

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

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

April 14, 1999

Melanie B. Cane, Physician
30 Marjory Lane
Scarsdale, New York 10583

RECEIVED
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OFFICE OF PROFESSIONAL
MEDICAL CONDUCT

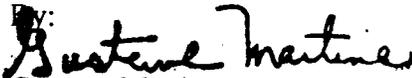
Re: Application for Restoration

Dear Dr. Cane :

Enclosed please find the Commissioner's Order regarding Case No. **99-45-60** which is in reference to Calendar No. **16500**. 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
Supervisor

DJK/GM/bt

cc: **William Wood, Esq.**
Wood & Scher
14 Harwood Court
Scarsdale, New York 10583

The University of the State of New York
Education Department



IN THE MATTER

of the

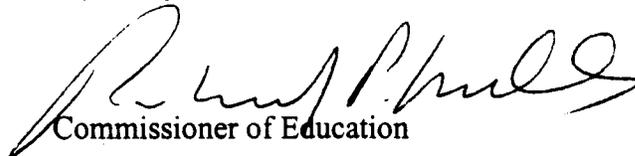
Application of MELANIE B. CANE
for restoration of her license to
practice as a physician in the State of
New York.

Case No. 99-45-60

It appearing that the application of MELANIE B. CANE, 30 Marjory Lane, Scarsdale, New York 10583, to surrender her license to practice as a physician in the State of New York, was granted by action of the State Board for Professional Medical Conduct on January 8, 1993, and she having petitioned the Board of Regents for restoration of said license, and the Regents having given consideration to said petition and having agreed with and accepted the recommendations of the Peer Review Panel and the Committee on the Professions, now, pursuant to action taken by the Board of Regents on March 16, 1999, it is hereby

ORDERED that the petition for restoration of License No. 188428, authorizing MELANIE B. CANE to practice as a physician in the State of New York, is denied.

IN WITNESS WHEREOF, I, Richard P. Mills,
Commissioner of Education of the State of New York for
and on behalf of the State Education Department, do
hereunto set my hand and affix the seal of the State
Education Department, at the City of Albany, this 6th
day of April, 1999.


Commissioner of Education

Case No. 99-45-60

It appearing that the application of MELANIE B. CANE, 30 Marjory Lane, Scarsdale, New York 10583, to surrender her license to practice as a physician in the State of New York, was granted by action of State Board for Professional Medical Conduct on January 8, 1993, and she having petitioned the Board of Regents for restoration of said license, and the Regents having given consideration to said petition and having agreed with and accepted the recommendations of the Peer Review Panel and the Committee on the Professions, now, pursuant to action taken by the Board of Regents on March 16, 1999, it was

VOTED that the petition for restoration of License No. 188428, authorizing MELANIE B. CANE to practice as a physician 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 License

Re: **Melanie B. Cane**

Attorney: William Wood

Melanie B. Cane, 30 Marjory Lane, Scarsdale, New York 10583, petitioned for restoration of her physician license. The chronology of events is as follows:

- | | |
|---------------------------|--|
| 02/20/92 | Issued license number 188428 to practice medicine in New York State. |
| 09/22/92 | Pled guilty in County Court of the State of New York, County of Westchester, to the crime of Assault in the Second Degree. |
| 12/02/92 | Charged with professional misconduct by Department of Health. |
| 12/02/92 | Applied to surrender physician license. |
| 01/13/93 | Effective date of surrender approved by the State Board for Professional Medical Conduct. |
| 10/19/94 | Petition for restoration of physician license submitted. |
| 07/23/97
&
10/29/97 | Peer Committee restoration review. |
| 09/09/98 | Report and recommendation of Peer Committee. (See "Report of the Peer Committee.") |
| 10/14/98 | Report and recommendation of Committee on the Professions. (See "Report of the Committee on the Professions.") |

Disciplinary History. (See attached Application to Surrender License.) On September 22, 1992, in the County Court of the State of New York, County of

Westchester, Dr. Cane pled guilty to the crime of Assault in the Second Degree. The plea was based upon Dr. Cane's admission of guilt to the charges that she put the drug Prolixin into beverages in her ex-boyfriend's refrigerator, with the intent of harming him. The medication caused Parkinsonian symptoms. The Department of Health charged Dr. Cane with professional misconduct on the basis of her conviction of committing an act constituting a crime under New York State Law, and she submitted an Application to Surrender License on December 2, 1992. The State Board for Professional Medical Conduct accepted her application and the surrender of her physician license became effective January 13, 1993.

On December 14, 1992, she was sentenced in Westchester County Court to two weekends' incarceration in Westchester County Penitentiary, fined \$5,000, ordered to pay restitution to the victim in the amount of \$54,450, perform 1,000 hours of community service, write a report to the Court on the book, The Nazi War Doctors, surrender her physician license and not engage in the practice of medicine or psychiatry in any capacity in any health related field for a period of five years, continue psychiatric treatment for a period of five years, and be placed on probation for five years. She submitted an application for restoration of her license on October 19, 1994.

Recommendation of the Peer Committee. (See attached Report of the Peer Committee.) The Peer Committee (Cournos, Harris, Santiago) convened on July 23, 1997 and on October 29, 1997 to meet with Dr. Cane. In its report dated September 9, 1998, the Committee recommended unanimously that Dr. Cane's petition for restoration of licensure be denied.

Recommendation of the Committee on the Professions. On October 14, 1998, the Committee on the Professions (Duncan-Poitier, Porter, Muñoz) met with Dr. Melanie B. Cane to consider her petition for restoration of her physician license. Mr. William Wood, her attorney, accompanied her. Dr. Cane presented the Committee with the following:

- Summary of Peer Committee's statements that she believed were not supported by the record.
- Letters supporting her contention that the process for considering her restoration application has been mishandled and unnecessarily delayed.
- Letter dated June 24, 1997, from Dr. Samuel J. Langer indicating that he feels Dr. Cane has demonstrated significant progress in psychotherapy and has been able to handle stressful situations.
- Copy of Office of Professional Discipline's investigator's Progress Report #24 reporting a telephone conversation with Dr. Langer in which he recommends that Dr. Cane's license be restored.

- Letter, dated July 29, 1997, from Arlene G. Adler, Chief, Pediatric Psychology and Assistant Professor of Pediatrics, New York Medical College, indicating that an abstract to be presented at the Poster Forum on September 17, 1997 is authored by Melanie Cane and Arlene G. Adler.
- Course outline for three-credit course, AIDS and Other Manifestations of HIV Infections, for Spring 1994.

The Committee asked Dr. Cane to explain what led to the surrender of her license. Mr. Wood interjected and asked if he might address the Committee for a few minutes first. With the Committee's approval, he discussed the materials that had been distributed to the Committee and indicated that he felt Dr. Cane's case has been mishandled by OPD and unnecessary delays occurred despite his objections. The Committee indicated it would review the material he provided.

Dr. Cane told the Committee that in May or June of 1992, "I basically poisoned my ex-boyfriend." She reported that she gave him Prolixin, an anti-psychotic drug because he had broken up with her. She indicated that she was "totally shattered" after the relationship ended. Dr. Cane said that she had been talking about buying building lots with friends where they would all live together next to one another. She said that although her ex-boyfriend broke up their relationship, he allowed her to remain in the house they shared for about two more months before she moved out. Dr. Cane said that her father died in February 1990 after a six-week battle with cancer. She stated that her father was diagnosed at the same time residencies were being matched. She reported that she told her mother that she was not ready to do a residency, but her mother convinced her to honor her commitment. She said that she struggled each day in the residency. Dr. Cane indicated that she met her ex-boyfriend, an established psychiatrist, in November 1990. She said, "He was a father figure, or whatever."

Dr. Cane told the Committee that when she found out that her ex-boyfriend and friends got the land on which to build their houses, she fell apart and "got real suicidal." She reported that although she was under psychiatric care at the time, she found that she was desperately trying to find a way to maintain the relationship with her former boyfriend. She said that she felt that if she could hurt him, and subsequently take care of him, that he would want to stay with her. The Committee asked Dr. Cane if she would have continued to give him Prolixin if he didn't go to the hospital. She replied that she only administered it once in beverages that were in his refrigerator. In response to the Committee's inquiry, she indicated that she did not know how much of the drug he actually ingested. Dr. Cane said that he was initially very sick, but then got better. She stated that once she confessed to him, he called her psychiatrist and that she was hospitalized for psychiatric treatment the next day. She indicated that she understood that her former boyfriend was discharged from the hospital the next day but still experienced some transient Parkinsonian symptoms. The Committee asked why she confessed after remaining silent for so many days while doctors sought to diagnose and treat her seriously ill boyfriend. Dr. Cane replied that she had told her supervising resident, her closest friend at the time, what she had done. She indicated

that "my friends anonymously called the hospital" and later that day she confessed to her ex-boyfriend.

The Committee asked Dr. Cane if she knew what she was doing when she put the drug in her ex-boyfriend's drinks. She replied that she still had a key to the house, decided to put the drug in the beverages in his refrigerator, and that her biggest concern was that someone would see her. She indicated that she wasn't thinking of the consequences. Dr. Cane said, "Yes, I knew it was wrong. It was so existential." The Committee asked why she chose Prolixin. She responded that she was reading a book, Final Exit, which was about ways to commit suicide and subsequently consulted a psychiatric medication book to find a non-lethal medication. She said that she stole the drug from the hospital in which she was working. The Committee asked how long it was before her ex-boyfriend got the help he needed. She replied that at first, he called her and said that he was feeling bad. Dr. Cane reported that he went to the psychiatric emergency room where he worked and they gave him some medication that made him feel better. She said that he subsequently felt worse, was hospitalized, and that doctors were preparing to perform a spinal tap. She indicated that the beverages in which she put the drug were probably in his refrigerator for a couple of weeks and that he was in the hospital for about three weeks. The Committee inquired as to how her misconduct became a criminal matter. She answered that she was not really sure who filed the charges. Dr. Cane said that her ex-boyfriend said he wouldn't prosecute and the next day after she confessed she went into a psychiatric hospital. She reported that there was no trial and that she just pled guilty to the charges.

The Committee asked Dr. Cane why she felt she was now ready to practice medicine again. She responded that at the time of her petition for restoration she was in a Master's of Public Health program and didn't know what she would be able to do since the court had imposed a five-year prohibition on her participation in health-related activities. She reported that Mr. Wood was a guest lecturer on restoration in 1994 and she went to speak to him. She indicated that he told her the process would take two to three years and although her psychiatrist did not feel she was ready to practice at that time, he felt she probably would be in an additional three years. She said, "I feel I've proven myself over and over again to myself." She stated that she now feels very stable and has been able to handle "plenty of bumps and downs." Dr. Cane said that after her probation officer indicated that she would recommend the early dismissal of her probation, but ultimately failed to do so, she was devastated. She stated that after she cried and called her lawyer, she went on to deal with and accept this setback. As another example, she indicated that the front page of the Daily News featured her in a story on Valentine's Day, but that she was able to face that also. She also reported that a former boyfriend of hers became violent and threatened to publicize her situation. She said that she didn't resort to any improper means to resolve this situation but instead referred the matter to the police. Dr. Cane stated, "I have the ability to cope now."

The Committee asked if the misconduct was a mistake or intentional conduct. She replied, "It's not that black or white." Dr. Cane told the Committee that she didn't

think she was impaired at the time although Dr. Langer said that she was so impaired that she scared and hurt her ex-boyfriend's friends and family. She stated, "I don't think I destroyed his life, although he is probably still coping with it." She reported that because of the court order prohibiting her from having any contact with him during the probationary period, she hadn't seen him although she heard that he was OK and only missed three months of work. The Committee asked Dr. Cane if she were a member of the Committee, how would she look at her conduct and fitness to practice medicine. She responded, "Very, very warily." She said she would see a person with a long psychiatric history. She continued that as a Committee member she would wonder how a person who experienced a fairly common sort of a breakup with her boyfriend could react in such a malicious, cruel way and could not only hurt him, but intentionally withheld vital information necessary for his successful medical treatment. However, she stated that she would then take a step back. Dr. Cane told the committee that people seemed concerned that she stole the drug as a doctor. She said, "If I took a gun and shot him, people may have had a different reaction." She indicated that she has been watched very closely for five years and has been living with her mother – "the most critical person ever." She told the Committee that Dr. Langer has stated that she is fit to practice and Dr. Loeb feels she can practice with some initial controls. She agreed that it would be appropriate for some controls to be in place if her license were restored.

Dr. Cane stated that she was devastated by the Peer Committee's report and thought they would be recommending restoration of her license with a lot of stipulations. She indicated that she felt the Peer Committee was reacting to the incident and not to the subsequent testimony. She said that they did not look at the person who's changed so much from the person who performed her prior misdeeds. She reiterated that she did not feel their conclusions were consistent with the record. Dr. Cane told the Committee that she doesn't let anything get to a point where it overwhelms her. She discussed the activities she's been involved with for the last five years. Dr. Cane stated that she has really struggled with the question of whether she wanted to have anything more to do with medicine and feels her involvement at this time would be very limited if her license were restored. She indicated she has toyed back and forth with the idea of going into public health medicine and does have an interest in working with adolescents with AIDS.

Mr. Wood told the Committee that the key to her behavior is Dr. Cane's relationship with her father. He reported that her father disappointed her time after time, but she continued to be sure that he loved her. He said that because of this, she was impaired throughout her relationship with her ex-boyfriend. Mr. Wood indicated that Dr. Langer has stated that Dr. Cane's judgment is now good and referred to the Department's Professional Assistance Program which helps impaired professionals regain entry into their profession. He inquired, "How is she different?" He indicated that a certain percentage of licensees become impaired each year, and you take a risk in giving them back their licenses. He said that he didn't think the risk with Dr. Cane was any greater and appropriate conditions could be put on her return to practice.

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 believes it is not its role to merely accept as valid whatever is presented to it by the petitioner but to weigh and evaluate all of the evidence submitted and to render a determination based upon the entire record.

The Committee notes that four issues were raised by the legal advisor to the Peer Committee before the commencement of the testimonial portion of the meeting. Two of these issues, relating to documentation balance and the New York State Department of Health's position letter, were adequately resolved as reflected in the Report of the Peer Committee.

One of the issues raised related to the terms of probation stemming from petitioner's criminal conviction, and whether those terms were violated during petitioner's participation in activities that culminated in a public health degree. The Peer Committee deferred this issue to the Committee on the Professions after electing to proceed without clear resolution. The Committee on the Professions finds that it was inappropriate for the Peer Committee to defer this to the Committee on the Professions. This matter should have been resolved prior to the Peer Committee meeting, or during the course of the meeting if the Peer Committee believed that it needed resolution in order to make its recommendation. Although it was not resolved, the Committee on the Professions did not believe it to be necessary to resolve this question in reaching its determination.

Similarly, the administrative officer raised, apparently without the urging of either party, the jurisdiction of the New York State Education Department over the restoration petitions of physicians, physician assistants, and specialist assistants. The Committee on the Professions has consulted with the Education Department's Office of Counsel on this matter, which has advised that the Board of Regents jurisdiction over the restoration of physicians, physician assistants, and specialist assistants has remained undisturbed after the passage of Chapter 606 of the Laws of 1991, which transferred jurisdiction over the **discipline** of these licensees to the Department of Health. This determination is based upon a careful reading of the relevant laws and the history of Chapter 606, including a memorandum from the then Counsel to the Department of Health stating that jurisdiction over the licensure **restoration** of physicians was to remain with the Board of Regents.

The Committee on the Professions (COP) concurs with the assessment of the Peer Committee that "Given the severity of the initial behavior and the lack of full rehabilitation, despite petitioner's significant efforts in this direction, it does not seem appropriate to restore her license at this time." The COP has carefully reviewed the additional material provided by Dr. Cane challenging the Peer Committee's conclusions and finds that the Committee appropriately analyzed the record and drew rational

conclusions based on that analysis. The COP finds that the Peer Committee provided a thorough explanation of the reasons for its determination and concurs with its recommendations. The COP believes that Dr. Cane still fails to fully comprehend the serious consequences of her actions or the extent of the harm she caused to her ex-boyfriend. This lack of understanding of the consequences of her action is underscored by her statement, "If I took a gun and shot him, people may have had a different reaction." After evaluating the record and Dr. Cane's statements and demeanor in her personal appearance before the Committee on October 14, 1998, the COP retains serious reservations about her ability to exercise the sound judgment required of a physician licensed by the State of New York.

In view of the foregoing, the Committee on the Professions voted unanimously to concur with the recommendation of the Peer Committee that Dr. Cane's petition for the restoration of her license as a physician in the State of New York be denied at this time.

Johanna Duncan-Poitier, Chair

Joseph B. Porter

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 Petition of

MELANIE B. CANE

**REPORT OF
THE PEER
COMMITTEE
CAL. NO. 16500**

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

-----X

Petitioner, Melanie B. Cane, was authorized to practice as a
physician in the State of New York by the New York State Education
Department, by the issuance to her of license No. 188428 on
February 20, 1992.

Petitioner's current address is 30 Marjory Lane, Scarsdale,
New York 10583. Her current residential telephone number is (914)
725-4864.

PRIOR ADMINISTRATIVE PROCEDURAL HISTORY

On December 2, 1992, then respondent-now petitioner entered
into and signed an "Application To Surrender License" with the
State of New York Department of Health State Board for Professional
Medical Conduct.

In said surrender application respondent Melanie Beth Cane
stated "I admit guilt to the specification of professional

misconduct set forth in the [statement of] charges", which specification was being convicted of committing an act constituting a crime under New York State law, specifically:

"On or about September 22, 1992, in the County Court of the State of New York, County of Westchester, Respondent pleaded guilty to the crime of ASSAULT IN THE SECOND DEGREE, as charged in Superior Court Information number 92-1236. Respondent, on or about and between April 24, 1992 and May 17, 1992, for a purpose other than lawful medical or therapeutic treatment, intentionally caused stupor, unconsciousness or other physical impairment or injury to another person by administering to him, without his consent, a drug, substance or preparation capable of producing same. Respondent put the drug Prolixin into beverages in her ex-boyfriend's refrigerator, with the intent of hurting him. The medication caused Parkinsonian symptoms.

Sentencing in the criminal matter has not yet taken place, but is currently scheduled for December 4, 1992."¹

On January 6, 1993 the Chairperson of the State Board for Professional Medical Conduct of the New York State Department of Health adopted the application of Dr. Cane to surrender her license and on January 8, 1993 Order #BPMC 93-04 was issued, which became effective January 11, 1993.²

PETITIONER'S EDUCATION AND EMPLOYMENT OR PRACTICE EXPERIENCE

On or about October 19, 1994, MELANIE BETH CANE petitioned for the restoration of her license to practice as a physician in the State of New York with the submission of a bound document entitled "Verified Petition For The Restoration Of A License To Practice Medicine Exhibits And Chronological Listing".

She has set forth her education, employment and practice

¹ Then defendant-now petitioner was actually sentenced on December 11, 1992.

² See *Meeting* Section of this report, specifically footnotes 10 through 12 thereunder.

experience therein³ as follows⁴:

- June, 1990: Graduate, received medical degree; New York Medical College, [location not stated.]⁵
- June, 1990 to June, 1992: Intern/Resident; Cornell Medical Center Westchester Division, [New York.]
- October, 1990/February, 1991/June, 1991/September, 1991/December, 1991: separate, mainly six day, vacations in the United States or Mexico.
- July 2, 1992 to August 17, 1992: Inpatient; St. Vincent's Psychiatric Hospital, Harrison, New York.
- August 18, 1992 to September 5, 1992: Outpatient, daily psychotherapy; [location not stated.]
- September 5, 1992 to present [June 28, 1994 date of Activities form of the petition submitted by petitioner:] Outpatient, psychotherapy once or twice weekly; [location not stated.]
- September, 1992 to June, 1993: Tutor (volunteer); [location not stated.]
- September, 1992 to June, 1993: Part-time cashier; Pastrami Delight, Galleria, White Plains, [New York.]
- November, 1992 to present [June 28, 1994 date of Activities

³ The Activities form document, submitted on two pages, is directly after the sworn signature page (page 12) of petitioner's Verified Petition (and without an Exhibit designation).

⁴ Petitioner also submitted her two-page resume, which is Exhibit F of her Verified Petition.

⁵ Petitioner's first listed event on her Activities form is actually February 28, 1990, when her father died.

form of the petition submitted by petitioner:]
Supervisor/coordinator; soup kitchen, St. Bartholomew's
Church, White Plains, New York.

- November, 1992: Vacation; Jamaica.
- January, 1993 to present [June 28, 1994 date of Activities form of the petition submitted by petitioner:] Student; Masters of Public Health program, New York Medical College, Valhalla, New York.
- June, 1993 to present [June 28, 1994 date of Activities form of the petition submitted by petitioner:] Volunteer Coordinator; "The Lord's Pantry", [location not stated.]
- June, 1993 to present [June 28, 1994 date of Activities form of the petition submitted by petitioner:] Part-time data entry [clerk]; Scarsdale Village, [New York.]
- December, 1993 to February, 1994: Videotape researcher and co-producer; "The Lord's Pantry", [location not stated.]

PETITIONER'S SUPPORTING AFFIDAVITS⁶

Petitioner submitted affidavits from the following individuals⁷ in support of her petition for restoration of licensure:

1. Samuel J. Langer, M.D., Physician; 275 North Street,

⁶ The fourteen (14) supporting affidavits (one from two people) submitted are Exhibits H through L of petitioner's Verified Petition, specifically: Exhibit H—Samuel J. Langer, M.D.; Exhibit I—Regina Cane; Randie Cane Engle; Barbara Jane Feinberg; Paul and Ann Spindel; Walter J. Handelman; Exhibit J—Lawrence [Eli] S. Freedman; Charles Cooper; Maryann Hatfield, Ed.M.; Exhibit K—Robert J. Anello; Exhibit L—Joan C. McGovern; Christine L. Williams, M.D.; Rev. Philip W. Stowell; Patricia Holowiak.

⁷ Each of petitioner's affiants submitted a separate letter along with his or her supporting affidavit form, except for Ann and Paul Spindel, who did so as a couple.

- Harrison, NY 10528, who has known petitioner as her treating psychiatrist since her admission to St. Vincent's Hospital on July 2, 1992.⁸
2. Regina Cane, Teacher; 30 Marjory Lane, Scarsdale, NY 10583, who, as petitioner's mother, has known petitioner for her (petitioner's) entire life.
 3. Randie Cane Engle, Lawyer; 2910 Brookhaven View, Atlanta, GA 30319, who, as petitioner's younger sister, has known petitioner since she (Engle) was born.
 4. Barbara Jane Feinberg, Author; 535 E. 86th Street, New York, NY 10028-7533, who, as a friend of petitioner's mother, has known petitioner since her (petitioner's) birth.
 5. Paul Spindel and Ann Spindel, 39 Wynmor Road, Scarsdale, NY 10583, who, as social friends of petitioner's parents from approximately 1970, have known petitioner since that time.⁹
 6. Walter J. Handelman, Lawyer and Mayor of the Village of Scarsdale (NY) [as of June 27, 1994 date of Supporting Affidavit form and of affiant's annexed letter;] 260 Mamaroneck Road, Scarsdale, NY 10583, who "as a neighbor, the avuncular father of one of her contemporaries, her father's confidant, her mother's advisor, a friend of the

⁸ Dr. Langer's three page curriculum vitae was also submitted with his October 11, 1994 Supporting Affidavit form and October 28, 1994 letter. Dr. Langer also appeared as petitioner's first witness at the July 23, 1997 meeting date.

⁹ In addition to Dr. Langer, Ann Spindel and Regina Cane appeared, as petitioner's third and fifth witnesses, respectively, the former on July 23, 1997, and the latter on October 29, 1997.

petitioner and her sister",. has known petitioner since petitioner's parents moved to Scarsdale.

7. Lawrence S. Freedman (Eli), Unemployed lover/confidant/best friend [as of July 18, 1994 date of Supporting Affidavit form and affiant's July 15, 1994 annexed letter;] 10 Colden Avenue, White Plains, NY 10606, who has known petitioner personally for two years as of three weeks prior to the underlying criminal assault incident.
8. Charles Cooper, Journalist; One Devonshire Place, Apt. 2914, Boston, MA 02109, who "as an old friend of the man [Eli Freedman] Melanie is seeing socially", has known petitioner for two years [as of July 13, 1994 date of Supporting Affidavit form and affiant's annexed undated letter.]
9. Maryann Hatfield, Ed.M., Doctoral student/therapist; 90 Bynner Street, Jamaica Plain, MA 02130, who has known petitioner "as a close friend and colleague nearly 15 years" [as of July 11, 1994 date of Supporting Affidavit form and affiant's annexed July 9, 1994 letter.]
10. Robert J. Anello, Attorney; Morvillo, Abramowitz, Grand, Iason & Silberberg, P.C., 565 Fifth Avenue, New York, NY 10017, who, as her criminal and civil counsel has known petitioner for two years [as of his undated Supporting Affidavit form and his annexed August 18, 1994 letter.]
11. Joan C. McGovern, Executive Director, The Lord's Pantry, Inc., 177 Davis Avenue, White Plains, NY 10605, who,

through petitioner's probation officer, Dolores McNeil, has known petitioner as one of her (McGovern's) volunteers for one year and seven months [as of the July 12, 1994 date of Supporting Affidavit form and of affiant's annexed letter.]

12. Christine L. Williams, M.D., Physician; 8 Elm Road, Scarsdale, NY 10583, who, as a Clinical Professor of Pediatrics and Director of the Maternal and Child Health Track in the Graduate School of Health Sciences at New York Medical College, has known petitioner since the fall of 1993 as a graduate student and candidate for its Masters of Public Health degree [as of July 20, 1994 date of Supporting Affidavit form and affiant's annexed July 1, 1994 letter.]
13. Philip W. Stowell, Rector; St. Bartholomew's Episcopal Church Rectory, 95 Ralph Avenue, White Plains, NY 10606, who, through the St. Bart's Soup Kitchen, has known petitioner for two and one-half years as a volunteer there [as of August 8, 1994 date of Supporting Affidavit form and affiant's annexed August, 1994 letter.]
14. Patricia Holowiak, Office Manager, St. Bartholomew's Episcopal Church; 82 Prospect Street, White Plains, NY 10606, who, as the creator of and employer of the Sunday soup kitchen at the church, has known petitioner as a volunteer and employee there [as of the October 26, 1994 date of Supporting Affidavit form and affiant's annexed September 25, 1995 (sic) letter.]

MEETINGI. Preliminary Legal Considerations

On July 23, 1997 and October 29, 1997 this Peer Committee met to consider the petitioner in this matter.

Petitioner appeared and was represented by her attorney, William L. Wood, Jr., Esq., at both meeting dates.

The Office of Professional Discipline was represented by Kenneth J. Appel, Esq., at both meeting dates.

Abigail S. Bernhardt, Esq., acted as legal advisor to the Peer Committee throughout the duration of this matter at this original level.

Although neither this meeting nor a transcript or other record thereof is required by law it is scheduled to provide the Peer Committee with the opportunity to further review the petitioner, and the application for restoration therefor with its supporting documentation, as well as other information, related thereto. Accordingly the immediately following portion of this report is nonetheless based on the transcript that has been made of our meetings.

On behalf of the Peer Committee Ms. Bernhardt, its legal advisor, raised certain issues with counsel before the commencement of the testimonial portion of the meeting. These issues, four in total, are jurisdiction, criminal probation terms, documentation balance, and New York State Department of Health position letter.

As to the predicate issue of jurisdiction, specifically subject matter jurisdiction, while as indicated hereinabove then respondent-now petitioner surrendered her license to practice as a physician in this state to the New York State Department of Health, there was, at that time, 1992 and 1993, no actual procedural avenue for the pursuit of the restoration of such an individual's

professional license thereafter.¹⁰ However, in 1997, Part 24 of the Rules of the Board of Regents, which is concerned with the restoration process, was amended, effective June 20, 1997, such that jurisdiction for this particular type of restoration, one involving a physician, was now expressly included.¹¹ Thus the matter of Cane may, retroactively, be under the jurisdiction of the New York State Education Department.¹²

The second issue is then defendant-now petitioner's criminal terms of probation. The criminal court judge, John Carey, meted out a sentence which included terms of probation that had been carefully crafted to be specifically tailored to defendant's criminal activity. These terms, in part consisting of a document entitled Special Orders and Conditions of Probation, included,

¹⁰ Chapter 606 of the Laws of 1991 which was approved and became effective July 26, 1991, amended, inter alia, Art. 131-A of the education law pertaining to professional medical conduct and, at the same time, repealed certain provisions of, inter alia, Art. 130 thereof, such that primary and final responsibility for the physician professional discipline function was transferred to the New York State Department of Health with its attendant necessary albeit streamlined proceedings therefor. (See 16 Ed. L. §§6529-6532 McKinney's Cum. Pocket Part 1998). Surrenders were addressed only somewhat while next to nothing was expressly said about restorations. Chapter 37 of the Laws of 1992, while making technical corrections to existing law, did not then address restorations.

¹¹ See 8 N.Y.C.R.R. §24.7(b), which states in part, "petitions for restoration of a professional license which has been revoked or *surrendered* pursuant to sections 6510 or 6510-a of the Education Law or *title II-A of Article 2 of the Public Health Law*" [emphasis added.]

¹² The New York State Legislature divested the New York State Education Department (NYSED) of its authority over physicians, specifically repealing its authority thereon as shown by the current status, inter alia, of 16 Ed. L. § 6510-a (McKinney's Cum. Pocket Part 1998), transferring such authority, in its entirety, to the New York State Department of Health (NYSDoH). Consequently NYSED, by itself, no longer possesses any authority to revise law affecting physicians. Its unilateral assumption revising a regulation (24.7) affecting physicians, here relating to the restoration of a license, is without legal foundation. Currently this power regarding physicians resides with NYSDoH alone. Further, 16 Ed. L. § 6511. Penalties for professional misconduct, (McKinney's 1985) applies only to NYSED licensees. Therefore, as the above change in the regulation was effectuated by the New York State Education Department instead of by the New York State Department of Health it remains to be seen whether it is actually valid legally (with or without retroactivity).

inter alia, under term numbered 1, that defendant "shall not engage in the practice of medicine or psychiatry nor work in any capacity whatsoever - whether paid or volunteer - in any health-related field for a period of five years" [emphasis added.] The effective date of this sentence was December 14, 1992.

While Mr. Wood, at our July 23, 1997 meeting, was focussing on the fact that, per his advice, petitioner had initiated the process for restoring her license to practice as a physician in this State during the probationary period, there is also the concern that petitioner was engaging in, at the very least, a health-related field, when she actively pursued obtaining a Masters of Public Health degree. Both of these actions, submitting a petition for the restoration of her professional license and participating in activities, inter alia, culminating in a public health degree, required legal interpretation as to whether each fell within the parameters of petitioner's criminal terms of probation. As our legal advisor indicated, neither the several employees of the Westchester County Probation Department nor the New York State Education Department investigators, appearing within the restoration material for the instant matter, are attorneys, and there is no opinion of counsel from either entity.¹³

Under the circumstances of the instant restoration meeting we elected to proceed without immediately resolving the criminal probation terms issue. After consultation with our chairperson our

¹³ The restoration material contains correspondence and/or other communication from William Pratley, Probation Officer, and Anthony P. D'Angelo, Assistant Commissioner, of the Westchester County Probation Department, as well as John Boyle, Senior Investigator, and Michael Colon and Lewis Antine, Supervisors, Office of Professional Discipline, New York State Education Department.

legal advisor demurred to her and our Peer Committee. Therefore this issue, involving then defendant-now petitioner's criminal terms of probation is deferred to the Committee on the Professions for its determination.¹⁴

The third issue is documentation balance. In fairness this Peer Committee should have before it all of the documents on a particular point. The substantial document entitled "Affirmation In Opposition, Indictment Number SCI 92-1236" was submitted as a part of the restoration material without its corresponding moving papers thereon nor the decision on the motion of Judge Leavitt. The motion appears to have related to vacating or modifying the sentence imposed on then defendant-now petitioner by the Westchester County Court. It had a return date of August 2, 1996.

While not resolved at this juncture, July 23, 1997, these missing documents were submitted under an October 15, 1997 cover letter by petitioner's counsel subsequent to the October 10, 1997 letter of Ms. Bernhardt, written on our behalf. They are part of the instant record as Applicant's Exhibit "C". The two aforementioned letters, the latter with its enclosure, are hereby appended to that pre-existing exhibit.

Finally, the absence of a New York State Department of Health position letter with regard to the possible restoration of the license of a physician is noted. Mr. Appel admitted its omission

¹⁴ Part 24 of the Rules of the Board of Regents describes the restoration process, that is the process of applying for the restoration of a revoked or surrendered professional license. Current internal New York State Education Department policy requires the instant first level of professional peer review although it is not expressed (codified) thereunder. At such a meeting therefore the position of legal advisor is an informal one and any rulings of a legal nature are actually made by the Peer Committee Chairperson.

and promptly submitted the December 28, 1994 letter from the Office of Professional Medical Conduct for our review. It is denominated OPD Exhibit "1-23" and states, in part, "[w]e have no relevant information or comment on this application".¹⁵ At this time petitioner also submitted another document entitled "Supplemental Verified Petition For A License To Practice Medicine", which is denominated OPD Exhibit "2-24".

Both Mr. Wood and Mr. Appel waived opening statements. Mr. Wood then presented seven witnesses--Samuel J. Langer, M.D.; Laurence Loeb, M.D.; Ann Spindel; Cathey Falvo, M.D.; Joseph Scianameo; Regina C. Cane; Melanie Beth Cane (petitioner)--over the course of the two meeting dates on behalf of petitioner.

II. July 23, 1997 Witnesses

Petitioner's first witness, Samuel J. Langer, M.D., who is petitioner's treating psychiatrist, originally assessed petitioner as a patient referral from Dr. M. on July 2, 1992. His initial diagnosis of petitioner was "[m]ajor depressive disorder, borderline personality disorder". Such persons, per Dr. Langer, have difficulty with self-esteem, having to do with their capacity to perceive, not only themselves, but the world around them; they experience disturbances in judgment. In addition, with regard to the latter part of his initial diagnosis, such persons evince instability; they have chaotic lifestyles.

Dr. Langer then treated petitioner, whom he considers to be a

¹⁵ All documents made a part of the instant record during or subsequent to the meetings in this matter are given combination exhibit numbers to reflect their placement vis à vis the restoration material package submitted in advance to the Legal Advisor, which did not possess an index, and that of others, later, which did.

high functioning borderline personality disorder patient, over the ensuing years. One focus was the relationship inside therapy, to thereby contain, limit, and interpret petitioner's behavior so that she might internalize a system of thinking about people that included the consequences of her actions and her taking the responsibility therefor. Petitioner, per Dr. Langer, has also handled her life without (outside of) the therapeutic relationship, meaning work, academic performance, and other interpersonal relationships, in a markedly different manner now, one that is proactive and mature.

Dr. Langer further testified that he thinks petitioner had not been fit to practice medicine at the time she poisoned B.F., as she had non-psychotic impaired judgment, but that she is now: "I believe in rehabilitation". Further still he feels her borderline personality disorder exhibits an excessive compulsive component which improves her prognosis for recovery and rehabilitation. His diagnosis of petitioner has not changed and his prognosis, at least in the near future, includes continued treatment and medication (Prozac), for petitioner is a recovering rehabilitated now cognizant disorder-challenged individual.

Petitioner's second witness, Lawrence Loeb, M.D., a forensic psychiatrist, had been requested by her counsel to evaluate petitioner by reading all of the background and other material in the instant matter to formulate a position as to petitioner's capacity to practice medicine at this time, which he did after also speaking with Dr. Langer and also meeting with petitioner. Dr. Loeb's examination of petitioner found no evidence of psychosis but

did find evidence of some characterological issues: obsessiveness; compartmentalization; intellectualization. Given the seriousness of petitioner's history and, at the same time, subsequent five years of psychiatric treatment, he found it very difficult to judge the extent of any change effected in petitioner, and also to know how she would function in a stressful non-"average expected environment".

Couching the issue for this Peer Committee as "does psychiatric treatment effectuate the kind of change that would restore somebody to be a competent physician of whom one need not be afraid", and later as "whether she is safe in prescribing", Dr. Loeb testified that (1) he would be uncomfortable if petitioner were to practice psychiatry, due to the existence of compartmentalization and intellectualization, and the necessity of intimate patient-physician contact; and (2) he does not know and cannot predict if she will be safe. Aside from that upon the restoration of petitioner's license to practice medicine he would want petitioner placed on probation, under supervision, for two or three years, while she pursued a residency program, to enable one to ascertain how petitioner functions as a physician at that point, and continued in therapy treatment.¹⁶ Based on his actual review otherwise, per Dr. Loeb, petitioner functions well outside of the practice of medicine; her intellectual capability is not in

¹⁶ Dr. Loeb testified that he thinks petitioner now knows (is able to distinguish) right from wrong but as to her capacity to adhere to (that which is) right it "is your projection of the future question... what has to be determined"; consequently he "would like to see how she functions over the course of the next couple of years, continuing therapy, with some sort of controls on her practice of medicine that would be agreeable to the licensing board".

question.

Dr. Loeb agreed that borderline personality disorder¹⁷ is very difficult to treat. Further, based on petitioner's family medical history, he does not know the extent of petitioner's soft neurological issues and the interplay of prescribed medications (Ritalin; Dexedrine) therefor, which may be a factor that interferes with her ability to flexibly empathize and enter another person's social world. There had been no recent psychological testing of petitioner¹⁸ nor had he read any patient records Dr. Langer may have had for petitioner; he is guided by Dr. Langer's recommendations vis à vis petitioner that she has undergone considerable change.

Petitioner's third witness, Ann Spindel, has had a long-standing intimate relationship with the Cane family over the last 27 years. The two families dined, celebrated and swam together through the years despite the volatile, erratic and inconsistent behavior of petitioner's violent, mentally ill, emotionally unstable father. Mrs. Spindel thinks petitioner had a very powerful relationship with her father, which had to have had a detrimental effect on her.

Over the last five years since July, 1992, when she learned from petitioner's mother of petitioner's actions involving B.F. and

¹⁷Dr. Loeb's diagnosis for petitioner would be "borderline personality disorder improved". However he also testified that "the issue is not the diagnosis...but the degree to which a person can function in a specific capacity given a great deal of stress", which he cannot predict.

¹⁸ Dr. Loeb had access to the psychological testing conducted on petitioner while an in-patient at the hospital in 1992; the members of this Peer Committee have not seen it. There had been no follow-up psychological testing nor neuropsychological testing of petitioner as of the July 23, 1997 date of Dr. Loeb's testimony.

her subsequent hospitalization therefor, Mrs. Spindel has seen petitioner a lot, spoken with her, and "been there for her". Per Mrs. Spindel she and petitioner have always had a close relationship, observing, "what I see is very small details that are very important to a sense of maturity, a sense of growth, and acceptance of what reality is". Mrs. Spindel thinks petitioner should be relicensed as a physician because (1) this was a one time aberration; (2) petitioner has worked five years to understand why she did it; and (3) petitioner has rehabilitated herself to maturity.

Petitioner's fourth witness¹⁹, Cathey Falvo, M.D., currently the program director, International and Public Health Graduate School Health Sciences, New York Medical College, who was one of petitioner's teachers²⁰ as well as her thesis advisor for her masters in public health degree over at least three years, found petitioner to be intellectually superior. Dr. Falvo nominated petitioner for the Outstanding Thesis Prize for her masters thesis "Adolescent Adjustments To Having Chronic Disease—HIV", which she was subsequently awarded. Dr. Falvo, who is not a board certified psychiatrist, does not otherwise maintain a social relationship with petitioner.

Between meeting dates, as mentioned hereinabove under the

¹⁹ The testimony of petitioner's third witness, Ann Spindel, had been interrupted at the July 23, 1997 meeting for the testimony, in its entirety, of petitioner's fourth witness, Cathey Falvo, M.D., before Mrs. Spindel's testimony was heard to completion on that same date. After that the meeting adjourned, ultimately to October 29, 1997.

²⁰ The courses, in part, were: Introduction to Public Health; Introduction to Biostatistics and Epidemiology (two condensed semesters).

subsection entitled *I. Preliminary Legal Considerations* of the *Meeting* section of the instant report²¹, petitioner submitted, through her attorney, "copies of the Notice of Motion, Affidavit of Robert J. Anello, Memorandum in Support of Motion and Decision and Order".²²

III. October 29, 1997 Witnesses

Petitioner's fifth witness, and the first presented at our second meeting date²³, October 29, 1997, Joseph A. Scianameo, is petitioner's current intimate. Petitioner has related to him her serious actions regarding B.F., which he at first found shocking, after they "started discussing each other's problems". His further reaction was that "what this shows to me is that the rehab[ilitation] process does work, because to me she's strong, she is focused, she's healthy".

Mr. Scianameo feels, when queried, that petitioner's relationship with her mother is "strange" and "unhealthy", while her relationship with her sister is "close" and "extremely healthy". He has observed petitioner handling stressful events successfully, that is, without being "overly emotional": she had her two ill sheepdogs euthanized; she managed The Lord's Pantry for persons with AIDS; she attended graduate school; she has undergone this restoration process; she ended her previous intimate relationship (with Freedman); she has disagreements with him

²¹ This is related to the document in the original Cane restoration documentation material entitled "Affirmation in Opposition Indictment No. SCI 92-1236".

²² These documents were sent to each of the three members of our Peer Committee October 16, 1997.

²³ Both counsel again elected to waive opening statements when given the opportunity to make same at the commencement of the October 29, 1997 meeting.

(Scianameo).²⁴ He is aware that petitioner has seen Dr. Langer for five years, who has "helped her extensively to get her where she's at today", and that she continues to see him for therapy.

Petitioner's penultimate witness, Regina C. Cane, an employed elementary school teacher and petitioner's mother, had been requested by her counsel to describe petitioner's late father. According to her, he had been a medicated mentally ill intermittently hospitalized occasionally employed sometimes functioning individual always in therapy, who was both "extremely bright, interested in a myriad of things, charming at times" and yet also "incapable of sustaining any level of commitment or responsibility, so that living with him was like being on a roller coaster and never quite knowing where you were getting on and where you were getting off." In describing his personality, apart from his mental illness, she stated: "he was almost childlike in his enthusiasms, and when he wanted to do something it was all out."²⁵

She described his relationship with petitioner, his firstborn, as that of a playmate on whom he lavished attention, until he hospitalized himself from the time she was eight months for a period of fifteen months, thus establishing a pattern of devotion and disappearance. The birth of petitioner's same sex sibling after nearly six years intensified this as her father now doted on the younger, to which it was easier for him to relate. Again,

²⁴ According to him petitioner is also engaged in volunteer work at the medical center, at the college and at an organization that is concerned with stray animals.

²⁵ Thus "if he needed to do something or wanted to be on top of the situation, he would double up the medication because he felt he couldn't function without it."

according to Mrs. Cane, when her (petitioner's) father, who could neither follow rules nor adhere to a schedule, tutored²⁶ other children at his basement home office, his attention to her diminished: "I love you, I have no time for you".

Mrs. Cane and petitioner's father divorced, as a result of which he had no responsibility for their children due to his unemployability and disabilities. Later he sustained a heart attack, while pursuing a business investment in Montana, and consequently did not attend petitioner's high school graduation. Later still, subsequent to petitioner graduating from Wellesley and during her attending medical school, for which he had promised financial support directly to petitioner nonetheless, he sued petitioner's mother for his expenses in so doing.

Litigation ensued, which Mrs. Cane said had a horrendous and devastating impact upon petitioner. In effect petitioner's father was repudiating his acknowledgment and support of petitioner as his daughter. Nevertheless petitioner tried to maintain a relationship with him, even with his remarriage to a woman only slightly older than she as well as his "instances of real cruelty to both children, psychological cruelty and real disappointments."

Petitioner totally immersed herself in her father's care once he was diagnosed with terminal cancer, to the detriment of her schoolwork, and then he died just six weeks later, in February, 1990. She did, however, graduate from medical school in June, 1990. She had been in therapy, (that is, had psychiatric care), ever since Wellesley, for depression with some anorexia.

²⁶ Mr. Cane held a Masters degree in Education and had taught.

As to her elder daughter's relationships with men otherwise, they were intense. They also were total immersion one-on-one all-consuming relationships with a very devoted male, which petitioner would terminate at will, until the advent of B.F.. He, unlike his male predecessors, had a life aside from petitioner, other interests and other friends, and it was he, not petitioner, who ended it (their relationship).

It is Mrs. Cane's position that petitioner cannot deal with a man leaving her as it is a replay of her relationship and experience with her father; petitioner needs to feel that a man is there for her at all times regardless of her wanting the man to be there. She would characterize her own current relationship with her daughter as much improved and that of petitioner with her sister as much closer. Previously petitioner was more involved with her own relationships and less involved with the family.

In 1992 petitioner had been going to the hospital a lot to care for her then semi-former intimate, B.F., where they did not quite know what ailed him. Mrs. Cane knew this and her reaction was one of horror and disbelief when B.F., the victim himself, told her (by telephone) that it was her daughter, petitioner, who had caused his illness. Mrs. Cane then had her older daughter hospitalized that night through psychiatrist Dr. M..

Per Mrs. Cane petitioner's actions regarding B.F.--"that need to be there, that need to tend, that need to help, that need to be present...and neglecting everything else...that became the total core of her existence"--was essentially the same as petitioner's actions toward her father during the last six weeks of his life. Petitioner

told her mother that what she had thought would have happened was that B.F. would become ill, need petitioner, see her devotion, and rethink ending their relationship. During and subsequent to petitioner's own hospitalization petitioner and her mother attended joint therapy sessions for a couple of months with a social worker.

Mrs. Cane thinks petitioner's "whole way of seeing the world is much clearer now", especially as she has now had five years of therapy and "reality testing". Therapy enabled petitioner to not only understand and feel remorse for what had occurred but to also freely express other emotions. She has been dealing with the aftermath of these events and determining what to do with her life.

While petitioner was in the hospital she met E.F., a large young man who became devoted to her, and they then lived for a time together subsequent to her discharge. It was petitioner who ultimately ended this relationship in June, 1996. As to petitioner's current relationship with Joseph Scianameo, Mrs. Cane thinks it gives petitioner stability as well as a devoted father figure, making her calmer and more relaxed than she had been in any of her previous relationships with a male.

Mrs. Cane thinks that it is time for petitioner to obtain her license as a physician again: "I think she's done everything and more than anybody asked of her".

Petitioner's seventh and last witness was herself. She said that B.F. "had basically broken up with me around January or February of 1992 and I was desperately unhappy...I sort of did everything to hang onto the relationship." At the time petitioner, who lived with him in his house, was in the second semester of her

second year of medical residency.

Petitioner moved out of B.F.'s house. As the two of them saw less and less of each other thereafter petitioner lost his group of friends and relatives--his brother and his best friend and their fiancées--with whom she had previously become "one happy family". However with B.F.'s subsequent hospitalization due to her actions she "got my family back", as well as B.F. and his love.

Petitioner searched through books, Final Exit as well as one about psychiatric medications, among others²⁷, for a non-lethal medication, and chose soluble, tasteless, odorless, colorless Prolixin, which she then removed from her hospital work unit. At the time she had limited experience as a physician and was not sure what the side effects of administering Prolixin to someone would be, other than that it would be non-beneficial short term discomfort. However at the time of these events she also knew right from wrong.

What started out solely as a situation between petitioner and B.F., where she took care of him (B.F.) as needed, slowly became one involving B.F.'s close friends, where they took over since petitioner was not his (B.F.'s) girlfriend anymore. Then, initially unbeknownst to petitioner, B.F.'s friends took him to Sloan Kettering Hospital for examination, and therefore suddenly things "snowballed"; "[i]t was just this thing spinning out of control, and it didn't have anything to do with the B [...] I saw who

²⁷ When questioned by opposing counsel, and later, by a committee member, as to whether she did ever look up Prolixin in the PDR [Physicians' Desk Reference] prior to placing Prolixin in B.F.'s beverages, petitioner stated that she "may have," that she "honestly d[id]n't remember," and that she "wasn't sure".

was just sort of stiff." As to petitioner keeping track in her mind that it could be related to the surreptitious Prolixin administration, she said she "would very, very occasionally have that experience, like reality would sort of come through and something would internally put my finger over the dam and it would be gone."

There was, according to petitioner, a "total severing of realities" in her as B.F.'s condition worsened. On the one hand she was a solicitous caretaker who actually became part of the investigation searching for the cause of his illness; on the other hand it was her own actions, weeks earlier, that caused his original stiffness but did not require his current hospitalization. "I just didn't believe that what was happening to him now [side effects of Prolixin medication] was a consequence of what I had done weeks earlier".

In retrospect, as to petitioner's continuing daily failure to inform B.F.'s hospital physicians through her withholding of necessary information about the Prolixin ingestion: "I could never see myself being in an emotional state like that now or in the future where I could ever even be in where I could do that." In addition petitioner said that she does not think she could compartmentalize at all now, unlike her former behavioral ability.

Petitioner said it did not occur to her that B.F. would not get better; she thought now that she was back with him he would improve, they would be married, and they would be a part of the group. As it was the reestablished social group would leave him in her care in the evenings. B.F. was able to and did, per

petitioner, communicate his love for her during his hospitalization.

This social group of six people was very important for petitioner, thus she was devastated when B.F. parted with her. B.F., his brother and friend had been saving money for their long held plan to buy land and build on it three houses in close proximity like a compound. Petitioner knew of this and had envisioned her married life there with a house, children, pets, tennis court, as physicians, with these friends as family, in their own community.

Petitioner described her usual pattern of relationships with males as one that is initially mutually quick and intense, where, most importantly for her, the male is going to take care of her emotionally, followed for petitioner by a period of destabilization and disillusionment, leading to imbalance, as the male tries to continue it, and ultimately petitioner ends it. However petitioner's relationship with B.F. was different from her previous such relationships because by that time she knew she needed to understand and change this pattern in the context of her father's dying and death, as well as as a result of the therapy-assisted²⁸ termination of her then-current such type of a relationship with a man, after her father's death, who was similar in personality to her father.

Petitioner met B.F. as the result of a blind date. He was, she says, very different from anyone previous: very intelligent,

²⁸ The therapy was insisted upon, per petitioner, by the male in that relationship; the therapist was his therapist.

stimulating, very bright, very self-assured and very strong, with his own preexisting career and social life separate from petitioner. They also had very different relationship operation views: spending every free minute one has together (petitioner) as a first priority versus spending only some of one's available free time together (B.F.), as the other person is always there.

In retrospect petitioner states that she and B.F. were not well suited for one another because she was "very needy and I needed someone to be there for me constantly, 100 percent", and he "needed not to be needed". This she now thinks was the relationship dynamic, although it was not then initially apparent. In clarification she means, "not that they shouldn't have other things in their life, but I just needed someone to be there when I needed that person".

Petitioner had also stated that "my emotional world revolved around my father...the relationship was incredibly destructive at times to me, but I loved him and he clearly loved me." And further that "[n]o matter how unable he was to show that in a healthy way...he was really the only one I was sure of that loved me and vice versa." This was the relationship for petitioner, despite many almost constant bitter disappointments.

Petitioner identified quite strongly with her father, which she feels was the crux of their closeness, because they were very much alike "in heart and soul". She thought and hoped that he would change, "[b]ut I never learned" as "I would just keep going back for more." Some of these rampant disappointments were his sudden inexplicable trip to Montana (and subsequent myocardial

infarction) at the time she was to attend her high school graduation, dance as well as eighteenth birthday celebration; his loud public refusal at the end of her first year of medical school to pay as previously promised for her entire medical education; his subsequent lawsuit during her third year of medical school to collect all monies he had expended for her post-baccalaureate education from her mother; and his subsequent loud public chastisement of petitioner while at the hospital where she was a medical student on call for signing affidavits related to that lawsuit.

These family scenes, which left petitioner in tears, also caused petitioner to miss or to be saddened at times of important life events for her, to have to suddenly seek and obtain financial aid, as well as later to be depressed and to initially fail the pediatric rotation final written examination. As petitioner herself observed these "were...a typical scenario that he would promise, back out, and then leave me there like I was a total fool for getting upset over the...broken promise". Petitioner also "sort of separated him from this lawsuit" as "I just had this ability to do this" because "[t]hey were really separate things."

In high school her parents' house was like a battlefield with acrimonious fissures enhancing dysfunction. Later, twice when her father left or was going to leave, petitioner was involved in an automobile accident. The aftermath was handled by others in his absence.

Moving to her current life, post-B.F. and post-hospitalization, petitioner has lived through a lot of discrete

stressful experiences and the anxiety of not knowing what will happen. One was the unexpected unwelcome appearance of and subsequent article by a well-known New York newspaper columnist about, inter alia, her and the incident involving B.F., while she was fulfilling the incarceration term of her criminal sentence. Its publication resulted in the retraction of a previously made offer of employment at a clinic research project, which eliminated the opportunity on which she had counted "to get some semblance of my life back".

Petitioner was devastated by this. She called and told a lot of people that she knew and with whom she was close about her past history. She also decided to focus on serving the 1000 hour community service requirement of her criminal sentence instead of continuing to search for employment.

Thus in about eight months she completed her community service. As she had already begun pursuing her masters degree in public health she continued to do so. She also continued in therapy with Dr. Langer.

However another stressful time for petitioner was when Dr. Langer, after about three years, moved to a position in Torrington, Connecticut, ninety miles away. At first they engaged in therapy to ease the termination/transition process, then for a year they compromised and met halfway (geographically) between their two locations, and then when this became untenable for Dr. Langer, petitioner chose to drive to his New England office, albeit on a less frequent basis.

Petitioner currently sees Dr. Langer every two or three weeks.

He has, in part, focused on skills training which is the acquisition of skills with which to handle powerful emotions in a rational and controlled manner; to recognize, anticipate, observe, distance, examine and evaluate an emotion before reacting to it. He currently prescribes 30 milligrams of Prozac for her.

Moving to thoughts of the future, if petitioner's license is restored to her she plans to apply for a public health residency program with a mental health and AIDS focus, most likely at New York Medical College, especially as she has obtained her master of public health degree, eliminating one year from the required residency period. Per petitioner, "[b]ecause I've been out of it for five years, I don't know my abilities...how much stress I could tolerate on a day-to-day, hour-to-hour, minute-to-minute basis." After that residency year she would then reexamine her position, as to whether to pursue a psychiatry residency or to find a niche within public health and preventive medicine, again preferably at New York Medical College where she is known.

On the other hand, if petitioner's license is not restored to her she would leave the New York area to move to the South and pursue some type of work involving animals. Alternatively she might pursue certification to teach tennis. "[I]t took me a very, very long time, almost until I met Joe [Scianameo], to accept the fact that even if I don't get my license back then, that I'm still okay, that I have other options in life, and that, you know, I can be a productive member of society, regardless."

And her relationship with her mother is "tough": on the one hand her mother could not see petitioner as a person separate from

her father, and, yet, on the other hand, her mother has been very supportive of her rehabilitative process and permitted her to live in her (mother's) home. Petitioner feels it is hard for her mother to have her daughter living at home again after so many years, and at the same time it is also hard for petitioner to be living with her mother, when previously she lived elsewhere. For a time the two of them continued to see the hospital social worker; petitioner now confides in her mother and knows her love. Nonetheless it is now her mother's other daughter who is the success.

On cross-examination petitioner stated that B.F.'s Prolixin poisoning was diagnosed as a result of an anonymous telephone call from petitioner's Cornell supervising resident, and not as a result of a brain biopsy performed on B.F.²⁹ Nonetheless B.F. was very supportive of petitioner when he thereafter confronted her about her administration of Prolixin to him. They then spoke once or twice more by telephone in the ensuing few days about her health and future.

Also, at about the same time (approximately April, 1992), petitioner was asked to leave the psychiatric residency (physician) program at the end of the year where she was a second year psychiatric resident. This was due to an on-call incident at the hospital where she inappropriately filled in a patient admission examination form for a newly admitted patient without first fully completing the physical examination of this patient.

Petitioner admitted that, unlike other relationships with men,

²⁹ There is some dispute on this point as some of the submitted documentation in this restoration matter would seem to indicate otherwise.

she could not control, most especially emotionally, her relationship with B.F. However she views her motivation not as one of control but as one of maintaining love. Nor does she see this episode as a form of revenge, despite her anger, for it was anger due to the fact that B.F. was able to function so well without her and do without her; it was desperation.

At the hospital when faced with the possibility that B.F. might die petitioner "had the capability to...go through...sort of transient panic fear and then push it back...into its compartment." Petitioner said "I take full responsibility for what happened", as she was not then able to view the situation in an adult detached manner. When B.F. continued to telephone her afterwards about his love and future marriage plans for them it was similar to what her own father had done: "I love you, but you can't have me".

At the time of the incident involving B.F. petitioner was prescribed Prozac by her psychiatrist, who was not Dr. Langer, and she self-medicated by taking more than the prescribed amount of it. She may have written prescriptions for herself but she did not obtain medication from her employer's stock.

Petitioner, when questioned about remorse, said that she feels horrible about what she did to B.F.. She also feels horrible for her family and for herself. However she does not feel worse for herself--and she admits that she brought about this situation, an interrupted life, herself--than she does for either B.F. or her family.

Petitioner stated: "it's such a long process to have something like that sink in, and it's still even an ongoing

process". Later she stated specifically regarding B.F.: "it's just very hard to have feelings about something I don't know about." However she also stated: "I feel very bad about the hospital part and the suffering part, and the fear part was very scary".

Petitioner actually practiced medicine with her license for less than a year in 1992. She describes herself as having been an erratic resident in psychiatry, especially because she realizes now, in retrospect, that she did not then address her father's dying and death. Petitioner was counseled during what was for her a difficult neurology rotation at Sloan Kettering Hospital for writing a medication order in the incorrect patient's report sheet.

Now, besides her masters degree program, petitioner reads an AIDS textbook and the American Journal of Public Health, peruses the American Journal of Psychiatry, and attends a few grand rounds. Petitioner plays tennis, runs, writes poetry, reads, and volunteers for an animal shelter. Petitioner has also been in a committed relationship with Joseph Scianameo for some time.

In fact petitioner's current support system consists of Joseph Scianameo, Dr. Langer, her mother (Regina Cane), her sister (Randie Cane Engle), the Spindels (Ann and Paul), and two friends (in California and Massachusetts, respectively). Petitioner has now completed most aspects of the criminal sentence meted out to her, and stated, in part: "...as far as the length of the probation and

not being able to practice or do anything health related³⁰, the community service--the restitution was a little steep--I agreed with those." She has also fulfilled the book report and incarceration parts of the sentence, the latter of which overlapped with the commencement of her public health degree program studies.

Regardless of the outcome of the State of New York restoration meeting and process petitioner intends to continue to seek professional therapeutic assistance; "I still have a lot of issues to deal with". She admits that she had, in the past, been cruel, been hurtful, to the men she dated, especially in abruptly ending relationships deliberately extended by her long past her span of actual interest. While she has, to some extent, forgiven herself for what she had done, she explained that she has not forgotten it: "I mean, I think I have an understanding of everything, but I really feel like I need to sort of have it sitting on my shoulder all the time to sort of remind me of what I did, of what I'm capable of doing, of what got me there, and make sure that I never put myself in a situation that would ever enable me to get close to doing something like that again."

IV. Closing Arguments

Closing arguments were then made by both counsel, Mr. Appel

³⁰ See the second legal issue discussed herein under the subsection entitled *I. Preliminary Legal Considerations of the Meeting* section of the instant report. Petitioner stated, toward the end of her cross-examination on October 29, 1997, that she actually obtained specific permission from her probation officer to perform patient interviews with her thesis advisor present once she obtained approval to do the research project for her masters degree in public health. Later on petitioner further stated, in discussing why she filed her petition for restoration when she did and in so doing referring to the terms of her criminal probation, that "[t]he problem I really had was with health-related activities", which restriction she thus admits exists, and yet at the same time ignores, by implying that it, "health-related activities", is not an actual obstacle category for her but that the absence of her license to practice medicine, alone, still is.

followed by Mr. Wood.

Mr. Appel opposes the restoration of petitioner's license to practice as a physician in this State for the following reasons:

- (1) Her original precipitating criminal act was intentional, of some duration, and damaging, contrary to the principle that a physician should do no harm.
- (2) Since that time it is unclear for what petitioner is remorseful, as she not only caused harm to the life of B.F., the victim, but also caused harm to the lives of her family and to her own life.
- (3) As to rehabilitation, Drs. Langer and Loeb, both psychiatrists, were very qualified in their recommendations for licensure reinstatement for petitioner, someone who had previously been licensed as a physician for less than a year.
- (4) With regard to reeducation, petitioner has been out of practice for more than five years and has submitted insufficient evidence documenting that she continues to remain current in the field of medicine, a field of endeavor that is not the same as that of public health.
- (5) In addition protection of the public in this case outweighs petitioner's continuing rehabilitative efforts for the safety of the citizenry.
- (6) Finally petitioner Cane, alone, is the subject of the instant proceeding and not her family.

Mr. Wood seeks the restoration of petitioner's license to practice as a physician in this State and points out that

physicians are also human beings; that petitioner has had the benefit of substantial extended psychiatric treatment and care; that in reality all of us are the product of our relationships with others; that petitioner's two-part impaired judgment--her decision first to administer Prolixin to B.F. and her decision second to withhold the disclosure thereof from B.F. and his hospital medical team--was the result of her sad fate; and that therefore under the circumstances petitioner is not to be held responsible for the actions she took regarding B.F..

As to whether petitioner is impaired now and whether petitioner would pose a risk to the public now if her license were to be restored to her, he referred to the words of Dr. Langer, who said she was certainly competent to return to the practice of medicine, and to Dr. Loeb, who said he was not sure as he is not a prognosticator. He also argued that the Peer Committee members have a dual responsibility--primary is protection of the public, but secondary is fairness to the petitioner--and that therefore consideration should be given to Dr. Loeb's proposal to restore petitioner's license provisionally through appropriate probationary terms such as monitoring and enrollment in a public health or preventive medicine residency program with periodic progress reports to the Regents.

In sum he views petitioner as a victim of her actions due to her impairment, rhetorically, as an explanation of remorse; as a proposed probation requirement medical program resident as a satisfaction of reeducation; and as someone who has undergone five and a half years of therapy as a satisfaction of rehabilitation.

Finally he stated that a history of extensive psychiatric care should not preclude petitioner, who is not a marginal person, from moving forward in her life and career, once appropriate safeguards are put in place by the State.

POST-MEETING ACTIVITY

Deliberation was scheduled for and held on December 18, 1997. However, due to the ex parte action of one Peer Committee member first disclosed at the conclusion of that deliberation, and the later separate and different post-deliberation disclosure of another Peer Committee member, a re-deliberation, meaning a deliberation de novo, was scheduled, on the basis of curing the former ex parte action with the inclusion of a new document in the Cane record, and resolving the latter disclosure with the affirmative statement of the involved Peer Committee member. The re-deliberation by all three of the original Cane Peer Committee members was held on April 28, 1998. Copies of the correspondence relating thereto, in chronological order, along with the new document and the affirmative statement, is annexed hereto, made a part hereof, and marked as Peer Committee Exhibit "A".

DETERMINATION

We have considered the record in this matter, during our April 28, 1998 re-deliberation, (a deliberation de novo), in consultation with our legal advisor, and on that basis the following is the unanimous determination of the Peer Committee.

We are not in favor of the re-licensure of petitioner. We first review the issue of rehabilitation. Petitioner had, over a period of time, shown an inability to distinguish right from wrong.

She engaged in "compartmentalization". Nothing in the testimony she presented, even from physicians, is compelling to say that she is no longer at risk of harming another person if she is once again desperate to preserve her own self interests. Her expert witness, Dr. Loeb, a forensic psychiatrist, could not provide assurances this Peer Committee wants to hear.

Petitioner manifested, prior to and including the underlying criminal incident, significant disturbances that interfered with both her professional and her personal life. For instance

- During her neurology rotation residency petitioner was threatened with expulsion for causing the administration of Heparin to the wrong patient. By her own account (testimony) during her psychiatry residency she was experiencing difficulties performing as a physician.
- Petitioner, distraught over the death of her father, failed her pediatric rotation final examination.
- Petitioner acted with forethought and malice when engaging in the criminal act, poisoning B. F., as she researched what drug she would use and selected Prolixin because it was "colorless, odorless and tasteless". She then emptied Prolixin into more than one beverage container and allowed the victim, B. F., to drink it over a period of days.
- Further, when the victim, B. F., started to become ill petitioner did not reveal her actions to him or to any of the medical staff treating him. By her own account petitioner began to believe that B. F. was ill for a different reason, and that this event had occurred in

another lifetime; "[i]t's like it happened in another life".

- Petitioner then joined the diagnostic team to ascertain the cause of the victim's illness and thereby got B. F. back with her. She could not tolerate the idea that B. F. could manage without her and in incapacitating him she had the experience of gaining him back; "[m]y experience was that I had him back." Petitioner poisoned B. F. out of anger, not as revenge.
- Further still, petitioner took pleasure from the experience of sitting in the hospital room with members of B. F.'s family and friends, thus regaining the social circle of shared friendship. She stated "[a]nd so after I committed the act and I was present in the hospital, it was as though I was back, I had got my family back."

Nonetheless, since the revocation of licensure petitioner has slowly developed a perspective on how wrong this behavior was, but by the account of her own expert witness she is not fully there and still has problems imagining herself in another person's situation (empathizing). Dr. Loeb, the forensic psychiatrist, was not sure what would happen to petitioner under stress. Given the severity of the initial behavior and the lack of full rehabilitation, despite petitioner's significant efforts in this direction, it does not seem appropriate to restore her license at this time. We feel petitioner is unprepared for a return to the practice of medicine.

However we do wish to emphasize that petitioner has made positive progress. Her brutal honesty during the hearing, the

considerable amount of time she has spent to understand her actions, and her performance of valuable community service speak well for her. She also stayed involved in her field, generally, by obtaining a graduate degree in public health.

The issue of rehabilitation though is critical. Thus what petitioner has to have been rehabilitated from is why we have discussed, hereinabove, petitioner's pre-revocation period. Petitioner is a risk to the public. She has improved, but not enough. The burden in a restoration is upon the petitioner. Here her expert, Dr. Loeb, could not help her meet that burden.

With regard to re-education, a Masters of Public Health (M.P.H.) degree is not the same as a degree in medicine. Many persons possessing an M.P.H. degree are not physicians. We note petitioner did go to some clinical grand rounds and that she did read medical journals. However she did not pursue medical courses, meaning continuing medical education coursework credit. Of course petitioner herself stated that it was her plan to go back into a residency training program, if her license were to be restored, before practicing medicine independently.

Petitioner's remorse is hard to assess. We are sure that she is sorry that it happened, that she poisoned B. F.. Thus we believe that there is a certain amount of remorse but it is not easily quantifiable.

Petitioner is able to acknowledge that B. F. was harmed; she also expressed distress at the thought that B. F. could have died. However it also appears that she is now more concerned that her medical career has been derailed or interrupted.

Remorse consists of the elements of understanding what has happened; feeling sorry that it happened; feeling sorry that society/a person was injured; and determining that one would not so act again. Petitioner understands that what she did is wrong and has expressed regret that it occurred. Nonetheless we were not convinced that petitioner felt the full horror of what she did. The depth of her remorse is somewhat limited, which is part and parcel of her lack of adequate rehabilitation.

Petitioner still does not have sufficient insight. She is not despairing, simply not horrified, at what she has done. There is a lot of ongoing stress in petitioner's life; she is more focused on the restoration process and how to put her own life back together, not what happened to B. F..

Here we have clear intent for the commission of a criminal act. Yet petitioner's own witness, Dr. Falvo, one of her public health professors, did not know the specific act and details of what petitioner had perpetrated, which suggests to us a lack of real honest and open communication by petitioner with her. We infer that at no time was there honesty by petitioner in this relationship, such as it was.

Nevertheless petitioner has expressed remorse. However her previous actions were intimately connected with medical knowledge, its power and its access to medication, which medication she stole from a worksite. Hers was a compound crime: petitioner took advantage of her medical knowledge and access to the prescription medication. Thus the act blurred the line between the personal and professional life of petitioner; there was wrongdoing in both

arenas.

Petitioner had so many opportunities to do the right thing and she did not. She was and remains a very disturbed person. We repeat and emphasize that Dr. Loeb, who was her own expert witness, could not give supportive testimony.

Petitioner may have definitely improved but still could not fully feel her way into someone else's world. This means that petitioner cannot hold the other person's perspective when making a decision. And that is less than the burden of *compelling* evidence required in a restoration.

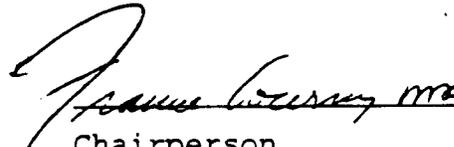
In sum petitioner has not gotten far enough in her rehabilitation for us to discuss other topics, such as monitoring if her license were to be restored. We find this particular case deeply troubling. Petitioner's rehabilitation is too fundamental an issue to put her on probation of any type at this time; we find that she is not ready for it.

Consequently, for all of the above reasons, we unanimously recommend to the Board of Regents that the petition for restoration of licensure be denied, and that the New York State Department of Health Bureau of Professional Medical Conduct Order No. 93-04, accepting petitioner's application to surrender her license, remain in effect.

Respectfully submitted,

FRANCINE COURNOIS, M.D.,
Chairperson
DAVID HARRIS, M.D.

ANTHONY SANTIAGO,
Public Member

 9/9/98
Chairperson Dated

PEER COMMITTEE EXHIBIT "A"

MELANIE B. CANE

CALENDAR NO. 16500

- December 23, 1997 letter of Legal Advisor to Counsel
- December 26, 1997 letter of petitioner's attorney, William L. Wood, Jr., Esq., to Legal Advisor
- December 30, 1997 letter of Office of Professional Discipline attorney, Kenneth J. Appel, Esq., to Legal Advisor
- March 3, 1998 letter of Legal Advisor to Counsel
- March 5, 1998 letter of Legal Advisor, enclosing the March 4, 1998 statement of the chairperson, to Counsel
- March 12, 1998 letter of Legal Advisor, enclosing ten pages from the 1992 edition of the *Physicians' Desk Reference (PDR)*, [title page; acquisition date page; drug Prolixin pages] to Counsel
- March 13, 1998 letter of petitioner's attorney, William L. Wood, Jr., Esq., to Legal Advisor
- March 19, 1998 letter of Office of Professional Discipline attorney, Kenneth J. Appel, Esq., to Legal Advisor
- April 9, 1998 letter of Legal Advisor to Counsel
- April 29, 1998 letter of Legal Advisor to Counsel