

The
University of the
Education  State of New York
Department

IN THE MATTER

of the

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

Case No. CP-09-17

It appearing that the license of JOHN H. FANCHER, Redacted Address
authorizing him to practice as a physician in the State of New York,
was revoked by Order of a Hearing Committee of the State Board for Professional Medical
Conduct effective March 17, 1999, and he having petitioned the Board of Regents for restoration
of said license, and the Regents having given consideration to said petition and having reviewed
the record, and having agreed with and accepted the recommendations of the Peer Committee
and the Committee on the Professions, except having adopted the Terms of Probation of the
Board of Regents, now, pursuant to action taken by the Board of Regents on June 23, 2009, it is
hereby

ORDERED that the petition for restoration of License No. 198654, authorizing JOHN H.
FANCHER 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 JOHN H. FANCHER is placed on probation for a period of five years under specified terms and conditions as set forth in detail in the attached Vote, and upon successful completion of the probationary period, his license to practice as a physician in the State of New York shall be fully restored.



IN WITNESS WHEREOF, I, Carole F. Huxley, Interim 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 30th day of September, 2009.

Redacted Signature

Interim Commissioner of Education

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PS Form 3800, April 2002 See Reverse for Instructions

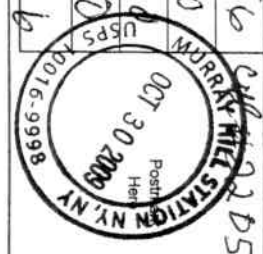


ty of the State

IN THE MATTER
OF
JOHN H. FANCHER
(PHYSICIAN)

U.S. Postal Service
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Sent To John H. Fancher, Physician
Redacted Address

X-----X

STATE OF NEW YORK)
COUNTY OF ALBANY)
Neil Blumenthal being duly sworn, deposes and says:

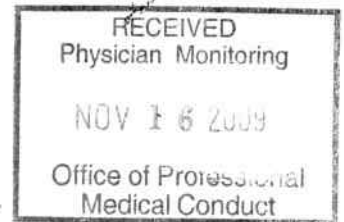
I am over the age of twenty-one years and am an employee of the New York State Education Department, Office of Professional Discipline, 475 Park Avenue South, New York, New York 10016.

On the 30th day of October, 2009, I personally delivered to the United States Postal Office, located at 34th Street and Park Avenue, New York, New York 10016 the Duplicate Original Order of the Commissioner of Education Case No. CP-09-17, in reference to Calendar No. 22050 and the Vote of the Board of Regents by Certified Mail - Return Receipt requested to the respondent herein named at 10828 N. Biltmore Drive #132, Phoenix, Arizona 85029 & Debra J. Young, Esq., Thuiliez, Ford, Gold, Butler & Young, L.L.P., 20 Corporate Woods Boulevard, Albany, New York 12211.

Certified Mail Receipt No. 7002 0860 0000 6466 7516

The effective date of the Order being the 6th day of November 2009.

Sworn to before me this 2nd day of November 2009
Redacted Signature



NELLIA L. BLAIZES-McNEAR
Notary Public, State of New York
Registration #01BL6054271
Qualified in Kings County
My Commission Expires Jan. 29, 2011

It appearing that the license of JOHN H. FANCHER, Redacted Address, authorizing him to practice as a physician in the State of New York, was revoked by Order of the State Board for Professional Medical Conduct effective March 25, 1999, and he having petitioned the Board of Regents for restoration of said license, and the Regents having given consideration to said petition and having reviewed the record, and having agreed with and accepted the recommendations of the Peer Committee and the Committee on the Professions, except having adopted the Terms of Probation of the Board of Regents, now, pursuant to action taken by the Board of Regents on June 23, 2009, it is hereby

VOTED that the petition for restoration of License No. 198654, authorizing JOHN H. FANCHER to practice as a physician in the State of New York, is denied, but that the execution of the Order of surrender of said license is stayed, and said JOHN H. FANCHER is placed on probation for a period of five years under specified terms and conditions, at the beginning of which he must complete a clinical competency assessment followed by a retraining program as described in the Terms of Probation of the Board of Regents. Until the Director of the Office of Professional Medical Conduct determines that he has satisfactorily completed the retraining program, he may practice medicine only in accordance with the parameters established and approved for the retraining program. Once the retraining program has been satisfactorily completed, he shall continue on probation under the Terms of Probation of the Board of Regents, and upon satisfactory completion of the probationary period, his license to practice as a physician in the State of New York shall be fully restored.

Case Number
CP-09-17
June 4, 2009

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: **John H. Fancher**

John H. Fancher, ^{Redacted Address}, petitioned
for restoration of his physician license. The chronology of events is as follows:

- 05/06/89 Issued license number 0000-33649 to practice medicine in North Carolina.
- 09/25/89 Issued license number MD041154L to practice medicine in Pennsylvania.
- 09/28/89 Issued license number 0101044479 to practice medicine in Virginia (expired 7/31/92).
- 04/23/90 Issued license number MD 7079 to practice medicine in Hawaii (expired 1/21/92).
- 04/22/91 Issued license number 19982 to practice medicine in Arizona.
- 09/20/94 Issued temporary license number 422 to practice medicine in Wyoming (expired 4/12/95).
- 03/07/95 Issued license number 198654 to practice medicine in New York State.
- 12/12/95 Issued temporary license number 95005639A to practice medicine in Indiana (expired 1/12/96).
- 04/12/96 Issued license number 35-070227F to practice medicine in Ohio.
- 09/25/98 Charged with professional misconduct by the New York State Department of Health.
- 03/17/99 Hearing Committee Determination and Order revoked license to practice medicine in New York.
- 03/25/99 Effective date of New York State license revocation.
- 02/09/00 Medical license revoked in Ohio based on prior action in New York.

- 05/11/00 Stipulated Rehabilitation Agreement by Arizona Medical Board.
- 04/02/01 Pennsylvania Bureau of Professional and Occupational Affairs Order suspended medical license until completion of Stipulated Rehabilitation Agreement entered into in Arizona.
- 08/22/01 Arizona Board of Medical Examiners revoked medical license; but revocation stayed pending five year probation under specified terms.
- 11/18/01 Arizona probation tolled due to expired license.
- 05/19/03 Application submitted for restoration of New York medical license.
- 05/05/05 Peer Committee restoration review.
- 07/19/06 Report and recommendation of Peer Committee.
- 02/22/07 Committee on the Professions restoration review.
- 06/04/09 Report and recommendation of Committee on the Professions.

Disciplinary History. (See attached disciplinary documents.) In 1998, the Department of Health charged Dr. Fancher with 21 specifications of professional misconduct, of which he was found guilty of five, all of which stemmed from his treatment of seven patients in the emergency room at Millard Fillmore Hospital in Buffalo, New York between April 18 and April 23, 1995.

The Hearing Committee (McAloon, Major, Simmons) found that Dr. Fancher had practiced medicine with negligence on more than one occasion with respect to all seven patients, A, B, C, D; E, F, and G; had practiced with incompetence on more than one occasion with respect to Patients D, E, and G; had practiced with moral unfitness with respect to Patient A; and he had failed to maintain adequate medical records with respect to Patients B, C, D, E, F, and G. Other specifications, which alleged gross negligence, gross incompetence, fraudulent practice, and misconduct associated with harassing or abusing a patient, were all dismissed.

With respect to Patient A, a 38-year-old male who came to the emergency room with complaints of chest pain and burning urination, Dr. Fancher was found by the Hearing Committee to have improperly ordered that he be administered an injection of magnesium sulfate. Reportedly, the sole reason for the order to inject the patient with magnesium sulfate was to cause him pain as a way to discourage him from coming to the emergency room for no apparent reason. With respect to Patient B, a 33-year-old male who had come to the emergency room for a blow to the head and face from a metal bar, the Hearing Committee concluded that Dr. Fancher had failed to perform an adequate neurological examination of the patient, had failed to do an appropriate right middle ear exam, had failed to diagnose a zygomatic arch fracture, and had failed to

adequately document Patient B's record. Patient C was a 52-year-old female who had come to the emergency room with complaints of left side weakness, posturing indicative of a cerebral hemorrhage, and a history of severe headaches. The Hearing Committee concluded that Dr. Fancher had failed to intubate Patient C in a timely manner, had failed to perform an adequate neurological examination, and had failed to provide adequate records. Regarding Patient D, a 45-year-old male who presented to the emergency room with severe headache and persistent nausea and vomiting, the Hearing Committee found that Dr. Fancher had taken only a minimal history and had performed a minimal exam. He also had failed to properly evaluate the patient's headache, to consider other possible causes for the patient's symptoms, and to properly document treatment.

With respect to Patient E, a 48-year-old female who came to the emergency room after falling and hitting her head at a chronic care facility where she lived and who had a history of multiple falls in the days prior to her arrival, the Hearing Committee found that the applicant had taken no history from the patient, had performed a nominal neurological examination that did not meet minimum standards of medical care, and had failed to properly document treatment. With respect to Patient F, a 25-year-old male who came to the emergency room with complaints of back pain after falling down some stairs the previous evening, the Hearing Committee found that Dr. Fancher had taken only a minimal history and had failed to adequately document details relating to the accident and the injuries suffered. He was also found to have ordered no diagnostic tests and to have failed to adequately evaluate the patient for his symptoms. Finally, with respect to Patient G, an 80-year-old male who was brought to the emergency room via ambulance following a ten-minute seizure and who had a history of seizure disorder, the Hearing Committee found that Dr. Fancher had failed to perform or document a proper physical examination, had failed to perform a proper neurological exam, had failed to document an appropriate history, and had made no attempt to properly evaluate why the patient's Dilantin levels were low. Following a five-day hearing, the Hearing Committee voted to revoke Dr. Fancher's license.

On May 19, 2003, Dr. Fancher submitted the instant application for restoration of his physician license.

Recommendation of the Peer Committee. (See attached Report of the Peer Committee.) The Peer Committee (Gitman, Gujaverly, Morton-Rias) convened on May 5, 2005. In its report dated July 19, 2006, the Committee unanimously recommended that the revocation of Dr. Fancher's license to practice as a physician in the State of New York be stayed and that he be placed on probation for a period of five years under various terms, which included a provision that he not engage in private practice during that time period. He was to practice medicine only under the supervision of a physician licensed in the State of New York and his medical practice was to be confined to an Article 28 facility as defined by the public health law of the State of New York. In addition, Dr. Fancher was to continue to be monitored by the Committee for Physicians Health, which was to certify his continued sobriety and ability to practice. Upon successful completion of the terms of probation, Dr. Fancher's license would be fully restored.

Recommendation of the Committee on the Professions. On February 22, 2007, the Committee on the Professions (Templeman, Hansen, O'Grady-Parent) met with Dr. Fancher to consider his application for restoration. He was not represented by an attorney.

Dr. Fancher was asked to explain his understanding of why his license had been revoked. He explained that, starting in about 1989, he had begun a career as a locum tenens physician and was hired by a group that provided doctors where they were needed, all over the United States. He reported that had taken that position because he thought it would be interesting to travel and see the country. He indicated that he had previously traveled around much of the world, having gone to medical school and done his residency in France, and having worked with a group called "Doctors of the World." As a locum tenens physician, he told the Committee that he was often sent to practice in emergency rooms, although he was board certified only in internal medicine. He stated that there is no requirement in the United States that a physician be specifically certified for emergency room work. He reported that he was sent on a number of assignments, including to hospitals in Hawaii, Alaska, and Florida. He told the COP that, in April 1995, he was sent to work in the emergency room at Millard Fillmore Hospital in Buffalo and that the hospital terminated his services after one week, without giving him any real reason other than that they did not like his recordkeeping. He indicated that he then went on to work at a hospital in Elmira, without any problems, followed by a four-month stint working for the Navy in Pensacola. He explained that he then settled in Arizona, where he worked with a physician in a practice specializing in general and internal medicine.

Dr. Fancher reported that, in late 1998, he was served by the Office of Professional Medical Conduct of the New York State Department of Health with disciplinary charges and that he lost his physician license in 1999. He indicated that, once he lost his New York license, other states where he had been licensed also revoked his license. He told the Committee that he was able to get a stay of revocation of his license in Arizona, but by then, he had lost most of his patients, so he allowed his license to expire. He reported that he last practiced medicine in December of 2001. He indicated that he had gone into an extensive state of depression as a result of dealing with the loss of his profession.

When asked to provide more information about what happened in reference to his treatment of patients in Buffalo, Dr. Fancher explained that he agreed that his recordkeeping there was not good. He told the COP that he had used a truncated method of recordkeeping when working for the military and that he believes that many of the findings against him for negligent and incompetent treatment had come about because of his poor documentation. However, he admitted that he was probably not paying sufficient attention to the cases, which was inappropriate. He stated that he had been a frequent alcohol user, although he never drank when he was working. He told the Committee that he believes that alcohol has a negative effect on one's personality and prevents a person from evolving. With respect to the patient for whom he was found to have prescribed magnesium sulfate, he stated that he had no recollection of ever having seen the patient, though he was the physician of record. He did indicate that, notwithstanding the indication in the Peer Committee report that the magnesium sulfate was administered to the patient, he rescinded the order before the patient was

given the injection, and we note that the record supports Dr. Fancher's statement. He also reported that, in the five days he had spent in the hospital in Buffalo, he had treated about twenty patients a night.

When asked by the COP what he had done for rehabilitation, Dr. Fancher explained that he had begun a program to rehabilitate himself in about the year 2000. Dr. Fancher indicated that he had admitted to himself that he was abusing alcohol and was an alcoholic. He told the COP that he started attending AA meetings, volunteered over 300 hours answering phones for AA, and received counseling from a program in Arizona. He reported that he took a two or three-day course in recordkeeping, courses in pharmacology, and an ethics course at Vanderbilt University. In addition, he indicated that he obtained extensive CME credits. He reported to the Committee that he passed the Federation of State Medical Boards' Special Purpose Examination (SPEX) in 2002 and that he also took an internal medicine board certification preparation course and passed the American Board of Internal Medicine (ABIM) recertification exam in internal medicine in November 2003. In addition, he indicated that he took the American College of Physicians' Medical Knowledge Self-Assessment Program (MKSAP 12) in internal medicine, earning 135 credit hours. Dr. Fancher also noted that after he had stopped practicing medicine he eventually acquired a commercial driver's license and drove a bus for a period of time. At the present time he works at a college teaching anatomy and other subjects.

Dr. Fancher concluded his presentation by indicating that he feels he has come a long way since the events that led to the loss of his license and that this has enabled him to change his approach to the profession. He feels that he has learned to be more calm, more careful, and more patient. He told the Committee that his skill, knowledge, and training could be used to help people if he is allowed to return to the practice of medicine.

The overarching concern in all restoration cases is the protection of the public. New York Education Law §6511 gives the Board of Regents discretionary authority to make the final decision regarding applications for the restoration of a professional license. §24.7 of the Rules of the Board of Regents charges the COP with submitting a recommendation to the Board of Regents on restoration applications. Although not mandated by law or regulation, the Board of Regents has instituted a process whereby a Peer Committee first meets with an applicant for restoration and provides a recommendation to the COP. A former licensee petitioning for restoration has a significant burden of satisfying the Board of Regents that there is a compelling reason that licensure should be granted in the face of misconduct that 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, without question, the arguments presented by the petitioner, but to weigh and evaluate all of the evidence submitted and to render a determination based upon the entire record.

The COP concurs with the Peer Committee's assessment that Dr. Fancher is remorseful. He articulated to the COP that he acknowledges his past mistakes, and he has presented a convincing case that he will use his insights to improve his medical

practice in the future. We find that Dr. Fancher has taken the necessary steps to change his approach to medicine, including his completion of coursework in recordkeeping and ethics. He has also completed substantial re-education in internal medicine, including 135 credits for completing the MKSAP profile, successful completion of the SPEX examination, and successful completion of the American Board of Internal Medicine's Recertification Examination. We find that he successfully completed treatment for alcoholism and that he has maintained his sobriety since 2000. He has, therefore, shown substantial rehabilitation, as well as re-education. Finally, the COP concurs with the Peer Committee's recommendation that Dr. Fancher's re-entry into the practice of medicine be structured and supervised for a five-year probationary period.

Therefore, after a careful review of the record and its meeting with Dr. Fancher, the Committee on the Professions votes unanimously to concur with the recommendation of the Peer Committee that the Order of Revocation of Dr. Fancher's license to practice as a physician in the State of New York be stayed, that he be placed on probation for a period of five years in accordance with the Terms of Probation of the Peer Committee attached as Exhibit "B" to the Report of the Peer Committee, provided that the period of probation shall be tolled during periods in which applicant is not engaged in the active practice of medicine in New York State, that applicant shall notify the Director of the Office of Professional Medical Conduct, in writing, if applicant is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more, and that applicant shall then notify the Director again prior to any change in that status; and that, upon satisfactory completion of the probationary period, his license be fully restored.

Leslie Templeman, Chair
Stanley Hansen
Erin O'Grady-Parent



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

JOHN HAWLEY FANCHER

REPORT OF
THE PEER COMMITTEE
CAL. NO. 22050

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

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JOHN HAWLEY FANCHER, 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 on March 7, 1995. Said license was revoked, effective March 24, 1999 by the Office of Professional Medical Conduct (OPMC), New York State Department of Health (DOH) as the result of a professional misconduct proceeding.

The applicant has applied for restoration of his license.

BACKGROUND INFORMATION

~~The written application, supporting papers provided by the applicant and papers resulting from the investigation conducted~~

JOHN HAWLEY FANCHER (22050)

by the Office of Professional Discipline (OPD) have been compiled by the prosecutor from OPD into a packet that has been distributed to this Peer Committee in advance of its meeting and also provided to the applicant.

PRIOR DISCIPLINE PROCEEDINGS

Action by the State Board for Professional Medical Conduct:

By determination and order BPMC 99-58, dated March 19, 1999, the hearing committee determined that the applicant's license to practice medicine in the State of New York be revoked. The order enforcing the penalty was served by mail upon the applicant, effective March 26, 1999.

Specifications of misconduct: The applicant was charged with 21 specifications of professional misconduct, of which he was found guilty of five (5) specifications to the extent indicated in the Hearing Panel's report dated March 17, 1999.

Nature of the misconduct: On or about April 18, 1995 through on or about April 23, 1995, while working as a locum tenens doctor in the emergency room at Millard Fillmore Hospital in Buffalo, New York, he was found to have treated seven patients (referred to as patients A through G) with unwarranted treatment, moral unfitness, negligence, incompetence on more than one occasion, and failure to maintain adequate records.

As a brief overview of the findings of fact made by the hearing panel, we note that the applicant's misconduct included, but was not necessarily limited, to the following:

JOHN HAWLEY FANCHER (22050)

Patient A: Patient A was a 38 year old male who was treated on April 20, 1995 for complaints of both prior and current chest pain and burning during urination. The applicant directed a resident and a nurse to administer one gram of magnesium sulfate by intramuscular injection. Both the nurse and the resident questioned the order but were told to comply without rationale. The applicant's stated reason to the nurse for ordering the medication was to deter the patient from coming to the emergency room for what the applicant saw as no reason, and because the injection would hurt.

Patient B: Patient B was a 33-year old male treated on April 22, 1995 for a blow to the head and face from a metal bar. The applicant failed to properly document information about the injuries and failed to perform an adequate neurological exam of the patient.

Patient C: Patient C was a 52-year old female treated on April 23, 1995 for a history of severe headaches and presenting with left side weakness and posturing indicative of a cerebral hemorrhage. There was no indication that the applicant did a physical exam which included a neurological exam. Additionally the applicant failed to run necessary tests.

~~Patient D: Patient D was a 45-year old male who presented on April 18, 1995 for complaints of a severe headache with nausea and vomiting that persisted. The applicant took only a minimal history and performed only a minimal exam. The applicant made a~~

JOHN HAWLEY FANCHER (22050)

diagnosis of a tension headache, prescribed medication and discharged the patient. There was no documentation that the applicant considered other possible causes for the patient's symptoms.

Patient E: Patient E was a 48-year old female treated on April 18, 1995 after falling and hitting her head at the chronic care facility where she lived. The patient had multiple falls in the days prior to her arrival in the hospital. The applicant took only a minimal history and performed only a nominal neurological examination including only minimal tests.

Patient F: Patient F was a 25-year old male who was treated on April 18, 1995 by the applicant after complaints of back pain from falling down some stairs the night before. Only a minimal history was recorded by the applicant, who also failed to adequately document details relating to the accident and the injuries suffered. The applicant ordered no diagnostic tests and failed to adequately evaluate the patient for symptoms.

Patient G: Patient G was an 80-year old male who was treated on April 18, 1995 following a 10-minute seizure. The patient had a history of seizure disorder and arrived via ambulance. The applicant only documented the seizure disorder and prostate cancer history but did not perform or document any physical exam, nor did he perform a proper neurological exam.

OTHER STATES LICENSURE STATUS

Arizona: On August 22, 2001 the applicant's medical license

JOHN HAWLEY FANCHER (22050)

in the State of Arizona was revoked based on the New York State disciplinary proceeding, with said revocation stayed and the applicant placed on probation for five (5) years, with terms including participation in a monitored aftercare program for substance abuse, practice only in a group setting and 40 hours CME. The applicant allowed his license to expire in Arizona on November 18, 2001 without having completed the terms of probation.

Ohio: Ohio revoked the applicant's license effective February 23, 2000, based upon New York's action.

Pennsylvania: Pennsylvania suspended the applicant's license effective April 22, 2001, until such time as he satisfactorily completed the terms of Arizona's substance abuse rehabilitation terms then in effect, which was prior to his subsequent stayed revocation in that state. As of June 2003 his license was considered suspended in Pennsylvania.

Wyoming: The temporary license issued to the applicant on or about September 20, 1994 expired on March 31, 1995 for his failure to take the SPEX examination within the allotted time.

Indiana: The applicant's temporary permit, issued on or about December 12, 1995, expired on January 12, 1996.

Virginia: The applicant was issued a license on September 28, 1989 and he allowed it to expire on July 31, 1992.

Hawaii: The applicant was licensed in this state on or about April 23, 1990 and it expired on or about January 31, 1992. It

JOHN HAWLEY FANCHER (22050)

was considered forfeited by Hawaii and indicated that the applicant must apply as a new applicant to be licensed.

North Carolina: The applicant was issued a license to practice medicine on or about May 6, 1989, which expired on or about June 6, 1992. His license status is termed "inactive" by the state.

APPLICATION FOR RESTORATION

The applicant executed the State Education Department's standard form for applying for restoration of licensure. The application contained information and attachments as referred to, below:

Entries in the basic application form:

Continuing Education: The applicant provided documentation that he completed over 200 credit hours of coursework from April 2000 to April 2003 through correspondence courses and attendance at classes. In addition, the applicant reads various professional medical journals.

Professional Rehabilitation Activities: The applicant submitted documentation that he prepared, studied and passed the American Board of Internal Medicine (ABIM) recertification exam in internal medicine, which the applicant completed in November 2003.

Submissions of Affidavits: In support of his application, the applicant submitted five affidavits, four of which were from medical colleagues and one from his attorney.

INVESTIGATIVE INFORMATION

Subsequent to the filing of the petition for restoration, OPD conducted an investigation for the purposes of this proceeding. Information from that investigation, including reports from the OPD investigator as well as other documents, was made a part of the packet for this proceeding. Certain information from the packet has been summarized above. Among the information not summarized are reports from the investigator dated October 29, 2004 and November 22, 2004 respectively. These reports relate an interview conducted with the applicant by the investigator and begins with an outline of the applicant's disciplinary history.

The applicant described the action taken by OPMC as a "wake-up call". He acknowledged that in the past he was angry and that this might have been attributable to his excessive and problematic drinking prior to 2000. In the long run, the applicant feels that his life has improved as a result of the revocation of his license.

The applicant explained that he was lazy in his documentation and charting and that this was his basic practice problem. He has sought to correct this fault through a combination of understanding the specific areas in which he needs improvement, CME courses dedicated to those areas of deficiency, and by accepting full responsibility for his prior actions.

JOHN HAWLEY FANCHER (22050)

With regard to his alcoholism problem, the applicant entered a substance abuse rehabilitation center in Arizona after his driving under the influence conviction in 1997. Thereafter, he began attending Alcoholics Anonymous (AA) meetings, which he still attends on a regular basis.

The applicant stated that he has been sober for five years now, and through an agreement with the Committee for Physicians Health (CPH), provides a log of his AA attendance and submits to random drug screenings. In addition to the above, the applicant volunteers and has completed over 300 hours helping other individuals with alcohol-related problems.

The following individuals submitted affidavits in support of the applicant. Each person was interviewed by telephone and all were aware of the facts surrounding the revocation of the applicant's license.

The first of these individuals was Herbert D. Goodman, M.D., who has known the applicant for over five years. He met the applicant through their joint work at a family practice clinic. Dr. Goodman said that the applicant has made sincere and serious efforts towards rehabilitation and highly recommends his licensure restoration.

The second was Jay G. Bernstein, D.O., who has known the applicant for approximately eight years, and who met through their joint employment at the same family practice clinic. Dr. Bernstein described the applicant as very intelligent, if not

JOHN HAWLEY FANCHER (22050)

brilliant. He is aware of the retraining and counseling that the applicant has undergone and believes that he has made sincere steps towards rehabilitating himself. He feels that the applicant would be an excellent physician again, but does recommend that his rehabilitation and practice be monitored if he is reinstated.

John W. Curtin, M.D. met the applicant about five years ago when he was referred to him by the Arizona Monitored Aftercare Program. Dr. Curtin stated that the applicant participated in that program for two years as well as a 12-step program. He believes that the applicant is of good moral character and, as his personal physician, highly recommends reinstatement of the applicant's license.

Michel A. Sucher, M.D. met the applicant while serving as a professional monitor for the Arizona Medical Board and has known the applicant for approximately five years. Dr. Sucher believes the applicant has accepted responsibility for his actions and is remorseful for them. He also highly recommends the restoration of the applicant's medical license.

Daniel P. Jantsch, Esq. has known the applicant for approximately eight years both socially and professionally. Mr. Jantsch represented the applicant during his hearing for the Arizona Medical Board. While at one time he would not have recommended restoration, he now views the applicant's rehabilitative efforts as phenomenal and highly supports his relicensure.

JOHN HAWLEY FANCHER (22050)

Among the other materials which comprised the restoration packet were the following:

- 1) a letter from the applicant dated October 29, 2004, stating that he had entered into an agreement with the CPH of New York; and
- 2) a letter dated February 27, 2004 from Dennis J. Graziano, Director, OPMC, setting forth his office's position on the applicant's restoration petition. In said letter, he expressed concern about the lack of any current evaluations* of the applicant's prior psychological and alcohol problems. While the office does not directly oppose restoration, it does recommend specific probationary terms over a five year period if re-licensure is granted.

PEER COMMITTEE MEETING

On May 5, 2005, this Peer Committee met to consider this matter. The applicant appeared before us personally and elected to proceed without an attorney after being apprised of his right to be represented by counsel. Also present was Joan E. Handler, Esq., an attorney from the Division of Prosecutions, OPD.

*Dr. Graziano's letter was submitted prior to the above letter from the applicant regarding his entry into New York's CPH program.

JOHN HAWLEY FANCHER (22050)

Before the applicant made an opening statement in which he reviewed the circumstances that led to his licensure revocation, offered two documents which were entered into the record as Applicant's Exhibits "A" and "B" respectively. Applicant's "A" was a letter dated May 3, 2005 from Dr. John W. Curtin attesting to the applicant's sobriety since February of 2000 and his consistently negative results in random drugs and alcohol screenings. He noted that he is happy with the applicant's continued progress and supported his license reinstatement.

Applicant's "B" was a listing of all of the CME courses the applicant has taken since 1999.

He then began his remarks by describing the work that he was doing as a locum tenens doctor and the hours and time frame in which he worked in the emergency room while at Millard Fillmore Hospital. He then went on to describe what he has done since 1999, the year his license was revoked. He gave an overview of the CME credits he has completed as well as the work that went into his taking and passing both the Special Purpose Examination (SPEX) and the recertification exam for Board status in internal medicine.

The applicant then spoke about his treatment for alcohol dependence. From his DUI conviction in 1997 to his subsequent rehabilitation and aftercare treatment and monitoring, he said that he has been sober since almost 2000. Most recently, the applicant has participated with the CPH of the New York State

JOHN HAWLEY FANCHER (22050)

Medical Society, wherein he gives random urine samples on a regular basis; he has never had a positive result.

Ms. Handler in her opening statement noted that the underlying reason for the applicant's problems, namely alcoholism, has been addressed by the applicant. She also noted the recommendation of OPMC regarding the applicant, which was a five year probationary period, including continuing drug and alcohol screening and monitoring, and supervised medical practice to address any clinical concerns.

The applicant gave his testimony through a narrative. He began with a review of his personal and educational background, which included travel to various locations around the world before entering medical school in France in 1975. The applicant did his first four years of a seven year program in Grenoble, France, transferred to Paris, and over the next three years did residencies in and around Paris. He received his Doctor of Medicine in or about March of 1985. Before beginning another residency position at that time, he spent five months with Doctors of the World, an aid organization.

He finished his residency at the end of 1988 and began working as a locum tenens physician in various cities, including Elmira and Buffalo (where his problems occurred), before moving to Phoenix, Arizona. He practiced in Arizona for approximately three years before the events in New York caught up with him. He was able to practice for another two years after his New York

JOHN HAWLEY FANCHER (22050)

revocation until Arizona took his license in 2001 based upon the New York action. While he was able to get his Arizona license back under certain terms only a few months later, the applicant had lost his patients, suffered from depression and he allowed his license to expire. He has not practiced since.

On cross-examination, Ms. Handler asked the applicant what restrictions were placed on his Arizona license, his monitored aftercare and whether he had difficulty practicing while being monitored. He responded that he was limited to practicing medicine in an office only with another physician present. In addition, he was required to complete 40 hours of CME and to remain in the monitored aftercare program in Arizona for five years. Because he did not continue to practice in Arizona after regaining his license with certain restrictions, he never actually participated in the monitoring program.

The applicant was asked if he would be able to comply with the OPMC recommendations if his license was to be restored, and what intentions he might have as to how and where he would practice. The applicant envisioned the monitoring to be similar to doing a residency but in an office setting. While he intends to live and hopefully practice in Arizona, the applicant feels ~~that his lack of a New York license has hampered his ability to practice elsewhere.~~ The applicant feels that he needs to first get his New York license restored before he can reapply to any other states for licensure.

JOHN HAWLEY FANCHER (22050)

Ms. Handler also asked the applicant about three malpractice suits against him and about the resolution and settlement pertaining to the suit that involved the death of a patient. The applicant stated that that particular lawsuit was scheduled for a hearing one month after he lost his medical license; he agreed with his attorney that this information, if presented to a jury, could be detrimental and the case was settled without the applicant admitting any liability.

The peer committee then asked questions of the applicant. When asked about his current employment and level of clinical competence, the applicant responded that he is currently employed as a bus driver transporting people to and from the airport. He then spoke of his appreciation for the hands-on aspect of medicine and that while he has no way of keeping current with that aspect, he does keep abreast with his professional reading. He is reviewing the MKSAP-13," which gives him up-to-date theoretical knowledge. While it has been some time since he has practiced, he is sure that it is like riding a bicycle and that his skills will come back quickly. He also anticipated that he would start out slowly in returning to practice by working about four hours a day.

He was also questioned about the seven cases of which he was ~~found guilty and whether these cases involved documentation or~~ clinical care and whether or not alcohol was a problem in his life at that time. The applicant explained that he divided the cases

JOHN HAWLEY FANCHER (22050)

in that four of them did not result in any patient harm and that the poor documentation of these cases led to an assumption of negligence and incompetence. The applicant stated that he was not paying attention in these cases and that, in itself, was bad enough. In the other three cases, the applicant gave an explanation of each because he felt that each was unique. He again acknowledged that his work in Buffalo at the hospital was not good.

The first case was, in his words, a case of moral unfitness and unwarranted treatment. The applicant, who was the doctor of record in the emergency room, never saw the patient in this case, who in fact was seen by an intern. The controversy stemmed from the fact that the applicant ordered an injection of magnesium sulfate which was meant to and did, in fact, cause patient harm.

In the second case, the applicant refers to this as the worst case he dealt with and was the last patient seen by him while at MFH. The patient was brought in by EMS and the accusations stem from the fact that the applicant did not intubate the patient in the emergency room. Ultimately the patient did well, but in hindsight the applicant acknowledges that the patient should have been intubated immediately.

The third case really bothered the applicant in that he stated that there was definite negligence on his part. The applicant admitted that he missed diagnosing the patient's fractures upon admission to the hospital and, upon further

JOHN HAWLEY FANCHER (22050)

examination a few days later, missed diagnosing a ruptured eardrum.

He went on to explain that while alcohol had been a problem on occasion, he never drank while on the job. The applicant did receive a DUI, but this was in 1997, two years after the previous events.

The panel continued its questioning relating to the applicant's alcohol abuse and its correlation with his depression and subsequent treatment. The applicant testified that he has abused alcohol and admitted to being an alcoholic at AA meetings. He further stated that alcohol was a major contributor to his problems and, while there was only one criminal conviction for driving under the influence, there could have and should have been more. As to his depression, the applicant said that he participated in an Arizona program which included counseling. The applicant did not take any antidepressants during this time. He said that his period of depression lasted for about six months.

The applicant was also asked how he gets along with people while working and whether or not he would be able to work in a supervised setting if required to do so as a condition of being re-licensed. He replied that while it takes him a while to open up to people, he usually has no problem in getting along with them. He further stated that he would do whatever it takes to get his license back, and though he would prefer not to return to New York to practice, he would if necessary.

JOHN HAWLEY FANCHER (22050)

Upon further cross-examination, the applicant was asked to clarify why the medical practice questions which resulted in the revocation of licensure all came about during that brief time in Buffalo. He replied that it "was a period of sloppiness in a place where it wasn't tolerated". He further stated that there were probably other instances of sloppiness elsewhere that never came to anyone's attention.

The panel then asked what the applicant has been doing in his life other than employment. The applicant said that he has friends and does a lot of reading. In the areas of rehabilitation and community service, the applicant stated that he studies scripture, which he first started through AA, and has also logged about 300 hours manning the phones at AA on a volunteer basis. He continues his attendance at AA meetings on approximately a once a week basis.

When asked what specific plans the applicant had for regaining hands-on competency in clinical skills, he replied that he has given some thought to contacting the director of internal medicine at the Veterans Administration (VA) to seek out the possibility of working there between four and six hours per day. More specifically, the applicant wants to apply for his Ohio license and would like very much to gain employment there.

Another option he has thought about is to train residents on how to pass the medical boards since the applicant feels that taking tests has always come easy for him.

JOHN HAWLEY FANCHER (22050)

He was asked about any other employment attempts he might have made since his license revocation and whether it was a specific requirement of Arizona's that he obtain licensure in another jurisdiction first before it would grant re-licensure. He explained that he assumed that Arizona would follow the lead of other states which require restoration by the original state which revoked the license in the first instance before it would reinstate that state's license.

He attempted to get a real estate license in Arizona, spending three months in preparing for the exam and, after being put through "hoops", was denied the license. After this experience, the applicant did an internship at a hospital in phlebotomy. Even though he felt he excelled at this job, he was unable to gain employment in the field. This is what led to his becoming a bus driver.

When asked to elaborate on his future employment plans, he reiterated his wish to work part-time initially with his ultimate goal to become a full-time internist, preferably in a hospice or hospital setting. He would also like to be board-certified but this will not be possible until he regains his license.

Ms. Handler, in her closing remarks on behalf of the ~~Prosecutions Division~~, stated that she will rely on the panel for its decision as to whether or not the applicant has shown himself to be rehabilitated, re-educated and to have shown the appropriate remorse to be granted restoration of his New York

JOHN HAWLEY FANCHER (22050)

medical license. Ms. Handler asked the panel to consider strongly the recommendation of OPMC regarding the conditions to be imposed upon the applicant if his license is restored.

The applicant, in his closing argument, stated that he has done a tremendous amount of work to get to this point in life and that he wants the opportunity to be a responsible and good physician.

RECOMMENDATION

We have reviewed the entire record in this matter, including the written materials received before and during our meeting. In arriving at our recommendation, we note that, in a licensure restoration proceeding, the burden is on the applicant to demonstrate that which would compel the return of the license. Greenberg v. Board of Regents of University of New York, 176 A.D. 2d, 1168, 575 N.Y.S. 2d 608, 609. In reaching our recommendation, we consider whether the applicant demonstrates sufficient remorse, rehabilitation and re-education. However, we are not necessarily limited to such formulaic criteria but may consider other factors, particularly the seriousness of the original offense and, ultimately, our judgement as to whether the health and safety of the public would be in jeopardy should the application be granted.

There is no doubt by this Peer Committee that the applicant is remorseful for the actions that led to the revocation of his license. The applicant gave compelling testimony of the shame, embarrassment and financial burden that he placed upon himself and

JOHN HAWLEY FANCHER (22050)

his family. Upon our review of the records and the cases that caused problems for the applicant, it is clear that he recognizes his errors and accepts responsibility for them.

Regarding re-education, we are comfortable that the applicant has done what he could and that his CME has been sufficient so that no further education is necessary. Similarly, no further community service is warranted. In terms of rehabilitation, we are satisfied that he has achieved this through his acknowledgement of and dealing with his alcohol abuse. The applicant has maintained sobriety since the year 2000, participates in a recovery program and is monitored by CPH.

However, we would recommend, and in fact require as a condition of his restoration of licensure, his continued participation with the Committee on Physicians Health until they are fully satisfied with his recovery.

The applicant has maintained gainful employment since his license revocation and while his current job may not be considered glamorous work, he takes great pride in his employment.

An important factor in reaching our recommendation was the applicant's realistic outlook of his options and possible limitations to his future practice in the medical field. On this note, ~~the applicant's lack of clinical practice and skills is a~~ concern of not only to this committee but to the applicant as well. The applicant testified that he would be comfortable in returning to work on a part-time basis and would be willing to

JOHN HAWLEY FANCHER (22050)

undergo any internships, residency programs and/or monitoring and supervision programs to ensure his success and reintegration into the medical community.

Therefore, it is the unanimous recommendation of this Peer Committee that execution of the revocation of the applicant's license to practice as a physician in the state of New York be stayed, and that the applicant then be placed on probation for a period of five (5) years under the terms and conditions of probation annexed hereto made a part hereof and marked as Exhibit "A". Said terms shall include, among other things, provisions that he not engage in private practice during that time, that he practice medicine only under the supervision of a physician licensed in the State of New York, and that said medical practice be confined to an Article 28 facility as defined by the Public Health Law of the State of New York. In addition, the applicant must continue to be monitored by CPH, who must certify his continued sobriety and ability to practice. Upon successful completion of the terms of probation, the applicant's license would be fully restored.

Respectfully submitted,

Paul Gitman, M.D., Chairperson

Krishna R.S. Gujaverly, M.D.

Dawn Morton-Rias, P.A., Ph.D.

Redacted Signature

Chairperson

1/9/06
Date

EXHIBIT "B"

TERMS OF PROBATION
OF THE PEER COMMITTEE

JOHN HAWLEY FANCHER

CALENDAR NO. 22050

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), 433 River Street, Suite 303, Troy, NY 12180-2299, 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 have quarterly performance reports submitted to the New York State Department of Health (DOH), addressed to the Director, Office of Professional Medical Conduct, as aforesaid, from his employer, evaluating his performance as a physician in his place of employment, said reports to be prepared by applicant's supervisor or employer;
4. 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 NYSED, addressed to the Director, Office of Professional Discipline, as aforesaid, no later than the first three months of the period of probation;
5. 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;

6. 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;
7. That applicant, during the period of probation, shall practice medicine only under the supervision of a physician licensed to practice in the State of New York;
8. That applicant, during the period of probation, shall not engage in private practice;
9. That applicant, during the period of probation, shall practice medicine in the State of New York only in Article 28 facility as defined by the Public Health Law;
10. That applicant shall, during the period of probation, abstain from the unauthorized use of all drugs, remain free from alcohol abuse, and shall be fit to practice his profession;
11. That applicant shall continue his enrollment in the Committee for Physician's Health (CPH) substance abuse and monitoring program, for evaluation, and any necessary treatment, and/or referral, all at applicant's expense, and shall cooperate fully with and participate in said substance abuse program, said program to conduct an examination of applicant at least once every three (3) months during the period of probation, at such times as said program may choose, at applicant's expense, said examination to include urine samples for the detection of any drugs or alcohol in applicant. Applicant shall submit or cause to be submitted a written report from and signed by an authorized person from said program, once every three (3) months during the period of probation, in which said authorized person shall state whether the presence of any drug(s) and/or alcohol has been detected by virtue of the said examination and shall also indicate the name of said drug(s). In the event any drug(s) or alcohol is detected, applicant shall submit a sworn affidavit explaining the use of said drug(s) or alcohol, as well as any other papers applicant wishes to submit in that regard. The said reports and affidavits, as well as any other papers, shall be forwarded to the New York State Department of Health, to the Director, Office of Professional Medical Conduct, as aforesaid. If any information is received by the New York State Department of Health indicating that applicant

JOHN HAWLEY FANCHER (22050)

is not drug and/or alcohol-free and/or not fit to practice his profession, such information shall be processed to the Board of Regents for its determination in a violation of probation proceeding initiated by the New York State Department of Health and/or such other proceedings pursuant to the Education Law and/or Rules of the Board of Regents;

12. That upon receipt of evidence of non-compliance with or any other violation of any of the aforementioned terms of probation, the OPMC may initiate a violation of probation proceeding.

TERMS OF PROBATION
OF THE BOARD OF REGENTS

JOHN H. FANCHER

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), 433 River Street, Suite 303, Troy, NY 12180-2299, 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 NYSED, addressed to the Director, Office of Professional Discipline, 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 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;
6. That, prior to engaging in the practice of medicine other than for purposes of the Clinical Competency Assessment, the applicant shall enroll in and successfully complete a Clinical Competency Assessment to be conducted by a program approved by the Director, OPMC. Applicant shall cause a written report of such assessment to be provided directly to the Director, OPMC, within ninety (90) days of the effective date of this Order, unless the Director, OPMC extends the time for submission of such report;

7. That the applicant shall be responsible for all expenses related to the Clinical Competency Assessment and shall provide to the Director, OPMC, proof of full payment of all costs that may be charged. This term of probation shall not be satisfied in the absence of actual receipt, by the Director, of such documentation, and any failure to satisfy this term of probation shall provide a basis for a violation of probation proceeding;
8. That the applicant shall submit to the Director, OPMC, a retraining plan consistent with the recommendations resulting from the Clinical Competency Assessment within sixty (60) days of receiving the results of the Clinical Competency Assessment, unless the Director, OPMC extends the time for such submission, such plan to be subject to approval in writing by the Director, OPMC;
9. That the applicant, at the conclusion of the approved retraining program, shall submit to the Director, OPMC, a detailed assessment of the progress made by the applicant toward remediation of all identified deficiencies;
10. That the applicant shall practice medicine only within the parameters established for the retraining program until the Director, OPMC, has determined that the applicant has satisfactorily completed the retraining program;
11. That the applicant, once the retraining program has been satisfactorily completed, shall practice medicine in a setting approved by the Director, OPMC, for the duration of the period of probation;
12. That applicant, during the period of probation, shall practice medicine only under the supervision of a physician licensed to practice in the State of New York;
13. That applicant, during the period of probation, shall not engage in private practice;
14. That applicant shall have quarterly performance reports submitted to the New York State Department of Health (DOH), addressed to the Director, OPMC, as aforesaid, from his employer, evaluating his performance as a physician in his place of employment, said reports to be prepared by applicant's supervisor or employer;
15. That applicant shall, during the period of probation, abstain from the unauthorized use of all drugs, remain free from alcohol abuse, and shall be fit to practice his profession;
16. That applicant shall continue his enrollment in the Committee for Physician's Health (CPH) substance abuse and monitoring program, for evaluation, and any necessary treatment, and/or referral, all at applicant's expense, and shall cooperate fully with and participate in said substance abuse program, said program to conduct an examination of applicant at least once every three (3) months during the period of probation, at such times as said program may choose, at applicant's expense, said examination to include urine samples for the detection of any drugs or alcohol in applicant. Applicant shall submit or cause to be submitted a written report from and signed by an authorized person from said program, once every three (3) months

during the period of probation, in which said authorized person shall state whether the presence of any drug(s) and/or alcohol has been detected by virtue of the said examination and shall also indicate the name of said drug(s). In the event any drug(s) or alcohol is detected, applicant shall submit a sworn affidavit explaining the use of said drug(s) or alcohol, as well as any other papers applicant wishes to submit in that regard. The said reports and affidavits, as well as any other papers, shall be forwarded to the New York State Department of Health, to the Director, Office of Professional Medical Conduct, as aforesaid. If any information is received by the New York State Department of Health indicating that applicant is not drug and/or alcohol-free and/or not fit to practice his profession, such information shall be processed to the Board of Regents for its determination in a violation of probation proceeding initiated by the New York State Department of Health and/or such other proceedings pursuant to the Education Law and/or Rules of the Board of Regents;

17. That upon receipt of evidence of non-compliance with or any other violation of any of the aforementioned terms of probation, the OPMC may initiate a violation of probation proceeding; and
18. That the period of probation shall be tolled during periods in which the applicant is not engaged in the active practice of medicine in New York State. The applicant shall notify the Director of OPMC, in writing, if the applicant is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. The applicant shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon the applicant's return to practice in New York State