



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

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MAY 04 2001

OFFICE OF PROFESSIONAL
MEDICAL CONDUCT

May 2, 2001

Cesar Omar Rodriguez, Physician
1735 Madison Avenue - Apt.6A
New York, New York 10029

Re: Application for Restoration

Dear Dr. Rodriguez:

Enclosed please find the Commissioner's Order regarding Case No. 01-18-60 which is in reference to Calendar No. 18296. 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

Gustave Martine

Gustave Martine
Supervisor

The University of the State of New York
Education Department



IN THE MATTER

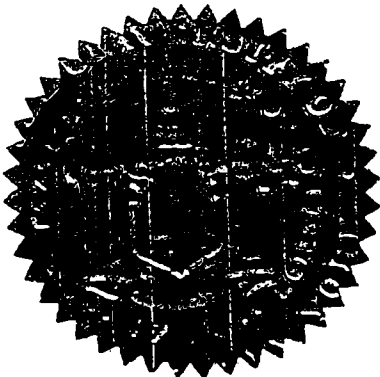
of the

Application of CESAR OMAR RODRIGUEZ a.k.a OMAR CESAR RODRIGUEZ for restoration of his license to practice as a physician in the State of New York.

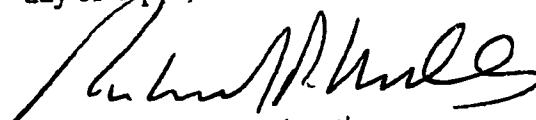
Case No. 01-18-60

It appearing that the license of CESAR OMAR RODRIGUEZ a.k.a OMAR CESAR RODRIGUEZ, 1735 Madison Avenue, Apt. 6A, New York, New York 10029, to practice as a physician in the State of New York, was revoked by action of the Administrative Review Board of the State Board for Professional Medical Conduct effective November 2, 1994, and he having petitioned the Board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 recommendation 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. 154467, authorizing CESAR OMAR RODRIGUEZ a.k.a. OMAR CESAR RODRIGUEZ 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 27th day of April, 2001.


Commissioner of Education

-Case No. 01-18-60

It appearing that the license of CESAR OMAR RODRIGUEZ a.k.a OMAR CESAR RODRIGUEZ, 1735 Madison Avenue, Apt. 6A, New York, New York 10029, to practice as a physician in the State of New York was revoked by action of the Administrative Review Board of the State Board for Professional Medical Conduct effective November 2, 1994, 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 recommendation 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. 154467, authorizing CESAR OMAR RODRIGUEZ a.k.a OMAR CESAR RODRIGUEZ to practice as a physician, be denied.

Case number 01-18-60
August 15, 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: Cesar Omar Rodriguez
a.k.a Omar Cesar Rodriguez

Not represented by counsel.

Cesar Omar Rodriguez, 1735 Madison Avenue, Apt 6A, New York, New York 10029, petitioned for restoration of his physician license. The chronology of events is as follows:

- 06/24/83 Issued license number 154467 to practice as a physician in New York State.
- 04/25/91 Pled guilty to one count of Attempted Grand Larceny in the third degree and one count of Conspiracy in the fifth degree.
- 03/09/94 Charged with professional misconduct by New York State Department of Health. (See "Disciplinary History.")
- 08/03/94 Determination and Order of Hearing Committee of the State Board for Professional Medical Conduct revoking license.
- 10/26/94 Decision and Order of the Administrative Review Board for Professional Medical Conduct revoking license.
- 11/02/94 Effective date of revocation.
- 06/30/97 Submitted application for restoration of professional license.
- 11/19/99 Peer Committee restoration review.
- 04/18/00 Report and recommendation of Peer Committee. (See "Report of the Peer Committee.")
- 08/15/00 Report and recommendation of Committee on the Professions. (See "Report of the Committee on the Professions.")

Disciplinary History. (See attached disciplinary documents.) On April 25, 1991, Dr. Rodriguez pled guilty to one count of Attempted Grand Larceny in the third degree and one count of Conspiracy in the fifth degree. The charges alleged that between December 8, 1988 and February 23, 1989, Mr. Rodriguez, in agreement with other persons, signed prescriptions and prior authorization forms for the dispensation of medical equipment, which he knew was not needed by patients and for which he intended that the Medicaid program would be billed in excess of \$3,000. At the time that the guilty plea was entered into, the presiding judge indicated that a conditional discharge and a fine of \$2,500 would be imposed. Between the time of the guilty plea and the initial sentencing date, the Attorney General's office became aware that Dr. Rodriguez was employed in another Medicaid facility and was signing prescriptions in the name of another physician. The sentence imposed was increased to five years' probation and a fine of \$2,500.

On March 9, 1994, the New York State Department of Health charged Dr. Rodriguez with one specification of professional misconduct based on his conviction of committing an act constituting a crime under New York State law. On August 3, 1994, a Hearing Committee of the State Board for Professional Medical Conduct sustained the specification of professional misconduct and issued a Determination and Order revoking Dr. Rodriguez's professional license. Dr. Rodriguez requested a review of the Hearing Committee's findings and determination, stating that he felt he was denied due process by the refusal of an adjournment on the hearing date. On October 29, 1994, the Administrative Review Board issued a Decision and Order sustaining the findings and decision of the Hearing Committee. On November 2, 1994, the order revoking his license became effective.

On June 30, 1997, Mr. Rodriguez submitted an application for restoration of his license.

Recommendation of the Peer Committee. (See attached Report of the Peer Committee.) On November 19, 1999, the Peer Committee (Kase, Roman, Robinson) met with Mr. Rodriguez to consider his application for restoration. In its report, dated April 4, 2000, the Committee unanimously recommended that Mr. Rodriguez's application for restoration be denied.

Recommendation of the Committee on the Professions. On August 15, 2000, the Committee on the Professions (Muñoz, Alexander, Porter) met with Dr. Rodriguez to discuss his application for restoration. An attorney did not accompany him.

The Committee asked what led to the revocation of his license. With the Committee's consent, Dr. Rodriguez read from a prepared statement. He reported that he was arrested in November 1989 for Medicaid fraud and freely admitted his guilt. He told the Committee that without his cooperation the fraud could not have occurred. Dr. Rodriguez indicated that he has retracted statements made in his restoration application but stated that the retractions were not in response to the comments made by the Department of Health opposing his application. He stated, "Change occurs over time" and reiterated that he was not claiming to be a victim of injustice but was "just stating

(the) facts" as he understood them. Dr. Rodriguez indicated that without resources, he has been unable to take CME courses, as there were none available at a low cost. He added, "You can't go to Grand Rounds when working 9 to 5." He suggested that he was unprepared for the Peer Committee meeting and would be willing to adhere to any restrictions imposed for the restoration of his license. He recommended that the Committee on the Professions send his case back to the Peer Committee in six months for a reevaluation after he had an opportunity to work on some of the areas in which it felt he was deficient.

At the Committee's request, Dr. Rodriguez recounted his employment history as a physician. When the misconduct occurred, he was employed by a medical practice as the sole physician. He reported that within a year of his employment at the practice he was approached by the office manager and his employer to "sign prior approval orders for products." He said that they told him that they wanted to help a business associate. Dr. Rodriguez stated, "I did not exercise caution or discretion. I didn't follow-up on the equipment." He indicated that he became suspicious after a month or two when he saw many "prior approvals for wheelchairs" and said, "I told them I no longer wanted to sign." He told the Committee, "I believe that shortly thereafter there was a knock on the door and I was arrested." Dr. Rodriguez said that he believed that the owner and office manager left the country and there was "no paperwork to be found."

Dr. Rodriguez stated that he agreed with the Peer Committee that he has been unable to keep abreast of current trends in pediatrics. However, he indicated that he has worked for the last two years in the pediatric field, "doing assessments, drawing blood, vaccinations, etc." He reported that he has applied to the American Academy of Pediatrics for membership. Dr. Rodriguez told the Committee that only the medical director knew of his misconduct and revocation.

The Committee asked, "Why was what you did wrong?" Dr. Rodriguez replied, "It was clearly illegal. It was clearly unethical. Yet, I chose not to follow the law or my conscience." He said that at the time he was only thinking that he was "just working for someone else. Just helping the practice and a friend. Just turned a blind eye." Dr. Rodriguez indicated that it has taken a number of years to "come to the realization of what I've done." He said that previously he put all the blame on others and had a "lot of anger and resentment." He discussed how some of this anger and resentment was related to what he considered unfair treatment at his Health Department hearing and his poor legal representation.

When asked for his understanding of the Medicaid program, Dr. Rodriguez said that it provided medical coverage for those who could not afford it. He indicated that he came from the "same neighborhood of people I defrauded. I believe my family was on it for awhile." He said that he was very ashamed for possibly denying care to the "real needy."

The Committee asked if he personally received money for his illegal activities. He replied, "It was presented to me as helping a friend set up a business." He said that after his arrest he "read the transcript and found out they were getting funds from the supplier." He stated, "I didn't care - quite frankly." The Committee inquired if he was

pressured to participate. Dr. Rodriguez replied, "say I was encouraged. I was taken out to dinner with the supplier and his associates. I allowed myself to be influenced." He added, "I was either oblivious to it or didn't think clearly enough." Regarding the scripts he wrote after being suspended by Medicaid, he indicated that he felt that as long as they were countersigned it was all right. He reported that he told the medical group that his Medicaid privileges had been suspended.

The Committee asked Dr. Rodriguez for his comments regarding the Peer Committee's statements pertaining to his lack of insight. He said, "Earlier, I was not able to accept responsibility for my part." He reported that he has gained insight through therapy and the church. He added, "The intervening 12 years has taught me much about myself. Somewhere along the line, I became an unethical person and abused the privilege." Dr. Rodriguez asked the Committee to consider that he "never abused a patient or committed malpractice."

Dr. Rodriguez reported that since 1994 he has had therapy with the spiritual director of his church. He said, "I do see a psychiatrist once a month." He indicated that he was severely depressed and was on anti-depressants. When asked if he felt he was prepared professionally at the present time, he responded, "No." He said that he would be willing to take a refresher course and whatever else was required. He asked that a decision on his application be stayed for six to nine months and said that he would make a "concerted effort to prepare myself." Dr. Rodriguez added, "I will invest the time and money."

Dr. Rodriguez said that if his license were restored, he would like to go into primary care, pediatrics in particular. He expressed a desire to eventually set up a private practice. The Committee asked what convincing evidence he could present that would warrant restoration of his license. He replied, "It's been a strong learning experience." He indicated that he understands the danger of recklessness and poor judgment. Dr. Rodriguez told the Committee that he wouldn't submit to those temptations again.

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 finds that Dr. Rodriguez did not make a compelling case for the restoration of his license at this time. The COP concurs with the Peer Committee that Dr. Rodriguez "expressed sincere regret for his misconduct, both for its effect on himself and on the participants in the Medicaid system." Similarly, the COP agrees that he does not satisfy the reeducation criteria for restoration. Dr. Rodriguez admits that he participated in very few formal reeducation or retraining activities and has not remained current with the profession through Continuing Medical Education courses. The Peer Committee opined that Dr. Rodriguez's "explanation of the lack of financial resources to have pursued such training is not an adequate excuse. It is the responsibility of a physician pursuing relicensure to seek retraining." The COP concurs. Applicants for relicensure must demonstrate significant efforts to remain current in their profession if the COP is to have some degree of assurance that the public would not be placed at risk were the license restored. Dr. Rodriguez asks that a decision on his restoration application be delayed so that he can concentrate on preparing himself. The COP believes that this preparation should have been done prior to his application for restoration.

The COP concurs with the Peer Committee that Dr. Rodriguez "still has not shown sufficient insight on the degree of his responsibility for what occurred and on the gravity of his misconduct," although he seems to have recently been making some progress in this area. However, he continues to focus on the flaws in the original disciplinary hearings, which were based on conduct that the Court determined warranted five years' probation and a \$2,500 fine. However, both the Peer Committee and the COP believe that emphasis must be placed on what has occurred subsequent to such action. Dr. Rodriguez must accept the reality of his revocation and take affirmative steps to remediate his previous problems if he hopes to have his physician's license restored. Unfortunately, it does not appear to either the Peer Committee or the COP that he has done so.

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

Frank Muñoz, Chair

Claudia Alexander

Joseph B. Porter



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

CESAR OMAR RODRIGUEZ

REPORT OF
THE PEER
COMMITTEE
CAL. NO. 18296

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

-----X

CESAR OMAR RODRIGUEZ, hereinafter known as the applicant,
was previously licensed to practice as a physician in the State
of New York by the New York State Education Department. Said
license was revoked as a result of a professional misconduct
proceeding. The applicant has applied for restoration of his
license.

On November 19, 1999 this Peer Committee convened to review
this matter and make the following recommendation to the
Committee on the Professions and the Board of Regents.

BACKGROUND INFORMATION

The written application, supporting papers provided by the
applicant and papers resulting from the investigation conducted
by the Office of Professional Discipline (OPD) have been compiled
by the prosecutor from OPD into a packet that has been

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distributed to this Peer Committee in advance of its meeting and also provided to the applicant.

Listed below is the background information from that packet. Further details pertaining to these documents may be found therein.

Prior Discipline Proceedings

Hearing Committee of Board of Professional Conduct:

By determination and order of Board of Professional Medical Conduct dated August 3, 1994 and served by mail August 11, 1994, the applicant's license to practice as a physician in the State of New York was revoked following a hearing.

Administrative Review Board Decision and Order:

By order signed October 26, 1994 and mailed October 28, 1994 the determination of the Hearing Committee was upheld

Charge for which the applicant was found guilty of professional misconduct:

Being convicted of committing an act constituting a crime under New York State law.

Nature of the Misconduct:

On or about April 25, 1991, the applicant was convicted, upon his plea of guilty, of one count of attempted Grand Larceny in the third degree and one count of conspiracy in the fifth degree, in violation of N.Y. Penal Law Sec. 110.00; 155.35 and 105.05, in that, on or about and on or between December 8, 1988

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and February 23, 1989, the applicant, in agreement with other persons, signed prescriptions and prior authorization forms for the dispensation of medical equipment, which he knew was not needed by the patient and for which he intended that the NYS Medical Assistant Program (Medicaid) would be billed, and pursuant to which it would pay in excess of \$3,000.

PETITION FOR RESTORATION

In a petition dated June 30, 1997, the applicant applied for restoration of his license to practice medicine.

The petition included a section entitled "The Nature of the Criminal Charges and the Disposition Thereof." The applicant describes being an employee at a medical clinic from November 1988 to February 1989. He states he saw patients, made diagnosis and signed a number of Medicaid forms. He states he "negligently" got involved in fraudulent scheme of other physicians at the clinic and in "a moment of poor judgment let himself be used in an undertaking which involved the submission of documents for medical equipment purchases which were unnecessary." Discovery of the scheme led to the applicant's criminal conviction that was the basis of the professional misconduct charges.

In explaining his involvement, the applicant states he had previously made very few Medicaid billings and had a spotless record. However, the physicians of the clinic introduced him to a medical equipment supplier. He was convinced by the supplier to

issue prescriptions obtaining from the supplier equipment that was not needed. The applicant states that he did not personally benefit from these purchases. He explains the supplier turned out to be someone who was involved in massive amounts of such fraud. The applicant attaches to his petition newspaper articles about this supplier's wider activities. He also states the supplier "had the experience, motive, opportunity and means to entrap any Medicaid provider into entering fraudulent schemes similar to his own." The applicant claims he was never aware of the extent of the fraudulent scheme nor did he benefit financially.

The applicant then recounts that he subsequently was employed at a different medical group, where "... petitioner, again, used poor judgment and was persuaded to sign prescriptions using another physicians name and license." The applicant attaches to his petition another newspaper article, this one showing his employer at this second practice was an unlicensed individual practicing medicine and involved in wider schemes.

The petition then proceeds to a section entitled "Determination and order of the New York State Board of Professional Medical Conduct." In that section, the petitioner implies he was denied a fair professional misconduct hearing. He describes being denied an adjournment on a hearing date on which he was sick. He also tells of his attorney walking out on the hearing, leaving him in default when the adjournment was denied.

The next section of the petition is entitled "Why Petitioner wants his License to Practice Medicine in New York State Restored and Why the Board of Regents Should Take Favorable Action On the Petition." He describes how, since he was very young, he has wanted to help the poverty stricken area of East Harlem where he was raised. His aspiration was to establish a local health clinic for the community. He believes he can convey the importance of preventive care to his community. He says he would be devoted and dedicated and believes "he should not be penalized indefinitely because in a moment of poor judgment he let himself be used in a fraudulent undertaking against the 'Medicaid Program'".

The next section of the petition is entitled "The Revocation of Petitioner's License Has Proven a Harsh Learning Experience Which Assures That There Will Not Be A Reoccurrence." He states that, "in a moment of poor judgment and naivete," he was "used by persons intent on perpetrating a fraud on the Medicaid Program." He states he was severely punished; would exercise greater care in the future; and would be "vigilant of wrongdoing by other practitioner's and shall report all such unlawful practices and unlawful medical billing to the proper authorities."

In the final section of the petition, entitled "Petitioner Has Maintained His Skills and Knowledge To Practice Medicine During the Period of Revocation" the applicant states that he attended and is still attending medical seminars and classes. He

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also says he is mentally, physically, and medically competent and would be an invaluable asset to the community and medicine.

Attachments to the Petition:

- Aforementioned two newspaper articles;
- Documentation of early discharge from criminal probation on October 31, 1995;
- Five affidavits of support from various acquaintances;
- Chronology of Activities form;
- Curriculum vitae, which included a listing of his employment from 1995 to the present as a medical assistant.
- 1994 certificate of completion of course on infection control
- Certificate of Relief from Disabilities, issued by court on March 18, 1998;

INVESTIGATION BY OPD

Subsequent to the filing of the petition, OPD conducted an investigation for the purposes of this proceeding. Information from that investigation, including reports from the investigator and other documentation, was made part of the packet for the proceeding. Included in the information from that packet not previously referred to are case reports of the investigation for

this restoration proceeding. Those reports include a summary of an interview of the applicant on April 22, 1998, conducted by an OPD investigator. Among the information about the interview as reported by the investigator are the following:

- The applicant gave the same explanation for his actions as in his petition, including that he negligently got involved with the perpetrators of the schemes and that he used poor judgment;
- He stated his involvement caused Medicaid to be improperly billed \$3,000.00;
- On September 4, 1991 he was sentenced to five years probation and a fine of \$2,5000. He was discharged from probation on October 31, 1995.
- He has kept abreast of the professions by working as a medical assistant, listening to audiotapes, and reading books and periodical. He listed five medical journals he subscribes to.
- He stated to the interviewer that he was remorseful and that he was raised with morals and knew the difference between right and wrong;
- He takes the blame for his actions and for letting others in his life down;
- He seeks restoration because of the time and effort

he has invested in getting his degree; he finds pediatrics very satisfying; he enjoys helping people; and he wishes to help poor people and doesn't wish to be penalized because he had "poor judgment"

- If restored, he plans to find employment as a pediatrician in a general pediatric practice and to continue to stay in and serve his community;
- While he initially felt angry about the revocation, feeling it was severe, unjust and not related to patient care, he has, over time, realized he was guilty and that the revocation was just;
- He reported community involvement as member of Our Lady Queen of Angels Parish, where he lectures; is involved in fundraising; teaches Bible study and attends spiritual retreats;
- He also volunteers for Edad, a senior citizens center, and Justus, an education program for at risk teenagers, as a tutor and counselor.

Additionally, the packet contains a letter dated April 10, 1998, from Anne F. Saile, Director, the Office of Professional Medical Conduct, stating the position of her office opposing the application. Ms. Saile states the applicant's petition refers to

the events of the revocation, "as though he was not professionally and personally responsible for these action. In his words, this was merely the result of poor judgment and naivete." Ms. Saile also states "There is no convincing evidence in the information provided on his own behalf that Dr. Rodriguez has the ethical standards required to fulfill the public's trust placed in the hand of a licensed physician."

PEER COMMITTEE MEETING

On November 19, 1999, this Peer Committee met to consider this matter. The applicant appeared before us personally and was not represented by an attorney. The applicant was reminded by the Chairperson of this Committee of the applicant's right to be represented by an attorney of his choosing. The applicant indicated he understood that right but has elected to proceed before us without an attorney. Also present was Claudia Stern, Esq., an attorney from the Division of Prosecutions, OPD.

Upon the opening of the proceeding, one of the members of this Committee, Dr. Stanford Roman, Jr., disclosed for the record that he has been Dean of the Sofia Davis School of Bio Medical Education since April, 1990. The applicant, in the curriculum vitae attached to his petition, listed that school as one of the institutions of higher learning he had attended in the past. The applicant, upon being questioned, stated he had no objection to Dr. Roman's participation on the Committee and believed Dr. Roman

would be able to fairly evaluate this matter without prejudice.

In his presentation to our Committee, the applicant stated that he was amending or retracting some of the statements in his written petition. He stated the focus of his petition seemed to be on his financial hardship and that his crime was based solely on "negligence, naiveness." He stated before us he no longer agrees with those statements.

He stated he now "freely admitted that I was persuaded to sign the claim for medical equipment. I wrongly signed these orders." He said he did not verify delivery of the equipment, nor did he inform the authorities when his suspicions were aroused. He stated he was not motivated by greed and was not rewarded financially for his participation, but he acted out of friendship to his employer, whom he was unaware was involved in a much wider scheme.

The applicant also stated to us that, at the time of his criminal acts, he was "not fully capable of making moral judgments." He cited the death of his mother near that time and the pressure on him caused by the problems of his schizophrenic brother. The applicant stated he now freely admits his guilt and no longer feels, as he did in the past, that he was duped or his punishment was excessive.

He also stated his academic and personal life has been spent in the community of East Harlem. He worked hard to obtain his

medical degree in order to serve the community in his chosen specialty of pediatrics. He says he broke faith with his oath and conscience and has taken steps to repair that damage and make amends.

In response to cross-examination by Ms. Stern, the applicant said he changed the position stated in his petition because it was quite some time since the petition was filed and he realized it did not reflect his true feelings. Ms. Stern asked if he changed because of the subsequent letter from OPMC, opposing the application on the grounds the applicant did not accept personal responsibility but attributed his acts to "poor judgment and naiveness." The applicant stated the letter "is not why I am changing it; it does enter into my consideration."

Ms. Stern then explored how the applicant got involved with such serious matters at two different locations and whether there were two convictions or one. In the first matter, the applicant stated he was encouraged by his employer, the medical director of the facility, to write prescriptions for nebulizers, which the applicant says he did not verify against the list of those provided and as to whether delivery occurred. The second involvement came to light before sentencing for the conviction on the first matter and affected the severity of that sentence.

In the second matter, the applicant worked in another Medicaid facility. The applicant stated that, though he was

suspended from the Medicaid program, no one told him he could not work in the facility as long as he limited his practice to non-Medicaid patients or, if he were to write a prescription for a Medicaid patient, the prescription was subsequently countersigned by a participating physician. The applicant stated he did issue such prescriptions for physicians who were involved with what came to be revealed as another fraudulent scheme.

In further reply to Ms. Stern, the applicant stated he was not in "full possession of my moral character" at the time he committed these acts. He said what has changed since is "time and maturity." He says he has engaged in much reflection and undergone counseling with his spiritual advisor.

He stated he did not intentionally engage in a fraudulent scheme but was "negligent." He said he did not intend to gain financially but that "his intention was at the time to help a friend, a business friend, to expand a business proposition. In the course of that, my suspicions were aroused and I chose not to confront them or report the matter. In that, I was negligent."

He stated that, at the time, he was angry at the severity of his penalty, feeling he had been duped and therefore punished unfairly as compared to others in similar situations. Also, he felt then he committed only a financial crime, not a patient care crime. Now, he takes personal responsibility for his actions and any anger he has is directed at himself. He said he feels the

waste of ten years that could have been of service professionally and to his family. He cites a younger brother who has five boys to raise whom he could have helped financially. In response to further questions about his rehabilitation, in addition to spiritual counseling, he cites his involvement in spiritual affairs.

He is has been employed by Cornell Medical Association for five years where he is a pediatric medical assistant, doing patient triage, blood drawings and assisting doctors when necessary with procedures.

Ms. Stern inquired of the applicant as to his readiness to resume practice. He stated "I definitely need to have more study in newer treatments." He says he has kept abreast by reading literature and going to some grand rounds at Cornell, for which he does not have documentary evidence. He stated he has not been able to go to any conferences in the area.

During his presentation before us, the applicant submitted two additional reference letters not previously submitted. One was dated November 10, 1999 from Fr. Gregory Noel, OFM Cap., a parish priest at the applicant's church. The writer attested to the applicant's faithful attendance at church and his involvement with volunteer work and church activities. The writer also, for over two years, has been meeting personally with the applicant in monthly spiritual direction sessions. Fr. Gregory attests to the

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applicant's honesty and integrity, "in his pursuit of God, the truth about himself, the changes that have come about as a result of his decisions about matters of consequence, and the growth he has gone through into a man of conscience and integrity."

The other new submission was a November 18, 1999 letter from Mary Louise Patterson, M.D., physician in charge of Cornell Medical Associates, the applicant's employer. Dr. Patterson said the applicant recently disclosed to her the revocation of his medical license and its circumstances. She states he is clearly determined to establish his professional standing and credibility. She fully supports his license restoration, saying he would be an asset to the community.

Upon conclusion of the applicant's presentation, this Peer Committee asked questions of him. Asked to expand upon his lack of continuing clinical education, the applicant cited the financial burden of attending courses and conferences. He said he did partake of access to audio cassettes and library material, but has no CME credits he can present to us.

We asked the applicant whether he is subject to the same pressures as existed when he committed his criminal acts. The applicant stated the pressures are the same but that it is he that has changed. He still is caretaker to his mentally ill brother. The applicant believes he is now stronger of character now that he is entering middle age and that "I have different

values, different goals and I don't believe in my heart I am capable of these same mistakes again."

Exploring further the issue of the reading he has done since his revocation, we cited the journals he stated he subscribed to, including the Journal of the American Medical Association and the New England Journal of Medicine. We asked him if he could tell us of a particular theme in the last year in those two journals that struck his interest. The applicant said he could not; and that he has not read those particular journals in the past year but has read mostly pediatric journals and magazines.

A discussion ensued as to the applicant's understanding of his conduct at the second clinic in which he worked while awaiting sentencing on his conviction. He said he signed prescriptions on behalf of a physician, despite the suspension of his Medicaid privileges, with the understanding that the physician would be later countersigning the prescriptions. The applicant clarified that he signed his own name with the understanding a covering physician would countersign the prescriptions. The applicant stated he was under the impression that his actions were considered acceptable at that time.

In response to a further question from the Peer Committee, the applicant stated he did not mention his revocation on his employment application to his current employer, the Cornell Medical Associates, Pediatrics. The applicant maintains there was

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no question to that effect on the application and he did not reveal his past troubles to his supervisor until later in his employment.

The applicant called one witness who appeared before us, Father Martin Curtin, who has been associated for nine years with the church attended by the applicant. Father Curtin has known the applicant for approximately six years, during which he has had discussion sessions with the applicant. The witness said though the applicant did not gain financially from his misconduct, the applicant concentrated on taking a hard look at what he did and on improving his spiritual direction. The applicant became active in the church and in community affairs. The witness said the applicant has a real sense of conscience about what he did and how destructive it was to his personal integrity. His change of attitudes makes it unlikely he would go down such a road again. The witness also said the applicant has a great passion for going back into medicine.

In the last two years, Father Greg, who wrote one of the letters the applicant submitted at the Peer Committee meeting, took over as the applicant's spiritual advisor because of Father Greg's greater specialized skills in that area. Therefore, the witness was reluctant to state in what areas the applicant still needed growth. However, the witness did say the applicant was more at peace with himself and less able to be influenced by

others who do not share his values.

Our Committee asked the witness questions. We were interested in the timing of the applicant's self-enlightenment about his sense of responsibility for his actions in relationship to the date of his 1997 restoration petition before us. The witness felt the applicant had a real turnaround as to his understanding of responsibility for what occurred about a year or so after he began to confer with the witness, which would have been several years before the petition. We asked the witness if he could reconcile those earlier realizations by the applicant with the applicants statements in the petition, in which the applicant does not accept much responsibility and which statements the applicant disavowed today before us. The witness said he could not account for what strategic or legal considerations that went into the petition, which he did not help draw, and how those might appear to differ from the applicant's earlier conversations with the witness.

In closing remarks, Ms. Stern stated that her office formally opposes the application. Ms. Stern stated that, only a few years out of medical school, the applicant was involved in a billing scheme that defrauded Medicaid of 3.8 million dollars and then, while awaiting sentencing in that matter, became involved in a "\$2 million Medicaid scam." She also argued that if the applicant's behavior in the second matter was acceptable, as he

said, it would not have resulted in an increased sentence in the first matter.

Ms. Stern further cited the letter from OPMC expressing doubt as to whether the applicant has taken responsibility for his actions. Although the applicant says he now takes more responsibility than he stated in his 1997 restoration petition, Ms. Stern argues that in his investigative interview with OPD in April, 1998, a year and a half after the petition, the applicant still characterizes his involvement in the Medicaid scheme for which he was convicted as "negligent" rather than intentional and that in both schemes he used "poor judgment." Ms. Stern stated to us that in his criminal papers, the applicant admitted to intentionally signing prescriptions and prior authorization forms for dispensation of medical equipment which he knew was not needed by patients and for which he intended Medicaid would be billed.

With regard to continuing education, Ms. Stern says the applicant admits before us that he does not possess adequate current knowledge at this time.

With regard to the letters submitted before us the day of our meeting and the testimony of the applicant's witness, Ms. Stern argues that no one who knew the applicant at the time of his misconduct has appeared before us to attest to how the applicant is a changed man.

In his closing statement before us, the applicant said he did present testimony of people who know him as to his current character, including that of his priest who is bounded by the sacraments. He also stated that, since 1989, he has grown as a man. He also said he has retained his skills. He stated he freely admitted he is not current, but would make every effort to become so and to accept any conditions that may be placed on his license.

As to the larger schemes referred to by Ms. Stern, the applicant said he was not aware of them and only participated to a small extent out of friendship and that he himself did not intend to defraud the state. The applicant stated to us: "I was misled and I agree that was wrong. I admit my guilt."

As to the second scheme, the applicant said our panel itself in its discussion before him indicated it was customary at the time for non-providers to sign the prescriptions with the expectation they would be countersigned, and that the applicant did not suspect the extent of the duplicity of the clinic with which he was employed. He also argued that his sentence was, as a practical matter, not really upgraded because of this second involvement in that he was originally sentence to six months conditional discharge but that sentence was upgraded to five years discharged.

The applicant said he did not intend to raise the inadequacy

of his counsel at the prior proceedings, but that since his witness raised that issue, the applicant would add that he could not afford quality counsel at the time.

In conclusion, the applicant stated he did not intend to deceive the court or our Peer Committee. He freely admits his crimes and takes responsibility. Moreover, he stated he only retracted statements in his petition because they did not correctly represent his feelings today, which were not arrived at in the eleventh hour but were part of a long process that he had not verbalized outside of his circle of friends and his spiritual advisor. Finally, the applicant said he made mistakes and freely admitted those mistakes.

RECOMMENDATION

An applicant for the restoration of a professional license in New York State has the burden of demonstrating that which would compel the return of the license. In considering whether that burden has been met, the Peer Committee, in arriving at its recommendation, considers the criteria of reeducation, remorse and rehabilitation.

Reeducation:

In considering the application before us, on the issue of reeducation alone, this applicant does not meet that criterion for restoration. The applicant himself freely admits he has no certifications of continuing medical education (aside from the

1994 certificate for infection control). While some applicants are restored with probation terms allowing them to pursue educational updates, those applicants are usually those who have provided considerable evidence of some formal re-training.

This applicant has provided no record of any such training, including the minimum amount of CME even physicians licensed in good standing must undergo. The applicant's explanation of the lack of financial resources to have pursued such training is not an adequate excuse. It is the responsibility of a physician pursuing relicensure to seek retraining. There are many opportunities for low cost course work and rounds that could be formally certified.

Furthermore, the applicant claimed to have read medical literature and journals, but when asked to recite references to the two most prominent such journals, it was apparent that the applicant had not read them in recent years. We therefore have real questions, in addition to his lack of current skills, about the applicant's judgment in coming before us without such documentation and about the applicant's credibility to the extent he claims to have read and kept up with recent developments.

Remorse:

We believe the applicant has shown remorse for his past misconduct. In admitting wrongdoing to the extent he does in his presentation, the applicant expressed sincere regret for his

misconduct, both for its effect on himself and on the participants in the Medicaid system.

Rehabilitation:

Though remorse and rehabilitation are two closely related criteria, we note they are considered separately and there are distinctions between them. Upon consideration of the total record before us, we do not believe the applicant has fulfilled the criteria of rehabilitation.

The applicant still has not shown sufficient insight on the degree of his responsibility for what occurred and on the gravity of his misconduct. Furthermore, we do not believe the applicant has sought and received sufficient help in fortifying himself against the stress and pressures that might cause him to repeat similar actions in the future.

While the applicant makes much of his verbal modification before us of his petition -- now accepting responsibility for his past acts -- he still minimizes the degree of intent he had in committing those acts. In the interview subsequent to his petition and before us, he still characterizes those acts as negligent or the result of undue pressures from others. However, the applicant, in his plea of guilty, admitted to a crime requiring his intent. Also, the nature of those acts certainly required the applicant's understanding that he was issuing unneeded prescriptions or orders to the detriment of the Medicaid

system. One cannot be "influenced" to believe otherwise or be able to commit such acts negligently, rather than intentionally. Also, while it was not shown the applicant was paid all or part of the resulting reimbursements, he surely benefited by maintaining his salary and his position in the structure that was perpetrating these acts. Even as late as in his closing statement, the applicant places ultimate blame on others, stating he was a victim of the actions of another who was willing to accuse the applicant in the hope it would result in helping that person's criminal case.

We also have been given little convincing reason to think the applicant believes he acted purposefully. His own witness, Father Curtin, told us the applicant was admitting his blameworthiness early in their counseling, yet the applicant disavowed responsibility in the petition and interview that were subsequent to that period of the counseling. We have no concrete reason to think that the applicant believes himself any more responsible than when he made those statements to Father Curtin. We also believe the applicant does not understand the gravity of the crime he committed. He persists in comparing it to the enormity of the scheme of his employer. However, his actions in and of themselves, without such comparisons, are a serious breach of criminal law and professional standards.

We have real questions as to whether the applicant has

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recommendation at this time that the petition before us be denied.

Respectfully submitted,

NATHAN G. KASE, M.D.,
Chairperson

STANFORD A. ROMAN, Jr., M.D.

BENJAMIN ROBINSON,
Public Member

Nathan Kase 9/18/00
Chairperson Dated