



Public

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

OFFICE OF PROFESSIONAL DISCIPLINE

475 Park Avenue South - Second Floor
New York, NY 10016-6901

July 14, 2010

Kildare Clark, Physician

REDACTED

Re: Application for Restoration

Dear Dr. Clark:

Enclosed please find the Commissioner's Order regarding Case No. CP-10-03 which is in reference to Calendar No. 23171. This order and any decision contained therein goes into effect five (5) days after the date of this letter

Very truly yours,

Donald Dawson
Director of Investigations

By:

REDACTED

Ariana Miller
Supervisor

DD/AM/go

cc: Robert J. De Mers Jr., Esq.
Attorney at Law
Global Building
444 Grand Street
Paterson, NJ 07505

JUL 24 2010

The
University of the
Education
State of New York
Department



IN THE MATTER

of the

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

Case No. CP-10-03

It appearing that the license of KILDARE CLARKE, REDACTED
, to practice as a physician in the State of New York, was revoked by a Hearing
Committee of the State Board for Professional Medical Conduct effective on July 31, 2002, and
he having petitioned the Board of Regents for restoration of said license, and the Regents having
given consideration to said petition and having reviewed the record, and having agreed with and
accepted the recommendations of the Peer Committee and the Committee on the Professions,
except having adopted the terms of probation recommended by the Committee on the
Professions, now, pursuant to action taken by the Board of Regents on March 9, 2010, it is
hereby

ORDERED that the petition for restoration of License No. 132990, authorizing
KILDARE CLARKE to practice as a physician in the State of New York, is denied, but that the
execution of the order of revocation of said license is stayed, and said KILDARE CLARKE is
placed on probation for a period of three years under specified terms and conditions, and upon
successful completion of this probationary period, his license to practice as a physician in the
State of New York shall be fully restored.



IN WITNESS WHEREOF, I, David M. Steiner,
Commissioner of Education of the State of New
York for and on behalf of the State Education
Department, do hereunto set my hand and affix the
seal of the State Education Department, at the City
of Albany, this 2 day of July, 2010.

REDACTED

Commissioner of Education

Case No. CP-10-03

It appearing that the license of KILDARE CLARKE, REDACTED
to practice as a physician in the State of New York, was revoked by a Hearing Committee of the State Board for Professional Medical Conduct effective on July 31, 2002, and he having petitioned the Board of Regents for restoration of said license, and the Regents having given consideration to said petition and having agreed with and accepted the recommendations of the Peer Committee and the Committee on the Professions, except having adopted the terms of probation recommended by the Committee on the Professions, now, pursuant to action taken by the Board of Regents on March 9, 2010, it is hereby

VOTED that the petition for restoration of License No. 132990, authorizing KILDARE CLARKE to practice as a physician in the State of New York, be denied, but that the execution of the order of revocation of said license shall be stayed, and said KILDARE CLARKE shall be placed on probation for a period of three years under specified terms and conditions, and upon the successful completion of this probationary period, his license to practice as a physician in the State of New York shall be fully restored.



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

Committee on the Professions
2nd Floor, West Wing
89 Washington Avenue
Albany, New York 12234
Telephone: (518) 486-1765
Fax (518) 474-3863

March 9, 2010

Robert J. DeMers, Jr.
Attorney at Law
Global Building
444 Grand Street
Paterson, NJ 07505-2004

Dear Mr. DeMers:

The application for the restoration of the physician license of your client Kildare I. Clarke was considered by the Board of Regents at its March 9, 2010 meeting.

After consideration of the entire matter, the Board of Regents voted to stay the order of revocation of the physician license of Kildare I. Clarke and place him on probation for three years under the Terms of Probation attached to the Report of the Committee on the Professions and labeled as Exhibit "A." Upon satisfactory completion of the probationary period, his license would be fully restored. The Order of the Commissioner of Education pertaining to this decision is being prepared and will be delivered to you.

If you have any questions, you may contact me at 518-486-1765.

Sincerely,

REDACTED

Seth Rockmuller

cc: Kildare I. Clarke
Walter Ramos
Mary Ellen Clerkin ✓
Deborah Couser

RECEIVED

MAR 04 2010

LAW OFFICES
ROBERT J. DE MERS JR., ESQ. ASSOCIATE COMMISSIONER
ATTORNEY AT LAW Office of the Professions

MEMBER OF THE BAR:
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February 24, 2010

Seth Rockmuller, Esq.
Associate Attorney
Committee on the Professions
NYS Department of Education
89 Washington Avenue
2nd Floor West Wing
Albany, New York 12234

Re: Kildare I. Clarke, M.D., Restoration of Physician License

Dear Mr. Rockmuller:

Thank you for your telephone call and letter on behalf of the Committee on the Professions. Pursuant to Section 24.7(a)(2)(i) of the Rules of the Board of Regents, please consider this letter as a written response to the Committee's recommendation to the Board of Regents.

Please know that Dr. Clarke is grateful for the time invested by the Honorable Members of both the Peer Committee and the Committee on the Professions in considering this situation. Also, the efforts of your Office in coordinating and compiling the necessary information and Reports has been greatly appreciated. Please consider this letter as notification that Dr. Clarke would indeed like this case to be considered by the Board of Regents at the March 8-9, 2010 Regents Meeting.

There is only one request that this Office would respectfully bring to your attention regarding the Reports of both Committees. The COP's recommendation essentially reflects that provided by the Peer Committee Report. The appearance before the Peer Committee occurred on March 27, 2007, almost three (3) years ago. The Report of that Committee and of the COP have both recommended a probationary period of three (3) years. It has now been almost five years since submission of the Application for Restoration, and about three (3) years since appearance before the Peer Committee. Further, as you are aware, Dr. Clarke has now taken more than the fifteen (15) hours of courses of training in medical ethics, as well as continuing to be very active in serving the public in related capacities. In fact, since the revocation of his license, Dr. Clarke has volunteered two days a week at Kings County Hospital teaching junior physicians in the areas of emergency and ambulatory care medicine, medical ethics and the most up-to-date standards of patient care. In regard of the time which has now passed, and the sincere efforts reflected in these numbers, it is most respectfully requested that the recommended period of probation of three years be reduced.

Seth Rockmuller, Esq.
February 24, 2010
Page 2 of 2

Alternatively, it is respectfully requested that the Office of Professional Medical Conduct be given discretion to reduce the period of probation, pursuant to indications of satisfactory performance received by that Office.

Please know that Dr. Clarke is grateful for the time and consideration shown to him by all persons involved in all levels of the restoration process.

Please let this Office know if there is anything else needed in this matter.

Once again, thank you for your ongoing courtesy and kind attention in this matter.

Very truly yours,

REDACTED

ROBERT J. DE MERS, JR., ESQ.
Attorney & Counsellor at Law

RJDM/gle

Cc: Kildare I. Clarke, M.D.



FOR EXECUTIVE SESSION

TO: The Professional Practice Committee

FROM: Frank Muñoz
REDACTED

SUBJECT: Report of the Committee on the Professions Regarding
the Petition of Kildare Clarke for Restoration of his
Physician License

DATE: February 23, 2010

STRATEGIC GOAL: Goal 3

AUTHORIZATION(S): REDACTED

Executive Summary

Issue for Decision

Should the Regents approve the recommendation of the Committee on the Professions pertaining to restoration of licensure as listed on the attached report?

Proposed Handling

The question will come before the Professional Practice Committee at its executive session meeting in March 2010 for discussion and action. It will then come before the full Board at its March 2010 meeting for final action.

Procedural History

Section 24.7 of the Rules of the Board of Regents authorizes the Committee on the Professions to review and submit its recommendations to the Board of Regents for final determinations of petitions for restoration of professional licenses which have been revoked or surrendered pursuant to Section 6510 or 6510-a of the Education Law or Title II-A of Article 2 of the Public Health Law. The recommendation in this case followed an investigation, a personal appearance before a Peer Committee, and a personal

appearance before the Committee on the Professions. The salient facts in the case and recommendation of the Committee on the Professions are set forth in the attached report of the Committee.

Background Information

One petition for restoration of licensure is attached for review and approval.

Recommendation

That the Board of Regents stay the Order of Revocation of Kildare Clarke's license to practice as a physician in the State of New York and place him on probation for three years under the Terms of Probation attached to the Report of the Committee on the Professions as Exhibit "A," and that upon satisfactory completion of the probationary period, his license be fully restored.

Timetable for Implementation

Approval of the Committee on the Professions' recommendation will be effective March 9, 2010.

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: **Kildare Clarke**

Attorney: Robert J Demers, Esq.

Kildare Clarke, REDACTED petitioned for restoration of his physician license. The chronology of events is as follows:

- 11/04/77 Issued license number 132990 to practice medicine in New York State
- 03/05/02 Charged with 13 specifications of professional misconduct by the New York State Department of Health.
- 07/31/02 Hearing Committee Determination and Order No. 02-224 by Department of Health sustained most specifications of professional misconduct and revoked license.
- 01/29/04 Appellate Division, Third Department, affirmed determination of the Hearing Committee of the State Board for Professional Medical Conduct.
- 04/11/05 Application for restoration submitted.
- 03/27/07 Peer Committee restoration review
- 09/25/07 Report and Recommendation of Peer Committee.
- 02/27/08 Committee on the Professions restoration review.
- 02/23/10 Report and Recommendation of the Committee on the Professions

Disciplinary History. (See attached disciplinary documents) On July 31, 2002, the New York State Department of Health found Dr. Clarke guilty of professional misconduct which stemmed from his treatment of three patients between the years 1992 and 2000, as well as his submission of a curriculum vitae to the Office of Professional Medical Conduct that had false entries In treating Patient A at his private psychiatric office in the year 2000, Dr Clarke was found to have acted negligently by failing to obtain or document a proper medical, psychiatric and substance abuse history and by failing to formulate a diagnosis He was also found to have treated Patient A with both negligence and gross negligence by

issuing him two prescriptions for cannabis without proper medical indication, for issuing cannabis prescriptions to Patient A when he was aware of Patient A's prior drug abuse, and for issuing Patient A two refillable prescriptions for cannabis when it was not done in good faith in the ordinary practice of medicine, but for purposes of deceiving A's probation officer and a judge. The last action was also found to constitute fraudulent practice, a violation of law, and moral unfitness.

With respect to Patient C, a diabetic whom he treated in the emergency room at Kings County Hospital Center, Dr. Clarke was found guilty of both negligence and gross negligence for failing to adequately evaluate the seriousness of Patient C's condition and to recognize the existence of an underlying diabetic ketoacidosis. He was also found guilty of both negligence and gross negligence with respect to his emergency room treatment in 1992 of Patient D, who was pregnant and had been experiencing two days of heavy bleeding and cramps, for failing to start an intravenous infusion, check her vital signs, or order her to be typed for a possible transfusion. Lastly, Dr. Clarke was found guilty of fraudulent practice, false reporting, and moral unfitness for submitting a curriculum vitae to the Office of Professional Medical Conduct which claimed memberships in various associations when he was not a member. Dr. Clarke was found not guilty of three specifications of gross incompetence and one specification of incompetence on more than one occasion. Based on the specifications of which he was found guilty, his license to practice medicine was revoked, and the revocation was upheld by the Appellate Division, Third Department, on January 29, 2004.

On April 11, 2005, Dr. Clarke submitted an application for restoration of his license.

Recommendation of the Peer Committee. (See attached Report of the Peer Committee.) The Peer Committee (Cordice, Diamond, Robinson) convened on March 27, 2007. In its report dated September 25, 2007, the Committee unanimously recommended that Dr. Clarke's application for restoration be granted to the extent that the revocation of his license be stayed and that he be put on probation for a period of three years under various terms, which included a requirement that he take specific continuing professional education courses and be subject to on-site supervision with quarterly reports. The Peer Committee recommended that, upon the successful completion of his probation, his license to practice as a physician in the State of New York be fully restored.

Recommendation of the Committee on the Professions. On February 27, 2008, the Committee on the Professions (COP) (Templeman, Hansen, O'Grady-Parent) met with Dr. Clarke to consider his application for restoration. His attorney, Robert J. Demers, Esq., accompanied him.

Applicant's Statements to COP

The COP asked Dr. Clarke to explain the events that led to the revocation of his license. Dr. Clarke stated that Patient A was an individual that he had treated pro bono, who suffered from depression, ADHD, and a seizure disorder. Patient A had stopped using all medications that other doctors had prescribed for him and was using illegal street marijuana. He came to Dr. Clarke because he was aware of Dr. Clarke's position as an expert on the use of medical marijuana. Dr. Clarke admitted that he did give Patient A a prescription for pure marijuana from the Medical Marijuana Club in Manhattan without

following proper protocol. He told the Committee that he hoped to keep Patient A away from street marijuana which can be unsafe, and to treat him while weaning him from marijuana. However, Patient A did not follow up with him for appointments and, unbeknownst to him, was on probation for using drugs and was breaking parole. Since the patient was pro bono, he kept hand written notes for records which did not get transferred into computer format. He stated that he has now learned not to let his compassion for a patient lead him to take short cuts with the law and protocol.

With respect to Patient C, a diabetic who had come to the emergency room, Dr. Clarke stated that he had followed the hospital policy at the time, which was to take the patient's temperature, blood pressure, and pulse, and then, if the patient were stable, to send him or her to the adult walk-in area which was adjacent to the emergency room. However, the patient had to wait four hours there to be seen and was then sent back to the ER when he was found to have high glucose. Similarly, regarding Patient D, who had come to the emergency room with an incomplete abortion, Dr. Clarke stated that he had examined her as per hospital policy to make sure that she was stable, and then had sent her directly to the third floor where the abortion would be completed. In both cases he had felt at the time that he was acting properly. Now, in retrospect, he believes that he should have not only observed hospital policy, but used better judgment to evaluate the individual case. Lastly, regarding the incorrect curriculum vitae that he submitted, he told the COP that he had given the document to someone else to type and had not reviewed it. He should have made sure that it was corrected and updated. Dr. Clarke indicated that he was extremely remorseful for the actions that led to the loss of his license. He had failed himself and his patients, many of whom relied on him for free treatment.

In reference to his re-education and rehabilitation, Dr. Clarke stated that he has taken approximately 210 credit hours of continuing medical education courses. He has participated in grand rounds and has taken part in clinical case conferences at Kings County Hospital Center. In addition, he has conducted voluntary meetings through the Doctor's Council staff where he has discussed ethics and professional misconduct issues, including his own, with medical professionals. He has also done volunteer work with youth in the community, encouraging them to stay in school and get an education. Dr. Clarke indicated that if he were to get his license back, he would hope to return to work at Kings County Hospital to serve the populace in that area. He would also hope to provide free psychological service to needy patients.

Recommendation

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 Committee on the Professions agrees with the findings of the Peer Committee that Dr. Clarke is sincere with respect to his expressions of remorse for his misconduct. We also believe that he has taken appropriate measures to rehabilitate himself both with respect to addressing his misconduct, by sharing his experiences with other professionals, and with respect to his commitment to his community, by encouraging and mentoring youth in pursuing education. In addition, we conclude that he has participated in a sufficient amount of continuing medical education to support his application. In this regard, we note that he has submitted documentation of the completion of additional continuing education, including 14.25 credits in the treatment of diabetes which relates to his treatment of Patient C, and courses in ethics and in the use and abuse of cannabis. We also note that, when he was in practice, he exhibited a strong commitment to the well-being of his patients, regardless of their ability to pay, as is evident from his application, his references, and his meeting with us, and it appears to us that this commitment continues. Additionally, it appears that Dr. Clarke's misconduct arose out of several incidents of poor judgment, which, while serious, did not result in patient harm or constitute a pattern of misconduct.

While we agree with the probationary terms established by the Peer Committee, we also recommend that Dr. Clarke be required to take a three credit hour course in medical recordkeeping during his probationary period and that his probationary period be stayed when he is not engaged in the active practice of medicine in the State of New York. Additionally, we believe that the settings in which he may practice during his probationary period should be expanded to provide sufficient flexibility to enable him to find a position but that any situation in which he practices should be subject to the prior approval of the Director of the Office of Professional Medical Conduct. Finally, we recommend that the Director of OPMC be given the discretion to determine whether to accept any courses completed prior to service of the order in this matter toward completion of the course requirements imposed by the Terms of Probation.

Therefore, after a careful review of the record and its meeting with Dr. Clarke, the Committee on the Professions votes unanimously to concur with the recommendation of the Peer Committee that the Order of Revocation of Dr. Clarke's license to practice as a physician in the State of New York be stayed, and that he be placed on probation for three years under the specified terms attached to this report and labeled as Exhibit "A", which includes an additional requirement that he take a three credit hour course in medical record keeping, and that upon satisfactory completion of the probationary period, his license be fully restored.

Leslie Templeman, Chair
Stanley Hansen
Erin O'Grady-Parent

EXHIBIT "A"

TERMS OF PROBATION
OF THE COMMITTEE ON THE PROFESSIONS

Kildare Clarke

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, Office of Professional Medical Conduct (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 only practice within an institutional or other group setting under the onsite supervision of a physician licensed by the State of New York, said setting and supervision to be subject to the prior approval of the Director of the Office of Professional Medical Conduct, and 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,
6. That applicant shall, at applicant's expense, enroll in and diligently pursue, a course of training in medical ethics, said course to consist of fifteen (15) hours, and a course in medical recordkeeping, said course to consist of at least three (3) credit hours, said courses of training to be selected by applicant and previously approved

in writing by the Director of the Office of Professional Medical Conduct, and to be satisfactorily completed during the first year of probation, such completion to be verified in writing and said verification to be submitted to the Director of the Office of Professional Medical Conduct, provided that the Director of the Office of Professional Medical Conduct may, in his discretion, accept courses completed prior to the service of the order in this matter in satisfaction of this requirement;

7. 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,
8. 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; and
9. That the period of probation shall be tolled during periods in which the applicant is not engaged in the active practice of medicine in New York State. The applicant shall notify the Director of OPMC, in writing, if the applicant is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. The applicant shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon the applicant's return to practice in New York State.



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

KILDARE CLARKE

**REPORT OF THE
PEER COMMITTEE
CAL. NO. 23171**

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

-----X

Kildare Clarke, 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. Applicant's license to practice medicine in the State of New York was revoked effective July 31, 2002 by a Determination and Order of a Committee of the State Board for Professional Medical Conduct appointed by the Commissioner of Health of the State of New York.

Applicant has applied for restoration of his license.

CHRONOLOGY OF EVENTS.

11/04/77 Applicant issued license #132990 to practice medicine in the State of New York.

03/05/02 Applicant charged with thirteen Specifications of Professional Misconduct.

04/23/02- Hearing held before a Committee of the State Board
06/04/02 Board for Professional Medical Conduct.

07/31/02 Applicant's license to practice medicine in the State of New York revoked.

01/29/04 Appellate Division Third Department confirmed determination of the Hearing Committee of the State Board for Professional Medical Conduct.

04/11/05 Applicant submitted application for restoration of license.

03/27/07 Peer Committee restoration review completed.

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), were compiled by the prosecutor from OPD into a packet that was distributed to this Peer Committee in advance of its meeting and also provided to the applicant.

DISCIPLINE PROCEEDING

Hearing before Committee of State Board for Professional Medical Conduct:

On April 23, May 1, May 21, May 28, and June 1, 2002, a hearing was held before a Committee of the State Board for Professional Medical Conduct to hear and determine thirteen specifications of professional misconduct lodged against applicant. Applicant appeared personally and by counsel at the hearing. On July 17, 2002 the Committee issued its Determination and Order sustaining twelve specifications of professional misconduct against applicant and ordering applicant's license to practice medicine be revoked.

Specifications of Misconduct:

Applicant was found guilty of:

- a. Professional misconduct as defined in New York State Education Law Section 6530(4), practicing the profession of medicine with gross negligence, three specifications.
- b. Professional misconduct as defined in N.Y.S. Education Law Section 6530(3), practicing the profession of medicine with negligence on more than one occasion, three specifications.
- c. Professional misconduct as defined in N.Y.S. Education Law Section 6530(2), practicing the profession of medicine fraudulently, two specifications.

- d. Professional misconduct as defined in N.Y.S. Education Law Section 6530(21), willfully making or filing a false report, or failing to file a report required by law or by the Department of Health or the Education Department, one specification.
- e. Professional misconduct as defined in N.Y.S. Education Law Section 6530(16), willful or grossly negligent failure to comply with substantial provisions of federal, state or local laws, rules or regulations governing the practice of medicine, specifically N.Y.S. Public Health Law Section 3330, one specification.
- f. Professional misconduct as defined in N.Y.S. Education Law Section 6530(20), engaging in conduct in the practice of medicine that evidences moral unfitness to practice, two specifications.

Nature of the misconduct:

The Hearing Committee found applicant engaged in the following conduct:

- a. On or about April 28, 2000 and August 25, 2000, applicant treated Patient A* for an unknown condition at

* App. = Applicant; O.P.D. = Office of Professional Discipline; Exh. = Exhibit; Exhs. = Exhibits; t. = transcript; p. = page; pp. = pages. Initials rather than names will be used in this report when referring to persons other than the applicant, the members of the hearing panel, the administrative officer, and the attorney for each party, if any.

applicant's private psychiatric office at 6 Hazelton Drive, White Plains, New York. Applicant's care and treatment of Patient A deviated from accepted standards of care in that:

1. Applicant failed to obtain and document adequate medical, psychiatric and substance abuse and substance abuse histories.
2. Applicant failed to formulate a diagnosis or differential diagnoses.
3. Applicant issued to Patient A two prescriptions for cannabis, one refillable three times and the other, two times.
4. The two prescriptions for cannabis were issued without proper medical indication.
5. At the time applicant issued the prescriptions for cannabis, applicant was aware of Patient A's prior history of drug abuse.
6. Cannabis is a Schedule 1 medication. Section 3330 of the Public Health Law prohibits the issuance of prescriptions for Schedule 1 drugs. Applicant's issuance of a prescription for cannabis violated Public Health Law Section 3330.
7. Applicant's chart for Patient A stated the prescription was being issued pursuant to the

"Controlled Substance Therapeutic Research Act."

Applicant failed to abide by the terms of that Act.

b. On or about August 27, 1992, Patient C, a known diabetic, was seen by applicant in the emergency room at Kings County Hospital Medical Center for a complaint of lack of insulin for two days. Applicant's care and treatment of Patient C deviated from accepted standards of care in that:

1. Applicant failed to adequately evaluate the relative seriousness of Patient C's condition.
2. Applicant did not obtain Patient C's significant medical history including insulin dependent diabetes for thirty-five years and an episode of diabetic ketoacidosis.
3. Applicant failed to recognize the existence of an underlying diabetic ketoacidosis.

c. On or about August 27, 1996, Patient D, who was pregnant, was brought to the emergency room at Kings County Hospital after two days of heavy vaginal bleeding and with lower abdominal cramps. Applicant's care and treatment of Patient D deviated from accepted standards of care in that:

1. Applicant failed to start an intravenous infusion, check vital signs or order the patient's blood to be typed and cross-matched for a possible transfusion.
- d. Applicant submitted a curriculum vitae to the Office of Professional Medical Conduct containing false entries about his accomplishments and qualifications, although he knew they were false.

Other states' proceedings:

At all times relevant to these proceedings, applicant has held no medical license in any other state.

APPLICATION FOR RESTORATION

On April 11, 2005, 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 Professional Education: Applicant provided documentation that he completed about 123.2 hours of continuing professional education. Applicant indicated he regularly engages in discussions with physicians at Kings County Medical Center, attends rounds and continuing professional education there and reads the most current medical literature. In addition, applicant volunteers with the Doctor's Council discussing medical misconduct and medical ethics issues.

Professional Rehabilitation Activities: Applicant made no entry in this portion of the application.

Submissions of Affidavits: Applicant submitted affidavits from four physicians and one attorney (legal counsel to the Doctor's Council) supporting the restoration of his medical license.

Additional attachments to the application: Applicant attached a certificate issued by the American Medical Association indicating that applicant has fulfilled the requirements for the Physician's Recognition Award in Continuing Medical Education. The certificate indicates that it is valid for the period March 1, 2005 through March 1, 2008.

INVESTIGATIVE INFORMATION

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

- September 15, 2006 memo documenting the investigator's restoration interview with applicant. Applicant stated he was devastated by the revocation of his license because he became a physician to help people and, when his license was revoked, he could no longer help his patients. He accepted full responsibility for his actions. Applicant submitted certificates evidencing additional continuing education. Applicant continues to do volunteer work at Kings County

and, if his license were restored, he would return to work at Kings County. Applicant supports his nine nieces and nephews who reside with him. His source of income is withdrawals from his 401K plan. Applicant provided the investigator with certificates evidencing an additional 68.5 hours of continuing medical education beyond those submitted with the application.

- October 11, 2006 memo reflecting that the investigator had contacted two of the physicians who had submitted affidavits supporting restoration: Barry L. Liebowitz, M.D. and Andrew Rohen, M.D. Each reiterated what was set forth in his respective affidavit.
- October 17, 2006 report containing the information from the above memos as well as reporting the investigator's contact with two additional physicians who had submitted affidavits in support of restoration: Lee Chang Yang, M.D. and Joseph Williams, M.D. Dr. Yang confirmed the information contained in his affidavit and attachment thereto, adding that Dr. Clarke was caring and dedicated and would not turn away anyone. Dr. Williams submitted a letter directed to the investigator reaffirming information contained in his affidavit as well as noting that the Kings County Hospital Ambulatory Care Unit, which Dr. Williams directs, misses applicant's knowledge in medicine and management. He

"whole-heartedly" recommends restoration stating, "He should not be denied the opportunity to further serve his patients, or serve with his colleagues at the institution to which he has already given so much!"

- On March 12, 2007 memo from the investigator to the prosecutor including copies of documents regarding proof that applicant resides at the apartment on Broadway in New York, and owns houses in Brooklyn and White Plains. Applicant provided copies of statements from his 401K account and additional letters in support of restoration from a former patient, and a college student and young physician he has mentored.

PEER COMMITTEE MEETING

On March 27, 2007, this Peer Committee met to consider this matter. Applicant appeared before us personally and was represented by an attorney, Robert J. Demers, Jr., Esq.

Also present was Michael Hilf, Esq., an attorney from the Division of Prosecutions, OPD.

Applicant presented the testimony of Andrew Rohen, M.D. and Joseph Williams, M.D. Each of these witnesses had provided affidavits in support of restoration which were attached to applicant's initial application. In addition, Dayanan Hedge, M.D. testified on behalf of applicant.

Dr. Rohan testified that he has known applicant since 1976 and has worked with him as a physician since 1977. The witness testified that he believed the public would be served by the restoration of applicant's license. The witness described applicant as a physician who placed concern for his patients above concern for himself. Dr. Rohan admitted on cross examination that he was unaware of the details of applicant's misconduct and could not testify as to whether applicant has taken steps to remediate the deficiencies found.

Dr. Williams testified that he has worked with applicant since 1983 or 1984. He testified that, in his opinion, the patient population served by Kings County Hospital, as well as the public in general, would be well served by the restoration of applicant's license. In response to questions asked on cross examination, Dr. Williams stated:

"I think that Dr. Clarke was convicted, his license was revoked, he was punished. That's what I think happened and he has years to reflect, and he has given his life to practicing medicine. If you ever saw him practice medicine, if you were with him practicing medicine, you would have seen what the man did and what he believed."

Dr. Hedge testified that he had worked with the applicant from 1974 until 2001, when Dr. Hedge took early retirement due to an injury. The witness testified that applicant was competent, caring and compassionate in his patient care. The witness, who speaks with applicant weekly, described applicant

as "very remorseful" and gave his personal opinion that applicant would never again engage in professional misconduct.

Applicant testified in support of his request for restoration. Applicant described his prior conduct as having brought disgrace upon the medical community and admitted that his conduct has resulted in his having failed his patients because he can no longer provide them with medical care. He felt that the decisions he made, which resulted in findings of misconduct, were correct at the time he made those decisions. It is only after serious reconsideration and objective analysis that he has come to realize that those decisions were wrong and represent a failure of his obligation to exercise good, independent medical judgment in the treatment of each patient. He accepts full responsibility for the actions which resulted in the revocation of his license.

Applicant has attempted to rehabilitate himself through analysis of his role as a staff physician within the hospital setting. It is applicant's intention, if restoration is granted, to return to Kings County Medical Center as a staff physician. He has maintained his contacts within that facility through his voluntary meetings with staff to discuss issues of professional misconduct as well as his reeducation efforts including attendance at rounds and clinical conferences. Applicant has continued his volunteer work with youth in the community

encouraging education as a means for young people to better their lives.

Mr. Hilf, on behalf of the Office of Professional Discipline, made no recommendation as to whether the application for restoration should be granted or denied.

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 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 considered whether 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.

We find the applicant to have presented proof of sufficient remorse, rehabilitation and reeducation to have met his burden of proving those elements. We find his expressed remorse to be credible and genuine in light of his conduct since revocation.

He has never abandoned his interest and involvement in the field of medicine, even though he began studies in a different field. He regularly has been involved in counseling of physicians regarding ethics and professional misconduct. His willingness to make public and discuss his history in order to help other physicians and the profession indicates to us both genuine remorse and rehabilitation.

Applicant's efforts in reeducating himself are significant. Applicant presented evidence of his having earned a total of about 210 hours of continuing medical education since his revocation. We are concerned that there is no specific formal continuing education in the field of ethics and feel that such education should be part of applicant's future.

This Committee found applicant's testimony, as well as the testimony of applicant's witnesses, to be straightforward and credible. The applicant is a man of great principle and exhibits deep devotion to his patients. His misconduct, although serious, did not result in patient harm nor was it for personal gain. The misconduct involved the treatment of three patients and the incidents did not occur closely in time. In fact, the first act of misconduct occurred in 1992, the last in 2000.

It is the unanimous recommendation of this Peer Committee that the revocation of applicant's license to practice as a

physician in the State of New York be stayed, and that applicant then be placed on probation for a period of three years under the terms and conditions of probation annexed hereto, made a part hereof and marked as Exhibit A. Said terms of probation include, *inter alia*, additional specific continuing professional education, on-site supervision and quarterly reports from applicant's employer to OPMC. Upon successful completion of the terms of probation, we recommend that applicant's license be fully restored.

Respectfully submitted,

JOHN CORDICE, M.D., CHAIRPERSON

MARTIN DIAMOND, D.O.

BENJAMIN ROBINSON, ESQ:

REDACTED

~~Chairperson~~

Dated

9/25/07

EXHIBIT A

TERMS OF PROBATION
OF THE PEER COMMITTEE

KILDARE CLARKE

CALENDAR NO. 23171

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 only practice within an institutional setting under the onsite supervision of a physician licensed by the State of New York and 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, at applicant's expense, enroll in and diligently pursue a course of training in medical ethics, said course of training to be selected by applicant and previously approved in writing by the Director of the Office of Professional Medical Conduct, said course to consist of fifteen (15) hours and to be satisfactorily completed during the first year of probation, such completion to be verified in writing and said verification to be submitted to the Director of the Office of Professional Medical Conduct;
5. 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;

6. 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;
7. 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;
8. 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.