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October 8, 2003

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OCT 10 2003 03-566

OFFICE OF PROFESSIONAL
MEDICAL CONDUCT

Andrew G. Gunther, Physician
20 Middle Hill Road
Troy, New York 12180

Re: Application Restoration

Dear Dr. Gunther:

Enclosed please find the Commissioner's Order regarding Case No. CP-03-08 which is in reference to Calendar No. 20317. This order and any decision contained therein goes into effect five (5) days after the date of this letter.

Very truly yours,

DANIEL J. KELLEHER
Director of Investigations

By:

GUSTAVE MARTINE
Supervisor

DJK/GM/er

cc: Sharif Mahdavian, Esq.
36 West 44th Street - Suite 816
New York, New York 10036

The
University of the
Education  State of New York
Department

IN THE MATTER

of the

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

Case No. CP-03-08

It appearing that the license of ANDREW G. GUNTHER, 20 Middle Hill Road, Troy, New York 12180, to practice as a physician in the State of New York, was surrendered pursuant to a consent order of the Department of Health, Office of Professional Medical Conduct, effective December 28, 1998, and he having petitioned the Board of Regents for restoration of said license, and the Regents having given consideration to said petition and having agreed with and accepted the recommendations of the Peer Committee and the Committee on the Professions, now, pursuant to action taken by the Board of Regents on September 12, 2003, it is hereby

ORDERED that the petition for restoration of License No. 169393, authorizing ANDREW G. GUNTHER to practice as a physician in the State of New York, is denied, but that the Order of Surrender of said license is stayed for five years, and said ANDREW G. GUNTHER is placed on probation for a period of five years under specified terms and conditions, and upon successful completion of the probationary period, his license to practice as a physician in the State of New York be fully restored.

IN WITNESS WHEREOF, I, Richard P. Mills,
Commissioner of Education of the State of New York for
and on behalf of the State Education Department, do
hereunto set my hand and affix the seal of the State
Education Department, at the City of Albany, this 23rd
day of September, 2003.


Commissioner of Education

Case No. CP-03-08

It appearing that the license of ANDREW G. GUNTHER, 20 Middle Hill Road, Troy, New York 12180, to practice as a physician in the State of New York, was surrendered pursuant to a consent order of the Department of Health's Office of Professional Medical Conduct, effective December 28, 1998, and he having petitioned the Board of Regents for restoration of said license, and the Regents having given consideration to said petition and having agreed with and accepted the recommendations of the Peer Committee and the Committee on the Professions, now, pursuant to action taken by the Board of Regents on September 12, 2003, it was

VOTED that the petition for restoration of License No. 169393, authorizing ANDREW G. GUNTHER to practice as a physician in the State of New York, be denied, but that the Order of Surrender of said license is stayed for five years, and said ANDREW G. GUNTHER is placed, on probation for a period of five years under specified terms and conditions, 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.

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: Andrew G. Gunther

Attorney: Sharif Mahdavian

Andrew G. Gunther, 20 Middle Hill Road, Troy, NY 12180, petitioned for restoration of his physician license. The chronology of events is as follows:

- 02/25/87 Issued license number 169393 to practice as a physician in New York State.
- 12/21/98 Charged with professional misconduct by Department of Health.
(See "Disciplinary History.")
- 12/23/98 Surrender Order signed by Department of Health.
- 12/28/98 Effective date of surrender.
- 04/01/02 Submitted application for restoration.
- 12/18/02 Peer Committee restoration review.
- 03/06/03 Report and recommendation of Peer Committee. (See "Report of the Peer Committee.")
- 05/16/03 Committee on the Professions restoration review.
- 08/26/03 Report and recommendation of Committee on the Professions.
(See "Report of the Committee on the Professions.")

Disciplinary History. (See attached disciplinary documents.) On December 21, 1998, the Department of Health charged Dr. Gunther with three specifications of professional misconduct: fraudulent practice, moral unfitness, and filing a false report. The Department alleged that Dr. Gunther, since approximately October of 1995, wrote prescriptions for Valium and Lortab in the names of various individuals who were not his patients and diverted the medications for his own use. Dr. Gunther admitted guilt to the charges of fraudulent practice and filing a false report and entered into a consent order

with the Office of Professional Medical Conduct to surrender his license. The surrender became effective December 28, 1998.

Dr. Gunther submitted an application for restoration of his license on April 1, 2002.

Recommendation of the Peer Committee. (See attached "Report of the Peer Committee.") The Peer Committee (Herrman, Wu, Barnette) met with Dr. Gunther on December 18, 2002 to review his application for restoration. In its report, dated March 6, 2003, the Committee recommended that the order of surrender of Dr. Gunther's physician license be stayed, that he be placed on probation for five years under specified terms, and that upon successful completion of the probationary period, his license be fully restored. The recommended probationary terms included a stipulation that he successfully complete an additional five years of participation with the Committee for Physician's Health of the Medical Society of the State of New York.

Recommendation of the Committee on the Professions. On May 16, 2003, the Committee on the Professions (Duncan-Poitier, Alexander, Munoz) met with Dr. Gunther to review his application for restoration. Sharif Mahdavian, Esq., his attorney, accompanied him.

The Committee asked Dr. Gunther to discuss what led to the loss of his license. He said that he has been sharing his story at "12-Step" meetings. Dr. Gunther explained that after he completed his residency in 1987, he joined his father's orthopedic practice. He reported that at that time his father had stopped doing surgery. He said, "I was drinking." He indicated that as a teenager he started using alcohol and drugs and now realizes that he was using them as a means of escape to deal with stress caused by his own perception of having low esteem. Dr. Gunther said he continually felt that he was "not measuring up" to the "hero" status of his older brother who had a very successful medical practice. Dr. Gunther told the Committee that he got into a habit of stopping at bars after seeing patients and staying until about 11 p.m., even though he had told his wife he would be home by 7 p.m. He reported that his wife eventually told him to enter a rehabilitation program or their marriage would be over. He said that he entered a rehabilitation program "for her," came back, didn't drink, but never really accepted his alcoholism. He stated, "I wouldn't admit I had a problem." He explained that he felt like a "dry drunk" and that there was a richness missing from his life. Dr. Gunther reported that he dove into work and exercise and after six years "developed quite an anxiety disorder." He said, "I had a full-blown panic attack" and went to a general practitioner in 1994 who gave him a prescription for Valium. Dr. Gunther stated, "There's my relapse."

Dr. Gunther said that the Valium relieved his stress and that he felt he had found a way to make his wife happy. He indicated that soon the refills didn't last, and he didn't want to let his general practitioner know he "liked this stuff." He said that he recruited and manipulated a friend to fill a Valium script at a pharmacy and give the medication to him. Dr. Gunther indicated he stopped going to the general practitioner and started using other friends to get Valium prescriptions filled for him as his tolerance grew and he needed more and more to get the same effect. In 1997, he reported that he tried one of the Lortab pills that had been prescribed for his wife's back problem and again felt great. Consequently, he said that he also started writing Lortab prescriptions to be filled

for his own use. Dr. Gunther told the Committee that eventually he started to befriend people he didn't really know to fill the prescriptions for him at different pharmacies.

Dr. Gunther reported that on February 26, 1998, he drove to meet one of the individuals he had solicited to fill a prescription for him and discovered that his car was soon blocked by two unmarked State Police cars. He indicated that he later learned that he was being investigated for a "month or so." He reported that one of the investigators told him, "Doc, it all stops right here." Dr. Gunther told the Committee, "He was right." He indicated that he was sentenced to five years of probation with the condition that he surrender his license. He indicated that he would never do anything that would result in his having to go back to a time in his life like this, which was so painful for him, his wife, and his children.

After his arrest, Dr. Gunther said that he received a call from the Committee on Physician's Health and was asked if he could use some help. Dr. Gunther said that the call saved his life. He reported that he entered a rehabilitation program in Virginia with other impaired health professionals and made a decision to "adopt a recovery-based lifestyle."

The Committee asked Dr. Gunther if he felt he had harmed any patients while impaired. He replied, "I'm sure I did not render very competent health care. I think God sent that State policeman because someone might have gotten hurt." He reported that one malpractice suit was settled after his arrest was publicized, but he didn't think the allegations were true. The Committee asked if anything happened to his friends. He replied, "Fortunately, no." He indicated that he has tried to make amends to those he involved in his illegal scheme without their knowledge and has spoken to all those friends except for one.

In response to the Committee's inquiry, Dr. Gunther said that he felt he was a good doctor and could be a good doctor again. He said that in the past his feelings of inadequacy would have prevented him from making such a statement but that he is different today. He indicated that he now realizes that he is different from his father and brother and has abilities that they don't. He said, "I am comfortable in my own skin." Dr. Gunther said that with the help of his psychologist, he is "starting to like myself better." Dr. Gunther said he was very happy with the Report of the Peer Committee and the Committee's recommendations.

The Committee asked Dr. Gunther what he would like to do if his license were restored. He replied, "I don't know if I want to go back into surgery. I don't want to rule it out, however." He reported that he has made some inquiries with an orthopedic group to see if they would allow him to come in and observe and assist. He indicated he has also explored the possibility of working with older patients two mornings a week in nursing homes. Dr. Gunther said he has also looked into part-time possibilities within the correctional system. He described his activities to remain current in the medical profession.

The Committee asked, "Do you still think you are an alcoholic?" Dr. Gunther replied, "I don't think. I know I am." He said that his rehabilitation has given him faith in himself and new glasses with which to see the world. He reiterated that he never

wanted to go back to that painful time in his life. When asked if he felt there should be any restrictions imposed on his resuming surgery, Dr. Gunther said that his resumption of surgery should be monitored and that the type of cases should be restricted so that there would be no danger to patients.

The overarching concern in all restoration cases is public protection. Education Law §6511 gives the Board of Regents discretionary authority to make the final decision regarding applications for the restoration of a license to practice as a physician in New York State. 8NYCRR §24.7(2) charges the Committee on the Professions (COP) with submitting a recommendation to the Board of Regents on restoration applications. Although not mandated in law or regulation, the Board of Regents has instituted a process whereby a Peer Committee 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 so serious that it resulted in the loss of licensure. There must be clear and convincing evidence that the petitioner is fit to practice safely, that the misconduct will not recur, and that the root causes of the misconduct have been addressed and satisfactorily dealt with by the petitioner. It is not the role of the COP to merely accept as valid whatever is presented to it by the petitioner but to weigh and evaluate all of the evidence submitted and to render a recommendation based upon the entire record.

The COP concurs with the recommendation of the Peer Committee that Dr. Gunther has demonstrated that he has fulfilled the basic criteria for restoration of his physician license – remorse, rehabilitation, and reeducation. The COP found Dr. Gunther's responses to its questions credible and heartfelt. He expressed remorse for continuing to practice while impaired and acknowledged that although no patients may have been physically harmed, he did not provide the level of care he might have if not impaired. Similarly, he expressed remorse for the way he manipulated his friends to fill prescriptions for him. Dr. Gunther was straightforward in describing the root causes of his misconduct and the steps he has taken to make certain the misconduct would not recur. He has been actively involved with the Committee for Physician's Health, has had negative urine tests, continues to receive psychological counseling on a regular basis, and continues to be active in Alcoholic Anonymous. Dr. Gunther has a strong support system in place and demonstrated there is little likelihood the misconduct would recur were his license restored. The Peer Committee noted that Dr. Gunther's competence has never been an issue. Nonetheless, he demonstrated significant involvement with continuing medical education courses, participation in Grand Rounds, and continued involvement in the medical field through his consulting business. The COP concurs with the recommendation of the Peer Committee to stay the surrender of Dr. Gunther's physician license and to place him on probation for five years with the stipulation that he continue with the Committee for Physician's Health. However, the COP feels that since he has been away from surgery for approximately five years, his resumption of that specialty should be monitored by the Department of Health during a one-year training period. During his meeting with the COP, Dr. Gunther suggested that his resumption of surgery be monitored.

Therefore, after a careful review of the record and its meeting with him, the Committee on the Professions voted unanimously to recommend that the order of

surrender of Dr. Gunther's physician license be stayed for five years, that he be placed on probation for five years under specified terms and conditions attached to this report and labeled as Exhibit "B," and that upon successful completion of the probationary period, his license be fully restored.

Johanna Duncan-Poitier, Chair

Claudia Alexander

Frank Munoz

EXHIBIT "B"

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

ANDREW G. GUNTHER

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 during the period of probation the applicant shall enter into a participation agreement with and actively participate in the program conducted by the Committee for Physician's Health of the Medical Society of the State of New York;

6. That the applicant shall satisfactorily complete a one-year training program in surgery before practicing in that specialty area, said training program to be approved and monitored by the Director, OPMC;
7. 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; and
8. That upon receipt of evidence of noncompliance with or any other violation of any of the aforementioned terms of probation, the OPMC may initiate a violation of probation proceeding.



The University of the State of New York

NEW YORK STATE EDUCATION DEPARTMENT
OFFICE OF PROFESSIONAL RESPONSIBILITY
STATE BOARD FOR MEDICINE

-----X

In the Matter of the Application of

ANDREW GUNTHER, M.D.

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

-----X

REPORT OF
THE PEER
COMMITTEE
CAL. NO. 20317

ANDREW GUNTHER, hereinafter referred to as the applicant, was previously licensed to practice as a physician in the State of New York by the New York State Education Department. The applicant's license was revoked as a result of a professional misconduct proceeding, and he has applied for restoration of this license.

On December 18, 2002, this Peer Committee convened to review this matter and make the following recommendation to the Committee on the Professions and the Board of Regents.

BACKGROUND INFORMATION

The written application, supporting papers provided by the applicant, and papers resulting from the investigation conducted by the Office of Professional Discipline (OPD) have been

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

Listed below is the background information from that packet and the information contained in the applicant's submissions on the day of the meeting. Further details pertaining to these documents may be found therein.

PRIOR DISCIPLINE PROCEEDING

Case No. BPMC-98-316

Action by the New York State Department of Health

December 22, 1998 – A Surrender Order was issued, revoking the applicant's license to practice as a physician.

Determination of the Specifications of the Charges

The applicant admitted guilt to professional misconduct within the meaning of New York Education Laws §6530(2) and §6530(20), in that he fraudulently practiced in the profession and willfully made or filed a false report. According to the investigative report, the applicant also pled guilty to attempted criminal sale of a controlled substance (prescriptions), a class D felony, and was sentenced to five years probation in which he was released after approximately one year.

Nature of the Misconduct

The applicant admitted, in a Surrender Order entered into in the State of New York, that he had written prescriptions for Valium and Lortab in the names of various individuals who were not his patients and or diverted said medications from other individuals since approximately October of 1995. The State Board for Professional Misconduct accepted the applicant's Surrender Order.

PETITION FOR RESTORATION

The applicant submitted a restoration application dated April 1, 2002, with attachments as described below.

ATTACHMENTS TO THE PETITION

- Five affidavits and six letters in support of the application from professional colleagues of the applicant
- Two page letter from the applicant addressed to “committee members”, describing his license revocation in New York State and detailing his recovery and continuing medical education
- Surrender Order from the New York State Board for Professional Medical Conduct dated December 23, 1998
- Treatment letters from: The William J. Farley Center, Williamsburgh, V.A.
 The Committee for Physicians’ Health, Albany, N.Y.
 St. Peter’s Addiction Recovery Center, Albany, N.Y.
 Wynantskill Family Medicine, Ritchie Parrotta, D.O.
 Michael Ellis, Ph. D., Albany, N.Y.
- Discharge from probation
- Current curriculum vitae of the applicant
- Documentation of continuing medical education credits acquired and certificates of attendance
- Two page letter from the applicant, entitled “Return to medical practice plan for Andrew G. Gunther, M.D.,” detailing the applicant’s plans for employment provided his license is restored
- Psychiatric and Chemical Dependency evaluation
- Record of AA/NA attendance
- Copies of urine drug screens

- Letter from the New York State Health Department dated June 11, 2002 stating that there is insufficient information in the applicant's petition to determine whether he is fit to return to the active practice of medicine.

INVESTIGATION BY OPD

Subsequent to the filing of the Petition, OPD conducted an investigation for the purposes of this proceeding. Information from that investigation, including reports from the investigators and other documentation, was made part of the packet for the proceeding. Certain information from the packet has been summarized above. Among the information not summarized is a report from the investigator dated June 18, 2002.

This report summarizes an in-person interview with the applicant. During this interview, the applicant stated that he agreed to surrender his license because he had become dependent upon Valium and Lortab, drugs he had originally been prescribed for an anxiety condition. After his arrest on February 25, 1998, for Criminal Sale of a Prescription Controlled Substance and Criminal Sale of a Controlled Substance in the 5th, the applicant entered a rehabilitation program for health care professionals at William Farley Center, Williamsburg, Virginia.

The applicant has been undergoing random urine drug screens since June 1998 and all screens have been negative. He has been sober for four years and has kept up with his profession through such activities as reading periodicals. The applicant is currently employed in his own business, Acumen Medical Consultants, which performs medical case reviews and research for attorneys.

At the time of his surrender, the applicant stated that he was "totally ashamed and was especially remorseful of the shame that his addiction brought upon his family members." His references were interviewed and all spoke highly of him, both as a person who has overcome his

addiction and as a very fine doctor.

PEER COMMITTEE

On December 18, 2002, this Peer Committee met to consider this matter. The applicant appeared before us represented by his attorney, Sharif Mahdavian, Esq. Also present was Karen Eileen Carlson, Esq., an attorney who appeared on behalf of the Division of Prosecutions of OPD. The hearing consisted of three witnesses aside for the applicant: his AA sponsor, his case manager, and his wife.

The applicant began his presentation with a thorough direct examination from his attorney. The applicant narrated his early feelings of abandonment when he was he was required by his parents to attend a prep school in Connecticut at the age of thirteen or fourteen years old. It was at this time that he first got introduced to beer, wine and marijuana. By the time he was twenty years old drinking, and smoking marijuana had become "a regular thing." The applicant engaged in these activities numerous times per week, if not daily.

While pursuing his medical residency at Albany Medical Center, the applicant married and had two children. During this time the applicant describes losing track of time and neglecting familial obligations to spend time at the bar. On August 13 1988, the applicant's father suddenly died, and for a period thereafter, his drinking doubled. At his wife's request, the applicant entered the Gateway Rehabilitation Center for one month and twenty-eight days. After this experience, the applicant characterized himself as a "dry drunk." He no longer drank alcohol, but had all of the components of an alcoholic's thinking, the obsessions, the compulsions, "a big empty hole", and no spirituality.

Approximately six years later, the applicant was prescribed Valium by his primary care giver, to help deal with his anxiety attacks. Gradually his tolerance to the medication increased and he began to take higher doses. The applicant describes his efforts, towards the end of 1995, to recruit and coerce his friends into writing him prescriptions for Valium. In 1997 the applicant began taking his wife's medication, Lortab, to help ease his back pain. He soon became addicted to both Valium and Lortab. The applicant was arrested in February of 1998 while attempting to pick up a prescription for Valium from an acquaintance. The applicant stated that he felt that his use was escalating and it was a blessing that he was apprehended. He expressed guilt that he was rendering patient care while his judgement was impaired.

With the assistance of the Committee for Physician's Health, the applicant agreed to go to the Farley Center in Williamsburg, Virginia. The applicant became involved in Alcoholics Anonymous (AA) approximately four months later, after being discharged from the Farley Center. He stated that he attended AA meetings on an average of four to five times per week. He finds the meetings to be "fantastic." The applicant expressed pride in the new business he developed, Accuman Medical Consultants. He describes the company as one that reviews personal injury and malpractice cases for attorneys to help determine if there is any merit to the claim.

When questioned about recovery and re-education the applicant named numerous programs in which he has been involved. To increase his education he stated that he has been attending the Wednesday morning orthopedic grand rounds sponsored by the Department of Orthopedics at Albany Medical Center. Also on Wednesdays he goes to a St. Peters' Hospital Department of Medicine presentation, which is a one-hour CME credit producing grand round. On Fridays he goes to Albany Medical Center for their grand rounds and earns one CME credit. He also attended a comprehensive review course in orthopedics, in Washington, D.C., participates in on-line courses

and visits several educational websites. In addition to being involved in AA, the applicant stated that he has been seeing a psychotherapist since 2000. He used to see him every week, and presently he sees him every three weeks. The applicant goes to the Albany County Jail once every other month to share his story with the inmates there. Furthermore, he was hired by St. Peters Addiction Recovery Center (SPARC) to be a substance abuse counselor from December 1999 until June of 2000.

When asked by his attorney if his relationship has changed with his family and children, the applicant described it as having "blossomed a thousand-fold." He now enjoys attending his children's sports events, such as hockey and cheerleading, and being active in their lives.

The applicant was then briefly cross-examined by Ms. Carlson who inquired as to why the applicant worked for the SPARC program as an addiction counselor for only six months. The applicant stated that there was a change in administration and he wasn't really qualified for the job. Ms. Carlson also asked the applicant, "what is different now that hopefully over the next five, ten years you won't again have the need for a rehabilitation program?" The applicant responded that he has now surrendered, not only in his head, but also in his heart. Sobriety is something he takes one day at a time. He says that in 1998 he was "nowhere near that point."

The Peer Committee then began questioning the applicant. When asked about his religious affiliation, the applicant described his new found spirituality within the Roman Catholic religion. The Committee also inquired into whether the applicant's drug and alcohol addiction was a factor in a previous malpractice lawsuit in which he was named a defendant. The applicant denied any connection between the settlement of his lawsuit and his addiction; he also addressed the Peer Committee's concerns regarding the Prozac medication he is presently taking for depression. The

Committee concluded its questioning with the applicant's rendition of what his life and employment schedule would consist of if his license were reinstated.

Following a brief recess, Mr. Mahdavian directly examined the applicant's case manager from the Committee for Physician's Health. The case manager described the treatment regimen that was offered to the applicant following the surrender of his license. His treatment included a five year participation agreement with the Committee for Physician's Health, in-patient treatment at the Farley Center, an out-patient drug dependency treatment at Ellis Clinical Services, AA, consistent forensic toxicology screens, and psychotherapy. When asked his opinion of the applicant, the case manager stated that the applicant was a wonderful example of a physician who has invested himself in his personal recovery.

Ms. Carlson had no follow up questions for the case manager.

The Peer Committee asked the case manager to give a recommendation should the applicant's reinstatement be approved. The case manager recommended an additional five year commitment to the Committee for Physician's Health, continued urine toxicology screens, continued psychotherapy, and a work-site monitor.

The next witness to testify was the applicant's AA sponsor. He spoke of the service work he and the applicant do together as president and vice-president of the Board of Directors of Hudson Mohawk Recovery, and boasted of the applicant's consistency in attendance at AA meetings. The sponsor seemed confident that if the applicant continues his present treatment he would have a lifetime of sobriety.

Ms. Carlson followed up as to whether sponsors were mandated in AA. The witness stated that although they are not mandated, they are suggested.

The Peer Committee had no questions for this witness.

The final witness was the applicant's wife. She testified as to how her husband's alcoholism effected their family life. She stated that the applicant is now a different person and she is proud of him.

Neither the Peer Committee nor Ms. Carlson had questions for this witness.

In closing, Ms. Carlson reminded the Peer Committee to consider the three R's in restoration proceedings: the extent of rehabilitation; the extent of re-education; and the extent of remorse an applicant has.

The applicant then addressed the committee and thanked them for their consideration.

RECOMMENDATIONS

This Peer Committee has considered the entire record in this matter. It is the unanimous opinion of the Committee that the revocation of the applicant's license to practice as a physician be stayed, and that the applicant be placed on probation for five years under the terms of probation annexed hereto, made a part hereof, and marked as Exhibit "A." Upon successful completion of the terms of probation, the applicant's license would be fully restored. We have considered the three criteria used in restoration determinations: remorse, re-education, and rehabilitation and have found the applicant has demonstrated, to our satisfaction, fulfillment of these criteria.

The applicant appeared before us as a sincere man who has been humbled by the experience of losing his license. Based on his testimony there is no doubt as to his remorse. We perceive him as an individual who took great pride in his professional accomplishments. He also demonstrated an understanding of his responsibilities as a physician and a public servant. The applicant expressed a feeling of guilt for rendering patient care while under the influence of drugs. He responded fully and truthfully to our questions and the questions posed by the prosecuting attorney, and exhibited heartfelt remorse over the events that led to the revocation of his license.

The applicant was a well-trained and experienced physician at the time that his license was surrendered, therefore competence has not been an issue. The applicant has provided, however, documentation of coursework that we have determined to qualify as a successful level of re-education. For the past year he has been attending the Wednesday morning orthopedic grand rounds at Albany Medical Center, where the residents present cases. He has also provided documentation of approximately 148 continuing medical education (CME) hours in orthopedic education and approximately 57 continuing education credits in addictionology. In addition, the applicant has continued to work in the medical field by operating his consulting business. For these reasons, we believe that the applicant has demonstrated sufficient re-education, and we see no need to recommend any formal course prerequisites to the granting of this application.

In terms of his rehabilitation, we initially note that the applicant was sentenced to five years probation for his conviction of a class D felony, and was released from probation after approximately one year. He entered into a five year agreement with the Committee for Physicians Health, under which he was treated at the Farley Center on an in-patient basis, and received out-patient treatment locally. He remains a very active member of AA, attends psychotherapy four times a month, and has taken a more active role in the extracurricular activities of his children. He described the support he receives from his family and AA sponsor. In five years the applicant has never failed to pass his random urine toxicology screenings. On these facts alone, the applicant's rehabilitation efforts have been impressive. In addition, however, we found the applicant to be an individual who is not merely going through the motions with regard to his rehabilitation. He is active and enthusiastic in these efforts, and has been open and honest with his peers and able to accept their support.

ANDREW GUNTHER (20317)

In summary, based upon the testimony and other evidence on the record, we believe that the applicant has fulfilled the criteria established for the restoration of his license. However, we believe that it is imperative that the applicant continue his active rehabilitation efforts, and are therefore recommending that the applicant be placed on probation for five years before his license is unconditionally restored, and that as a condition of probation, he successfully complete an additional five years of participation with the Committee For Physician's Health.

Respectfully submitted,

John C. Herrman, M.D., Chairperson,
Thomas Wu, M.D.,
William Barnette, Public Member

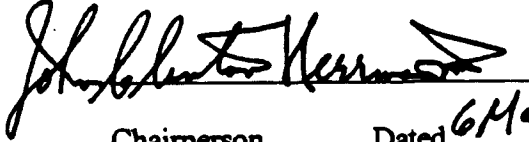

Chairperson Dated 6 March 2003

EXHIBIT "A"
TERMS OF PROBATION
OF THE PEER COMMITTEE

Andrew Gunther, M.D.

CALENDAR NO. 20317

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), Department of Health (DOH), 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 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), 2nd Floor, North Wing, 89 Washington Avenue, Albany, New York 12234 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 DOH, addressed to the Director, OPMC, as aforesaid, no later than the first three months of the period of probation;
4. That applicant shall submit written proof to the DOH, addressed to the Director, OPMC, as aforesaid, that 1) applicant is currently registered with the NYSED, unless applicant submits written proof that applicant has advised DPLS, NYSED, that applicant is not engaging in the practice of applicant's profession in the State of New York and does not desire to register, and that 2) applicant has paid any fines which may have previously been imposed upon applicant by the Board of Regents or pursuant to section 230-a of the Public Health Law, said proof of the above to be submitted no later than the first two months of the period of probation;
5. That during the period of probation, the applicant shall enter into a participation agreement with and actively participate in the program conducted by the Committee For Physician's Health of the Medical Society of the State of New York;
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 upon receipt of evidence of noncompliance with or any other violation of any of the aforementioned terms of probation, the OPMC, DOH may initiate a violation of probation proceeding.