



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

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MEDICAL CONDUCT

PUBLIC

January 30, 2004

Steven Kashan, Physician  
46 Sunset Road  
Great Neck, New York 11024

Re: Application for Restoration

Dear Dr. Kashan:

Enclosed please find the Commissioner's Order regarding Case No. CP-03-07 which is in reference to Calendar No. 20199. 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

A handwritten signature in black ink that reads "Gustave Martine".

Gustave Martine  
Supervisor

cc: Joel L. Hodes, Esq.  
Whiteman, Osterman & Hanna  
One Commerce Plaza  
Albany, New York 12260

The  
University of the  
Education  State of New York  
Department

IN THE MATTER

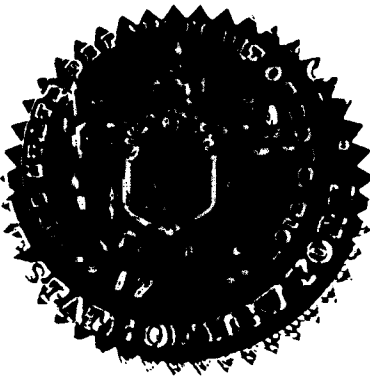
of the

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

Case No. CP-03-07

It appearing that the license of STEVEN KASHAN, 46 Sunset Road, Great Neck, New York 11024, to practice as a physician in the State of New York, was revoked by a Hearing Committee of the State Board for Professional Medical Conduct, effective April 23, 1998, and he having petitioned the Board of Regents for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 disagreed 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 December 12, 2003, it is hereby

ORDERED that the petition for restoration of License No. 128602, authorizing STEVEN KASHAN 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 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 23<sup>rd</sup>  
day of January, 2004.

  
Commissioner of Education

Case No. CP-03-07

It appearing that the license of STEVEN KASHAN, 46 Sunset Road, Great Neck, New York 11024, to practice as a physician in the State of New York, having been revoked by a Hearing Committee of the State Board for Professional Medical Conduct effective April 23, 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 disagreed 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 December 12, 2003, it was

VOTED that the petition for restoration of License No. 128602, authorizing STEVEN KASHAN to practice as a physician in the State of New York, be denied.

Case number  
CP-03-07  
November 24, 2003

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

Report of the Committee on the Professions  
Application for Restoration of Physician License

**Re: Steven Kashan**

Attorney: Joel L. Hodes

Steven Kashan, 46 Sunset Road, Great Neck, New York 11024, petitioned for restoration of his physician license. The chronology of events is as follows:

- 09/24/76 Issued license number 128602 to practice as a physician in New York State.
- 10/28/97 Charged with professional misconduct by Department of Health. (See "Disciplinary History.")
- 04/08/98 Hearing Committee of the State Board for Professional Medical Conduct revoked license.
- 04/23/98 Effective date of revocation.
- 06/08/01 Submitted application for restoration.
- 10/10/02 Peer Committee restoration review.
- 01/02/03 Report and recommendation of Peer Committee. (See "Report of the Peer Committee.")
- 03/14/03 Committee on the Professions restoration review.
- 05/19/03 Report and recommendation of Committee on the Professions. (See "Report of the Committee on the Professions.")
- 06/17/03 Board of Regents remanded to Committee on the Professions for further clarification of the basis for its determination.
- 11/24/03 Report and recommendation of Committee on the Professions. (See "Report of the Committee on the Professions.")

**Disciplinary History.** (See attached disciplinary documents.) On October 28, 1997, the Department of Health charged Dr. Kashan with four specifications of professional misconduct. Specifically, in regard to two female patients, he was charged with willfully harassing, abusing or intimidating a patient either physically or verbally and with engaging in conduct in the practice of the profession of medicine that evidences moral unfitness to practice. The specifications of professional misconduct were based on allegations that between on or about October 9, 1986 and on or about December 16, 1986, Dr. Kashan treated Patient A (17 years of age) for a knee injury in his medical offices where, for no legitimate medical purpose, he fondled Patient A's breasts, rubbed her nipple and vaginal area and touched the patient's buttocks. The Department also alleged that between on or about March 16, 1995 and on or about June 20, 1995, Dr. Kashan treated Patient B (30 years of age) for injuries to her neck, shoulder and hand at his medical offices where during one visit he, for no legitimate medical purpose, held Patient B's breasts; during a second visit he, for no legitimate medical purpose, touched Patient B's breasts; and during a third visit he, for no legitimate medical purpose, touched Patient B's breast and rubbed her pubic and vaginal areas with his elbow. On April 8, 1998, a Hearing Committee of the State Board for Professional Medical Conduct sustained the four specifications of professional misconduct even though it did not sustain the charges related to Patient B's first visit. The Hearing Committee voted to revoke Dr. Kashan's physician license and the revocation became effective April 23, 1998.

Dr. Kashan submitted an application for restoration of his license on June 8, 2001.

**Recommendation of the Peer Committee.** (See attached "Report of the Peer Committee.") The Peer Committee (Holztapple, Herrman, Wu) met with Dr. Kashan on October 10, 2002 to review his application for restoration. In its report, dated January 2, 2003, the Committee recommended that Dr. Kashan's license be restored.

**Summary of Meeting with the Committee on the Professions.** On March 14, 2003, the Committee on the Professions (Duncan-Poitier, Porter, Earle) met with Dr. Kashan to review his application for restoration. Joel L. Hodes, Esq., accompanied him as counsel.

The Committee asked Dr. Kashan to explain what led to the charges of professional misconduct against him. He replied that he was accused in 1997 of improperly examining two patients, one of them occurring 13 or 14 years earlier. He said that he was "very terribly sorry" and felt the charges related to his "stupidity" and a misunderstanding. Dr. Kashan stated that he failed to clearly explain the purpose of his examinations to the patients in question. He told the Committee that he was trying to perform thorough examinations so that he could reach appropriate conclusions regarding their proper treatment. He said that the need for a thorough examination was especially true for a young patient as a pain in one part of the body could come from another place. As an example, he indicated that tonsillitis could cause a pain in the hip.

Dr. Kashan said, "I've thought a lot about this." He stated that he has concluded, "I wasn't clear." He said that he knows he was a very good doctor and that under no circumstances wanted to harm his patients. Dr. Kashan stated, "I tried to understand

more of the American culture." He reported, as an example, that in his country you don't tell a patient directly that he or she has cancer but, instead relate this information to the family. In this country, he continued, you have to confront and explain to the patient directly. Dr. Kashan told the Committee, "I am not saying they were lying. I am guilty of not clearly explaining to the patients the purpose of my examinations."

The Committee asked Dr. Kashan if he had read the recommendation of the Department of Health strongly opposing the restoration of his license. He indicated that he had. When asked for his comments regarding the recommendation, Dr. Kashan stated, "I think they are wrong. I know that I haven't done anything improper to patients." He told the Committee that he wished the patients were here now so that he could talk directly to them. He explained that he is family-oriented and came from a "family of high standards in society." He said that he wished the patients had come and talked to him.

The Committee explained that it had to consider Dr. Kashan's integrity in light of the decision of the Department of Health sustaining the charges of professional misconduct. Referring to the letter from the Department of Health opposing the restoration of Dr. Kashan's license, the Committee noted that during the original disciplinary hearing he denied being sued for malpractice although the record indicated there were four malpractice actions against him. Dr. Kashan said that at that time there were three or four complaints but they were all dismissed. He indicated that it was a misunderstanding in terminology. He described the malpractice suits and said that none involved any alleged sexual abuse or misconduct.

Dr. Kashan reported that prior to the initial disciplinary proceeding, the Department of Health was willing to enter into a consent agreement whereby he would only be placed on probation. He said that his lawyer wanted to challenge the Department of Health and "persuaded me to fight them." Dr. Kashan reported that he later discovered the lawyer was "under litigation" at the time and later disbarred. Dr. Kashan told the Committee he would not have lost his license if he had agreed to the initial probationary offer.

The Committee noted that in 1998 the Department of Health found Dr. Kashan guilty of professional misconduct after considering the evidence and testimony at his hearing. The Committee noted that it would have to accept the determination of guilt as an established fact and asked Dr. Kashan to explain the nature of his examinations since he indicated that the patients were confused and misunderstood what he was doing. Dr. Kashan said that the 17-year-old female patient had a knee complaint. He explained that with young persons you often had to look for other causes, such as juvenile rheumatoid arthritis or infection of the bone. Consequently, he reported that he examined her organs, including her heart, belly and lymph nodes in the groin area, and that he also took X-rays. He stated, "I do not agree with the charges. You need to find the lymph nodes." In response to the Committee's inquiry asking if he touched the patient's nipples and clitoris, he said that there might have been some "brushing" as he examined her groin area and the lymph nodes under her arm. Dr. Kashan said that there was always someone in the room with him and that even though he has seen thousands of patients, nobody else came forward to complain after his case was in the media. He referred to the letters of support accompanying his application for restoration

and said that some were from the "toughest doctors in Nassau County" and one was on the State Board for Professional Medical Conduct.

The Committee asked Dr. Kashan to describe what has happened in his life since the revocation of his license. He said that he has acquired more than 500 Continuing Medical Education credits, takes self-assessment tests in orthopedics, attends conferences, and attends Grand Rounds every week at Long Island College Hospital. He indicated that he has received counseling from Rabbi Waxman, a nationally known person involved in Conservative Judaism. Dr. Kashan said that he was "in a bad depression" and that Rabbi Waxman helped him get out of it and better understand American culture. The Committee asked Dr. Kashan what conclusions he reached through this counseling. He replied that he understood the need to remain strong and have "a better understanding of what I need to do." He said that he understands that the medical profession has the highest standard of ethics and that a physician should have better judgment, as patients could be hurt emotionally or physically. He indicated that he now realizes he needs to provide a better explanation to his patients regarding the need for thorough examinations. Dr. Kashan stated, "Only a handful of orthopedic surgeons could appreciate what I did for the patients." He said that he was badly depressed and kept thinking about how he could tell the patients he was sorry he hurt them.

Dr. Kashan told the Committee that he was a positive force in the community and could be even better if his license were restored. The Committee noted that the two patients sincerely believe the sexual misconduct occurred and asked Dr. Kashan why, in his estimation, they felt that way. He replied, "I went through that a lot." He said that he believed that Patient B wanted to collect disability payments and that he failed to support her claim. He had no explanation regarding Patient A, the 17-year old. After further questioning by the Committee, Dr. Kashan acknowledged that the patients' feelings about the basis for and nature of his examinations could cause them long-term mental and physical problems. Mr. Hodes noted that two-thirds of the recommendation from the Department of Health summarized information from the initial disciplinary hearing and asked the Committee to look at Dr. Kelly's psychiatric comments and Dr. Putterman's comments about what constitutes a proper examination.

**Basis for Recommendation of Committee on the Professions:** 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 accepts the judgment of the Peer Committee that Dr. Kashan has satisfied the reeducation criteria for restoration of his license. However, based upon its careful examination of the record and meeting with him, the COP does not concur with the conclusions of the Peer Committee that Dr. Kashan presented a compelling case that he has satisfied the restoration criteria of remorse and rehabilitation.

Dr. Kashan continues to deny that he inappropriately touched the two female patients even though a Hearing Committee of the State Board for Professional Medical Conduct found him guilty of the specifications of professional misconduct involving both patients. The COP acknowledges that Dr. Kashan has the right to continue to deny his guilt of those charges but the COP must accept the determination of guilt by the Department of Health as a matter of record. In the face of Dr. Kashan's continuing denial of responsibility for the professional misconduct for which the Department of Health found him guilty, the COP is obliged to carefully consider the potential danger to the public if his license is restored.

Dr. Kashan told the COP that he wished the two patients had come to him with their concerns rather than filing charges against him. He also said that he wished the two patients were at the meeting so that he could talk to them. However, it was not until the end of his meeting with the COP that Dr. Kashan was able to indicate how those patients might have suffered because of his actions. When asked initially what was wrong with the patients' belief that he had sexually abused them, Dr. Kashan stated that, after careful consideration, he felt Patient B filed the charges because he didn't support her efforts to collect disability insurance. After further questioning by the COP, Dr. Kashan conceded that a patient's feeling that she was sexually abused could cause the patient long-term mental and physical problems. The COP further notes that, at the original disciplinary hearing in 1998, Dr. Kashan attempted to discredit the testimony of the 17-year-old patient by alleging that she was a drug user. Dr. Kashan stated that he is not saying the patients were lying but emphasized that he was only guilty of failing to adequately explain the nature of his comprehensive examinations to the patients. The COP finds that Dr. Kashan's remorse was primarily directed at the consequences of the loss of his license upon himself and his family and it was only after extensive questioning by the COP that he was able to relate how the patients could have been harmed if they felt they were sexually abused.

The COP notes that Dr. Kashan has not engaged in any systematic professional counseling to help him understand why his patients believe he touched them improperly. Dr. Kashan does indicate that his discussions with Rabbi Waxman have helped him to cope with his depression, become stronger, better understand ethical considerations of the medical profession, and better understand American culture. Dr. Kelly and Dr. Lefer provided psychological reports based on brief meetings with Dr. Kashan. We note, however, that neither of those psychiatrists reviewed the material from the initial disciplinary proceedings before making their recommendations and neither provided any formal counseling to him. Dr. Kashan did not indicate how he arrived at the conclusion that the only thing he did wrong was his failure to adequately communicate the nature of his comprehensive examination to the patients in question.



The COP notes that both patients apparently believe that Dr. Kashan inappropriately touched them sexually even though they were clothed. Dr. Kashan admitted during his meeting with the COP that he might have brushed against their breasts and pelvic areas while examining lymph nodes. The COP notes, however, that both patients expressed similar conviction that Dr. Kashan's contact with them was intentionally sexual beyond what could be reasonably attributable to the incidental contact associated with an appropriate medical examination. Without a clearer explanation of Dr. Kashan's understanding of the Department of Health's subsequent revocation of his license, the COP is unable to determine if Dr. Kashan has taken the necessary rehabilitative steps to ensure that such professional misconduct will not recur were his license restored. The Department of Health opined that there was nothing in his petition that demonstrated that Dr. Kashan has been rehabilitated and opposes the restoration of his license. In view of the totality of the circumstances presented, the COP finds that Dr. Kashan has failed to present a sufficiently compelling case to warrant the restoration of his license at this time.

Therefore, after a careful review of the record and its meeting with him, the Committee on the Professions voted to deny Dr. Kashan's application for restoration of his license to practice medicine in New York State at this time.

**Board of Regents Action:** On June 17, 2003, the Board of Regents voted to remand Dr. Kashan's petition for restoration of his physician license to the Committee on the Professions for further clarification of the basis for its determination.

**Clarified Basis for Recommendation of Committee on the Professions:** Upon further review of the record and its meeting with him, the Committee on the Professions offers the following revised rationale to address the Board of Regents request for clarification of the basis for its decision.

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 accepts the judgment of the Peer Committee that Dr. Kashan has satisfied the reeducation criteria for restoration of his license. However, based upon its careful examination of the record and meeting with him, the COP does not concur with

the conclusions of the Peer Committee that Dr. Kashan presented a compelling case that he has satisfied the restoration criteria of remorse and rehabilitation.

Dr. Kashan continues to deny that he inappropriately touched the two female patients even though a Hearing Committee of the State Board for Professional Medical Conduct found him guilty of the specifications of professional misconduct involving both patients. The COP acknowledges that Dr. Kashan has the right to continue to deny his guilt of those charges but the COP must accept the determination of guilt by the Department of Health as a matter of record. In the face of Dr. Kashan's continuing denial of responsibility for the professional misconduct for which the Department of Health found him guilty, the COP is obliged to carefully consider the potential danger to the public if his license is restored.

Dr. Kashan told the COP that he wished the two patients had come to him with their concerns rather than filing charges against him. He also said that he wished the two patients were at the meeting so that he could talk to them. However, it was not until the end of his meeting, after repeated questioning on this matter by the COP, that Dr. Kashan was able to indicate how those patients might have suffered because of his actions. When asked initially to explain his opinion as to why these patients believe that he sexually abused them, Dr. Kashan stated that, after careful consideration, he felt Patient B filed the charges because he didn't support her efforts to collect disability insurance. The COP further notes that, at the original disciplinary hearing in 1998, Dr. Kashan attempted to discredit the testimony of the 17-year-old Patient "A" by alleging that she was a drug user. Dr. Kashan stated that he is not saying the patients were lying but emphasized that he was only guilty of failing to adequately explain the nature of his comprehensive examinations to the patients. It was only after persistent questioning by the COP that Dr. Kashan conceded that a patient's feeling that she was sexually abused could cause the patient long-term mental and physical problems. Rather than focusing on the concerns and potential harm to these patients, it appears, to this committee, that Dr. Kashan's remorse was primarily directed at the consequences of the loss of his license upon himself and his family.

The COP notes that Dr. Kashan has not engaged in any systematic professional counseling to help him understand why his patients believe he touched them improperly. Dr. Kashan does indicate that his discussions with Rabbi Waxman have helped him to cope with his depression, become stronger, better understand ethical considerations of the medical profession, and better understand American culture. In the course of preparing his restoration application, Dr. Kashan met briefly with Dr. Kelly and Dr. Lefer. Both doctors produced psychological assessments based upon these meetings with Dr. Kashan. We note, however, that neither of those psychiatrists provided any formal counseling to Dr. Kashan.

Even after extensive questioning, Dr. Kashan failed to articulate how he arrived at the conclusion that his only failure was to adequately communicate the nature of his comprehensive examinations to the patients in question. The COP is deeply concerned that both patients apparently believe that Dr. Kashan inappropriately touched them sexually even though they were clothed. Dr. Kashan admitted during his meeting with the COP that he might have brushed against their breasts and pelvic areas while examining lymph nodes. The COP notes, however, that both patients expressed similar

conviction that Dr. Kashan's contact with them was intentionally sexual beyond what could be reasonably attributable to the incidental contact associated with an appropriate medical examination.

Based upon its careful review of the record as well as its meeting with Dr. Kashan, it is the opinion of COP that Dr. Kashan fails to fully grasp or accept personal responsibility for the serious misconduct for which the State Board for Professional Medical Conduct found him guilty. The COP does not agree with Dr. Kashan's characterization of his role in the incidents which led to the revocation of his license. Indeed, this committee finds that the evidence in the record contradicts Dr. Kashan's continuing assertion that he was only guilty of failing to adequately communicate the purpose of his examination to the patients in question. In view of the foregoing, the COP does not believe that Dr. Kashan has taken the necessary rehabilitative steps to ensure that such professional misconduct would not recur were his license restored. The Department of Health opined that there was nothing in his petition that demonstrated that Dr. Kashan has been rehabilitated and opposes the restoration of his license. The COP agrees with this assessment and finds that Dr. Kashan has failed to present a sufficiently compelling case to warrant the restoration of his license at this time.

Johanna Duncan-Poitier, Chair

Joseph B. Porter

Steven Earle

The  
University of the  
Education  
State of New York  
Department



IN THE MATTER

of the

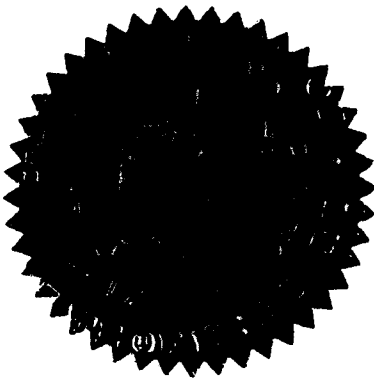
Application of STEVEN KASHAN  
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ORDERED that the petition for restoration of License No. 128602, authorizing STEVEN KASHAN to practice as a physician in the State of New York, be remanded to the Committee on the Professions for further clarification of the basis for its determination.

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



  
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**Recommendation of the Committee on the Professions.** On March 14, 2003, the Committee on the Professions (Duncan-Poitier, Porter, Earle) met with Dr. Kashan to review his application for restoration. Joel L. Hodes, Esq., accompanied him as counsel.

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The Committee explained that it had to consider Dr. Kashan's integrity in light of the decision of the Department of Health sustaining the charges of professional misconduct. Referring to the letter from the Department of Health opposing the restoration of Dr. Kashan's license, the Committee noted that during the original disciplinary hearing he denied being sued for malpractice although the record indicated there were four malpractice actions against him. Dr. Kashan said that at that time there were three or four complaints but they were all dismissed. He indicated that it was a misunderstanding in terminology. He described the malpractice suits and said that none involved any alleged sexual abuse or misconduct.

Dr. Kashan reported that prior to the initial disciplinary proceeding, the Department of Health was willing to enter into a consent agreement whereby he would only be placed on probation. He said that his lawyer wanted to challenge the Department of Health and "persuaded me to fight them." Dr. Kashan reported that he later discovered the lawyer was "under litigation" at the time and later disbarred. Dr. Kashan told the Committee he would not have lost his license if he had agreed to the initial probationary offer.

The Committee noted that in 1998 the Department of Health found Dr. Kashan guilty of professional misconduct after considering the evidence and testimony at his hearing. The Committee noted that it would have to accept the determination of guilt as an established fact and asked Dr. Kashan to explain the nature of his examinations since he indicated that the patients were confused and misunderstood what he was doing. Dr. Kashan said that the 17-year-old female patient had a knee complaint. He explained that with young persons you often had to look for other causes, such as juvenile rheumatoid arthritis or infection of the bone. Consequently, he reported that he examined her organs, including her heart, belly and lymph nodes in the groin area, and that he also took X-rays. He stated, "I do not agree with the charges. You need to find the lymph nodes." In response to the Committee's inquiry asking if he touched the patient's nipples and clitoris, he said that there might have been some "brushing" as he examined her groin area and the lymph nodes under her arm. Dr. Kashan said that there was always someone in the room with him and that even though he has seen ~~thousands of patients, nobody else came forward to complain after his case was in the media.~~ He referred to the letters of support accompanying his application for restoration and said that some were from the "toughest doctors in Nassau County" and one was on the State Board for Professional Medical Conduct.

The Committee asked Dr. Kashan to describe what has happened in his life since the revocation of his license. He said that he has acquired more than 500 Continuing Medical Education credits, takes self-assessment tests in orthopedics, attends conferences, and attends Grand Rounds every week at Long Island College



Hospital. He indicated that he has received counseling from Rabbi Waxman, a nationally known person involved in Conservative Judaism. Dr. Kashan said that he was "in a bad depression" and that Rabbi Waxman helped him get out of it and better understand American culture. The Committee asked Dr. Kashan what conclusions he reached through this counseling. He replied the he understood the need to remain strong and have "a better understanding of what I need to do." He said that he understands that the medical profession has the highest standard of ethics and that a physician should have better judgment, as patients could be hurt emotionally or physically. He indicated that he now realizes he needs to provide a better explanation to his patients regarding the need for thorough examinations. Dr. Kashan stated, "Only a handful of orthopedic surgeons could appreciate what I did for the patients." He said that he was badly depressed and kept thinking about how he could tell the patients he was sorry he hurt them.

Dr. Kashan told the Committee that he was a positive force in the community and could be even better if his license were restored. The Committee noted that the two patients sincerely believe the sexual misconduct occurred and asked Dr. Kashan why, in his estimation, they felt that way. He replied, "I went through that a lot." He said that he believed that Patient B wanted to collect disability payments and that he failed to support her claim. He had no explanation regarding Patient A, the 17-year old. After further questioning by the Committee, Dr. Kashan acknowledged that the patients' feelings about the basis for and nature of his examinations could cause them long term mental and physical problems. Mr. Hodes noted that two-thirds of the recommendation from the Department of Health summarized information from the initial disciplinary hearing and asked the Committee to look at Dr. Kelly's psychiatric comments and Dr. Putterman's comments about what constitutes a proper examination.

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 accepts the judgment of the Peer Committee that Dr. Kashan has satisfied the reeducation criteria for restoration of his license. However, based upon its careful examination of the record and meeting with him, the COP does not concur with the conclusions of the Peer Committee that Dr. Kashan presented a compelling case that he has satisfied the restoration criteria of remorse and rehabilitation.

Dr. Kashan continues to deny that he inappropriately touched the two female patients even though a Hearing Committee of the State Board for Professional Medical Conduct found him guilty of the specifications of professional misconduct involving both patients. The COP acknowledges that Dr. Kashan has the right to continue to deny his guilt of those charges but the COP must accept the determination of guilt by the Department of Health as a matter of record. In the face of Dr. Kashan's continuing denial of responsibility for the professional misconduct for which the Department of Health found him guilty, the COP is obliged to carefully consider the potential danger to the public if his license is restored.

Dr. Kashan told the COP that he wished the two patients had come to him with their concerns rather than filing charges against him. He also said that he wished the two patients were at the meeting so that he could talk to them. However, it was not until the end of his meeting with the COP that Dr. Kashan was able to indicate how those patients might have suffered because of his actions. When asked initially what was wrong with the patients' belief that he had sexually abused them, Dr. Kashan stated that, after careful consideration, he felt Patient B filed the charges because he didn't support her efforts to collect disability insurance. After further questioning by the COP, Dr. Kashan conceded that a patient's feeling that she was sexually abused could cause the patient long term mental and physical problems. The COP further notes that, at the original disciplinary hearing in 1998, Dr. Kashan attempted to discredit the testimony of the 17-year-old patient by alleging that she was a drug user. Dr. Kashan stated that he is not saying the patients were lying but emphasized that he was only guilty of failing to adequately explain the nature of his comprehensive examinations to the patients. The COP finds that Dr. Kashan's remorse was primarily directed at the consequences of the loss of his license upon himself and his family and it was only after extensive questioning by the COP that he was able to relate how the patients could have been harmed if they felt they were sexually abused.

The COP notes that Dr. Kashan has not engaged in any systematic professional counseling to help him understand why his patients believe he touched them improperly. Dr. Kashan does indicate that his discussions with Rabbi Waxman have helped him to cope with his depression, become stronger, better understand ethical considerations of the medical profession, and better understand American culture. Dr. Kelly and Dr. Lefer provided psychological reports based on brief meetings with Dr. Kashan. We note, however, that neither of those psychiatrists reviewed the material from the initial disciplinary proceedings before making their recommendations and neither provided any formal counseling to him. Dr. Kashan did not indicate how he arrived at the conclusion that the only thing he did wrong was his failure to adequately communicate the nature of his comprehensive examination to the patients in question.

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The COP notes that both patients apparently believe that Dr. Kashan inappropriately touched them sexually even though they were clothed. Dr. Kashan admitted during his meeting with the COP that he might have brushed against their breasts and pelvic areas while examining lymph nodes. The COP notes, however, that both patients expressed similar conviction that Dr. Kashan's contact with them was intentionally sexual beyond what could be reasonably attributable to the incidental contact associated with an appropriate medical examination. Without a clearer explanation of Dr. Kashan's understanding of the Department of Health's subsequent revocation of his

license, the COP is unable to determine if Dr. Kashan has taken the necessary rehabilitative steps to ensure that such professional misconduct will not recur were his license restored. The Department of Health opined that there was nothing in his petition that demonstrated that Dr. Kashan has been rehabilitated and opposes the restoration of his license. In view of the totality of the circumstances presented, the COP finds that Dr. Kashan has failed to present a sufficiently compelling case to warrant the restoration of his license at this time.

Therefore, after a careful review of the record and its meeting with him, the Committee on the Professions voted to deny Dr. Kashan's application for restoration of his license to practice medicine in New York State at this time.

Johanna Duncan-Poitier, Chair

Joseph B. Porter

Steven Earle

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# *The University of the State of New York*

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

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In the Matter of the Application of

**STEVEN KASHAN**

**REPORT OF  
THE PEER  
COMMITTEE  
CAL. NO. 20199**

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

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**STEVEN KASHAN**, 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 October 10, 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-98-66**

#### **Action by the New York State Department of Health**

March 13, 1998 – A Determination and Order of the Hearing Committee, State Board for Professional Medical Conduct was issued, directing the revocation of the applicant's license to practice as a physician.

#### **Determination of the Specifications of the Charges**

The Hearing Committee found the applicant guilty of willfully harassing, abusing or intimidating a patient, either physically or verbally, and with engaging in conduct in the practice of medicine that evidences moral unfitness to practice. The factual allegations set forth in paragraphs A, A.1, B, B.2 and B.3 of the Statement of Charges were sustained. The factual allegations set forth in paragraph B.1 of the Statement of Charges were not sustained.

#### **Nature of the Misconduct**

The Hearing Committee found that on or about December 16, 1986, Patient A, then a 17 year old female, was seen by the applicant at his medical offices where, several times, and through the patient's clothing, the applicant fondled Patient A's breasts, nipples, vagina, clitoris and buttocks. On or about May 15, 1995, the applicant placed his hand on the breasts of Patient B, then a 30 year old female, while asking her to perform exercises. On or about June 2, 1995, the applicant placed his left hand on Patient B's breast, pinched her nipple and placed his elbow into her crotch area, rubbing his elbow around the patient's pubic and vaginal areas.

The allegation that on or about May 2, 1995, Patient B was seen by applicant at his medical offices where, not for any legitimate medical purpose, applicant held Patient B's breasts, was not sustained.

### **PETITION FOR RESTORATION**

The applicant submitted a restoration application dated June 8, 2001, with attachments as described below.

### **ATTACHMENTS TO THE PETITION**

- Personal statement of the applicant, in which he asserts that he did not fulfill his professional obligation to the complaining patients by not communicating clearly to them their condition, physical examination and treatment. He also expresses his regret for the incidents, describes his efforts at re-education, and discusses his consultation with Rabbi Mordecai Waxman regarding the revocation of his license;
- Seven affidavits in support of the application from advisors and professional colleagues of the applicant;
- Sixteen patient, physician, and community letters of support;
- Documentation of the State Board of Medicine of Florida, which revoked the applicant's Florida license effective March 2, 2000, based upon his request to voluntarily relinquish his license.
- Malpractice history, showing seven actions commenced from 1984 through 1997, with two resulting in monetary settlements;

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- Curriculum vitae from Rabbi Mordecai Waxman, the applicant's religious counselor;
- Reports of the psychiatric evaluation of the applicant by Kevin Kelly, M.D. and Gary L. Lefer, M.D. and executed releases;

- List of continuing education credits since revocation of the applicant's license along with transcripts and other forms of verification;
- Two letters of community service verification;
- Current curriculum vitae of applicant with explanations as to lack of present employment and documentation of failed employment attempts;

### **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 January 2, 2002.

This report summarizes an interview conducted in person with the applicant. He attributed the revocation of his license to an unfortunate choice of lawyers, and a decision, based upon advice of counsel, to contest the Department of Health charges, rather than to accept an offer of settlement. He stated that he had made the error of failing to explain to the two patients in question that he had gone beyond their initial complaint in his physical examination of them. He also stated that he was aware that the negative experiences of these patients could cause them permanent harm. He explained any allegation that he had lied to the Department of Health's Hearing Committee as a misunderstanding. The applicant was often tearful during this interview, concluding the session by stating that he had been practicing for twenty years and was proud of how many people he had been able to help.

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If his license is restored, the applicant stated that he hopes to join the staff of Nassau County Medical Center (where he is acquainted with the Chairman of the Orthopedics

Department), another facility, or possibly a group practice. He would not return to the type of office setting where the previous incidents took place.

Other information on the record, not already summarized:

- Letter from dated November 29, 2001 from Dennis J. Graziano, Director of the New York State Health Department's Office of Professional Medical Conduct, expressing opposition to the restoration of the applicant's license.
- Curriculum Vitae of Walter S. Ramsey, M.D., Eric A. Putterman, M.D., and Kevin Vincent Kelly, M.D., witnesses for the applicant at the Peer Committee meeting.

#### **PEER COMMITTEE**

On October 10, 2002 this Peer Committee met to consider this matter. The applicant appeared before us personally, and was represented by Joel L. Hodes, Esq. and Kristin Koehler Guilbault, Esq. Also present was Ilene Bergman, Esq., an attorney who appeared on behalf of the Division of Prosecutions of OPD. Orly Kashan, Yoav Zacaim and Alanna McKiernan, Esq., were present as observers.

Mr. Hodes started his opening remarks by reiterating for the Peer Committee the circumstances of the applicant's loss of license. He asserted that it was his client's belief that he had no inappropriate physical contact with the patients in question, but that his client understood that he had still caused those patients pain, and that they felt violated and abused by the applicant. He then described for the Peer Committee the applicant's educational and professional background, and the steps the applicant has taken to support his restoration application, including psychological evaluations, re-education activities, and counseling sessions with Rabbi Waxman of Long Island. He closed by describing the testimony to be presented, and asserting that the evidence will show that the applicant is worthy of a license,



based upon the absence of any risk of harm to the public, and the benefit which the community will derive from his services.

Ms. Bergman also described the revocation proceeding in her opening statement, and outlined for the Peer Committee the factors they should consider, including remorse, re-education and rehabilitation. She asserted that the burden is on the applicant to prove that he is worthy of having his license to practice as a physician restored.

Dr. Kevin Kelly was the first witness to testify on the applicant's behalf. He described the nature of his examination of the applicant, and provided his impression of him. He expressed his professional opinion that the applicant was truthful in his denial that there was no inappropriate physical contact between him and his patient. Dr. Kelly then stated that the most plausible explanation of what happened was that the applicant performed a more thorough physical examination of these patients than most doctors do, and failed to explain what he was doing to these patients. He stated his opinion that the applicant was not a sexual predator, and that it was not likely that he would engage in any sexually inappropriate behavior in the future. He also opined that the applicant would benefit from the type of counseling he received from Rabbi Waxman. When questioned regarding the Department of Health's letter in opposition to the petition for restoration, Dr. Kelly stated that it was his impression that there was nothing that the applicant needed rehabilitation from, and that he believed, with great confidence, that the applicant shows no psychological or psychiatric obstacles to returning to the practice of medicine.

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~~On cross-examination by Ms. Bergman, Dr. Kelly revealed that he had only read the~~  
Department of Health decision a couple of days before his testimony. He responded to the Peer

Committee's questions, however, by stating that the decision contained no discrepancies from what he learned in his examination of the applicant.

Dr. Eric A. Putterman then testified on behalf of the applicant. He knew the applicant as a practitioner in Long Island, and stated that the applicant epitomizes the type of physician who has a strong moral conviction about how to practice medicine. He stated that, in his observations of the applicant, his behavior towards his patients was always appropriate, he always showed the utmost respect for patients, and that he was aware of no complaints from patients concerning the applicant, other than those associated with the revocation proceeding. Dr. Putterman also testified that it would be appropriate to perform a hip and lumbar examination of a patient who presents with knee pain, but who has no obvious source of pain from the knee. On cross-examination by Ms. Bergman, Dr. Putterman admitted that he had not read the decision of the Department of Health's Hearing Committee.

Dr. Walter S. Ramsey next testified on behalf of the applicant. He has known the applicant professionally since 1984 or 1985, and stated that the applicant was probably the most moral person he had met in the profession. He stated that he and his colleagues reacted with disbelief when they learned of the applicant's license revocation. On cross-examination, Dr. Ramsey also admitted that he had not read the decision of the Department of Health's Hearing Committee.

Donna Marie Vacenda, a former patient of the applicant next testified on his behalf, stating that he had never acted inappropriately towards her or made any inappropriate  
comments.

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The applicant testified on his own behalf, first reviewing for the Peer Committee his educational and professional background. He then described his life since his license was

revoked, discussing his attempts to obtain employment, which have been unsuccessful, and his struggles to support his family. He described his increased involvement with his family and community during this time, which he claims has helped him improve his English language skills and gain an understanding of American culture. He outlined his efforts at continuing medical education, and his counseling sessions with Rabbi Waxman. When questioned as to why his license was revoked, the applicant attributed this to a failure to communicate properly with his patients. He further stated that he understood that he did harm, and that he failed to fulfill his professional responsibility to these two patients. He also stated that he was not aware of any other patient complaints like the kind that led to his license revocation, and expressed his willingness to have his practice limited to a hospital setting.

In her cross-examination of the applicant Ms. Bergman established that the applicant has not received counseling from a medical doctor, psychologist or psychiatrist, but only from Rabbi Waxman, and that the rabbi was also a patient of the applicant's. In response to questions from Ms. Bergman, the applicant also elaborated on his contacts with his community, and asserted that he could remain competent in his specialty, despite not having actually practiced since the revocation of his license.

In response to questions by the Peer Committee, the applicant agreed that, if he resumed practice, he would need to have a third party present when he examines female patients. He also described in further detail the nature of his prior practice, explaining that while he was practicing, he performed approximately ten surgeries per month. He discussed communication difficulties with patients generally, stating that when this arose in his private practice, he would have a nurse or relative of the patient aid in communication.

In her closing statement, Ms. Bergman reviewed the evidence as it relates to remorse, re-education and rehabilitation, noting specifically that the applicant had not received treatment from a psychologist or psychiatrist. She reminded the Peer Committee that the burden is on the applicant in this case, and that the Committee's focus should be on safeguarding the public.

Mr. Hodes, in his closing remarks, reviewed the evidence presented, and argued that the applicant need not demonstrate that his skills remain the same today as they were when he left practice. He asserted that the evidence demonstrates that the applicant has fulfilled the requirements for restoration of his license.

### RECOMMENDATIONS

This Peer Committee has considered the entire record in this matter. It is the unanimous opinion of the Committee that the applicant's license to practice as a physician should be restored. We have considered the three criteria used in restoration determinations: re-education, rehabilitation and remorse, and have found that the applicant has demonstrated, to our satisfaction, fulfillment of these criteria. We have also concluded that the applicant would present no harm to the public were he to resume practicing medicine.

As to his re-education, we initially note that the applicant's professional competence was not an issue in the proceeding that resulted in his license revocation. There is also substantial evidence on the record that the applicant was held in esteem by his colleagues in the medical community, both in the form of letters and affidavits of support and in the testimony of Dr. Putterman and Dr. Ramsey. Given this evidence of his competence, we find that the applicant has completed sufficient continuing medical education, and that he has met the requirement of re-education necessary for the restoration of his license to practice.

With regard to the issue of rehabilitation, we were persuaded by the report and testimony of Dr. Kelly, who examined the applicant and concluded that the applicant demonstrated no significant psychopathology, and no evidence of any tendency toward boundary violations. In his testimony, Dr. Kelly concluded that the psychotherapy or professional counseling was not necessary or relevant for the applicant, and that the type of counseling he received from a clergyman was more appropriate. We note that Dr. Kelly's diagnosis was corroborated by Dr. Gary Lefer who examined the applicant in April 2001, and concluded that the applicant does not display any propensity toward any deviant behavior, particularly of a sexual nature. Based upon our impressions of the applicant at the hearing, we accept these findings, and conclude that the applicant does not require professional therapy. The applicant's counseling sessions with his clergyman were sufficient to enable him to achieve a greater understanding of his role as a physician and the potential for his female patients to feel violated due to his treatment and examination.

The issue of remorse is necessarily influenced by the applicant's belief, expressed throughout the restoration process, that the contact he had with the two complaining patients was not inappropriate, and that the problems arose due to his own failure to properly communicate with these patients. He has, however, recognized that these patients were harmed through his failure to communicate and has expressed remorse for the harm he has caused. We believe that the applicant has a deeper understanding of the need to explain all of the examination and treatment he is performing to his patients. He also expressed an understanding of the consequences of his failure to properly communicate these items. The applicant need not surrender his contention that he is innocent of the original charges in order to have his license restored. While we do not express an opinion regarding the findings of the Hearing Committee

which revoked the applicant's license, we have carefully evaluated the applicant's activities since his license was lost, and the steps he has taken to deal with his deficiencies. We find that he is sincere in his remorse and in his determination to resume his practice in accordance with the highest professional standards, and believe that he would not be a threat to the public were his license to be restored.

In conclusion, it is the unanimous recommendation of the Peer Committee that the petition for restoration of the applicant's license as a physician in New York State be granted.

Respectfully submitted,

Philip G. Holztapple, M.D., Chairperson,  
Lt. John C. Herrman, M.D.  
Thomas K. Wu, M.D.

*Philip G. Holztapple* / 1/2/03  
Chairperson                      Dated: