



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

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January 11, 2001

John R. Hubbard, Physician  
205 - B Kino Springs Drive  
Nogales, Arizona 85621

Re: Application for Restoration

Dear Dr. Hubbard:

Enclosed please find the Commissioner's Order regarding Case No. 00-213-60 which is in reference to Calendar No. 17801. 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

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JAN 16 2001

OFFICE OF PROFESSIONAL  
MEDICAL CONDUCT

The University of the State of New York  
Education Department



IN THE MATTER

of the

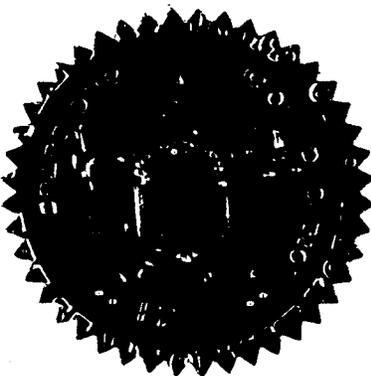
Application of JOHN R. HUBBARD  
for restoration of his license to  
practice as a physician in the State of  
New York.

Case No. 00-213-60

It appearing that the application of JOHN R. HUBBARD, 205-B Kino Springs Drive, Nogales, Arizona 85621, to surrender his license to practice as a physician in the State of New York, was granted by the State Board for Professional Medical Conduct effective June 30, 1995, 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 Review Panel and the Committee on the Professions, now, pursuant to action taken by the Board of Regents on December 15, 2000, it is hereby

ORDERED that the petition for restoration of License No. 097831, authorizing JOHN R. HUBBARD to practice as a physician in the State of New York, is denied.

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 *9th*  
day of January 2001.



*Richard P. Mills*  
Commissioner of Education

Case No. 00-213-60

It appearing that the application of JOHN R. HUBBARD, 205-B Kino Springs Drive, Nogales, Arizona 85621, to surrender his license to practice as a physician in the State of New York, having been granted by action of the State Board for Professional Medical Conduct effective June 30, 1995, 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 Review Panel and the Committee on the Professions, now, pursuant to action taken by the Board of Regents on December 15, 2000, it was

VOTED that the petition for restoration of License No. 097831, authorizing JOHN R. HUBBARD to practice as a physician in the State of New York, be denied.

October 17, 2000

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: John R. Hubbard**

Not Represented by Counsel.

John R. Hubbard, 205-B Kino Springs Drive, Nogales, Arizona 85621, petitioned for restoration of his physician license. The chronology of events is as follows:

- 10/26/66 Issued license number 097831 to practice as a physician in New York State.
- 03/25/85 Charged with professional misconduct by Department of Health. (See "Disciplinary History.")
- 04/29/85 Submitted Application to Surrender License.
- 06/21/85 Board of Regents voted to grant Application to Surrender License.
- 07/08/85 Effective date of Commissioner's Order granting Application to Surrender License.
- 08/18/87 Submitted first application for restoration.
- 03/20/89 Report of Peer Committee recommending surrender be stayed and five years probation.
- 05/10/89 Report and Recommendation of Committee on the Professions recommending surrender be stayed and five years probation.
- 06/16/89 Board of Regents voted to stay surrender with five years probation.
- 07/26/89 Effective date of Commissioner's Order.
- 06/12/95 Charged with professional misconduct by Department of Health. (See "Disciplinary History.")
- 06/19/95 Submitted Second Application to Surrender License.

- 06/30/95 Effective date of State Board for Professional Medical Conduct Order granting the Application to Surrender License.
- 11/04/97 Submitted second application for restoration.
- 07/23/99 Peer Committee restoration review.
- 06/14/00 Report and recommendation of Peer Committee. (See "Report of the Peer Committee.")
- 10/17/00 Report and recommendation of Committee on the Professions. (See "Report of the Committee on the Professions.")

**Disciplinary History.** (See attached disciplinary documents.) On March 25, 1985, the Department of Health charged Dr. Hubbard with seven specifications of professional misconduct: practicing the profession while the ability to practice is impaired by alcohol, drugs, physical disability or mental disability; unprofessional conduct related to willfully harassing, abusing or intimidating a patient either physically or verbally and with abandoning and neglecting patients; practicing with gross negligence; practicing with negligence on more than one occasion; committing an act constituting a crime under New York State Law; being convicted of a crime, if committed in this State, would constitute a crime; and being habitually drunk. . On April 29, 1985, Dr. Hubbard submitted an Application to Surrender License, admitting guilt to four of the specifications, in full satisfaction of the alleged charges. Specifically, the specifications to which he pled guilty dealt with his convictions for Reckless Driving, Leaving the Scene of an Accident, and Driving While Intoxicated; practicing while impaired by alcohol, drugs, physical or mental disability, and being habitually drunk. On June 21, 1985 the Board of Regents voted to grant the Application to Surrender License and the Commissioner's Order became effective on July 8, 1985.

On August 18, 1987, Dr. Hubbard submitted his first application for restoration. In its report, dated March 20, 1989, the Peer Committee recommended that the surrender be stayed, that he be placed on probation for five years, and that Dr. Hubbard continue to participate in a formal alcohol rehabilitation program. On May 10, 1989, the Committee on the Professions recommended that the surrender be stayed, that he be placed on five years probation, and demonstrate that he test free of drugs and alcohol prior to practicing. On June 16, 1989, the Board of Regents voted to stay the order of surrender of Dr. Hubbard's license and place him on probation for five years under specified terms. The Commissioner's Order became effective July 26, 1989.

On June 12, 1995, the Department of Health charged Dr. Hubbard with ten specifications of professional misconduct involving his violation of New York State probationary terms established as conditions for the restoration of his license in 1989; the loss of his license in Arizona based upon his being found guilty of professional misconduct which would also constitute professional misconduct in this State; and his failure to respond to written communication from the Department of Health. It was

alleged that he violated the following New York State probationary terms: failure to remain alcohol and drug free; failure to submit to unannounced tests of his blood and/or urine for the presence of drugs or alcohol; failure to conduct himself in a manner befitting his professional status; and failure to inform the Department of Health of his address changes throughout his probation. Further, it was alleged that the professional misconduct of which he was found guilty in Arizona would constitute professional misconduct in New York as follows: practicing with negligence on more than one occasion, practicing with incompetence on more than one occasion, and failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient. On June 19, 1995, Dr. Hubbard submitted an Application to Surrender License, admitting guilt to all charges except violation of the following two probationary terms: failure to remain alcohol and drug free and failure to submit to unannounced tests of his blood and/or urine for the presence of drugs or alcohol. On June 30, 1995, the Department of Health granted the Application to Surrender License.

On November 4, 1997, Dr. Hubbard submitted his second application for restoration.

**Recommendation of the Peer Committee.** (See attached Report of the Peer Committee.) On July 23, 1999 the Peer Committee (Kavaler, Harris, Robinson) met with Dr. Hubbard to review his application for restoration. In its report, dated June 14, 2000, the Committee unanimously recommended that his application for restoration be denied.

**Recommendation of the Committee on the Professions.** On October 17, 2000, the Committee on the Professions (Duncan-Poitier, Alexander, Earle) met with Dr. Hubbard to review his application for restoration. Dr. Hubbard provided the Committee with a copy of his license to practice medicine in Arizona, dated September 10, 1999; a letter, dated October 25, 1999, from William D. Grant, Director of Physician Prescribed Educational Program, SUNY Health Science Center at Syracuse; and a copy of his DEA Controlled Substance Registration Certificate, dated October 25, 1999.

The Committee told Dr. Hubbard that the record reflects that during his restoration consideration in 1989 he indicated that he was rehabilitated and safe to practice. The Committee noted that he was given a second chance to practice by having his license restored. Dr. Hubbard, however, failed to adhere to the probationary terms, thus causing him to surrender his license for a second time. The Committee asked Dr. Hubbard to explain what compelling reason existed that would warrant giving him a third chance to practice medicine in New York State. Dr. Hubbard's explanation was strictly focused on his career needs vs his evidence of rehabilitation. Dr. Hubbard responded that he lost his license in Arizona for over-prescribing medications while a member of a pain management group but has now received his Arizona license back, although he cannot practice without supervision. He told the Committee, however, that as a condition of receiving unrestricted licensure in Arizona, he must complete a one-year residency in primary care. Dr. Hubbard explained that he found it problematic to complete this requirement because "no one wants to give a one-year residency. It's impossible unless someone drops out." He continued, saying that since he had already completed a residency, he couldn't get any further reimbursement and the hospital

would have to pay his salary." He explained that he could not find a place in Arizona where he could complete the requirement but thought that he could satisfy the requirement through the Physician Prescribed Educational Program at Syracuse. He reported that he would need his New York State license back in order to participate in the program.

The Committee asked Dr. Hubbard how it could be assured the public would be safe considering his history of placing patients in danger. He responded that the program at Syracuse had monitoring. He said, "Syracuse would give a track record." He added that he no longer drinks and that although he has no proof, he does participate in Alcoholics Anonymous.

The Committee asked Dr. Hubbard if he felt prepared to enter practice. He told the Committee that he had been retired for six years and is on a fixed income. He said, "You don't just run out and attend expensive CME meetings." However, he told the Committee that he believed that the Syracuse program would sufficiently prepare him for practice. When asked to describe the program at Syracuse, he replied, "I can't tell you specifics until I talk to Grant. I can't talk to him until I have a license." He also told the Committee that he wasn't sure how long the program would be, but added that Arizona requires him to complete at least one year in a primary care setting. He reported that he tried to get the requirement changed so that he might work in a specialty area, but Arizona declined his request. Dr. Hubbard added that he passed the Special Purpose Examination (SPEX) in 1997.

The Committee asked Dr. Hubbard to describe his future plans, should he receive his license. He stated that he would be working with a website that provides medication to stack cabinets in the emerging world.

The Committee asked Dr. Hubbard why he didn't adhere to the probationary terms after his last restoration. He responded, "It occurred in the end part of the five years. She went after me. I took a Sudafed the day before a urine screening and the lab couldn't detect it. Olympic athletes have trouble with Sudafed." The Committee asked why his alcohol and substance abuse would no longer be a problem. Dr. Hubbard told the Committee that he doesn't drink any more and would request to be in the monitoring program at Syracuse. The Committee requested an explanation of previous statements in the record wherein Dr. Hubbard asserted that he never harmed any patients. Dr. Hubbard told the Committee, "I never worked drunk or hung-over. Way back, it was alleged that I saw patients in the Emergency Room with alcohol on my breath. It was alleged, but not proven." He explained that at that time there were no emergency room doctors so "I would go and see my own patients and that could be what happened." Dr. Hubbard told the Committee that he had been sober since 1993. When the Committee asked why the record said he was sober since 1983, he stated that he wasn't sure how long he had been sober and if the record said 1983, then he must have been sober since 1983. He told the Committee he wasn't sure how to explain the inconsistency.

The Committee again asked Dr. Hubbard what compelling reason there was to return his license. He said that he felt the grounds of the second charges were tenuous

and that he was rushed to get everything done within the probationary deadline. He told the Committee that he didn't intend to trivialize the charges but felt they were unjust and unwarranted.

The overarching concern in all restoration cases is the protection of the public. Education Law (section 6511) gives the Board of Regents discretionary authority to make the final decision regarding restoration of a license to practice as a physician in New York State. Section 24.7(2) of the Rules of the Board of Regents 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 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 grievous and 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 as valid whatever is presented to it by the petitioner but to weigh and evaluate all of the evidence submitted and to render a determination based upon the entire record.

The COP notes that Dr. Hubbard lost his license to practice previously and that it was once restored and he was given a second chance to practice. He failed to comply with the probationary terms and lost his license a second time. He is currently asking to have his license restored again, requesting a third chance to practice in New York State. However, the COP believes that Dr. Hubbard has not provided the COP with any compelling reason why his license should be restored. In response to its inquiry the COP notes that Dr. Hubbard provided different information than what was contained in the record, and the significant inconsistencies and lack of substantive proof of preparedness lead the Committee to believe that Dr. Hubbard still presents a significant danger to the public were his license restored.

Throughout the record and in its meeting with the COP, Dr. Hubbard discussed his professional plans were he to receive his license back. He stated that he would be an emergency room physician in a rural, underserved area; work with the Federal Bureau of Prisons in out-patient pain management; work with a website; volunteer in Mongolia and Asia; return to classical operating room anesthesia; sell automatic external defibrillators; practice in Arizona; and practice in Auburn, New York. The COP, as did the Peer Committee, is concerned that Dr. Hubbard constantly presented different goals throughout the proceedings, making it more difficult to assess his credibility and readiness to resume practice without presenting a danger to the public.

When asked what compelling reason there was to restore his license, Dr. Hubbard's response essentially entailed his desire to work with the Physician Prescribed Educational Program at the State University of New York Health Science Center at Syracuse and complete a residency program in New York State to receive permission to practice without supervision in Arizona. The COP finds this is not a

compelling reason to return his New York State license and potentially place the citizens of New York State in jeopardy. Further, the Committee finds that Dr. Hubbard's request to the Arizona board to change his probationary terms indicates a continued unwillingness to comply with rules established for his practice of medicine. Previously, in both New York and Arizona, he failed to comply with established probationary conditions.

Dr. Hubbard failed to demonstrate evidence of rehabilitation or an understanding of the severity of his misconduct. The COP found it troubling that Dr. Hubbard believes he caused no patient harm while practicing impaired. In fact, he can not remember the year in which he became sober. He claims to be a participating member of Alcoholics Anonymous as well as working with a "spiritual advisor" in Pennsylvania while living in Arizona. However, he has presented no documented proof of his sobriety or of his involvement in any treatment programs or spiritual recovery groups.

Dr. Hubbard has consistently blamed others for his actions and seems to be continuing in this vein. He blamed the most recent loss of his license on the Department for charging him with probationary violations. He blamed the positive urine test results during probation on Sudafed. He blamed Arizona for giving him probationary terms that are difficult to carry out. He fails to look at his responsibility for his actions, the danger he posed to his patients, and the damage he caused to the profession. He has not demonstrated rehabilitation or current competency to practice, shown signs of remorse, or presented a compelling reason to restore his license to practice.

The COP concurs with the opinion of the Department of Health that "There is nothing in his petition to suggest that he understands how he came to surrender his license in 1985 or 1995 nor is there enough evidence that he possesses the requisite remorse, rehabilitation or reeducation to warrant return of his surrendered license."

Therefore, after a complete review of the record and its meeting with him, the Committee on the Professions unanimously recommends that Dr. Hubbard's application for restoration of his license to practice as a physician in the State of New York be denied at this time.

Johanna Duncan-Poitier, Chair

Claudia Alexander

Steven Earle



# The University of the State of New York

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

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In the Matter of the Application of

JOHN HUBBARD

REPORT OF  
THE PEER  
COMMITTEE  
CAL. NO. 17801

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

-----X

Petitioner, JOHN HUBBARD, was authorized to practice as a  
physician in the State of New York by the New York State Education  
Department by the issuance to him of license No. 097831 on October  
26, 1966.

## PRIOR DISCIPLINARY ACTION

On June 21, 1985, petitioner's application to surrender his  
license to practice as a physician in the State of New York was  
approved by the Board of Regents. Petitioner's surrender of his  
license was based on his admission of guilt to four of the seven  
specifications of professional misconduct lodged against him. The  
gravamen of those charges was that petitioner's ability to  
practice medicine was impaired by alcohol on a number of occasions  
over an extended period of time dating back to 1968. Additionally,  
petitioner was found guilty on several occasions of driving while  
intoxicated.



Subsequently, in 1987, petitioner applied for the restoration of his license to practice medicine. In that application, he stated that "I feel that the original intent (of my original disciplinary action) has been satisfied by my continuing sobriety since April 1983, and by my participation in Arizona's physician recovery program." Following hearings, petitioner's application was granted and the surrender of his license was stayed by the Board of Regents effective July 26, 1989, at which time he was placed on probation for five years.

Throughout the period of probation, petitioner violated his probation terms and petitioner was charged by the Office of Professional Medical Conduct (OPMC) with ten specifications of professional misconduct.

This resulted in petitioner pleading guilty to eight of those ten specifications, including failing to notify OPMC of his address changes and failing to respond within thirty days to written communications from OPMC. Petitioner did not admit guilt to charges of failing to remain alcohol and drug-free and failing to submit to random unannounced drug and alcohol screenings. In the face of these allegations, in addition to action taken against him by the Arizona Board of Medical Examiners, which resulted in the surrender of his license there in 1994, petitioner agreed to surrender his medical license effective June 30, 1995.

#### PETITION

In November of 1997 petitioner submitted his application for the restoration of his license to practice medicine in the State of New York.

In his narrative chronology, petitioner noted that in June 1995 he voluntarily surrendered his license in New York; in April of 1995 he received a two year suspension of his license to practice medicine in Pennsylvania; and in June of 1994 his medical license in Arizona was cancelled. Petitioner did not mention the earlier surrender of his license to practice medicine in New York in 1985 or its subsequent restoration subject to probation in 1989.

Petitioner stated in his application that the "factors that led to surrender are not likely to reoccur. All professional complaints emanated from pain control practice. (I) left pain practice and returned to classical operating room anesthesia in September, 1992, nearly two years prior to the Arizona action".

Petitioner requested favorable action on this application for the following reasons. One was that the prior disciplinary actions were not timely and occurred outside of New York, and that the complaints against him were considered "administrative in nature and not related to patients' physical damage or loss". He also cited in his favor his desire to recover his license in order to return to practice as an emergency room physician in rural, underserved areas.

Petitioner also stated that he had completed, as of the date of the application, 400 hours of independent general medical review in preparation for the Special Purposes Examination (SPEX) given by the Federation of State Medical Boards.

During its investigation of petitioner's application, petitioner stated to investigators from the New York State Education Department (NYSED) that while he has not worked since

1994, he has done volunteer work in Arizona with various groups and with Vision International, an organization providing medical services in Mongolia, as well as other countries.

Petitioner stated to the Department that he currently has no problems with alcohol, with his most recent DWI convictions occurring within the past five to six years.

PEER COMMITTEE MEETING

On July 23, 1999 this Peer Committee met to review petitioner's application for restoration. Petitioner appeared in person and elected to proceed without an attorney after being apprised of his right to be represented by one. The Department was represented by Stephen J. Lazzaro, Esq.

The legal advisor to the panel was Howard J. Goodman, Esq.

Subsequent to the hearing held on July 23, 1999, petitioner submitted various materials for the panel's consideration. These were reviewed by the panel and made a part of the record of this hearing, which was closed to further submissions on February 22, 2000.

Petitioner testified in narrative form and then responded to questions from the Department's representative and the panel. Petitioner acknowledged that he has deep remorse for his past actions and recounted the losses he has suffered through this misconduct. These include the loss of his home, being unable to pay for his daughter's law school education, and losing years out of what had promised to be a flourishing medical career.

Petitioner has spent the time since the cancellation of his medical licenses engaged in volunteer work in both Arizona and

Mongolia. He is seeking restoration in order to do emergency room work in underserved areas of upstate New York, either in Fulton or Watkins Glen, and to raise money to continue his volunteering efforts in Asia and to help pay for his daughter's graduate education.

Petitioner also seeks the restoration of his license in order to pursue the sale of automatic external defibrillators for a company which is seeking a physician and salesman for its products.

Petitioner said that his marriage is sound and that he continues to be in successful recovery from alcohol addiction.

On cross-examination by the Department's representative, petitioner recounted his disciplinary history. Petitioner's first surrender of his license in New York was in 1985. This was the result of offenses relating to his alcoholism, including driving and practicing medicine while impaired. He petitioned for the restoration of his license to practice medicine, and in July of 1989 was allowed to resume practicing subject to terms of probation to be in effect for 5 years. These terms included, among others, that petitioner remain alcohol and drug-free and that he submit to random urine tests for substance screenings.

Petitioner maintained that the urine screen which he failed was "dirty" not because of alcohol or an illegal substance but rather from Sudafed taken for a sinus problem. Additionally, petitioner said that the laboratory used by the drug monitors was not "forensically correct".

Petitioner concedes that during his period of probation he did have a driving while impaired incident, in which he fell asleep and

drove off the road. On that occasion, petitioner said that he drank before driving, but that since 1995 he has been drug and alcohol-free.

Petitioner has participated in Alcoholics Anonymous (AA) in the past and still attends meetings occasionally, but relies more on a spiritual advisor, Dr. Morris Smith, from Williamsport, Pennsylvania. Petitioner provided no documentation of participation in AA or any other support group.

Petitioner stated that a recurrence of his problems would not happen because he would not practice pain medicine and would not be involved in prescribing narcotics.

Petitioner described his introduction to alcohol use by saying that he was "trained as a traditional fraternity binge beer drinker" at Syracuse University. This behavior continued through his years of military service and into the early years of his medical practice, and it resulted in various alcohol-related driving violations. Despite all this, petitioner asserts that there was "never a time" when any damage was done to any patient, or anyone else for that matter, as a result of his drinking or "poor driving habits".

The circumstances in his life which led to this path was that he was young and foolish, combined drinking and driving, and worked for the "wrong" doctor in Phoenix, Arizona.

If restored, he would use his license as a basis to continue his volunteer work in Asia and to sell defibrillators based upon a doctor's orders. He would be willing to accept any conditions imposed on him and could not imagine any terms so onerous that he

could not comply with them. He attributed his past failure to comply with terms of probation to "carelessness".

Petitioner says that he is supported in his sobriety by advisors in his hometown and the aforementioned Dr. Smith in Pennsylvania. He worships every Sunday with a missionary family, has a sound marriage and in general has strong ongoing support.

Petitioner recognizes that alcoholism is a potentially recurring illness and that one has to be vigilant about resisting cravings. He is "sickened" to think of what he risked by his need for alcohol, and views his overseas service as a blessing in that it has filled the void created by his inability to work for five years.

He views the prospect of selling defibrillators as a means of supporting his overseas volunteer efforts, which he hopes to do two to four 4 months per year.

Petitioner said that he has been sober at this point about eight years, with his last formal association with a treatment program being in Arizona from 1986 to 1989, pursuant to state-mandated conditions. From 1989 to the current time, he has relied on Rev. Smith as his spiritual advisor. His method of dealing with alcohol cravings is to use guided imagery to overcome them.

Petitioner was then further questioned by the panel as to what he viewed was lost by his alcoholism.

The first part of his reply dealt with his material losses, including a 200-acre farm and Greek Revival mansion house in upstate New York. He also said that his drinking contributed to his daughter's early struggles and now prevents him from

contributing to her law school education as he would like to do.

He also discussed the loss of self-esteem and his absence from professional life during what should have been the most productive years of his career.

His family history of alcoholism includes a father and sister who were alcoholics. Petitioner's background is primarily in anesthesia, although his volunteer work in Mongolia is in ophthalmology and general medicine and instructing doctors there in Western medicine.

Petitioner was questioned about his practice in Arizona which led to the loss of his license there. He said that because he was in a pain management clinic, and treating patients who were already habituated to narcotic analgesics, he tended to overprescribe such narcotics and thus came to the attention of the medical board there.

Petitioner agreed with the action taken by Arizona with respect to his overprescribing of these narcotics but took exception to their requirement of a mini-residency which he could not comply with.

Petitioner's future plans include practicing in Arizona if his application for relicensure there is successful.\* If he is

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\*Petitioner's medical license in Arizona was restored on August 4, 1999, subsequent to this hearing, at which time he was also placed on probation for five years in that jurisdiction. However, prior to any unsupervised practice of medicine, petitioner is required to complete a one year residency in a primary care setting which requires the approval of that state's Board of Medical Examiners.

Petitioner's application to modify this term of probation was denied on February 4, 2000 by Arizona.

relicensed in New York only, then he would practice in a small community hospital in Auburn, where he has family.

The Department's representative noted in his closing argument that the last formal continuing medical education that petitioner participated in was in 1997. He also noted that while petitioner testified that he would be willing to abide by whatever terms this panel might impose, he did not comply with terms of probation imposed by OPMC and the State of Arizona, respectively. Further, he defended his inability to comply with Arizona's terms while at the same time admitting that his failure to explain his inability to comply with their terms resulted in the cancellation of his license there.

Petitioner's lack of formal treatment programs also calls into question his commitment to maintaining his sobriety and the depth of his understanding of the nature of his illness.

While the Department believes that that petitioner is sincerely remorseful for his past actions, that alone is insufficient to warrant relicensure when the other criteria needed to be met have not been fulfilled.

Petitioner asked this panel to take favorable action on his application, saying that his spirit is headed in the right direction. He said that he has found great fulfillment through the volunteer work resulting from his forced career change, and that any licenses he can regain will enable him to finance those efforts.

RECOMMENDATION .

In evaluating petitioner's application for licensure, we apply

the generally accepted criteria of remorse, rehabilitation and re-education. Additionally, we are charged with the responsibility of safekeeping the public's health, safety and welfare.

We also note in reviewing this application that the legal burden is on petitioner to submit evidence such as would "compel" the exercise of discretion in his favor. Matter of Jablon v. Board of Regents of Univ. of State of N.Y., 271 App. Div. 369, 373, 66 N.Y.S.2d 340, aff'd 296 N.Y. 1027, 73 N.E. 2d 904. Taking the above into consideration, we unanimously conclude that petitioner has insufficiently fulfilled these requirements and that therefore his application for restoration be denied.

Petitioner appears to be sincere in his expressions of remorse, and readily concedes that he is a recovering alcoholic, but presents no objective proof of sobriety, no references from fellow AA participants or sponsor(s), and in the affidavit supplied by what petitioner terms his "spiritual advisor" there is no mention of alcoholism.

Additionally, petitioner appears conflicted in his goals for what he hopes to achieve with his license to practice medicine if it is restored. It is not clear to us whether he wants to perform charity work in Mongolia, sell defibrillators, work in upstate New York or return to Arizona to practice. With respect to his proposal to sell defibrillators, we do not find it credible that a medical license is needed for this endeavor. And, we find unrealistic his desire to be an emergency room physician when nothing in his

practice history of anesthesiology or pain management suggests that he is qualified for such a position.

Further, petitioner's history of failing to comply with conditions imposed by various licensing authorities does not inspire confidence that restoring his license subject to terms of probation would be helpful in this instance.

Finally, we are concerned with petitioner's relatively small total of continuing medical education credits and the fact that it is unrelated to his area of practice.

For all these reasons, we unanimously recommend to the Board of Regents that petitioner's application for the restoration of his license to practice medicine in the State of New York be denied.

Respectfully submitted,

Florence Kavalier, M.D.,  
Chairperson

David Harris, M.D.

Benjamin Robinson, Esq.,  
Public Member

 6/14/2000  
Chairperson Dated