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

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Public

May 30, 2007

Olga Benitez, Physician

REDACTED

Re: Application for Restoration

Dear Dr. Benitez:

Enclosed please find the Commissioner's Order regarding Case No. CP-07-02 which is in reference to Calendar No. 21762. 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

Ariana Miller
Supervisor

DJK/AM/bt

cc: Michael Schoppmann, Esq.
Kern, Augustine, Conroy & Schoppmann, P.C.
420 Lakeville Road
Lake Success, New York 11042



The
University of the
Education  State of New York
Department

IN THE MATTER

of the

Application of OLGA BENITEZ for
restoration of her license to practice
as a physician in the State of New
York.

Case No. CP-07-02

It appearing that the license of OLGA BENITEZ, REDACTED
to practice as a physician in the State of New York, was revoked by the
Administrative Review Board for Professional Medical Conduct, effective July 27, 1999, and she
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 March 20, 2007, it is hereby

ORDERED that the petition for restoration of License No. 151109, authorizing OLGA
BENITEZ to practice as a physician in the State of New York, is denied, but that the execution
of the revocation order is stayed, and said OLGA BENITEZ is placed on probation for a period
of two years under specified terms and conditions, and upon successful completion of the
probationary period, her 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 16th
day of May, 2007. n

REDACTED
Commissioner of Education

Case No. CP-07-02

It appearing that the license of OLGA BENITEZ, REDACTED, to practice as a physician in the State of New York, was revoked by the Administrative Review Board for Professional Medical Conduct, effective July 27, 1999, and she having petitioned the Board of Regents for restoration of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 March 20, 2007, it was

VOTED that the petition for restoration of License No. 151109, authorizing OLGA BENITEZ to practice as a physician in the State of New York, is denied, but that the execution of the revocation order is stayed, and said OLGA BENITEZ is placed on probation for a period of two years under specified terms and conditions, and upon successful completion of the probationary period, her 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: **Olga Benitez**

Attorney: Michael Schobmann, Esq.

Olga Benitez, REDACTED, i, petitioned for restoration of her physician license. The chronology of events is as follows:

- 08/06/82 Issued license number 151109 to practice medicine in New York State.
- 10/--/98 Charged with professional misconduct by Department of Health
- 01/19/99 Determination and Order No. 99-6 by Department of Health suspended license to practice medicine for four years, last three years nine months stayed, and ordered probation, a fine, and one hundred fifty hours of community service.
- 07/27/99 Administrative Review Board (ARB) affirmed determination on charges, but overturned penalty and revoked license to practice medicine.
- 03/20/00 Provisional Order of Discipline by New Jersey State Board of Medical Examiners, revoked license to practice in New Jersey.
- 09/13/00 Final Order of Discipline, New Jersey State Board of Medical Examiners, voted three years suspension, execution stayed, probation for three years.
- 09/29/03 Application for restoration submitted.
- 08/04/05 Peer Committee Restoration Review.
- 04/20/06 Report and recommendation of Peer Committee.
- 06/27/06 Committee on the Professions Restoration Review.
- 02/27/06 Report and recommendation of Committee on the Professions.

Disciplinary History. (see attached disciplinary documents.) In 1999, the Department of Health charged Dr. Benitez with 33 specifications of misconduct. The Hearing Committee found that she had failed to maintain accurate records and that she had practiced negligently on more than one occasion in treating six patients, because she had failed to obtain and note adequate histories and had failed to perform and note adequate physical examinations. The Committee found further negligence in her failure to provide follow-up treatment to one patient for a heart murmur, to another patient for a breast nodule, to a third patient for tenderness in the abdomen, and to a fourth patient for cystitis. The Committee also found that she had practiced fraudulently and had filed false reports by billing for test interpretations that she had never performed. The Committee found further fraud and false report filings because Dr. Benitez engaged in "unbundling"¹ in billing for tests for three patients. The Committee also sustained charges that Dr. Benitez had ordered certain tests inappropriately for three patients. The Committee further concluded that Dr. Benitez had engaged in conduct evidencing moral unfitness by engaging in excessive billing, falsifying insurance records, and failing to provide follow-up for five different patients.

On January 19, 1999, the New York State Department of Health State Board for Professional Medical Conduct, in Determination and Order No. 99-6, voted unanimously to suspend applicant's license to practice medicine in the State of New York, with the last three years and nine months being stayed, with probation. She was also ordered to pay a \$10,000 fine and to do 150 hours of community service. On July 27, 1999, the Administrative Review Board (ARB), although affirming the Hearing Committee's determination and sustaining the charges against the applicant, voted unanimously to overturn the penalty, and to revoke Dr. Benitez' license to practice medicine in the State of New York. The ARB concluded that there were sufficient grounds to revoke Dr. Benitez' license based on her deficient care for the patients at issue in the proceeding, as well as her fraudulent conduct.

Dr. Benitez was licensed to practice medicine in the State of New Jersey on June 1, 1985. When Dr. Benitez' New York license was revoked, New Jersey started its own inquiry, and her license was provisionally revoked effective March 20, 2000. However, following Dr. Benitez' application for modification or dismissal of the charges against her in New Jersey, on September 13, 2000 the New Jersey Board of Medical Examiners modified the provisional revocation. Dr. Benitez was given a three-year stayed suspension, and was required to take coursework in the management of a medical practice and to pay a fine.

On September 29, 2003, Dr. Benitez submitted an application for restoration of her New York license.

Recommendation of the Peer Committee. (See attached Report of the Peer Committee.) The Peer Committee (Norris, Gujavarty, Kase) convened on August 4, 2005. In its report dated April 20, 2006, the Committee voted unanimously to recommend that Dr. Benitez' application for restoration be granted to the extent that the revocation of her license be stayed and that she be placed on probation for a period of

¹ Unbundling occurs when a physician conducts one test, but bills separately for separate parts of the test.

two years under specified terms and conditions, which included a requirement that she only practice medicine as a salaried physician under supervision in an Article 28 facility with quarterly reviews.

Recommendation of the Committee on the Professions. On June 27, 2006, the Committee on the Professions (Muñoz, Frey, Templeman) met with Dr. Benitez to consider her application for restoration. Her attorney Michael Schoppmann accompanied her.

The Committee asked Dr. Benitez to explain the events that brought her to her present situation of having to seek restoration of her license. She explained that the problems that led to the revocation of her license, which had occurred between 1990 and 1992, took place during a time in her life which was very difficult. She reported that from 1989 until June of 1990 she was taking infertility drugs, which had pervasive side effects including nausea, fatigue, drowsiness, and anxiety. She told the Committee that after she became pregnant in June of 1990, her husband became hostile towards her, demanded that she get an abortion, and began a campaign of verbal and physical abuse towards her, and that the physical assaults from her ex-husband became so severe that in August of 1990 she had to petition a court for an Order of Protection. The record confirms that a Temporary Order of Protection was granted at that time for a period of two months. Dr. Benitez also reported that she suffered severe complications during her pregnancy, which included hypertension, anemia, and excessive weight gain. She told the Committee that after her twins were born in September of 1991, she secured another Temporary Order of Protection against her ex-husband after he threatened to kill her, and that her ex-husband also harassed her by contacting the Department of Health and OSHA to lodge accusations, most of which were found to be unsubstantiated. She related that during divorce proceedings, her ex-husband petitioned for custody of the children and fought her regarding access and rights to the building where both of them conducted their professional practices. She indicated that her preoccupation with these problems in her life made it difficult for her to concentrate and to provide quality care to her patients.

Dr. Benitez told the Committee that she recognizes that the mistakes that she made were serious and that she takes full responsibility for them. She stated her hope that the Committee would understand that the mistakes did occur during a difficult time in her life. She admitted that she had not, during the 1990 to 1992 time period, adequately documented the history she had taken from patients and information concerning the extent of her physical examinations. She admitted that her billing practice knowledge at that time was not comprehensive. She also indicated that she had relied on information provided by a colleague about the billing process that had not been correct and that she had delegated to others duties and responsibilities for which she now acknowledges she was responsible. However, although she was guilty of improper billing, she denied that it was done with any malice or an attempt to defraud insurance providers.

When asked why her license should be restored to her, Dr. Benitez stated that she is extremely sorry about what happened in her past medical practice, and that since 1995 when she moved her practice to a new location, away from her ex-husband, she has gained control of her life and has distanced herself from the chaos and turmoil she

had experienced in the early 1990's. She has since dedicated her life to volunteering her time, financial resources, and services to serve communities who have little or no access to medical care. She started a free medical clinic at West New York, New Jersey called "La Hermosa Family Care Center", which provides services to uninsured poor and homeless people. She provides services at La Hermosa for free. She also provides medical care at the Union City Family Planning Center in Union City, New Jersey, and at Hoboken Family Planning in Hoboken, New Jersey. In addition, she has been involved with World Missions, a not-for-profit organization, acting as Director from 1996 through 1999, and has organized and participated in missionary trips to Africa. She has raised funds and bought vaccines and supplies for a clinic in Ghana and has opened a school there through her church. She has been able to continue her medical practice because the State of New Jersey allowed her to retain her medical license, despite the fact that New York had revoked her license.

In addition to her efforts to serve communities in New Jersey, Dr. Benitez testified that she has taken corrective measures to correct the shortcomings that led to the loss of her license. She has taken several dozen continuing medical education courses regarding accurate record keeping. She attended a rigorous seminar at Case Western Reserve University in June, 2001, and participated in a seminar offered by the Florida Medical Association entitled "Quality Medical Record Keeping for Healthcare Professionals", in March, 2001. In the latter course, the Florida Medical Association provided her with an on-site critique of her medical records, during which she received an assessment of the strengths and weaknesses of her office record keeping system and practices. She also took the "Physician's Guide to Practice Management", offered by the Medical College of Georgia, from May through August, 2001. The course stressed that the medical record is one of the most important tools she obtains as a physician. She has incorporated the guidelines that she has learned from these courses into her office methodology, to the benefit of her patients and practice at the present time.

In addition to courses on record keeping, she has taken extensive courses on proper billing procedures. The seminar entitled "Intensive Course in Medical Record Keeping" specifically dealt with CPT coding, as well as HCFA guidelines. In addition, Barbara Cobuzzi, an expert in the field of coding and billing, has provided her with specific literature and instruction to completely overhaul her billing practices.

When asked about her work prior to 1991, Dr. Benitez indicated that she had worked in a hospital from 1981 to 1991, and had had no problems. Her record keeping was only a problem during the time of turmoil she described. She also has been working now in New Jersey for over five years without any additional charges of misconduct.

Dr. Benitez stated that she believes that her patients deserve the best she has to offer. Providing the best medical care possible is a passion for her, as well as a recognized privilege. She is thankful that she has been allowed to practice medicine in the State of New Jersey, and hopes that her license will be restored in the State of New York, so that she can also serve the people of this state. She had always wanted to be a doctor since she was a young girl and wants to be an inspiration to her children. It

would be her plan to continue to offer pro-bono medical services as a significant part of her practice.

The overarching concern in all restoration cases is the protection of the public. New York 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 a 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.

The COP agrees with the findings and recommendations of the Peer Committee. Dr. Benitez has presented a compelling case that she understands the nature, causes, and effect of her misconduct, and that she feels great remorse concerning the actions that led to the revocation of her license. Dr. Benitez has demonstrated a true passion for her medical career, appeared genuine in her regret about her previous acts, and was adamant about her desire to provide the best medical care possible in the future.

The COP was also impressed with the efforts that Dr. Benitez has made to reeducate herself in specific areas where she had been deficient. She has participated in many hours of CME course work and it is clear that she has spent a great deal of time addressing the causes of her misconduct. The COP is satisfied that it is highly unlikely that the misconduct would recur. Dr. Benitez has practiced in New Jersey for over five years without incident. In addition, she has been greatly involved in community and public service, and we believe, that if given an opportunity, she would continue those same services in the State of New York. We note that her petition was strongly supported by thirteen affidavits, and that the Office of Professional Medical Conduct does not oppose the restoration of her license.

Based on all of the foregoing, a complete review of the record, and its meeting with her, the Committee on the Professions voted unanimously to recommend that order of revocation of Dr. Benitez' license to practice as a physician in New York State be stayed for a period of two years, that she be placed on probation for a period of two years under specified terms attached to the Report of the Peer Committee and labeled as Exhibit A, and that upon satisfactory completion of the probationary period, her license be fully restored.

Frank Muñoz
Joseph Frey
Leslie Templeman



The University of the State of New York

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

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In the Matter of the Application of

OLGA BENITEZ, M.D.

**REPORT OF
THE PEER
COMMITTEE
CAL. NO. 21762**

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

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OLGA BENITEZ, hereinafter referred to as the applicant, was previously licensed to practice as a physician in the State of New York by the New York State Education Department. The applicant's license was revoked as a result of a professional misconduct proceeding, and she has applied for restoration of this license.

On August 4, 2005, this Peer Committee convened to review this matter and make the following recommendation to the Committee on the Professions and the Board of Regents.

BACKGROUND INFORMATION

The written application, supporting papers provided by the applicant, and papers resulting from the investigation conducted by the Office of Professional Discipline (OPD) have been compiled

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

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

PRIOR DISCIPLINE PROCEEDING

Action by the New York State Department of Health

Case No. BPMC 99-6

January 19, 1999- The New York State Department of Health State Board for Professional Medical Conduct, Determination and Order #99-6, voted unanimously to suspend the applicant's license to practice medicine in the State of New York.

July 27, 1999- The Administrative Review Board (ARB) affirmed the Hearing Committee's Determination sustaining the charges against the applicant, but voted unanimously to overturn the penalty and, revoked the applicant's license to practice medicine in the State of New York.

Specifications of Misconduct

The applicant was found guilty of One Specification of professional misconduct as defined by New York Education Law

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§6530(3), by practicing medicine with negligence on more than one occasion.

The applicant was found guilty of Six Specifications of professional misconduct as defined by New York State Education Law §6530(2) by practicing the profession of medicine fraudulently.

The applicant was found guilty of Six Specifications of professional misconduct as defined by New York Education Law §6530(21) by willfully making or filing a false report.

The applicant was found guilty of Three Specifications of professional misconduct as defined by New York Education Law §6530(35) by ordering excessive or unnecessary tests or treatments.

The applicant was found guilty of Six Specifications of professional misconduct as defined by New York Education Law §6530(32) by failing to maintain accurate patient records.

The applicant was found guilty of One Specifications of professional misconduct as defined by New York Education Law §6530(20) by engaging in conduct in the practice of the profession of medicine that evidences moral unfitness.

Nature of the Misconduct

The Committee determined that the applicant failed to maintain accurate records for all Patients. The Committee also

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found that the applicant practiced negligently on more than one occasion in treating six Patients, because the applicant failed to obtain and note adequate histories and to perform and note adequate physical examinations. The committee found further negligence in the failure to provide follow-up treatment to Patient A for a heart murmur, to Patient B for a breast nodule, to Patient D for tenderness in the abdomen and to Patient F for cystitis. The Committee found that the applicant practiced fraudulently and filed false reports by billing for test interpretations the applicant never performed. The Committee found further fraud and false report filings because the applicant engaged in "unbundling" in billing for tests for Patients B, D, and F. Unbundling occurs when a physician conducts one test, but bills separately for separate parts of the test. The Committee also sustained charges that the applicant ordered certain tests inappropriately for Patients B, E and F. The Committee concluded that the applicant engaged in conduct evidencing moral unfitness, by engaging in excessive billing, falsifying insurance records and failing to provide follow-up treatments for Patients A, B, D and F.

APPLICATION FOR RESTORATION

On September 29, 2003, the applicant executed the New York

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State Education Department's standard form for applying for restoration of licensure. The application contained information and attachments as referred to below:

ATTACHMENTS TO THE PETITION

- Personal statement of the applicant, in which she outlines both her personal and professional history. The applicant describes the corrective measures she has taken in her current practice in New Jersey, specifically in the areas she was found to be deficient. In addition, the applicant speaks of the charitable service she both participates in and provides. The applicant expresses her sincere desire to prove herself worthy of faith and trust and to prepare herself both professionally and personally for the restoration of her license in New York.
- Thirteen affidavits, nine of which were from professional colleagues, three from professional clergy and one from a community professional.
- Documentation that she had participated in over three-dozen different CME courses. Credits for this CME total over 260 credit hours.

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- Professional rehabilitative activities in the areas of; Medical Records Maintenance, Billing Procedures, Charting and Practice Management.
- Final Order of Discipline by the State of New Jersey Board of Medical Examiners dated October 11, 2000, stating that; effective September 13, 2000, applicant's license to practice medicine and surgery in the State of New Jersey was suspended for a period of three years, the entirety of which is stayed and shall be served as a period of probation.

INVESTIGATION BY OPD

Subsequent to the filing of the Petition, OPD conducted an investigation for the purposes of this proceeding. Information from that investigation, including reports from the investigators and other documentation, was made part of the packet for the proceeding. Certain information from the packet has been summarized above. Among the information not summarized is a report from the investigator dated April 19, 2004.

This report summarizes an in-person interview conducted with the applicant, who was represented by counsel.

The report begins with an outline of the applicant's disciplinary history as filed in her application for restoration.

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The applicant maintains a current license to practice medicine in New Jersey and has a solo family practice in Union City, New Jersey. The applicant stated that she works between 30 and 35 hours a week. She accepts private insurance plans, but is banned from the Medicare and Medicaid programs, pending the possible restoration of her New York license.

In addition to her family practice, the applicant is the Medical Director at the Jersey City Medical Center. This is a church-based program practice that is open every Thursday. This practice offers free health care treatment to low-income clientele.

Since revocation, the applicant, to the best of her knowledge, has not had any complaints filed against her nor have there been any inquiries from insurance companies regarding her billing practices.

The applicant does not have privileges at any hospital but is eager to have her privileges restored. If her New York license is restored, the applicant is confident these privileges will likely be restored.

The applicant has taken several intensive courses in an effort to correct the problems that led to her revocation. Course work has included but is not limited to; patient documentation,

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patient assessment and planning, record keeping and evaluation of a patient with medical surgical breast symptoms.

The applicant said that she had attempted to change her billing procedures before the investigation by the Department of Health. She admitted that she was guilty of improper billing, but denied that it was done with malice afterthought or in an attempt to defraud the insurance providers. The applicant said that she made a mistake in that she had relied on information provided by a colleague regarding the billing process.

The applicant supplied a report from Barbara Cobuzzi of Cash Flow Solutions Inc, who reviewed the charges of "unbundling" that were filed against the applicant and it was Ms. Cobuzzi's opinion that the applicant was not guilty of "unbundling".

The applicant takes full responsibility for the actions that led to the revocation of her license but also mentioned that there were personal problems with her husband (from whom she is now divorced). He was her professional partner at the time and had locked her out of the office on several occasions and subsequent thereto, the applicant noted some patient records were missing.

Thirteen written affidavits were submitted in support of reinstatement of the applicant's license and the following were interviewed to elaborate on their written affidavits:

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Gara M. Sommers, M.D.: is a licensed physician in both New York and New Jersey. She has known the applicant for about two years, both personally and professionally. Dr. Sommers stated that the applicant is an excellent, caring physician and that she has never received any complaints from referrals made to the applicant.

Eliseo Asencio, M.D.: is an internist licensed in both New York and New Jersey. He has known the applicant for over 27 years. The applicant has referred patients to him and she has always followed up with him regarding the care of these patients. Dr. Ascencio is aware of the coursework the applicant is taking to keep current in her profession and to avoid the mistakes made in the past. Dr. Ascencio categorized the applicant as community-oriented and feels she would be an asset to the medical profession, if her license were to be reinstated.

Mary Jane Brewer, M.D.: is the Dean of Students at Brewer Christian College in Jacksonville, Florida. She stated that she has known the applicant for approximately eight years. She has worked in the past at various missions with the applicant and was also a

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witness at the New Jersey State Board of Medicine's Discipline Hearing. Dr. Brewer stated that the applicant did follow up with her patients but failed to document these follow-ups in her records. The doctor also stated that he felt that the problems with the billing and accounting practices of the office were the result of the applicant's brother being in charge of that area.

Gary J. Guarnaccia, M.D.: is a physician licensed in both New York and New Jersey. He has known the applicant for over ten years and has worked with her in the past and looks forward to working again with her, if her license is reinstated. Dr. Guarnaccia believes the applicant has taken extensive coursework to correct the problems that led to her revocation.

PEER COMMITTEE

On August 4, 2005, this Peer Committee met to consider this matter. The applicant appeared before us represented by her attorneys, Michael Schoppmann, Esq. and Rudolph C. Gabriel, Esq. Also present was Jameione Winston-Day, Esq., an attorney for the New York State Education Department.

Mr. Schoppmann began his opening statement with a background of events that occurred during the hearing that led to the

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applicant's license being revoked. Mr. Schoppmann stated that while the applicant was advised that she could take an Article 78 proceeding against the ruling by the ARB, she said absolutely not. The applicant stated that this was her responsibility, it was her career and she should have made certain that she was represented better. Mr. Schoppmann went on to say that he and his client, the applicant, were not here to question what the State of New York did previously in terms of its action.

Mr. Schoppmann would like this committee to look at the record which shows that not only were they granted a hearing with the State of New Jersey but New Jersey granted the applicant an unrestricted license to practice medicine in that state, and this is an endorsement of who she is. Mr. Schoppmann went on to say that the applicant has been practicing medicine in New Jersey since 2000 without blemish, without incident, successfully, without suit and without claim.

Mr. Schoppmann continued by telling the committee that the applicant believes that if there were mistakes made, then it was her responsibility. She believes she has to prove herself to this committee. The applicant believes that the privilege to practice medicine is the highest privilege that can be granted. The applicant has taken many courses during the past years that were

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specifically related to her practice deficiencies. Mr. Schoppmann wanted the committee to note that the applicant should have paid more attention and should have managed her billing practices better. While her actions were structurally incorrect, they were not fraudulent or dishonest.

In closing Mr. Schoppmann said he wanted this committee to come to understand who the applicant is. The State of New Jersey recognized this and gave the applicant a chance and hopefully this committee will do the same. Mr. Schoppmann asked that the committee look at the last five years to see how the applicant has sought to improve herself and remedy problem areas through her CME. The applicant wants to go back to the free clinics where she had worked before and give back to the communities that need her. Mr. Schoppmann said there is no one more deserving of trust and more deserving of the restoration of this privilege than the applicant.

Ms. Winston-Day began her opening statement stating that the purpose of today's proceedings is to assess whether or not the applicant is worthy of the public trust. The committee must determine whether the applicant has sufficed in getting the CME necessary and whether or not the committee believes, after

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reviewing the documents, they warrant the public trust to restore the applicant's license to practice medicine.

Additional documentation of ongoing CME was offered to supplement the previously provided documents. It was noted by Ms. Winston-Day that these documents would be accepted but there were no signed certification from the programs, although it is signed by the applicant that she attended. These documents are marked as applicant's A, B and C.

Mr. Schoppmann began his questioning of the applicant by asking her to explain what measures to change her method of practice she has taken since the revocation of her New York license to practice medicine. The applicant responded that she took action immediately, not only by taking the standard CME courses but by taking comprehensive courses in medical recordkeeping. The applicant explained that the first course she took was with the Florida Medical Association. This course required extensive reading followed by four hours of instruction and then a personal audit where they were given a set of records to implement what they had learned and make the necessary corrections. The second course was at Ohio State Western University. This was a two-day class where they sat with staff and learned all types of recordkeeping techniques. Some of the areas

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that were emphasized were; taking patient information, accuracy, assessment, note taking, tests follow-up, follow-up appointments and giving patients information. The applicant took a third course at the Medical College of Georgia. This course lasted for several months. The applicant stated that she was sent a booklet, which was divided into modules. After each module's lesson, they were given a practice type of review where they make the necessary changes and recommendations. Once this was done, they then sent in the draft to the college and the college would in turn send back a corrected draft showing information missed or incorrect. In addition, there was phone contact where necessary.

The applicant was then asked, over and above the previously mentioned courses, what has she done in CME course work. The applicant stated that she has attended as many CME courses as possible in order to continue to learn. The applicant said that she keeps abreast in all of the new developments in her attempt to learn and contribute as much as possible in her treatment of her patients.

The applicant was then asked about her billing and coding operations. Since this was a concern of the State of New York previously, the applicant was asked whether she has hired anyone or brought someone in to oversee her billing and coding

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operations. The applicant responded that Barbara Cobuzzi, an expert in coding and billing, did a review of all the records from the applicant's past practice. In addition Ms. Cobuzzi gave the applicant information and guidance. The applicant keeps in touch still with Ms. Cobuzzi to consult with her so no more mistakes are made.

Mr. Schoppmann asked the applicant to verify that since she has been granted an unrestricted license to practice medicine in New Jersey, that she has had no complaints to the State Board of Medical Examiners. The applicant responded "no lawsuits, no complaints, absolutely not".

Mr. Schoppmann then asked about the applicant's desire to come back to work in New York and whether she had any employment offers to do so. The applicant responded that she would love to come back because not only does she have roots in New York but she also feels that she has left her church community. Additionally Dr. Gary Guarnaccia has offered the applicant employment. Dr. Guarnaccia is the head of OB-GYN at the Parkway Hospital. He has offered the applicant a full-time position in his office doing family practice for his patients.

The applicant was then asked about her acceptance of responsibility for the circumstances that led to the revocation of

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her license in New York. The applicant stated that mistakes are costly and when you make a mistake then you have to correct it and make restitution. She said she feels that she has been successful in doing this through her acknowledgment of her mistakes and the reeducation she has completed. The applicant went on to say that there are no words that can tell the committee how bad she feels for the pain she has caused her family, her patients, herself and the community. The applicant would like the opportunity to prove herself worthy of the privilege to practice medicine again in New York.

Mr. Schoppmann asked the applicant if she felt that she was a different physician today than she was when her difficulties arose. In response, the applicant stated that she was different because when you loose everything that is when you realize what you love most. The applicant described the loss as getting up every morning feeling like your purpose in life is gone. It's not a pain you feel in your heart but in your soul.

Ms. Winston-Day began her cross-examination by asking the applicant what she has learned from the courses taken that she was not aware of before. The applicant stated that she has learned to keep accurate records and that those records must be

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complete and because patient's lives are at stake, proper follow-up care and documentation is crucial.

Ms. Winston-Day asked the applicant to elaborate on the communities where she provides and provided care. The applicant explained that these are very poor communities and many times patients do not go to the doctor because they do not have the resources to pay for services. The applicant accepts whatever payment the patients can give for services. In addition, the applicant stated that she works at a free clinic and at times refers those in need to these free clinics for services.

Dr. Kase asked the applicant questions about her appointment schedule, patient schedule and her distribution of time among her varied obligations. The applicant explained that new patient visits usually take between 45 minutes and an hour and follow-up visits take 20 to 30 minutes approximately. An average day usually runs from 9:30 a.m. until around 7:00 p.m. and that she works half days on Saturday's. Typically, the applicant is in her office most mornings and early afternoons. She provides services to the clinics generally in the late afternoons and evening hours.

Dr. Kase followed with questions about the faith-based care the applicant provides as well as questions about being able to

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include a New York practice into what is already a very busy schedule. The applicant noted that in order to provide medical care in the community church setting, she must have a medical license. Concerning the job that Dr. Guarnaccia offered, the applicant explained that she would probably work there only twice a week and that she would restructure her other commitments. Dr. Kase voiced his concerns about the applicant's ambitious plans to work in the variety of settings discussed and said he is concerned about the time and balancing of the workload. The applicant said she feels confident that she can restructure her schedule to be able to continue her current obligations as well as picking up the obligations she had previously in New York. She feels she has to give back to the community and that she left unfinished business in New York.

Dr. Gujavarty asked the applicant about having a monitor come to her practice and about the applicant's standard of pro bono care. The applicant stated that she would have no hesitation about supplying records to a monitor for examination. The applicant also stated that she believed the standards of care for pro bono work anywhere should be the best standards of care. She continued saying that there should be no difference if a person is paying or not paying.

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Dr. Norris asked a few questions relating to the applicant's current residence, how her income is derived from her practice and any restrictions that may have been placed on her New Jersey medical license. The applicant began by stating that she currently resides in New Jersey but does not feel that will hinder her practicing medicine in New York. The applicant's income is derived from her practice which is half insurance payments and half cash receipts. New Jersey did not and has not put any restrictions on the applicant's license to practice medicine in that state. There has never been any form of monitoring of her practice either.

Questions and discussions arose about the suspension of the applicant's driver's license by the Department of Motor Vehicles. After much discussion, it was clarified by Mr. Schoppmann that there was a single event where a parking violation resulted in a ticket being issued. There was a citation issued and it was mailed to the Staten Island address at which the doctor did not reside. The failure to respond to the citation and the mailed notice triggered a suspension automatically of her license. The failure then to appear for the notice of suspension continued to escalate charges. All of this stemmed from that one single parking violation. He said it was a

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series of related events but it is one suspension of her license. Mr. Schoppmann said the applicant was allowed to plead guilty to a non-moving violation, which ended the suspension of her license.

Dr. Norris asked the applicant how she strayed so afar from what she had been taught at one of the leading residency programs in the country, Montefiore. The applicant stated that it was a very hard period of her life when she lost focus. She explained that she was going through a divorce from a man she felt was abusive. The applicant stated that this abuse was both physical and verbal.

Ms. Winston-Day asked the applicant what assurance she could give the committee that she would not loose focus and put patient's at risk again. The applicant responded that she has learned a great lesson that cost her a great price and caused a tremendous amount of pain for herself, her family and her community. The applicant now says she knows what is important and will not loose focus of what is important.

Ms. Winston-Day then asked what had happened to the patients the applicant had been treating in New York. The applicant said that many of the patients came to New Jersey for treatment while others have gone to other physicians in the

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area. The applicant had communicated with her patients before leaving so they could find another physician in the area. There were three other physicians in the office so patients could continue to come to the same place if they so chose.

Dr. Gujavarty ended the questioning by asking if there was a reason why the applicant had not obtained her boards. The applicant noted that she was planning to take the boards but was not able to do so after loosing her license. She plans on taking the boards if her New York license is restored. She also noted that she trained in primary care at Montefiore under what they called the internal medicine track and primary practice track and that this was a three-year program.

Ms. Winston-Day in her closing statement said that the prosecution would rely on the committee's expertise and impressions as to whether or not the applicant's license should be restored. She reminded the committee to assess whether or not the applicant has accepted full responsibility for what has gone wrong in her past and if she has rehabilitated herself. Ms. Winston-Day also reminded the committee that if the committee agrees to restore the applicant's license, the committee has the ability to place her on probation and to require a form of monitoring that would be appropriate.

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Mr. Schoppmann closed by saying that the applicant has accepted full responsibility for her past actions. She lost focus, she lost direction and she went on the wrong path.

Mr. Schoppmann asked the committee to look at what it took for a doctor with impeccable credentials and a brilliant background to be pushed astray. He noted that the applicant has brought herself back and proven herself for five years in an unblemished record of practice in New Jersey.

Mr. Schoppmann said that he has never met someone more committed to remediating themselves and proving themselves worthy.

Mr. Schoppmann said that if the applicant is given the opportunity, she will prove herself worthy of the committee's trust.

POST HEARING SUBMISSIONS

At the request of the panel the applicant submitted additional papers regarding her CME. These papers are made a part hereof and marked as Hearing exhibit 1.

RECOMMENDATION

The Peer Committee has considered the entire record in this matter. We have considered the three criteria typically used in restoration determinations: remorse, re-education, and

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rehabilitation. However, we are not necessarily limited to such formulaic criteria but may consider other factors, particularly the seriousness of the offences and, ultimately, our judgment as to whether the health and safety of the public would be in jeopardy should the application be granted.

This Peer Committee has no doubt that the applicant is remorseful for the actions that led to the revocation of her license. Time and time again, the applicant spoke of her passion for her career, that it was life and that there was nothing else in this world she would rather be doing than helping people. The applicant appeared genuine when she talked about the shame and embarrassment she has caused not only herself but also her family.

Regarding reeducation, the applicant provided documentation both in writing and through testimony of her CME coursework. The applicant participated in many hours of CME course work that were generic in nature but more importantly, she took courses that were very much specifically related to the problems that led to the revocation of her medical license. The committee was impressed with the efforts the applicant made in her reeducation and her acknowledgement of the areas of deficiencies she needed to improve on.

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In terms of rehabilitation, the applicant has practiced in New Jersey for five years without incident. However, we believe that the applicant may have some problems balancing her New York and New Jersey commitments and we can see a potential for the applicant to overextend herself. Therefore, as part of the probation terms, we recommend that the applicant be required to work only in a structured and supervised setting and not in private practice in New York State.

Based on the traditional criteria of remorse, rehabilitation and reeducation, peer committee satisfied that the applicant has met her burden of proof.


It is therefore the unanimous recommendation of this Peer Committee that the applicant's application for restoration of her license to practice as a physician in the State of New York be granted and that the applicant be placed on probation for two (2) years under the terms of probation annexed hereto, made a part hereof, and marked as Exhibit "A".

Respectfully submitted,

JAMES E.C. NORRIS, M.D.,
Chairperson
KHRISHNA GUJAVARTY, M.D.

NATHAN G. KASE, M.D.

REDACTED

 Chairperson

 Date

EXHIBIT "A"

TERMS OF PROBATION
OF THE PEER COMMITTEE

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CALENDAR NO. 21762

1. That applicant, during the period of probation, shall be in compliance with the standards of conduct prescribed by the law governing applicant's profession;
2. That applicant shall submit written notification to the Director, Office of Professional Medical Conduct (OPMC), Department of Health (DOH), 433 River Street, Troy, NY 12180-2299, of any employment and/or practice, applicant's residence, telephone number, and mailing address and of any change in 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), 2nd Floor, North Wing, 89 Washington Avenue, Albany, New York 12234 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 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 section 230-a of the Public Health Law, said proof of the above to be submitted no later than the first two months of the period of probation;

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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;
6. That applicant, during the period of probation, shall practice medicine only as a salaried physician under supervision in an article 28 facility;
7. That during the period of probation, applicant shall have quarterly performance reports submitted to the New York State Department of Health (DOH), addressed to the Director, Office of Professional Medical Conduct, as aforesaid from applicant's employer, evaluating her performance as a physician in her place of employment, said reports to be prepared by applicant's supervisor or employer;
8. That upon receipt of evidence of noncompliance with or any other violation of any of the aforementioned terms of probation, the New York State Education Department may initiate a violation of probation proceeding and/or such other proceedings pursuant to the Education Law and/or Rules of the Board of Regents.