



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

OFFICE OF PROFESSIONAL DISCIPLINE
(212) 921-3872/3873

1411 BROADWAY – TENTH FLOOR
NEW YORK, NEW YORK 10018

December 2, 2015

Hank Ross, Physician
[REDACTED]

Re: Application for Restoration

Dear Dr. Ross:

Enclosed please find the Commissioner's Order regarding Case No CP-12-09, which is in reference to the restoration of license number 163223. This order and any decision contained therein goes into effect five (5) days after the date of this letter.

Very truly yours,

LOUIS J. CATONE, Director
Office of Professional Discipline

By: [REDACTED]

ARIANA MILLER
Supervisor

DD/AM/cm

Enclosure

CERTIFIED MAIL – RRR

cc: Anthony Z. Scher, Esq.
Wood & Scher, Attorneys at Law
222 Bloomingdale Road, Suite 311
White Plains, NY 10605

The
University of the
Education  State of New York
Department

IN THE MATTER

of the

Application of HANK ROSS for reconsideration of a determination by the Board of Regents pursuant to section 24.9 of the Rules of the Board of Regents relating to his application for restoration of his license to practice as a physician in the State of New York.

Case No. CP-12-09

It appearing that the license of HANK ROSS, to practice as a physician in the State of New York, was revoked by Order of the Administrative Review Board for Professional Medical Conduct dated August 11, 2006, and he having petitioned the Board of Regents for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, pursuant to action taken by the Board of Regents on March 20, 2012 and by Order dated May 10, 2012; it having been ordered that the petition for restoration of License No. 163233, authorizing HANK ROSS to practice as a physician, is denied, but that the Order of revocation of said license be stayed, and said HANK ROSS shall be placed on probation for a period of seven years under specified terms and conditions, and upon successful completion of said probation, his license to practice as a physician in the State of New York shall be fully restored; and said HANK ROSS having applied for reconsideration of such

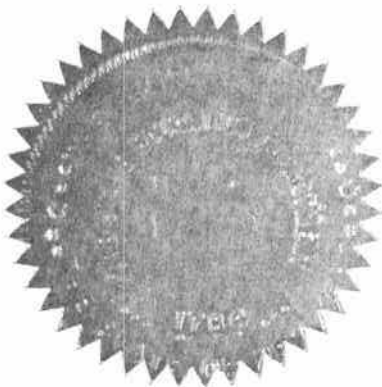
determination by the Board of Regents pursuant to section 24.9 of the Rules of Board of Regents, and the Regents having considered such application for reconsideration, pursuant to action taken by the Board of Regents on November 17, 2015, now, it is hereby

ORDERED that petitioner's application for reconsideration be accepted because the Order of the Board of Regents dated May 10, 2012 relating to the petition for restoration of License No. 163233 appears to be internally inconsistent and thus potentially affected by an error of law; and it is further

ORDERED that the May 10, 2012 Order be amended as follows:

ORDERED that the petition for restoration of License No. 163233, authorizing HANK ROSS to practice as a physician in the State of New York, is denied, but that the Order of revocation of said licensed shall be stayed, and said HANK ROSS shall be placed on probation from May 10, 2012 through the date of this Order under the terms and conditions specified in the May 10, 2012 Order, and upon successful completion of said probation, his license to practice as a physician in the State of New York shall be fully restored.

IN WITNESS WHEREOF, I,
MaryEllen Elia, 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 30th day of November
2015.




Commissioner of Education

It appearing that the license of HANK ROSS, to practice as a physician in the State of New York, was revoked by Order of the Administrative Review Board for Professional Medical Conduct dated August 11, 2006, 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, pursuant to action taken by the Board of Regents on March 20, 2012 and by Order dated May 10, 2012; it having been ordered that the petition for restoration of License No. 163233, authorizing HANK ROSS to practice as a physician, is denied, but that the Order of revocation of said license be stayed, and said HANK ROSS shall be placed on probation for a period of seven years under specified terms and conditions, and upon successful completion of said probation, his license to practice as a physician in the State of New York shall be fully restored; and said HANK ROSS having applied for reconsideration of such determination by the Board of Regents pursuant to section 24.9 of the Rules of Board of Regents, and the Regents having considered such application for reconsideration, pursuant to action taken by the Board of Regents on November 17, 2015, now, it is hereby

VOTED that petitioner's application for reconsideration be accepted because the Order of the Board of Regents dated May 10, 2012 relating to the petition for restoration of License No. 163233 appears to be internally inconsistent and thus potentially affected by an error of law; and it is further

VOTED that the May 10, 2012 Order be amended as follows:

ORDERED that the petition for restoration of License No. 163233, authorizing HANK ROSS to practice as a physician in the State of New York, is denied, but that the Order of revocation of said licensed shall be stayed, and said HANK ROSS shall be placed on probation from May 10, 2012 through the date of this Order under the terms and conditions specified in the

May 10, 2012 Order, and upon successful completion of said probation, his license to practice as a physician in the State of New York shall be fully restored.

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ANTHONY Z. SCHER
WILLIAM L. WOOD, JR.
(ALSO ADMITTED IN TEXAS)

ANDREA DIAL SCHER
OF COUNSEL

July 20, 2015

Douglas Lentivech, Esq.
Deputy Commissioner
Office of the Professions
State Education Department
State Education Bulding, 2M
89 Washington Avenue
Albany, NY 12234

Re: **Hank Ross, MD**
Application for Reconsideration

Dear Mr. Lentivech,

Please consider the enclosed as Dr. Hank Ross's Application for Reconsideration to the Committee on the Professions under 8 NYCRR Section 24.9.

Dr. Ross's medical license was restored based on his Application for Restoration pursuant to a vote of the Board of Regents on March 19, 2012 which followed a recommendation of the Committee on the Professions. The vote of the Board of Regents was effectuated by an Order of the Education Commissioner dated May 10, 2012. For the reasons set forth in the enclosed Application for Reconsideration, it is respectfully requested that the Education Commissioner's Order of May 10, 2012 be modified.

Very truly yours,


Anthony Z. Scher

AZS/jd
Enclosure

APPLICATION FOR RECONSIDERATION

By his attorneys, WOOD & SCHER, as and for his Application for Reconsideration, HANK ROSS, MD states as follows:

1. This is an Application for Reconsideration of the Order of the Education Commissioner dated May 10, 2012 in Case No. CP-12-09 involving Hank Ross, MD. A copy of the Commissioner's Order and vote of the Board of Regents are attached as **Exhibit 1**.
2. The Application is made pursuant to 8 NYCRR Section 24.9 on the ground that the Order may contain an error in transcription and/or that circumstances have changed subsequent to the original determination.
3. Dr. Ross was issued license No. 163233 on July 15, 1985.
4. On April 25, 2006, a Hearing Committee of The State Board for Professional Medical Conduct sustained various charges against Dr. Ross and imposed a penalty of a one year suspension with two years of probation and the requirement that Dr. Ross complete 20 hours of continuing medical education in ethics and office management.
5. It is noteworthy that none of the Findings of Misconduct that were sustained by the Hearing Committee involved substandard clinical practice.
6. The Hearing Committee's decision was appealed to the Administrative Review Board of The State Board for Professional Medical Conduct which, on August 11, 2006, increased the penalty to revocation of Dr. Ross's medical license. Again, there were no findings of substandard clinical practice.
7. On August 17, 2009, Dr. Ross filed an Application for Restoration of his\ medical license.

8. On April 4, 2011, a Peer Committee of the State Board for Medicine heard Dr. Ross's application and issued its report on June 5, 2011 recommending that Dr. Ross's medical license be restored subject to certain conditions of probation for 3 years.

9. On July 26, 2011, Dr. Ross appeared before the Committee on the Professions.

10. On February 22, 2012, the Committee on the Professions issued its report which recommended that Dr. Ross's license be restored subject to certain conditions of probation for a period of three years. A copy of the Committee's report is attached as **Exhibit 2.**

11. On March 19, 2012, the Board of Regents acted on Dr. Ross's Application for Restoration.

12. By an Order dated May 10, 2012, (effective May 21, 2012) the Education Commissioner issued an Order staying the revocation of Dr. Ross's medical license and placed him on probation for seven years under certain conditions. A copy of the Education Commissioner's Order and Vote of the Board of Regents as noted above are attached as **Exhibit 1.**

13. The Vote of the Board of Regents states that the "Regents having given consideration to said petition and having reviewed the record, and having agreed with and accepted the recommendation of the Peer Committee and the Committee on the Professions, except having adopted the terms of probation recommended by the Committee on the Professions. . ." See, **Exhibit 1.**

14. The Vote of the Board of Regents then states without explanation that the probation period is seven years (rather than the three years recommended by the Peer Committee and the Committee on the Professions). The Education Commissioner's Order mirrors the Vote of the Board of Regents. See, **Exhibit 1.**

15. It is respectfully submitted that the inclusion of a seven year probation may have been an error in transcribing since the language of the rest of the Vote of the Board of Regents appears to reflect the acceptance by the Regents of the probation recommended by the Committee on the Professions as to all terms and conditions.

16. In addition, a seven year probation is an unusually long probation. When they elect to depart from a recommendation made by the Committee on the Professions, the Regents usually state the reason why the recommendation is not being followed. No such statement is included in the Vote and Order of the Board of Regents/Education Commissioner. See, **Exhibit 1**.

17. If this is so (a transcription error), then Dr. Ross should be deemed to have completed his probation as of May 21, 2015.

18. If the Regents intended to extend the probation to seven years, it is respectfully requested that the Regents consider the changes in circumstances experienced by Dr. Ross as a basis for a modification.

19. For three years, Dr. Ross has scrupulously followed the conditions of probation recommended by the Committee on the Professions and adopted by the Board of Regents. The conditions include medical practice in a supervised setting (Paragraph 5 of the Terms of Probation); a practice supervisor approved by OPMC (Paragraph 5 of the Terms of Probation); the performance of ambulatory surgery only (Paragraph 6 of the Terms of Probation); performance of ambulatory surgery only in a hospital setting (Paragraph 6 of the Terms of Probation); and all surgeries to be performed under the direct supervision of a board certified surgeon (Paragraph 6 of the Terms of Probation). Dr. Ross has performed admirably such that the granting of this Application would pose no risk to the public. See, **Exhibit 3** attached hereto.

20. It is clear from the circumstances of this case that the probation conditions relating to supervision and limited surgical practice (Paragraphs 5 and 6 of the probation, **Exhibit 2**) were intended to address Dr. Ross's potential rustiness due to his time away from surgical practice rather than to address any findings of negligent or incompetent surgical practice (since there were none).

21. Due to the strict conditions of probation, however, Dr. Ross is facing a significant change in circumstances. Due to the probation restrictions, almost all health insurance plans have not accepted him as a network provider - thus greatly limiting the number of patients he can see.

22. As a result of the financial hardship caused by this, Dr. Ross's home went into foreclosure and he was forced to sell it and is now renting.

23. Due to the restrictions of the probation, Dr. Ross has been unable to obtain privileges at Winthrop University Hospital because he cannot cover the Emergency Room (due to the supervision requirement of probation). At the time of his appearance before the Committee on the Professions, Dr. Ross explained that he had been told that it was likely he would receive privileges at Winthrop.

24. Dr. Ross is ineligible for re-certification by the American Board of Orthopaedic Surgery as a result of the probation restrictions. See **Exhibit 3** attached hereto. Many hospitals require board certification as a prerequisite for hospital privileges.

25. Dr. Ross cannot practice before the Workers' Compensation Board and thus cannot treat injured workers due to the restrictions of the probation. See **Exhibit 4** attached hereto.

26. It thus appears that Dr. Ross's ability to return to practice has been limited far more than was contemplated by the Board of Regents when his Restoration Application was granted.

27. Indeed, the three year probation already served would have satisfied the Peer Review Committee; it would have satisfied the Committee on the Professions; and it even would have satisfied the Office of Professional Medical Conduct ("OPMC") as the Director of OPMC submitted a letter to the Committee on the Professions supporting the restoration of Dr. Ross's medical license subject to a three year probation. See Exhibit 5.

28. Under all of the facts and circumstances, we request that Dr. Ross be deemed to have completed his probation or, at the least, that all monitoring and supervisory restrictions be deemed to have been fulfilled and that Dr. Ross be permitted to return to the unrestricted practice of medicine.

WHEREFORE, Dr. Hank Ross respectfully requests that the probation imposed by the Education Commissioner's Order dated May 10, 2012 be deemed to have been completed or, in the alternative, that the conditions of probation set forth in said Order be modified to eliminate Paragraphs 5 and 6 thereof.

Dated: White Plains, New York
July 20, 2015

HANK ROSS, MD

By: _____

WOOD & SCHER

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White Plains, NY 10605
914-328-5600

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