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

OFFICE OF PROFESSIONAL DISCIPLINE
(718) 246-3060/3061

195 Montague Street - Fourth Floor
Brooklyn, New York 11201

Sushila Gupta, Physician

May 22, 2009

Redacted Address

Re: Application for Restoration

Dear Dr. Gupta:

Enclosed please find the Commissioner's Order regarding Case No. CP-08-10 which is in reference to Calendar No. 21721. 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:

Redacted Signature

Ariana Miller
Supervisor

DJK/AM/er

cc: William L. Wood, Jr., Esq.

Wood & Scher

Attorneys at Law

222 Bloomingdale Road, Suite 311

White Plains, New York 10605



The
University of the
Education  State of New York
Department

IN THE MATTER

of the

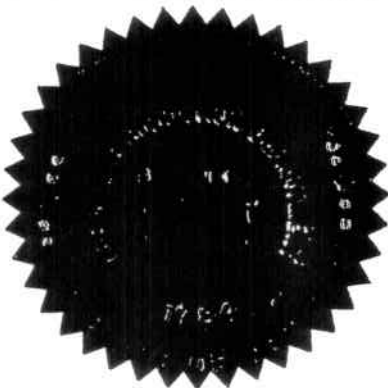
Application of SUSHILA GUPTA for
restoration of her license to practice as a
physician in the State of New York.

Case No. CP-08-10


It appearing that the license of SUSHILA GUPTA, Redacted Address

, to practice as a physician in the State of New York, was revoked by the Administrative Review Board for Professional Medical Conduct, effective November 13, 1995, and she having petitioned the Board of Regents for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 petitioner's additional submissions, and having disagreed with and rejected the recommendations of the Peer Committee and the Committee on the Professions, for the reasons set forth in the attached written decision, now, pursuant to action taken by the Board of Regents on November 16, 2008, it is hereby

ORDERED that the petition for restoration of License No. 131542, authorizing SUSHILA GUPTA to practice as a physician in the State of New York, is denied.



IN WITNESS WHEREOF, I, Richard P. Mills,
Commissioner of Education of the State of New York for
and on behalf of the State Education Department, do
hereunto set my hand and affix the seal of the State
Education Department, at the City of Albany, this *John*
day of May, 2009.


Commissioner of Education

Case No. CP-08-10

It appearing that the license of SUSHILA GUPTA, Redacted Address

to practice as a physician in the State of New York, was revoked by the Administrative Review Board for Professional Medical Conduct, effective November 13, 1995, and she 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 petitioner's additional submissions, and having disagreed with and rejected the recommendations of the Peer Committee and the Committee on the Professions for the reasons set forth in the attached written decision, now, pursuant to action taken by the Board of Regents on November 16, 2008, it is hereby

VOTED that the petition for restoration of License No. 131542, authorizing SUSHILA GUPTA to practice as a physician in the State of New York, is denied.

THE UNIVERSITY OF THE STATE OF NEW YORK
The State Education Department

DETERMINATION OF THE BOARD OF REGENTS

on

Application for Restoration of Physician License

Re: **Sushila Gupta**

A full recitation of the facts and disciplinary history in this matter is set forth in the report and recommendation of the Committee on the Professions submitted to the Board of Regents on October 1, 2008.

After carefully reviewing the initial report and recommendation of the Peer Committee dated September 27, 2005, and the report and recommendation of the Committee on the Professions ("COP") dated June 4, 2008, we find that Dr. Gupta is not entitled to restoration of her license to practice medicine, and reject the recommendations of the Peer Committee and the COP to stay the revocation of Dr. Gupta's license with probationary terms.

Factors to be considered in an application for restoration of a professional license include the seriousness of the underlying misconduct, the applicant's rehabilitation, professional competence and risk of harm to the public, remorse for the underlying actions and reeducation efforts. See Nehorayoff v. Mills, 270 AD2d 748 (3d Dept 2000), rev'd on other grounds, Nehorayoff v. Mills, 95 N.Y.2d 671 (2001); Melone v. State of N.Y. Educ. Dept., 182 AD2d 875 (3d Dept 1992); Greenberg v. Board of Regents, 176 AD2d 1168 (3d Dept 1991).

In reviewing this matter, we are concerned by the seriousness of the charges that led to the loss of Dr. Gupta's license. A Hearing Committee for the State Board for Professional Medical Conduct revoked her license in 1995, which was sustained by the Administrative Review Board. The Hearing Committee found Dr. Gupta guilty of 17 specifications of professional misconduct, including practicing with gross negligence, negligence on more than one occasion, practicing with gross incompetence, incompetence on more than one occasion, failing to maintain records, and deviating from accepted medical standards, all related to her obstetric care of five patients, and found that Dr. Gupta did not possess the requisite professional skills or concern for her patients' well-being to continue the practice of medicine. The specific charges included, among others not listed here, failure to perform and document prenatal care on two patients; inadequate ultrasound exams on four patients; failure to obtain necessary diagnostic or lab tests on three patients; failure to perform and document adequate history on three patients; failure to administer RhoGAM on one patient; and failure to be available and to provide coverage while two patients were in labor. In one case, Dr. Gupta failed to diagnose an ectopic pregnancy, which led to rupture and consequent surgery. In another case, where the patient was permitted to remain in labor too long and the fetus was in distress for several hours without appropriate intervention, the baby was born with severe neurological deficits. These are all very serious mistakes, and we especially note that a number of the charges involved repeated errors in

the fundamental skills of documentation, obtaining adequate patient histories and ordering appropriate diagnostic and lab tests.

We agree with the Peer Committee and the COP that Dr. Gupta has shown remorse for these mistakes. We also note that Dr. Gupta has pursued reeducation and rehabilitation, especially in the area of ultrasound, but we are concerned that a large portion of the recent continuing education courses have been in mental health topics (19 credit hours out of 92.75 credits in the last four years) and topics other than gynecology/obstetrics, and the yearly number of continuing education credits has declined since submission of the restoration application, from an average of about 50 hours per year to approximately 23 hours per year in the last four years. Dr. Gupta also did not explain how her reeducation and rehabilitation efforts have specifically addressed the particular deficiencies that led to revocation of her license, other than ultrasound.

Dr. Gupta has now been out of practice for almost 13 years, and we are not convinced that her reeducation and rehabilitation efforts are sufficient to compel a determination that she now has the competence to practice without posing a risk of harm. We are also concerned by her statements that if her license was restored she intended to limit her practice to gynecology, and therefore the proposed probation terms have no provision for supervised obstetrical practice to address the underlying obstetrical practice issues that resulted in the misconduct findings. Once the probation period ends, Dr. Gupta's license would be fully restored without any restriction as to areas of practice. The Board of Regents would have no way to ensure that Dr. Gupta confined her practice to gynecology, the risk level that she now feels comfortable with, and there would be no provision for addressing the obstetrical inadequacies that led to revocation of her license.

In sum, based upon the foregoing, we are not convinced that Dr. Gupta is fit to practice at the current time, and find that Dr. Gupta has not made the mandatory showing to compel the exercise of our discretion to restore her license. We reject the recommendations of the Peer Committee and the COP, and deny Dr. Gupta's application for restoration of her physician license.

R.M. 8-11-08

August 5, 2008

Mr. Seth Rockmuller
The State Education Department
University of State of New York
Albany, N.Y. 12230

Re: Dr. Sushila Gupta
Restoration Application

Dear Mr. Seth:

The following is the answer in reply to your letter dated July 28, 2008.

Professional Activities:

- 1) I am still doing voluntary work at Nyack Hospital once a week in the emergency room. Documentation is attached.
- 2) I have joined the AAPI (American Association of Physicians from INDIA) of Rockland County. They have frequent medical meetings and have lectures on different subjects at different times. I try to attend as many as possible. Documentation is attached.
- 3) I meet Dr. Mukhtyar often to discuss Ob/Gyn journals on different topics and clinical problems. Documentation will follow.

Continuing Education; I study every day my basic books to keep my knowledge up to date:

- 1) Obstetrics by Williams.
- 2) Gynaecology by Novak.
- 3) Clinical Gynaecologic Endocrinology by Spiroff.
- 4) I study on the internet every day one to two hours at www.ACOG.com.
- 5) I study the following journals:
 - a) Green Journal of Obstetrics and Gynaecology
 - b) Contemporary Ob/Gyn
 - c) ACOG Practice Bulletin
- 6) I attend Primed Seminar for Continuing Education. Documentation is attached. I am registered for Primed Seminar 2008. Documentation is attached.
- 7) Mind, Mood, and Memory journal from Massachusetts General Hospital. Documentation is attached.
- 8) Health after 50 newsletter from John Hopkins. Documentation is attached.
- 9) Staying Ahead of the Curve in Pediatric and Adolescent Health: Asthma, Pertussis, Hepatitis and Vaccinations.
- 10) Comprehensive Mental Health Approaches: Semester I.

- 11) Comprehensive Mental Health Approaches: Semester II.
- 12) Improving Remission in the Treatment of Major Depressive Disorder.
- 13) Applying the Pharmacology of Atypical Antipsychotics: Clinical Implications on Efficacy and Safety.

I hope the above is sufficient evidence towards my Continuing Education since July 2004 uptill now.

Sincerely,

Redacted Signature

Sushila Gupta



160 North Midland Avenue
Nyack, New York 10960-1998
(845) 348-2000

July 30, 2008

To Whom It May Concern:

Sushila Gupta has volunteered at Nyack Hospital in the Emergency Department from April 4, 2003 to the present.

She is a very competent and reliable volunteer and an asset to the department to which she is assigned. I highly recommend her for any endeavor she wishes to pursue.

If you have any questions or concerns, you can contact me at 845-348-2204.

Thank you.

Sincerely,

Redacted Signature

Helen Hayes Perkins
Patient Satisfaction Advisor, and
Director of Volunteer Services

HHP/jm



AAPI of Rockland



Executive Officers:

Bangalore Sridhara, M.D.
President
(845) 942-1001

Dilip Subhedar, M.D.
Vice President
(845) 357-5745

Sankaran Krishnan, M.D.
Secretary/Legal
(845) 493-7585

Perminder Grewal, M.D.
Treasurer
(845) 942-1001

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Rakesh Shreedhar, M.D.

Directors
Ajit Sardana, D.D.S.
Indra Kumar Goohya, M.D.
Smitha Ramaswamy, M.D.

August 5, 2008

To Whom It May Concern:

Dr. Sushila Gupta has been an active member of AAPI of Rockland since 2004. In the past four years she has attended a minimum 4 medical meetings each year.

Sincerely,

Redacted Signature

Bangalore S. Sridhara, M.D.
President, AAPI of Rockland



Badge Number: 1734

Pri-Med Institute certifies that

Sushila Gupta, MD

has participated in the educational activity titled Pri-Med Updates, located at Westchester, NY on September 9-10, 2004 and is awarded 16.25 category 1 credit(s) toward the AMA Physician's Recognition Award.

This activity has been reviewed and is acceptable for up to 16.25 Prescribed credit hours by the American Academy of Family Physicians.

Redacted Signature

Alyce Kuklinski, MSN, RN, NP
Director, Accreditation & Education Partner Services
Pri-Med Institute

PRIMED
Delivering World Class Medical Education

Sushila Gupta, M.D.

STATEMENT OF CONTINUING MEDICAL EDUCATION CREDIT

Participant Information

Name: Sushila Gupta, M.D.	Address: [Redacted]	City/State/Zip: [Redacted]	Phone: [Redacted]	Facility: [Redacted]
-------------------------------------	-------------------------------	--------------------------------------	-----------------------------	--------------------------------

Provider Information

CME LLC, 2801 McGaw Ave Irvine, CA 92614-5835

Certificate #351

Date of Issue: June 25, 2005

Activity Information

Title: Staying Ahead of the Curve in Pediatric and Adolescent Health: Asthma, Pertussis, Hepatitis and Vaccinations

Date of Activity: June 25, 2005

Activity Venue: (if applicable) New York Marriott Marquis

Activity Location or Dist. Method: New York, New York

Credit Hours Awarded for this Activity: 7.25

CME LLC certifies that Sushila Gupta, M.D. has participated in the educational activity described above and is awarded 7.25 category 1 credit(s) toward the AMA Physician's Recognition Award:

CME LLC is accredited by the Accreditation Council for Continuing Medical Education to provide continuing medical education to physicians.

If you have any questions regarding this Statement, please call the CME LLC Customer Service Department at (800) 447-4474.



Redacted Signature

Marsha Meyer, RPH
Sr. Vice President, Clinical Information
Program Administrator



Badge Number: 21872464

Pri-Med Institute certifies that

Sushila Gupta, MD

has participated in the educational activity titled Pri-Med Updates, located at Tarrytown, NY on September 20-21, 2005 and is awarded 16.25 category 1 credit(s) toward the AMA Physician's Recognition Award.

This activity has been reviewed and is acceptable for up to 16.25 Prescribed credit hours by the American Academy of Family Physicians.

Redacted Signature

Marissa Seligman, Pharm D
Chief Clinical & Regulatory Affairs Officer and VP
Pri-Med Institute

PRIMED
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HARVARD MEDICAL SCHOOL
Department of Continuing Education



Massachusetts General Hospital
Psychiatry Academy

CME You Can Trust... Wherever You Are

Harvard Medical School certifies that

Sushila Gupta, MD

has participated in the educational activity titled

Comprehensive Mental Health Approaches: Semester 1

at New York City, NY on April 21, 2006 and is awarded 5.0 AMA PRA Category 1 Credit(s)[™].

Authorized by: /

Redacted Signature

Sanjiv Chopra, M.B., B.S.
Faculty Dean of Continuing Education
Professor of Medicine



HARVARD MEDICAL SCHOOL
Department of Continuing Education



Massachusetts General Hospital
Psychiatry Academy

CME You Can Trust...Wherever You Are

Harvard Medical School certifies that

Sushila Gupta, MD

has participated in the educational activity titled

Comprehensive Mental Health Approaches: Semester 2

at New York City, NY on October 13, 2006 and is awarded 6.0 AMA PRA Category 1 Credit(s)[™].

Authorized by:

Redacted Signature

Sanjiv Chopra, M.B., B.S.
Faculty Dean of Continuing Education
Professor of Medicine



2801 McCaw Avenue, Irvine, California 92614

0150092
Sushila Gupta, M.D.
6 Theis Ln
Blauvelt, NY 10913-1003

CME LLC is accredited by the Accreditation Council for Continuing Medical Education to provide continuing medical education to physicians.

Continuing Medical Education LLC

confirms that

Sushila Gupta, M.D.

has completed the educational activity entitled

Improving Remission in the Treatment of Major Depressive Disorder


on

December 01, 2007
and is awarded 4.00 AMA PRA Category 1 Credits™

CME credits from activities presented by ACCME accredited providers may be used toward American Osteopathic Association (AOA) Category 2-A requirements
The American College of Radiology (ACR) accepts activities designated for AMA PRA Category 1 Credits™

Date issued: December 01, 2007

Redacted Signature


Aparna Vasireddy
Continuing Education Administrator



CME | Continuing
Medical
Education

2801 McGow Avenue, Irvine, California 92614

Sushila Gupta, M.D.
6 Theis Ln
Blauvelt, NY 10913-1003

CME LLC is accredited by the Accreditation Council for Continuing Medical Education to provide continuing medical education to physicians.

Continuing Medical Education LLC

confirms that

Sushila Gupta, M.D.

has completed the educational activity entitled

**Applying the Pharmacology of Atypical Antipsychotics: Clinical Implications
on Efficacy and Safety**

on

June 07, 2008

This activity was designated for 4.00 AMA PRA Category 1 Credits™

CME LLC is approved by the California Board of Registered Nursing, Provider No. CEP12748 and designates this educational activity for 4.00 contact hours(s) for nurses.

The American Nurses Credentialing Center (ANCC) accepts AMA PRA Category 1 Credits™ toward recertification requirements.

CME LLC is registered with CE Broker as an approved provider of continuing medical education for Florida-licensed physicians, osteopathic physicians, physician assistants and nurses.

Redacted Signature

Apurna Vasireddy
Continuing Education Administrator

- Inbox (2)
- Junk
- Drafts (1)
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- Deleted (7)
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New Reply Reply all Forward Delete Junk
Move to Options ?

Attachments, pictures, and links in this message have been blocked for your safety.
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Pri-Med Registration

From: Support@pri-med.com
You may not know this sender. Mark as safe | Mark as unsafe
Sent: Mon 7/07/08 6:50 PM
To: sushila_gupta@hotmail.com

Dear Dr. gupta:

Thank you for registering for Pri-Med New York 2008 to be held in New York, NY from October 3 - 5, 2008 .

Your registration has been processed and your official confirmation letter will be mailed shortly.

Please keep the following Pri-Med Member Account Information for your records:

Badge Number: 30627415
Username: sushila gupta
Mailing Address for registration materials:
sushila gupta, MD

6 theis lane
blauvelt, New York 10913
United States

For housing information please go to: <http://www.pri-med.com/pmo/ViewEvent.aspx?EventCode=10NYC08A>

Don't forget you can use your account login to update your registration record, including address changes at: www.pri-med.com
Plus, use this login anytime to access Pri-Med's new no-cost, online CME, clinical tools and patient care resources at: www.pri-med.com

We look forward to seeing you in October.

MJC Communications, LLC is the owner of Pri-Med. 101 Huntington Ave, Boston, MA 02199.
Please forward any questions to support@pri-med.com with Pri-Med C&E as

R.M. 8-13-08

August 11, 2008

Mr. Seth Rockmuller
The State Education Department
University of State of New York
Albany, N.Y. 12230

Re: Dr. Sushila Gupta
Addendum to the Restoration letter provided on August 5, 2008 (Attached)

Dear Mr. Seth:

Professional Activities:

- 1) For the past 20 years I have been a member of the Bronx AAPI society.
Documentation attached.
- 2) Also attached is a recommendation letter from Ob/Gyn Dr. Mukhtyar.

Sincerely,

Redacted Signature

Sushila Gupta



AMERICAN ASSOCIATION OF PHYSICIANS OF INDIAN ORIGIN
AAPI-BRONX CHAPTER

140 Bellamy Loop
Bronx, N.Y. 10475
(718) 671-6600

PRESIDENT:

Rajesh Patel, M.D.

August 6, 2008

VICE PRESIDENT:

Prakash Kancheria, M.D.
Jagdish Patel, M.D.

To Whom It May Concern:

This is to certify that Dr. Sushila Gupta residing at 6 Theise Lane, Balaubet, NY is a member of our association, AAPI Bronx in good standing. She attends our meetings regularly.

SECRETARY:

Sanjeev Bansal, M.D.
Narendra Bhalodkar, M.D.

I have known Dr. Gupta for over 20 years. She bears a good moral character and has practiced with high ethical standards.

TREASURER:

Padmakant Shah, M.D.

Due considerations given to her will be highly appreciated. Thank you.

PUBLIC RELATIONS:

Sumir Sahgel, M.D.

Sincerely,

Redacted Signature

COMMITTEE

MEMBERS:

Lekshmi Dharmarajan, M.D.
Pravin Patel, M.D.
Dinesh Mehta, M.D.
Vijay Khatriwala, M.D.

Dr. Rajesh Patel
President
AAPI-Bronx

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Venkatachala Pathy, M.D.

RESIDENT

REPRESENTATIVE:

S. Shah, M.D.

Usha Mukhtyar, MD, FRCS, MRCOG, FACOG

Board Certified Obstetrician and Gynecologist

1521 Benson Street, Bronx, NY 10461

(718) 863 2173, Fax (718) 823-3926

August 11, 2008

TO WHOM IT MAY CONCERN

Ref: Dr. Sushila Gupta, MD

I have known Dr. Gupta for last 30 years. She is sincere, compassionate, caring and was universally loved by her patients.

Dr. Gupta has been volunteering in my office for several years. She helps me take the history of patient. Then during examination she stays with me in the room. We discuss the examination findings and relation to symptoms. We also discuss the differential diagnosis and management of the patients.

We refer to internet details on condition of the patient at ACOG.ORG site, EMEDICINE site, MSSNY.ORG site and several other medical sites, thus being thorough in diagnosis and management. She often borrows Green Journal and ACOG Practice Bulletin from me.

Dr. Gupta has kept up with the Obstetrics and Gynecology subject. She is hardworking, conscientious, knowledgeable and up-to-date.

She is highly qualified. She is board eligible in US and did Diploma in Obstetrics and Gynecology from Royal College of Ob. & Gyn. from England. She has often helped Ob & Gyn. residents and helped them with presentations, case studies.

I strongly recommend that she be given back her licensed to practice. She will be a very good physician taking good care of patient. I understand she made mistakes in the past. At that time she was under great stress with her seriously sick only child. Now she is over all that stress and would prove a great physician if given license

If you need any other information, kindly do not hesitate to contact me.

Sincerely

Redacted Signature

Usha Mukhtyar



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

SR

Committee on the Professions
2nd Floor, West Wing
88 Washington Avenue
Albany, New York 12234
Telephone: (518) 486-1765
Fax: (518) 474-3863

July 29, 2008

William L. Wood, Jr.
Wood and Scher
Attorneys at Law
222 Bloomingdale Road, Suite 311
White Plains, NY 10605

Dear Mr. Wood:

At its meeting on July 28, 2008, the Professional Practice Committee of the Board of Regents tabled its consideration of the application of your client Sushila Gupta for restoration of her physician license. The Committee requested an update on Dr. Gupta's re-education efforts since the most current documentation of continuing medical education in her file which is dated June of 2004. I have spoken with Dr. Gupta and have asked her to provide documentation of all continuing medical education since that date, as well as a listing of all other re-education efforts since that time, with documentation whenever possible. It is anticipated that the Board of Regents will consider the matter again at its meeting on September 15-16, 2008.

If you have any questions, please contact me at 518-486-1765.

Sincerely,

Redacted Signature

Seth Rockmuller

cc: Sushila Gupta
Walter Ramos
Andrew Tolkoff
Mary Ellen Clerkin
Deborah Couser

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: **Sushila Gupta**

Attorney: William L. Wood, Jr.

Redacted Address

Sushila Gupta, Redacted Address, J, petitioned for restoration of her physician license. The chronology of events is as follows:

- 07/15/77 Issued license number 131542 to practice medicine in New York State.
- 12/07/94 Charged with professional misconduct by the Department of Health.
- 07/25/95 Hearing Committee of the State Board for Professional Medical Conduct voted revocation.
- 11/06/95 Administrative Review Board for Professional Medical Conduct sustained revocation.
- 11/13/95 Effective date of revocation.
- 11/26/96 First application for restoration submitted.
- 04/07/99 First Peer Committee restoration review.
- 11/03/99 Report and recommendation of first Peer Committee.
- 01/05/00 First report and recommendation of Committee on the Professions. (See "Report of the Committee on the Professions.")
- 03/07/00 Board of Regents voted denial of first restoration application.
- 04/07/00 Commissioner's order denying restoration served.
- 05/31/03 Second application for restoration submitted.
- 10/26/04 Second Peer Committee restoration review.
- 09/27/05 Report and Recommendation of Second Peer Committee. (See "Recommendation of the Peer Committee.")

Disciplinary History. (See attached Administrative Review Board Decision and Order Number ARB No. 95-161 and Determination and Order BPMC 95-161.) On December 7, 1994, the Department of Health charged Dr. Gupta with 17 specifications of professional misconduct, including practicing with gross negligence, negligence on more than one occasion, practicing with gross incompetence, incompetence on more than one occasion, and failing to maintain records. The charges related to her obstetric care of five patients (A-E). A Hearing Committee of the State Board for Professional Medical Conduct found that Dr. Gupta failed to perform and document an adequate medical history for Patients B, C and D; failed to perform and document physical examinations for Patients C and D; ordered and/or performed ultrasound exams that were not adequate or did not order sufficient ultrasound exams for Patients A, B, C and D; failed to perform necessary lab tests for Patients A and B; failed to perform and document adequate prenatal care for Patients A and B; failed to administer the drug RhoGAM to Patient A, who was rh negative; incorrectly diagnosed an intrauterine pregnancy for Patient C, when there was no medical indication for that diagnosis; failed to appropriately treat patient D, given the patient's complaint of lack of fetal movement; was unavailable during delivery and did not provide coverage for delivery for Patient D; abandoned Patient E while the patient was in labor; allowed Patient E to remain for an excessive amount of time in second stage labor, while the patient's baby was in distress; and inappropriately ordered the administration of Oxytocin to Patient E.

Additionally, the Hearing Committee found that Dr. Gupta deviated from accepted medical standards. They concluded that she failed to diagnose the presence of spina bifida in Patient B's infant; put Patient C's life in danger by misdiagnosing an intrauterine pregnancy when there were no definitive physical signs present; did not follow-up on Patient D's report that there was a lack of fetal movement; did not follow-up her duty as a physician by going to the hospital after sending Patient E there; and demonstrated a lack of knowledge of the proper management of an obstetrical patient by failing to perform the complete regimen of prenatal care and laboratory tests for Patients A and B. The Committee found that Dr. Gupta did not possess the requisite professional skills or concern for her patients' well-being to continue the practice of medicine and that allowing her to continue to practice would put her patients at risk.

The Hearing Committee voted to revoke Dr. Gupta's license. She appealed this decision to an Administrative Review Board for Professional Medical Conduct. The Review Board sustained the Committee's determination that Dr. Gupta was guilty of professional misconduct and sustained the determination to revoke her license. The Review Board concluded that the evidence demonstrated that Dr. Gupta lacked the ability, insight and motivation to be a successful candidate for retraining and that her deficiencies were so severe as to reflect that she lacked the requisite skills to practice medicine in general. Additionally, they noted that she demonstrated an indifference to her patients' safety and abandoned a patient at the most crucial stage of delivery. The revocation was effective November 13, 1995.

On November 26, 1996, Dr. Gupta submitted her first application for restoration of her physician license. In a report dated January 5, 2000, the Committee on the Professions (COP) recognized that Dr. Gupta had engaged in extensive and varied continuing medical education but expressed concerns about the credibility of her statements. The COP questioned whether she had gained sufficient insight into the flaws in her practice that led to her professional misconduct and that had to be addressed in order to insure that the health and safety of her patients would not be jeopardized were her license to be restored. Additionally, the COP found that Dr. Gupta expressed remorse concerning the impact the loss of her license had on her life but that she failed to show sufficient concern for the physical and psychological effects her misconduct had on her patients. The COP recommended that Dr. Gupta's application for the restoration of her license be denied, and on March 7, 2000, the Board of Regents voted to deny her application. (The reports of the first Peer Committee and the first COP are attached.)

On May 31, 2003, Dr. Gupta submitted the instant application for restoration of her physician license.

Recommendation of the Peer Committee. (See attached Report of the Peer Committee.) The Peer Committee (Cordice, Vorhaus, Frontera) convened October 26, 2004. After reviewing the record and hearing the testimony of Dr. Gupta and three witnesses who appeared on her behalf, the Peer Committee concluded that Dr. Gupta had made a good effort at re-education and rehabilitation through her participation in continuing medical education courses and grand rounds, her reading of medical texts and journals, and her involvement in community service. Having had the opportunity to observe her demeanor while testifying, the panel further found that she demonstrated sincere remorse and accepted responsibility for the acts that led to the loss of her license, that the risk of future misconduct was very low, and that the restoration of her license would not pose a risk to the public. The panel went on, however, to unanimously recommend that Dr. Gupta undergo a course of retraining. In its report dated September 27, 2005, the Committee unanimously recommended that the revocation of Dr. Gupta's license to practice as a physician be stayed, that she undergo a clinical competency assessment and a course of retraining, and that following said retraining she be placed on probation for five years under specified terms and conditions, including the submission of quarterly performance reports from her employer.

Recommendation of the Committee on the Professions. On November 30, 2005, the Committee on the Professions (Muñoz, Templeman, Hansen) met with Dr. Gupta to consider her application for restoration. William L. Wood, Jr., her attorney, accompanied her.

The Committee asked Dr. Gupta to explain the events that led to the loss of her license. She responded that the incidents related to mistakes she made in her treatment of five patients. In one case, she failed to document the administration of RhoGAM to a patient who was Rh negative. With regard to the second patient, Dr. Gupta indicated that she failed to diagnose an ectopic pregnancy of a patient who was five weeks pregnant. According to Dr. Gupta, she did not see the ectopic pregnancy on the sonogram, but she told the patient to go to the hospital if she had further bleeding. The patient did go to the hospital three days later, at which time a D and C was performed.

In treating a third patient, Dr. Gupta failed to detect that the fetus had spina bifida when she looked at a sonogram done when the patient was 13 to 15 weeks pregnant. The condition was subsequently detected when the patient was 26 weeks pregnant. Dr. Gupta told the COP that abortion was the only alternative to having the baby and that the patient chose to have the baby. The fourth incident involved a patient who had multiple health problems, including sickle cell anemia and diabetes. Dr. Gupta reported that she was able to hear the fetal heart beat as a result of which she told the patient to go home. The baby was delivered stillborn three days later. Dr. Gupta told the fifth patient to go to the hospital but then failed to meet her there because of an emergency involving her own child. The patient had a long second stage of labor, and the baby, who was delivered by a resident in the hospital, was born with a mental disability. Dr. Gupta told the COP that she should have performed a Caesarean delivery.

In response to a question about her medical training background, Dr. Gupta reported that she had a two-year residency in India and also had two years of training in government service in that country, that she then had a series of residencies in hospitals in England over a period of four years, that she then returned to India where she practiced for four years, and that she thereafter came to the United States in 1973. She told the Committee that she had previously obtained a Canadian license to practice medicine, and she reported on her restoration application that she worked from March 1, 1974 until May 31, 1976 and again from June 6, 1977 until June 30, 1980 as a medical specialist at the Letchworth Village Developmental Center. Her application further indicates that from June 1, 1976 until June 30, 1977 she performed a residency in psychiatry at the Middletown Psychiatric Center.

Dr. Gupta obtained her New York license to practice medicine in 1977, and she reported on her restoration application that from July 1, 1980 until November 13, 1995, the effective date of the revocation of her license, she engaged in a private medical practice in Bronx, New York. She indicated that during her first two years of practice, she practiced only gynecology and then added obstetrics to her practice. In response to questions from the Committee, Dr. Gupta indicated that she had performed over 1,000 deliveries between 1980 and 1995. In a letter submitted at the request of the Committee after its meeting with Dr. Gupta, she confirmed that she had performed 1,093 births and reported that over the course of her practice five malpractice actions had been brought against her, two relating to gynecological cases and three relating to obstetrical cases.

When asked about her recent employment, Dr. Gupta reported that she had not been working, and that she relied upon her husband's income and on social security payments for support. She further reported that she would like her license to be restored so that she can "be useful" and "really help people."

The Committee asked Dr. Gupta if she would now do anything different in the five cases that led to the revocation of her license. She replied that in the first case, she should have documented the administration of RhoGAM to the patient; in the second case, she should have sent the patient for a blood test to aid in diagnosis; in the third case, she should have sent the sonogram to a specialist but she indicated that the outcome would have been the same as the only alternative was an abortion and the patient wanted to have the baby; and in the fourth case, she heard fetal sounds and that if she had not heard them or if the sounds had been faint, she would have sent her to

the hospital. As noted above, in response to another question by the Committee, she had indicated that she should have performed a Caesarean delivery on the fifth patient.

When asked by the Committee to comment on her current competence to practice, she replied that she feels that she is competent. She also indicated that she would like to work with another physician, that she wishes to practice only gynecology and not obstetrics, and that a colleague had agreed to supervise her. She reported that although she is not board certified in the United States, she was awarded a diploma from the Royal College of Obstetrics and Gynecology in England and that such diploma provided the basis for her privileges at Bronx Lebanon Hospital in this state. Dr. Gupta also indicated that she takes an exam every year to assess her skills and studies on her own areas in which she is weak. In addition, she has participated extensively in continuing education courses over the past 10 years and has often participated in hospital grand rounds over that period.

In closing, Dr. Gupta stated that she has actively pursued her medical education over the past 10 years, that she now has greater insight about the practice of medicine than she had prior to the revocation of her license, that she has worked very hard for the restoration of her license, and that she wants the opportunity to serve the public as a doctor.

The overarching concern in all restoration cases is the protection of the public. Education Law §6511 gives the Board of Regents discretionary authority to make the final decision regarding applications for the restoration of a professional license. Section 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 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 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 that considered Dr. Gupta's first restoration application recommended that her application be denied because it did not find a recurrence of misconduct to be unlikely; did not believe that she had gained significant insight into the flaws in her practice that led to her professional misconduct; found her responses concerning her competency to practice and the causes of her misconduct to be inconsistent and therefore questioned the credibility of many of her responses; expressed doubts that she has taken the necessary corrective steps to insure the health and safety of her patients were her license restored; and failed to demonstrate remorse for the physical and/or psychological effects her misconduct may have had on her patients.

The current COP believes that Dr. Gupta has remedied these concerns. She demonstrated that she now understands the deficits that led to her misconduct, that she recognizes what she should have done differently, and that she has demonstrated a commitment to put her new insights into practice to protect the health and safety of her patients. The Committee found that she had developed the insight necessary to enable her to discuss her competency to practice and the causes of her misconduct. It found her discussion of these subjects to be honest and consistent, enabling her to make the necessary adjustments to practice safely and competently. Moreover, the Committee found Dr. Gupta to now express sincere remorse for the harm done by her misconduct.

In considering Dr. Gupta's application for the restoration of her license, the Committee noted that she had extensive experience in her practice of medicine. She practiced obstetrics and gynecology from 1979 until 1995, during which period she delivered over 1,000 babies. The record indicates that over the course of her career, five malpractice actions have been brought against her, of which three involved obstetric cases and two involved gynecological cases. The disciplinary action resulting in the loss of her license was based on five obstetric cases treated by Dr. Gupta between 1988 and 1994, two of which resulted in malpractice actions in which she was a defendant and which were subsequently settled. While the Committee is not familiar with any statistics regarding the percentage of obstetric cases in which problems arise, it does note that the infant mortality rates in the United States for 1985, 1990, and 1995 were 10.4, 8.9, and 7.6 infant deaths per 1,000 live births, respectively. There is no information in the record to suggest that the infant mortality rate in cases handled by Dr. Gupta was disproportionately high; nor is it possible to say that the one infant death in the five cases upon which the charges against her were based resulted from her treatment of the patient.

Dr. Gupta told the Committee that she does not wish to practice on her own and does not wish to work in the area of obstetrics at this time. Rather, she has spoken to a colleague about working under her supervision and expressed to the Committee her wish to restrict her practice to gynecology. The Committee found this preference to constitute evidence of her understanding of the process she needs to follow to enable her to return to the safe practice of medicine.

With regard to the question of re-education, the COP notes that she has participated in extensive continuing education courses, has participated in hospital grand rounds, and has engaged in annual self-assessment activities enabling her to focus her studies on specific areas of need. Additionally, she is performing volunteer work as the Liaison Officer in the surgical waiting room and operating room at Nyack Hospital, has joined the American Association of Physicians from India and attends that organization's meetings and lectures, and observes in the office of an obstetrician/gynecologist. However, because of the long period of time that has elapsed since Dr. Gupta last practiced medicine and to further protect her patients during the period of her return to practice, the COP agrees with the Peer Committee that a period of retraining is essential. The Peer Committee recommended that such retraining period precede the commencement of Dr. Gupta's probationary period. The COP notes, however, that Dr. Gupta would need to have her license restored before she could participate in any retraining program involving hands-on practice. Accordingly, the COP is revising the recommendation of the Peer Committee and extending the probationary

period to permit the necessary hands-on practical training. Accordingly, the COP recommends that she be placed on probation for a period of six years, at the beginning of which she must complete a clinical competency assessment followed by a retraining program as described in the Terms of Probation, attached hereto as Exhibit "A." Until the Director of the Office of Professional Medical Conduct determines that she has satisfactorily completed the retraining program, Dr. Gupta may practice medicine only in accordance with the parameters established and approved for the retraining program. Once the retraining program has been satisfactorily completed, Dr. Gupta would continue on probation under the Terms of Probation attached hereto as Exhibit "A." During the probationary period, she would be prohibited from practicing obstetrics.

Based on all of the foregoing, a complete review of the record, and its meeting with her, the Committee on the Professions voted unanimously to recommend that the order of revocation of Dr. Gupta's license to practice medicine in New York State be stayed for a period of six years, that she be placed on probation for a period of six years under the terms specified in Exhibit "A," annexed hereto, and that upon satisfactory completion of the probationary period, her license be fully restored.

Frank Muñoz, Chair
Leslie Templeman
Stanley Hansen

EXHIBIT "A"

TERMS OF PROBATION
OF THE COMMITTEE ON THE PROFESSIONS

SUSHILA GUPTA

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, 4th 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 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;
6. 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;

7. 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, such plan to be approved in writing by the Director, OPMC;
8. 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;
9. 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;
10. 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. During this period, the applicant shall be prohibited from practicing obstetrics;
11. 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;
12. 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; and
13. 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.



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

SUSHILA GUPTA

REPORT OF
THE PEER
COMMITTEE
CAL. NO. 21721

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

-----X

Applicant, SUSHILA GUPTA, was authorized to practice as a
physician in the State of New York by the New York State
Education Department. This is applicant's second application for
restoration of licensure.

PRIOR DISCIPLINARY PROCEEDING

(Taken from First Peer Panel Report)

Applicant was charged with gross negligence, negligence on
more than one occasion, gross incompetence, incompetence on more
than one occasion and failing to maintain records. The charges
involved her treatment of five patients and her failure to
maintain adequate records.

It was found that applicant failed to document adequate

SUSHILA GUPTA (21721)

medical histories on three patients, failed to perform and document physical examinations for two patients, ordered and/or performed ultrasound exams that were not adequate or did not order sufficient ultrasound exams for patients, failed to administer a drug (RhoGAM) to one patient which was indicated by the patient's condition, incorrectly diagnosed an intrauterine pregnancy when there was no medical indication for that diagnosis, was unavailable during a delivery and failed to provide coverage for said delivery for one patient, abandoned one patient who was in labor and ordered one patient's membrane ruptured, causing the patient to go into second stage labor and then allowed the patient to remain in second stage labor for an excessive time, while the fetus was in distress.

There were numerous findings that applicant deviated from acceptable medical standards. According to the hearing panel report, applicant failed to perform the complete regimen of prenatal care and laboratory tests, demonstrated a lack of knowledge of the proper management of an obstetrical patient and failed to diagnose Spina Bifida in a fetus.

Applicant also incorrectly diagnosed an intrauterine pregnancy leading to her failure to take required action and thereby jeopardized the patient's life and failed to provide adequate care to a patient who reported a lack of fetal movement.

Based on the above, applicant's license to practice medicine in the State of New York was revoked effective November 13, 1995.

APPLICATION

On May 30, 2003, applicant petitioned for the restoration of her license to practice as a physician in the State of New York.

Attached to the application are documents evidencing hundreds of hours of continuing medical education (CME).

In response to the question in the application:

"List other methods, if any, that you have used to maintain/improve your knowledge and skill in the practice of your profession since the date of the revocation/surrender of your license." the application lists the following:

1. CREOG - In-Training Examination 1999 in Bronx Lebanon Hospital, Bx, NY.
2. Books studied in this period - a.) Novak's Gynecology 12th edition, Williams Obstetrics 20th edition.
3. Precis Fifth Update in Obstetrics and Gynecology.
4. Clinical Gynecology Endocrinology and Infertility Fifth Edition, Female patient.

Regarding her continuing medical education and how it is relevant to her prior misconduct the application states:

"All the education I did helped me to have more insight into my subject. I had seen so many early pregnancy sonograms in the Sonogram Department at Planned Parenthood and it kept my knowledge up to date."

Regarding community service, the application lists volunteer work at Planned Parenthood as an assistant to the sonographer from July 1997 to November 1998. Also listed is volunteer work in the emergency room at Nyack Hospital from April 1993 to the present.

In response to the question:

SUSHILA GUPTA (21721)

"List any professional practice-related rehabilitation activities which you have undertaken to address the action(s) which resulted in the loss of your license."

the application states:

"Volunteer work as Assisting in Sonogram Department at Planned Parenthood in New York City Clinic helped me the most in reading the sonograms of early pregnancy. I had a case in which I failed to diagnose ectopic pregnancy and another case in which I failed to diagnose spina bifida. In this clinic approximately 35 to 40 sonograms were done, so it gave me great knowledge for picking up the abnormalities of early pregnancy."

"Ob/Gyn Grand Rounds in Bronx Lebanon Hospital and Valhalla Hospital also granted me great knowledge concerning information regarding pregnancy sonograms and the female patient in general. All of the above is an enrichment to my services in practicing as an Ob/Gyn."

INVESTIGATIVE INTERVIEW

Applicant was interviewed by an OPD investigator regarding her application. Besides what is set forth in the application, applicant said she has taken some continuing education courses relative to record keeping.

Regarding the incidents that led to the loss of her license,

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applicant said she has learned that she should have administered a blood test when there is evidence of possible ectopic pregnancy. She should have referred the patient to a specialist. She must document all treatment and issues concerning patient care. She said she should have had printed forms for the patients to fill out, and for her to keep notes in the file. She said that she did not feel overwhelmed regarding her caseload at the time but that there was a particular day where she had to take care of her daughter and could not get to the patient.

Applicant stated that she feels very sorry for her mistakes, however, she feels confident that those types of mistakes will not happen again. If reinstated, she plans on working in a group practice where there are other physicians with whom she can work and confer. She said she would like to continue her work in under privileged communities especially with young women.

PEER PANEL REVIEW

On October 26, 2004 the Peer Panel met to review the application in this matter. Applicant appeared and was represented by William Wood, Esq. The Department was represented by Dennis Spillane, Esq.

The Chairperson opened the meeting by stating that the Peer Panel had read the full application and all supporting documentation before the meeting.

After opening statements, applicant presented additional documents regarding CME which are made part of the material in this matter and marked as Applicant's A. The panel also accepted

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a 10/14/04 letter and it is marked as Department's 1.

Applicant was then sworn in as the first witness and there was discussion among the parties and the panel regarding the two pages concerning the 2004 CREOG In Training Examination Score Report (part of Applicant's A).

Applicant went on to give a brief history of her education, training, licensing and practice.

The discussion then turned to the five cases that led to the revocation of applicant's license. Applicant discussed each case briefly and acknowledged what she had done wrong in each case.

Applicant then went on to say what she had learned from her mistakes and what she has done to prevent errors such as these from occurring in the future should her license be restored. (Much of this discussion was a repetition of what is set forth in the application and the investigative interview).

Applicant went on to say that her first restoration peer panel recommended that her license be restored with some probationary limitations. However, the Committee on the Professions (COP) recommended that her license not be restored and the Board of Regents accepted the COP recommendation.

Applicant then said that there are one or two physicians that she has spoken to who would be willing to supervise applicant for a period of time in their practice should her license be restored.

Mr. Spillane then pointed out that the three items in the CREOG exam (part of Applicant's A) where applicant fell below the

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mean were practice management, diagnosis and reproductive endocrinology and these areas of practice are the same areas that gave rise to the revocation of applicant's license. Mr. Spillane then suggested that the panel, with their expertise, explore those areas with applicant and how problems would be avoided in the future. Upon questioning by the panel, applicant said that in the beginning the supervising physician would check every patient applicant treated. Applicant said this might be a period of perhaps two months or so and then, as the supervising physician gained confidence in applicant, he or she would supervise only the complicated cases. Applicant said she did not want to go into solo practice.

At the end of applicant's testimony, applicant agreed to provide OPD with an authorization to get a copy of applicant's CREOG exam, if that is possible.

Applicant then called Usha Mukhdyar, M.D., as a witness. Dr. Mukhdyar is Board Certified in OB-GYN. She has known applicant for twenty years, both socially and professionally. She said she has a very high opinion of applicant as a person and as a physician and would be willing to supervise applicant if applicant resumes practicing medicine.

Dr. Mukhdyar went on to say that applicant has expressed great sorrow and remorse for the suffering she has caused the patients and their families. She said applicant has made a great effort to rehabilitate herself through re-education.

Dr. Mukhdyar said that part of applicant's problem that led

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to errors with at least one of her patients was that applicant's daughter at that time had a severe heart condition and suffered from severe depression to the point of being suicidal. She said this condition lasted between six months and a year but it no longer exists. It has been cured.

When asked about the results of the CREOG exam where applicant fell below the mean in some areas, Dr. Mukhdyar said that would not cause her concern if she had to supervise applicant's practice because exams alone are not the only measure of a physician's ability. She said some physicians do not do well on exams but are good clinicians and some physicians do well on exams but are not good clinicians.

Applicant then called Swaraksha Jindal, M.D. as a witness. Dr. Jindal is a pediatrician and has been friends with applicant for many years. They have socialized together and have attended CME meetings together. Dr. Jindal has referred patients to applicant and has never had one of these patients complain about the care they received from applicant. Dr. Jindal said she had confidence that applicant could practice competently and without negligence if her license is restored.

Applicant then called Marion Kivlehan as a witness. Ms. Kivlehan has known applicant since 1980 when she began working for applicant as a secretary and remained as such until applicant lost her license. Thereafter, Ms. Kivlehan stayed on as applicant's husband's secretary. She said that applicant was always good to her patients and gave her patients her time when

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they needed it. She also said that she never heard a patient complain about applicant. She went on to say that applicant had often expressed sorrow and remorse for what happened to the five patients in question. Ms. Kivlehan concluded by saying that if applicant's license is restored, she would go to applicant for treatment.

Mr. Spillane closed by saying that he took no position regarding whether applicant's license should be restored because that lies within the expertise of the panel. However, he said that he did have some concerns about whether applicant is competent enough to have her license restored. He cited the results of the CREOG exam as one concern.

Mr. Wood closed by saying applicant has demonstrated a sincere desire to return to the practice of medicine because she did not stop her efforts after she was denied restoration on her first attempt. She kept right on trying to re-educate herself through lectures, courses and grand rounds. He said the CREOG results should be taken in context. Applicant took the exam along with residents that were in a structured learning environment, whereas applicant was learning by herself and yet, when compared to the others taking the exam, applicant overall received a satisfactory outcome.

Mr. Wood went on to say that concerns for the public could be addressed in a probationary setting with close supervision of applicant's progress.

Before closing the meeting, it was agreed that applicant

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would provide an authorization so that whatever information is available regarding the CREOG exam can be obtained and provided to the panel. The results of that effort are made a part of the record herein and marked as Hearing Exhibit A. Also included in this exhibit is an October 27, 2004 letter from Mr. Wood in response to Department's 1.

RECOMMENDATION

We unanimously recommend that the application herein be granted and that the revocation of applicant's license to practice medicine in the State of New York be stayed.

Applicant has made a good effort at re-education and rehabilitation through CME courses, grand rounds, the reading of medical texts and journals and involvement in community service.

Applicant has also demonstrated sincere remorse before this Panel. The Panel strongly believes this based on the testimony of applicant's witnesses and on our observation of applicant's demeanor before us. Applicant has taken responsibility for the acts that led to her loss of licensure.

The Panel believes the risk of future misconduct by applicant is very low and that restoration of her license to practice medicine in New York State does not pose a risk to the public.

However, we further unanimously recommend that before applicant is allowed to resume the practice of medicine she must undergo a course of retraining under a program such as that set forth in the terms attached hereto and marked as Exhibit "A".

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We also unanimously recommend that after said retraining, applicant be placed on probation for five years under the terms of probation attached hereto and marked as Exhibit "B".

Respectfully submitted,

John W.V. Cordice, Jr., MD,
Chairperson

Louis J. Vorhaus, MD
Alfred T. Frontera, MD

Redacted Signature

~~Chairperson~~

~~Dated~~

EXHIBIT "A"

SUSHILA GUPTA

CALENDAR NO. 21721

RETRAINING

1. Applicant shall obtain a clinical competency assessment performed by a program for such assessment as directed by the Director of OPMC (Office of Professional Medical Conduct). The applicant shall cause a written report of such assessment to be provided directly to the Director of OPMC within sixty (60) days of the effective date of the Order herein.
2. Applicant shall be responsible for all expenses related to the clinical competency assessment and shall provide to the Director of 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 shall provide a basis for a Violation of Probation proceeding.
3. At the direction of the Board and within 60 days following the completion of the clinical competency assessment (CCA) the applicant shall identify a Preceptor, who must be hospital based, preferably a physician who is board certified in the same specialty, to be approved in writing, by the Director of OPMC.
4. The applicant shall cause the Preceptor to:
 - a. Develop and submit to the Director of OPMC for written approval a remediation plan, which addresses the deficiencies/retraining recommendations identified in the CCA. Additionally, this proposal shall establish a timeframe for completion of the remediation program of not less than three months and no longer than 12 months.
 - b. Submit progress reports at periods identified by OPMC certifying whether the applicant is fully participating in the personalized continuing medical education program and is making satisfactory progress towards the completion of the approved remediation plan.
 - c. Report immediately to the Director of OPMC if the applicant withdraws from the program and report promptly to OPMC any significant pattern of non-compliance by the applicant.
 - d. At the conclusion of the program, submit to the Director of OPMC a detailed assessment of the progress made by the applicant toward remediation of all identified deficiencies.

EXHIBIT "B"

SUSHILA GUPTA

TERMS OF PROBATION
OF THE PEER COMMITTEE

CALENDAR NO. 21721

1. That applicant, during the period of probation, shall practice medicine only as a salaried physician in a hospital setting.
2. That applicant, during the period of probation, shall be in compliance with the standards of conduct prescribed by the law governing applicant's profession;
3. 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, or mailing address, and of any change in applicant's employment, practice, residence, telephone number, or mailing address within or without the State of New York.
4. That during the period of probation, 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 applicant's employer, evaluating applicant's performance as a physician in applicant's place of employment, said reports to be prepared by applicant's supervisor or employer.
5. 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 to be submitted by applicant to the DOH, addressed to the Director, OPMC, as aforesaid, no later than the first three months of the period of probation;
6. 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

SUSHILA GUPTA (21721)

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;

7. 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;
8. 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.