



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

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May 2, 2001

Gilbert Ross, Physician  
71 Somerset Drive  
Great Neck, New York 11020

Re: Application for Restoration

Dear Dr. Ross:

Enclosed please find the Commissioner's Order regarding Case No. 01-20-60 which is in reference to Calendar No. 18312. 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  
Supervisor

cc: Jeffrey Rubin, Esq.  
Rubin & Shang  
9 East 40<sup>th</sup> Street  
New York, New York 10016

The University of the State of New York  
Education Department



IN THE MATTER

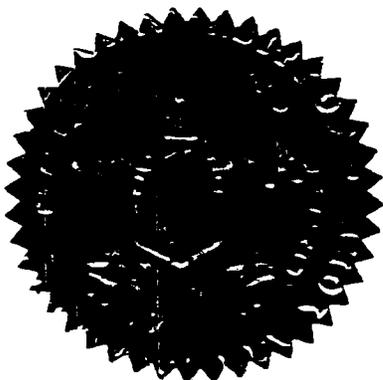
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Application of GILBERT ROSS for restoration of his license to practice as a physician in the State of New York.

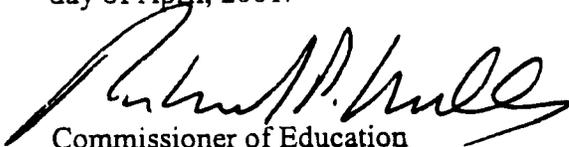
Case No. 01-20-60

It appearing that the license of GILBERT ROSS, 71 Somerset Drive, Great Neck, New York 11020, to practice as a physician in the State of New York, was revoked by the Administrative Review Board of the State Board for Professional Medical Conduct effective July 24, 1995, and he having petitioned the Board of Regents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 March 20, 2001, it is hereby

ORDERED that the petition for restoration of License No. 116347, authorizing GILBERT ROSS to practice as a physician in the State of New York, is denied, but that the execution of the order of revocation of said license is stayed, and said GILBERT ROSS is placed on probation for a period of three years under specified terms and conditions and upon successful completion of this probationary period, his license to practice as a physician in the State of New York shall be fully restored.



IN WITNESS WHEREOF, I, 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 27<sup>th</sup> day of April, 2001.

  
Commissioner of Education

Case No. 01-20-60

It appearing that the license of GILBERT ROSS, 71 Somerset Drive, Great Neck, New York 11020, to practice as a physician in the State of New York, having been revoked by the Administrative Review Board of the State Board for Professional Medical Conduct effective July 24, 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 March 20, 2001, it was

VOTED that the petition for restoration of License No. 116347, authorizing GILBERT ROSS to practice as a physician in the State of New York, be denied, but that the order of revocation of said license shall be stayed, and said GILBERT ROSS shall be placed on probation for a period of three years under specified terms and conditions and upon the successful completion of this probationary period, his license to practice as a physician in the State of New York shall be fully restored.

Case number 01--20-60  
December 18, 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: Gilbert Ross**

Attorney: Jeffrey Rubin

Gilbert Ross, 71 Somerset Drive, Great Neck, New York 11020, petitioned for restoration of his physician license. The chronology of events is as follows:

- 07/02/73 Issued license number 116347 to practice as a physician in New York State.
- 06/26/93 Found guilty, after trial, of 13 counts of fraud, specifically, one count of participation in a racketeering enterprise, one count of violation and pattern of racketeering activity, ten counts of mail fraud, and one count of criminal forfeiture.
- 08/25/94 Charged with professional misconduct by Department of Health. (See "Disciplinary History.")
- 03/01/95 Date of Determination and Order of Hearing Committee for the State Board for Professional Medical Conduct suspending license for two years, suspension stayed, and probation for two years.
- 07/24/95 Effective date of State Board for Professional Medical Conduct Administrative Review Board's decision revoking license.
- 08/21/98 Submitted application for restoration.
- 03/22/00 Peer Committee restoration review.
- 10/20/00 Report and recommendation of Peer Committee. (See "Report of the Peer Committee.")
- 12/18/00 Report and recommendation of Committee on the Professions. (See "Report of the Committee on the Professions.")

**Disciplinary History.** (See attached disciplinary documents.) On or about June 26, 1993, Dr. Ross was found guilty, after trial, and convicted on 13 counts of fraud,

specifically, one count of participation in a racketeering enterprise, one count of violation and pattern of racketeering activity, 10 counts of mail fraud, and one count of criminal forfeiture. The charges related to his participation, with others, from February through April 1991, in a scheme to operate medical clinics for the purpose of obtaining payments directly and indirectly from the Medicaid system by submitting bills, and causing others to submit bills, for medical services, drug prescriptions, and laboratory tests which he knew to be, and were in fact, medically unnecessary.

Based on this federal conviction, the Department of Health charged him with professional misconduct. On March 1, 1995, a Hearing Committee of the State Board for Professional Medical Conduct determined that Dr. Ross was guilty of the charge but felt that there were mitigating circumstances that should be considered. It noted that his participation in the illegal activity was limited to only seven weeks, that he voluntarily resigned when he perceived the irregularities, and that he was doing extensive volunteer work. The Hearing Committee determined that Dr. Ross' license should be suspended for two years; however, they stayed the suspension and placed him on probation and required him to perform 500 hours of community service.

The Office of Professional Medical Conduct requested a review of the decision by an Administrative Review Board for Professional Medical Conduct. The Review Board sustained the Hearing Committee's determination of guilt but voted to revoke Dr. Ross' license. It noted that he had violated the public trust in the medical profession and used his medical license to commit fraud. The Review Board noted that he received approximately \$82,000.

On August 21, 1998, Dr. Ross submitted an application for restoration.

**Recommendation of the Peer Committee.** (See attached Report of the Peer Committee.) The Peer Committee (Harris, Lopez, Santiago) met with Dr. Ross on March 22, 2000 to review his application for restoration. In its report, dated October 20, 2000, two members of the Committee recommended that the revocation be stayed and that Dr. Ross be placed on probation until December 31, 2004. The third member of the Committee recommended that the license be restored without any probationary restrictions.

**Recommendation of the Committee on the Professions.** On December 18, 2000, the Committee on the Professions (Duncan-Poitier, Ahearn, Muñoz) met with Dr. Ross to review his application for restoration. Dr. Ross' attorney, Jeffrey Rubin, accompanied him.

The Committee asked Dr. Ross to describe, in his own words, what got him into trouble. He replied that he "made a very bad decision" to participate in a clinic. He indicated that he should have known right away that the clinic was not a legitimate operation. Dr. Ross told the Committee that it was not a clinic established to help people, but, rather, one to make money. He said, "I did it for money. I was in financial straits at the time."

Dr. Ross reported that at the time of the misconduct, he did not have a full-time practice. He said that his wife was also a physician and had a full-time practice in "the city." He explained that he took care of the children. Dr. Ross indicated that after his wife was killed, he started to take on moonlighting jobs to help compensate for the lost income. He said that when he married his current wife, she was attending law school and this added to his "severe financial difficulties." As part of his moonlighting activities, Dr. Ross indicated that he had worked in another clinic. After responding to a newspaper advertisement, he reported that he was hired to work at the "Khan Clinic." He said that Mr. Khan told him that he had a medical license in Pakistan and was awaiting licensure in this country, but that he later found out Mr. Khan was not licensed as a physician anywhere. Dr. Ross stated that he was the only physician associated with the clinic and he was to be the supervisor for the physician assistants who actually saw the patients. He reported that he checked with the Medical Society of New York and spoke with an attorney who told him that it was a "legal venture" as a physician is allowed to supervise physician assistants off-site. Dr. Ross said that he would go to the clinic three times a week to drop off and pick up patients' charts. He indicated that he only got a physician assistant call once or twice and that usually the physician assistant would refer patients needing more extensive medical treatment to another clinic.

Dr. Ross said that he began to notice that the patient charts contained repetitive diagnoses and prescribed medications. He stated, "I realize I was just fooling myself." Dr. Ross indicated that he quit after about eight weeks. He said, "I didn't notify anybody. I didn't return any money." He reported that the reimbursements from Medicaid were coming to him and he was making \$5,000 to \$10,000 a week while only paying \$4,000 a month for rent. Dr. Ross indicated that he believed most of the patients coming to the clinic were just seeking prescriptions to sell on the street to individuals who would get the drugs to resell to pharmacies.

The Committee asked him about his perjury during his trial. Dr. Ross replied, "I have trouble reconciling those two persons." He explained that at the time he was a person who couldn't deal with what he had done or admit his criminal activity. At the time, he said that he couldn't even admit to his wife or colleagues his "unethical and criminal activity." Eventually, after going to prison, he realized that it took "too much effort to maintain the façade." Even though the misconduct occurred for only a short period of time, Dr. Ross told the Committee that "eight weeks doesn't excuse it." He said, "I violated every ethical trust placed in me as a doctor."

He indicated that his friends and family have been very supportive during his rehabilitation. Dr. Ross told the Committee that his misconduct was "so out of character for me" and the concept of ever going anywhere near such a situation again seems foreign to him. He reported that he was the Medical Director of the American Council on Science and Health and is currently the Executive Director. Dr. Ross said that he was upfront and reported his incarceration and misconduct before being hired. He indicated that the organization researches and reports on controversial topics, such as actual vs. hypothetical harm. He updated the Committee on his activities to remain current in his profession.

The Committee asked for his reactions to the recommendation of the Department of Health opposing the restoration of his license. He referred to their statement that "There is no new information in Dr. Ross' petition which would cause us to recommend that the privilege of licensure to practice medicine in the State of New York be restored to Dr. Ross." Dr. Ross said that he felt he had presented "a lot of information" in his petition and during the restoration process. He used the Report of the Peer Committee as an example of the information that Committee used to recommend restoration of his license.

When asked what he would like to do if his license were restored, he said that he would look into practicing part time. Dr. Ross indicated that he realizes that with Medicaid and Medicare exclusions, he will have difficulty finding a position, especially if he needs to be monitored in a restrictive setting. Nonetheless, he said that he would agree to any restrictions the Regents felt were necessary for the restoration of his license.

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 concurs with the Peer Committee that Dr. Ross made a compelling case to demonstrate that he is "remorseful for his misconduct and has kept abreast of the profession." Similarly, it finds that Dr. Ross demonstrated that he has identified the root causes of his misconduct and has made the necessary behavioral changes in his life, providing an acceptable assurance level that the public would not again be placed in danger were his license restored. The COP, as did the Peer Committee, finds that Dr. Ross openly admits that his motive was greed and not that he was an "unwilling dupe" in a fraudulent scheme that he happened to stumble into, even though he was unaware initially of what was occurring. His initial stages of denial compounded the original misconduct and resulted not only in a criminal perjury conviction but also played a major factor in the penalty assigned to the professional misconduct.

The COP notes that his participation in the fraudulent activity was short-lived, that he cooperated with the authorities so that further harm could not occur to patients,

and that the misconduct appears to be aberrational. Dr. Ross has made efforts to "pay back" the community. The COP found Dr. Ross to be humble, remorseful, and credible. Regarding the Department of Health's opinion that "no new information" was presented to recommend restoration, the COP, as did the Peer Committee, finds that Dr. Ross presented sufficient documentation and information to make a compelling case for restoration of his license. The COP agrees with the majority opinion of the Peer Committee that Dr. Ross' reentry into the practice of medicine should be monitored but feels that the monitored practice can occur in any setting approved by the Department of Health. The COP recommends a probationary period of three years.

Therefore, after a complete review of the record and its meeting with him, the Committee on the Professions recommends that the order of Dr. Ross' revocation be stayed for three years, that he be placed on probation for three years under specified terms and conditions, attached to this report and labeled Attachment "B," and that upon successful completion of the probationary period his license to practice medicine in the State of New York be fully restored.

Johanna Duncan-Poitier, Chair

Kathy Ahearn

Frank Muñoz

EXHIBIT "B"

TERMS OF PROBATION  
OF THE COMMITTEE ON THE PROFESSIONS  
FOR

GILBERT ROSS

1. That applicant, during the period of probation, shall be in compliance with the standards of conduct prescribed by the law governing applicant's profession;
2. That applicant shall submit written notification to the New York State Department of Health, addressed to the Director, Office of Professional Medical Conduct (OPMC), New York State Department of Health, 433 River Street, Troy, New York 12180-2299, of any employment and/or practice, applicant's residence, telephone number, or mailing address, and any change in employment, practice, residence, telephone number or mailing address within or without the State of New York;
3. That applicant shall submit written proof from the Division of Professional Licensing Services (DPLS), New York State Education Department (NYSED), that applicant has paid all registration fees due and owing to the NYSED and applicant shall cooperate with and submit whatever papers are requested by DPLS in regard to said registration fees, said proof from DPLS to be submitted by applicant to the OPMC, addressed to the Director, Office of Professional Medical Conduct, as aforesaid, no later than the first three months of the period of probation;
4. That applicant shall submit written proof to the OPMC, 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 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;
5. That applicant shall work only in a supervised setting where close practice oversight is available on a daily basis. The setting need not be restricted to a facility licensed by New York State. Applicant shall not practice medicine until the supervised setting is approved, in writing, by the Director of OPMC. Applicant shall propose an appropriate supervisor or administrator in all practice settings, who shall be subject to the written approval of the Director of OPMC. Applicant shall cause the supervisor or administrator to submit reports, as requested by OPMC, regarding applicant's overall quality of medical practice.
6. That applicant shall make quarterly visits to an employee of the Office of Professional Medical Conduct, New York State Department of Health, 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;

7. That upon receipt of evidence of noncompliance with or any other violation of any of the aforementioned terms of probation, the Office of Professional Medical Conduct may initiate a violation of probation proceeding and/or any such other proceeding against applicant as may be authorized pursuant to the law.



# The University of the State of New York

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

-----X

In the Matter of the Application of

GILBERT ROSS

REPORT OF  
THE PEER  
COMMITTEE  
CAL. NO. 18312

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

-----X

Applicant, GILBERT ROSS, 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. 116347 on July 2,  
1973.

## PRIOR DISCIPLINARY PROCEEDING

In July of 1995, applicant's license to practice as a  
physician in the State of New York was revoked by action of the  
New York State Department of Health. This was based upon the one  
specification of professional misconduct which applicant was found  
guilty of. The gravamen of applicant's misconduct was his having  
been found guilty after trial on or about June 26, 1993 in the  
United States District Court, Southern District of New York on 13  
counts of fraud, in violation of various federal statutes.

During the period of February 1991 to April of 1991, applicant, together with others, participated in a scheme to operate medical clinics for the purpose of obtaining payments from the Medicaid system for medical services, drug prescriptions and laboratory tests which he knew to be medically unnecessary.

As a result of his conviction, applicant was sentenced to 46 months of incarceration, 3 years of supervision following his release, and originally ordered to pay restitution to New York State of \$612,855. On appeal the amount of restitution was reduced to \$82,000.

#### PETITION

As part of applicant's petition for restoration of licensure, he submitted a number of supporting documents, including, among other things, a chronology of his activities.

The relevant portion of this chronology begins during the period of February to April of 1991, with applicant's work at the "Khan Clinic", where he engaged in the fraudulent acts which led to his conviction. From that time to July of 1995, when his license was revoked, applicant continued to maintain a private practice of internal medicine and rheumatology at several locations.

In January of 1996 he surrendered to federal prison camp in Schuylkill, Pennsylvania. In June of 1997 he was transferred to federal boot camp in Lewisburg, and in December of 1997 he was released to a halfway house in New York City.

GILBERT ROSS (18312)

During the time from July of 1993 to November of 1995, applicant volunteered at the Rotacare Clinic in Hempstead, New York. This was a free medical facility which he helped to establish, and in which he was the original and only physician until his license was revoked; he continued to work there for approximately four months in an administrative capacity after he lost his license.

Upon his release from incarceration, applicant worked as a sales representative for Allied Digital Technologies until March of 1998. From that time till the present he has been employed as the Medical Director of the American Council on Science and Health (ACSH) and now holds the title of Executive Director in that organization.

In applicant's petition he discussed the revocation of his license and his activities since then. He states that his revocation was not the result of any negligence or incompetence in the practice of medicine, but due to a failure on his part to uphold the "high, ethical standards that are expected of a physician in our society".

His continuing medical education (CME) has taught him to re-examine his prior misconduct and to realize that only the most ethical conduct can be tolerated when an individual holds a medical license.

Applicant stated that his medical interests have always been in helping the sick and those unable to afford proper medical care. This desire motivated him to establish the Rotacare Clinic

in Long Island and later to become involved with the ACSH, an organization dedicated to the education of the public in the areas of health, health-related products and environmental issues.

His role at the ACSH has been in the coordination and promotion of health awareness booklets and publications; appended to his petition were a number of such articles.

He concluded his application by stating that he has "paid dearly for (his) past transgressions and (has) benefited from the punishment" he received. He says that he is at the stage of his life where he is moving ahead as a new person and hopes to be able to demonstrate his skills, knowledge and dedication to the profession of medicine. Applicant assures this panel and those others who will review this application that what occurred in the past will not recur in the future.

Applicant's petition also contained letters of reference from colleagues and friends, evidence of continuing medical education, a curriculum vitae and examples of research projects at the ACSH that he has been involved in.

As part of the restoration process, applicant was interviewed by the Department's Investigations Division. In said interview, applicant discussed the root causes of his criminal misconduct.

He attributed it to financial stresses arising out of his wife's death and the expense of caring for his two young children from that marriage. He also said that he realized after about two weeks at the clinic that excessive and unnecessary testing was being done and that he should have quit immediately upon that

realization. He acknowledged his culpability and admitted that it was greed which motivated him and his misguided belief that he was entitled to this money.

When questioned as to whether his punishment was fair, applicant responded that he thought it was adequate.

If his license is not restored, applicant said that he would continue to work as a consultant without providing direct medical care but would still make efforts to re-obtain his license. If he is restored, he would return to the practice of medicine with modest goals for financial compensation.

**PEER COMMITTEE MEETING**

On March 22, 2000 this Peer Committee met to review applicant's petition for restoration. Applicant appeared in person and was represented by an attorney, Jeffrey Rubin, Esq. The Department was represented by Dennis K. Spillane, Esq.

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

Applicant's presentation to the panel began with the testimony of various character witnesses. The first to appear on applicant's behalf was Philip Gelber, M.D. Dr. Gelber is a cardiologist who first became acquainted with applicant in 1973 when both were medical residents at Bellevue Hospital. They were later colleagues at Long Island Jewish and North Shore Hospitals in Long Island.

Dr. Gelber said that he was aware in "just a very general sense" of the circumstances and facts of the crime applicant was

convicted of. He thought that the events were an "anomaly" based upon his wife's illness and death, without which they would not have occurred. Dr. Gelber spoke to applicant's abilities as a physician. He found applicant's work to be extremely high in quality and very thoughtful and that he had a good rapport with patients. Even now, he testified, there are patients who ask when applicant is going to return to practice because of their close relationship with him. He stated his belief that applicant's character was such that he deserved to be relicensed.

Upon questioning from the panel, Dr. Gelber was apprised of the fact that applicant's unjust enrichment was \$82,000 over a seven week period. Although unaware of that, he viewed applicant as not someone who benefited from his wrongdoing in the form of yachts and mansions, but rather to compensate both emotionally and financially for the loss of his wife.

The next witness to testify for applicant was Dr. Robert Greenwald. Dr. Greenwald is the chief of rheumatology at Long Island Jewish Medical Center and has known applicant since he applied for staff privileges at the hospital in 1977.

Dr. Greenwald was aware of the circumstances of applicant's crime and his subsequent incarceration. Notwithstanding, he had no reservations about applicant's character. During applicant's tenure at the hospital, Dr. Greenwald regarded him as a very dedicated and conscientious member of the staff and would have no hesitancy in recommending patients, including family members, to him.

Elizabeth Whelan, Ph.D. next testified. Dr. Whelan is the president and founder of the ACSH, which is based in New York City. She first became acquainted with applicant in January of 1998 when he responded to an ad placed in the New York Times for a staff assistant. He informed her at the time that he had been convicted of a crime and had served time in prison as well as had his medical license revoked.

Because of his background, and the controversial work sometimes done by ACSH, applicant's hiring was reviewed by two of its directors, who were favorably impressed after meeting him. Dr. Whelan has found applicant's work to be "absolutely impeccable, reliable, on time and ...of high quality." In terms of his personal ethics, she has judged him by the quality of this work, and the complete and unbiased way he evaluates professional literature.

Applicant's background has never been an issue in terms of hurting the credibility of the ACSH, or as a source of attacking one of its publications. In conclusion, she recommends applicant's relicensure.

The next witness to testify on applicant's behalf was Sister Theresa Graf, the director of Rotacare, a health service program for the poor, uninsured and homeless in Long Island.

When the program was starting out it needed a medical director, so she was referred to applicant, who agreed to serve in that capacity. This was at a time shortly before applicant's criminal trial. She was aware of his subsequent conviction and

incarceration and in fact visited him in prison. Although she didn't know the dollar amount of applicant's fraud until apprised at this hearing, she testified that it would not change her opinion regarding applicant's worthiness to be relicensed.

Applicant's role in Rotacare prior to his revocation was as a treating physician on a volunteer, non-paying basis.

Sister Graf views applicant as a person who made a mistake, paid for that mistake, and who would like to get back to helping people. She certainly believes that applicant is incapable of committing further crimes and would welcome him back to her clinic to provide the medical help her community needs.

The final witness to testify on applicant's behalf was Rabbi Lee Friedlander. Rabbi Friedlander is the senior rabbi of the Reconstructionist Synagogue of the North Shore in Long Island.

Rabbi Friedlander first met applicant in approximately 1987, when applicant came with his now current wife for premarital counseling. The couple have now been members of the congregation for more than ten years.

The rabbi first became aware of applicant's legal problems through the newspaper and then later from applicant himself. His understanding of applicant's crime was that he had unlawfully signed off on forms allowing people to resell medication while applicant was a clinic physician. The rabbi's involvement with applicant consisted of spending time with him during the trial as well as visiting him in prison. It was during this time, while applicant was in prison, that his son became bar mitzvahed, so

applicant and the rabbi studied the Bible together as well.

What impressed Rabbi Friedlander about applicant was his acceptance of the punishment he received. He noted that on one visit to applicant in prison, applicant said that this (meaning being in jail) is where I belong because of what I did.

Rabbi Friedlander said that the community has rallied around applicant and his family and have welcomed him warmly back into their fold. He also gave, as an example of applicant's giving nature, that applicant provided free medical care to a custodian and his family in the congregation who did not have medical insurance.

Applicant then took the stand and responded to questions posed by his attorney, the Department's representative and the panel.

Applicant's testimony began with a clarification of his current work scope and then proceeded to a chronology of his personal and work history. He wished to emphasize that his work at the ACSH is entirely non-clinical and that he has no direct contact with patients.

Applicant was married for the first time in 1973 and had two children with his wife Jane, who passed away following an accident in 1985. He remarried in 1988. Applicant said that he was very depressed at the time of his wife's death and that it still affects him to the present, but he was able to resume his regular activities pretty quickly. However, he did feel the loss of her income, which was a major factor in his life. His money problems

were exacerbated by the cost of putting his second wife through law school.

After his first wife died he supplemented his income with a number of moonlighting jobs in various locations. To further augment his income he answered an ad in the New York Times for a clinic where a doctor could make a lot of money. The ad gave him the impression that he could squeeze it in among his other pursuits and earn extra income.

He went to this clinic in January of 1991 and met its director, Mohammed Khan, who said that he was a doctor in Pakistan but had not yet gotten his license in the United States. Because of Dr. Khan's unlicensed status here, the clinic needed a physician to supervise the physician assistants who worked there in order to bill Medicaid. Applicant said that he inquired of Dr. Khan if this was a legal arrangement and was told that it was. He also was told that he could earn several thousand dollars a week from this job.

Applicant also checked with the Medical Society as to the legality of this and was told that it was proper. At some point into his employment at the clinic, however, applicant became suspicious of the billing and lab tests done in his name and quit.

Applicant concedes that his initial attitude upon being prosecuted was that he was not going to agree to plead guilty and maintained that he was duped into starting at the clinic, quitting when he found out that something was wrong. Applicant now says that he did not testify truthfully at his trial, attributing this

to his inability to admit to himself and others that he had committed a crime.

Applicant was originally ordered by the court to pay restitution of \$612,000, and his sentence enhanced because of his perjury at trial. Applicant continued to believe for some time that he had not done anything wrong and in fact felt persecuted. After an appeal his restitution was modified to \$82,000. By 1995 he had made full restitution.

Applicant testified that the nature of his perjury was that he said that he was unaware of the illegal acts going on at the clinic, just cognizant of some procedural irregularities. However, he in fact admitted that he was aware that the clinic couldn't possibly be operating on a legal basis.

Eventually he came to the realization that he had definitely committed a crime and betrayed the trust inherently placed in the holder of a medical license. He also came to accept the punishment he received in losing his license and saw that that was appropriate as well.

Applicant also addressed the perception of the witnesses who testified on his behalf (as well as that conveyed to the investigator) that it was grief over his wife's loss which caused him to commit his crime. He said that he saw no conscious relationship between her death and his acts other than the fact that he had a severe need for money, and believes that his motivation was misunderstood by others.

"It was greed on my part", he said, "promoted by...a real

need for more income, but that's hardly an excuse for stealing, which is what I did". He realizes that the fact that he didn't use the money to buy jackets or a home in Barbados doesn't make it better.

Applicant believes that he is a fit candidate for licensure now because of his acceptance of his wrongdoing and of what he has gone through. He is certain that there is no chance in the world that he would ever commit another crime. Not only is he a changed person, but the circumstances which drove him to his misconduct do not exist, and in any event would not compel him to commit those acts: "So both externally and internally there's not the slightest chance in the world that such an event or anything resembling (it) would ever occur". He further states that he is sure that he could be a competent practitioner again and has taught medical classes in the past several years at both a hospital and in a classroom setting.

Applicant concluded his direct testimony before the panel by saying that he is basically a good and honest person who did a stupid and dishonest thing. He used extremely poor judgment and it would never happen again.

On cross-examination, applicant further explored his reasons for committing the crime and why he believes he is now an ethical person. He also reiterated why he thinks he is still competent to practice medicine, which is that the techniques in his specialty, rheumatology, have not changed much since he was revoked in 1995. He envisions himself in private practice on a part-time basis but

recognizes that he is precluded from Medicaid and Medicare patients; he would also continue to help at the Rotacare charity he helped found in Long Island.

The panel further explored the issue of bereavement as the possible cause of his criminal conduct and why his witnesses seemed to attribute his behavior to that. Applicant could not account for that other than that those who knew him knew of the dislocation caused by his wife's death and naturally ascribed the events of 1991 to that.

In reconstructing the activities at the clinic, applicant testified again that he was duped and said for the first time that "Dr. Khan", the clinic director, was not in fact a doctor. Applicant, who did not seek therapy or counseling over this incident, does not believe that he was psychologically disturbed, just greedy.

Applicant was then questioned as to the practicality of his plans to return to practice, even on a part-time basis, given the almost certain inability of his obtaining Medicare or Medicaid reimbursement as well as the probable difficulty in obtaining any sort of third party reimbursement.

Applicant replied that he has always pictured himself as a doctor, and that while his current pursuit is a "wonderful thing", it does not replace his desire to practice medicine again. He could not be more specific about his future plans because he would have to investigate further what opportunities are available to him, but hasn't had the time or mental energy to do so. Applicant

said that he has been a medical student or doctor since 1968 and has no other way to regard himself.

The Department's representative in his closing remarks did not oppose applicant's petition for restoration. He expressed the belief that applicant possesses a sense of ethics which would preclude any future misconduct from occurring. He further thought that the usually applied criteria of remorse, reeducation and rehabilitation are issues which have been satisfactorily addressed by applicant.

Applicant's attorney cited various factors in arguing for applicant's restoration. The first was the quality of the individuals who testified on applicant's behalf, and the faith they displayed in him. This was especially true of Dr. Whelan, who placed her own job, and her organization's reputation on the line, by hiring him at the ACSH.

He also asserted that applicant represents two different people; the individual who in weakness succumbed to criminal behavior in trying circumstances, and the one who now fully understands the consequences of his actions and that any repeat of his past behavior is not a possibility.

Applicant has benefited from his time in jail, and is now happily remarried with a stable home life. These, and the factors cited above, should reassure the public that applicant can be trusted with the privilege of practicing medicine again in the State of New York.

The Department of Health in its letter on this matter

concluded that "there is no new information in applicant's petition which would cause us to recommend that the privilege of licensure to practice medicine in the State of New York be restored to applicant."

RECOMMENDATION

In evaluating applicant's petition for licensure, we apply the previously mentioned 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 petition that the legal burden is on applicant 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 1027, 73 N.E. 2d 904. Taking the above into consideration, we unanimously conclude that applicant has fulfilled these requirements and that therefore his petition for restoration be granted, albeit with conditions.

It is the recommendation of the chairperson, Dr. David Harris, and panel member Dr. Rafael Lopez, that applicant's license be restored, provided that applicant's practice be subject to the terms of probation set forth in the annexed Exhibit "A", which would limit him to supervised institutional settings only until 2004, with no private practice permitted until that time.

It is the belief of the undersigned and Dr. Lopez, in agreement with the public member of the panel, Anthony Santiago (whose views are set forth below), that applicant is genuinely

remorseful for his misconduct and has kept abreast of the profession with the substantial number of CME credits he has taken over the past five years in addition to his involvement with teaching. It is further to applicant's credit that such distinguished individuals as those who testified have come forward on his behalf. Nonetheless, the undersigned and Dr. Lopez feel that the conditions imposed upon applicant's return to practice represents an additional safeguard of the public safety.

Applicant's thought process with regards to his criminal conduct has clearly evolved over the years. From an initial denial of his culpability, applicant has belatedly come to understand that he was not an unwilling dupe in his fraudulent scheme, but rather that he turned a blind eye to questionable medical practice. He also now acknowledges that it was greed which motivated him and not simply grief over his wife's death.

It is the recommendation of the panel's public member, Anthony Santiago, that applicant's license to practice medicine in the State of New York be restored without restriction. In his view, applicant in all relevant aspects is worthy of re-entering the profession.

It is Mr. Santiago's belief that applicant in his current job is making a contribution to society, and the character witnesses who appeared for him were persuasive and inspired confidence in applicant's abilities. Applicant has kept abreast of the profession through his continuing education and teaching in a hospital setting. His conduct since the revocation of his

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license has been exemplary; there is no reason to deny applicant the ability to practice medicine again in New York.

In conclusion, the undersigned and Dr. Lopez recommend to the Board of Regents that applicant's petition for the restoration of his license be granted subject to the provisions set forth in Exhibit "A". It is the recommendation of Anthony Santiago that applicant's license be restored without restriction.

Respectfully submitted,

David Harris, M.D., Chairperson

Rafael Lopez, M.D.

Anthony Santiago, Public Member

David Harris M.D. 10/20/00  
Chairperson Dated



EXHIBIT "A"

TERMS OF PROBATION  
OF THE HEARING PANEL

GILBERT ROSS

CALENDAR NO. 18312

1. That applicant, during the period of probation, which shall run from the effective date of the Commissioner's Order to be issued in this matter until December 31, 2004, shall be in compliance with the standards of conduct prescribed by the law governing applicant's profession;
2. That applicant shall submit written notification to the Director, Office of Professional Medical Conduct (OPMC), Corning Tower, Room 438, Empire State Plaza, Albany, NY 12237, of any employment and practice, applicant's residence, telephone number, and mailing address and of any change in applicant's employment, practice, residence, telephone number, and mailing address within or without the State of New York;
3. That applicant, during the period of probation, shall practice medicine only in an Article 28 facility under the supervision of a New York State licensed physician;
4. That, during the period of probation, applicant shall not engage in the private practice of medicine;
5. That applicant shall have quarterly performance reports submitted to the DOH, addressed to the Director, OPMC, as aforesaid, from applicant's employer, evaluating applicant's performance in the practice of medicine in applicant's place of employment, said reports to be prepared by applicant's supervisor or employer;
6. That applicant shall submit written proof from the Division of Professional Licensing Services (DPLS), New York State Education Department (NYSED), that applicant has paid all registration fees due and owing to the NYSED and applicant shall cooperate with and submit whatever papers are requested by DPLS in regard to said registration fees, said proof from DPLS to be submitted by applicant to the Department of Health (DOH), addressed to the Director, OPMC, as aforesaid, no later than the first three months of the period of probation;
7. 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 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;

8. 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;
9. 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.