



Public

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

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

195 Montague Street - Fourth Floor  
Brooklyn, New York 11201

Marvin Galler, Physician

May 22, 2009

Redacted Address

Re: Application for Restoration

Dear Dr. Galler:

Enclosed please find the Commissioner's Order regarding Case No. CP-09-05 which is in reference to Calendar No. 22935. This order and any decision contained therein goes into effect five (5) days after the date of this letter.

Very truly yours,

Daniel J. Kelleher  
Director of Investigations

By:

Redacted Signature

Ariana Miller  
Supervisor

DJK/AM/er

cc: Joseph V. Sedita, Esq.  
Attorney at Law  
Hodgson Russ, L.L.P.  
140 Pearl Street, Suite 100  
Buffalo, New York 14202-4040



The  
University of the  
Education  State of New York  
Department

IN THE MATTER

of the

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

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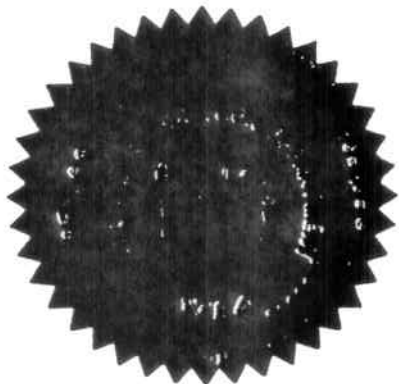
Case No. CP-09-05

It appearing that the license of MARVIN GALLER, <sup>Redacted Address</sup>

authorizing him to practice as a physician in the State of New York, was surrendered by order of the State Board for Professional Medical Conduct effective June 18, 2002, and he having petitioned the Board of Regents for restoration of said license, and the Regents having given consideration to said petition and having agreed with and accepted the recommendations of the Peer Committee and the Committee on the Professions, except having agreed with and accepted the revised Terms of Probation recommended by the Committee on the Professions, now, pursuant to action taken by the Board of Regents on March 17, 2009, it is hereby

ORDERED that the petition for restoration of License No. 147538, authorizing MARVIN GALLER to practice as a physician in the State of New York, is denied, but that the execution of

the order of surrender of said license is stayed, and said MARVIN GALLER is placed on probation for a period of five years under specified terms and conditions, and upon successful completion of the probationary period, his license to practice as a physician in the State of New York shall be fully restored.



IN WITNESS WHEREOF, I, Richard P. Mills, Commissioner of Education of the State of New York for and on behalf of the State Education Department, do hereunto set my hand and affix the seal of the State Education Department, at the City of Albany, this day of May, 2009.

Handwritten signature of Richard P. Mills in black ink, written over the printed name in the text block.

Redacted Signature

Commissioner of Education

Case No. CP-09-05

It appearing that the license of MARVIN GALLER, . Redacted Address

authorizing him to practice as a physician in the State of New York, was surrendered by Order of the State Board for Professional Medical Conduct effective June 18, 2002, and he having petitioned the Board of Regents for restoration of said license, and the Regents having given consideration to said petition and having agreed with and accepted the recommendations of the Peer Committee and the Committee on the Professions, except having agreed with and accepted the revised Terms of Probation recommended by the Committee on the Professions, now, pursuant to action taken by the Board of Regents on March 17, 2009, it is hereby

VOTED that the petition for restoration of License No. 147538, authorizing MARVIN GALLER to practice as a physician in the State of New York, is denied, but that the execution of the order of surrender of said license is stayed, and said MARVIN GALLER is placed on probation for a period of five years under specified terms and conditions, and upon successful completion of the probationary period, his license to practice as a physician in the State of New York shall be fully restored.

Case Number  
CP-09-05  
February 27, 2009

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: **Marvin Galler**

Attorney: Joseph V. Sedita

Marvin Galler, <sup>Redacted Address</sup>, petitioned for restoration of his physician license. The chronology of major events is as follows:

- 09/04/81 Issued license number 147538 to practice medicine in New York State.
- 01/14/02 Order for Non-Practice of Medicine by State Board for Professional Medical Conduct (180 days).
- 06/06/02 Charged with professional misconduct by Department of Health.
- 06/18/02 Effective date of Order surrendering physician license.
- 07/11/03 Guilty plea by applicant to one count of Adulteration of a Drug in Interstate Commerce with Intent to Mislead.
- 12/10/03 Applicant sentenced a 1 year probation with a \$5,000 fine and \$100 assessment.
- 12/13/04 Notice of Discharge from Supervision, U.S. District Court, Southern District of Florida.
- 10/17/05 Application for restoration of license to practice medicine submitted.
- 11/07/06 Peer Committee Restoration Review.
- 12/04/06 Report and Recommendation of Peer Committee.
- 11/15/07 Committee on the Professions Restoration Review.
- 02/27/09 Report and Recommendation of Committee on the Professions.

**Disciplinary History.** (See attached disciplinary documents) On December 29, 2001, applicant executed an Application for and Agreement to Not Practice Medicine/Order of the State Board for Professional Medical Conduct (BPMC), wherein he agreed to not engage in the practice of medicine for a period of 180 days, while BPMC was investigating aspects of his medical practice to determine if he had engaged in professional misconduct. That application and agreement resulted in a January 14, 2002 Order for Non-Practice of Medicine issued by the BPMC. On June 6, 2002, the Department of Health (DOH) charged Dr. Galler with professional misconduct for practicing medicine with gross negligence, negligence on more than one occasion, and willful or grossly negligent failure to comply with Federal Law. The charges stemmed from allegations that Dr. Galler had intentionally adulterated flu vaccine with a non-flu vaccine substance and had inoculated numerous patients with the adulterated flu vaccine at his medical office between November 12, 2001 and November 20, 2001. On June 4, 2002 applicant executed a Surrender of License application, in which he did not contest the charge of gross negligence set forth in the Statement of Charges. On June 14, 2002, BPMC issued a Surrender Order. On July 11, 2003 Dr. Galler pled guilty to one count of a violation of 21 U.S.C. §331(k) and §333(a)(2), Adulteration of a Drug in Interstate Commerce with Intent to Mislead. Dr. Galler was sentenced to a one-year probation with a \$5,000 fine and \$100 assessment. By notice dated December 13, 2004, Dr. Galler was discharged from supervision by the U.S. District Court, Southern District of Florida.

On October 17, 2005, Dr. Galler submitted the instant application for restoration of his New York physician license.

**Recommendation of the Peer Committee.** (See attached report of the Peer Committee) The Peer Committee (Cordice, Salom, and Cournos) convened on November 7, 2006. In its report dated December 4, 2006, the Committee voted unanimously to recommend that Dr. Galler's application for restoration be granted, to the extent that the revocation of his license be stayed and that he be placed on probation for a period of five years under specified terms and conditions, which included a requirement that he submit to an examination and any necessary treatment from an approved psychiatrist or psychologist of his choice, once every three months, and submit a written report once every three months from the psychiatrist or psychologist stating whether Dr. Galler is fit to practice. In addition, the Peer Committee recommended that Dr. Galler be monitored by an approved physician, that his records be subject to random selections and reviews, and that the monitor submit quarterly performance reports.

**Recommendation of the Committee on the Professions.** On November 15, 2007, the Committee on the Professions (COP) (Muñoz, Templeman and Hansen) met with Dr. Galler to consider his application for restoration. Joseph V. Sedita, his attorney, accompanied him. The Committee asked Dr. Galler to explain the events that had led to the loss of his license. Dr. Galler explained that he was under severe stress, severely depressed, and truly unfit to practice. He stated that he had diluted three vials of the flu vaccine and administered them to some of his patients. During this time he had his own practice and saw 30 to 35 patients a day. He told the COP that the anthrax scare was happening at this time and that there was a shortage of flu vaccine. He indicated that he had people begging him for the vaccine, that he wanted to avoid saying "no," and that

diluting the vaccine kept him from having to tell people "no." He said that he was incapable of monitoring himself at that time and that there were other factors going on that were overwhelming. He explained that his office manager, upon whom he relied heavily, had embezzled a large sum of money. Dr. Galler reported that his mother-in-law, who lived with him and who had lived seven and half years after a cancer diagnosis, was in the final stages of terminal cancer and that this was heart rending for him. Dr. Galler told the Committee that his partner did not pick up his share of the workload, leaving Dr. Galler to carry this load by working 85 hours a week. He stated he now understands that you have to take care of yourself and listen to others.

The Committee asked if he had an attorney when he surrendered his license. Dr. Galler responded that he was represented by the same attorney who is representing him on his restoration application. The attorney, who accompanied him to the COP meeting, then explained that, at the time Dr. Galler surrendered his license, it was apparent to him that the doctor could not practice because he had suffered a complete emotional breakdown. Dr. Galler agreed to a 180-day suspension and went for an evaluation at Menninger Clinic, where he later attempted suicide.

When asked by the Committee what he has done in the last six years, Dr. Galler responded that for the first six months he received acute inpatient therapy and concentrated on getting his life and his family's life back to normal. He told that Committee that, since that time, he has continued with outpatient therapy, seeing his psychiatrist two to three times a year, his psychologist on a regular basis, and his primary physician as needed. He also reported that he participates in group therapy sessions. Dr. Galler explained that these efforts have helped him to learn his weaknesses and to understand what he needs to do to monitor himself. He indicated that he now knows when to say "no," and that he knows what he needs to do to take care of himself both emotionally and physically. He reported that he exercises, has more friends, spends more time with his family, and travels. He stated he knows what his limitations are and he does not expect to be able to do everything.

Dr. Galler told the COP that he left Buffalo five and half years ago, mainly for the sake of his children, and moved to Florida, where he could be near his brother and other family. He indicated that he now provides medical/legal consulting for law firms in New York State, but that he does not testify. He explained that his business forces him to stay current on medical issues and that he believes that his medical knowledge is at its peak.

The Committee asked Dr. Galler what his plans were if his license were restored. He responded that he plans to return to New York State to find a position. He reported that he has kept his friends in Buffalo and that he still returns there for a week each month for business. He mentioned the shortage of physicians in Buffalo and reported that he planned on returning to practice slowly, starting on a part-time basis. He explained that he does not want to manage a practice. When asked if this was realistic, he said he has explored opportunities at the Buffalo Veterans Administration hospital. Dr. Galler's attorney noted that his conviction would bar Dr. Galler from participation in federally-funded programs.



When asked what CE he had beyond his current employment Dr. Galler responded that he attends conferences such as the American Heart Association meeting in Orlando, Florida and that he takes on-line courses in internal medicine and cardiology.

The Committee asked Dr. Galler about malpractice actions against him, and he stated that the Appellate Division had just upheld a judgment in his favor in one case. He reported that a second malpractice case named him as defendant solely due to his position at the hospital and that he also prevailed in that case.

The overarching concern in all restoration cases is the protection of the public. New York Education Law §6511 gives the Board of Regents discretionary authority to make the final decision regarding applications for the restoration of a professional license. Section 24.7 of the Rules of the Board of Regents charges the COP with submitting a recommendation to the Board of Regents on restoration applications. Although not mandated by law or regulation, the Board of Regents has instituted a process whereby a Peer Committee first meets with an applicant for restoration and provides a recommendation to the COP. A former licensee petitioning for restoration has the significant burden of satisfying the Board of Regents that there is a compelling reason that licensure should be granted in the face of misconduct that resulted in the loss of licensure. There must be clear and convincing evidence that the petitioner is fit to practice safely, that the misconduct will not recur, and that the root causes of the misconduct have been addressed and satisfactorily dealt with by the petitioner. It is not the rule of the COP to merely accept, without question, the arguments presented by the petitioner, but to weigh and evaluate all of the evidence submitted and to render a determination based upon the entire record.

The COP concurs with the recommendation of the Peer Committee. We believe that Dr. Galler has presented a compelling case that he understands the nature, causes, and effects of his misconduct that he is remorseful concerning the actions that led to the revocation of his license, and that he has sufficiently re-educated and rehabilitated himself for restoration purposes. Dr. Galler has taken numerous continuing education courses in order to keep his knowledge current, has attended conventions, and has kept his medical knowledge current in furtherance of his consulting business. The record shows that Dr. Galler's dilution of influenza vaccine was an isolated instance of misconduct in his otherwise unblemished career. The COP is satisfied that the root cause of the misconduct has been addressed and that it is highly unlikely that the misconduct involved in this case will reoccur.

We note that Chief Judge Arcara of the United States District Court for the Western District of New York, in the course of his sentencing remarks, addressed the possibility of Dr. Galler's re-licensure stating, "I don't know what's going to happen in the future, I know you're in Florida doing consulting. I hope that you are given an opportunity again." In his concluding remarks Judge Arcara went on to say, "You did it, you've shown true remorse, you've almost from [the] get-go you admitted that you made this --- I don't like to use the word mistake, but bad judgment. And you're paying a dear penalty for it. And I'd just like to see you, as best you can, enjoy your family and your friends, and I wish the best as far as your future is concerned and as far as the medical profession."



Dr. Galler's petition is strongly supported by nine affidavits, and the Office of Professional Medical Conduct does not oppose the restoration of his medical license, provided that he receive ongoing therapy and have a monitor for his practice for five years. In addition, the COP has received a letter from the Committee for Physician Health, a division of the Medical Society of the State of New York that assists physicians who suffer from psychiatric illnesses, detailing Dr. Galler's implementation of identification and support mechanisms to avoid the problems he has had in the past. The Committee for Physician Health recommends that Dr. Galler be allowed to return to practice with safeguards that closely reflect those recommended by the Peer Committee. We also believe that the probationary terms recommended by the Peer Committee are, for the most part, appropriate to assure that the public will be protected. However, we have included revised Terms of Probation with this report to address technical problems with those recommended by the Peer Committee and to include a tolling provision for periods of time when Dr. Galler is not engaged in the active practice of medicine in New York State.

Based on all of the forgoing, a complete review of the record, and its meeting with him, the Committee on the Professions voted unanimously to recommend that Dr. Galler's application for restoration of his license to practice as a physician in New York State be granted to the extent that the order of the Commissioner of Health accepting the surrender of his license be stayed, that he be placed on probation for a period of five years in accordance with the Terms of Probation of the Committee on the Professions set forth in Exhibit A annexed hereto, and that upon satisfactory completion of the probationary period, his license be fully restored.

Frank Muñoz, Chairperson  
Leslie Templeman  
Stan Hansen

## EXHIBIT "A"

### TERMS OF PROBATION OF THE COMMITTEE ON THE PROFESSIONS

MARVIN GALLER

1. That the applicant, during the period of probation, shall be in compliance with the standards of conduct prescribed by the law governing the applicant's profession;
2. That the applicant shall submit written notification to the Director, Office of Professional Medical Conduct (OPMC), New York State Department of Health, Suite 303, 4<sup>th</sup> Floor, Hedley Park Place, 433 River Street, Troy, NY 12180-2299, of any employment and/or practice, applicant's residence, telephone number, and mailing address and of any change in the applicant's employment, practice, residence, telephone number, and mailing address within or without the State of New York;
3. That the applicant shall submit written proof from the Division of Professional Licensing Services (DPLS), New York State Education Department (NYSED), that the applicant has paid all registration fees due and owing to the NYSED and the applicant shall cooperate with and submit whatever papers are requested by DPLS in regard to said registration fees, said proof from DPLS to be submitted by the applicant to the Department of Health (DOH), addressed to the Director, OPMC, as aforesaid, no later than the first three months of the period of probation;
4. That the applicant shall submit written proof to the DOH, addressed to the Director, OPMC, as aforesaid, that 1) the applicant is currently registered with the NYSED, unless the applicant submits written proof that the applicant has advised DPLS, NYSED, that the applicant is not engaging in the practice of the applicant's profession in the State of New York and does not desire to register, and that 2) the applicant has paid any fines which may have previously been imposed upon the applicant by the Board of Regents or pursuant to section 230-a of the Public Health Law, said proof of the above to be submitted no later than the first two months of the period of probation;
5. That the applicant shall supply to the Director of OPMC written reports, once every three months, from a psychiatrist or psychologist, chosen by the applicant and previously approved, in writing, by the Director of OPMC, which reports shall be based on an examination performed by such psychiatrist or psychologist and shall indicate any necessary treatment and whether the applicant is fit to practice as a physician in the State of New York, provided that such examinations and such reports shall be provided at the applicant's expense;
6. That the applicant shall comply with any necessary treatment identified by the psychiatrist or psychologist and must be fit to practice as a physician in the State of New York in order to be in compliance with the terms of probation, said fitness to be demonstrated by the above-referenced report from the psychiatrist or

psychologist; and that, if information is received by DOH from said psychiatrist or psychologist indicating that the applicant is unfit to practice applicant's profession, such information shall constitute grounds for the commencement of a violation of probation proceeding;

7. That during the period of probation, the applicant's practice shall be monitored, at the applicant's expense, as follows:
  - a. That said monitoring shall be by a physician selected by the applicant and previously approved, in writing, by the Director of OPMC;
  - b. That the applicant shall be subject to random selections and reviews by said monitor of the applicant's patient records, office records, and hospital charts in regard to the applicant's practice, and the applicant shall be required to make such records available to said monitor at any time requested by said monitor; and
  - c. That said monitor shall submit a report, once every four months, regarding the above-mentioned monitoring of the applicant's practice, to the Director of OPMC;
8. That the applicant shall make quarterly visits to an employee of OPMC, unless otherwise agreed to by said employee, for the purpose of said employee monitoring the applicant's terms of probation to assure compliance therewith, and the applicant shall cooperate with said employee, including the submission of information requested by said employee, regarding the aforesaid monitoring; and
9. That upon receipt of evidence of noncompliance with or any other violation of any of the aforementioned terms of probation, OPMC may initiate a violation of probation proceeding.
10. That the period of probation shall be tolled during periods in which the applicant is not engaged in the active practice of medicine in New York State. The applicant shall notify the Director of OPMC, in writing, if the applicant is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. The applicant shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon the applicant's return to practice in New York State.



# 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

Marvin Galler, M.D.

REPORT OF  
THE PEER  
COMMITTEE  
CAL. NO. 22935

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

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

## Chronology of Events

09/04/81	Issued license no. 147538 to practice medicine in the State of New York.
10/29/01	Application for Agreement to Not Practice Medicine/Order of the Board
01/14/02	Order for Non-Practice of Medicine by State Board for Professional Medical Conduct. (180 days)
06/06/02	Charged with professional misconduct by Department of Health
06/14/02	Surrender Order BPMC No. 02-202

- 06/18/02      Effective date of Surrender Order
- 07/11/03      Guilty plea by applicant to one count of a violation of 21 U.S.C. §331(k) and §333(a)(2), Adulteration of a Drug in Interstate Commerce with Intent to Mislead, accepted by Chief U.S. District Judge Richard J. Arcara.
- 12/10/03      Sentencing of applicant in the case of United States of America v. Galler to a one-year probation with a \$5,000 fine and \$100 assessment.
- 12/13/04      Notice of Discharge from Supervision, U.S. District Court, Southern District of Florida.
- 10/17/05      Application for restoration of license to practice medicine submitted.

### **BACKGROUND INFORMATION**

The written application with supporting papers provided by the applicant, and papers resulting from the investigation conducted by the Office of Professional Discipline (OPD), were compiled by the prosecutor from OPD into a packet that was distributed to this Peer Committee in advance of its meeting and also provided to the applicant.

Listed below is the information from that packet, which was also submitted by applicant on the day of the meeting. Further details pertaining to these documents may be found therein.

### **PRIOR DISCIPLINARY HISTORY**

#### **Action by State Board for Professional Medical Conduct**

#### **Case No. BPMC 02-202**

On October 29, 2001, applicant executed an Application for an Agreement to Not Practice

Medicine/Order of the Board, wherein he agreed to not engage in the practice of medicine for a period of one-hundred-eighty days, while the New York State Board for Professional Medical Conduct was investigating aspects of his medical practice to determine if he had engaged in professional misconduct. An Order for Non-Practice of Medicine was executed on January 14, 2004 by the State Board for Professional Medical Conduct, in conjunction with said application, with the adoption of the application.

On or about June 6, 2002, the Bureau of Professional Medical Conduct served a Statement of Charges alleging that applicant had committed professional misconduct as defined in New York Education Law §6530(4) by: practicing the profession of medicine with gross negligence; practicing the profession of medicine with negligence on more than one occasion in violation of New York Education Law §6530(3); and for willful or grossly negligent failure to comply with federal law, as defined in New York Education Law §6530(16), for violation of 21 U.S.C. §331(b). All charges stemmed from allegations that applicant had intentionally adulterated flu vaccine with a non-flu vaccine substance and had inoculated numerous patients with the adulterated flu vaccine at his medical office between November 12, 2001 and November 20, 2001.

On June 4, 2002, applicant submitted a proposal for Surrender of License, in which he did not contest the charge against him for gross negligence set forth in the Statement of Charges. On June 14, 2002, the State Board for Professional Medical Conduct executed a Surrender Order, accepting the terms of the Surrender of License Agreement. The Surrender Order was effective June 18, 2002.

#### **APPLICATION FOR RESTORATION**

Applicant submitted a restoration application dated October 17, 2005, with attachments as



summarized below.

**Applicant's Statement**

Applicant explained in his statement that the event involving his dilution of flu vaccine in 2001 came about at a time when he was overwhelmed with work and other stresses in his life. He diluted the vaccine to avoid stress that he would have experienced from having to disappoint patients when he did not have enough flu vaccine for those requesting it. Applicant has, since the event in question, undergone psychiatric treatment and psycho-therapy. He has consequently developed introspection that has allowed him to control interactions and which has allowed him to set limits and to pursue other activities so as to avoid stress. He indicated that he has been current with medical topics and has taken extensive continuing medical education courses to maintain and improve his skills. He hopes to return to the medical profession and make a meaningful commitment to society.

**Continuing Medical Education & Community Service**

Applicant submitted certificates of completion indicating that he had taken approximately two-hundred-forty continuing medical education courses in the time period from September 24, 2002 through September 22, 2005. Applicant also presented documents substantiating his participation in community service organizations. He served as an advisor to the Development Corporation for Israel, a consultant for Broward Community College, a food deliverer for Palm Beach Harvest, and as a counselor/chaperone at Temple Beth El.

**Supporting Affidavits**

Applicant submitted nine affidavits in support of his application, all of which recommended him as a hard working, caring and competent physician. The affidavits were from: Stanford Copley, MD, David Hoffman, MD, Raymond Tuoti, MD, Daniel Wild, MD, Stuart Pohl, Peter Rodgers, Esq.,

Mark Rubin, Rabbi Merle Singer, and Steven Wiseman, Esq.

Rehabilitation Activities

Applicant received inpatient treatment at the Menninger Clinic from December 6, 2001 through December 18, 2001. He was diagnosed with Generalized Anxiety Disorder, chronic with severe exacerbation secondary to tampering with packaged medications. Medical records from Menninger were provided by the applicant. Other medical records provided by the applicant indicating psychological treatment were from psychiatrist Dr. Richard Wolin, of Buffalo, New York, who treated the applicant upon referral from the Committee for Physicians Health, first on January 22, 2002, and then on a continuing basis. Dr. Wolin's primary diagnosis of the applicant was that he was suffering from major depression, single episode versus recurrent. Dr. Wolin placed applicant on medication which consisted of Paxil and Xanax. Applicant was next seen by psychiatrist Dr. Alexander Vuckovic for a second opinion. Dr. Vuckovic's report dated April 1, 2002 was provided by applicant. Dr. Vuckovic concurred with Dr. Wolin's diagnosis.

Applicant also provided letters from Barbara Booth, M.S., C.R.C.-M.A.C., a psycho-therapist who treated him after his incident involving the dilution of the influenza vaccine upon referral from the New York State Medical Society, Committee for Physicians Health. Ms. Booth indicated in her letters of January 8, 2004 and May 10, 2005, that applicant had participated in weekly therapy sessions for almost three years after the incident, and that he has since continued his treatment with her on a monthly basis, with more frequent telephone therapy sessions. Ms. Booth indicated that applicant has accomplished, through therapy, an intimate understanding of the genesis of his problems that led to the vaccine incident, which she has concluded was not generated by malice or greed, but in an attempt to provide for more patients than the influenza supply allowed.

**Additional Attachments**

Applicant's attorney submitted an affidavit which included various exhibits regarding the federal action against applicant for violating Article 21, U.S.C. §331(k) and §333(a)(2) for adulteration of a drug in interstate commerce with the intent to deceive. Those documents included the agreement which applicant entered into, wherein he pled guilty to the charges. Also included was a pre-sentence investigation report by a United States Probation Officer, dated August 25, 2003, revised October 7, 2003, which, among other things, specified that applicant had diluted three bottles of the flu vaccine with a dextrose solution which was used to inoculate ten to fifty of his patients. The report indicated that the flu shots were given free of charge and that none of the patients who received the flu vaccine became sick. Other exhibits provided were: a Sentence Memorandum prepared by applicant's attorney in the federal action; letters of support from applicant's family, friends, and former patients that were submitted to the federal court on applicant's behalf for his sentencing hearing; the transcript from Judge Arcara's sentencing, in which Judge Arcara sentenced applicant to the least sentence required by the Sentencing Reform Act of 1984 for the violation applicant pled guilty to, which was one year of probation along with a \$5,000 fine and mandatory assessment of \$100; the Judgment in the federal action against applicant for the charge previously identified; and the Notice of Discharge From Supervision, indicating that applicant's probation period expired on December 9, 2004.

**DEPARTMENT'S EXHIBITS**

**OPD Investigators Progress Report dated April 5, 2006**

The Investigator's Report included a brief synopsis of applicant's statement and of phone

conversations the investigator had with three persons who had submitted affidavits in support of the applicant, all of whom highly recommended reinstatement of applicant's license. The report also outlined the investigator's phone conversations with the applicant, the applicant's treating psychotherapist, and his psychiatrist, who recommended a favorable consideration of applicant's restoration petition.

**Records From the Office of Professional Medical Conduct, New York State Health Department**

These records were referenced previously in setting forth applicant's prior disciplinary history.

**Letter from Dennis J. Graziano, Director of Office of Professional Medical Conduct, dated August 21, 2006**

The position taken by the Office of Professional Medical Conduct was a recommendation for restoration of applicant's license, but with a requirement that an independent psychiatric evaluation be conducted to determine his fitness to return to practice. They also recommended that applicant be required to have ongoing therapy and monitoring for five years, and that he would be required to attend appropriate medical education programs.

**Other Letters**

- 04/05/06 Letters from the OPD investigators supplementing her report. (Ex.'s 5 and 6)
- 03/13/06 Letter from Norma Nelson in support of applicant. (Ex. 7)
- 03/25/06 Letter from Dr. Richard Wolin in support of applicant. (Ex. 8)
- 09/19/06 Attestation from the State Education Department that applicant was licensed to practice medicine on September 4, 1981, license number 147538. (Ex. 9)

PEER COMMITTEE MEETING

On November 7, 2006 this Peer Committee met to consider this restoration matter. The applicant appeared before us personally and was represented by his attorney, Joseph V. Sedita, Esq. The Division of Prosecutions, OPD, was represented by Sherrie Thompson, Esq.

The first witness produced by the applicant was Dr. Richard E. Wolin, a board certified psychiatrist, who has been treating the applicant since 2002 upon referral from the Committee for Physicians Health, which is associated with the Medical Society of the State of New York. Dr. Wolin is still treating the applicant and sees him every four months or so at the present time. During his treatment of the applicant, Dr. Wolin has sent quarterly reports to the Committee for Physicians Health. Dr. Wolin testified that he originally treated the applicant with anti-depressants and Lithium. Applicant was taken off medication in February of 2005. He was again placed on a low dosage of Paxil over the summer of 2006, because of stress related to his wife's illness.

Dr. Wolin testified that applicant's actions in diluting flu vaccines in November of 2001 came about because he was under enormous stress from internal and environmental pressures. He had been caring for ill family members, working long hours, and had been dealing with office problems including a recent embezzlement by his office manager and an associate who he felt was not meeting professional responsibilities. Dr. Wolin opined that the applicant was presently in full remission from his depressive disorder that existed at the time of his illegal act, and opined that the applicant would have a low rate of recidivism because he had no prior history of acting irresponsibly under stress, and because it would be unlikely that he would suffer from extreme depression in the future if he continued his therapy and was monitored. He opined that the applicant presently has a good understanding of how stress affects him, and does not think that applicant would allow himself

to be affected again as he had in the flu vaccine incident.

The only other witness to testify was applicant himself. Applicant testified that he now lives in Boca Raton, Florida, where he moved shortly after the events surrounding the loss of his license, having previously lived in the Buffalo, New York area. In Florida, applicant started a medical-legal consulting business, wherein he advises attorneys regarding medical malpractice cases. He travels frequently to western New York for his business, which provides him with sufficient income to support his family. He testified that when he is in the Buffalo area, he presently still sees his psycho-therapist about once a month. He had seen her three times per week immediately following the flu dilution incident, which was subsequently reduced to once a week. He also continues to see Dr. Wolin. Applicant further testified consistently with the statement that he submitted in support of his application.

Regarding his desire to get back into the medical profession, applicant testified that he has a passion for medicine, and a great desire to return to that profession. He testified that he has learned a lot about himself since November of 2001, and does not believe that there would be a reoccurrence of those events in the future. He now knows how to keep himself from becoming overstressed. He knows how to say "No", and has learned how to take time for himself. He has taken up hobbies, does casual reading, has made more friends, and is involved with his temple. He feels that he is very attuned to himself and would be able to recognize if a problem was causing him to become overstressed and he would know when he should turn to his physician for help. In addition, he has the support of his wife and family members and an extended group of friends. He testified that he was extremely sorry for his past act which affected the trust of his patients, and hopes to go on and practice medicine properly to make up for it.



RECOMMENDATION

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

In our meeting, we had the opportunity to observe, evaluate, and question the applicant personally. We believe that he demonstrated sincere remorse for his acts and a true determination to make sure that no such acts are repeated by him in the future.

We note that, other than the event that led to the loss of applicant's license, he has not been involved with any misconduct or any inappropriate behavior. Applicant has undergone extensive psychological treatment and psychoanalysis. His present treating psychologist has indicated that applicant is in full remission from the depressive disorder that led to his inappropriate actions, and has opined that, with appropriate continuing therapy, applicant is unlikely to experience recidivism. Both applicant and his psychiatrist indicated that the applicant has learned how to cope with, and manage the stress in his life, so that he can act appropriately so as not to jeopardize future patients. The applicant has established a support system consisting of his medical providers, his wife and family, as well as friends, that should provide him with a sufficient framework to sustain him in the future. We believe that applicant has learned introspection and has learned when to recognize when

he is under too much stress. He has learned when he needs help to handle stress and how to seek the help he might require. In addition, he has learned how to say "No", and how to avoid stress in the first place.

We note that numerous affidavits were submitted in support of applicant's restoration, all of which commended him as a hard working, caring, and competent physician. Applicant also demonstrated an ability to adapt to his situation by establishing a new business in order to use his medical background to advise attorneys of the strengths and weaknesses of malpractice cases. He also participated in volunteer work to contribute to his community. In addition, applicant presented proof of having taken numerous continuing medical education classes, acquiring over two hundred credits, in order to keep his medical knowledge current so as to enable him to resume his practice of internal medicine. Finally, we find it relevant that the Office of Professional Medical Conduct supported restoration of applicant's license.

Although we are persuaded that the applicant has taken appropriate steps to overcome his psychological disorders that led to his past convictions, and continues to take steps to ensure that he does not repeat that behavior, we remain cautious because of the nature of that very behavior. In order to address our concern, in recommending restoration of applicant's license to practice medicine, we recommend that he continue to receive psychological monitoring, as well as monitoring of his practice, for a five year period.

Thus, it is our unanimous recommendation that execution of the revocation of the applicant's license to practice as a physician in the State of New York be stayed, and that the applicant then be placed on probation for a period of five years under the terms and conditions of probation annexed

hereto and made a part hereof, marked as Ex. "A". Upon successful completion of the probation, the applicant's license would be fully restored.

Respectfully submitted,

John Cordice, MD, Chair  
Ira L. Salom, MD  
Francine Cournos, MD

Redacted Signature

~~Chairperson~~

Dated

December 4, 2006

EXHIBIT "A"

TERMS OF PROBATION  
OF THE HEARING PANEL

MARVIN GALLER

CALENDAR NO. 22935

1. That applicant, during the period of probation, shall be in compliance with the standards of conduct prescribed by the law governing applicant's profession;
2. That applicant shall submit written notification to the Director, Office of Professional Medical Conduct (OPMC), 433 River Street-Suite 303, Troy, New York, 12180-2299, of any employment and/or practice, applicant's residence, telephone number, and mailing address, and of any change in applicant's employment, practice, residence, telephone number, or mailing address within or without the State of New York;
3. That applicant shall submit written proof from the Division of Professional Licensing Services (DPLS), New York State Education Department (NYSED), that applicant has paid all registration fees due and owing to the NYSED and applicant shall cooperate with and submit whatever papers are requested by DPLS in regard to said registration fees, said proof from DPLS to be submitted by applicant to the NYSED, addressed to the Director, Office of Professional Discipline, as aforesaid, no later than the first three months of the period of probation;
4. That applicant shall submit written proof to the DOH, addressed to the Director, OPMC, as aforesaid, that 1) applicant is currently registered with the NYSED, unless applicant submits written proof that applicant has advised DPLS, NYSED, that applicant is not engaging in the practice of applicant's profession in the State of New York and does not desire to register, and that 2) applicant has paid any fines which may have previously been imposed upon applicant by the Board of Regents or pursuant to section 23-a of the Public Health Law, said proof of the above to be submitted no later than the first two months of the period of probation;
5. That applicant shall supply written reports, once every three months, from a psychiatrist or psychologist, chosen by applicant and previously approved, in writing by said employee, to which psychiatrist or psychologist applicant shall submit, at applicant's expense, to an examination and any necessary treatment, once every three months during the period of probation, said written reports by the psychiatrist or psychologist to state whether or not applicant is fit to practice as a physician in the State of New York; that

applicant must be fit to practice as a physician in the State of New York in order to be in compliance with this term of probation, such fitness to be demonstrated by said report from the psychiatrist or psychologist; and that if information is received by the New York State Department of Health, from said psychiatrist or psychologist indicating that applicant is unfit to practice applicant's profession, such information shall be processed to the Board of Regents for its determination in a violation of probation proceeding initiated by the New York State Department of Health and/or such other proceedings pursuant to the Public Health Law, Education Law, and/or such other proceedings pursuant to the Public Health Law, and/or Rules of the Board of Regents;

6. That during the period of probation, applicant shall have applicant's practice monitored, at applicant's expense, as follows:
  - a. That said monitoring shall be by a physician selected by applicant and previously approved, in writing, by the Director of the Office of Professional Medical Conduct;
  - b. That applicant shall be subject to random selections and reviews by said monitor of applicant's (patient records), (office records), (hospital charts) in regard to applicant's practice, and applicant shall also be required to make such records available to said monitor at any time requested by said monitor; and
  - c. That said monitor shall submit a report, once every four months, regarding the above-mentioned monitoring of applicant's practice to the Director of the Office of Professional Medical Conduct;
7. That applicant shall make quarterly visits to an employee of the OPMC, DOH, unless otherwise agreed to by said employee, for the purpose of said employee monitoring applicant's terms of probation to assure compliance therewith, and applicant shall cooperate with said employee, including the submission of information requested by said employee, regarding the aforesaid monitoring;
8. That upon receipt of evidence of noncompliance with or any other violation of any of the aforementioned terms of probation, the OPMC may initiate a violation of probation.