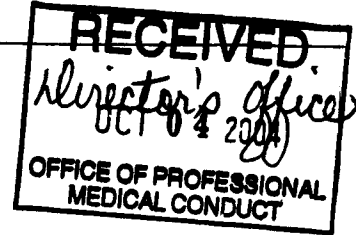


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THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK

Office of Professional Discipline, 475 Park Avenue South, 2nd Floor, New York, NY 10016-6901
Tel. (212) 951-6400
Fax (212) 951-6420
E-mail: OP4INFO@MAIL.NYSED.GOV



PUBLIC

October 1, 2004

Keith Barnard, Physician
1476 East 48th Street
Brooklyn, New York 11234

Re: Application for Restoration

Dear Dr. Barnard:


Enclosed please find the Commissioner's Order regarding Case No. CP-04-05 which is in reference to Calendar No. 20049. 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

cc: Douglas M. Nadjari, Esq.
Kern Augustine Conroy &
Schoppmann, P.C.
Lake Success, New York 11042

The
University of the
Education  State of New York
Department

IN THE MATTER

of the

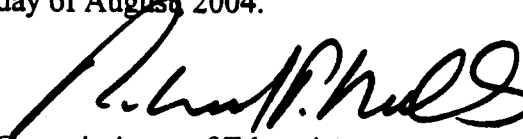
Application of KEITH L.
BARNARD for restoration of his
license to practice as a physician in
the State of New York.

Case No. CP-04-05

It appearing that the license of KEITH L. BARNARD, 1476 E. 48th Street, Brooklyn, New York 11234, to practice as a physician in the State of New York, was revoked by a Hearing Committee of the State Board for Professional Medical Conduct, effective October 1, 1997, and he having petitioned the Board of Regents for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 agreed with and accepted the recommendations of the Peer Committee and the Committee on the Professions, now, pursuant to action taken by the Board of Regents on May 18, 2004, it is hereby

ORDERED that the petition for restoration of License No. 153331, authorizing KEITH L. BARNARD 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 *10th*
day of August, 2004.


Commissioner of Education

Case No. CP-04-05

It appearing that the license of KEITH L. BARNARD, 1476 E. 48th Street, Brooklyn, New York 11234, authorizing him to practice as a physician, having been revoked by a Hearing Committee of the State Board for Professional Medical Conduct, effective October 1, 1977, and he having petitioned the Board of Regents for restoration of said license, and the Regents having given consideration to said petition and having agreed with and accepted the recommendations of the Peer Committee and the Committee on the Professions, now, pursuant to action taken by the Board of Regents on May 18, 2004, it was

VOTED that the petition for restoration of License No. 153331, authorizing KEITH L. BARNARD to practice as a physician, be denied.

Case number
CP-04-05
March 29, 2004

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: Keith L. Barnard

Attorney: Douglas M. Nadjari

Keith L. Barnard, 1476 E. 48th Street, Brooklyn, New York 11234, petitioned for restoration of his physician license. The chronology of events is as follows:

- 03/11/83 Issued license number 153331 to practice as a physician in New York State.
- 05/06/93 Charged with professional misconduct by Department of Health. (See "Disciplinary History.")
- 08/16/93 Department of Health ordered Censure and Reprimand with a fine of \$3,000.
- 07/07/97 Charged with professional misconduct by Department of Health. (See "Disciplinary History.")
- 09/18/97 Department of Health revoked physician license.
- 10/01/97 Effective date of revocation.
- 06/11/01 Application for restoration submitted.
- 08/27/02 Peer Committee restoration review.
- 10/17/03 Report and recommendation of Peer Committee. (See "Report of the Peer Committee.")
- 12/08/03 Committee on the Professions restoration review.
- 03/29/04 Report and recommendation of Committee on the Professions. (See "Report of the Committee on the Professions.")

Disciplinary History. (See attached disciplinary documents.) On May 6, 1993, the Department of Health charged Dr. Barnard with one specification of professional misconduct, specifically, practicing the profession fraudulently. The Department alleged that in September 1983, Dr. Barnard filed an application for employment at Interfaith Medical Center in Brooklyn, New York, stating that he had completed a residency in Orthopedic Trauma Surgery and knew that the statement was false at the time he made it. A Hearing Committee of the State Board for Professional Medical Conduct sustained the charge of professional misconduct and ordered that Dr. Barnard receive a Censure and Reprimand and pay a fine of \$3,000. The Order was effective August 16, 1993.

On July 7, 1997, the Department of Health charged Dr. Barnard with professional misconduct based on his conviction of committing an act constituting a crime under federal law. The Department alleged that on or about September 18, 1996, Dr. Barnard was found guilty after trial of one count of Conspiracy to Commit Medicaid Fraud and Mail Fraud in violation of Title 18, United States Code, Section 371, and two counts of Mail Fraud in violation of Title 18, United States Code, Section 1341. The charges stated that based on the conviction, Dr. Barnard was sentenced to 30 months in prison with supervised release for two years and ordered to pay restitution in the amount of \$157,152. A Hearing Committee of the State Board for Professional Medical Conduct sustained the specification of professional misconduct and voted to revoke Dr. Barnard's license. The revocation became effective October 1, 1997.

On June 11, 2001, Dr. Barnard submitted an application for restoration of his license.

Recommendation of the Peer Committee. (See attached "Report of the Peer Committee.") The Peer Committee (Diamond, Kase, Cohen) met with Dr. Barnard on August 27, 2002 to review his application for restoration. In its report, dated October 17, 2003, the Committee voted unanimously to recommend that his application for restoration of his physician license be denied.

Recommendation of the Committee on the Professions. On December 8, 2003, the Committee on the Professions (Templeman, Alexander, Porter) met with Dr. Barnard to review his application for restoration. Douglas M. Nadjari, his attorney, accompanied him.

The Committee asked Dr. Barnard to explain why he lost his license. Dr. Barnard stated that his first mistake was lying about his credentials when applying for a position in the Emergency Room at Interfaith Medical Center. He said, "I was so excited. I wanted to puff up my credentials. I'm sorry for it." He reported that he worked in the Emergency Room for seven years and space was provided for his private practice at the hospital.

Dr. Barnard told the Committee that he has disgraced himself, his family, and his profession. He indicated that his parents stressed values and ethnic consciousness. He

said that he dreamt of being a physician in the minority community. He indicated he went to prison and has been dealing with what he did for many years.

The Committee asked Dr. Barnard to explain how he became involved with working in the clinic in addition to his practice at the hospital. He said he worked at the clinic for four-hour sessions, two days a week, for about a year. He indicated that he paid rent to two Pakistani businessmen who not only owned the clinic where he worked but also owned 10 to 12 clinics in other locations. He said that the owners had "a lot of money" and "wined and dined me before I agreed to work with them." He reported that he personally knew three other physicians who worked in these clinics. Dr. Barnard stated, "I allowed myself to be used. I don't know what happened to the other physicians. They seemed to have disappeared."

Dr. Barnard told the Committee that he did not leave the clinic when he should have. He said that after one month he understood that illegal things were happening but chose to remain another 11 months. He indicated that the patients he saw had a "full range of issues" and sometimes they didn't want to be examined. He reported that some of the patients would balk when he would recommend alternative medications from what they wanted. Dr. Barnard said that he spent about 15 minutes with each patient. He reported that some of the patients didn't want to be examined while others had a good history at the clinic and he "might write them prescriptions after examining them."

The Committee asked how his misconduct was discovered. Dr. Barnard replied that Social Services notified him that they wanted to review some of his charts. He reported that they questioned him and then wanted more charts to review. Dr. Barnard indicated that Social Services subsequently stopped paying some of the charges submitted but he could not get detailed information from them regarding their concerns. He said that he eventually stopped working at the clinic but continued to cooperate with Social Services. He reported that Federal agents arrested him seven years after he had stopped working in the clinic. Dr. Barnard said that he later discovered that many of the prescriptions he approved were later resold, although at the time he had no knowledge this was occurring. He reported that he also found out that the pharmacy and technicians at the clinic were involved in the illegal activities. Dr. Barnard said, "I realize now how stupid I was." He told the Committee that none of the prescriptions he wrote were for narcotics and that most of them were for antibiotics and antihistamines. He indicated that the patients had "scripted complaints" for those prescriptions.

Dr. Barnard said that the owners of the clinic took care of all the billing and he got his checks at home. He stated, "The more Medicaid patients I saw, the more they got." He reported that the owners expected him "to write for tests" as "they did the tests and got that money." Dr. Barnard told the Committee, however, that he didn't order tests that weren't indicated. He said, "I was more careful about that, for some reason." He reported that the owners kept asking him why he wasn't ordering more tests and that he told them, "I had responsibility."

The Committee asked, "What did you feel you did that was wrong?" Dr. Barnard replied, "I allowed myself to commit acts that I knew were wrong and could hurt somebody. I did it because it was so easy to do. The checks kept coming in." He added, "It was not the way I was raised." He told the Committee, "I can't remember what was going on in my mind at that time."

The Committee asked Dr. Barnard what decisions he has made about life since his release from prison. He replied that the process actually started in prison when he "took account of spirituality." He indicated that he had never thought about it before. He reported that he had tremendous support from family and friends and realized how important such support was. He said that he saw others in prison who couldn't handle being incarcerated.

Dr. Barnard was asked if he felt he was prepared to practice now. He indicated that he felt he has "made a huge effort" by taking courses both in person and by correspondence. He said that he knew the longer he stayed away from practice, the more difficult it would be. Dr. Barnard stated, "Maybe, it is not up to me to decide." The Committee asked if he felt he needed any retraining before resuming practice. Dr. Barnard replied, "I don't think so. I feel I have my finger on the pulse." He told the Committee that he felt he still had a lot of productive years remaining and still understood "technically what I was trained to do." He said, "I'm ready to move on and get back into it."

The Committee noted that restitution was part of his sentence to the criminal conviction and asked Dr. Barnard what attempts he has made to fulfill this obligation. He replied that his ability to pay was related to his ability to earn. He indicated that he had to liquidate his assets to pay legal fees and other debts. He reported that he offered to pay the State \$100 a month and then increase his payments once he became a physician again. Dr. Barnard said that the State refused and wanted him to pay one-third of the full amount and the rest in payments. He reported that at this time he has not "come to terms with the State." He said that the State has placed a lien on his house and "has gone after my wife for payments." He indicated that his wife is a physician in private practice. He said that his wife encouraged him to convey the house to her so she could access the equity to borrow money for necessary home repairs. Dr. Barnard stated, "I turned over my portion of the house to her to pay off debts." He told the Committee, "I felt I owed her and my family something."

The Committee indicated to Dr. Barnard that the Peer Committee and the Department of Health both questioned his veracity regarding his role in the original conspiracy and asked for his comments. He said, "I was in disbelief after reading the report." He indicated that it appeared to him that during the meeting the Peer Committee was understanding and sympathetic. He said, "I feel they did not understand me at all."

Mr. Nadjari told the Committee members that they would need to form their own opinions regarding Dr. Barnard's credibility. He said that his client has a part-time job and has taken on the responsibility of raising his family rather than employing domestic

help to care for his children. He indicated that Dr. Barnard is actively involved in an outreach program at his church where he helps indigent children and senior citizens. He said that Dr. Barnard was willing to accept any conditions with the restoration of his license and has agreed to pay back his debt with every penny he earns as a physician.

The overarching concern in all restoration cases is public protection. Education Law §6511 gives the Board of Regents discretionary authority to make the final decision regarding applications for the restoration of a license to practice as a physician in New York State. 8NYCRR §24.7(2) charges the Committee on the Professions (COP) with submitting a recommendation to the Board of Regents on restoration applications. Although not mandated in law or regulation, the Board of Regents has instituted a process whereby a Peer Committee first meets with an applicant for restoration and provides a recommendation to the COP. A former licensee petitioning for restoration has the significant burden of satisfying the Board of Regents that there is a compelling reason that licensure should be granted in the face of misconduct so serious that it resulted in the loss of licensure. There must be clear and convincing evidence that the petitioner is fit to practice safely, that the misconduct will not recur, and that the root causes of the misconduct have been addressed and satisfactorily dealt with by the petitioner. It is not the role of the COP to merely accept, without question, the arguments presented by the petitioner but to weigh and evaluate all of the evidence submitted and to render a recommendation based upon the entire record.

The COP notes that licensure is a privilege and not a right. The COP agrees with the Peer Committee that Dr. Barnard failed to demonstrate sufficient remorse and rehabilitation to warrant the restoration of his license at this time. Dr. Barnard has failed to make any payments toward the original \$157,152 restitution assessed to him. That amount has subsequently increased with accrued interest. The COP takes a dim view of Dr. Barnard's decision to move his assets into his wife's name in the face of his complete failure to fulfill his obligation to make restitution. The COP believes Dr. Barnard has not fully accepted the consequences of his misconduct and the debt he is morally obligated to fulfill, whether or not his license is restored.

The COP finds that Dr. Barnard has not presented a compelling case to demonstrate that he accepts full responsibility for his role in the Medicaid fraud. The record reflects that Dr. Barnard presented differing accounts regarding his involvement in the fraud at different times and he continues to minimize his role in the fraudulent scheme. Similarly, the COP remains unclear whether he has reached a sufficient level of rehabilitation so that were he placed in a similar situation in the future, the misconduct would not recur. Dr. Barnard was unable to clearly articulate the root causes of not only why he participated in the misconduct but also why he closed his eyes to the illegal activity that he said he knew was occurring after being at the clinic only one month. There was no evidence presented that Dr. Barnard would have independently stopped his misconduct short of the intervening investigation. Dr. Barnard's remorse appeared to be principally directed toward the negative effects his misconduct had upon himself and his family. He failed to emphasize and demonstrate to the COP the serious potential danger in which he placed the community by not only giving unwarranted

prescriptions but also depriving the indigent of needed medical care by inappropriately taking funds from the limited Medicaid pool. Dr. Barnard did not provide a sufficient level of confidence at this time for the COP to be convinced that the misconduct would not recur were his license restored. Even though Dr. Barnard told the COP that he feels he is competent to resume practice immediately, the COP questions his current competency and notes that he has not participated in Grand Rounds or other such live reeducation activities. Dr. Barnard said that he has stopped taking continuing medical education courses because of a lack of funds.

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

Leslie Templeman, Chair

Joseph B. Porter

Claudia Alexander



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

KEITH BARNARD

**REPORT OF
THE PEER
COMMITTEE
CAL. NO. 20049**

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

-----X

The applicant was authorized to practice as a physician in the State of New York by the
New York State Education Department.

PRIOR DISCIPLINE

The applicant was the subject of two misconduct proceedings before the State. The first, in August 1993 was the result of false statements made by the applicant for privileges at Interfaith Medical Center in Brooklyn, when he stated that he had completed a residency in orthopedic trauma surgery and responded "yes" to a question regarding his board eligibility. Both statements were not true. At the Hearing before the New York State Board for Professional

Medical Conduct (Board), the applicant admitted that he "was wrong" to have made the false statements and expressed "regret" that he had done so. Nonetheless, the Board determined that the applicant "knowingly made a false statement about his background and professional status in the course of obtaining a hospital appointment," and rendered a penalty of a Censure and Reprimand and a \$3,000 fine.

Following an expedited direct referral proceeding based on the applicant's conviction in United States District Court, Southern District of New York for mail fraud and Medicaid Fraud, his medical license was revoked effective September 30, 1997. The applicant was found guilty after trial of defrauding Medicaid by giving prescriptions that were not medically necessary to patients (who then sold the drugs on the street) and ordering excessive tests. He was sentenced to thirty months in prison, two years supervised release, restitution of \$157,152.00 to the New York State Department of Social Services and ordered to participate in drug testing and treatment.

THE APPLICATION

On June 11, 2001 the applicant petitioned the New York State Education Department for the restoration of his license to practice as a physician in the State of New York.

Regarding the first disciplinary action the application states in part:

"I had inadvertently checked the "yes" box on the question of board eligibility in orthopedic surgery when in fact I was not eligible. I was applying for employment as an emergency room attending physician. I had no intention of seeking privileges as an orthopedic surgeon. I subsequently received the appointment and worked as an attending emergency room physician for approximately seven years. In this capacity I was not called upon to perform orthopedic surgical procedures. No practical consequences are known to have followed from my false statement."

Regarding the second disciplinary action the application states in part:

"Unfortunately I was unable to respond to the allegations set forth in the statement of charges at the adjudicatory proceeding held on August 28, 1997 which ultimately determined the state of my licensure in New York State. Consequently, I am submitting this statement in response to the above mentioned document. I am making it clear that I have never been accused of or put on trial for malpractice or for performing any act that could be interpreted as malpractice. I was accused, tried, and convicted of Medicaid billing fraud. Any other statement differing from this is completely in error. The official transcript of the trial is proof. Furthermore, I completely deny, now, just as I did then the accusation of drug abuse before and during the trial. This was a deliberate effort by the U.S. Attorney's office to further smear my character. I maintain my innocence in this matter."

Regarding rehabilitation activities the application states:

"My rehabilitation activities began when I entered the federal prison in June 1997 to serve a thirty month sentence. This event alone has a powerfully sobering quality, as you might well imagine. I had plenty of time to sit and think about my role in this breach of the law. I thought about how I might turn my life around and renew the public trust that I once assumed. I decided that I should start by re-establishing my relationship with God by asking forgiveness and pledging my commitment to a life in Christ from that point on. I began by joining the prison church. I quickly became a leader in this congregation, and served as an inspiration to other inmates. My involvement intensified to the point where I served as a deacon on the board and gave the sermon on Sunday evenings on several occasions when no clergy was available"

"My decision to give my life to Christ is the most significant and effective form of rehabilitation that I could indulge in considering the nature of my case. Upon release from prison in August 1999 I began attending regular worship services at Christ Fellowship Baptist Church in Brooklyn, New York. My twelve year old son and I were baptized in a dual ceremony on February 6, 2000 by Rev. David Kelly, pastor of the church."

"In addition to my spiritual renaissance I have renewed my commitment to community and social development by volunteering to teach at the "Once Upon A Time" theater school in Richmond Hill, New York. I work with disadvantaged

children on a daily basis in the subject of reading and comprehension. This position is particularly important because it fulfills two major needs: 1) It satisfies the Department of Probation requirement that I be employed and 2) It allows me the opportunity to take part in the healing of one of our societies' famous ills."

"The activities which I have briefly outlined in the above paragraphs, aside from providing for my family as a husband and father, have occupied all my time and energy since my return home. My pivotal and most significant task still remains, to regain my license and return to the practice of medicine."

Supporting affidavits accompanying the application confirm the above rehabilitation activities.

INVESTIGATIVE INTERVIEW

On October 23, 2001 an interview was conducted with the applicant. The content of the application was reviewed.

With regard to the continuing education courses and the professional journals, the applicant said that the courses were correspondence courses and that from these courses he receives journals.

The applicant said that he served 26 months in jail. He said he was attempting to work out a deal to pay back the \$157,152.00 he owes the State. He said that the best he could pay back was \$100.00 a month. The State Office of the Attorney General told him that they will not accept that amount of payment.

THE MEETING

On August 27, 2002 this Peer Panel met to consider the application in this matter. The applicant appeared and was represented by T. Lawrence Tabak, Esq. Michael Hilf, Esq. represented the Division of Prosecutions of the Office of Professional Discipline.

After preliminary opening remarks by the Chairperson and the parties, the applicant spoke on his own behalf and repeated much of what is in his application and in the investigative interview. The applicant offered six more certificates regarding CME which were accepted and marked as applicant's Exhibit A.

Upon questioning by Mr. Hilf regarding why the applicant had used the term "inadvertent" to describe what was found to be a knowingly made false statement on his application for employment at Interfaith Medical Center, the applicant said "It is hard for me to recall my mindset at that time".

Upon further questioning by Mr. Hilf, the applicant stated that he earned between \$1,600.00 and \$2,000.00 a year tutoring and driving the bus at the school where he is employed. When asked why he had not sought higher paying employment so he could pay his restitution, the applicant said he had sought some employment but was unable to obtain a position he wanted. He said he has not made any effort to obtain a full time job that pays even minimum wage.

Upon further questioning, the applicant stated that in November 2000 he had signed over the 50% interest he had in his home to his wife rather than use it to pay the restitution he owes.

The applicant, when questioned regarding the arrangement he had with the owners of the two Medicaid clinics he worked in, stated that he used the clinics rent free and kept 100% of the Medicaid fees paid for his services. He said the owners made their money from tests the applicant ordered for the clinics' Medicaid patients. He said that after a few months at the clinics he began to wonder if something improper was going on, but he stayed anyway.

Upon questioning by the panel, the applicant stated that he had been tested for drug use while he was in prison and during his two years of probation and all tests were negative.

Upon further questioning by the panel, the applicant said that he had no idea, when he was working at the clinics, that some of the people coming into the clinics as patients were not real patients. He said he never created mock charts. He said he only wrote prescriptions and ordered tests that he thought were medically necessary.

The applicant went on to say that, other than his work as a tutor and bus driver at the school, his only other job is to take care of his children and the household, for which he receives an allowance from his wife. He said he offered to pay \$100.00 a month to the State to pay off his debt but the State did not think that was reasonable or showed good intentions.

When asked about his CME, the applicant stated that he has not gone to Grand Rounds at Interfaith Hospital, which is about a mile from his house, nor has he gone to Grand Rounds at any other Hospital. He said he has gone to quite a few meetings with pharmaceutical companies for which he received CME credit.

Upon further questioning by the panel, the applicant said that he could not say what percentage of the patients he saw were mock patients. He could not say whether it was 50% or 75% or 85%.

The parties made closing statements. Mr. Hilf recommended that the application be denied based on the applicant's failure to make any reasonable effort to make restitution in this matter, and based on the applicant's explanation of what took place at the clinics not making sense and not being logical when compared to the findings made in the criminal case. Mr. Hilf also cited the applicant's use of the term "inadvertently" when referring to his conduct regarding his first disciplinary action.

Mr. Tabak recommended that the application for restoration be granted because the applicant acknowledged the wrong that he committed. He also said that the applicant has sought employment. He said that the applicant is involved in his church helping others and this shows remorse and rehabilitation. He also cited the applicant's efforts at CME. All these things, he said, show that the applicant deserves another chance.

RECOMMENDATION

We unanimously recommend that the application herein be denied. While the applicant has made acceptable efforts at continuing medical education we find a lack of remorse and a lack of rehabilitation.

We believe the applicant thinks of the medical profession in terms of money. We believe that is why the applicant deliberately made a false answer on his application for employment at

Interfaith Hospital. We believe that is why the applicant accepted the position at the clinics, which led to his criminal conviction, to incarceration and to the revocation of his license. We further believe that is why the applicant has made no effort to pay the \$157,000.00 he owes the government. He even went so far as to transfer the only asset he had, his half interest in his home, to his wife's name. He has not even made any effort to gain any kind of meaningful employment.

We do not believe the applicant was honest with this panel in his testimony regarding failure to pay the restitution he owes as a result of his conviction, the facts regarding said conviction or the facts regarding his first disciplinary action. He even said in his application that the first disciplinary action was the result of something he did "inadvertently". When pressured for details regarding these facts, the applicant often said that he could not recall.

Accordingly, we cannot recommend restoration of licensure in this matter.

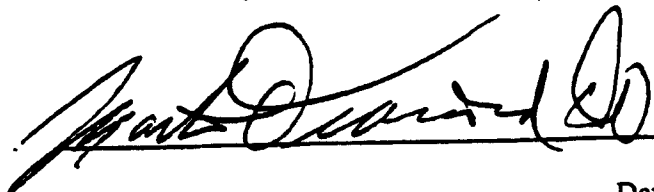
We hope the applicant will take our comments into consideration should he reapply in the future.

Respectfully submitted,

Dr. Martin Diamond, Chairperson

Dr. Nathan Kase

Dr. Seymore Cohen

 10/17/03
Chairperson Dated