

*Public*  
The  
University of the  
Education  State of New York  
Department

IN THE MATTER

of the

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

Case No. CP-09-20

It appearing that the license of BRIJ K. MITTAL, Redacted Address  
, authorizing him to practice as a physician in the State of New York, was  
surrendered by Order of the State Board for Professional Medical Conduct effective August 29,  
2001, and he having petitioned the Board of Regents for restoration of said license, and the  
Regents having given consideration to said petition and having reviewed the record, and having  
agreed with and adopted the recommendations of the Peer Committee and the Committee on the  
Professions, except having adopted the tolling provisions recommended by the Committee on the  
Professions, now, pursuant to action taken by the Board of Regents on September 15, 2009 as  
reflected in the attached Vote, it is hereby

ORDERED that the petition for restoration of License No. 135464, authorizing BRIJ K.  
MITTAL to practice as a physician in the State of New York, is denied, but that the execution of

the Order of surrender of said license is stayed, and said BRIJ K. MITTAL is placed on probation for a period of one year under the Terms of Probation attached to the Report of the Peer Committee as Exhibit "A," provided that the period of probation shall be tolled during periods in which he is not engaged in the active practice of medicine in New York State, that he shall notify the Director of the Office of Professional Medical Conduct (OPMC), in writing, if he is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more, that he shall then notify the Director of OPMC again prior to any change in that status, and that the period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon his return to practice in New York State; and upon successful completion of the probationary period, his license to practice as a physician in the State of New York shall be fully restored.



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 30<sup>th</sup> day of September, 2009.

Redacted Signature

Interim Commissioner of Education

9-657



# City of the State of New York

IN THE MATTER

OF

BRIJ K. MITTAL

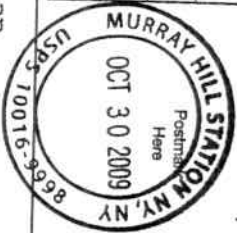
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Sent to  
Brij K. Mittal, Physician  
Street, Apt. No.: 180 Four Corners Road  
or PO Box No. 180 Four Corners Road  
City, State, ZIP+4  
Staten Island, New York 10304

STATE OF NEW YORK )  
COUNTY OF ALBANY )

SS. A

Redacted Signature

being duly sworn, deposes and

says:

I am over the age of twenty-one years and am an employee of the New York State Education Department, Office of Professional Discipline, 475 Park Avenue South, New York, New York 10016.

On the 30<sup>th</sup> day of October, 2009, I personally delivered to the United States Postal Office, located at 34<sup>th</sup> Street and Park Avenue, New York, New York 10016 the Duplicate Original Order of the Commissioner of Education Case No. CP-09-20, in reference to Calendar No. 22649 and the Vote of the Board of Regents by Certified Mail - Return Receipt requested to the respondent herein named at 180 Four Corners Road, Staten Island, New York 10304.

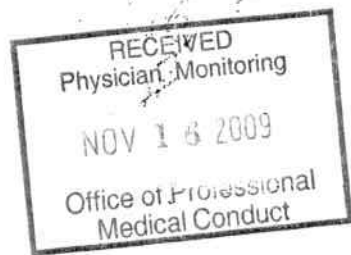
Certified Mail Receipt No. 7002 68600000 64671773

The effective date of the Order being the 6<sup>th</sup> day of November, 2009.

Sworn to before me this  
2<sup>nd</sup> day of November, 2009

Redacted Signature

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



It appearing that the license of BRIJ K. MITTAL, 1 Redacted Address

authorizing him to practice as a physician in the State of New York, was surrendered by Order of the State Board for Professional Medical Conduct effective August 29, 2001, and he having petitioned the Board of Regents for restoration of said license, and the Regents having given consideration to said petition and having reviewed the record, and having agreed with and adopted the recommendations of the Peer Committee and the Committee on the Professions, except having adopted the tolling provisions recommended by the Committee on the Professions, now, pursuant to action taken by the Board of Regents on September 15, 2009, it is hereby

VOTED that the petition for restoration of License No. 135464, authorizing BRIJ K. MITTAL to practice as a physician in the State of New York, is denied, but that the execution of the Order of surrender of said license is stayed, and said BRIJ K. MITTAL is placed on probation for a period of one year under the Terms of Probation attached to the Report of the Peer Committee as Exhibit "A," provided that the period of probation shall be tolled during periods in which he is not engaged in the active practice of medicine in New York State, that he shall notify the Director of the Office of Professional Medical Conduct (OPMC), in writing, if he is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more, that he shall then notify the Director of OPMC again prior to any change in that status, and that the period of probation shall resume, and any terms of probation which were not fulfilled shall be fulfilled, upon his return to practice in New York State; and upon successful completion of the probationary period, his license to practice as a physician in the State of New York shall be fully restored.

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

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

Re: **Brij K. Mittal**

Brij K. Mittal, Redacted Address, petitioned  
for restoration of his physician license. The chronology of events is as follows:

- 08/04/78 Issued license number 135464 to practice medicine in New York State.
- 11/03/99 Charged with professional misconduct by the New York State Department of Health (DOH).
- 12/22/99 Consent Agreement entered into with the Office of Professional Medical Conduct (OPMC), regarding a charge of failure to comply with a law governing the practice of medicine, with a penalty of 6 months suspension, \$10,000 fine, and 5 years probation.
- 02/15/00 Effective date of suspension of New York State license.
- 06/13/01 Convicted of Conspiracy to Receive Unlawful Medicare Kickbacks and Unlawful Receipt of Kickbacks after trial in United States District Court, Southern District of New York.
- 08/17/01 Charged with professional misconduct by DOH for having been convicted of a crime under Federal law.
- 08/29/01 State Board for Professional Medical Conduct accepted Application to Surrender License.
- 07/28/03 Released from incarceration.
- 08/17/04 Received Certificate of Release from Disabilities.
- 09/03/04 Application for Restoration submitted.
- 05/25/06 Peer Committee restoration review.
- 10/05/06 Report and Recommendation of Peer Committee.
- 06/28/07 Committee on the Professions restoration review.

**Disciplinary History.** (See attached disciplinary documents.)

On November 3, 1997, the Department of Health (DOH) served charges on Dr. Mittal for professional misconduct. The charges stemmed from allegations that Dr. Mittal submitted fraudulent documents which indicated that he had performed preceptorships in nuclear medicine and nuclear cardiology and that he had participated in hundreds of procedures using radioactive material. As a result of filing those documents, Dr. Mittal was able to obtain a Radioactive Materials License from the New York City Department of Health. On December 12, 1999, Dr. Mittal admitted to one specification of willful or grossly negligent failure to comply with substantial provisions of a local law, rule or regulations governing the practice of medicine, and entered into a consent agreement with OPMC. Under the terms of that order, Dr Mittal agreed to a six month actual suspension of his license, a \$10,000 fine, and 5 years probation.

While Dr. Mittal was on probation, he was found guilty, after a jury trial in the United States District Court for the Southern District of New York, of one count of Conspiracy to Receive Unlawful Medicare Kickbacks and three counts of Unlawful Receipt of Kickbacks. On June 13, 2001, he was sentenced to 30 months of incarceration, \$10,000 restitution, a \$400 special assessment, and three years supervised release following incarceration.

As a result of that conviction, OPMC served a Statement of Charges, on or about August 27, 2001, accusing Dr. Mittal of professional misconduct for committing an act constituting a crime in violation of Federal law. Dr. Mittal thereafter made an application to surrender his license, and the surrender was accepted, effective August 29, 2001.

On September 3, 2004, Dr. Mittal 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 (Salom, Cordice, Lowinson) convened on May 25, 2006. In its report dated October 5, 2006, the Committee unanimously recommended that the surrender of Dr. Mittal's license to practice as a physician in the State of New York be stayed and that he be placed on probation for a period of one year under specified terms, which included a requirement of quarterly performance reports. The Peer Committee recommended that, upon successful completion of his probation, his license to practice as a physician in New York be fully restored.

**Recommendation of the Committee on the Professions.** On June 28, 2007, the Committee on the Professions (COP) (Muñoz, Templeman, O'Grady-Parent) met with Dr. Mittal to consider his application for restoration. He was not represented by an attorney.

The Committee asked Dr. Mittal to explain the events that led to the loss of his license. He explained that he had been charged with accepting money for referring patients and that he had been unaware of the law at the time. He stated that a man

visited him at his medical practice in Brooklyn and told him that he was opening an MRI business that would provide transportation to patients for same day service. He claimed that there was no discussion at the first meeting about any payment for referring patients to have MRIs. However, later on, after he had been referring patients to that business for MRIs, the MRI company started paying him money which it indicated was reimbursement for a portion of his secretary's salary for paperwork. The payment given to him was in cash. He stated that all the referrals he gave to the MRI business were for procedures which were medically necessary. He stated that he did not do the referrals out of greed, because he only made about \$18,000 over the approximate 2.5 years that he made the MRI referrals, which amount was of minimal significance to him, because he was at the time making over a million dollars a year with his medical practice. He reported that many other individuals were also charged by Federal prosecutors for referring patients to the same entity, and all others pled guilty. He pled not guilty, however, on the advice of his attorneys. He told the COP that he believed he would not have received the severe penalty that he did, 30 months of incarceration, a large amount of restitution to pay, and 3 years supervised release, if he had pled guilty.

When asked to explain about his earlier consent agreement in December of 1999, wherein he had agreed to a six month suspension of his license, Dr. Mittal indicated that he had agreed at that time to admit that he had been using radioactive material without a license. He told the COP that he actually did have approximately 200 hours of classroom work and that he had practiced under someone in a preceptorship, but that he had gotten a letter from the state indicating that it could not verify the preceptorship. Dr. Mittal indicated that, in the discipline case that eventually led to the consent agreement, there was supposed to be a hearing on the issue, but the hearing conflicted with an appearance in his federal court proceeding, as a result of which his attorney advised him to plead guilty in the discipline matter to having used the radioactive material without a valid license.

The Committee asked Dr. Mittal to explain why he should be allowed to have his license back at this time. Dr. Mittal explained that he now takes full responsibility for his prior bad judgments and behavior and knows now that his actions were wrong. He told the Committee that he would never allow himself to be placed in a similar situation in the future. He reported that, due to his past actions, he has lost everything and has suffered severe consequences. He indicated that, since losing his license, he has taken extensive courses in legal and medical ethics and that he has earned a Master of Business Administration degree in the field of Health Care Administration through Baker College's online program. He also told the Committee that he wrote an article for his MBA entitled "Law and Medical Ethics." In addition, he submitted documentation of having taken over 4,300 CME credits from 2003 through 2008. He stated that he has also been involved with volunteer work in his community at the Hindu Center located in Flushing, NY and that he has given health care seminars and talks on risk modification through nutrition and exercise. Dr. Mittal also noted that prior to the loss of his medical license he had provided numerous patients with free medical treatment because they were unable to pay for the services. In conclusion, Dr. Mittal stated that he would be extra careful from now on and would seek legal advice before entering any activities which could possibly conflict with the law. He stated that he fully understands that his prior actions were wrong, that he is now ready to resume the practice of medicine, and that he hopes to return to the practice of cardiology. With a return of his license, he

indicated that he would continue his prior practice of caring for uninsured and poor people.

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. §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 concurs with the Peer Committee's assessment that Dr. Mittal is remorseful. He articulated to the COP that he now realizes his acceptance of money for referrals was wrong and that he will in the future evaluate each situation which presents itself with a circumspect eye and critical judgment and will consult with outside sources should he have any question about the legality of future endeavors. We note that, in order to address his prior missteps, Dr. Mittal has studied extensively, and has written a lengthy paper as part of a master's thesis on the topic of law and medical ethics. Additionally, we note that the record contains no evidence of harm to any of Dr. Mittal's patients and does not raise questions about the adequacy of his medical skills.

In addition to exhibiting substantial efforts towards rehabilitation, Dr. Mittal has taken over 4,300 hours of continuing medical education credits to keep himself informed about his profession, as well as obtaining a Master of Business Administration in Health Care Management. He has also demonstrated a willingness to volunteer his knowledge and skills to his community by providing over 150 hours of community service which included health education and lifestyle modification discussions. He has become very involved in religious pursuits and in his temple.

As was the Peer Committee, the COP was impressed with the strong references provided in support of Dr. Mittal's application, both the written references and the testimony of the two references who testified at the Peer Committee hearing. Those references noted both his skill as a physician and his willingness to provide medical services whether or not the patient was able to pay.

Finally, we believe that Dr. Mittal has appropriately addressed the concerns that were expressed by the OPMC in its letter opposing the restoration of his license. In his restoration application, Dr. Mittal provided a lengthy list of patients to whom he had provided free medical services, and OPMC expressed concern that Dr. Mittal may have been engaged in the practice of medicine during the time his medical license was



surrendered. Dr. Mittal has explained that all the medical services he provided free to patients were performed prior to the time that he surrendered his license. In addition, his subsequent volunteer work did not include examining patients or rendering medical treatment.

Therefore, after a careful review of the record and its meeting with Dr. Mittal, the Committee on the Professions votes unanimously to concur with the recommendation of the Peer Committee that the Order of Surrender of Dr. Mittal's license to practice as a physician in the State of New York be stayed, and that he be placed on probation for one year under the Terms of Probation attached to the Report of the Peer Committee as Exhibit "A," provided that the period of probation shall be tolled during periods in which the applicant is not engaged in the active practice of medicine in New York State; that the applicant shall notify the Director of OPMC, in writing, if the applicant is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more; that the applicant shall then notify the Director again prior to any change in that status; and that the period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon the applicant's return to practice in New York State. Upon satisfactory completion of the probationary period, his license should be fully restored.

Frank Muñoz  
Leslie Templeman  
Erin O'Grady-Parent



# 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

**BRIJ K. MITTAL**

REPORT OF  
THE PEER  
COMMITTEE  
CAL. NO. 22649

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

-----X

**BRIJ K. MITTAL**, 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 to the Office of Professional Medical Conduct, New York State Health Department, (hereinafter "OPMC") in disposition of a professional misconduct proceeding. The applicant has applied for restoration of his license.

## 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

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distributed to this Peer Committee in advance of its meeting and also provided to the applicant.

PRIOR DISCIPLINE PROCEEDINGS

Action by the State Board for Professional Medical Conduct:

The order of OPMC accepting and enforcing the surrender of the applicant's license was served by mail upon the applicant, effective August 29, 2001.

Specifications of misconduct :

The applicant agreed not to contest the one specification of having been convicted of an act constituting a crime under Federal law.

Nature of the misconduct :

On or about April 17, 2000, in the United States District Court, Eastern District of New York, after a jury trial, the applicant was found guilty of one count of Conspiracy to Receive Unlawful Medicare Kickbacks, in violation of 48 U.S.C. 371 and three counts of Unlawful Receipt of Kickbacks, in violation of 42 U.S.C. 1320a-7(b)(1). The Court sentenced the applicant to thirty months of incarceration, a \$10,000 fine, a \$400 special assessment and he was placed on supervised release for a period of three years.

Earlier Disciplinary Proceeding Before OPMC:

By order of OPMC dated December 22, 1999, a consent agreement entered into by the applicant was adopted, in which he admitted guilt to one specification of committing professional misconduct.

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by willful or grossly negligent failure to comply with substantial provisions of local law, rule or regulation governing the practice of medicine, and the applicant's license was suspended for six months and he was fined \$10,000 and placed on probation for five years. The charge for which respondent admitted guilt pertained to the applicant having received, possessed and/or used radioactive material without an appropriate license.

**APPLICATION FOR RESTORATION**

On September 3, 2004, the applicant executed the State Education Department's standard form for applying for restoration of licensure. The application contained information and attachments as referred to below:

**Entries in the basic application form:**

**Continuing Education:**

The applicant claimed to have earned 1,245 credits through attending conferences and internet video conferences and attached a list delineating these activities.

**Professional Rehabilitation Activities:**

The applicant stated that he is getting an MBA in Health Care Administration from Baker College online, part of Michigan University. He further stated that he had taken a course in medical ethics and wrote an article on law and medical ethics.

**Submissions of Affidavits:**

With his application, the applicant submitted affidavits from

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various individuals supporting his application for restoration, including physicians, a hospital administrator, a dentist and a nurse.

Additional attachments to the application:

In addition to the foregoing, the application included certain other letters in the applicant's support, letters pertaining to certain community service provided by the applicant and a Certificate of Relief from Disabilities, issued to the applicant on August 17, 2004.

INVESTIGATIVE INFORMATION

The packet provided by OPD contains the following additional information from the investigation that resulted from the filing of the application for restoration:

- October 18, 2005 report of the OPD investigator for this proceeding which includes a summary of a July 26, 2005 interview of the applicant by the investigator, further summarized as follows:

At the interview, the incidents which led up to the surrender of the applicant's medical license were discussed. Initially his medical license was suspended for a period of six months as a consequence of his obtaining a radioactive material license by fraudulent means, he was then placed on 5 years probation and fined the sum of \$10,000, with community service. However, during his probationary period he was convicted in the U.S. District Court after a trial by jury for conspiracy in obtaining medicare kickbacks, and then elected to

BRIJ K. MITTAL (22649)

surrender his medical license. He was sentenced to 30 months incarceration at a Federal Correctional facility on June 13, 2001. The applicant was released from incarceration on July 28, 2003, and placed on minimal supervised release for a three period. He provided proof that the fine and assessment were paid as of June 14, 2001.

The applicant stated that after the surrender of his medical license he had felt terrible. In retrospect he believed he would have received a lesser sentence if he initially pled guilty since his co-defendants testified against him, and he believes he received a harsher sentence. Even though he takes full responsibility for his prior bad judgments and behavior, he believes that the action taken by the Department of Health was justified based on the situation he got involved with which now he knows was wrong.

He stated that since the surrender of his medical license he has not been gainfully employed. He stated he is able to support himself and his family with his savings, the sale of his medical practice, and other investments. His wife, children and friends were very supportive of him throughout his entire ordeal.

He also noted that he has been very busy with the continuing education courses in order to keep up with the profession of medicine, especially in his field of cardiology.

He also explained that he has taken a course in legal and medical ethics, and received his Master's of Business Administration in the field of health care

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administration from Baker College and an on-line course given through Michigan University in December of 2004.

He has also taken and completed a number of courses on the internet through Medscape from April 9, 2003 through July 23, 2005, a total of more than 11,992 CME credits, and provided proof that he completed the outlined courses. Additionally, he has read a number of medical journals such as the New England Journal of Medicine, and publications dealing with the specialty of cardiology.

The applicant stated that he has also been involved with volunteer work within his community at the Hindu Center Inc. located in Flushing, New York. He volunteered for this organization from September of 2004 through the present time. He informs the population of health education, preventive health, and life style modifications through nutrition and exercise. The applicant also provided community service to the Rajasthan Association of North America (RANA) from October 15, 2003 through December 31, 2004.

Applicant stated that he takes full responsibility for his prior actions, and that he will not allow himself to be placed in a similar situation since he had lost everything, and suffered the consequences dearly, but now understands his prior actions were wrong, and is ready to resume the practice of medicine, even if it means starting over.

- Copies of prior disciplinary proceedings against the applicant, including the proceedings that resulted in the surrender of his medical license and also the prior

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disciplinary proceeding against the applicant in which he entered into a consent agreement.

- February 17, 2005 letter from Dennis J. Graziano, Director, OPMC, stating his office's position on the current application. Therein, after reviewing the applicant's disciplinary history and certain statements made by the applicant in his application for restoration, a concern is raised regarding the applicant's volunteer activities and whether or not these activities might have constituted the practice of medicine by the applicant during a period of time after he had surrendered his license to practice medicine. After pointing out that the charges brought against the applicant have involved fraudulent behavior, the letter went on to state that OPMC is compelled to strongly oppose restoring the applicant's privilege to practice medicine.

PEER COMMITTEE MEETING

On May 25, 2006 this Peer Committee met to consider this matter. The applicant appeared before us personally and chose to proceed without an attorney. Also present was Wayne Keyes, Esq., an attorney from the Division of Prosecutions, OPD.

After certain preliminary statements, two witnesses testified on the applicant's behalf. The first was Simon Saada, M.D., who had submitted one of the affidavits included in the applicant's application for restoration. He is the Director of Surgery at



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Victory Memorial Hospital, in Brooklyn, where the applicant had worked prior to the surrender of his medical license. He testified that he has known the applicant for approximately twenty-five years and that he is one of the best cardiologists that he has ever known, elaborating on the applicant's commitment to his practice and his patients. Thereafter, he described how the applicant had privately discussed the details of his criminal and licensure problems and the remorse and changes that he had observed in the applicant as a result of his troubles. He testified that he had advised the applicant to obtain an MBA in healthcare management and had also advised him to keep abreast of the medical profession.

He next responded to questions from the peer committee regarding his knowledge of the nature of the transgressions by the applicant, including ones pertaining to both the criminal conviction for kickbacks and the prior disciplinary proceedings before the Department of Health. He clarified that the kickbacks involved the applicant having been accused of referring patients for x-rays or testing for which the applicant received kickbacks. The witness went on in detail to explain the evidence of change he has seen in the applicant, including his questioning of himself and everything that he does and calling on his friends to advise him when he needs to talk, as well as attending temple and praying. He testified that he knows in his heart that the applicant will never, ever do this again. Finally, in response to

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questions from this hearing committee, he stated that, as a member of the board of trustees of the hospital and of the credentials committee, based on his knowledge of the applicant, he would recommend granting him hospital privileges and would not hesitate to reappoint him.

The second character witness was Sujit Chakrabarti, M.D., another colleague from Victory Memorial Hospital who had submitted an affidavit on the applicant's behalf. He stated that he too had known the applicant for twenty-five years and began by enumerating the changes that he has seen in the applicant, in that he is closer to his family, much more religious and is remorseful for his misdeeds. This witness referred to the applicant's excellence as a physician, as well as his generosity with providing needed help to patients, never inquiring whether or not they had the money to pay. Responding to questions from the peer committee, he discussed his readiness to send any patient or family member to the applicant, referring to him as a very good physician who took care of many patients who could not pay him a single dime.

Thereafter, the applicant testified on his own behalf. The applicant began his testimony by clarifying the facts pertaining to his having applied for a nuclear license. He explained that he had been advised to plead guilty to one charge, not the false representation in his application, but the use of radioactive material without a license, which is what he did. In part, the recommendation of his own attorney was because the date of the

BRIJ K. MITTAL (22649)

hearing was the same day that the applicant was required to appear in criminal court and no adjournment was granted to him.

The applicant testified that he is a different, changed person than what he was, asking the hearing committee to give him a second chance. He explained the changes in himself, including that he goes to temple and is on its board of trustees. He stated that he attends meetings and attended a course in ethics so that he is more knowledgeable than before. Now he will play it safe, talk to people and get their advice. Later, he added that he assures the peer committee that nothing will happen if he is given another chance to serve the community.

Addressing his criminal conviction, the applicant stated that he does not believe that greed was an issue with his conviction because he was making \$1 million plus every year and the criminal allegation was for \$18,400. He explained that it would have made no sense for him to have jeopardized everything for that money. When questioned by the peer committee, the applicant explained that a person had come to him, wanting help. He stated that the tests he ordered were all indicated and legitimate. With regard to the money paid, the applicant stated that he did not know the law or he would have turned the offer down, citing to his own ignorance.

Continuing, the applicant stated that for the past few years, practically four to five days a week, he has participated in CME courses, either going to conferences in Brooklyn or Manhattan, or

BRIJ K. MITTAL (22649)

video conferences on the internet. He has, from about 2002, collected 700 articles, obtained his MBA in health administration and wrote fifteen papers and one portfolio, some pertaining to cardiology and high cholesterol. He stated that he is doing anything that he can to keep in touch, re-educate himself with current knowledge in medicine. Later, he stated that his CME courses had included four courses in ethics, during the years 2004 and 2005. One was a general ethics course and the others were medical ethics; one was live, the others video conference. The applicant stated that he had been blindly dedicated to work from 7:00 in the morning until 11:00 to 12:00 at night, without looking at the real aspects of what he should avoid and what he should concentrate on so that nothing goes wrong. He has learned from these courses that he should not make any hasty and quick decisions and should look at the rationale and ethics of the profession and then try to stick to them. He should be careful and, if he needs advice, go to a professional in that field and get advice before proceeding.

In response to questions from the prosecuting attorney, the applicant conceded that he has not undergone any kind of counseling or therapy from 2001 until the present, but added that he felt that he can handle the problem, which he stated he has done. He further explained that his older daughter is getting a Ph.D. in psychology and that she has discussed things with him that were helpful. He stated that no one has recommended that he seek therapy or counseling.

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In further response, the applicant acknowledged that he had indicated in his application that he had performed community service at two different organizations, one for 30 hours and one for 120 hours, submitting letters from those organizations. He clarified that the services had included blood pressure screenings, blood sugar screenings, health education, lifestyle modification talks, how to lose weight and keep fit, stating that he has provided community service at the Hindu Center on Kissena Boulevard in Queens. Additionally, the applicant clarified that the medical services for patients listed in the papers attached to his restoration application, for which he had not billed, were provided while he still had his medical license, stating that without a license, he cannot provide these services.

Next, the applicant reviewed his criminal sentence of 30 months in prison and then three years of supervised release, indicating that he had spent approximately two years in a minimum security prison and was then released early. While in prison, every two weeks for two hours he was involved in medical education, similar issues to those listed earlier, speaking to other inmates about these things in a class situation. Following his release from prison, he has been on supervised release, for which he had three more months at the time of our meeting.

The applicant explained that he has not been employed since he lost his medical license and has supported himself through certain real estate that he sold, plus rental income. He has sold

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his practice and was getting monthly installments for the sale and income from renting his offices. Were his license reinstated, applicant testified that he would look for a full-time practice or a full-time job at a hospital.

Finally, the applicant responded to questions regarding the comments made in the letter from the Department of Health which opposed the restoration of his license. He added that he had provided a requested affidavit explaining that the services he had provided had been while he was licensed and added that the subsequent volunteer services were nothing like examining a patient or rendering treatment. He stated that he was surprised that the letter referred to fraudulent activity and that they might be thinking of the radioactive license but that the issue was practicing without the license for isotopes, about which he again reiterated details.

Each party then made closing remarks, the prosecuting attorney reminding this peer committee that the burden is on the applicant. He also stated that his department takes no position whatsoever on the application. The applicant stated that he was very sorry for what happened and regrets that his family suffered, he suffered and he has not intention of doing this again. He added that he has been loyal to the service of the community and the State of New York and will continue to do so if he is granted his license. He concluded by stating that he loves his profession.

RECOMMENDATION

We have reviewed the entire record in this matter, including the written materials received before our meeting. In arriving at our recommendation, we note that, in a licensure restoration proceeding, the burden is on the applicant to demonstrate that which would compel the return of the license. Greenberg v. Board of Regents of University of New York, 176 A.D. 2d, 1168, 575 N.Y.S. 2d 608, 609. In reaching our recommendation, we consider whether the applicant demonstrates sufficient remorse, rehabilitation and reeducation. However, we are not necessarily limited to such formulaic criteria but may consider other factors, particularly the seriousness of the original offense and, ultimately, our judgment as to whether the health and safety of the public would be in jeopardy should the application be granted.

This peer committee has had the opportunity to review extensive documentation and to listen to first-hand testimony of the applicant and of his witnesses. Having done so, it is our unanimous conclusion that the applicant has demonstrated that his license to practice medicine should be restored, with the conditions hereinafter set forth.

We believe that the applicant's many expressions of remorse for the criminal conduct which led him to surrender his license are genuine and sincerely felt. While he has indicated that the misconduct was the result of his failure to realize that he could not accept payments for referrals, it is clear that he now

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understands that his acceptance of these fees was wrong. Further, he has convinced us that he has learned that he must evaluate each situation which presents itself with a circumspect eye and his own critical judgment. Where a question arises, he is prepared to consult colleagues and friends, of whom he seems to have many. We view this as a change in attitude that will assure that he is not the perpetrator of the kind of misconduct that has plagued him prior to this in his medical career and led to the surrender of his medical license. Additionally, we note that while there was certain reference in the record to the applicant having previously submitted a fraudulent application for a license for radioactive material, he did not admit to guilt on that charge and has not been found guilty of any fraudulent activity in that regard. Thus, our decision herein is not based on any claim of fraud by the applicant.

Further, in his testimony before us and in that of his witnesses, we see a convincing demonstration that the applicant has changed his attitude both in his personal and professional life. He has become interested in the exploration of ethical issues and has become more involved in his religious pursuits and his temple. He has continued to demonstrate his commitment, apparently evident even before his criminal conviction, to volunteering his knowledge and skills to his community. In this regard we note that we are satisfied that the applicant was not practicing medicine after the surrender of his medical license. We



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believe his contention that the medical services that were rendered by him without payment were rendered while he was still licensed to practice and not thereafter.

In reaching our recommendation, we are also influenced by the character witnesses presented by the applicant. Each of these physicians have known the applicant for many years, primarily in the capacity of professional colleagues and each did not waiver in encouraging the restoration of the applicant's license. They enthusiastically wished to have his medical expertise available to them and were unhesitating in trusting that he would perform excellently and in compliance with legal and moral requirements of the profession.

Finally, we note that the applicant has engaged in extensive continuing medical education, as demonstrated by the records provided by him. We are confident that he would be able to resume the practice of medicine with the knowledge of practice expected of him.

Based on the foregoing, it is our unanimous conclusion that, were his medical license restored, rather than being a risk to the public in the State of New York, the applicant would be a valuable contributor to the public wellbeing. Thus, it is our unanimous recommendation that execution of the surrender of the applicant's license to practice as a physician in the state of New York be stayed.

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We further recommend that the applicant then be placed on probation for a period of one year under the terms of probation annexed hereto, made a part hereof and marked as Exhibit A. Upon successful completion of the probation, the applicant's license would be fully restored.

Respectfully submitted,

Ira Salom, M.D. Chairperson

John Cordice, M.D.

Joyce Lowinson, M.D.

Redacted Signature

Chairperson Date

5 Oct 2006 !

EXHIBIT A

TERMS OF PROBATION  
OF THE PEER COMMITTEE

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CALENDAR NO. 22649

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 have quarterly performance reports submitted to the New York State Department of Health (DOH), addressed to the Director, Office of Professional Medical Conduct, as aforesaid, from his employer, evaluating his performance as a physician in his place of employment, said reports to be prepared by applicant's supervisor or employer;
4. 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;
5. 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

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Health Law, said proof of the above to be submitted no later than the first two months of the period of probation;

6. 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 applicant shall cooperate with said employee, including the submission of information requested by said employee, regarding the aforesaid monitoring;
7. 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.