

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

OFFICE OF PROFESSIONAL DISCIPLINE (718) 246-3060,3061

195 Montague Street – Fourth Floor Brooklyn, New York 11201

July 2, 2008

Gregory O'Keefe, Physician

Redacted Address

Re: Application for Restoration

Dear Dr. O'Keefe:

Enclosed please find the Commissioner's Order regarding Case No. CP-08-05 which is in reference to Calendar No. 22730. 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:

Redacted Signature

/

Ariana Miller Supervisor

DJK/AM/er

cc: Bart M. Carrig, Esq.
Blumberg & Carrig
37 North Ann Street, Suite 2
Little Falls, New York 13365

RECEIVED

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OFFICE OF PROFESSIONAL MEDICAL CONDUCT



#### IN THE MATTER

of the

Application of GREGORY O'KEEFE for restoration of his license to practice as a physician in the State of New York.

Case No. CP-08-05

It appearing that the license of GREGORY O'KEEFE, Redacted Address

authorizing him to practice as a physician in the State of New York, was revoked by order of a Hearing Committee of the State Board for Professional Medical Conduct dated November 20, 2000, and he having petitioned the Board of Regents for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, including the recommendation of the Committee on the Professions that the period of probation shall be tolled during periods in which GREGORY O'KEEFE is not engaged in the active practice of medicine in New York State, as provided in the attached Vote, now, pursuant to action taken by the Board of Regents on April 15, 2008, it is hereby

ORDERED that the petition for restoration of License No. 195984, authorizing GREGORY O'KEEFE 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 GREGORY O'KEEFE is placed on probation for a period of two years under specified terms and conditions, and upon

successful completion of the 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 27 day of June, 2008.

Commissioner of Education

It appearing that the license of GREGORY O'KEEFE, Redacted Address

5, authorizing him to practice as a physician in the State of New York, was revoked by Order of a Hearing Committee of the State Board for Professional Medical Conduct dated November 20, 2000, 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, including the recommendation by the Committee on the Professions that the period of probation shall be tolled during periods in which the applicant is not engaged in the active practice of medicine in New York State, that the applicant shall notify the Director of the Office of Professional Medical Conduct in writing if the applicant is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more, that the applicant shall then notify the Director again prior to any change in that status, and that the period of probation shall resume and any terms of probation that were not fulfilled shall be fulfilled upon the applicant's return to practice in New York State, now, pursuant to action taken by the Board of Regents on April 15, 2008, it is hereby

VOTED that the petition for restoration of License No. 195984, authorizing GREGORY O'KEEFE 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 GREGORY O'KEEFE is placed on probation for a period of two years under specified terms and conditions, and upon successful completion of the probationary period, his license to practice as a physician in the State of New York shall be fully restored.

# 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: Gregory O'Keefe

Attorney: Bart M. Carrig

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Gregory O'Keefe, Redacted Address petitioned for restoration of his physician license. The chronology of events is as follows:	
09/18/75	Issued license to practice as a physician in the State of Maine.
06/10/94	Issued license number 195984 to practice as a physician in New York State.
02/96	Settled a Medicaid Fraud Complaint with the Maine Attorney General's Office.
01/20/98	Signed a Consent Agreement with the Maine Board of Licensure in Medicine, agreeing to a reprimand based upon the 1996 Medicaid fraud settlement.
07/29/98	Signed Consent Agreement with the New York State Office of Professional Medical Conduct (OPMC), agreeing to a censure and reprimand, based upon the disciplinary action taken by the State of Maine.
11/16/99	Charged by the OPMC with six specifications of professional misconduct.
11/20/00	Order issued revoking the applicant's license to practice as a physician in the State of New York.
06/14/01	Article 78 proceeding to challenge revocation dismissed by Appellate Division, Third Department.
09/20/01	Leave to appeal denied by Court of Appeals.
02/25/05	Submitted application for restoration of physician license.
06/12/06	Peer Committee restoration review.
07/12/06	Report and Recommendation of the Peer Committee. (See "Report of the Peer Committee")

03/08/07 Committee on the Professions meeting with applicant.

03/27/08 Report and Recommendation of the Committee on the Professions.

Disciplinary History. In an order dated November 20, 2000, a Hearing Committee of the State Board for Professional Medical Conduct found that Dr. O'Keefe had committed gross negligence and gross incompetence in the case of patient "A" whose lung he had hit while performing a trigger point injection, and whom he failed to transport to a hospital following confirmation of a pneumothorax. Dr. O'Keefe was also found either negligent or incompetent in the treatment of patient "A" and eight other patients. All of these findings related to treatment and medication of patients by Dr. O'Keefe from late 1995 through 1997.

Recommendation of Peer Committee. (See attached Report of the Peer Committee.) The Peer Committee (Holtzapple, Colgan, Corona) convened on June 12, 2006 to consider Dr. O'Keefe's application for restoration of his physician license. In its report dated July 12, 2006, the Committee unanimously recommended that the revocation of Dr. O'Keefe's license to practice be stayed and that he be placed on probation for a period of two years under terms which included a provision that ten percent of his cases be subject to quality assurance internal reviews.

Recommendation of the Committee on the Professions. On March 8, 2007, the Committee on the Professions (COP) (Templeman, Earle, Frey) met with Dr. O'Keefe to consider his application for restoration. Dr. O'Keefe appeared with his attorney Bart M. Carrig.

The COP first asked Dr. O'Keefe to provide an overview of his case and an explanation of how he lost his license to practice. He discussed his current state of mind, and the motivation that caused him to file his application, citing his current job as the Herkimer County Director of Public Health. He stated that he misses helping patients and performing community service in ways that he is restricted from doing due to the revocation of his license. He also expressed his interest in restoring the pride that came with being a physician.

In reciting his history, he described "killing himself" with work while he practiced in Maine and his desire to work in a less isolated, more collegial setting. His wife's family in New York gave him an opportunity to re-locate, and he moved to New York in 1994, taking the position of Medical Director at Bassett Healthcare in Herkimer. He explained that he fell off of a roof in December 1994, sustaining multiple fractures, yet returned to work in February 1995, using a wheelchair and walker. He also explained that he was later diagnosed with hypothyroidism, and raised the possibility that this condition may have contributed to his errors in patient care.

Dr. O'Keefe reported to the Committee that he decided to leave Bassett Healthcare to work at Little Falls Hospital, where he practiced without incident from March 1998 until the revocation of his license. When questioned about issues relating to his employment at Bassett, he explained that it was a financially failing clinic which was understaffed and inappropriately billed for services performed by physician assistants and nurse practitioners. He told the Committee that he took on more than his share of the work and that no one particularly liked him. He explained that he also disclosed the improper billing practices to the chief executive officer, that life became "less pleasant" after this

disclosure, and that it was at this time that the misconduct charges were first mentioned to him. He reported that Bassett wanted him to work in Oneonta instead of the job he wanted to take at Little Falls Hospital, which he described as a competitor of Bassett, but that he preferred Little Falls, where he could continue to serve some of his patients.

Dr. O'Keefe was asked when he was diagnosed with a thyroid problem, and how this condition could affect his ability to practice competently. He replied that he was diagnosed in 1998, but believed that his roof fall and his subsequent attempts to resume working could have been the triggers to his thyroid failure. He stated that a thyroid problem can affect all metabolic activities, and can be misdiagnosed as fatigue or muscle aches. He reported that his health is much improved since beginning treatment, that he lost 20 pounds, that his blood pressure is good, and that, at the age of 60, he feels better than he did when he was 50.

The COP noted that a review of the record and the letters of support reflect three possible explanations for the findings of defective patient care found by OPMC: a "set-up" by his former employer, the applicant's thyroid condition, and negligence due to overwork. Dr. O'Keefe agreed that all three explanations were possible, but asserted that his attorney at the OPMC proceeding advised against raising the issues of his thyroid condition or a possible "set up." Focusing on patient "A," the COP asked how the applicant viewed the procedures he followed in the 24 to 48 hour period after his initial treatment. Dr. O'Keefe asserted that the procedure he initially followed was safe, and was one that he had done many times before. He admitted however, that his medical habits were formed while practicing in Maine, when he was by himself to a great degree. He now understands that medicine is more of a team process when additional resources are available.

The COP asked about the Medicaid fraud proceedings in Maine, and the applicant explained that an auditor, working in relation to the purchase of a practice, had discovered \$10,000 to \$12,000 in billings for lab tests that were not adequately supported in the record. The applicant reported this discrepancy to the Maine authorities, and volunteered reimbursement. The State of Maine in turn assessed an additional \$5,000 charge.

In terms of his future plans, Dr. O'Keefe expressed his desire to continue as Director of Public Health in order to work on public health issues in Herkimer County, which he described as the second poorest county in the state and as having lots of health needs. He also expressed the desire to augment that position with some private practice to help fill in some of the gaps in care he sees in the county, and noted that, if licensed, he could prescribe medications and provide treatment.

In closing remarks, Dr. O'Keefe's attorney pointed to the number of professionals who vouched for the applicant's reputation as a physician in the Little Falls community, where he served after the incidents which led to his revocation but before his license was actually taken away. Dr. O'Keefe expressed his strong desire to return to patient care.

The overarching concern in all restoration cases is the protection of the public. Education Law §6511 gives the Board of Regents discretionary authority to make the final decision regarding applications for the restoration of a professional license. Section 24.7 of the Rules of the Board of Regents charges the COP with submitting a recommendation to the Board of Regents on restoration applications. Although not mandated by 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 that 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 determination based upon the entire record.

Initially, we note the impressive record that the applicant has made in the health care field since the revocation of his license. The applicant has served, since October 2002, as the County Health Commissioner for Herkimer County, and his testimony before the Peer Committee and the statements in support of the applicant reflect the diligence with which he has performed his duties there. He also provided to us lengthy letters of recommendation from prominent members of the Herkimer County community. The applicant lost his license due to deficiencies in patient care, and we view his service in the public health field as an important part of his rehabilitation. We also take note that during the period from March 1998 until the revocation of his license took effect in October 2001, the applicant worked as a physician at Little Falls Hospital without a problem. Of significance in this regard is the testimony of the medical director of Little Falls Hospital before the Peer Committee, who undertook a review of all of Dr. O'Keefe's cases at that hospital after learning of the charges, and found no evidence of problems.

As to the incidents themselves, while we do not intend to diminish their significance, we note that the Peer Committee in this matter, consisting of three physicians, concluded that the applicant's undiagnosed hypothyroidism was a contributing cause in these matters. There is no evidence on the record to dispute this finding. The applicant is aware of this condition, and his treating physician indicated in his affidavit that he has maintained management of it. Thus, to the extent that his medical condition was a contributing factor in his deficient practice, his treatment of this condition eliminates this factor in our consideration of the risk to the public if the applicant's license is restored.

We also found the applicant's description of his transition from an extremely isolated practice in Maine to a hospital-based practice in Herkimer to be genuine. While in Maine, the applicant was required to practice without the benefit of collaboration with other health professionals, and was required to rely exclusively on his own judgment at times. His experience in Maine may have led to a tendency to eschew collaboration when it was available and needed in a hospital setting. The applicant acknowledged that his desire to prove himself in a hospital setting may have led to overwork and the errors that occurred.

Turning to the applicant's re-education, the record contains extensive documentation of over 1,000 hours of continuing education courses since the revocation of his license. He has diligently pursued his re-education since the loss of his license, and, in addition, his employment as a county health director has given him continual exposure to health care issues, supplementing his medical course work.

Considering his extensive re-education coursework, and the applicant's successful tenure as a county health commissioner, we believe that there is clear and compelling evidence that the applicant is fit to practice medicine again. While he still expresses disagreement with the findings of the OPMC panel, the applicant demonstrated an awareness of the seriousness of the charges, and has diligently pursued all of the steps necessary to make a strong case for the restoration of his license. Looking to the manner

in which he has conducted himself since his loss of license, and the presentation he made to us at our meeting, we do not perceive a risk that his misconduct will recur, or that his licensure will represent a risk to the public. We note that in 2003, after considering the circumstances of the revocation of his license in New York, the Maine State Board of Licensure in Medicine granted Dr. O'Keefe's appeal from its preliminary decision to deny him a license to practice medicine, which preliminary decision was based on the revocation of his New York license. We also note that the Office of Professional Medical Conduct does not oppose Dr. O'Keefe's application.

Based on all of the foregoing, a complete 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 that the revocation of Dr. O'Keefe's license to practice as a physician in New York State be stayed and the applicant be placed on probation for a period of two years under the terms and conditions of probation recommended by the Peer Committee, provided that the period of probation shall be tolled during periods in which the applicant is not engaged in the active practice of medicine in New York State; that the applicant shall notify the Director of OPMC, in writing, if the applicant is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more; that the applicant shall then notify the Director again prior to any change in that status; and that the period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon the applicant's return to practice in New York State.

Leslie Templeman, Chair Steven Earle Joseph Frey



# 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

Gregory O'Keefe, III, M.D.

REPORT OF THE PEER COMMITTEE CAL. NO. 22730

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

Gregory O'Keefe, III, hereinafter known as the applicant, was previously licensed to practice as a physician in the State of New York by the New York State Board of Regents. The applicant's license was revoked as a result of a professional misconduct proceeding, and he has applied for restoration of his license.

On June 12, 2006, this Peer Committee convened to review this matter and makes the following recommendation to the Committee on the Professions and the Board of Regents.

# **BACKGROUND INFORMATION**

The written application, supporting papers provided by the applicant, records from the New York State Department of Health, Office of Professional Medical Conduct, concerning applicant's prior disciplinary actions, and a position letter presented by the Office of Professional Medical Conduct, have been compiled by the prosecutor from the Office of Professional Discipline (OPD)

into a packet that has been distributed to this Peer Committee in advance of its meeting and also provided to the applicant.

Listed below is the background information from that packet and the information contained in the applicant's submissions on the day of the meeting. Further details pertaining to these documents may be found therein.

# PRIOR DISCIPLINE PROCEEDING

# Action by State Board for Professional Medical Conduct

## BPMC 98-162, Consent Agreement & Order

On or about July 29, 1998, applicant entered into an agreement with OPMC, wherein the applicant agreed to a penalty of a censure and reprimand with respect to a charge against him for professional misconduct under New York State Education Law §6530(9)(d), for having had disciplinary action taken against him by a fully authorized disciplinary agency of another state.

Applicant entered into a consent agreement with the Board of Licensure in Medicine in Maine, where he accepted a reprimand, and agreed to pay a fine and penalty for submitting claim forms to Medicaid for services which were never performed, in the amount of \$5,258.09.

## Case No. BPMC 00-326

On November 16, 1999, applicant was charged by the Office of Professional Medical Conduct (OPMC) with six specifications of misconduct.

On November 20, 2000, an order by the Office of Professional Medical Conduct, New York State Health Department, was issued, revoking the applicant's license to practice medicine, upon receipt or seven days after mailing by certified mail of the order, whichever was earlier.

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# Hearing and Order, BPMC 00-326

The OPMC Hearing Committee held hearings on January 12, 2000, March 12, 2000, March 28, 2000, April 10, 2000, and April 11, 2000, concerning charges against the applicant for violations of New York State Education Law §6530(3), 6530(4), 6530(5), and 6530(6). The OPMC Hearing Committee determined that the applicant was guilty of the first, second, third, fourth, fifth, and sixth specifications of misconduct contained within the Statement of Charges, as follows:

First and Second Specifications: Practicing the profession of medicine with gross negligence for, with respect to patient "A", at a time when the applicant was "A's" primary care attending physician, failing to order an immediate x-ray after applicant was aware that he had hit the patient's lung while performing a trigger point injection, and then, upon getting confirmation that "A" had a pneumothorax, failing to transport "A" to the hospital given "A's" frail condition.

<u>Third and Fourth Specifications</u>: Practicing the profession of medicine with gross incompetence with respect to the same two actions as alleged in the first and second specifications.

<u>Fifth and Sixth Specifications</u>: Practicing the profession of medicine with negligence (fifth specification) and with incompetence (sixth specification) as follows:

A. With respect to patient "A", in addition to those acts for which applicant was found grossly negligent, applicant was also found to have acted negligently and incompetently by failing to make timely and appropriate adjustments to "A's" anti-coagulation therapy despite testing that showed "A's" INR was within the sub-therapeutic range; in failing to make timely adjustments to "A's" medication in order to achieve a therapeutic dose despite digoxin testing which showed that

- "A's" digoxin levels were sub-therapeutic; by incorrectly interpreting "A's" elevated TSH test (thyroid stimulating hormone); and by failing to order timely thyroid replacement therapy for "A's" hypothyroidism following positive tests;
- B. With respect to patient "B", whose medical problems included COPD (chronic obstructive pulmonary disease), Type II non-insulin dependent diabetes, chronic renal insufficiency, atrial fibrillation, inoperable coronary artery disease, and recurrent angina, applicant was both negligent and incompetent in putting "B" on Rezulin, which was a new drug at the time in 1997, rather than getting an endocrinology consult. Applicant was further negligent and incompetent in prescribing Carvedilol to "B" when "B" had broncho-spastic pulmonary disease, and for failing to timely obtain a cardiology consult;
- C. With respect to patient "C", who had been diagnosed with rheumatoid arthritis, COPD, primary pulmonary hypertension, status post pulmonary emboli, and pulmonary fibrosis, applicant was found to have acted negligently and incompetently by prescribing Carvedilol to "C", and for failing to obtain a cardiology consult prior to ordering the use of Carvedilol;
- D. With respect to patient "D", a patient with Type II adult-onset diabetes, severe diabetic retinopathy, and circulatory complications, applicant was negligent and incompetent for failing to properly monitor and obtain timely laboratory tests of "D" after starting "D" on Monopril, despite indications of underlying renal insufficiency, and for not addressing "D's" hyperkalemia in a timely and appropriate manner;
- E. With respect to patient "E", applicant was found to have acted negligently and

incompetently in interpreting "E's" test for Human Parvovirus, reading it as positive when it was negative, and then ordering the administration of immunoglobulin injections to treat the misdiagnosed Human Parvovirus,

- F. With respect to patient "F", a patient with hypothyroidism, obesity, and borderline hypertension, applicant was found to have acted negligently and incompetently for incorrectly interpreting "F's" cosyntropin stimulation test, for inappropriately prescribing cortisone 25, and for incorrectly interpretating "F's" ferritin blood test, with subsequent inappropriate prescription of ferrous sulfate;
- G., H., I.: Applicant was found to have acted negligently and incompetently with respect to patient's "G", "H", and "I", for incorrectly interpreting each patient's cosyntropin stimulation test, and for inappropriately prescribing an order of cortisone acetate, 25 mix. In each case, the test was within normal limits, but applicant had diagnosed the patient with Addison's disease.

Based on the above findings, respondent's license was revoked by an order dated November 20, 2000.

# PETITION FOR RESTORATION

On February 25, 2005, the applicant executed the New York State Education Department's standard form for applying for restoration of licensure. The application contained information and attachments as referred to below:

## Personal Statement

The applicant submitted a personal statement which expressed his remorse for the acts that

led to his revocation. He also expounded on his extensive efforts to rehabilitate himself through education and work as Public Health Director for Herkimer County, where he has been employed from 2002 to the present time. Applicant also explained how he was diagnosed with hypothyroidism in 1998, following the acts that led to his revocation which occurred between 1995 and 1997. He stated that it was his belief that his hypothyroidism had been affecting him for years prior to its diagnosis, and had detrimentally affected his treatment of patients and had led to his 1994 near-fatal fall off of a roof, which caused him to suffer extensive fractures. His early return to work following those injuries also affected his treatment of patients.

Applicant reiterated in his statement that his hypothyroidism is currently well treated and monitored. He presently thinks clearly and has substantially recovered from the injuries sustained in the 1994 accident.

#### **Continuing Education**

The applicant provided documentation that he had completed an extensive amount of continuing medical education courses, following his revocation. He completed a total of: 119.5 Category I CME units in 2001; 476.25 Category I CME units in 2002; 243.55 Category I CME units and 349.5 Category II CME units in 2003; 213.5 Category I CME units and 287.5 Category II CME units in 2004; and 185.5 Category I CME units and 179 Category II CME units in 2005.

### Rehabilitation Activities

In addition to his CME courses and work as Director of Public Health for Herkimer County, applicant also indicated that he performed several community or public service activities following his revocation. He has been involved with the following organizations: Central New York AHEC, the American Red Cross, World War II Veterans, Citizens for Justice, Herkimer Rural Health Network, the Commission for a Healthy Central New York, and the Mohawk Valley Nursing Home

#### Foundation.

## Submissions of Affidavits

Respondent submitted nineteen affidavits from individuals, all of whom highly recommended that applicant's license to practice medicine be restored. Various affidavits attested to applicant's medical skills, his value to the community, and rehabilitative efforts. The supporting affidavits were submitted by the following:

- Dr. Dale Adamson, applicant's treating physician, who was familiar with, among other things, applicant's present good health and excellent management of his hypothyroid condition;
- Mr. George Aney, an attorney familiar with applicant through applicant's volunteer work;
- Mr. David Armstrong, a nursing home administrator and CEO of Little Falls Hospital and Residential Health Care Facility, who was familiar with applicant's work at those facilities;
- Dr. Deepak Buch, a physician who was familiar with applicant by working with him at Little Falls Hospital;
- Mr. Marc W. Butler, a New York State assemblyman from the 117<sup>th</sup> District, who became familiar with applicant following his revocation;
- Mr. George Clive, a former CEO of Valley Health Services, who was familiar with applicant as an attending physician at that establishment;
- Ms. Virginia Clive, a registered nurse and RN supervisor at Valley Health Services, who worked with applicant at that medical facility;
- 8. Dr. Camille Dillard, a physician who was familiar with applicant through working with

- him at Little Falls Hospital and its primary care centers;
- 9. Ms. Patricia Failing, Director of Nursing at Little Falls Hospital, who worked with the applicant at Little Falls Hospital as well as on community service programs;
- 10. Dr. Brian Gaffney, a cardiologist who worked with applicant at Little Falls Hospital;
- 11. Dr. Douglas Haas, a family physician who worked with applicant at Little Falls Hospital;
- 12. Mr. Leonard Hendrix, Chairman of the Herkimer County Legislature, who worked with applicant in his position as Director of Public Health for Herkimer County;
- 13. Ms. Sharon Nagle, the Head Nurse at Little Falls Hospital, who worked with applicant in his position as Director of Public Health for Herkimer County;
- 14. Dr. Julie Perlanski, Medical Director of Little Falls Hospital Primary Care Clinics, who worked with applicant when he treated patients at that facility;
- 15. Dr. Rita Ratcliffe, Medical Director of Little Falls Hospital, who was familiar with applicant from when he worked at that hospital;
- 16. Senator James Seward, a state senator for the 51<sup>st</sup> District, who worked with the applicant in applicant's position as Medical Director of Herkimer County and other community events;
- 17. Mr. Scott Todd, a retired state trooper and investigator, who knew applicant because he was his own personal physician. [Mr. Todd criticized the OPMC hearing process, criticized the underlying decision which revoked applicant's license. Mr. Todd chaired a "Committee for Justice" that worked for an OPMC reform bill];
- 18. Mr. James Wallace, a former county administrator, who knew the applicant through applicant's work as Herkimer County Director of Public Health; and
- 19. Mr. Theodore Wind, Mayor of the city of Little Falls, who worked with applicant in his

position as Director of Public Health for Herkimer County.

#### Department Exhibits

In addition to presenting the Determination and Order and the Statement of Charges which resulted in applicant's license revocation, respondent also produced a letter from Dennis J.

Graziano, Director of the Office of Professional Medical Conduct, dated May 18, 2006, which set forth the Department of Health's position towards applicant's request for restoration of his medical license. The Department of Health did not oppose the restoration of applicant's medical license, but did recommend a period of monitoring if his license was to be restored.

# PEER COMMITTEE MEETING

On June 12, 2006, this Peer Committee met to consider this matter. The applicant appeared before us personally and was represented by Bart M. Carrig, Esq. of Blumberg & Carrig. Also present was Carl Worboys, Esq., an attorney from the Division of Prosecutions, OPD. Kathleen L. Werther, Esq. was the judicial hearing officer.

The applicant presented seven witnesses on his behalf, all of whom had written supporting affidavits. All of the witnesses were familiar with the underlying charges against the applicant and all highly recommended that he be allowed to return to the practice of medicine. They testified to his good character and competency as a practitioner. Witnesses who testified on applicant's behalf were: Dr. Brian Gaffney, Dr. Julie Perlanski, Dr. Douglas Hass, Dr. James Wallace, Ms. Virginia Clive, Dr. Camille Dillard, and Dr. Rita Ratcliffe. Of particular interest to this panel was the testimony from Dr. Ratcliffe, who, as Medical Director of Little Falls Hospital, had worked with applicant extensively from 1999 to 2001. Dr. Ratcliffe testified that after she learned of the revocation of applicant's license in November of 2000, she had all of applicant's cases at Little

Falls Hospital reviewed by specialists, in addition to the quality review that had already been done according to the hospital's ongoing system. No problems or complaints regarding applicant's care of patients surfaced.

The applicant also testified on his own behalf. Applicant testified that he was a graduate of Princeton University, and then attended Dartmouth Medical School and Johns Hopkins. He did a three year residency at Dartmouth Hitchcock Medical Center in Internal Medicine, and then went to practice in Maine, where he became board certified in Internal Medicine. He practiced from 1975 until 1994 on an isolated island community which was only accessible by boat and air. After determining to return to New York State to be near his wife's family, applicant waited five years to locate a replacement before leaving the island.

In June of 1994, applicant became employed at Bassett Health Care, Herkimer, New York, after being licensed to practice in New York State in 1994. Applicant testified that his desire to jump right in to being a hospital physician, after the solo practice he had had in Maine, manifested itself in an urge to succeed which was both naïve and immature at the time. He was able to control that urge during the time he worked at Little Falls Hospital from 1998 to 2001. Applicant also testified about the forty foot fall off the roof of his home in December of 1994 where he shattered his pelvis, left ribs, both tibia plateaus, and his left elbow. He returned to work at Bassett Health Care in February 1995, with the aid of a walker and chair. He believes in retrospect that that was a mistake, because he really did have less capacity, although he did not want to admit it at the time.

When applicant was in the process of leaving Bassett Health Care in 1998, he had a physical and numerous tests done, and a thyroid test showed a TSH of over sixteen, indicating hypothyroidism. He had indeed been feeling tired since approximately 1990, and at times felt that he was in a "fog". He was placed on thyroid medication, which he still takes regularly, and has

noticed a great difference in his mental acuity. All of the cases for which applicant faced charges of negligence, gross negligence, and incompetence, occurred between 1995 and 1997, prior to the time that applicant was on hypothyroid medication.

From March 1998 until October 2001, before applicant's license was revoked, applicant worked at Little Falls Hospital in Little Falls, New York, both as Medical Director, and in Internal Medicine. Though applicant's cases were the subject of quality reviews, no problems were ever noted with any of applicant's cases. After his license was revoked, applicant spent about one year simply dedicating himself to taking continuing medical education (CME) courses. He was then offered the position as Herkimer County Director of Public Health, a position which he accepted in October 2002, and still holds at the present time.

The applicant generally expressed his sincere remorse for the acts that led to his revocation, and expressed a genuine desire to be able to return to the practice of medicine. He has taken extensive CME courses to keep himself prepared to practice medicine, and believes that his position as Director of Public Health has also been extremely helpful to him. He believes that he could perform his duty as Director of Public Health even more efficiently if he were again licensed to practice medicine, because he has not been able to perform all of the duties that a public health director should do, without a medical license. He indicated that if he were granted a return of his license, he would plan to resume the practice of medicine on a part-time basis, and seek peer review in order to ease back into the profession.

Applicant's attorney waived a closing statement. Mr. Worboys, in his closing, recommended that the panel consider the suggestion made by the Office of Professional Medical Conduct.

### RECOMMENDATION

We have reviewed the entire record in this matter, including the written materials received during our hearing. In arriving at our recommendation, we note that, in a licensure restoration proceeding, the burden is on the applicant to demonstrate that which would compel the return of the license. Greenberg v. Board of Regents of the University of New York, 176 A.D.2d 1168. In reaching our recommendation, we consider whether the applicant demonstrates sufficient remorse, rehabilitation, and reeducation. However, we also consider other factors, including the seriousness of the original offense, and, ultimately, our judgment as to whether the health and safety of the public would be in jeopardy should the application be granted.

We believe that the applicant has sincerely expressed his remorse and regret for the actions that led to his revocation. We do believe, from the extensive testimony and submittals in this case, that applicant's undiagnosed hypothyroidism was a contributing cause to applicant's actions that resulted in his revocation. Since being on hypothyroid medication, the applicant practiced medicine without incident, in what was described by colleagues as an exemplary manner, for the next three years before his license was revoked, while working at Little Falls Hospital. Applicant's treating physician, Dr. Adamson, attested to the fact that applicant has worked extensively to rehabilitate his medical problems and that he has maintained management of his hypertension and hypothyroidism so as to be competent to resume his profession.

Applicant has also taken great strides to continue to educate himself. He has taken over a thousand hours of CME courses. Furthermore, he has continued to broaden his horizons and to support his community by serving it as Herkimer County Director of Public Health.

Based on our unanimous conclusion that applicant has successfully met his burden of demonstrating sufficient remorse, rehabilitation and re-education, we highly recommend that execution

of the revocation of the applicant's license to practice as a physician in the state of New York be stayed, and that the applicant then be placed on probation for a period of two years under the terms and conditions of probation annexed hereto made a part hereof and marked as Exhibit "A", which includes a provision that a minimum of ten percent of his cases are subject to quality assurance internal reviews. Upon successful completion of the probation, the applicant's license would be fully restored. We also highly recommend to applicant that he continue his present regime to control his hypothyroidism.

Respectfully submitted,

Philip Holtzapple, MD, Chair Margaret Colgan, MD

Rebert Corona/MD

, Redacted Signature

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#### EXHIBIT "A"

#### HEARING PANEL

#### TERMS OF PROBATION

#### GREGORY O'KEEFE, III

#### CALENDAR NO. 22730

- 1. That applicant, during the period of probation, shall be in compliance with the standards of conduct prescribed by the law governing respondent's profession;
- 2. That applicant shall submit written notification to the Director, Office of Professional Medical Conduct (OPMC), 433 River Street-Suite 303, Troy, NY 12180-2299, of any employment and/or practice, applicant's residence, telephone number, and mailing address and of any change in applicant's employment, practice, residence, telephone number, and mailing address within or without the State of New York;
- 3. That applicant shall submit written proof from the Division of Professional Licensing Services (DPLS), New York State Education Department (NYSED), that applicant has paid all registration fees due and owing to the NYSED and 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 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 applicant shall submit written proof to the DOH, addressed to the Director, OPMC, as aforesaid, that 1) applicant is currently registered with the NYSED, unless applicant submits written proof that applicant has advised DPLS, NYSED, that applicant is not engaging in the practice of applicant's profession in the State of New York and does not desire to register, and that 2) applicant has paid any fines which may have previously been imposed upon applicant by the Board of Regents or pursuant to §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 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 applicant's terms of probation to assure compliance therewith, and applicant shall cooperate with said employee, including the submission of information requested by said employee, regarding the aforesaid monitoring;
- That, during the period of probation, applicant shall have applicant's practice monitored, at applicant's expense, as follows:
  - a. That said monitoring shall be by a physician selected by applicant and previously approved, in writing, by the Director of the Office of Professional

Medical Conduct;

b. That applicant shall be subject to random selections and reviews by said monitor of approximately ten percent of applicant's patient records, office records, and hospital charts in regard to applicant's practice, and applicant shall also be required to make such records available to said monitor at any time requested by said monitor; and

c. That said monitor shall submit a report, once every four months, regarding the above-mentioned monitoring of applicant's practice to the Director of the Office

of Professional Medical Conduct;

7. If the Director of the Office of Professional Medical Conduct determines that applicant may have violated probation, the Department of Health may initiate a violation of probation proceeding and/or such other proceedings pursuant to the Public Health Law, Education Law, and/or Rules of the Board of Regents.