



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

OFFICE OF PROFESSIONAL DISCIPLINE  
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Brooklyn, New York 11201

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AUG - 1 2008

OFFICE OF PROFESSIONAL  
MEDICAL CONDUCT

July 30, 2008

Guy Denis, Physician

Redacted Address

Re: Application for Restoration

Dear Dr. Denis:

An incomplete copy of the Commissioner's Order regarding Case No. CP-06-06, which is in reference to Calendar No. 21771, was served July 18, 2008. Now, please find enclosed a complete copy of the Commissioner's Order regarding Case No. CP-06-06, which is in reference to Calendar No. 21771. 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

Redacted Signature

Ariana Miller  
Supervisor

DJK/AM/er

cc: Francis J. Offermann, Jr., Esq.  
Offermann, Cassano, Greco, Slisz & Adams, L.L.P.  
Attorneys at Law  
1776 Statler Towers  
Buffalo, New York 14202

The  
University of the  
Education  State of New York  
Department

IN THE MATTER

of the

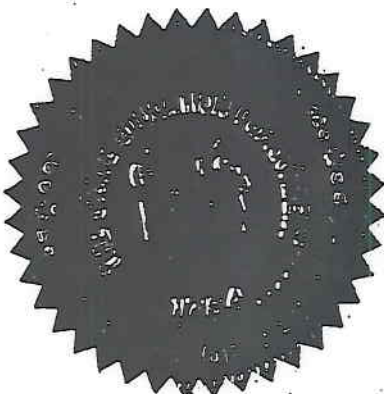
Application of GUY DENIS, for  
restoration of his license to practice  
as a physician in the State of New  
York.

Case No. CP-06-06

It appearing that the license of GUY DENIS, Redacted Address

, to practice as a physician in the State of New York was  
surrendered by action of the State Board for Professional Medical Conduct effective May 21,  
1993, and he having petitioned the Board of Regents for restoration of said license, and the  
Regents having given consideration to said petition and having reviewed the record, and having  
disagreed with the recommendation of the Peer Committee, and having agreed with and adopted  
the recommendation of the Committee on the Professions for the reasons set forth in a written  
decision attached to the Vote, now, pursuant to action taken by the Board of Regents on February  
12, 2008, it is hereby

ORDERED that the petition for restoration of License No. 143323, authorizing GUY  
DENIS 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 3<sup>rd</sup>  
day of July, 2008.

Redacted Signature

Commissioner of Education

Case No. CP-06-06

It appearing that the license of GUY DENIS, Redacted Address  
, to practice as a physician in the State of New York, was  
surrendered by action of the State Board for Professional Medical Conduct effective May 21,  
1993, and he having petitioned the Board of Regents for restoration of said license, and the  
Regents having given consideration to said petition, petitioner's submissions in response to the  
draft reports of the Committee on the Professions, and petitioner's submission in lieu of personal  
appearance before the Board of Regents, and having disagreed with and rejected the  
recommendation of the Peer Committee, and having agreed with and adopted the  
recommendation of the Committee on the Professions for the reasons set forth in a written  
decision attached hereto, now, pursuant to action taken by the Board of Regents on February 12,  
2008, it is hereby

VOTED that the petition for restoration of License No. 143323, authorizing GUY DENIS  
to practice as a physician in the State of New York, is denied.

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

Determination of the Board of Regents  
Application for Restoration of Physician License

Re: Guy Denis

A full recitation of the facts and disciplinary history in this matter is set forth in the report and recommendation of the Committee on the Professions dated December 20, 2007.

After carefully reviewing the report and recommendation of the Peer Committee dated April 14, 2005, and the final report and recommendation of the Committee on the Professions ("COP") dated December 20, 2007, we find that Dr. Denis is not entitled to restoration of his license to practice medicine. We reject the recommendation of the Peer Committee that Dr. Denis be placed on probation for a period of ten years, with probation terms and limitation of practice stipulations, and adopt the report and recommendation of the COP that Dr. Denis' application for restoration be denied.

As an initial matter, we are concerned about Dr. Denis' disciplinary history and the incidents that led to the surrender of his license in 1993. In 1991, Dr. Denis was found guilty of negligence on one occasion and incompetence on more than one occasion, and received a 5-year stayed suspension and 5 years probation. That action was based on his treatment of 2 patients. With respect to the first patient, he failed to prepare a complete and detailed operative report and failed to obtain adequate samples during surgery. With respect to the second patient, he failed to obtain a CT scan which could have been used to guide surgery he performed; unnecessarily explored the patient's neck by attempting a neck biopsy (which was unduly risky); and required nearly 5 hours of surgery during 2 operative procedures to get a positive biopsy when the procedure should have been completed in a shorter time and in a single surgery.

In April 1993, Dr. Denis' license was summarily suspended after being charged with 27 specifications of professional misconduct relating to 7 patients. In May 1993, he surrendered his license admitting to one specification of having committed negligence on more than one occasion relating to his treatment of the 7 patients. The misconduct to which he admitted is as follows:

Patient	Admitted conduct
A	Performed an inappropriate operation given the age, health and history of the patient; Lack of adequate medical indication for the operation; Failed to recognize problem caused by operation
B	Recommended an operation without adequate trial of nonsurgical therapy; Lacked qualifications and privileges to perform recommended operation

- C Recommended operation without adequate medical indication
- D Inadequate medical indication for pre-operative diagnosis;  
Failed to perform appropriate operation;  
Recommended operation without adequate medical indication and too soon following a prior surgery
- E Performed operation too soon after ear infection;  
Inappropriately recommended surgery
- F Inappropriately recommended surgery
- G Inappropriately recommended surgery

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We note in particular that these incidents of admitted negligence occurred over a 3½ period and that most of the incidents occurred while the earlier set of disciplinary charges was already pending against him. The record also indicated that Dr. Denis was the defendant in 12 malpractice actions, all but one of which was settled for amounts ranging from \$15,000 to \$700,000. The 12<sup>th</sup> action was pending at the time of the application.

Dr. Denis' 14 year absence from practice of medicine also raised serious questions about his current competency, a concern that was shared by the NYS Department of Health in its strong opposition to Dr. Denis' application for restoration. The Peer Committee expressed similar concerns which it sought to address by imposing stringent conditions on the restoration of his license, including successful completion of 2 competency exams and 10 years of probation with extensive practice restrictions, but we do not feel that such terms would provide sufficient protection to the public. Dr. Denis could have more convincingly demonstrated his competency to practice safely by participating in an independent assessment of his medical knowledge and skills and by completing any remediation recommended by such assessment, but he has failed to do so to this point.

We were also concerned that, although the Peer Committee proposed restrictions on Dr. Denis' practice during the 10-year period of probation, those restrictions would end when the probationary period expired and Dr. Denis' license was fully restored.

Public protection and safe and competent practice are at the heart of the Board's responsibility in determining whether to restore the license of an applicant who has engaged in conduct serious enough to result in the loss of a professional license. Given Dr. Denis' history of negligent and incompetent practice, the long period of time since he last practiced, and the very long probation period and strict practice limitations recommended even by the Peer Committee, Dr. Denis failed to make a compelling case that he would be able to practice in a safe and competent manner if his license were restored.

Case Number  
CP-06-06  
December 20, 2007

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: **Guy Denls**

Attorney: Francis J. Offermann, Jr.

**Guy Denis**, Redacted Address  
petitioned for restoration of his physician license. The chronology of  
events is as follows:

- 08/22/80 Issued license number 143323 to practice medicine in New York State.
- 12/15/87 Charged with professional misconduct by the Department of Health.
- 10/18/90 Hearing Committee recommended license be revoked.
- 11/30/90 Commissioner of Health recommended license be revoked.
- 06/05/91 Regents Review Committee recommended license be suspended for five years, execution stayed, probation for five years.
- 07/26/91 Board of Regents voted five years' stayed suspension and five years' probation.
- 08/05/91 Commissioner's order implementing discipline imposed by Board of Regents effective.
- 04/19/93 Charged with professional misconduct by the Department of Health.
- 04/26/93 License summarily suspended for 90 days by Commissioner of Health.
- 05/06/93 Applicant applied to surrender license.
- 05/10/93 Board for Professional Medical Conduct adopted the Application to Surrender License.
- 05/21/93 Surrender Order of the Board for Professional Medical Conduct effective.
- 06/20/94 First application for restoration submitted.
- 01/05/96 First Peer Committee restoration review.

- 04/12/96 Report and recommendation of first Peer Committee.
- 10/08/96 First report and recommendation of Committee on the Professions.
- 12/20/96 Board of Regents voted denial of first restoration application.
- 02/05/97 Commissioner's order denying restoration served.
- 01/13/04 Second application for restoration submitted.
- 04/14/05 Second Peer Committee restoration review.
- 08/12/05 Report and recommendation of second Peer Committee. (See "Report of the Peer Committee.")
- 11/30/05 Committee on the Professions restoration review.
- 07/10/06 Second report and recommendation of Committee on the Professions.
- 07/26/06 Board of Regents voted denial of second restoration application.
- 10/26/06 Application for reconsideration of denial of second restoration application.
- 01/31/07 Denial of application for reconsideration.
- 06/28/07 Decision/Order/Judgment of NYS Supreme Court, Albany County sustaining applicant's petition in part and remanding applicant's restoration application to the Board of Regents.
- 11/16/07 Third report and recommendation of Committee on the Professions.
- 12/06/07 Response to third report and recommendation of the Committee on the Professions.
- 12/20/07 Fourth report and recommendation of the Committee on the Professions.

**Additional History.** As noted in the above chronology and in the report below, this matter was previously considered by the Committee on the Professions and the Board of Regents. Following the mailing of a copy of the draft COP report to the applicant, his attorney submitted on his behalf a response dated July 6, 2006. That response was transmitted to the COP members on July 6, 2006, and after consideration of the response, the COP chose not to make any changes in its recommendation to the Board of Regents that Dr. Denis' application for restoration of his license be denied. A copy of the response was also forwarded to the members of the Higher Education and Professional Practice Committee of the Board of Regents. After consideration of the matter, including applicant's July 6, 2006 response, the Higher Education and Professional Practice Committee and subsequently the entire Board of Regents voted to

deny the applicant's application for restoration of his license. By letter dated October 26, 2006, Dr. Denis sought reconsideration of the determination of the Board of Regents, and such reconsideration application was denied by letter dated January 31, 2007.

The applicant then sought review of the denial of his restoration application in a proceeding pursuant to Article 78 of the Civil Practice Law and Rules. In a Decision/Order/Judgment dated June 28, 2007, the Court found that the petitioner (Dr. Denis) had raised "a factual issue as to whether the COP actually did consider petitioner's response prior to the issuance of the final report" and determined that the "matter must ... be remitted to the Board of Regents for its elucidation of the basis upon which it chose to reject the report of the Peer Committee and accept that of the Committee on the Professions." The Court:

**"ORDERED AND ADJUDGED**, that the instant petition is sustained to the extent that a trial shall be held to determine the limited issue of whether the Committee on the Professions had met and considered petitioner's response to its draft report prior to the issuance of its final report; and ... further

**"ORDERED AND ADJUDGED**, that should respondents choose to avoid a trial of this issue, they shall communicate in writing to petitioner's counsel and to the Court, within fifteen (15) days of the date of this Decision, Order, and Judgment, their decision to direct the Committee on the Professions to reconvene for the purpose of considering petitioner's response to their draft report in a manner consistent with the terms of this Decision, Order, and Judgment; and ... further

**"ORDERED AND ADJUDGED**, that petitioner's application for restoration of his license to practice medicine is remanded to the Board of Regents for further proceedings consistent with this Decision, Order, and Judgment, with those proceedings to be held in abeyance pending either the result of the trial of the factual issue described above or the voluntary reconsideration by the Committee on the Professions of petitioner's response to their draft report."

Rather than have a trial on the issue of whether the COP considered Dr. Denis' response to its draft report prior to issuance of its final report, the COP met on August 14, 2007 to again consider that response. At that time, the COP decided to accept the Court's invitation to address more fully some of the issues raised by the applicant in his response. This report has been modified accordingly.

**Disciplinary History.** (See attached report of the Regents Review Committee and Application to Surrender License.) On December 15, 1987, the Department of Health charged Dr. Denis with professional misconduct in that he had practiced the profession of medicine with negligence on more than one occasion and with incompetence on more than one occasion. On October 18, 1990, the Hearing Committee (Lynch, Leslie, Raines) of the State Board for Professional Medical Conduct, Department of Health, sustained, in part, both of the charges and recommended that Dr. Denis' license be revoked. On November 30, 1990, the Commissioner of Health recommended that the Findings of Fact, Conclusions, and Recommendation of the Hearing Committee be accepted.



Although the Regents Review Committee (Linton, Black, Wachtel) recommended that the Findings of Fact, Conclusions, and Recommendation of the Hearing Committee and the Commissioner of Health be modified, it still recommended that Dr. Denis be found guilty, in part, of the charges. In its report of June 5, 1991, the Regents Review Committee further recommended that Dr. Denis' license be suspended for five years, that execution of said suspension be stayed, and that he be placed on probation for five years.

The Board of Regents voted to modify the Findings of Fact as recommended by the Regents Review Committee but still found Dr. Denis guilty, in part, of both charges. On July 26, 1991, the Regents voted to suspend Dr. Denis' license for five years, execution of said suspension was stayed, and Dr. Denis was placed on probation for five years.

On April 21, 1993, the Commissioner of Health issued an order summarily suspending Dr. Denis' medical license. The Order of the Commissioner of Health, which became effective on April 26, 1993, was accompanied by a notice of hearing and a formal statement of disciplinary charges. Dr. Denis was charged with 27 specifications of professional misconduct. On May 6, 1993, Dr. Denis signed an Application to Surrender License in which he admitted guilt, in part, to the fifteenth specification of professional misconduct which charged him with practicing the profession of medicine with negligence on more than one occasion.

On May 10, 1993, the State Board for Professional Medical Conduct adopted the Application to Surrender License. The Order of the State Board for Professional Medical Conduct became effective May 21, 1993.

On June 20, 1994, Dr. Denis submitted his first application for restoration of his physician license. In a report dated October 8, 1996, the Committee on the Professions (COP) noted the strong opposition of the Department of Health to the restoration of his license and Dr. Denis' failure to ameliorate his practice after the initial charges were brought against him in 1987, leading to a second set of charges in 1993. Additionally, the COP found that Dr. Denis expressed remorse concerning the impact the loss of his license had on his life and that of his family but that he failed to show sufficient concern for the physical and emotional effects his misconduct had on his patients who underwent unnecessary surgery. The COP further found that Dr. Denis had not undertaken sufficient efforts at reeducation and had yet to demonstrate his acceptance of the seriousness of the problems with his practice. The Committee recommended that Dr. Denis' application for the restoration of his license be denied, and on December 20, 1996, the Board of Regents voted to deny his application.

On January 13, 2004, Dr. Denis submitted the instant application for restoration of his physician license.

Recommendation of the Peer Committee. (See attached Report of the Peer Committee.) The Peer Committee (Martinke, Messina, Shah) convened on April 14, 2005. In its report dated August 12, 2005, the Committee unanimously recommended that, upon submission of proof that he has passed both the Special Purpose Examination (SPEX) offered by the Federation of State Medical Boards and the Step 2

Clinical Skills (CS) examination offered by the United States Medical Licensing Examination, the surrender of Dr. Denis' license to practice as a physician be stayed and that he be placed on probation for ten years under specified terms and conditions. Those terms and conditions included a prohibition on the performance of head and neck surgery, limitations that during the first five years of probation his practice be in a group or hospital setting and that he not seek to be credentialed to practice at any hospital, and a requirement that during the first year of probation he practice only under direct supervision with quarterly performance reports.

Recommendation of the Committee on the Professions. On November 30, 2005, the Committee on the Professions (Muñoz, Templeman, Hansen) met with Dr. Denis to consider his application for restoration. Francis J. Offermann, Jr., his attorney, accompanied him. Dr. Denis presented documentation of his completion of 55 CME credits through the University of Iowa Carver College of Medicine from June 3 to June 10, 2005.

The Committee asked Dr. Denis to explain the events that led to the loss of his license. He responded that he committed several errors of judgment and explained this in part as resulting from a failure to take the courses necessary to provide him with the information he needed to address the needs of his patients. He further explained that at the time of the incidents which led to the disciplinary charges against him he was young and believed that he had learned enough. He illustrated this problem by reporting that in one instance he recommended surgery as the proper course of action as that was what he had learned during his training. However, the accepted practice in his field had changed to first considering physical therapy to address the patient's problem, but he had not kept up-to-date with current practices and recommended surgery as the first course of action. Dr. Denis reported that he now recognizes the importance of staying current in his field and related to the Committee that he has for many years attended weekly meetings of the Head and Neck Tumor Conference of the Roswell Park Cancer Institute, at which cancer specialists in different areas discuss treatment alternatives.

Dr. Denis also talked about his problems with misdiagnoses, indicating that he was too anxious when he was young but that he has since learned the value of taking the time necessary to make a diagnosis and to seek a second opinion in appropriate situations.

In response to a question concerning his current activities, the applicant indicated that he was not working but that he was studying. He further indicated that several other states had revoked his medical licenses and that he was looking into having those licenses restored as well. He indicated a willingness to move to a new location in his efforts to obtain a good position, although he indicated that he had never practiced in other states.

The Committee asked Dr. Denis about the results of his misdiagnoses on his patients. He responded that he was unaware of the patient outcomes as he did not follow the progress of the patients after he lost his license, but said that none of the patients had died.

The charges brought against Dr. Denis in 1987 related to events that took place in 1981 and 1982. The five-year stayed suspension of his license and the five-year period of probation resulting from those charges took effect in 1991. The 1993 charges were served while Dr. Denis was still on probation from the prior disciplinary action, and the new charges related to his treatment of seven patients, one of whom he treated prior to the initial set of charges against him and the other six of whom he treated while the initial set of charges was pending. When asked by the COP whether he should have been aware that there were questions about the competency of his practice at the time of the incidents leading to the second set of charges, Dr. Denis' attorney responded that there had been no resolution with regard to the first set of charges and that there was a real question about whether he had done anything wrong with respect to those charges. Dr. Denis told the Committee, however, that following the initial set of charges against him, he did try to improve his reports.

In response to a question about his current competence to practice, Dr. Denis responded that he is confident about his competence. He went on to say that finding a position and then obtaining hospital privileges would take time and that the limitations on surgery recommended by the Peer Committee were unnecessary as his surgical practice would be monitored by the hospital.

The Committee asked Dr. Denis what he has been doing since he surrendered his license in 1993. He responded that he has been unemployed since that time, that his wife is a nurse who works overtime, and that he has also used his retirement savings to support his family.

Dr. Denis told the COP that he had fought the first set of charges against him but that he had agreed to surrender his license following the second set of charges because he could not afford to litigate those charges given the short period of time he had to prepare a defense following the summary suspension of his license by the Commissioner of Health. He also indicated that he believed that many of the 1993 charges were defensible and that he was required to plead to only one specification at the time to surrender his license.

When asked by the COP why his license should be restored at this time, Dr. Denis failed to respond to the question asked, saying instead that he felt that the ten-year period of probation recommended by the Peer Committee was excessive and that one year of probation would be sufficient. When questioned further about how he would practice under the probation terms recommended by the Peer Committee, he indicated that it would be difficult to practice under those terms as they were too restrictive and would place too many limits on his ability to practice.

Later in the meeting, Dr. Denis' attorney did address the question of why the applicant's license should be restored. He emphasized Dr. Denis' re-education activities, reporting his regular attendance at weekly multidisciplinary case discussion meetings at Roswell Park Cancer Institute's Head and Neck Tumor Conference since 1993 and his observation of over 100 surgeries performed by two surgeons with whom he also had the opportunity to discuss the procedures observed. His attorney also reported Dr. Denis' attendance at meetings of the American Academy of Otolaryngology and his completion of home study courses.

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

The COP agrees with the Peer Committee that Dr. Denis has engaged in a significant amount of re-education as evidenced by his participation in the Roswell Park, American Academy of Otolaryngology, and home study programs. In his July 6, 2006 letter, Dr. Denis' attorney asserts that he appears not to have "clearly spelled out in the Application for Restoration, and in the exhibits attached, as well as through Dr. Denis' testimony, the depth and breadth of his reeducation process." However, all of the evidence then cited by Dr. Denis is information previously submitted to and considered by the COP in making its recommendation. Indeed, the COP explicitly recognized in its original recommendation, as it does above, that Dr. Denis has engaged in a significant amount of re-education. However, given all of the evidence presented, the COP finds now, as it did before, that he has not presented a compelling case to demonstrate that his skills are sufficiently developed to enable him to practice medicine in a safe and competent manner. The COP notes that Dr. Denis waited seven years from the denial of his first restoration application to again apply for restoration of his license and that it has now been more than 14 years since he last practiced medicine. This long absence from the practice of medicine raises serious questions about his current competency. In "strongly" opposing Dr. Denis' current restoration application, the Department of Health raised similar concerns, writing, "[f]urther, we are very concerned that permitting a surgeon who has not practiced the art of surgery for nearly twelve years to return to practice, places the public at undue risk."

Public protection and safe and competent practice are at the heart of the COP's responsibility in determining whether it should recommend to the Board of Regents that a licensee who has engaged in conduct serious enough to result in the loss of a professional license be restored to practice. In its report the Peer Committee stated, "...since the applicant has been absent from the daily practice of medicine since his license was revoked in 1993, we are concerned that he may lack the basic medical knowledge and clinical skills to safely return to practice." The Peer Committee went on to impose competency examination requirements and a ten-year period of probation with extensive practice restrictions during the probationary period, including a

prohibition on any head and neck surgery and a five-year requirement that Dr. Denis practice only in a group or hospital setting, with direct supervision during the first year.

The COP agrees with the Peer Committee's concern about Dr. Denis' ability to practice in a safe and competent manner but disagrees with its conclusion that his license should be restored. While the COP generally relies on the Peer Panel, which is composed of professionals in the restoration applicant's profession, for questions regarding re-education and clinical competence, it cannot do so when, after carefully considering the perspective of the Peer Committee, it comes to a contrary conclusion with respect to whether the public is being adequately protected by the restoration of a license. Dr. Denis surrendered his license to practice based on his admission that he practiced negligently with respect to his treatment of seven patients over a three-and-one-half-year period. Most of this misconduct occurred at a time when he was subject to proceedings based on earlier charges of misconduct and in which he was subsequently found guilty of negligence on more than one occasion and incompetence on more than one occasion. The COP also notes that the record indicates that Dr. Denis was the defendant in 12 malpractice cases. The record further indicates that all but one of the lawsuits were settled for amounts ranging from \$15,000 to \$700,000, with one lawsuit indicated as pending as of the time the restoration application was filed.

In his July 6, 2006 letter, Dr. Denis argues that the testimony provided by three physicians supporting the restoration of his license should "be given great weight in the final decision of the Board of Regents." The COP considered the testimony and the recommendations of these individuals, but in the final analysis, it is the responsibility of the Committee to make a recommendation to the Board of Regents based on its review of the entire record, rather than to defer to the recommendations of an applicant's witnesses. While one of the doctors testified that he had seen many of Dr. Denis' patients after Dr. Denis had surrendered his license and that he found him to have made sensible recommendations ... "consistent with the ENT doctors in the Western New York area ...," the fact remains that in the cases that led first to the suspension and subsequently to the surrender of Dr. Denis' license, his actions were found to be both negligent on more than one occasion and incompetent on more than one occasion. In sum, the COP did not find the totality of the record, including the testimony and recommendations of the physicians, to support a recommendation that Dr. Denis' license be restored.

In his July 6, 2006 letter, Dr. Denis analogizes his situation to that of a physician who chose to suspend his practice for 13 years and then returned to practice. He incorrectly states that such a physician would remain competent because of the continuing medical education he would be required to complete to maintain his license, as there is no continuing education requirement for medical licensure in New York State. However, even if such a physician did complete continuing education coursework, it does not necessarily follow that he or she would immediately be competent to practice given the long lapse in practice, but because that physician had never lost his or her credential, he or she would be authorized to continue to practice. If a complaint were then filed, disciplinary procedures such as those used in Dr. Denis' case would be invoked to review his or her competency. Dr. Denis, however, is not in that situation because he has already lost his license, and it is his responsibility to establish his competency to practice safely. As noted above, the COP recognized his

significant efforts at re-education but, given the entire record in this case, is not convinced that he has established that he is able practice in a manner that will adequately protect the safety of his patients. Moreover, Dr. Denis could have more convincingly demonstrated his competency to practice safely by participating in an independent assessment of his medical knowledge and skills, but he has failed to do so to this point. For example, the Coalition for Physician Enhancement is a coalition of programs, at least some of which provide a means by which a physician who has lost or surrendered his or her license may participate in a systematic assessment of medical skills and knowledge and ascertain any areas in which remediation is required. Completion of such a program would provide a formal objective assessment of a physician's ability to practice safely, and successful completion of any remediation recommended as a result of such an assessment would provide additional assurance that the public would be adequately protected. In the absence of such an assessment, the record is simply insufficient for the COP to conclude that Dr. Denis has satisfied his burden of establishing his competency to practice safely.

Dr. Denis asserts in his response to the initial recommendation of the Committee on the Professions that "... if the Committee on the Professions and the Board of Regents so decided, Dr. Denis' license to practice medicine could be ... restricted ..." to the practice of otolaryngology, his particular field of practice and the area in which much of his re-education was concentrated. This is simply not the case. While such a limitation could be imposed during a period of probation, the Board of Regents lacks the authority to continue that limitation beyond the end of the probationary period. Moreover, were such a limitation to be placed on his practice during a probationary period, at the end of that period, the limitation would end and he would not have had any probationary experience in areas in which he would then be allowed to practice.

In his July 6, 2006 response, Dr. Denis also misapprehends the significance of the COP's concern with the strict restrictions placed on his probationary return to practice by the Peer Committee. The COP's concern was not that the limitations in and of themselves were a reason to deny restoration; rather, the COP saw those limitations as an expression of the concern the Peer Committee had about Dr. Denis' ability to practice competently and safely. Indeed, the Peer Committee wrote, "... since the applicant has been absent from the daily practice of medicine since his license was revoked in 1993, we are concerned that he may lack the basic medical knowledge and clinical skills to safely return to practice." The Peer Committee then went on to recommend completion of two competency examinations followed by successful completion of a ten year probationary period before Dr. Denis' license would be restored. A ten year probationary period is extremely long and very unusual and, coupled with the requirement that Dr. Denis pass two competency examinations and the probationary conditions, reflect the Peer Committee's serious concerns with Dr. Denis' current competency to practice safely. As noted in its original report, the Committee on the Professions shared this concern and came to a conclusion, different from that of the Peer Committee, that Dr. Denis had not made a compelling case for the restoration of his license.

Given his history of negligent and incompetent practice and the long period of time since he last practiced and considering the concerns expressed by the Peer Committee as evidenced by the strict limitations it recommended on his return to

practice, the COP concludes that Dr. Denis has failed to make a compelling case that his license should be restored at this time. Additionally, although he sought to assure the COP that he would restrict his practice to his specialty area, as noted above, a physician license, once restored, is not so restricted, and he would be free to practice medicine in any area. In sum, the COP does not believe that the applicant has presented a compelling case to demonstrate that he would be able to practice medicine in a safe and competent manner if his license were restored.

Based on all of the foregoing, a complete review of the record, and its meeting with him, the Committee on the Professions voted unanimously to recommend that Dr. Denis' application for restoration of his license to practice as a physician in New York State be denied at this time.

In a letter dated December 6, 2007, Dr. Denis responded to the third report and recommendation of the Committee on the Professions. Following consideration of that response, the Committee determined not to change its recommendation.

Frank Muñoz, Chair  
Leslie Templeman  
Stanley Hansen

STATE OF NEW YORK  
SUPREME COURT

COUNTY OF ALBANY

In the Matter of the Application of  
GUY DENIS, M.D.,

Petitioner,

For a Judgment Pursuant to CPLR Article 78

-against-

DECISION/ORDER/JUDGMENT

Index No.: 620-07

RJI No.: 01-07-ST7367

RICHARD P. MILLS, COMMISSIONER OF  
EDUCATION for the STATE OF NEW YORK  
and THE BOARD OF REGENTS OF THE  
UNIVERSITY OF THE STATE OF NEW YORK,

Respondents.

(Supreme Court, Albany County, All Purpose Term)

(Justice Kimberly A. O'Connor, Presiding)

APPEARANCES:

FRANCIS J. OFFERMANN, JR., ESQ.  
Attorney for Petitioner  
1776 Statler Towers  
Buffalo, New York 14202

HON. ANDREW M. CUOMO  
Attorney General of the State of New York  
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O'CONNOR, J.:

This is a CPLR Article 78 petition which seeks to challenge a denial of restoration of petitioner's license to practice medicine. Petitioner was originally licensed to practice in 1980. Following charges of professional misconduct lodged against him in 1987, petitioner was found guilty and placed on probation for a five year period, effective 1991. This determination was



judicially confirmed in a proceeding brought by petitioner in the Appellate Division under Education Law (former) § 6510-a(4) (*Denis v. Bd. of Regents of the Univ. of the State of New York*, 192 A.D.2d 963 [3d Dep't 1993]). Additional charges of professional misconduct were brought against petitioner in 1993. These charges stemmed from allegations of negligence and incompetence in the treatment of seven patients. While one of these incidents arose prior to the original filing of charges in 1987, the remaining six occurred after petitioner had already been put on notice of the pendency of complaints of professional misconduct against him. With an admission of guilt to one of these latter charges, petitioner surrendered his license.

In addition to having had these disciplinary charges leveled against him, petitioner has been the defendant in a total of twelve malpractice lawsuits. Eleven of those actions were settled with payments of damages to the plaintiffs. These awards ranged from fifteen thousand dollars (\$15,000.00) to seven hundred thousand dollars (\$700,000.00).

One year after its surrender, petitioner applied for restoration of his medical license. Following a lengthy administrative review process, respondents denied this application in 1997.

In January of 2004, petitioner again applied for restoration of his license. Pursuant to the procedures established by Education Law § 6511 and 8 NYCRR § 24.7, the application was referred to the Office of Professional Discipline (OPD) of the New York State Education Department (SED) and to the Committee on the Professions (COP). An OPD prosecutor then prepared a presentation for a Peer Committee consisting of three members of the State Board of Medicine. The Peer Committee compiled materials consisting of petitioner's application for license restoration, affidavits submitted by professionals and other individuals acquainted with petitioner, and documents prepared by the OPD prosecutor. The Peer Committee also heard testimony from petitioner and a number of

witnesses presented on his behalf. Through counsel, petitioner also submitted documentary exhibits in support of his application. This presentation took place in an adversarial setting, with the OPD prosecutor exercising the right to confront petitioner's evidence by cross-examination and to submit evidence against petitioner.

Following the conclusion of the hearing the Peer Committee prepared a written report, dated August 12, 2005, with recommendations for both the COP and the Board of Regents. The report tracks petitioner's disciplinary record, summarizes the written materials submitted by petitioner and the OPD prosecutor, and gives a synopsis of the testimony adduced at the hearing. The Peer Committee then goes on to note that petitioner has demonstrated remorse for the harm he had inflicted on numerous patients and that he has actively pursued a program of home study, clinical observation, and regular attendance at weekly conferences as part of his needed re-education. The Peer Committee concludes that petitioner has thus been rehabilitated and that his license to practice should be restored.

In its recommendations, however, the Peer Committee also recognized that petitioner had not practiced medicine since 1993. Indeed, they found that petitioner has been completely unemployed for the entire time period. As a result, they expressed concern that petitioner did not possess the current knowledge and skills needed to practice medicine. They, therefore, recommended that petitioner successfully pass two objective professional examinations that would assess both his level of medical knowledge and his practical skills as a prerequisite to restoration of his license. Furthermore, the Peer Committee recommended that, upon reinstatement, petitioner be placed on probation for a ten-year term, with intense supervision for the first year as well as a number of other conditions.

Meanwhile, the COP gathered its information, which included the report of the Peer Committee. The COP also interviewed petitioner at length as part of its investigation. On June 29, 2006 the COP issued a draft report on petitioner's application for restoration of his license. While the report agreed with that of the Peer Committee in many important respects, the COP drew the ultimate conclusion that "[g]iven his history of negligent and incompetent practice and the long period of time since he last practiced and considering the strict limitations on his return to practice recommended by the Peer Committee ... [petitioner] has failed to make a compelling case that his license should be restored at this time." Thus, the unanimous recommendation of the COP was that petitioner's license not be restored.

Petitioner then submitted, through counsel, a written response to the COP's report pursuant to 8 NYCRR § 24.7(a)(2)(i). This response was sent to counsel for the COP on July 6, 2006. With neither comment on the points raised by petitioner nor an acknowledgment of having considered the response, the COP issued their final report on July 10, 2006. Indeed, but for the change of the date of the report and a slight modification of pagination, the final report is a verbatim reprint of the draft report.<sup>1</sup>

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<sup>1</sup> Although petitioner's response to the draft report was sent to the COP on Thursday, July 6, 2006, counsel for the COP asserts in a letter dated January 31, 2007 (subsequent to the date of the petition [Respondent's Exhibit FF]) that the response "was considered by the Committee on the Professions" prior to its release of its final report on the following Monday. Noteworthy, however, is that the COP's final report bears the date "July 10, 2006" in its upper right hand corner, while in the body of the report itself it gives the date of June 10, 2006 as the date of the "[s]econd report and recommendations of the Committee on the Professions." Counsel's letter (Respondent's Exhibit FF) explains this away as a typographical error and asserts that the date of the final report should read July 6, 2006 (a Saturday). Counsel for the COP, in his affidavit of March 13, 2007, then asserts that the July 6, 2006 date given by him in the letter was yet another error and that the date should have read July 10, 2006. In short, respondent's position is that petitioner's response to the draft report, sent to the COP on a Thursday, was received in time for copying and dissemination to the committee members, was considered by the COP (which, of necessity, would have held a meeting for that purpose), and was rejected by it prior to the issuance of its final report on the next Monday. Of course, as noted *supra*, the

On July 26, 2006, the Board of Regents met and considered petitioner's application for restoration of his license to practice medicine. Without analysis, explanation or comment, the Board "disagreed with and rejected the recommendations of the Peer Committee" and "agreed with and accepted the recommendations of the Committee on the Professions" and thus voted to deny petitioner's application (Petitioner's Exhibit E). This vote was enforced by the Order of respondent Commissioner of Education on September 12, 2006 (*Id.*). This proceeding ensued.

Petitioner raises two basic claims. First, he contends that the decision of the Board of Regents was arbitrary and capricious and abusive of discretion. Second, he contends that the alleged failure of the COP to consider his response to their draft report affects the administrative process with an error of law, thereby tainting its result. Each claim will be addressed in turn.

The Court of Appeals has repeatedly confirmed the proposition that the determinations of an administrative body charged with the authority of reviewing applications for revocations or restorations of professional licenses will not be overturned as long as those determinations are rationally based (*see Matter of Nehorayoff v. Mills*, 95 N.Y.2d 671, 675 [2001], citing *Matter of Pell v. Bd. of Educ.*, 34 N.Y.2d 222, 230-231 [1974]). Moreover, "Education Law § 6510 and 6511 vest the Board of Regents with considerable discretion concerning matters of professional misconduct, including the revocation and restoration of medical licenses" (*Nehorayoff, supra*, at 674, citing *Matter of Tompkins v. Bd. of Regents*, 299 N.Y. 469, 476 [1949]). The exercise and review of that discretionary authority is guided by the understanding that the restoration of a medical license is granted only in the rare case "where the merit of the applicant is clearly established to the satisfaction of the [Board]" (*Matter of Jablon v. Bd. of Regents*, 271 App. Div. 369, 373 [3d Dep't 1946] *aff'd*

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final report of the COP makes no reference whatsoever to petitioner's response.

296 N.Y. 1027 [1947] [internal quotations and citations omitted], quoted in *Nehorayoff, supra*, at 674).

In the instant case, respondent Board of Regents gave no basis whatsoever for its decision to accept the report of the COP and to reject that of the Peer Committee. The absence of any reference to a single factor or a number of factors that caused respondent Board to agree with one report and reject the other precludes any meaningful judicial review of respondent's actions. Any attempt to divine a line of reasoning that might have led the Board of Regents to the conclusion that the COP's recommendations were superior to those of the Peer Committee would be nothing more than impermissible speculation.

Certainly, in those situations where the committees which exist for the purpose of augmenting the knowledge base of the Board of Regents through their investigations and analyses are in agreement as to the action recommended, there may be no abuse of discretion in the Board's adopting the reasoning of those committees as its own. Where, as here, however, the committees are split as to their fundamental recommendations, it is incumbent upon the Board of Regents to provide a petitioner, the public, and potentially a reviewing court with some express basis for its decision.

In the *Nehorayoff* matter cited above, for example, the Board of Regents chose not to follow the recommendations of either committee in determining that the petitioner's license to practice medicine not be restored. In holding that the Board had acted within the ambit of its discretionary authority, the Court of Appeals noted that the Board had "cited the gravity of the original offense; the size of petitioner's practice at that time, petitioner's failure to express appropriate remorse for his patients and the reservations and limitations expressed by the consultant and the Committee on

the Professions" (95 N.Y.2d at 674). Here, the Board of Regents cited nothing at all in support of its decision to accept one committee's report and to reject the other's.

Of course, it is neither the function nor the intent of this Court to express its agreement or disagreement with the ultimate determination of the Board of Regents. The lesson of the *Nehorayoff* case is that a reviewing court may not "impermissibly weigh[] the evidence and substitute[] its judgment for that of [the] Board" (*id.*, quoting 270 A.D.2d 748, 750 [dissenting opinion of Mercure, J.]). "Rather, the appropriate standard of review is whether the Board's determination is supported by a rational basis" (*id.* at 675 [citation omitted]). Since the Board here gave no basis at all for its determination, it cannot be said that the determination was rationally based. This matter must, therefore, be remitted to the Board of Regents for its elucidation of the basis upon which it chose to reject the report of the Peer Committee and accept that of the Committee on the Professions.

The other issue raised by petitioner relates to the treatment given by the COP to the response submitted by petitioner as of right under 8 NYCRR § 24.7(a)(2)(i). Petitioner contends that his response was never considered by the COP. Respondents' verified answer (at para. 22) "affirmatively allege[s] that Petitioner's July 16, 2006<sup>2</sup> response was, in fact considered by the COP and by the Board of Regents." While there is a presumption of regularity attendant upon administrative proceedings, (*see, e.g., Matter of Werter v. Bd. of Regents*, 18 A.D.2d 1032 [3d Dep't 1963], cited in *Matter of Nehorayoff v. Mills*, 282 A.D.2d 932, 932-933 [3d Dep't 2001] on remand from 95 N.Y.2d 671 [2001]), petitioner has sufficiently rebutted that presumption at least to the

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<sup>2</sup> So in original; presumably this should read "July 6, 2006." This is apparently the third typographical error in respondents' papers dealing with the timetable regarding the handling of petitioner's response to the draft report of the COP. (There is, it appears, yet a fourth error in the papers evidencing this chronology: the cover letter submitted by counsel to the COP along with the June 29, 2006 draft report bears the date "June 8, 2006" [see Respondent's Exhibit G].)

extent of raising a factual issue as to whether the COP actually did consider petitioner's response prior to the issuance of the final report. As noted *supra*, the circumstances surrounding the timing of the COP's receipt of the response relative to its release of the final report and the lack of any reference to petitioner's response in the COP's final report both suggest some merit to petitioner's concerns.

CPLR 7804(h) states, in pertinent part, "If a triable issue of fact is raised in a proceeding under this article, it shall be tried forthwith." Whether the COP had considered petitioner's response prior to its issuance of its final report is certainly a material issue in this proceeding, as any failure of the COP to have considered the response would be an error of law adversely affecting the Board of Regents' ultimate determination. The determination of this issue is thus essential to the disposition of this matter.

Of course, the preparation for and conduct of such a trial could likely be a time-consuming and costly burden on all parties. Counsel might, for example, seek to depose members of the COP in order to learn when and under what circumstances the committee met between July 6 and July 10, 2006 when it considered petitioner's response. Counsel might also seek to subpoena the records of the COP or its support staff in an effort to determine which of the two conflicting dates given in the final report (*i.e.*, July 10, 2006 or June 10, 2006) was the actual date of its completion. These pretrial efforts on the part of petitioner's counsel might well be met with motion practice from respondents to restrict or prevent such discovery. In short, the amount of litigation potentially necessary to determine this apparently straightforward issue could be considerable.

On the other hand, since the ultimate relief to which petitioner would be entitled in the event he were to succeed at trial would be remittitur to respondents for reconsideration by the COP,

respondents might opt to avoid protracted litigation by directing the COP to reconvene and issue either an amended or a superseding final report which, at a minimum, would acknowledge consideration of petitioner's response if not actually address the substantive issues raised in it.<sup>3</sup>

Accordingly, it is hereby

**ORDERED AND ADJUDGED**, that the instant petition is sustained to the extent that a trial shall be held to determine the limited issue of whether the Committee on the Professions had met and considered petitioner's response to its draft report prior to the issuance of its final report; and it is further

**ORDERED AND ADJUDGED**, that, should respondents choose to avoid a trial of this issue, they shall communicate in writing to petitioner's counsel and to the Court, within fifteen (15) days of the date of this Decision, Order, and Judgment, their decision to direct the Committee on the Professions to reconvene for the purpose of considering petitioner's response to their draft report in

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<sup>3</sup> Surely, it might behoove the COP to confront some of the questions posed in petitioner's response to the draft report. For example, the COP bases its recommendation of denial of petitioner's application on the grounds that, due to the passage of time, he lacks current practical skills. In arriving at this conclusion, however, the COP failed to acknowledge that, in the period since the loss of his license, petitioner has closely observed more than one hundred surgical procedures. Meaningful judicial review of respondents' ultimate determination could be assured if the COP were to articulate a full understanding of the extent of petitioner's efforts at recapturing the privileges of his medical license. There are certainly facts in the record that could support a final determination that petitioner should never again practice medicine in the State of New York. On the other hand, there are also facts in the record that demonstrate that petitioner has dedicated the last dozen years of his life to achieving a deeper understanding of the suffering that his mistakes have caused many patients, to rehabilitating himself as a doctor and to re-educating himself through regular participation at weekly medical conferences, hundreds of hours of continuing medical education classes and participation (through observation) in many surgeries. The ultimate decision as to whether petitioner can ever again practice medicine lies not within the jurisdiction of this Court, but within the sound discretion of respondents. Whether or not petitioner is ultimately successful before the Board of Regents, his efforts — and the law — require that his application be accorded more than short shrift.



a manner consistent with the terms of this Decision, Order, and Judgment; and it is further

**ORDERED AND ADJUDGED**, that petitioner's application for restoration of his license to practice medicine is remanded to the Board of Regents for further proceedings consistent with this Decision, Order, and Judgment, with those proceedings to be held in abeyance pending either the result of the trial of the factual issue described above or the voluntary reconsideration by the Committee on the Professions of petitioner's response to their draft report.

This shall constitute the Decision, Order, and Judgment of the Court. All papers, including this Decision, Order, and Judgment, are being returned to the attorneys for respondent. The signing of this Decision, Order, and Judgment shall not constitute entry or filing under CPLR 2220. Counsel are not relieved from the applicable provisions of that rule relating to filing, entry, and notice of entry.

**SO ORDERED AND ADJUDGED.**

**ENTER.**

Dated: June 28, 2007  
Albany, New York.

Redacted Signature

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**HON. KIMBERLY A. O'CONNOR**  
Acting Supreme Court Justice

**Papers Considered:**

1. Notice of Petition, dated January 22, 2007; Verified Petition, dated January 22, 2007, with annexed Exhibits A-G;
2. Verified Answer, dated March 13, 2007; Affidavit of Seth Rockmuller, Esq., dated March 13, 2007, with annexed Exhibits A-FF; Memorandum of Law, dated March 14, 2007;
3. Verified Reply, dated April 27, 2007; Affidavit of Francis J. Offermann, Jr., Esq., dated April 27, 2007, with annexed Exhibits 1-2; Memorandum of Law, dated April 29, 2007.
4. Letter submission of Jeffrey M. Dvorin, Esq., dated May 10, 2007;
5. Letter submission of Francis J. Offermann, Jr., Esq., dated May 11, 2007.

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SERVICE BY ELECTRONIC MEANS NOT  
ACCEPTED

December 6, 2007

VIA FACSIMILE AND U.S. MAIL

Fax No.: (518) 474-3863

Seth Rockmuller, Esq.  
The New York State Education Department  
Committee on the Professions  
88 Washington Avenue  
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Re: Application for Restoration of License -  
Guy Denis  
Case No. CP-06-06  
Calendar No. 21771  
Our File No. 301-21002

Dear Mr. Rockmuller:

Pursuant to Section 24.7(a)(2)(i) of the Rules of the Board of Regents, I am submitting the following response, on behalf of Guy Denis, M.D., to the Committee on the Professions' (COP) draft version of what has been denominated as the third report and recommendation of Committee on the Professions, and dated November 16, 2007.

As pointed out by the COP at the beginning of its November 16, 2007 report, this restoration application is back before it and the Board of Regents, because of a remand decision and judgment in an Article 78 proceeding brought by Dr. Denis in the Supreme Court, sitting in Albany County. The COP, at page 3 of its recent report, has stated:

Rather than have a trial on the issue of whether the COP considered Dr. Denis' response to its draft report prior to issuance of its final report, the COP met on August 14, 2007 to again consider that response. At that time, the COP decided to accept the Court's invitation to address more fully some of the issues raised by the applicant in his response. This report has been modified accordingly. (COP report, November 16, 2007)

On behalf of Dr. Denis, I will respond to the COP modifications, and at the same time, I reiterate my earlier response of July 6, 2006, which is attached hereto as Exhibit "A".

### EXTENT OF RE-EDUCATION

Commenting on the above-entitled portion of my July 6, 2006 response, the COP, at page 3 thereof, stated the following:

In his July 6, 2006 letter, Dr. Denis' attorney asserts that he appears not to have 'clearly spelled out in the Application for Restoration, and in the exhibits attached, as well as through Dr. Denis' testimony the depth and breadth of his re-education process.' However, all of the evidence then cited by Dr. Denis is information previously submitted to and considered by the COP in making its recommendation. Indeed, the COP explicitly recognized in its original recommendation, as it does above, that Dr. Denis has engaged in a significant amount of re-education. (COP report November 16, 2007)

The total of the COP observations regarding Dr. Denis' re-education, in both its July 6, 2006 and November 16, 2007 reports, is as follows:

1. On November 30, 2005, the Committee on the Professions . . . met with Dr. Denis . . . [who] presented documentation of his completion of 55 CME credits through the University of Iowa Carver College of Medicine from June 3 to June 10, 2005. (COP report, November 16, 2007, p. 5)
2. Dr. Denis . . . related to the Committee that he has for many years attended weekly meetings of the Head and Neck Tumor Conference of the Roswell Park Cancer Institute, at which cancer specialists in different areas discuss treatment alternatives. (COP report, November 16, 2007, p. 5)
3. Later in the meeting, Dr. Denis' attorney . . . emphasized Dr. Denis' re-education activities, reporting his regular attendance at weekly multidisciplinary case discussion meetings at Roswell Park Cancer Institutes' Head and Neck Tumor Conference since 1993 and his observation of over 100 surgeries performed by two surgeons with whom he also had the opportunity to discuss the procedures observed. His attorney also reported Dr. Denis' attendance at meetings of the American Academy of Otolaryngology and his completion of home study courses. (COP report, November 16, 2007, p. 6)

4. The COP agrees with the Peer Committee that Dr. Denis has engaged in a significant amount of re-education as evidenced by his participation in the Roswell Park, American Academy of Otolaryngology, and home study programs. (COP report, November 16, 2007, p. 7)

These brief observations by the COP do not reflect the impressive record of Dr. Denis' re-education accomplishments. For this, I refer in part to pages 2 and 3 of Dr. Denis' July 6, 2006 response. It should be noted that Dr. Denis earned 236 CME credits for his attendance at the American Academy of Otolaryngology sponsored courses between 2000 and 2006, not merely the 55 CME credits offered into evidence at the COP meeting on November 30, 2005, and set forth above in COP observation #1. They are all documented in the restoration application, as set forth in Dr. Denis' July 6, 2006 response.

As for the COP's observation #2, briefly stating that Dr. Denis had attended weekly meetings of the Head and Neck Tumor Conference of the Roswell Park Cancer Institute for many years hardly captures, for the recipient of the COP report, the measurement of his educational achievements, considering that Dr. Denis has attended these weekly meetings for at least 12 years, and that there would have been at least 45 meetings a year, for a total of over 500 meetings attended by him. Because CME credits were not offered to attendees after 1996, Dr. Denis was awarded only 81.5 CME credits. The glowing praises of the consecutive chiefs of the Department of Head and Neck at Roswell Park Hospital are also impressive, and they appear in the transcript of the Peer Committee hearing.

Observation #3 by the COP, quoted above, has only two lines devoted to Dr. Denis' observation of over 100 surgeries, and the record reflects that these surgeries were performed by six surgeons, not just two, as stated in the COP report. This enhanced learning experience is particularized further on page 3 of Dr. Denis' response. Suffice it to say here that the detail of many of the 100 observed surgeries reflect a sophisticated, up-to-date understanding of the problems encountered in those surgeries. Dr. Denis' own comments from his application, and set forth in his response of July 6, 2006, describe the discreet dialogue which took place between him and the particular surgeon involved.

COP observation #3 also devotes less than two lines to Dr. Denis' attendance at meetings of the American Academy of Otolaryngology and his completion of home study courses. Dr. Denis attended Academy sponsored seminar programs, not just meetings of the American Academy of Otolaryngology. As pointed out in Dr. Denis' July 6, 2006 response, these were not random studies and seminars. Dr. Denis selected these courses because, in the main, their subject matter provided him special incite into the areas of otolaryngology in which he had had problems, and which were the subject of the charges against him in the two disciplinary cases preceding the voluntary surrender of his license. This is further amplified at page 2 of the July 6, 2006 response. Again, the COP reports do little to expand on Dr. Denis' very substantial re-education achievements, but a review of pages 2 and 3 of his July 6, 2006 response show in more detail the extent of his re-education.

As for his home study courses, completed between 1993 and 2004, they earned for Dr. Denis 2216 CME credits, and as most physicians know, constitute an integral tool in keeping physicians abreast of their respective practices.

### THE QUALITY OF THE PHYSICIAN WITNESSES

With respect to the above-entitled portion of Dr. Denis' response of July 6, 2006, the COP commented as follows:

In his July 6, 2006 letter, Dr. Denis argues that the testimony provided by three physicians supporting the restoration of his license should 'be given great weight in the final decision of the Board of Regents.' The COP considered the testimony and the recommendations of these individuals, but in the final analysis, it is the responsibility of the Committee to make a recommendation to the Board of Regents based on its review of the entire record, rather than to defer to the recommendations of an applicant's witnesses. While one of the doctors testified that he had seen many of Dr. Denis' patients after Dr. Denis had surrendered his license and that he found him to have made sensible recommendations . . . 'consistent with the ENT doctors in the Western New York area . . .,' the fact remains that in the cases that led first to the suspension and subsequently to the surrender of Dr. Denis' license, his actions were found to be both negligent on more than one occasion and incompetent on more than one occasion. . . . (COP report, November 16, 2007)

Initially, it should be pointed out that the last sentence of the COP's comments above is incorrect, or at least ambiguous. Only in the first case against Dr. Denis was there a finding that his actions were negligent on more than one occasion and incompetent on more than one occasion. In the second case, which resulted in the voluntary surrender of his medical license, Dr. Denis pled guilty only to a single specification that he had been negligent on more than one occasion.

As for the physicians who testified, no mention is made in the report of the COP with respect to the qualifications and background of these doctors. Two of the Board Certified surgeons occupied

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The New York State Education Department  
Committee on the Professions  
December 6, 2007  
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the position of Chief of Head and Neck Surgery at Roswell Park Cancer Institute, one of them still in that position. None of the physician witnesses are socially acquainted with Dr. Denis, but know him only in a professional capacity. The professional quality of these witnesses, including their candid testimony as to Dr. Denis' extensive re-education and their professional opinions that his license to practice medicine should be restored are more fully commented upon in the July 6, 2006 response of Dr. Denis on pages 3-5.

The last observation made by the COP contained a quotation from the testimony of Dr. Hoepfner, one of the three physician witnesses. Dr. Hoepfner also testified immediately prior to the testimony quoted by the COP above, that Dr. Denis "had very nice results." (Peer Committee transcript, page 148)

#### LONG ABSENCE FROM THE PRACTICE OF MEDICINE

On page 7 of its report, the COP noted:

... Dr. Denis waited seven years from the denial of his first restoration application to again apply for restoration of his license and that it has now been more than 14 years since he last practiced medicine. This long absence from the practice of medicine raises serious questions about his current competency. In 'strongly' opposing Dr. Denis' current restoration application, the Department of Health raised similar concerns, writing, '[f]urther, we are very concerned that permitting a surgeon who has not practiced the art of surgery for nearly twelve years to return to practice, places the public at undue risk.' (COP report, November 16, 2007)

The Department of Health's concern misses the mark, since the restoration of a physician's license gives him no credentials to perform surgery. To be a surgeon one must first be a licensed physician, but to practice medicine, one need not be a credentialed surgeon.

As for the COP's concern that the long absence from the practice of medicine raises serious questions about Dr. Denis' current competency, the mere passage of time is not evidence of a lack of competence. As pointed out in Dr. Denis' response of July 6, 2006, there is no evidence in the record to justify Committee on the Professions belief that Dr. Denis may lack the basic medical

knowledge and clinical skills to safely return to practice. It has cited only "the long period of time since he last practiced." Lapse of time in and of itself does not negate the retention of the basic medical knowledge and clinical skills that a physician has developed in medical school and in his subsequent years of training and practice. Especially is this true, in the case of Dr. Denis, where he has dedicated many years to his re-education following the surrender of his license. analogized

On page 8 of the November 16, 2007 COP report, the COP has criticized the analogy made in the July 6, 2006 response of Dr. Denis. His situation was analogized to that of a physician who has chosen to suspend his practice for 13 years, and return to practice. Mandatory Continuing Medical Education, even though nonexistent in New York State, is not the point of the analogy. The passage of time without practicing medicine is the point. That sojourning physician who has not practiced for 13 years need not concern himself about his right to practice, since he has committed no act of misfeasance or nonfeasance in his practice. Similarly, in the case of Dr. Denis, the passage of time, in and of itself, is not evidence of any incompetency. As pointed out in his response of July 6, 2006, Dr. Denis has gone through 13 years of programmed re-education. His re-education, in its thoroughness, has fully addressed the issues in this case. He has also had eminently qualified peer support for restoration of his license.

### DR. DENIS' DEMONSTRATION OF COMPETENCY

In its modified report of November 16, 2007, the COP has questioned Dr. Denis' demonstration of competency in the following statement:

... the COP recognized his significant efforts at re-education but, given the entire record in this case, is not convinced that he has established that he is able to practice in a manner that will adequately protect the safety of his patients. Moreover, Dr. Denis could have more convincingly demonstrated his competency to practice safely by participating in an independent assessment of his medical knowledge and skills, but he has failed to do so to this point. For example, the Coalition for Physician Enhancement is a coalition of programs, at least some of which provide a means by which a physician who has lost or surrendered his or her license may participate in a systematic assessment of medical skills and knowledge and ascertain any areas in which remediation is required. Completion of such a program would provide a formal objective

assessment of a physician's ability to practice safely, and successful completion of any remediation recommended as a result of such an assessment would provide additional assurance that the public would be adequately protected. In the absence of such an assessment, the record is simply insufficient for the COP to conclude that Dr. Denis has satisfied his burden of establishing his competency to practice safely. (COP report, November 16, 2007)

It is difficult to imagine a more objective re-education program than that undertaken by Dr. Denis in the last 13 years. A thorough review of his entire application and attachments will attest to this. The COP, in the above quote, has stated that Dr. Denis should have participated in an "independent assessment" of his medical knowledge and skills by completing a program such as that provided by the Coalition for Physician Enhancement. A hasty inquiry of that coalition suggests that it is loosely made up of several institutions and organizations, some of whom may have a kind of earning program for physicians. Whether any program from such coalition is available, or whether it would be objective is another question. In any event, it is interesting that neither the COP nor the New York State Health Department has ever made this suggestion to Dr. Denis before.

The Peer Committee, on the other hand, has recommended two separate competency examinations that Dr. Denis would be required to take and pass if the Board of Regents adopted its recommendation. That would appear to be an objective standard that would test Dr. Denis' competency. Both testing organizations have been around for awhile, while that may not be true of the above stated coalition.

### LIMITING DR. DENIS TO THE PRACTICE OF OTOLARYNGOLOGY

On page 9 of its recent report, the COP commented as follows:

Dr. Denis asserts in his response to the initial recommendation of the Committee on the Professions that '... if the Committee on the Professions and the Board of Regents so decided, Dr. Denis' license to practice medicine could be ... restricted ...' to the practice of otolaryngology, his particular field of practice and the area in which much of his re-education was concentrated. This is simply not the case. While such a limitation could be imposed during a period of probation, the Board of Regents lacks the authority to



continue that limitation beyond the end of the probationary period. Moreover, were such a limitation to be placed on his practice during a probationary period, at the end of that period, the limitation would end and he would not have had any probationary experience in areas in which he would then be allowed to practice. (COP report, November 16, 2007).

While Dr. Denis and I respect that opinion of the COP, we are unaware of any such limitation on the authority of the Board of Regents. Even if its authority is limited to restricting a physician to a certain area of practice only during a probation period, the COP could follow the Peer Committee's recommendation of a ten year period of probation or even a lifetime probationary period, and limit Dr. Denis' practice to otolaryngology for that period.

#### CONCLUSION

Based upon the modified draft report of the Committee on the Professions, the earlier Peer Committee report, the 1996 reports of both the Peer Committee and the Committee on the Professions, and this response as well as the July 6, 2006 response on behalf of Applicant, we ask that the Committee on the Professions, in its final report, modify its modified draft report of November 16, 2007 to the Board of Regents, and recommend to the Board of Regents that Dr. Denis' Application for Restoration of his license to practice medicine be granted.

Respectfully submitted,

Redacted Signature

Francis J. Offermann,   
Attorney for Applicant, Guy J. Denis, M.D.

FJO/jep  
Copy: Jeffrey M. Dvorin, Assistant Attorney General/via fax and mail  
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July 6, 2006

Seth Rockmuller, Esq.  
The New York State Education Department  
Committee on the Professions  
88 Washington Avenue  
2<sup>nd</sup> Floor West Wing  
Albany, New York 12234

Re: Application for Restoration of License -  
Guy Denis  
Our File No. 301-21002

Dear Mr. Rockmuller:

Pursuant to your letter dated June 8, 2006, our several phone calls in the week of June 19, 2006 and Section 24.7(a)(2)(i) of the Rules of the Board of Regents, we are submitting the following response, on behalf of Guy Denis, M.D., to the Committee on the Professions' draft version of its written report to the Board of Regents, recommending denial of Dr. Denis' Application for Restoration of his physician license.

CLARIFICATION OF APPARENT MISUNDERSTANDING

Initially, we wish to reassure the Committee on the Professions with respect to a question posed to Dr. Denis as to "why his license should be restored at this time." Dr. Denis' response admittedly referenced more to the restrictions on his license, if restored, that had been recommended by the Peer Committee, such as the "ten year period of probation." When he later stated that it would be "difficult to practice under those terms," he certainly did not mean to suggest that he could not practice with those restrictions. Dr. Denis has asked the Board of Regents for restoration of his license to practice medicine, with whatever restrictions might be imposed. Dr. Denis responded with respect to the recommended restrictions of the Peer Committee, since there had been a short dialogue with the Members of the Committee on the Professions as to the various restrictive measures recommended (Two competency exams, ten-year probation and certain restrictions on the license, once restored).

### EXTENT OF RE-EDUCATION

It appears to Dr. Denis and his attorney that we have not clearly spelled out in the Application for Restoration, and in the exhibits attached, as well as through Dr. Denis' testimony, the depth and breadth of his reeducation process. For instance, Dr. Denis' attendance, for more than the last twelve years, at the weekly case conferences of the Division of Head and Neck Surgery at Roswell Park Cancer Institute certainly is a meaningful educational achievement in itself. As Dr. Denis stated in his application:

"They have provided me with a valuable opportunity to remain current in my area of practice, despite my inability to practice. These discussions have included pathology reports, radiology studies, radiation therapy, as well as input from various disciplines, including plastic surgeons, oral maxillary surgeons, speech therapists and head and neck surgeons." (App. for Restoration, Part C-Cont. Ed., Question 2).

In support of the intrinsic value of attending these conferences, 81.5 CME credits (App. for Restoration, Part C-Cont. Ed., Exhibit 9) were awarded to Dr. Denis from 1993 to 1996 (CME credits were not awarded after 1996) for attending these conferences. Several letters from Thom R. Loree, M.D. and Donald P. Shedd, M.D., the present and erstwhile Chiefs of the Department of Head and Neck Surgery at Roswell Park Cancer Institute, also confirm Dr. Denis' weekly attendance at these meetings, and the latter's "intelligent questions" and "good grasp of the problems under consideration" (App. for Restoration, Part C-Cont. Ed., Exhibit 10). Also, the Chief of this Department immediately after Dr. Shedd, Mark D. DeLacure, M.D. wrote in 1996 of Dr. Denis' active participation at these conferences, and that Dr. Denis had exhibited a "true interest in advancing his own knowledge and expanding his own perspectives for the better good of patient treatment . . ." (Peer Committee Hearing Tr., Exhibit 4).

Another important facet of Dr. Denis' reeducation was the classroom/clinical courses sponsored by the American Academy of Otolaryngology, taken by Dr. Denis from 2000 through 2006. These were not random studies and seminars that were there for the taking. Dr. Denis selected these courses because, for the most part, their subject matter gave him special incite into the areas of Otolaryngology in which he had problems, and for which he had been charged in the two disciplinary cases preceding the voluntary surrender of his license. The details of these studies, as well as observed surgeries at Roswell Park Cancer Institute, St. Joseph Hospital and Our Lady of Victory Hospital, and the manner in which they helped Dr. Denis understand the shortcomings in his practice, as reflected in the charges in both Disciplinary Cases, are set forth in Dr. Denis' Application. (App. for Restoration, Part C-Cont. Ed., Questions 1, 2 and 3). The American Academy of Otolaryngology's sponsored courses also earned Dr. Denis 236 CME credits between

2000 and 2006 (App. for Restoration, Part C-Cont. Ed., Question 1, Exhibit C; Peer Committee Hearing Tr., Exhibit 1 and Exhibit 2; Exhibit A, State's group of documents, pp. 321-323; and Committee on the Professions' draft report, p. 4).

The details of many of the 100 surgeries performed by Drs. Loree, Shedd, Hoepflinger, and at least three other surgeons in the ENT field who were not referred to by name in Dr. Denis' Application for Restoration, Mark D. DeLacure, M.D., Ernesto Rigual, M.D., and Wesley L. Hicks, Jr., DDS, M.D., also reflect a sophisticated up to date understanding of the problems encountered in those surgeries (App. for Restoration, Part C-Cont. Ed., Question 2, Exhibit C, pp. 4-20). As Dr. Denis stated in his Application about these enriching clinics:

"To enhance this learning experience, I was able to ask questions of the operating surgeons during the various procedures. I also prepared for my observation of the surgeries by reviewing the radiology studies and medical records of the particular patient, when I was given the opportunity. At appropriate times, I was allowed to provide input to the operating surgeon. I was also privileged to listen to and observe the operating surgeon's dictation of the observed surgeries at Our Lady of Victory and St. Joseph Hospitals." (App. for Restoration, Part C-Cont. Ed., Question 2).

To complete his reeducation and to keep himself abreast of the latest developments in his specialty, Dr. Denis has also participated in home study courses sponsored and approved by the American Academy of Otolaryngology. He has done this each and every year from 1993 to the present time, and through 2004 earned 2216 CME credits from the AAO-HNS Foundation (App. for Restoration, Part C-Cont. Ed., Question 1, Exhibit 8).

We believe that Dr. Denis' complete reeducation program, as evidenced above, has not only been significant, but extensive and thorough for the last several years.

#### THE QUALITY OF THE PHYSICIAN WITNESSES

Together with two lay witnesses, and the Affidavits of several others, Dr. Denis produced three physicians, all surgeons, who testified on his behalf, and recommended that his physician license be restored.

Briefly, Donald P. Shedd, M.D. is a Board Certified Surgeon, and a former Chief of Head and Neck Surgery at Roswell Park Cancer Institute (1967-1996), was selected as one of the best

doctors in head and neck surgery in the northeast by White-Woodward Survey-1986, is a former President of the Society of Head and Neck Surgeons, and a Research Professor, Department of Surgery at State University of New York at Buffalo from 1967-1996, with Emeritus rank at the present time. He also has written four books and approximately 150 articles in professional periodicals (Peer Committee Hearing Tr., Exhibit 9).

Thom Robert Loree, M.D. is a Board Certified Surgeon, as well as being certified by the American Board of Plastic Surgery. Currently, he is the Chief, Department of Head and Neck Surgery and Oncology, and Chief, Section of Plastic and Reconstructive Surgery at Roswell Park Cancer Institute. He is an Associate Professor of Surgery at State University of New York at Buffalo. In 1991, Dr. Loree was listed in a New York Magazine article "The Best Doctors in New York," under Plastic and Reconstructive Surgery. He has written extensively. (Peer Committee Hearing Tr., Exhibit 8).

Mark A. C. Hoeplinger, M.D. is Board Certified in all aspects of Otolaryngology Head and Neck Surgery, and is a Fellow of the American Academy of Otolaryngology Head and Neck Surgery. He is also a Fellow of the American College of Surgeons and a Clinical Instructor at the State University of New York at Buffalo. He has published and lectured, and is currently a practicing Otolaryngologist with Western New York Ear, Nose and Throat. (Peer Committee Hearing Tr., Exhibit 10).

These eminently qualified physician/surgeons each testified that he was aware of the charges to which Dr. Denis pled guilty, and that Dr. Denis had surrendered his license to practice medicine. Each became aware of his continuous reeducation, and knew that he had attended the weekly patient care conferences of the Division of Head and Neck Surgery of Roswell Park Cancer Institute for various periods of time between 1993 and 2006. Two of these physician witnesses, Dr. Shedd and Dr. Loree, were the coordinators of these weekly conferences, the former between 1993 and 1996, and Dr. Loree from 1996 to the present time. (Peer Committee Hearing Tr., pp. 68-93; 93-108; 126-152).

In addition, each testified about the many surgeries (approximately 100) that were performed by them and others, which Dr. Denis was permitted to observe, and to share comments with the respective surgeons.

Without exception, each testified that in his opinion, Dr. Denis should have his physician license restored, including his right to perform surgery after being properly credentialed by the particular hospital where surgery was to be performed.

Finally, Dr. Hoeplinger, during his testimony before the Peer Committee, was asked by Dr. Shah, the following question:

Q. Dr. Hoeplinger, if Dr. Denis has his license restored, he will probably need to be observed in cases before he would be granted privileges to various hospitals. Would you be willing to take time out of your schedule to observe these cases? Without hesitation or qualification, Dr. Hoeplinger answered, "Sure." (Peer Committee Hearing Tr., p. 138).

Dr. Hoeplinger, after Dr. Denis surrendered his license, saw many of the latter's patients, and found that Dr. Denis' care had been good. He testified that "... he had very nice results ... consistent with the standard of care in this area ... I thought that the recommendations he made were sensible ... consistent with the ENT doctors in the Western New York area." (Peer Committee Hearing Tr., p. 148).

The professional quality of these three physicians and their candid and honest testimony as to Dr. Denis' extensive reeducation, as well as their professional opinions that his license to practice medicine should be restored, deserve to be given great weight in the final decision of the Board of Regents.

### THE BASIC MEDICAL KNOWLEDGE AND CLINICAL SKILLS TO SAFELY RETURN TO PRACTICE

Before discussing the recommendations of the Peer Committee, and the draft recommendations of the Committee on the Professions, we believe it appropriate to briefly comment on the conclusions reached by the Peer Committee and Committee on the Professions in their recommended denial of Dr. Denis' initial Application for Restoration of his license to practice medicine in 1996.

The Peer Committee's recommendation on April 12, 1996, was as follows:

We unanimously recommend that the application herein not be granted and that the revocation of the applicant's license to practice medicine in the State of New York not be stayed.

The applicant has demonstrated no real remorse nor any real insight into the problems that gave rise to the charges against him. His continuing education is misguided and not addressed to the issues in this case. Nor does the applicant have any real current peer support for restoration. (Report of Peer Committee CAL.No. 15787).

The Committee on the Professions' recommendation to the Board of Regents on October 8, 1996, stated in part:

"The Committee on the Professions also concurs with the Peer Review Panel that Dr. Denis's continuing education efforts to date, while showing a good faith effort, do not sufficiently address the basis for the loss of licensure. The Committee believes that Dr. Denis's efforts at reeducation through his activities at Roswell Park are a step in the right direction and of more value than many of the home study courses or readings that Dr. Denis has also completed. Dr. Denis has made some progress toward further consideration for the restoration of his license. He admits that he made some errors, although he has not yet demonstrated his acceptance of the seriousness of the problems. The Committee believes that Dr. Denis needs to engage in further reeducation and rehabilitation efforts before he would be ready to have his license to practice as a physician restored." (Peer Committee Hearing Tr., p. 6).

The current recommendation of the Peer Committee clearly recognizes that Dr. Denis has accomplished a reeducation worthy of license restoration. The Peer Committee "was impressed with the efforts the applicant has made in re-education ... It is apparent that, through these activities, the applicant has maintained a currency with his former specialty, and has been exposed to the latest developments in cancer treatment." Based solely upon his absence from the daily practice of medicine, the Peer Committee then stated that it was "concerned that he may lack the basic medical knowledge and clinical skills to safely return to practice." It supported and recommended restoration, but only after Dr. Denis demonstrates, through successful completion of competency examinations, his basic medical knowledge and clinical skills.

The Committee on the Professions has rejected this recommendation, although there is no evidence in the record to justify its belief that Dr. Denis may lack the basic medical knowledge and clinical skills to safely return to practice. It cited only "the long period of time since he last practiced." Lapse of time in and of itself does not negate the retention of the basic medical knowledge and clinical skills that a physician has developed in medical school, and in his subsequent years of training and practice.

Is it fair to conclude, if a physician suspends his practice for 13 years, that he lacks the basic knowledge and clinical skills to safely return to practice? Noone would suggest that conclusion, for such a physician would have had to obtain a certain number of CME credits to retain his license during each renewal period. That ensures that he has retained his basic knowledge and clinical skills. Also consider the case of a physician, who several years after being licensed, becomes board certified in a particular speciality. When that specialist, in order to retain his license to practice, seeks CME credits, he invariably will take CME courses within his chosen speciality, and perhaps never return to take courses which would solely hone his basic medical knowledge and clinical skills. The former includes the latter. In Dr. Denis' intensive four pronged reeducation program which was concentrated heavily in the speciality of Otolaryngology, his retention of his basic medical knowledge and clinical skills were aided by his speciality CME.

This Dr. Denis has done through his programmed reeducation during those 13 years. He did everything that the Peer Committee and the Committee on the Professions in 1996 advised him to do. He has shown true remorse for his misconduct and for the pain and damage caused to his patients. He has come to understand the problems that gave rise to the previous charges against him. His reeducation, in its thoroughness, has fully addressed the issues in this case. Finally, he has had eminently qualified peer support for restoration. The lack of these requirements had been cited by the Peer Committee and/or the Committee on the Professions in their 1996 reports as the reasons why that application should be denied.

We also suggest that it would be difficult to maintain a currency with an applicant's former specialty and at the same time not retain the basic knowledge and clinical skills to safely return to practice. One would seem to include the other. Especially would this be so, as in the present case, when Dr. Denis has testified that he intends only to practice in the field of Otolaryngology, frequently referred to as ENT practice. The Committee on the Professions, in its draft report, has observed that although Dr. Denis intends only to practice Otolaryngology, a restored license to practice medicine would permit him to practice in any area. However, if the Committee on the Professions and the Board of Regents so decided, Dr. Denis' license to practice medicine could be so restricted.

**REASONS FOR THE COMMITTEE ON THE PROFESSIONS'**  
**RECOMMENDATION TO DENY THE APPLICATION**

On the concluding page of the current draft report of the Committee on the Professions, it summarizes the reasons for its recommendation as follows:

Given his history of negligent and incompetent practice and the long period of time since he last practiced, and considering the strict limitations on his



return to practice recommended by the Peer Committee, the Committee on the Professions concludes that Dr. Denis has failed to make a compelling case that his license should be restored at this time. (Draft report of the Committee on the Professions, p. 7).

Each of these three reasons merit a response. First, Dr. Denis' negligent and incompetent practice almost 20 years ago has been dealt with during and after the earlier application for reinstatement. Certainly, the reasons for one's loss of his license must be considered soberly and thoroughly, and they have been so considered. See the 1996 reports of the Peer Committee and the Committee on the Professions, as well as the current reports of both.

The second reason given, the long period of time since Dr. Denis last practiced, is not a valid reason, nor evidence of a valid reason for such denial. In our opinion, it would require evidence of some conduct during that lapse of time to constitute a basis for concluding that the application should be denied.

Finally, logically and professionally, the strict limitations on his return to practice recommended by the Peer Committee do not seem to constitute valid reasons to deny Dr. Denis' Application for Restoration of his license. The Board of Regents has placed strict limitations on many restored licenses. Its own rules permit certain restrictions, as follows:

If an applicant has failed to remain current with developments in the profession, and a substantial question is presented as to the applicant's current fitness to enter into the active practice of the profession, the Board of Regents may require that the applicant take and obtain satisfactory grades on a proficiency examination satisfactory to the department prior to the issuance of a license or limited permit. (Rules of the Board of Regents, Section 24.7(a)(2)(ii)).

CONCLUSION

Based upon the draft report of the Committee on the Professions, the earlier Peer Committee report, the 1996 reports of both the Peer Committee and the Committee on the Professions, and this response on behalf of Applicant, we ask that the Committee on the Professions, in its final report, modify its draft report to the Board of Regents, and recommend to the Board of Regents that Dr. Denis' Application for Restoration of his license to practice medicine be granted.

Respectfully submitted,

OFFERMANN, CASSANO, GRECO, SLISZ & ADAMS, LLP

Redacted Signature

Francis J. Offermann, Jr.

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December 20, 2007

**VIA FACSIMILE**

Fax No.: (518) 486-2405

Peggy Rivers  
Assistant to the Commissioner  
The State Education Department  
The University of the State of New York  
Albany, New York 12234.

Re: Application for Restoration of License -  
Guy Denis  
Case No. CP-06-06  
Calendar No. 21771  
Our File No. 301-21002

Dear Ms. Rivers:

I am grateful to the Board for giving me, as the attorney for Dr. Guy Denis, the opportunity to present to it the text of what would have been my remarks to the assembled Regents on December 14, 2007, if I had been granted permission to personally appear before the Board of Regents on that date.

On August 5, 1991, by decision of the Board of Regents, and order of the Commissioner of Education, Dr. Denis' license to practice medicine was suspended, the execution thereof stayed and he was placed on probation for five years.

Dr. Denis was later charged with professional misconduct in 1993, but before addressing that case, I wish to refer to testimony given by one of the three distinguished physicians who testified before the Peer Committee in this restoration proceeding.

Mark A. Hoeplinger, M.D. was testifying at the hearing on April 14, 2005, and following his direct testimony and cross-examination, Dr. Shah (Dhiren K. Shah, M.D.) questioned and Dr. Hoeplinger answered, as follows:

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Peggy Rivers  
Assistant to the Commissioner  
December 20, 2007  
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Q. Dr. Hoepfner, you observed many of his patients, you observed him, you practiced in close association. You stated that you felt that his care was appropriate and good.

A. Of the patients I saw.

Q. Of the patients you saw. In your opinion, why do you think he lost his license?

A. I think that -- I hate to answer that question, but I have to answer that question. I think some of the --

Q. If you don't have an opinion, that's okay, too. It would be very helpful to us.

A. But I swore to tell the truth. I think that some of the senior ear, nose, and throat doctors downtown, I think they had it in for him. He comes from a different culture. He's a different language, a different race. I think they -- it's always easy to criticize someone who's different from us.

Any of us -- for example, an operative dictation, any of us could look at our surgical dictation, I could improve it here, I could put another sentence there. Any of our surgical dictations could be buffed up and improved. And fistula, I have had fistulas when I used to do head and neck. I gave up head and neck because I chose to give it up. But we've all had fistula with laryngectomy with neck dissection.

Margins, frozen section margins. Sure, we could all communicate better with the frozen sections. I think some of the senior physicians downtown were really after him and I didn't agree with it. (Peer Committee Hearing Transcript, p. 150-152.)

While I was unaware that Dr. Hoepfner would testify to the fact that senior ENT doctors downtown had it in for Dr. Denis, I had personally verified, in 1992, that in deed, certain ENT doctors were bent on having Dr. Denis' license revoked.

Sometime during 1992, I had occasion to professionally visit an otolaryngologist in the City of Buffalo. While I was conversing with this physician in one of his treatment rooms, a loud knock on the door was heard, and without more, the door was opened and another otolaryngologist entered the room and said to me that when I was finished with my appointment with his colleague, he would like to see me in his office. I acknowledged his request, and told him that I would go there presently. I had known this physician when we both were volunteers for the United Way drive, and I expected that he wished to talk over old times, since I had known him in no other way.

A few moments later, my appointment having been completed, I immediately went to the office of the senior otolaryngologist who had requested to see me.

I had seated myself in his office for only a few moments when he burst into the room, obviously in an agitated state. With his index finger wagging no further than six inches from my face, and without any additional salutation, he told me that I was doing a great disservice to the community. Perplexed, and without the faintest clue as to what he was talking about, I asked what I was doing that was troubling him. He told me that I knew what he was talking about, and it is awful what I am doing. I protested that I really did not know about what he was talking. He looked at me, straight in the eye, still pointing his index finger at my face, and said that I was the attorney for Dr. Denis, and prevented him from losing his license, obviously referring to the Board of Regents decision a year or so earlier, which had not accepted the recommendation of the New York State Health Department to revoke Dr. Denis' license, but instead suspended him, with a stay thereof, and placed him on probation for five years. The very irate otolaryngologist continued his high pitched tirade by telling me that "we're going to get him -- you better believe it -- and it's going to be soon, but we are going to have his license revoked." He stormed out of his office, without another word, and I quickly exited.

Dr. Hoeplinger, in his Peer Committee testimony, was speaking about the same otolaryngologist who had made his threat to me that he was going to get Dr. Denis. I will not name either that otolaryngologist or the other one referred to by Dr. Hoeplinger, but both of them, over the years, have been able to exercise a great deal of influence on health and education matters in the Buffalo medical community. It is wrong to use such influence to jeopardize a physicians' reputation in the community, as well as his license to practice. I believe that this was done in the case of Dr. Denis, as was admitted and promised to me by the senior otolaryngologist in his office.

I have mentioned this incident because it reflects upon the administration of the Public Health Law and Education Law in New York State. I also believe that the influence brought to bear by these unnamed otolaryngologists has impacted this case.

When Dr. Denis was charged the second time, the charges were accompanied by an immediate summary suspension of his license to practice. In such case, a hearing follows within 30 days or so, and as an attorney who is familiar with summary suspensions, I know that it is extremely difficult to defend such a case, because of the pressure of time and the fact that the suspended physician may not

Peggy Rivers  
Assistant to the Commissioner  
December 20, 2007  
Page 4

practice. Dr. Denis, in lieu of defending the charges, chose to surrender his license, and to do this, it was necessary for him to admit guilt to one specification of the charges. There never was a shred of evidence produced in this proceeding against him. However, he did plead guilty to a single specification of charges, and I do not in any way attempt to abrogate Dr. Denis' guilt to that specification. On that basis, he surrendered his license to practice.

I am certain that each of you has read the record details of Dr. Denis' efforts to reeducate himself after having lost his license. In my opinion, the entire package of the different segments of his achievement is impressive and unparalleled. Both the Peer Committee and the COP were impressed with his reeducation accomplishment. Both Committees were concerned only that since Dr. Denis had been absent from the daily practice of medicine since 1993, he may lack the basic medical knowledge and clinical skills to safely return to practice.

It is important to note that the record does not reflect any perceived lack of knowledge and clinical skills on the part of Dr. Denis. Certainly, if in any phase of his reeducation, he had faltered, this would have been noted by the six surgeons, whose 100 surgeries Dr. Denis had witnessed, asked questions and observed the preparation of the operative reports. Deficiencies in his basic medical knowledge could also have been easily discovered by the many physicians and other professionals who attended the weekly sessions of the Division of Head and Neck Surgery at Roswell Park Cancer Institute for more than 12 years (now 13). Instead, the record reveals that Thom R. Loree, M.D. and Donald P. Shedd, M.D., the present and erstwhile Chiefs of that Department testified and confirmed in letters that Dr. Denis asked "intelligent questions" and had a "good grasp of the problems under consideration." These examples show positive, objective evidence of Dr. Denis' retention of basic skills. On the other hand, there is no evidence in the record reflecting that during this thirteen year period he did anything supporting the suspicion that he "may lack" the basic medical knowledge and clinical skills to safely return to practice.

Attached to this letter is a letter from the American Board of Otolaryngology dated October 31, 1985 to Dr. Denis, advising him that he had passed the written examination and "that you are now certified as a Diplomat of the American Board of Otolaryngology." Importantly, his examination scores and their meaning are attached to this letter. Because Dr. Denis scored well, he was not obligated to take the oral component of the Board examination. I have attached the Board's letter only to point out that Dr. Denis was well grounded in the basic medical knowledge and clinical skills of his profession when he became Board Certified in 1985. With your indulgence, I ask that this letter and that of the American Board of Otolaryngology be added to the record herein. The latter is marked as Exhibit "A" to my letter.

The Peer Committee's recommendation supporting Dr. Denis' restoration petition recognized that to assure that he did or did not lack the required medical knowledge and clinical skills, Dr. Denis should be required to take and pass the Special Purpose Examination (SPEX) offered by the Federation of State Medical Boards, and the Step 2 Clinical Skills (CS) examination offered by the



Peggy Rivers  
Assistant to the Commissioner  
December 20, 2007  
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United States Medical Licensing Examination before his license is restored. Even after restoration, the Peer Committee would require a ten year probation, and that Dr. Denis not seek credentialing to practice at any hospital for the first five years, and limit himself to practice in a group or hospital setting.

According to both the Peer Committee and the COP, Dr. Denis has more than fulfilled the requirements for restoration - remorse, reeducation, and rehabilitation. Yet, the COP has concluded that Dr. Denis has failed to make a compelling case that his license should be restored.

I sincerely hope and urge the Board of Regents to fully consider, in addition to all that was in the record before the Peer Committee and the COP, the background of how Dr. Denis came to be charged in his second case. I have pointed out the unimpeached, uncontradicted and clear testimony of Dr. Hoepflinger that certain senior ear, nose and throat doctors downtown had it in for Dr. Denis because of his different culture, different language, and was of a different race. I personally verified that such an unprofessional effort in deed existed against Dr. Denis, as one of the otolaryngologists referred to by Dr. Hoepflinger voluntarily told me that they were going to get Dr. Denis' license --- and they did. He not only told me this, but sought me out to angrily tell me that I was performing a disservice to the community in representing Dr. Denis in this matter.

Dr. Denis deserves the opportunity to take the examinations that would either demonstrate that he has the basic medical knowledge and clinical skills, or that he does not. Only by passing these exams could he have his license restored.

I submit to you that giving Dr. Denis this opportunity to prove that he has retained the basic medical knowledge and clinical skills to safely practice medicine in the community would be the fairest way to complete this restoration proceeding and to possibly permit Dr. Denis to once again practice the profession of medicine that he loves so well, and the return to which he has dedicated the last 13 years of his life.

I thank you for receiving this letter.

Respectfully submitted,  
Redacted Signature

Francis J. Offermann, Jr.  
Attorney for Petitioner

FJO/jep

Copy: Jeffrey M. Dvorin, Assistant Attorney General/via fax  
Seth Rockmuller, Esq./via fax  
Guy J. Denis, M.D./via mail

# **EXHIBIT**

## **"A"**

**American Board of Otolaryngology**  
**letter to Dr. Denis**  
**dated October 31, 1985**

# AMERICAN BOARD OF OTOLARYNGOLOGY

*Serving the Specialty of Otolaryngology Head and Neck Surgery*

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NANCY DYKE  
Administrative

October 31, 1985

Dear Doctor Denis:

I am very pleased to inform you that you successfully passed the recent written examination of the American Board of Otolaryngology and that you are now certified as a Diplomate of the American Board of Otolaryngology. It is the Board's hope that you will maintain and demonstrate to your patients, your peers and the public the high standards and ethics represented by the award of this certificate. Please accept my congratulations and best wishes.

Enclosed is a copy of your examination profile. Also enclosed is a "Request for Certificate" form which should be filled out with your name as you wish it to appear on the certificate and returned to this office as soon as possible along with a fee of \$50.00. Failure to return this form promptly delays the printing of the certificate. If we have not received this form by DECEMBER 2, 1985, we will assume that you do not wish a certificate. Our printer will notify you by mail as to the date your certificate will be available.

The American Board of Otolaryngology will submit your name for publication in the next edition of the DIRECTORY OF MEDICAL SPECIALISTS providing you check the box at the bottom of the "Request for Certificate" form.

Please return by DECEMBER 2, 1985 the following items:

1. Request for Certificate form (which also includes the request for publication in the Directory of Medical Specialists at the bottom of the form.)

- 
2. Check for \$50.00 payable to the American Board of Otolaryngology for your certificate.

Congratulations to you once again.

Sincerely,

Redacted Signature

George F. Reed, M.D.  
Executive Vice President

GFR/cw  
enc.

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AMERICAN BOARD OF OTOLARYNGOLOGY  
 SEPTEMBER 1985 CERTIFICATION EXAMINATION

CANDIDATE NUMBER: 090

INDIVIDUAL ANALYSIS

INTERPRETATION

SCORE TYPE	PCI	SCORES PR SCALED
MULTIPLE CHOICE	88	97 10.3
INFANT/CHILD	71	58 6.8
ADULT	78	74 8.3
DIAGNOSIS	80	75 8.2
TREATMENT	83	82 8.9
ANAT, EMBRY, PATH, MICRO	92	93 10.0
PHYS, PHARM, HIO, GENET	81	80 8.8
CONGENITAL	83	79 8.6
METABOLIC, IDIOP, MACH	81	73 8.2
INFECTIONOUS & INFIL	71	57 7.0
NEOPLASTIC & OTHER	69	46 6.2
TRAUMA	58	15 3.7
HEARING, ACOUS, AUDIO	67	42 5.8
OTOLOGY	73	55 6.8
PLASTIC & RECONSTRUCTION	77	72 8.1
HEAD & NECK	77	75 8.2
GENERAL	69	50 6.4
RECALL	83	84 8.8
INTERPRETATION	76	72 8.0
PROBLEM SOLVING		
WEIGHTED TOTAL WRITTEN TEST SCORES	76	70 8.2

YOUR SCORES ON THE 1985 ABO WRITTEN COMPONENT OF THE CERTIFICATION EXAMINATION ARE PROVIDED FOR 19 DIFFERENT SUBAREAS AS WELL AS FOR A WEIGHTED TOTAL OF THE WRITTEN TEST.

FOR EACH OF THE 19 SUBAREAS, THE PERCENT OF CORRECT ANSWERS (PCI), THE PERCENTILE RANK OF EACH SUBAREA SCORE (PR), AND THE SCALED SUBAREA SCORES (SCALED) ARE REPORTED. THE REFERENCE GROUP USED TO DERIVE THE SCALED SCORES CONSISTS OF CANDIDATES GRADUATED FROM U.S. OR CANADIAN MEDICAL SCHOOLS AND TAKING THE EXAMINATION FOR THE FIRST TIME.

THE WEIGHTED TOTAL WRITTEN TEST SCORE IS A SCORE THAT IS ADJUSTED FOR SLIGHT VARIATIONS IN THE DIFFICULTY OF DIFFERENT FORMS OF THE EXAMINATION. THIS ADJUSTED SCORE SCALE PROVIDES THE BASIS FOR SETTING THE PASSING AND FAILING MARKS ON THE WRITTEN TEST. CANDIDATES WHOSE SCALED SCORES ARE 7.5 AND ABOVE HAVE PASSED AND WILL BE CERTIFIED. THOSE WHOSE SCALED SCORES ARE 6.7 AND BELOW HAVE FAILED. CANDIDATES WHOSE SCORES ARE BETWEEN THESE TWO POINTS ARE INVITED TO TAKE THE ORAL COMPONENT OF THE CERTIFICATION EXAMINATION IN 1986 OR THEY MAY RETAKE THE WRITTEN TEST IN THE FUTURE.



# The University of the State of New York

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

X

In Matter of the Application of

GUY DENIS, M.D.

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

X

REPORT OF  
THE PEER  
COMMITTEE  
CAL. NO. 21771

GUY DENIS, hereinafter referred to as the applicant, was previously licensed to  
practice as a physician in the State of New York by the New York State Department of Health.  
The applicant's license was revoked as a result of a professional misconduct proceeding, and he  
applied for restoration of this license.

On April 14, 2005, this Peer Committee convened to review this matter and make the  
following recommendation to the Committee on the Professions and the Board of Regents.

## BACKGROUND INFORMATION

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

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isted below is the background information from that packet and the information contained in applicant's submissions on the day of the meeting. Further details pertaining to these documents may be found therein.

PRIOR DISCIPLINE PROCEEDING

tion by the New York State Board of Regents

se No. 11592

December 15, 1987- the applicant is charged by the New York State Department of Health's Office of Professional Medical Conduct (OPMC) with six specifications of professional misconduct, alleging that he practiced medicine with negligence on more than one occasion and his incompetence on more than one occasion.

October 18, 1990 - a hearing committee of the State Board for Professional Medical Conduct concluded that the applicant is guilty of the first, second, fourth, fifth and sixth specifications of misconduct to the extent indicated in its report, and recommended that his license to practice medicine be revoked.

November 30, 1990 - the Commissioner of Health recommended to the Board of Regents the findings, conclusions and recommendations of the hearing committee be accepted in full.

June 5, 1991 - the Regents Review Committee recommended to the Board of Regents the applicant be found guilty of the first and second specifications of misconduct, to the extent indicated in its report, and that his license to practice be suspended for five years, execution stayed, and the applicant be placed on probation for five years.

July 26, 1991- the New York State Board of Regents voted to suspend the applicant's license for five years, execution stayed, and to place the applicant on probation for five years.

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by the New York State Department of Health

No. BPMC 93-92

April 19, 1993- the applicant is charged by OPMC with twenty-seven specifications of misconduct.

April 21, 1993- an order of the Commissioner of Health is issued, immediately suspending the applicant's license to practice medicine.

May 10, 1993 - an order of the State Board for Professional Medical Conduct is issued, denying the applicant's application to surrender his license to practice medicine.

Amendment of the Specifications of the Charges

The applicant admitted guilt, within the meaning of New York Education Laws §6509, of one specification of professional misconduct (practicing medicine with negligence on more than one occasion) regarding seven patients.

Details of the Misconduct

The applicant admitted, among other things, to performing a procedure without adequate medical indication, recommending procedures without adequate medical indication, recommending procedures without considering non-surgical alternatives, recommending procedures that he had neither the qualifications or hospital privileges to perform, making inappropriate diagnoses, and recommending inappropriate procedures.

#### PRIOR RESTORATION PROCEEDING

No. 96-167-60R

June 20, 1994- the applicant filed a petition for restoration of his medical license.

April 12, 1996 - the Peer Committee issued its report, recommending that the petition be denied.

October 8, 1996 - the Committee on the Professions issued its report, recommending



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that the petition be denied.

January 22, 1997- the Board of Regents denied the applicant's application for restoration of his medical license.

### PETITION FOR RESTORATION

The applicant submitted a restoration application dated January 13, 2004, with attachments as described below.

### ATTACHMENTS TO THE PETITION

- Six affidavits in support of the application from advisors and professional colleagues of the applicant;
- Documentation of continuing education credits received following the revocation of the applicant's license, along with transcripts and other forms of verification;

### INVESTIGATION BY OPD

Subsequent to the filing of the Petition, OPD conducted an investigation for the purposes of this proceeding. Information from that investigation, including reports from the investigators and other documentation, was made part of the packet for the proceeding. Certain information in the packet has been summarized above. Among the information not summarized is a report from the investigator dated August 13, 2004.

This report summarizes a telephone interview conducted with the applicant, who was represented by counsel. The interview was recorded and the tape was secured as evidence.

The report begins with an outline of the applicant's disciplinary history as filed in his application for restoration.

The applicant described his continuing education efforts as in his application: his weekly

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attendance at case conferences of the Division of Head and Neck Surgery of Roswell Park Cancer Institute. The applicant has also participated in 1900 hours of either in person or correspondence continuing education courses for which he was awarded 81.5 CME credits. Numerous surgeries were observed by the applicant, which he prepared for by reviewing records and studies of medical documents.

Petitioner expressed his sorrow for any pain or damage he may have caused his patients, expressed his determination not to repeat these past mistakes. What the applicant might do if his license were to be restored depends on what opportunities may present themselves. He is considering working in a hospital or doing research. If he were to deal with patients, the applicant would seek second opinions in an effort to give his patients better care. He also would seek for better documentation and concentration on his operative reports.

There are no criminal or civil matters pending against the applicant. In addition, all malpractice cases against him have been resolved. The applicant further stated that there are no physical or mental impairments that would prevent him from practicing his profession.

Three telephone interviews were conducted. The following information was obtained:

Michael Piazza - Retired Labor Union President: Mr. Piazza stated that he has known the applicant for over 10 years. He first met the applicant through his position as a benefits administrator for the labor organization to which they both belonged.

Donald P. Shedd, M.D.: Dr. Shedd has known the applicant for approximately ten years. They both attended various teaching conferences at Roswell Park Cancer Institute.

Lachlan M. Mackenzie, Retired M.D.: Dr. Mackenzie has known the applicant for approximately thirteen years. He has supervised about twenty of the applicant's surgical cases while he was practicing in Olean, New York.

Other information on the record, not already summarized:

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letter dated September 29, 2004 from Dennis J. Graziano, Director, Department of Health, Office of Professional Medical Conduct, expressing strong opposition to the restoration of the applicant's license.

### PEER COMMITTEE

On April 14, 2005, this Peer Committee met to consider this matter. The applicant appeared before us represented by his attorney, Francis J. Offermann, Jr., Esq. Also present was Ms. R. Bergman, Esq., an attorney for the New York State Education Department.

Mr. Offermann began his opening statement by informing the committee that it was the applicant's second application for restoration of his license to practice medicine. The first application for restoration was denied after only one year's loss of his license. Mr. Offermann stated that this was too soon for a request for restoration. The applicant had no time for remorse or a serious attempt at re-education.

The applicant's current application was filed ten years after the loss of his license. Mr. Offermann intended to offer evidence and testimony that would convince the committee that the applicant is filled with remorse, that his skills have been enriched through relentless re-education and that he has come to terms with and has a clear understanding of his misconduct. The applicant has resolved to help his community and is dedicated to practicing good medicine.

Ms. Bergman reminded the committee that an additional factor to consider in a restoration case is the risk of harm to the public and the professional competence of the applicant. She also noted that there were two disciplinary actions taken against the applicant. In 1993 there was a five year stayed suspension and in 1993 a summary suspension, which led to a voluntary surrender.

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Ms. Bergman continued her opening remarks, stating that the burden is on the applicant as not practiced since 1993. The potential issue of putting the public at risk must be considered.

The applicant began his testimony with background information about his birth in Haiti followed by his higher education in Enrigo, Spain. He studied there for six years and graduated in 1972, working as a physician in a small town for almost two years. The applicant explained he came to the United States and began with an internship for one year at Brooklyn Hospital, in New York, followed by a residency in general surgery for one year, at the same hospital. A second residency took place at Brooklyn Jewish Hospital from 1978-1979. The applicant also did an Ear, Nose and Throat (ENT) residency at Upstate Medical Center in Syracuse, New York from 1979-1980. Residency continued in Augusta, Georgia from 1980 to 1981. The applicant received his license to practice medicine in New York State in 1980 followed by certification from the American Board of Otolaryngology in 1985.

Mr. Offermann offered into evidence various exhibits demonstrating courses, lectures and seminars that were attended by the applicant since the loss of his license. Additionally, after the voluntary surrender of his license, the applicant sought the advice from a colleague, Dr. [redacted], who was at that time, Chief of Head and Neck Surgery for Roswell Park Hospital. The applicant was advised to attend weekly head and neck conferences where different specialists presented their cases. The applicant began attending these conferences in 1993. He only had a few days off in his break in attendance and continues attending presently. The applicant also observed approximately seventy-six surgeries at the Roswell Park Cancer Institute by Dr. Loree and Dr. [redacted]. In addition, the applicant observed thirteen surgeries at St. Joseph's Hospital by Dr. [redacted] Singer.

During further questioning by his attorney, the applicant explained that he was very sorry for what happened to his patients. His educational experience over the years made him realize he should have done better. It took a long time for him to realize how he had hurt those people. In the beginning he was not aware of the harm he caused, but over the years he became more remorseful. The applicant acknowledged that the care he had provided was unsatisfactory. The courses that the applicant took have brought knowledge and an understanding through the mistakes of those he observed and learned from. It was also during time of personal family problems that, as a patient himself, he felt he was living the remorse through his family. The applicant feels he has grown over the years. In the beginning he was angry about losing his license but now is able to focus on the reasons he lost his license.

Ms. Bergman's questioning focused on the weekly conferences and surgery observations that the applicant participated in. Learning from these experiences, Ms. Bergman wanted to know more about the type of harm the applicant had caused his patients. The applicant talked about pain, emotional harm and missed diagnoses, all of which were possible for poor patient treatment. If given the opportunity to practice again, the applicant does not believe he would practice surgery. He understands that even if he did wish to surgery that he would have to regain credentials and privileges through the hospitals. Regained privileges would be possible and he would have to be supervised for a length of time.

Dr. Messina's questioning focused around clarification of the applicant's activities from 1991 through 1993. The applicant stated that the reported malpractice cases, most of which were taken care of, occurred from 1985 to 1990 but not after 1991. In seeking further clarification, Dr. Messina commented and questioned about the charges that occurred during

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1983-1984 period that resulted in a stayed suspension and period of probation. There was concern that during the applicant's period of probation, he continued to practice in a way that considered to be negligent even after he was initially informed that there were some charges pending. The applicant was awaiting a decision on the first charges, hoping for a positive outcome and admits he did not fully understand nor accept his negligence until the second set of charges were brought in 1991.

Mr. Offermann ended his questioning of the applicant, clarifying that the Health Department brought charges with respect to seven patients who were treated after the first charges were brought, but before any decision was made by the Board of Regents on the second set of charges.

Thom Robert Loree, M.D. testified to his credentials and verified his employment at Well Park Cancer Institute. The doctor met the applicant in 1993 during attendance of the weekly tumor board meetings. Dr. Loree was aware that the applicant had surrendered his license in 1993 due to misconduct charges. Dr. Loree gave an outline of the weekly conferences, which usually lasted one hour. When asked his opinion as to whether the applicant's license to practice medicine should be restored, Dr. Loree answered, "Yes, I think it should be restored." In further support of restoration Dr. Loree stated, during cross-examination by Ms. Bergman, that he felt surgical privileges should also be restored, standing that it is done on a hospital-to-hospital basis and that it is a tight credential process.

Ronald P. Shedd, MD, began his testimony with a background of his medical career. Dr. Shedd first retired in 1996, came back to work in 2000 and retired a second time in 2005. Up until 1996, he was Chief of the Head and Neck Cancer Surgery Department. Dr. Shedd recalls meeting the applicant in or about 1993. Dr. Shedd verified that the applicant

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in fact attend the weekly conferences at Roswell. Being aware of the charges made against the applicant and the re-education that the applicant has completed, Dr. Shedd believes the applicant's license should be restored.

Testimony continued with Camellia Pirrone-Briandi. Ms. Pirrone has been an advisor to the applicant for twenty years and considers their relationship to be of a very friendly personal-type but mostly consisting of business and lifetime financial discussions. Ms. Pirrone has also been a patient of the applicant. She describes the applicant as an active participant in school functions and community events. She considers the applicant a role model for many people in the community.

Marlene Beth Denis, wife of the applicant, testified next. She began by stating that she has been married to the applicant for twenty-six years and they have two children. She is a registered nurse and works at Roswell Park Cancer Institute. Mrs. Denis was the applicant's office manager while he was in private practice prior to his license surrender in 1993. As office manager, Mrs. Denis both viewed and heard interaction between the applicant and his patients. She described these conversations as both warm and mutual. Many times the applicant treated more than one family member, and established a good rapport with the families. Mrs. Denis was asked about the applicant's trilingual skills and their benefit to the community and the practice. Mrs. Denis stated that there are not many doctors who are bilingual and that the Dunkirk area has a large Spanish speaking community, some of which are poor English speaking skills.

The next witness called to testify was Mark A. Hoeplinger, M.D. The doctor has been employed for roughly twenty years as a Board Certified ENT physician. Both the doctor and applicant were on the staff at Lake Shore Hospital. From time to time they would discuss an interesting case and Dr. Hoeplinger also gave second opinions to the applicant's patients.

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doctor was aware that the applicant had lost his license and had applied for restoration of  
cense. The applicant requested and was allowed to observe surgeries by Dr. Hoeplinger  
Joseph's Hospital and Our Lady of Victory Hospital. The doctor explained that the  
cant was very eager to learn, he asked a lot of questions and that his questions were  
intelligent. Dr. Hoeplinger verified his knowledge of the applicant's attendance of the  
ly tumor conferences at Roswell Park Cancer Institute as well as the applicant's home  
and conference attendance. Dr. Hoeplinger stated that he had no reservations at all as to  
applicant's license being restored. In addition, the doctor said he would be willing to take  
from his schedule to observe the applicant on cases, were it a condition of restoration.  
ing further examination, the doctor was asked his opinion on what would be required in  
for the applicant to be able to practice again. Dr. Hoeplinger recommended limited  
ntials for a finite period of time as well as having a staff member observing his practice.

In closing remarks, Ms. Bergman stated that remorse, re-education, rehabilitation, the  
cience of the practitioner and the potential risk to the public are all factors to consider in  
oration proceeding. She asked that the committee assess the credibility of the witnesses  
eir testimony. Ms. Bergman had a concern about the Health Department's September  
04 letter stating that even though the applicant was notified of charges in 1987, he  
change his conduct that led to further charges until after notification of those charges.

Mr. Offermann, in his closing statement stated that the applicant has proven by clear  
onvincing evidence that his license should be restored. Mr. Offermann stated that the  
ant clearly showed remorse and that the three highly trained and skilled professionals  
trong testimony in the applicant's favor towards restoration. Mr. Offermann argued the  
Department's letter was unfair in that the applicant was suspended without a hearing  
great burden was placed on the applicant to respond to the charges within ten days. It



as not until the second set of charges was served that the applicant became aware of the severity of the charges at hand. Mr. Offermann feels that the applicant has been more persistent than any other restoration applicant he has seen in his re-education efforts and in overcoming his language difficulties. He concluded by saying that the applicant had sustained his burden.

### RECOMMENDATIONS

The Peer Committee has considered the entire record in this matter. We have considered the three criteria typically used in restoration determinations: remorse, re-education, and habilitation. However, we are not necessarily limited to such formulaic criteria but may consider other factors, particularly the seriousness of the offences and, ultimately, our judgment to whether the health and safety of the public would be in jeopardy should the application be granted.

The applicant appeared before us as a good, well-intentioned man. He has overcome many difficulties in his medical education and career stemming from his cultural background and language barriers. The applicant, born in Haiti, went to Spain to study medicine and worked there for two years. Following his arrival in the United States, the applicant went to school to learn English and to prepare for the exam to intern in the United States.

However, the applicant ran into trouble not due to the language barriers but because, among other things, he performed and recommended surgical procedures without adequate medical indication and that were beyond his capabilities, and was faulty in his diagnoses.

In evaluating this application, we believe that re-education and rehabilitation are closely associated since the applicant's license was revoked due to practice issues. Thus, the applicant's rehabilitation comes first from developing an understanding of how his medical practice was

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ient. The applicant then must re-educate himself to correct these deficiencies; and develop knowledge and skills that will enable him to safely practice medicine.

Following two separate disciplinary proceedings, and one prior attempt to have his license restored, we believe that the applicant has achieved a full understanding of the nature of deficiencies in his medical practice, and was able to express to us an appreciation for the harm he inflicted on his patients, and remorse for this harm.

The committee was impressed with the efforts the applicant has made in re-education. The applicant has attended a variety of lectures and seminars sponsored by the American Academy of Otolaryngology, Head and Neck Surgery, where he earned approximately fourteen hours of CME credits. Many of these topics were related to areas of practice where the applicant was found to have practiced negligently. The applicant has also been doing home study classes for twelve years, earning an additional eighty-one CME credits. A large portion of the applicant's additional re-education has been through attending the weekly Tumor Board conferences he has been attending at Roswell Park Hospital. The applicant has attended these conferences on a regular basis since 1993 and continues attendance at the present time. Additionally, the applicant has observed numerous surgical procedures performed by professional associates Dr. Lorce, Dr. Shedd and Dr. Hoepflinger. It is apparent that, through these activities, the applicant has maintained a currency with his former specialty, and has been exposed to the latest developments in cancer treatment.

However, since the applicant has been absent from the daily practice of medicine since his license was revoked in 1993, we are concerned that he may lack the basic medical knowledge and clinical skills to safely return to practice. While we support the applicant's desire to return to practice, we would therefore require that he demonstrate, through successful completion of competency examinations, his basic medical knowledge and clinical skills before having his

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license restored. Once he has done this, we recommend that a ten-year period of probation could be imposed, during which certain restrictions are placed on the applicant's license, and during the first year of which his practice is supervised. Under these conditions, the applicant, in our opinion, will be able to practice the profession of medicine in a safe and effective manner.

It is therefore the unanimous opinion of the committee that the applicant's application for restoration of his license be granted, but only after the applicant has submitted proof satisfactory to the Director of the Department of Health's Office of Professional Medical Education, that he has taken and passed the Special Purpose Examination (SPEX) offered by the American Board of State Medical Boards, and the Step 2 Clinical Skills (CS) examination offered by the United States Medical Licensing Examination.

Following submission of this proof, it is our unanimous recommendation that the restoration of the applicant's license to practice as a physician be stayed, and that the applicant be placed on probation for ten years under the terms of probation annexed hereto, made a part of this report, and marked as Exhibit "A." Upon successful completion of the terms of probation, the applicant's license would be fully restored.

Respectfully submitted,

David J. Martinke, D.O., Chairperson,  
Joseph A. Messina, M.D.  
Dhiren K. Shah, M.D.

( Redacted Signature

Chairperson

Dated: \_\_\_\_\_

EXHIBIT "A"  
TERMS OF PROBATION  
OF THE PEER COMMITTEE

Guy Denis, M.D.

CALENDAR NO. 21771

applicant, during the period of probation, shall be in compliance with the standards of conduct prescribed by law governing applicant's profession;

applicant shall submit written notification to the Director, Office of Professional Medical Conduct, Department of Health (DOH), 433 River Street, Troy, NY 12180-2299, of any employment and/or applicant's residence, telephone number, and mailing address and of any change in applicant's employment, practice, residence, telephone number, and mailing address within or without the State of New York;

applicant shall submit written proof from the Division of Professional Licensing Services (DPLS), New York State Education Department (NYSED), 2<sup>nd</sup> Floor, North Wing, 89 Washington Avenue, Albany, New York 12234 that applicant has paid all registration fees due and owing to the NYSED and applicant shall file with and submit whatever papers are requested by DPLS in regard to said registration fees, said proof to be submitted by applicant to the DOH, addressed to the Director, OPMC, as aforesaid, no later than the first three months of the period of probation;

applicant shall submit written proof to the DOH, addressed to the Director, OPMC, as aforesaid, that 1) applicant is currently registered with the NYSED, unless applicant submits written proof that applicant has not registered with DPLS, NYSED, that applicant is not engaging in the practice of applicant's profession in the State of New York and does not desire to register, and that 2) applicant has paid any fines which may have previously been imposed upon applicant by the Board of Regents or pursuant to section 230-a of the Public Health Law, any of the above to be submitted no later than the first two months of the period of probation;

during the entire period of probation, the applicant shall be prohibited from performing head and neck surgery;

during the first five years of the period of probation, the applicant shall limit his practice to a group or office setting, and shall not seek to become credentialed to practice at any hospital;

during the first year of probation, the applicant shall only engage in the practice of medicine under direct supervision, and have quarterly performance reports submitted to the DOH, addressed to the Director, OPMC, as aforesaid, from the respondent's employer, evaluating the respondent's performance as a physician in the respondent's place of employment, said reports to be prepared by the respondent's supervisor or employer;

applicant shall make quarterly visits to an employee of the OPMC, DOH, unless otherwise agreed to by the employee, for the purpose of said employee monitoring applicant's terms of probation to assure compliance with the same, and applicant shall cooperate with said employee, including the submission of information requested by the employee, regarding the aforesaid monitoring;

in the event of receipt of evidence of noncompliance with or any other violation of any of the aforementioned terms of probation, the OPMC, DOH may initiate a violation of probation proceeding.

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