to practice as a physician in New York State. An attorney did not accompany him. Dr. Gross presented the Committee with documentation of his recent continuing education activities.

The Committee asked Dr. Gross to describe the circumstances that led to the loss of his license. He replied that he lost his license in 1993 because of a problem he got into with the triplicate prescription law. He indicated that the loss of his license had nothing to do with his character and said, "In my estimation, it's above reproach." Dr. Gross told the Committee that one of the charges implied that he was a drug abuser and said that it was "an absurdity." He reported that the charge was never litigated and that he had never abused drugs of any kind. Dr. Gross said that he was also charged with selling prescriptions but "That was never my style." He stated, however, that "Maybe, I didn't spend enough time with these people." He reported that he scheduled eight to ten patients a day, six days a week. He indicated that he issued a "huge volume" of triplicate prescription forms for minor tranquilizers.

Dr. Gross said that his father was a general practitioner who had medicines in his closet, which he gave to his patients. Dr. Gross indicated that he had a Ph.D. in Biochemistry and when he became a physician he also became a "dispensing physician." He stated that he kept computerized charts and "never doled out more than what was O.K. for a month." Dr. Gross told the Committee that he never got a publication regarding the triplicate prescription law and thought that the law only applied if "you gave out a prescription." He stated that he would give three pills of each of three different medicines to his patients to try out and see which one worked the best for them. Dr. Gross said that he would then mail a triplicate prescription form to the patient and this saved them money. He told the Committee that he had closed his office for a month because of personal medical problems and that shortly after reopening his office he dispensed 40 Valium tablets to an undercover policewoman for \$20. Dr. Gross said that he did not realize it was against the law. He stated, "I regret my mistake. It was only a misdemeanor. I never hurt anyone. There were no hard drugs. I paid for it."

The Committee asked Dr. Gross about the Office of Professional Discipline's Investigator's report which indicated that the criminal charges, to which he pled guilty, involved the sale of prescriptions on five separate occasions to the undercover policewoman without performing any physical examination or diagnosis. He replied that it was "Maybe, one or two days when I first came back. Patients were coming in left and right. They all knew I was coming back." He said that "It was only one time and I asked the person to come back." Dr. Gross said that the policewoman indicated she was withdrawing from Valium and was with a patient of his who he recognized. He stated, "It was a sting operation and she lied on top of it." Dr. Gross reported that Grumman's was closing and many people were concerned about what would happen to them. He said that he also had social workers in his office. He told the Committee that it was the "nature of my practice" to initially dispense small quantities of medications and then send the scripts. He stated, "The rules changed and my practice didn't accommodate the changes."

Dr. Gross told the Committee that he did dispense medicine, but he was ignorant of the law. He said that he considered the medicines to be fairly harmless and wanted to be sure that his patients were really using them in an honorable fashion. He stated, "It's your responsibility to make sure you disseminate information." The Committee asked Dr. Gross what responsibility he had to keep current in his profession. He replied, "It has to come down from the authorities." When asked if he had any responsibility, he replied, "It's 25 percent my responsibility; 75 percent of authority's." The Committee asked him how could he be aware of law or regulation changes if the authorities didn't tell him. He replied that he could find out from professional associations and knew that the Nassau County Medical Society was fighting the triplicate prescription rules.

In response to the Committee's inquiry, Dr. Gross stated that the majority of his patients were given prescriptions. He said, "My patients had substantial problems." He indicated that these problems often had physical manifestations. He said that other doctors at the time were reluctant to prescribe controlled medicines and referred their

patients to him. Dr. Gross reported they would tell their patients, "Go to Dr. Gross and he'll prescribe them for you." He told the Committee that most of his patients "got meds and psychotherapy. I wasn't a medicine pusher." He said that he could get the medicines in quantities and was doing his patients a favor by dispensing the medicines to them at a cheaper price.

The Committee asked Dr. Gross if he felt any patients were harmed. He replied, "My successor didn't do as good a job." After the Committee clarified its question, Dr. Gross said that he did not think his activities harmed anyone. He stated, "You can take 5,000 pills and it wouldn't depress the nervous system. You'd go to sleep first." The Committee asked Dr. Gross why he surrendered his license if he felt he did nothing wrong. He replied that he felt he had no choice as he did sell 40 Valium pills to the undercover policewoman and there was no way to defend his behavior. He indicated that he only dealt with his lawyer and his "lawyer never said anything about a hearing or anything else." The Committee asked Dr. Gross if he had been a drug addict. He replied, "No." He said that he kept the drugs in his office only to dispense to his patients. He indicated that the prescription bottles found in his office with names on them were from his patients who were no longer taking the medicines. Dr. Gross told the Committee that to avoid possible harmful side effects with medicine he was prescribing, he would take the patient's prescription bottle and medicine "for safe keeping." He told the Committee that it was possible some of these medicines might have been dispensed to other patients.

The Committee asked Dr. Gross how it could be assured the public would not be harmed if his license were restored. He replied, "I'm not stupid. I'll make sure I know what's going on." He read portions of letters he had received from his former patients and told the Committee that he was "caring, a humanitarian, and a legitimate doctor." He said that he realizes that drug interactions are possible and wouldn't dispense them again. He indicated that this was now the pharmacist's responsibility. Dr. Gross stated that he has learned and continues learning, even today. He said, "I'm educated. I'm not prescribing anymore." He described his continuing education efforts and explained how he is remaining current in medicine in his current position. Dr. Gross told the Committee that if his license were restored, he would not dispense and would prescribe carefully.

The overarching concern in all restoration cases is the protection of the public. A former licensee petitioning for restoration has the significant burden of satisfying the Board of Regents that licensure should be granted in the face of misconduct that resulted in the loss of licensure. There must be a clear preponderance of evidence that the misconduct will not recur and that the root causes of the misconduct have been addressed and satisfactorily dealt with by the petitioner.

The Committee on the Professions (COP) believes it is not its role to merely accept as valid whatever is presented to it 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 accepts the judgment of the Peer Committee that Dr. Gross "has completed ample continuing education." However, the COP does not concur with the conclusion of

the Peer Committee that he "has made a significant effort at rehabilitation" and "is remorseful."

The COP notes that the Peer Committee provided no explanation in its report for arriving at their conclusion and finds no basis in the record or in its meeting with the applicant to conclude that Dr. Gross has made a compelling case for the restoration of his license. Rather, the COP finds that Dr. Gross has not demonstrated that he either accepts responsibility for his misconduct or its seriousness. In his meeting with them, the COP notes that Dr. Gross expressed anger both with being caught in a "sting operation" and with the undercover policewoman and continually referred to the actions which led to the loss of his license as "mistakes" and "misunderstandings." Dr. Gross insisted that it was the State's responsibility to make certain every practitioner was aware of every law and regulation and it was not until "pushed" by the COP that he reluctantly conceded that it was "25 percent" his responsibility. He stated that he was aware that the Nassau County Medical Society was fighting the triplicate prescription law but said that he felt the law did not pertain to his activities in his office. The COP was concerned that Dr. Gross said that he would take his patient's medicines, save them, and sometimes give them out but still could not articulate the potential danger to the public of such actions. It was not until the COP pointed out the danger of dispensing medicines when he had no knowledge how they had been stored or possibly tampered with that he said, "You're right. I'm learning more here today."

The COP finds that Dr. Gross demonstrated a cavalier attitude toward his dispensing of controlled drugs and was certain that no patient could have been harmed because sleep would occur first. The Committee also was concerned that Dr. Gross explained away his selling Valium to the undercover policewoman because it was at a time when he was just returning to his office after a month's absence and all his patients were "clamoring" to see him at the same time. The Committee questions his judgment in dispensing medicines under such conditions when he did not have time to adequately make a current evaluation before prescribing. The Committee finds that Dr. Gross' responses to many of their questions during their meeting with him raised questions as to whether the public would be adequately protected were his license to be restored. The COP finds that Dr. Gross did not demonstrate his understanding of the root causes of his misconduct and finds that without such an understanding it is difficult to evaluate if he has taken the appropriate steps to ensure that such misconduct would not recur. The COP notes that the Office of Professional Medical Conduct (OPMC) stated "Nowhere in his petition does Dr. Gross accept responsibility or acknowledge any wrongdoing for his conduct in selling prescriptions for controlled substances. Without this acknowledgement, there is no rehabilitation. Without rehabilitation, there is not assurance that the public would be protected against further acts of misconduct by the petitioner." The COP concurs with OPMC's conclusion that "restoration of this medical license would pose a significant threat to the public."

After a complete review of the record and its meeting with Dr. Gross on August 10, 1998, the Committee on the Professions voted unanimously to recommend that Dr.

Gross' petition for restoration of his license as a physician in New York State be denied at this time.

Kathy Ahearn, Chair

Frank Muñoz

Claudia Alexander