

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

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Public

September 29, 2005

Sue A. McCarthy, Physician
59 Granger Place
Buffalo, New York 14222

Re: Application for Restoration

Dear Dr. McCarthy:

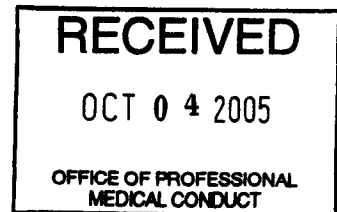
Enclosed please find the Commissioner's Order regarding Case No. CP-0504 which is in reference to Calendar No. 21478. This order and any decision contained therein goes into effect five (5) days after the date of this letter.


Very truly yours,

Daniel J. Kelleher
Director of Investigations

By: *Gustave Martine*
Gustave Martine
Supervisor

cc:



The
University of the
Education  State of New York
Department

IN THE MATTER

of the

Application of SUE A. McCARTHY
for restoration of her license to
practice as a registered physician
assistant in the State of New York.

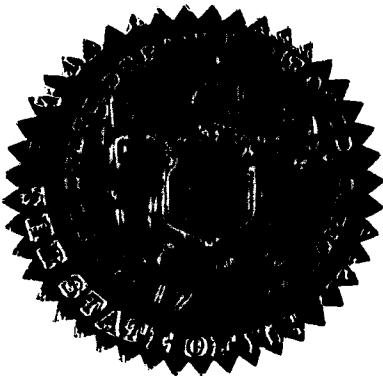
Case No. CP-05-04

It appearing that the license of SUE A. McCARTHY, 59 Granger Place, Buffalo, New York 14222, to practice as a registered physician assistant in the State of New York, was revoked by a Hearing Committee of the Office of Professional Medical Conduct, effective February 17, 2000, and she having petitioned the Board of Regents for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 but having accepted the terms of probation recommended by the Committee on the Professions, now, pursuant to action taken by the Board of Regents on July 22, 2005, it is hereby

ORDERED that the petition for restoration of License No. 005829, authorizing SUE A. McCARTHY to practice as a physician in the State of New York, is denied, but that the Order of Revocation of her license be stayed for 5 years, and said SUE A. McCARTHY be placed on probation for 5 years under the terms and conditions specified by the Board of Regents, and that upon successful completion of the probationary period, her license to practice as a registered physician assistant in the State of New York shall be fully restored.

IN WITNESS WHEREOF, I, Richard P. Mills,
Commissioner of Education of the State of New York for
and on behalf of the State Education Department, do
hereunto set my hand and affix the seal of the State
Education Department, at the City of Albany, this 22nd
day of September, 2005.


Commissioner of Education



Case No. CP-05-04

It appearing that the license of SUE A. McCARTHY, 59 Granger Place, Buffalo, New York 14222, to practice as a registered physician assistant in the State of New York, having been revoked by a Hearing Committee of the Office for Professional Medical Conduct, effective February 17, 2000, and she having petitioned the Board of Regents for restoration of said license, and the Regents having given consideration to said petition, and having agreed with the recommendation of the Peer Committee, and having agreed with and accepted the recommendation of the Committee on the Professions but having accepted the terms of probation recommended by the Committee on the Professions, now, pursuant to action taken by the Board of Regents on July 22, 2005, it was

VOTED that the petition for restoration of License No. 005829, authorizing SUE A. McCARTHY to practice as a registered physician assistant in the State of New York, is denied, but that the Order of Revocation of her license be stayed for 5 years, and said SUE A. McCARTHY be placed on probation for 5 years under the terms and conditions specified by the Board of Regents, and that upon successful completion of the probationary period, her license to practice as a registered physician assistant 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 Registered Physician Assistant License

Re: Sue A. McCarthy

Not Represented by an Attorney

Sue A. McCarthy, 59 Granger Place, Buffalo, NY 14222 petitioned for restoration of her registered physician assistant license. The chronology of events is as follows:

- 02/25/97 Issued license number 005829 to practice as a registered physician assistant in New York State.
- /--/99 Charged with professional misconduct by Department of Health.
- 02/11/00 Hearing Committee of Office of Professional Medical Conduct revoked registered physician assistant license.
- 02/17/00 Effective date of revocation.
- 05/14/03 Submitted application for restoration of registered physician assistant license.
- 07/27/04 Peer Committee restoration review.
- 01/14/05 Report and recommendation of Peer Committee. (See "Report of the Peer Committee.")
- 03/11/05 Committee on the Professions restoration review.
- 06/20/05 Report and recommendation of Committee on the Professions. (See "Report of the Committee on the Professions.")

Disciplinary History. (See attached disciplinary documents.) In 1999, the Department of Health charged Ms. McCarthy with 28 specifications of professional misconduct, including practicing while impaired, habitual abuse of prescription drugs, fraudulent practice, negligence on more than one occasion, incompetence on more than one occasion, inadequate record keeping, and moral unfitness. The charges alleged that she practiced while impaired and prescribed Hydrocodone, Zolpidem, Phentermine, and Carisoprodol for herself and another individual without adequate

medical justification. Additionally, it was alleged that Ms. McCarthy fraudulently issued prescriptions using a physician's name and fraudulently issued bulk stock orders for controlled substances. The charges also stated that she inappropriately prescribed Plavix to patients. On February 11, 2000, a Hearing Committee of the State Board for Professional Medical Conduct sustained the charges of professional misconduct and voted to revoke her license. The revocation became effective February 17, 2000.

Ms. McCarthy submitted an application for restoration of her registered physician assistant license on May 14, 2003.

Recommendation of the Peer Committee. (See attached "Report of the Peer Committee.") The Peer Committee (Lee; Messina; Cordice, Jr.) met with Ms. McCarthy on July 27, 2004 to review her application for restoration. In its report, dated January 14, 2005, the Committee voted unanimously to recommend that the order of revocation of her license be stayed and that she be placed on probation for five years under specified terms and conditions. She would be required to renew her contract with the Committee on Physician's Health for five years, practice only in a supervised practice, submit quarterly reports from her employer, and be prohibited from writing prescriptions for a minimum of three years.

Recommendation of the Committee on the Professions. On March 11, 2005, the Committee on the Professions (Munoz, Porter, Templeman) met with Ms. McCarthy to review her application for restoration. An attorney did not accompany her.

The Committee asked Ms. McCarthy to explain what led to the loss of her license. She said that she began using pain killers that were prescribed for her by a physician because of neck and back pain she was experiencing. She indicated that the physician was busy and since she could not always make contact with him, she began to write her own prescriptions as well as prescriptions using a physician's name without his authorization. In retrospect, she said that she now believes that she did not continue getting prescriptions from the physician, as she did not want to be known in the hospital as a person dependent on pain pills. She stated, "I'm sure that's what I was doing." Ms. McCarthy reported that she also ordered bulk prescriptions for herself at the hospital. She stated that her drug dependency lasted for about nine months, until the point when her supply ran out. Ms. McCarthy said that she was aware of how unsafe street drugs were and, consequently, rather than turn to those drugs, she made the decision to just stop taking the controlled drugs for her pain. She stated that she also wrote a couple of prescriptions for her sister who had foot pain.

The Committee asked about the charges related to her prescribing Plavix for patients. Ms. McCarthy replied that at the time the charges were made, Plavix was a new drug and is now used in the types of cases on which the charges were based. She explained that she was a respiratory therapist before becoming a registered physician assistant and had always been interested in investigating the application of new drugs. Based on her research, Ms. McCarthy said that she thought Plavix was a perfect medication for patients allergic to aspirin. Regarding her administration of Toradol IM to another patient listed in the charges, she indicated that a physician had administered the medication in the past and she was just following what that physician had done.

The Committee asked, "What was the problem with what you did?" Ms. McCarthy responded, "I violated the code of ethics." She explained that a registered physician assistant should never practice while impaired. She said that a practitioner must be alert and in full control at all times, if the public is to be adequately protected. She indicated that practicing while impaired is immoral behavior. Ms. McCarthy stated, "Yes, I was impaired." The Committee asked, "Was your performance compromised?" She replied, "Yes. There's no way around that."

Ms. McCarthy told the Committee that she feels she has addressed the concerns raised by the Department of Health in its letter not recommending restoration of her license. She explained that she has sought professional help to address the root causes of her misconduct and has complied with every request of the Professional Assistance Program and the Committee on Physician's Health. Additionally, she indicated that she met with a psychiatrist who submitted a statement that he felt she was ready to resume practice. Regarding the recommendation of the Peer Committee, Ms. McCarthy inquired as to whether the recommended restriction on her issuance of prescriptions for three years applied to all drugs or just to controlled drugs. She indicated that she felt it would be difficult to practice without being able to write scripts for noncontrolled drugs and did not feel the public would be endangered if she were allowed to write such scripts.

Ms. McCarthy discussed her rehabilitation activities with the Professional Assistance Program, Committee on Physician's Health, Alcoholics Anonymous, and Narcotics Anonymous. She described her extensive support system and contacts, available 24 hours a day. She explained that she is aware of her triggers and, through education and professional help, has learned how to treat her neck and back pain without controlled substances. Ms. McCarthy reported that she is a member of Caduceus, a support group of impaired physicians and physician assistants. She reported on her continuing education activities and indicated that she passed the national recertifying examination. Ms. McCarthy said that she is currently employed with an organ transplant company. Ms. McCarthy said that she takes full responsibility for what she did and wants to be able to resume practicing the profession that she was able to practice for only a short time before the misconduct occurred. She said, "I love the field of medicine."

The overarching concern in all restoration cases is public protection. Education Law §6511 gives the Board of Regents discretionary authority to make the final decision regarding applications for the restoration of a license to practice as a registered physician assistant in New York State. 8 NYCRR §24.7(2) charges the Committee on the Professions (COP) with submitting a recommendation to the Board of Regents on restoration applications. Although not mandated in law or regulation, the Board of Regents has instituted a process whereby a Peer Committee first meets with an applicant for restoration and provides a recommendation to the COP. A former licensee petitioning for restoration has the significant burden of satisfying the Board of Regents that there is a compelling reason that licensure should be granted in the face of misconduct so serious that it resulted in the loss of licensure. There must be clear and convincing evidence that the petitioner is fit to practice safely, that the misconduct will not recur, and that the root causes of the misconduct have been addressed and satisfactorily dealt with by the petitioner. It is not the role of the COP to merely accept,

without question, the arguments presented by the petitioner but to weigh and evaluate all of the evidence submitted and to render a recommendation based upon the entire record.

The COP concurs with the Peer Committee's assessment that Ms. McCarthy is truly remorseful. She clearly articulated to the COP the potential danger in which she placed her patients by practicing while impaired. Ms. McCarthy has identified the root causes of her misconduct and outlined the steps she has taken to modify her lifestyle so that the misconduct will not recur. She entered and was released from the Department's Professional Assistance Program. She has spent five years with the Committee on Physician's Health and has complied with all requests. Her drug screenings have been negative and the Committee recommended that she be allowed to resume practice. She has been active with Caduceus, Alcoholics Anonymous, and Narcotics Anonymous and described her extensive support system. Ms. McCarthy has addressed the concerns raised by the Department of Health and submitted a statement from a psychiatrist that she is ready to resume practice. The COP concurs with the Peer Committee's recommendation that her reentry into the practice should be structured and supervised for a five-year period. However, the COP recommends that during this probationary period, Ms. McCarthy should be restricted from issuing prescriptions for controlled drugs until her approved supervisor notifies the Office of Professional Medical Conduct that it is safe for her to resume the prescribing of such drugs.

Therefore, after a careful review of the record and its meeting with her, the Committee on the Professions voted unanimously to concur with the recommendation of the Peer Committee that the order of revocation of Ms. McCarthy's license to practice as a registered physician assistant in New York State be stayed for five years, that she be placed on probation for five years under specified terms attached to this report and labeled as Exhibit "B," and that upon satisfactory completion of the probationary period, her license be fully restored.

Frank Munoz, Chair

Joseph B. Porter

Leslie Templeman

EXHIBIT "B"

TERMS OF PROBATION
OF THE COMMITTEE ON THE PROFESSIONS

SUE A. MCCARTHY

1. That the applicant, during the period of probation, shall be in compliance with the standards of conduct prescribed by the law governing the applicant's profession;
2. That the applicant shall submit written notification to the Director, Office of Professional Medical Conduct (OPMC), New York State Department of Health, Suite 303, 4th Floor, Hedley Park Place, 433 River Street, Troy, NY 12180-2299, of any employment and/or practice, applicant's residence, telephone number, and mailing address and of any change in the applicant's employment, practice, residence, telephone number, and mailing address within or without the State of New York;
3. That the applicant shall submit written proof from the Division of Professional Licensing Services (DPLS), New York State Education Department (NYSED), that the applicant has paid all registration fees due and owing to the NYSED and the 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 the applicant to the Department of Health (DOH), addressed to the Director, OPMC, as aforesaid, no later than the first three months of the period of probation;
4. That the applicant shall submit written proof to the DOH, addressed to the Director, OPMC, as aforesaid, that 1) the applicant is currently registered with the NYSED, unless the applicant submits written proof that the applicant has advised DPLS, NYSED, that the applicant is not engaging in the practice of the applicant's profession in the State of New York and does not desire to register, and that 2) the applicant has paid any fines which may have previously been imposed upon the 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 during the period of probation, the applicant shall only practice as a registered physician assistant in a supervised setting under the supervision of an individual to be selected by the applicant and previously approved, in writing, by the Director, OPMC;

6. That during the period of probation, the applicant shall not issue prescriptions for controlled drugs until the supervisor, identified in paragraph 5 above, has provided a written opinion addressed to the Director, OPMC, as aforesaid, indicating that it is safe that she issue such prescriptions;
7. That during the period of probation, the applicant shall participate in a program of rehabilitation under the auspices of the Committee for Physician's Health of the Medical Society of the State of New York, which shall include monitoring for the use of drugs as provided for in paragraph 8 below;
8. That the applicant shall submit herself for monitoring in regard to the use of drugs by a facility to be chosen by the applicant and approved in writing by the Director, OPMC, said facility to conduct an examination of the applicant at least once every two months during the period of probation, at such times as said facility may choose, at the applicant's expense, said examination to include urine samples for the detection of any drug in the applicant. The applicant shall submit or cause to be submitted a written report from and signed by an authorized person from said facility, once every two months during the period of probation, in which said authorized person shall state whether the presence of any drug(s) has been detected by virtue of the said examination and shall also indicate the name of said drug(s). In the event any drug(s) is detected, the applicant shall submit a sworn affidavit explaining the use of said drug(s), as well as any other papers the applicant wishes to submit in that regard. The said reports and affidavits, as well as any other papers, shall be forwarded to the Director, Office of Professional Medical Conduct, as aforesaid. Upon receipt of any information that the applicant is not drug-free and/or not fit to practice her profession, the OPMC may initiate a violation of probation proceeding;
9. That the 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 the applicant's terms of probation to assure compliance therewith, and the applicant shall cooperate with said employee, including the submission of information requested by said employee, regarding the aforesaid monitoring; and
10. 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.



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

SUE MCCARTHY

**REPORT OF
THE PEER
COMMITTEE
CAL. NO. 21478**

**for the restoration of her license to
practice as a physician's assistant
in the State of New York.**

X

SUE MCCARTHY, hereinafter known as the applicant, was previously licensed to practice as a physician's assistant in the State of New York by the New York State Education Department (hereinafter "Department"). Said license was revoked by the Office of Professional Medical Conduct, New York State Health Department, as a result of a professional misconduct proceeding.

The applicant has applied for restoration of her 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 distributed to

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

PRIOR DISCIPLINE PROCEEDINGS

Action by the New York State Health Department

Determination and Order of the Hearing Committee of the State Board for Professional Medical Conduct: By Order dated February 11, 2000, the Hearing Committee voted to revoke the applicant's license to practice as a physician's assistant. The applicant did not appear at the Hearing Committee's meeting on January 27, 2000.

Specifications of misconduct

The applicant was found to have violated NYS Education Law §6530(7) by practicing the profession of medicine while impaired by drugs, physical and/or mental disability; violated NYS Education Law §6530(8) by being a habitual user of alcohol or dependent on or a habitual user of narcotics, barbiturates, amphetamines, hallucinogens or other drugs; violated NYS Education Law §6530(3) by practicing medicine with negligence on more than one occasion; violated NYS Education Law §6530(5) by practicing medicine with incompetence on more than one occasion; violated NYS Education Law §6530(32) by failing to maintain a record for each patient that accurately reflects the care and treatment given to each patient; and violated NYS Education Law §6530(20) by practicing medicine in a manner that evidences moral unfitness.

Nature of the misconduct

The applicant, between approximately October 1998 and July 1999, was, at times, impaired for the practice of medicine while employed at the Sheehan Memorial Hospital and associated health care facilities. The applicant, between approximately June 1999 and July

1999, prescribed controlled substances and non-controlled substances for herself and another individual without medical justification. The applicant fraudulently issued prescriptions using a physician's name on or about June 17, 1999 and July 10, 1999. The applicant fraudulently issued bulk stock orders for controlled substances on or about October 9, 1998 and on or about August 5, 1999. Between on or about August 24, 1998 and on or about June 17, 1999, the applicant provided medical care to eight patients that was below accepted standards of medical practice.

APPLICATION FOR RESTORATION

On May 14, 2003, the applicant executed the Department's standard form for applying for restoration of licensure. The application contained information and attachments as referred to below.

Continuing Education

The applicant provided documentation that she had attended the annual conference of the American Association of Physician's Assistants in May 2001, completing 54 credit hours, and again in May 2003, completing 55 credit hours. The applicant also provided documentation that she had completed academic course work in mathematics and computer science, at Buffalo State College in the Summer of 2001, and at Niagara County Community College in Fall 2001, Spring 2002, Summer 2002, Fall 2002, and Spring 2003.

Professional Rehabilitation Activities

The applicant provided a letter dated April 30, 2003 from the Committee for Physician's Health of the Medical Society of the State of New York, indicating that she entered the Committee's program on April 10, 2000 and remains in good standing. The

applicant also provided documentation of her attendance at Alcoholics Anonymous and Narcotics Anonymous sessions during the period May 2001 through June 2003. The Committee for Physicians Health provided a letter dated November 12, 2003, describing the applicant's participation in their program and containing an opinion that the applicant is able to engage in the safe and effective practice of medicine. In addition, the applicant provided a note dated April 28, 2003, indicating that she has been a member of the Buffalo Caduceus since May 2000, and a letter dated January 29, 2003 from the Department's Professional Assistance Program (PAP) indicating that she was successfully discharged from that program effective January 30th.

Submissions of Affidavits:

In support of her application, the applicant supplied a letter from her weekly urine monitor, reflecting compliance, a letter from her AA sponsor, a letter from her primary therapist, and five affidavits, three of which were from physicians.

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:

The investigator prepared a report dated January 14, 2004, which summarized an interview conducted by telephone with the applicant on that date. The applicant stated that she deserved the revocation of her license, and she described how she became addicted to pain killers. She stated that she was experiencing back and neck pain, and took half of a pill supplied by a co-worker. She then obtained a prescription, and when this ran out, she began to write herself prescriptions. The applicant stated that she never responded to the New York

ate Health Department's disciplinary proceeding because she was afraid, and that had she known her license would be revoked, she would have responded. The applicant asserted that she has taken continuing education to allow her to maintain her certification as a physician's assistant. She took the re-certification exam and passed it in August 2003.

The applicant stated that from July 1999 until January 2000, she received unemployment benefits. She then worked for the census bureau and as a mail carrier. She enrolled at Niagara County Community College with the intent of receiving a degree in computer science.

As to her current employment, the applicant stated that since July 2003 she had been employed by an organ transplant service, and that if her license is restored, she intends to return to practice as a physician's assistant.

Also on the record is a letter from Dennis J. Graziano, Director, New York State Health Department, Office of Professional Medical Conduct. In that letter Mr. Graziano takes the position that there is insufficient information in the applicant's petition to determine whether the petition should be granted, citing a lack of a reflection in the petition that the applicant understands why her license was revoked, and the absence of an in-depth independent psychiatric evaluation of the applicant.

PEER COMMITTEE MEETING

On July 27, 2004 this Peer Committee met to consider this matter. The applicant appeared before us personally and was not represented by an attorney. Also present was Karen Carlson, Esq., an attorney from the Division of Prosecutions, OPD.

Additional documentation was placed on the record at the start of the Peer Committee

eting, consisting of:

- a letter from the applicant to Mr. Graziano dated June 26, 2004;
- a letter from Richard F. Wolin, M.D., a psychiatrist who evaluated the applicant in March 2000, and followed up with her in a visit on May 6, 2004. In that letter Dr. Wolin describes his initial Axis I diagnosis of opiate and polysubstance abuse, describes the applicant's course of rehabilitation treatment, and supports the restoration of her physician's assistant's license.
- a registration renewal document submitted to the Department regarding the applicant's license to practice as a respiratory therapist. In that document, the applicant indicates that she intends to register in an "inactive status," and makes reference to her participation in the PAP program and the restoration application for her license as a physician's assistant.
- documentation of her attendance at Alcoholic's Anonymous/Narcotics Anonymous sessions during the period May 2001 through June 2003;
- additional documentation of continuing education and documentation of the applicant's certification as a physician's assistant by the National Commission on Certification of Physician Assistants.

The applicant made an opening statement, expressing her remorse and taking full

responsibility for her actions.

Testimony was received by Maria Crea, M.D., who described the procedures she employs as the applicant's urine monitor. She also described, in response to questions by the committee, her role as a spiritual advisor to the applicant. When asked why the applicant never appeared at her revocation hearing, she stated that the applicant was afraid and not familiar with Health Department proceedings. When asked about the physical problems that led to the applicant's drug abuse, the witness stated that the applicant controls those problems through a change in lifestyle and through over the counter medication.

The applicant's Alcoholics Anonymous sponsor testified, stating that the applicant approached her three years ago at an AA meeting and asked for her sponsorship. She described the applicant's failure to participate in the Health Department's proceedings as avoidance, and expressed her opinion that the applicant will do well in the future.

Testimony was received from Timothy Welsh, the applicant's substance abuse counselor. He stated that he is a chemical dependency counselor who works for a facility licensed by the New York State Division of Alcoholism and Substance Abuse. He works with a lot of professional clients, and expressed his opinion that the applicant is ready to leave treatment. He was asked why it took the applicant such a long time (August 1999 to March 2000), to seek treatment, he discussed the tendency of addicts to be out of touch with reality. He stated that he believed her assertion that she had been abstinent since August 2000, and when asked why, described the lowering of her defenses, and a dramatic improvement in her attitude. When asked to describe how the applicant copes with the pain that led to her addiction, Mr. Welsh described her improved diet and exercise habit, but also discussed

strategies that he employs for recovering addicts who need pain medication, such as distributing the medication a dose at a time.

Jackie Jones, the applicant's case manager from the Committee on Physician's Health testified, describing the applicant's participation in that program.

The applicant testified, asserting in response to a question from Ms. Carlson that she did not appear at the Health Department proceeding out of fear. She also claimed that no patients were harmed as a result of her deficient care. She then discussed her addiction process, stating that she had, in the past, avoided pain-killers out of a concern over becoming involved with those drugs. She revealed that the other individual she was obtaining drugs for was her sister. The Peer Committee then questioned the applicant, beginning by noting the rapid onset of the applicant's addiction, and asking whether she had any notion of a vulnerability to that affliction. The applicant stated that she had no family history of alcoholism, and did not abuse drugs as a youth. When asked how she came to stop using, the applicant stated that she ran out of her supply and was not willing to buy on the street.

The applicant described the circumstances that resulted in the chronic pain she experiences, explaining that she had a car accident in the late 1970s that resulted in a neck injury, and also suffers from spondylolisthesis in her lower back.

The applicant made closing remarks, thanking the Peer Committee for giving her a chance.

Ms. Carlson made closing remarks in which she noted that the applicant had not had an opportunity to demonstrate what kind of physician's assistant she could be. She

recommended, that if the Peer Committee wanted to restore the license, that the applicant be given a lengthy probation period, which would include monitoring.

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.

We begin by noting the relatively short period of time that the applicant was employed as a physician's assistant prior to having her license revoked, the applicant having been licensed in February 1997 and having lost her job in July 1999. Given this time period, we do not have much of a record to judge her abilities and competence.

The applicant is experienced in health care, however, being previously licensed as a respiratory therapist, and appears to have diligently pursued her continuing education during the time her physician's assistants license was revoked. We also do not view the patient care issues in her revocation proceeding as being of primary consideration. Far more serious is the finding that the applicant practiced medicine while impaired by drugs, wrote prescriptions to support her habit, forged prescriptions and made fraudulent bulk orders of narcotics.

All of these transgressions stem from an addiction to pain killers, an addiction that developed very rapidly, leading the applicant from a successful career in the medical field to the loss of her job and license. The applicant has identified the cause of her addiction as self medication in response to chronic pain. We accept this explanation. We believe that the applicant is truly remorseful. However, we remain concerned with how quickly she became so deeply involved with drugs that she jeopardized her career.

As to her addiction, we are satisfied with the rehabilitation activities that the applicant has pursued. She has sought out and successfully participated in two prominent monitoring programs available to health professionals - those offered by the Department's Professional Assistance Program and the Committee on Physician's Health. She also appears to have embraced her therapy through outpatient therapy and regular attendance at AA and NA meetings. The applicant also has developed strong relationships in her support system, and arranged to have several members of her support community testify on her behalf at our meeting.

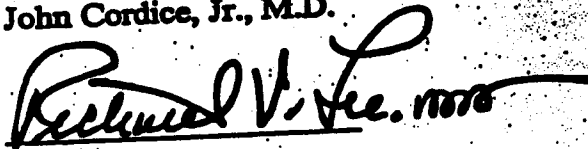
However, we remain concerned with the limited amount of time the applicant spent in practice prior to her license revocation, the rapid onset of her addiction and the extent of the transgressions the applicant committed to obtain narcotics. These factors must be considered in determining the applicant can practice without jeopardizing the health and safety of the public. We are therefore recommending that the applicant's license be restored, but that she first be placed on probation for term of five years under terms that are intended to assure that she maintains her rehabilitation and can safely progress as a competent physicians assistant. These terms would include a requirement that the applicant renew her contract with the

Committee on Physician's Health for five years, that she only engage in a supervised practice, and provide quarterly reports from her employer, and that she be prohibited from writing prescriptions for a minimum of three years, and thereafter only after her employer considers it to be safe.

It is therefore our unanimous recommendation that execution of the revocation of the applicant's license to practice as a physician's assistant in the State of New York be stayed, and that the applicant then be placed on probation for a period of five years under the terms and conditions 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,

Richard V. Lee, M.D., Chairperson
Joseph Messina, M.D.,
John Cordice, Jr., M.D.



Chairperson Date: Jan 14, 2005

EXHIBIT "A"
TERMS OF PROBATION
OF THE PEER COMMITTEE

Sue McCarthy, R.P.A.

CALENDAR NO. 21478

that applicant, during the period of probation, shall be in compliance with the standards of conduct prescribed by the law governing applicant's profession;

that applicant shall submit written notification to the Director, Office of Professional Medical Conduct (OPMC), Department of Health (DOH), 433 River Street, Troy, NY 12180-2299, of any employment and/or change in applicant's 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;

that applicant shall submit written proof from the Division of Professional Licensing Services (DPLS), New York State Education Department (NYSED), 2nd Floor, North Wing, 89 Washington Avenue, Albany, New York 12234 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 DOH, addressed to the Director, OPMC, as aforesaid, no later than the first three months of the period of probation;

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;

that during the period of probation, the applicant shall only practice as a physician's assistant in a supervised setting under the supervision of an individual to be selected by the applicant and previously approved, in writing, by the Director, OPMC;

that during the period of probation, the applicant shall not issue prescriptions for period of three years, and hereafter not until the supervisor, identified in paragraph 5, above, has provided a written opinion addressed to the Director, OPMC, as aforesaid, indicating that it is safe that she issue prescriptions;

that during the period of probation the applicant shall participate in a program of rehabilitation under the auspices of the Committee for Physician's Health of the Medical Society of the State of New York, which shall include monitoring for the use of drugs as provided for in paragraph 8, below;

that the applicant shall submit herself for monitoring in regard to the use of drugs by a facility to be chosen by the applicant and approved by the New York State Department of Health, after obtaining prior written approval by the New York State Department of Health, said facility to conduct an examination of the applicant at least once every two months during the period of probation, at such times as said facility may choose, at the

applicant's expense, said examination to include urine samples for the detection of any drug in the applicant. The applicant shall submit or cause to be submitted a written report from and signed by an authorized person in said facility, once every two months during the period of probation, in which said authorized person shall indicate whether the presence of any drug(s) has been detected by virtue of the said examination and shall also indicate the name of said drug(s). In the event any drug(s) is detected, the applicant shall submit a sworn affidavit explaining the use of said drug(s), as well as any other papers the applicant wishes to submit in that regard. The said reports and affidavits, as well as any other papers, shall be forwarded to the New York State Department of Health, addressed to the Director, Office of Professional Medical Conduct, as aforesaid. If any information is received by the New York State Department of Health indicating that the applicant is not drug-free and/or not fit to practice her profession, such information shall be processed to the Board of Regents for its determination in a violation of probation proceeding initiated by the New York State Department of Health and/or such other proceedings pursuant to the Public Health Law, Education Law, and/or Rules of the Board of Regents;

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;

That upon receipt of evidence of noncompliance with or any other violation of any of the aforementioned terms of probation, the OPMC, DOH may initiate a violation of probation proceeding.