

THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, N.Y. 12230

OFFICE OF PROFESSIONAL DISCIPLINE, A.V. ZOGG BLDG., 800 FOURTH STREET, RM. 317, LIVERPOOL, NEW YORK 13088

July 23, 1997

James T. Holmes, Physician
416 Crown Avenue
Staten Island, NY 10212

Re: Application for Restoration

Dear Dr. Holmes:

Enclosed please find the Commissioner's Order regarding Case No. 97-44-60R which is in reference to Calendar No. 0015816. 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: Lisa A. Cahill, Esq.
Zuckerman, Goldstein, Taylor & Kolker
1114 Avenue of the Americas
New York, NY 10036

The University of the State of New York
Education Department



IN THE MATTER

of the

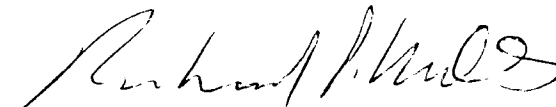
Application of JAMES T. HOLMES
for restoration of his license to practice
as a physician in the State of New York

Case No. 97-44-60R

It appearing that the application of JAMES T. HOLMES, 416 Crown Avenue, Staten Island, New York 10212, to surrender his license to practice as a physician in the State of New York, was granted by action of the Board of Regents on April 24, 1987, 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 hearing panel and the Committee on the Professions, now, pursuant to action taken by the Board of Regents on June 12, 1997, it is hereby

ORDERED that the petition for restoration of License No. 102924, authorizing JAMES T. HOLMES to practice as a physician in the State of New York, is denied, but that the execution of the action granting the application to surrender his license is stayed, and said JAMES T. HOLMES is placed on probation for a period of three years under the attached terms and conditions.

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 18th day of July, 1997.


Commissioner of Education



Case No. 97-64-60R

It appearing that the application of JAMES T. HOLMES, 416 Crown Avenue, Staten Island, New York 10212 to surrender his license to practice as a physician in the State of New York, having been granted by action of the Board of Regents on April 24, 1987, 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 hearing panel and the Committee on the Professions, now, pursuant to action taken by the Board of Regents on June 12, 1997 it was

VOTED that the petition for restoration of License No. 102924, authorizing JAMES T. HOLMES to practice as a physician in the State of New York, be denied, but that the execution of the action granting the application to surrender his license be stayed, and said JAMES T. HOLMES be placed on probation for a period of three years under the attached terms and conditions.

EXHIBIT "B"

TERMS OF PROBATION
OF THE PEER COMMITTEE

JAMES T. HOLMES

CALENDAR NO. 15816

1. That applicant shall make quarterly visits to an employee of and selected by the Office of Professional Medical Conduct of the New York State Department of Health, unless said employee agrees otherwise as to said visits, for the purpose of determining whether applicant is in compliance with the following:
 - a. That applicant, during the period of probation, shall be in compliance with the standards of conduct prescribed by the law governing applicant's profession;
 - b. That applicant shall submit written notification to the New York State Department of Health, addressed to the Director, Office of Professional Medical Conduct, Empire State Plaza, Albany, NY 12234 of any employment and/or practice, applicant's residence, telephone number, or mailing address, and of any change in applicant's employment, practice, residence, telephone number, or mailing address within or without the State of New York;
 - c. That applicant shall submit written proof from the Division of Professional Licensing Services (DPLS), New York State Education Department (NYSED), that applicant has paid all registration fees due and owing to the NYSED and applicant shall cooperate with and submit whatever papers are requested by DPLS in regard to said registration fees, said proof from DPLS to be submitted by applicant to the New York State Department of Health, addressed to the Director, Office of Professional Medical Conduct, as aforesaid, no later than the first three months of the period of probation; and
 - d. That applicant shall submit written proof to the New York State Department of Health, addressed to the Director, Office of Professional Medical Conduct, as aforesaid, that 1) applicant is currently registered with the NYSED, unless applicant submits written proof to the New York State Department of Health, 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; said proof of the above to be submitted no later than the first two months of the period of probation;

2. That the applicant shall continue to be treated regularly by a psychiatrist during the period of probation -- either his current psychiatrist or another psychiatrist, chosen by the applicant and previously approved, in writing, by the Director of the Office of Professional Medical Conduct, to which psychiatrist the applicant shall submit, at the applicant's expense, to an examination and any necessary treatment, at least once every six months during the period of probation, and that applicant shall supply written reports at least once every six months from said psychiatrist, said written reports by the psychiatrist to state whether or not applicant is fit to practice as a physician in the State of New York; that applicant must be fit to practice as a physician in the State of New York in order to be in compliance with this term of probation, such fitness to be demonstrated by said report from the psychiatrist; and that if information is received by the New York State Department of Health, from said psychiatrist indicating that applicant is unfit to practice applicant's 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;
3. That, during the first year of the period of probation, the applicant shall not practice medicine individually or in his own private practice but shall practice as a physician only with and under the supervision of another physician board certified in psychiatry or in a structured, supervised setting under the supervision of a physician board certified in psychiatry, said supervising physician and/or structured setting with supervision to be selected by the applicant and previously approved, in writing, by the Director of the Office of Professional Medical Conduct; and
4. If the Director of the Office of Professional Medical Conduct determines that applicant may have violated probation, the Department of Health may initiate a violation of probation proceeding and/or such other proceedings pursuant to the Public Health Law, Education Law, and/or Rules of the Board of Regents.

JAMES T. HOLMES (15816)

5. During the probationary period, petitioner must obtain approval from the Office of Professional Medical Conduct if he wishes to practice in any area of medicine except psychiatry, and that, upon successful completion of the period of probation, the applicant's license to practice medicine in the State of New York 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 Medical License

Re: **James T. Holmes**

Attorney: Lisa A. Cahill

James T. Holmes, 416 Crown Avenue, Staten Island, New York, 10212, petitioned for restoration of his medical license. The chronology of events is as follows:

- 01/17/69 Issued license number 102924 to practice medicine in New York State.
- 04/22/86 Convicted of one count of Grand Larceny in the Second Degree, and two counts of Offering a False Instrument for Filing in the First Degree (See "Disciplinary History.")
- 01/12/87 Applied to surrender medical license.
- 04/24/87 Regents voted to grant application to surrender license.
- 05/13/87 Commissioner's Order effective.
- 01/14/94 Petition for restoration submitted.
- 01/26/96 Peer Panel restoration review.
- 10/7/96 Report and recommendation of Peer Review Panel. (See "Recommendation of the Peer Review Panel.")
- 03/19/97 Report and recommendation of Committee on the Professions (See "Recommendation of the Committee on the Professions.")

Disciplinary History. (See attached Application to Surrender License.) Dr. Holmes pled guilty to and was convicted on April 22, 1986 in the Supreme Court, County of New York, of one count of Grand Larceny in the Second Degree and two counts of Offering a False Instrument for Filing in the First Degree. Dr. Holmes admitted to having received in excess of two hundred forty-five thousand dollars in Medicaid funds to which he was not

entitled by submitting numerous fraudulent reimbursement claims for the period January 1, 1983 through March 31, 1985, which overstated the number and duration of psychotherapy treatments he had provided to Medicaid patients. In his application to surrender his medical license dated January 12, 1987, Dr. Holmes admitted guilt to professional misconduct based on his criminal conviction of April 22, 1986. On April 24, 1987, the Board of Regents voted to grant his application to surrender his license. The Commissioner's Order became effective on May 13, 1987. On January 14, 1994, Dr. Holmes submitted a petition for restoration.

Recommendation of Peer Review Panel. (See attached report of the Peer Review Panel.) The Peer Review Panel (Gujavarty, Hannan, Lopez) convened on January 26, 1996. In its report dated October 7, 1996, the Panel unanimously recommended that the surrender of Dr. Holmes' license to practice medicine in the State of New York be stayed and that he be placed on probation for three years under specified terms and conditions, including regular treatment by a psychiatrist during the probation period and a restriction that during the first year of probation he practice only with and under the supervision of another physician board certified in psychiatry or in a structured, supervised setting under the supervision of a physician board certified in psychiatry.

Recommendation of the Committee on the Professions. On March 19, 1997, the Committee on the Professions (Duncan-Poitier, Ahearn, Muñoz) met with Dr. James T. Holmes to consider his petition for restoration of his license as a physician in New York State. Dr. Holmes was accompanied by his attorney, Lisa A. Cahill, and his wife, Rosemarie Gaeta.

The Committee asked Dr. Holmes to explain the circumstances that led to the loss of his license. Dr. Holmes said that he and his first wife were doing everything possible to have a child, and after 10 years and 6 miscarriages a son was born. He indicated that he and his wife were having marital problems before the birth, but he hoped the marriage would work out. Dr. Holmes reported that his wife asked him to move out six months after his son's birth and that she told him she made a decision that their marriage was over before she became pregnant. He said that he moved into a first floor apartment in the brownstone they owned since he didn't want to be too far away from his son.

Dr. Holmes told the Committee that the fraud began during the next six months after he moved. He said that he was depressed, upset, and nothing was going right. Dr. Holmes stated that he was so depressed and so angry that good judgment left him. When asked by the Committee to explain how these feelings related directly to the Medicaid fraud, Dr. Holmes indicated that

it was the only thing nonpersonal that he could rebel against. He said that the Medicaid system was a nice target because it was not well run and, for example, it often took him 18 months to receive payments. Dr. Holmes stated that he was not capable of stealing from a person; that's why it had to be from something that was faceless. He said that he never acted out his depression by getting angry with his patients.

In response to the Committee's inquiry as to why he took the money, Dr. Holmes said that he had no idea because he didn't really need it and several checks were never even cashed. He indicated that he did not even know how much money was actually involved, although he agreed upon \$200,000 as a restitution amount. Ms. Gaeta told the Committee that her husband was not very interested in the business aspects of his practice and, as a result, there were many well paid employees and unnecessary overhead costs on his practice at the time of the fraud.

The Committee asked for an explanation of what had now changed. Dr. Holmes said that he met his second wife about one year after he was asked to move out, and they have adopted two Chinese daughters. He indicated that he has a very good relationship with his son, now 15, who he sees every other weekend. Dr. Holmes told the Committee that he continues to take antidepressant medication which he feels is a good buttress against getting depressed. Additionally, he stated that he would not do any work that would relate to Medicaid nor would he do anything that could possibly endanger his medical license if it were restored. Dr. Holmes said that he has been seeing Dr. Reich, a psychiatrist, since 1986. He reported that he saw Dr. Reich once a week until 1995 and now sees him every other week. He told the Committee that he completed a master's degree program in public health, but soon discovered that jobs for someone of his age and with his background were rare. However, Dr. Holmes said that he has been financially solvent because he receives \$50,000 a year from his father's estate.

Dr. Holmes asserted that he has learned to deal with the underlying issues that led to his "acting out," and has a good relationship with his ex-wife. He indicated that he has faced up to what he did, no longer hides these past actions when dealing with people, and is very sorry. Dr. Holmes said that he is not sure if he still has his Tennessee license and has no use for it now. He indicated that he maintained that license only for sentimental reasons so that he could practice with his father, a physician in that state, when he visited.

Dr. Holmes said that he would like to find a job in psychiatry if his license were restored. However, he reported that the competition for psychiatric patients in New York City is now much greater. If he were not able to obtain a psychiatric post after six months, he told the Committee he would become a

general practitioner. Dr. Holmes informed the Committee of his extensive efforts to remain current in his profession.

When asked about his feelings regarding the Peer Review Panel's recommendation, Dr. Holmes made two comments. First, he stated that the report on page 12 did not reflect that he practiced with his father only during the two-year period, 1966-68, preceding his father's death. Second, Dr. Holmes told the Committee that he felt it would be difficult to secure work under the probationary conditions. He stated that he felt the Panel's concern is understandable; however, he felt a probationary period of one and one-half years would be sufficient.

The Committee on the Professions notes that Dr. Holmes' Medicaid fraud occurred over ten years ago. The Committee notes that he has demonstrated his remorse for his criminal conduct and has undergone professional treatment to understand the underlying causes leading to his inappropriate behavior and develop the personal support system necessary to deal with future emotional difficulties. The Committee agrees with the Peer Review Panel that Dr. Holmes has done much to rebuild his personal life and is not a likely candidate for repeating his wrongdoing. The Committee accepts the judgment of the Panel that Dr. Holmes is sufficiently current in his field of psychiatry, but notes that he may need additional reeducation to practice in other areas of medicine. The Committee notes that the Department of Health in its letter commenting on Dr. Holmes' petition does not object to restoring the petitioner's license. Therefore, after a complete review of the record, including Dr. Holmes' personal interview with the Committee on the Professions, the Committee voted unanimously to concur with the recommendation of the Peer Review Panel that the surrender of Dr. Holmes' license to practice as a physician in the State of New York be stayed and that he be placed on probation for three years. However, the Committee on the Professions voted unanimously that Dr. Holmes be placed on probation under the terms specified in the Peer Review Panel with the additional stipulation that during the probationary period he must obtain approval from the Office of Professional Medical Conduct if he wishes to practice in any area except psychiatry, and that, upon successful completion of the period of probation, the applicant's license to practice medicine in the State of New York be fully restored.

Johanna Duncan-Poitier, Chair

Kathy A. Ahearn

Frank Muñoz