



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

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March 21, 2003

03-209

Edward Birdsong, Physician  
2200 North Haskell Avenue  
Dallas, Texas 75204

Re: Application for Restoration

Dear Dr. Birdsong:

Enclosed please find the Commissioner's Order regarding Case No. CP-03-02 which is in reference to Calendar No. 19783. 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*  
Gustavé Martine  
Supervisor

cc: William Wood Jr., Esq.  
Harwood Building  
14 Harwood Court – Suite 512  
Scarsdale, New York 10583

The  
University of the  
Education  State of New York  
Department

IN THE MATTER

of the

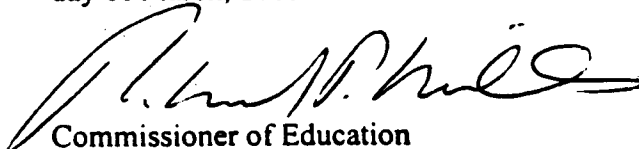
Application of EDWARD  
BIRDSONG for restoration of his  
license to practice as a physician in  
the State of New York.

Case No. CP-03-02

It appearing that the license of EDWARD BIRDSONG, 2200 N. Haskell Avenue, Dallas, Texas 75204, to practice as a physician in the State of New York, was revoked by the Administrative Review Board of the State Board for Professional Medical Conduct effective November 21, 1995, and he having petitioned the Board of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 accepted amended terms of probation from the Committee on the Professions on February 10, 2003, and having disagreed with the recommendation of the Peer Review Panel, and having agreed with and accepted the recommendation of the Committee on the Professions, now, pursuant to action taken by the Board of Regents on February 11, 2003, it is hereby

ORDERED that the petition for restoration of License No. 164669, authorizing EDWARD BIRDSONG to practice as a physician in the State of New York, is denied, but that the execution of the order of revocation of said license is stayed, and said EDWARD BIRDSONG is placed on probation for a period of five years under specified terms and conditions and upon successful completion of this probationary period, his license to practice as a physician in the State of New York shall be fully restored.

IN WITNESS WHEREOF, I, Richard P. Mills,  
Commissioner of Education of the State of New York for  
and on behalf of the State Education Department, do  
hereunto set my hand and affix the seal of the State  
Education Department, at the City of Albany, this 7<sup>th</sup>  
day of March, 2003.

  
Commissioner of Education

Case No. CP-03-02

It appearing that the license of EDWARD BIRDSONG, 2200 N. Haskell Avenue, Dallas, Texas 75204, to practice as a physician in the State of New York, having been revoked by the Administrative Review Board of the State Board for Professional Medical Conduct effective November 21, 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 accepted amended terms of probation from the Committee on the Professions on February 10, 2003, and having disagreed with the recommendation of the Peer Review Panel, and having agreed with and accepted the recommendation of the Committee on the Professions, now, pursuant to action taken by the Board of Regents on February 11, 2003, it was

VOTED that the petition for restoration of License No. 164669, authorizing EDWARD BIRDSONG to practice as a physician in the State of New York, be denied, but that the order of revocation of said license shall be stayed, and said EDWARD BIRDSONG shall be placed on probation for a period of five years under specified terms and conditions and upon the successful completion of this probationary period, his license to practice as a physician in the State of New York shall be fully restored.

Case number  
CP-03-02  
January 13, 2003

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: Edward Birdsong**

Attorney: William Wood, Jr.

Edward Birdsong, 2200 N. Haskell Avenue, Dallas, TX 75204, petitioned for restoration of his physician license. The chronology of events is as follows:

- 11/06/85 Issued license number 164669 to practice as a physician in New York State.
- 04/13/95 Charged with professional misconduct by Department of Health. (See "Disciplinary History.")
- 04/18/95 Department of Health summarily suspended physician license.
- 07/07/95 Terms of summary suspension modified by Department of Health to allow practice under supervision in a hospital emergency department setting.
- 08/23/95 Hearing Committee of the State Board for Professional Medical Conduct revoked license.
- 11/14/95 Administrative Review Board for Professional Medical Conduct sustained revocation of license.
- 11/21/95 Effective date of revocation.
- 06/13/00 Submitted application for restoration.
- 04/19/02 Peer Committee restoration review.
- 11/05/02 Report and recommendation of Peer Committee. (See "Report of the Peer Committee.")
- 12/19/02 Committee on the Professions restoration review.

01/13/03 Report and recommendation of Committee on the Professions.  
(See "Report of the Committee on the Professions.")

**Disciplinary History.** (See attached disciplinary documents.) On April 18, 1995, the Department of Health (DOH) summarily suspended Dr. Birdsong's license to practice as a physician in New York State. DOH charged him with 15 specifications of professional misconduct, including negligence on more than one occasion, incompetence on more than one occasion, gross negligence, gross incompetence, and failure to maintain adequate medical records. The charges related to his care of six patients in the emergency room of Good Samaritan Hospital, West Islip, New York during the period from 1991 to 1994. The charges included his failure to obtain and note appropriate histories, failure to obtain and note appropriate physical examinations, improperly discharging patients, failure to order appropriate tests and/or consultations, failure to correctly interpret x-rays, and failure to sufficiently document patients' histories, examinations, tests and treatment plans.

On July 7, 1995, the Department of Health determined that the continued practice of medicine in the State of New York by Dr. Birdsong did not constitute an imminent danger to the health of the people of New York and modified the terms of his summary suspension by allowing him to practice medicine in supervised hospital emergency department settings under approved physician supervisors. On August 23, 1995, a Hearing Committee of the State Board for Professional Medical Conduct determined that Dr. Birdsong was negligent and incompetent in his practice of medicine with regard to five of the six cases presented, grossly negligent in three of the six cases, and grossly incompetent in two of the six cases. The Hearing Committee determined that the appropriate penalty for his misconduct was revocation of his license. In its report, the Committee noted that it considered having Dr. Birdsong undergo an evaluation and retraining program in lieu of the revocation but determined that "he would not benefit from this program because of the significant defects demonstrated - his lack of logical thinking, and his failure to comprehend and acknowledge the severity of his professional shortcomings." Dr. Birdsong appealed this decision to an Administrative Review Board for Professional Medical Conduct. On November 14, 1995, the Review Board sustained the penalty of revocation, which became effective seven days later.

Dr. Birdsong submitted an application for restoration of his license on June 13, 2000.

**Recommendation of the Peer Committee.** (See attached "Report of the Peer Committee.") The Peer Committee (Kavalier, Harris, Kase) met with Dr. Birdsong on April 19, 2002 to review his application for restoration. In its report, dated November 5, 2002, the Committee recommended that Dr. Birdsong's license be restored without restrictions.

**Recommendation of the Committee on the Professions.** On December 19, 2002, the Committee on the Professions (Duncan-Poitier, Muñoz, Porter) met with Dr.

Birdsong to review his application for restoration. William Wood, Jr., his attorney, accompanied him.

The Committee asked Dr. Birdsong to explain why he lost his license. He replied, "I was practicing very poorly in the ER – certainly, with the six cases." He said that his documentation was abominable, as he was not recording patient vital signs, conversations, and consults. He indicated that, recently, he looked at the records for the six patients referred to in the Department of Health's charges of professional misconduct and realized that they were "scanty." Dr. Birdsong told the Committee, "I don't practice that way any more." He said that he realizes that he placed patients at risk and didn't treat them in a sufficiently comprehensive fashion. He indicated that he realizes now that he discharged patients that should not have been discharged.

Dr. Birdsong reported that after graduating from the New York College of Osteopathic Medicine in 1982, he completed one year of postgraduate hospital training in Ohio. He said that he never completed a residency in a specialty area and elected to practice as a General Practitioner to satisfy a "public health obligation" and "drifted into the ER" as he began to practice in Texas. Dr. Birdsong indicated that, in 1987, he moved to New York State and worked in the emergency departments of Richmond Memorial Hospital on Staten Island and in Good Samaritan Hospital and other hospital emergency rooms on Long Island. After losing his license in New York State, Dr. Birdsong reported that he completed a one-year rotating internship at Ohio University, Youngstown Osteopathic Hospital. After completing this residency, he stated that he completed an additional one-year residency in internal medicine at Cuyahoga Falls General Hospital in Ohio. Dr. Birdsong reported that, subsequently, he completed a residency program in family practice in Ohio in 2000. He stated that he practiced in Ohio for two years under probationary conditions mandated by that state. He indicated that he is currently practicing medicine in Federal correctional institutions in Texas.

Dr. Birdsong told the Committee that his recent additional residency training and medical practice in Ohio has enabled him to see the "glaring errors on what I did." Regarding the six cases referred to in the charges of professional misconduct, Dr. Birdsong said that they "were the worst." He indicated that he had worked at the hospital in the Emergency Room for 10 years and that those six charts were in the Quality Assurance files. He stated that all six patients either returned to the hospital or went to another hospital after he had made the decision not to admit them after examining them. He said that he now realizes there were serious gaps in his knowledge and that he should have completed a more comprehensive residency program before beginning to practice. He stated that at the time he could interpret tests correctly but lacked the knowledge to fully understand what they might mean in relation to other aspects of a patient's health. Dr. Birdsong indicated that in the busy emergency room the hospital expected him to make a fast decision as to whether a patient should stay or be sent home. He said that patient space was at a premium.

Dr. Birdsong responded to questions posed by the Committee regarding his treatment of the six patients at issue with the Department of Health. He stated that at the time the hospital had no accredited residency programs and, as a result, there were no residents with whom he could consult regarding the patients. He indicated that if he

had a question, he would have to either try to get the physician who was "on call" at the hospital to come to the Emergency Room or discharge the patient and refer him/her to a physician. He said that while practicing in Ohio, he spoke to the attending physicians much more frequently regarding his patients.

The Committee asked Dr. Birdsong if he felt his recent residency training enhanced his diagnostic skills. He replied, "Absolutely." He said that the additional training helped fill in the gaps in his prior training both in general and specialty areas. He reported that he has practiced in Ohio under supervision without any negative incidents. If his license were restored in New York State, Dr. Birdsong said that he would like to join a family practice on Long Island. He said that he can currently work for the federal system but realizes that he needs to have his Medicaid and Medicare privileges restored for private practice. He told the Committee that he feels there is "no probability of repeating" the misconduct. Dr. Birdsong said that he has "filled in the gaps" and is "very sorry for my mistakes." He stated that he feels sorry for the patients that he placed in danger and said that he now believes he has the competencies to more adequately help patients in the future. Dr. Birdsong said that he was "not ER trained" and "never could work in a busy ER." He stated, "I have been doing family practice and would like to settle in."

The overarching concern in all restoration cases is public protection. Section 6511 of the Education Law gives the Board of Regents discretionary authority to make the final decision regarding applications for the 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 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.

The COP concurs with the Peer Committee that Dr. Birdsong has presented a compelling case for the restoration of his license and notes that the Department of Health does not oppose the restoration. COP agrees with the Peer Committee that Dr. Birdsong has "made an extraordinary effort at reeducation and rehabilitation." Dr. Birdsong realized that the charges of professional misconduct revealed deficiencies in his medical training and he sought out opportunities in Ohio to participate in structured hospital postgraduate residencies to gain further training in both general and specialized areas of medicine. Ohio restored his license in November 2000 and allowed him to practice under probationary conditions. He practiced in that state for two years under supervision and is currently practicing medicine for the Texas correctional

system. The COP found that Dr. Birdsong understood the root causes of his misconduct and has taken the necessary steps to provide a sufficient level of assurance that his previous misconduct will not be repeated in the event his license is restored. Additionally, COP found that Dr. Birdsong demonstrated remorse for the poor treatment he provided for his patients and the potential danger in which he placed them. The Peer Committee recommended that Dr. Birdsong's physician license be restored without restriction; however, the Department of Health recommended that his license be restored initially only during a period of probation with a restriction that he be prohibited from engaging in the practice of emergency medicine. COP notes that Dr. Birdsong indicated that he was not trained in emergency medicine and could never work in a busy emergency room. Also, COP notes that gross negligence and gross incompetence formed part of the basis for the revocation of his license and agrees with the Department of Health that his resumption of practice in New York State be monitored during a probationary period during which he is prohibited from practicing emergency medicine.

Therefore, after a careful review of the record and its meeting with him, the Committee on the Professions voted unanimously to recommend that the order of revocation of Dr. Birdsong's physician license be stayed for five years, that he be placed on probation for five years under specified terms and conditions, attached to this report and labeled as Exhibit "A," and that upon successful completion of the probationary period, his license will be fully restored.

Johanna Duncan-Poitier, Chair

Frank Muñoz

Joseph B. Porter



**EXHIBIT "A"**

**TERMS OF PROBATION  
OF THE COMMITTEE ON THE PROFESSIONS**

**EDWARD BIRDSONG**

1. That the applicant, during the period of probation, shall be in compliance with the standards of conduct prescribed by the law governing the applicant's profession;
2. That the applicant shall submit written notification to the Director, Office of Professional Medical Conduct (OPMC), New York State Department of Health, Suite 303, 4<sup>th</sup> Floor, Hedley Park Place, 433 River Street, Troy, NY 12180-2299, of any employment and/or practice, applicant's residence, telephone number, and mailing address and of any change in the applicant's employment, practice, residence, telephone number, and mailing address within or without the State of New York;
3. That the applicant shall submit written proof from the Division of Professional Licensing Services (DPLS), New York State Education Department (NYSED), that the applicant has paid all registration fees due and owing to the NYSED and the 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 the 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 the applicant shall submit written proof to the DOH, addressed to the Director, OPMC, as aforesaid, that 1) the applicant is currently registered with the NYSED, unless the applicant submits written proof that the applicant has advised DPLS, NYSED, that the applicant is not engaging in the practice of the applicant's profession in the State of New York and does not desire to register, and that 2) the applicant has paid any fines which may have previously been imposed upon the 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 the 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 the applicant's terms of probation to assure compliance therewith, and the applicant shall cooperate with said employee, including the submission of information requested by said employee, regarding the aforesaid monitoring;

6. That during the period of probation the applicant shall be prohibited from engaging in the practice of emergency medicine; and
7. 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.



# 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

**EDWARD BIRDSONG**

**REPORT OF  
THE PEER  
COMMITTEE  
CAL. NO. 19783**

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

-----X

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

### PRIOR DISCIPLINARY PROCEEDING

Applicant, who practiced emergency medicine, was charged with  
committing acts of negligence on more than one occasion, gross  
negligence, incompetence on more than one occasion, gross  
incompetence and failing to maintain adequate medical records. The  
charges related to applicant's treatment of six patients. That  
proceeding began on April 13, 1995 through a Summary Order by the  
Commissioner of Health, suspending immediately applicant's license  
to practice medicine in New York State, upon the Commissioner's  
finding that applicant's continued practice of medicine

EDWARD BIRDSONG (19783)

constituted an imminent danger to the health of the people of this State. The Hearing Committee rendered an Interim Report on July 7, 1995, in which they determined that applicant did not constitute an imminent danger to the public health and in which they ordered that applicant practice in a supervised setting, with monitoring, until such time as a final determination in this case was rendered.

In their final determination, the Hearing Committee found that applicant was guilty of negligence on more than one occasion in the treatment of five patients, incompetence on more than one occasion in the treatment of five patients, gross negligence in the treatment of three patients, gross incompetence in the treatment of two patients, and failure to maintain adequate records in the cases of five patients.

The Committee voted to revoke applicant's license to practice medicine in New York State.

#### APPLICATION

On June 13, 2000 applicant petitioned for the restoration of his license to practice as a physician in the State of New York. His application states in pertinent part:

"After getting over the shock of the revocation of my license, I was determined to do everything in my power to increase my level of training and education. Therefore, I found a full term medical program that would accept me. I was determined to remain in medicine even if it meant beginning all over again. In June

EDWARD BIRDSONG (19783)

1996 I applied to and was accepted into a rotating internship at Ohio University, Youngstown Osteopathic Hospital which I completed in June 1997."

"The Ohio University program is accredited by the American Osteopathic Association."

"After completion of the internship, I began an internal medicine residency training program at Cuyahoga Falls General Hospital and completed one year in July of 1998. My rotations included one month of Cardiology, one month of Pulmonary, one month of GI, one month of Infectious Disease, two months of ICU/CCU and six months of Internal Medicine."

"I went on to undertake a residency program in family practice at Youngstown Osteopathic Hospital which I completed in May of 2000. I have passed my written Board exams, and I am now Board eligible in family practice by the American Osteopathic Board of Family Practice."

"For the past four years my abilities and competence have been tested and supervised in both the classroom and hospital settings. I will work with the Board in any way the members see fit in order to return to the practice of medicine. Over the last four years of additional medical education, internship and residences, I have demonstrated to myself, my superiors at Ohio University and, I hope, to this Board that I am not the physician I was when my license was revoked in 1995."

INVESTIGATIVE INTERVIEW

On August 1, 2001 an interview with applicant was conducted. The application for restoration submitted by applicant was reviewed. He stated that he was self-employed in family practice at 212 N. Main Street, Hubbard Ohio. His Ohio License is 34003450E. Applicant said that he is presently under probation in Ohio for a period of five years from November 2000 to November 2005 and is only to practice under supervision of another doctor. That doctor was Dr. James D'Ambrogio who worked out of the N. Main Street office. Applicant stated that he is presently in receipt of several Professional Journals such as AMA, AOA, JAMA and the Osteopathic Association paper.

Applicant was asked to relate how he felt about the action taken against his license by New York State. He said that he realizes that he was wrong and that he had made a mistake and the State was right to take action against him. He felt that the action was a bit harsh. He felt that action could have been taken other than the revocation of his license. He said he knows that he put patients in danger. He said he feels that he is now better trained and better equipped to do his job.

PEER PANEL REVIEW

On April 19, 2002 this Peer Panel met to review the application in this matter. Applicant appeared and was represented by Anthony Z. Scher, Esq. The Department was represented by Francis K. Kenna, Esq.

EDWARD BIRDSONG (19783)

The Chairperson opened the meeting by stating that the Peer Panel had read the full application and supporting documentation before the meeting. The Chairperson then had everyone in the meeting introduce themselves.

Mr. Scher then offered additional material regarding the application and said material was accepted. Said material consisted of eight (8) additional items which were marked applicant's exhibits A through H and made a part of the record herein.

Mr. Scher then made a brief opening statement.

He noted that the Department of Health did not oppose restoration of applicant's license but they did suggest there be restrictions on his emergency room practice.

Applicant then spoke to the Panel. He stated that as part of his practicing under supervision in Ohio he worked with Dr. James D'Ambrogio from November 2000 to March 2002 when he began working at the Federal Prison in Seagoville, Dallas, Texas where he is also under supervision.

Applicant went on to say that he would like his New York license restored without restrictions because he believes that through his reeducation and practice under supervision he has overcome his past difficulties. He stated that he believes that if New York issued him a restricted license he might no longer be able to practice in the Federal Prison system.

Applicant went on to say, in answer to a question from Mr. Kenna, that he is sorry for the patients who suffered due to his

EDWARD BIRDSONG (19783)

mistakes and lack of knowledge. He said that he is remorseful and that he is a different doctor today than he was seven years ago.

In answer to panel questions, applicant said that if he receives an unrestricted license to practice medicine in the State of New York, he would like to return to New York and go into family practice with a group.

Dr. James D'Ambrogio was then called as a witness for applicant and stated that while applicant was under his supervision applicant showed an exceptional ability to take care of his patients and anticipate problems. He said he believes applicant has raised the academic level of patient care in his office. He went on to say that he would trust his own family to applicant's care.

Randy J. Younkin was then called as a witness by applicant. He stated that he has been a patient of applicant since 1996 and had referred perhaps a dozen people to applicant and had always gotten positive reports of applicant's care.

Mr. Scher then stated that he wanted the Panel to know that applicant is now Board Certified in family medicine and has been since 2000. He also offered another exhibit, "I", which was accepted.

The parties then made closing statements.

#### RECOMMENDATION

We unanimously recommend that the application herein be granted and that the revocation of applicant's license to practice



EDWARD BIRDSONG (19783)

medicine in the State of New York be stayed. Applicant has made an extraordinary effort at reeducation and rehabilitation.

We see no reason to place any restrictions on applicant's practice. He has already been under practice monitoring for eighteen months. There is more than sufficient documentation and attestation as to his competency in emergency medicine so as not to require restrictions in that area or any other area of practice.

Applicant has also demonstrated remorse before this Panel. He has admitted to and recognized his previous problems.

Respectfully submitted,

Florence Kavalier, MD, Chairperson

David Harris, MD

Nathan G. Kase, MD

 11/5/02

Chairperson

Dated