



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

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August 4, 2000

William P. Capote, Physician
301 Monterey Avenue
Pelham, New York 10803

RECEIVED

AUG 07 2000

**OFFICE OF PROFESSIONAL
MEDICAL CONDUCT**


Re: Application for Restoration

Dear Dr. Capote:

Enclosed please find the Commissioner's Order regarding Case No. 00-90-60 which is in reference to Calendar No. 17308. This order and any decision contained therein goes into effect five (5) days after the date of this letter.

Very truly yours,

Daniel J. Kelleher
Director of Investigations

By:

Gustave Martine
Supervisor

cc: Barbara A. Ryan, Esq.
Aaron, Rappaport, Feinstein &
Duetsch, LLP
757 Third Avenue
New York, New York 10017

The University of the State of New York
Education Department



IN THE MATTER

of the

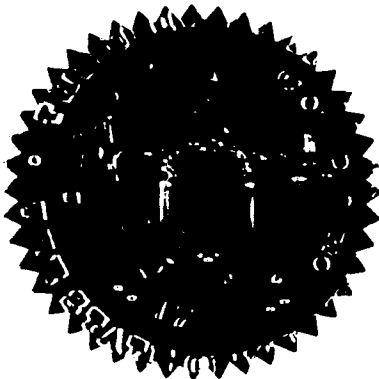
Application of WILLIAM P. CAPOTE for restoration of his license to practice as a physician in the State of New York.

Case No. 00-90-60

It appearing that the license of WILLIAM P. CAPOTE, 301 Monterey Avenue, Pelham, New York 10803, to practice as a physician in the State of New York, was revoked by the New York State Department of Health's Administrative Review Board for Professional Medical Conduct effective July 1, 1996, and he having petitioned the Board of Regents for restoration of said license, and the Regents having given consideration to said petition and having agreed with and accepted the recommendations of the Peer Review Panel and the Committee on the Professions, now, pursuant to action taken by the Board of Regents on June 13, 2000, it is hereby

ORDERED that the petition for restoration of License No. 121375, authorizing WILLIAM P. CAPOTE 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 28th day of July, 2000.




Commissioner of Education



Case No. 00-90-60

It appearing that the license of WILLIAM P. CAPOTE, 301 Monterey Avenue, Pelham, New York 10803 to practice as a physician in the State of New York, having been revoked by the New York State Department of Health's Administrative Review Board for Professional Medical Conduct effective July 1, 1996, and he having petitioned the Board of Regents for restoration of said license, and the Regents having given consideration to said petition and having agreed with and accepted the recommendations of the Peer Review Panel and the Committee on the Professions, now, pursuant to action taken by the Board of Regents on June 13, 2000, it was

VOTED that the petition for restoration of License No. 121375, authorizing WILLIAM P. CAPOTE to practice as a physician in the State of New York, be denied.

Case number 00--90-60

April 12, 2000

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: William P. Capote

Attorney: Barbara A. Ryan

William P. Capote, 301 Monterey Avenue, Pelham, New York 10803, petitioned for restoration of his physician license. The chronology of events is as follows:

- 09/16/74 Issued license number 121375 to practice as a physician in New York State.
- 09/12/95 Charged with professional misconduct by Department of Health. (See "Disciplinary History.")
- 01/09/96 Effective date of Hearing Committee of the State Board for Professional Medical Conduct's Determination and Order to limit practice to obstetrics and gynecology and place on probation for five years.
- 07/01/96 Effective date of Administrative Review Board for Professional Medical Conduct's Decision and Order for revocation.
- 07/03/97 Supreme Court, Appellate Division, dismissed CPLR Article 78 petition for review of determination of Administrative Review Board for Professional Medical Conduct.
- 08/04/97 Submitted application for restoration of professional license.
- 06/18/99 Peer Committee restoration review.
- 02/04/00 Report and recommendation of Peer Committee. (See "Report of the Peer Committee.")
- 05/03/00 Report and recommendation of Committee on the Professions. (See "Report of the Committee on the Professions.")

Disciplinary History. (See attached disciplinary documents.) On September 12, 1995, Dr. William Capote was charged with three specifications of professional misconduct. The first specification charged Dr. Capote with being found guilty of violating a state statute or regulation where the violation would constitute professional misconduct pursuant to New York State Education Law. Dr. Capote was excluded from the Medicaid Program for five years for billing for services not rendered, ordering unnecessary laboratory tests, failing to follow up on abnormal laboratory results, improperly performing spirometry tests and failing to document medical records in conformity with Medicaid requirements. The second and third specifications charged Dr. Capote with practicing the profession of medicine fraudulently for allegedly providing prenatal care to two patients and indicating that he would deliver their babies at Our Lady of Mercy Hospital where he did not have admitting privileges.

A Hearing Committee of the State Board for Professional Medical Conduct sustained the first specification of professional misconduct, finding that Dr. Capote was excluded from the Medicaid program for a period of five years, specifically for billing for services not rendered, ordering unnecessary laboratory tests, failing to follow up on abnormal laboratory results, improperly performing spirometry tests and failing to document medical records in conformity with Medicaid requirements. The Hearing Committee also found that Dr. Capote provided prenatal care for two patients when he knew that he did not have admitting privileges at Our Lady of Mercy Hospital. However, the Committee also found that there was an office policy to inform all patients that Dr. Capote would not deliver their babies and seven other patients stated that they were so informed. The Hearing Committee concluded that, although it appeared that Dr. Capote was negligent, he did not demonstrate willful behavior and was not guilty of the second and third specifications of professional misconduct. On January 9, 1996, the Hearing Committee ordered that Dr. Capote's license to practice medicine be limited to the practice of obstetrics and gynecology until such time as he was able to convince the Office of Professional Misconduct that he had successfully completed additional accredited training in any other field or fields of medical practice. The Hearing Committee also ordered that he be placed on probation for five years.

On January 16, 1996, the Department of Health requested a review of the Hearing Committee's Determination and Order. An Administrative Review Board for Professional Medical Conduct sustained the Hearing Committee's determination finding Dr. Capote guilty of professional misconduct but voted unanimously to overturn the penalty of the Hearing Committee because it found the penalty to be inconsistent with the findings and not appropriate for the serious misconduct committed. The Administrative Review Board voted to revoke Dr. Capote's license, effective July 1, 1996.

On July 14, 1997, the Supreme Court, Appellate Division, dismissed Dr. Capote's petition, pursuant to CPLR Article 78, to review the Administrative Review Board's determination for revocation.

On August 4, 1997, Dr. Capote submitted an application for restoration.

Recommendation of the Peer Committee. (See attached Report of the Peer Committee.) The Peer Committee (Diamond, Harris, Robinson) unanimously recommended to the Committee on the Professions on February 4, 2000 that Dr. Capote's application for restoration be denied.

Recommendation of the Committee on the Professions. On April 12, 2000, the Committee on the Professions (Duncan-Poitier, Muñoz) met with Dr. Capote regarding his application for restoration. Normally, three members of the Committee on the Professions meet with a restoration applicant; however, one of the scheduled members was unable to attend. Dr. Capote was apprised of his rights to reschedule his meeting or meet with the two remaining members of the Committee with the understanding that if both members did not agree on their recommendation, he would have the option of having another meeting or having the third Committee member vote after completing a paper review. Dr. Capote agreed to meet with the two Committee members present. He provided the following additional information to the Committee:

- a. A letter confirming his membership in the Bronx Gynecological and Obstetrical Society.
- b. A statement from his attorney addressing the Report of the Peer Committee.
- c. A letter of recommendation and support from the Pastor of Our Lady of Perpetual Help Church.
- d. A letter of recommendation from Mr. Jesús Hernández, M.D.

The Committee Chair asked Dr. Capote to explain how the charges of professional misconduct occurred. He stated that he had contacted a lawyer to assist with a case against Our Lady of Mercy Hospital for unfairly suspending his hospital privileges and terminating his employment, but found that the attorney's fees were too expensive. According to Dr. Capote, this same attorney later contacted him and asked him to substitute for a doctor at a clinic as a way to make money to pay his legal fee. He indicated that he told the lawyer he was reluctant to take the job, as he had never worked in a clinic. Dr. Capote reported that the lawyer was persistent, even calling his wife, and he finally "gave in and agreed." He explained that the lawyer was recommended by the State Medical Society.

Dr. Capote described the clinic as dysfunctional, stating that 99% of the patients were on Medicaid. He told the Committee that the patients had a full profile completed and had taken a "slew of tests" before he even saw them. He said that he questioned many of the tests, but the clinic manager told him to "forget about it." Dr. Capote reported that he was the only physician working at the clinic and now realizes that he should have used his professional medical judgement. He said, "I should have looked into their billing practices." He told the Committee that he would "never again find myself in that situation." When asked how he could have prevented the Medicaid fraud, he stated that he should have reviewed the billing practices and insisted that patients be treated in the way he believed they should be treated.

Dr. Capote listed many malpractice lawsuits in his restoration application. The Committee recognizes that mere malpractice complaints and settlements can reflect a

wide range of factors and do not necessarily indicate negligent practice. With that understanding, records of such incidents are a valid source of inquiry in the Regents' determination of Dr. Capote's fitness to practice. Dr. Capote stated that the malpractice complaints covered 20 years of practice and that the insurance company routinely paid and settled most cases even though he would have preferred to go to court so that he could "explain his situation." In reviewing the cases with Dr. Capote, the Committee noted that seven involved the delivery of impaired infants, one involved his alleged failure to diagnosis an ectopic pregnancy, and another involved an alleged delay in diagnosing cancer of the cervix. The Committee asked Dr. Capote what, if any, insight he could offer about these serious charges. Dr. Capote said, "Some were just bad outcomes." Ms. Ryan interjected that the Office of Professional Medical Conduct "probably looked at the malpractice cases," and she noted that they were not incorporated into the charges of professional misconduct. Additionally, his attorney indicated that Bronx was a "litigious borough."

Dr. Capote said that his reaction to the Report of the Peer Committee was to "[do] a lot of soul searching." He stated, "I realize I made a lot of mistakes... mistakes I could have prevented." He indicated that he should have looked at the billing practices and made certain they were done the "way I thought proper." Dr. Capote stated, "As a result of my mistakes, I brought a blemish and shame to the medical profession and myself. I paid a big price for my mistakes."

Dr. Capote said he is currently a family planning counselor for Planned Parenthood and teaches genetics courses at Mercy College. He told the Committee, "I know I made a big mistake. I think I've learned my lesson. I've tried to be as honest as possible in this meeting."

The Committee asked Dr. Capote about his private practice. He replied that he had an obstetrics and gynecology practice on Morris Park Avenue and that about 80% of the patients had private insurance. He reiterated that he went to work at the clinic after he "had a problem with hospital privileges at Our Lady of Mercy."

The Committee asked, "What would you say today that would be a compelling argument to get your license back?" Dr. Capote replied, "I realize I made a big mistake by not addressing the problems then. I did try, in a small way, with the lab tests, but I was told this is how it must be." He admitted that he made a "big mistake" and "learned my lesson – in a hard way." Dr. Capote told the Committee that he did not go to the clinic to "hurt people or to rob Medicaid." Rather, he indicated that he went to the clinic for his financial needs to cover his legal expenses but found that he "only got into more trouble." He explained that if you lose your privileges at one hospital, it is difficult to get privileges at another although he did eventually.

Dr. Capote described his attempts to remain current in medicine. If his license were restored, he said that he would not practice in the field of obstetrics. Dr. Capote told the Committee that he knew he made a big mistake and is sure that it would never happen again.

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

The COP concurs with the Peer Committee assessment that Dr. Capote willfully suspended his professional medical judgement in the circumstances that led to the loss of his license. While Dr. Capote states that his problems at the clinic were due to naivete, the COP, as did the Peer Committee, believes that he was experienced enough to know better than to suspend his medical judgement and not take the necessary corrective steps. Dr. Capote continued to emphasize that he recognized his wrongdoing and the detrimental effects his actions had on himself. However, the COP concurs with the Peer Committee that Dr. Capote neglected to grasp the amount of harm that could have come to patients by not independently assessing and diagnosing patients under his care. Additionally, the COP notes that the Department of Health opposes Dr. Capote's application for restoration and states, " In his application, Dr. Capote accepts no direct responsibility for the Medicaid program exclusion that formed the basis for the findings against him by the Board for Professional Medical Conduct. In fact, he merely alludes to it when he writes that he recognizes "the necessity of meticulous supervision of support staff in ordering only those laboratory tests pertinent to the patient's condition and informing the patient of abnormal results." Dr. Capote did not present a compelling case to warrant restoration of his license at this time.

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

Johanna Duncan-Poitier, Chair

Frank Muñoz



The University of the State of New York

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

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In the Matter of the Application of

WILLIAM CAPOTE

**REPORT OF
THE PEER
COMMITTEE
CAL. NO. 17308**

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

-----X

Applicant, **WILLIAM CAPOTE**, was authorized to practice as a physician in the State of New York by the New York State Education Department.

PRIOR DISCIPLINARY PROCEEDING

As a consequence of his actions, while working at a clinic for two and a half months in 1991, applicant was excluded from the Medicaid program effective November 30, 1993, for a period of five years.

He was found by Medicaid to be guilty of billing for services not rendered, ordering unnecessary laboratory tests, failing to follow up on abnormal laboratory results, improperly performing spirometry tests, and failing to document medical records in conformity with Medicaid requirements.

More specifically, applicant, through the clinic, billed the

WILLIAM CAPOTE (17308)

Medicaid program for ophthalmic echography tests for eleven patients, which were never performed. He ordered numerous unnecessary laboratory tests for each of the twenty patients which were the subject of the underlying DSS action. Applicant also billed the Medicaid program for useless spirometry tests. In addition, he failed to address positive syphilis tests for three patients and failed to address numerous abnormal blood test results reported for each of the patients.

Another example of inadequate medical care rendered at the clinic by applicant is that seven of the twenty patients at issue were diagnosed and medicated for hypertension on their first office visits. All of these patients had either normal or slightly elevated blood pressure.

As a result of the above, applicant's license to practice medicine in the State of New York was revoked.

THE APPLICATION

On August 4, 1997 applicant petitioned for the restoration of his license to practice as a physician in the State of New York.

In his petition applicant states that he now recognizes the necessity of meticulous supervision of support staff in ordering only those laboratory tests pertinent to the patient's condition and informing the patient of abnormal results and making sure that insurance forms are properly completed and fully reviewed before signing.

He further states that if his license is restored, he plans to take Medical management courses and also will take the course

the Medicaid Program (DSS) offers to physicians on healthcare fraud and abuse.

Applicant also set forth his efforts at continuing education.

INVESTIGATIVE INTERVIEW

During the interview, the incidents which led to the revocation of applicant's license were discussed. Applicant stated that, while working for a short period of time at the clinic treating Medicaid patients in 1991, he was not aware of the billing practices going on in the clinic as the billing was handled by someone else. He could not imagine that after working at the clinic for just two and a half months he would be under investigation, be charged with professional misconduct and, as a consequence, be excluded from the Medicaid program and lose his license. He felt that the penalty was overkill and unjustified as he did nothing intentionally wrong. However he said he takes responsibility as he should have been more aware of his surroundings and exercised better judgement. He also felt that the State made an example of him to show what could happen if an individual gets involved with Medicaid fraud intentionally or otherwise. Applicant further stated that as a result of the investigation no criminal charges were brought against him and he didn't receive any monetary benefits based on the fraudulent billing practices being conducted at the clinic while he worked there.

PEER PANEL REVIEW

On June 18, 1999, the Peer Panel met to review the

application in this matter. Applicant appeared and was represented by Barbara Ryan, Esq. The Department was represented by Stephen Lazzaro, Esq.

The Chairperson opened the meeting by stating that the Peer Panel had read the full application and all supporting documentation before the meeting.

The parties then made opening statements. Applicant presented two additional letters and three pages regarding continuing education at the meeting which are made a part of the material herein.

The essence of applicant's testimony before this panel was that the two and a half months at the clinic in question was an isolated situation where applicant was naïve and stupid and went along with the situation at said clinic even though he had doubts and misgivings as to the propriety of that situation. He did this because he was in need of money at the time and because it was for such a limited period of time. A Dr. Popovick was in charge of the clinic at the time and applicant had the impression that Dr. Popovick had developed the procedures at the clinic and applicant went along with them. He said he accepted that that was how things were done in a clinic setting. Applicant had never worked in a clinic before. While applicant did question the staff about the way the laboratory testing was being handled, he let the matter drop when he was told that was the way things had to be done.

Applicant expressed remorse for having cost the Medicaid

WILLIAM CAPOTE (17308)

program so much expense and for any harm that may have come to patients. He pointed out that he had never been charged with fraud in the twenty years he had been in his own practice.

Applicant stated that to have his license revoked over the events that took place over a two and a half month period, after all the years he had been in practice, seemed unreasonable and to be overkill.

Applicant presented two witnesses on his behalf. Dr. Blair Kokotek stated that she had worked with applicant when he was licensed and observed him to be committed and compassionate. She believes applicant had no intention to commit fraud. She believes him to be of good character, devoted to his family and a very religious man. She stated that he is an active member of the Bronx OB/GYN Society. Dr. Kokotek was not aware of the findings of poor patient care by applicant at the clinic in question.

Lybia Burgos is a registered nurse and a nurse practitioner who has worked with applicant at Planned Parenthood both while he was licensed and since he lost his license, as he now works there as a counselor. She believes applicant to be a skilled professional who is patient and humble and who the patients at Planned Parenthood like very much. She also was not aware of the findings of improper patient care.

The parties made closings statements. Ms. Ryan stated that applicant has suffered enough and has demonstrated that he should be restored to licensure. Mr. Lazzaro stated that the Department opposes restoration of applicant's license.

RECOMMENDATION

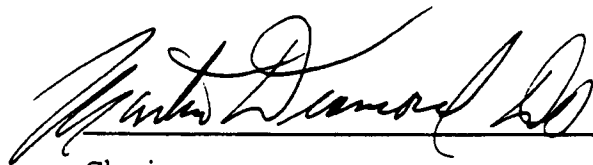
We want to say at the outset that we believe applicant to be a decent man. He impressed us as such during his testimony before us. We had difficulty in reaching a decision in this matter. However we feel we must unanimously recommend that the application herein be denied. Applicant stated that his problems at the clinic were due to his being naïve and being stupid. However, we believe that applicant willfully suspended his medical judgement in the situation in question. Applicant also does not seem to grasp the amount of harm that could have come to patients in this situation. We hope applicant will take these things into consideration should he reapply for restoration in the future.

Respectfully submitted,

Martin Diamond, Chairperson

David Harris

Benjamin Robinson


Chairperson

2/4/00
Dated