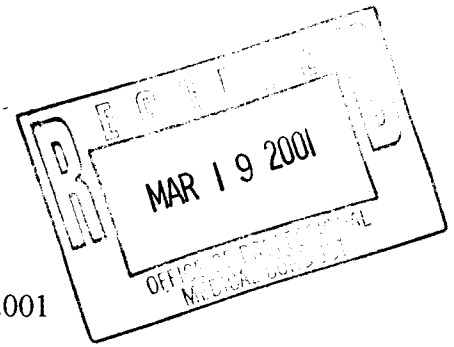




THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK

Office of Professional Discipline, 475 Park Avenue South, 2nd Floor, New York, NY 10016-6901  
Tel. (212) 951-6400  
Fax (212) 951-6420  
E-mail: OP4INFO@MAIL.NYSED.GOV



March 14, 2001

Charles G. Gabelman III, Physician  
10 Foery Drive # 303  
Utica, New York 13501

RECEIVED  
MAR 22 2001  
OFFICE OF PROFESSIONAL  
MEDICAL CONDUCT

Re: Application for Restoration

Dear Dr. Gabelman:

Enclosed please find the Commissioner's Order regarding Case No. 01-01-60 which is in reference to Calendar No. 17872. 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*

Gustave Martine  
Supervisor

cc: Peter M. Hobaica, LLC  
258 Genesee Street – Suite 505  
Utica, New York 13502

The University of the State of New York  
Education Department



IN THE MATTER

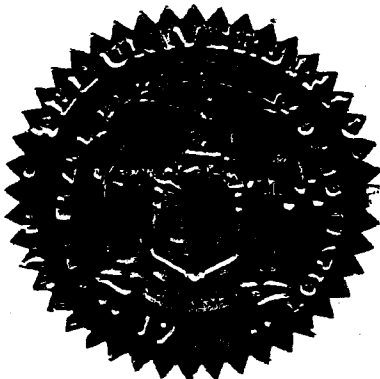
of the

Application of CHARLES G.  
GABELMAN III for restoration of  
his license to practice as a physician  
in the State of New York.

Case No. 01-01-60

It appearing that the license of CHARLES G. GABELMAN III, 10 Foery Drive, #303, Utica, New York 13501, to practice as a physician in the State of New York, was revoked by the New York State Department of Health's Administrative Review Board for Professional Medical Conduct effective September 14, 1994, and he having petitioned the Board of Regents for restoration of said license, and the Regents having given consideration to said petition and having reviewed and disagreed with the recommendations of the Peer Review Panel and having agreed with and accepted the recommendation of the Committee on the Professions, now, pursuant to action taken by the Board of Regents on February 6, 2001, it is hereby

ORDERED that the petition for restoration of License No. 157522, authorizing CHARLES G. GABELMAN III to practice as a physician in the State of New York, is denied.



IN WITNESS WHEREOF, I, Richard P. Mills,  
Commissioner of Education of the State of New York for  
and on behalf of the State Education Department, do  
hereunto set my hand and affix the seal of the State  
Education Department, at the City of Albany, this  
day of March, 2001. *RP Mills*

*Richard P. Mills*  
Commissioner of Education

Case No. 01-01-60

It appearing that the license of CHARLES G. GABELMAN III, 10 Foery Drive, #303, Utica, New York 13501 to practice as a physician in the State of New York, having been revoked by the New York State Department of Health's Administrative Review Board for Professional Medical Conduct effective September 14, 1994, and he having petitioned the Board of Regents for restoration of said license, and the Regents having given consideration to said petition and having reviewed and agreed with the recommendations of the Peer Review Panel and having agreed with and accepted the recommendation of the Committee on the Professions, now, pursuant to action taken by the Board of Regents on February 6, 2001, it was

VOTED that the petition for restoration of License No. 157522, authorizing CHARLES G. GABELMAN III to practice as a physician in the State of New York, be denied.

Case number 01--01-60

November 15, 2000

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: Charles G. Gabelman III**

Attorney: Robert F. Julian

Charles Gabelman III, 10 Foery Drive, # 303, Utica, New York 13501, petitioned for restoration of his physician license. The chronology of events is as follows:

- 03/05/84 Issued license number 157522 to practice as a physician in New York State.
- 10/01/92 Date of New York State Department of Health Commissioner's Order summarily suspending physician license.
- 10/01/92 Charged with professional misconduct by Department of Health. (See "Disciplinary History.")
- 05/23/93 Pled guilty in Oneida County Court to two counts of sexual abuse in the third degree, a misdemeanor.
- 02/16/94 Department of Health amended Statement of Charges.
- 06/20/94 Determination and Order of Hearing Committee for the State Board for Professional Medical Conduct revoking license.
- 09/14/94 Effective date of Professional Medical Conduct Administrative Review Board's decision to sustain Hearing Committee's determination revoking license.
- 02/27/97 Submitted application for restoration.
- 09/08/99 Peer Committee restoration review.
- 10/04/00 Report and recommendation of Peer Committee. (See "Report of the Peer Committee.")
- 11/15/00 Report and recommendation of Committee on the Professions. (See "Report of the Committee on the Professions.")

**Disciplinary History.** (See attached disciplinary documents.) On October 1, 1992, the Department of Health determined that Dr. Gabelman's continued practice of medicine constituted an imminent danger to the health of the people of New York State and summarily suspended his license. He was charged with twelve specifications of professional misconduct: conduct evidencing moral unfitness, practicing the profession fraudulently, willful physical abuse, and inaccurate records. The charges alleged physical contact of a sexual nature with two female patients, including fondling both patients' breasts, pinching and biting the nipple of one of the patient's breasts, squeezing the nipples of the other patient's breasts, and forcibly placing one patient's hand on his penis over his clothing. It was also alleged that Dr. Gabelman had an employee make false entries into one of the patient's record. Additionally, it was charged that after being arrested for driving while intoxicated, he went to a hospital and requested that an IV solution be administered and that blood be drawn above the line so that the blood sample would be diluted. Dr. Gabelman was granted an adjournment from the original hearing dates in October 1992. On May 26, 1994, a Hearing Committee of the State Board for Professional Medical Conduct determined that Dr. Gabelman's practice of medicine constituted an imminent danger to the health of the people of the State of New York and recommended that the Summary Order remain in effect until a final decision was rendered.

On May 23, 1993, Dr. Gabelman pled guilty, under an Alford plea, in Onedia County Court to two counts of sexual abuse in the third degree, a misdemeanor. Under that plea, he was not required to give any factual statement as to what happened. Based on this conviction of committing an act constituting a crime under New York State Law, the Department of Health amended the Statement of Charges, adding a thirteenth specification of professional misconduct on February 16, 1994.

A Hearing Committee of the State Board for Professional Medical Conduct determined that Dr. Gabelman was guilty of professional misconduct based upon his criminal conviction under New York State Law and guilty of fraud in the practice of medicine, guilty of moral unfitness in the practice of medicine, guilty of willfully abusing two patients, and guilty of failing to maintain accurate records. The Committee ordered that his license be revoked. Upon Dr. Gabelman's appeal, an Administrative Review Board for Professional Medical Conduct sustained the decision of the Hearing Committee for revocation. On September 14, 1994, the Commissioner's Order became effective.

On February 27, 1997, Dr. Gabelman submitted an application for restoration.

**Recommendation of the Peer Committee.** (See attached Report of the Peer Committee.) The Peer Committee (Holtzapple, Corona, Wu) met with Dr. Gabelman on September 8, 1999 to review his application for restoration. In its report, dated October 4, 2000, the Committee recommended that the revocation be stayed and that Dr. Gabelman be placed on probation for three years. The recommended terms of probation included stipulations that Dr. Gabelman complete 200 hours of public service annually at a facility dealing with sexual abuse victims, domestic violence or rape crisis;

that he practice only in a hospital or institution setting under supervision, and that he have quarterly psychiatric reports submitted.

**Recommendation of the Committee on the Professions.** On November 15, 2000, the Committee on the Professions (Duncan-Poitier, Ahearn, Templeman) met with Dr. Gabelman to review his application for restoration. Dr. Gabelman's attorney, Robert F. Julian, accompanied him. Dr. Gabelman presented the Committee with an update package that included a letter informing the Committee of his activities since the Peer Committee meeting, a letter from St. Elizabeth Hospital regarding the possibility of granting Dr. Gabelman privileges, a letter from Adolfo Brane, M.D., his treating psychiatrist, and additional documentation of continuing education activities.

The Committee asked Dr. Gabelman to describe what happened that led to his loss of licensure. He described the incidents involving inappropriate sexual contact with patients and indicated that during the investigation of one patient's charges, two other persons came forward with complaints of similar incidents. He told the Committee that it was a "betrayal of my profession" and described the incidents as "inappropriate and wrong." He also talked about his attempt to conceal the incident by falsifying a patient's record and went on to discuss his arrest for DWI and his subsequent attempt to falsify the blood sample drawn for the DWI test. He also spoke of the domestic disputes involving his wife.

When asked to discuss his understanding of the problem that existed that led to his inappropriate behavior, Dr. Gabelman stated that he had a "very self-centered narcissistic personality" that resulted in his being "demanding" and having a "sense of entitlement." Dr. Gabelman told the Committee that this personality manifested itself in his behavior including "drunk" driving, patient abuse, and domestic disputes. He added, "I was subject to rage and outbursts of my temper." He reported that it took years of therapy to reach this diagnosis. The Committee asked Dr. Gabelman why his narcissistic traits manifested itself in different ways, including impulsive sexual actions. He acknowledged that it was a hard question to answer and had discussed it with his therapist. He indicated that he believed it related to his perception of "women in unprotected situations" and that he "looked out to other people for gratification." He indicated that while "most surgeons have a level of narcissistic personality" that he "went over the line. I felt like women must think I'm the greatest and want me and I'm entitled to have it." Dr. Gabelman reported that he took a "full battery of tests" and that "If it were something other than impulse control, it would have been addressed." He told the Committee, "I'm not hiding behind psychiatric evaluation. My actions were wrong and I did it."

He added that he has learned how to deal with his impulses and no longer has the same "sense of entitlement." As an example he explained how he did not get upset while waiting in a long line to rent a car or doesn't get upset if someone passes him while he's driving – occurrences that he reported in the past would have resulted in aggressive behavior and anger. As another example of the change in his attitude, Dr. Gabelman told the Committee that even though they are not naked, he is alone with women in the office where he works and "could have tried something" but hasn't. He also said that he goes to the gym every morning and sees "those women," often

scantily clad, but "never came on to them even though some gave an indication they were interested."

Dr. Gabelman told the Committee that there had been no incidents of violence with his wife since 1992. He informed the Committee that his wife was "set in her ways and very physical." He pointed out that his wife was never brought to the emergency Room with "battered wife syndrome." Again, he reminded the Committee that there were no incidents of violence with his wife since 1992 but said that he was not downplaying what he had done.

The Committee noted that in 1995 when he applied for licensure in Rhode Island, he implied that he was falsely charged in New York and asked for an explanation. Dr. Gabelman told the Committee that, "It took a while to come to the realization that what I did was wrong." He added that for a long time he was in a "denial process" and "denied everything." He said, "I don't have an excuse." Dr. Gabelman told the Committee that since then he has faced up to what he did and has tried to rehabilitate himself. When the Committee inquired if he inappropriately touched the breasts of other patients, he reported that there were two or three incidents he vaguely remembered.

The Committee asked Dr. Gabelman what impact his misconduct had upon his wife and patients. He informed the Committee that it nearly ruined his marriage and that his stepchildren had trouble growing up. He said, "It ruined my wife's life." He also surmised that even though he has had no contact with the patients, they probably had psychological trauma as a result of his actions. He added, "If I could write them a letter, I would do it."

The Committee asked Dr. Gabelman what argument could be presented to demonstrate that someone with his history could satisfy the moral character requirement if he were applying for initial licensure. He replied, "I would look very closely at the individual with a jaundiced eye." He added that he would consider the time frame since the misconduct, his admission of wrongdoing, his full disclosure of the misconduct, and his great effort at rehabilitation. Dr. Gabelman said that he has developed a consistent behavior pattern for many years with the support of his wife, therapy, and "renewed faith in my Lord." He described his therapy with his psychiatrist and with his certified social worker. He explained that he now has a changed outlook regarding other people and himself and that "sufficient behavioral boundaries" now exist. He added that his wife had also joined therapy. He stated that he was in the recovery stage.

The Committee asked what compelling reason existed for the privilege of having his license restored in light of his serious misconduct. He reported that he always wanted to be in medicine and always strove to be the best. He advised the Committee that "the quality and excellence of the care he rendered was never an issue." He indicated that he wanted to go back to helping the community and work with a hospital with a large poor population. He said, "I can add rather than take away from the community." Dr. Gabelman told the Committee that he agreed that licensure was "an honor and privilege." The Committee questioned his assertion that the quality of care was excellent considering the physical abuse that some patients suffered under his

care, especially if they were traumatized and refrained from seeing a physician after such an experience. He explained that he felt his skills were never called into question in any other venue. Dr. Gabelman said that it has been difficult for him to admit that what he did was his fault and would be willing to work in a rape crisis center or in some other way to help women. He reminded the Committee that he has not been arrested in the last eight years.

Regarding his current competency, Dr. Gabelman stated that he works in the law offices of Mr. Julian to help assess the way medical cases are managed. He indicated that he reads surgical books and medical charts daily, reviews x-rays and CAT scans, and consults regularly with "medical experts" to complete his job. He stated that he also attends grand rounds at St. Elizabeth Hospital, when appropriate, and had completed the infection control and child abuse courses required by the State for licensure. He explained that he plans to have a mentored situation before resuming surgery and has registered to take a five-day general surgery course in San Diego in February.

The Committee asked Dr. Gabelman for his reaction to the Department of Health's recommendation strongly opposing the restoration of his license. He took issue with the statement that "There is nothing in Dr. Gabelman's restoration petition which demonstrates that he has been rehabilitated." Dr. Gabelman referred to three sections in his petition that related to his therapy and acceptance of responsibility for his actions. He added that he has done "much more since 1997."

The overarching concern in all restoration cases is the protection of the public. Education Law (section 6511) gives the Board of Regents discretionary authority to make the final decision regarding restoration of a license to practice as a physician in New York State. Section 24.7(2) of the Rules of the Board of Regents charges the Committee on the Professions (COP) with submitting a recommendation to the Board of Regents on restoration applications. Although not mandated in law or regulation, the Board of Regents has instituted a process whereby a Peer Committee meets with an applicant for restoration and provides a recommendation to the COP. A former licensee petitioning for restoration has the significant burden of satisfying the Board of Regents that there is a compelling reason that licensure should be granted in the face of misconduct so grievous and serious that it resulted in the loss of licensure. There must be clear and convincing evidence that the petitioner is fit to practice safely, that the misconduct will not recur, and that the root causes of the misconduct have been addressed and satisfactorily dealt with by the petitioner. It is not the role of the COP to merely accept 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 concurs with the Peer Committee that Dr. Gabelman "has maintained his knowledge level sufficient to meet the reeducation requirement" for restoration of his license. However, the COP does not agree with the Peer Committee that "it is clear that the applicant is rehabilitated from his predatory behavior" or that he "has demonstrated the remorse necessary for the restoration of his license." The COP notes that the Peer Committee stated that the applicant "must stay in a situation where his actions can be monitored and that there is a certain degree of oversight." The COP questions how the



Peer Committee can conclude that Dr. Gabelman is "fully rehabilitated" if it recommends that he "must stay" in a monitored situation.

The COP finds that Dr. Gabelman is moving in a positive direction with his rehabilitation efforts and commends him for pursuing therapy to begin to identify the root causes of his misconduct and the steps he must take to address them in the future. However, the record reflects a destructive and violent pattern of behavior that existed for many years and which manifested itself in many ways. This pattern of behavior led to egregious acts of professional misconduct and criminal activities including sexual and physical abuse of female patients, domestic violence, and drunk driving. Moreover, it led Dr. Gabelman to embark upon a course of conduct calculated to conceal his acts; i.e., Dr. Gabelman insisted that a laboratory technician draw blood while an IV solution was being administered to dilute the sample for a blood alcohol level analysis, went to the laboratory the next day to alter the laboratory slip from his visit the previous night, made a member of his office staff put false information in one of the sexually abused patient's medical file, lied on his initial application for licensure in this State by failing to reveal a shoplifting conviction, and failed to admit his guilt to the misconduct charges in this State on an application for licensure in Rhode Island. Those actions, designed in his self-interest to bring about a favorable outcome, continue to concern the COP and raise serious questions about his credibility.

While attributing his violent outbursts against his wife to his narcissistic personality, Dr. Gabelman still fails to accept full responsibility for his actions, telling the COP that his wife was "set in her ways" and "very physical." He attempted to minimize the spousal abuse, telling the COP that his wife was not brought to the Emergency Room and classified as "battered wife syndrome." Likewise, when discussing the charges of physical abuse with one of his patients, he again attempted to minimize his role and indicated that the charges were false as he never forcibly grabbed the patient but only stood in front of her. When the COP pointed out that Dr. Gabelman is physically a large man and that he interposed himself between the abused patient and her only means of exit, Dr. Gabelman conceded that he and the patient may have perceived what occurred differently, and it was only after prodding by the COP that he admitted that the claim that she was grabbed and blocked from leaving was probably not unreasonable on her part. While admitting that the female patients might have suffered some psychological trauma, the COP notes that Dr. Gabelman made no mention of his efforts to understand the damage. Similarly, he failed to mention any impact that his actions had upon his office worker or the laboratory technician that he persuaded to act unethically. The COP finds that Dr. Gabelman's actions were extremely serious and he has been unable to demonstrate that he has taken full responsibility for his actions and that he fully appreciates the detrimental impact his misconduct had on others. Without such responsibility and understanding, the COP believes that Dr. Gabelman has not adequately demonstrated that he is remorseful.

In Matter of Melone v. SED, 182 AD2d (3<sup>rd</sup> Dept. 1992), the court found that the gravity of the offense and the risk of harm to the public were two additional factors that needed to be considered in evaluating a restoration petition. Dr. Gabelman's conduct was serious and his consistent behavior pattern over a period of many years presented a real risk of harm to the public. Dr. Gabelman repeatedly presents his not being

arrested in the last eight years as the documentation of his rehabilitation. However, Dr. Gabelman has not been put in a one-on-one situation with female patients where he is the authority figure. An ability to control anger in a traffic situation, while admirable, does not necessarily translate to a safe doctor-patient relationship. Dr. Gabelman started therapy in 1992 but he was still denying his misconduct in August 1995 when he applied to Rhode Island for licensure. The COP finds that he has not presented a compelling case to demonstrate that through his therapy he has clearly identified the triggers to his misconduct or the understanding and methods he has developed in his life to insure that the public would not be placed in peril were his license restored. When asked why what he refers to as his narcissistic personality manifested itself in various types of violent or abusive activities, he acknowledged that the question was hard to answer. The COP failed to obtain any indication from Dr. Gabelman as to what specific incidents or situations triggered his sexual misconduct and/or violent behavior. Without that understanding, the COP cannot assess whether he has made the necessary behavioral modifications in his life to provide a high degree of assurance that the misconduct would not recur. The acts of misconduct were egregious and present a lengthy pattern of behavior. Dr. Gabelman needs to further document his remorse and rehabilitation before the COP believes it can recommend that his license should be restored. The COP concurs with the opinion of the Department of Health that Dr. Gabelman still has not demonstrated that he has been rehabilitated and that restoration of his license would be "totally inappropriate and contrary to the best interests of the public" at this time.

Therefore, after a complete review of the record and its meeting with him, the Committee on the Professions unanimously recommends that Dr. Gabelman's application for restoration of his license to practice as a physician in the State of New York be denied at this time.

Johanna Duncan-Poitier, Chair

Kathy Ahearn

Leslie Templeman

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

In the Matter of the Application of

**CHARLES G. GABELMAN III**

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

REPORT OF  
THE PEER  
COMMITTEE  
CAL. NO. 17872

-----X

CHARLES G. GABELMAN III, hereinafter referred to as the applicant, was previously licensed to practice as a physician in the State of New York by the New York State Education Department. Said license was revoked as a result of a professional misconduct proceeding. The applicant has applied for restoration of his license.

On September 8, 1999, this Peer Committee convened to review this matter and make the following recommendation to the Committee on the Professions and the Board of Regents.

**BACKGROUND INFORMATION**

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

CHARLES G. GABELMAN III (#17872)

Listed below is the background information from that packet and the information contained in applicant's submissions on the day of the meeting. Further details pertaining to these documents may be found therein.

**PRIOR DISCIPLINE PROCEEDING**

**Determination of the Administrative Review Board**

**of the Board for Professional Medical Conduct:**

Revocation of Physician License

**Effective Date of Order:**

September 14, 1994

**Specification of Charges Found Guilty:**

- Conduct exhibiting moral unfitness
- Practicing the profession fraudulently
- Willful physical abuse
- Inaccurate medical records
- Conviction of a crime

**Nature of the Misconduct:**

- applicant was found to have sexually abused two patients (A and C)
- applicant was convicted of sexually abusing two patients (A and B)
- applicant falsified Patient A's medical records
- applicant tried to falsify his own medical records after being arrested for driving while intoxicated

**APPLICANT'S PETITION FOR RESTORATION**

**Description of Petition:**

- dated December 6, 1996
- 3 pages single-spaced letter

CHARLES G. GABELMAN III (#17872)

**Attachments to the Petition Include:**

- 9 affidavits in support from his treating psychiatrist, his treating social worker, a clinical psychologist who evaluated him, two physicians, a podiatrist, an economics professor, and two patients
- 5 unsworn letters of support from the staff at the law firm where applicant currently works, a neighbor, and the president of the local hospital
- list of research topics from 10/92 until present
- chronological listing of activities since graduation

**Summary of Petition:**

The applicant began by formally requesting restoration of his license to practice medicine. He noted that the revocation had to do with charges of sexual misconduct involving female patients, for which he pleaded guilty in criminal court and served a sentence of probation without incident.

He noted that he has always felt that dedication to his patients and a strong work ethic would be sufficient to carry him through. He felt that his personal life and professional were separate and that pressures in his private life would not affect his professional life. He realized, albeit too late, that he had clouded the boundaries between his personal and professional life, which led to disastrous misjudgments. He noted that the failure to make appropriate judgements permeated his entire value system. Indeed, as recently as his hearing with OPMC in May of 1994, he stated that he failed to recognize that he had a significant problem. After the adverse decision for revocation, however, he noted that he did a great deal of soul searching and an extensive personal inventory, which lead to the realization that he was in denial with respect to his personal values and actions. The realization led him to the belief that many of these

CHARLES G. GABELMAN III (#17872)

personality traits were long standing and deeply ingrained, for which he entered an intense program of personal evaluation, therapy and self-help.

Applicant stated that he entered into a therapeutic relationship with Dr. A.B., a well-known area psychiatrist. Their relationship initially began as a crisis intervention situation, which evolved into a program of intense psychotherapy. Through this therapy, applicant states that he has gained insight into his personality and his problems. He asserted that the therapy helped him work through his initial denial that a problem existed to a point of realization that the problem was one that he alone created. He further noted that Dr. A.B. has indicated strongly his opinion that the applicant should be allowed to return to the practice of medicine and is willing to testify professionally on his behalf.

The applicant also noted that he entered into a second stage of evaluation and therapy at an addiction recovery program in his area under the direction of J.C., MSW. The program involved evaluation and ongoing therapy. He stated that he participated in Stage I of their program to determine if there was any component of alcohol or substance abuse, which was ultimately found to be negative. Their recommendation was that no further evaluation or treatment in this matter was necessary. The program included twice-weekly private sessions, as well as group sessions with other medical professionals. During these sessions, the applicant noted that he gained insight into his personality and the problems which it created. He continued his therapeutic relationship with J.C. with a goal of modification of the problem behavior areas. He noted that he continues to visit J.C. on a regular basis. Applicant noted that J.C. has stated personally and formally that he fully supports the applicant's efforts in restitution of his medical license and has submitted an affidavit on the applicant's behalf.

Applicant further noted that he also underwent a full battery of mental status and

CHARLES G. GABELMAN III (#17872)

psychological testing with N.L., Ph.D. in Syracuse, New York. This two-month evaluation involved multiple interview sessions and lengthy multiphasic testing. Applicant asserts that the results of the evaluation show no major psychopathology or perversions, however, he does have a narcissistic personality, which lead to grandiosity and improper feelings of entitlement. N.L. also has given applicant a favorable evaluation and has indicated his willingness to advocate and testify in applicant's behalf in his quest for license restitution.

On a personal level, applicant stated that he deeply examined his religious beliefs, attended lengthy Bible studies, and now reads the scriptures on a regular basis. He noted that he also engages in a two-hour a day personal exercise regimen that has improved his overall health and enabled him to loose unneeded pounds. He further noted that he and his wife, Joan have reconciled and are living a far less flamboyant lifestyle and that she supports his efforts to regain his license.

On a professional medical level, applicant stated that his medical knowledge has remained current due to his avid reading of the medical and surgical literature, and his ongoing research into the areas of medical standards and practices. He further stated that he has kept in close contact with some of his medical colleagues discussing cases and current trends and that many of them have indicated their willingness to work closely with him in reintegration into the medical community when his license is restored.

Finally, applicant noted that he has made mistakes, and that he now recognizes the errors of his ways through intense personal therapy. He realized that some of the personality traits necessary to be a surgeon were also the traits that lead to his mistakes. He stated that he became arrogant and grandiose, then self-destructive, making poor judgements that had a devastating effect on his professional and personal life. His intense multi-facet ongoing program has given

CHARLES G. GABELMAN III (#17872)

him the perspective he needs to return to work as a better functioning physician, with the knowledge, insight, and self-control not to make the same errors again. This adversity, applicant alleged, has made him a better overall person and a better physician. He stated that he realizes the error of his ways and asked to have his license restored.

### **INVESTIGATIVE REPORTS FROM OPD**

#### **Progress Report:**

- Dated September March 25, 1998
- Describes the background of the case as follows:
  - In 1994, applicant's license to practice medicine was summarily suspended by the Department of Health (DOH).
  - In September 1994, applicant's license to practice medicine was revoked on the basis that he was a danger to his patients. He was found to have engaged in physical contact of a sexual nature with two female patients. He was also found to have falsified medical records and used his position at a local hospital to create false documentation of his own blood alcohol level when he was arrested on DWI charges.
- Summarizes an interview with applicant on December 15, 1997 as follows:
  - When asked to recount the circumstances that led to the revocation of his physician's license, petitioner stated that his license to practice medicine was suspended in 1992 for criminal charges of sexual abuse and that in 1994, his license was revoked after conviction of said charges.
  - When asked to be more specific about the circumstances that led to his loss of licensure, the petitioner first stated that he was charged with the



sexual abuse of three female patients, which he subsequently revised to two patients. His attorney then explained that the criminal case involved three females, however, OPMC case included only two.

- A review of this information revealed that the third female (Patient B) would not testify at the OPMC hearing, however, was involved with the criminal case. The petitioner was asked to explain the allegation with Patient B. The petitioner stated that Patient B was a 24-year-old female patient at the time of the incident, who also happened to be his receptionist. The petitioner stated "I did nothing wrong with her." The petitioner would not explain the allegation of Patient B, however, he stated that she came forward with an allegation of abuse only after seeing the other allegations in the newspaper. The petitioner was asked why he pleaded guilty to harassment of this patient if the allegation was untrue. The petitioner responded "I did not have the finances to fight."
- When asked what had happened with Patients A and C, petitioner stated that "he made a mistake" with both patients and claimed he was fully rehabilitated. When prompted again about the circumstances surrounding Patient A and C, petitioner reluctantly stated that he had touched both patients in an inappropriate manner and would offer no further description. At no time did the petitioner claim any remorse for either patient or mention a concern for their well being. He did state that one of the patients is presently suing him in civil court and allegations are false.
- At no time during the interview did the petitioner show any concern for the

patients that he sexually abused. The petitioner did state that he believed the Regents action was appropriate although at the time his license was revoked, he disagreed with their action. When asked to explain why he had changed his mind regarding the Regents revocation of his license he stated that, "they said I had a sexual problem and I don't." He further explained that "I have a problem regarding entitlement in my life; I know that now and I didn't realize it at the time my license was revoked." The petitioner stated that his "problem" was not one of perversion, rather it was "narcissistic behavior."

- Petitioner failed to express remorse at the OPD Investigation interview.
- Petitioner stated that he has no physical ailments and is not dependent on alcohol or drugs.
- In response to a question about why he wants his license restored, the petitioner stated that he may have had "narcissistic" problems, however, his reputation as a surgeon was outstanding. More specifically, the petitioner claims that if his license were restored he would again practice surgery.
- Petitioner stated that St. Elizabeth hospital in Utica would more than likely allow him to practice surgery at their facility. In addition, the petitioner stated that the hospital would be preferable setting because of the element of supervision.
- In response to a question about how he has been supporting himself since revocation of his license, petitioner indicated that he has been a full time

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medical consultant for his attorney for the past three years. His duties include researching medical issues for the law firm. In addition, the petitioner reviews journals, x-rays and medical records for his attorney. His attorney stated that there are females in his office and at no time has anyone complained of the petitioner's conduct while in the office.

- The petitioner was requested to provide any educational documentation reflecting continuing education. He provided no documentation, however, he states that he continues to read medical and surgical literature.
- The petitioner was also asked about his 1991 DWI and Falsifying Business Records convictions (8/25/90). He stated that his vehicle was pulled over for speeding. The petitioner stated that "I blew a 1.8 and yet I only had a few drinks." After his arrest, the petitioner went immediately to Faxton Hospital in Utica and attempted to obtain his own alcohol level reading to disprove the police reading. The petitioner admitted that he requested hospital staff to draw blood from the same arm being infused with water to dilute an alcohol reading.
- The petitioner was asked to explain his criminal history other than the convictions that led to the revocation of his medical license. He stated he had no criminal history other than the charges, which led to revocation of his license, which are:
  - D.W. I (misdemeanor)-1/21/91
  - Falsifying business records (E. felony)-1/25/91
  - Sexual abuse in the third-degree (misdemeanor)-5/25/93

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- When the petitioner was asked about prior arrests, he recounted the following incidents:
  - 1983: he was forced to resign from Rhode Island Hospital in Rhode Island due to an altercation with his first wife, however no criminal case resulted.
  - 1987: the petitioner claimed he was also violent with his wife at St. Elizabeth hospital in Utica. The petitioner claims no criminal case resulted.
  - 1992: the petitioner stated an order of protection was filed against him after he threw a rock through a car window striking his wife. Again, the petitioner claims no criminal case resulted.

O. P. D. investigation revealed the petitioner was not truthful in answering this question. An investigation revealed that petitioner was arrested on 7/14/88 (not 1987) for the crime of felony reckless endangerment. The charge was reduced to a misdemeanor and adjourned in contemplation dismissal. Six months after this disposition the charge was dismissed. (The underlying facts of this charge are set forth later in this report).

Regarding the 1992 incident, while the petitioner admitted he was arrested for throwing a rock at his wife, he failed to mention those charges were resolved in courts by pleaded guilty to a misdemeanor charge of criminal contempt on 10/9/92.

- In response to a question about whether he holds a license to practice medicine in any other state than New York, he stated "no." He was

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specifically asked whether he holds a physician's license in Rhode Island or ever applied for a license in Rhode Island, and again he stated "no."

- Reveals that on 12/20/94 the Rhode Island board of medical licensure and discipline received an application for licensure from the petitioner, in which he made the following comments regarding his revocation in New York:

In October, 1991, I assumed care of a female patient involved in an automobile accident. She came to me through the local hospitals through the emergency room immediately after the accident. She had a number of minor injuries and multiple related complaints out of proportion with her physical exam. She remained under my care for approximately six months.

Her last visit to me was of an urgent nature with her complaining of pain in her left chest and breast area. Because of the urgent nature of her complaints, she was seen outside of normal office hours, when my staff, including my wife who worked in the office, were not present. Despite my usual policy, a chaperone was not present during the exam. The exam was appropriate for the patient's complaints and was in no way sexual in nature. The patient was somewhat upset and left the office at that time.

The following day, she discussed the incident with me and in this discussion apologies by me were made. The patient had recorded this conversation on a remote recorder supplied by the State Police. My apology was construed as an admission and I was subsequently charged with sexual harassment. After a lengthy public campaign by local papers, another woman came forth and alluded to a similar situation with a poorly documented story of an incident three years prior. I was subsequently charged with another harassment count.

Lengthy legal maneuvering occurred over the next several months between the county district attorney and the New York State Department of Health. My license was suspended six months later. Of course, I lost my hospital privileges as a result. After lengthy discussions with my lawyer, I elected to make an Alford plea (*nolo contendere*) to two low level misdemeanors in satisfaction of these charges, rather than face two trials and their large legal expenses. It should be noted that at no time was there an admission of any wrongdoing on my part, as this is the nature of an Alford plea. I made this decision due to limited financial resources. I received a fine and a short probation.

Within several months, the first patient brought forth a \$2 million civil suit

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against both me and the hospital where she was treated. It is the feeling of myself and many others close to the case that monetary gain was the patient's primary motive. There has been no further action in this matter. The second patient later admitted that she was forced to make her complaint by her common-law husband also in hopes of financial gain. Subsequently, she has refused to testify against me in the Department of Health hearings and has privately apologized.

After the suspension, there was legal maneuvering by the state and my counsel which took several months. The state made no good faith effort to resolve the situation and, in fact, my attorney had to bring an article 11 charge against the Department of Health to obtain a hearing.

The hearing began in March 1994 and lasted approximately six weeks involving weekly meetings. The state presented their witnesses and their charges and then I was allowed rebuttal and supporting witnesses. Appearing on my behalf was sister Rose Vincent, the CEO of Saint Elizabeth hospital, my primary place of practice, multiple colleagues, and patients and their families. The entire medical community supported me in this effort

Initially, it was felt a favorable outcome would be given on my behalf as the preponderance of the evidence and personal testimonials were all in my favor. Despite this, my license was revoked in June, 1994. Decisions regarding an appeal are pending.

As part of the preparation for the hearing, I underwent two independent psychiatric evaluations, voluntarily and at my expense, both of which had no unfavorable findings. These reports can certainly be shared with the board as can any and all information regarding the hearing, the charges and personal testimonials from colleagues. This is a very cursory and simplified explanation, the other details can be made available at the board's request.

This has been a devastating experience to me and my family. As a dedicated physician who has always placed my patient's welfare at a premium, I can only ask that the board consider my application with an open mind. I have been offered a chance to start anew and I will do anything humanly possible to that end. I would submit to evaluations and I've offered to participate in the Kentucky Medical Association's impaired physician's program. I'll meet personally with the board at its convenience.

I sincerely thank you for careful consideration in this matter.

A record check indicated that petitioner's application for licensure in Rhode

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Island was denied based on his criminal conviction in New York and filing a false report.

- Notes that a telephone check revealed that petitioner requested an application for licensure from the state of Texas and an application was forwarded to him.
- Notes that the investigator spoke with seven of applicant's references, all of whom were supportive of having his license restored (although all did not know all of the circumstances surrounding his loss of licensure). Two of the references, however, felt that he should have restrictions placed on his license
- States that the Office of Professional Medical Conduct strongly opposes restoration of applicant's license to practice medicine because:

[applicant's] restoration petition focuses essentially on himself - his values, his personality and what he has lost since the revocation of his license. His petition shows a lack of any real understanding of his professional offenses. Rather, it suggests a minimization of the misconduct for which his license was revoked. In [applicant's] own words, 'What occurred was a clouding of the boundaries between personal and professional values...' These words indicate an attempt to downplay the seriousness of his offenses rather than suggesting any genuine understanding or remorse concerning what he has done to his victims. [Applicant's] history of domestic violence, alcohol abuse and professional misconduct, which included sexually abusing patients, attempting to create false evidence by using his position at a hospital and falsifying a patient's medical record, are serious acts of misconduct. There is nothing in [his] restoration petition which demonstrates that he has been rehabilitated. This office would consider restoration to be totally inappropriate and contrary to the best interests of the public.

- Notes the following criminal convictions:

- 12/27/76 - Chicago, Illinois - Misdemeanor - Shoplifting

Applicant failed to disclose this to the OPD investigator during the interview and failed to disclose this on his original application for licensure as a physician in New York, which he filed in 1983.

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- 9/9/91 – Kirkland, New York – Violation - DWAI

On 8/25/90, applicant was arrested for DWI and speeding. His Breathalyzer results were .19%. He went to the hospital to have blood drawn for his own evidentiary use. He had an IV started and instructed the phlebotomist to draw blood from above the IV site. The phlebotomist refused. He then returned the next day to alter the lab slip. He was indicted on a charge of falsifying records and DWI, but entered a plea of guilty to DWAI in satisfaction of both charges.

- 5/25/93 – Utica, New York – Class B Misdemeanor - Sexual Abuse in Third Degree, 2 counts

Applicant was indicted on 5/4/92 on two counts of Sexual Abuse in the first degree. He was convicted by an Alford Plea. These allegations were part of the original OPMC disciplinary proceeding.

- 10/9/92 – New Hartford, New York – Class A Misdemeanor - Criminal Contempt in the Second Degree

On 9/29/92, applicant threw a rock through the front window of his wife's car. Because his wife would not cooperate, and there were no other witnesses, applicant was convicted of criminal contempt.

- 6/27/90 – New Hartford, New York – Violation – Trespass

Applicant violated an order of protection and was arrested on charges of Criminal Contempt in the Second Degree, Resisting Arrest, and Criminal Mischief in the fourth degree. He was convicted of Trespass.

- 5/21/91 – New Hartford, New York – Violation – Trespass



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Applicant was arrested on a charge of Reckless Endangerment in the Second Degree, a class A Misdemeanor after he threw a butcher knife at his wife. He was convicted of Trespass.

**PEER COMMITTEE MEETING**

On September 8, 1999, this Peer Committee met to review this matter. The applicant appeared in person before us and was represented by Robert F. Julian, Esq. The prosecutor from OPD was Karen Carlson, Esq. who appeared in person before us.

Mr. Julian made a brief opening statement describing how the applicant is remorseful and that he knows his actions were wrong that he is gone through intensive therapy and soul-searching. He stated that the question for the panel was to decide whether or not the applicant deserves another chance and whether he currently poses a risk to the public. He noted that he plans to offer both psychological and psychiatric testimony for the purpose of helping the panel understand not only the applicant's journey and where he went wrong but also whether he has been rehabilitated. He further noted that the applicant would testify that at his prior hearing he did not tell the truth, but that he is subsequently come to grips with his wrongdoing. He concluded that aside from his flaws, applicant was a very good, confident, professional surgeon.

In her opening statement, Ms. Carlson reminded the panel that the three primary goals for the panel to keep in mind when deciding this case are remorse, rehabilitation and reeducation. She asked that the panel consider the egregiousness of the applicant's actions and reminded the panel that they were not present at the hearing to witness the female patients testify about how he bit a breast of one patient and bit a breast of another patient. She requested that the panel review the report of the hearing committee. She also noted that not only did the applicant violate professional misconduct statutes, he also violated the Hippocratic oath which states "first, do no

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harm."

Mr. Julian then questioned his first witness, a paralegal in his office where the applicant is also employed. He asked her if she ever had occasion have contact with the applicant and, if so, whether he had ever acted inappropriately towards her. She replied that when he was first hired she had concerns about working with him because she was aware of his background in connection with this case. Since that time, she has had many opportunities to work with them alone in his office and he is always been a gentleman around her. She stated that she was impressed with his medical knowledge and that if he had his license restored, she would go to see him as a physician if she needed to.

Under cross-examination by Ms. Carlson, this witness indicated that while she was aware of the allegations against the applicant in the O. P. M. C. hearing decision, she was not aware that there were some findings that the applicant asked an employee to lie.

Applicant's next witness was J. C. He identified itself as a C. S. W.(clinical social worker) with an R. designation, who has spent most of his career in a not-for-profit setting while simultaneously maintaining a private clinical practice. He was asked by applicant's psychiatrist in 1995 to counsel the applicant. He was advised that applicant's clinical diagnosis was narcissistic personality disorder. He began treating applicant for alcohol abuse but shortly thereafter ruled out alcohol abuse as a diagnosis, determining that applicant's alcohol abuse was episodic rather than chronic. He then focused his therapy on applicant's personal world; his relationship with his father, his relationship with his wife and his upbringing. He testified that, initially, applicant experienced significant denial or resistance, but that over a period of three four months applicant began to trust him. He further indicated that applicant's therapy evolved when he moved out of the denial stage. He testified that dealing with one's actions and feelings of

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entitlement are particularly difficult for individuals with a narcissistic personality. He stated that individuals with a narcissistic personality have a very severe sense of insecurity and an arrogance that is used as a defense mechanism. He noted that applicant's father was a perfectionist who was not very forgiving and that applicant was a "controller" who was not very trusting. He also commented that applicant's relationship with his wife was very conflict-driven. He stated that his wife knew how to push his buttons. Mr. Julian asked J. C. to assume that the applicant would testify to the following: he had inappropriate contact with patients A., B. and C., in addition to several other women; that the instances of violence towards his wife are largely correct as reported; that he instructed an employee to be untruthful with regard to a medical record; that he made misrepresentations with regard to medical records; that he made an application to Rhode Island for a medical license in which he represented that the reasons he lost the license were unfair and untrue; and that there are instances where applicant has not fully revealed the full history of his behavior and conduct. He then asked the witness whether, based upon those assumptions, the applicant has made sufficient progress to obtain his license to practice medicine in New York. J.C. replied that he believed that the applicant was capable of working again, that he would be able to control his behaviors and that he did not pose a danger to others. He also added that he thinks that because the only thing that keeps applicant from relapsing into unacceptable behaviors is awareness, he needs to maintain a therapeutic relationship to turn to in times of stress. He also indicated that the fact that the applicant has had no arrests in the last 8 years is significant because it shows that he has been able to maintain control. He stated that the applicant is very intelligent and has learned where he has been and where he needs to go. The witness opined that the applicant would be able to maintain control over himself in future situations with patients because the applicant has evolved from blaming everyone else for his

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behaviors to accepting what he did was wrong.

Under cross-examination, by Ms. Carlson, J.C. admitted that he had not read the O.P.M.C. hearing decision until approximately 10 days before the hearing. He stated that he had been in a therapeutic relationship with the applicant from 1995-1997. In 1997, he moved to Florida and no longer treated applicant. Ms. Carlson then asked whether, in J.C.'s opinion, the applicant's patients could push his buttons like his wife could and he responded that he did not believe so.

The panel then clarified with J.C. that he has not had contact with the applicant since 1997. The panel also clarified the relationship between the narcissistic personality and lying. J.C. indicated that someone with a narcissistic personality would be more likely to lie in order to support the entitlement they feel.

Mr. Julian then introduced Dr. A.B., who was applicant's treating psychiatrist. He indicated that he first encountered the applicant in 1992, when he was admitted to the emergency room of the hospital for a psychiatric problem. Dr. A.B. testified that that he treated him at that time only long enough to get him stabilized and discharged from the hospital. After his discharge, applicant began to see Dr. A.B. for treatment. Dr. A.B. diagnosed applicant as having a narcissistic personality disorder. Mr. Julian asked Dr. A.B. to assume the same behavioral things as J.C. and opine whether applicant is likely to relapse into bad behaviors again. Dr. A.B. opined that he did not believe that applicant was likely to relapse. Dr. A.B. opined that he did not think that applicant would relapse because when applicant first came to him, he did not express any guilt over what had happened – he was only sorry that his license was revoked. However, as their therapeutic relationship evolved, applicant gained a better understanding of himself. He mentioned that applicant's relationship with his father and his brother's suicide

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created the need for the applicant to prove himself. According to Dr. A.B., applicant's accomplishments as a physician and a scholar were not enough – he needed more. But now he understands himself, and even though he is still narcissistic, Dr. A.B. opined that he would be safe in a treatment situation with a female patient. He suggested that applicant now knows how much he has to lose if he breaches the boundaries. Dr. A.B. also suggested that further evidence that the applicant is a changed man is the respect he has in his marriage for his wife. He has become very supportive of her and has not had an arrest for an incident of domestic violence for many years.

Ms. Carlson then cross-examined Dr. A.B. She clarified that the applicant and Dr. A.B. were colleagues at the same hospital before applicant began his therapeutic relationship with the applicant although Dr. A.B. denied that they had anything other than a very casual relationship, i.e., merely recognizing a face in the halls. He then admitted that he saw the applicant approximately 22 times between 1996-1999. Finally Ms. Carlson asked Dr. A.B. about the imbalance of power in the doctor-patient relationship and Dr. A.B. indicated that sexual contact between a doctor and his patient is always abuse even if the patient sought it out because of the imbalance of power.

Mr. Julian then called applicant's personal trainer as a witness. He indicated that he has known the applicant for over five years and that he comes to the fitness center to work out on the average about six days a week. He indicated that there have never been any complaints about applicant's behavior despite the coed nature of their facility during the time the applicant has been training there.

Mr. Julian then called Dr. N.L., who is a clinical psychologist who evaluated applicant at the request of the applicant's attorney. After clarifying what records Dr. N.L. reviewed, Mr.

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Julian asked the witness how many times he saw the applicant. Dr. N.L. indicated that he had seen him four times for the purpose of conducting an interview and administering psychological tests. Dr. N. L. testified that he concluded from the testing that the applicant was a cooperating and willing participant who was open and candid, and that he had a narcissistic disorder, a shaky self-esteem and a sense of superiority. In his initial interview with respondent (it appears that two of the sessions were in 1995 and the second two sessions were in 1999 shortly before the hearing), respondent discussed his personal history and related information about how he felt about what had happened with respect to his loss of licensure. In the second set of interviews in 1999, applicant discussed what he has been doing in terms of rehabilitation over the intervening four years, such as seeing J.C. and Dr. A.B., and living a more healthy lifestyle – working out and studying the Bible. He opined that the applicant's current expression of remorse is much more thoughtful than when he first saw him and that he was more able to take responsibility for his actions. He also indicated that while he thought that the applicant did not pose a risk to patients when he first saw him, he feels even more strongly about that issue now. With respect to whether the applicant has a sexually deviant personality, Dr. N.L. stated that, based upon his testing, he did not believe that the applicant had any kind of psychosexual disorder. Mr. Julian then questioned Dr. N.L. about applicant's history of untruthfulness with respect to patient records and whether he thought that he would be likely to revert to that behavior again in the future. Dr. N.L. indicated that applicant's untruthfulness was related to his narcissistic personality and that the applicant has worked very hard on self-honesty, so he does not believe that such behavior is likely to recur. He explained that the underlying behavior – sexually abusing patients – is not likely to resurface and therefore the need to lie about this behavior will not present itself. He noted that the applicant is committed to improving himself and appears to

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have developed a healthy pride and attitude.

Ms. Carlson then cross-examined Dr. N.L. She sought to clarify why he felt more strongly about applicant's remorse now than he did in 1995. He stated that it was hard to quantify – but that there was a deepening of the levels upon which applicant felt badly about the incidents. Ms. Carlson attempted to discern why Dr. N.L. felt that the applicant was remorseful and ready to return to practice in 1995 when J.C. did not feel that the applicant was very remorseful at that same time. Dr. N.L. testified that while the applicant still presented some defensiveness in his behavior, he felt that applicant recognized that he made a mistake and would not repeat the behavior.

The panel sought to clarify with Dr. N.L. how he could state that applicant had made sufficient progress in August of 1995 so that he would not present a risk to the welfare of a patient when he had only seen him two times – once for testing and once for an interview. Dr. N.L. stated that he based it on reports from J.C. and Dr. A.B. In response to a question from the panel, Dr. N.L. indicated that in the second set of interviews in 1999, he did not repeat any of the testing; he simply spent the time talking with the applicant. The panel then sought to have some assurance that the applicant would not repeat his behavior if he were licensed. Dr. N.L. indicated that he believes that the applicant has internalized his therapy and that he knows where his weaknesses and vulnerabilities lie. He opined that the applicant is sincere in his expression that he wishes to continue treatment. He also suggested that the applicant have a mentor so that when he transitions back into practice, he would have someone with whom he could discuss ethical issues.

Mr. Julian then questioned the applicant. He asked the applicant about the incidents that he was initially charged with. The applicant admitted that he bit Patient A on the nipple, that

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such contact was inappropriate, and that he had lied under oath when he denied it in the prior proceeding. He also admitted that the conversations he had with her afterward as she was leaving the building were inappropriate as well. The applicant admitted that, with respect to Patient B, he touched both of her breasts under her examining gown in a sexually inappropriate way that was not medically indicated. He further admitted that, with respect to Patient C, he inappropriately placed her hand on his clothed penis. Mr. Julian then questioned the applicant about whether he had engaged in any of this conduct with other patients. The applicant acknowledged that he had inappropriately touched the breasts of at least two other patients and indicated that there may have been more. The applicant then stated that he knows that he has betrayed the trust of his patients as well as his profession. He stated that he violated the first tenet of the Hippocratic oath – first, do no harm. He then admitted that it was wrong not to indicate on his application for licensure in New York that he had been convicted of shoplifting in Illinois in 1976 while he was a medical resident. Mr. Julian then went through applicant's lengthy criminal history with him wherein he admitted to the basis of the charges and admitted that his behavior was wrong. Mr. Julian then questioned the applicant about his application for licensure in Rhode Island in which he indicated that: the proceedings in New York were not supported by the preponderance of the evidence; the exams performed were appropriate for the patients' complaints; and that the exams were not sexual in nature. The applicant indicated that the statements were untrue.

Mr. Julian then focused his questions on the applicant's activities since his revocation. The applicant indicated that he first met Dr. A.B. when he was admitted to the hospital in 1992 when he was very depressed. He continued with therapy with Dr. A.B. as an outpatient after he was discharged approximately once a month. He continued with that until he began to see J.C. in



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1995. For about 3-4 months, he saw J.C. weekly in group therapy sessions until they determined that there was no alcohol addiction problem. After that he continued to see J.C. for regular psychotherapy as a private patient until J.C. left the area in 1997. The applicant testified that after he overcame his denial of the problem, he began to work on his problems. In addition to therapy, he did several other things to improve his shortcomings, such as going to marriage counseling, working out at a gym, and going to a Bible study group and church. He stated that he has maintained his medical knowledge by researching medical topics in his current employment, evaluating x-rays with a radiologist, reading medical journals, and occasionally attending grand rounds.

Mr. Julian then asked the applicant to address the panel and identify reasons to the panel that he would not repeat his behavior if his license were restored. The applicant indicated that he wanted to be a doctor since he was a child and that he had worked very hard towards that goal. He stated that he betrayed his patients, his profession, himself and his family. He indicated that he did not want to admit that he was wrong because of the shame he would feel. Once he faced the shame and admitted it, it was easy to find the remorse. He indicated that this process did not happen overnight – it took years of self-reflection. He stated that he now has a different mindset and he does not believe he is capable of engaging in the same behaviors again.

Ms. Carlson then cross-examined the witness. She clarified that the applicant actually lost his license in March of 1994 so that in 1994, he was still denying that the acts had occurred, despite the fact that he stated he was in therapy with Dr. A.B. in 1992. The applicant agreed with that assessment. He stated that the earliest time at which he admitted that he engaged in these behaviors was really in the fall of 1995. She then went over the incidents involving Patients A, B and C. She suggested that the applicant knew his behavior was wrong at the time he fondled and

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bit Patient A's nipple because he told her immediately after it happened that he would do anything to help her and to please not tell anyone about the incident. Applicant agreed. Ms. Carlson then asked the applicant about the incidents pertaining to the women that did not come forward and whether the applicant knew at the time that he committed them that they were wrong. The applicant indicated that he knew his behavior was wrong at the time he was fondling the women. Ms. Carlson then reviewed the findings of the hearing committee report from OPMC and asked the applicant whether he disagreed with any of them such as, holding Patient A as she was trying to get into her car after the incident, and telling her that he would waive his professional fee for testifying at her personal injury trial. Applicant indicated that he essentially agreed with the findings of the report.

The panel then questioned the applicant about his research into medical topics. The applicant indicated that for each of the topics he researched, he first performed a literature review and then looked at records to determine if there were any deviations from standard practice.

In response to a question from the panel, the applicant indicated that his usual practice at the time these incidents occurred was to have a chaperone in the office at the time the applicant examined any patient, but that he decided to deviate from that by scheduling their visits outside of office hours so that no chaperone would be present. Applicant indicated that he intends, if his license were restored, to continue with therapy, that he will continue to observe his personal religious followings, that he will continue to enjoy a close relationship with his wife, and that he would only work in a hospital setting, *i.e.*, he has no desire to maintain a private practice. He proposes that he have a mentor to advise him on clinical, surgical and ethical issues.

Mr. Julian then called his next witness, Dr. J.D. who is a general surgeon in Utica and is the medical director of the trauma unit at the local hospital. He indicated that he became

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acquainted with the applicant when he came to the area to practice surgery in 1984. In 1986, applicant volunteered to become part of the trauma group. He opined that applicant's surgical record was very good and that his surgical skills were excellent. He also indicated that his statement that applicant should not have female contact to the OPD investigator was not entirely accurate. He meant that all doctors should have only chaperoned contact with female patients, not just the applicant. Dr. J.D. also indicated that from a common sense point of view that he did not think that the applicant would relapse.

Mr. Julian then called the applicant's landlord, A.V. She testified that the applicant and his wife have been exemplary tenants with no complaints against them by the other residents. She also indicated that she has had the occasion to be alone with the applicant and has never experienced any problems with him.

Mr. Julian then questioned the applicant's wife, J.G. She indicated that she has been married to the applicant for a number of years and that their marriage has changed for the better since his license was revoked. She indicated that he has become more humble, caring sensitive and tolerant.

Ms. Carlson then made a brief closing statement and indicated that the applicant violated the first tenet of the Hippocratic Oath – first, do no harm. She indicated that he was found guilty of sexually abusing two patients and then in the instant hearing, indicated that there were at least three more. She admitted that he was very honest with the panel, but that does not mitigate what had happened in the past. She suggested that sexual abuse of a patient is one of the most heinous acts a physician can do and that the women who were abused may not have been able to have the benefit of the same personal journey that the applicant has made. She stated that it is impossible to quantify the amount of damage and pain inflicted by the applicant. She further indicated that OPD

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is not comfortable with the applicant's reliance on his own inner awareness as the safety valve for avoiding future bad behavior. She stated that while the applicant expressed remorse, there was no testimony that he had attempted to address his personal journey with the abused patients, nor any indication of any additional steps taken by him to account for all of the hurt inflicted on the patients. She indicated that sexual abuse is a crime and it should not be taken lightly. She stated that despite the fact that applicant had built-in controls in his own practice to avoid situations where he would be alone with female patients, he still managed to create those opportunities and that his assurances that it would not happen again in the future are not enough to give OPD the confidence it needs to believe that his conduct would reoccur. She concluded by stating that OPD opposed applicant's petition for restoration.

Mr. Julian then made his closing remarks to the panel. He indicated that the applicant admitted his bad behavior in not only the incidents he was formally charged with, but that he also voluntarily disclosed additional incidents of sexual abuse. He stated that the applicant understands that his narcissistic personality disorder is not an excuse but rather an attempt to evaluate what he did from a therapeutic perspective. He disagreed with Ms. Carlson's suggestion that it would be appropriate for the applicant to make contact with the victims again. He suggested that the panel evaluate the applicant's propensity towards engaging in this behavior from the testimony of the three professionals who testified the social worker, the psychologist and the psychiatrist. He stated that the applicant has been rehabilitated, that he has worked through his demons, that his life and his skills have to be taken in their entirety, when the panel evaluates whether any one who has committed the acts that the applicant has is ever capable of redemption.

#### **RECOMMENDATION**

In reviewing this matter, we have considered the three criteria for restoration proceedings:

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re-education, remorse and rehabilitation. It is the panel's opinion that the applicant has demonstrated all of the criteria for restoration.

With respect to the re-education criterion, this panel notes that applicant is working in an attorney's office doing research for medical malpractice cases on a variety of topics. He testified that he has been doing this for approximately several years and has researched over 40 topics. He has reviewed medical records and x-rays. Thus, we find that the applicant has maintained his knowledge level sufficient to meet the reeducation requirement.

Applicant also demonstrated the remaining criteria – remorse and rehabilitation. With respect to rehabilitation, it is clear that the applicant is rehabilitated from his predatory behavior. Both his treating psychiatrist and his social worker testified that the applicant now possesses insight into his problems and that he understands why he did what he did. The applicant appears to have changed his life and has been humbled by the loss of licensure. He appears to have a much stronger relationship with his wife and by all accounts, has not engaged in the abusive kind of behavior with his wife that seemed commonplace before the loss of his license. He has voluntarily sought therapy from a variety of sources and appears to have followed through and stuck with it long enough to have developed an appreciation of his narcissistic personality and the ramifications that presents for a surgeon. He has taken what steps he could take to rehabilitate himself. He has become more involved in his religion and he has made certain lifestyle changes with respect to his marriage and his own personal fitness. Therefore, we find that the applicant has fully rehabilitated himself and met this criterion for restoration.

With respect to remorse, it appears that applicant is remorseful. He presented himself before the peer committee and not only admitted that he sexually abused Patients A, B and C, he also revealed that there were a number of others that he sexually abused and for which he now

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completely accepts blame for. He stated that he feels badly for how he acted towards these women and bears a great degree of guilt over it. He recognizes that his actions were morally wrong, but this panel believes that applicant must stay in a situation where his actions can be monitored and that there is a certain degree of oversight. Accordingly, we find that applicant has demonstrated the remorse necessary for the restoration of his license.

Therefore, the unanimous recommendation of this Peer Committee is that the execution of the revocation of the applicant's license to practice as a physician in the State of New York be stayed; that applicant be placed on probation for three years under the terms of probation attached hereto, made a part hereof, and labeled as Exhibit "A," and that, upon successful completion of the terms of probation, applicant's license to practice medicine in that State of New York be fully restored.

Respectfully submitted,

Philip G. Holtzapple, M.D., Chairperson  
Robert Corona, M.D.  
Thomas K. Wu, M.D.

  
Philip G. Holtzapple, M.D., Chairperson      Dated

10/4/00

EXHIBIT "A"

TERMS OF PROBATION  
OF THE PEER PANEL

CHARLES G. GABELMAN III

CALENDAR NO. 17872

1. That applicant shall make quarterly visits to an employee of and selected by the Office of Professional Medical Conduct of the New York State Department of Health, unless said employee agrees otherwise as to said visits, for the purpose of determining whether applicant is in compliance with the following:
  - a. That applicant, during the period of probation, shall be in compliance with the standards of conduct prescribed by the law governing applicant's profession;
  - b. That applicant shall submit written notification to the New York State Department of Health, addressed to the Director, Office of Professional Medical Conduct, Empire State Plaza, Albany, NY 12234 of any employment and/or practice, applicant's residence, telephone number, or mailing address, and of any change in applicant's employment, practice, residence, telephone number, or mailing address within or without the State of New York;
  - c. That applicant shall submit written proof from the Division of Professional Licensing Services (DPLS), New York State Education Department (NYSED), that applicant has paid all registration fees due and owing to the NYSED and applicant 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 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; and
  - d. That 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) applicant is currently registered with the NYSED, unless applicant submits written proof to the New York State Department of Health, that applicant has advised DPLS, NYSED, that applicant is not engaging in the practice of applicant's profession in the State of New York and does not desire to register, and that 2) applicant has paid any fines which may have previously been imposed upon applicant by the Board of Regents; said proof of the above to be submitted no later than the first two months of the period of probation;

2. That applicant, during the period of probation has successfully performed 200 hours of public service per year for each year of probation at a facility dealing with sexual abuse victims, domestic violence or rape crisis to be selected by applicant and previously approved, in writing, by an employee of and selected by the Office of Professional Medical Conduct of the New York State Department of Health; and that applicant shall provide a report at least twice a year on the applicant's activities with respect to such program from the director of such program to said employee;
3. That applicant shall only practice as a physician in a hospital or institution based setting under the supervision of a physician board certified in surgery, said supervising physician to be selected by applicant and previously approved, in writing, by the Director of the Office of Professional Medical Conduct;
4. That once every three months during the period of probation, at applicant's expense, the applicant shall submit to an examination and any necessary treatment by a psychiatrist, psychologist or certified social worker (hereinafter "therapist") chosen by the applicant and previously approved, in writing, by an employee of and selected by the Office of Professional Medical Conduct of the New York State Department of Health. Said therapist shall supply written reports to said employee once every 3 months, which shall state whether or not applicant is fit to practice as a physician in the State of New York. Applicant must be fit to practice as a physician in the State of New York in order to be in compliance with this term of probation, such fitness to be demonstrated by said written report from said therapist.
5. If the Director of the Office of Professional Medical Conduct determines that applicant may have violated probation, the Department of Health may initiate a violation of probation proceeding and/or such other proceedings pursuant to the Public Health Law, Education Law, and/or Rules of the Board of Regents.