



RECEIVED
FEB 14 2005
OFFICE OF PROFESSIONAL
MEDICAL CONDUCT

512

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

OFFICE OF PROFESSIONAL DISCIPLINE

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

February 11, 2005

PUBLIC

Monroe S. Harris, Physician
165-15 71st Avenue
Flushing, New York 11365

Re: Application Restoration

Dear Dr. Harris:

Enclosed please find the Commissioner's Order regarding Case No. CP-04-16 which is in reference to Calendar No. 20500. This order and any decision contained therein goes into effect five (5) days after the date of this letter.

Very truly yours,


DANIEL J. KELLEHER
Director of Investigations

By:

Gustave Martine

GUSTAVE MARTINE
Supervisor

DJK/GM/er

The
University of the
Education  State of New York
Department

IN THE MATTER

of the

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

Case No. CP-04-16

It appearing that the license of MONROE S. HARRIS, 165-15 71 Avenue, Flushing, New York 11365, to practice as a physician in the State of New York, was revoked by the Administrative Review Board of the State Board for Professional Medical Conduct, effective on or about July 13, 1999, and he having petitioned the Board of Regents for restoration of said license, and the Regents having given consideration to said petition and having agreed with the recommendation of the Peer Committee and having agreed with and accepted the recommendation of the Committee on the Professions, now, pursuant to action taken by the Board of Regents on September 10, 2004, it is hereby

ORDERED that the petition for restoration of License No. 091907, authorizing MONROE S. HARRIS to practice as a physician in the State of New York, be denied.

IN WITNESS WHEREOF, I, Richard P. Mills,
Commissioner of Education of the State of New York, do
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 *27th*
day of February, 2005.


Commissioner of Education

Case No. CP-04-16

It appearing that the license of MONROE S. HARRIS, 165-15 71 Avenue, Flushing, New York 11365, to practice as a physician in the State of New York, was removed by the Administrative Review Board of the State Board for Professional Medical Conduct, effective on or about July 13, 1999, and he having petitioned the Board of Regents for restoration of said license, and the Regents having given consideration to said petition and having agreed with the recommendation of the Peer Committee and having agreed with and accepted the recommendation of the Committee on the Professions, now, pursuant to action taken by the Board of Regents on September 10, 2004, it was

VOTED that the petition for restoration of License No. 091907, authorizing MONROE S. HARRIS to practice as a physician in the State of New York, be denied.

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: Monroe S. Harris

Not Represented by an Attorney

Monroe S. Harris, 165-15 71 Avenue, Flushing, New York 11365 petitioned for restoration of his physician license. The chronology of events is as follows:

- 02/15/64 Issued license number 091907 to practice as a physician in New York State.
- 09/01/94 Charged with professional misconduct by Department of Health.
- 09/08/94 Department of Health granted Application for Consent Order with two-year stayed suspension, two-year probationary period, and \$2,000 fine.
- 10/14/98 Charged with professional misconduct by Department of Health.
- 02/04/99 Hearing Committee of the State Board for Professional Medical Conduct revoked license.
- 07/06/99 Administrative Review Board of the State Board for Professional Medical Conduct sustained revocation of license.
- 10/19/00 Appellate Court confirmed Administrative Review Board's decision to revoke license.
- 02/14/02 Submitted application for restoration of physician license.
- 01/07/03 Peer Committee restoration review.
- 05/14/04 Report and recommendation of Peer Committee. (See "Report of the Peer Committee.")
- 06/07/04 Committee on the Professions restoration review.

08/06/04 and recommendation of Committee on the Professions.
(See "Report of the Committee on the Professions.")

Disciplinary History. (See attached disciplinary documents.) On September 1, 1994, Dr. Harris signed an Application for Consent Order after the Department of Health charged him with five specifications of professional misconduct: practicing with negligence on more than one occasion, practicing with gross negligence, practicing with incompetence on more than one occasion, practicing with gross incompetence, and violation of Article 33 of the Public Health Law. With respect to nine patients, the charges alleged that Dr. Harris prescribed the controlled substance Didrex inappropriately and without conducting and/or noting adequate initial and/or follow-up evaluations, including but not limited to physical examinations, initial and/or interim history, blood and urine screens and/or electrocardiograms. Further, the charges alleged that Dr. Harris entered into a Stipulation and Order with the Department of Health, Bureau of Controlled Substances, in which he admitted to violations of Article 33 of the Public Health Law and/or Part 80 of 10 NYCRR regarding the dispensing and documentation of controlled substances from his office. In the Consent Order, Dr. Harris admitted guilt to the fifth specification of professional misconduct (violation of Article 33) in full satisfaction of the charges against him. The Department of Health granted the Consent Order on September 8, 1994 with a penalty of a two-year suspension of his physician license, suspension stayed, a two-year period of probation, and a fine of \$2,000.

On October 14, 1998, the Department of Health charged Dr. Harris with 18 specifications of professional misconduct: fraudulent practice (1-6), moral unfitness (7), making or filing a false report (8-13), negligence on more than one occasion (14), incompetence on more than one occasion (15), and failure to maintain records (16-18). The charges related to his submission of false information on applications for staff reappointments to various hospitals and his application for reregistration of his physician license with the New York State Education Department as well as inappropriate treatment of three patients for weight reduction. A Hearing Committee of the State Board for Professional Medical Conduct sustained specifications one through six (fraudulent practice), eight through thirteen (making or filing a false report), fourteen (negligence on more than one occasion as it related to Patients A and C), fifteen (incompetence on more than one occasion as it related to Patients A and C), and sixteen through eighteen (failure to maintain records as it related to Patients A and C). The Hearing Committee opined that it was convinced that Dr. Harris did not recognize his shortcomings, and given his age and attitude, was not a candidate for training. The Committee also noted that it received two sets of records for each of the three patients with the second set being more detailed than the first set and opined that it felt the second set was not prepared contemporaneously with the events but prepared later in anticipation of the Committee's review. The Hearing Committee voted to revoke Dr. Harris' physician license on February 4, 1999.

Dr. Harris appealed the revocation to an Administrative Review Board of the State Board for Professional Medical Conduct. The Review Board affirmed the Hearing Committee's determination that Dr. Harris had committed professional misconduct as well as the Committee's determination revoking his license. Dr. Harris appealed the

revocation of his license to the Appellate Division, Third Department, which confirmed the Administrative Review Board's revocation decision. Dr. Harris further appealed to the U.S. District Court, claiming that the Department of Health discriminated against him in violation of the Americans with Disabilities Act (ADA) and Section 504 of the federal Rehabilitation Act by failing to make accommodations for his alleged learning and attention deficit disabilities. Dr. Harris had claimed that, because of his disability, he could not understand how to complete application forms to reflect controlled substance violation charges and that his learning disabilities caused him to misunderstand or be confused by the application questions. The federal court dismissed Dr. Harris' challenge to the license revocation, concluding that the federal claims under the ADA and Rehabilitation Act cannot be relitigated in federal court because the claims had already been considered and rejected by the Appellate Division.

Dr. Harris submitted an application for restoration of his physician license on February 14, 2002.

Recommendation of the Peer Committee. (See attached "Report of the Peer Committee.") The Peer Committee (Kavaler, Cohen, Robinson) met with Dr. Harris on January 7, 2003 to review his application for restoration. In its report, dated May 14, 2004, the Committee voted unanimously to recommend that Dr. Harris' application for restoration of his physician license be denied.

Recommendation of the Committee on the Professions. On June 7, 2004, the Committee on the Professions (Munoz, Templeman, Hansen) met with Dr. Harris to review his application for restoration. An attorney did not accompany him. Prior to the meeting, Dr. Harris submitted additional information, dated August 6, 2003, to address concerns he had after reading the transcript of his meeting with the Peer Committee. Specifically, he enclosed (1) additional explanations and new information to answer the prosecutor's concerns, (2) a practical model exercise to illustrate an understanding of current guidelines and standards of practice, and (3) documentation of coursework he had completed on current guidelines and standards of practice. In a letter dated August 11, 2003, Dr. Harris provided information on what he described as additional comments on remorse and rehabilitation, a history of his problem, and what he has learned from his experience. At the meeting with the Committee, Dr. Harris presented additional documentation and comments regarding his continuing education, his meeting with the Peer Committee, his truthfulness at the Peer Committee meeting, Department of Health rules and regulations, his obesity treatment of patients, and ways to improve his documentation skills.

The Committee asked Dr. Harris to relate what caused the loss of his license. He replied that he "did not follow DOH (Department of Health) regulations" and that "applications were not filled out correctly, although there were many reasons for that." He said, "It did happen and I accept full responsibility." Regarding the treatment of his patients, he said that he now realizes that he was not up-to-date on treatments and understands that what he did was wrong. Dr. Harris stated that he never caused any harm to his patients with the diet medications he prescribed for them and that he never had any malpractice suits filed against him.

The Committee asked him to describe his practice at the time the misconduct occurred. Dr. Harris said that he had a family practice and submitted claims to 25 health care organizations. He indicated that he also had an obesity practice, which was a separate entity. Dr. Harris told the Committee that he usually prescribed drugs in the obesity practice, as "people seem to want to take medications."

Regarding the charges related to Article 33 violations, Dr. Harris said that DOH determined that he was not keeping records properly. He indicated that he believed DOH did send something out related to record keeping for certain drugs, but said that he believed at the time that "they'll let me know if I did anything wrong." He indicated that after the stipulation agreement with DOH, he "thought it would all end." However, Dr. Harris told the Committee, the Office of Professional Medical Conduct brought new charges against him and also included charges related to his care of patients. He indicated that he did not think he was doing anything wrong as someone from the "pharmacy bureau" did visit his office and told him that his records were O.K. He reported that DOH was also monitoring his records since he was on probation. Dr. Harris said that he wrote prescriptions for the obesity patients and the pharmacy filled them. He stated that he "never gave overdoses" although he did prescribe the medications for a long period of time.

The Committee asked Dr. Harris if he did or did not do what DOH found him guilty of. He said that at the time he felt he was doing nothing wrong and emphasized that the charges had nothing to do with his regular family practice. He said, "I didn't understand, but it did occur. In my own mind, I was misdirected. I will not get involved in the medications anymore."

The Committee asked, "What is the strongest argument for restoring your license?" Dr. Harris replied that he would not get involved with obesity patients. He indicated that he would make sure his applications were accurate, as he did not "want to go through this terrible thing again." He added, "With the data base, you would know immediately. It would be foolish." Dr. Harris told the Committee that he has taken many reeducation courses, including paralegal study. He said that prescribing medications "off label" (used for purposes not tested and approved by the Federal Drug Administration) only "brings you heartache and problems." He indicated that he has tried to reeducate himself and would be willing to take the "Boards" again. Dr. Harris added, "I felt I explained things to my patients fully at the time."

The Committee questioned Dr. Harris' judgment in prescribing diet pills for eight years to a male patient 5 feet 8 inches tall and weighing 145 pounds. Dr. Harris responded, "There are people out there who wanted to take something to help themselves." He reported that the patient told him that he felt his weight was rising and "wanted to take something." He told the Committee that he was sorry that he was "over aggressive" with that patient and "wouldn't do it again." Dr. Harris added, "It was a weak moment on my part." He indicated that he realizes that he was trying to please the patient too much and that he did not document what he had done with the patient. He told the Committee that some studies at the time suggested that long-term use of some of the diet pills was O.K. and that he usually prescribed lower levels than what was recommended.

Dr. Harris said that if his license were restored, he would just have a family practice and "do things by the book." He indicated that he would not prescribe any controlled substances and if his patients insisted, he would tell them, "You can find another doctor." He said that the paralegal studies he's taken has kept his mind sharp and will help him avoid problems in the future. He indicated that he would adhere to all rules and regulations in the future and would be truthful on all applications, even having a lawyer go over them. Dr. Harris said that he has learned from "my harsh penalty."

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, without question, the arguments presented by the petitioner but to weigh and evaluate all of the evidence submitted and to render a recommendation based upon the entire record.

The COP concurs with the Peer Committee that Dr. Harris gave "no reassurance whatsoever that, regardless of the reasons for the applicant's past misconduct, the public would not be at risk again should the applicant be allowed to practice medicine." Dr. Harris continues to minimize and rationalize the misconduct that led to the revocation of his license as well as the initial disciplinary action taken against him. Although he indicated that he accepts responsibility for what he did, he failed to convey any appreciation of what that acceptance of responsibility means. As the Peer Committee opined, Dr. Harris "again essentially tries to relitigate his previously adjudicated guilt." Dr. Harris continues to assert that at the time he thought he did nothing wrong. The COP acknowledges his right to do so but notes that the public record reflects his being found guilty of serious shortcomings in his practice. Dr. Harris failed to convey any real understanding of the potential danger in which any physician would place his patients with such shortcomings in his/her practice.

The COP is concerned that Dr. Harris failed to demonstrate good professional judgment and integrity when dealing with his obesity patients and filling out application forms incorrectly. His explanation of prescribing diet pills to the 145-pound male patient for eight years because the patient "wanted to take something" illustrates Dr. Harris' poor professional judgment. In its meeting with him, the COP found no evidence that were his license restored, his professional judgment might not again be compromised. The record shows a pattern of behavior that continually put the public at risk. For example, he acknowledged that DOH might have sent out information regarding the

prescribing of certain drugs, but chose to ignore the correspondence and stated that he felt DOH would tell him if he was doing something wrong. Rather than clearly identifying the root causes of his misconduct and making the necessary behavioral modifications in his life, Dr. Harris said that his solution to avoid similar misconduct is not to have an obesity practice and not to prescribe controlled substances. The COP finds that Dr. Harris did not present a compelling case for the privilege of having his license restored at this time.

Therefore, after a careful review of the record and its meeting with him, the Committee on the Professions voted unanimously to concur with the recommendation of the Peer Committee to deny Dr. Harris' license to practice as a physician in the State of New York at this time.

Frank Munoz, Chair

Leslie Templeman

Stanley Hansen



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

MONROE HARRIS

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

**REPORT OF
THE PEER
COMMITTEE
CAL. NO. 20500**

-----X

MONROE HARRIS, hereinafter known as the applicant, was previously licensed to practice as a physician in the State of New York by the New York State Education Department. Said license was revoked by the Office of Professional Medical Conduct, New York State Health Department (OPMC), as a result of a professional misconduct proceeding. The applicant has applied for restoration of his license.

BACKGROUND INFORMATION

The written application, supporting papers provided by the applicant and papers resulting from the investigation conducted 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. Set forth below are summaries of information from the packet, further details of which are available in the packet.

PRIOR DISCIPLINE PROCEEDINGS

Action by State Board for Professional Medical Conduct

OPMC Hearing Committee: On February 4, 1999, the OPMC hearing committee determined the applicant to be guilty of seventeen specifications of professional misconduct. The hearing committee determined that the applicant's license to practice medicine in the State of New York be revoked.

Professional Medical Conduct Administrative Review Board: On July 6, 1999, the Administrative Review Board, which considered the applicant's request for review of the determination of the hearing committee, sustained the findings, determination on the charges and penalty of revocation set forth by the hearing committee.

Order of the Professional Medical Conduct Administrative Review Board: July 6, 1999, the order enforcing the penalty was served by mail upon the applicant, effective upon receipt or seven days after the mailing.

Specifications of misconduct: The applicant was found guilty of six specifications of practicing the profession of medicine fraudulently; six specifications of unprofessional conduct (willfully making or filing a false report); one specification of negligence on more than one occasion; one specification of incompetence on more than one occasion; and three specifications of failure to maintain records.

~~Nature of the misconduct. The fraudulent practice~~

MONROE HARRIS (20500)

specifications concerned the applicant's false answers on certain cited applications for staff re-appointments at hospitals and on his licensure registration renewal application. At various times, the applicant answered falsely in the negative concerning whether he was under investigation by the Department of Health, Bureau of Controlled Substances; whether his license had been previously disciplined, though it had been in a prior discipline proceeding described below; or whether he had ever been discharged from one of his hospital positions, which he had been for failing to disclose his prior discipline on one of his staff re-appointment applications. In finding him guilty of the fraud specifications, the OPMC hearing committee rejected the applicant's defense that he did not intend to answer falsely, but that he did so because of learning disabilities that made it difficult for him to answer the applications properly. In rejecting that defense, the hearing committee cited its implausibility in view of the applicant's advanced education and that he did not raise that defense in the administrative proceeding against him at Catholic Medical Center.

The specifications of misconduct sustained for practice issues concerned the applicant's treatment of obesity. Of allegations concerning three patients, the applicant was ~~found guilty for actions concerning two of the patients. In~~

the cases of patient A, treated from 1987 to 1996, and patient C, treated from 1981 to 1998, the applicant did not take an adequate history; failed to take and perform or note an adequate physical examination; improperly treated the patients' obesity, including but not limited to inappropriately prescribing Didrex, an appetite suppressant medication; failed to appropriately monitor the patients during treatment with appetite suppressant medication; and failed to maintain medical records which accurately reflect the care and treatment of the patients.

Prior New York State Discipline Proceeding: On September 1, 1994, the applicant executed an Application for Consent order in disposition of a professional misconduct proceeding. On September 21, 1994, the application was adopted by the State Board for Professional Misconduct and served upon the applicant.

In that proceeding, the applicant was charged with five specifications of professional misconduct, however he admitted guilt to only one specification in full satisfaction of the charges. The four specifications for which the applicant was not adjudicated as guilty concerned the improper prescribing of Didrex to nine separate patients

* Initials rather than names may be used in this report when referring to persons other than the applicant, panel members, ~~Administrative Officer, those representing the parties, and those~~ that may appear in any annexed exhibit.

without patient evaluations, histories, and follow-ups. The specification to which the applicant admitted guilt was for having entered into a Stipulation and Order in an Article 33 proceeding "regarding the dispensing and documentation of controlled substances" at his office.

The penalty agreed to and adopted in the Consent Order was a two-year suspension, execution of the suspension stayed, two years probation and a \$2,000 fine. The terms of probation provided for monitoring of the applicant's practice by OPMC, including regular meetings with the OPMC monitor and that, at the monitor's request, the applicant provide medical records and controlled substance ordering and inventory records selected in a number and manner by the monitor.

Other states proceedings: The record before us indicates the applicant had been licensed to practice medicine in four other states. In two of the states, his license was revoked because of the revocation in New York. In the other two states, his license is listed as "expired." The applicant currently holds no license in any jurisdiction to practice medicine.

APPLICATION FOR RESTORATION

On February 14, 2002, the applicant executed the State Education Department's standard form for applying for restoration of licensure. The application contained information and ~~attachments as referred to, below:~~

Entries in the basic application form:

Continuing Education: The applicant lists approximately five hundred hours of CME. He also lists having taken paralegal courses on subjects including courses related to medical law and ethics issues and other regulatory matters.

In continuations to the education entry on the application, attached on separate sheets, the applicant emphasizes the legal ethics courses and a course on Obesity and Eating Disorders at Harvard Medical School. He comments on steps he would take to be more careful in the future. He also takes the opportunity to state that he was too trusting and believing of some of his patients. He also alludes to the argument he later made at our Peer Committee meeting, which is that his Health Department probation monitors from his first discipline proceeding told him his practices during probation were correct, but that the same Health Department then charged him with misconduct for those practices in the second discipline proceeding.

Community Service: The applicant lists under this category the close to round the clock care he was providing to his elderly mother, who was 93 years old at the time he signed the application.

Submissions of Affidavits: The applicant submits affidavits on his behalf from seven persons, including four osteopaths.

INVESTIGATIVE INFORMATION

The packet provided by OPD contains the following additional information from the investigation that resulted from the filing of the application for restoration:

- June 20, 2002 report of the OPD investigator for this proceeding which includes a summary of an interview on that date with the applicant by the investigator in which:
 - The applicant expressed remorse for his behavior and told of the effects of the revocation on his finances, including the \$250,000 he spent on legal fees. He is supporting two daughters, one in college, the other in law school; he has had difficulty finding employment; and he has dipped into his retirement funds for living expenses
 - He stated he did not lie on the application on his employment application at Catholic Medical Center; that when he completed the last application, his disciplinary proceeding had not yet concluded; and that he has taken steps to prevent fraudulent behavior in the future, including taking the paralegal ethics courses.
 - He stated that he has taken courses to learn the proper treatment of obesity and now knows to take detailed notes.
-
- He stated that his obesity patients were also under

the care of other physicians; that he would ask the patients if the other physicians took blood tests and if he was told by the patients that such tests were normal he did not feel the need to conduct his own blood tests.

- If his license was reinstated, he would confine himself to family practice and not treat obesity
 - July 3, 2003 letter from Dennis Graziano, Director, OPMC, stating his office's position in opposition to the current application for the following reasons:
 - The applicant's claim in a federal law suit of discrimination in the discipline proceeding based on his disabilities was rejected by the federal courts as having already been litigated and rejected by the New York State Appellate Division.
 - The applicant has misrepresented his past on numerous applications. His defenses for these acts were already rejected in the OPMC proceeding, where it was noted that he did not raise his claim of learning disabilities at his Catholic Medical Center administrative proceeding. His application to Catholic Medical Center was made two days after he signed the consent order. The applicant states that, since revocation of his medical license, he has
-
-
- applied for and passed an insurance agent exam,

MONROE HARRIS (20500)

applied for and received a paralegal certificate, and has taken the Law School Aptitude Test without reference to difficulties with learning disabilities.

- His restoration application repeats arguments in defense of his medical practices already considered at his discipline proceeding.
- Proof of CME

PEER COMMITTEE MEETING

On January 7, 2003, this Peer Committee met to consider this matter. The applicant appeared before us personally and was not represented by an attorney. Also present was Frank Kenna, Esq., an attorney from the Division of Prosecutions, OPD.

In his presentation before us, the applicant introduced two additional packets of information, which were received and marked as Applicant's Exhibit A and Applicant's Exhibit B. Much of the applicant's presentation centered on references to the various items in these submissions.

The applicant gave a wide-ranging presentation that cited different rationales for the points he made. He addressed both the practice questions related to his treatment of obesity and the fraud issues related to his answers on various applications.

The applicant spoke numerous times about the lack of clear direction from the Health Department on proper practice in the ~~treatment of obesity. The applicant emphasized that, in his many~~

MONROE HARRIS (20500)

years of practice, only his obesity treatment brought on attention from the authorities. He repeatedly pointed out that his obesity practice was not found wanting by the Health Department probation officials monitoring him for his probation from his first discipline. He asserted that those same practices were then prosecuted in the new proceeding that resulted in the revocation.

At some times in his presentation, he seemed to say the deficiencies found resulted from poor guidance from the Health Department as to record keeping, implying that the substance of his practice was adequate. Other times he ascribed difficulties to problems his secretaries had with a record keeping transcription product he purchased. At one point, he said he was too believing and trusting of his patients who would ask for the medications.

There were moments he blamed his problems on a "misunderstanding" between himself and the Health Department as to proper record keeping or standards of care. Yet, he also expressed regret and remorse for wrongdoing, saying he "missed signals" from the Health Department as to what it is they wanted.

He also, when asked, repeated the point in the advance papers that he relied on the patients' word on the state of their blood tests as taken by their other treating physicians.

At another point in his presentation, the applicant stated that the thoroughness of patient monitoring the Health Department expected was more appropriate for more serious controlled ~~substances, and not for the medications he prescribed, which he~~

MONROE HARRIS (20500)

characterized as drugs that were "not horrible" as abused substances go. He said he wished to avoid the whole problem by not doing an obesity practice again should his license be restored.

The applicant, both verbally and through his exhibits, presented information on more continuing education courses he has taken. He also spoke of the paralegal courses he took, including those on medical legal matters he felt would provide better guidance to him in the future. He has taken the LSAT (law boards for law school admission) with the thought of possibly attending law school if his license is not returned.

Exhibit A submitted by the applicant consisted of transcripts from the disciplinary hearing of testimony by the patients whose treatments were in question. The applicant explained that he was submitting these not only to show the adequacy of his treatment but also to show his honesty and good intent.

Exhibit B included the applicant's rebuttal to the letter submitted by the Director of OPMC to this proceeding that opposed the restoration application. In the portion of his rebuttal concerning practice issues, the applicant argued that none of the insurance plans he participated in questioned whether his methods failed to meet their credentialing standards. He re-asserted his point that his methods were approved by the Health Department's probation monitors, only to result in his discipline later for those same methods. He complained of the inconsistency of ~~standards, saying he realized only after his discipline proceeding~~

MONROE HARRIS (20500)

that the Health Department did not want controlled substances used long term for treatment of obesity.

The applicant maintained it was not his intent to lie on the applications for which fraud was found at his disciplinary proceeding. Both before us and in his rebuttal to the Health Department letter, the applicant continued to attribute his problems in answering the questions on the applications to his learning disabilities. He insisted on his honesty and on his lack of intent in answering the questions improperly. He stated that, in taking the LSAT examination, he was given special accommodations for the learning disabled, which required medical documentation. His Exhibit B included documentation of a lie detector test he took to show he did not intend to answer the questions improperly. He apparently attempted to offer this test result at his disciplinary hearing. Among the instances for which he was found guilty, he stated he did not realize references to investigations and discipline included the Bureau of Controlled Substances investigation leading to the Article 33 adjudication. Nor did he think of his discipline consent order needed to be mentioned after he signed it but before the Board of Professional Medical Conduct accepted it.

The OPD attorney, Mr. Kenna, stated his office's opposition to the application. He argued that the applicant skirted around the issues and did not address the reasons for his improper actions. ~~Mr. Kenna stated that the applicant insists on his~~

MONROE HARRIS (20500)

reliance on others for knowing what proper practice is, rather than knowing himself the established standards of practice of his profession.

RECOMMENDATION

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

This applicant was found guilty of extremely serious deficiencies in medical practice. His treatment of obesity patients consisted of liberal dispensing or prescribing of appetite suppressant drugs for long-term use in violation of clear standards of care. In doing so, the applicant failed to take histories, take proper tests, and do proper follow-ups. His conduct was consistent with previous violations found in an Article 33 proceeding and a professional misconduct proceeding

MONROE HARRIS (20500)

prior to the one that resulted in the revocation of his license. The applicant continued to practice in this manner after the first two proceedings.

In this restoration proceeding, the applicant minimizes his serious misconduct by characterizing it as a "misunderstanding" of unclear standards for which others should have provided him guidance. To this day, despite the various proceedings against him, the applicant does not profess an understanding of the gravity of his practice deficiencies and his own responsibility to be knowledgeable about the proper standards of care. Yet, the misconduct in question was not borderline behavior for which others might be held responsible, but serious and repeated instances of the applicant making available to patients diet pills for his own personal profit while providing woefully inadequate medical care.

In making his presentation, the applicant relies heavily on arguments that he was not guided by the Health Department on proper standards and that he was unfairly prosecuted for matters not questioned by the probation monitors. However, these arguments essentially amount to attempts to question the findings of facts and determinations of guilt in the prior discipline proceeding. Any relitigation of those results is beyond the jurisdiction of this restoration proceeding. It would be more properly the subject of appeal of the discipline proceeding. Furthermore, the Appellate ~~Division upheld the discipline proceeding on appeal~~

MONROE HARRIS (20500)

In making these arguments, the applicant was unfocused, providing many alternative sub-arguments that often overlapped or contradicted each other. It is unclear whether the applicant is saying he was unfairly prosecuted; that he is not guilty of the charges in the discipline proceeding; that he is guilty only of not understanding the Health Departments directives; or that he did not, in substance, practice poorly but was guilty of improper record keeping.

If the applicant is saying he was not guilty, then we note that the courts have ruled that an applicant in these proceedings does not have to admit past wrongdoing he does not believe he committed. "Petitioner need not surrender his contention that he is innocent of the original charges in order to be readmitted to his profession." Melone v. State Educ. Dep't, 581 N.Y.S.2d 894, 896 (N.Y. App. Div., 1992) Therefore, in cases where an applicant denies his guilt to the original misconduct, the criterion of remorse is undercut and limited in its usefulness. In these circumstances, we instead must consider the other criteria, particularly whether the public is protected.

In this case, whether the applicant is denying his guilt or explaining it, our approach to the application is the same. We still look for some acknowledgment from the applicant of the seriousness of the public record and his need to convince us of his trustworthiness to have his license restored. This ~~applicant's presentation does the exact opposite. He minimizes~~

MONROE HARRIS (20500)

the seriousness of what he was found guilty of and still maintains he must rely on the direction of others to assure he will not commit the same misconduct again.

As to the fraud issues, the applicant again essentially tries to relitigate his previously adjudicated guilt. Instead of concentrating on demonstrating why we can believe he will be truthful in the future, the applicant focuses on his lack of intent to lie on the applications and on his previous defense based on his learning disabilities. These arguments were already rejected in the previous discipline proceeding, as well as in both federal and state court appeals. Furthermore, our Peer Committee finds the applicant's explanation no less implausible than the OPMC reviewers did. The applicant was able to gain admission to medical school and maintain long years of medical practice. Since his discipline proceeding, the applicant has studied and obtained further certifications in other fields. The record still shows it to be more likely than not that the applicant lied to cover up serious blemishes on his record.

Our ultimate concern is the health and safety of the public. The applicant engaged in repeated instances of behavior that put that health and safety at risk. His presentation before us gives no reassurance whatsoever that, regardless of the reasons for the applicant's past misconduct, the public would not be at risk again should the applicant be allowed to practice medicine. Nor

MONROE HARRIS (20500)

do we have any assurance that the applicant has taken steps that would prevent him from again fraudulently representing his situation. The applicant's presentations on both issues fall well short of the compelling burden on him in this proceeding.

It is therefore the unanimous recommendation of this Peer Committee that the application before us for restoration of licensure as a physician in the State of New York be denied.

Respectfully submitted,

Florence Kavaler, Chairperson
Seymour Cohen, M.D.
Benjamin Robinson, Public Member

Florence Kavaler May 14, 2004

Chairperson

Date

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

-----X
In the Matter of the Application of

MONROE HARRIS

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

**REPORT OF
THE PEER
COMMITTEE
CAL. NO. 20500**

-----X
