

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

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MEDICAL CONDUCT

February 5, 1997

Roberto DePaula, Physician  
200 East 64th Street  
Apt. 24-D  
New York, New York 10021

Re: Application for Restoration

Dear Dr. DePaula:

Enclosed please find the Commissioner's Order regarding Case No. 96-171-60R which is in reference to Calendar No. 0015379. 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

The University of the State of New York  
Education Department



IN THE MATTER

of the

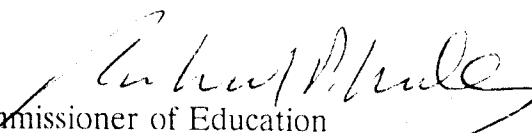
Application of ROBERTO DEPAULA  
for restoration of his license to practice  
as a physician in the State of New York

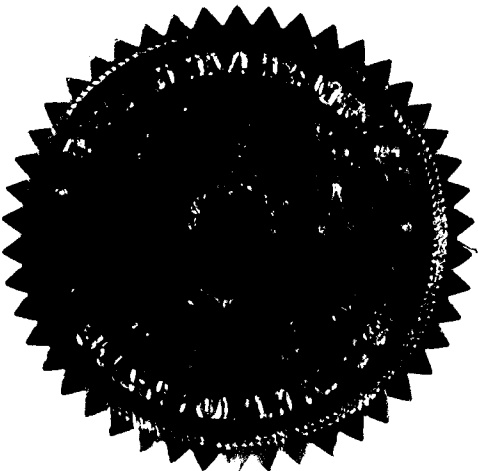
Case No. 96-171-60R

It appearing that the license of ROBERTO DEPAULA, 200 East 64th Street, Apt. 24-D, New York, New York 10021, to engage in the practice of medicine in the State of New York, having been revoked by action of the Board of Regents on October 18, 1991, and he having petitioned the Board of Regents for restoration of said license, and the Regents having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 20, 1996, it is hereby

ORDERED that the petition for restoration of License No. 124580, authorizing ROBERTO DEPAULA to practice as a physician in the State of New York, is denied, but that the execution of the order revoking said license is stayed, and said ROBERTO DEPAULA is placed on probation for a period of two years under the annexed 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 22 day of January, 1997.

  
Commissioner of Education



Case No. 96-171-60R

It appearing that the license of ROBERTO DEPAULA, 200 East 64th Street, Apt. 24-D, New York, New York 10021, to engage in the practice of medicine in the State of New York, was revoked by action of the Board of Regents on October 18, 1991, 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 20, 1996 it was

VOTED that the petition for restoration of License No. 124580, authorizing ROBERTO DEPAULA to practice as a physician in the State of New York, be denied, but that the execution of the order revoking said license be stayed, and said ROBERTO DEPAULO be placed on probation for a period of two under certain terms and conditions.

96-171-60R  
November 13, 1996

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: Roberto DePaula

Attorney: Amy T. Kulb

Roberto DePaula, 200 East 64th Street, Apartment 24-D, New York, New York 10021, petitioned for restoration of his medical license. The chronology of events is as follows:

- 07/16/75 Issued license number 124580 to practice medicine in New York State.
- 10/02/90 Charged with professional misconduct by Department of Health. (See "Disciplinary History.")
- 11/08/90 Charges amended.
- 08/16/91 Regents Review Committee recommended five years suspension last 57 months stayed, five years probation for said last 57 months.
- 10/18/91 Board of Regents voted license be revoked.
- 11/06/91 Commissioner's Order effective.
- 11/07/91 Temporary Restraining Order granted by Appellate Division of the Supreme Court.
- 12/24/91 Applied to State Education Department for reconsideration.
- 01/24/92 Stay denied, Temporary Restraining Order vacated.
- 01/24/92 Revocation effective.
- 03/09/92 Application for reconsideration denied.
- 03/11/93 Appellate Division, Third Department affirms Board of Regents decision.
- 06/14/93 Petition for restoration submitted.
- 08/11/95 Peer Panel restoration review.

- 05/20/96 Report and recommendation of Peer Review Panel.  
(See "Recommendation of the Peer Review Panel.")
- 11/13/96 Report and recommendation of Committee on the  
Professional. (See "Recommendation of the  
Committee on the Professions.")

Disciplinary History. (See attached report of the Regents Review Committee.) On October 2, 1990, The Department of Health charged Dr. DePaula with seven specifications of professional misconduct. On January 23, 1989, Dr. DePaula pled guilty to the crime of Offering a False Instrument for Filing in the First Degree, a Class E felony. Dr. DePaula was sentenced to five years probation and ordered to pay \$27,540 in restitution. Dr. DePaula had submitted a bill to Medicaid for services which he never rendered. As a result, Dr. DePaula was charged with professional misconduct in that he had been convicted of committing an act constituting a crime. Dr. DePaula was also charged with professional misconduct in that he committed unprofessional conduct when he willfully physically abused a patient, practiced the profession with gross negligence, practiced the profession negligently on more than one occasion, committed unprofessional conduct in that in his practice of psychiatry he evidenced immoral conduct when he had physical contact of a sexual nature with a patient, and he committed professional misconduct in that he practiced the profession fraudulently. On approximately ten occasions between 1983 and 1987, Dr. DePaula had sexual relations with a patient. Dr. DePaula billed said patient's husband and/or insurance company for nine visits in November 1982 and nine visits in December 1982 with said patient's oldest daughter. Dr. DePaula never treated said patient's oldest daughter. Dr. DePaula intentionally billed for services he knew he had not rendered. Finally, Dr. DePaula was charged with professional misconduct in that he committed unprofessional conduct when he failed to retain a record for at least six years. Dr. DePaula had failed to maintain medical records of his treatment of said patient.

On November 8, 1990, the Statement of Charges were amended to reflect that during 1981 and 1982 Dr. DePaula billed said patient's husband and/or insurance carrier for 98 visits with said patient's three year old daughter. Dr. DePaula had, in fact, treated the three year old daughter once a week in February, March, and April of 1982. Dr. DePaula intentionally billed said patient's husband and/or insurance company for services which he knew he had not rendered.

On January 28, 1991, the Hearing Committee of the State Board for Professional Medical Conduct found Dr. DePaula guilty of all of the charges with the exception of the charge of practicing the profession negligently on more than one occasion. The Committee recommended that Dr. DePaula's license be suspended for five years,

suspension stayed, and that he be placed on probation for five years under specified terms and conditions including practice limitation to an institutional setting as a salaried employee. On March 22, 1991, the Commissioner of Health recommended that the findings of fact and conclusions of the Hearing Committee be accepted but recommended that only the last four years of the five year suspension be stayed.

In its report dated August 16, 1991, the Regents Review Committee (Griffith, Liebowitz, McKennan) recommended that Dr. DePaula be found guilty of all of the charges. The Committee further recommended that Dr. DePaula's license be suspended for five years upon each specification of the charges, said suspensions to run concurrently, that execution of the last 57 months be stayed, and that he be placed on probation for 57 months under specified terms and conditions including practice limitation to work as a salaried employee in a supervised institutional setting.

On October 18, 1991, the Board of Regents voted to revoke Dr. DePaula's license. The Commissioner's Order became effective on November 6, 1991. Dr. DePaula instituted an Article 78 proceeding to contest the action of the Regents and on November 7, 1991 obtained a Temporary Restraining Order. On January 24, 1992, the Temporary Restraining Order was vacated, and the revocation became effective. On March 11, 1993, the Appellate Division, Third Department, of the New York Supreme Court denied Dr. DePaula's appeal. Dr. DePaula also applied for a reconsideration and on March 9, 1992, the Executive Director of the Office of Professional Discipline determined that the rearguments made by Dr. DePaula did not warrant referral to the Board of Regents.

Recommendation of the Peer Review Panel. (See attached Report of the Peer Review Panel.) The Peer Review Panel (Hannan, Riggins, Wu) met on August 11, 1995. In its report dated May 20, 1996, the Panel recommended that the revocation of Dr. DePaula's license be stayed and that he be placed on probation for two years under specified terms and conditions including a practice limitation to a structured salaried employment situation which did not involve the collection of fees for service or require Dr. DePaula's involvement with billing procedures.

Recommendation of the Committee on the Professions. On November 13, 1996, the Committee on the Professions (Duncan-Poitier, Muñoz, Porter) met with Dr. Roberto DePaula to consider his petition for the restoration of his license as a physician in New York State. Dr. DePaula was accompanied by Ms. Amy Kulb, his attorney, and Mrs. DePaula attended the meeting as an observer.

Dr. DePaula opened the meeting with the Committee describing the events that resulted in the loss of his license. He stated that in 1981 and 1982, when he was trying to serve the Hispanic community, he became overwhelmed and lost his judgment. Dr. DePaula said he was concentrating on being a compassionate physician and did not pay attention to his billing for services. He explained that his second error in judgment was that subsequent to the termination of treatment of an adult female patient he became involved with that patient and allowed the relationship to become intimate. Dr. DePaula said that subsequent to his problems with the Medicaid billings, he sought employment at Coler Memorial Hospital where he worked as a psychiatrist on the AIDS unit. However, upon his criminal conviction he lost his job as the Associate Medical Director of AIDS Service at Coler. Dr. DePaula explained that several months later he obtained a job as the medical director for the Catholic Home Bureau. There he had responsibilities for the social and medical needs of foster children, the biological families, and expectant women. Dr. DePaula described this work for the Catholic Home Bureau as the happiest time of his professional life. He worked at the Catholic Home Bureau approximately two years until his license was revoked as a result of the criminal conviction.

The Committee asked Dr. DePaula about his activities subsequent to the revocation of his license. Dr. DePaula explained that he has maintained good relationships in the international community and has been employed helping recent immigrants from South America find necessary medical services in the United States. Because he possesses knowledge of the United States medical system, he has been able to refer patients to the appropriate medical specialists. These activities have allowed him to observe the delivery of medical services which has kept him involved in the medical field.

The Committee questioned Dr. DePaula about his sexual relationship with a former patient. Dr. DePaula said "from the day it happened I knew I had made a tremendous mistake." He stated that he tried his best at that time to find a way to resolve the matter. He explained that he has subsequently examined himself to determine where he lost his objectivity and why he lost his sense of boundaries in dealing with a former patient.

Dr. DePaula suggested that some of the circumstances of his life at the time this conduct occurred created an opportunity for his lapse in judgment. Dr. DePaula explained that his father died just prior to this time and when he committed this error in judgment he was counseling children who were dying. Dr. DePaula said in reflecting on what happened he openly discussed all these circumstances with his wife and has come to better understand what occurred. Dr. DePaula stated that, when faced with these circumstances, he should have sought professional help.

The Committee asked Dr. DePaula if he realized that he could lose his license as a result of the relationship that had developed between himself and a former patient. Dr. DePaula explained that when this occurred he was more concerned about the ethical aspects of his mistake and the effect on the former patient. He stated that he did not really consider the possibility of the loss of licensure. Dr. DePaula said that he felt terrible about what happened and didn't know how to solve the problem. When asked by the Committee what would prevent such a problem from recurring, Dr. DePaula stated that the 15 years of pain that he has experienced would insure that such actions could never again happen. When asked what he had done to educate himself as to the professional boundaries between a physician and his patient, Dr. DePaula replied that he has become a much more humble and obedient person. He stated that he went to the library and began to read about the ethical aspects of the profession. He became interested in reading about this topic and continued to search out books and articles on ethical practice.

The Committee inquired whether the charges against him relating to Medicaid fraud were the result of billing errors, his lack of knowledge, or intentional conduct. Dr. DePaula explained that he was not aware of the importance of billing for the right services. He stated that it was his fault because he was not supervising properly and he should have made sure that billing was performed correctly. Dr. DePaula said he understood the objectives of the Medicaid program were to provide professional services to poor people and reimburse the providers of those services in accordance with the government approved payment schedule. He stated that he now understands it is the licensee's responsibility to make sure that proper services are provided and that the billing is proper for the services rendered. Dr. DePaula said that he is now aware of the importance of keeping proper records and following the regulations for reimbursement.

The Committee asked Dr. DePaula what he would do if his license were restored. Dr. DePaula stated that he would like to return to the Catholic Home Bureau and that he did not want a position where he would have to be involved in billing again. Dr. DePaula said that he enjoyed his work at the Catholic Home Bureau because he was able to concentrate on providing care for people who needed it.

The Committee has reviewed the entire record in Dr. DePaula's petition for restoration and finds that despite the fact that Dr. DePaula committed serious misconduct, he has demonstrated his remorse for what occurred and has made appropriate efforts to rehabilitate himself. The Committee finds Dr. DePaula's voluntary restriction of his practice after his problems with Medicaid billing to be a mitigating factor in consideration of his restoration petition. In addition, he practiced medicine successfully and without any complaints at two positions since



these Medicaid problems but prior to the revocation of his license.

In regard to the sexual relationship between Dr. DePaula and a former patient, the Committee finds that although his actions were professional misconduct, there are mitigating circumstances in that the relationship took place after treatment had terminated and the relationship was consensual in nature. While these factors do not excuse or condone the conduct, they do serve to differentiate such misconduct from other cases that come before the Committee on the Professions which involve the sexual abuse of patients. There are also other mitigating factors:

- 1) The Regents Review Committee that reviewed Dr. DePaula's misconduct did not recommend revocation.
- 2) More than nine years have passed since the misconduct in question.
- 3) The Peer Review Panel of the State Board for Medicine that reviewed this petition for restoration recommends that the revocation of Dr. DePaula's medical license be stayed.

In the matter of reeducation, the Committee notes that the Peer Review Panel was satisfied that the nature of Dr. DePaula's activities since the revocation has allowed him to stay involved in the field of medicine and that the Peer Review Panel was satisfied with the applicant's medical knowledge. After a complete review of the record and for the reasons set forth above, the Committee on the Professions concurs with the recommendation of the Peer Review Panel and unanimously voted to recommend to the Board of Regents that the order revoking Dr. DePaula's license be stayed and that Dr. DePaula be placed on probation for a period of two years under the terms of probation annexed to the Peer Review Panel Report and labeled Exhibit A, 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

Frank Muñoz

Joseph B. Porter