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

OFFICE OF PROFESSIONAL DISCIPLINE

475 Park Avenue South - Second Floor
New York, NY 10016-6901

July 25, 2001

Dugald T. Lewis, Physician
570 Lebrun Road
Post Office Box 2002
Amherst, New York 14226

Re: Application for Restoration

Dear Dr. Lewis:

Enclosed please find the Commissioner's Order regarding Case No. 01-50-60 which is in reference to Calendar No. 18746. This order and any decision contained therein goes into effect five (5) days after the date of this letter.

Very truly yours,

DANIEL J. KELLEHER
Director of Investigations

By: Gustave Martine
Gustave Martine
Supervisor

The University of the State of New York

Education Department

IN THE MATTER

of the

Application of DUGALD T. LEWIS for restoration of his license to practice medicine in the State of New York.

Case No. 01-50-60

It appearing that the license of DUGALD T. LEWIS, 570 Lebrun Road, P.O. Box 2002, Amherst, New York 14226, authorizing him to practice as a physician in the State of New York, was revoked by action of the Administrative Review Board for Professional Medical Conduct effective October 18, 1997, and he having petitioned the Board of Regents for restoration of said license, and the Regents having given consideration to said petition as well as the additional materials he submitted to the Board of Regents on June 6, 2001 and having reviewed and rejected the recommendations of the Peer Review Panel and having agreed with and accepted the recommendations of the Committee on the Professions, now, pursuant to action taken by the Board of Regents on June 12, 2001, it is hereby

ORDERED that the petition for restoration of License No. 164025, authorizing DUGALD T. LEWIS, 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 29th day of June, 2001.

Commissioner of Education

Case No. 01-50-60

It appearing that the license of DUGALD T. LEWIS, 570 Lebrun Road, P.O. Box 2002, Amherst, New York 14226, to practice as a physician in the State of New York, having been revoked by action of the Administrative Review Board for Professional Medical Conduct effective October20, 1997, and he having petitioned the Board of Regents for restoration of said license, and the Regents having given consideration to said petition as well as the additional materials he submitted to the Board of Regents on June 6, 2001 and having reviewed and rejected the recommendations of the Peer Review Panel and having agreed and accepted the recommendations of the Committee on the Professions, now, pursuant to action taken by the Board of Regents on June 12, 2001, it was

VOTED that the petition for restoration of License No. 164025, authorizing DUGALD T. LEWIS, to practice as a physician in the State of New York, be denied.

Case number 01-50-60
March 2, 2001

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: Dugald T. Lewis

Attorney: Martin Schaum

Dugald T. Lewis, 570 Lebrun Road, PO Box 2002, Amherst, New York 14226, petitioned for restoration of his physician license. The chronology of events is as follows:

09/16/85	Issued license number 164025 to practice as a physician in New York State.
01/22/97	Charged with professional misconduct by Department of Health. (See "Disciplinary History.")
06/14/97	Date of Determination and Order of Hearing Committee for the State Board for Professional Medical Conduct revoking license.
10/20/97	Date of Administrative Review Board for Professional Medical Conduct's order revoking license.
07/13/99	Submitted application for restoration.
10/19/00	Peer Committee restoration review.
01/06/01	Report and recommendation of Peer Committee. (See "Report of the Peer Committee.")
05/15/00	Report and recommendation of Committee on the Professions. (See "Report of the Committee on the Professions.")

Disciplinary History. (See attached disciplinary documents.) On or about January 1, 1997, the Department of Health charged Dr. Lewis with professional misconduct (gross negligence, gross incompetence, negligence on more than one occasion and incompetence on more than one occasion), as a result of issues

surrounding the care and treatment provided to several patients. On June 14, 1997, a Hearing Committee of the State Board for Professional Medical Conduct determined that Dr. Lewis was guilty of the charges and determined that his license should be revoked. That decision became effective on June 26, 1997.

On October 20, 1997 the Administrative Review Board for Professional Medical Conduct affirmed the decision to revoke Dr. Lewis' professional license.

On July 13, 1999, Dr. Lewis submitted an application for restoration.

Recommendation of the Peer Committee. (See attached Report of the Peer Committee.) The Peer Committee (Martinke, Colgan, Farkash) met with Dr. Lewis on October 19, 2000 to review his application for restoration. In its report, dated January 6, 2000 [sic], all members of the Committee recommended that the revocation be stayed and that Dr. Lewis be placed on probation for at least six months and/or he completes at least 100 general surgery cases under the supervision of a Board Certified Surgeon and at least 50 vascular procedures under the supervision of a Board Certified Vascular Surgeon. Additionally, the Committee recommended that he pass a course in advanced laporascopic procedures before working with the supervising surgeons.

Recommendation of the Committee on the Professions. On March 2, 2001, the Committee on the Professions (Muñoz, Porter, Earle) met with Dr. Lewis to review his application for restoration. Dr. Lewis' attorney, Martin Schaum, accompanied him. Prior to the meeting, in a letter dated August 18, 1999, Mr. Schaum submitted a "Statement of Work Activities since June, 1997" prepared by Dr. Lewis and dated August 18, 1999. In a transmittal dated April 5, 2001, Mr. Schaum submitted documentation of Dr. Lewis' attendance on April 2, 2001 at a seminar on Advanced Laparoscopic Anti-Reflux Procedures with 3.5 hours of hands-on lab experience. At the meeting, Dr. Lewis submitted documentation of 16 hours of CME credit for his participation in Advanced Cardiac Life Support on February 5-6, 2001. Mr. Muñoz explained that he had spoken with Mr. Schaum regarding scheduling issues but did not engage in any discussion of Dr. Lewis' restoration application. Dr. Lewis did not object to Mr. Muñoz's serving on the Committee.

Following the meeting, Mr. Schaum forwarded a letter, dated March 23, 2001, from Dr. Eddie L. Hoover stating that he has reviewed the three patient charts pertinent to Dr. Lewis' revocation and that he continues to support his prior position expressed at the Peer Committee meeting that Dr. Lewis' license should be reinstated. Accompanying a letter dated April 3, 2001, Mr. Schaum forwarded three undated one-page statements that were signed by Dr. Eddie L. Hoover, which provided his analysis of the treatment in the three cases pertinent to Dr. Lewis' revocation. The Committee agreed to accept and consider these additional materials as part of the record.

The Committee questioned Dr. Lewis with respect to the incidents that led to the revocation of his medical license and asked him to explain, in his own words, what happened. Dr. Lewis informed the Committee that three patient deaths occurred during

the 1994-1995 time period, which resulted in the sustained charges of professional misconduct. Dr. Lewis stated that, as a result of these three cases, he had "paid a hefty price." He indicated that he felt time has helped him better understand what happened and that he has "come to grips with the issues." He added that he's been reeducated. Dr. Lewis then discussed the cases in a fairly detailed fashion.

The first case Dr. Lewis described involved a 70-year-old female with a history of severe mental retardation. He reported that he saw the patient, who suffered from a variety of physical conditions and weighed only 78 pounds, for the elective repair of a hiatal hernia. Pre-operatively, Dr. Lewis said that he ordered typical screening of the patient's blood, but no cross matching of blood was ordered and no matched blood was available in the operating room. When complications arose during the surgery and significant blood loss was noted, Dr. Lewis stated that he ordered blood for the patient, but that none was readily available. He said that he requested the operating room nurse to go to the blood bank to obtain matched blood, but that when the blood finally arrived, the patient's blood was not clotting. Dr. Lewis said that the patient died after the surgery.

When asked what went wrong with the care provided to this patient, Dr. Lewis explained that the surgery occurred at a very small rural hospital and that the hospital did not have the resources that he expected. He reported that the hospital apparently had no policy requiring that matched blood be set up in the operating room, and Dr. Lewis stated that he was "led wrong by the hospital."

The second patient discussed by Dr. Lewis also involved a surgical procedure, a gall bladder operation, performed at a small rural hospital. The patient's pre-operative screenings, according to Dr. Lewis, suggested that the patient had abnormal antibodies present in her blood. As in the case of the first patient, he told the Committee that matched blood was not ordered to be available in the operating room, nor was blood immediately available post surgery. He said that complications developed during surgery resulting in some blood loss, the patient had difficulty in clotting, and post surgical complications ensued. Dr. Lewis reported that he wanted to return to the operating room and perform exploratory surgery on the patient, but the anesthesiologist disagreed, stating that the patient was too unstable. He said that while the disagreement was being resolved, the patient's health deteriorated and she died. Again, when questioned about the deficiencies in patient care, Dr. Lewis stated that the patient might have survived if the operation was performed at a larger hospital. He explained that the hospital's lack of a protocol for resolving the disagreement with the anesthesiologist was problematic, but suggested that he should have called the hospital's CEO to resolve the problem.

The last patient described by Dr. Lewis was treated at a larger, urban hospital and involved colon surgery on an elderly patient. Dr. Lewis described the problem in this case as beginning on the eighth post-operative day when the patient became acutely unstable. Dr. Lewis stated that he saw the patient and ordered that the patient be followed more closely. Dr. Lewis stated that the patient died later that day and that he

had not taken further measures because the residents had not contacted him in as timely a fashion as he had wanted. He stated that he wrongly relied upon the judgement of the residents.

The Committee noted that Dr. Lewis appeared to be still placing much of the blame for what happened to the three patients upon others. After much probing by the Committee, Dr. Lewis said that for two of the cases, he was responsible for using bad judgement for performing the operation at a small hospital and should not have started one of them at the end of the day. In the third case, he said that he was responsible for not giving specific instructions to the resident staff to call him. The Committee noted that the disciplinary documents stated that he did not accept responsibility for his misconduct at the time of the disciplinary proceedings. Dr. Lewis agreed that that was a fair characterization of his beliefs at that time. He said, however, that after looking at all the issues in his mind, the revocation was justified. Dr. Lewis told the Committee that he now realizes he should have been more willing to listen to others.

Regarding his meeting with the Peer Committee, the Committee on the Professions asked Dr. Lewis why Dr. Hoover, one of those testifying on his behalf, said that he had not reviewed the cases that resulted in the loss of his license. Dr. Lewis replied that Dr. Hoover was aware of the cases and that the transcript was not accurate. Mr. Schaum asked if the Committee would accept a letter from Dr. Hoover during the next few weeks. The Committee said that it would. Subsequent to the meeting, the Committee received the following statement from Dr. Hoover: "Please be advised that I have reviewed the three patient charts pertinent to the revocation of the above named physician's (Lewis) medical license. After having completing a thorough review, I continue to support my prior position expressed during the hearing that Dr. Lewis' license to practice medicine in the State of New York be reinstated."

When queried about re-education efforts, Dr. Lewis explained that he reads journals, has taken CME courses and regularly attends hospital conferences. He has taken comprehensive review courses on blood management of surgical patients and a specialty review in general surgery. Dr. Lewis explained that these courses would be useful in his future surgical practices. He gave the Committee copies of documentation of 16 credits of CME for his participation in Advanced Cardiac Life Support on February 5-6, 2001.

In response to the Committee's inquiry, Dr. Lewis indicated that he was not employed and that his efforts have been directed to getting his license back. When asked how he has been supporting himself, Dr. Lewis said that he's gotten help from friends and family.

When asked, generally, what he could offer the Committee as compelling evidence that his license should be restored, Dr. Lewis stated that he has paid a high price for his actions. He stated that he believes the past three and one-half years have caused him to "become better." He said that he realizes he needs to establish a "management pathway" in his mind. He told the Committee that if he had the three

cases again, he would handle them differently. Mr. Schaum said that Dr. Lewis was not the same person he was two years ago when he met him. He said that at that time Dr. Lewis was still using defense mechanisms.

The primary 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. Although not mandated by 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 recommendation based upon the entire record.

While the COP believes that Dr. Lewis has made some positive efforts during the past three and one-half years, several concerns remain. Specifically, Dr. Lewis continues to displace the blame for the death of the three patients. Two of the patient deaths Dr. Lewis attributes to the inadequacies of a small rural hospital and a third death to the lack of judgement exercised by hospital residents. In retrospect, and upon probing by the COP, Dr. Lewis eventually offered scenarios as to how he would treat the three patients differently today. Dr. Lewis failed to demonstrate a true understanding of his responsibilities as the physician and continued to place too much emphasis upon the size of the hospital. Dr. Lewis failed to demonstrate an understanding of the physician's responsibility regardless of the facility. Mr. Schaum told the COP that Dr. Lewis still took refuge in "defense mechanisms" two years ago, but that he has now assumed responsibility for his misconduct, presumably during the last two years. The COP concurs with the Department of Health's assessment that it did not "believe that the public would be protected from Dr. Lewis' continued negligent or incompetent practice if the privilege to practice medicine were restored to him."

Dr. Lewis presented himself as a person who had personally paid a "high price," but never focused upon the price paid by his patients and their families. The Committee was left with a concern that Dr. Lewis' inability to focus upon his deficiencies and the resulting patient harm suggests that he has not clearly identified the root cause of his misconduct and made the necessary behavioral modifications to ensure that the public would not be placed at risk were his license restored. Although provided the opportunity more than once to describe "what he has done" and "what he has undergone" since his revocation, he failed to clearly identify the changes he has made in his life. Even when asked how he's supporting himself, Dr. Lewis responded vaguely that he was receiving

assistance from friends and family. The COP does not concur with the Peer Committee's opinion that Dr. Lewis is rehabilitated and remorseful and notes that the Peer Committee, in its report, provided no rationale for its opinion.

Therefore, after a complete review of the record and its meeting with him, the Committee on the Professions recommends that the application for restoration of the physician license of Dr. Dugald Lewis be denied at this time.

Frank Muñoz, Chair

Joseph B. Porter

Steven Earle

The University of the State of New York

NEW YORK STATE EDUCATION DEPARTMENT
OFFICE OF PROFESSIONAL RESPONSIBILITY
STATE BOARD FOR MEDICINE
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In the Matter of the Application of

DUGALD T. LEWIS

REPORT OF THE PEER COMMITTEE
CAL. NO. 18746

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

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Applicant, DUGALD T. LEWIS, was authorized to practice as a physician in the State of New York by the New York State Education Department by the issuance to him of license No. 164025 in September 1985.

PRIOR HISTORY

On June 26, 1997, applicant's license to practice medicine in the State of New York was revoked by order of the Office of Professional Medical Conduct. Applicant had been determined by a BPMC Committee Board for Professional Medical Conduct, hereinafter BPMC; to be guilty of gross and repeated negligence and repeated incompetence in providing care to three patients. Said patients died.

In reaching their recommendation for penalty, the Committee recommended that applicant's license be revoked because no other remedy was appropriate under the circumstances. Applicant failed

to take responsibility for the complications that arose when he performed surgery on said patients. The Committee found that applicant tried to place the blame on others and that his continued practice presented a danger to the public. The Committee rejected retraining because they believed that applicant lacked insight into his shortcomings and was unable to recognize his errors in judgment. The Committee also rejected monitoring because monitoring constitutes an "after the fact" remedy that would fail to prevent errors during care.

Applicant appealed the determination to the Review Board. The Board voted unanimously to sustain the Committee's determination and their recommendation as to penalty.

APPLICANT'S PETITION FOR RESTORATION

In July 1999, applicant applied for restoration of his medical license. Applicant was interviewed on January 19, 2000 by an investigator from the Office of Professional Discipline. Applicant admitted that he made medical errors but he did not believe that they should have resulted in revocation. He believes that this was too harsh of a penalty. Applicant stated that it has been very difficult for him obtain employment because employers are not interested in a physician whose license is revoked. Applicant returned to school to learn computer programming and plans to use his computer skills to earn a living. Applicant has had to file bankruptcy and survives with help from his friends. Applicant provided a listing of the journals that he reads and seminars that he has attended.

The Department interviewed three of applicant's references all of them support the restoration of his license:

Dr. Hoover - believes that applicant has matured and has learned to look into himself.

Dr. Applewhite - believes that applicant is a great surgeon who has helped many people. She believes that his license was revoked because he was too opinionated for a person of color. Applicant has become a better person since the revocation of his license.

Dr. Bradley - highly recommends the restoration of applicant's license. He believes that the mistakes that were made should never have risen to the level of revocation. Dr. Bradley believes the situation was political.

OPMC

In a letter dated October 11, 1999, the Office of Professional Medical Conduct opposed the restoration of applicant's license noting that in his petition applicant fails to mention the charges of which he was determined to be guilty. The Office believes that this omission represents a continuation of his inability to accept responsibility for what he did wrong.

PEER COMMITTEE

On October 19, 2000, this Peer Committee convened to review this matter. Applicant appeared before us and was represented by Martin Schaum, Esq. Applicant's packet of information entitled "Public Response for the Reinstatement of Dr. Dugald T. Lewis, Medical License" was marked as "Exhibit A". Applicant's summary of CME credits earned by applicant was received and marked as "Exhibit B". The packet of information provided to the panel prior to the hearing was marked as "Exhibit C". A tape recording of

applicant playing piano and signing gospel songs was marked as "Exhibit D". The investigator's report was marked as "Exhibit E".

TESTIMONY OF DR. HOOVER

Dr. Hoover testified on behalf of the restoration of applicant's license. Dr. Hoover is the Head of Surgery at Buffalo General Hospital. He has worked with applicant at the hospital and found him to be a safe, competent, diligent and caring surgeon. Dr. Hoover stated that he was aware of the fact that applicant's license to practice medicine was revoked. Dr. Hoover maintains that he has not had an opportunity to review the cases that caused this revocation. Dr. Hoover stated that if applicant applied for privileges at his hospital that he would recommend applicant be re-appointed.

Dr. Hoover stated that applicant has participated in the city-wide morbidity conferences which are held once a week. Applicant has also participated in hospital based conferences both at the Veterans Administration and at Buffalo General Hospital. In the conferences that Dr. Hoover has attended with applicant, applicant was a full participant. Dr. Hoover was able to access that applicant has kept abreast of changes in the profession. More importantly, applicant's full participation helped to create an atmosphere where other doctors could respond positively to criticism. Dr. Hoover believes this is a change in applicant's attitude from the time when the charges were first brought against him. Back then, applicant was angry, frustrated and defensive about looking at what he had done wrong. Now, applicant is more

accepting, acknowledging that something bad has happened and that we need to find out why. Applicant can now speak honestly about his bad outcomes with his peers.

Dr. Hoover recommended that if applicant's license is restored, a strict monitoring program be put in place to ensure that applicant is prepared to re-enter the profession and to perform surgery safely.

TESTIMONY OF NANCY STALICA

Nancy Stalica, a certified surgical technologist, testified in support of the restoration of applicant's license. Ms. Stalica was employed at Tri-County Hospital and worked with applicant for three years. She was assisting applicant during the surgery of E.H. Ms. Stalica believes that applicant did nothing wrong. Ms. Stalica remembers calling for blood on the telephone but that the blood took a long time to arrive. The lab wanted someone to come down and get the blood. She advised them that they would have to bring the blood up because no one could leave the operating room to get the blood. Ms. Stalica states that she had paged her supervisor to try to get help over 10 times but no one responded. She remembers the patient coding on the table and being revived. Ms. Stalica believes that applicant should never have lost his license. Ms. Stalica's opinion was that the hospital failed both the applicant and the patient.

TESTIMONY OF KATHLEEN GUZZETTA;

Kathleen Guzzetta, a GI nurse at Buffalo General Hospital, testified in support of the restoration of applicant's license.

Ms. Guzzetta worked with applicant since 1987 and believes him to be a fantastic physician. The patients and their families love him.

TESTIMONY OF APPLICANT

Applicant described his education and training. He completed his residency in 1984 and began a private practice in general and vascular surgery in 1989. He was granted privileges at Buffalo General and ECMC Hospitals and in 1991 was granted privileges at Tri-County Hospital.

In June of 1997 applicant lost his license as a result of charges brought by OPMC concerning the death of three of applicant's patients. At first, applicant was surprised and angry about the actions of OPMC. None of the patients or their families has ever sued for malpractice and applicant had been cleared of any wrongdoing by hospital committees. Applicant appealed the OPMC decision but lost. That loss is when the reality finally began to sink in.

Applicant stated that losing his license has forced him to take a good look at himself. He has had a chance to come to terms with the facts. He was the surgeon and there were bad outcomes. Although he believed at the time that he did the best he could, when others looked at the situation, they saw things differently. Applicant has had to come to terms with that.

Applicant states that he lost everything when he lost his license. Applicant lost his work and his home. He has had to file for bankruptcy. Applicant, as of the time of this hearing, has

been unable to obtain work. Applicant has supported himself through the help of his family. Applicant's faith has helped him to reflect on his life.

Applicant has tried to prepare himself mentally, emotionally and otherwise for the restoration of his license to practice medicine. He wanted to make sure that this experience would make him a better not a bitter person.

Applicant believed that it was important to prepare himself educationally for his chance at reinstatement. He has read journals, taken CME courses and attends hospital conferences on a weekly basis. Applicant also attended a comprehensive review course that specifically addressed the areas of blood including the preparation of the patient pre-operatively and the management of the patient intra-operatively. Applicant states that these principles will guide his practice of blood management of surgical patients in the future. These courses have helped him to identify things that he could have done differently with these patients. Applicant stated that he now believes that the patient with the hiatal hernia had contracted blood volume and that she should have been hydrated preoperatively. He believes that if she had been hydrated preoperatively, her blood hemoglobin might have dropped and her underlying anemia might have become evident.

In answer to the panel's questions, applicant stated that although none of these patients or their families sued him for malpractice, since the revocation, three other malpractice lawsuits have been filed against him. One was settled and the

other two are still in the deposition stages.

Applicant has turned to his faith to help him get through the tough times. The tape he recorded is a reflection of his spiritual life. The song "It Is Well" is about a life where a person has lost everything but still has his soul. Applicant could truly relate to those sentiments.

CLOSING STATEMENT BY PROSECUTING ATTORNEY

The prosecuting attorney takes no position on the application and instead relies on the expertise of the panel to make the determination.

CLOSING STATEMENT BY APPLICANT'S ATTORNEY

Dr. Lewis is a changed person. He is a man who has worked through his anger is now truly remorseful about what has happened. He has had the opportunity to examine his life and has become a better person because of these unfortunate experiences. Applicant has taken the steps to learn from his mistakes. He has reeducated himself and diligently applied himself. We ask you to allow him to rejoin his profession and allow him to practice medicine again.

RECOMMENDATION

In reaching our determination in this matter, we have taken into consideration the entire record. We unanimously determine that applicant has rehabilitated himself. Applicant is remorseful for what he has done, accepts responsibility for his wrongdoing and has kept himself abreast of the changes in his profession.

Once his anger subsided, he devoted himself to finding out what had gone wrong and what he could have done differently. He has with the help of his faith rehabilitated himself. Our only concern is that a surgeon has no way to keep his hands trained other then doing surgery. Therefore, we unanimously recommend to the Board of Regents that the revocation of applicant's license to practice as a physician in the State of New York be stayed, and that he be placed on probation under a specific plan calling for supervision by a Board Certified Surgeon and a Board Certified Vascular Surgeon working in a hospital or university setting. Said probationary period shall be for at least six months and shall involve the supervision of applicant in at least 100 cases of general surgery, and 50 cases of vascular surgery. Said probation shall also include the provision that prior to working with the Board Certified Surgeon and the Board Certified Vascular Surgeon, applicant shall within the first six months, take and pass a course in advanced laparoscopic procedures. Applicant copy of the terms of probation are annexed hereto, made a part hereof and marked as Exhibit "A".

Respectfully submitted,

David J. Martinke, DO, Chairperson

Margaret T. Colgan, MD

Gil M. Farkash, MD

David J. Martinke, DO JAN 6, 2000

Chairperson Dated

EXHIBIT "A"

TERMS OF PROBATION
OF THE PEER COMMITTEE

DUGALD T. LEWIS

CALENDAR NO. 18746

1. That applicant, during the period of probation, shall be in compliance with the standards of conduct prescribed by the law governing applicant's profession;

2. That applicant shall submit written notification to the Director, Office of Professional Medical Conduct (OPMC), Corning Tower, Room 438, Empire State Plaza, Albany, NY 12237, of any employment and/or practice, applicant's residence, telephone number, and mailing address and of any change in applicant's employment, practice, residence, telephone number, and mailing address within or without the State of New York;

3. That applicant shall submit written proof from the Division of Professional Licensing Services (DPLS), New York State Education Department (NYSED), that applicant has paid all registration fees due and owing to the NYSED and applicant shall cooperate with and submit whatever papers are requested by DPLS in regard to said registration fees, said proof from DPLS to be submitted by applicant to the Department of Health (DOH), addressed to the Director, OPMC, as aforesaid, no later than the first three months of the period of probation;

4. That applicant shall submit written proof to the DOH, addressed to the Director, OPMC, as aforesaid, that 1) applicant is currently registered with the NYSED, unless applicant submits written proof that applicant has advised DPLS, NYSED, that applicant is not engaging in the practice of applicant's profession in the State of New York and does not desire to register, and that 2) applicant has paid any fines which may have previously been imposed upon applicant by the Board of Regents or pursuant to section 230-a of the Public Health Law, said proof of the above to be submitted no later than the first two months of the period of probation;

5. That applicant shall be placed upon probation under the supervision of a Board Certified Surgeon (hereinafter BCS), who is practicing in a hospital or university setting, said BCS shall supervise applicant for a period of at least 6 months and/or until applicant completes at least 100 general surgery cases and is certified by said BCS as being able to complete intra-operative procedures and manage post-operative complication without supervision.

6. That said BCS is to supervise applicant in at least 100 general surgery procedures, said distribution and case mix is to be determined by BCS and a detailed case list is to be submitted in writing to OPMC and approved by them approved in writing.

7. That said BCS is to provide reports to OPMC in writing about the management of those cases and BCS is to certify to OPMC, when appropriate, but not before 100 general surgery procedures are completed, that applicant is ready to complete intra-operative procedures and manage post-operative complications without direct supervision.

8. That applicant shall be placed upon probation under the supervision of a Board Certified Vascular Surgeon (hereinafter BCVS), who is practicing in a hospital or university setting, said BCVS shall supervise applicant for a period of at least 6 months and/or until applicant completes at least 50 vascular procedures and is certified by said BCVS of being able to complete intra-operative procedures and manage post-operative complications without direct supervision.

9. That said BCVS is to supervise applicant in at least 50 vascular surgery procedures, said distribution and case mix is to be determined by BCS and a detailed case list is to be submitted in writing to OPMC and approved by them approved in writing.

10. Said cases will be admitted under the care of the BCVS.

11. That said BCVS is to be approved by OPMC and said BCVS shall be scrubbed and present in the operating room for any and all intra-operative procedures and shall supervise applicant's post-operative care of said patients.

12. That said BCVS is to provide reports to OPMC in writing about the management of those cases and BCVS is to certify to OPMC, when appropriate, but not before 50 vascular procedures are completed that applicant is ready to complete intra-operative procedures and manage post-operative complications without direct supervision.

13. That applicant, ***before working with either the BCS or BCVS***, take and pass a course in advanced laporascopic procedures.

14. That applicant shall make quarterly visits to an employee of the OPMC, DOH, unless otherwise agreed to by said employee, for the purpose of said employee monitoring applicant's terms of probation to assure compliance therewith, and applicant shall cooperate with said employee, including the submission of information requested by said employee, regarding the aforesaid monitoring;

15. That upon receipt of evidence of noncompliance with or any other violation of any of the aforementioned terms of probation, the OPMC may initiate a violation of probation proceeding.