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

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OFFICE OF PROFESSIONAL  
MEDICAL CONDUCT

July 5, 2002

Herbert M. Weinman, Physician  
222 Hillside – Newberry  
Dallas, Pennsylvania 18612

Re: Application for Restoration

Dear Dr. Weinman:

Enclosed please find the Commissioner's Order regarding Case No. CP-02-01 which is in reference to Calendar No. 18847. 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

*Gustave Martine*

Gustave Martine  
Supervisor

cc: Scott Einiger, Esq.  
Fager & Amsler, Esqs.  
2 Park Avenue  
New York, New York 10016

The  
University of the  
Education  State of New York  
Department

IN THE MATTER

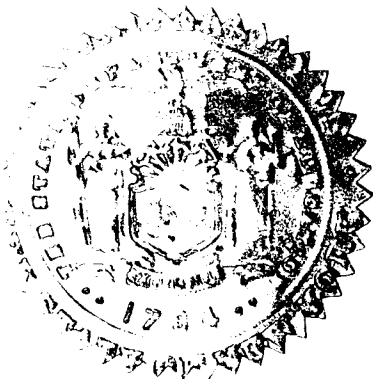
of the

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


Case No. CP-02-10

It appearing that the application of HERBERT M. WEINMAN, 222 Hillside-Newberry, Dallas, Pennsylvania 18612, to surrender his license to practice as a physician in the State of New York, was accepted by the State Board for Professional Medical Conduct effective 10/22/96, 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 June 18, 2002, it is hereby

ORDERED that the petition for restoration of License No. 096623, authorizing HERBERT M. WEINMAN to practice as a physician in the State of New York, is granted.



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 24<sup>th</sup>  
day of June, 2002.

  
Commissioner of Education

Case No. CP-02-10

It appearing that the application of HERBERT M. WEINMAN, 222 Hillside-Newberry, Dallas, Pennsylvania 18612, to surrender his license to practice as a physician in the State of New York, was accepted by the State Board for Professional Medical Conduct effective 10/22/96, 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 June 18, 2002, it is hereby

VOTED that the petition for restoration of License No. 096623, authorizing HERBERT M. WEINMAN to practice as a physician in the State of New York, is granted.

Case number  
CP-02-10

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: Herbert M. Weinman**

Attorney: Scott Einiger

Herbert M. Weinman, 222 Hillside-Newberry, Dallas, Pennsylvania 18612, petitioned for restoration of his physician license. The chronology of events is as follows:

- 06/22/66 Issued license number 096623 to practice as a physician in New York State.
- 09/09/96 Charged with professional misconduct by Department of Health. (See "Disciplinary History.")
- 09/09/96 Submitted Application to Surrender License.
- 10/09/96 Department of Health accepted Application to Surrender License.
- 10/22/96 Effective date of surrender.
- 02/02/00 Submitted application for restoration.
- 10/03/01 Peer Committee restoration review.
- 01/05/02 Report and recommendation of Peer Committee. (See "Report of the Peer Committee.")
- 03/11/02 Committee on the Professions restoration review.
- 05/28/02 Report and recommendation of Committee on the Professions. (See "Report of the Committee on the Professions.")

**Disciplinary History.** (See attached disciplinary documents.) On September 9, 1996, Dr. Weinman submitted an application to the State Board for Professional Medical Conduct of the Department of Health to surrender his physician license. The

Department of Health had charged him with 16 specifications of professional misconduct related to seven patients, including gross negligence, gross incompetence, negligence on more than one occasion and incompetence on more than one occasion. In his surrender application he stated that he did not contest the charge of negligence on more than one occasion as it related to three patients in full satisfaction of all charges. On October 9, 1996, the State Board for Professional Medical Conduct accepted his Application to Surrender License and the surrender became effective October 22, 1996.

Dr. Weinman submitted an application for restoration of his physician license on February 2, 2000.

**Recommendation of the Peer Committee.** (See attached "Report of the Peer Committee.") The Peer Committee (Colgan, Herrman, Wu) met with Dr. Weinman on October 3, 2001 to review his application for restoration. In its report, dated January 5, 2002, the Committee recommended unanimously that the application be granted.

**Recommendation of the Committee on the Professions.** On March 11, 2002, the Committee on the Professions (Ahearn, Muñoz) met with Dr. Weinman. His attorney, Scott Einiger, accompanied him.

Ms. Ahearn explained to Dr. Weinman and Mr. Einiger that one of the Committee members was unexpectedly precluded from attending the meeting. She indicated that they could proceed with the meeting with just two Committee members present and that if they chose this option, a unanimous decision of the Committee would be forwarded to the Board of Regents. However, if the vote were split, Dr. Weinman would have the option of attending another meeting with three Committee members or requesting that a paper review be done by a third Committee member. Dr. Weinman and Mr. Einiger agreed to continue with the meeting under the conditions outlined by Ms. Ahearn.

The Committee asked Dr. Weinman to explain what led to the loss of his license and what changes he has made that would warrant restoration of his license. Dr. Weinman said that in 1989 a patient complained to the Department of Health (DOH) that proper treatment had not been received. Dr. Weinman reported that DOH requested 30 of his patients' records in 1991 and he was called to Albany in 1993. He indicated that at that time he thought DOH just wanted additional information to help clarify questions raised by another physician reviewing the charts. Dr. Weinman said that there remained some questions about eight of his patients' charts and DOH charged him with professional misconduct in 1996. He said that at that point he realized the charges were serious and retained an attorney.

Dr. Weinman told the Committee that at the time the charges were made in 1996, he had left New York State and was serving as the Vice President for Provider Services at Blue Cross in Pennsylvania. Upon the advice of his attorney he said he decided not to challenge the charges and "pleaded to three of the cases." Dr. Weinman said that he soon realized that he had made a "terrible decision" and didn't fully understand the consequences of his decision at that time. Having just assumed a new position with Blue Cross and not certain if he wanted to practice medicine again, he said he became

convinced that his best action was to quietly surrender his New York State license. Additionally, he reported that his attorney told him it would cost at least \$50,000 to defend the charges, that he would need to make many trips to Albany, and that the outcome of any hearings could possibly embarrass him. Dr. Weinman stated that his attorney did not mention that other states might take action after being informed of the surrender in this State. He reported that he subsequently lost his license in Pennsylvania based on the surrender in this State and was told that restoration of his license in Pennsylvania could not be considered until New York State restores his license. Nonetheless, he said that ultimately it was his decision.

Dr. Weinman stated that he was remorseful for the manner in which he took care of his patients and admitted that he "did keep lousy records." Looking back, he indicated that he wonders how anybody could have treated his patients with the records that he kept. He detailed his extensive reeducation activities and told the Committee that he would be a better physician were his license restored. The Committee asked Dr. Weinman if he gave poor care or maintained poor records. He replied that the care he provided for his patients was not adequately reported in patient records. He indicated that at that time physicians were mainly single practitioners and other physicians generally had no need to review another physician's patient records. He explained that he now teaches courses in his consulting business stressing the importance and value of thorough and complete documentation of patient records. Dr. Weinman told the Committee that in his lectures he stresses both quality and quantity issues related to patient records. He said that the records must show the complete, actual care provided for a patient. Dr. Weinman indicated that the records often determine whether insurance companies will decide if certain care was medically necessary and whether the physician will be appropriately reimbursed. Additionally, he pointed out that patient records become a focal point in litigation and medical liability proceedings. He said that the patient records have a significant impact on the care of the patient, particularly when more than one physician sees the patient. He indicated that quality records would help avoid duplication of tests and medicinal mistakes. Dr. Weinman said that he now realizes that the records he maintained created a great "potential for harm" for his former patients but felt that he did provide adequate care for them, although it was not adequately documented.

The Committee asked Dr. Weinman to discuss his involvement with physician assistants in his office and questioned if they needed more information on patient charts to adequately practice. He replied that he worked closely with two physician assistants. He indicated that the relationship was complementary and that they were "incidental to my services." Dr. Weinman said that he now realizes that the physician assistants "didn't pick up that I wasn't saying enough on the patient charts." He reported that he failed to record everything that he did with the patient, e.g., patient's temperature, but felt at that time that he had recorded the "right things on the chart." Dr. Weinman said that he practiced conservatively and didn't order excessive tests or medicines for his patients. He reported that DOH wanted him to provide much more detail on the patient charts so that they could better understand what he was doing with his patients.

The Committee asked Dr. Weinman why DOH charged him with the other charges of professional misconduct and noted that some of the charges related to the care provided by his physician assistants. He replied that he did not know since he did not have a hearing and "it never came up." He said that he felt he closely supervised his physician assistants. He reported that a physician assistant did miss a diagnosis of appendicitis. Dr. Weinman explained that when he began to work with physician assistants, he initially would see every patient with a physician assistant. He said that after observing the physician assistants and discussing cases with them, he gave patients the option of seeing a physician assistant if he was not available. He reported that he reviewed every chart of patients seen by physician assistants and that he reviewed the charts with them twice a week.

Dr. Weinman told the Committee that he would like to tell his story to other doctors and that maybe this could help make them better doctors. He explained how, as a healthcare consultant, he has been able to draw upon his past experiences as an aid for helping others provide better medical care.

The overarching concern in all restoration cases is public protection. Education Law (section 6511) gives the Board of Regents discretionary authority to make the final decision regarding restoration of a license to practice as a physician in New York State. Section 24.7(2) of the Rules of the Board of Regents charges the Committee on the Professions (COP) with submitting a recommendation to the Board of Regents on restoration applications. Although not mandated in law or regulation, the Board of Regents has instituted a process whereby a Peer Committee meets with an applicant for restoration and provides a recommendation to the COP. A former licensee petitioning for restoration has the significant burden of satisfying the Board of Regents that there is a compelling reason that licensure should be granted in the face of misconduct so grievous and serious that it resulted in the loss of licensure. There must be clear and convincing evidence that the petitioner is fit to practice safely, that the misconduct will not recur, and that the root causes of the misconduct have been addressed and satisfactorily dealt with by the petitioner. It is not the role of the COP to merely accept as valid whatever is presented to it by the petitioner but to weigh and evaluate all of the evidence submitted and to render a recommendation based upon the entire record.

The COP concurs with the conclusion of the Peer Committee that Dr. Weinman demonstrated fulfillment of the basic criteria for restoration of his license – remorse, rehabilitation, and reeducation. He readily admits that there were deficiencies in his practice and expressed remorse for the potential danger in which he placed his patients. Dr. Weinman now regrets not responding to the Department of Health regarding all of the initial charges of professional misconduct as he continues to feel many of them were unjustified and he could have provided explanations. However, the COP found that he accepts full responsibility for deficiencies in his practice and does not contest the charges stipulated in his surrender application for three patients. He continues to participate in community service activities. The COP notes that Dr. Weinman has learned from his mistakes and constantly draws upon his past as a healthcare consultant and teacher to help others provide better services for patients. The COP concurs with the Peer Committee that "through these endeavors, he has developed a

keen appreciation of the issues of record keeping and documentation, which were central to the charges leading to his license surrender." The Department of Health did not recommend that Dr. Weinman's license be restored, feeling that he failed to address in his application for restoration all the charges he did not contest in his surrender application. However, the COP found that Dr. Weinman provided credible explanations in addressing the professional misconduct charges. The COP concurs with the Peer Committee's impression "that the applicant is aware of the requirements of modern medical office practice, and would be unlikely to return to the sloppy procedures which marred his former practice." The COP accepts the conclusion of the Peer Committee that Dr. Weinman is currently competent to practice based on his extensive reeducation and continual employment in the medical field.

Therefore, after a complete review of the record and its meeting with him, the Committee on the Professions voted unanimously to concur with the recommendation of the Peer Committee that Dr. Weinman's license to practice as a physician in the State of New York be restored.

Kathy A. Ahearn, Chair

Frank Muñoz





# 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

HERBERT WEINMAN

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

REPORT OF  
THE PEER  
COMMITTEE  
CAL. NO. 18847

-----X

HERBERT WEINMAN, 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 surrendered as a result of a professional misconduct proceeding, and he has applied for restoration of this license.

On October 3, 2001, 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 by the prosecutor from OPD into a packet that has been distributed to this Peer



HERBERT WEINMAN (18847)

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**

Case No. BPMC-96-246

#### **Action by the New York State Department of Health**

October 9, 1996 – A Determination and Order of the Chairperson, State Board for Professional Medical Conduct was issued, adopting the applicant's application for surrender of his license to practice as a physician.

#### **Determination of the Specifications of the Charges**

The applicant did not contest the fifteenth specification of professional misconduct charged against him, alleging negligence on more than one occasion, as it related to paragraphs A, C, and G of the factual allegations in the Statement of Charges.

#### **Nature of the Misconduct**

The applicant admitted to failing to meet the acceptable standard of care in his treatment of three patients over the period from on or about July 1, 1988 to on or about April 10, 1990. The specific admissions include, but are not limited to, a failure to perform and/or record an adequate physical examination; a failure to adequately obtain and/or record an adequate history; and making various diagnosis without adequate medical justification.

### **PETITION FOR RESTORATION**

The applicant submitted a restoration application dated February 2, 2000, with attachments as described below.

**ATTACHMENTS TO THE PETITION**

- Six affidavits in support of the application from professional colleagues of the applicant.
- Documentation of the State Board of Medicine of the Commonwealth of Pennsylvania, which suspended the applicant's Pennsylvania license, based upon his license surrender in New York, and until his New York license is restored.
- Malpractice history, showing four actions commenced from 1981 through 1991, with two resulting in monetary settlements.
- Continuing Medical Education record from the American Academy of Family Physicians.
- Record of licenses held in other states, showing inactive licenses in Alabama, Connecticut, Indiana, Ohio, Texas and Florida, and the suspended license in Pennsylvania.
- Correspondence between the applicant and the Council on Ethical and Judicial Affairs of the American Medical Association (AMA), which resulted in the retention of the applicant's membership in the AMA.
- Current curriculum vitae of the applicant.

**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 June 16, 2000.

This report summarizes an interview with the applicant conducted via telephone on June 9, 2000. During this interview, the applicant stated that he wanted to restore his New York license in order to have Pennsylvania restore his license, and so that he could obtain employment as a medical director or volunteer his services as a physician. He also stated that he has family living in New York, and may decide to return to New York to practice. He expressed remorse for the actions which led to his license revocation, and regretted that he was not better at documentation. He also outlined his employment history and community service activities.

Other information on the record, not already summarized:

- Letter from Temple B'Nai B'Brith, Kingston, Pennsylvania, dated June 12, 2000 reflecting the applicant's leadership functions with the temple.
- Letter from the Jewish Family Service of Greater Wilkes-Barre, Pennsylvania, dated June 10, 2000, reflecting the applicant's volunteer service with that organization.
- Letter from Big Brothers, Big Sisters of Luzerne County Pennsylvania, indicating that the applicant served on the Board of Directors from 1997 to 1999.
- Updated documentation of the applicant's continuing medical education, and regarding his consulting seminars.

#### PEER COMMITTEE

On October 3, 2001, this Peer Committee met to consider this matter. The applicant appeared before us personally, and was represented by Scott I. Einiger, Esq. Also present was Ilene Bergman, Esq., an attorney who appeared on behalf of the Division of Prosecutions of OPD.

In his opening statement, Mr. Einiger outlined the applicant's practice in New York, and the history of his license surrender proceeding.

Ms. Bergman also described the proceeding which led to the applicant's license surrender, and outlined for the Committee the issues to be addressed in a restoration proceeding.

Testimony was received from William Sheeley, who has been a practicing pharmacist in New Paltz, New York for 38 years. He depicted his work with the applicant in founding the New Paltz rescue squad in the early 1970s, and his professional interaction with the applicant as a pharmacist. He described the applicant as conservative practitioner, who was compassionate and who dedicated his life to the medical profession. In cross-examination by Ms. Bergman, he clarified his understanding of the charges which led to the applicant's license revocation.

The Peer Committee then heard testimony from Donna Siegel, who worked as a physician's assistant with the applicant while he was practicing in New York. She stated that she was employed in that capacity in the applicant's office for five years, and also worked with the rescue squad that the applicant had founded. She stated that she was familiar with the circumstances which led to the applicant's license revocation, and with the consulting work which he is now engaged in. She characterized the applicant as a wonderful clinician who had an incredible relationship with the families in the community, and an excellent reputation as a professional. In response to questions from the Committee, Ms. Siegel discussed her understanding of the mandated relationship between a physician's assistant and a physician, and the applicant's supervision of her.

Testimony was then received from Ann Rechen, who worked for the applicant as a registered nurse for nineteen years. She provided her opinion that the applicant was a well respected physician who was very active in the community, and stated that she supported his petition for restoration because he was a conscientious physician

Dr. Leo Hartz was the applicant's last supporting witness. He and the applicant were employed together at the Blue Cross for Western Pennsylvania, and the applicant assisted Dr. Hartz

HERBERT WEINMAN (18847)

in his transition from a family physician to the medical director of that organization. He explained in detail the applicant's role there and the consulting business he established after leaving Blue Cross. He described the applicant's consulting presentations for the Committee, which he characterized as very good. He also evidenced a detailed understanding of the reasons behind the applicant's loss of license, and stated that he believed that the applicant has developed a real understanding of the need for proper documentation. He stated that the applicant has also taken the extra step in his rehabilitation in that area by making it part of his work and trying to impart his knowledge to other physicians.

The applicant then testified on his own behalf, beginning by outlining for the Committee his education background and his private practice in the New Paltz area. He stated that he began working on a masters degree in business in 1981, and ultimately left his practice following its transition to an HMO. He then began his career in health administration, working for a corporate health provider and the Blue Cross before leaving that organization to begin his consulting business.

The applicant described the investigation of his practice by the New York State Health Department for the Committee. He stated that he first received a call in 1991, following a complaint from a single patient, and later, in 1993, a request for records for about 22 patients. After a visit to Albany to discuss these issues in 1995, the Department issued charges in 1996. At that time the applicant was a vice-president of the Blue Cross in Pennsylvania, and based upon those circumstances and the cost of fighting the charges, decided to voluntarily surrender his license. He described this as probably the worst decision of his life. However, he admitted to the Committee that his records at the time were not up to standard, stating that he regretted not going before a Panel to explain himself.

The applicant then described his interest in medical documentation and quality of care issues, stating that he realized that physicians working with the Blue Cross were not being denied claims due to quality of treatment, but rather due to poor documentation. He was in a position to explain to the participating physicians the need for proper documentation, and carried that knowledge forward to his consulting business.

The applicant reviewed for the Committee his maintenance of continuing medical education, and asserted that his current business requires his to engage in thousands of hours of training to keep current in medicine. He also discussed the feedback he receives from the participants in his seminars. When asked about the services he would like to provide as a physician, the applicant expressed an interest in volunteering in a foreign country, or perhaps moving back to New York to practice. He also explained to the Committee that his Pennsylvania license was suspended based solely on the New York State action.

Through questioning by Ms. Bergman, the applicant discussed some of the specific charges which led to his license revocation. He admitted that he did not take adequate physicals and histories, and asserted that certain of the charges arose from his conservative practice, and not wanting to perform tests that were not necessary. He also reviewed the status of his licenses in other states, many of which were obtained as part of his employment in the corporate health field.

In response to questions by the Committee, the applicant agreed that the New York State Health Department appropriately took the position that he should lose his license. He also discussed in further detail the consulting work that he does, and the interaction he has with practitioners at the seminars which he conducts.

In closing, Ms. Bergman reviewed the criteria for restoration of a license, and did not take a position in opposition to the application. Mr. Einiger asserted that the applicant has taken

responsibility for his prior actions, and has taken a great deal of time to re-educate himself. The applicant also addressed the Committee in closing, and claimed that the revocation of his license has resulted in an opportunity to teach, which has been a tremendous benefit to him.

### RECOMMENDATIONS

This Peer Committee has considered the entire record in this matter. It is the unanimous opinion of the Committee that the applicant's license to practice as a physician should be restored. We have considered the three criteria used in restoration determinations: re-education, rehabilitation and remorse, and have found that the applicant has demonstrated, to our satisfaction, fulfillment of these criteria.

In terms of remorse, it was clear from his testimony that the applicant recognizes that his prior practices were deficient, and that he is obviously remorseful for these deficiencies. He readily admitted the negligence which led to the revocation of his license. While, in testimony, he questioned the wisdom of voluntarily surrendering his license, he did not doubt the validity of the findings in the charges which he admitted in his surrender application. He expressed regret for not having an opportunity to explain himself before a panel. We do not fault him for these statements of regret, and do not believe that they lessen the feelings of remorse he expressed for his negligent practice.

It was apparent from his testimony that since the license surrender the applicant has developed a greater comprehension of the failings of his former medical practice. He was working in the health administration field at the time of the surrender of his license, and subsequently has developed a consulting business devoted to medical office management. We believe that, through these endeavors, he has developed a keen appreciation of the issues of record keeping and documentation, which were central to the charges leading to his license surrender. He now teaches



HERBERT WEINMAN (18847)

seminars on this topic, and his interaction with professionals in this setting has contributed to his sensitivity to the need for careful examination and diagnosis, as well as proper documentation. We certainly received the impression that the applicant is aware of the requirements of modern medical office practice, and would be unlikely to return to the sloppy procedures which marred his former practice.

The applicant's continuing education was extensive, particularly when coupled with the fact that he has worked successfully in the medical field since losing his license. He has consistently earned substantial credits in family practice, and maintained his membership in the American Medical Association and the American Academy of Family Physicians.

Based upon his continual employment in the medical field and his extensive efforts at re-education, we believe that the applicant is qualified to resume a family practice in New York State without the need for a period of probation,

In summary, based upon the testimony and other evidence on the record, we believe that the applicant has fulfilled the criteria established for the restoration of his license, and that his license to practice as a physician in the State of New York be restored without condition.

Respectfully submitted,

MARGARET COLGAN, M.D.,  
Chairperson,  
JOHN C. HERRMAN, M.D.,  
THOMAS K. WU, M.D.

*Margaret T. Colgan* 1/05/02  
Chairperson                      Dated