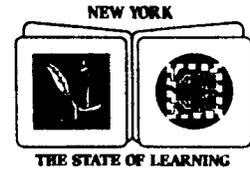


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OFFICE OF PROFESSIONAL DISCIPLINE
MEDICAL CONDUCT



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, N.Y. 12230

OFFICE OF PROFESSIONAL DISCIPLINE, A.V. ZOGG BLDG., 800 FOURTH STREET, RM. 317, LIVERPOOL, NEW YORK 13088

October 16, 1996

Behrooz Bassim, Physician
102 Market Street
Potsdam, New York 13676

Re: Application for Restoration

Dear Dr. Bassim:

Enclosed please find the Commissioner's Order regarding Case No. 96-154-60R which is in reference to Calendar No. 0015704. This order and any decision contained therein goes into effect five (5) days after the date of this letter.

Very truly yours,

DANIEL J. KELLEHER
Director of Investigations

By: *Gustave Martine*

Gustave Martine
Supervisor

The University of the State of New York
Education  Department

IN THE MATTER

of the

Application of BEHROOZ BASSIM
for restoration of his license to practice
as a physician in the State of New York

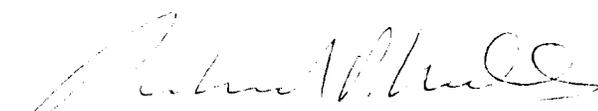
Case No. 96-154-60R

It appearing that the license of BEHROOZ BASSIM, 102 Market Street, Potsdam, New York 13676, to practice as a physician in the State of New York, was revoked by action of the Board of Regents on October 19, 1990, and he having petitioned the Board of Regents for restoration of said license, and the Regents having given consideration to said petition, and having agreed with and accepted the recommendations of the Peer Review Panel and the Committee on the Professions, now, pursuant to action taken by the Board of Regents on September 20, 1996, it is hereby

ORDERED that the petition for restoration of License No. 106646, authorizing BEHROOZ BASSIM to practice as a physician in the State of New York, is denied.



IN WITNESS WHEREOF, I, RICHARD P. MILLS, Commissioner of Education of the State of New York, for and on behalf of the State Education Department, do hereunto set my hand and affix the seal of the State Education Department at the City of Albany, this 2nd day of October, 1996.


Commissioner of Education

Case No. 96-132-60R

It appearing that the license of BEHROOZ BASSIM, 102 Market Street, Potsdam, New York 13676, to practice as a physician in the State of New York, having been revoked by action of the Board of Regents on October 19, 1990, and he having petitioned the Board of Regents for restoration of said license, and the Regents having given consideration to said petition, and having agreed with and accepted the recommendations of the Peer Review Panel and the Committee on the Professions, now, pursuant to action taken by the Board of Regents on September 20, 1996, it was

VOTED that the petition for restoration of License No. 106646, authorizing BEHROOZ BASSIM to practice as a physician in the State of New York, be denied.

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

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

Re: Behrooz Bassim

Not represented by counsel

Behrooz Bassim, 102 Market Street, Potsdam, New York 13676, petitioned for restoration of his medical license. The chronology of events is as follows:

- 07/22/70 Licensed to practice medicine in New York State.
- 03/14/89 Charged with professional misconduct by Department of Health. (See "Disciplinary History.")
- 09/17/90 Regents Review Committee recommended that license be revoked.
- 10/19/90 Board of Regents voted revocation.
- 11/05/90 Commissioner's Order effective.
- 11/07/90 Temporary Restraining Order granted by Appellate Division of the Supreme Court.
- 01/25/91 Stay denied, Temporary Restraining Order vacated.
- 01/25/91 Revocation effective.
- 02/17/92 Petition for restoration submitted.
- 08/27/93 Peer Panel restoration review.
- 04/18/94 Peer Panel recommended that license be restored.
- 08/16/94 Committee on the Professions recommended that Dr. Bassim undergo a psychiatric evaluation, said evaluation to be presented to a new Peer Review Panel.
- 11/04/94 Board of Regents voted to require Dr. Bassim to undergo a psychiatric evaluation, said evaluation to be presented to a new Peer Review Panel.
- 12/14/94 Commissioner's Order effective.
- 07/28/95 Review by second Peer Review Panel.

- 01/18/96 Report and recommendation of second Peer Review Panel. (See "Recommendation of the Second Peer Review Panel.")
- 06/05/96 Report and recommendation of Committee on the Professions. (See "Recommendation of the Committee on the Professions.")

Disciplinary History. (See attached report of the Regents Review Committee.) On March 14, 1989, the Department of Health charged Dr. Bassim with conduct evidencing moral unfitness and with physical abuse of a patient. It was charged that Dr. Bassim had engaged in physical contact of a sexual nature with three patients. In its report dated December 19, 1989, the Hearing Committee (Bredenberg, Chazin, Sears) of the Department of Health found Dr. Bassim guilty of the charges and recommended that his license be revoked. On May 18, 1989, the Commissioner of Health recommended that the findings, conclusion, and recommendation of the Hearing Committee be accepted.

On September 17, 1990, the Regents Review Committee (Batista, Evans, Postel) recommended that Dr. Bassim's license be revoked. On October 19, 1990, the Board of Regents voted revocation. The Commissioner's Order became effective on November 5, 1990. On November 7, 1990, Dr. Bassim instituted an Article 78 proceeding to contest the action of the Regents and obtained a Temporary Restraining Order. On January 25, 1991, Dr. Bassim's appeal was denied, and the Temporary Restraining Order was vacated. The revocation became effective the same day. On February 17, 1992, Dr. Bassim submitted a petition for restoration of his medical license.

A Peer Review Panel (Diamond, Riggins, Colgan) met on August 27, 1993. In its report dated April 18, 1994, the Panel recommended that Dr. Bassim's license be restored. The Committee on the Professions (Ahearn, Sauer, Muñoz) met on August 16, 1994. The Committee disagreed with the recommendation of the Peer Review Panel. The Committee on the Professions was not convinced that Dr. Bassim was emotionally ready to return to the practice of medicine nor was it convinced that Dr. Bassim had kept up with his medical education. The Committee on the Professions recommended that Dr. Bassim's petition be denied but that he be required to undergo a psychiatric evaluation, said evaluation to be presented to a new Peer Review Panel to assess Dr. Bassim's readiness to return to the practice of medicine, and to make recommendations as to whether any further rehabilitation is necessary and the adequacy of petitioner's continuing education. On November 4, 1994, the Board of Regents voted to accept the recommendation of the Committee on the Professions. The Commissioner's Order became effective on December 14, 1994.

Recommendation of the Second Peer Review Panel. (See attached report of the Peer Review Panel.) The Peer Review Panel (Roman, Lowinson, Santiago) met on July 28, 1995. Due to additional submissions, the Panel did not deliberate until October 13, 1995. In its report dated January 16, 1996, the Panel unanimously found that Dr. Bassim had not been adequately rehabilitated, that he is in need of further continuing education, and that he does not currently possess adequate insight and understanding regarding his ethical and professional responsibilities. The Panel believed that the public would not be protected if Dr. Bassim's license were restored and recommended that his petition for restoration be denied.

Recommendation of the Committee on the Professions. On June 5, 1996, the Committee on the Professions (Duncan-Poitier, Sheldon, Muñoz) met with Dr. Behrooz Bassim to consider his petition for the restoration of his license as a physician in New York State. Dr. Bassim appeared personally but was not represented by an attorney. His wife attended the meeting as an observer.

In opening the meeting, Dr. Bassim summarized the reasons why he lost his license by stating that three female patients had made charges against him, which resulted in hearings before the Office of Professional Medical Conduct (OPMC). OPMC voted to revoke his license. Dr. Bassim asserted he has maintained his innocence since the very beginning. He said that there were 168 inconsistencies in the statements made against him. He also asserted that there were 24 instances where the Office of Professional Medical Conduct made false reports of incidents or tampered with the evidence.

Dr. Bassim stated that the first Peer Review Panel from the State Board for Medicine reviewed his petition for restoration and found him credible. He asserted that Dr. Bernstein, a psychologist that evaluated him, gave reports based on examination and testing, including the use of hypnosis. These reports were favorable to the restoration of his license. Dr. Bassim then said that (despite the favorable recommendation of the first Peer Review Panel) his initial meeting with the Committee on the Professions resulted in the Committee's finding that he could not relitigate his initial case and that the administrative finding of his guilt must be accepted and could not be altered. Dr. Bassim stated that the Committee recommended that he go before a second Peer Review Panel.

Dr. Bassim then asserted that, based on a decision of the Appellate Court, Third Department, he believed that it was possible for the Committee on the Professions to accept his assertions of innocence in this matter. Dr. Bassim stated that the previous Committee on the Professions had refused to accept his evidence of innocence. Dr. Bassim argued that the second Peer Review Panel has no legal authority. He argued that a second Peer Review Panel is

not a higher body and can't reverse the opinion of the first Peer Review Panel. Dr. Bassim again asserted that under current case law, if there is evidence that he was misjudged, the Committee on the Professions and the second Peer Review Panel could overturn the original disciplinary action against him.

The Committee inquired of Dr. Bassim what he would do differently if his license were to be restored. Dr. Bassim stated that he was a general practitioner in a small community. He was examining patients alone. He stated that whenever he had to perform an extensive examination of a female patient either his wife or one of his secretaries would be present. Things have changed now. Dr. Bassim stated that he has been "tagged." He said that he had to be more careful than the average physician. He asserted that if someone takes him to court he would lose because of his history. He said that he would have to have an objective party present for such examinations in the future. Dr. Bassim stated he could not take any chances, and where in the past he had seen patients on weekends, he couldn't do that anymore because there would be no third party observer. He also said he would not be able to do house calls for the same reason. Dr. Bassim said that he would prefer to work in a clinic where there are a lot of independent witnesses present.

Dr. Bassim then discussed his continuing education. He started by stating that he originally worked in the specialty of pathology, and he was board certified in clinical pathology. He subsequently moved from pathology to the general practice of medicine. Dr. Bassim asserted that he knows more medicine than the average physician. Dr. Bassim said that he receives over 25 medical magazines and that he reads about medicine and science a great deal because he is not interested in sports or reading fiction. Dr. Bassim also stated that he achieved a diploma in "paralegal" to help defend himself through the various administrative and legal actions over the last several years.

Dr. Bassim continued by stating the New York State Medical Society requires 25 hours of category 1 continuing medical education credits and 50 hours of category 2 continuing medical education credits and that he has exceeded these levels. Dr. Bassim stated that he had also attended conferences, and for some of these he took written tests. Dr. Bassim also submitted a list of journals that he read.

The Committee then questioned Dr. Bassim as to what he meant in his earlier statement about the Office of Professional Medical Conduct engaging in evidence tampering. Dr. Bassim replied that he was referring to the Office of Professional Medical Conduct changing what was in the record. In citing an example, Dr. Bassim stated that during the disciplinary proceeding he was asked if he had touched the buttocks of a patient. Dr. Bassim asserted that the transcript proves at two separate times he answered no to this

question. Dr. Bassim asserted that the OPMC hearing committee reported that he admitted that he had touched the buttocks of the patient. Dr. Bassim said, "if they report something that is contrary to the truth, I consider that evidence tampering."

Dr. Bassim also cited another example where the hearing committee of the OPMC in its report stated he recommended that one patient eat fat. Dr. Bassim stated that this was not in the transcript of the hearing.

Dr. Bassim told the Committee on the Professions that it was tyranny not to restore his license. He said he has considered a hunger strike as a possibility. Dr. Bassim asserted that he had tried his best to prove to the Committee, the agency, and the "administration" that he is innocent. Dr. Bassim contended that the police, the Watertown Daily Times, Dr. Bernstein's psychological report, Dr. Krishnakumar's report, and the first Peer Review Panel all say that he is truthful in what he is saying. Dr. Bassim argued that once somebody made a mistake down the line that everyone just continued to endorse that mistake.

The Committee asked Dr. Bassim to explain what he meant by asserting the physical impossibility of certain of the allegations against him. Dr. Bassim referred the Committee to Exhibits X, Y, and Z which were part of the documentation in the record, and proceeded to give an example of what he meant. Dr. Bassim stated that one of the patients who testified against him said that she thought that something happened while she was on the examining table and that she jumped off the table behind his left shoulder onto the floor. When she jumped down she alleges that she saw Dr. Bassim's zipper was open. Dr. Bassim stated that she could not see his zipper from that angle. Dr. Bassim further asserted that there was no mention of this matter in this patient's first statement.

One of the members of the June 5, 1996 COP (Mr. Muñoz) disclosed to Dr. Bassim that he was also a member of the first COP to review his petition for restoration and explained the reasons that the petition was referred to a second Peer Review Panel of the State Board for Medicine (reasons are documented in the Peer Review Panel Report). The Committee then questioned Dr. Bassim about the meaning of his statement that the Peer Review Panel of the State Board for Medicine "proved to be a slavish subservient (sic) of the Board of Regents." Dr. Bassim explained that he came from a part of the world where slavery has 4,000 years of history. He defined slavish as follows: "you would be willing to do the wrong thing, and close your eyes, to do what your boss wants."

The Committee pointed out the Report of the Peer Review Panel, page 12, which stated "the applicant has not taken courses to assist him in dealing with the problems he may encounter in relating to patients, lacking from his education post-revocation is

both courses on ethics and courses where he must participate and be evaluated by others." The Committee also pointed to the Peer Review Panel's finding that they were not persuaded by the psychiatric and psychological assessments of record, that they were either conclusory or incomplete and that such narrow assessments were based on the denials presented by the applicant regarding his prior conduct. The Committee asserted that the Peer Review Panel was pointing to valid issues in this matter. Dr. Bassim responded that he believed the Peer Review Panel said that he was not an ethical person. Dr. Bassim stated that if the Peer Review Panel was going to insult him to that degree that he had a right to insult them back. He said that both the psychologist and psychiatrist who examined him said that he was an ethical person and that the Peer Review Panel's Report was contrary to these facts. Dr. Bassim argued that the Peer Review Panel had no right to devalue his educational efforts because of the lack of courses on ethics.

Dr. Bassim also defended his written response to the Peer Review Panel Report. He said when he received this report he had no choice but to write such a response to them. He stated that the allegation in the report that he was unethical had angered him to such an extent that he considered going on the Internet and the possibility of a hunger strike.

The Committee inquired of Dr. Bassim why he believed the former patients made these allegations against him. Dr. Bassim responded that in 1972 he began practice in the hospital as a pathologist and was hired to build its laboratory function. He recognized at the time that there was substantial political infighting between the older and newer physicians. The Committee responded that for such internal politics to be involved in the allegations against him, it would imply some connection between the physicians and the people making the allegations. Dr. Bassim responded that when it came to the money issues involved in the political battles between the physicians, anything was possible.

Dr. Bassim closed the meeting with the Committee on the Professions by discussing the self-assessment he had prepared. He reiterated he has never been on drugs, he does not drink alcohol, he doesn't smoke, he has been married since 1967, and has two daughters that are now in college. Dr. Bassim stated that he doesn't read fiction, that he has written non-fiction books, and that he writes symphonies and plays piano.

In evaluating Dr. Bassim's claims that the second Peer Review Panel has no authority, the Committee reviewed the recommendation of the first Committee on the Professions (Ahearn, Sauer, Muñoz) which stated:

"Based on all of the foregoing, it is the unanimous recommendation of the Committee on the Professions that

Dr. Bassim be required to undergo a psychiatric evaluation, at the petitioner's expense, by a New York State licensed physician who is board certified in psychiatry. Said psychiatrist is to be selected by Dr. Bassim but approved in advance of the evaluation by the Executive Secretary of the State Board for Medicine. This psychiatrist should evaluate petitioner's fitness to practice medicine including consideration of his continued assertion of innocence. The report of this psychiatrist is to be presented to a new Peer Panel of the State Board for Medicine for the purpose of evaluating Dr. Bassim's readiness to return to the practice of medicine including any necessary rehabilitation and the adequacy of his continuing education as these issues relate to the Board of Regents' responsibility to safeguard the consuming public.

It is not the role of this second Peer Panel to re-evaluate or relitigate petitioner's disciplinary case which took away his license to practice. That matter has been litigated and appealed through the courts. The second Peer Panel should limit its review to the stated purposes above. At the conclusion of the second Peer Panel review a report shall be submitted to the Committee on the Professions for its review and recommendation to the Board of Regents."

Accordingly the Committee on the Professions (Duncan-Poitier, Muñoz, Sheldon) finds that the role of the second Peer Panel was not to duplicate the first review but rather was specifically focused on Dr. Bassim's readiness to return to practice, including his rehabilitation and continuing education. The second Panel was also to take into consideration any information from a psychiatric examination of Dr. Bassim.

The overarching concern in all restoration cases is the protection of the public. A former licensee petitioning for restoration has the significant burden of satisfying the Board of Regents that licensure should be granted in the face of a finding of misconduct that resulted in the loss of licensure.

In considering Dr. Bassim's petition for restoration of his license, the Committee finds that Dr. Bassim has been unable to progress beyond the initial disciplinary proceeding. Dr. Bassim is focused on trying to convince the Peer Review Panel, the Committee on the Professions, and the Board of Regents that he is innocent of the charges of which he was found guilty and that the revocation of his license should be overturned. The restoration process is not the proper forum for such an action. Dr. Bassim challenged the administrative action in court. That is the appropriate forum to attempt to relitigate the initial loss of licensure. The court has sustained the guilty finding of the OPMC.

The Committee finds portions of Dr. Bassim's writings in support of his petition to be very angry and threatening. His explanation to the Committee of a potential conspiracy against him between physicians at the hospital and patients who complained that Dr. Bassim had sexually abused them is difficult for the Committee to accept. Dr. Bassim has failed to demonstrate to the Committee that he has gained insight into how his actions in this matter may have contributed to the ultimate findings of guilt in the revocation proceeding. He has not shown the Committee how he has changed or grown in the years since the loss of his license in such a way that would inspire confidence by the Board of Regents that restoring his license would be appropriate given the Board's concern for the safety and protection of the consuming public. The Board of Regents must give its highest priority to assuring the protection of the public when it considers requests for the restoration of a license. Petitioner is free to assert his innocence of the charges of which he was administratively found guilty. However, when the Regents assess any application for the restoration of a license, the petitioner carries the burden of convincing the Board of Regents that the restoration of the professional license is warranted and would not present a risk to the consuming public. Petitioner in this case has failed to convince the Committee on the Professions that such a restoration would be appropriate or safe for the public.

The Committee on the Professions, after a complete review of the record and its meeting with petitioner, concurs with the unanimous recommendation of the Peer Review Panel dated January 18, 1996, which recommends to the Board of Regents that Dr. Bassim's application for the restoration of his license to practice as a physician in New York be denied.

Johanna Duncan-Poitier, Chair

Thomas E. Sheldon

Frank Muñoz



The University of the State of New York

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

-----X

In the Matter of the Application of

BEHROOZ BASSIM

**REPORT OF
THE PEER
COMMITTEE
CAL. NO. 15704**

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

-----X

The applicant, BEHROOZ BASSIM, was issued a license on or about July 22, 1970 authorizing him to practice as a physician in the State of New York.

PRIOR REVOCATION

On October 19, 1990, the Board of Regents voted to revoke the applicant's license upon each specification of the charges of which he was found guilty. On October 26, 1990, the Order of the Commissioner of Education executing the vote of the Board of Regents was issued. Thereafter, the applicant was served with Commissioner's Order No. 10975 effectuating the revocation of his license to practice as a physician in the State of New York.

PROFESSIONAL MISCONDUCT

Six specifications of professional misconduct were brought

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against the applicant in the prior disciplinary proceeding resulting in the revocation of his license. The first three specifications were based upon the applicant's conduct in the practice of his profession which evidences moral unfitness to practice medicine. The fourth through sixth specifications were based upon the applicant's willful physical abuse of patients. Respondent was found guilty of each of these six specifications involving his engaging in physical contact of a sexual nature with three patients. As stated by the hearing committee, respondent "abused three patients for his own gratification."

SIGNIFICANT PROCEDURAL HISTORY

On February 17, 1992, the applicant signed and subsequently submitted a petition applying for the restoration of his license to practice as a physician in New York State. The lengthy petition contains, among other things, five points of argument, an appendix of exhibits, 10 supporting affidavits, and a self-assessment.

Following an investigation and a personal appearance by the applicant, the Committee on the Professions issued a report dated August 16, 1994. The recommendation of the Committee on the Professions and the record existing at that time were then considered by the Board of Regents. On November 4, 1994, the Board of Regents voted to agree with and accept the recommendation of the Committee on the Professions and to deny the petition for restoration, but to direct: (1) the applicant to undergo a psychiatric evaluation by an approved, licensed, and board

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certified psychiatrist; and (2) a new peer panel to review the report prepared by said psychiatrist, evaluate the applicant's readiness to return to the practice of medicine, make recommendations as to whether any further rehabilitation is necessary, and make a recommendation as to the adequacy of the applicant's continuing education.

On December 1, 1994, the Commissioner of Education issued an order effectuating the determination of the Board of Regents with respect to the applicant's petition for restoration. Said order and vote of the Board of Regents was mailed to the applicant on December 9, 1994.

FIRST PSYCHIATRIC EVALUATION

Pursuant to the determination of the Board of Regents, the applicant obtained Department approval of a psychiatrist and was thereafter evaluated by that psychiatrist, Dr. Krishnakumar, on May 25, 1995. In his report, Dr. Krishnakumar stated his impression, based upon his examination of the applicant, that "there appears to be no evidence of any psychiatric illness at the present time." It was also Dr. Krishnakumar's impression of the applicant that he found "no evidence of any psychiatric contraindication to his working as a Physician or any other capacity that he chooses". That psychiatric evaluation indicates that all information used to assess the applicant was obtained from the applicant.

The applicant submitted Dr. Krishnakumar's psychiatric evaluation, together with a report, dated June 17, 1995, prepared

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by the applicant regarding his continuing medical education, and requested that a meeting be scheduled before a new panel from the State Board for Medicine.

PANEL MEETING

On July 28, 1995, this review committee met to consider this application. The applicant appeared in person and was not represented by an attorney. After being informed of his right to be represented by an attorney of his own choosing, the applicant elected to proceed without an attorney. The Office of Professional Discipline (OPD) was represented by Franklyn Perez, Esq. At the applicant's request, the applicant's wife was permitted to attend this meeting.

At the outset of our meeting, we received into the record the May 25, 1995 psychiatric evaluation prepared by Dr. Krishnakumar and the June 17, 1995 continuing medical education report prepared by the applicant. The applicant then introduced, and we received into the record, a list of continuing medical education programs the applicant attended at: (1) Hepburn Hospital from December 1994 to June 1995; (2) Canton-Potsdam Hospital from July 1994 to June 1995; and (3) St. Lawrence Psychiatric Center from December 1994 to May 1995. We also received into the record certificates, acknowledgements, and other documents introduced by the applicant regarding continuing education attended by him; and an affidavit by the applicant dated July 25, 1995.

The applicant initially acknowledged that he has been

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determined guilty of the misconduct charges previously brought against him and that he could not challenge that determination in this forum. Nevertheless, he continued to maintain his innocence of such charges. He insisted that, in the disciplinary proceedings, he had been denied a fair opportunity to demonstrate the physical impossibility of such charges.

At this point in our meeting, the applicant offered a new document consisting of both the July 25, 1995 affidavit already accepted into the record as well as six attachments accompanying the affidavit. The OPD's objection to the receipt of these six attachments was sustained on each of the grounds that they were untimely submitted, duplicative, a burden to the record, beyond the scope of the prior determination of the Board of Regents regarding this restoration proceeding, an improper attempt to relitigate the issue of the applicant's guilt, irrelevant, and prejudicial.

This Committee informed the applicant that he was afforded this opportunity to address each of the questions framed by the Board of Regents for our review and to present any information and arguments pertinent to this restoration proceeding.

The applicant informed us that in the years since his revocation of license, he has continued his medical education and kept current with the profession. He believes that he is more knowledgeable today than when he was first licensed to practice medicine. The applicant declared that his medical competence is

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demonstrated by the over 100 hours of continuing medical education credit he has earned and by the various journals he has read. The applicant told us that he correctly answered written questions propounded during his coursework. He then stated that there were no clinical aspects of these courses because he has been prohibited from practicing as a physician. In the applicant's opinion, just as he was once able to switch from the field of pathology to general practice without having seen and treated patients, he would be able to successfully practice at this time, even though he has been out of practice for several years.

The applicant stated that he is an avid reader of 20 different journals and has various interests in addition to medicine. He writes books and classical music. He referred to his self-assessment which shows that he does not smoke, use illegal drugs, hunt, read fiction, or watch fiction on television. The applicant told us that he has a close knit family, including two daughters in college.

We asked the applicant how he manages financially and otherwise in view of his loss of license. In response, the applicant merely indicated that his savings is being depleted and he can live with less material things. He said that he plays music to relax himself and that he needs no medications.

According to the applicant, most of the community where he lives supports him in his efforts to be relicensed. He stated that former patients have asked him when he will be reopening his

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practice. We inquired about the kind of practice he would engage in if his license were restored. In response, the applicant spoke about his seeking to practice in a solo general practice where he would keep a third person with him at all times in his examination room. He also desires to work in an emergency room on nights and weekends. We were informed that the applicant worked in an emergency room in the past, has taken courses regarding emergency care, and would complete any other courses his employer would require him to take.

The applicant denied any blocking from his conscience of the incidents which led to the revocation of his license. He referred to the report from Dr. Bernstein, Psychologist, dated April 23, 1993, which concludes that the applicant suffers from no psychopathology. In Dr. Bernstein's opinion, the applicant is not a person of "dishonest character or personality disorder, but rather a man who has always been deeply committed and devoted to strong ethical principles."

The applicant also referred to the report from Dr. Krishnakumar, Psychiatrist, which concludes that "there appears to be no evidence of any psychiatric illness at the present time." It was Dr. Krishnakumar's opinion that there is "no evidence of any psychiatric contradiction" to the applicant working as a physician or in any other capacity. The applicant stated that these conclusions support his claim that he is not suffering from any mental health problems.

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We inquired further about Dr. Krishnakumar's assessment. The applicant informed us that he saw Dr. Krishnakumar only one time before the above report was completed. This assessment and report, according to the applicant, were based on the applicant's answers to questions, a review of Dr. Bernstein's report, and other documents supplied by the applicant. Dr. Krishnakumar was apparently not provided with the prior determination finding the applicant guilty of professional misconduct. The applicant stated that he provided oral information to Dr. Krishnakumar about the prior disciplinary proceeding. In response to our question as to what such oral information was provided to Dr. Krishnakumar, the applicant stated that he explained to Dr. Krishnakumar the evidence proving his innocence of the charges. The reason given by the applicant for his not providing the hearing committee report from the prior disciplinary proceeding to Dr. Krishnakumar was that the applicant assumed the Education Department's Division of Professional Licensing Services had provided such information to Dr. Krishnakumar.

The applicant indicated that he believed that he was constrained from producing, at our meeting, evidence other than the one report from Dr. Krishnakumar. We informed the applicant that he was and remained permitted to produce Dr. Krishnakumar as a witness, to obtain other reports or information from Dr. Krishnakumar, and to submit other evidence in support of his position. Although we expressed our willingness to grant an

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adjournment to enable the applicant to present witnesses, the applicant chose not to call any witnesses at anytime. The applicant elected instead to obtain a post-meeting supplemental report from Dr. Krishnakumar. After both parties agreed to submit written closing statements subsequent to the submission of Dr. Krishnakumar's supplemental report, we agreed to keep the record open for these further submissions.

SUPPLEMENTAL PSYCHIATRIC EVALUATION

Thereafter, on July 31, 1995, August 9, 1995, and August 14, 1995, the applicant was re-examined by Dr. Krishnakumar and, on August 9, 1995, the applicant's wife was examined by Dr. Krishnakumar. Various tests were also performed on the applicant. In this post-meeting evaluation, Dr. Krishnakumar was requested by the applicant to render an opinion as to whether the applicant, considering his present mental state, history, and family history, would be likely to "take advantage of patients" if he were allowed to practice medicine.

In his supplemental report, Dr. Krishnakumar again concluded that there is now "no psychiatric contraindication" to the applicant returning to the practice of medicine. Dr. Krishnakumar's examination did "not reveal any evidence of blocking of events that allegedly occurred in the past in regards to the judgment made against him." Dr. Krishnakumar's findings include: the applicant is "emotionally ready to return to the practice of medicine"; the applicant "would be much more cautious and

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conservative" than an average physician and would likely "be more careful and cautious" than he ever was in the past; the "traumatic experience" endured by the applicant "has not interfered with his ability to function as a physician and as a person at the present time"; and there is "very little" likelihood of misconduct or malpractice being committed by the applicant in the future.

We received from the applicant a written closing statement dated September 19, 1995. No written closing statement was received from the OPD.

Deliberations were conducted by this Committee on October 13, 1995.

EVALUATION

The scope of our decision was delineated by the November 4, 1994 vote of the Board of Regents. In following the directions of the Board of Regents, we have considered the entire record before us, including the report and supplemental reports from Dr. Krishnakumar, various materials concerning continuing medical education, the applicant's July 25, 1995 affidavit, and the applicant's written closing statement.

We shall first consider the question posed by the Board of Regents of whether any further rehabilitation by the applicant is necessary.

The applicant has not shown that he has made any attempts, in the years since the revocation of his license, at rehabilitation. The fact that the applicant does not suffer from depression or

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psychosis does not obviate the need for the applicant to improve his integrity and character. We did not find any evidence that the applicant received or is interested in receiving on-going therapy or training geared to providing him with insight and understanding.

Both his written documentation and his oral presentation do not demonstrate any exploration of rehabilitation by the applicant. We do not discern any consideration by the applicant of what he needs to do to assure that the needs of patients will be met and that the public will be protected. The only step the applicant stated that he would take in this regard is to have a third person present with him in the examining room. He did not mention or show any understanding that he must avoid all situations where he might be accused of wrong-doing. Before the applicant will be ready to act responsibly and ethically, he will need to contemplate and act upon the steps he should take to assure that his past conduct will not be committed in the future. At this time, the applicant has not attempted to remediate his conduct.

We reject the applicant's claim that he does not need any rehabilitation. Although the applicant is free to profess his innocence and may be restored to his profession regardless of his assertions of innocence, he must meet his burden of proving that the restoration of his license is warranted. In our unanimous opinion, the applicant has made no progress, to date, in rehabilitating himself and shows no inclination to do so in the future. The applicant has not taken any measures towards

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appreciating and respecting the public trust conferred on a licensee. In view of this lack of action by the applicant in accepting his responsibilities to the patients he would treat, we cannot say that he would, at all times, act as a caring and ethical physician.

The applicant has not demonstrated any improvement of himself personally or professionally subsequent to his misconduct in several patient cases. Rather, he repeatedly seeks our approval of his contention that the prior determination against him is fraudulent, flawed, and false. We must, however, act within our jurisdiction in this restoration proceeding and evaluate the issues framed by the Board of Regents.

We have also considered the continuing education undertaken by the applicant. The applicant asks, in his petition, for us to only consider his keeping current with medical knowledge for a general practitioner. He has shown us various technical subjects he has studied. While the continuing education taken by the applicant is worthwhile, it is inadequate without further coursework.

The applicant has not taken courses to assist him in dealing with the problems he may encounter in relating to patients. Lacking from his education post-revocation is both courses on ethics and courses where he must participate and be evaluated by others. The continuing education taken, to date, by the applicant does not address the areas of ethics and responsibility in providing patient care. As shown in our analysis as to the issue

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of rehabilitation, the applicant has not yet focused on the need to protect the public in the future.

We are not persuaded by the psychiatric and psychological assessments of record. They are either conclusory or incomplete. Such narrow assessments are based on the denials presented by the applicant regarding his prior conduct. They are not predicated on a broad view of the applicant subsequent to the revocation of his license. We do not find any significant evidence, in any of the reports submitted to us, that the applicant has grown or changed in the years that he has been out of practice or that the applicant has done anything to assure that his past misconduct would not recur. We note that the original psychiatric report, submitted at our meeting pursuant to the requirements imposed by the Board of Regents, was silent about crucial issues referred to herein. Moreover, several of the assessments of the applicant were couched in terms of evidence which was not found. Such limited assessments are not sufficient to demonstrate the applicant's readiness to return to the practice of medicine.

RECOMMENDATIONS

We unanimously recommend the following findings that:

- (1) the applicant has not been adequately rehabilitated;
- (2) the applicant is in need of further rehabilitation;
- (3) the applicant has not been adequately re-educated;
- (4) the applicant is in need of further continuing education;
- (5) the applicant does not now possess adequate insight and

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understanding regarding his ethical and professional responsibilities; and

(6) the public would not be protected if the applicant's license was restored at this time.

Based upon all the foregoing, the applicant is not now ready to return to the practice of medicine in New York State. Accordingly, we unanimously recommend that the instant application for the restoration of the applicant's license to practice as a physician in New York State be denied.

Respectfully submitted,

STANFORD A. ROMAN, JR., M.D.,
Chairperson

JOYCE H. LOWINSON, M.D.

ANTHONY SANTIAGO


Chairperson

Dated 1/18/96