

THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, N.Y. 12234

OFFICE OF PROFESSIONAL DISCIPLINE
ONE PARK AVENUE, NEW YORK, NEW YORK 10016-5802

March 4, 1999

Simon Wapnick, Physician
171 East 84th Street
New York, New York 10028

Re: Application Restoration

Dear Dr. Wapnick:

Enclosed please find the Commissioner's Order regarding Case No. 98-142-60 which is in reference to Calendar No. 16428. 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
Supervisor

DJK/GM/er

cc: Robert Harris, Esq.
1015 Broadway
Woodmere, New York 11598

RECEIVED

MAR 8 1999

OFFICE OF PROFESSIONAL
MEDICAL CONDUCT

The University of the State of New York
Education Department



IN THE MATTER

of the

Application of SIMON WAPNICK
for restoration of his license to
practice medicine in the State of
New York.

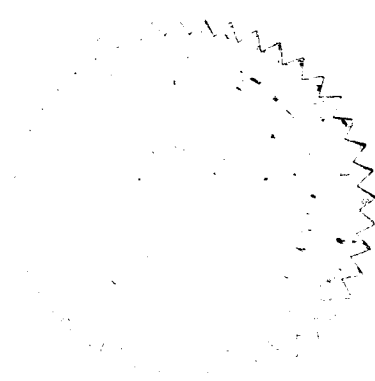
Case No. 98-142-60

It appearing that the license of SIMON WAPNICK, 171 East 84th Street, New York, New York 10028, authorizing him to practice medicine in the State of New York, was revoked by action of the State Board for Professional Medical Conduct on February 18, 1993, and he having petitioned the Board of Regents for restoration of said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 February 3, 1999, it is hereby

ORDERED that the petition for restoration of License No. 122882, authorizing SIMON WAPNICK, to practice medicine 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 24th
day of February, 1999.


Commissioner of Education



Case No. 98-142-60

It appearing that the license of SIMON WAPNICK, 171 East 84th Street, New York, New York 10028, to practice medicine in the State of New York, having been revoked by action of the State Board for Professional Medical Conduct on February 18, 1993, and he having petitioned the Board of Regents for restoration of said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 February 3, 1999, it was

VOTED that the petition for restoration of License No. 122882, authorizing SIMON WAPNICK, to practice medicine in the State of New York, be denied.

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

Report of the Committee on the Professions
Application for Restoration of Physician's License

Re: Simon Wapnick

Attorney: Robert Harris

Simon Wapnick, 171 East 84th Street, New York, New York, 10028, petitioned for restoration of his physician's license. The chronology of events is as follows:

- 02/07/75 Issued license number 122882 to practice as a physician in New York State.
- 03/17/92 Charged with professional misconduct by New York State Department of Health. (See "Disciplinary History.")
- 11/10/92 Hearing Committee of the State Board for Professional Medical Conduct determined revocation, revocation stayed, and a five-year probationary period.
- 02/18/93 Administrative Review Board for Professional Medical Conduct determined revocation.
- 02/18/93 CPLR Article 78 petition filed with Supreme Court of the State of New York, Appellate Division, Third Judicial Department.
- 04/21/94 Memorandum and Judgment of Supreme Court, Appellate Division, Third Judicial Department, confirming the decision of the Administrative Review Board and dismissing the applicant's petition.
- 02/24/95 Petition for restoration of physician's license submitted.
- 07/11/97 Peer Committee restoration review.
- 01/08/98 Report and recommendation of Peer Committee. (See "Recommendation of the Peer Committee.")

08/10/98

Report and recommendation of Committee on the Professions.
(See "Recommendation of the Committee on the Professions.")

Disciplinary History. (See attached reports of the Hearing Committee of the State Board for Professional Medical Conduct and the Administrative Review Board.) On March 17, 1992, the Department of Health charged Dr. Wapnick with 14 specifications of professional misconduct, including gross negligence, gross incompetence, negligence on more than one occasion, and incompetence on more than one occasion based on his care of six patients (hereinafter referred to as patients A through F). A Hearing Committee of the Office of Professional Medical Conduct sustained (1) the charges of gross incompetence arising from Dr. Wapnick's care of patients B, C, D, and E; (2) the charges of incompetence on more than one occasion involving his care of patients A, B, C, D, and E; (3) the charges of gross negligence arising out of his care of patients B, D, and E; and (4) the charges of negligence on more than one occasion involving his care of patients A, B, C, D, and E. The specifications in regard to Dr. Wapnick's treatment of patient F were not sustained. The Hearing Committee's "Findings of Fact" and "Discussion" sections detail instances of serious complications from surgery and/or improper post-operative follow-through treatments; improper diagnoses and treatments; the creation during surgery of one patient of a blind loop that led nowhere and which led to stasis and infection; the failure over several days to recognize and check for hypoxia in one patient who subsequently died; and incorrect judgment to reoperate on one patient who then bled to death during the surgery. The Hearing Committee determined that Dr. Wapnick's license to practice as a physician in this State should be revoked. It further determined that the revocation should be stayed and Dr. Wapnick placed on probation for five years under specified terms and conditions. The Hearing Committee found that "Respondent demonstrated a pattern of carelessness and inattention to detail in his care of five out of the six patients charged. Respondent's failure to exercise the care that a reasonable physician would, under the circumstances, rose to the level of gross negligence in the cases. Further, Respondent demonstrated gross incompetence with regard to his management of four out of the six cases charged. It is apparent to the Hearing Committee that Respondent is not competent to practice the profession, in the absence of a significant period of monitoring and rehabilitation."

Both Dr. Wapnick and the Department of Health requested a review by the Administrative Review Board for Professional Medical Conduct. On February 18, 1993, the Review Board unanimously sustained the Hearing Committee's determination of professional misconduct resulting in the revocation of Dr. Wapnick's license to practice as a physician, but voted to overturn the Committee's stay of the revocation. Dr. Wapnick commenced an Article 78 proceeding to challenge the Administrative Review Board's determination, but a Temporary Restraining Order was not granted by the Appellate Division of the Supreme Court of the State of New York. On April 21, 1994, the Court dismissed the petition and found no basis in the record to justify disturbing the findings and penalty rendered by the Review Board. Dr. Wapnick submitted his application for restoration of his physician's license on February 24, 1995.

Recommendation of the Peer Committee. (See attached Report of the Peer Committee.) The Peer Committee (Harris, Lopez, Riggins) convened on July 11, 1997. In its report dated January 8, 1998, the Committee unanimously recommended that Dr. Wapnick's petition for restoration of his license to practice as a physician in New York State be denied.

Recommendation of the Committee on the Professions. On August 10, 1998, the Committee on the Professions (Ahearn, Muñoz, Alexander) met with Dr. Simon Wapnick to consider his petition for the restoration of his license to practice as a physician in New York State. Robert Harris, his attorney, and Isabel Wapnick, his wife, accompanied him. Dr. Wapnick presented the Committee with letters of recommendation recently obtained from: Dr Louis R. M. Del Guercio, Professor and Chairman, Department of Surgery, New York Medical College; John Spencer, Reader in Surgery/Consultant Surgeon, Hammersmith Hospital; Naguib Habib; Head of Liver Surgery Section, Hammersmith Hospital Campus; and Joseph D. Etlinger, Professor and Chairman, Department of Cell Biology and Anatomy, New York Medical College. He also presented a letter from Dr. Leslie H. Blumgart, Chief, Hepatobiliary Service, Memorial Sloan-Kettering Cancer Center documenting Dr. Wapnick's attendance on his ward rounds and operation room as well as grand rounds in surgery and medicine and a letter from Appleton & Lange requesting him to make corrections for a reprint of *Appleton & Lange's Review of Surgery*. Additionally, Dr. Wapnick submitted materials he prepared relating to his remorse, rehabilitation, recent activities, activities and operations at Hammersmith Hospital, and results of a medical examination on July 30, 1998.

The Committee asked Dr. Wapnick to explain why he lost his license and why he felt it should be restored. He responded that his license was revoked on the basis of five patients he had seen before and during 1987. He said that there was no doubt in his mind regarding the serious nature of the charges and acknowledged his failure. He stated that he realized he had a serious problem in 1987 in the way he was managing his practice, which consisted of very serious and difficult surgical cases. Dr Wapnick indicated that because of that realization he took the following measures in his practice at that time: gave up his private practice, reduced the number of on-call patients from 15 to 5 per month, discontinued accepting more complex cases, discontinued accepting emergency on-call duty, discontinued accepting patients from nursing homes, reduced his involvement in peritoneal-venous shunt surgery (which he helped to invent 14 years before), and wore loops in 1987 and had left eye surgery in 1992. He reported that his hospital mortality rate was reduced because of the above actions.

Dr. Wapnick told the Committee that he had six months to reflect on the report of the Peer committee and was sorry that he couldn't express his true feelings to them. He reported that he began to realize that he has a problem expressing externally what he is feeling internally. He stated that he hesitated to come out and be forthright in admitting his mistakes to the Peer Committee. Dr. Wapnick said that he might have made a mistake by trying to diffuse the seriousness of the errors he made by relying upon his

record before and after 1987. He indicated that after his license was revoked, he took very strong steps to stay abreast of medicine and surgery and has been performing surgery in the United Kingdom during the last two years. He said that he has true remorse, realizes the serious nature of those cases, and his clinical management of cases is better as a result of the action taken against him.

The Committee asked Dr. Wapnick if he would have done anything different with those cases today. He responded that if he saw the same five patients, he would manage them much better. He stated that he failed to detect early warning signs that complications were arising, e.g., a poor oxygen level. He said that he is "so aware now of these possible errors" and would both order and receive results immediately. Dr. Wapnick reported that with one of the cases the radiology report indicated there was no problem, but the senior radiologist changed his opinion. Dr. Wapnick said, "I should have gone to the senior radiologist to get the report." The Committee asked Dr. Wapnick if he was now saying that he committed errors even though the Office of Professional Discipline investigative report indicated that he stated he did not commit any errors. He responded, "Yes." He indicated that he told the Administrative Review Board that he would do exactly what he had done before and not operate on only one patient, but he was reported to have said this regarding all five patients. The Committee asked if he agreed with the gross incompetence and gross negligence charges. Dr. Wapnick said that at that particular time, he "couldn't look at the whole thing objectively." He stated, "It is not in the context with how I feel now."

The Committee asked Dr. Wapnick how he got into the circumstances that led to the loss of his license. Mr. Harris responded that Dr. Wapnick took on more than he could reasonably handle and this had already done some damage. He indicated that Dr. Wapnick practiced for six years with the changes he instituted after the misconduct occurred and until his license was revoked. He said, "It's difficult to rehabilitate from that." The Committee asked Dr. Wapnick if he was still stretched too thin. He responded that in 1987 his typical day ran from 6:00 a.m. to 11:00 p.m. He indicated that in London he now does in one week what he previously did in one day. Dr. Wapnick said that when he had his practice he was getting more and more referrals and his practice grew rapidly. He stated that his cases were complex and time-consuming and it wasn't until 1987 that he realized that he was unable to offer appropriate care to everyone. The Committee asked Dr. Wapnick how it could assess the possibility of the misconduct recurring. Mr. Harris said that Dr. Wapnick went to a therapist five years ago and stated, "Psychology in private is different than in public. You don't realize what you're doing."

Dr. Wapnick told the Committee that he has learned a new profession as a professor of anatomy and wants to be able to go to New York medical schools and practice. He reported that the medical schools won't hire him because of his revocation and because they told him, "We're educating medical students." Dr. Wapnick stated that he has been a surgeon since 1966 and really feels he would like to be able to see a patient and not feel ashamed or limited in what he could do. He indicated that he now has better empathy facing patients because of what happened to him. He told the Committee that he would like to practice surgery freely. He indicated that his own goals

were fairly limited and he no longer saw any point in getting up at 5:00 a.m. and working until 11:00 p.m. He said that his children are grown and his needs are relatively limited. Dr. Wapnick stated that he wants to regain his self-respect and wants to be able to hold his head up in society. He said that he cares and wants to be able to show that he can do whatever he undertakes with respect. He stated that he would like a position as an anatomy instructor but wants to be able to show residents what he is teaching on the operating table.

In response to the Committee's request, Dr. Wapnick briefly discussed the five cases involved in the misconduct charges. The Committee asked if he felt his eyesight was really a problem. Dr. Wapnick replied that in July 1987 he clearly remembers noting a discrepancy between his right and left eye while he was in his study. He said that it definitely was a factor with patient C and may have been a factor with patient A. He told the Committee that he always told surgeons that they have to do a 3-dimensional attack, which could be affected by different sight in the two eyes. The Committee asked why he was only recently raising the possibility of his eyesight as a contributing factor to his misconduct. Dr. Wapnick reported that he now realizes they are interlinked and, as a result, his performance may not have been up to par. He reported that once he started wearing loops, his surgery improved immensely.

Mr. Harris told the Committee that even though Dr. Wapnick can practice in the United Kingdom, he would like to return to New York as his children and grandchildren are in this country. He reported that Dr. Wapnick's son and father-in-law are surgeons. He indicated that Dr. Wapnick's disability insurance policy currently pays him \$85,000 a year, but that he would lose it if he resumes practice as a surgeon. Dr. Harris said that people change and the State recognizes it by licensing psychologists and psychiatrists.

The overarching concern in all restoration cases is the protection of the public. A former licensee petitioning for restoration has the significant burden of satisfying the Board of Regents that licensure should be granted in the face of 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 on the Profession (COP) 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 COP concurs with the conclusion of the Peer Committee that Dr. Wapnick "has made considerable efforts toward continuing education and staying involved in his field." The COP notes that the Peer Committee determined that they saw "nothing in his actions that overcome his deficiencies in remorse and rehabilitation" and presented a detailed and comprehensive discussion of the reasons for that determination. The COP notes that the misconduct leading to the revocation of Dr. Wapnick's license was serious, complex, and technical. The Peer Committee found that Dr. Wapnick admitted different degrees of guilt and levels of seriousness of the misconduct at various stages of the restoration process and at the various stages of the initial disciplinary

proceedings. The COP notes that Dr. Wapnick told them that he has had time to reflect upon the Peer Committee's report and now fully admits guilt and says he comprehends the seriousness of his original actions resulting in the misconduct. However, the COP notes that during their meeting with Dr. Wapnick, he continued to stress the steps he had taken in 1987 to correct the problems he realized at that time and provided no documentation or enlightenment of the changes he would now make to address the problems he's now admitting for the first time. The COP notes that Dr. Wapnick participated in therapy, but apparently failed to identify the root causes of his misconduct until confronted with the report of the Peer Committee recommending that his petition for restoration be denied. The COP questions if he truly recognizes the root causes of his problem and notes that his previous denials make it difficult to reassess from a medical perspective. If, indeed, Dr. Wapnick now fully comprehends the seriousness of actions, the COP does not believe that there has been a sufficient period of awareness in which he could have fully demonstrated his rehabilitation. The Committee notes that Dr. Wapnick continues to dwell upon the effects his misconduct had upon himself and his family, rather than the patients he harmed. The COP finds that Dr. Wapnick did not present a compelling case for the restoration of his license and that the public would be sufficiently protected were his license to be restored. Therefore, after a complete review of the record and its meeting with Dr. Wapnick on August 10, 1998, the Committee on the Professions voted unanimously to recommend that Dr. Wapnick's petition for the restoration of his license to practice as a physician in the State of New York be denied at this time.

Kathy Ahearn, Chair

Frank Muñoz

Claudia Alexander

Simon Wapnick, MBChB., MD., FRCS., FACS.

171 East 84th St.,

New York.,

NY. 10028

E-mail simwapnick@hotmail.com 01/1/98

The State Education Department/

University of the State of New York Albany,

Mr Leonard Latski

Committee on the Professions

Cultural Education Center, Room 3055)

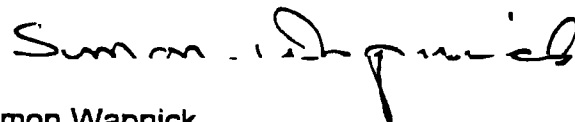
Telephone: (518) 473-6291

Fax: (518) 473-8577

Dear Mr Latski,

Thank you for your letter of the 16th December which I received in St Lucia on the 24th of December. I thank you for giving me an extension until the 6th of January. According to Section 24.7(b)(1) of the Rules of the Board of Regents, I hereby submit a letter from myself as well as a letter from Dr Piers. I will arrange for the original letter to be sent to you as discussed. I will also send a copy of any response I receive from the three surgeons mentioned in my letter.

Sincerely,



Simon Wapnick

RECEIVED
JAN 05 1999
COMMISSION ON THE
PROFESSIONS

Simon Wapnick, MBChB., MD., FRCS., FACS.

171 East 84th St.,

New York.,

NY. 10028

03/4/98

Board Of Regents

New York State

Department Of Education,

Dear Sirs/Ms.,

Application for License restoration.

Introduction:

The last case against me brought before the Hearing Committee was seen and treated by me in July 1987. As far back as 1987 I had concern and had shown remorse concerning these 5 cases that led eventually to my license revocation six years later in 1993. The record of cases presented as well as the clear favorable surgical performance reported by Drs Cayten, Migorelle, and Sparks attests to the fact that I was carrying out surgery at a competent level between **1987 and 1993**. The letters from these surgeons and evaluation of all my cases and complications was submitted with the original application to the Peer Committee. My hospital mortality and morbidity rate was reduced because of the active changes instituted by me in 1987 and reported in detail in my original application to the Peer Review Committee.

Root causes of the misconduct I had instituted the following steps since 1987 as summarized by the report of The Committee of the Professions (numerals have been added for clarification):

"Dr Wapnick indicated that because of that realization he took the following measures in his practice at that time:

- 1) Gave up his private practice
- 2) Reduced the number of on-call days from 15 to 5 per month,
- 3) Discontinued accepting complex cases,
- 4) Discontinued accepting emergency on-call duty,
- 5) Discontinued accepting patients from nursing homes,
- 6) Reduced his involvement in peritoneal-venous shunt surgery (which he helped to invent 14 years before),
- 7) Wore loops in 1987 and had left eye surgery in 1992".

These steps were carried out as I realized that even as far back as 1987 that I was seriously concerned with events occurring in my surgical practice and due to my *remorse* and concern about problems of patient care I initiated a process of *rehabilitation* on my own accord. The license revocation dealt with and was exclusively related to the five cases seen by me before July 1987. The Peer Committee and the Committee of the Professions have chosen to ignore the more compelling evidence that I had actually **started** the process of rehabilitation between 1987 and 1993. My defense on the five cases was **flawed** as there was pretrial agreement with the Peer Committee to accept my **quilt** on the five cases and not to retrv the five cases as well as my response to it. I accepted then and continue to accept now full awareness that my performance on the 5 cases constituted gross negligence and gross incompetence. I have attempted to address the issues involved and offer appropriate protection to my patients by the following actions in the past:

- a) **Evidence that the misconduct will not recur (ie after license revocation in 1993)**
 - i) I have completely improved my knowledge of medicine and surgery
 - ii) Since 1987 until now (the end of 1998) there has been no recurrence of that pattern of carelessness and

negligence in the manner I have conducted in an active clinical surgical career.

b) Root causes of the misconduct were addressed and dealt with

- i) In my conscience and emotions
- ii) The way I behaved before license was revoked in 1993 as (See root causes of the misconduct above) well as during the period 1994 to present time Jan 1999.
- iii) I am no longer a workaholic and I have come to the realization that it is detrimental to my patients and myself if I work excessive hours day and night.

If the Board of Regents cannot be persuaded by my current plea to restore an unrestricted license I would like to request that consideration be given to restore my license temporarily with the condition that I treat patients under appropriate supervision. I am submitting the names of three Surgeons who are well respected in the medical community in the State of New York and elsewhere in the United States. I have written to the following three surgeons and will submit their response as soon as it is available to me. If the Board of Regents finds it more convenient to choose its own person to act as my surgical supervisor that would be fully acceptable to me.

- 1) Dr Louis R. M. Del Guercio,
Professor and Chairman,
Department of Surgery,
New York Medical College
- 2) Professor Gene Cayten,
Chairman Department Of Surgery,
Our Lady Of Mercy Hospital,
Bronx, New York
- 3) Professor Ralph Ger ,
Director Of Surgery,
Nassau Community Center,
Nassau, New York.

I am at present volunteering at St Judes Catholic Mission Hospital in St Lucia. I was sent here through the Catholic Mission Medical Center in New York. I feel that this position has assisted me in securing more confidence. In view of the fact that I am voluntary and unpaid it has given me inner strength and courage to achieve excellent surgical care by expressing remorse for the past and conscientiously planning the optimum rehabilitation that I require.

Sincerely,

Simon Wapnick.

Simon Wapnick.

Enclosure: letter from Dr Piers from St Judes Hospital, St. Lucia.

Dr Andrew Piers. MB, B.S., FRCS(Can), FRCS(Eng)(general surgeon)

St Judes Hospital,
Vieux Fort
Carribbean,
West Indies
E-mail-andrewpiers@hotmail.com

1085 Gower point Rd.,
RR#4 C 12, Gibson B.C., VON, IVO
Canada
telephone: (604)-886-4181 Fax-604-886-4124

2 January, 1999

Board of Regents,
Education Department,
New York State Department,

Re application: license restoration for Simon Wapnick.

Dear Sir. Ms,

I am at present the locum consultant surgeon at St Judes Hospital, St. Lucia, West Indies.

I had the pleasure to work with Dr Simon Wapnick during his stay here in his capacity as a voluntary surgeon

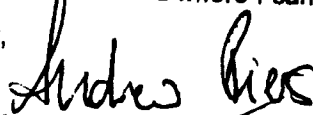
He informed me of his problem regarding the circumstances leading to revocation of his license.

From our discussions, I realised that he is extremely upset and genuinely sorry about the circumstances that led up to the suspension in 1993. I also sensed that he is fully aware and cognizant of why the Board came to their decision.

During our working relationship, I found him to be a conscientious and competent general surgeon, who, as a result of his past experiences is genuinely aware of his limitations. He always discussed with me all surgical cases and he never took the patient to the operating room without prior consultation. This was a purely voluntary decision on his part and as a result I feel that he regained a lot of confidence and a better sense of judgment in his clinical decision making. If the Board of regents still maintain that Dr Wapnick has not had adequate exposure for rehabilitation to correct the problems related to remorse, I recommended and advised Dr Wapnick that he should endeavor to arrange a period of preceptorship that would be acceptable to the board.

I have no hesitation in supporting Dr Wapnick in his effort to regain his license and should you require any further information please do not hesitate to contact me at the above address. I will be returning shortly to Canada where I can be reached at the above address.

Sincerely,



Andrew Piers.



The University of the State of New York

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

-----X

In the Matter of the Application of

SIMON WAPNICK

**REPORT OF
THE PEER
COMMITTEE
CAL. NO. 16428**

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

-----X

SIMON WAPNICK, hereinafter known as the applicant, was previously licensed to practice as a physician in the State of New York by the New York State Education Department. Said license was revoked as a result of a professional misconduct proceeding. The applicant has applied for restoration of his license.

On July 11, 1997, this Peer Committee convened to review this matter and make the following recommendation to the Committee on the Professions and the Board of Regents. All members of the Committee met personally on August 6, 1997 to deliberate on our recommendation based on the record of the proceeding to that point.

BACKGROUND INFORMATION

The written application, supporting papers provided by the

SIMON WAPNICK (16428)

applicant and papers resulting from the investigation conducted by the Office of Professional Discipline (OPD) have been compiled 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. Further details pertaining to these documents may be found therein.

Prior Discipline Proceeding

Action by the Medical Conduct Administrative Review

Board, Office of Professional Medical Conduct (OPMC):

February 9, 1993 -- Report issued affirming on elective appeal of both parties the findings of fact and (with minor technical adjustments) the determination on the charges of the OPMC Hearing Committee. The Administrative Review Board modified the lesser penalty recommendation of the Hearing Committee (stated below) to revocation. The determination of the Administrative Review Board represented final administrative action in the matter. Its report was served upon the applicant several days after it was signed. A subsequent court appeal by the applicant stayed the effectiveness of the revocation. The applicant lost the court appeal. The court stay was lifted, and the revocation has been effective since February 17, 1994.

Hearing Committee:

November 10, 1992 -- Report of the OPMC Hearing Committee served upon the applicant. The report found the applicant

SIMON WAPNICK (16428)

guilty of professional misconduct in the treatment of five patients, as summarized in more detail below. It determined a penalty of revocation of the applicant's license to practice medicine in the State of New York, with execution of said revocation stayed and the applicant placed on probation for five years under terms of probation, including: that the applicant obtain a monitoring physician at each hospital where he obtains surgical privileges; that the monitoring physician shall be scheduled to render second opinions on all cases scheduled for surgery by the applicant; and that the monitoring physician be required to supervise the applicant during surgery.

Specifications for which the applicant was found guilty and nature of the misconduct:

The misconduct proceeding resulted in findings of guilt concerning the applicant's care in 1986 and 1987 of five patients referred to as Patients A, B, C, D and E. The incidents concerned the performance of surgery by the applicant or matters related to his surgical practice. The actual specifications of misconduct in each instance for which guilt was found are summarized as follows:

- negligence on more than one occasion involving care rendered to Patients A, B, C, D, & E;
- incompetence on more than one occasion involving the care rendered to Patients A, B, C, D & E;
- gross incompetence arising from the care rendered to Patients B, C, D & E; and

SIMON WAPNICK (16428)

- gross negligence involving the care rendered to Patients B, D & E.

The misconduct involved numerous instances of highly technical medical deficiencies by the applicant described in great detail in the "Findings of Facts" section on pages 3 through 13 of the OPMC Hearing Committee's report, and in the analysis of the determination on the charges in the "Discussion" section on pages 17 through 27 of that report, which is included in the packet for this restoration proceeding. The "Findings of Fact" and "Discussion" detail numerous instances of serious complications from surgery and/or improper post-operative follow-through treatments; improper diagnoses and treatments; the creation during surgery of one patient of a blind loop that led nowhere and which led to stasis and infection; the failure over several days to recognize and check for hypoxia in one patient who subsequently died; and incorrect judgment to reoperate on one patient who then bled to death during the surgery.

In its report recommending a stayed revocation and probation, the Hearing Committee stated the applicant "demonstrated a pattern of carelessness and inattention to detail in his care of five out of the six patients charged ... It is apparent to the Hearing Committee that Respondent [the applicant] is not competent to practice the profession, in the absence of a significant period of monitoring and rehabilitation."

The Administrative Review Board of the New York State Board for Professional Medical Conduct, in modifying the penalty to revocation, disagreed with the Hearing Committee's statement that the applicant was a candidate for rehabilitation. The Review Board found that "the applicant was not forthcoming in acknowledging the mistakes he made in the surgical care and after care for the patients involved in this case. Throughout his testimony, the Respondent insisted that he had provided proper care and he stated that he would follow the same exact procedures if he had the same cases to do over again." The Review Board noted that the applicant had already received extensive training and "we see no indication in the record that the Respondent would be any better qualified to practice general medicine other than surgery." The Review Board also noted that if the applicant ever became a candidate for restoration "we recommend to the Restoration Committee that if they consider restoring the Respondent's license, that license should be restricted so that Respondent is not permitted to practice surgery."

PETITION FOR RESTORATION

- Seven page verified petition executed February 24, 1995 plus attached chronological listing and exhibits
- In petition portion, the applicant states he maintained a surgical practice with an emphasis on pancreatic and biliary disease surgeries, handling a large number of high risk cases.

SIMON WAPNICK (16428)

- Describes the personal devastation to him of losing his medical license
- Owned and operated a medical surgical supply company from August 1993 to July, 1994.
- Notes his regular attendance at conferences and ward rounds at Memorial Sloan-Kettering Cancer Center, September 1993 through September, 1994; and service in fall of 1993 as adjunct faculty member in the Department of Cell Biology and Anatomy at New York Medical College and his position as a professor of anatomy at Ross University, Dominica, Commonwealth of West Indies.
- States he does "not wish to contest the cases" upon which was based his revocation, stating "I feel that I had ample opportunity to present all the evidence I believed was necessary to convince the hearing panel that my management of the cases was acceptable. I failed in that respect and have accepted the consequences of that failure, to wit, the revocation of my license."
- States he has reflected on what led to his revocation and states three bases of his petition:
 - a) His performance has been good from 1987 until his revocation in 1993, stating his problems were restricted to a period from 1987 and before, and that he has taken steps to remedy deficiencies from that period;
 - b) From 1988 through 1993 he substantially reduced

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the surgeries he did in the high risk categories;

c) Despite the five cases resulting in his revocation, he states his mortality and morbidity rate for 1987 was acceptable.

- Makes reference to data attached to the petition consisting of print-outs from hospitals listing complications and mortality from surgery performed by the applicant
- Makes reference to letters attached to the petition from six physicians analyzing the data, with the applicant maintaining their analysis agrees with the applicant's own conclusions that "my morbidity and mortality rate for 1988-1993 was good, that prior to 1988 I had a much higher volume of high risk cases, and notwithstanding the five cases for which I was revoked, my morbidity and mortality rate for 1987 and prior years was acceptable."
- States that a "separate possible cause of my deficiency prior to 1988 may have been my vision problems." States diagnosis of bilateral cataracts did not occur until 1988. Describes treatment of Dr. Goldman as rectifying the problem
- States in this original petition that he has no intent of practicing surgery again if restored.
- Further states he would accept a stayed revocation with monitoring of his practice
- Refers to the seven letters of support attached to the

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petition (which are additional to the six letters analyzing the printout of his surgeries.)

- States, even before the misconduct proceeding, he addressed past problems by reducing overall volume of surgery; reducing high risk cases; and correcting his vision problem.
- Expresses sorrow for those who may have suffered as the result of his actions and adds, "However, for almost two years I have been barred from the practice of medicine, my sole adult occupation, interest and avocation."
- Concludes by stating he has addressed his problems and believes his restoration does not pose a danger or threat to the public

Attachments to Petition

- Chronology of activities since professional school
- Curriculum vitae
- Extensive list of scholarly material the applicant has written and published
- Letters corroborating rounds attended and teaching done, as previously stated
- Data referred to concerning surgeries undertaken by the applicant
- Letters referred to in the petition from other physicians analyzing that data
- Letters and medical records from the applicant's ophthalmologist, Dr. Kenneth N. Goldman, M.D.

- Affidavits and letters of reference as referred to by the applicant in his petition

INVESTIGATION

Subsequent to filing of the petition, OPD conducted an investigation for purposes of this proceeding. Information from that investigation, including reports by investigators and other documentation, were made part of the packet for the proceeding.

In addition to the information from the packet referred to and summarized in this report, above, the packet contains a report by an OPD investigator of an interview of the applicant by the investigator held on September 14, 1995 in the presence of the applicant's attorney.

Investigator's Report of the Interview:

- The applicant was reported by the interviewing investigator to disagree with the findings of the Health Department and does not believe he was negligent or incompetent in the instances that were in question
- Subsequent to the revocation, the applicant changed attorneys to William L. Wood, Esq., who was present at the interview
- Although, as he stated in his petition, the applicant does not wish to contest the conclusions of the discipline proceeding, the investigator reports he does not believe the decision finding him guilty was correct.
- The applicant was reported to have stated that his civil rights were not adequately protected and that a

"competent" panel would not have reached the same conclusions

- The applicant's written petition stated he is not contesting the previous proceedings. His attorney present at the interview characterized the applicant's position as that he accepts the decision and penalty, but still does not agree with either
- The applicant stated he changed attorneys and initiated an appeal to the Administrative Review Board after the Hearing Panel imposed a stayed revocation with physician monitoring because the hearing panel relied on charts and hospital records, rather than the testimony of the applicant and his expert witness, and that the monitoring requirement would lead to problems in his ability to practice.
- Concerning the issue of his vision disability that he raised in his petition as a possible factor in surgeries he performed in 1986 and 1987, the applicant stated the issue was not raised at the discipline proceeding for tactical legal reasons
- Although he maintains he was not grossly negligent or incompetent in the incidents charged, he stated that, due to his vision problem, he would not practice surgery if restored. He said he was collecting a disability payment that would preclude his right to practice surgery

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- In fact, the applicant stated that, if restored, he would not engage in the clinical practice of medicine at all but wished for restoration to remove the humiliation of revocation and to allow him to more fully pursue his academic interests in anatomy, allowing him access to patients even though he would take no part in the diagnosis and treatment of patients.
- The applicant, updating his petition papers, stated he became an adjunct professor of anatomy at New York Medical College, Valhalla, NY, and that he discontinued his medical supply business in August, 1994.
- Mr. Wood stated to the interviewer that, at the time the restoration matter was scheduled for hearing, he would provide information updating the applicant's information beyond that submitted with the original restoration petition of February, 1995.

Position of OPMC on restoration application:

- May 3, 1995 letter of Kathleen Tanner, Director, OPMC, opposes restoration
- Notes the Review Board saw "no indication from the record that Respondent would be any better qualified to practice general medicine than surgery." Ms. Tanner stated that the applicant has not had extensive training for general practice such as a residency in family practice or internal medicine.

SUPPLEMENTAL VERIFIED PETITION

Shortly before our Peer Committee meeting, the applicant submitted a bound document entitled "Supplemental Verified Petition For a License to Practice Medicine." The document consists of a verified statement by the applicant, executed July 10, 1997, and six tabbed subdivisions labeled Exhibits A through F.

In the verified statement portion:

- The applicant provided a chronology of his activities since March 1993, including time spent: as a medical school lecturer in anatomy in various forums listed; reviewing documents in preparation of the court appeal of his discipline matter; extensive time reviewing medicine and anatomy in textbooks; operating his own medical supply business; attending ward rounds at Sloan Kettering Hospital and elsewhere; teaching in 1994 and 1995 in Puerto Rico and at Ross University, Portsmouth, Dominica; and, in May 1996 undergoing a radical prostatectomy for cancer.
- Beginning in 1995, the applicant consulted with the Physician Prescribed Educational Program at Syracuse University, which provides information and guidance to physicians on continuing education, including those in difficulties such as experienced by the applicant. The applicant sought advice on re-entering practice and toward gaining relicensure. In a memo from the program director to the applicant's attorney that is part of the

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attachments to the Supplemental Verified Petition, the director recounts how, in view of the efforts the applicant had made to stay active and updated, and the applicant's full licensure in England, the program would be willing to work with the applicant to address any issues in his upcoming [restoration] hearing.

- The applicant, throughout the second half of 1996, traveled to England where he became affiliated with several programs and institutions wherein he practiced some medicine and participated in consultations, medical education and ward rounds.
- The applicant had cataract surgery in January, 1997
- Afterward, the applicant became actively involved in the field of surgery by being accepted in an honorary position at Hammersmith Hospital, London, England. A Reader in Surgery, Dr. John Spencer, took the applicant on in this position at the Department of Surgery, where the applicant initially was directly supervised but eventually began performing surgery, operating with and supervising Dr. Spencer's trainees. Dr. Spencer, in his letter of June 25, 1997, stated he believes the applicant "to be fully able to practice skilled and safe clinical surgery."
- While at Hammersmith, the applicant also took on a major project in radiology. The applicant's attachments include extensive documentation concerning this project.

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- The applicant also submitted evidence of a contract he and other physicians entered into in 1996 for the preparation of a textbook on surgery.

PEER COMMITTEE MEETING

On July 11, 1997, this Peer Committee met to consider this matter. The applicant appeared before us personally and was represented by an attorney, William L. Wood, Jr., Esq. Present also was Dennis K. Spillane, Esq., an attorney who appeared on behalf of the Division of Prosecutions of OPD.

Initially, Mr. Wood offered the bound supplemental petition, which had not previously been presented to our Peer Committee. We briefly recessed to read the document.

In his opening statement, Mr. Wood asked us to consider the updated information in the verified petition as well as the six witnesses he would be offering. Mr. Wood said he would also display the various optical loops the applicant has used to correct his vision problems when he was practicing surgery in the late 1980's and early 1990's.

There followed considerable colloquy among the parties present, in which our Committee clarified: that we will not be relitigating the original proceeding or going into any details on the specifics and the merits of the five cases upon which the revocation was based; and, that, since filing his original petition, the applicant has changed his position and is now seeking an unlimited license to practice medicine in the State of New York, including the right to fully practice surgery.

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Mr. Spillane, in his opening, expressed skepticism, despite the agreements before us, that the applicant does not wish to contest the original five cases. Mr. Spillane cited Dr. Spencer's letter attached to the supplemental petition, in which Dr. Spencer cited the reasons why the applicant felt the original decision was wrong, as one indication that the applicant still thinks he did nothing wrong and "can't help" but want to relitigate the decision.

We then heard from the applicant's witnesses.

The applicant's witnesses included the Director of Surgery during 1991 through 1993 at Our Lady of Mercy Medical Center, Bronx, New York, during which time the applicant had privileges at that hospital. The witness spoke highly of the applicant's competence as a surgeon. We also heard from a surgeon who succeeded the applicant after the revocation at the applicant's position at an HMO who spoke highly of the applicant's reputation and previous care of the patients at the HMO. We also heard from one of the surgeons who reviewed the statistical analysis of cases the applicant submitted with the petition who stated he found no problem with the patterns presented and who believes corrective actions taken by the applicant are adequate to lead the witness to believe the applicant can resume the practice of surgery. We also heard from the assistant to the director of a medical group with which the applicant was associated in the past, who related the high regard with which the applicant was held by the patients with whom the witness came in contact.

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We then heard from Dr. Spencer, the surgeon from London under whom the applicant worked in the first part of 1997 at Hammersmith Hospital. He explained that Hammersmith is a teaching hospital involved only with post-graduate training. Dr. Spencer had known the applicant in the 1960's but had no contact with him until 1997, when the applicant visited him and broached the possibility of doing work at Hammersmith. Dr. Spencer had heard of some of the applicant's accomplishments during the intervening time, including published works and the applicant's role in helping an American doctor develop a new type of shunt.

The applicant became a senior advising colleague at Hammersmith, an unpaid position that allowed the applicant access to all the institution's facilities. Initially, the applicant was involved with discussions and with the radiology project described in the advance papers. The applicant eventually began assisting Dr. Spencer with surgeries, taking on increasing responsibility. Dr. Spencer eventually allowed the applicant to assist his junior staff in surgeries on Dr. Spencer's behalf and in Dr. Spencer's absence and, on one occasion, the applicant did an operation himself. The applicant also reported back to Dr. Spencer on the status of patients on two occasions Dr. Spencer was away on holiday.

In response to cross-examination by Mr. Spillane, the witness explained he allowed the applicant to practice, despite what he later learned of the applicant's disciplinary problems, because of the explanations of events given by the applicant and the fact that, in the witnesses's experience, most such proceedings are

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based on personal issues and not on the actual facts, and he wished to judge the applicant himself based on his performance. It was also as a result of questions from our Committee we learned that the applicant did not initially tell Dr. Spencer of his troubles in New York. The witness also noted the applicant had been practicing for seven years without complaint from the time of the misconduct until the time he was actually revoked.

The applicant then testified. In his direct testimony, he reviewed his early training and career in South Africa and Rhodesia. He came to this country in 1974 and aided an American surgeon in the invention of a new type of shunt. The applicant offered into the record an illustration of the shunt's function. That document was accepted into this record as Applicant's Exhibit A.

After 1983, the applicant entered private practice in New York as a surgeon, specializing in liver and pancreatic surgery and taking on what he described to us as particularly difficult cases.

He stated that, at or about May 1987, he began to realize problems in some of his cases. He stated to us, as he did several times, that people unfairly focus on "the numerator" rather than the proportion of difficulties encountered to the entire high volume of cases undertaken.

In response to this realization of problems, he began an analysis of his practices and decided he had been doing too high a volume of cases. He also realized he was having trouble with his eyes and learned he was developing cataracts. He consulted with

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Dr. Goldman, the ophthalmologist, and began using optical loops when performing surgery that improved the situation.

Continuing his direct testimony, the applicant noted that in 1996, he had surgery for prostate cancer which has apparently eradicated the cancer.

In January 1997, knowing he wanted to resume involvement with surgical practice and realizing one of his eyes was deteriorating, he underwent cataract surgery which he says has resulted in a tremendous increase in his confidence in his vision.

In response to Mr. Spillane's cross-examination, the applicant said in December 1996 he changed his mind from his February, 1995 petition and decided that he wanted to regain unrestricted licensure to practice surgery and medicine. He said that was necessary to allow him to pursue teaching postgraduate residents clinical anatomy surgery.

Asked the status of his disability insurance benefits, the applicant explained he is secured the amount of the income he earned in 1993 but if he were to develop a practice (which he then emphasized he would not,) the payments would be adjusted downward.

He also added that the policy would allow him to practice general medicine, but would be adjusted downward if he were to practice surgery.

In response to another line of inquiry from Mr. Spillane, the applicant confirmed that he did not initially tell Dr. Spencer of his disciplinary problems in New York.

A major emphasis in Mr. Spillane's cross-examination explored

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the issue of the applicant's attitude as to whether he did or does think he did anything wrong in the cases for which he was found guilty of professional misconduct.

At this point at our meeting, a great deal of time and discussion was spent trying to distinguish between the various sources of statements on this subject, such as the Administrative Review Board's report; the applicant's first petition; the investigator's summary of his interview with the applicant; the applicant's supplemental petition; and the applicant's statements before us at our meeting. Further distinctions were attempted to be drawn between the applicant's opinion of the accuracy of the past characterizations of his attitude on this issue as well as the distinction, if any, between the applicant's past attitude and his attitude the day of our meeting before us.

Mr. Spillane first focused on comments by the Administrative Review Board, which were also quoted in the investigator's report, which asserted that "throughout" the transcript of the hearing the applicant was not forthcoming about his mistakes and said given a second chance he would proceed in his treatment of the patients exactly as he did the first time.

We note on this point that our Peer Committee did not have the benefit of reading the transcripts of the hearing. Also, the source of this statement was the report of the Administrative Review Board and not that of the Hearing Panel. The applicant's response to Mr. Spillane's inquiry was the most vehement of all the applicant's testimony before us. The applicant insisted he had

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spent 18 hours a day for a long period of time going over all the details of his case, and that, in the one matter of patient C, he is absolutely convinced he acted properly. He said his limited remarks about Patient C were taken out of context to make him sound unrepentant about the entire case. He then commented with words to the effect that this distortion was one indication of problems with the system of justice and how it has dealt with him.

He then said that he "of course" had made mistakes and also again commented on the proportion of these mistakes relative to his entire caseload. The applicant then talked of only five cases in nineteen years for which he was found at fault based on the testimony of a "so-called" expert witness. Asked if he agreed with the investigator's comments that the applicant felt he did not commit gross negligence or other misconduct, the applicant said he disagreed with the investigator's conclusions about his attitude.

As to the investigator's report that the applicant felt he was deprived of his civil rights and that a "competent" panel would not have come to the same decision, the applicant told us he had no recollection of those remarks. Upon further questioning, he stated any remarks he might have made about a panel's competency would likely have referred to the Administrative Review Board and its decision to revoke, rather than the hearing panel's lesser penalty. Specifically, the applicant stated, "... the only thing that disrupted my life and my wife's life and my family's life was the review committee's decision. I would have -- it wouldn't have been comfortable, but I could have worked out a comfortable solution

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from the hearing committee's decision."

Our Committee, in our questioning, tried to focus on what the applicant's feelings are today about his culpability. He said he does not say he would do the same things all over again. He said he has tried to learn from the experience and is even working on a book to warn other surgeons about the kind of things to look out for that could go wrong. He reiterated the steps he has taken, including reducing the volume of surgery; reducing the difficulty of cases taken on; and addressing his vision problem. On the other hand, the applicant did not contradict the opinions he expressed that he was judged unfairly on only a handful of his total cases and that the penalty of revocation was too harsh.

In response to questions on other matters, the applicant said he is asking for total unrestricted licensure. He said any institution would be "terrified" to hire someone under supervision and he wishes to be able to perform surgery in the context of teaching graduate residents anatomy.

Our panel queried further on the possibility the applicant raised that his vision problem affected his performance. We asked how vision would have affected findings of gross negligence (as opposed to incompetence) when many of those charges concerned matters of care and decision making not directly affected by vision.

The applicant said he only thought of the possible effects of his vision after the fact. He pointed out he was already performing without problems using loops in 1988, 1989 and 1990 and

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the investigation and problems with the five cases in question were only first brought to his attention in 1991. He said he is not admitting his vision affected those cases, but was only raising the possibility in retrospect.

Finally, we asked the applicant how he was different today in attitude and otherwise than he was when he was revoked. The applicant's answer focused on having learned the need to follow-up on patient care and not rely on the reports or decisions of junior physicians or others. He said he would check charts very carefully and see patients personally at discharge and in follow-up visits. He said he would not take chances, again stating he now knows he is judged on the numerator of cases that might be problems.

Mr. Spillane, in his closing remarks, stated his office's opposition to the application. He argued that the applicant does not accept that he did anything wrong. He said this attitude was demonstrated by the applicant's answer on how he has changed, with Mr. Spillane arguing that the applicant's emphasis on careful review of charts and on personal follow-through do not address the particular issues of care for which the applicant was found guilty.

Mr. Spillane also maintained that the applicant's refusal to accept supervision also demonstrates the applicant's lack of acceptance and understanding of what he did wrong.

Finally, Mr. Spillane argued that the applicant continues to show a lack of forthrightness, as demonstrated by his not revealing the nature of his discipline record to Dr. Spencer when the applicant first approached him for work in the surgery department

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in London.

Mr. Wood, in his closing, stated the applicant had practiced and made positive contributions for thirty years, citing his publication of eighty peer reviewed papers and his participation in the invention of the peritoneal shunt. As a measure of his eminence, someone like Dr. Spencer who had not been in contact with the applicant for thirty years was willing to take him on at Hammersmith Hospital, where the applicant immediately made a valuable contribution.

Mr. Wood said the applicant practiced successfully for five years after the cases in question and was accepted by HIP and others who would have concern for liability.

Mr. Wood also said the applicant did not deny there were problems with the cases in question and said he learned much from them and would do things differently given a chance. Mr. Wood argued that five mistakes in a person's life should not be picked out and held to the light.

Mr. Wood pointed out that, unlike many applicants for restoration, this applicant has been energetically involved in medical matters, including his hands-on experience in London. He has also outlined the steps the applicant took and will take to correct his past problems, particularly the reduction in volume and difficulty of cases and addressing his vision problems.

RECOMMENDATION

In reaching a recommendation, we are mindful of the criteria in restoration matters of remorse, rehabilitation and reeducation.

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In restoration matters, the burden is on the applicant to demonstrate that his application and supporting case is such as to compel the restoration of license. In doing so, we are also to keep in mind that the three criteria, while important, are also balanced against the question as to whether the recommendation assures the health and safety of the public.

The issue of remorse, in some cases, may be affected by the Court decision of Melone v. State of New York Department of Education, 182 A.D. 2d 875, which states an applicant does not have to admit guilt to the past charges adjudicated against him if the applicant thinks he is innocent of the charges. However, even the Melone case does not alter the compelling burden on the applicant to prove himself worthy of restoration. That case also lists a number of other considerations that are operative even if the applicant still asserts his original innocence, including the gravity of the offense; the petitioner's rehabilitation; risk of harm to the public; and professional competence.

The applicant's misconduct was clearly very serious. It involved five different patients. In three instances, he was found both grossly negligent and grossly incompetent, mostly related to his surgical skills and patient care judgments. In two of those instances, patient deaths occurred, including one instance of a wrong diagnosis and another in which, after the applicant elected to reoperate, the surgical patient bled to death. In fact, the Administrative Review Board, in non-binding dicta to its written decision, advised that even if the applicant's license is restored,

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he should not be permitted to practice surgery.

During the course of our Peer Committee, a major issue raised by the prosecutor was whether the applicant thinks he was blameworthy in the diagnoses and treatment of the five patients, or put another way, whether the applicant "thinks he did anything wrong."

It is true that the record is somewhat confusing and ambiguous in this regard, depending on one's interpretation of several sources of information, such as the report of the Administrative Review Board; the report of the interviewing investigator and; the applicant's statements before us.

Of most concern to this Peer Committee is the applicant's feelings as they are, today. We note that the applicant does concede, with the exception of his treatment of patient C, that he made mistakes and that there was need for him to take corrective actions. Therefore, the privileges afforded him by Melone, where an applicant denies guilt, is not so much an issue in evaluating remorse and rehabilitation.

What concerns us more is the degree of seriousness with which the applicant views the previously adjudicated misconduct. For even viewing the degree of remorse displayed in the light most favorable to the applicant, this applicant has minimized the misconduct committed.

The fundamental flaw in the applicant's thinking is demonstrated by his frequent mention of being judged by "the numerator." It is true that a desired outcome cannot be expected

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in every case undertaken by a surgeon. However, that understanding is applied to those physicians practicing within an acceptable standard of care. It is a different issue to judge a physician on individual cases where, in those individual cases, the physician was practicing egregiously outside the standard of care, as when gross negligence is found. In those instances, it is entirely appropriate to judge a physician's merit based on the seriousness of his misconduct in an individual case, or, in the instance of this applicant, multiple cases.

This applicant has not shown rehabilitation but rather a propensity to deflect from his own acts and to focus on other people or circumstances.

In addition to focusing on the proportion of his cases his misconduct represents, the applicant expends a great deal of energy lambasting the process that resulted in his revocation, such as questioning the competency of the Administrative Review Board and making charges of deprivation of civil rights or fairness in the proceeding.

Other statements or positions taken by the applicant cast further doubt on the quality of his rehabilitation: We note that he was not forthcoming to Dr. Spencer about his past misconduct even though he was approaching Dr. Spencer about resuming involvement with surgery. At our meeting, even when he concedes to us that he made mistakes, the applicant immediately again went on to characterize those mistakes as within the margin of what goes on with other surgeons. Despite the findings against him, he does not

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believe he committed revocable offenses. He raises the issue of his eyesight as a possible explanation for his problems, but does not want to go so far as to admit his eyesight was a factor. Nor does he explain how his eyesight would be related to many findings related to judgment and preparation and not related to physical dexterity during surgery. Also, despite the nature of the findings against him, he is resistant to the idea of supervision, a condition that would be a minimum one to be expected in view of the nature of the misconduct and the need to provide protection to the public.

Nor, even to the degree that he admits fault in his actions, does he exhibit any real remorse. Most of the applicant's concerns were for the effect of the proceeding on himself. He expresses great indignation at the fairness of the penalty. Whatever passing reference he may make to the consequences to his actions quickly turns toward recounting the effect of the revocation on his life and that of his family. His one expression of apology at our meeting was for the expense the proceeding has incurred, and even then he took the opportunity to cite the expense to himself.

The applicant has made considerable efforts toward continuing education and staying involved in his field. However, we see nothing in his actions that overcome his deficiencies in remorse and rehabilitation. For instance, given a final chance to explain to us how he has changed, his response was limited to the need to carefully check charts and supervise junior staff involved, again showing his propensity to believe his problems were with the

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deficiencies of others, and not his own practice of medicine and surgery.

It is the unanimous conclusion of this Peer Committee that the applicant has not fulfilled all the criteria for restoration and that, in view of the seriousness of the original misconduct, the public would not be protected by the granting of this application.

It is therefore our unanimous recommendation that the application before us be denied.

Respectfully submitted,

DAVID HARRIS, M.D., Chairperson

RAFAEL LOPEZ, M.D.

DELORES D. RIGGINS, Public Member

David Harris MD 1/8/98

Chairperson

Dated