

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

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MAR 2 4 2003 OFFICE OF PROFESSIONAL MEDICAL CONDUCT

3-207

March 21, 2003

Jean LaBaze, Physician 1120 East Jersey Street Elizabeth, New Jersey 07201

Re: Application for Restoration

Dear Dr. LaBaze:

Enclosed please find the Commissioner's Order regarding Case No. CP-02-11 which is in reference to Calendar No. 18488. 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

Gustave Martine Supervisor

cc:



IN THE MATTER

of the

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

Case No. CP-02-11

It appearing that the license of JEAN J. LABAZE, 1120 E. Jersey Street, Elizabeth, New Jersey 07201, to practice as a physician in the State of New York, was revoked by a Hearing Committee of the State Board for Professional Medical Conduct effective January 15, 1997, and he having petitioned the Board of Regents for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 Review Panel, 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 13, 2002, it is hereby

ORDERED that the petition for restoration of License No. 101700, authorizing JEAN J. LABAZE to practice as a physician in the State of New York, is denied, but that the execution of the order of revocation of said license is stayed, and said JEAN J. LABAZE is placed on probation for a period of five years under specified terms and conditions and upon successful completion of this probationary period, his license to practice as a physician in the State of New York shall be fully restored.



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

Commissioner of Education

Case No. CP-02-11

It appearing that the license of JEAN J. LABAZE, 1120 E. Jersey Street, Elizabeth, New Jersey 07201, to practice as a physician in the State of New York, having been revoked by a Hearing Committee of the State Board for Professional Medical Conduct effective January 15, 1997, and he having petitioned the Board of Regents for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 Review Panel, 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 13, 2002, it was

VOTED that the petition for restoration of License No. 101700, authorizing JEAN J. LABAZE to practice as a physician in the State of New York, be denied, but that the order of revocation of said license shall be stayed, and said JEAN J. LABAZE shall be placed on probation for a period of five years under specified terms and conditions and upon the successful completion of this probationary period, his license to practice as a physician in the State of New York shall be fully restored.

Case number CP-02-11 November 14, 2002

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: Jean J. Labaze

Not Represented by an Attorney

Jean J. Labaze, 1120 E. Jersey Street, Elizabeth, New Jersey 07201, petitioned for restoration of his physician license. The chronology of events is as follows:

07/10/68	Issued license number 101700 to practice as a physician in New York State.
10/01/96	Charged with professional misconduct by Department of Health. (See "Disciplinary History.")
01/06/97	Hearing Committee of the State Board for Professional Medical Conduct revoked license.
01/15/97	Effective date of revocation.
01/15/98	Submitted application for restoration.
05/17/01	Peer Committee restoration review.
10/12/01	Report and recommendation of Peer Committee. (See "Report of the Peer Committee.")
09/24/02	Committee on the Professions restoration review.
11/14/02	Report and recommendation of Committee on the Professions. (See "Report of the Committee on the Professions.")

<u>Disciplinary History.</u> (See attached disciplinary documents.) On May 8, 1996, the New Jersey State Board of Medical Examiners entered into an Interim Consent Order executed by the applicant and the State Board, which ordered Dr. Labaze to surrender his New Jersey license to practice medicine and to cease the practice of medicine in that state. It was alleged that he maintained a medical office in New Jersey without adherence to appropriate sanitary practices, which demonstrated a clear and imminent danger to the public health, safety and welfare. Based on this action in New Jersey, on October 1, 1996, the Department of Health charged Dr. Labaze with professional misconduct. The charges stated that the misconduct, if committed in New York State, would be considered as negligence on more than one occasion, gross negligence, and/or failure to use accepted infection control practices. On January 6, 1997, a Hearing Committee of the State Board for Professional Medical Conduct determined that Dr. Labaze was guilty of the charges and revoked his license, effective nine days later. On May 28, 1997, the New Jersey State Board of Medical Examiners entered into a Consent Order Restoring Licensure executed by the applicant and the State Board. The Order suspended his license for a period of five months effective nunc pro tunc on May 8, 1996 and concluding on October 8, 1996 and established conditions for an inspection of his medical office before resuming practice and for subsequent inspections after resuming practice.

Dr. Labaze submitted an application for restoration of his license on January 15, 1998.

<u>Recommendation of the Peer Committee.</u> (See attached "Report of the Peer Committee.") The Peer Committee (Robinson, Lopez, Norris) met with Dr. Labaze on May 17, 2001 to review his application for restoration. In its report, dated October 12, 2001, the Committee, by a vote of two to one, recommended that the application be denied.

<u>Recommendation of the Committee on the Professions.</u> On September 24, 2002, the Committee on the Professions (Muñoz, Porter, Earle) met with Dr. Labaze to review his application for restoration. An attorney did not accompany him. He submitted the following additional documentation:

- Letter, dated August 15, 2002, from Dr. Frahtz M. Angus, M.D., Medical Director, Centre Hospitalier de la S.A.M.T.E., Haiti, stating that Dr. Labaze has been working at the hospital one or two times a week on a volunteer basis since November 2001.
- Letter, dated September 10, 2002, from Jean-Claude Bernard, Medical Administrator, Dispensaire – Hopital de Fermathe, Haiti, stating that Dr. Labaze has been working at the hospital, an institution of the Baptist Haiti Mission, once or twice a week since December 2001.

The Committee asked Dr. Labaze to explain why his license was revoked. He replied that it was based on his conduct in New Jersey. He explained that he had an office in New Jersey where he was treating some patients but was also in the process of phasing out his practice and closing the office. He indicated that he was referring some patients to his daughter who had an office across the street. He reported that after smoke infiltrated his office, he had his boiler and chimney inspected, and arranged to have repairs done the following week. Dr. Labaze said that on the intervening Sunday, the Fire Department came to the office as a result of the smoke problem. He reported

that he subsequently had the repairs made and that the Department of Health did an inspection and said that everything was "O.K." but later "got a paper saying I had to surrender my license." He indicated that he was not required to appear before any committee before surrendering his license. Dr. Labaze said that the action taken in New Jersey resulted in his having his license suspended for five months and then it was restored in 1997. He told the Committee that New York State revoked his license because of the initial action taken in New Jersey.

He told the Committee that he had a lawyer in New Jersey, a neighbor, who said he was familiar with professionals and disciplinary actions in New York State. Dr. Labaze said he was advised that he had no choice but to accept the revocation and could later request the restoration of his license. He indicated that he never realized how long the process would take and the gravity of his decision not to contest the revocation. He explained that he was in the Army Reserves and waiting for the right opportunity to perform additional active duty so that he could obtain his pension. Dr. Labaze indicated that his involvement in the Reserves was mainly on weekends but that in 1996 he told the Army he was ready to go anywhere. He reported that the Army called him regarding a possible full-time mission in Kenya but later told him that he couldn't go because New York State had revoked his license and that he needed to have that license restored.

The Committee asked Dr. Labaze why he felt his license should be restored. He replied that the action in New York was based on the suspension of his license in New Jersey and that state restored his license in 1997. He said that New Jersey believed the misconduct would not recur and that a subsequent inspection of his office in New Jersey found no problems. He indicated that he closed that office and has been practicing medicine primarily through missionary work. He referred to the two letters from Haiti documenting his volunteer work. Dr. Labaze said that he was "shocked" by the Peer Committee's assessment that he was not remorseful for what had occurred. He told the Committee that he has learned from his mistakes and realizes that he did not take sufficient care in maintaining his office so that patients would receive the best care from him.

The Committee asked about the unsanitary conditions that existed in his office when New Jersey asked him to surrender his license. Regarding the medications that were stored in various locations and those that were expired, Dr. Labaze said that he collected samples and had been routinely sending them overseas to help poor people. He reported that with the Haitian embargo, he couldn't send all the drugs he had accumulated. He indicated that he did throw some of the expired drugs out but now realizes that he should have checked them regularly and disposed of those with expired dates. He explained the negative impact of having expired drugs in his office and not having them properly stored. Regarding the blood products that were found in his office, Dr. Labaze said that he had a friend at the laboratory who would pick up the blood samples according to the laboratory's schedule. He told the Committee that he realizes "I should have gotten my own company to pick them up." He said that he realizes the potential danger in which he placed his patients by not getting necessary blood tests performed for his patients in a more timely manner. Dr. Labaze also explained that he realizes he should have had his office better organized to properly store medications and supplies and that he should have clearly designated examining and storage rooms. As an example, he indicated that scissors that were used for flowers were in his office rather than being stored in the cellar. He reported that he lived on the top floor of the building that housed his office.

Dr. Labaze elaborated on his volunteer work in Haiti. He said that he worked in a private clinic associated with a hospital. He indicated that he would see patients and consult with their physicians. He reported that he brought a portable sonography machine to Haiti and helped the physicians use it on their patients and interpret the results.

Dr. Labaze said that if his license were restored, he had no intentions to work in private practice. He indicated that he would prefer to work in a hospital but would consider practicing in either a prison or clinic. He told the Committee that he would also explore with the Army Reserves opportunities to serve in disadvantaged countries. In addition to his other continuing education activities, Dr. Labaze said that he has been studying alternative medicine.

The overarching concern in all restoration cases is public protection. Section 6511 of the Education Law 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. Section 24.7(2) of the Rules of the Board of Regents 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 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.

COP agrees with the minority opinion of the Peer Committee that Dr. Labaze has met the criteria for restoration. That Committee member noted that "the State of New Jersey, has restored his license and is satisfied that he has changed, and that the State of New York should do the same." COP notes that New Jersey entered into an Interim Consent Order with Dr. Labaze that required him to surrender his license while his case was reviewed through its disciplinary process. That review resulted in a subsequent Consent Order the following year suspending his license for five months retroactively and restoring his license upon a satisfactory inspection of his medical office. The preliminary inspection was satisfactory although subsequent inspections were mandated on a regular basis once he resumed practice. Even though he never reopened this office, New Jersey restored his license in 1997 and he could practice in that state. COP gives great weight to the action taken by New Jersey, the state in which the original misconduct occurred. New Jersey determined that the misconduct only warranted a five-month suspension of his license and restored his license, thereby determining that Dr. Labaze's resumption of the practice of medicine posed no threat to the residents of New Jersey. In its letter opposing the restoration of Dr. Labaze's license, the Department of Health (DOH) commented that Dr. Labaze did not understand the "very serious threat that his office practices pose to his patients' health and safety." COP notes that DOH revoked Dr. Labaze's license before the final Consent Order was signed in New Jersey in 1997, which only suspended his license for five months. COP finds that the action in New Jersey implies that it felt Dr. Labaze had appropriately addressed the concerns that led to the temporary surrender of his license and no longer posed a threat to the public.

Contrary to the majority opinion of the Peer Committee, the COP found that Dr. Labaze demonstrated remorse for the condition of his medical office and the potential danger in which he placed his patients. COP came to this conclusion by asking a variety of questions, as there appeared to be some difficulty with Dr. Labaze's command of the English language. In its meeting with him, the COP found no evidence to support the majority opinion of the Peer Committee that Dr. Labaze "would continue to operate in a careless and callous manner." Dr. Labaze discussed the unsanitary conditions in his New Jersey office in 1996, assumed full responsibility for them, and stated how he would take all necessary actions to avoid such conditions were he to maintain a medical office in the future. COP agrees with the minority recommendation of the Peer Committee that Dr. Labaze for the restoration of his license. COP recommends that his initial resumption of practice in New York State be in a structured setting where he is appropriately supervised and that he be precluded from private practice during that period of probation.

Therefore, after a careful review of the record and its meeting with him, the Committee on the Professions voted unanimously to stay the revocation of Dr. Labaze's license to practice medicine in the State of New York for five years, to place him on probation for five years under specified terms attached to this report as Exhibit "A," and to fully restore his license upon successful completion of the probationary period.

Frank Muñoz, Chair

Joseph B. Porter

Steven Earle

EXHIBIT "A"

TERMS OF PROBATION OF THE COMMITTEE ON THE PROFESSIONS

Jean J. Labaze

- 1. That the applicant, during the period of probation, shall be in compliance with the standards of conduct prescribed by the law governing the applicant's profession;
- 2. That the applicant shall submit written notification to the Director, Office of Professional Medical Conduct (OPMC), New York State Department of Health, Suite 303, 4th Floor, Hedley Park Place,433 River Street, Troy, NY 12180-2299, of any employment and/or practice, applicant's residence, telephone number, and mailing address and of any change in the applicant's employment, practice, residence, telephone number, and mailing address within or without the State of New York;
- 3. That the applicant shall submit written proof from the Division of Professional Licensing Services (DPLS), New York State Education Department (NYSED), that the applicant has paid all registration fees due and owing to the NYSED and the applicant shall cooperate with and submit whatever papers are requested by DPLS in regard to said registration fees, said proof from DPLS to be submitted by the applicant to the Department of Health (DOH), addressed to the Director, OPMC, as aforesaid, no later than the first three months of the period of probation;
- 4. That the applicant shall submit written proof to the DOH, addressed to the Director, OPMC, as aforesaid, that 1) the applicant is currently registered with the NYSED, unless the applicant submits written proof that the applicant has advised DPLS, NYSED, that the applicant is not engaging in the practice of the applicant's profession in the State of New York and does not desire to register, and that 2) the applicant has paid any fines which may have previously been imposed upon the applicant by the Board of Regents or pursuant to section 230-a of the Public Health Law, said proof of the above to be submitted no later than the first two months of the period of probation;

- 5. That the applicant shall make quarterly visits to an employee of the OPMC, DOH, unless otherwise agreed to by said employee, for the purpose of said employee monitoring the applicant's terms of probation to assure compliance therewith, and the applicant shall cooperate with said employee, including the submission of information requested by said employee, regarding the aforesaid monitoring;
- 6. That during the period of probation the applicant shall be prohibited from engaging in the private practice of medicine;
- 7. That during the period of probation the applicant shall practice medicine only in a supervised setting where close practice oversight is available on a daily basis. Applicant shall not practice medicine until the supervised setting is approved, in writing, by the Director of OPMC. Applicant shall propose an appropriate supervisor or administrator in all practice settings, who shall be subject to the written approval of the Director of OPMC. Applicant shall cause the supervisor or administrator to submit reports, as requested by OPMC, regarding applicant's overall quality of medical practice; and
- 8. That upon receipt of evidence of noncompliance with or any other violation of any of the aforementioned terms of probation, the OPMC may initiate a violation of probation proceeding.



The University of the State of New York

NEW YORK STATE EDUCATION DEPARTMENT OFFICE OF PROFESSIONAL RESPONSIBILITY STATE BOARD FOR MEDICINE In the Matter of the Application of

JEAN LA BAZE

REPORT OF THE PEER COMMITTEE CAL. NO. 18488

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

Applicant, JEAN LA BAZE, was authorized to practice as a physician in the State of New York by the New York State Education Department by the issuance to him of license No. 101700 on or about July 1, 1968.

PRIOR DISCIPLINARY ACTION

- May 2, 1996 Verified Complaint was filed with the State of New Jersey, Department of Law and Public Safety, which alleged that applicant was maintaining his medical office without adherence to the appropriate sanitary practices and possessed expired and unlabeled medicines in his office. The complaint maintained that such conduct was a clear and imminent danger to the public's health and safety.
- May 8, 1996 State Board of New Jersey entered into an Interim Consent Order executed by the applicant and the

State Board which ordered the applicant to surrender his New Jersey medical license and to cease the practice of medicine in New Jersey.

- January 15, 1997 State of New York revoked applicant's medical license as a result of the prior disciplinary action by the State of New Jersey.
- May 28, 1997 State of New Jersey restored applicant's medical license.
- March 1998 Applicant petitioned the State of New York for the restoration of his medical license.

APPLICANT'S PETITION FOR RESTORATION

On January 15, 1998, applicant submitted a petition for the restoration of his license to practice as a physician in the State of New York. An investigator from the Office of Professional Discipline interviewed applicant on April 5, 1998. Applicant stated that his license to practice medicine was revoked in New York as a result of the actions taken by the State Board of New Jersey. The State of New Jersey inspected his office, found unsanitary conditions and initiated actions that resulted in applicant surrendering his license to practice medicine. Applicant maintains the sanitation problems in his medical office were caused by the fact that his boiler was broken and that his office was under construction at the time of the inspection.

Applicant stated that he has not worked since his license was

revoked. Applicant has taken some continuing education courses which are listed in the application. Applicant is still active with the Army Reserve as a Lieutenant Colonel in the Medical Corps. Applicant stated that his New Jersey license has been restored and that he hopes to have his New York license to practice medicine restored soon. Applicant hopes to continue working in the military as a doctor when his license is restored. Applicant believes that the actions of the Board of Regents were fair but he does not understand why New Jersey revoked his license.

Applicant submitted letters of reference from five persons who were then interviewed by a State investigator:

- <u>Richard Dodger, DDS</u> urges the restoration of applicant's medical license. He believes that applicant is a good doctor and states that any reservist who has been a patient of Dr. La Baze has always spoken highly of him.
- Marc Antoine, MD has known the petitioner for 15 years. Dr. Antoine is aware of the sanitary condition that caused applicant to lose his license. Dr. Antoine stated that he believes that accidents happen and that applicant should get his license back.
- Emile Tibere, MD has known the applicant since 1957 when they attended medical school together in Haiti.

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Additionally, since that time, they have worked together in many hospitals and were even in private practice together for a while. Dr. Tibere is aware of the fact the applicant lost his medical license but is not aware of the reason. Dr. Tibere believes that applicant is a good doctor and recommends that his license be restored.

- <u>Colette Simon, MD</u> was applicant's supervisor from 1994-1996. She states that the applicant is a very knowledgeable physician and that his license should be restored.
- James M. Brown, MD has known the applicant for approximately eighteen years, and believes him to be a good doctor. Dr. Brown believes that applicant's license should be restored.

OPMC

In a letter dated April 10, 1998, the Office of Professional Medical Conduct declared their opposition to the restoration of applicant's medical license noting that applicant continues to greatly minimize the threat that his office posed to the public health. OPMC states that the evidence shows:

"...that the office was filthy, medical equipment was dirty, clear plastic bags with vacutainers filled with blood were undated and labeled with different names but contained no laboratory slips, and unopened medication

ampules contained expiration dates and log numbers which had partially worn off and were unreadable, some of which had expired over ten years before the inspection occurred."

The Office of Professional Medical Conduct believes that the gap between applicant's description of why he lost his license and the finding of the New Jersey Board is so wide that it shows that applicant has no clue as to the root causes of his misconduct.

PEER COMMITTEE

On May 17, 2001, this Peer Committee convened to review this matter. The applicant appeared before us in person and was represented by Bill Vaslas and Karen Hauss, Esqs. Representing the Office of Professional Discipline and appearing before us was Stephen Lazzaro, Esq. Nina Tornabene, Esq. Was the legal advisor to the Panel. On May 17, 2001, shortly after the deliberations had been held in this matter, one of the panel members contacted legal services and requested that the applicant provide additional the After consultation with Chairperson, the information. applicant was contacted on behalf of the peer committee and asked to provide additional information. On June 19, 2001, applicant, through his attorneys, provided the additional information requested. On June 21, 2001, the additional information was sent to the panel. By July 5, 2001, a final determination was reached in this matter. This Committee makes the following recommendation to the Committee on the Professions and the Board of Regents.

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TESTIMONY OF APPLICANT

Applicant repeated and reiterated the information contained in his application. Applicant testified that he attended medical school in Haiti and graduated in 1962. In 1963, applicant moved to Canada and began his residency in Surgery and Obstetrics and Gynecology. In 1965, applicant came to the United States and began his internship at Harlem Hospital in the department of Obstetrics and Gynecology. After completing his internship, applicant spent one year in Forensic Pathology. Applicant's first job was at the Hospital for Joint Diseases where he worked in the medical clinic. At the same time, he also had a part-time practice at Planned Parenthood.

In 1976, applicant moved to Michigan and opened up a clinic. Applicant became the Medical Director of Planned Parenthood in Lansing, Michigan.

In 1979, applicant returned to New York. Applicant received a medical license from the State of New Jersey. Applicant worked at Alex & Waters for one year and then took a position at North General Hospital, which was part of the Hospital for Joint Diseases at the time. Applicant worked there until 1994.

In 1980, applicant joined the U.S. Army Reserve. Applicant served in the Reserves until 1997 when his license to practice medicine was revoked in New York.

Applicant stated that for most of his career he devoted himself to treating indigent patients. In the Army Reserve

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applicant has served in Latin America, Ecuador and Paraguay. Applicant also was sent to Germany to serve military women during the Gulf War.

Applicant was in the process of phasing out his New Jersey practice when the incident occurred that resulted in the revocation of his medical license. Applicant stated that he had been planning to return to the Army Reserve for a six-month period.

Applicant admitted that his office was in a state of disarray and that if given his license back he would take the appropriate steps to ensure that things were kept properly. Applicant admitted that the way he kept his office was a mistake and maintained that he would not keep it that way again.

Applicant stated that his floor was dirty because of the work that was being done on the boiler. He admitted that he did not properly supervise his staff in disposing of the outdated medication and old blood products. Applicant believes that he has learned his lesson and that the revocation has not only affected his life but his life in the military. The Army Reserve will not let him practice until he clears up the matter in New York State. Applicant stated that he needs to have his New York medical license restored in order to complete his service in the U.S. Army Reserve and to qualify for a pension. Applicant stated that he does not intend to open another medical office in either New York or New Jersey.

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Since the revocation of his license, applicant has taken many continuing education courses including an OSHA course and courses in holistic medicine. Applicant stated that he has been performing missionary work in Haiti since his revocation. Applicant stated that he has reviewed the regulations for appropriate methods of storing and disposing of blood products.

In response to the panel's questions, applicant stated that his office in New Jersey was not really open for business when the State inspector visited. Applicant admitted that the state inspector called, posing as a patient and was given an appointment but stated that it was never his intention to see the patient. Applicant stated that his daughter $is^{-}a$ physician who has an office right across the street. Applicant's instructions to his wife were to have the patients come in and to refer them, if they were willing, to his daughter's office.

In response to the panel's questions, applicant stated that he never received notice of the disciplinary hearing that resulted in the revocation of his license and therefore did not appear. The only thing he received was a letter telling him that he had to surrender his license and he did so.

TESTIMONY OF DR. SUPPLICE

Dr. Julien Supplice testified before the panel in support of the applicant's petition for the restoration of his license to practice medicine. Dr. Supplice has know applicant since 1980 when they met in the United States Army Reserves. Dr. Supplice is Board

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Certified in General Surgery and is a Clinical Assistant Professor of Surgery at the State University Downstate. He presently has an office in Kingsbrook Jewish Medical Center.

Applicant and Dr. Supplice have worked closely together in the medical corps on active duty for at least two weeks every year. Additionally, they met monthly at Fort Hamilton. Dr. Supplice believes that applicant is a good doctor who is very competent and compassionate. Applicant is well informed and has always kept abreast of the changes in the profession. He is an asset to the medical community.

In response to the panel's question, Dr. Supplice stated that he was always satisfied with applicant's organization and cleanliness when he worked with him in the Army Reserves. He stated that if a job was available at Kingsbrook Hospital and applicant's license had been restored he would hire him without reservation.

TESTIMONY OF DR. GLICKLICH

Dr. Natalia Glicklich testified in support of the restoration of applicant license. Dr. Glicklich first met applicant in 1980 at North General Hospital and worked with him until 1992. Dr. Glicklich was the Medical Director and was applicant's supervisor. Dr. Glicklich stated that in all the years she worked with applicant he was a competent, caring and dedicated physician. He was never unsanitary or disorganized. She would hire him today

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without any hesitation.

CLOSING STATEMENT BY PROSECUTING ATTORNEY

The prosecuting attorney does not believe that applicant has made a compelling case for the restoration of his license and as such opposes the restoration of his license to practice as a physician. The prosecuting attorney believes that applicant has not made a coherent case on re-education. He further believes that while applicant has expressed remorse, applicant's remorse is more about the loss of his pension then about remorse for the way in which he kept his office.

CLOSING STATEMENT BY APPLICANT'S ATTORNEY

The testimony presented shows applicant to be an extremely compassionate and qualified physician who has dedicated himself to the practice of medicine. Applicant has treated people whether or not they could afford to pay. He continues to do missionary work in Haiti. Applicant realizes his mistakes and is remorseful for them. Applicant's communication skills are somewhat limited but he has tried his best to answer clearly the questions that were asked of him. Applicant is a doctor who wants to return to the Army, practice medicine and complete his service there. Applicant wants to qualify for a pension from the Army and can't do that until he clears up this matter. He has indicated that it is not his intention to open an office in New York and so there is no threat of public harm. Applicant's attorney pointed out that the State of New Jersey had a similar concern about protecting the public and

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yet they have restored his license. Applicant has learned his lesson and asks that his license be restored.

RECOMMENDATION

In reaching our determination in this matter we have taken into consideration the entire record including the additional information requested by the panel and provided by applicant's attorney. In a restoration case, the burden is on the applicant to present such evidence that would compel the exercise of discretion in the applicant's favor. Applicant has the burden of clearly establishing that he is entitled to such a restoration and a restoration is only intended to apply to exceptional cases.

In the case before us, we have determined by a vote of two to one, that applicant has failed to meet that burden. The record before us shows that applicant does not fully understand and appreciate the extent of his wrongdoing. Applicant has failed to demonstrate a true understanding of his responsibilities as a physician and how his failures have led to the revocation of his license.

Applicant has displayed a callous disregard for the safety of the public by the way in which he kept his office. The inspection report from New Jersey, submitted by the applicant, does nothing to allay our fears. The inspectors saw an almost empty office without patient files. The inspectors recommended a follow-up inspection be conducted once the office was in operation, but no such follow-up inspection ever took place because applicant never

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reopened his office in New Jersey. Applicant's efforts at reeducation and rehabilitation show a lack of cohesiveness and have left us with a strong feeling that if we were to restore his license that applicant would continue to operate in a careless and callous manner. Additionally, applicant failed to establish to the satisfaction of this panel, any feelings of remorse. The remorse applicant expressed is more about the effect on his life of the revocation of his license and the loss of his pension than for what he has done wrong. Applicant believes that he has paid a high price for his mistakes but is still not able to admit the danger that his practice presented to the public.

We believe that applicant is still in denial about the true reasons for his revocation. Although we understand and sympathize with applicant's desire to return to practice in order to qualify for a pension, our responsibility is to protect the people of the State of New York. Therefore, we recommend to the Board of Regents that the application be denied.

One of the panel members believes that applicant has met the criteria for restoration. Additionally, he notes that the State of New Jersey, has restored his license and is satisfied that he has changed, and that the State of New York should do the same.

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Respectfully submitted, Benjamin Robinson, Chairperson

Rafael Lopez, MP. James E.C. Norris, MD 10/10/01 Genson Chairperson Dated