

Public
The
University of the
Education



State of New York
Department

IN THE MATTER

of the

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

Case No. CP-09-15

It appearing that the license of FRANKLIN SIMON, Redacted Address
to practice as a physician in the State of New York was
surrendered by order of the State Board for Professional Medical Conduct effective June 14,
1996, and he having petitioned the Board of Regents for restoration of said license, and the
Regents having given consideration to said petition and having reviewed the record, and having
disagreed with and rejected the recommendation of the Peer Committee, and having agreed with
and adopted the recommendation of the Committee on the Professions, now, pursuant to action
taken by the Board of Regents on May 18, 2009 as reflected in the attached Vote, it is hereby

ORDERED that the petition for restoration of License No. 099659, authorizing
FRANKLIN SIMON to practice as a physician in the State of New York, is denied.

IN WITNESS WHEREOF, I, Carole F. Huxley, Interim
Commissioner of Education of the State of New York for
and on behalf of the State Education Department, do
hereunto set my hand and affix the seal of the State
Education Department, at the City of Albany, this 29th
day of September, 2009.

Redacted Signature

Interim Commissioner of Education ✓



Case No. CP-09-15

It appearing that the license of FRANKLIN SIMON, Redacted Address
, to practice as a physician in the State of New York, was
surrendered by order of the State Board for Professional Medical Conduct effective June 14,
1996, and he having petitioned the Board of Regents for restoration of said license, and the
Regents having given consideration to said petition and the record, including petitioner's
submission in response to the report of the Committee on the Professions, and having disagreed
with and rejected the recommendation of the Peer Committee, and having agreed with and
adopted the recommendation of the Committee on the Professions for the reasons set forth in that
recommendation, including but not limited to the concern that the practice limitations
recommended by the Peer Committee could not be enforced after the probationary period ends,
now, pursuant to action taken by the Board of Regents on May 18, 2009, it is hereby

VOTED that the petition for restoration of License No. 099659, authorizing FRANKLIN
SIMON to practice as a physician in the State of New York, is denied.

7002 0860 0000 6467 1605

7002 0860 0000 6467 165

9453

Sent To
Franklin Simon, Physician
Redacted Address

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ty of the State

IN THE MATTER
 OF
 FRANKLIN SIMON
 (PHYSICIAN)

Sent To James C. Sherwood
 Attorney at Law
 Street, Apt. No. Schlam, Stone & Dolan, I.L.P.
 or PO Box No. Broadway
 City State ZIP
 New York, New York 10004
 PS Form 3800, April 2002

Postage	\$ 1.33
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STATE OF NEW YORK

COUNTY OF ALBANY

SS:

Neil Blumenfeld

being duly sworn, deposes and says:

I am over the age of twenty-one years and am an employee of the New York State Education Department, Office of Professional Discipline, 80 Wolf Road, Suite 204, Albany, New York 12205-2643.

On the 30th day of October, 2009, I personally delivered to the Stuyvesant Plaza Post Office the Duplicate Original Vote of the Board of Regents and Order under Calendar No. 22528 and the Report of the Regents Review Committee or Application for Consent or Surrender, or Report of the designated Regent in a summary suspension proceeding as applicable, by Certified Mail - Return Receipt Requested to the respondent herein named at 325 Riverside Drive, Apt. #72, New York, New York 10025 & James C. Sherwood, Attorney at Law, Schlam, Stone & Dolan, L.L.P., 26 Broadway, New York, New York 10004.

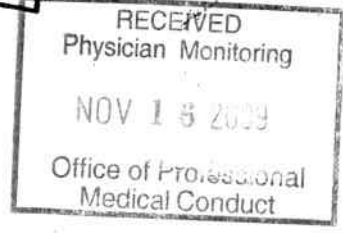
Certified Mail Receipt No. 7002 0860 0000 6467 1650

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

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

Redacted Signature

NELLIA L. BLAIZES-McNEAR
 Notary Public, State of New York
 Registration #01BL6054271
 Qualified in Kings County
 My Commission Expires Jan. 29, 2011



Case Number
CP-09-15
May 1, 2009

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: Franklin Simon

Attorney: James C. Sherwood

Franklin Simon, ^{Redacted Address}
, petitioned for restoration of his medical license. The chronology of events is as follows:

- 08/18/67 Issued license #099659 to practice medicine in the State of New York.
- 04/13/78 Charged with professional misconduct by the Department of Health.
- 10/27/80 Department of Health recommended applicant's license be revoked.
- 07/07/81 Determination and Order revoking New York medical license.
- 09/23/83 First Petition for Restoration of License denied, but penalty modified to extent that revocation of license was stayed and applicant placed on five years probation.
- 07/29/85 Application for Modification of Terms of Probation denied.
- 06/14/96 Effective date of license surrender following new charges of professional misconduct.
- 08/30/04 Second Petition for Restoration of License.
- 10/11/07 Peer Committee restoration review hearing completed.
- 04/22/08 Report and Recommendation of Peer Committee. (See "Report of the Peer Committee.")
- 10/28/08 Committee on the Professions meeting with applicant.
- 05/01/09 Report and Recommendation of Committee on the Professions.

Disciplinary History. (See attached disciplinary documents.) On April 13, 1978 the State Board for Professional Medical Conduct charged the applicant with practicing the profession of medicine fraudulently; practicing the profession with gross negligence/gross incompetence; practicing the profession with negligence and/or incompetence on more than one occasion, practicing the profession while his ability to practice was impaired by mental disability; and unprofessional conduct. On October 27, 1980, the Commissioner of Health issued his recommendation that the applicant's license be revoked. On July 7, 1981 the Commissioner of Education issued an order revoking the applicant's license. The applicant subsequently filed a Petition for Restoration of License; on September 23, 1983, the Board of Regents voted to deny the petition, but also voted to stay the revocation of the applicant's license and to place him on probation for five years. In May 1996, the applicant was charged with one specification of having a psychiatric condition which impaired his ability to practice; one specification of practicing while impaired; three specifications of fraudulent practice; two specifications of moral unfitness (based on instances of inappropriate conduct with a patient and with a co-worker); and one specification of gross negligence. Effective June 14, 1996, the applicant surrendered his license.

On August 30, 2004, Mr. Simon submitted the instant application for restoration of his physician license.

Recommendation of the Peer Committee. (See attached Report of the Peer Committee.) The Peer Committee (Norris, Lowinson, Robinson) convened on July 18, 2007, October 10, 2007 and October 11, 2007. In its report dated April 22, 2008, the Committee voted unanimously to recommend that Dr. Simon's license be restored but that his practice be limited in a specified manner, including continuation of psychotherapy and supervision of his practice, and that he be placed on probation for five years under specified terms. Those terms included provisions that he work in a supervised situation, that he continue in psychotherapy, and that he should have a practice monitor who would issue quarterly reports to his therapist, who would then issue appropriate reports to the OPMC.

Recommendation of the Committee on the Professions. On October 28, 2008, the Committee on the Professions (COP) (Ahearn, Hansen, Earle) met with Dr. Simon to consider his application for restoration. He was accompanied by his attorney James C. Sherwood.

The Committee asked Dr. Simon what led to the loss of his license. He responded that he had had a previous problem in the late 1970s with an episode of bipolar behavior. He explained that he had gone through a difficult divorce, that he had had difficulty visiting his daughter because of logistics, that he had cycled into a hypomanic state, and that he had exhibited totally inappropriate behavior, some of which he states he does not remember. He indicated that, based on his conduct at that time, the state recommended revocation of his license. He reported to the COP that he started treatment and that he was prescribed Lithium, which stabilized his condition. He explained that, although an application submitted by him for the restoration of his license was denied in 1983, the revocation of his license was stayed by the Board of Regents, based on the stabilization of his condition and on the quality of the services he

provided at the hospital where he worked, and he was placed on probation for five years under specified terms and conditions.

Dr. Simon stated that 15 years later he did a terrible thing by having a brief affair with a female colleague. He explained that this affair only lasted one day and that it caused him great emotional pain. He reported that about six or eight months later this same colleague was having an affair with his boss, that the affair was causing problems in the workplace, and that he believed that he was the only one who could approach his boss about the affair. He said that his boss turned on him, ordered him out of his office, accused him of starting rumors and finally expelled him from the facility. Dr. Simon stated that he was then required to participate in an administrative hearing about his own affair with this same colleague. He told the Committee that he had forgotten about his previous affair with this colleague and that at this time he resigned his position. Dr. Simon described this colleague as a psychopath and a "professional litigator."

When asked by the Committee why he resigned over this incident, Dr. Simon stated that he did not think that any one would believe him. He said that he did not remember his affair until after he had a conversation with his boss. He explained that he had lost his license once because of sexual misconduct committed during a bi-polar incident and that he was afraid of litigation. He also stated that he felt a sense of loyalty to his boss and did not believe the allegation that he was having an affair and that he felt that resignation was the most prudent course of conduct for him.

Dr. Simon related to the Committee that, while on a trip to Israel with his family, he became dehydrated because the climate was very hot. He indicated that he was experiencing severe back pain because the Lithium he was taking had caused him to develop a large kidney stone. He reported that he received treatment from a physician who advised him to stop taking the Lithium and that another physician later prescribed Depakote for treatment of his bi-polar condition. He explained that Depakote caused him to gain a lot of weight, that he developed sleep apnea which, at times, caused him to go into a hypnotic state when treating patients, and that he was diagnosed with an oxygen saturation level of 75 percent. Dr. Simon reported that he has now been weaned off all medications by Dr. Labins, his psychiatrist, and that there have been no signs of bi-polar disorder since being taken off the medications.

Dr. Simon explained to the Committee that, before he lost his license, he had a small private practice and was treating a patient who had anorexia. He stated that this patient had lost her mother and her father to cancer and, at the time he was treating her, was involved with a boyfriend who beat her. He reported that he remembered an old approach called "symbolic realization," in which a patient sits on the physician's lap and is held in order to provide comfort to the patient. He explained that his patient was losing a lot of weight and that her health was in great danger. He reported to the COP that he intended only to feed her. He stated the patient subsequently went to the hospital where she told a social worker about Dr. Simon holding her in his arms and that the social worker then reported it to the Office of Professional Medical Conduct. He explained that he did use bad judgment but that he really wanted to find out what was going on with this patient. He stated that he then surrendered his license voluntarily.

The Committee asked Dr. Simon why he did not defend himself and this treatment. He answered saying that this was the first time he had ever tried the treatment and that he was told that if he did not surrender his license he would not practice again. The Committee then asked Mr. Simon about the serious allegations that he bit, kissed and touched the buttocks of the patient. He responded by denying all of those allegations. He explained that the sleep apnea caused him to have poor judgment, which resulted in his decision to have his patient sit on his lap.

Dr. Simon explained that, between 1996 and 2001, his health continued to decline. He stated that he went on his own medical journey to figure out his medical issues. As part of this journey, he reported that he went to a sleep clinic and now uses a continuous positive airway pressure (CPAP) apparatus for his sleep apnea, which keeps it under control. He explained that he now believes that he has overcome his medical and emotional problems and stated that he has been evaluated by three doctors, all of whom indicated to him that he should seek to have his license restored.

Noting that he was no longer taking any medication, the COP asked Dr. Simon how he would be able to recognize that he needs help before it is too late. Dr. Simon told the COP that he could assure them that there would be no repeat of the behavior for which he had been disciplined in the past because he would have a support system in place now and he would be monitored following the recommendations in Dr. Krueger's report. He stated that his wife, who is a psychologist, would also monitor him and report any problems to Dr. Labins. He explained that bi-polar episodes are not sudden but build up gradually and that there should be adequate time for the monitors to recognize the symptoms. Explaining what he would do to monitor himself when he was alone with a patient, he said that he have a video camera in his office and indicated that he would continue seeing a psychiatrist.

The Committee asked Dr. Simon what had changed since the late 1970s when he had his first bi-polar episode. He responded that he was all alone in the late 1970s and had no support system in place. He said that he had to travel long distances in order to see his daughter and that this was stressful. He told the Committee that his loneliness and lack of a supportive community led to his inappropriate conduct with his patients. He continued by stating that he married his present wife in 1982 and that he now has a strong support system in place.

When asked by the Committee how he supported himself, Dr. Simon stated he supports himself by collecting Social Security and his pension. The Committee asked Dr. Simon what he would do if his license were restored. He answered that he would work in Maimonides Hospital, in the Veterans Administration Hospital in the Bronx, or in the prison system. He explained that he has developed a sense of how much the prison population needs and how little is provided.

The overarching concern in all restoration cases is the protection of the public. New York Education Law §6511 gives the Board of Regents discretionary authority to make the final decision regarding applications for the restoration of a professional license. Section 24.7 of the Rules of the Board of Regents charges the COP with submitting a recommendation to the Board of Regents on restoration applications. Although not mandated by law or regulation, the Board of Regents has instituted a

process whereby a Peer Committee first meets with an applicant for restoration and provides a recommendation to the COP. A former licensee petitioning for restoration has a significant burden of satisfying the Board of Regents that there is a compelling reason that licensure should be granted in the face of misconduct that resulted in the loss of licensure. There must be clear and convincing evidence that the petitioner is fit to practice safely, that the misconduct will not recur, and that the root causes of the misconduct have been addressed and satisfactorily dealt with by the petitioner. It is not the role of the COP to merely accept, without question, the arguments presented by the petitioner, but to weigh and evaluate all of the evidence submitted and to render a determination based upon the entire record.

The COP does not concur with the Peer Committee's recommendation that Dr. Simon's license be restored. We find his testimony before us to be inconsistent and neither credible nor logical. We find his asserted inability to remember his own affair with a colleague when he was confronted by an almost identical scenario of his boss having an affair with the same colleague not to be credible. He continues to engage in what appears to be a consistent pattern of blaming others, and it appears he has not fully addressed the root causes of his misconduct. For example, he appears to shift the blame for his affair to his colleague by saying that she was a psychopath and a "professional litigator." Dr. Simon denies wrongdoing in both his affair and his treatment of his patient but was quick to resign his position at the hospital and surrender his license, making no attempt to defend himself or his actions. This leads us to the belief that Dr. Simon was well aware that his behavior was wrong. He maintains that he now has a support system in place that will keep him from repeating his prior misconduct. However, it appears to us that he had a support system in 1996 but that it failed to prevent his misconduct at that time. Dr. Simon's episodes manifest themselves in dangerous behavior, and we do not find clear and convincing evidence that he will not repeat his prior behavior. We find no compelling reason to restore Dr. Simon's license.

Additionally, we note that the recommendation of the Peer Committee is that "the applicant be restored to licensure but that his practice be limited" to a supervised situation, with a practice monitor, and with the continuation of psychotherapy "for the remainder of his practice." The Board of Regents is authorized to place a restoration applicant on probation and to impose terms and conditions to be adhered to during the period of probation. However, the Board does not have the authority to impose practice limitations beyond the probationary period. While we appreciate the Peer Committee's effort to provide adequate protection for the public by imposing conditions on Dr. Simon's practice, its recommendation could not be implemented as written, even were the Board of Regents to vote to restore of his license.

After a careful review of the record and its meeting with Dr. Simon, the Committee on the Professions voted unanimously to recommend that his application for the restoration of his license to practice as a physician in the State of New York be denied.

Kathy Ahearn, Chair
Steven Earle
Stanley Hansen

THE UNIVERSITY OF THE STATE OF NEW YORK
BOARD OF REGENTS

In the Matter of the Petition of Franklin Simon,
M.D. for the Restoration of his Medical License

Case No. CP-09-15

**RESPONSE OF PETITIONER FRANKLIN SIMON, M.D.
TO RECOMMENDATION OF COMMITTEE ON THE PROFESSIONS**

Petitioner Franklin Simon, M.D., respectfully submits this response to the recommendation of the Committee on the Professions of the New York State Education Department ("COP") dated May 1, 2009, that his petition for the restoration of his license to practice medicine be denied.

I. BACKGROUND

Dr. Franklin Simon surrendered his license to practice medicine effective June 14, 1996. After therapy for sleep apnea and psychotherapy with Dr. Zev Labins, M.D. beginning in 2000, accumulating substantial CME credits and thousands of hours of charitable activities, he applied to restore his license on August 30, 2004. His application was referred to the Peer Committee, which heard testimony on July 18, 2007, October 10, 2007 and October 11, 2007. Witnesses included Dr. Zev Labins, Dr. Simon's therapist; Dr. Joyce Walseleben, of the N.Y.U. Sleep Disorders Center; Dr. Zebulon Taintor, M.D., Dr. Simon's supervisor at Manhattan Psychiatric Center; Dr. Seymour Gers, who worked with Dr. Simon at Manhattan Psychiatric Center; and his wife, Barbara Simon, psychologist, and Dr. Simon himself. Dr. Simon had also been thoroughly tested and evaluated by Dr. Richard Kreuger, M.D., the pre-eminent specialist in treating physicians with psycho-sexual impairments, whose report was entered into evidence. Dr. Kreuger opined to a reasonable degree of medical certainty that Dr. Simon could return safely to the practice of

medicine or psychiatry in a supervised situation. The Peer Committee made the following recommendation:

We unanimously recommend that the applicant be restored to licensure but that his practice be limited as set forth in exhibit A attached hereto and by the terms of probation attached hereto and marked as exhibit B. We also recommend that said period of probation be for five (5) years.

We base this recommendation on the applicant's extensive CME efforts and on his extensive volunteer work, community service and personal service and sacrifice for close friends and relatives.

We further believe the applicant has taken responsibility for his misconduct. He has been in continued therapy since 2000 and has made considerable progress therein. He also has stated clearly that he will accept any restrictions placed on his practice of medicine.

II. ARGUMENT

BECAUSE THE RECOMMENDATION OF THE COMMITTEE ON THE PROFESSIONS HAS NO SUPPORT IN THE RECORD, THE BOARD OF REGENTS SHOULD FOLLOW THE RECOMMENDATION OF THE PEER COMMITTEE AND RESTORE DR. SIMON'S MEDICAL LICENSE

The COP rejects the findings of the Peer Committee without analyzing, refuting, or even referring to any of the evidence in the record before the Peer Committee. The COP claims to base its recommendation that Dr. Simon's license not be restored on the following allegations:

- (1) he continues to engage in what appears to be a consistent pattern of blaming others;
- ~~(2) it appears that he has not fully addressed the root causes of his problem;~~
- (3) he allegedly denied wrongdoing in both his affair and his treatment of his patient, but was quick to resign his position at the hospital and surrender his license, making no attempt to defend himself or his actions. These allegations lead the COP to the

belief that Dr. Simon was well aware his behavior was wrong, and that there was a contradiction in his testimony;

- (4) Dr. Simon had a support system in place in 1996 which failed, so his current support system will not prevent repetition of prior misconduct;
- (5) his episodes manifest themselves in dangerous behavior, without warning; and
- (6) his testimony was inconsistent and neither credible nor logical.

None of these allegations is supported by the record in this case or by Dr. Simon's testimony before the COP.

A. Dr. Simon Never Denied Wrongdoing in his Affair with Dr. Y or in his Treatment of Patient M.

The COP argues that Dr. Simon contradicted himself in his testimony as follows:

Dr. Simon denies wrongdoing in both his affair and his treatment of his patient but was quick to resign his position at the hospital and surrender his license, making no attempt to defend himself or his actions. This leads us to the belief that Dr. Simon was well aware that his behavior was wrong.

Nothing in the record supports the COP's view that he denied wrongdoing. Dr. Simon accepted responsibility for his actions, without reservation, before the Peer Committee and before the COP. His willingness to resign his position at the hospital and his surrendering his license demonstrate his consciousness of wrongdoing, as does all of his testimony. Thus, there is no basis for the alleged "contradiction" in testimony the COP seeks to create.

1. Dr. Simon accepted responsibility for his affair with Dr. Y.

Dr. Simon accepted full responsibility for his affair with Dr. Y, both before the COP and before the Peer Committee. In its narrative of Dr. Simon's testimony before the COP, the COP reports: "Dr. Simon stated that 15 years later he did a terrible thing by having a brief affair with a female colleague. He explained that this affair lasted only one day and that it caused him great

emotional pain.” (COP Recommendation, p. 3, para. 1) This hardly amounts to a denial of wrongdoing.

In his hearing before the Peer Committee, he described his one, consensual sexual encounter with a fellow physician, Dr. Y, on the staff of Manhattan Psychiatric Center (“MPC”) where he worked. He did not supervise this colleague, directly or indirectly. Dr. Simon stated that Dr. Y invited him to visit her office where they engaged in a sexual encounter. (Tr. 33).^{*} He never visited her office again and never had a sexual encounter with her again. (Tr. 33). He testified that he considered this encounter to be a serious, inexcusable boundary violation, for which he was personally responsible. (Tr. 34-35)

On cross-examination, Dr. Simon testified repeatedly that he did not consider himself to be a victim of Dr. Y, even though he had had a one-day affair with her and she had made false accusations against him. (Tr. 66, ll. 25-69, l. 9). He was not a victim because “I’m responsible for putting myself in harm’s way of Dr. Y. And in that sense, I take responsibility for my actions.” (Tr. 69, ll. 4-9).

His reference to her a psychopath and a professional litigator surely disparages her, but does not detract from his admission that he accepts responsibility for their “mutual decision” to engage in a sex act, nor from his repeated refusal to characterize himself as her victim, because he willingly “put himself in harm’s way.”

2. Dr. Simon accepted responsibility for his inappropriate treatment of Patient M by permitting her to sit on his lap

Dr. Simon testified that in trying to devise an acceptable therapy for this patient, he recalled a technique used by Dr. Sechayee, a Swiss psychoanalyst, in a classic psychiatric case study, involving a therapist permitting a patient to sit on her lap. Dr. Joyce Lowinson, M.D., a

^{*} Citations in the form “Tr.” refer to the transcript of the hearing before the Peer Committee dated October 11, 2007.

psychiatrist on the Peer Committee, was familiar with the case study at issue, stating "If you were analytically trained, then some of the philosophy that was explained by this Swiss psychiatrist which we all know about in psychiatry and how boundaries were crossed, how did your own training affect your perception of this? Did you have some ambition? (Tr. 122, l. 23-123, l. 3) (emphasis added).

Dr. Simon admitted wrongdoing in his answer:

Yes, I did. And, in fact, I had thought it would be an heroic measure on my part. I thought it might save the day. It was – I was really indulging my own rescue fantasies as a substitute for good judgment."

(Tr. 123, ll. 4-8). Dr. Simon had earlier testified that indulging in rescue fantasies by a psychiatrist was a taboo and a serious boundary violation. (Tr. 45, ll. 20-46, l. 18).

Panelist Benjamin Robinson of the Peer Committee asked Dr. Simon "whether you still subscribe to that theory of treatment." And Dr. Simon answered "No, I no longer do." (Tr. 114, ll. 15-115, l. 3). Mr. Robinson asked "Do you ever see yourself approaching a client in a manner you did before, such as a closer attachment as opposed to distancing yourself from a patient?" Dr. Simon answered:

I don't see myself as ever engaging again in such a way of approaching a patient.

(Tr. 117, ll. 15-20). Dr. Simon testified that his therapy with Dr. Labins helped lead him to this insight. (Tr. 118, ll. 21-119, l. 8).

In renouncing this method of treatment, Dr. Simon stated that "...in the context of an office visit to engage in that kind of practice just violates too many expectations and boundaries." (Tr. 115, ll. 2-3). He related that in a later telephone conversation, Patient M stated:

"Oh, I know, you didn't do anything, Dr. Simon, but you confused me." And that's when it hit me how stupid and how unacceptable

and how self-destructive and how destructive of that patient that kind of approach could be.”

(Tr. 115, ll. 17-23).

Thus, Dr. Simon unconditionally condemned his treatment of Patient M, and blamed no one but himself. In so doing, he revealed thoughtful insights into the root causes of his problem.

3. **Dr. Simon’s willingness to surrender his position at Manhattan Psychiatric Center and his willingness to surrender his license are consistent with his awareness that his behavior was wrong.**

As demonstrated above, Dr. Simon has fully admitted that his affair with Dr. Y and his permitting Patient M to sit on his lap were wrong. That realization informed his decisions to leave Manhattan Psychiatric Center and to surrender his license.

In leaving Manhattan Psychiatric Center, he was motivated by his shame over his affair with a colleague, which he told the COP “was a terrible thing” that “caused him great emotional pain.” He also wanted to spare his wife Barbara who was also on the staff of Manhattan Psychiatric Center from the deep embarrassment caused by his infidelity.

In surrendering his license, he realized early on from his telephone conversation with Patient M described above just how ill-advised and wrong was his permitting her to sit on his lap: he called it “stupid,” “unacceptable,” “self-destructive” and “destructive of that patient.” That telephone conversation came after the charge was made and before he surrendered his license.

Thus, there is no contradiction in his testimony, as the COP alleges. He has consistently admitted his behavior was wrong, and leaving Manhattan Psychiatric Center and surrendering his license only corroborate his admissions.

B. Dr. Simon's Current Support System Will Detect and Prevent Recurrence of Unprofessional Conduct

The COP argues that Dr. Simon's support system in 1995 failed to prevent his episode with Patient M, and therefore that his current support system would likewise be inadequate to prevent future misconduct. Because of the substantial differences in Dr. Simon himself and in his supports between 1995 and the present, this illogical leap by the COP fails.

In 1995 when Dr. Simon took on Patient M as his private patient, he was commuting between Plattsburgh in upstate New York where he worked long hours as a *locum tenens* physician and his home in Belle Harbor, Queens. (Tr. 40). He had no permanent institutional job. He was having marital difficulties and was separated from his wife. His problem with sleep apnea existed but had not been diagnosed. This unstable situation closely parallels his life circumstances in 1977 when he suffered from untreated bipolar disorder. It should be noted, however, that the boundary violations in the 1990's – a one-day consensual affair with a professional colleague and applying an unorthodox therapy inappropriately to a fragile patient – were incidents of a lesser magnitude than the episodes in 1977.

Dr. Simon comes before the Board as a changed man with a significantly strengthened support system. Dr. Labins testified that Dr. Simon's bipolar disorder has been in remission at least since the start of his therapy in 2000. (Peer Committee Report, pp. 7-8). His sleep apnea was first diagnosed in 1999, has been successfully treated to date, and is now well-controlled. He spent nine years in therapy with Dr. Labins, a noted gatekeeper psychiatrist who has worked with Dr. Simon on the root causes of his problems in therapy since 2000, and is very satisfied with his progress. (Peer Committee Report, pp. 6, 8). His marriage is strong and intact, and his wife communicates frequently and directly with his ongoing therapist Dr. Labins. For many years, Dr. Simon took everyday personal care of his mother, of a colleague and of a friend, whom he took

into his home and nursed in their final illnesses. (Peer Committee Report, p. 11) He spent 2,000 hours assisting inmates in dealing with the criminal justice system and in charitable work for the elderly and others, all without compensation. (Peer Committee Report, p. 9). He told the COP that if he is permitted to return to practice he hopes to be able to help underserved patient populations, saying "that he would work in Maimonides Hospital, in the Veterans Administration Hospital in the Bronx, or in the prison system. He explained that he has developed a sense of how much the prison population needs and how little is provided." (COP Recommendation, p. 4, para. 5).

The terms of readmission recommended by Doctors Kreuger, Labins, and Taintor, accepted by Dr. Simon and his wife, Barbara Simon, psychologist, and recommended by the Peer Committee, provide extraordinary additional support for Dr. Simon. They provide that he practice only in an institutional setting, and that the mental health professionals with whom he work read Dr. Kreuger's extensive, detailed report. They provide that he continue in therapy with Dr. Labins and that he have a practice monitor, both of whom would file regular reports with the OPMC.

Perhaps the most significant of the COP's many errors is its statement:

Dr. Simon's episodes manifest themselves in dangerous behavior, and we do not find clear and convincing evidence that he will not repeat his prior behavior.

(COP Recommendation, page 5, first full paragraph)

Dr. Simon's illnesses manifest themselves first by *prodromata*, or pre-symptoms, which warn that his illness may be returning, and which present before any of the dangerous behaviors of concern.

For bipolar disorder, *prodromata* include carrying a very heavy workload, hypersexuality, irritability, sleep disturbance, weight changes, poor social judgment, spending money unwisely, pressured speech, flight of ideas, and impulsivity. (Tr. 121, 145). For sleep apnea there are not

only oxygen levels, for which precise measurements are available daily from the CPAP device which Dr. Simon wears to sleep every night, but also behaviors such as excessive daily sleepiness.

All of these medical professionals are very aware of the *prodromata* of a possible recurrence of his bipolar disorder, and all are committed to support and take action if any of these pre-symptoms appear. Barbara Simon, his wife of 26 years, explicitly undertook to the Peer Committee to report to Dr. Labins if any *prodromata* appear, or if he ceases compliance with treatment for his currently well-controlled sleep apnea. (Report of Peer Committee, p. 11.)

Thus, the many-layered support systems and monitoring endorsed by Drs. Labins, Krueger, Taintor, and Gers and by the Peer Committee will ensure against any recurrence of unprofessional conduct by Dr. Simon.

C. The COP Erroneously Finds that Dr. Simon “Continues to Engage in what Appears to be a Consistent Pattern of Blaming Others, and it Appears that He Has Not Fully Addressed the Root Causes of His Misconduct.”

The COP bases this finding on a single phrase in Dr. Simon’s half-hour conversation with them, *i.e.*, his calling Dr. Y, his professional colleague with whom he had a single episode of sex, “a psychopath and a professional litigator.” In doing so, the COP betrays a total lack of familiarity with the sworn testimony before the Peer Committee which examined this relationship in depth, as well as with his treatment of Patient M.

As set forth above, with respect to Doctor Y:

- he told the COP he did a “terrible thing” by having an affair with Dr. Y, a mistake which “caused him a great deal of emotional pain;”
- he told the Peer Committee that his affair was a “serious boundary violation,” that he accepted responsibility for it, and that he could not excuse or justify this bad behavior;

- he told the Peer Committee that the decision by him and Dr. Y to have sex was a mutual decision, and that he did not consider himself to be her victim. (Tr. 34, ll. 5-10).
- Despite persistent cross-examination, Dr. Simon repeatedly rejected any thought that he was a victim, since he had voluntarily "put himself in harm's way" with Dr. Y.

These lengthy exchanges before the Peer Committee show both a refusal to blame Dr. Y and a thoughtful analysis of the root causes of his own conduct, with Dr. Simon concluding that his predicament was caused by his own, indefensible, bad decision.

Similarly, with respect to his treatment of Patient M, he blames no one but himself. The COP cites no evidence that he blames others for this behavior because no such evidence exists, either before the COP or before the Peer Committee. Again, as set forth above, his testimony concerning Patient M shows that he fully accepted responsibility and has insight into the root causes of his behavior:

- he said that he had engaged in a rescue fantasy in treating Patient M, which he described as violating a taboo under the practices of psychiatry; (Tr. 45, ll. 20-46, l. 14)
- he said his treatment of Patient M violated many "expectations and boundaries"; (Tr. 115, ll. 2-3).
- he described the therapy as "stupid," "unacceptable," "self-destructive," and "destructive of that patient"; (Tr. 115, ll. 17-23).
- While he entered into this therapy with a theory and good intentions, neither of them justified his serious boundary violations; in fact his good intentions

“jeopardized the patient,” “confused rather than improved” her, a result he considered “unacceptable, in fact, reprehensible.” (Tr. 44, ll. 9-19).

In addition to the above, Dr. Simon had other insights into the root causes of this episode, including the fact that he did not have enough time to treat Patient M. (Tr. 44, ll. 20-23). He also came to realize that he was impaired at the time, by what was later diagnosed as sleep apnea. (Tr. 47, ll. 2-49, l. 6). As Dr. Simon learned through therapy and through treatment for sleep apnea, this physical impairment was one of the root causes of this episode.

Most significantly, Dr. Simon repeatedly and explicitly rejected impairment as an excuse or justification for his behavior with Patient M.

Q: And does the impairment relieve you of your responsibility?

A: Absolutely not. I have full responsibility.

(Tr. 46, ll. 15-18).

Indeed, when discussing his conduct in 1977 that resulted in the loss of his license, he explained why impairment did not justify his behavior.

Q: Does your impairment amount to an excuse or justification for the behavior that’s the basis for those charges?

A: Absolutely not.

Q: Why not?

A: My first duty to my patients is not to do any harm and not to jeopardize their well being. The fact that I’m impaired, was impaired, in no way excuses my behavior. And by being impaired, I placed my patients in jeopardy. It’s my responsibility not to be impaired.

(Tr. 21, ll. 1-12).

From all of the above, it is clear that Dr. Simon, through therapy with Dr. Labins and through reflection, has identified the root causes for his episodes in 1994 and 1995. He has also identified the role played by illnesses – bipolar disorder and sleep apnea – in his behavior. He

sought medical treatment for both conditions, which are now stabilized. His bipolar disorder has been in remission at least since 2000. He has not received depakote or lithium for his bipolar in remission since 2003, when depakote was stopped at the direction of Dr. Labins. Dr. Labins remains vigilant for the possible appearances of any *prodromata* reflecting a potential recurrence of bipolar disorder.

Likewise, his sleep apnea is well-controlled by use of the CPAP device every night when he sleeps. His wife directly, and Dr. Labins indirectly, monitor this condition as well. In fact, were his license to be reinstated, all medical professionals with whom he works would also monitor his *prodromata* of both illnesses. Those monitoring him would also be familiar with Dr. Kreuger's report. (Peer Committee Report, Ex. A).

D. Dr. Simon Was A Consistent and Credible Witness

The COP found "Dr. Simon's testimony before [it] to be inconsistent and neither credible nor logical." The examples cited by the COP which were discussed above were shown to be without basis:

- he did not "engage in a consistent pattern of blaming others": he took personal responsibility for his treatment of Patient M; he repeatedly refused to call himself victim in his affair with Dr. Y, for which he took responsibility.
- he did not deny wrongdoing in his affair with Dr. Y or in his treatment of Patient M; consequently, there is no inconsistency in his surrendering his position or his license, or in other admissions of wrongdoing.
- he stated that his impairments in 1977 and 1996 did not justify his episodes of misconduct, because as a physician he had the obligation not to practice while impaired.

The COP offers only one specific example of incredible testimony, which is on a matter irrelevant to any issue before the Board. Dr. Simon stated that he had a close professional relationship with Dr. Ford, the head of MPC where he worked. Dr. Simon was therefore asked by Dr. Kiehl, a colleague who supervised Dr. Y, to approach Dr. Ford and warn him of rumors circulating in Manhattan Psychiatric Center that Dr. Ford and Dr. Y were having an affair, and that Dr. Ford should be careful not to do anything to give credence to these rumors. Dr. Simon said he accepted the assignment, went to see Dr. Ford, related Dr. Kiehl's concerns, and was angrily rejected by Dr. Ford. Only then did he think about his own affair with Dr. Y, and belatedly realized that his own affair had deprived him of any moral authority to help his friend and mentor, Dr. Ford. (Tr. 70). Dr. Simon gave this account of his meeting with Dr. Ford before the Peer Committee, giving it a context and a fuller explanation than was presented to the COP. (Tr. 69, ll. 10-72, l. 23).

In all events, this conversation is irrelevant to any issue presented by Dr. Simon's petition. It does not seek to shift responsibility to Dr. Y; if anything, it demonstrates that Dr. Simon made an extremely poor political judgment in approaching his superior. Whether or not he thought about his own affair is not even relevant to this tangential question.

The Peer Committee heard extensive testimony about Dr. Y, including Dr. Simon's account of his meeting with Dr. Ford, and was satisfied that it had heard enough about Dr. Y to determine the credibility of Dr. Simon:

~~The Chairperson: I believe Mr. Hilf [the OPD attorney] said that he wanted to establish for this panel the credibility of this witness. I would like to tell both of you and to the panel and Dr. Simon that I have thoroughly reviewed this packet, the other panel members have thoroughly reviewed this packet.~~

We have an attorney and two physicians on this panel. This is not a lay jury you're talking to. I think we have enough information to make a decision about the credibility of this witness.

Therefore, I'm going to sustain your objection and ask Mr. Hilf to move on to something else. Would you please, sir.

(Tr. 90, ll. 25-91, l. 17)

Dr. Simon was found unanimously to be credible on every relevant issue by the Peer Committee, which heard him testify under oath on direct and cross-examination, and heard the testimony of Dr. Labins, his long-term therapist; Dr. Zebulon Taintor, who was Dr. Simon's supervisor at Manhattan Psychiatric Center; Dr. Gers, a colleague of Manhattan Psychiatric Center; Dr. Walsleben, who treated him for sleep apnea; and his wife, Barbara Simon.

In sum, none of the instances of inconsistent or incredible testimony by Dr. Simon offered by the COP have a basis in evidence, or survive scrutiny. The belief of the COP about Dr. Simon's credibility and consistency is baseless and arbitrary, and should be rejected by the Board.

E. Dr. Simon Consents to Probation of Any Length Determined by the Board of Regents

The Peer Committee recommended that Dr. Simon be admitted to practice under certain limitations, and that he be placed on probation for five years. Dr. Simon had consented to all of these terms. The COP, however raises a technical point that the Board of Regents allegedly has no "authority to impose practice limitations beyond the probationary period" (COP Recommendation, p. 5, penultimate paragraph).

If the COP is correct in its view of limits to the Board's authority, Dr. Simon hereby requests and consents to amending the proposed terms of probation: (a) to incorporate all practice limitations recommended by the Peer Committee into the proposed terms of probation; (b) to extend the term of probation to twelve years, by which time Dr. Simon will be 80 years old; and (c) to permit Dr. Simon to apply for relief from probation, in whole or in part, after five years on probation.

III. CONCLUSION

For all the foregoing reasons, and based on the facts set forth in the Peer Committee Report, petitioner requests that the Board of Regents restore his license to practice medicine subject to the conditions recommended in the Peer Committee Report, and that the terms of his probation be amended as requested in the preceding paragraph.

Respectfully submitted,

Redacted Signature

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Attorneys for Petitioner
Dr. Franklin Simon

JCS/bc



The University of the State of New York

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

-----X

In the Matter of the Application of

FRANKLIN SIMON

REPORT OF
THE PEER
COMMITTEE
CAL. NO. 22528

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

-----X

FRANKLIN SIMON, Redacted Address

hereinafter known as the applicant, was previously
licensed to practice as a physician in the State of New York by
the New York State Education Department. Said license was
surrendered effective June 14, 1996. The applicant has applied
for restoration of his license.

CHRONOLOGY OF EVENTS

On August 18, 1967 the applicant was issued license number
099659 to practice as a physician in the State of New York.

On April 13, 1978 the applicant was charged with
professional misconduct by the Department of Health.

On July 7, 1981 an Order was issued revoking the applicant's

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license to practice medicine in the State of New York.

On September 23, 1982 revocation of the applicant's license is stayed and he is placed on probation for five years.

On June 14, 1996 the applicant surrenders his license after having once again been charged with professional misconduct.

On August 30, 2004 the applicant submits his second application for restoration of license to practice as a physician in the State of New York.

On July 18, 2007, October 10, 2007, and October 11, 2007 Peer Committee restoration meeting.

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.

Listed below is information from the packet, which was also submitted by OPD on the day of the meeting. Further details pertaining to the documents in the packet may be found therein.

PRIOR DISCIPLINARY HISTORY

On or about April 13, 1978, the Department of Health issued a Statement of Charges against the applicant. The applicant was charged with practicing the profession fraudulently; practicing the profession with gross negligence/gross incompetence;

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practicing the professional with negligence and/or incompetence on more than one occasion, practicing the profession while his ability to practice was impaired by mental disability; and unprofessional conduct. These charges stemmed from the applicant's treatment of six patients from September 1976 through October 1977 and the fact that he attempted to get these patients to perform lewd and lascivious acts and made sexual advances toward them under the guise of psychiatric therapy.

A hearing took place on these charges on ten dates from May 17, 1978 through September 26, 1979. The hearing panel found the applicant guilty of the charges regarding two patients and recommended revocation of his license in its report issued on February 22, 1980. On October 27, 1980, the Commissioner of Health issued his recommendation that the applicant's license be revoked. The Regents Review Committee (RRC) heard the case on June 3, 1981 and, in its report of June 18, 1981, the RRC unanimously recommended that the recommendation of the Hearing Committee and the Commissioner be accepted. On July 7, 1981, the Commissioner of Education issued Order #2060 which revoked the applicant's license.

The applicant subsequently filed a Petition for the Restoration of his License, but the Board of Regents determined that the petition should be denied. However, on September 23, 1983, the Board did vote to stay the revocation of the license and place the applicant on probation for five years. The

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applicant then sought to have the terms of his probation modified so that he might engage in a limited practice outside of his place of employment. The Commissioner denied this request for modification.

In May 1996, the applicant was once again served with a Statement of Charges, which accused him of the following: Having a psychiatric condition which impairs the ability to practice; four specifications of fraudulent practice; two specifications of moral unfitness (including sex with a co-worker and allowing a patient to sit on his lap) and one specification of gross negligence. As a result of these charges, the applicant made an Application to Surrender his License and said surrender was accepted under Surrender Order #96-142, dated June 5, 1996.

INVESTIGATIVE INTERVIEW

The applicant, in the presence of his attorney, Alireza Dilmanghani, was personally interviewed concerning his restoration petition. The salient points of that interview were as follows:

The applicant noted that some of the charges that were brought against him alleged that he had inappropriate contact with female patients. The applicant denied these allegations and ~~stated that he was only comforting these patients in a time of~~ need and his actions were misinterpreted. The applicant said that his bi-polar disorder and sleep apnea condition caused his poor judgment and unprofessionalism. He said he knew that he had to surrender his license when he did, until such time as his

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conditions were stable. Thus, he sought the help of Zev Labins, MD.

The applicant believed that the initial action that was taken against his license was justified in that he was unable to practice because of his bi-polar disorder. At that time, there was no program for physicians in New York State, so one was designed to accommodate him. There came a time when he was no longer able to take lithium, so Depakote was prescribed and he had some bad reactions to that medication. He then developed sleep apnea in the mid-90s.

The applicant claimed to be remorseful about his prior actions. He tended to blame his illnesses for his actions. He said he believes that he is now rehabilitated since he has not been on any prescription drugs for several years and he contacts Dr. Labins when he feels the need. When asked why he should get his license back, the applicant responded that he is rehabilitated and he never was criminally convicted of any crime. When he realized that he was suffering from bi-polar disorder and sleep apnea, he immediately sought medical help and voluntarily surrendered his license. He said he is now ready to resume the practice of medicine in his specialty of psychiatry.

~~The applicant's medical conditions caused him to be unemployed during 1996 and part of 1997. Starting in August 1997, he worked for several months as Compliance Officer with a medical consulting firm. His duties included medical billing and coding.~~

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In April and May 2000, the applicant worked as a census taker for the U.S. Bureau of Census.

From September 2000 through June 2001, the applicant worked as a substitute biology and history teacher at Murray Bergtraum High School in Manhattan, New York.

The applicant has been unemployed since 2001 and supports his family with his savings, his disability and his state pension.

The applicant stated that he keeps up to date with his profession by reading the following periodicals: New England Journal of Medicine, JAMA, Med Line, Medical Digest, American Journal of Psychiatry, and Scientific American. He also reviews the Internet website Medscape for information.

From September 2003 through May 2004, the applicant attended Grand Rounds as an observer at NYU Medical Center and earned 66 CME credits. Additionally, on October 26, 2002, he participated in "Psychiatric Disorders," a course sponsored by NYU Post-Graduate Medical School and earned nine CME credits.

The applicant has been under the care of Dr. Labins since September 2000 for his bi-polar and sleep apnea problems. Dr. Labins has provided a letter, dated September 7, 2005, wherein he states that the applicant is ready to resume practice, that psychotherapy has been of significant benefit to the applicant and has helped him address problematic issues and that this support will remain in place to help the applicant deal with any

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problems that may arise subsequent to reinstatement of his license.

From May 2003 to the present, the applicant has volunteered approximately 1000 hours to the Freedom Forum, A civil rights organization. He has attended trials and visited prisons to assist inmates and their families cope with the criminal justice system.

During this same time period, the applicant has also volunteered approximately 1000 hours of his time to the Rainmaker Senior Assisted Living Project to assist with the business plan and to visit with senior citizens to determine their special needs.

The applicant has also volunteered 1250 hours of his time to the Furman Law Firm in New York City. He assists the attorneys in the preparation of criminal cases.

PEER COMMITTEE MEETING

This Peer Committee met to consider this matter. The the applicant appeared before us personally and was represented by an attorney, James C. Sherwood, Esq. Also present was Michael Hilf, Esq., an attorney from the Division of Prosecutions, OPD. During the course of the meeting exhibits 1, 3, 4, and 6-14 were admitted into evidence.

The first witness was Dr. Zev Labins. Dr. Labins is a psychiatrist and has treated the applicant beginning in 2000. He said he never observed evidence of the applicant having bi-polar

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disorder and in 2001 discontinued the applicant's taking Depakote which had been prescribed earlier. He said the only result of this was that the applicant seemed more alert-during the day. He said that if the applicant had had bi-polar disorder in the past it is now in remission.

Dr. Labins went on to say that he is treating the applicant for sleep apnea and that the applicant's blood oxygen levels have been normalized. He said sleep apnea can affect a person's judgment and this may have been a factor in the applicant's prior misconduct. He said he also found the applicant to be a romantic and naive which also may have resulted in said misconduct by way of boundary violations such as allowing a patient to sit on his lap. He said he believes the applicant has a much clearer understanding now of what led to this profession misconduct and that he accepts responsibility for that misconduct. He said that the applicant, under adequate restrictions, such as a practice monitor and a therapy monitor, could practice psychiatry in a safe and effective manner.

Dr. Labins went on to say that he thinks the applicant had learned from his misconduct and the sanctions that resulted therefrom.

Dr. Labins also said that should the applicant return to practice it should be with the restrictions set forth in the report of Dr. Richard Krueger on page 20 thereof (part of exhibit

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1). A copy of said restrictions is annexed hereto and marked as exhibit A.

The next witness was Dr. Seymour Gers who is a psychiatrist and has known the applicant since 1985. They worked together at Manhattan Psychiatric Center (MPC) from then until 1996. They also are both members of the American Society of Psychoanalytical Physicians. In both of these settings Dr. Gers found the applicant to be bright, well informed and up to date with the current literature.

The applicant had asked for Dr. Gers's advice about how to deal with the misconduct charge regarding his sexual involvement with a female doctor at MPC. Dr. Gers advised the applicant to get treatment for the psychiatric problems that caused the applicant to get involved in such a relationship.

Dr. Gers said that he sees a significant behavioral difference in the applicant as a result of the treatment he has gotten over the past several years. He said that he thinks the applicant could function again as a psychiatrist at MPC under the guidelines set forth by Dr. Krueger. He said he believes the applicant could utilize his intelligence and professional experience and even his experience as a patient to effectively help people.

The next witness was Dr. Joyce Walsleben who has been employed as a sleep expert and a psychologist at NYU Medical Center since 1989. Dr. Walsleben stated in part that sleep apnea

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can cause a person to have impaired decision-making and judgment. She said that she evaluated the applicant's sleep apnea in 2006 and that he ~~could~~ have it corrected if he would employ, among other things, a treatment using a device which would promote continuous positive airways pressure (CPAP) which would promote an adequate supply of oxygen to the brain during sleep. She said such a device could be monitored to see if the applicant was using the device as required to correct his sleep apnea.

The next witness was Barbara Simon, the applicant's wife. She has been a psychologist at MPC since 1981 where she met the applicant. They were married in 1982. She knew at that time that the applicant was diagnosed with bi-polar disorder and was taking lithium.

She said he seemed fine at that time but she noticed a change in his behavior in the mid-nineties. She said he would alternate between being angry and depressed to being joyful. She said at times he would be driving the car and have to pull over to take a nap; both at night and during the day. She said she was very hurt when she heard about his affair with his female co-worker. She said it was also quite embarrassing since they were all employed at the same place. They actually separated for a number of months. She said she has noticed a great change in the applicant since he has been in treatment. She went on to say that it is the applicant's dream to return to the practice of medicine. He keeps up with all the literature, takes CME and tests on line.

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She went on to say that the applicant took his mother into their home during the last years of her life and took total care of her. He also took care of her parents (his in-laws) when ~~they~~ needed it and took a friend into their home when the friend was very ill and then visited him often when he finally had to go into the hospital. He also took care of a friend when she developed ALS, (amyotrophic lateral sclerosis) taking her to the doctor and sitting with her. Mrs. Simon said if she noticed any changes in the applicant's behavior in the future that might be signs of a problem, she would notify Dr. Labins.

The next witness was Dr. Zebulon Taintor. He said he first met the applicant in 1985 at MPC where Dr. Taintor became Chief of Staff in 1987. The applicant, at that time, was the quality assurance psychiatrist at MPC and Dr. Taintor said he was very effective in that position but was not functioning as a physician in that he was not allowed to see patients. He said he would support the restoration of the applicant's license under the conditions contained in Dr. Krueger's report.

The next witness was the applicant. He said he accepted responsibility for his action which gave rise to the revocation and surrender of his medical license. He said he has been in therapy with Dr. Labins since 2000 and has not used medication for the last three or four years and has been stable regarding his bi-polar disorder. He said he has lost 60 pounds since he has

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stopped the medication. He said the CPAP has stabilized his sleep apnea.

The applicant went on to say that he would abide by any restrictions the panel would recommend should his license be restored, including the restrictions in Dr. Krueger's report.

The applicant spoke briefly regarding his CME efforts but exhibit 3 and the Application for Restoration show the great extent of said efforts.

The applicant described the extent of his efforts in taking care of his mother in her last years as well as the care he provided to his mother-in-law and his friend that he allowed to move into his home because of that friend's illness. He also spoke of the 2000 hours spent volunteering to help prisoners and his other rather extensive community service.

The parties then made closing statements. Mr. Hilf closed by saying the Department opposes the restoration of licensure herein. Mr. Sherwood closed by saying that the applicant has met his burden and would comply with any restrictions recommended by the panel.

RECOMMENDATION

We have taken into consideration all the documentary evidence and testimony and make the following recommendation.

We unanimously recommend that the applicant be restored to licensure but that his practice be limited as set forth in exhibit A attached hereto and by the terms of probation attached hereto

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and marked as exhibit B. We also recommend that said period of probation be for five (5) years.

We base this recommendation ~~on the~~ applicant's extensive CME efforts and on his extensive volunteer work, community service and personal service and sacrifices for close friends and relatives.

We further believe the applicant has taken responsibility for his misconduct. He has been in continued therapy since 2000 and has made considerable progress therein. He also has stated clearly that he will accept any restrictions placed on his practice of medicine.

Respectfully submitted,

James Norris, MD, Chairperson

Joyce Lowinson, MD

Benjamin Robinson, Esq.

Redacted Signature

Chairperson

Dated

April 22, 2008

EXHIBIT A

FRANKLIN SIMON

CALENDAR NO. 22528

Impression and Recommendations: It is my opinion with a reasonable degree of medical certainty, that Dr. Simon could safely return to the practice of medicine or psychiatry in a supervised situation. This would require presentation of this report or some similar notification of his history to whichever psychiatrist and/or organization might hire him. He should continue in psychotherapy with Dr. Labins or a similar caregiver indefinitely for the remainder of his practice. The patient should have a practice monitor, who would issue quarterly reports to his therapist, and his therapist should issue appropriate reports to the OPMC. I have included a monitoring form which I have configured which I think would be appropriate for this purpose.

Should the patient require a mood stabilizer again or experience another manic episode, he could be treated with lithium in my opinion. His nephrolethiasis was related to dehydration while on lithium and this could be easily avoided should he be started on lithium again.

It is also my best medical judgment that Dr. Simon will not require mood stabilizers again. If what he had in the 1970's was a manic episode, he has no historical evidence of another such episode, nor does he have a strong family history or a history of psychostimulants triggering such an episode. He has done fine on no medications for three years and I anticipate that this would continue. Furthermore, he would be, if he returned to practice with the above condition, in psychotherapy and under supervision, and this would present an ample situation to monitor him and suggest corrective action to his psychiatrist. It is also the case that clinically some individuals with manic-depressive disorder will as they age not require medications and not experience any recurrence of pathology.

EXHIBIT B

TERMS OF PROBATION
OF THE PEER COMMITTEE

FRANKLIN SIMON

CALENDAR NO. 22528

1. That applicant, during the period of probation, shall be in compliance with the standards of conduct prescribed by the law governing applicant's profession;
2. That applicant shall submit written notification to the Director, Office of Professional Medical Conduct (OPMC), 433 River Street - Suite 303, Troy, NY 12180-2299, of any employment and/or practice, applicant's residence, telephone number, and mailing address and of any change in applicant's employment, practice, residence, telephone number, and mailing address within or without the State of New York;
3. 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 Department of Health (DOH), addressed to the Director, OPMC, as aforesaid, no later than the first three months of the period of probation;
4. That applicant shall submit written proof to the DOH, addressed to the Director, OPMC, as aforesaid, that 1) applicant is currently registered with the NYSED, unless applicant submits written proof 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 or pursuant to section 230-a of the Public Health Law, said proof of the above to be submitted no later than the first two months of the period of probation;
5. That applicant shall make quarterly visits to an employee of the OPMC, DOH, unless otherwise agreed to by said employee, for the purpose of said employee monitoring applicant's terms of probation to assure compliance therewith, and

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applicant shall cooperate with said employee, including the submission of information requested by said employee, regarding the aforesaid monitoring;

6. That applicant, in his employment, comply with the provisions of exhibit A herein;
 7. The applicant shall have quarterly performance reports submitted to DOH addressed to the Director, OPMC, as aforesaid evaluating his performance as a physician in his place of employment, said reports to be prepared by applicant's supervisor;
 8. That applicant shall remain in therapy and have quarterly reports regarding his progress therein prepared by his therapist and submitted to DOH, addressed to the Director, OPMC as aforesaid; and
 9. That upon receipt of evidence of noncompliance with or any other violation of any of the aforementioned terms of probation, the OPMC may initiate a violation of probation proceeding;
-