



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

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OFFICE OF PROFESSIONAL
MEDICAL CONDUCT

September 2, 1999

Jeffrey H. Rudell, Physician
110 Cedarhurst Avenue
Point Lookout, New York 11569

Re: Application for Restoration

Dear Dr. Rudell:

Enclosed please find the Commissioner's Order regarding Case No. 99-105-60 which is in reference to Calendar No.16299. This order and any decision contained therein goes into effect five (5) days after the date of this letter.

Very truly yours,

Daniel J. Kelleher
Director of Investigations

By: *Gustave Martine*
Gustave Martine
Supervisor

cc: Anthony Scher, Esq.
Wood & Scher
4 Harwood Street
Harwood Building
Scarsdale, New York 10583

The University of the State of New York
Education Department



IN THE MATTER

of the

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

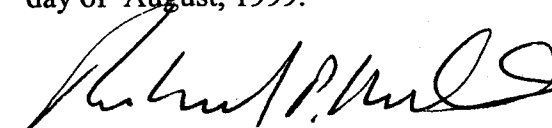
Case No. 99-105-60

It appearing that the license of JEFFREY H. RUDELL, 110 Cedarhurst Avenue, Point Lookout, New York 11569, authorizing him to practice as a physician in the State of New York, was revoked by action of the Administrative Review Board for Professional Medical Conduct on August 18, 1992, and he having petitioned the Board of Regents for restoration of said license, and the Regents having given consideration to said petition and having agreed with and accepted the recommendations of the Peer Review Panel and the Committee on the Professions, now, pursuant to action taken by the Board of Regents on July 16, 1999, it is hereby

ORDERED that the petition for restoration of License No. 101320, authorizing JEFFREY H. RUDELL to practice as a physician in the State of New York, is denied.

IN WITNESS WHEREOF, I, Richard P. Mills, Commissioner of Education of the State of New York for and on behalf of the State Education Department, do hereunto set my hand and affix the seal of the State Education Department, at the City of Albany, this 25th day of August, 1999.




Commissioner of Education

Case No. 99-105-60

It appearing that the license of JEFFREY H. RUDELL, 110 Cedarhurst Avenue, Point Lookout, New York 11569, authorizing him to practice as a physician in the State of New York, was revoked by action of the Administrative Review Board for Professional Medical Conduct on August 18, 1992, and he having petitioned the Board of Regents for restoration of said license, and the Regents having given consideration to said petition and having agreed with and accepted the recommendations of the Peer Review Panel and the Committee on the Professions, now, pursuant to action taken by the Board of Regents on July 16, 1999, it was

VOTED that the petition for restoration of License No. 101320, authorizing JEFFREY H. RUDELL to practice as a physician in the State of New York, be denied.

Case number 99-105-60

April 7, 1999

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: **Jeffrey H. Rudell**

Attorney: Anthony Scher

Jeffrey H. Rudell, 110 Cedarhurst Avenue, Point Lookout, New York 11569, petitioned for restoration on his physician license. The chronology of events is as follows:

- | | |
|----------|--|
| 06/14/68 | Issued license number 101320 to practice medicine in New York State. |
| 12/30/91 | Charged with professional misconduct by Department of Health. (See "Disciplinary History.") |
| 05/26/92 | Effective date of Determination and Order of Hearing Committee of the State Board for Professional Medical Conduct revoking license. |
| 08/18/92 | Administrative Review Board for Professional Medical Conduct sustained revocation. |
| 08/18/92 | Effective date of revocation. |
| 10/14/93 | CPLR Article 78 proceeding commenced. |
| 12/02/93 | CPLR Article 78 petition dismissed. |
| 10/23/94 | Application for restoration submitted. |
| 09/19/97 | Peer Committee restoration review. |
| 08/10/98 | Report and recommendation of Peer Committee. (See "Recommendation of the Peer Committee.") |
| 04/07/99 | Report and recommendation of Committee on the Professions. (See "Recommendation of the Committee on the Professions.") |

voluntary capacity to follow through with a commitment to the Department of Nephrology.

Dr. Rudell said that a podiatrist offered him office space and that he saw patients in this new office while it was being renovated. Dr. Rudell said that a year before seeing Patient A, her roommate had seen him for a Sigmoidoscopy. He reported that Patient A had rectal bleeding, that he attempted to perform a Sigmoidoscopy but it was incomplete, and that he asked her to come back in two months. Dr. Rudell indicated that she came back in two weeks and was "more agreeable this time" as she was not as nervous. He reported that he examined her and told her to schedule a follow-up visit. He reported that she was "disappointed or angry about something" as she left and said, "This is not a real office. You're not a real doctor." He claims he did not understand why she made those comments, as the examination had proceeded without incident. Dr. Rudell said that the patient subsequently complained to the Office of Professional Medical Conduct. He stated that he "tried to contact her a few times to find out what was going on, what was bothering her."

Dr. Rudell told the Committee that the investigator from OPMC "looked at me like I was a drug dealer." He said that this was because of his conviction in Alabama. He said he had been investigated at least two times for Medicaid fraud but they eventually "gave up on the fraud allegations." Dr. Rudell said the investigator also knew about his termination at St. Luke's. He said that on this new complaint "they went overboard. There were several things which clouded the issue." The Committee asked Dr. Rudell if he felt revocation would have been an appropriate action if the patient's charges were true. He replied, "Yes." In response to the Committee's inquiry regarding his reactions to the Peer Committee report, Dr. Rudell said, "It's their opinion. They have grounds."

The Committee asked Dr. Rudell why he could not perform the Sigmoidoscopy the first time. He replied, "You need cooperation; otherwise, they squeeze it out." He said that the patient was "not prepared psychologically" and there would be problems if she had spasms. The Committee asked if the patient discussed why she was uncomfortable the first time. Dr. Rudell answered, "Not that I remember." The Committee inquired if it was appropriate for a patient with rectal bleeding to wait two months for further examination. He explained that if the patient were not having another episode of bleeding, it would be appropriate to wait. He indicated that if a patient has a problem, he believed the patient would come back earlier. Dr. Rudell told the Committee that he assumed Patient A had a problem when she returned within two weeks.

The Committee asked Dr. Rudell if anyone else was present when he was with Patient A. He replied that another patient was in an adjoining room with the door slightly ajar since it couldn't be closed tightly. He said that he had just moved into the office in January, the incident occurred in February, he had just hired a "front-office" secretary, and didn't have a full complement of staff. He told the Committee that he did not use good judgment. Dr. Rudell reported that it was several weeks before it came to the attention of OPMC and said, "She could have gone directly to the police station." He indicated that there was time for the patient to concoct a story. He indicated that the

satisfying the Board of Regents that licensure should be granted in the face of misconduct that resulted in the loss of licensure. There must be a clear preponderance of evidence that the misconduct will not recur and that the root causes of the misconduct have been addressed and satisfactorily dealt with by the petitioner. The Committee believes it is not its role to merely accept as valid whatever is presented to it by the petitioner but to weigh and evaluate all of the evidence submitted and to render a determination based upon the entire record.

The Committee on the Professions (COP) concurs with the Peer Committee that Dr. Rudell did not present compelling evidence to warrant restoration of his license. After its meeting with Dr. Rudell, the COP found no basis for disagreeing with the detailed analysis presented by the Peer Committee for not recommending restoration at this time. Although Dr. Rudell need not admit guilt to the charges that resulted in the revocation of his license, questions of credibility were raised by the Peer Committee and linger with the COP as it reviewed the record and Dr. Rudell's responses to its questions. Also, the COP notes that Dr. Rudell demonstrated little sensitivity and could not provide any insight into why the patient would charge him with sexual misconduct and why her demeanor changed so drastically after putting on her clothes. Nor could Dr. Rudell give credible answers to simple questions like how the patient's underpants ended up in his briefcase, how she could mistake a rectal exam for a tongue on her vagina, etc. Rather, Dr. Rudell focused upon the fact that he believed the State authorities were prejudiced against him in the investigation. Moreover, the COP accepts the judgment of the Peer Committee regarding Dr. Rudell's reeducation efforts and current competency and concurs with their conclusion that his rehabilitative efforts have been minimal. The Department of Health opposes Dr. Rudell's application for restoration and feels that "the restoration of his physician's license would place the public in peril."

Therefore, after a complete review of the record and its meeting with Dr. Rudell, the Committee on the Professions unanimously concurs with the recommendation of the Peer Committee that Dr. Rudell's application for restoration of his license to practice as a physician in the State of New York be denied at this time.

Johanna Duncan-Poitier, Chair

Kathy A. Ahearn

Frank Muñoz



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

JEFFREY H. RUDELL

REPORT OF
THE PEER
COMMITTEE

CAL. NO. 16299

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

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On June 14, 1968 Jeffrey H. Rudell, hereinafter, petitioner,
was authorized to practice as a physician in the State of New York
by the New York State Education Department by the issuance to him
of license No. 101320.

PRIOR DISCIPLINARY RECORD

By notice of Hearing and Statement of Charges dated December
30, 1991 petitioner was charged by the Department of Health, Office
of Professional Medical Conduct with fraud in the practice of the
profession, moral unfitness and willfully abusing a patient. On
six dates between February 20, 1992 and May 5, 1992 a hearing was
held by a hearing panel of the State Board for Professional Medical
Conduct.

On May 19, 1992 the hearing panel issued its determination and
Order (BPMC 92-40) which unanimously sustained the changes

New York. Said petition read as follows:

1. This is my petition for the restoration of my license to practice medicine in New York State.
2. My medical license was revoked by the New York State Department of Health's State Board for Professional Medical Conduct. A Hearing Committee of the State Board found him guilty of four specifications of professional misconduct and revoked his license in its Determination and Order dated May 19, 1992. A copy of the Hearing Committee's Determination and Order is annexed as Exhibit "A".
3. Thereafter, I appealed to the Administrative Review Board of the State Board for Professional Medical Conduct. The review board affirmed the hearing committee. A copy of the review board's determination is annexed as Exhibit "B".
4. Following the review board's affirmance of the hearing committee, I sought judicial relief in the Appellate Division, Third Department. A copy of the brief submitted to that Court by his attorneys is annexed as Exhibit "C". The Appellate Division upheld the review board's order revoking my license. A copy of the Appellate Division's decision is annexed as Exhibit "D".
5. Thereafter, I moved in the Court of Appeals for permission to appeal to that court from the decision of the Appellate Division. That motion was denied and I then had no further legal avenues open to me.
6. Obviously, through my denials of the allegations against me at the hearing and by pursuing every legal remedy available to me, I have asserted and continued to assert my innocence.
7. Indeed, I would not even be making this application for the restoration of my license if in so doing I had to admit that the allegations against me were true. I would rather not have my license than to acknowledge the truth of false allegations.
8. The subject of remorse is a very difficult one

15. In early 1988, I became interested in and involved in hyperbolic medicine. Hyperbaric medicine is that branch of medicine relating to medical conditions caused by and related to greater than normal pressure applied to gases under greater than atmospheric pressure - for example, deep sea divers sometimes experience hyperbaric problems.
16. Initially, my main involvement in this field consisted of being on call for Mr. Andre Galerne's diving company in the event of a diving accident.
17. Subsequent to the revocation of my license, I devoted more of my energy to the field of hyperbaric medicine. I have attended courses in this area; I have given exhibitions; I have written papers and I have attempted to sell hyperbaric equipment. For a detailed account of meetings attended and presentations made, the Peer Review Panel, the Committee on the Professions and the Board of Regents are respectfully referred to the Chronological Listing which is appended to this petition as Exhibit "E". Documentation of my involvement in hyperbaric medicine is annexed as Exhibit "F".
18. Since I am very anxious to have my license restored, I have not neglected aspects of medicine other than hyperbaric medicine. I have strived to keep myself current in areas of concern to family medicine. Toward that end, I have attended recognized CME courses in arthritis and ulcers, hypertension, infectious diseases allergic rhinitis, trauma, calcium channel blockers, asthma, allergy and AIDS, chronic fatigue syndrome and prostatic disease. Documentation of my attendance at these programs is annexed as Exhibit "G".
19. I also continue to receive and read numerous medical journals including Archives of Family Medicine, American Family Practitioner, Cardiology World News, Consultant, Drug Therapy, Emergency Medicine, Family Practice Management, Heart Disease & Stroke, Hippocrates, Journals of the American Board of Family Practice, Journal of the American Medical Association, Journal of the Undersea Medical Society (later, Undersea & Hyperbaric

Board of Regents grant my application for the restoration of my license to practice medicine in New York State.

PEER PANEL MEETING

On September 19, 1997 this peer panel met to consider the instant petition. Petitioner appeared and was represented by Anthony Z. Scher, Esq. The Division of Prosecutions was represented by Dennis K. Spillane, Esq. Gregory C. Schulte of the Office of Legal Services served as Counsel to the peer panel.

Petitioner's appearance and presentation before the instant panel was substantially a reiteration of his written petition.

Petitioner testified, in response to a question from Mr. Scher as to ". . . what . . . have you been doing for the last five years?" that:

I have gone to meetings and conventions, mainly something to do with hyperbaric medicine, mainly on the eastern seaboard, universities and other places.

I have continued to read medical journals. I have tried to get involved with other businesses that would produce income such as Amway Business, Primerica Financial Services, LCI Communications. I went to art school for a while. I have tried to do some hyperbaric chambers so the patients don't have to look for a chamber.

These items have the potential to be aboard every vessel that puts divers in the water and that is an up-and-coming project.

I have been trying to figure out the logistics of how to prevent bends. Bends is defined as bubbles of nitrogen occurring in divers, being they come up too fast. By the use of providing re-breathers and oxygen generation equipment even in remote locations, that will reduce the amount of nitrogen in the breathing gas, making it safer.

In response to further questioning petitioner stated that:

JEFFREY H. RUDELL (16299)

maybe need help with hyperbaric treatment and I think I have shown the ability to capture their interest and get them in the chamber for treatment and get them where they were better off after they left than when they came in. Especially for the diabetic feet and osteoradionecrosis. There may be a chance for me to prove something works in the AIDS and Lyme Disease field."

While continuing to maintain that he is innocent of the charge which led to the revocation of his medical license petitioner stated that he would accept that a chaperone be present with female patients if the peer panel were to include such a term in a period of probation.

In addition to petitioner's testimony, the peer panel took testimony from three additional witnesses, Sandra Jarmuth, Andre Galerne and Steven Foldi each of whom supports the restoration of petitioner's license to practice medicine.

RECOMMENDATION

Professional licensure is a privilege granted to those who agree to adhere to, and abide by, certain statutory and regulatory standards of conduct. Said standards of conduct are a necessary and essential element in developing and maintaining the public's trust and confidence in the licensed professional.

Furthermore, through the enforcement of said standards of conduct the Board of Regents of the State of New York and the New York State Education Department are empowered to protect the valid interests and concerns, as well as safeguarding the health and welfare of the consuming public.

misconduct to be incredible on its face.

While it is not within the mandate of the instant peer panel to compel petitioner to admit guilt to, or show remorse for, acts to which he maintains his innocence it is also not within the mandate of the instant panel to present a forum for the relitigation of previously litigated matters, whether they were criminal, civil or administrative. The instant peer panel is obligated to accept such prior determinations as matters of fact.

Furthermore, the paramount issue before the instant panel is petitioner's current fitness for restoration of licensure. Given the prior underlying record before us we find petitioner's attempt to shift responsibility for his proven professional misconduct by asserting that the victim of said misconduct was "mistaken" and "angry" because "[petitioner] didn't have a solution for her problem" to be without merit, incredible and based, solely, upon petitioner's unsubstantiated speculations. We further find that in any determination of fitness to practice the profession of medicine the issue of credibility is a fair and appropriate factor to be considered by a sitting peer panel.

It is clear that Melone did not intend that any petitioner for restoration be able to shift the burden of carrying the proceeding to the State by merely taking the expedient tack of denying the original misconduct.

Rather in Melone, the court found "the Board's determination irrational and unreasonable and [to constitute] an abuse of discretion", the court noted that the Board not only ignored

JEFFREY H. RUDELL (16299)

find, especially in light of petitioner's aforementioned lengthy absence from a New York medical practice, that petitioner has failed to convince the instant panel of his readiness to resume the practice of medicine.

As indicated above it is the burden of a petitioner seeking restoration of licensure to present evidence which would compel a sitting peer panel to find in petitioner's behalf.

Overall, we find the instant petition for restoration seriously deficient. We find this particularly troubling in light of the serious nature of petitioner's prior professional misconduct. It is the unanimous opinion of the instant panel that petitioner has made only the most perfunctory of efforts in seeking restoration and that in the particular areas of rehabilitation and reeducation said petition is particularly inadequate.

Therefore, and for the above reasons, we unanimously recommend to the Board of Regents that his application for restoration of licensure to practice as a physician in the State of New York be denied.

Respectfully submitted,

Richard V. Lee, M.D., Chairperson

Florence Kavalier, M.D.

Delores D. Riggins, Public Member

 8/10/98

Chairperson

Dated