



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

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PUBLIC

April 7, 2000

Marshall Hubsher, Physician
12 Forest Drive
Sands Point, New York 11050

Re: Application for Restoration

Dear Dr. Hubsher:

Enclosed please find the Commissioner's Order regarding Case No. 00-41-60 which is in reference to Calendar No. 16964. 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: Nathan Dembin, Esq.
225 Broadway, Suite 1400
New York, New York 10007

The University of the State of New York
Education Department



IN THE MATTER

of the

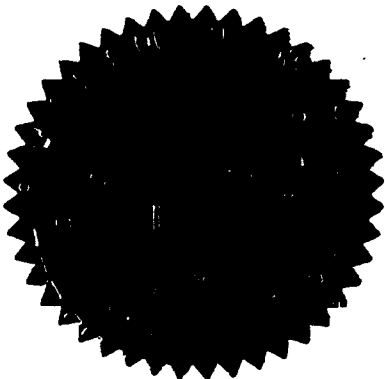
Application of MARSHALL
HUBSHER for restoration of his,
license to practice as a physician in
the State of New York.

Case No. 00-41-60

It appearing that the license of MARSHALL HUBSHER, 12 Forest Drive, Sands Point, New York 11050, authorizing him to practice as a physician in the State of New York, was revoked by action of the Administrative Review Board for Professional Medical Conduct effective May 16, 1995, and he having petitioned the Board of Regents for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 7, 2000, it is hereby

ORDERED that the petition for restoration of License No. 129123, authorizing MARSHALL HUBSHER 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 3rd
day of April, 2000.




Commissioner of Education

Case No. 00-41-60

It appearing that the license of MARSHALL HUBSHER, 12 Forest Drive, Sands Point, New York 11050, to practice as a physician in the State of New York, having been revoked by action of the Administrative Review Board for Professional Medical Conduct effective May 16, 1995, and he having petitioned the Board of Regents for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 7, 2000, it was

VOTED that the petition for restoration of License No. 129123, authorizing MARSHALL HUBSHER to practice as a physician in the State of New York, be denied.

Case Number 00-41-60
January 5, 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: Marshall Hubsher

Attorney: Nathan Dembin

Marshall Hubsher, 12 Forest Drive, Sands Point, New York 11050, petitioned for restoration of his physician license. The chronology of events is as follows:

10/22/76	Issued license number 129123 to practice medicine in New York State.
05/06/87	Charged with professional misconduct by Department of Health.
02/25/88	Regents Review Committee recommended suspension for five years, last 42 months stayed, and probation for 42 months.
05/25/88	Board of Regents recommended suspension for five years, last 42 months stayed, and probation for 42 months.
04/27/88	Commissioner's Order effective.
04/15/94	Charged with professional misconduct by Department of Health.
01/20/95	Hearing Committee of the State Board for Professional Medical Conduct voted restoration.
05/09/95	Administrative Review Board for Professional Medical Conduct sustained revocation.
05/16/95	Effective date of revocation.
05/17/96	Submitted application for restoration of physician license.
02/05/99	
03/01/99	
03/05/99	Peer Committee restoration review
11/28/99	Report and recommendation of Peer Committee. (See "Report of the Peer Committee.")

01/05/00

Report and recommendation of the Committee on the Professions.
(See "Report of the Committee on the Professions.")

Disciplinary History. (See attached disciplinary documents.) On May 6, 1987, the Department of Health charged Dr. Hubsher with three specifications of professional misconduct. The first specification was based upon his conviction of committing an act constituting a crime under New York State Law. On or about April 24, 1987, Dr. Hubsher pled guilty to submitting false claims to the Medicaid program for three and one-half years for approximately \$4,125 and making a false entry on and falsely altering a New York State Medical Assistance Program Prior Approval Request. He was sentenced to 4 months in jail and 5 years' probation and ordered to make restitution for \$25,569.55 and to return \$6,550 to two patients. The second specification of professional misconduct charged him with being convicted of committing an act constituting a crime under Federal Law. On or about December 23, 1982, Dr. Hubsher pled guilty to knowingly and intentionally possessing approximately 2,000 Methaqualone tablets. He was fined \$5,000. Lastly, Dr. Hubsher was charged with being in violation of Article 33 of the Public Health Law. On or about March 8, 1983, the Commissioner of Health found that Dr. Hubsher issued a prescription for a controlled substance with a false date. His right to issue triplicate prescriptions was revoked for 24 months and he was assessed a civil penalty of \$1,200. On February 25, 1988, a Regents Review Committee found him guilty of the three specifications of professional misconduct and recommended that his license be suspended for five years and that the last 42 months be stayed, at which time he be placed on probation for 42 months under specified terms and conditions. On March 25, 1988, the Board of Regents accepted the Committee's findings of fact, determination as to guilt, and recommendation as to penalty, and the Commissioner's Order was effective April 27, 1988.

On April 15, 1994, the Department of Health charged Dr. Hubsher with 13 specifications of professional misconduct, specifically, practicing the profession while his license was suspended, failing to maintain records, and practicing the profession fraudulently. A Hearing Committee of the State Board for Professional Medical Conduct concluded that Dr. Hubsher did provide treatment, issue prescriptions, formulate diagnoses, modify dosage and alter medication for many of his patients, including Patients A, B, C, D and AH, during the period of his suspension. The Committee also determined that Dr. Hubsher failed to keep any records reflecting the evaluation and treatment of his patients while he treated them. Lastly, the Committee found that Dr. Hubsher did not inform Patients A and AH that his license was suspended and that he intentionally and knowingly concealed that fact in order to mislead them to falsely believe he was licensed to practice psychiatry and could prescribe medications for their disorders. The Committee stated, "He manipulated circumstances to intentionally conceal he was practicing medicine during the suspension of his license. He purposely dissembled by signing bills as 'M. Hubsher, Certified Psychiatrist' or 'M. Hubsher, M.D.' and calling in prescriptions using the name 'M. Hubsher, M.D.,' 'Hubsher, M.D.,' or

'Merritt Hubsher, M.D.' for the purpose of making patients, insurance carriers, and pharmacies falsely believe that treatment and prescriptions were rendered by a licensed physician." The Committee also felt that Dr. Hubsher perjured himself by falsely testifying that he gave his brother, Merritt Hubsher, M.D., a check for \$30,000 for being available to prescribe medications to his patients during his suspension but noted that he never claimed a business tax deduction nor issued an IRS Form 1099 to his brother for income paid. The Hearing Committee voted to revoke his license.

Dr. Hubsher appealed the Committee's determination to an Administrative Review Board for Professional Medical Conduct. On May 9, 1995, the Review Board sustained the Hearing Committee's determination that Dr. Hubsher had practiced medicine while suspended, had failed to maintain adequate records, and had practiced medicine fraudulently and sustained the Committee's determination revoking his license. The revocation was effective May 16, 1995.

On May 17, 1996, Dr. Hubsher submitted an application for restoration of his physician license.

Recommendation of Peer Committee. (See attached Report of the Peer Committee.) The Peer Committee (Harris, Cordice, Jordan) convened on February 5, March 1, and March 5, 1999. In its report dated November 28, 1999, the Committee voted unanimously to recommend that Dr. Hubsher's application for restoration of his physician license be denied.

Recommendation of the Committee on the Professions. On January 5, 2000, the Committee on the Professions (Duncan-Poitier, Porter, Muñoz) met with Dr. Hubsher to consider his application for restoration. Nathan Dembin, his attorney, accompanied him.

The Committee asked Dr. Hubsher to explain the events that resulted in the loss of his license. He replied that in 1980 he was out of his residency for only a year and one-half and was renting office space with another psychiatrist. He reported that the psychiatrist left, and he had to pay all the rent. He said that he placed an advertisement in the newspaper and got two other physicians to share the space and rent. Dr. Hubsher indicated that about two months later, DEA officials came into the suite and found Quaaludes in those doctors' offices. He reported that they were arrested and since the lease was in his name, he was arrested also. The Committee asked if he was aware of the Quaaludes. He replied, "No. I should have known, but didn't."

Dr. Hubsher said that a second incident involved a patient who was taking Valium and planning to leave for a vacation. He indicated that she asked him for another prescription so that she would have enough medication to last for the entire trip. Dr. Hubsher said that the time period had not yet elapsed for issuing another prescription and that he told her initially that he couldn't postdate the script, adding, "although this is routinely done in hospitals." He indicated, however, that he did give her a postdated prescription but told her not to fill it until the date listed on the script. Dr.

Hubsher told the Committee that he was concerned "she might have bad side effects if she stopped taking the medication." He reported that she went to a pharmacist and attempted to fill the prescription before the date listed on the script.

Dr. Hubsher said that a third incident involved two of his Medicaid patients who suffered from agoraphobia. He indicated that they could find no doctor, other than himself, who was willing to come to their homes and take them to places they feared. He said that Medicaid reimbursed only \$30 for each visit and that the patients "felt bad and offered to pay for time and gas." He said that one gave him an extra \$25 and the other gave him an extra \$30 per visit over a period of two to three years. He indicated that he was charged with Medicaid fraud and that his suspension was really based only on that conviction.

The Committee asked Dr. Hubsher to focus on the events leading to the eventual revocation of his license – not why his license was initially suspended. In response, Dr. Hubsher indicated that while his license was suspended, he continued psychotherapy with some of his patients. He reported that a monitor from the State Education Department checked on him weekly and that Dr. Grossman of the Committee for Physicians Health of the New York State Medical Society also monitored him. He said that they made sure he took down the sign from his office door reflecting that he was an "M.D." Dr. Hubsher said that his brother was also a psychiatrist who covered for him when he was on vacation. He told the Committee that he felt he could continue to see his patients strictly for psychotherapy and that if they needed prescriptions, they could speak to his brother on the telephone. He said, "That's what happened."

Dr. Hubsher indicated that most of his patients wanted to continue psychotherapy with him during the period of his suspension even though he couldn't prescribe medication for them. He stated, "I told every one of them. Dr. Grossman also called them." He reported that many of his patients did leave so that they could obtain insurance reimbursement or receive medication directly from the psychiatrist they would be seeing. He said that for some of his patients he wrote prescriptions for a six-month period prior to his suspension. Dr. Hubsher said that he checked with the State Board and with his Education Department monitor and they said it was O.K. He indicated that he completed his probationary period in 1993 and practiced without restriction until 1995 when the Department of Health revoked his license.

The Committee asked Dr. Hubsher if he knew why the Department of Health investigated him. He replied that his brother had seen a patient who had a bad reaction to a medication his brother had prescribed. He said that they investigated his brother who didn't have a record of having written the prescription. Dr. Hubsher told the Committee that his brother denied calling in the prescription and when asked who did call it in, Dr. Hubsher reported that his brother said, "It's possible my brother may have called it in." Dr. Hubsher said that the Department of Health then went back to checking all his brother's records, and that in preparation for this investigation, his brother asked him for a list of the patients that he was seeing during the suspension and their medications. Dr. Hubsher stated, "I gave him the list and the refills I had given when I

was licensed." He said, "I saw them for psychotherapy. My brother gave prescriptions." Dr. Hubsher reported that his brother turned in "my list of 42 patients" and the Department of Health "just assumed I called in those prescriptions." He indicated that he had all of those patients either testify at his hearing or send in statements saying that he didn't call in prescriptions for them. Dr. Hubsher said that the Department of Health failed to produce a record of any prescriptions that he allegedly prescribed while suspended. Dr. Hubsher said that his brother received only an Administrative Warning on the condition that he testify against him. Dr. Hubsher reported that his brother told the Department of Health that he (his brother) only wrote five or six of the prescriptions and that the rest must have been written by him. In his own defense, Dr. Hubsher said, "Most of them (his psychotherapy patients) weren't even taking medications any more."

The Committee asked if he was aware of what his brother was doing. Dr. Hubsher replied, "I only gave my brother's phone number to my patients. Most of it was between my brother and the patients." He said that his Education Department monitor also knew what he was doing and told him and his brother that his brother would be allowed to call in prescriptions as long as he kept a record and spoke to the patients.

The Committee asked Dr. Hubsher what he thought happened. He responded that he felt the eventual revocation was provoked, in part, by three forms he had sent in to insurance companies, while his license was suspended, which contained medical diagnoses. He reported that he had asked his monitor if he could fill out the insurance forms, but he indicated that she said most would not pay if he was not licensed. Dr. Hubsher said that he found two insurance companies that would continue to pay, but that he did not indicate on the insurance forms that he was no longer licensed.

The Committee asked, "What do you take responsibility for?" Dr. Hubsher replied that he shouldn't have gotten his brother involved as his brother's main office was in New Jersey. He said that he should have gotten an independent psychiatrist. Dr. Hubsher said that he should have made certain that his brother kept proper records. He stated, "I shouldn't have put down a medical diagnosis on the forms, even though they said it was O.K." He said, "I apologized to every one of my patients. I have been suffering for the past 20 years."

The Committee told Dr. Hubsher that his account does not agree with the findings of the Department of Health and asked for his comments. He said that only one patient testified at the hearing against him whereas seven testified for him and that his other patients submitted affidavits on his behalf. Dr. Hubsher indicated that 98% of the time he spent with his patients during his suspension was talk therapy, but that for those two patients, for whom he submitted the insurance forms, he conducted relaxation exercises and took their blood pressure. He said that he did not think you needed a license to do that. The Committee asked for his reactions to the Peer Report, which indicated that his peers doubted his veracity. Dr. Hubsher replied that he thought the hearing went very well and that the Peer Committee didn't give any indication that they doubted what he was telling them. Mr. Dembin commented that he was not sure how

they derived that decision based on the testimony and affidavits and felt "they were just repeating what DOH had said."

Dr. Hubsher said that he was not trying to defraud his patients. The Committee noted, however, that the Peer Committee still reached the conclusion that he was trying to undermine the effects of his suspension. Dr. Hubsher stated, "I never thought I was scheming. I only thought about doing the best for my patients. I can't admit to what I didn't do." He reported that he gave his patients the option of continuing with him or seeing someone else. He said that many wanted to continue with him as they were deeply into therapy and that it could have been detrimental stopping therapy or changing therapists. In response to the Committee's question as to whether he wrote or called in any prescriptions during the time of his suspension, Dr. Hubsher said, "I definitely did not."

The Committee asked if the Education Department monitor testified at his hearing. Dr. Hubsher replied that he hired an investigator but couldn't locate her. He reported that the Education Department would not give him her last known address. He reiterated that his brother admitted calling in four to six prescriptions but he did not know which ones they were or who they were for. When asked about the North Shore Health Center that he set up, Dr. Hubsher said that he paid his brother \$30,000 to be the medical director. He indicated that his brother was supposed to see his patients, but didn't. When asked how he was currently making a living, Dr. Hubsher replied, "Barely." He said that he was on the verge of bankruptcy and was only seeing 3 or 4 patients for psychotherapy. He indicated that he would love to have more patients, but potential patients are concerned about reimbursement issues and he is trying to be very careful to avoid what happened before. Regarding the Peer Committee's concern that he had not done voluntary counseling in his community, Dr. Hubsher said that he called agencies years ago, but they said that he wouldn't be covered under their malpractice insurance.

The Committee asked Dr. Hubsher if there was anything else he'd like to add. He said that he was concerned that the Peer Committee questioned whether his character had changed. He pointed out that Dr. Grossman, who treated and monitored him, said that his character had matured and he had grown more conscious of rules. Dr. Hubsher stated, "I've definitely matured." He reported that he was married in 1988, forcing him to become more responsible, and that his children were born in 1992 and 1995. He said that he tries to be as good a father as possible, e.g., he attended a school board meeting the previous night until very late. Dr. Hubsher said that in the 1980s, he took risks and was not as conscientious about rules and regulations. He said that he is now different. Mr. Dembin presented some comments to support Dr. Hubsher's application and pointed out that there was never a hint of any patient harm or abuse.

The overarching concern in all restoration cases is the protection of the public. A former licensee petitioning for restoration has the significant burden of satisfying the Board of Regents that licensure should be granted in the face of misconduct that resulted in the loss of licensure. There must be a clear preponderance of evidence that

the misconduct will not recur and that the root causes of the misconduct have been addressed and satisfactorily dealt with by the petitioner. The Committee on the Professions (COP) believes it is not its role 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 conclusion of the Peer Committee that Dr. Hubsher has not made a compelling case for the restoration of his license. The Peer Committee noted that his license was suspended on the basis of three separate serious offenses directly related to his practice and believed that Dr. Hubsher "schemed before, during and after said suspension to see to it that there was little, if any, disruption to his practice." The Peer Committee concluded that such conduct was indicative of a serious underlying problem, and was concerned, as was the COP, that Dr. Hubsher "produced no professional testimony as to what the underlying problem was or as to his current state of mind." Regarding the Medicaid fraud conviction, Dr. Hubsher said he was unaware that he could not receive money from both Medicaid and a patient. Regarding his Federal conviction, Dr. Hubsher said he was unaware that the physicians sharing his suite had a large number of Quaaludes. Regarding the postdated prescription, Dr. Hubsher said that he told the patient not to fill it until the date listed. He told the COP that his suspension was really based upon the Medicaid fraud, seemingly dismissing the other two charges, as he did in his application for restoration.

The COP believes that the initial disciplinary action, resulting in the suspension of his license, should have been a "wake-up call," especially, for a physician just starting to practice. Dr. Hubsher said that he was careful and checked everything out with his monitors from the Education Department and Committee on Physicians Health before giving his patients six-month prescriptions, setting up a separate business entity with his brother as medical director, and enlisting his brother's help to provide prescriptions for his patients, if needed. Yet, in his closing statement to the COP, Dr. Hubsher stated that in the 1980s he took risks and was not as conscientious about rules and regulations as he is now. Dr. Hubsher said that he set up a separate business entity with his brother to serve as medical director so that his brother could see his patients. But, he also said that he only provided his patients with his brother's telephone number in New Jersey and gave no indication to the COP that his brother would actually visit his office to meet with patients. Such varying responses raise questions as to the real motivation of Dr. Hubsher's actions and the COP believes they illustrate his lack of clear professional judgment.

Except for the postdated prescription incident, Dr. Hubsher used the excuse of being "unaware" and gave the COP the impression that his brother's lack of correct procedure was his brother's problem. Although stating that he continually had his patients' best interests in mind, the COP finds that he failed to acknowledge the possible serious consequences his actions may have had on his patients. He said that his patients were harmed because they could no longer have him as a psychiatrist. However, Dr. Hubsher expressed no regret for not making sure that his patients were receiving appropriate medications from either his brother or other physicians.

Additionally, he said that he gave some patients a six-month supply of their medications. Although acknowledging that such activity may be legal, the COP questions the professional judgment he exercised without insuring that appropriate monitoring of the medications occurred during that lengthy period. The COP likewise believes that Dr. Hubsher's remorse was not centered upon the potential to harm for his patients, but rather his personal interests. Looking back, Dr. Hubsher gave the COP a list of things he should have done; however, he presented no compelling evidence to demonstrate that in future situations his professional judgment might not again be compromised.

Therefore, after a complete review of the record and its meeting with him, the Committee on the Professions voted unanimously to concur with the recommendation of the Peer Committee that Dr. Hubsher'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

Joseph B. Porter

Frank Muñoz



The University of the State of New York

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

-----X

In the Matter of the Application of

MARSHALL HUBSHER

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

REPORT OF
THE PEER
COMMITTEE
CAL. NO. 16964

-----X

Applicant, **MARSHALL HUBSHER**, was authorized to practice as a
physician in the State of New York by the New York State Education
Department.

PRIOR DISCIPLINARY PROCEEDING

On 3/25/88 The Board of Regents suspended applicant's medical
license for a period of 5 years, stayed the last 42 months of the
suspension and placed applicant on probation for 42 months. The
suspension was based on applicant's 1982 Federal criminal
conviction for possession of 2,000 quaaludes, a 1983 Nassau County
conviction for issuance of a triplicate prescription with a false
date and a 1987 conviction for Medicaid fraud. The period of
suspension ran from 4/27/88 until 10/26/89. After the suspension
was terminated, applicant was on probation from 10/27/89 through
4/26/93.

The Department of Health, revoked applicant's license to practice medicine effective 5/16/95. In essence, applicant was found guilty of providing medical treatment to a number of patients during the time his license was suspended. Applicant diagnosed and prescribed medication and telephoned prescriptions to pharmacies and disguised the fact that he was the prescriber by falsely identifying his brother Merritt Hubsher (also a psychiatrist) as issuing the prescriptions. The Hearing Committee concluded that providing treatment to patients required that applicant maintain records for that treatment, which he failed to do. The Hearing Committee also found applicant had practiced fraudulently by failing to inform 2 patients that his license was suspended.

THE APPLICATION

On May 17, 1996 applicant petitioned for the restoration of his license to practice as a physician in the State of New York. In his petition applicant states a number of times that he never practiced medicine during his license suspension, never prescribed medication during that suspension and that there was no evidence in the Office of Professional Medical Conduct (OPMC) hearing that he ever practiced medicine while his license was suspended. He also states several times that OPMC did not have jurisdiction over him when the alleged illegal practice took place. He states that OPMC ignored his witnesses and evidence.

Applicant states that the original discipline was based on

his Medicaid Fraud conviction. He does not mention the other two offenses. Applicant states a number of times that he has never had a malpractice case against him or a patient complaint filed against him and that he has never harmed a patient. Applicant states that he made full restitution in the Medicaid fraud case to both the government and the patients. He states that he was not initially aware that it was illegal to accept payment from both the government and the patient. Applicant also states that after the suspension of his license he was found to have complied with that suspension, and with the probation that followed, by both the Education Department and by his State Medical Society monitor, Dr. Grossman. He practiced medicine from 1989 to 1995 without any problems in his practice. Applicant says he has never been a danger to the public. Applicant also details his efforts at continuing education regarding both practice and ethics. Applicant states he yearns to return to practice so that he can help his patients, many of whom only wish to be treated by him.

INVESTIGATIVE INTERVIEW

Some issues were discussed in the investigative interview that were not addressed in the application. Regarding the Medicaid fraud conviction applicant stated that he was sentenced to four months in jail and served 2/3 of that time.

Applicant went on to explain that in 1982 he had rented a suite and sublet offices to two other psychiatrists. Those psychiatrists had been found to have had illegal amounts of

Quaaludes in their possession. Applicant stated that because the rental agreement was in his name, he was also arrested, and he had pled guilty to a misdemeanor. Applicant further explained that the 1983 conviction regarding the prescription involved him renewing a sleeping medication prescription for a patient who was going away on vacation. The patient had planned on filling the prescription while she was away. However, she instead went to the pharmacy to try and fill it before she left on vacation. As applicant had post-dated the prescription and it was not yet renewable applicant was arrested.

During the period of suspension, applicant stated that he did set up the North Shore Health Center. He stated that his brother Merritt Hubsher, MD, Psychiatrist agreed to be the Director. Applicant stated that he paid his brother \$30,000 to be the Director. According to applicant, there was an agreement between the two brothers that Merritt Hubsher would speak with the patients applicant was seeing in psychotherapy and order any necessary prescriptions. Applicant explained that in an unrelated matter, Merritt Hubsher was being investigated by OPMC for lack of adequate records pursuant to a patient complaint. Applicant stated that he had given his brother a list of the patients he was treating in psychotherapy and their medications. During this investigation by OPMC, Merritt gave that list to OPMC and they in turn used it as proof that applicant was practicing medicine. Applicant stated that Merritt did testify at applicant's hearing

with OPMC and did admit to calling in about six prescriptions and writing a few prescriptions and mailing them to patients.

PEER PANEL REVIEW

On February 5, March 1 and March 5, 1999, the Peer Panel met to review the application in this matter. Applicant appeared and was represented by Nathan L. Dembin, Esq. The Department was represented by Allison Berkwitz, Esq.

The Chairperson opened the meeting by stating that the Peer Panel had read the full application and all supporting documentation before the meeting. (This includes the additional packet submitted by applicant before the meeting). The Chairperson had everyone in the meeting introduce themselves.

Applicant then made an opening statement.

Applicant continued by calling witnesses on his behalf. The first witness was [REDACTED]. Mr. [REDACTED] told the panel that applicant had gone out of his way to help him. Mr. [REDACTED] suffered from claustrophobia and a fear of travel on open water. Applicant not only treated Mr. [REDACTED], he accompanied him to the World Trade Center where they went on the elevators to the observation deck. They also went on the Long Island Railroad, the Circle Line and the Staten Island Ferry.

Mr. [REDACTED] stated that he was not treated by applicant during the 18 months of applicant's suspension from licensure nor did applicant prescribe any medication for him during that period. Mr. [REDACTED] did not see Merrit Hubsher either. Mr. [REDACTED] believes

applicant is a changed individual today and strongly supports his relicensure.

Rabbi Shalom Paltiel has known applicant for seven years and is his spiritual counselor. He believes applicant has grown and matured during this time due in large part to having married and had children. He believes applicant to be a good man, well intentioned and honest. Applicant attends synagogue more regularly now and is much more involved in the community than he was when he was younger and single. Rabbi Paltiel knows applicant's license was suspended for medicaid fraud and was revoked for practicing during this suspension. He believes applicant is remorseful for his past misdeeds.

██████████ was a patient of applicant. Mr. ██████████ had seen two psychiatrists before applicant but they did him no good. Applicant helped Mr. ██████████ greatly with his depression between 1993 and 1995. He fully supports restoration of licensure.

██████████ was a patient of applicant. He had seen other psychiatrists before he began with applicant in 1979 or 1980 but those others did not help. Mr. ██████████ continued to see applicant during the period of applicant's suspension from licensure and applicant never prescribed any medication for him during this period. He got his medication from his regular doctor. Mr. ██████████ continued in treatment with applicant until the revocation of applicant's license in 1995. He believes that applicant is remorseful because he has disappointed his patients. He stated

that when he first started in treatment with applicant he could not function in society but by 1995 he felt he did not need to go to another psychiatrist because applicant had helped him so much. He believes applicant should be reinstated as a psychiatrist.

At our meeting on March 1, 1999 applicant introduced additional material (16 pages) which is made a part of the record herein.

Applicant then called Lilian Hubsher, applicant's mother, as the first witness of the day. Mrs. Hubsher stated that she believes applicant is more mature now than he was in the early 1980's because he was single then and is married with children now and more involved with the synagogue and the community.

She went on to say that because of all that has happened Merritt Hubsher is now estranged from her and the rest of her family. Mrs. Hubsher believes the \$30,000.00 applicant gave Merritt was not a loan but was pay for Merritt to be medical director of applicant's practice and Merritt never gave the \$30,000.00 back to applicant. She went on to say that Merritt agreed to call in prescriptions for applicant's patients and on one occasion she saw Merritt call in a prescription for one of applicant's patients, at applicant's request, from the Concord Hotel. While Mrs. Hubsher believes that Merritt testified falsely at applicant's OPMC hearing, she did not attend said hearing and bases her belief largely on what applicant has told her.

Applicant then spoke to the Panel and repeated much of what

was stated in his application and in his investigative interview. He stated he started his practice in 1978 and that it was the medicaid charges that led to the suspension of his license in 1988. He (incorrectly) stated that the other two offenses were not part of that proceeding. He stated that he never ordered, used or dispensed Quaaludes.

Applicant went on to say that he voluntarily went to the Medical Society and they referred him to Dr. Grossman whom he began to see in 1986 or 1987 and continued to see until 1993 or 1994. They discussed why applicant seemed prone to take risks and endeavored to have applicant become a more careful, responsible person and physician.

Applicant said that Dr. Peter Stein monitored his practice during his probation and filed quarterly reports with the State and there were no problems then nor in the two years he was in practice thereafter.

Applicant went on to say that he paid his brother Merritt \$30,000.00 to be medical director of the North Shore Health Center and that psychotherapy patients of applicant (while applicant was suspended) would be referred to Merritt if they needed medications. He stated that Merritt failed to keep records for these patients and that is what caused the whole problem in that matter. He added that before his suspension took place he had given some of his patients six months of refills on their medication so they would have medication for that time period.

Applicant stated that he is remorseful for the lack of judgement he demonstrated in 1988 in getting his brother involved with his patients during his license suspension. He also regretted putting a medical diagnosis (Paroxysmal Artrial Tachycardia) on an insurance form during said suspension.

Applicant said he is also remorseful for the suffering of his patients because they cannot see him for treatment.

Applicant stated he has done 320 hours of CME and reads all the journals.

Applicant said that he has seen one or two suicidal patients on a voluntarily basis as a psychotherapist since his license was revoked and that he did help them.

Applicant stated that his wife is and has been very supportive of him.

Under questioning by Ms. Berkwit applicant repeated that only the medicaid fraud was involved in the suspension of his license. He stated that he has three psychotherapy patients now and if they need medication they get it from Dr. Jimmy Chen who comes to applicant's office for one hour a week. If his license is not restored applicant will continue with his psychotherapy practice and also live on investments.

Under questioning by the panel applicant stated that while his license was suspended he was still treating the same patients as before it was suspended and the therapy was the same except that he could not prescribe medication. He said he did not think

it necessary to keep records for this treatment because he was not practicing medicine. He said if his brother had only kept records of the patients his brother had prescribed for, there would not have been a problem.

Applicant stated that his brother testified that the \$30,000.00 was a loan and the Health Department believed him. When asked if the \$30,000.00 was a business payment to his brother, why was there no business deduction made for it, applicant could not offer an explanation. Nor could applicant explain why he had not issued a 1099 form for said \$30,000.00 payment to his brother.

When asked about his treatment with Dr. Grossman applicant stated that Dr. Grossman's diagnosis of applicant was mild to moderate impulsive disorder with possible antisocial tendencies. He said Dr. Grossman referred to it as white tower thinking, that applicant thought that he did not have to be regulated by ordinary government agencies. Applicant said that he has become much more careful about what he does.

When asked why he does not treat more patients if he really wants to help people, applicant stated that he did not want to get in trouble because it might look like he was practicing medicine. He also stated that most patients want medication. Applicant went on to say that he wants his license back so he can prescribe for his patients.

Applicant was asked why he choose his brother, whose practice

was in New Jersey, to prescribe for his patients, when applicant knew so many prominent psychiatrists in the area around his practice. Applicant answered that his brother covered for applicant when applicant went on vacation and therefore his brother knew many of the patients. He said he should have seen to it that his brother actually saw the patients and kept records. He also said he should have sent his patients to other psychiatrists.

Applicant conceded that during his suspension he had put things down on the insurance claim forms that could be seen as the practice of medicine.

Applicant stated that he is remorseful for the suffering he has caused himself and his patients and because he has hurt the profession. He apologized to his patients and to other physicians. He also regrets ever having gotten his brother involved because now they do not speak to one another. After questioning of applicant was concluded Mr. Dembin read several quotes from Dr. Grossman's prior testimony.

The parties then made closing statements.

RECOMMENDATION

We unanimously recommend that the application herein not be granted and that the revocation of applicant's license to practice medicine in the State of New York not be stayed.

This matter is not now, nor has it ever been, about applicant's professional ability. He is obviously a gifted

therapist and his CME is acceptable. However, given his ability we cannot understand why applicant has not, and is not, volunteering his time to treat people in his community. He has apparently little else to occupy his time. He is only treating three patients in his psychotherapy practice and is otherwise living from his investments. We cannot reconcile this with his continually saying how much he wants to help people.

Regarding applicant's rehabilitation we have not heard any professional testimony about what has changed in applicant's character from the time his problems began in 1980. Within a very short time of starting his practice applicant committed three serious offenses directly related to his practice. Then when disciplinary action (in the form of an 18 month license suspension) was taken against his license as a result of these three offenses, applicant schemed before, during and after said suspension to see to it that there was little, if any, disruption to his practice. This type of conduct is indicative of a serious underlying problem. Yet applicant produced no professional testimony as to what the underlying problem was or as to his current state of mind.

Applicant states that he is remorseful for his lapses of judgement in 1988 because it has caused hardship for himself, for his family and for his patients and because it has harmed the profession. However it is clear from his petition and from his statements before this panel that he sees himself as a victim set

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upon by the Department of Health with the help of his brother.

In light of foregoing we have to say that the record herein does not warrant that this panel recommend restoration of licensure in this matter.

Respectfully submitted,

Dr. David Harris, Chairman

Dr. John W.V. Cordice

Lois Jordan (Public Member)

David Harris MD

Chairperson

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Dated